

SPECIAL MEETING OF THE UPPER THAMES RIVER CONSERVATION AUTHORITY BOARD OF DIRECTORS'

AGENDA

TUESDAY, NOVEMBER 17, 2020 at 10:30 A.M
Virtual Meeting Due to COVID-19 Pandemic

- 1. Approval of Agenda**
- 2. Declaration of Conflicts of Interest**
- 3. Conservation Authorities Act Changes – I.Wilcox Admin #3902**
- 4. Adjournment**



Ian Wilcox, General Manager

c.c. Members of the Board of Directors and Staff

MINUTES
SPECIAL BOARD OF DIRECTORS' MEETING
Virtual Meeting Due to COVID-19 Pandemic
TUESDAY, NOVEMBER 17, 2020

Members Present:	M.Blosh A.Dale D.Edmiston A.Hopkins T.Jackson S.Levin – Chair N.Manning	P.Mitchell B.Petrie J.Reffle J.Salter M.Schadenberg A.Westman
Regrets:	A.Murray	H.McDermid
Solicitor:	G.Inglis	
Staff:	T.Annett B.Glasman C.Harrington T.Hollingsworth J.Howley	A.Shivas C.Tasker M.Viglianti – Recorder I.Wilcox

1. Approval of Agenda

Mover: N.Manning

Seconder: J.Salter

THAT the Board of Directors approve the Agenda as posted.

Carried.

2. Declaration of Conflicts of Interest

The Chair inquired whether the members had any conflicts of interest to declare relating to the agenda. There were none.

3. Conservation Authorities Act Changes: Bill 229
(Report attached)

Staff introduced the report, highlighted the work done by Conservation Ontario, and informed the Board of the tight timeline and importance of Municipal support.

The Board discussed the recommendation and expressed their concern and displeasure with the actions of the Province. Concerns were raised that Municipalities may not be aware of the proposed changes given the bill was introduced within the larger Budget Bill.

A Board member raised concerns regarding some of the language used in the materials from Conservation Ontario, feeling it lacked specific definitions and quantifiable data, and suggested the first proposed Municipal resolution ask the Province to work with Conservation Ontario to address their concerns, and not ask for repeal or amendments.

A Board member felt that communications from the Board should be delivered to Municipalities by their Board representative instead of staff. After discussion, most Board members supported staff recommendation number two and felt the communication materials should be circulated by staff to Municipalities, rather than individual Board members, due to time constraints and to ensure a consistent message.

Board members raised concerns regarding the proposed restriction of Board appointments to only Municipal Councilors and were unsure how voting in the interest of the Municipality would work.

Concerns were raised around the potential logistical impossibility of Municipal resolutions being passed before the Bill is passed. Staff communicated the opinion of Conservation Ontario that there would be value even if resolutions of support were received after the Bill is passed, as Municipal support could help influence pending regulations.

Board members noted Bill 229 was introduced by Minister Philips and suggested recommendation number three of the staff report be amended to add Minister Philips, and the letter be addressed to him. Staff confirmed the letter would be from the Chair and contain a meeting request.

Mover: B.Petrie

Secunder: A.Dale

AMENDMENT to number three, that it be sent to Minister Philips as the lead.

Carried.

T.Jackson was disconnected from the meeting at 11:13am.

Mover: A.Dale

Seconder: B.Petrie

THAT the Board of Directors approve the recommendations as amended.

The Chair confirmed the mover and seconder were willing to let their names stand.

Carried.

11. Adjournment

There being no further business, the meeting was adjourned at 11:15 am on a motion by N.Manning.



Ian Wilcox
General Manager
Att.

To: UTRCA Board of Directors

From: Ian Wilcox

Date: November 13, 2020

Agenda #: 3

Subject: Conservation Authority Act Changes

Filename: ::ODMA\GRPWISE\UT_MAIN.UTRCA_PO.
Administration:3902.1

Recommendations

1. That the UTRCA Board of Directors support the position and recommendations of Conservation Ontario as described in the Proposed Resolution for Municipalities,
2. That the Board direct staff to share this information and the draft municipal resolution with member municipalities, encouraging their support and action, and
3. That the Chair forward a letter to the Minister of Natural Resources and Forestry, and Minister of the Environment, Conservation and Parks reiterating concerns expressed by Conservation Ontario.

