CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

AUTHORITY MEETING

Tuesday, December 15, 2020 - 5:00 P.M.

AGENDA ADDENDUM

AGENDA ITEM:	**SUPPORTING DOCUMENTS**

CHIEF ADMINISTRATIVE OFFICER

(1) Staff Report #5719-20 **H-1 to H-11**

Re: Royal Assent of Bill 229 An Act to implement Budget measures and to enact, amend and repeal various statutes

REPORT
_____CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

DATE: December 15, 2020

FILE: ASLA3

APPROVED BY C.A.O. CD

S.R.: 5719-20

TO: Chair and Members, CLOCA Board of Directors

FROM: Chris Darling, Chief Administrative Officer

SUBJECT: **Royal Assent of Bill 229 An Act to implement Budget measures and to enact, amend and repeal various statutes**

On November 5th, Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures Act), 2020 was introduced in the legislature. The Omnibus budget bill contains a total of 44 schedules, amongst them, Schedule 6, which identifies further legislative amendments to the *Conservation Authorities Act* from those introduced through Bill 108, as well as a consequential amendment to the *Planning Act.*

At the November 17th Board of Directors meeting, a staff report was considered that outlined several concerns with Schedule 6. The Board subsequently approved a resolution requesting that Schedule 6 be removed from Bill 229.

On November 30th, Standing Committee on Finance and Economic Affairs started consideration of Bill 229 and made several amendments to Schedule 6, all of which were approved and incorporated into Bill 229, which received Royal Assent on December 8th.

The attached Table provides a summary of key provisions of Schedule 6, staff recommendations on the original Schedule and commentary on the changes made at Standing Committee. Generally, some of the changes addressed previous identified concerns, however some significant concerns remain. Further, there is amendment added by Standing Committee that raises a new concern. This new provision of the CA Act provides that an authority must issue a permit where a Minister's Zoning order has been issued by the Minister of Municipal Affairs and Housing even if it is contrary to the desires of the authority Board and/or the professional advice of the authority staff. This new provision took effect immediately upon Royal Assent. There are liability concerns with the potential of being required to issue a permit that may result in increased risk to flooding and erosion.

At the Conservation Ontario Council meeting on December 14, 2020, Council approved the following resolution in response to this new CA Act provision.

> *WHEREAS Conservation Authorities have been requesting that a clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure and programming be added to the Conservation Authorities Act (CA Act) consistent with the same statutory indemnification afforded to municipalities, the Province and agencies of the Province;*
> *WHEREAS recent planning and permitting amendments to the CA Act by Bill 229 create considerable concerns that the science –based watershed approach to decision making will be superseded by the Minister or the Local Planning Appeal Tribunal;*
> *WHEREAS under the new provisions of the CA Act an authority must issue a permit where a Minister's Zoning order has been issued by the Minister of Municipal Affairs and Housing even if it is contrary to the desires of the authority Board and/or the professional advice of the authority staff;*
> *THEREFORE, be it resolved that the Province be requested to amend the CA Act and or regulations to add a clause of indemnification for the good faith operation of essential flood and erosion control infrastructure and programming and /or issue indemnities under the appropriate Acts and regulations to conservation authorities that are compelled to issue permits due to the new provisions of CA Act and associated Planning Act Minister Zoning Order decisions.*

Cont'd

In terms of next steps, we anticipate that the province will soon release draft regulations detailing provisions in the amended Conservation Authorities Act. In partnership with Conservation Ontario, we will review the draft regulations and report to the Board. We will also restart our discussions with the Region of Durham and the other Durham Conservation Authorities to establish an agreement addressing services that Durham will provide explicit funding for and which are considered non-mandatory under the amended CA Act.

RECOMMENDATIONS:
THAT Staff Report # 5719-20 be received for information.

Attach.
CD/lv
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Bill 229 – Schedule 6: Summary of Original Proposed Amendments, Implications and Recommended Actions and Commentary on Amendments Made at Standing Committee.

