

Ontario Federation of Agriculture

Submission to the

Standing Committee on Finance and Economic
Affairs

RE: Bill 229; Schedule 6

*the Protect, Support and Recover from COVID-19
Act (Budget Measures) 2020*

November 30, 2020

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The Ontario Federation of Agriculture (OFA) proudly represents more than 38,000 farm family members across the province, supporting our members and the agri-food industry on issues, legislation and regulations governed by all levels of government. OFA works to ensure the agri-food sector and our rural communities are included, consulted and considered in any new and changing legislation that impacts the sustainability of our farm businesses. We are the leading agricultural advocate for Ontario farmers, their businesses and their communities.

The provincial government introduced Bill 229 on November 5th. Schedule 6 of Bill 229 proposes to amend the Conservation Authorities Act. Since 2017, Bill 229 is the third statute to propose amendments to the Conservation Authorities Act. And before that, the government held two rounds of consultations on a review of conservation authorities in 2015 and 2016.

Ontario's conservation authorities provide a watershed level planning perspective that transcends municipal borders, one that OFA supports and one that deserves support, not only from the province but also from municipalities.

Before addressing the proposed amendments, OFA emphasizes that there is only one Ontario landscape, meaning that the full range of land uses found across Ontario; urban, rural, agricultural, natural heritage, cultural heritage and mineral extraction, must share that landscape. Inherent in this perspective is recognition that our agricultural areas not only provide us with food, fibre and fuel, but also a broad range of environmental and ecological goods and services that benefit all Ontarians. These environmental and ecological goods and services, in alphabetical order, include, aesthetic and recreational space, air quality (oxygen production, carbon sequestration, climate regulation), biodiversity, nutrient cycling, pollination services, soil erosion control, water cycling (purification, retention, flood mitigation, groundwater recharge), and habitat for wildlife and endangered species.

There is also the additional expectation from the province that Southern Ontario in general, and the Greater Golden Horseshoe in particular, will accommodate virtually all future population and job growth, and the infrastructure necessary to support that projected growth. Accommodating that growth will consume agricultural lands and natural heritage features, thereby placing even greater demands on the remaining non-urbanized land to fulfill societal expectations to provide environmental and ecological goods and services along with food, fibre and fuel.

Ontario's agricultural lands are a finite and shrinking resource. Based on the 2016 Census, Ontario farms encompassed 12.3 million acres or less than 5% of Ontario's land area. Comparing the 2011 and 2016 censuses showed a decline in the area of farms from 12.6 million acres in 2011 to 12.3 million acres in 2016, equal to a loss of 63,940 acres/year or 175 acres/day. Ontario cannot sustain continuing losses of agricultural land while maintaining our ability to produce food, fibre and fuel from our limited and declining agricultural land base.

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Lastly, OFA emphasizes that the principle resource-based land use within the areas of Ontario where conservation authorities operate is agriculture. Provincially, the protection of Ontario's prime agricultural areas for their long-term agricultural use is a key objective.

Section 14 (1.1) 14(2) and 14.1: Municipal councillors appointed:

OFA believes that conservation authorities benefit from having board representation that is not limited to municipal councillors, but reflective of the broader interests of the watershed. We recommend that the current system of appointments to the authority board by whomever council chooses as its municipal appointment to the authority be retained.

Section 14(4): Member from the agriculture sector appointed:

A further amendment to section 14(4) authorizes the Minister to appoint a “representative of the agricultural sector” to the authority board. The “representative of the agricultural sector” addresses a long-standing OFA ask; a change to the Conservation Authorities Act we welcome. However, in light of the proposed amendments to section 14.1 on the duties of members to their respective municipalities, we question what the role of the representative of the agricultural sector will be, how they will be chosen, to whom they will be accountable to and will they be a voting member? OFA recommends that the role of the agricultural representative on the board be defined, and that conservation authorities work with their agricultural community to determine how best to ensure an agricultural representative is respected by their peers in the community. The appointment process for agricultural representatives for Source Water Committees under the Clean Water Act was extremely successful and may be a model to be followed. Finally, we recommend that the representative of the agricultural sector be a member of an accredited general farm organization. OFA recommends that the agricultural sector representative be a full voting member of the conservation authority's board.

