Credit Valley Conservation
inspired by nature

Friday, December 11, 2020

Meeting to be Held Electronically

MEMBERS

K. (Karen) Ras (Chair)
T. (Tom) Adams (Vice Chair)
J. (John) Brennan
S. (Stephen) Dasko
J. (Johanna) Downey
A. (Ann) Lawlor
M. (Matt) Mahoney
M. (Martin) Medeiros
M. (Michael) Palleschi
G. (Grant) Peters
R. (Ron) Starr
J. (John) Stirk

Pages

7. CORRESPONDENCE/INFORMATION ITEMS DISTRIBUTED TO MEMBERS

7.2. ***BREIFING NOTE: BILL 229, SCHEDULE 6 UPDATE*** *2*

Briefing note to the CVC Board of Directors from Deborah Martin-Downs, CAO regarding an update on Bill 229, Schedule 6.

BRIEFING NOTE

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December 10, 2020

To:	CVC Board of Directors		
From:	Deb Martin Downs, CAO		
cc			
Re:	**Bill 229 – Schedule 6 Update**		

The purpose of this Brief is to provide and update to the CVC Board of Directors (the 'Board') on Bill 229 (the 'Bill') – Schedule 6 (amendments to the *Conservation Authorities Act*), which received Royal Assent on December 8, 2020. This brief is a follow-up to the Board report on Bill 229 that was presented to the Board on November 13, 2020 – followed by the submission of a letter to the province, among other things, requesting that Schedule 6 to Bill 229 be removed (final revised correspondence, at the Board's direction, is attached as Appendix 1).

CVC AND CO ADVOCACY ACTIVITIES

CVC staff, in coordination with Conservation Ontario, followed the progression of the Bill through the legislative process. Standing Committee meeting dates were identified for November 30th, December 1st and December 2nd. CVC requested, and was granted, an opportunity to speak before the Committee on Finance and Economic Affairs (SCFEA). Conservation Ontario (CO), Toronto and Region Conservation and a number of environmental groups also attended to speak to Schedule 6 of the Bill. Chair Ras, Vice Chair Adams, and CAO Martin-Downs attended the session on November 30th at 4 pm. Chair Ras' remarks to the Committee are Appendix 2.

CVC SUBMISSIONS AND CHANGES TO SCHEDULE 6 OF THE BILL

Following the session, CVC provided a written submission to the Standing Committee (see Appendix 3). On December 3rd, several motions were presented by Committee members to further amend Schedule 6 of the Bill. While there were some positive amendments made to address concerns raised by CO and CVC, there were additional amendments proposed to Schedule 6 which will likely further limit conservation authority's ability to effectively manage public and health and safety related to natural hazards – in particular, related to CA's ability to review and issue Section 28 permits based on provincial and CA policy (see below).

On December 4th all of the motions for Schedule 6 were accepted by the Committee without further amendment. On December 7th, the Bill was brought back to the legislature where it was eventually passed on December 8th and received royal assent immediately thereafter. The request to the province to remove Schedule 6 from the Bill for further consultation was not accepted.

Below is a brief summary of the substantive changes made to the Bill, and corresponding amendments, which will impact the way we operate moving forward (note: the majority of these points are still subject to the release of their implementing regulations which are forthcoming):

1) Governance

a) 14(1.1) Mandated that the municipal councillors appointed by a particular municipality as members of a conservation authority be selected from that municipality's own councillors only.

AMENDED - a participating municipality shall ensure that at least 70 per cent of its appointees are selected from among the members of the municipal council with provisions for municipalities to seek relief. (addresses concerns raised)

b) Added the discretion of the Minister to appoint a member "as a representative of the agricultural sector" (new CA Act provision 14(4)).

AMENDED – to clarify voting rights of an appointed agricultural representative to be not for budget or governance issues of the CA with respect to amalgamation or dissolution. (addresses request for clarification)

c) Replace the currently unproclaimed duty of members to "act honestly and in good faith with a view to furthering the objects of the authority" (CA Act, s14.1) to require that members "act honestly and in good faith" and that members of appointed by participating municipalities, "generally act on behalf of their respective municipalities" (new CA Act provision 14.1).

