
SUBJECT: Further Amendments to the Conservation Authorities Act in Bill 229: Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020

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RECOMMENDATION:

1. That the report entitled “Further Amendments to the Conservation Authorities Act in Bill 229: Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020” be received;
2. That the City of Markham request that the Province withhold the enactment of Schedule 6 of Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* related to changes to the Conservation Authorities Act to allow for further review and consultation with municipalities, conservation authorities and the public;
3. That the staff report and resolution be forwarded to the Province of Ontario and Toronto and Region Conservation Authority; and,
4. That Staff be authorized and directed to do all things necessary to give effect to this resolution.

PURPOSE:

The purpose of this report is to inform Committee about proposed changes to the *Conservation Authorities Act*. Although the Province is not seeking public input regarding the changes, this report provides staff comments on the implications of these changes to the City.

BACKGROUND:

In June 2019, the Province passed Bill 108, *More Homes, More Choices Act*, which, in part, amended the *Conservation Authorities Act*. The amendments defined the core mandate of the conservation authorities to include programs and services related to the risk of natural hazards, the conservation and management of conservation authority lands, source water protection, and any other programs prescribed by regulations. The amendments further identified that any programs or services that did not fall under the core mandate may be provided by a conservation authority through a memorandum of understanding or agreement with the benefitting municipality. Regulations implementing the *Conservation Authorities Act* changes have not been released by the Province. City staff are currently in preliminary discussions with the Toronto and Region Conservation

Authority (TRCA) to identify services that are already being provided to the City and to explore a framework for a memorandum of understanding.

On November 5, 2020, the Province released Bill 229 (*Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*). Within Bill 229 are a number of additional amendments to the Conservation Authorities Act aimed at improving transparency and consistency in conservation authority operations, strengthening municipal and provincial oversight and streamlining conservation authority roles in permitting and land use planning.

DISCUSSION

Bill 229 proposes to further define the core mandate of conservation authorities and to streamline conservation authority permitting and land use planning review. The TRCA would retain their mandate for flood plain protection and mitigation.

Proposed Ministerial powers to intervene in permit applications

Conservation authority permits are required for development or site alteration in or near hazardous lands (flood plains or valley slopes) and wetlands. The proposed changes introduce new powers for the Minister to take over decision making for a permit application before the decision of the conservation authority. While the ability of landowners to circumvent the issuance of a permit by a conservation authority by requesting Ministerial approval may result in a faster decision, there are no criteria or safeguards provided to ensure that decisions will support provincial and local environmental policy. A serious risk would be that one-off site-specific permits approved outside of the context of a local flood plan management program could pose a greater flood risk to downstream properties without an appropriate mitigation plan. The ability for the Minister to issue conservation authority permits mirrors the Ministerial Zoning Order powers of the province to make land use and zoning decisions without a Council decision and without due public process.

Implications to TRCA's participation in Local Planning Appeal Tribunal (LPAT) appeals and hearings

A second concern is related to proposed amendments to the *Planning Act* that limit a conservation authority's ability to participate at LPAT hearings. Markham relies on the TRCA to provide scientific and technical input into complex environmental planning matters. The City does not employ or retain expertise in terrestrial and aquatic ecology and other science-based disciplines. The amendments leave the City at greater risk to defend environmental issues without the TRCA's support. The result could be unforeseen costs to Markham and landowners to retain needed expertise and cause unnecessary delays in the approval process.

The City has had a long and positive relationship with TRCA and it provides critical value to our City's good planning through securing, protecting and managing Markham's Greenway System, flood plains, wetlands and watershed planning.

Staff have summarized the proposed changes to the *Conservation Authorities Act*, and their implications for the City in Table 1 below.

Table 1: Changes to the Conservation Authorities Act

#	Proposed Change	Markham Staff Comments
Changes to permits under Section 28 of the Conservation Authorities Act (Permits for development or site alterations in or near watercourses, flood plains, wetlands, valley slopes and other hazardous lands)		
1	Allows the Minister to take over the decision making for a permit application – either to deny or to approve a permit – before a conservation authority has made a decision.	Ministerial intervention, in the absence of a clear decision-making framework, risks creating confusion and inconsistency in permit administration. It appears this change seeks to address the consistency and the time delay of conservation authority decisions. Staff suggest that these concerns be addressed by improving regulations and policies that govern the conservation authority permitting process.
2	Allows permit applicants to request that the Minister review a permit decision within 15 days of a decision. The Minister may confirm or change the authority's decision. A decision made by the Minister is final and without appeal.	Where applicants disagree with the decision of a conservation authority, the proper recourse should be through an appeals process to a conservation authority board or to the Local Planning Appeals Tribunal (LPAT). This is already provided for in the current iteration of the Act. There is significant risk to flood protection and the protection of health and safety where decisions are made in an isolated context and contrary to a conservation authority's decision.
3	Sets a 120-day timeframe for a decision on permit applications, after which an applicant may appeal to the LPAT.	The TRCA has identified that a 120-day timeframe should begin upon a complete application supported by appropriate technical studies. Without complete application requirements, a 120-day timeframe may lead to a greater amount of appeals to LPAT which, in turn, could also lead to delays to parallel planning processes.
4	Remove the un-proclaimed provisions of Bill 139 (2017) that allow conservation authorities to issue stop work orders where they contravene Section 28 regulations.	Staff support enforcement tools such as stop work orders for conservation authorities to protect wetlands and to stop interference and modifications in hazard lands for public health and safety.
5	Allows permit applicants to appeal fees to the LPAT.	No implications to Markham.
6	Amends the warrantless entry provisions as they relate to	The changes will limit the ability of technical staff (e.g., engineers, planners, ecologists) to

