

Conservation Ontario Detailed Reference Document (November 11, 2020)

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<p>1. Planning Act amendment</p> <p>“We have also heard concerns from some stakeholders about the role of conservation authorities ... as a public body with the power to comment on and challenge decisions under the Planning Act. Stakeholders have questioned whether conservation authorities’ current roles are consistent and supportive of timely decisions that are necessary in the land use planning and approval process, and some stakeholders consider these roles need to be streamlined as they impose unnecessary costs and/or delays for businesses and property owners.</p> <p>...</p> <p>The Schedule also proposes 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. Municipalities and the Province can continue to work with</p>	<p>Proposed General Positioning: It is understood that the effect of this amendment would be that conservation authorities would no longer be able to appeal or become party to an appeal of a <i>Planning Act</i> decision as a public body. While most <i>Planning Act</i> applications will continue to be directly circulated to conservation authorities by municipalities or planning authorities, it appears as though conservation authorities will only be representing the “provincial interest” with respect to natural hazards when providing comments as part of the Province’s one window planning approach (e.g. Official Plans and Official Plan Amendments). The inability to represent the provincial interest and/or appeal on more common <i>Planning Act</i> applications (e.g. Plan of Subdivision, Site Plan) represents a significant threat to public safety. While the full implications of this amendment are not understood, it is anticipated however not confirmed that CAs will continue to be able to appeal <i>Planning Act</i> decisions as landowners. Conservation Ontario has requested a meeting with MMAH, the Ministry responsible for the Province’s ‘one window’ to discuss the possible “unintended consequences” of this amendment.</p> <p>Amend. Recommend that an amendment be made to limit appeals as a public body to conformity with section 3.1 (natural hazards) of the Provincial Policy Statement. Retain the ability of CAs as landowners to participate in appeals affecting their land. Briefing is required with MMAH and MNRF staff to understand the implications of this amendment.</p> <p>Questions:</p> <p>Will it affect CA circulation/notification of planning applications and the ability of a CA to comment on planning applications?</p> <p>How will CAs be able to appeal as a landowner?</p> <p>How will CAs be able to represent the watershed interest without the ability to appeal <i>Planning Act</i> decisions as a public body?</p> <p>How does this relate to the natural hazards program and service regulation?</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
conservation authorities and rely on their advice and support where they want it during an LPAT appeal.” (ERO posting 019-2646)	<p>Policy/Agreement/Regulation work: Presumably this amendment will require revisions to our MMAH/MNRF/CO MOU and to our template MOU for plan review services. The overlay of this with mandatory programs and services regulation, including the natural hazards program and service regulation and scoping of non-mandatory regulations is to be determined.</p>
<p>2. Section 28 amendments</p> <p>“We have also heard concerns from some stakeholders about the role of conservation authorities in issuing permits under the <i>Conservation Authorities Act</i> and as a public body with the power to comment on and challenge decisions under the Planning Act. Stakeholders have questioned whether conservation authorities’ current roles are consistent and supportive of timely decisions that are necessary in the land use planning and approval process, and some stakeholders consider these roles need to be streamlined as they impose unnecessary costs and/or delays for businesses and property owners.</p> <p>We are therefore proposing changes to the <i>Conservation Authorities Act</i> to streamline the role of conservation authorities in permitting and land use planning as well to ensure timely decisions are made in relation to permits required under section 28 of the Act.</p>	<p>Proposed General Positioning: The proposed amendments to the Section 28 regulation will negatively impact a CA’s ability to protect life and property, through limiting a CA’s ability to independently apply their watershed science, allowing individuals to circumvent the CA permitting process and by tying up CA staff in unnecessary appeal processes. This proposal does not improve transparency, consistency in decision-making and nor does it streamline the process. In fact, this proposal will result in a significantly longer approval process which might jeopardize the health or safety of persons or result in the damage or destruction of property.