

December 1, 2020

Chair Amarjot Sandhu and Committee Members
Standing Committee on Finance and Economic Affairs
c/o Julia Douglas, Committee Clerk
99 Wellesley Street West
Room 1405, Whitney Block
Queen's Park
Toronto, ON
M7A 1A2

VIA EMAIL: comm-financeaffairs@ola.org.

Dear Chair Amarjot Sandhu and Committee Members,

RE: Major Governance, Streamlining and Cost Concerns with *Bill 229: Protect, Support and Recover from COVID 19 Act (Budget Measures Act)* - Schedule 6 – Conservation Authorities Act Bill

The Niagara Peninsula Conservation Authority (NPCA) is a strong contributor to Ontario's local economy and has been committed to keeping the environment, people and property of our watershed safe from natural hazards for the past 61 years. On an annual basis, the NPCA serves 520,000 residents in Niagara, Hamilton and Haldimand boosting local economic activity through flood protection, hazard management, clean water, and green jobs. NPCA supports approximately 1000 planning and permit files on an annual basis to advance sustainable growth and engages over thousands of residents and volunteers to restore Ontario's watersheds and educate our next generations for stewardship of our watersheds.

The NPCA appreciates the need for transparency and accountability. Over the past few years, we have invested heavily in implementing measures for the highest standards of customer service for our residents. For the NPCA, this work was initiated as the result of the *2018 Special Audit of the NPCA by the Office of the Auditor General of Ontario* (OAGO).

We anticipate that changes proposed in Bill 229 will lead to the opposite of your government's stated desire to help conservation authorities (CA) modernize and operate with greater focus, transparency and efficiency. We would like to stress that proposed amendments are also contrary to Auditor General's 2018 recommendations for the NPCA and will be practically difficult to implement given that make-up of conservation authorities (watershed interests vs. municipal boundaries).

These changes also have the potential to cause significant delays in the planning and permitting process, add costs and ultimately have the potential for significant impacts on Ontario's ability to provide flooding and natural hazards management/protection and drinking water protection to Ontarians. We note, as well, that these changes appear contrary to the Special Advisor's Report on Flooding and Ontario's Flooding Strategy.

These changes will undo the hard work the NPCA has done over the last few years to ensure we are a transparent, trustworthy, accountable and solutions-oriented organization.

We highlight key issues below for your consideration:

Amendments Contradict Good Standards of Governance

The proposed governance model seems to be unprecedented (against standards of good governance) and potentially unworkable in practice. The proposed changes are contrary to the fiduciary responsibilities of a public body and challenges the purpose of CA's to address watershed issues that transcend municipal boundaries. The Auditor General in her audit recommended that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the CA, to which the ministry response was in agreement. Additionally, community appointed members bring a diverse range of expertise and skill set to the current CA Boards. The specification of 'municipal councilor' rather than "municipally elected official" may exclude municipal Mayors. The appointment of community, sector or elected representatives be best left to the appointing municipalities.

Amendments Related to CA Mandate Compromise our Ability to Protect the Watersheds, Address Extreme Weather Issues to Protect, Serve Municipalities and Engage Communities to Protect and Enhance Ontario's Natural Resources.

Conservation Authorities are resource management agencies and have a long history of studying and understanding our watersheds. This has significantly assisted our municipal partners in their work, particularly around land use planning, in understanding priority areas for protection and restoration. We also provide residents of our watershed with important programs for restoration that is not provided by any other level of government. Removal of the Natural Resource Mandate of CA's as stated in Section 20 opens the door for the Province to scale back the important work of CA's such as watershed-scale monitoring, data collection management and modelling; watershed-scale studies, plans, assessments and strategies; and watershed-wide actions including stewardship, communication, outreach and education activities that protect our environment on a watershed basis. CA's will now have to rely on the Province to include these functions specifically in a Regulation.

Planning and Permitting and Changes to CA Role in Land Use Planning

Provincial changes will actually create more costs, delays and red tape around permit and planning applications and appeals. This will **significantly set back the client service improvements undertaken by CA's** in the past few years. Changes have to the *Planning Act* will create a significant gap in the land use planning system.

The proposed amendments will limit the NPCA's ability to undertake non-partisan, transparent, and technically sound decision-making and will allow individuals to circumvent the technical permitting process. We are concerned that given the appeal periods specified in the proposed changes combined with the amount of time it takes to go through an appeal at the Local Planning Appeal Tribunal (LPAT), this will have the opposite effect on permit timelines. If applicants are not satisfied with decisions made by the hearing boards (CA Board of Directors or Executive), then applicants can now appeal directly to the Minister who can make his or her own decision without a hearing and even issue a permit. Alternatively, or in addition, the applicant can appeal a decision of the conservation authority to the LPAT. These **changes could add almost 200 days to the application process which means more costs for developers, conservation authorities and**

the Province to manage this excessive appeal system. In 2018, CA's received 11,781 requests for permits in regulated areas. Of these 10,810 permits were issued. There were 28 appeals to the Mining and Lands Tribunal (MLT) of which 23 were decided in the favour of the CA's. It is noted that relatively few permits are appealed to the MLT because the current and affordable system is based on the technical/natural hazard merits of the applicant's request. The LPAT is already overloaded with land use planning application appeals without overloading it further with appeals for CA permits. It is **unclear how the Province will pay for the technical expertise to advise on Section 28 permit decisions by the Minister or by the LPAT to ensure that these decisions are not increasing the liability costs for the Province or conservation authorities (and thereby municipalities) and putting lives and property at increased risk.**

The proposed changes will result in increased legal costs to CA's municipalities, and/or all permit applicants. Staff will end up spending significant amounts of time preparing for and attending unnecessary LPAT hearings and will lead to a more burdensome, litigious and adversarial process. This will significantly set back the client service improvements undertaken by CA's in the past few years.

The loss of the right of appeal for a CA on land use planning decisions is concerning. **This creates the potential for decisions contrary to CA Regulations or hazard mandates** being left unchallenged. It would also mean that a CA could be in a position where a permit cannot be issued for a project authorized by a municipality. This would add considerable delays for developers and runs contrary to streamlining CA roles in permitting and land use planning.

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

Additionally, despite recent reports by both the Auditor General and the Special Advisor on Flooding, recognizing that the **conservation authorities lack basic tools to ensure compliance** with the Act and Regulations, Bill 229 proposes to repeal sections that provide these necessary tools (e.g. **stop work orders**). During the pandemic, many CA's have experienced an increase in illegal activities on CA-owned lands and in CA regulated areas. In the case of some Section 28 infractions, extensive remediation costs and damages to neighbouring properties could have been avoided if tools such as enhanced powers of inspection and stop (work) orders were available to CA officers. Instead, conservation authorities must rely on their municipal partners to assist with stop orders under municipal by-laws or the Building Code, when appropriate. This puts undue stress on municipalities to provide services to the CA's and results in a duplication of efforts. For egregious offences, a CA's only recourse is to proceed through the court system, resulting in significant legal costs to the CA and to the accused. These unnecessary costs to conservation authority and municipal budgets, as well as to the taxpayers/property owners for damages that could have been avoided will continue under the *Budget Measures Act*.

Amendments Limit CA's Ability to Address Extreme Weather and Climate Change Issues.

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

change may also limit future ability of CA's to address extreme weather and climate change issues.

In closing, over 60,000 Ontarians are served at various conservation areas to their recreational, health and wellness needs.

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

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

Respectfully,

A handwritten signature in cursive script that reads "Brenda Johnson".

Brenda Johnson
Chair, NPCA