



**Credit Valley
Conservation**
inspired by nature

May 17, 2019

Carolyn O'Neill
Ministry of the Environment, Conservation and Parks
Land and Water Division
Great Lakes and Inland Waters Branch
Great Lakes Office
40 St Clair Avenue West, Floor 10
Toronto, ON
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Dear Ms. O'Neil,

**RE: Modernizing Conservation Authority Operations – CA Act and Bill 108 –
Schedule 2
ERO # 013-5018**

We are taking this opportunity to provide comments on the Ministry of the Environment, Conservation and Parks' proposals to amend the *Conservation Authorities Act* (CA Act) as well as Bill 108, Schedule 2 amendments to the CA Act. It is understood the anticipated amendments are in effort to further improve the ability of conservation authorities (CAs) to modernize and improve delivery of their core programs and services – consistent with the government of Ontario's 'Made-in-Ontario Environment Plan'. The proposed amendments were reviewed by the CVC Board of Directors at the May 10, 2019 Board of Directors meeting and comments were endorsed by the CVC Board of Directors.

Credit Valley Conservation (CVC) has an on-going interest in the development and implementation of these proposed amendments given our role as:

- Regulators under Section 28 of the CAA;
- Public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- Representing the provincial interest in natural hazards for planning and development related matters (as per MOU with province, dated 2001);
- Service providers to municipal partners; and
- Landowners

CVC has a proud 65-year history of partnerships with the province, municipalities, watershed residents, development and consulting industries, and other agencies and watershed stakeholders. Together, we continue to work collaboratively to protect people and property from flooding and other natural hazards, and to conserve natural resources. We own 7100 acres of land in our watershed, a significant amount of which are forests, wetlands and grasslands, in addition to our more active conservation areas open for public enjoyment.

For 65 years CVC has been undertaking the core mandate established in 1946 of delivering *programs and services that further the conservation, restoration, development and management of natural resources on a watershed scale*. In addition, after Hurricane Hazel, the mandate to *control floods and pollution* was added. Watersheds, natural resources and

hazards – a simple, unique and effective model. Some suggest we should just stick to hazards and leave the rest to someone else. While municipalities have overall planning responsibilities under the PPS, there is virtually no one else out with boots on the ground undertaking work to restore, monitor and manage our natural resources.

Some suggest that the management of hazards can somehow be separated from the watershed. The landscape influences the quality and quantity of water to our watercourses and ground water. The hazards will get bigger if we do not manage the natural resources that absorb and filter water, apply effective storm water management to developed lands, or mitigate and adapt to climate change. We can work to maintain natural resources and reduce hazards with watershed management plans and actions.

Please consider the following comments on the proposed amendments. These comments cover both the proposals and the specific amendments to the CA Act.

PROPOSED CHANGE 1 – Defining Core Mandatory Programs and Services

Bill 108 Schedule 2 provides a new clause 21.1 (1):

21.1 (1) If a program or service that meets any of the following descriptions has been prescribed by the regulations, an authority shall provide the program or service within its area of jurisdiction:

1. Programs and services related to the risk of natural hazards.
2. 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.
3. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*.
4. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations.

Response: While CVC supports the province's continued efforts to more clearly define CA core mandatory programs and services, we are confident that the programs and services CVC provides are focused on delivering our core mandate. They support delivery of our hazard management role, our natural resource management role and conservation and management of CA lands. Some programs and services are provided at the request of, or to support our partners, for which additional resources are provided. Over 90% of our budget supports the core mandate as it currently exists in the CA Act.

Hazards

Response: The wording regarding the hazard mandate in the proposals is different than the wording that has now been included in the Act - '*natural hazard protection and management*' versus '*risk of natural hazards*'. We find the terminology in the act to be too vague as to provide guidance as to the intent. CAs undertake work to provide protection from and manage natural hazards. CAs have built up significant skills in understanding these hazards and understand the measures that need to be taken to both manage them and provide protection from them.

Recommendation 1: Change the terminology from "Programs and services related to the risk of natural hazards" to "programs and services for the **protection from and management of natural hazards**".

