

From: Trish Barnett [<mailto:T.Barnett@lsrca.on.ca>]

Sent: Wednesday, August 16, 2017 9:32 AM

Subject: Lake Simcoe Region Conservation Authority - Board of Directors' Resolution

Good morning Regional and Municipal Clerks:

At their meeting on July 28th, the Lake Simcoe Region Conservation Authority Board of Directors passed the following resolution regarding the *Conservation Authorities Act* Review:

Moved by: A. Eek

Seconded by: S. Strangway

BOD-114-17 RESOLVED THAT Staff Report No. 33-17-BOD regarding the comments on the *Conservation Authorities Act* Review be approved for submission to the Ministry of Natural Resources and Forestry, Conservation Ontario and LSRCA member municipalities. CARRIED

Attached is Staff Report No. 33-17-BOD, which we ask that you please share with your CAOs and Members of Council.

If you have any concerns or questions, please do not hesitate to contact us.

Thank you and regards,
Trish

Trish Barnett

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TO: Board of Directors

FROM: Michael Walters
Chief Administrative Officer

DATE: July 17, 2017

SUBJECT: Comments on the *Conservation Authorities Act* Review

RECOMMENDATION: THAT Staff Report No. 33-17-BOD regarding the comments on the *Conservation Authorities Act* Review be approved for submission to the Ministry of Natural Resources and Forestry, Conservation Ontario and LSRCA member municipalities.

Purpose of this Staff Report:

The purpose of this Staff Report No. 33-17-BOD is to provide the Board of Directors with staffs' analysis and comments on the proposed amendments to the *Conservation Authorities Act* review for information.

Background:

In 2015, the Ministry of Natural Resources and Forestry (MNRF) initiated a three-phase review of the *Conservation Authorities Act*, which governs Ontario's 36 conservation authorities (CAs). MNRF developed an initial Conservation Authorities Discussion Paper (fall 2015) to provide an overview of CAs, their funding and governance ([EBR#012-4509](#)), along with a series of questions to solicit feedback on opportunities to improve the legislative, regulatory and policy framework governing the creation, operation and activities of conservation authorities.

In spring 2016, MNRF posted a second discussion paper ([EBR#012-7583](#)) that identified priorities for moving forward with the *CA Act* review, *Conserving Our Future: Proposed Priorities for Renewal*. This was followed by multi-sector engagement sessions hosted by MNRF. LSRCA, Conservation Ontario and several other conservation authorities participated in the engagement sessions and provided responses to both discussion papers. LSRCA's comments on *Conserving Our Future* were received at their Board Meeting held on October 20, 2016, under Resolution 43-16-BOD.

The third phase of the review, an amended *Conservation Authorities Act*, was introduced to the legislature on May 30, 2017 and passed First Reading as part of Bill 139, the *Building Better Communities and Conserving Watersheds Act*. Bill 139 is an “omnibus bill”, which groups various Acts to be amended including the *CA Act*, labelled as Schedule 4. Further to the May 31, 2017 EBR notice for the proposed *CA Act* amendments, the Province released [Conserving Our Future: A Modernized Conservation Authorities Act](#). This supporting document was posted on June 14, 2017 (EBR#012-7583) and outlines a comprehensive suite of actions to be taken by MNRF to modernize the *CA Act*.

As presented at the June 2017 Board Meeting, the document is organized into five themes and lists the legislative amendments proposed under the Act, as well as a number of proposed policy, regulation and program changes resulting from the MNRF consultation.

The document’s five themes include:

- Strengthening Oversight and Accountability,
- Increasing Clarity and Consistency in Programs and Services,
- Increasing Clarity and Consistency in Regulatory Requirements,
- Enhancing Collaboration and Engagement,
- Modernizing Funding Mechanisms.

The document concludes with a section on implementation which states that the proposed policy, regulation and program changes would be phased in over the next four years to provide the ministry, conservation authorities, participating municipalities, indigenous communities and other interested parties the opportunity to participate in their development. It goes on to state that a phased approach is also being used in consideration of the time and resources that it may take to operationalize some of the proposed changes.

