

**Report To: Board of Directors**

**Subject: Bill 229 Proposed Amendments to the Conservation Authorities Act**

**Report No: FA-63-20**

**Date: November 19, 2020**

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**Recommendation:**

**WHEREAS** Bill 229, Protect, Support and Recover from COVID 19 Act -Schedule 6 – Conservation Authorities Act introduces changes and new sections that could significantly impact conservation authorities’ mandate of watershed-based natural resource management; alter good governance standards recommend by Ontario’s Auditor General; and weaken NPCA’s ability to serve its municipal partners and communities in the protection from natural hazards and conserving natural resources through its planning, permitting and enforcement activities;

**WHEREAS** the proposed amendments have the potential to add significant delays in the planning and permitting process, add costs for all parties involved, and ultimately have the potential for significant impacts on Province’s ability to provide flooding and natural hazards management contrary to the Special Advisor’s Report on Flooding and Ontario’s Flooding Strategy;

**WHEREAS** NPCA has already made significant investments to establish a very high standard of governance, transparency, accountability and progressive enforcement based on the Ontario Auditor General’s recommendations and streamlining our permitting and land use planning reviews through Conservation Ontario’s Client Service and Streamlining Initiative;

**WHEREAS** NPCA and other Conservation Authorities take pride in being a science-based community-focused delivery partner to the Province and municipalities for over seven decades in supporting sustainable growth and green economy for the future of Ontario’s taxpayers;

**THEREFORE, BE IT RESOLVED:**

1. **THAT** the NPCA Board of Directors **REQUESTS** the Government of Ontario to remove the proposed Schedule 6 from Bill 229 and continue to work with conservation authorities on regulations proposed under previous Bill 108 to achieve desired improvements in the planning process.
2. **AND FURTHER THAT** the attached draft letter **BE FINALIZED** for signature by the Chair and Vice Chair and **BE SENT** 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, the Auditor General; partner municipalities, and Conservation Ontario.

## **Purpose:**

The purpose of this report is to update the Board on proposed changes to the Conservation Authorities Act. These changes form Schedule 6 of Bill 229, which is the Protect, Support and Recover from COVID-19 Act (Budget Measures).

## **Background:**

Bill 229 was introduced on November 5, 2020 as part of the Ontario Budget and proposes changes to a number of different pieces of legislation. Among those is the Conservation Authorities Act (CAA). As the changes to the CAA are part of the proposed Budget, there is no consultation period.

The proposed changes are significant and cover multiple sections of the CAA, including areas that are unproclaimed. Details of proposed changes were provided by Conservation Ontario and are attached as Appendix 1. A brief overview of the key changes proposed is as follows:

- Require Conservation Authority (CA) Boards be comprised of members from municipal councils;
- Remove an unproclaimed section that would have allowed the Province to prescribe Board member skills and qualifications;
- New requirement for Board members to act honestly and in good faith and, in the case of the members appointed by participating municipalities, shall generally act on behalf of their respective municipalities;
- Require that the Chair/Vice-Chair positions are one year in duration and that no member may sit in those positions for more than two consecutive terms;
- Allowing for the Minister (unclear if Minister of Natural Resources and Forestry or Environment, Conservation and Parks) to appoint a member of the CA Board from the Agricultural sector;
- Remove reference to “further the conservation, restoration, development and management of natural resources” from the Objects of a CA;
- Remove the ability of CAs to expropriate land;
- Revising the unproclaimed Sections of the CAA that pertain to the programs and services provided by a CA to require some programs and services to be prescribed through Regulation;
- Add the ability for a Permit applicant to appeal the Permit fees;
- Add (to an unproclaimed Section) the ability for the Minister to appoint an Administrator of the CA following an investigation to the CA’s operations;
- Ability of a Permit applicant to appeal a CA’s lack of decision after 120 days to the Local Planning Appeal Tribunal (LPAT);
- Ability to request the Minister review a CA’s decision on a Permit application;
- Ability to appeal a CA’s decision on a Permit application to the LPAT;
- Gives the Minister the ability to issue Permits (Minister’s Order);
- Modification to the Planning Act that will remove a CA’s ability to appeal an approval authority’s decision to the LPAT;
- Modification to the requirements for entry onto property for compliance/enforcement purposes; and
- Removal of the unproclaimed section that would have allowed CAs the ability to issue stop-work orders.