Section 20: Objects:

Currently, the Objects of a conservation authority in section 20 are, “to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.”

In past Conservation Authorities Act submissions, we have supported clearer delineation of the mandatory programs and services an authority must deliver as well as those programs and services it provides for or on behalf of a municipality and other programs and services. We acknowledge the benefits of consistency in those mandatory programs and services an authority must deliver across Ontario's thirty-six conservation authorities. We note that some of the thirty-six conservation authorities have limited financial resources due to their low population or limited property tax base. An authority's ability to deliver those mandatory programs and services should not be jeopardized by an authority's limited financial resources. OFA recommends that the definition of mandatory programs and services be combined with a provincial commitment that ensures all thirty-

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six conservation authorities have the financial resources to fully deliver the provincially mandated programs and services.

OFA recognizes the benefits of the agricultural stewardship programs that have been delivered by many of the conservation authorities, some which have earned worldwide recognition. OFA recommends that agricultural stewardship programs be included among an authority's mandatory programs and services to be determined under section 21.1.

Our expectation would be that OFA would be a party in the development of an authority's mandatory programs and services under section 21.1, municipal programs and services under section 21.1.1 and any other programs or services provided under section 21.1.2 and that work on determining which programs and services are mandatory, municipal or other would commence as soon as possible.

Section 21.2: Fees:

Bill 229 proposes to add additional subsections to section 21.2 that deal with fees. Under the yet-to-be proclaimed 21.2(11), a person can request reconsideration of a fee, and under 21.2(12), the authority can, upon reconsideration, order the fee be paid as originally charged, vary the fee as the authority considers appropriate or order no fee be levied. In addition, there are already existing conservation authority processes for consulting on, developing and posting of its fees. While the proposed additional subsections provide detail on requests for reconsideration, appeal timelines and reference to the Local Planning Appeal Tribunal to hear these appeals, we question the necessity of these additional provisions, which will add unnecessary costs to all parties.

Minister's Review - sections 28.1 (8) and 28.1 (9):

Subsections 28.1 (8) and (9) of the current Act provide the option to request the Minister's Review. The current provisions in section 28.1 were enacted in 2017 but have yet to be proclaimed "in force". Bill 229 proposes a structure for appeals to the Minister, including setting timelines, required information and final appeal to the Local Planning Appeal Tribunal. While the proposed changes provide a degree of structure, we question if the outcome of these proposed changes will be added time and costs? We also find that the provisions in subsections (19) through (26) are confusing as they seem to circumvent Ministerial reviews. OFA recommends these sections be rewritten to clarify their intent and to ensure that the current process for a Minister's Review is not circumvented.

Permits issued by Minister- section 28.1.1:

OFA questions the rationale behind these provisions as they appear to supersede an authority's existing permitting authority under section 28.

30.2(1) of the Act is repealed and replaced by Entry without warrant, permit application and Entry without warrant, compliance:

As we understand these changes, they propose to split the current warrantless entry provisions into two scenarios; one related to permit applications and the second to compliance. In the situation of entry related to a permit application, we question the need for a warrantless entry related to a permit application. Why would an authority need this power? If a property owner requires a permit to undertake an activity on their property, it would follow that they would grant their conservation authority the right to enter. If a property owner refuses entry for a permit application, they should expect the permit will not be issued.

OFA supports entry without a warrant for compliance reasons, following approved protocols such as agricultural biosecurity protocols.

Repeals Section 30.4 dealing with “stop work” orders, enacted in 2017.

The Ontario Federation of Agriculture opposes this proposed change. We see the current provisions on stop work orders as quite reasonable and sensible. Since conservation authorities have the statutory role and responsibility to issue permits for works related to natural hazards and the conservation and management of lands, the ability to issue a stop work order in the event someone is undertaking work without a conservation authority permit or in violation of the conditions on a permit, we view the current stop work order provisions as absolutely necessary and reasonable. When faced with such a situation, prompt action is vital. Without the ability to issue a stop work order, how does the government propose to address work undertaken without a conservation authority permit or in violation of the conditions on a permit? OFA requests that section 30.4 of the Conservation Authorities Act be retained.

Proposed Regulations – Section 40 repealed and replaced.