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions	Conservation Authorities Act as Amended
Existing aboriginal or treaty rights Section 1 is amended to include a non-abrogation clause with respect to aboriginal and treaty rights.	**No concern.**	Approved as originally proposed
Members of authority 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.	**There may be a concern with appointing municipal councillors.** The specification of 'municipal councillor' rather than "municipally elected official" may exclude Mayors. **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. **Significant concern.** The proposed amendment would replace the currently unproclaimed duty of members to "act honestly and in good faith with a view to furthering the objects of the authority" to require that members "generally act on behalf of their respective municipalities". This 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. Suggested Action: Rescind the amendment to Section 14.1 "Duty of Members"	**Significant concern addressed** through changes made at Standing Committee by removing the proposal that Board members represent the interests of their respective municipalities has been removed. Duty of Board members to act honestly and in good faith with a view to furthering the objects of the authority now remains in the Act. Standing Committee also amended the Bill to: - require least 70 % of its appointees are selected from among the members of the municipal council; and - if the Minister appoints a Member to represent the agricultural sector, that Member will have voting limitations, including not being able to vote on budget matters.

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Meetings of authorities 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.	**No concern.** CLOCA's Administrative By-Law already addresses most of these requirements. Administrative By-law will have to be amended to require posting of minutes within 30 days after a meeting.	Approved as originally proposed
Chair/vice-chair 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.	**There may be a municipal concern.** CLOCAs recent practice has been to rotate the Chair and Vice Chair on a 4-year basis to coincide with municipal elections and to provide for continuity. According to provincial staff the basis for a 2-year term is to improve representation and accountability among various participating municipalities. However, some conservation authorities, including CLOCA only has one participating municipality and there is no need to change representation as frequently as every two years. Recommended Action: Amend to allow Chair and Vice Chair to serve up to 4 years to coincide with municipal elections.	**Concern likely addressed** through amendments made at Standing Committee. The Act requires that Board Chairs and Vice Chairs can not serve more than two years – however, there is provision that a CA can apply to the Minister for longer terms.
Objects 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.	**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	Approved as originally proposed

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	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".	
Powers of authorities 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.	**No concern**	Approved as originally proposed
Regulations prescribing Programs and Services 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 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.	**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 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. Any standards and requirement of these local service agreements should be determined locally by the municipality and the conservation authority. Recommended Action: Rescind all clauses and amendments relating to the ability to prescribe standards and requirements for municipal or other programs and services	**Concern likely addressed** through amendments made at Standing Committee. The proposed provision that our local municipal and watershed programs and services be subject to provincial regulations prescribing standards and requirements has been removed. However, a clause was added that would allow the Minister to make future regulations prescribing standards and requirements for local service agreements.

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Agreements for 'other programs and services' 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.	**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.	**Potential concern remains** as amendment was approved as originally proposed.
Fees for programs and services Section 21.2 of the Act allows a person who is charged a fee for a permit 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.	**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.	**Some concern remains** as amendment was approved as originally proposed.

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Provincial oversight 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 appoint an administrator to take over the control and operations of the authority.	**No concern.** This appears to be an expansion of powers previously provided to the Minister.	Amendment approved as originally proposed
Appeal of Permit decision or of a non-decision 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. Bill 229 would repeal and replace 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	**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. The existing appeal process to the Mining and Lands Tribunal has worked well for 40 years and they have important historic case law and knowledge. The introduction of these two new appeal avenues could lead to unintended consequence of delays, contrary to the object of streamlining approvals. 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.	**Significant concerns remain** as amendment was approved as originally proposed.

