

November 29, 2020

**VIA Email**

Standing Committee on Finance and Economic Affairs  
99 Wellesley Street West  
Room 1405, Whitney Block  
Queens's Park,  
Toronto, ON M7A 1A2

Attn: Amarjot Sandhu, MPP, Chair: [amarjot.snadhu@pc.ola.org](mailto:amarjot.snadhu@pc.ola.org)  
Julia Douglas, Clerk: [comm-financeaffairs@ola.org](mailto:comm-financeaffairs@ola.org)

CC: Hon. Rod Phillips, Minister of Finance: [rod.phillipsco@pc.ola.org](mailto:rod.phillipsco@pc.ola.org)  
Hon. Doug Ford, Premier of Ontario: [doug.fordco@pc.ola.org](mailto:doug.fordco@pc.ola.org)

**Re: Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures),  
2020**

Please find for the assistance of the Standing Committee my recommendation, as discussed below, that

**Schedule 6 (proposed changes to the *Conservation Authorities Act* and consequential amendments) be withdrawn in its entirety from *Bill 229***

**Lack of Meaningful Public Consultations**

On November 5, 2020, through *Bill 229 Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*, specifically Schedule 6, the Province introduced amendments to the *Conservation Authorities Act* and the *Planning Act*. If enacted, some changes will significantly impede a conservation authority's role to establish programs and services for the communities they serve and protect Ontario's environment and ensure people and property are safe from natural hazards.

The public comment period is 28 days from November 5, 2020, until December 2, 2020.

The Province identified these changes as necessary to improve the **transparency** and **consistency** in conservation authority operations, **strengthen** municipal and provincial **oversight** and streamline conservation authority roles in permitting and land use planning. Yet, the decision to bypass the usual posting of proposed government actions that may affect the environment on the Environmental Registry of Ontario calls into question the Province's commitment to transparency, consistency and strengthening oversight.<sup>1</sup> The Province's actions have denied the public and its municipal elected representatives the right to "consult and participate in provincial government decision-making that might affect the environment."<sup>2</sup>

### **Remove Schedule 6, proposed changes to the *Conservation Authorities Act* and consequential amendments**

The "overall conclusion is that while a small number of the proposed changes (including improved transparency through publicly available information) may be supportable in principle, the majority of the Schedule 6 amendments are regressive in nature and are completely contradictory to fulfilling both the purpose of the *Conservation Authorities Act* and the desire to set the course for more climate-resilient communities in the future."<sup>3</sup> Accordingly, Schedule 6 should "not be enacted in its present form and instead be withdrawn in its entirety from *Bill 229*."<sup>4</sup>

### Section 14 Members of Authority

The proposed amendment to Section 14, ensuring conservation authority (CA) board members are solely municipal councillors and not also mayors or citizen appointees, removes a municipality's right to decide who shall represent them at the board. Citizen appointees and

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<sup>1</sup> Environmental Registry of Ontario (ERO) bulletin titled Updating the Conservation Authorities Act (ERO # 019-2646) posted November 5, 2020, states "There is no requirement to consult on this initiative on the Environmental Registry of Ontario." <https://ero.ontario.ca/notice/019-2646>

<sup>2</sup> <https://ero.ontario.ca/page/whats-registry>

<sup>3</sup> Bill 229 submission to Standing Committee from CELA, November 27, 2020

<sup>4</sup> Bill 229 submission to Standing Committee from CELA, November 27, 2020

mayors provide a valuable perspective at the board level. As a Grand River Conservation Authority (GRCA) Board member, I am proud to serve with my fellow councillors, mayors, and citizen appointees. I appreciate the value and perspective they bring to our meetings. The proposed amendment does not address the situation where municipal governments may not have sufficient councillors to send to the board. The public and their elected municipal representatives deserve to know the reasons behind this decision to prevent mayors and citizen appointees from serving on (CA) boards. I recommend that the Province reconsider its proposed change in favour of continuing with the status quo.

The decision to appoint an additional member to a board representing the agricultural sector is discriminatory and short-sighted. Why does the farm sector have precedence over the forestry, fishing and urban sectors, which are equally impacted by conservation authorities' activities? The short-sightedness of the decision ignores the fact that many councillors come from rural communities and may also be farmers. I grew up on a farm, and I represent rural constituents. Does the amendment suggest I do not have my rural residents' best interests at heart or that I am incapable of representing them as a board member because I no longer work in the agricultural sector? Adopting this proposed requirement does not serve the public's interest and should be removed.

The amendment requiring board "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."<sup>5</sup> Water knows no boundary. A watershed encompasses many different and diverse communities. Individually, these municipalities may not responsibly manage their section of the watershed in the best interest of all who share that watershed. The decision in the late 1990s to amalgamate municipalities was in part to promote watershed planning. Suggesting the board focus on its own municipalities' needs first goes against the reasons for amalgamation.

You need a higher-level CA with local knowledge and experience to effectively manage the entire watershed in all its member municipalities' best interests. This CA's board's role is to

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<sup>5</sup> Summary of Proposed Amendments to the *Conservation Authorities Act* & *Planning Act* Through Bill 229 and Implications. Conservation Ontario, November 11, 2020.

ensure the shared watershed's best interests over individual municipal interests.

Removal of this recommendation in favour of the status quo is the preferred approach.

#### Sections 21.1, 21.1.1, 21.1.2 Programs and Services

It is premature to mandate adherence to mandatory programs and services prescribed by regulation without first outlining what the regulation will entail. Who would blindly sign a contract without first knowing its contents or having a discussion about possible changes? Yet, the Province expects CAs and the municipalities who rely on their current programs and services to accept this change. These sections are premature without the presence of the regulation, and I recommend their removal.

