

Report To: Board of Directors

Subject: Bill 229 - Implications of (February, 2021) Proclamation of Various Provisions

Report No: FA-12-21

Date: February 18, 2021

Recommendation:

WHEREAS the amendments to the Conservation Authorities Act (“CAA”) in Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures) was passed by the legislature on December 8, 2020 resulting in a number of un-proclaimed provisions in the CAA;

AND WHEREAS on February 2, 2021, some these provisions related to housekeeping, governance, and government requirements were proclaimed with the NPCA having received further direction from the Ministry of Environment Conservation and Parks (MECP) on February 5, 2021 in regards to implementation of said proclaimed provisions;

NOW THEREFORE, BE IT RESOLVED:

1. **THAT** Report No. FA-12-21 RE: Bill 229 - Implications of (February, 2021) Proclamation of Various Provisions **BE RECEIVED**.
2. **THAT** the recommended actions related to NPCA governance provisions **BE APPROVED** as below:
 - a) As per amended CAA Section 14(1), the NPCA requests partner municipalities to initiate the process of determining NPCA Board composition and associated appointments to be completed in time for NPCA’s January 2023 Annual General Meeting (AGM). (No membership changes are required for the remainder of the current term until the end of 2022);
 - b) As per amended CAA Section 14(2), on February 5, 2021 the NPCA provides a copy of existing (2018-2019) municipal resolutions/Order in Council regarding NPCA Board composition and appointments to the Province by April 1st 2021;
 - c) As per amended CAA Section 17(1), and in keeping with NPCA Resolution No. FA -11-21, the Board consider reconfirmation of Chair and Vice Chair term for the remainder of 2021 at the June 2021 AGM and the matter be referred to the Governance Committee for further discussion in consultation with member municipalities. Any exceptions to this provision be formally requested for approval by the Minister and included in the updated Administrative By-Law.

3. **AND FURTHER THAT** a copy of this report **BE CIRCULATED** to the NPCA's partner municipalities for their consideration.

Purpose:

The purpose of this report is to seek Board approval on next steps and key actions related to the February 2, 2021 proclaimed governance provisions of the Conservation Authorities Act.

Background:

On December 8, 2020, Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020, was passed by the Legislature with amendments to the Conservation Authorities Act ("CAA"). Amendments made in 2020 along with previously unproclaimed sections of the CAA from 2017 and 2019 have resulted in a series of unproclaimed provisions.

On January 11, 2021, the Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks informed the NPCA about the establishment of a Conservation Authorities Working Group to help the government implement recent changes to the CAA. Following the establishment of the Conservation Authority Working Group, various conservation authorities (including the NPCA) requested clarity on implementation timelines and transition provisions related to governance changes.

On February 5, 2021, the NPCA received an update from the Ministry of the Environment, Conservation and Parks in regard to the Conservation Authorities Act advising that on February 2, 2021, some provisions in the CAA came into effect. These provisions included:

- Government requirements (e.g. non-derogation provision clarifying that nothing in the CAA is intended to affect constitutionally protected Aboriginal and treaty rights);
- Provisions related to conservation authority governance (e.g. changes to the conservation authority municipal membership);
- Minister's powers (e.g. enabling the Minister to issue a binding directive to a conservation authority following an investigation); and
- Housekeeping amendments.

Details are provided in Appendix 1: Implications of Proclamation of Various Provisions: Frequently Asked Questions.

The remaining unproclaimed provisions are currently being developed through phased regulations by the Province to be proclaimed in two stages in 2021 as follows:

Stage 1: Provisions related to natural hazard management, mandatory programs and services, community advisory boards, the agreements and transition period, fees.

Stage 2: Provisions related to municipal levies, and standards and requirements for non-mandatory programs and services.

Recommended Actions Based on Ministry Direction:

Staff recommends a short-list of immediate next steps and actions for approval of Board as per provincial direction identified in the attached Appendix 1.

As per CAA Section 14(1) below, the NPCA will requests member municipalities to initiate the process of amending NPCA Board composition and associated appointments to be completed in time for NPCA's January 2023 Annual General Meeting.

No membership changes are required for the remainder of the current term until Dec 2022. Current members will complete the remaining duration of their appointments.

14(1.1) When appointing members of an authority, the council of a participating municipality shall ensure that at least 70 per cent of its appointees are selected from among the members of the municipal council.

Exception

14(1.2) Upon application by a participating municipality, the Minister may grant permission to the municipality to select less than 70 per cent of its appointees to an authority from among the members of the municipal council, subject to such conditions or restrictions as the Minister considers appropriate.

