

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Special Meeting of the Board of Directors, Friday, November 13, 2020

FROM: Laurie Nelson, Director, Policy Planning

RE: **IMPACT OF BILL 229, *PROTECT, SUPPORT AND RECOVER FROM COVID-19 ACT (BUDGET MEASURES), 2020***

KEY ISSUE

The Province of Ontario has proposed amendments to the *Conservation Authorities Act* and the *Planning Act* in Schedule 6 of [Bill 229](#), that present major implications for Toronto and Region Conservation Authority's (TRCA) ability to fulfill its mandate, primarily in the areas of planning, permitting and enforcement.

RECOMMENDATION

WHEREAS on November 5, 2020, the Province of Ontario introduced Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, which proposes amendments to the *Conservation Authorities Act* and *Planning Act*;

AND WHEREAS the proposed amendments will diminish TRCA's ability to serve its municipal partners and other watershed stakeholders in the protection from natural hazards and conserving natural resources, primarily in the areas of planning, permitting and enforcement;

THEREFORE, LET IT BE RESOLVED THAT TRCA's Board of Directors request that the Government of Ontario remove proposed amendments to the *Conservation Authorities Act* and *Planning Act* in Bill 229 relating to planning, permitting and enforcement and include strengthened provisions related to enforcement, in order to support a balanced approach to development, enable conservation authorities to mitigate natural hazards and protect natural heritage, and to prevent any downloading of enforcement costs to municipalities;

AND FURTHER THAT the Clerk and Manager, Policy, so advise the Premier, Minister of Environment, Conservation and Parks, the Minister of Natural Resources and Forestry, the Minister of Municipal Affairs and Housing, the Minister of Finance, MPPs in our jurisdiction, TRCA's partner municipalities, neighbouring conservation authorities and Conservation Ontario.

BACKGROUND

Previous Bill 108 Amendments and Advocacy Efforts

TRCA has been a value-added collaborator throughout the three-year provincial consultation process regarding the modernization of the *Conservation Authorities Act* (the Act or the CA Act). Prior to previous amendments to the Act under Bill 108, the *More Homes, More Choice Act*, TRCA with its municipal partners, Conservation Ontario, and neighbouring conservation authorities in the Greater Golden Horseshoe, strongly advocated that the Province recognize critical role that conservation authorities (CAs) play as watershed and natural resource management agencies. In addition to requesting the addition of "conserving natural resources"

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as a mandatory program or service, it was strongly voiced that stronger enforcement powers were needed to improve regulatory compliance in the control of natural hazards and the conservation of land.

Bill 108 received Royal Assent on June 6, 2010 and assigned greater prescriptions to the three categories of programs and services established through Bill 139 amendments (mandatory, municipally-driven and Board-driven). Some of the key legislative amendments were made in section 21.1 (1) of the Act. They require conservation authorities to provide programs or services that meet the following descriptions and that have been prescribed in regulations:

- i. Programs and services related to the risk of natural hazards
- ii. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title
- iii. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the [Clean Water Act, 2006](#)
- iv. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations

Subsequent to Standing Committee and Third reading of Bill 108, a late addition to these categories as part of the amendments, was a clause that enables CAs to provide a program or service other than those listed above, but it must first be prescribed in a provincial regulation. The Environmental Registry of Ontario [Decision notice](#) on the approval of the CA Act amendments under Bill 108 reports that this clause was added to address comments received by the Province that CAs' mandatory programs and services were being defined too narrowly.

The Bill 108 provisions governing municipally directed programs and services, (non-mandatory), require a publicly available Memorandum of Understanding or agreement. Provisions were also added for other programs and services (non-mandatory), which state that a conservation authority may provide, within its area of jurisdiction, such other programs and services it determines are advisable to further its objects. Nonetheless, if municipal funding is involved, there must be a public agreement in place between CAs and municipalities.