Introduction

Amendments to the Conservation Authorities Act were introduced by the Province through Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 on November 5, 2020 <https://budget.ontario.ca/2020/contents.html>. These most recent changes build on (or reverse) legislative amendments made via Bill 108 in the summer of 2019. Collectively Conservation Authorities have concerns regarding several of the proposed amendments. This report summarizes those concerns and recommends communications with member municipalities and the Province.

Discussion

Three documents prepared by Conservation Ontario are attached to this report:

- A Summary of Proposed Amendments to the *Conservation Authorities Act and Planning Act* through Bill 229 and Implications,
- Background: Concerns About Changes to the Conservation Authorities Act and Planning Act Which Affect Conservation Authorities, and
- A Proposed Resolution for Municipalities.

Concerns regarding the legislative amendments are detailed in the above reports but generally fall within one of three broad categories:

1. Data and Science: Non-mandatory programs and new ministerial powers to deny or approve permits could preclude watershed science and based decisions. Conservation Authorities currently deliver programs and make decisions based on watershed scale benefits and impacts. Clarity is needed regarding how legislative changes will continue to ensure public safety from

hazards and watershed health through what could potentially be a new system of patch-work programs and services, with the possibility for Ministerial level permitting decisions that preclude watershed science.

2. Red Tape: While one intention of legislative change is a reduction in red tape and delays, there is concern new requirements to negotiate 17 separate municipal service agreements for non-mandatory services will add greatly to administrative effort. In addition, staff effort dealing with new appeal processes before the LPAT and/or the minister suggest permit approval times could be longer and more expensive.
3. Governance and Local Control- There is significant concern with the proposed change in the “duty of a member” from serving the best interests of the Conservation Authority to serving municipal interests. This is contrary to fiduciary responsibilities required through governance best practices and confuses the purpose of a Conservation Authority. The proposed amendment is also contrary to the recommendations of the Auditor General’s Special Audit of the Niagara Peninsula Conservation Authority. In addition, restricting the eligibility of Board representatives to Councillors removes municipal control of appointments and adds to the workload of elected officials.

Bill 229 is expected to move quickly through second and third readings so there is urgency to respond. Based on the information provided in this report, staff are recommending:

1. That the UTRCA Board of Directors support the position and recommendations of Conservation Ontario as described in the Proposed Resolution for Municipalities,
2. That the Board direct staff to share this information and the draft municipal resolution with member municipalities, encouraging their support and action, and
3. That the Chair forward a letter to the Minister of Natural Resources and Forestry, and Minister of the Environment, Conservation and Parks reiterating concerns expressed by Conservation Ontario.

Report Prepared by
Ian Wilcox

Attachments:

- A Summary of Proposed Amendments to the *Conservation Authorities Act and Planning Act* through Bill 229 and Implications,
- Backgrounder: Concerns About Changes to the Conservation Authorities Act and Planning Act Which Affect Conservation Authorities, and
- A Proposed Resolution for Municipalities.

**Summary of Proposed Amendments to the *Conservation Authorities Act*
& *Planning Act* through Bill 229 and Implications**

Description of Proposed Amendments	Implications to Conservation Authorities
<p>Existing aboriginal or treaty rights</p> <p>Section 1 is amended to include a non-abrogation clause with respect to aboriginal and treaty rights.</p>	<p>No concern.</p>
<p>Members of authority</p> <p>Section 14 is amended to ensure that the members of a conservation authority that are appointed by participating municipalities are municipal councillors. The Minister is given the authority to appoint an additional member to a conservation authority to represent the agricultural sector. The powers to define in regulation the composition, appointment or minimum qualifications for a member of the Board have been repealed. The duties of a member are amended, every member is to act honestly and in good faith and shall generally act on behalf of their respective municipalities.</p>	<p>There may be a municipal concern. Municipalities will no longer be able to appoint a member of the public to the Board and the specification of ‘municipal councillor’ rather than “municipally elected official” may exclude Mayors.</p> <p>There may be a municipal concern. Should the Minister choose to appoint a member to represent the agricultural sector it is assumed that candidates would apply through the Public Appointments Secretariat. It is also assumed that these appointments would have the same voting privileges as all members and would be entitled to receive per diems and to be appointed as the chair or vice-chair.</p> <p>There may be a municipal concern. There is no opportunity to manage these legislative amendments through the regulations process as Bill 229 has removed the ability to prescribe by regulation, the composition, appointment, or qualifications of members of CAs.</p> <p>Significant concern. The amendment that would require members to act on behalf of their respective municipalities 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>