Bill 139 must pass through two more readings in the legislature before it can be enacted. This could take place during the next session of Parliament scheduled to commence September 11, 2017. It is likely that the Bill will be debated by Members of the Legislature and could be referred to a Standing Committee for a “clause by clause” review. It should be noted that many of the proposed legislative amendments are enabling only, meaning that if passed they would not come into effect until a later date through regulations made by the Lieutenant Governor in Council (LGIC) or by the Minister.

Proposed Amendments

The following summarizes some of the more substantial changes as a result of Bill 139:

1. Currently, the Act does not contain a purpose statement which will be addressed through the following addition: ***The purpose of this Act is to provide for the organization and***

delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario.

2. Existing Section 20 (1) states the objects of a conservation authority. Section 20 (1) is not proposed to be repealed but is proposed to be amended as follows: *The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals. R.S.O. 1990, c. C.27, s. 20.*
3. **Governance** of conservation authorities: A new Section 19.1 is proposed that sets out the power of an authority to make by-laws in relation to its governance, including its meetings, employees, officers and its executive committee. Many of these powers were previously regulation-making powers that CAs held under Section 30 of the Act; they are now legislative requirements. Section 19.1 outlines the minimum expectations for the content of administrative by-laws. CAs must have compliant by-laws in place within one year of enactment of Bill 139.
4. **Programs and services:** A new Section 21.1 (1) of the Act, entitled Programs and Services, is being proposed, which sets out three categories of program and services that a CA is required or permitted to provide within its area of jurisdiction:
 - (1) Mandatory programs and services that are required by the regulation.
 - (2) Municipal programs and services that the CA agrees to provide on behalf of municipalities situated in whole or in part within its area of jurisdiction under a memorandum of understanding.
 - (3) Such other programs and services as the CA may determine are advisable to further its objects.

The new provisions of Section 40 of the Act would enable the LGIC to make regulations outlining the provincially mandated programs and services CAs are required to provide in (1) above, in accordance with any applicable standards or requirements outlined in the regulation. Furthermore, as per Section 40 (2) such regulations may include standards and requirements to mitigate the impacts of climate change and provide for adaptation to a changing climate, including through increasing resiliency.

5. **Fees for programs and services:** The powers of authorities under Section 21 (1) in the current Act remain largely intact with the exception of 21 (1) (m) and (m.1) that are proposed to be repealed. Sections 21 (1) (m) and (m.1) are CA powers for using CA-owned or managed land for park or other recreational purposes, to erect structures for such purposes and to charge fees for such services, and to charge fees for services in general

approved by the Minister. A new Section 21.2, Fees for programs and services, has been added to the Act. The ability for CAs to charge fees for classes of programs and services is now proposed to be determined by the Minister and prescribed through regulation. A CA may charge a fee for a program or service that it provides only if it is set out on the list of classes of programs and services published by the Minister. The amount of a fee charged by a CA for a program or service shall be the amount prescribed by the regulations, or if no amount is prescribed, the amount determined by the CA. In addition, CAs will be required to maintain a fee schedule that sets out the list of programs and services that it provides and in respect of which it charges a fee, the amount of the fee charged or the manner in which the fee is determined. Every CA will be required to adopt a written fee policy that is available to the public and includes the frequency that the policy will be reviewed; the process for carrying out a review and notice of the review; and how a fee can be appealed.

6. **Apportionment of Costs:** Sections 24 to 27 of the Act are repealed and replaced with new sections allowing CAs to recover capital costs with respect to projects undertaken, as well as operating expenses, from their participating municipalities. Currently, the apportionment of those costs and expenses is based on a determination of the benefit each participating municipality receives from a project or from the CA. The amendments provide that the apportionment and where appeals will be heard, will be determined in accordance with regulations to be approved by the LGIC. A definition of “operating expenses” has been added to the Act in Section 1, replacing the “administration” and “maintenance” expenses categories in the current Act, yet the amended Act provides no definition of “capital costs”. Existing rules regarding apportionment of costs and their appeal will continue to apply until such time that new regulations are proposed and approved.
7. **Regulating Activities:** Section 28 of the Act is repealed and substantially updated to provide additional clarity, scope and consistency in the types of activities that are subject to CA approval. The authority of individual CAs to make regulations concerning development and interference with watercourses or wetlands is transferred to the Minister. The content of Section 28 CA regulations, which is currently part of the “content regulation” for CAs (Ontario Regulation 97/04), has been moved up into the Act. Similarly, prohibitions have been added to the Act. Provisions have been added that would enable the Minister to establish exemptions for activities provided that they are undertaken in accordance with regulations made by the ministry. The scope of a CA’s review of a permit application has been further clarified and strengthened in Section 28.1 (4). A CA may now refuse a permit if the activity is likely to create conditions or circumstances that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property. A CA can refuse a permit if in its opinion the activity is likely to affect (versus current wording “will affect”) the control of flooding, erosion, dynamic beaches, pollution or conservation of land. This strengthened test allows a consideration of probability and possibility. New regulation-making enabling powers by the LGIC are set out