#### Section 21.2 Fees for Programs and Services

"Multiple appeals of fees [could potentially] undermine the CA Board direction [concerning] cost recovery and to divert both financial and staff resources away from the primary work of the conservation authority."<sup>6</sup>

Standard business practice allows for reconsideration of fee charges. These requests are typically few and far between, but under this amendment could become more of a common occurrence, driving up overhead costs that would require increased fees. The proposed changes are excessive intervention in local matters where the Province offers little financial contribution. This section does not serve the public's best interest in reducing taxpayer dollars, and I recommend its removal.

#### Sections 28.1 (1) and (8), 28.3, 28.3 (5) Ministerial Review of Permit Decisions, Cancellation of Permits, Appeals and Minister's Order Re. S. 28 Permit

An individual or business entity can currently appeal to CAs regarding an unfavourable decision

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<sup>6</sup> Summary of Proposed Amendments to the *Conservation Authorities Act & Planning Act* through Bill 229 and Implications. Conservation Ontario, November 11, 2020.

or cancellation of a permit for non-compliance. The proposed change would allow the party to bypass the CA appeal process or the rescinding of a permit to go directly to the Local Planning Appeal Tribunal (LPAT) or seek a Minister's Order. The proposed change is vague on whether or not inappropriate activities (e.g., land-clearing, clear-cutting a bush, dumping fill in a wetland) could continue during the appeal process, further undermining CAs' ability to enforce the cessation of work activities. Equally concerning is given the relatively low fines, the entity may consider the appeal process and fine a reasonable business cost and means to run roughshod over the process. The ends justify the means. Unfortunately, the environmental damage is done.

What checks and balances are in place to reassure local municipalities that watershed data and expertise provided by CAs are considered in a ministerial override? This amendment overrides local knowledge, expertise and concern, hardly what I believe supports the public's best interest. Instead, these proposed changes incentivize development, allowing developers to influence decision-makers and sanctions inadequate public consultation.

There are legitimate concerns about a few CAs overstepping their mandates and authority and the need for a mechanism to curb this behaviour. However, if that is the amendment's intent, it is not clearly defined and needs to be rewritten. As written, the amendment implies something far more nefarious and arbitrary without consideration for the public's best interests.

The Province should remove Sections 28.1 (1) and (8), 28.3, 28.3 (5) and reinstate discussion with all stakeholders to identify a better approach to these issues.

#### Section 30.2 Entry Without Warrant, Permit Application and Compliance

The proposed changes will require reasonable notice to the owner and the property's occupier, resulting in an increased administrative burden for the CA.<sup>7</sup> It also appears to remove the ability to bring experts on-site, which is detrimental to both the public and the owner and occupiers.

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<sup>7</sup> Summary of Proposed Amendments to the *Conservation Authorities Act & Planning Act* through Bill 229 and Implications. Conservation Ontario, November 11, 2020.

The experts may be the individuals best suited to identify whether or not a problem truly exists. Why would you not want expert advice?

The proposed circumstances in which a CA officer may enter land within a CA's jurisdiction severely limits the CA's effectiveness to monitor and manage activities affecting the environment. "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)."<sup>8</sup> Proposing these types of barriers to the effective management of our environmental resources does not serve the public's interest. Delays and costs associated with CAs having to obtain search warrants only prolong unsafe practices (e.g., impacting the groundwater supply) and increase public costs.

The Province should remove Section 30.2 and work with all stakeholders to find a more reasonable approach to these challenges.

#### Section 30.4 Stop (work) Order

Repealing this section that would have provided CA officers with the power to issue stop orders to persons carrying on activities that could or are contravening the *Act* is not in the public's best interest. In fact, who is this decision serving?

Today, there is increasing public concern about ensuring the long-term sustainability of the environment. Yet, this proposed amendment ignores the public's concern by preventing CA officers from enforcing the *Conservation Authorities Act*.

The Province should remove Section 30.4 and legislate CAs' use of the stop-work order.

#### Subsection 1(2) Planning Act – Exclusion of CAs as Public Body

Removing CAs as a public body denies CAs the right to independently appeal or become a

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<sup>8</sup> Summary of Proposed Amendments to the *Conservation Authorities Act* & *Planning Act* through Bill 229 and Implications. Conservation Ontario, November 11, 2020.

party to an appeal as a public body at the LPAT.<sup>9</sup> Why would you deny CAs this right provided to other members of the public and businesses? Why would you deny municipalities the right to rely on the expertise and support of their CAs?

Removal of this proposed amendment is the appropriate course of action.

## **Conclusion**

In summary, conservation matters, as does a responsible government and its adherence to transparency and good governance to serve the public's best interests.

The Province would better serve the public by removing Schedule 6 and continuing its discussion with the conservation authorities, municipalities and the public to build a more vital *Conservation Authorities Act*. We agree that the *Act* needs modernization but not through arbitrary changes that are regressive and do not consider all stakeholders' needs and interests.

Don't let the adoption of Schedule 6 define how your government is remembered.

As a leader, I am mindful that people will not remember what you did for them but how you made them feel. The GRCA and Credit Valley Conservation are two highly respected CAs in my community, and residents are not happy with the proposed amendments to their *Conservation Authorities Act*.

Our environment is a precious resource as we are discovering through other countries' mistakes and challenges. We cannot afford to follow their path.

The Province should continue to invest in long term environmental protection and its effective management through its 36 CAs to ensure a sustainable environment for future generations to follow.

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<sup>9</sup> Summary of Proposed Amendments to the *Conservation Authorities Act* & *Planning Act* through Bill 229 and Implications. Conservation Ontario, November 11, 2020.

Thank you for allowing me to share my views on the Province's regulatory amendments and for your consideration of my thoughts.

Should you have any questions regarding my comments, please do not hesitate to contact me.

Yours truly,

A handwritten signature in dark ink, appearing to read 'Ian MacRae', with a stylized flourish extending from the end.