A webinar was held by the Ministry of Environment, Conservation and Parks (MECP) on November 9, 2020 with staff from Conservation Ontario and Ontario's 36 Conservation Authorities. This was an opportunity to ask questions of MECP staff about the proposed changes. There was little new information provided but MECP staff confirmed that there will be a draft Regulation on CA programs and services circulated for review later this Fall. Ministry staff advised that details about transition for the new changes will follow in the future and, in some cases, be detailed through future Regulations.

As of November 16, 2020, Bill 229 was to be considered for Second Reading by the Ontario Legislature. The posting for the proposed changes to the CAA can be found at: <https://ero.ontario.ca/notice/019-2646>.

### **Discussion:**

The changes contemplated under Bill 229 are significant to not only the NPCA but to all CAs. NPCA staff have been working to understand the full implications of the proposed changes, however, much remains unknown until further Regulations are developed or more details provided by the Province.

NPCA supports the changes made to enhance the transparency and accountability of conservation authorities. Changes proposed have already been implemented to provide highest level of customer service standards and transparency to our communities. However, several amendments are contrary to the recommendations in the 2018 Auditor General's (AG) Report on the NPCA Audit.

### **Governance**

The proposed governance model seems to be unprecedented (against standards of good governance) and potentially unworkable in practice.

The standards of care for directors are set out under the Business Corporations Act: *“Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall, (a) act honestly and in good faith with a view to the best interests of the corporation....; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances”.*

The proposed changes are contrary to the fiduciary responsibilities of a public body and challenges the purpose of CAs to address watershed issues that transcend municipal boundaries. The Auditor General in her Audit recommended that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the CA, to which the ministry response was in agreement.

Additionally, NPCA's community appointed members bring a diverse range of expertise and skill set to the current Board. The proposed amendments are of concern to both NPCA and our partner municipalities as municipalities will no longer be able to appoint a member of the public to the Board and the specification of 'municipal councilor' rather than "municipally elected official" may exclude Mayors.

Over the past two years, NPCA has invested significant time and resources to successfully deliver on the Auditor General's recommendations specifically related to strengthening the NPCA's Governance as well as Planning and Enforcement functions. Staff are concerned that the proposed changes would be a step back for CAs and undo this work. At the time of drafting this report staff were in the process reaching out to the AG's office for direction.

## **Mandate of CA (Objects Powers and Duties Section 20 and 21 of CAA)**

The proposed changes to a CA's mandate are problematic. CAs are resource management agencies and have a long history of studying and understanding our watersheds. This has significantly assisted our municipal partners in their work, particularly around Land Use Planning, in understanding priority areas for protection and restoration. We also provide residents of our watershed with important programs for restoration that is not provided by any other level of government. Removal of the Natural Resource Mandate of CAs as stated in Section 20 opens the door for the Province to scale back the important work of CAs such as 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. CAs will now have to rely on the Province to include these functions specifically in a Regulation.

## **Planning and Permitting (Section 28 CAA)**

CA's have a critical role in protecting lives and property from natural hazards and we achieve that through our permit process and our involvement in municipal Land Use Planning. The proposed amendments will limit a CA's ability to undertake non-partisan, transparent, and technically sound decision making and will allow individuals to circumvent the technical CA permitting process.

The MECP has indicated that the proposed changes around appeals being heard by the LPAT is intended to make the Permit process more efficient. NPCA staff are concerned that given the appeal periods specified in the proposed changes combined with the amount of time it takes to go through an appeal at the LPAT, this will have the opposite effect on Permit timelines. In addition, where the Minister issues an order to make a decision on a Permit application, it is not clear how decisions would be made and if watershed context, or CA Board of Directors' approved regulatory policies will be regarded. CA staff provide evidence-based expertise on a diverse range of technical issues including, water resources engineering, environmental planning and ecology, necessary for sound decision making. It is not clear who will provide this advice to the Minister in making these decisions. This process may be perceived as lacking transparency.

For the reasons stated above, the proposed changes will result in increased legal costs to CA's municipalities, and/or all Permit applicants. Staff will end up spending a significant amount of time preparing for and attending unnecessary LPAT hearings and will lead to a more burdensome, litigious and adversarial process. This will set back the Client Service improvements undertaken by CA's in the past few years.