Key amendments are un-proclaimed and awaiting regulations

Many of the amendments from Bill 108 regarding programs and services and enforcement provisions are not yet in effect because they require enacting regulations. CAs, municipalities and other stakeholders have been eagerly awaiting the release of the draft regulations as they would reveal greater detail on the scope of CAs' mandate and were expected to grant enhanced enforcement powers to address un-proclaimed provisions and ongoing community concerns. Since then, individual briefings with CAs were held with Minister's staff and local MPPs.

Multi-Stakeholder Consultation Sessions

In early 2020, the Province conducted further consultation by hosting four in-person multi-stakeholder consultation sessions, as previously reported to the TRCA Executive Committee and Board of Directors. TRCA staff participated in three of the sessions in Barrie, Colborne and London. The Chair of TRCA's Board of Directors and TRCA's Chief Executive Officer also attended the sessions. Consisting of facilitated roundtable discussions and presentations from the agricultural sector, building industry, Conservation Ontario, and an environmental non-government organization, participants were provided with a series of questions under themes of

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mandatory and non-mandatory programs and services, the existing CA model, and partnerships.

The conversations during the roundtable discussions were generally consistent with the ongoing dialogue with the Province and stakeholders throughout the CA Act review process. TRCA staff attending the sessions made it clear in their discussions that the forthcoming draft regulations should enable TRCA to support provincial and municipal goals and objectives in the context of a growing and intensifying city-region.

Conservation Authorities Act Survey

Following the provincial multi-stakeholder consultation, the Ministry of Environment, Conservation and Parks issued an [on-line survey](#) to the public (survey closed March 13, 2020) that solicited input on the conservation authority model as it relates to transparency, permitting, oversight, Board composition and partnerships. It also asked for feedback on which programs and services should be mandatory within the areas of managing natural hazards, managing conservation authority-owned lands, and drinking water source protection.

TRCA's survey response was previously reported to the TRCA Board of Directors through a [Policy Submissions Summary report](#) and was informed by previously Board-endorsed TRCA submissions. After the survey closed, the Province stated on the survey website that, "The province is moving forward with a proposal to further define the core mandate of conservation authorities. These changes would improve the governance, oversight and accountability of conservation authorities, while respecting taxpayer dollars by giving municipalities more say over the conservation authority services they pay for."

It should also be noted that at that time, several municipalities within TRCA's jurisdiction, (and across the Province), passed Council resolutions of support for the valuable work of CAs for submission to the Province.

TRCA Memorandums of Understanding and Service Level Agreements

Recognizing the Bill 108 amendments to the Act that require CAs to establish Memorandums of Understanding (MOUs) for any municipally funded non-mandatory programs and services, and in anticipation of the enabling regulations, TRCA has been engaging its municipal partners in discussions to develop MOUs and other service level agreements (SLA). This has led to consensus on the importance of developing new standardized agreements to ensure consistency, accountability, and transparency. Pursuing MOUs and SLAs with our partner municipalities is helping identify ongoing funding for TRCA's programs, projects and services for 2021 and beyond, while also supporting our municipalities in their needs, priorities and desired outcomes. As such, MOUs are good business practice and allow a municipality to procure TRCA services more easily through procurement policy exemptions. The most recent update on the work underway was provided in a [report](#) to the Board of Directors on September 25, 2020.

Bill 229 carried on First Reading

On November 5, 2020, the Province of Ontario introduced Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020. Schedule 6 of Bill 229 proposes amendments to the *Conservation Authorities Act* and the *Planning Act*. As of the writing of this report, the Bill is proceeding through the legislature and carried on First Reading. The Province did not introduce any associated regulations.