Ian MacRae, Councillor Ward 1

Township of Centre Wellington

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# Updating the Conservation Authorities Act

|                 |                                                     |
|-----------------|-----------------------------------------------------|
| ERO number      | 019-2646                                            |
| Notice type     | Bulletin                                            |
| Act             | Conservation Authorities Act, R.S.O. 1990           |
| Posted by       | Ministry of the Environment, Conservation and Parks |
| Bulletin posted | November 5, 2020                                    |
| Last updated    | November 5, 2020                                    |

This notice is for informational purposes only. There is no requirement to consult on this initiative on the Environmental Registry of Ontario. Learn more about the [types of notices](#) on the registry.

## Bulletin summary

We are amending the *Conservation Authorities 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.

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## On this page

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## Why consultation isn't required

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.

This includes:

- a policy that forms part of a budget or economic statement presented to the Legislative Assembly; or
- a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Legislative Assembly.

## Bulletin details

### Background - conservation authorities

Conservation authorities are local public sector organizations established by the province through the *Conservation Authorities Act* on the petition of two or more municipalities. Conservation authority jurisdictions are based on a watershed scale and cross multiple municipal boundaries to address common resource management objectives, principally for the provincial and municipal governments as well as for the conservation authority itself.

The *Conservation Authorities Act* was established in 1946 to improve poor land, water and forestry practices that had led to drought, flooding, erosion, and deforestation as well as to create jobs following the war. Over time, conservation authority programs and services have expanded into many aspects of natural resource management including science and research, environmental education, protection of water quality, land use planning, and protection and conservation of natural heritage.

A conservation authority is comprised of a membership of municipal representatives appointed by the municipalities that formed or later joined the conservation authority.

There are currently 36 conservation authorities established in Ontario (31 in Southern Ontario and 5 in urbanized areas in the north) serving an area where 95% of Ontario's population live.

### Background - 2019 amendments to the *Conservation Authorities Act*

Ontario made a commitment in its [Made-in-Ontario Environment Plan](#) to ensure that conservation authorities focus and deliver on their core mandate.

In June 2019, the *More Homes, More Choice Act, 2019* (Bill 108) amended the *Conservation Authorities Act* to:

- Define the four areas of core mandatory programs and services offered by conservation authorities and allowing for the programs and services that make up each area to be further defined by regulation. The four areas include:
  - Programs and services related to the risk of natural hazards
  - Programs and services related to the conservation and management of lands owned or controlled by the conservation authority
  - Programs and services related to the conservation authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*
  - Programs and services related to the conservation authority's duties, functions and responsibilities under an Act prescribed by the regulations
- Allow other programs and services outside of the four core areas to be prescribed as mandatory programs and services.
- Require, after a specified date, that municipal financing of a non-mandatory program and service can only continue, where the conservation authority has entered into a financing agreement with its participating municipalities.
- Establish a transition period and process for conservation authorities and municipalities to identify, through an inventory, which of their programs and services are mandatory and then to enter into agreements for the non-mandatory programs or services that are financed in whole or in part at the municipal level.
- Enable the minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority.
- Clarify that the duty of conservation authority "board" members is to act with a view to furthering the objects of the conservation authority (i.e., the range of activities the conservation authority is allowed to undertake).

These sections of the *Conservation Authorities Act* are currently un-proclaimed. We posted a [notice](#) on the Environmental Registry of Ontario regarding these amendments on April 5, 2019 for 45 days.

### *Conservation Authorities Act* Review

Over the past year and a half, we have further consulted on the core role of conservation authorities in preparing and protecting against the impacts of natural hazards, maintaining and managing conservation lands, and roles in drinking water source protection. We received feedback from conservation authorities and a diverse group of stakeholders, including municipalities, the agricultural and development sectors, environmental and conservation organizations, and landowners, on the appropriate role for conservation authorities.

Through these consultations we heard concerns that some conservation authorities have expanded their programs and services beyond their core mandate.

We recognize that conservation authorities play an important role in local resource management, including protecting and preserving significant conservation land. With the scope of conservation authorities' activities expanding over time, some participating municipalities of a conservation authority have expressed concern about the increases to their municipal levies that they are required to pay under the *Conservation Authorities Act* to finance their respective conservation authorities and the lack of direct control that participating municipalities may have over conservation authority budgets. Participating municipalities on average contribute over half of the conservation authority revenue through municipal levies. Most of the remainder comes from conservation authorities' self-generated revenue, with provincial funding averaging less than ten per cent.

Based on the feedback we received, the province is moving forward with a proposal to further define the core mandate of conservation authorities. These changes would improve the governance, oversight and accountability of conservation authorities, while respecting taxpayer dollars by giving municipalities more say over the conservation authority services they pay for.

We are proposing to streamline conservation authorities' permitting and land use planning review which is expected to increase accountability, consistency and transparency, which in turn will support growth, competitiveness, and job creation as communities plan for future growth.

We know that many conservation authorities provide valuable recreational and educational programs and services that are important to the local community, such as camping and outdoor education. These programs would continue, so long as they are funded through self-generated revenue or have support from the local municipality that funds them.

Improving the governance of conservation authorities and ensuring they are focused on their core mandate is also in line with Protecting People and Property: Ontario's Flooding Strategy. Ontario's first comprehensive plan to strengthening flood preparedness, response and recovery.

### Summary of proposed changes

#### Improving transparency, consistency in operations and municipal/provincial oversight of conservation authorities

We are proposing amendments to the *Conservation Authorities Act* to improve consistency, transparency and municipal/provincial oversight of conservation authorities and their operations.