in Section 28.5 governing other activities that may impact the conservation, restoration, development and management of natural resources within the area of jurisdiction of a CA. This provision would enable the Province to regulate other activities within the area of the CA in the future in order to be responsive to current and future natural resource management challenges. The ability to enable regulations governing lands and property owned by a CA under Section 29 of the Act has been transferred from CAs to the Minister.

- 8. Enforcement and Compliance:** Other substantial amendments proposed under Bill 139 are enhanced enforcement mechanisms, i.e., the ability to stop work, the ability to enter privately-owned land, and the ability to charge significantly higher penalties than those currently allowed. The proposed amendments in Section 30 update and modernize the suite of compliance tools that can be used by CAs to enforce compliance with regulatory requirements. This section will be enacted at a date to be determined by the Lieutenant Governor.
- 9. Regulations, Lieutenant Governor in Council and Regulations, Minister:** Section 40 of the Act has been enhanced significantly to identify all the regulations needed to operationalize the proposed amendments to the Act. These regulations are either approved by the LGIC or the Minister of Natural Resources and Forestry. These regulatory changes will be subject to additional public and stakeholder consultation.

Issues and Relevance to Authority Policy:

LSRCA staff is continuing to review the proposed amendments to the CA Act and are in discussion with Conservation Ontario and other CAs. “Conserving our Future: A Modernized Conservation Authorities Act” is intended to explain the intent of the Ministry’s proposed amendments to the Act, as well as a suite of proposed regulatory, policy and program changes. Based on the review to date, it is the conclusion of staff that overall the changes are positive: the new purpose statement maintains the broad mandate of CAs with regard to natural resource management; enforcement tools for the Section 28 regulation have been enhanced, and CAs’ ability to assist municipalities managing watersheds and addressing climate change has been recognized. Furthermore, many of the standards, requirements and administrative aspects of CAs that are proposed as required to be part of a by-law and provincial regulations are already existing in LSRCA’s Section 28 Regulation, Watershed Development Policies, LSRCA Rules of Conduct, various memoranda of understanding (MOUs) and service delivery agreements, Fee Policy for Planning and Permitting Fees, etc., or through provincial documents, such as Hearing Guidelines and Policies and Procedures for Conservation Authorities. These documents exist as a solid foundation for the new requirements for documentation and transparency pursuant to the Province’s priority for strengthening oversight and accountability of CAs.

Furthermore, LSRCA's current By-laws were updated and are mostly in compliance with the Section 19.1 requirements. There are no impediments in regards to affecting the recommended changes or additions that are required to be in place within one year of enactment of Bill 139. With this said, much of the outcome of the CA Act review has been deferred to the content of regulations either under the Minister's approval or through Provincial Cabinet, the details of which are unknown at this time.

The "Conserving Our Future" document indicates that MNRF will establish a multi-ministry working group in order to develop the proposed regulatory changes and options for increasing provincial funding levels. A multi-stakeholder Service Delivery Review Committee will be established and tasked with supporting MNRF in the development of proposed policies and procedures. Any proposed regulatory and policy changes will be subject to additional public and stakeholder consultation as appropriate. In consideration of the time and resources that it may take to operationalize some of these proposed changes, a phased approach over the next four years is being proposed by MNRF.