As noted earlier in our submission, OFA has supported clearer definition of those mandatory programs and services an authority must deliver as well as those programs and services it provides for or on behalf of a municipality and any other programs and services. Our expectation would be that OFA would be a party in the development of any delineation of an authority’s mandatory programs and services, municipal programs and services and any other programs or services and that work on determining which programs and services are mandatory, municipal or other would commence as soon as possible.

In addition, in previous Conservation Authorities Act submissions, we’ve proposed language for “wetlands” and “watercourses” as well as proposing that terms like “interference with a wetland or watercourse” and “conservation of land” merit definition.

It is therefore critical that the development of a regulation to define “development activity”, “hazardous land”, “watercourse”, “wetland” and “pollution” receive the government’s highest priority after the Conservation Authorities Act amendments are passed.

The 2020 Provincial Policy Statement (PPS) contains an excellent, comprehensive definition of “wetlands”. It has remained consistent throughout multiple PPS reviews. It

has been repeated in the Greenbelt Plan, A Place to Grow: Growth Plan for the Greater Golden Horseshoe and the Niagara Escarpment Plan. OFA strongly recommends that the PPS definition of wetlands be adopted, verbatim, in the Conservation Authorities Act's definitions regulation.

OFA has also advocated that the Conservation Authorities Act definition of a "watercourse" as "an identifiable depression in the ground in which a flow of water regularly or continuously occurs" is unduly vague. One could consider a furrow in a plowed field as watercourse, a consequence we highly doubt was the intent of the legislation's authors.

The Ontario Ministry of Agriculture, Food and Rural Affairs' factsheet, "Top 10 Common Law Drainage Problems Between Rural Neighbours" contains a description of a "natural watercourse", a portion of which reads;

"Almost the whole definition of a natural watercourse is founded on the saying aqua currit et debet currere, or "water flows naturally and should be permitted thus to flow". A natural watercourse is defined generally as "a stream of water which flows along a defined channel, with a bed and banks, for a sufficient time to give it substantial existence". It must, on casual examination, "present the unmistakable evidence of the frequent action of running water".

OFA recommends that the Conservation Authorities Act definition of a watercourse be rewritten to incorporate the following principles;

- i. that there be reference to a "defined channel, with a bed and banks",
- ii. that intermittent streams are natural watercourses, and
- iii. that any definition of a watercourse excludes man-made ditches, roadside ditches, agricultural swales as well as drains constructed under the Drainage Act.

We believe that these principles encapsulate the elements of a natural watercourse, and that a new definition of a watercourse be based on these three principles.

We look ahead to the Ministry's proposals for defining "development activity". The current term used is "development", which differs substantially from the 2020 PPS definition of the same term. Having the same term defined quite differently leads to confusion, not only on the part of the "regulated community", but also on the part of the regulators themselves. We trust that utilizing a distinct and unique term will improve clarity of intent and understanding. OFA recommends that the final version of the "development activity" definition exclude the full range of agricultural uses encompassed in the 2020 PPS definition of "agricultural uses".

Amends Subsection 1(2) of the Planning Act:

Bill 229 proposes to amend Subsection 1(2) of the Planning Act by adding conservation authorities to the "public bodies" that are barred from independently appealing or becoming a party to a LPAT appeal. What is the rationale for this? We see the current

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provisions on Planning Act appeals by conservation authorities as reasonable and sensible. Since conservation authorities have a role and responsibility in development related to natural hazards and the conservation and management of lands, the ability to appeal planning decisions counter to these objectives is absolutely necessary.

OFA is aware of potential appeals of planning decisions contrary to provincial planning policies that were not pursued under the “one window” approach. Reliance on the “one window” approach solely through the Ministry of Municipal Affairs and Housing is both uncertain and subject to tight Planning Act appeal windows. Uncertain because the “one window” approach relies on the Ministry of Municipal Affairs and Housing to grasp the unique watershed-based reasons a conservation authority would believe warrants an appeal, and time sensitive because the appeal windows in the Planning Act are short, rendering valid appeals not pursued due to bureaucratic appeal approval processes. OFA requests that the ability of a conservation authority to appeal on its own right or be party to an appeal under section 1(2) of the Planning Act be retained.

The Ontario Federation of Agriculture appreciate this opportunity to provide its perspectives and recommendations on Schedule 6 of Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures) 2020*. We look forward to participating in ongoing consultations and discussions.