If passed, the amendments would:

- Revise the objects of conservation authorities (i.e., the range of activities conservation authorities are allowed to undertake) to reflect the three categories of programs and services that the conservation authority is currently authorized to deliver under the *Conservation Authorities Act* over the area over which it has jurisdiction:
  - Core mandatory programs and services described above
  - The programs and services which conservation authorities deliver on behalf of a municipality pursuant to a memorandum of understanding or agreement, and
  - The programs and services that a conservation authority delivers to further the purposes of the *Conservation Authorities Act*
- Enable the minister to, by regulation, establish standards and requirements for the delivery of non-mandatory programs and services.
- Integrate the current power of a conservation authority to "cause research to be done" with the conservation authority's current power to study and investigate the watershed in order to support the programs and services the conservation authority delivers.
- Remove the authority for conservation authorities to expropriate lands. Conservation authorities would have the ability to request either the Province or a municipality expropriate land.
- Require conservation authorities to follow generally accepted accounting principles.
- Require conservation authorities to make key documents publicly available online (e.g., meeting agendas, meeting minutes, municipal member agreements, annual audits).
- Require conservation authorities to submit to the minister a copy of any agreement its participating municipalities have entered into on the number of members each participating municipality is entitled to appoint to a conservation authority.
- Remove the transition provision for conservation authorities to develop administrative by-laws.
- Following an investigation, if after reviewing the investigator's report the minister is of the opinion that the conservation authority has failed or is likely to fail to comply with any provincial law, authorize the minister to issue a binding directive to the conservation authority, and/or, with the approval of the LGIC, to appoint a temporary administrator to assume control of all of the conservation authority's operations. Further, the minister would be authorized to issue binding directives to the administrator.
- Have all municipal levy appeals be heard by the Local Planning Appeal Tribunal (LPAT) – the *Conservation Authorities Act* currently provides that certain levy appeals are heard by the LPAT and others by the Mining and Lands Tribunal.
- Require participating municipalities to appoint municipal councillors as conservation authority members and that municipally appointed members generally act on behalf of their municipalities. This proposal would repeal the un-proclaimed provision made in Bill 108 that members were to act with a view to furthering the objects of the conservation authority, and instead provide clarity for conservation authority member governance and enhanced municipal oversight over taxpayer dollars.
- Enable the minister to appoint a member to the conservation authority from the agricultural sector.
- Require that conservation authority chairs and vice-chairs rotate every two years between different participating municipalities.
- Enable the minister to delegate some of their duties and powers under the *Conservation Authorities Act*, for example to a ministry official.
- Add a legal provision to the *Conservation Authorities Act* related to aboriginal and treaty rights under the Constitution. Such a non-derogation provision would recognize that nothing in the Act would abrogate or derogate from the existing aboriginal and treaty rights recognized and affirmed by section 35 of the Constitution.

#### Streamlining conservation authority roles and responsibilities in permitting and land use planning

We have also heard concerns from some stakeholders about the role of conservation authorities in issuing permits under the *Conservation Authorities Act* and as a public body with the power to comment on and challenge decisions under the Planning Act. Stakeholders have questioned whether conservation authorities' current roles are consistent and supportive of timely decisions that are necessary in the land use planning and approval process, and some stakeholders consider these roles need to be streamlined as they impose unnecessary costs and/or delays for businesses and property owners.

We are therefore proposing changes to the *Conservation Authorities Act* to streamline the role of conservation authorities in permitting and land use planning as well to ensure timely decisions are made in relation to permits required under section 28 of the Act.

If passed, the proposed amendments would:

- Authorize the Minister of Natural Resources and Forestry to issue an order to take over and decide an application for a permit under section 28 of the *Conservation Authorities Act* in place of the conservation authority (i.e. before the conservation authority has made a decision on the application).
- Allow an applicant, within 30 days of a conservation authority issuing a permit, with or without conditions, or denying a permit, to request the minister to review the conservation authority's decision.
- Where the minister has taken over a permit application or is reviewing a permit decision by a conservation authority, allow an applicant to appeal directly to LPAT where the minister fails to make a decision within 90 days.
- In addition to the provision to seek a minister's review, provide the applicant with the ability to appeal a permit decision to LPAT within 90 days after the conservation authority has made a decision.
- Where a permit is cancelled, allow the permit holder to appeal the cancellation to LPAT within 90 days.
- Allow applicants to appeal directly to LPAT where a conservation authority fails to make a decision on section 28 permit applications within 120 days.
- Provide permit applicants with the ability to appeal permit fees charged by a conservation authority to LPAT.
- Amend the un-proclaimed warrantless entry provisions to change the circumstances when an entry to land may be exercised by a conservation authority officer so that such circumstances are similar to entry powers now in effect in section 28 of the Act.
- Remove the un-proclaimed provisions for conservation authorities to be able to issue stop work orders and retain the current enforcement tools, such as laying charges and potential court injunctions.

The Schedule also proposes an amendment to the *Planning Act* to add conservation authorities to subsection 1 (2) of the *Planning Act*. This amendment, if passed, would make conservation authorities part of the Province's one window planning approach. This would mean that a conservation authority could not, as a public body under that Act, appeal a decision to LPAT or become a party to an appeal before LPAT. Municipalities and the Province can continue to work with conservation authorities and rely on their advice and support where they want it during an LPAT appeal.

Later this fall, we intend to further consult on regulatory proposals (mandatory programs and services, section 28 natural hazards, section 29 conservation authority lands, agreements and transaction) under the *Conservation Authorities Act* which will be posted on the Environmental Registry for public consultation.

## Supporting materials

### Related links

- [Conservation Authorities Act](#)
- [More Homes, More Choice Act, 2019 \(Bill 108\)](#)
- [Made-in-Ontario Environment](#)
- [Online consultation with stakeholders.](#)

### View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

## Connect with us

### Contact

Sam Lyon

416-327-3787

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We will send you email notifications with any updates related to this consultation. You can change your notification preferences anytime by visiting settings in your profile page.

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# What's on the registry

Learn what the Government of Ontario’s Environmental Registry is and what’s on it.

## On the registry

This is the place where you can consult and take part in provincial government decision-making that might affect the environment.

The Government of Ontario uses the registry to let people know about environmental matters in the province.