	permit review and enforcement of Section 28 violations.	review violations. The entry powers are retained for regulations officers under certain criteria. The TRCA has raised concerns that this would reduce the conservation authority's abilities to investigate violations where damage is being done to hazard lands and wetlands.
Land Use Planning (changes to Planning Act)		
7	Prohibits conservation authorities from independently appealing <i>Planning Act</i> applications to LPAT.	<p>The TRCA provides planning services to the City on natural heritage and natural hazard policies (i.e., protection of natural features, development in flood plains or valley slopes). Conservation authorities will still be permitted to attend LPAT in support of the City's position on an appeal.</p> <p>This change could shift responsibility for enforcing natural hazard/heritage requirements to City Council, where Council could previously rely on the conservation authority to protect its own interests.</p>
Governance and Program Delivery of a Conservation Authority		
8	Re-defines the conservation authority's purpose as the delivery of mandatory programs and services (natural hazards; conservation land management; source water protection) and any other programs delivered on behalf of a municipality.	The Province has not identified 'watershed planning and management' as a mandatory program of a conservation authority. Managing environmental and water problems based on watersheds and across municipal boundaries is a key benefit of forming conservation authorities. The proposed changes would require municipalities to opt in to and separately fund watershed planning programs. Should municipalities not opt in, there is risk that conservation authorities' ability to manage watersheds become diminished or ineffective.
9	Require municipal councillors on conservation authority boards to generally act on behalf of municipal interests and repeals the previous proposal that all board members act with a view of furthering the objectives of the conservation authority	There may be situations where one municipality's actions have down-stream impacts on another municipality(ies) within the jurisdiction of a conservation authority. Requiring councillors to consider a narrow interest could undermine the public's faith in an institution whose mandate is to protect the public from extreme flooding events without being limited by geo-political boundaries.
10	Allows the Province to appoint a member of the agricultural sector to the board of a conservation authority.	No implications to Markham. This change is supported.

11	Allows the Minister to make binding orders to conservation authorities where in its opinion a conservation authority is not operating in compliance with the Act.	No implications to Markham.
12	Allows the Minister to appoint an administrator to take over control and operations of a conservation authority where in its opinion a conservation authority is not operating in compliance with the Act.	No implications to Markham.
13	Remove the ability of conservation authorities to expropriate lands.	The expropriation of lands may have once served a greater purpose when conservation authorities were constructing dams and other flood control infrastructure. The construction of these types of infrastructure projects are increasingly rare in Ontario. Conservation authorities may ask municipalities or the Province to expropriate lands on their behalf. If a conservation authority sought a municipality to expropriate lands on its behalf, it is not clear how such an expropriation would be funded.

No Consultation regarding Amendments to Conservation Authorities Act

The Province has identified that, in accordance with the Environmental Bill of Rights, public consultation is not required as the proposed changes form part of the Province's 2020 budget. City staff are concerned that these significant procedural changes warrant public consultation and the opportunity for stakeholder feedback. It is recommended that the City request the Province defer approval of these amendments until feedback from stakeholders can be provided and considered. Any proposal should be posted on the Environmental Registry of Ontario (ERO) with a sufficient commenting period (90 days) and include workshops with the public and the conservation authorities so that the rationale for the changes may be fully understood.

FINANCIAL CONSIDERATIONS:

Not applicable.

HUMAN RESOURCES CONSIDERATIONS:

Not applicable.

ALIGNMENT WITH STRATEGIC PRIORITIES:

Conservation authorities directly support the management of hazardous lands and the protection of the natural environment which is aligned with the "Safe, Sustainable and Complete Community" goal of Markham's Strategic Plan.

BUSINESS UNITS CONSULTED AND AFFECTED:

Legal Services has been consulted in the preparation of this report.

RECOMMENDED BY:

Arvin Prasad, MCIP, RPP
Commissioner, Development Services

ATTACHMENTS:

Appendix 'A': Provincial Bulletin: Updating the Conservation Authorities Act
<https://ero.ontario.ca/notice/019-2646>