REPEALED - and replaced with the original version for Board members to act on behalf of CA. (addresses concerns raised)

d) Limit the term of a Chair or Vice-Chair to one year and to no more than two consecutive terms (new CA Act provision 17(1.1)).

AMENDED – term limits are maintained and further clarification is made that successive members from the same municipality cannot be appointed, that chairs will rotate through all the municipalities but that a municipality may seek permission to change those terms. (partially addresses concerns raised)

e) Added additional clauses around posting of minutes and agendas as well as regulations around budget processes. *(neutral change)*

2) Powers and Duties

a) While there were no changes to the purpose or materially to the powers of the CAs in Schedule 6, the objects as described in Section 21.1(1) as outlined in Bill 108 remain. They are:

21.1 *(1) If a program or service that meets any of the following descriptions has been prescribed by the regulations, an authority shall provide the program or service within its area of jurisdiction:*

1. *Programs and services related to the risk of natural hazards.*
2. *Programs and services related to the conservation and management of lands owned or controlled by the authority including any interests in land registered on title.*
3. *Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006.*
4. *Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations.*

The CAs continue to await the many implementing regulations coming out of the amended Act, as it will be these regulations that define the scope of programs and services allowed under the mandatory programs. Given the scope and aggressive nature of the changes to the Act, staff are concerned that the province will not allow for appropriate review and dialogue to inform the

regulations. These changes alone will fundamentally shift how CVC is funded and introduces significant administrative burden to the CA and our member municipalities going forward.

b) Narrows the objects of a conservation authority from providing "programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals" (CA Act, s20(1)) to only one of three categories: (i) mandatory programs and services, (ii) municipal programs and services, and (iii) other programs and services (new CA Act provision 20(1))

NO CHANGE (neutral – pending implementing regulations)

c) There are a number of proposed clauses that enable the Minister to make regulations that would prescribe standards and requirements for Municipal Programs and Services (i.e. service agreement between Municipality and CA) and Other Programs and Services (i.e. those determined by the Board and which if use municipal levy would require all municipalities' agreement)

AMENDED – removal of the words 'subject to regulations'. (addresses concerns raised)

d) The schedule also proposes an amendment to the *Planning Act* to add conservation authorities to subsection 1 (2) of the *Planning Act* which removes us as a public body and names us under the one window approach of MMAH for purposes of appeals to the LPAT.

AMENDED - to allow CAs to appeal for 'prescribed natural hazard' related purposes and consents on our own properties. (partially addresses concerns raised - unclear about source protection)

3) Regulatory

a) Allows an applicant, within 120 days of a conservation authority receiving a permit application, to appeal to the LPAT if no decisions by the conservation authority has been made.

NO CHANGE (concerns not addressed)

b) Authorized 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).

NO CHANGE – while the minister is required to consider the same tests in the review and permitting as a CA, their functional ability to do so remains a concern. (concerns not addressed)

c) Allows 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.

NO CHANGE (concerns not addressed)

d) 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.

NO CHANGE (concerns not addressed)

e) 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.

NO CHANGE (concerns not addressed)

f) Added a new permission for development (Section 28) and Ministerial Zoning Orders under the Planning Act provisions (reproduced in part):