The Mining and Lands Tribunal has the case law history and experience in adjudicating CAA cases. It is not clear what support will be available to LPAT members to be able to provide timely, consistent and sound decisions.

Finally, the proposed changes would see the removal of the unproclaimed Section that would have enabled a Stop-Work Order for enforcement purposes. This tool was recently added to the legislation (2019), after years of debate, to enable CAs to immediately stop activities which could cause high risk to life and property and environmental damage and allow time for a negotiated resolution of the matter. This is a major setback as CA's would continue to lack the legal authority to require a person committing a violation to cease. The violation could continue while the CA is investigating, leaving the only recourse for the CA to be to seek a court injunction.

## **Land Use Planning**

The loss of the right of appeal for a CA on Land Use Planning decisions is concerning. This creates the potential for decisions contrary to CA Regulations or hazard mandate being left unchallenged. It would also mean that a CA could be in a position where a Permit cannot be issued for a project authorized by a municipality. This would add considerable delays for developers and runs contrary to streamlining CA roles in Permitting and Land Use Planning.

This change is also of significant concern for NPCA as a Landowner as it takes away NPCA's right to appeal planning decisions as a landowner when infrastructure or other activities may be proposed on CA lands.

The 2019 Provincial Flood Advisor's report noted the important role that CAs play in the Land Use Planning process. The main legislative tools used to manage flood risk, the report states, include the Planning Act together with the Provincial Policy Statement (PPS) and the CAA. As a result of the Flood Advisor's recommendations, the 2020 PPS was revised to state that mitigating natural hazard risks, including those associated with climate change, will require the province, planning authorities, and conservation authorities to work together. This change may also limit future ability of CA's to address extreme weather and climate change issues.

## **Transition Provisions**

NPCA staff have learned that the expected transition period for the implementation of municipal MOUs would be one year, such that the changes would take effect January 2022 budget year.

This timeline is seriously problematic as Regulations may only be finalized in mid-year 2021 leaving inappropriate amount of time to finalize MOUs and address program changes in 2022 budgets. NPCA's partners municipalities may also not be able to meet this timeframe.

## **NPCA Advocacy and Communication Activities**

- Letter to the Premier, Ministers of Municipal Affairs and Housing, Natural Resources and Forestry, and Environment, Conservation and Parks, as well as the Auditor General (Appendix 2)
- A media statement and subsequent media release issued
- Letters have been sent to all to NPCA partnering municipalities to ask for their endorsement (Appendix 3)
- Chair, Vice Chair and CAO met both MPP Skelly and Oosterhoff to discuss our concerns and next steps.
- Letters have been sent to all area MPPs (Appendix 4)
- CAO, Chair and Vice Chair are also entertaining Media inquiries.
- Key messages are being distributed through various media platforms.

NPCA's Public Advisory Committee is being updated on a regular basis and NPCA is working closely with Conservation Ontario and neighboring conservation authorities.

## **Financial Implications:**

The proposed changes to the CAA, specifically to a CA's mandate, will have significant future budget implications and increased financial costs resulting from delays and legal actions. The full financial

implications of these changes will not be known until we see the proposed Regulation for CA programs and services, which is supposed to be available for comment this Fall.

**Related Reports and Appendices:**

- Appendix 1 – Summary of Proposed Amendments to the Conservation Authorities Act & Planning Act through Bill 229 and Implications
- Appendix 2 – Draft Letter to the Premier, Ministers and Auditor General
- Appendix 3 – Example of Municipal Letter
- Appendix 4 – Example of MPP letter

**Authored by:**

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**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><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. 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><b>There may be a municipal concern.</b> 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><b>There may be a municipal concern.</b> 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><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 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><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> 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><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> Municipal Councillor interest and availability regarding this requirement is to be determined.</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>
<p><b>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.</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</p>



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<p>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>restrict what the Authority is able to do for its member municipalities or to further the purpose of the Act.</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. <i>*All programs and services must be provided in accordance with any prescribed standards and requirements.* NOTE- this new addition is addressed as a <b>significant concern</b> under Programs and Services above.</i></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 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><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>
<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</p>	<p><b>No concern.</b> 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><b>Ministerial Review of Permit Decisions</b></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><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. 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><b>Minister’s Order Re. S. 28 Permit</b></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><b>Significant concern.</b> 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><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> 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><b>Entry Without Warrant, Permit Application</b></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</p>