Further direction on Municipal appointments is provided in Section 4 of CAA:

4(1) An upper-tier municipality that was established as a regional municipality before the day subsection 6 (1) of Schedule 4 to the Building Better Communities and Conserving Watersheds Act, 2017 comes into force,

(a) shall act in the place of the local municipalities within the regional municipality for the purpose of appointing representatives to attend a meeting for the establishment or enlargement of a conservation authority or the amalgamation of conservation authorities and for the purpose may appoint representatives in the numbers to which the local municipalities would otherwise have been entitled.

As per CAA Section 14(2) below, the NPCA is required to submit any existing (2018/2019) Council resolutions/Orders in Council (on the number of total conservation authority members and number of members per participating municipality in a conservation authority) to the Minister within 60 days of February 2, 2021 (i.e., by April 3, 2021). Staff are in the process of providing these documents to the Ministry and posting on-line for the public.

Future Orders in Council regarding 2023 appointments will be obtained from member municipalities for submission to the Province within 60 days of approval of any such agreement.

14(2.1) Despite subsections (1), (2) and (5), the total number of members of the authority and the number of members that each participating municipality may appoint may be determined by an agreement that is confirmed by resolutions (2.2) If the participating municipalities of an authority enter into an agreement with respect to the total number of municipally appointed members of the authority and the total number of members each municipality may appoint, the authority shall, within 60 days after the agreement is executed,(a) provide a copy of the agreement to the Minister; and (b) make the

agreement available to the public by posting it on the authority's website and by any other means the authority considers appropriate.

Implementation of amended CAA Section 17(1) regarding rotation of Chair and Vice-Chair could begin at a meeting (AGM) as specified by Implications of Proclamation of Various Provisions: Frequently Asked Questions. The current NPCA By-Law includes no provision for rotation and terms of Chair and Vice-Chair. The NPCA Board of Directors approved Resolution No. FA-11-2021 at Meeting #1 on January 21, 2021 to reschedule the AGM for June 2021, defer the appointment of current Board Chair and Vice Chair to June 2021 and extend the current term of Board Members appointed to Committees. At that time, the Board also approved by resolution that the term of each respective NPCA Committee Chair and Vice Chair be extended until the end of 2021 with formal reconfirmation to occur at the June 2021 AGM.

In keeping with the approved Authority Resolution No. FA -11-21, the amended CAA Section 17(1.1), and provincial direction, it is recommended that the Board consider reconfirmation of Chair and Vice Chair term for the remainder of 2021 at the June 2021 AGM and the matter be referred to the Governance Committee for further discussion in consultation with member municipalities. Any exceptions to this provision, as determined by the Governance Committee, should be formally requested for approval by the Minister. These changes will be included in the future updates to the NPCA Administrative By-Law.

Term of chair, vice-chair

17(1.1) A chair or vice-chair appointed under subsection (1) shall hold office for a term of one year and shall serve for no more than two consecutive terms.

Representation from each municipality

17(1.2) An authority in respect of which more than one participating municipality has been designated shall appoint chairs and vice-chairs from among the members appointed to the authority by each participating municipality on a rotating basis so as to ensure that a member appointed to the authority by a particular participating municipality cannot be appointed to succeed an outgoing chair or vice-chair appointed to the authority by the same participating municipality.

Exception

17 (1.3) Despite subsections (1.1) and (1.2), upon application by an authority or a participating municipality, the Minister may grant permission to the authority or participating municipality to, subject to such conditions or restrictions as the Minister considers appropriate,

- (a) appoint a chair or vice-chair for a term of more than one year or to hold office for than two consecutive terms; or
- (b) appoint as chair or vice-chair of the authority a member who was appointed to the authority by the same participating municipality that appointed the outgoing chair or vice-chair.

The detailed amended [CAA](#) is available on e-Laws for a complete list of the provisions that are now in force. NPCA staff will remain in regular conversation with Conservation Ontario and the Ministry of the Environment, Conservation and Parks for updates regarding the proclamation of the remaining provisions.

Financial Implications:

The full financial implications of these CAA changes will not be known until the proposed Regulations have been developed.

Related Reports and Appendices:

Appendix 1: Implications of Proclamation of Various Provisions: Frequently Asked Questions

Authored and Submitted by:

Original Signed by:

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Chief Administrative Officer/Secretary-Treasurer

Implications of Proclamation of Various Provisions: Frequently Asked Questions

Implications of Proclamation of Various Provisions: Frequently Asked Questions

1. Do participating municipalities have to appoint new members to conservation authorities now in order to meet the 70% requirement?

Immediate action is not required on the part of conservation authorities or by municipalities related to the provision requiring 70% of municipally appointed members be elected officials.

