

CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

**AUTHORITY MEETING**

Tuesday, November 17, 2020 - 5:00 P.M.

**AGENDA ADDENDUM**

**AGENDA ITEM:**

**SUPPORTING  
DOCUMENTS**

**CHIEF ADMINISTRATIVE OFFICER**

(1) Staff Report #5715-20

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

**H-1 to H-14**

# REPORT

## CENTRAL LAKE ONTARIO CONSERVATION AUTHORITY

**DATE:** November 17, 2020  
**FILE:** ASLA3  
**S.R.:** 5715-20  
**TO:** Chair and Members, CLOCA Board of Directors  
**FROM:** Chris Darling, Chief Administrative Officer  
**SUBJECT:** **Bill 229 An Act to implement Budget measures and to enact, amend and repeal various statutes**

APPROVED BY C.A.O. 

### Purpose

Ontario introduced Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020, for first reading on November 5, 2020. Bill 229 includes amendments to the various separate Acts including the *Conservation Authorities Act* and the *Planning Act*. The purpose of this report is to provide a summary of proposed legislative amendments that impact conservation authorities.

### Executive Summary

*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.*

### Concerns with Changes include:

- *Changes to conservation authorities' role in regulating development, permit and planning application appeal process that could put more people and infrastructure at risk of flooding and other natural hazards and add additional stressors to Ontario's biodiversity*
- *New appeal provisions will create more costs, delays and red tape*
- *New provisions allowing the Minister make decisions on permit appeals and issue permits without local watershed data and expertise from the conservation authorities*
- *Removal of the responsibility for CA Board members to represent the interests of the Conservation Authority is contrary to watershed management approach*
- *Amendments provide the Province can, through regulation, scope local service agreements between municipalities and conservation authorities*
- *Amendments weaken conservation authority's ability to enforce regulation*

*Elements of Bill 229, Schedule 6 need to be rescinded and/or amended and stakeholders need to be afforded meaningful consultation on the proposed changes.*

### Background

The Conservation Authorities Act was last amended through Bill 108 which received Royal Assent on June 6, 2019 and assigned greater prescriptions to the three categories of programs and services established through Bill 139 amendments (mandatory, municipally driven and Board-driven). Some of the key legislative amendments were made in section 21.1 (1) of the Act, which requires conservation authorities to provide programs or services that meet the following descriptions:

- i. Programs and services related to the risk of natural hazards
- ii. 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
- iii. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006

- iv. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations

Subsequent to Standing Committee and Third reading of Bill 108, a late addition to these categories as part of the amendments, was a clause that enables CA's to provide a program or service other than those listed above, but it must first be prescribed in a provincial regulation. The Environmental Registry of Ontario Decision notice on the approval of the CA Act amendments under Bill 108 reports that this clause was added to address comments received by the Province that CA's mandatory programs and services were being defined too narrowly.

The Bill 108 provisions governing municipally directed programs and services, (non-mandatory), require a publicly available Memorandum of Understanding or agreement. Provisions were also added for other programs and services (non-mandatory), which state that a conservation authority may provide, within its area of jurisdiction, such other programs and services it determines are advisable to further its objects. Nonetheless, if municipal funding is involved, there must be a public agreement in place between CA's and municipalities.

Many of the amendments from Bill 108 regarding programs and services and enforcement provisions are not yet in effect because they require enacting regulations. These regulations will provide greater detail on the scope of CA's mandate and were expected to grant enhanced enforcement powers to address ongoing community concerns.

In early 2020, the Province conducted further consultation by hosting multi-stakeholder consultation sessions. Individual briefings with CA's were held with Minister's staff and local MPPs. These consultation sessions were all high level with no discussion on detailed legislative or regulatory changes.

#### **No Consultation on Schedule 6 of Bill 229**

The Ministry of Environment, Conservation and Parks (MECP) posted a Bulletin on the Environmental Registry of Ontario (ERO) stating that MECP is amending the CA Act to improve transparency and consistency in conservation authority operations, strengthen municipal and provincial oversight, and streamline conservation authority roles in permitting and land use planning.

Section 33 of the Environmental Bill of Rights, 1993 (EBR) exempts proposals from the public consultation requirements under the EBR if the proposal forms part of, or gives effect to, a budget or economic statement presented to the Legislative Assembly. There is therefore no obligation for the government to consult on the proposed amendments because this proposal was brought forward under a budget measures bill.