To undertake our hazard management role there are many critical activities and programs undertaken to support this function including:

- Operations, inspections, maintenance or reconstruction of dams, channels, and erosion and ice control structures
- Flood forecasting and warning (hydrometric monitoring, data management, models, communications)
- Drought forecasting and warning (ground water monitoring; low water response teams)
- Emergency operations with municipalities (data support, communications, media, vulnerability assessments; post event assessments)
- Plan input and review for hazards, storm water management and feature protection (planning, engineering; ecology)
- Regulation (permitting and enforcement)
- Watershed planning to input to hazard management and planning decisions; determine effective mitigation measures including protection and expansion of natural areas and wetlands
- Floodline/Hazard and Risk Mapping (hydraulic and hydrologic modelling; base mapping; air photography, field assessment)
- Watercourse, shoreline and slope erosion control
- Hazard land securement
- Training/ Communications and Education

As well, **restoration activities** (tree planting, wetland restoration, forest management) and **monitoring of watershed health** have been long standing activities that have ensured that the impacts of land use change on hazards have been minimized. These activities should be reflected in the scope of programs and services in the Regulations to follow.

Conservation of Natural Resources

Response: The proposed core mandatory programs as outlined in the proposals for consultation and now the CA Act amendments are inconsistent with provincial acts and plans. One of the objects of CAs is 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...*' (CA Act, Sec. 21(1)(a)).

The province's Made-in-Ontario Environment Plan supports conservation and environmental planning outlining the province's commitment to '*...Work in collaboration with municipalities and stakeholders to ensure that conservation authorities focus and deliver on **their core mandate** of protecting people and property from flooding and other natural hazards and **conserving natural resources***' (Made-in-Ontario Environment Plan, Conserving Land and Greenspace, 2018 *emphasis added*).

The reference to **natural resources** is missing from the core mandatory programs and services.

Recommendation 2: that the **conservation of natural resources** be added to the core mandatory programs.

The following programs and services have long been part of a CAs core work, including:

- inventory and monitoring,
- watershed/subwatershed planning
- tree planting and forest management,
- natural heritage systems planning,
- habitat restoration and creation,
- invasive species management and
- landowner stewardship/ outreach activities

These items would need to be included in the scope of programs and services outlined in the Regulations to follow.

Together, hazard and natural resource management, directly support the purpose and objects of CAs in the act and the province's Made-in-Ontario Environment Plan – in coordinating the protection of life and property from natural hazards and conserving natural resources at a watershed scale.

To manage hazard lands, one needs to be able to manage the contributions from the lands within the watershed to the water. The natural hazards function mandate must also include the natural resources functions and watershed-based jurisdiction.

Conservation and Management of Conservation Authority Lands

The conservation and management of Conservation Authority lands are included in the core mandate 21.1 (1).

Response: CVC owns and/or manages 7100 acres of land on 61 properties and operate four active conservation areas. Some of the lands we manage are on behalf of the Ontario Heritage Trust by agreement. We agree with maintaining it as our core mandate for these lands are available to the people of Ontario and provide them with many recreational and ecosystem benefits of clean water, clean air, biodiversity and water management.

We do not have access to other sources of revenue to develop, maintain and manage our parks and therefore rely on the levy to be able to continue offering access to our lands and improving experiences for our visitors.

Recommendation 3: Support for including conservation and management of Conservation Authority lands as a core mandate in the CA Act.

Some of the components of the programs and services related to the conservation and management of lands include:

- Land planning (management plans)
- Land securement and acquisition
- Conservation area operations and management
- Property management (maintenance, management agreements)
- Facilities maintenance and capital works
- Hazard assessments (hazard trees, weather, trail inspections)
- Inspection and enforcement (risk and liability)

These items would need to be included in the scope of programs and services outlined in the Regulations to follow.

Drinking Water Source Protection (as prescribed under the Clean Water Act).

The province has added the programs and services related to Drinking Water Source Protection to the mandate of the CAs (CA Act 21.1 (1) 3.)

Response: The CAs have been engaged in the Drinking Water Source Protection Program since 2006 and agree with considering it a core mandate under the CA Act. However, we are concerned that this means that the costs to operate the program will be shifted to the municipalities. This will have a direct impact on the taxpayer in the watershed as the costs for the program will now be added to the levy.

There are also some challenges with allocating the costs for the drinking water program as three CAs participate in a source protection region. The lead CA, in our case Toronto and

Region CA, undertakes activities on behalf of all three CAs (CTC) as supported in the provincially funded program. As CVC has numerous wells in our jurisdiction, the CTC staff disproportionately work in our area.

Further, the province has not committed any funding past March of 2020. There needs to be transition funding to ensure no break in program services should the province cease funding the program and before the regulations and MOUs required in the act are completed.