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application is submitted, the applicant may appeal the application directly to the Tribunal.	Recommended Action: Rescind new appeal provisions and Maintain currently appeal provisions or alternatively limit new appeal provisions to one avenue and define complete applications.	
Minister's Order Re. S. 28 Permit 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.	**Significant concern.** These powers appear to be similar to a Minister Zoning Order provided for under the *Planning Act.* The use of these orders could remove the local watershed knowledge required to make important informed decisions to safeguard people and property from flooding and erosion. 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. Recommended Action: Amend to clarify that the Ministry would be responsible to ensure compliance with any permit that they issued and for any liability associated with the decision and include parameters that to clearly indicate under what circumstances the Minister could issue such an Order.	**Significant concern remains.** The proposed Ministers power to issue an order to take over the permitting authority remains and was approved. Standing Committee added a new provision to the CA Act requiring conservation authorities to issue a permit for any development that is subject to a Ministry Zoning Order. Conditions can be applied to the permit but are subject to appeal provisions to the Minister and/or LPAT. This provision nullifies the consideration of safety of people and property from flooding and erosion by conservation authorities potentially putting people and property at risk.
Cancellation of Permits 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.	**Some concern.** Although CLOCA rarely cancels permits, it is tool that can be used as part of our 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.	**Some concern remains** as amendment was approved as originally proposed.
Entry Without Warrant, Permit Application	**Some concern.** The changes are to amendments previously adopted but not proclaimed. For considering a permit application, the officer is now	**Concern has been addressed** through amendments made at Standing Committee.

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Subsection 30.2 (permit application) 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.	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.	
Entry Without Warrant, Compliance 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.	**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).	**Concern has been addressed** through amendments made at Standing Committee.
Stop (work) Order 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.	**Significant concern**. This is an important enforcement tool that conservation authorities have been without yet requested from the province for many years. Without this tool, conservation authorities must obtain an injunction to stop unauthorized activities, representing a significant cost to the taxpayers. The ability to issue stop work orders would also be consistent with the Made-in-Ontario Environment Plan, which includes an Action to "Work with municipalities, conservation authorities, other law enforcement agencies and stakeholders to increase enforcement on illegal dumping of excess soil." Recommended Action: Repeal. Conservation authorities' inability to stop work has a significant negative impact on public health and safety. Laying	**Significant concern addressed** as Standing Committee repealed this proposal to remove stop work order provisions.

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	charges and obtaining court injunctions is unnecessarily costly for the taxpayers and the accused.	
Regulations Made By Minister and LGIC The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.	**No concern.**	Amendment approved as originally proposed.
Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal	**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.	**Some concern remains** as amendment was approved as originally proposed.
Planning Act – Exclusion of CAs as Public Body Subsection 1(2) of the *Planning Act* 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 to an appeal as a public body at the LPAT.	**Significant concern.** The intent of the amendment is to remove from conservation authorities the ability to appeal to LPAT any *Planning Act* decisions as a 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. The proposed changes to the Planning Act disregard the critical oversight role that conservation authorities have under the Act, the Provincial Policy Statement, the Memorandum of Understanding on Procedures to Address Conservation Authority Delegated Responsibility and Conservation Authorities Act to ensure that people and property are protected from natural hazards. Since the initial enactment of both the Planning Act and the Conservation Authorities Act in 1946, both statutes have been integrated to ensure that planning and development decisions property consider risks	**Significant concern remains.** Changes made at Standing Committee addresses the concern regarding conservation authorities ability to appeal land use decisions. The Act now provides that conservation authorities can appeal land use decisions where there are conformity concerns related to natural hazards. However, the changes made at Standing Committee now restrict conservation authority's ability to appeal land use planning decisions as a private land owner, unless it is related to a severance application.

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	associated with flooding and erosion hazards. The proposed changes weaken that long-standing and critical linkage with respect to the planning appeals process. While CLOCA rarely files appeals on its own with respect to either official plans or plans of subdivision, the integrity of our ability to provide commentary on planning matters is supported and reinforced by our ability to file appeals, as needed, which is recognized in the existing Memorandum of Understanding with the ministries. Changes are required to the provisions of Bill 229 in order to properly recognize Ontario's prevention-first approach, achieved in part through the planning approaches delivered by conservation authorities and to ensure proper oversight with respect to land use planning appeals. There is also concern that this amendment will remove the conservation authorities ability to appeal land use planning decisions as a private landowner. Recommended Action: Rescind to allow for discussion on limiting appeals as a public body to conformity with section 3.1 (natural hazards) of the Provincial Policy Statement. Clarity should also be provided to ensure conservation authorities retain the ability of CAs as landowners to participate in appeals affecting their land.	