The ERO Bulletin also states that later this fall, the government intends to consult on regulatory proposals for mandatory programs and services, Section 28 natural hazards, Section 29 conservation authority lands, agreements and transition under the CA Act. These proposals will be posted on the Environmental Registry for public consultation.

#### **Summary of Schedule 6 of Bill 229**

The following provides a summary of key amendments in Schedule 6 of Bill 229 amending the *Conservation Authorities Act*.

- Require 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. (new CA Act provision 14(1.1))
- Replace the currently unproclaimed duty of members to "act honestly and in good faith with a view to furthering the objects of the authority"<sup>13</sup> (CA Act, s14.1) to require that members "act honestly and in good faith" and that, particularly, members of appointed by participating municipalities, "generally act on behalf of their respective municipalities" (new CA Act provision 14.1)
- Limit the term of a chair or vice-chair to one year and to no more than two consecutive terms (new CA Act provision 17(1.1))

- Narrow the objects of a conservation authority from providing “programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals” (CA Act, s20(1)) to only one of three categories: (i) mandatory programs and services, (ii) municipal programs and services, and (iii) other programs and services (new CA Act provision 20(1))
- Narrowing a conservation authority’s powers to study and investigate the watershed from being directly focused on determining “programs and services whereby the natural resources of the watershed may be conserved, restored, developed and managed” (CA Act, s21(1)(a)) to research, study and investigate the watershed to “support” the development and implementation of programs and services (new CA Act provision 21(1)(a))
- Clarify mandatory programs and services of conservation authorities:
  - will include the following, only if set out in a future regulation and related to: (i) “the risk of natural hazards”, (ii) “the conservation and management of lands owned or controlled by” the conservation authority, (iii) “duties, functions and responsibilities as a source protection authority”, or (iv) other “duties, functions and responsibilities” under other legislation (new CA Act provision 21.1(1)1)
  - can only include any programs and services, if not part of the four mentioned above, that are set out in a future regulation within one year of a yet to be determined date (new CA Act provision 21.1(1)2)
  - require these mandatory programs and services to be provided in accordance with “standards and requirements” that may be set out in future regulations (new CA Act provision 21.1(1)(3))
- Require an authority to provide mandatory programs and services that are prescribed by regulation and meet the requirements set out in that section. Allow authorities to enter into agreements with participating municipalities to provide programs and services on behalf of the municipalities, subject to the regulations. 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. 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. 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. (new CA Act provision 21)
- Set a limit (30 days) on the amount of time that a conservation authority has to make a decision on a request for reconsideration a fee charged for a permit application (new CA Act provision 21.2(13)), allow the requester to directly appeal the amount of the fee to the Local Planning Appeal Tribunal (LPAT) if a conservation authority fails to do so (new CA Act provision 21.2(14)), and provide the LPAT with powers associated with such an appeal (new CA Act provision 21.2(19))
- Add immunity for investigators for “any act done in good faith in the performance or intended performance of their duties” or “any alleged neglect or default in the performance in good faith of their duties” (new CA Act provision 23.1(9)18)
- Set out powers and duties on the Minister upon the receipt of an investigator’s report, including making an order requiring a conservation authority to comply or recommending to the Lieutenant Governor in Council that an administrator be appointed to take over a conservation authority’s operations (new CA Act provision 23.2)
- Enable the ability for: (i) the Lieutenant Governor in Council, on a recommendation from the Minister, to appoint an administrator, (ii) set out in the appointment, or in terms and conditions set by the Minister, an administrator's powers and duties, and (iii) provide immunity to an administrator for “any act done in good faith in the performance or intended performance of their duties” or “any alleged neglect or default in the performance in good faith of their duties” (new CA Act provision 23.3)