> ***28.0.1*** *(1) This section applies to any application submitted to an authority under a regulation made under subsection 28 (1) for permission to carry out all or part of a development project in the authority's area of jurisdiction if, (a) a zoning order has been made by the Minister of Municipal Affairs and Housing under section 47 of the Planning Act authorizing the development project under that Act; (b) the lands in the authority's area of jurisdiction on which the development project is to be carried out are not located in the Greenbelt Area designated under section 3 of the Greenbelt Act, 2005; and (c) such other requirements as may be prescribed are satisfied.*
>
> *(1)* ***Permission to be granted:*** *(3) Subject to the regulations made under subsection (35), an authority that receives an application for permission to carry out all or part of a development project in the authority's area of jurisdiction shall grant the permission if all of the requirements in clauses (1) (a), (b) and (c) are satisfied.*
>
> ***Same:*** *(4) For greater certainty****, an authority shall not refuse to grant permission for a development project under subsection (3) despite, (a) anything in section 28 or in a regulation made under section 28****; and (b) anything in subsection 3 (5) of the Planning Act.*
>
> ***Agreement:*** *(17) An authority that grants permission for a development project under this section shall enter into an agreement with respect to the development project with the holder of the permission and the authority and the holder of the permission may agree to add a municipality or such other person or entity as they consider appropriate as parties to the agreement.*
>
> ***Contents of agreement:*** *(18) An agreement under subsection (17) shall set out actions or requirements that the older of the permission must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project.*
>
> These recent revisions to Section 28 regarding CA permits and Minister Zoning Orders raise new concerns. We draw the boards attention to 28.0.1(4) which orders a CA to issue a permit whether it complies with provincial and/or CA regulation or policy. This raises questions around professional standards and liability, should the CA issue a permit for a development that does not meet policy. While a CA may attach conditions to these 'forced' permits, the applicant can appeal the CA conditions to the Minister which circumvents the intent of the provision to ensure application of CA policy consistently, as well as a CA's ability to best implement appropriate mitigation measures if not approved.

However, these new provisions do allow the CA to enter into a compensation agreements but allowing for it at the outset of the process – which signals that regulated natural features are up for compensation which is not the typical process or in keeping with the mitigation hierarchy. Notwithstanding this, there are many cases where impacts to natural hazards such as flooding and erosion are not mitigatable – and if approved, would have otherwise unacceptable impacts and increased risk to public health and safety.

To date, CVC does not have any MZOs of any consequence to CVC within its jurisdiction, but that could change. This condition eliminates any ambiguity of the Schedule released on November 4th as to the intent of the province in having the Minister be able to override the CA. It continues to be unclear why a provision to force a CA to issue a permit under these circumstances is needed, when a provision for the Minister to directly issue a CA permit now exists.

4) Enforcement

a) Eliminated the (not yet proclaimed) powers for officers appointed by conservation authorities to issue stop orders (CA Act provision 30.4)

REPEALED – replaced the clause to allow stop work orders and is to come into force immediately. (addresses concerns)

b) Clarified conditions for officers appointed by conservation authorities to enter lands without a warrant.

NO CHANGE

SUMMARY and NEXT STEPS

We continue to await the many implementing regulations coming out of the amended act, as it will be these regulations that define the scope of programs and services allowed under the mandatory programs. The Ministry identified that they would be releasing proposed regulations for comments a few weeks after the budget Bill was finalized, but it is expected that the release will again be delayed given the considerable noise that surrounded this Bill and Schedule 6 specifically.

The response by the public, NGOs and municipal partners was unprecedented. The Canadian Environmental Law Association prepared a summary of the response since Bill 229 was introduced for First Reading on November 5, 2020:

- Canadian Environmental Law Association, with speakers from Environmental Defence, Ontario Nature and Credit Valley Conservation, hosted an informational webinar that had 1,286 unique views live and the recording of which has been viewed 946 times
- Over 4,000 supporters of Environmental Defence have emailed and phoned MPPs calling for the removal of Schedule 6
- Almost 19,000 supporters of Ontario Nature have sent emails to MPPs calling for the removal of Schedule 6
- Almost 13,000 supporters of David Suzuki Foundation have sent emails to MPPs calling for a halt to issuing Minister's Zoning Orders under the Planning Act and the removal of Schedule 6
- Conservation Ontario, representing all 36 conservation authorities, has called for the removal of Schedule 6
- Resolutions have been passed in at least 40 municipal councils, including the Cities of London, Greater Sudbury, and Thunder Bay, as well as the Region of Peel and Township of South Frontenac, calling for the removal of Schedule 6