We consult with you on the registry by:

- posting notices on what we’re doing that may affect the environment
- letting you comment on the notices
- informing you of any decisions we make

This includes changes to or new environmental:

- acts
- regulations
- policies
- instruments (e.g. permits, approvals and orders)

[Learn more about the consultation process.](#)

## What’s *not* on the registry?

This site does **not** include notices for:

- policies, acts and regulations posted before 2016
- decisions we made on instruments before April 24, 2019

You can find these notices on the old [Environmental Registry](#).

We also have separate sites for:

- [environmental assessments](#) – the planning, consultation and decision-making process to make sure potential environmental effects are considered before certain projects, like public roads and highways, transit or flood protection projects, begin
- [Access Environment](#) – a map-based tool to search for registrations on the Environmental Activity and Sector Registry, renewable energy approvals and environmental compliance approvals issued by the Ministry of the Environment and Climate Change (December 1999 onward)
- [brownfields and contaminated sites](#) – processes for cleaning up and redeveloping contaminated and underused industrial and commercial properties, like factories, gas stations and commercial/industrial waterfront properties
- [Fuels Safety Program](#) – regulates the transportation, storage, handling and use of fuels in Ontario
- the [Regulatory Registry](#) – information and consultation on regulatory initiatives that could affect Ontario businesses
- the [Ontario Land Registry](#) – Ontario’s official record of land ownership documents, including deeds, mortgages and plans of survey for title

The Government of Canada also has the [Canadian Environmental Protection Act Registry](#), where you can find documents related to the federal administration of the *Canadian Environmental Protection Act, 1999*.

## Glossary of terms

There are a few terms we use in the registry that might not be familiar to you.

[Learn about the terms we use in the registry.](#)

## Site map

[See the structure of our site.](#)

### About the registry

The Environmental Registry allows you to comment and share your thoughts on actions we take that could affect the environment.  
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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</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</p>                                                                                                                                                                                                                                         |

| Description of Proposed Amendments                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Implications to Conservation Authorities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                              |
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| <p>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>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.</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</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>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>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>                                                                                                                                                                                                                                                                                                                                                                                             |

| Description of Proposed Amendments                                                                                                                                                                                                                                                               | Implications to Conservation Authorities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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>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>                                                                                                                                                                                                                                                                                                                                                                                                         |

| Description of Proposed Amendments                                                                                                                                                                                                                                                                                                  | Implications to Conservation Authorities                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                               |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <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> 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 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 27, 2020

**VIA email**

Standing Committee on Finance and Economic Affairs  
99 Wellesley Street West  
Room 1405, Whitney Block  
Queen's Park  
Toronto, ON  
M7A 1A2

Attn: Amarjot Sandhu, MPP, Chair: [amarjot.sandhu@pc.ola.org](mailto:amarjot.sandhu@pc.ola.org)  
Julia Douglas, Clerk: [comm-financeaffairs@ola.org](mailto:comm-financeaffairs@ola.org)

CC: Hon. Rod Phillips, Minister of Finance: [rod.phillipsco@pc.ola.org](mailto:rod.phillipsco@pc.ola.org)  
Hon. Doug Ford, Premier of Ontario: [doug.fordco@pc.ola.org](mailto:doug.fordco@pc.ola.org)

**Re: Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020**

On behalf of the Canadian Environmental Law Association (CELA), please find for the assistance of the Standing Committee our recommendation, as discussed below, that:

**Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8 (proposed changes to the Crown Forest Sustainability Act, 1994) both be withdrawn in their entirety from Bill 229.**

**About Canadian Environmental Law Association**

CELA is a non-profit, public interest organization established in 1970 for the purpose of using and improving existing laws to protect public health and the environment. For nearly 50 years, CELA has used legal tools, undertaken ground-breaking research, and conducted public interest advocacy to increase environmental protection and safeguard communities. CELA works towards protecting human health and the environment by actively engaging in policy analysis and seeking justice for those harmed by pollution or poor environmental decision-making. It is from this public interest perspective that we have reviewed Schedules 6 and 8 in Bill 229.

**Canadian Environmental Law Association**

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## Lack of Robust, Meaningful Public Consultations

On November 5, 2020, the Ontario government tabled omnibus budget measures Bill 229 (the proposed Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020) for First Reading in the Ontario Legislature.<sup>1</sup> Schedule 6 of Bill 229 proposes fundamental changes to the *Conservation Authorities Act*<sup>2</sup> (CAAct) and to the conservation authorities' role in land use planning. Schedule 8 of Bill 229 proposes a permanent exemption for authorized logging operations from prohibitions against killing species at risk and destroying their habitats. An Environmental Registry of Ontario (ERO) bulletin titled Updating the Conservation Authorities Act<sup>3</sup> (ERO # 019-2646) was also posted on November 5, 2020, stating that public consultation is not required under Ontario's *Environmental Bill of Rights, 1993*<sup>4</sup> (EBR) because the proposed amendments form part of a budget. The most recent ERO bulletin relating to the intersection of forest operations and species at risk protections titled Proposed amendment to a regulation under the Endangered Species Act, 2007 relating to forest operations in Crown forests<sup>5</sup> (ERO # 019-1995) was posted on June 29, 2020 and relies on the temporary halt to EBR rights earlier this year<sup>6</sup> as the reason for not requiring consultation and hence not officially providing a decision notice. In the ERO bulletin, responses to the continued exemption from ESA prohibitions for forest operations that "were approved for publishing are available in the Bulletin supporting materials section." At time of writing, no such supporting materials were available (see attached). As such, the public cannot view the noted responses: 75 received through the registry and 3981 received by email. There does not appear to be any ERO notices at all related to the proposal to permanently exempt forest operations from species at risk protection and recovery obligations.

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<sup>1</sup> See <https://www.ola.org/en/legislative-business/bills/parliament-42/session-1/bill-229>.

<sup>2</sup> See <https://www.ontario.ca/laws/statute/90c27>.

<sup>3</sup> See <https://ero.ontario.ca/notice/019-2646>.