Description of Proposed Amendments	Implications to Conservation Authorities
<p>Meetings of authorities</p> <p>Section 15 is amended to require that meeting agendas be available to the public before a meeting takes place and that minutes of meetings be available to the public within 30 days after a meeting. They are to be made available to the public online.</p>	<p>No concern. CA Administrative By-Laws were completed by the December 2018 legislated deadline and, as a best practice, should already address making key documents publicly available; including meeting agendas and meeting minutes.</p>
<p>Chair/vice-chair</p> <p>Section 17 is amended to clarify that the term of appointment for a chair or vice-chair is one year and they cannot serve for more than two consecutive terms.</p>	<p>There may be a municipal concern. Municipal Councillor interest and availability regarding this requirement is to be determined.</p>
<p>Objects</p> <p>Section 20 objects of a conservation authority are to provide the mandatory, municipal or other programs and services required or permitted under the Act and regulations.</p>	<p>No concern. Previously the objects of an authority were to undertake programs and services designed to further the conservation, restoration, development and management of natural resources. This is still reflected in the Purpose of the Act. The objects now reference the mandatory and non-mandatory programs and services to be delivered. The “other programs and services” clause indicates that “an authority may provide within its area of jurisdiction such other programs and services as the authority determines are advisable to further the purposes of this Act”.</p>
<p>Powers of authorities</p> <p>Section 21 amendments to the powers of an Authority including altering the power to enter onto land without the permission of the owner and removing the power to expropriate land.</p>	<p>No concern</p>
<p>Programs and Services</p> <p>Section 21.1 requires an authority to provide mandatory programs and services that are prescribed by regulation and meet the requirements set out in that section. Section 21.1.1 allows authorities to enter into agreements with participating municipalities to provide programs and</p>	<p>Significant concern. The basic framework of mandatory, municipal and other program and services has not changed from the previously adopted but not yet proclaimed amendments to the legislation. What has now changed is that municipal programs and services and other programs and services are subject to such standards and requirements</p>

Description of Proposed Amendments	Implications to Conservation Authorities
<p>services on behalf of the municipalities, subject to the regulations. Section 21.1.2 would allow authorities to provide such other programs and services as it determines are advisable to further the purposes of the Act, subject to the regulations.</p>	<p>as may be prescribed by regulation. Potentially the regulations could restrict what the Authority is able to do for its member municipalities or to further the purpose of the Act.</p>
<p>Agreements for ‘other programs and services’</p> <p>An authority is required to enter into agreements with the participating municipalities in its jurisdiction if any municipal funding is needed to recover costs for the programs or services provided under section 21.1.2 (i.e. other program and services). A transition plan shall be developed by an authority to prepare for entering into agreements relating to the recovery of costs. *All programs and services must be provided in accordance with any prescribed standards and requirements.* <i>NOTE- this new addition is addressed as a significant concern under Programs and Services above.</i></p>	<p>Potential concern. This appears to be a continuation of an amendment previously adopted but not yet proclaimed. MECP staff indicate that the current expectation is that the plan in the roll-out of consultations on regulations is that the Mandatory programs and services regulation is to be posted in the next few weeks. It is noted that this will set the framework for what is then non-mandatory and requiring agreements and transition periods. MECP staff further indicated “changes would be implemented in the CA 2022 budgets” which is interpreted to mean that the Transition period is proposed to end December 2021. Subject to the availability of the prescribed regulations this date is anticipated to be challenging for coordination with CA and municipal budget processes.</p>
<p>Fees for programs and services</p> <p>Section 21.2 of the Act allows a person who is charged a fee for a program or service provided by an authority to apply to the authority to reconsider the fee. Section 21.2 is amended to require the authority to make a decision upon reconsideration of a fee within 30 days. Further, the amendments allow a person to appeal the decision to the Local Planning Appeal Tribunal or to bring the matter directly to the Tribunal if the authority fails to render a decision within 30 days.</p>	<p>Some concern. Multiple appeals of fees have the potential to undermine CA Board direction with regard to cost recovery and to divert both financial and staff resources away from the primary work of the conservation authority.</p>
<p>Provincial oversight</p> <p>New sections 23.2 and 23.3 of the Act would allow the Minister to take certain actions after reviewing a report on an investigation into an authority’s operations. The Minister may order the authority to do anything to prevent or remedy non-compliance with the Act. The Minister may also recommend that the Lieutenant Governor in Council</p>	<p>No concern. This appears to be an expansion of powers previously provided to the Minister.</p>