</p> <p>Repeal/Amend.</p> <ul style="list-style-type: none"> i. Amend. Clarify that the Ministry would be responsible to ensure compliance with any permit that they issued and for any liability associated with the decision. ii. Amend. Note that this description is inconsistent with the legislation (30 days as compared to 15). Choose one point of appeal (the Minister or the LPAT). iii. Amend. Choose one point of appeal (the Minister or the LPAT). iv. Amend. Choose one point of appeal (the Minister or the LPAT). v. Amend. Allow appeal of permit cancellation to the Members of the Authority only. vi. Amend. Specify in the legislation that the appeal for a non-decision after 120 days can only be made when the conservation authority has deemed the application to be complete. vii. Amend. Enact one of the three possible alternatives in its place: a) Develop provincial guidance that defines how to establish fees in consultation with municipal partners and other stakeholders. If the CA is not in compliance with the

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<p>If passed, the proposed amendments would:</p> <ul style="list-style-type: none"> i. 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 <i>Conservation Authorities Act</i> in place of the conservation authority (i.e. before the conservation authority has made a decision on the application). ii. 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. iii. 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. iv. 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. 	<p>guidance, the Minister could make an order under S. 23 to amend the CA fees policy. B) Enable the fee policy to go through public consultation via the ERO or C) require the approval of the Minister of the CA fee policy to avoid multiple appeals regarding the same fee schedule. Remove the right of appeal to the LPAT.</p> <ul style="list-style-type: none"> viii. Repeal. The MNR undertook an evidenced-based update to the powers of entry in 2017. This amendment would remove the update. Note: the 2017 update was not made at CO's request. ix. Repeal. Conservation authorities' inability to stop work has a significant negative impact on public health and safety. Laying charges and obtaining court injunctions is unnecessarily costly for the taxpayers and the accused. <p>Questions:</p> <p>How do these amendments reflect the recommendations of the Auditor General's report on the NPCA, the Flood Advisor's recommendations and the previous consultation on the Section 28 regulations?</p> <p>How are appeals to permit applications going to be addressed at the LPAT when there is a related land use planning decision that was refused and not appealed?</p> <p>How does the ability to appeal individual permit fees relate to the Board's ability to set an overall fee policy and expectations around cost recovery?</p> <p>Policy/Agreement/Regulation work:</p> <p>Mandatory program and services regulation is to be posted in the near future.</p> <p>The timing of the Section 28 regulation is to be determined, but it is anticipated that it will be released at the same time as the mandatory program and services regulations.</p> <p>Once a new Section 28 regulation is in place, significant policy development will be required related to implementation of the new regulation.</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<ul style="list-style-type: none"> v. Where a permit is cancelled, allow the permit holder to appeal the cancellation to LPAT within 90 days. vi. Allow applicants to appeal directly to LPAT where a conservation authority fails to make a decision on section 28 permit applications within 120 days. vii. Provide permit applicants with the ability to appeal permit fees charged by a conservation authority to LPAT. viii. 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. ix. 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. <p>....</p> <p>Later this fall, we intend to further consult on regulatory proposals (mandatory programs and services, section 28 natural hazards, section 29 conservation authority lands, agreements and transition) under the Conservation Authorities</p>	

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
Act which will be posted on the Environmental Registry for public consultation.” (ERO posting 019-2646)	