<sup>4</sup> See <https://www.ontario.ca/laws/statute/93e28>. Section 33 of the EBR states:

33 (1) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, form part of or give effect to a budget or economic statement presented to the Assembly.

(2) A minister need not give notice under section 15, 16 or 22 of a proposal that would, if implemented, change, (a) a policy that forms part of a budget or economic statement presented to the Assembly; or (b) a bill, Act, regulation or instrument that gives effect to a budget or economic statement presented to the Assembly.

<sup>5</sup> See <https://ero.ontario.ca/notice/019-1995>.

<sup>6</sup> The Auditor General found: "In April 2020, the Environment Ministry used a regulation to suspend the operation of the public consultation requirements of the EBR Act to allow the government to act quickly to address issues arising from the COVID-19 emergency. The regulation exempted all proposals from the EBR Act public consultation requirements, even if they were not related to COVID-19. As a result of this broad exemption, members of the public lost their right to seek leave to appeal ministries' decisions on 197 environmentally significant permits and approvals that were proposed during the ten week exemption period—permits and approvals that, for example, would allow industrial facilities to discharge pollutants to the air and water in Ontario communities—and that were unrelated to COVID-19." Office of the Auditor General of Ontario, Annual Report, *Operation of the Environmental Bill of Rights (2020)*, Chapter 1, November 2020. See <https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.

Bill 229 is the most recent proposal in a disturbing and undemocratic trend, starting with Bill 55, Strong Action for Ontario Act (Budget Measures), 2012<sup>7</sup>, of using omnibus budget measures bills to make substantive changes to environmental laws and thereby sidestepping the public's EBR rights.

CELA has on-going concerns regarding the lack of opportunity for meaningful public input, absence of appropriate engagement with Indigenous communities, and expedited legislative process. Proceeding with significant legislative amendments affecting forests, species, waters, and lands should not occur when many First Nation communities are unable to consult directly with their members due to the ongoing COVID-19 pandemic.

Further, relying on an exemption for budget measures implementation when proposed amendments to environmental laws are likely to have significant ecological and social impacts is inconsistent with the public participation rights guaranteed in the EBR. By not providing the opportunity for public review and comment via the ERO, which imposes a duty on the appropriate ministries to take every reasonable step to ensure all comments received in relation to a proposal are considered when decisions are made<sup>8</sup>, the government has both denied the public their rights and also deprived themselves from hearing from Indigenous communities and the public regarding their values and interests affected by Schedules 6 and 8. The Auditor General of Ontario's recent compliance report echoed this concern about improper sidestepping of key consultation requirements in the EBR.<sup>9</sup>

### **Remove Schedule 6, proposed changes to the *Conservation Authorities Act* and consequential amendments**

CELA's overall conclusion is that while a small number of the proposed changes (including improved transparency through publicly available information) may be supportable in principle, the majority of the Schedule 6 amendments are regressive in nature and are completely contradictory to fulfilling both the purpose of the *Conservation Authorities Act* and the desire to set the course for more climate resilient communities in the future. Accordingly, CELA recommends that Schedule 6 not be enacted in its present form and instead be withdrawn in its entirety from Bill 229.

Over the past five decades, CELA has been involved in various law reform initiatives, court cases, public hearings and other administrative proceedings related to the importance of integrated watershed management and ensuring hydrological integrity in land use planning on behalf of low-income individuals and disadvantaged or vulnerable communities. In particular,

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<sup>7</sup> See <https://www.ola.org/en/legislative-business/bills/parliament-40/session-1/bill-55>.

<sup>8</sup> *Environmental Bill of Rights, 1993*, s 35

<sup>9</sup> Office of the Auditor General of Ontario, Annual Report, *Operation of the Environmental Bill of Rights (2020)*, Chapter 1, November 2020. See <https://www.auditor.on.ca/en/content/annualreports/arbyyear/ar2020.html>.

CELA was counsel representing citizens of Walkerton at the associated drinking water inquiry and has been a persistent voice in seeking drinking water source protections for all residents of Ontario<sup>10</sup>. Further, Justice O'Connor endorsed watershed-based management of surface water and groundwater in his Part Two Report<sup>11</sup>. Conservation authorities have played a crucial role in the first phase of implementation<sup>12</sup> of the *Clean Water Act, 2006*<sup>13</sup>. Having arms-length agencies, whose jurisdiction is on a watershed-basis, has been key to enabling drinking water source protections.

Ontario's Special Advisor on Flooding Doug McNeil noted:

Ontario has a long history of taking actions to keep people and property safe from the impacts of flooding through land use planning policies and mitigative activities. The development of the modern floodplain policy in Ontario, the watershed approach, the conservation authority model, and the flood standards have been extremely effective at reducing flood risks, especially in new greenfield development areas.<sup>14</sup>

While the purpose of the CAAct is to “provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario”<sup>15</sup>, the scope and powers of conservation authorities will be limited to the point that no meaningful integrated watershed management will be possible. The “watershed approach” and the “conservation authority model” that the Special Advisor on Flooding lauded will be stripped down and made unrecognizable. Building climate resilient communities for the future will be impeded, if not impossible. Outlined below is a non-exhaustive list of concerns.

1. Indigenous people and Indigenous knowledge will not be represented in membership of conservation authorities

Although it is proposed that a non-derogation clause<sup>16</sup> will be added to the CAAct, such a confirmation of the constitutional protections afforded to existing aboriginal and treaty rights

<sup>10</sup> See <https://cela.ca/review-clean-water-act/>.

<sup>11</sup> The Honourable Dennis R. O'Connor, Part Two Report of the Walkerton Inquiry: A Strategy for Safe Drinking Water (2002), Chapter 4, pp 103-107; report available for download online [http://www.archives.gov.on.ca/en/e\\_records/walkerton/report2/index.html](http://www.archives.gov.on.ca/en/e_records/walkerton/report2/index.html).