Description of Proposed Amendments	Implications to Conservation Authorities
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.	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><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>Significant/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>
<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 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><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</p>	<p><b>Significant concern.</b> 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 public body or to become a party to an appeal. Conservation</p>

Description of Proposed Amendments	Implications to Conservation Authorities
<p>authorities will not be able to independently appeal or become a party to an appeal as a public body at the LPAT.</p>	<p>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.</p>

November 19, 2020

Honourable Doug Ford  
Premier of Ontario  
Room 281  
Legislative Building, Queen's Park  
Toronto, ON M7A 1A1

Dear Premier Ford,

**RE: Bill 229 Schedule 6 - Changes to Conservation Authorities Act**

The Niagara Peninsula Conservation Authority (NPCA) has been committed to keeping the environment, people and property of our watershed safe from natural hazards for the past 61 years with a mandate to further the conservation, restoration, development and management of natural resources in our watershed.

We are writing to express our extreme concern with regards to Schedule 6 of Bill 229. The proposed changes have a direct negative impact on decades of on-the-ground watershed planning, monitoring, and ecosystem management measures put in place to keep our residents safe from natural hazards and protect Ontario's precious natural resources for future generations. The need for investment in green space for the health and well being of our communities has been clearly exposed during the COVID Pandemic. Local CA's were challenged to deploy resources on the frontlines for the mental and physical well being of our communities.

NPCA appreciates the need for transparency and accountability. Over the past few years, we have invested heavily in implementing measures for the highest standards of customer service for our residents. For the NPCA, this work was initiated as the result of the 2018 Special Audit of NPCA by the Office of the Auditor General of Ontario (OAGO) and has been fully implemented. For most CA's, Administrative By-Laws are completed and already address these concerns including making key documents publicly available including; meeting agendas, meeting minutes, and annual audits.

We would like to stress that a majority of proposed amendments contained within Schedule 6 of Bill 229 are contrary to the spirit of Auditor Generals recommendations, against the basic standards of good governance, and disrespect watershed science and evidence-based planning decisions.

The proposed changes are contrary to the fiduciary responsibilities of a public body and challenges the purpose of CAs to address watershed issues that transcend municipal boundaries. The Auditor General, in her Audit, recommended that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the CA, to which the ministry responded in agreement.

Additionally, NPCA's community appointed members (as with all CA's community appointed members) bring a diverse range of expertise and skill set to the current Board. The proposed amendments are of concern to both NPCA and our partner municipalities as municipalities will no longer be able to appoint a member of the public to the Board. Also, the specification of 'municipal councillor' rather than "municipally elected official" may exclude Mayors.

The proposed changes to a CA's mandate are problematic. CAs are resource management agencies and have a long history of studying and understanding our watersheds. This has significantly assisted our municipal partners in their work, particularly around Land Use Planning, in understanding priority areas for protection and restoration. We also provide residents of our watershed with important programs for restoration that is not provided by any other level of government. Removal of the Natural Resource Mandate of CAs as stated in Section 20 opens the door for the Province to scale back the important work of CAs such as 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. CAs will now have to rely on the Province to include these functions specifically in a Regulation.

As you are also aware, CA's have a critical role in protecting lives and property from natural hazards and we achieve that through our Permit process and our involvement in municipal Land Use Planning. The proposed amendments will limit a CA's ability to undertake non-partisan, transparent, and technically sound decision making and will allow individuals to circumvent the technical CA permitting process.

The MECP has indicated that the proposed changes around appeals being heard by the LPAT is intended to make the Permit process more efficient. We are concerned that given the appeal periods specified in the proposed changes combined with the amount of time it takes to go through an appeal at the LPAT, this will have the opposite effect on Permit timelines. In addition, where the Minister issues an order to make a decision on a Permit application, it is not clear how decisions would be made and if watershed context, or CA Board of Directors' approved regulatory policies will be regarded. CA staff provide evidence-based expertise on a diverse range of technical issues including, water resources engineering, environmental planning and ecology, necessary for sound decision making. This newly proposed process may be perceived as lacking transparency.