- Add procedural rights for an applicant seeking a permit from a conservation authority to engage in an activity that would otherwise be prohibited<sup>20</sup>, including
  - submitting a request for Minister’s review of a conservation authority’s refusal of a permit or any conditions on a permit to which the applicant objects within 15 days of a decision (new CA Act provision 28.1(8))
  - setting out the time limit for the Minister’s review decision (30 days) and deeming that no reply within the time limit is “an indication that the Minister does not intend to review” the conservation authority’s decision (new CA Act provision 28.1(9))
  - setting out the details for conducting a Minister’s review (new CA Act provisions 28.1(10)-28.1(14)) and the Minister’s subsequent decision, including that the Minister’s decision is final (new CA Act provisions 28.1(15)-28.1(19))
  - setting out the applicant’s rights to appeal to the LPAT regarding a conservation authority’s permit decision (new CA Act provisions 28.1(21)-28.1(23)), including the ability to appeal prior to a decision being made when a conservation authority “fails to give the applicant notice of a decision” within 120 days of when the application was made (new CA Act provision 28.1(22)) setting out the notice, hearing, and powers associated with permit appeals to the LPAT (new CA Act provisions 28.1(24)-28.1(26))
- Add new procedures for a Minister to
  - order a conservation authority to not issue a permit or class of permits (new CA Act provision 28.1.1(1)), including before an application has been submitted to the conservation authority (new CA Act provision 28.1.1(3)) or before a conservation authority has made a decision about a permit application (new CA Act provision 28.1.1(4))
  - issue a permit for an otherwise prohibited activity, by replacing the conservation authority’s opinion with the Minister’s (new CA Act provision 28.1.1(2))
  - cancel a permit issued by the Minister (amendment to unproclaimed CA Act provision 28.3)
- Add new procedural rights for an applicant to appeal a Minister's decisions regarding a permit (new CA Act provisions 28.1.1(13)-28.1.1(14)), including the ability to appeal prior to a decision being made when the Minister “fails to give notice of a decision” with 90 days (new CA Act provision 28.1.1(13))
- Add new procedural rights for an applicant to appeal a conservation authority’s or a Minister’s decision to cancel a permit (new CA Act provisions 28.3(6)-28.3(9))
- Eliminate the (not yet proclaimed) powers for officers appointed by conservation authorities to issue stop orders (CA Act provision 30.4 will be repealed upon Royal Assent of Bill 229, per Schedule 6, s20 and s29(2))
- Enable the Minister to delegate any powers to an employee of the Ministry in writing (new CA Act provision 36.1)
- Add a requirement that conservation authorities ensure annual audits are conducted “in accordance with generally accepted accounting principles” (amendment to CA Act, s38(1)) and that conservation authorities make the auditor’s reports publicly available by publishing on the conservation authority’s website (new CA Act provision 38(4))
- Delegate authority to make regulations “governing programs and services” (among other things) to the Lieutenant Governor in Council (new CA Act provision 40(1)(b)) and indicate that any “standards and requirements” that may be established in such future regulations might include those which “mitigate the impacts of climate change and provide for the adaptation of climate change, including through increasing resiliency” (new CA Act provision 40(2))
- Through “consequential amendments”, exclude conservation authorities from the definition of a public body as relates to being able to seek to appeal certain land use planning decisions to the LPAT or being able to be added as a party to an appeal before the LPAT; only the Ministry of Municipal Affairs and Housing is authorized to represent provincial interests associated with watersheds in land use planning appeals (amendment to Planning Act, s1(2))

## Comments

CLOCA outlined our main concerns in a letter from CLOCA's Chair to the Premier of Ontario and Ministers of Environment, Conservation and Parks, Natural Resource and Forestry, Finance, and Municipal Affairs and Housing (Attachment 2). The letter summarized the comments contained in this report and indicated that a formal submission to the Province will be provided following consideration of this report by the Board of Directors.

Attachment 1 provides staff commentary on key amendments contained in Schedule 6 of Bill 229. There are several proposed provisions that staff have identified significant concerns and have recommended that these provisions either be rescinded or amended. Many of the amendments that staff have concerns with are new proposals and conservation authorities have not yet had the opportunity to provide input. Rescinding would allow for a focused consultation with the province and other stakeholders.

## RECOMMENDATIONS:

*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 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 CLOCA's Board of Directors request that the Government of Ontario rescind proposed amendments to the Conservation Authorities Act and Planning Act in Bill 229 relating to planning, permitting and enforcement, duties of Members and regulation to prescribe standards and requirements for municipal and other programs and services,*

*THAT CLOCA's Board of Directors request the Government of Ontario amend the proposal to limit term of Chair and Vice Chair to four years as opposed to two years and amend the provision allowing the Minister to issue order 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.*

*AND FURTHER THAT the Boards resolution and a copy of this report be forwarded to the Premier, Minister of Environment, Conservation and Parks, the Minister of Natural Resources and Forestry, the Minister of Municipal Affairs and Housing, the Minister of Finance, MPPs in our jurisdiction, and CLOCA's partner municipalities.*

Attach.