<sup>12</sup> See <https://conservationontario.ca/conservation-authorities/source-water-protection>.

<sup>13</sup> See <https://www.ontario.ca/laws/statute/06c22>.

<sup>14</sup> See Executive Summary, Ontario's Special Advisor on Flooding Report to Government, An Independent Review of the 2019 Flood Events in Ontario, A Report to the Hon. John Yakabuski, Minister of Natural Resources and Forestry (October 2019), <https://www.ontario.ca/document/independent-review-2019-flood-events-ontario>.

<sup>15</sup> CAAct, section 0.1.

<sup>16</sup> Bill 229, Schedule 6, section 1, proposes to add the following provision:

1.1 For greater certainty, nothing in this Act shall be construed so as to abrogate or derogate from the protection provided for the existing aboriginal and treaty rights of the aboriginal peoples of Canada as recognized and affirmed in section 35 of the *Constitution Act, 1982*.

in and of itself will not be sufficient to bring Indigenous rights into consideration by conservation authorities. For example, the membership of conservation authorities is not expanded to include the ability to appoint Indigenous representation. The governance model for conservation authorities does not appear to have been adjusted at all to incorporate Indigenous ways of knowing.

2. Narrowing of duties of conservation authorities' members is counter to the watershed approach needed to build climate resilient communities for the future

The duty of members will not include acting to "further the objects" of a conservation authority and the duty of members who are municipal councilors will be to act on behalf of their respective municipality. Conservation authorities were established to have a watershed-based approach and oversight precisely because municipal boundaries and interests do not align completely with ecologically relevant (e.g. watershed) boundaries.

3. Narrowing the objects and powers of conservation authorities is counter to the watershed approach needed to build climate resilient communities for the future

The current Provincial Policy Statement (PPS) contains policies aimed at protecting, improving and restoring water quality and quantity, including emphasizing "using the watershed as the ecologically meaningful scale for integrated and long-term planning, which can be a foundation for considering cumulative impacts of development"<sup>17</sup> and aimed at ensuring "the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems" as important recognition of the "linkages between and among natural heritage features and areas, surface water features and ground water features."<sup>18</sup> The proposed amendments will narrow the objects of conservation authorities such that ensuring land use planning decisions are consistent with the PPS and achieving the overall purpose of the CAACT will be significantly impeded.

Further, conservation authorities' powers to study & investigate, enter land throughout the watershed, cause research to be done, and expropriate will be narrowed or removed, making the ability to use a watershed approach next to impossible.

4. Removing conservation authorities' status as independent public bodies in land use planning will set integrated watershed management back decades

Bringing conservation authorities under the "one window" approach to municipal land use planning will limit meaningful integrated watershed management. Under the *Planning Act*, all

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<sup>17</sup> Provincial Policy Statement (2020), policy 2.2.1(a). See <https://www.ontario.ca/page/provincial-policy-statement-2020>.

<sup>18</sup> PPS (2020), policy 2.1.2.

provincial interests are expressed and defended only through the Ministry of Municipal Affairs and Housing (MMAH). As there is no express mechanism to ensure the interests of other ministry's mandates, including (as proposed) the watershed approach of conservation authorities, are reflected in MMAH's implementation of the *Planning Act*, the desire to build climate resilient communities for the future is very unlikely to be fully realized.

5. New procedures are being introduced without indication of whether matching third party rights of appeal in the public interest will be provided

New procedural rights for requestors (for fee reconsideration) and applicants (for the yet to be proclaimed permits), including new rights to appeal to the LPAT, are proposed. Further, new processes for the Minister to review, as well as appoint investigators and recommend the appointment of administrators, are also proposed. These amendments do not indicate, one way or another, whether third party, public interest based, appeal rights (as exist under the EBR for certain "instruments") will be made available.

6. Much of the detail, particularly in relation to setting out the scope of programs and services, any standards and requirements, and other important matters, continue to be left to the development of future regulations

It is impossible to fully analyze the impact of the proposed changes to conservation authorities' roles and responsibilities, as so many details are left to the discretion of the Lieutenant Governor in Council and/or the Minister to make future regulations.

Building climate resilience is crucially important for Ontario. For the reasons discussed above, CELA believes that the proposed changes to conservation authorities will not achieve this important task. To the contrary, the package of amendments as proposed are likely to set back watershed planning and implementation of an ecosystem-based approach by decades.

### **Remove Schedule 8, proposed changes to the *Crown Forest Sustainability Act, 1994***

CELA opposes the entirety of Schedule 8 and calls for its withdrawal from Bill 229.

The *Crown Forest Sustainability Act, 1994* (CFSA) applies to approximately two thirds of Ontario's land base, which is home to numerous species at risk and their habitat. It is precisely because of the Act's application to the majority of Ontario that makes the rollbacks proposed in Schedule 8 so significant and objectionable from the public interest perspective. If enacted, Schedule 8 will oust the protection for endangered species, contained in the *Endangered Species Act, 2007* and not replicated in the CFSA, from most of the Ontario landscape.

While Schedule 8 introduces a definition of “species at risk,” (ie. species that are listed as extirpated, endangered or threatened on the Species at Risk List in Ontario) into the CFSA, it does so in order to exempt all forestry operations from mandatory consideration of species at risk protection and recovery mandated by the *Endangered Species Act, 2007* (ESA).<sup>19</sup> That is, Schedule 8 proposes a new exemption within the CFSA which if enacted, removes the ESA’s prohibitions - that no person shall kill, harm, or harass<sup>20</sup> a listed species nor damage or destroy its habitat necessary for their survival and recovery<sup>21</sup> - from forestry operations, when on Crown land, as part of a forest management plan or forest resource licence.