- Ontario's Greenbelt Council wrote to Minister Clark calling for removal of Schedule 6
- Ontario's Big City Mayors approved a motion to call for the removal of Schedule 6
- Of the 45 deputations made during Standing Committee of Finance and Economic Affairs (SCFEA) hearings in response to a complex budget measures bill containing 44 schedules, over half of those deputations addressed or mentioned Schedule 6
- Of the over 20 witnesses who spoke to Schedule 6 at SCFEA hearings, all expressed significant concerns; none came forward in favour

There was some suggestion that delaying proclamation could allow for time to modify elements of the act. However, given the lack of engagement and willingness of the province to discuss these measures it is not expected that there will be any further opportunity to influence the content of the Act.

CVC staff will work with CO to assess the legality of some of the measures, including landowner appeal and direction to issue permits that may be contrary to professional practice regulations, provincial and CA policy. In addition, CVC staff will continue to monitor the Environmental Registry for posting of the regulations and will coordinate with CO and other CA staff.

Credit Valley Conservation
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November 13, 2020

Sent Via Email

The Honourable Doug Ford
Premier of Ontario
premier@ontario.ca

The Honourable Jeff Yurek
Minister of the Environment, Conservation and Parks
minister.mecp@ontario.ca

The Honourable Steve Clark
Minister of Municipal Affairs and Housing
minister.mah@ontario.ca

The Honourable John Yakabuski
Minister of Natural Resources and Forestry
minister.mnrf@ontario.ca

The Honourable Rod Phillips
Minister of Finance
Minister.fin@ontario.ca

Re: Bill 229 Schedule 6 Proposed Changes to the *Conservation Authorities Act*

Dear Premier Ford and Ministers Yurek, Clark, Yakabuski and Phillips

Credit Valley Conservation was formed in 1954 with a mandate to provide 'programs and services designed to further the conservation, restoration, development and management of natural resources' in the Credit River Watershed. After the devastating floods of Hurricane Hazel, which also had large impacts in the Credit River Watershed, the powers to regulate the floodplain were added with the intent that no Ontarian ever lost their life to flooding again.

This has been the legacy of conservation authorities (CA) in Ontario. Forests have been replanted, streams rehabilitated, fisheries protected and restored, and flood plains, wetlands, shorelines and other natural hazards identified and protected to ensure public safety and good water and land management. In recent years we have been entrusted to enact the *Clean Water Act* in recognition of the significant watershed-based role we play in land and water management, critical to a healthy and safe environment.

Over the years, the province has largely removed itself from any significant role with conservation authorities, including providing less that 1% of the funding to Credit Valley Conservation. Our watershed municipalities have supported us, and in turn, our programs and services have been designed to meet their needs as well as those of the watershed. CVC is fortunate to have such great partners in protecting the Credit River watershed.

Changes have been proposed to the *Conservation Authorities Act* (*CA Act*) under Bill 229 further modifying those under Bill 108 passed last year. The Province has described these changes as modernizing the *CA 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'. Provisions for accountability and transparency the CVC Board heartily agrees with and we are proud that CVC already has those measures in place. However, there are other proposed changes that have the potential to alter CVC's relationships with our municipalities as well as our ability to apply science-based decision making to the planning and permitting roles.

We have attached our Board report and accompanying resolution #108/20 unanimously passed by the Board of Directors of Credit Valley Conservation on November 13, 2020. This report lays out our comments on some of the revisions to the Act as outlined in Schedule 6 of Bill 229.

First and foremost, it is the recommendation of the CVC Board of Directors that the province remove Schedule 6 from Bill 229 to allow for consultation with conservation authorities and other stakeholders to ensure that any changes to the *CA Act* assist the province in meeting their objectives and have no unintended consequences of their inclusion.

The direction that board members act on behalf of their municipalities rather than the conservation authorities flies in the face of good governance practices and recommendations made by the Auditor General of Ontario about Niagara Peninsula Conservation. Moreover, for members to act only on behalf of their municipality is counter to the intent of the *CA Act* which was to transcend political boundaries for municipalities sharing a watershed to collectively manage and protect its resources. This clause must be repealed.