Many tools developed for the source protection assessment reports, such as the ground water models and Lake Ontario Collaborative Model, have significance beyond the local jurisdiction. The investment made by the province in their development and maintenance should still be valued and supported financially by the province.

Recommendation 4: Drinking water source protection be added to the CA core mandate but that the province should maintain some level of funding for the program in recognition of the significant cross boundary resources developed and the impact on municipal taxes.

Recommendation 5: A cost sharing model be developed to recognize the current source protection region structure and resource sharing undertaken by the CAs participating in the Source Protection Region.

Recommendation 6: Transition funding for the Source Water Protection program be provided until regulations and MOUs are completed.

PROPOSED CHANGE 2 – Increase Levy Transparency

New clauses have been added to the Act (21.1.1 (1-4)) to require the development of Memorandums of Understanding (MOUs) between the CA and the member municipality for the non-mandatory programs and services. The MOUs would be reviewed periodically and be made public.

Response: CVC supports the province's effort to further enable transparency on how CAs levy municipalities for mandatory and non-mandatory programs and services. However, it should be noted that CVC's current municipal levy and budgeting process for mandatory (levy) and non-mandatory (special levy) programs and services goes through a rigorous, transparent and public process led by each of our municipal partners. CVC seeks levy-budget approval from each municipal council, provides detailed information on special levy scope and deliverables, as well as obtaining final approval by CVC's Board of Directors (made up of municipally elected representatives of watershed municipalities). We annually make a public report to each of our funding partners and report on our budget in our annual report posted on our website. For some of our services such as plan review, MOUs are in place with the municipalities which are in various stages of renewal. While there may not be an overall MOU, the intent of the process is transparency about the programs and services we offer to the municipalities for which they have a say in approving.

It should be noted that the Conservation Authorities also deliver other services in support of provincial programs, such as management of provincial lands from the Ontario Heritage Trust, water quality monitoring of provincial stations and the ground water monitoring program. Funding is rarely included in the agreements. Should these functions not be supported by the municipalities in the future in their MOUs, a separate MOU with the province for funding needs to be included in the Act in order that CVC may continue to support the province in a cost efficient and effective manner.

We would suggest that requiring a MOU would add greater bureaucracy to manage and to continue to deliver the programs that municipalities appreciate and benefit from.

The province should provide a framework to ensure consistency among CAs for developing the MOUs.

Recommendation 7: The province to provide a framework to ensure consistency among CAs for developing the MOUs.

Recommendation 8: MOUs should not be restricted to the municipalities for funding. The province should be named as CAs deliver additional services to them, often without funding attached.

PROPOSED CHANGE 3 – Establish Transition Period for Delivery of Non-Mandatory Services

The province proposes to establish a transition period (e.g. 18 to 24 months) and process for conservation authorities and municipalities to enter into agreements for the delivery of non-mandatory programs and services to ensure compliance with CA Act Section 21.1.2 (2).

Response: CVC has, or is currently working on developing and updating, service agreements/memorandum of understanding with all our municipal partners. It should also be noted all of CVC's updated service agreements have been endorsed or approved by the affected municipal council as well as CVC's Board of Directors.

While the suggested timeline for implementation new MOUs of 18 to 24 months may be acceptable, much depends on the outcome of the Regional governance review and the timing for any of those changes. We have to know who we are negotiating with and we may not be the highest priority should change to their operations be significant.

Recommendation 9: The suggested transition timeline of 18 to 24 months be flexible based on the circumstances of individual CAs.

PROPOSED CHANGE 4 – Provincial Investigator

The province proposes to enable the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority (CA Act Section 23.1 (4 – 8)).

Response: CVC has no concerns with the province's proposal to amend the CA Act to appoint an investigator to undertake audits of CAs. However, it should be noted that CVC currently prepares annual financial statements reviewed by an independent auditor which are posted to CVC's website. Additionally, a CA's Board of Directors retain their right to request additional audits or investigations as deemed necessary – in accordance with their fiduciary duties to the organization. The Act could establish limits as to who can ask for an audit or a process before the board to ensure that frivolous requests are not made to be carried out at the expense of the CA (time and/or financial).

Section 23.1 (8) suggests that the CA may be required to pay all or part of the cost of an audit. Given the limitations being placed on mandatory and non-mandatory programs and services, the province must either make it eligible for mandatory recovery or be responsible for paying for it.

Operational audits, such as undertaken at Niagara Peninsula Conservation Authority, are unusual but nonetheless an important tool in the Act to ensure that the best interests of the

province are realized through the management of the CA. We have no concerns with adding measures to the act to allow for operational audits.