Current members should complete the remaining duration of their appointments. As new members are appointed, participating municipalities should be appointing members in a way that complies with this new requirement.

A participating municipality may also apply to the Minister of the Environment, Conservation and Parks requesting an exception to this 70% requirement. The request should include the rationale for the request, and what proportion of members the municipality is proposing to be elected officials. Requests should be sent to minister.mecp@ontario.ca.

2. Does a conservation authority need to immediately initiate the term limits of chair/vice-chairs and rotate amongst participating municipalities?

Immediate action is not necessarily required. Implementation of this provision could begin at the first meeting held this year (following the proclamation date of February 2, 2021), or at such other meeting as may be specified by the authority's by-laws.

A participating municipality or conservation authority may also apply to the Minister of the Environment, Conservation and Parks requesting an exception to the term limit or rotation. The request should include the alternative approach being proposed, and the rationale for the request. Requests should be sent to minister.mecp@ontario.ca.

3. When should conservation authorities transition to the use of generally accepted accounting principles?

If not already the practice, conservation authorities will transition to the use of generally accepted accounting principles for local government and ensure that key conservation authority documents are made available to the public (i.e., minutes of authority or executive committee meetings, auditor reports) following proclamation of these provisions on February 2, 2021.

Implications of Proclamation of Various Provisions: Frequently Asked Questions

4. When do copies of municipal member agreements need to be sent to the Minister and made public?

Please submit any existing agreements (on the number of total conservation authority members and number of members per participating municipality in a conservation authority) to the Minister within 60 days of February 2, 2021 (i.e., by April 3, 2021).

If no such agreement is in place as of February 2, 2021, but such an agreement is entered into at a future date, please provide it to the Minister within 60 days of executing the agreement. These agreements should also be made available to the public through the conservation authority's website or other appropriate means within these same timelines.

5. Which provisions of the *Conservation Authorities Act (CAA)* are you proclaiming in this first phase?

Provisions in the CAA that come into effect February 2, 2021, as part of this first phase include:

Housekeeping Amendments

- Clarifying "Minister" means the Minister of the of the Environment, Conservation and Parks (rather than the Minister of the Natural Resources and Forestry) (Bill 108, 2019).
- Administrative change by striking out "of the Environment" from "Minister of the Environment" (in the section on CA dissolutions – clause 13.1(6)(c)) (Bill 108, 2019).
- Remove a legislative date (now stale) for a past transition period for conservation authorities (CAs) to up-date administrative by-laws (Bill 229, 2020).

Government Requirements

- Non-derogation provision to recognize existing Aboriginal or treaty rights (Bill 229, 2020).
- Enable the Minister to delegate his or her powers to an employee of the Ministry of the Environment, Conservation and Parks (Bill 229, 2020).

Governance

- Changes to the CA municipal membership provisions including requiring 70 per cent of municipally appointed members to be elected officials with provision for the Minister to permit less than 70 per cent on application by a participating municipality (Bill 229, 2020).
- Requiring copies of municipal member agreements on number of total CA members agreed upon and numbers per participating municipality in a CA agreed upon, to be made public and provided to the Minister (Bill 229, 2020).
- Removal of the regulation making authority regarding the composition of the CA (Bill 229, 2020).

Implications of Proclamation of Various Provisions: Frequently Asked Questions

- Minister's power to appoint a member from the agricultural sector with limitations added to the member's voting rights (Bill 229, 2020).
- Limiting the term of the chair/vice-chair and rotating of the chair/vice-chair among a CA's participating municipalities with provision for the Minister to permit an exception to these requirements upon application of the CA or participating municipality. If an exception is granted, this would allow a chair/vice-chair to hold office for more than one year or two terms, or a member to succeed an outgoing chair, vice-chair, appointed from the same participating municipality (Bill 229, 2020).
- Minor amendments to the 'powers of authorities': integrating the CA power to "cause research to be done" with the CA power to "study and investigate the watershed" in order to support the programs and services the CA delivers; to require consent of the occupant or owner of the land before a CA staff can enter the land for the purpose of a CA project (such as land surveying); and to remove the power of a CA to expropriate land (Bill 229, 2020).
- Require CAs to follow generally accepted accounting principles for local governments, make key documents (annual audit, meeting agendas and minutes and member agreements) available to the public (Bill 229, 2020).

Minister's Power

- Enable the Minister to issue a binding directive to a CA following an investigation (Bill 229, 2020).
- Enable the province, upon recommendation by the Minister, to appoint a temporary administrator to assume control of a CA's operations following an investigation or the issuance of a binding directive, if the directive is not followed. Immunity is provided for the administrator (Bill 229, 2020).