Description of Proposed Amendments	Implications to Conservation Authorities
<p>appoint an administrator to take over the control and operations of the authority.</p>	
<p>Ministerial Review of Permit Decisions</p> <p>Subsection 28.1 (8) of the Act currently allows a person who applied to a conservation authority for a permit under subsection 28.1 (1) to appeal that decision to the Minister if the authority has refused the permit or issued it subject to conditions. Subsection 28.1 (8) is repealed and replaced with provisions that allow the applicant to choose to seek a review of the authority’s decision by the Minister or, if the Minister does not conduct such a review, to appeal the decision to the Local Planning Appeal Tribunal within 90 days after the decision is made. Furthermore, if the authority fails to make a decision with respect to an application within 120 days after the application is submitted, the applicant may appeal the application directly to the Tribunal.</p>	<p>Significant concern. These amendments provide two pathways for an applicant to appeal a decision of an Authority to deny a permit or the conditions on a permit. One is to ask the Minister to review the decision; the other is to appeal directly to the Local Planning Appeal Tribunal. Appeals brought through these processes will create additional workload for the Authority and increase the amount of time that a permit appeal process takes.</p> <p>New guidelines will need to be created to support the Minister and the LPAT in their decision-making processes. There is no reference to a complete application being submitted prior to the 120 day “clock” being started.</p>
<p>Minister’s Order Re. S. 28 Permit</p> <p>New section 28.1.1 of the Act allows the Minister to order a conservation authority not to issue a permit to engage in an activity that, without the permit, would be prohibited under section 28 of the Act. After making such an order the Minister may issue the permit instead of the conservation authority.</p>	<p>Significant concern. These powers appear to be similar to a Minister Zoning Order provided for under the <i>Planning Act</i>. Should the Minister decide to use these powers it is appears that the CA may be required to ensure compliance with the Minister’s permit.</p>
<p>Cancellation of Permits</p> <p>Section 28.3 of the Act is amended to allow a decision of a conservation authority to cancel a permit or to make another decision under subsection 28.3 (5) to be appealed by the permit holder to the Local Planning Appeal Tribunal.</p>	<p>Some concern. Some conservation authorities use the cancellation of a permit as part of their compliance approach; the ability to appeal to the LPAT will add 90 days to the process prior to a LPAT hearing taking place. Renders the tool ineffective if the permit holder decides to appeal.</p>
<p>Entry Without Warrant, Permit Application</p> <p>Subsection 30.2 (permit application) of the Act sets out circumstances in</p>	<p>Some concern. The changes are to amendments previously adopted but not proclaimed. For considering a permit application, the officer is now</p>