<p>3. Regulation making powers for prescribing standards and requirements for Non-Mandatory (i.e. Local) programs and services</p> <p>“Through these consultations we heard concerns that some conservation authorities have expanded their programs and services beyond their core mandate.</p> <p>We recognize that conservation authorities play an important role in local resource management, including protecting and preserving significant conservation land. With the scope of conservation authorities’ activities expanding over time, some participating municipalities of a conservation authority have expressed concern about the increases to their municipal levies that they are required to pay under the <i>Conservation Authorities Act</i> to finance their respective conservation authorities and the lack of direct control that participating municipalities may have over conservation authority budgets. Participating municipalities on average contribute over half</p>	<p>Proposed General Positioning: Proposed clauses enable the Minister to make regulations that would prescribe standards and requirements for Municipal Programs and Services (i.e. service agreement between Municipality and CA) and Other Programs and Services (i.e. those determined by the Board and which if use municipal levy would require all municipalities’ agreement). Although the Province has communicated that the local service agreement MOU’s between Conservation Authorities and Municipal Governments are a local matter and the province is not intending to reduce this local control of MOUs through future regulation, Conservation Ontario is pursuing opportunities to have these amendments repealed through the Standing committee clause by clause process so that they do not remain in the legislation for use by a future Minister or Government.</p> <p>Action: Repeal/amend all clauses and amendments relating to the ability to prescribe standards and requirements (including repeal of Section 21.1.1(5), Section 21.1.2 Prescribed Standards, Section 21.1.2 (3) b) Terms and Conditions, and Section 21.1.2(4) Conflict; and Including amendment of i.e. deletion of references to regulations in Section 21.1.1(1), and, 21.1.2 (1).</p> <p>Questions: n/a for repealing and amending these clauses.</p> <p>However, need further clarification/briefing on this bullet from MECP webinar: - the government will move forward with consultations on regulatory and policy proposals in two phases, including mandatory programs and services (phase one), and municipal levy (phase two).</p> <p>Policy/Agreement/Regulation work: n/a for repealing and amending these clauses.</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<p>of the conservation authority revenue through municipal levies. Most of the remainder comes from conservation authorities' self-generated revenue, with provincial funding averaging less than ten per cent.</p> <p>Based on the feedback we received, 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.</p> <p>....</p> <p>We know that many conservation authorities provide valuable recreational and educational programs and services that are important to the local community, such as camping and outdoor education. These programs would continue, so long as they are funded through self-generated revenue or have support from the local municipality that funds them.</p> <p>...</p> <p>Require, after a specified date, that municipal financing of a non-mandatory program and service can only continue, where the conservation authority has entered into a</p>	<p>Mandatory programs and services regulation is to be posted in the next few weeks which will set the framework for what is then non-mandatory and requiring agreements and transition periods.</p> <p>**Need to start advocating about the time period suggested in the CA briefing; if municipalities are being briefed on Nov 16 and 23rd then we need them speaking up on the issue of an insufficient transition period. MECP briefing indicated "changes would be implemented in the CA 2022 budgets" which as interpreted to mean that the Transition period would end December 2021; GMs are requesting December 2022.</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<p>financing agreement with its participating municipalities.</p> <p>Establish a transition period and process for conservation authorities and municipalities to identify, through an inventory, which of their programs and services are mandatory and then to enter into agreements for the non-mandatory programs or services that are financed in whole or in part at the municipal level.</p> <p>....</p> <p>Enable the minister to, by regulation, establish standards and requirements for the delivery of non-mandatory programs and services.</p> <p>...</p> <p>Later this fall, we intend to further consult on regulatory proposals (mandatory programs and services, section 28 natural hazards, section 29 conservation authority lands, agreements and transition) under the <i>Conservation Authorities Act</i> which will be posted on the Environmental Registry for public consultation.</p> <p>” (ERO posting 019-2646)</p> <p>MECP Slide Deck:</p> <ul style="list-style-type: none"> • In addition to the proposed legislative amendments, the government will move forward with consultations on regulatory and policy proposals in two phases, 	

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
including mandatory programs and services (phase one), and municipal levy (phase two).	