More alarmingly, Schedule 8 proposes to remove the ability of the Minister to issue orders in circumstances when there is imminent danger to an at-risk species.<sup>22</sup> Specifically, under the ESA, the Minister is able to order that a person stop engaging in an activity that could or is having a “significant adverse effect” on a species at risk.<sup>23</sup> However, by virtue of the proposed Schedule 8 amendment, this power has been nullified.

Further, while Schedule 8 introduces a new regulation making power enabling the Minister of Natural Resources and Forestry to order forestry operations to refrain or take certain actions to minimize impacts on at-risk species,<sup>24</sup> the passage of such a regulation remains at the discretion of the Lieutenant Governor in Council. Notably, the scope of the regulatory power and its aim to ‘avoid or minimize harm’ to species at risk is also much narrower than the ESA’s purpose to ‘protect and promote recovery.’ In short, a could-be regulation is not a stand in for the ESA and its detailed oversight and enforcement mechanisms aimed expressly at protecting at-risk species and enabling their recovery.

Read in conjunction with the province’s commitment to double logging in public forests<sup>25</sup> and permanently exempt forestry from environmental assessment,<sup>26</sup> Schedule 8 unravels what few legal mechanisms remained that prioritize conservation and protect natural areas in response to the biodiversity crisis. As set out in the Auditor General’s 2020 Annual Report, this is precisely the issue which ought to garner the government’s urgent and utmost attention:

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<sup>19</sup> Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1

<sup>20</sup> ESA, sections 9 and 10

<sup>21</sup> ESA, section 1

<sup>22</sup> Bill 229, Schedule 8, proposed amendment to CFSA, provision 47.1(3)

<sup>23</sup> ESA, Section 27.1

<sup>24</sup> Bill 229, Schedule 8, proposed amendment to CFSA, section 69(1)

<sup>25</sup> Ontario has committed “to unleash the full potential of this important industry,” see online; <https://www.ontario.ca/page/ontarios-forest-sector-strategy>

<sup>26</sup> See ERO decision notice “Proposed amendments to General Regulation 334 under the Environmental Assessment Act to remove Regulatory Duplication of Forest Management requirements in Ontario” (June 30, 2020), <https://ero.ontario.ca/notice/019-0961>; see also CELA’s blog, “Exemption of forestry from the Environmental Assessment Act sets a bad precedent,” (13 July 2020) online: <https://cela.ca/exemption-of-forestry-from-the-environmental-assessment-act-sets-a-bad-precedent/>

Biodiversity loss has been ranked as a top-five risk—by likelihood and impact—to economies over the next decade. Unlike other provinces, Ontario does not have a long-term plan or target to expand its network of protected areas.<sup>27</sup>

## Conclusion

In making our recommendations, we further refer the Standing Committee to our detailed comments previously provided on recent proposals related to conservation authorities, forest operations, and species at risk, including:

- Proposed Amendments to the Conservation Authorities Act – Preliminary Analysis (Nov 2020)<sup>28</sup>
- We Need Our Conservation Authorities – Survey & Primer Report (Sep 2020)<sup>29</sup>
- Letter to the Premier in Support of Ontario’s Conservation Authorities (Apr 2020)<sup>30</sup>
- Conservation Authorities Modernization ERO Numbers: 013-5018 (including Schedule 2, Bill 108) and 013-4992 (May 2019)<sup>31</sup>
- Submission on proposed amendment to a regulation under the Endangered Species Act, 2007, relating to forest operations (Jun 2020)<sup>32</sup>
- Submission on Bill 132, Schedule 16 regarding the proposed amendments to the CFSA (Nov 2019)<sup>33</sup>
- Submission on Bill 108, Schedule 5 regarding proposed amendments to the ESA (May 2019)<sup>34</sup>,
- Submission on the 10<sup>th</sup> Year Review of Ontario’s Endangered Species Act Discussion paper (Feb 2019)<sup>35</sup>

For the reasons discussed above, CELA strongly recommends that Schedule 6 (proposed changes to the Conservation Authorities Act and consequential amendments) and Schedule 8

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<sup>27</sup> Office of the Auditor General, “2020 Annual Report of Environmental Value-for-Money Audits and the Operation of the Environmental Bill of Rights,” online:

[https://www.auditor.on.ca/en/content/annualreports/arreports/en20/ENV\\_reflections\\_en20.pdf](https://www.auditor.on.ca/en/content/annualreports/arreports/en20/ENV_reflections_en20.pdf), pg 2

<sup>28</sup> See <https://cela.ca/proposed-amendments-to-the-conservation-authorities-act-preliminary-analysis/>.

<sup>29</sup> See <https://cela.ca/we-need-our-conservation-authorities/>.

<sup>30</sup> See <https://cela.ca/letterofsupportforconservationauthorities/>.

<sup>31</sup> See <https://cela.ca/conservation-authorities-modernization-ero-numbers-013-5018-including-schedule-2-bill-108-and-013-4992/>.

<sup>32</sup> See <https://cela.ca/forestry-exemption-endangered/>.

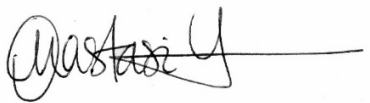
<sup>33</sup> See <https://cela.ca/submissions-on-bill-132/>.

<sup>34</sup> See <https://cela.ca/submission-regarding-legislative-amendments-to-the-endangered-species-act-bill-108-schedule-5-environmental-registry-no-013-5033/>.

<sup>35</sup> See <https://cela.ca/10th-year-review-of-ontarios-endangered-species-act/>.

(proposed changes to the Crown Forest Sustainability Act, 1994) be withdrawn in their entirety from Bill 229.

Regards,  
CANADIAN ENVIRONMENTAL LAW ASSOCIATION

A handwritten signature in black ink, appearing to read "Anastasia", followed by a long horizontal line.

Anastasia M Lintner, PhD, LLB  
Special Projects Counsel, Healthy Great Lakes

A handwritten signature in black ink, appearing to read "Kerrie Blaise".

Kerrie Blaise  
Northern Services Counsel