Description of Proposed Amendments	Implications to Conservation Authorities
<p>which an officer may enter land within the area of jurisdictions of an authority. Those circumstances are revised.</p>	<p>required to give reasonable notice to the owner and to the occupier of the property, which may result in increased administrative burden for the CA. It also appears to remove the ability to bring experts onto the site.</p>
<p>Entry Without Warrant, Compliance</p> <p>Subsection 30.2 (compliance) of the Act sets out circumstances in which an officer may enter land within the area of jurisdictions of an authority. Those circumstances are revised.</p>	<p>Significant/Some concern. The revisions essentially undo any enhanced powers of entry found within the yet to be proclaimed enforcement and offences section of the Act. The result is that CAs essentially maintain their existing powers of entry, which are quite limited. Conservation authorities will likely have to rely on search warrants to gain entry to a property where compliance is a concern. Reasonable grounds for obtaining a search warrant cannot be obtained where the activity cannot be viewed without entry onto the property (i.e. from the road).</p>
<p>Stop (work) Order</p> <p>Section 30.4 of the Act is repealed. That section, which has not yet been proclaimed and which would have given officers the power to issue stop orders to persons carrying on activities that could contravene or are contravening the Act, is repealed.</p>	<p>Significant concern. This is an important enforcement tool that conservation authorities have been requesting for years. Without this tool, conservation authorities must obtain an injunction to stop unauthorized activities which represents a significant cost to the taxpayers.</p>
<p>Regulations Made By Minister and LGIC</p> <p>The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.</p>	<p>No concern.</p>
<p>Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal</p>	<p>Some concern. The LPAT lacks the specialized knowledge that the MLT has with regard to S. 28 applications. There is also a significant backlog of cases at the LPAT.</p>
<p>Planning Act – Exclusion of CAs as Public Body</p> <p>Subsection 1(2) of the <i>Planning Act</i> is amended to remove Conservation Authorities as a public body under the legislation. Conservation authorities will not be able to independently appeal or become a party</p>	<p>Significant concern. There is lack of clarity on the implications of this amendment.</p> <p>The intent of the amendment is to remove from conservation authorities the ability to appeal to LPAT any <i>Planning Act</i> decisions as a</p>

Description of Proposed Amendments	Implications to Conservation Authorities
to an appeal as a public body at the LPAT.	public body or to become a party to an appeal. Conservation authorities will instead be required to operate through the provincial one window approach, with comments and appeals coordinated through MMAH. Note that the one window planning system is typically enacted for the review of Official Plans and Official Plan Amendments. It is expected that conservation authorities will retain the ability to appeal a decision that adversely affects land that it owns however that has not been confirmed.



Backgrounder

Concerns About Changes to the *Conservation Authorities Act* and *Planning Act* Which Affect Conservation Authorities

November 11, 2020

The Province has introduced a number of changes to the *Conservation Authorities Act* and the *Planning Act* that significantly either limit and completely change the role of conservation authorities to protect Ontario's environment and ensure people and property are safe from natural hazards. The changes risk watering down or limiting the conservation authorities' ability to ensure a watershed-based approach to development and to overall protection of Ontario's environment.

Highlights of Key Changes:

- remove and/or significantly hinder the conservation authorities' role in regulating development, permit and planning application appeal process and engaging in review and appeal of municipal planning applications
- allow the Minister make decisions on permit appeals and issue permits without watershed data and expertise from the conservation authorities
- redirect the fiduciary role (Duty of Members) for municipally appointed CA Board members. They are being told to make decisions in the best interest of the municipalities and not the conservation authority.

Conservation Authority Transparency and Accountability

There are a number of changes which appear administrative in nature which we acknowledge will address concerns around conservation authorities' 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.

Conservation Ontario Concerns

Ontario's environment will be at risk.

Provincial changes to both the *Conservation Authorities Act* and the *Planning Act* risk watering down or losing the conservation authorities' science-based watershed approach which currently protects Ontario's environment.

- Conservation authorities are important agencies who help protect Ontario's environment. Their science-based watershed information helps to steer development to appropriate places where it will not harm the environment or create risks to people.
- CAs bring the watershed science and information to the various tables where development and growth are being reviewed and discussed.
- Provincial changes limit the conservation authorities' ability to provide input to municipal planning applications and to permit decisions and appeals.

- The conservation authority watershed model has served Ontario well and is relied upon by many levels of government, businesses and residents to protect the environment from upstream to downstream.
- Conservation authorities undertake watershed-scale monitoring, data collection management and modelling; watershed-scale studies, plans, assessments and strategies; and watershed-wide actions including stewardship, communication, outreach and education activities that protect our environment on a watershed basis.

Provincial changes will actually create more costs, delays and red tape around permit and planning applications and appeals.