The proposed clause that allows the minister to dictate the standards and requirements for municipal or other programs and services agreed upon through service level agreements (non-mandatory programs) should be removed. Terms will be negotiated with the partner municipality and there will be no provincial funding or support in these categories. Therefore, an additional level of bureaucracy and oversight is unnecessary and duplicates effort – this proposed provision should be removed.

The province desires to speed up the approvals process yet many of the provisions in Schedule 6 will lead to increased administrative costs for the CA and municipalities, red tape, delays, and above all bring into question the integrity and transparency of the permitting and planning process. These changes will also result in a more uncertain, litigious, and discordant atmosphere, which will hinder our ability to work with applicants to find practical solutions for safe development.

The Minister of Natural Resources and Forestry (MNRF) may issue a Section 28 permit before a CA has finished its review. This provision allows proponents to circumvent the technical CA permitting process and tie up CA staff in unnecessary appeal processes. This proposal does not improve transparency, consistency in decision-making and nor does it streamline the process. This effectively politicizes the decision, removing the consistency with CVC policies and procedures and potentially resulting in precedent setting decisions which may result in future challenges. Further, we need the province to clarify

that the ministry would be responsible to ensure compliance with any permit that they issued and for any liability associated with the decision. No permit should be given by the Minister without the CA first completing its review and rendering its decision.

The province proposed a number timelines for permit appeals. There is a broad spectrum and complexity of applications in the files that CAs deal with. CVC currently meets all permit issuance guidance from the province and revised permit timelines as recently defined through the 'Client Service Standards for Conservation Authority Plan and Permit Review'. It is our submission that the province should amend or replace appeal timelines with a requirement for CAs to develop standards and procedures for permit and plan review, including permit issuance timelines, to be approved by their Board.

Consequential changes to the *Planning Act* are still being clarified with the Ministry of Environment Conservation and Parks (MECP) staff but CVC expects that it would bar conservation authorities from appealing a municipal planning decision to the Local Planning Appeal Tribunal (LPAT), unless requested through an agreement with the municipality or the Minister of Municipal Affairs and Housing. This tool is a necessary, but seldom used, tool in our toolbox. **CAs must be able to have the right to appeal approvals in hazard areas and for planning file implications to our rather substantial land holdings**.

The ministry staff clarified that this change to the *Planning Act* only affects the CA role in appeals and that participation in CA plan review would still be occurring. We seek confirmation from the province that CAs will still be able to support municipalities in this most important role.

Proposed changes would remove the un-proclaimed provision for conservation authorities to issue stop work orders, a new tool in our enforcement toolbox that we had long requested from the province, along with the more substantial fines. This tool will provide the ability to stop significant threats to life, property and environmentally sensitive areas before having to resort to costly fines and prosecution, as well as expensive restitution where ordered by the courts. This clause should be repealed.

We also formally request that you to engage with CAs as you work on regulations that will eventually define the scope of the mandatory programs as first included in Bill 108. This is critical to ensure that the focus and performance of CAs is actually improved.

Finally, the Act outlines that there will be a transition period for making the changes to the mandatory programs and services and developing agreements or MOUs with partners. In our briefing with MECP, they noted that they were expecting the transition to be one year such that the changes would take effect for the 2022 budget year. This is simply not enough time to allow staff of both the CA and municipalities to undertake the complex process that the province has laid out and given that the regulations have not yet been released.

CVC's budget is typically completed by June of the previous year to meet Region of Peel timelines. This leaves a six month window to:

- change our budget model;
- assess all programs and services against the regulations;
- enter into discussions with all our municipalities (up to 11);
- draft budgets for the selected programs and services;
- reiterate assuming some modification;
- and substantially complete negotiations in order to inform the budget process.

It is our position that this is an unreasonable expectation and one that the municipalities would no doubt be unable to meet given continued COVID restrictions and workloads as well as not being their implementation priority. Depending on the municipality and the type of agreements they may also require Council approval. **Therefore, a longer transition period will be required and no earlier than end of December 2022**.

