Office of the Chair

Toronto and Region Conservation Authority

November 30, 2020

Via Email

Amarjot Sandhu, MPP, Chair
Julia Douglas, Committee Clerk
Standing Committee on Finance and Economic Affairs
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Re: Bill 229 Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 Schedule 6, Amendments to the *Conservation Authorities Act* and the *Planning Act*

On behalf of Toronto and Region Conservation Authority (TRCA), thank you for the opportunity to appear before the Standing Committee prior to Third Reading of Bill 229. For the assistance of the Standing Committee, the following submission and attached presentation provides our recommendations on Schedule 6, amendments to the *Conservation Authorities Act* and the *Planning Act*.

Toronto and Region Conservation Authority (TRCA)
TRCA is one of the largest conservation authorities in Ontario with almost 5 million people living in our jurisdiction, which that includes 9 watersheds and over 70 km of Lake Ontario Shoreline stretching from Mississauga to Ajax and across the Oak Ridges Moraine from Mono in the west to Uxbridge in the east. Some of Canada's largest and fastest growing municipalities, including Toronto, Markham, Brampton, and Vaughan are located within TRCA's jurisdiction, which spans six upper-tier and 15 lower-tier municipalities. We advance flood infrastructure, trails and restoration projects and work with municipalities and applicants to ensure timely issuance of 1,000+ development and infrastructure permit approvals annually, while protecting our communities from the risks of flooding and erosion. We are also experts at ensuring our watersheds and the Lake Ontario shoreline are protected, restored, and made more resilient to impacts of climate change including more extreme weather events.

Transparency and Accountability
TRCA supports the amendments to the *Conservation Authorities Act* (CA Act) to enhance the transparency and accountability of conservation authorities, which is consistent with TRCA's current practice and levels of service to our stakeholders.

Many of our municipalities, neighbouring conservation authorities (CAs) and community partners in our jurisdiction are requesting Schedule 6 be removed from Bill 229 in its entirety.

TRCA can support moving forward with transparency and accountability components in Schedule 6 but is requesting that the governance, planning, permitting and enforcement provisions in Schedule 6 either be removed from Bill 229 or significantly amended to address significant public concerns.

Planning Act Amendments - CAs as Public Bodies at the LPAT

TRCA is very concerned with the proposed amendments to the *Planning Act* that would prohibit conservation authorities to independently appeal a *Planning Act* decision to the Local Planning Appeal Tribunal (LPAT) or become a party to an appeal. The 2019 Provincial Flood Advisor's report notes the important role that conservation authorities play in the land use planning process. Further, the Provincial Policy Statement 2020 states that mitigating natural hazard risks, including those associated with climate change, will require the Province, planning authorities, and conservation authorities to work together. The proposed amendments on appeals would, instead, diminish CAs' role in the planning process, compromising our ability to protect our landholdings and to fulfill our mandate for protection from natural hazards and conserving natural resources. At minimum, conservation authorities should be able to appeal or become a party on matters relating to the mandatory programs and services outlined in subsection 21.1(1) of the CA Act.

> **Recommendation:** Maintain the current appeal and party rights under the *Planning Act* for conservation authorities by removing the proposed amendment, or amend the *Planning Act* to limit conservation authority appeals and party status for matters relating to the risk of natural hazards or to lands owned or controlled by a conservation authority (proposed amendment provided in attachment).

Permitting – Section 28 Amendments

TRCA currently issues upwards of 1,000 permits per year with no appeals in many years and has been working with municipalities, Conservation Ontario, and the building industry to successfully improve permit review processes and timelines. We are concerned with the proposed amendments that would facilitate the Minister's powers to take over permit decisions and that would expand existing appeal rights and provide for appeals to the LPAT instead of the Mining and Lands Tribunal (MLT). The proposed changes would create a two-tier permitting process, allowing the Minister and applicants to circumvent a process that is working well to reach the same end of issuing a permit. The LPAT does not have the science-based experience with conservation authority legislation, policies, regulatory tests or permits that has been proprietary to the MLT for decades. The LPAT already has a significant caseload of appeals under other planning and municipal legislation. As such, these changes could bog down an already stressed system, creating delays and uncertainty for applicants. There are concerns with the capacity of the LPAT to consider individual issues on a watershed basis and an understanding of precedent and cumulative impacts, which have the potential to increase risk to people property from natural hazards.

> **Recommendation:** Maintain the current permit approval and appeal process and retain the Mining and Lands Tribunal as the appeal body. Revise the proposed amendment to include complete application requirements for CA permit applications to facilitate timely decisions.

Weakened Enforcement Powers Despite Increasing Illegal Activities
Throughout the consultation process on the Act, TRCA, as one of the largest landowners in the Greater Toronto Area, has been adamant in urging the Province to enhance the enforcement powers of conservation authorities. Enhancing these powers is essential to address rampant issues like illegal large-scale filling operations and the destruction of natural features, which are increasing in frequency and constant concerns for the municipalities within our jurisdiction. In order to adequately manage natural hazards and the natural resources of our lands that are subject to increased illegal fill operations, filling of wetlands, and dumping, TRCA requested similar powers to those of Provincial Enforcement Officers to accomplish our mandate

Enforcement – Entry without warrant, permit application
The amendment to subsection 30.2(1) as currently proposed would not permit CA staff who are not officers, (e.g., CA technical staff) to access a property without the consent of the landowner for purposes of considering a permit application.