For the reasons stated above, the proposed changes will result in increased legal costs to CA's municipalities, and/or all Permit applicants. Staff will end up spending significant amount of time preparing for and attending unnecessary LPAT hearings and will lead to a more burdensome, litigious and adversarial process. This will significantly set back the Client Service improvements undertaken by CA's in the past few years.

The Mining and Lands Tribunal has the case law history and experience in adjudicating Conservation Authorities Act cases. It is not clear what support will be available to LPAT members to be able to provide timely, consistent and sound decisions.

As presented, the proposed changes would see the removal of the unproclaimed Sections that would have enabled a Stop-Work Order for enforcement purposes. This tool was recently added to the legislation (2019), after years of debate, to enable CAs to immediately stop activities which could cause high risk to life and property and environmental damage and allow time for a negotiated resolution of the matter. This is a major setback as CA's would continue to lack the legal authority to require a person committing a violation to cease. The violation could continue while the CA is investigating leaving the only recourse for the CA to seek a court injunction thus further burdening an already overwhelmed legal system.

In the protection of life and property from natural hazards, the guidance Conservation Authorities generally follow is provided directly from the Province, if there is an issue with the way permitting decisions are being made by the CA's, then addressing the outdated guidance from the Province

would be somewhere to start. The current direction that has been taken by-passes the necessary work the Province needs to do to update the process and instead chooses to undermine the organization that is tasked with completing this work. This is extremely short-sighted, and it does not solve the underlying issues. The Province needs to make a commitment to begin to uphold their responsibility to provide adequate, clear, up-to-date and fair guidance to ensure that any decisions being made with respect to natural hazards, are done in the best interest of the Province of Ontario and ALL of the people that live here, political-interests and self-interests aside.

The loss of the right of appeal for a CA on Land Use Planning decisions is concerning. This creates the potential for decisions contrary to CA Regulations or hazard mandate being left unchallenged. It would also mean that a CA could be in a position where a Permit cannot be issued for a project authorized by a municipality. This would add considerable delays for developers and runs contrary to streamlining CA roles in Permitting and Land Use Planning.

This change is also of significant concern for NPCA as a Landowner as it takes away NPCA's right to appeal planning decisions as a landowner when infrastructure or other activities may be proposed on CA lands.

The 2019 Provincial Flood Advisor's report noted the important role that CAs play in the Land Use Planning process. This report states the main legislative tools used to manage flood risk include the Planning Act together with the Provincial Policy Statement (PPS) and the Conservation Authorities Act. As a result of the Flood Advisor's recommendations, the 2020 PPS was revised to state that mitigating natural hazard risks, including those associated with climate change, will require the province, planning authorities, and conservation authorities to work together. This change may also limit future ability of CA's to address extreme weather and climate change issues.

As such, the NPCA Board of Directors respectfully requests that the Government of Ontario remove the proposed Schedule 6 from Bill 229 and continue to work with Conservation Ontario and the 36 Conservation Authorities on regulations proposed under the previous Bill 108 to achieve the desired improvements within the Conservation Authorities Act.

Thank you for your kind consideration and understanding the urgency of this matter. For any questions, or clarity on these matters kindly contact CAO, Chandra Sharma at [csharma@npca.ca](mailto:csharma@npca.ca) or 905-788-3135.

Respectfully,

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Brenda Johnson  
Chair, NPCA

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Bruce MacKenzie  
Vice Chair, NPCA

Cc Bonnie Lysyk - Auditor General of Ontario  
Honourable Steve Clark - Minister of Municipal Affairs and Housing  
Honourable John Yakabuski – Minister of Natural Resources and Forestry  
Honourable Jeff Yurek - Minister of the Environment, Conservation and Parks  
Honourable Rod Phillips – Minister of Finance



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November 16, 2020

Mayor Hewitt and Council  
P.O. Box 400  
Cayuga, ON  
L8P 4Y5

Dear Mayor Hewitt and Council,

RE: Changes to Conservation Authorities Act and Conservation Authorities' Role in Land Use Planning

The Niagara Peninsula Conservation Authority (NPCA) has been keeping the environment, people and property of our watershed safe from natural hazards for the past 61 years with a mandate to further the conservation, restoration, development and management of natural resources across Niagara, Hamilton and Haldimand watersheds. Collaboration with NPCA's municipal partners has been a critical factor in our collective success on the ground.