CVC has shown that we are a service-oriented organization that works with our clients to get good outcomes for the landowner and the environment. We see the implications of historical land use decisions allowing development in floodplains in our watershed and the increasing frequency of flood events on those communities. Our regulations and policies are important to keep our watershed residents safe. We urge the province to ensure that we get this legislation right for the future of our communities.

We are available to discuss any of these comments with you.

Sincerely,

[redacted]

Karen Ras, Chair
Credit Valley Conservation

[redacted]

Tom Adams, Vice Chair
Credit Valley Conservation

c.c. CVC Watershed MPPs
Nando Iannicca, Chair, Region of Peel
Gary Carr, Chair, Halton Region
Bonnie Crombie, Mayor, City of Mississauga
Patrick Brown, Mayor, City of Brampton
Allan Thompson, Mayor, Town of Caledon
Rob Burton, Mayor, Town of Oakville
Sandy Brown, Mayor, Town of Orangeville
Laura Ryan, Mayor, Town of Mono
Bob Currie, Mayor, Township of Amaranth
Guy Gardhouse, Mayor, Township of East Garafraxa
Allan, Alls, Mayor, Town of Erin
Association of Municipalities of Ontario

SPEAKING NOTES (1083 Words)

- Thank you, Chair Sandhu and members of the standing committee, for the opportunity to speak to you this afternoon.
- My name is Karen Ras. I am the chair of the Credit Valley Conservation Authority and the Ward 2 Councillor for the City of Mississauga. I also serve on the Region of Peel council.
- With me today is the Vice Chair of the Authority, Tom Adams, the Ward 6 Town and Regional Councillor for Town of Oakville and the Region of Halton
- As well as Deborah Martin-Downs, the Chief Administrative Officer of Credit Valley Conservation.
- We are here to ask that Schedule 6 be removed from Bill 229
- The changes proposed in the Act have significant consequences to public safety and ***Schedule 6 must be removed from Bill 229*** to allow for proper public debate and careful crafting of changes to ensure that both the mandate of conservation authorities and the goals of the government are met.
- First, as a board member and a municipal councillor, we support the provisions in the Act for Conservation Authorities to operate in a timely, transparent and consistent manner. Our board agrees that CVC has met the spirit and intent of these requirements.
- However, those are the only provisions in Schedule 6 that we are able to support.
- Let me elaborate
- CAs are delegated natural hazard responsibilities by the Minister of Natural Resources and are responsible for representing the “Provincial Interest” on hazard matters in ***planning exercises where the Province is not involved***.
- In the changes to CA Act made under Bill 108, CAs maintain mandated responsibility for natural hazards and as well as for source water protection,

implementing the requirements of the Clean Water Act created after the Walkerton tragedy

- ***The province is not involved at the local planning table,*** but CAs are in order to ensure that a project meets hazard and source protection policies and can be permitted under Section 28 of the Conservation Authorities Act.
- Watershed boundaries have been selected three times over political boundaries as the most logical unit for managing the issues for which we are responsible – first in 1946 to address land management issues; again in 1956 to address flood management in the wake of hurricane hazel and most recently in 2002 by Justice O'Connor as a result of the Walkerton inquiry.
- ***Good land management results in good water management*** – this fundamental principal has been verified time and again
- When carrying out our source protection and natural hazard functions, we apply ***watershed and science-based information***, tools and decision making to inform our response.
- If you want the development process to go smoothly, a number of technical issues related to natural hazards and watershed management as well municipal issues need to be satisfied at the front end of projects to avoid bigger issues at the tail end of a project.
- If the project cannot meet technical requirements it is modified and in some circumstances heads to appeals – where CAs defend both the natural hazard and source protection requirements under our mandated responsibilities.
- However, the proposed changes to the Act ***allow a proponent to appeal directly to the Minister of Natural Resources and Forestry for a Section 28 permit*** – which the Minister is given the rights to issue – ***before or after*** a CA has considered it from a technical perspective.