As also indicated in the "Conserving Our Future" document, if passed the MNRF intends to use the LGIC regulation-making authority to propose regulations to outline the provincially-mandated roles and responsibilities of CAs and provide greater certainty including:

- a new regulation outlining the roles and responsibilities of CAs in managing water-related natural hazards, including programs and services associated with flood forecasting and warning, flood and erosion control and ice management,
- a new regulation outlining the roles and responsibilities of CAs in reviewing planning documents for consistency with Provincial Policy Statements, including policies related to natural hazards and land use patterns that promote climate change adaptation and mitigation,
- a new regulation outlining the roles and responsibilities of CAs in supporting Ontario's proposed Wetland Conservation Strategy and provincial commitments to stopping the net loss of wetlands,
- integration with the Ministry of the Environment and Climate Change to create a new regulation that includes standards and requirements to mitigate climate change and build resiliency,
- collaboration with a multi-ministry working group to identify additional areas where joint programs and services could be developed to support other areas of provincial interest (e.g. natural heritage identification and restoration, watershed planning and management, stormwater review, etc.).

Impact on Authority Finances:

The proposed amendments to the Act will enable the Province to make regulations governing the kinds of costs to be apportioned among participating municipalities as “capital costs” (not currently defined in the Act) and “operating expenses”. Similarly, the Province will also be enabled to make regulations governing how capital costs and operating expenses (e.g. associated with conservation authority programs, services and operation) are apportioned by CAs. “Conserving our Future” indicates that the Province will work with municipalities and CAs to update the way in which costs are apportioned to participating municipalities, including determining the appropriate body for hearing appeals of apportionment decisions.

LSRCA will continue to monitor and be engaged in this process to more fully understand the implications of the proposed changes, in particular as to how the province and municipalities are able to fund CAs given the categories of programs and services being introduced under the new Section 21.1 (1).

Unfortunately, there are no changes to current provincial funding levels proposed. MNRF has suggested that based on the provincial review of CA programs and services to be provided, an opportunity may exist to review existing funding levels against these expectations and ensure that appropriate resourcing is in place to ensure sustainability of these programs and services.

The Province has indicated it will be updating the Ministry’s Policies and Procedures regarding Conservation Authority Fees to provide CAs with additional guidance on the development of fee schedules. LSRCA has a proven consensus-based process that sets plan review and permitting fees based on consultation with the stakeholders (BILD, Municipalities, and Aggregate Industry). It is unclear at this time the scope of programs and services that are to be included in the Minister’s regulation or how prescriptive the amounts to be charged will be. This has significant potential implications to LSRCA’s operations and budgeting.

Specific Comments:

It is recommended that our comments regarding the review of the CA Act be supportive of the proposed changes. The following are draft comments that staff are suggesting be provided to the MNRF.

1. The proposed legislative amendments are enabling only, meaning that, if passed, they would not come into effect until a later date through regulations made by the Lieutenant Governor in Council (LGIC) or by the Minister. The report also recommends that an inter-ministerial group be responsible for directing how regulations are developed and implemented. It is recommended that this be expanded to include representation from municipalities, conservation authorities, and federal agencies with overlapping jurisdiction

(e.g. DFO) given their stake in watershed management. As a collective, it is imperative that CA's be represented and involved in the creation of the regulations and that our member municipalities are provided the opportunity to provide their input into the process.

2. The Province has identified an ambitious four-year time horizon for implementation of all the various recommended regulations. Currently the amendments do not include transition policies or provisions to address the time between the enactment of the amendments and the development and initiation of the regulations. LSRCA would recommend that certain amendments like the enhanced enforcement powers receive priority for implementation under Bill 139. Furthermore staff would request that an accompanying "order to comply" also be added in order to facilitate immediate mitigation at the expense of the proponent engaged in the offending activity. Additionally, the amendments do not mention the mapping that supports the s.28 regulations, which would assist in the proper enforcement of the new compliance measures.
3. The Province has indicated it will explore opportunities for new funding for CAs. LSRCA welcomes this opportunity as long as there is not further financial impact to our municipal partners. In addition the proposed amendment to the Act provides the Minister significant power to delegate responsibility for service delivery to CAs. If responsibilities are designated to CAs, it must come with sufficient provincial funding to fully offset these costs.
4. Climate change adaptation, especially related to natural hazard management lands, should be included as a mandatory responsibility for CAs. It is critical that this be clearly defined to avoid differences in interpretation of these requirements.

Summary and Recommendations:

It is therefore RECOMMENDED THAT Staff Report No. 33-17-BOD regarding the comments on the *Conservation Authorities Act* Review be approved for submission to the Ministry of Natural Resources and Forestry, Conservation Ontario and LSRCA member municipalities.



Michael Walters
Chief Administrative Officer