CD/bb

s:\reports\2020\sr5715\_20.docx

**Attachment 1: Summary of Proposed Amendments to the *Conservation Authorities Act*  
& *Planning Act* through Bill 229 and Implications and Recommended Actions**

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
<p><b>Existing aboriginal or treaty rights</b></p> <p>Section 1 is amended to include a non-abrogation clause with respect to aboriginal and treaty rights.</p>	<p><b>No concern.</b></p>
<p><b>Members of authority</b></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.</p> <p>The powers to define in regulation the composition, appointment or minimum qualifications for a member of the Board have been repealed.</p> <p>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><b>There may be a concern with appointing municipal councillors.</b> The specification of ‘municipal councillor’ rather than “municipally elected official” may exclude Mayors.</p> <p><b>There may be a municipal concern.</b> 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><b>Significant concern.</b> 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.</p> <p>Suggested Action: Rescind the amendment to Section 14.1 “Duty of Members”</p>

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
<p><b>Meetings of authorities</b></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><b>No concern.</b> 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.</p>
<p><b>Chair/vice-chair</b></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><b>There may be a municipal concern.</b> 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.</p> <p>Recommended Action: Amend to allow Chair and Vice Chair to serve up to 4 years to coincide with municipal elections.</p>
<p><b>Objects</b></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><b>No concern.</b> 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><b>Powers of authorities</b></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><b>No concern</b></p>



Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
<p><b>Regulations prescribing Programs and Services</b></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 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><b>Significant concern.</b> 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.</p> <p>Recommended Action: Rescind all clauses and amendments relating to the ability to prescribe standards and requirements for municipal or other programs and services</p>
<p><b>Agreements for ‘other programs and services’</b></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.</p>	<p><b>Potential concern.</b> 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><b>Fees for programs and services</b></p> <p>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</p>	<p><b>Some concern.</b> 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>

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
to bring the matter directly to the Tribunal if the authority fails to render a decision within 30 days.	
<p><b>Provincial oversight</b></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 appoint an administrator to take over the control and operations of the authority.</p>	<p><b>No concern.</b> This appears to be an expansion of powers previously provided to the Minister.</p>
<p><b>Appeal of Permit decision or of a non-decision</b></p> <p>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 application is submitted, the applicant may appeal the application directly to the Tribunal.</p>	<p><b>Significant concern.</b> 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.</p> <p>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.</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>Recommended Action: Rescind new appeal provisions and Maintain currently appeal provisions or alternatively limit new appeal provisions to one avenue and define complete applications.</p>
<p><b>Minister’s Order Re. S. 28 Permit</b></p>	<p><b>Significant concern.</b> These powers appear to be similar to a Minister Zoning Order provided for under the <i>Planning Act</i>. The use of these orders could remove the local watershed knowledge required to make</p>

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
<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>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.</p> <p>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.</p>
<p><b>Cancellation of Permits</b></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><b>Some concern.</b> 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.</p>
<p><b>Entry Without Warrant, Permit Application</b></p> <p>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.</p>	<p><b>Some concern.</b> The changes are to amendments previously adopted but not proclaimed. For considering a permit application, the officer is now required to give reasonable notice to the owner <b>and</b> 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><b>Entry Without Warrant, Compliance</b></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><b>Some concern.</b> 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>

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
<p><b>Stop (work) Order</b></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><b>Significant concern.</b> 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.”</p> <p>Recommended Action: Repeal. Conservation authorities’ inability to stop work has a significant negative impact on public health and safety. Laying charges and obtaining court injunctions is unnecessarily costly for the taxpayers and the accused.</p>
<p><b>Regulations Made By Minister and LGIC</b></p> <p>The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.</p>	<p><b>No concern.</b></p>
<p>Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal</p>	<p><b>Some concern.</b> 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><b>Planning Act – Exclusion of CAs as Public Body</b></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 to an appeal as a public body at the LPAT.</p>	<p><b>Significant concern.</b> 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 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</p>

Description of Proposed Amendments	Implications to Conservation Authorities and Recommended Actions
	<p>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 properly consider risks associated with flooding and erosion hazards. The proposed changes weaken that long-standing and critical linkage with respect to the planning appeals process.</p> <p>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.</p> <p>There is also concern that this amendment will remove the conservation authorities ability to appeal land use planning decisions as a private landowner.</p> <p>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.</p>



Attachment 2  
100 Whiting Avenue  
Oshawa, Ontario  
L1H 3T3  
Phone (905) 579-0411  
Fax (905) 579-0994