- The technical specialists and tools are not available directly to the Minister, as they are to a CA, to do the assessment and make technical decisions on an application.
- CVC alone has about 30 staff whose role it is to provide the tools and participate in the planning and permitting processes.
- So, this reduces the Minister's decision to a political one instead of a science and engineering based one
- Then, ***and this is a non-starter***, Schedule 6 removes the CA as a public body under a consequential amendment to the Planning act, ***removing our right to appeal planning act decisions***
- Schedule 6 also significantly complicates the process by a new appeal mechanism through the LPAT instead of the Mining and Lands Tribunal which has adjudicated Section 28 appeals for decades.
- With a lack of expertise and resources at the ministry and a system that encourages appeals instead of working to meet important public safety objectives, ***how can streamlining and efficiency be realized, forget about good decisions?***
- The LPAT is unlikely to concern itself with a watershed-based approach and provide decisions consistent with CA policies if CAs cannot be there to defend the policies and the science.
- While a CA may continue to sit at the planning table, the effectiveness of the CA will be damaged by the province signaling from the outset of any planning application that ***no matter what a CA says, the CA cannot appeal and the CA can be circumvented in the permitting process by having the Minister issue a permit without the review of a CA***.
- ***This is being proposed in the name of streamlining***
- ***This is dangerous to public safety***

- As a landowner, CAs would also be the ***only landowner*** in Ontario without the right to appeal applications that affect their own lands.
- So, we ask you – ***how can we be mandated to undertake certain functions on behalf of the people of Ontario and not be empowered to carry them out?***
- Conservation authorities have been defining and defending natural hazards from inappropriate development for 60 years – a role recognized by the Flood Advisor and in the recent provincial flood strategy.
- Our communities expect a standard of care and w***ho will accept the liability for decisions made without science or technical merit***?
- The CAs are more than willing to sit at the table with the province and determine ways to streamline processes. ***We have offered to do so with no uptake***.
- We have taken it upon ourselves to shorten timelines on permit delivery; and CVC has have done so 99% of the time – even throughout the COVID pandemic.
- ***Not once*** since bill 108 passed in June 2019 – ***18 months ago*** - has the province asked us to work with them to find a way to make the process faster without the extreme measures included in schedule 6.
- Respectfully we ask you to remove schedule 6 from Bill 229 to allow conservation authorities to work with the province on changes that will meet the objectives of both the province and the CAs – which ultimately will benefit the health and well-being of the people of Ontario

December 2, 2020

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

comm-financeaffairs@ola.org

SENT VIA EMAIL

Attn: Amarjot Sandhu, MPP, Chair- amarjot.sandhu@pc.ola.org
Julia Douglas, Clerk - jdouglas@ola.org

RE: Credit Valley Conservation Authority's Submission on Bill 229, the *Protect, Support and Recover from COVID-19 Act (Budget Measures Act), 2020* with regard to Schedule 6 *Conservation Authorities Act*

Thank you for the opportunity to appear before the Standing Committee on Finance and Economic Affairs on November 30th to speak on Schedule 6 *Conservation Authorities Act* of Bill 229.

Our position at the standing committee and in this submission is that Schedule 6 should be withdrawn from Bill 229. There are so many significant amendments required to Schedule 6 of Bill 229 to make it workable that we feel that there is really no alternative than to respectfully ask for it to be withdrawn. We ask this so that fulsome consultation can occur, and careful consideration can be given to operationalization of changes without unintended consequences.

The following comments provide more detail for your consideration of our **recommendation to amend the *Budget Measures Act 229* by withdrawing Schedule 6.**

Support for transparency and accountability
Our authority supports the measures around transparency and accountability that the Province has included in this schedule to address perceived issues. Credit Valley Conservation (CVC) already has those measures in place including posting of audited financial statements, minutes and agendas as well as making our meetings open to the public.

Inadequate consultation on specific amendments
CVC met with the Ministry of Environment, Conservation and Parks in November of 2019 and then attended two of the multi-stakeholder consultation sessions in the first quarter of 2020.