Key amendments proposed under Bill 229, as stated in the ERO Bulletin, are:

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- Remove the authority for conservation authorities to expropriate lands. Conservation authorities would have the ability to request either the Province or a municipality expropriate land.
- Require participating municipalities to appoint municipal councillors as conservation authority members and that municipally appointed members generally act on behalf of their municipalities. This proposal would repeal the un-proclaimed provision made in Bill 108 that members were to act with a view to furthering the objects of the conservation authority.
- Enable the minister to appoint a member to the conservation authority from the agricultural sector.
- Require that conservation authority chairs and vice-chairs rotate every two years between different participating municipalities.
- Enable the minister to delegate some of their duties and powers under the *Conservation Authorities Act*, for example to a ministry official.
- Add a legal provision to the *Conservation Authorities Act* related to aboriginal and treaty rights under the Constitution. Such a non-derogation provision would recognize that nothing in the Act would abrogate or derogate from the existing aboriginal and treaty rights recognized and affirmed by section 35 of the Constitution.
- Authorize the Minister of Natural Resources and Forestry to issue an order to take over and decide an application for a permit under section 28 of the *Conservation Authorities Act* in place of the conservation authority (i.e. before the conservation authority has made a decision on the application).
- Allow an applicant, within 30 days of a conservation authority issuing a permit, with or without conditions, or denying a permit, to request the minister to review the conservation authority's decision.
- Where the minister has taken over a permit application or is reviewing a permit decision by a conservation authority, allow an applicant to appeal directly to LPAT where the minister fails to make a decision within 90 days.
- In addition to the provision to seek a minister's review, provide the applicant with the ability to appeal a permit decision to LPAT within 90 days after the conservation authority has made a decision.
- Allow applicants to appeal directly to LPAT where a conservation authority fails to make a decision on section 28 permit applications within 120 days.
- Provide permit applicants with the ability to appeal permit fees charged by a conservation authority to LPAT.
- Amend the un-proclaimed warrantless entry provisions to change the circumstances when an entry to land may be exercised by a conservation authority officer so that such circumstances are similar to entry powers now in effect in section 28 of the Act.

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- Remove the un-proclaimed provisions for conservation authorities to be able to issue stop work orders and retain the current enforcement tools, such as laying charges and potential court injunctions.
- An amendment to the *Planning Act* to add conservation authorities to subsection 1 (2) of the *Planning Act*. This amendment, if passed, would make conservation authorities part of the Province's one window planning approach. This would mean that a conservation authority could not, as a public body under that Act, appeal a decision to LPAT or become a party to an appeal before LPAT.

Letter from TRCA Chair to the Premier of Ontario and Ministries

TRCA has stated our main concerns with the proposed amendments in a letter from TRCA's Chair to the Premier of Ontario and Ministers of Environment, Conservation and Parks, Natural Resource and Forestry, Finance, and Municipal Affairs and Housing (Attachment 1). The letter will be the basis of TRCA's formal comment submission to the Province and will be further informed by input from members of the Board of Directors.

ERO Bulletin on Schedule 6 of Bill 229 requires no consultation

The Ministry of Environment, Conservation and Parks (MECP) has also posted a [Bulletin](#) on the Environmental Registry of Ontario (ERO) for the information of the public. The ERO Bulletin states that MECP is amending the CA Act to improve transparency and consistency in conservation authority operations, strengthen municipal and provincial oversight, and streamline conservation authority roles in permitting and land use planning.

Section 33 of the *Environmental Bill of Rights*, 1993 (EBR) exempts proposals from the public consultation requirements under the EBR if the proposal forms part of, or gives effect to, a budget or economic statement presented to the Legislative Assembly. There is therefore no obligation for the government to consult on the proposed amendments because this proposal was brought forward under a budget measures bill. (It should be noted that the Legislative Assembly of Ontario webpage on Bill 229, lists "Committee" prior to Second Reading and again, prior to Third Reading. TRCA has made a request to appear before the Committee prior to Second Reading).

The ERO Bulletin also states that later this fall, the government intends to consult on regulatory proposals for mandatory programs and services, section 28 natural hazards, section 29 conservation authority lands, agreements and transition under the CA Act. These proposals will be posted on the Environmental Registry for public consultation.