<p>4A.Governance – Duty of Members</p> <p>“...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, and instead provide clarity for conservation authority member governance and enhanced municipal oversight over taxpayer dollars.” (ERO posting 019-2646)</p>	<p>Proposed General Positioning: The change to the ‘Duty of Members’ from furthering the objects of the authority to representing the interest of their municipality needs to be repealed. It contradicts the fiduciary duty of a Board Member to represent the best interests of the corporation they are overseeing. It puts an individual municipal interest above the broader watershed interests further to the purpose of the Act.</p> <p>It basically undermines the ability of the CA Board to address the broader environmental/resource management issues facing our watersheds today. Discourse on these issues and consideration of programs and services that address watershed-wide issues that span municipal boundaries is paramount in a time of increasing climate change, etc.</p> <p>Conservation Ontario will be asking the Association of Municipalities of Ontario (AMO) to champion this governance issue as well and to request a repeal. CAs should obtain resolutions of support from their Boards and Municipal Councils.</p> <p>Action: Repeal the amendment to Section 14.1 “Duty of Members”</p> <p>Questions: n/a</p> <p>Policy/Agreement/Regulation work: n/a</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
<p>4B. Governance - Additional</p> <p>“Require participating municipalities to appoint municipal councillors as conservation authority members”</p> <p>“Enable the minister to appoint a member to the conservation authority from the agricultural sector.”</p> <p>“Require that conservation authority chairs and vice-chairs rotate every two years between different participating municipalities.”</p> <p>“Require conservation authorities to make key documents publicly available online (e.g. ..., municipal member agreements,...)</p> <p>Require conservation authorities to submit to the minister a copy of any agreement its participating municipalities have entered into on the number of members each participating municipality is entitled to appoint to a conservation authority.”</p>	<p>Proposed General Positioning: A number of amendments have been made regarding CA Board appointments. Of concern are new clauses that require municipalities to only appoint municipal councillors and that the Chair/Vice Chair rotate every two years between different municipalities. Conservation Ontario’s positioning has been that Board appointments should remain the decision of the municipality but there will be practical limitations for these new requirements to be met (e.g. some CAs have only one or a few municipalities in their jurisdiction; some have more than 50% citizen appointees). Conservation Ontario will be asking the Association of Municipalities of Ontario (AMO) to champion these governance issues. CAs should obtain resolutions of support from their Boards and Municipal Councils.</p> <p>There is no opportunity to manage these legislative amendments through the regulations process as Bill 229 has <u>removed the ability to prescribe by regulation</u>, the composition, appointment, or qualifications of members of CAs. Given the already identified regulatory consultations planned and the pressures from COVID exacerbating municipal councillors’ time, respectfully request that proclamation of these governance changes be delayed for at least a few years. This would allow time for AMO and CO to collaboratively work on the necessary policies to support effective Board governance.</p> <p>Action: Request delay in proclamation until after regulations consultations are completed over the next number of years. Inform and solicit the support of AMO and member municipalities to champion amendments.</p> <p>Questions:</p> <p>Can municipalities supply the required number of municipal councilors?</p> <p>Will CA Boards be able to achieve quorum given additional committee pressure on municipal councilors?</p> <p>Can Mayors (head of council) be members too?</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
	<p>How will rotating the Chair/Vice Chair every two years between different municipalities be achieved if it's not supported by the outcomes of CA's election process?</p> <p>Will the agriculture representative be a voting member? What is the duty of this member (i.e. not included in Section 14.1)?</p> <p>What is the purpose of the Minister receiving copies of agreements on the number of members each municipality is entitled to appoint to a CA?</p> <p>Policy/Agreement/Regulation work: Bill 229 has removed the ability to prescribe any of this by regulation. AMO and CO could work on policies/procedures that would support "Conservation Authority Best Management Practices (BMP) and Administrative By-Law Model" (amended September 28, 2020) and updates to individual CA by-laws.</p>
<p>5. Transparency/accountability</p> <p>"Require conservation authorities to make key documents publicly available online (e.g., meeting agendas, meeting minutes, ... annual audits)." (ERO posting 019-2646)</p>	<p>Proposed General Positioning: There are a number of changes which appear administrative in nature which we acknowledge will address concerns around transparency and accountability. CA Administrative By-Laws were completed by the December 2018 legislated deadline and should already address these concerns including making key documents publicly available; including meeting agendas, meeting minutes, and annual audits.</p> <p>Conservation Ontario can assist CAs in updating their Administrative By-Laws by clarifying which BMPs are now legislated. Each update to individual CA Administrative By-Laws incurs legal costs such that it's anticipated that these updates will be addressed at a future date when more substantive amendments are required. In the meantime, these can be implemented without awaiting by-law amendments.</p> <p>Action: Implement – make materials publicly available</p> <p>Questions: n/a</p>

Generalized Description of Legislative Amendments to Conservation Authorities Act (CAA) per ERO Bulletin 019-2646	Proposed General Positioning & Proposed Questions/Comments for Clarification on Legislative Amendment & Proposed Comments for Development of Proposed Regulations/Policies
	Policy/Agreement/Regulation work: Updates to “Conservation Authority Best Management Practices (BMP) and Administrative By-Law Model” (amended September 28, 2020) and updates to individual CA By-Laws