> **Recommendation:** To enable conservation authority staff who are not officers to enter without warrant onto a property for purposes of considering a permit application, revise subsection 30.2(1) to include "An **authority or an** officer…." (proposed amendment provided in attachment).

Enforcement – Entry without warrant, compliance and Stop Order
The amendments directly impact an officer's ability to effectively address TRCA's permit compliance objectives, work with proponents and stakeholders to proactively address compliance issues, and limit an officer's ability to address significant impacts to natural hazards and features that might jeopardize the health and safety of persons or result in significant damage to property in an efficient and timely manner.

Significantly limiting an officer's ability to enter lands (subsection 30.2(2)) within the authority's jurisdiction is inconsistent with similar municipal and provincial legislation, and coupled with the removal of the Stop Order provision (section 30.4), does not afford officers an ability to "prevent or reduce the effects or risks" associated with illegal and egregious activities, and puts the onus on an authority to engage in a time consuming and costly injunction process through the courts.

> **Recommendations:**
> 1. Amend subsection 30.2(1) by replacing "and" with "**or**" between (1.1) (b) and (c), (per the rationale detailed in the attached presentation).
> 2. Reinstate the Stop Order powers (section 30.4) and provide greater clarity and certainty by requiring the issuances of a stop order to be tied to the tests of the CA Act and regulations (per attachment).

Enhanced Enforcement Provisions – Section 29 CA Landholdings
Although no changes are proposed through Bill 229, TRCA, through our May 21, 2019 correspondence to the Province, requested enhanced enforcement provisions to allow TRCA officers, under section 29 of the CA Act, to adequately protect our significant public

landholdings. As one of the largest landowners in the GTA, our abilities to protect and effectively address ongoing abuses and unlawful activities and protect our valuable greenspace for future generations is very limited.

> **Recommendation:** Enhance the enforcement provisions with section 29 of the CA Act similar to protections afforded to Ontario's Provincial Parks and Provincial Enforcement Officers.

Governance – Duty of Members
The amendment to section 14.1 would require Board members to act on behalf of their municipalities. The existing section 14.1 provides that Board members have a fiduciary responsibility to act in the best interest of the conservation authority for which they are appointed. Furthermore, this change is counter fundamental governance practices and the intent of the CA Act which is to transcend political boundaries sharing a watershed to collective manage and protect its natural resources.

> **Recommendation:** Revise section 14.1 to: Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority.

Governance – Municipal Councillors Appointed
Proposed amendment to subsection 14 (1.1) would require every member of the authority Board to be an elected municipal councillor. If enacted, municipalities may not reasonably be able to comply with this amendment. As an example, this would require 60% of the City of Toronto Council to be members of TRCA's Board, which would be impractical based on municipal council capacity and obligations. This change would also eliminate the highly valued, local needs perspective of citizen representatives appointed by municipalities.

> **Recommendation:** To address this challenge, add the following: Where a participating municipality is unable to adhere to subsection 14 (1.1), a conservation authority may request Minister approval for the participating municipality to appoint a defined number of citizen representatives.

Governance – Term of Chair, Vice-Chair
Proposed amendment to subsection 17 (1.1) would limit the term of a chair or vice-chair to a term one year and no more than two consecutive terms. Term limits should align with municipal council terms, (i.e., 4 years), to facilitate business continuity and consistency in business operations.

> **Recommendation:** That the terms of office for a chair or vice-chair align with municipal council terms, with terms of two years and no more than two consecutive terms.

CA Powers Among Keys to Advancing Provincial Growth Management Objectives
The importance of public greenspace and healthy ecosystems, the co-benefits of clean air and water and good mental health cannot be understated and has been magnified during the

COVID-19 Pandemic. Accordingly, expanding growth and intensification in Ontario through increasing housing supply and creating jobs must be commensurate with managing natural hazards and conserving natural resources. The legislative capacity of conservation authorities needs to be leveraged for CAs to advance these outcomes with our provincial and municipal partners. TRCA implores the Standing Committee to adopt this perspective for revising the amendments in Schedule 6 of Bill 229.

Thank you again for the opportunity to appear today before the Standing Committee.

Sincerely,

Jennifer Innis
Chair, Board of Directors

John MacKenzie, M.Sc. (PI) MCIP, RPP
Chief Executive Officer

Attachment 1: TRCA Presentation to the Standing Committee on Finance and Economic Affairs

cc.
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The Honourable Rod Phillips, Minister of Finance Minister.fin@ontario.ca
The Honourable Jeff Yurek, Minister of the Environment, Conservation and Parks minister.mecp@ontario.ca
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