Ministry of Environment, Conservation and Parks (MECP) Webinar

On the morning of November 6, 2020, the MECP invited TRCA, other conservation authorities and Conservation Ontario (CO) to join a webinar that afternoon on the proposed amendments affecting conservation authorities under Bill 229. At the webinar, MECP staff provided an overview of the Bill's proposed amendments and fielded questions from the attendees. CO and CA staff sought clarification on the amendments proposing alternate permit review and appeal processes. Participants also expressed doubt as to level of efficiency the proposed measures would bring to permit appeal and approval given the demonstrated success of ongoing CO and CA-driven streamlining initiatives.

Efforts in this area were acknowledged in 2020 by the Minister of Natural Resources and Forestry in a letter to the Chair of Conservation Ontario stating that the Minister was pleased to

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see the progress and success of Conservation Ontario's Client Service and Streamlining Initiative (Attachment 4). TRCA's own efforts to increase operational efficiencies, streamline processes and enhance customer service to support provincial priorities for streamlining the planning and development approvals process were outlined in a 2019 [report](#) to TRCA Board of Directors.

TRCA Action Items Post Bill 229 Release

Upon release of the proposed amendments in Schedule 6 of Bill 229 on November 5, 2020, TRCA staff undertook the following actions:

- Provided a verbal, high level update to the Executive Committee on November 6, 2020
- Issued a [press release](#) to 250-plus members of the media and posted on TRCA's website summarizing our initial response to the proposed amendments
- Issued social media posts on priority areas of planning, permitting and enforcement, for use by municipalities and public support
- Issued a letter from TRCA's Chair to the Premier of Ontario and Ministers of Environment, Conservation and Parks, Natural Resource and Forestry, Finance, and Municipal Affairs and Housing (Attachment 1)
- Issued a letter to Members of Provincial Parliament urging them to support conservation authorities (Attachment 2)
- Drafted a sample municipal council resolution of support for conservation authorities in the wake of Bill 229 for use by municipal partners (Attachment 3)
- Requested to appear before Standing Committee prior to the Second Reading of Bill 229

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 2 – Manage our regional water resources for current and future generations

Strategy 4 – Create complete communities that integrate nature and the built environment

Strategy 7 – Build partnerships and new business models

Strategy 8 – Gather and share the best sustainability knowledge

Strategy 12 – Facilitate a region-wide approach to sustainability

FINANCIAL DETAILS

Staff are engaged in this policy analysis work per the normal course of duty, with funding support provided by TRCA's participating municipalities to account 120-12. No additional funding is proposed to support the policy analysis work associated with the preparation of these comments.

DETAILS OF WORK TO BE DONE

Staff are undertaking the following next steps:

- Formalize TRCA's final submission to the Province in response to Bill 229 based on input from the Board of Directors meeting

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- Prepare a written submission for Committee prior to Second Reading on Bill 229
- Continue to engage with our partner municipalities to obtain resolutions of support from local municipal and regional Councils, residents throughout our jurisdiction, and our network of supporters to reach out to the Premier, MECP, MMAH, MNRF and local members of provincial Parliament to voice support for the changes proposed by TRCA.
- Continue to monitor the Environmental Registry of Ontario and the Province of Ontario News' Website to ensure TRCA is aware of, participates in consultation, and comments on the yet to be released draft regulations under the amended CA Act.
- Continue to engage the Province (including, but not limited to, MECP, MNRF, MMAH) through the legislative process, as opportunities arise, and through continued consultation and engagement with Ministry contacts already established through the Act consultation process in order to advocate for TRCA's recommendations.
- Continue to inform the Board of Directors of new developments on the CA Act and supporting regulations, particularly outcomes of our engagement with the Province.

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Attachments: 1

Attachment 1: TRCA Chair's Letter

Attachment 2: TRCA letter to Members of Provincial Parliament

Attachment 3: Draft Resolution for Councils of municipalities in TRCA's jurisdiction

Attachment 4: Letter to Conservation Ontario from Minister of Natural Resources and Forestry