Schedule 6 of Bill 229, proposes amendments which we believe have the potential to add significant delays in the planning and permitting process, add costs and have the potential for significant impacts on our collective ability to provide flooding and natural hazards management/protection and drinking water protection to our communities. The proposed changes also appear contrary to the Special Advisor's Report on Flooding and Ontario's Flooding Strategy, as well the 2018 Special Audit of NPCA by the Office of the Auditor General of Ontario (OAGO).

During the Pandemic, NPCA experienced an increase in illegal activities on our lands and regulated areas. In regards to our enforcement functions, conservation authorities must rely on their municipal partners to assist with stop orders under municipal by-laws or the Building Code, when appropriate. This puts undue stress on municipalities to provide services to the conservation authorities (CA's). Major offences result in unnecessary costs to conservation authority and municipal budgets, as well as to the taxpayers/property owners for damages.

Under the proposed changes, if applicants are not satisfied with decisions made by the Hearing Boards (CA Board of Directors or Executive), then applicants can now appeal directly to the Minister or to the Local Planning Appeal Tribunal (LPAT). These changes could add significant delays and more costs for developers, municipalities, conservation authorities and the Province to manage the excessive appeal system.

Over the past few years, we have invested heavily in implementing measures for the highest standards of customer service for our residents. We have also invested significantly on improved governance based on the Auditor General's recommendations. We believe that Board appointments remain the decision of the municipality in consultation with conservation authorities. We have made great strides and seek your support to ensure that we will be able to continue to build on our successes.

We are writing to seek the endorsement from our municipal partners through adoption of appropriate resolution. (A sample resolution is attached for your consideration.) We request your support in encouraging the Province of Ontario to work with conservation authorities to address



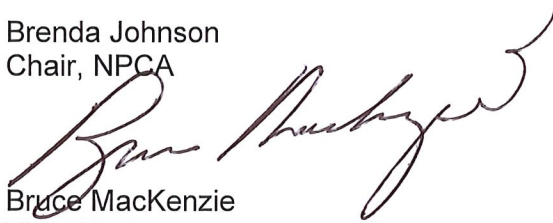
their concerns and to repeal or amend changes to the *Conservation Authorities Act* and the *Planning Act*.

For any questions, or clarity on these matters kindly contact CAO, Chandra Sharma at [csharma@npca.ca](mailto:csharma@npca.ca) or 905-788-3135.

Respectfully,



Brenda Johnson  
Chair, NPCA



Bruce MacKenzie  
Vice Chair, NPCA

### **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, and engaging in review and appeal of municipal 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:**

1. **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*.
2. **THAT** the Province of Ontario delay enactment of clauses affecting municipal concerns.
3. **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.
4. **THAT** the Province respect the current conservation authority/municipal relationships.
5. **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.



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November 16, 2020

Wayne Gates  
 MPP, Niagara Falls  
 Constituency Office  
 Unit 1  
 6746 Morrison St.  
 Niagara Falls, ON  
 L2E 6Z8

Dear Mr. Gates,

RE: Changes to Conservation Authorities Act and Conservation Authorities' Role in Land Use Planning

The Niagara Peninsula Conservation Authority (NPCA) has been keeping the environment, people and property of our watershed safe from natural hazards for the past 61 years with a mandate to further the conservation, restoration, development and management of natural resources in our watershed.

We are writing to express our extreme concern about Bill 229. The proposed changes have a direct negative impact on decades of on-the-ground watershed planning, monitoring, and ecosystem management measures put in place to keep our residents safe from natural hazards and protect Ontario's precious natural resources for future generations. The need for investment in green space for the health and well being of our communities was clearly exposed during the COVID Pandemic. Local CA's were challenged to deploy resources on the frontlines for the well being of our communities.

NPCA appreciates the need for transparency and accountability. Over the past few years, we have invested heavily in implementing measures for the highest standards of customer service for our residents. For NPCA, this work was initiated as the result of 2018 Special Audit of NPCA by the Office of the Auditor General of Ontario (OAGO) and has been fully implemented. For most CA's, Administrative By-Laws are completed and already address these concerns including making key documents publicly available; including meeting agendas, meeting minutes, and annual audits.