- There are new appeal processes which will significantly slow down the permitting process creating delays and more red tape.
- If applicants are not satisfied with decisions made by the Hearing Boards (CA Board of Directors and/or Executive), then applicants can now appeal directly to the Minister who can make his or her own decision and even issue a permit.
- Alternatively, or in addition, the applicant can appeal a decision of the conservation authority to the Local Planning Appeal Tribunal (LPAT).
- These changes could add as many as almost 200 days to the application process.

Changes made by the Province to the conservation authorities' role in not being allowed to independently appeal decisions made around permits and municipal planning applications will put more people and infrastructure at risk of flooding and other natural hazards and add additional stressors to Ontario's biodiversity.

- Conservation authorities' regulatory role is not always a popular one but it is very important. Being able to participate in appeals processes ensures that the watershed lens is being applied to planning and land use decisions and that people and their property are protected from natural hazards such as flooding.
- Changes have been made to the conservation authorities' role in the permit appeal process. They are no longer allowed to appeal these decisions independently.
- Without our ability to look at development applications on a watershed basis, we run the risk of the plan review process being piecemealed and ultimately the potential to exasperate risks associated with natural hazards and for cumulative negative environmental impacts.

The Province has removed the responsibility for municipally appointed CA Board members to represent the interests of the Conservation Authority.

- The Province has changed the 'Duty to Members' section of the CAA to have municipal representatives on CA Boards actually act in the interests of their own municipality rather than the conservation authority's interests.
- It contradicts the fiduciary duty of board members of any organization to represent the best interests of the corporation they are overseeing. It puts an individual municipal interest above the conservation authority interests.

- This change undermines the ability of the CA Board to address the broader environmental/resource management issues facing our watersheds today. It limits 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.

For more information:

Kim Gavine, General Manager, Conservation Ontario
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Conservationontario.ca

Proposed Resolution for Municipalities

WHEREAS the Province has introduced Bill 229, Protect, Support and Recover from COVID 19 Act - Schedule 6 – Conservation Authorities Act

WHEREAS the Legislation introduces a number of changes and new sections that could remove and/or significantly hinder the conservation authorities' role in regulating development, permit appeal process and engaging in review and appeal of planning applications

WHEREAS we rely on the watershed expertise provided by local conservation authorities to protect residents, property and local natural resources on a watershed basis by regulating development and engaging in reviews of applications submitted under the *Planning Act*

WHEREAS the changes allow the Minister to make decisions without CA watershed data and expertise

WHEREAS the Legislation suggests that the Minister will have the ability to establish standards and requirements for non-mandatory programs which are negotiated between the conservation authorities and municipalities to meet local watershed needs

WHEREAS municipalities require a longer transition time to put in place agreements with conservation authorities for non-mandatory programs

WHEREAS municipalities believe that the appointment of municipal representatives on CA Boards should be a municipal decision; and the Chair and Vice Chair of the CA Board should be duly elected

WHEREAS the changes to the 'Duty of Members' contradicts the fiduciary duty of a CA board member to represent the best interests of the conservation authority and its responsibility to the watershed

WHEREAS conservation authorities have already been working with the Province, development sector and municipalities to streamline and speed up permitting and planning approvals through Conservation Ontario's Client Service and Streamlining Initiative

WHEREAS changes to the legislation will create more red tape and costs for the conservation authorities, and their municipal partners, and potentially result in delays in the development approval process

AND WHEREAS municipalities value and rely on the natural habitats and water resources within our jurisdiction for the health and well-being of residents; municipalities value the conservation authorities' work to prevent and manage the impacts of flooding and other natural hazards; and municipalities value the conservation authority's work to ensure safe drinking water

THEREFORE BE IT RESOLVED

- THAT the Province of Ontario work with conservation authorities to address their concerns by repealing and/or amending changes to the *Conservation Authorities Act* and the *Planning Act*
- THAT the Province of Ontario delay enactment of clauses affecting municipal concerns
- THAT the Province of Ontario provide a longer transition period up to December 2022 for non-mandatory programs to enable coordination of CA-municipal budget processes
- THAT the Province respect the current conservation authority/municipal relationships
- AND THAT the Province embrace their long-standing partnership with the conservation authorities and provide them with the tools and financial resources they need to effectively implement their watershed management role.