Recommendation 10: The Act could establish limits as to who can ask for an audit or a process before the board to ensure that frivolous requests are not made to be carried out at the expense of the CA.

Recommendation 11: Include audit expenses in the mandatory administrative recovery items.

PROPOSED CHANGE 5 – Clarify the Duty of Conservation Authority Board Members

The province has inserted Section 14.1 into the CA Act to clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority similar to not-for-profit organizations.

Response: CVC supports the province's proposal to amend the CA Act to clarify the duty of CA Board members to act in the best interest of the CA.

Board of Director responsibilities are outlined in CVC's administrative by-laws recently updated to comply with the December 2017 CA Act requirements. Further, all CVC Board Members are required to sign a 'Code of Conduct' which includes a clause that all Board members act in the best interest of CVC. Prospective members are provided with the Code of Conduct prior to seeking a board appointment and all have willingly signed it upon appointment.

PROPOSED CHANGE 6 – Proclaim all Un-proclaimed Provisions

The province is also proposing to proclaim un-proclaimed provisions of the Conservation Authorities Act related to:

- fees for programs and services;
- transparency and accountability;
- approval of projects with provincial grants;
- recovery of capital costs and operating expenses for municipalities (municipal levies); regulation of areas over which conservation authorities have jurisdiction (e.g. development permitting);
- enforcement and offences; and
- additional regulations.

Response: CVC generally supports the initiative of the province to proclaim previously un-proclaimed provisions in the CAA. However, some of the un-proclaimed provisions lack detail to comment on as it is to be provided in a regulation. Of particular concern is the detail around fees for programs and services. Increasingly, CA's have had to increase the proportion of cost recovery to ensure that programs and services can continue to meet the service delivery standards or make up for insufficient funding resources. CAs need to maintain their flexibility while maintaining transparency on the fees charged. CVC's fee schedules are approved by our board and posted on our website for public review.

We welcome the proclamation of the enforcement provisions of the act as these have been long overdue as a tool in our toolbox. The opportunity exists to add an order to comply to the new enforcement provisions.

Recommendation 12: Maintain flexibility around fees for programs and services to reflect local circumstances.

In summary we have made the following recommendations for consideration by the government in Bill 108, Schedule 2:

Recommendation 1: Change the terminology from “Programs and services related to the risk of natural hazards” to “programs and services for the protection from and management of natural hazards” (21.1 (1) 1.)

Recommendation 2: that the *conservation of natural resources* be added to the core mandatory programs. (21.1 (1))

Recommendation 3: Support for including conservation and management of Conservation Authority lands as a core mandate of the CA Act (21.1 (1) 2.).

Recommendation 4: Drinking water source protection be added to the CA core mandate, but that the province should maintain funding for the program in recognition of the significant cross boundary resources developed and the impact on municipal taxes. (21.1 (1) 3.).

Recommendation 5: A cost sharing model be developed to recognize the current source protection region structure and resource sharing undertaken by the CAs participating in the Source Protection Region.

Recommendation 6: Transition funding for the Source Water Protection program be provided until regulations and MOUs are completed.

Recommendation 7: The province to provide a framework to ensure consistency among CAs for developing MOUs.

Recommendation 8: MOUs should not be restricted to the municipalities for funding. The province should be named as CAs deliver additional services to them, often without funding attached

Recommendation 9: The suggested transition timeline of 18 to 24 months be flexible based on the circumstances of individual CAs.

Recommendation 10: The Act could establish limits as to who can ask for an audit or a process before the board to ensure that frivolous requests are not made to be carried out at the expense of the CA.

Recommendation 11: Include audit expenses in the mandatory administrative recovery items.

Recommendation 12: Maintain flexibility around fees for programs and services to reflect local circumstances.

The reality of our role and mandate is that, over the last 25 years, we have worked continually with our municipalities, landowners, residents and other organizations to deliver programs effectively and efficiently. At times, it was not by choice, but by necessity. We have adapted, just as our environment does over time. There are no other organizations like conservation authorities who have boots on the ground, fingers in the soil and hands in the water. If we don't, then who will?

Credit Valley Conservation staff would be pleased to discuss these comments and other important opportunities to modernize the *Conservation Authorities Act* – particularly related to operations and governance.

If you have any questions or wish to meet to discuss further, please feel free to contact the undersigned at your convenience.

Regards,



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Chair, Credit Valley Conservation



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c.c. Conservation Ontario
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