We note that a majority of proposed amendments are contrary to the spirit of Auditor Generals recommendations, against the basic standards of good governance, and disrespect watershed science and evidence-based planning decisions. We respectfully state that:

1. Proposed 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.
2. Proposed changes will actually create more costs, delays and red tape around permit and planning applications and appeals.
3. Limiting Conservation Authorities ability 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.

## OUR ASKS

NPCA respectfully asks you to consider the impacts these proposed changes will have on the safety of your local environment, your constituents and their safety and we request:

1. That Province take a step back and rethink the provisions of Schedule 6. That the proposed Schedule 6 not be enacted in its present form. Ministry officials continue to work with CA's in good faith on regulations as proposed under previous Bill 108.
2. **Section 20 Mandate:** That the "Natural Resource Mandate" of CA's as stated in Section 20 be respected to allow for important work on 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.
3. **Planning Act Amendment:** That an amendment be made to limit appeals as a public body to conformity with section 3.1 (natural hazards) of the Provincial Policy Statement. Retain the ability of CAs as landowners to participate in appeals affecting their land.
4. **Section 28:** The proposed amendments to the Section 28 regulation will **negatively impact a CA's ability to protect life and property**, through limiting a CA's ability to independently apply their watershed science, allowing individuals to circumvent the CA permitting process and by tying up CA staff in unnecessary appeal processes. This proposal does not improve transparency, consistency in decision-making and nor does it streamline the process. In fact, this proposal will result in a significantly longer approval process which might jeopardize the health or safety of persons or result in the damage or destruction of property.
5. Amend or Specify in the legislation that the appeal for a non-decision after 120 days can only be made when the conservation authority has deemed the application to be complete.
6. Amend or Enact one of the three possible alternatives in its place: a) Develop provincial guidance that defines how to establish fees in consultation with municipal partners and other stakeholders. If the CA is not in compliance with the guidance, the Minister could make an order under S. 23 to amend the CA fees policy. B) Enable the fee policy to go through public consultation via the ERO or C) require the approval of the Minister of the CA fee policy to avoid multiple appeals regarding the same fee schedule. Remove the right of appeal to the LPAT.
7. 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.
8. **Regulation making powers for prescribing standards and requirements for Non-Mandatory (i.e. Local) programs and services:** Repeal All clauses and amendments relating to the ability to prescribe standards and requirements (including repeal of Section 21.1.1(5), Section 21.1.2 Prescribed Standards, Section 21.1.2 (3) b) Terms and Conditions, and Section 21.1.2(4) Conflict; and Including amendment of i.e. deletion of references to regulations in Section 21.1.1(1), and, 21.1.2 (1).

9. **Governance 4a – Duty of Members:** Repeal the change to the ‘Duty of Members’ from furthering the objects of the authority to representing the interest of their municipality. It 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. It basically undermines the ability of the CA Board to address the broader environmental/resource management issues facing our watersheds today. 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, etc.
10. **Member Appointments:** A number of amendments have been made regarding CA Board appointments. Of concern are new clauses that require municipalities to only appoint municipal councillors and that the Chair/Vice Chair rotate every two years between different municipalities.

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. Given the already identified regulatory consultations planned and the pressures from COVID exacerbating municipal councillors’ time, respectfully request that proclamation of these governance changes be delayed for at least a few years. This would allow time for CA’s to collaboratively work on the necessary policies to support effective Board governance.

We recommend that Board appointments should remain the decision of the municipality but there will be practical limitations for these new requirements to be met (e.g. some CAs have only one or a few municipalities in their jurisdiction; some have more than 50% citizen appointees).

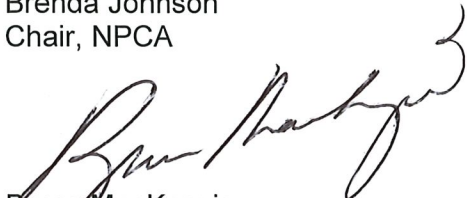
We request delay in proclamation until after regulations consultations are completed over the next number of years with appropriate parties.

Thank you for your kind consideration and understanding the urgency of this matter. For any questions, or clarity on these matters kindly contact CAO, Chandra Sharma at [csharma@npca.ca](mailto:csharma@npca.ca) or 905-788-3135.

Respectfully,



Brenda Johnson  
Chair, NPCA



Bruce MacKenzie  
Vice Chair, NPCA