Web: [www.cloca.com](http://www.cloca.com)  
Email: [mail@cloca.com](mailto:mail@cloca.com)

**Member of Conservation Ontario**

November 13, 2020

CLOCA File: ASLA3

The Honourable Doug Ford, Premier of Ontario  
The Honourable Jeff Yurek, Minister of Environment, Conservation and Parks  
The Honourable Steve Clark, Minister of Municipal Affairs and Housing  
The Honourable John Yakabuski, Minister of Natural Resources and Forestry  
The Honourable Rod Phillips, Minister of Finance

**Re: Bill 229 and Changes to the Conservation Authorities Act**

Central Lake Ontario Conservation is a local, community based, environmental organization and one of 36 Conservation Authorities responsible for managing watershed resources across Ontario. Central Lake Ontario Conservation's jurisdiction is based on the watershed boundaries of 4 major watercourses, across the municipal boundaries of Ajax/Pickering to Clarington, and north, from Lake Ontario to the crest of the Oak Ridges Moraine.

**Governance Provisions for Conservation Authorities**

We support the provisions to enhance transparency and accountability of conservation authorities. Regarding the new requirement that all Members be "municipal councillors," we would like to ensure this requirement allows Mayors to be Members. We recommend using the term "municipally elected official" for the wording of this requirement. We also note Bill 229 would replace the currently un-proclaimed duty of Members to "act honestly and in good faith with a view to furthering the objects of the authority" to require conservation authority Members "generally act on behalf of their respective municipalities". The conservation authority purpose and objects contained in the Act, are better achieved with a fiduciary duty of a Member that represents the best interests of the corporation they are responsible for overseeing. It is important that Members put the interest of the broader watershed above that of the individual municipality.

**Regulations Prescribing Standards for Municipal and Other Programs and Services**

We continue to look forward to working with the province in formulating regulations to prescribe standards and requirements for provincially mandated programs and services. However, it is now proposed that municipal and other programs and services may also be subject to such standards and requirements as prescribed by regulation. CLOCA has an extremely healthy and effective relationship with our participating municipality, the Region of Durham. We have worked collaboratively to develop programs and services that are mutually beneficial to our local communities. The standards and requirements for these local programs and services should remain the responsibility of the municipality and the conservation authority.

**Section 28 Permitting and Enforcement**

Section 28 permitting is critical to safeguarding people and property from natural hazards such as flooding and erosion. We continue to share the province's goal to ensure permit approvals are streamlined and we are committed to maintaining our excellent track record of pragmatic review and approvals. We are concerned that the new permit appeal mechanisms may lead to unintended consequences like delays due to a burdensome appeal process which could undermine the good work already accomplished in streamlining approvals. We effectively work with landowners and applicants to guide them, further ensuring proposed activities are not at risk of natural



hazards such as flooding and erosion. In the last 15 years we have issued approximately 4,000 permits without a Hearing or an appeal. We believe the existing appeal mechanism is a better alternative approach.

Bill 229 also provides the Minister with new powers to issue Orders allowing the Minister to issue a permit instead of the conservation authority. It is strongly suggested there be strict limitations to the use of these Orders and that the Minister take into consideration the foundation of science and local watershed knowledge conservation authorities have, to further ensure informed decisions will safeguard people and property from flooding and erosion.

Bill 229 also removes the un-proclaimed provision to allow conservation authorities to issue stop work orders. 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.”

### **Planning Act Amendment related to Public Bodies**

The proposed amendment also includes the removal of conservation authorities as a public body under the *Planning Act*, thereby removing our ability to appeal *Planning Act* decisions to the Local Planning Appeal Tribunal (LPAT).

The proposed change to the Planning Act should respect the critical oversight role that conservation authorities have under the Act, and the Provincial Policy Statement, ensuring people and property are protected from natural hazards. Since the initial enactment of both the Planning Act and the Conservation Authorities Act, both statutes have been integrated ensuring planning and development decisions properly consider risks 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. A revision to this amendment to limit conservation authority appeals to “the risk of natural hazards” would maintain the important legislative linkage.

### **Closing Remarks**

In closing, we respectfully request changes to the provisions of Bill 229 in order to properly recognize Ontario’s prevention-first approach, achieved in part through a watershed lens and planning and permitting approaches delivered by conservation authorities.

Our next Board of Directors meeting is Tuesday November 17<sup>th</sup> at which time more formal comments will be submitted.

Regards



Bob Chapman  
Chair, Central Lake Ontario Conservation Authority