While there were factions present at the 2020 sessions that were clearly seeking major changes to the conservation authorities (CAs), the majority of participants at our tables were seeking only minor improvements.

There have been no published results of that consultation providing analysis of the nature of comments received through the in-person consultations and questionnaire to support claims that the kinds of changes now proposed were supported by the consultation.

The consultations did not broach the topic of, or consult specifically on the wording of, proposed legislative amendments such that the impact could be discussed. As such, we were not prepared for the specific and significant amendments proposed to the *Conservation Authorities Act* in Schedule 6. Indeed, Schedule 6 includes what we consider to be a significant 'consequential amendment' to the *Planning Act* which is not even referenced in the 'Explanatory Note' for Schedule 6.

Schedule 6 does not contain administrative, budget-related amendments but rather are significant amendments impacting public policy and for which adequate and specific public consultation has not occurred.

> ***Withdrawing Schedule 6 is necessary to allow for proper public debate about the specific proposed amendments to the Act.***

Board Composition and Accountability:
A number of amendments in Schedule 6 deal with Board governance. Of significance is the amendment to Section 14.1 Duty of Members which would *require members to act on behalf of their respective municipalities*. This amendment contradicts the fiduciary duty of a Board Member to represent the best interests of the corporation they are overseeing. Case law in corporate governance has established as the 'business judgement rule' that Board members must act in the 'best interests of the organization' (e.g. *BCE Inc. v.1976 Debenture holders*). This same rule has been applied in case law to Boards that act in the public interest (e.g. *Ottawa Humane Society v. Ontario Society for the Prevention of Cruelty to Animals* 2017).

The proposed amendment to Duty of Members is especially concerning when one considers that the Members also act as a Hearing Board on decisions/refusals of CA permits and highlights the conflict of interest of an individual municipal interest versus the broader watershed interests and in fact, the provincial interest.

Good governance dictates that the Board acts on behalf of the organization and in the public interest. The standards of care for directors are set out under the *Business Corporations Act:*

> *'Every director and officer of a corporation in exercising his or her powers and discharging his or her duties to the corporation shall, (a) act honestly and in good faith with a view to the best interests of the corporation….; and (b) exercise the care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances'*

Further, the Auditor General of Ontario recommended in their report on the Niagara Peninsula Conservation Authority that *"to ensure effective oversight of conservation authorities' activities through boards of directors, we recommend that the Ministry of the Environment, Conservation and Parks clarify board members' accountability to the conservation authority*" to which the ministry response was in agreement. Moreover, for members to act only on behalf of their municipality is counter to the intent of the *CA Act* which was to transcend political boundaries for municipalities sharing a watershed to collectively manage and protect its resources.

The proposed amendment is unworkable and needs to be restored to its previous wording in Bill 108 "Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority"

Proposed amendments to non-mandatory programs and services clauses do not respect the CA/municipal relationship:
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 through Bill 108. What has now changed is that non-mandatory programs and services (i.e. municipal programs and services and other programs and services) are subject to '*such standards and requirements as may be prescribed by provincial regulation'* and that these would prevail over the terms and conditions set out in the local agreement. The programs and services outlined in 21.1.1 are determined and paid for by the municipalities and as such our municipalities will not accept prescribed provincial direction**.**

This clause is unacceptable to our municipalities and needs to be removed.

Circumventing CA permitting will have significant consequences to public safety:
CAs are delegated natural hazard responsibilities by the Minister of Natural Resources and are responsible for representing the "Provincial Interest" on hazard matters in ***planning exercises where the Province is not involved***. In the changes to the *CA Act* made under Bill 108, CAs maintain mandated responsibility for natural hazards and as well as for source water protection, implementing the requirements of the *Clean Water Act* created after the Walkerton tragedy. ***The province is not involved at the local planning table,*** but CAs are to ensure that a project meets hazard and source protection policies and can be permitted under Section 28 of the *Conservation Authorities Act.*

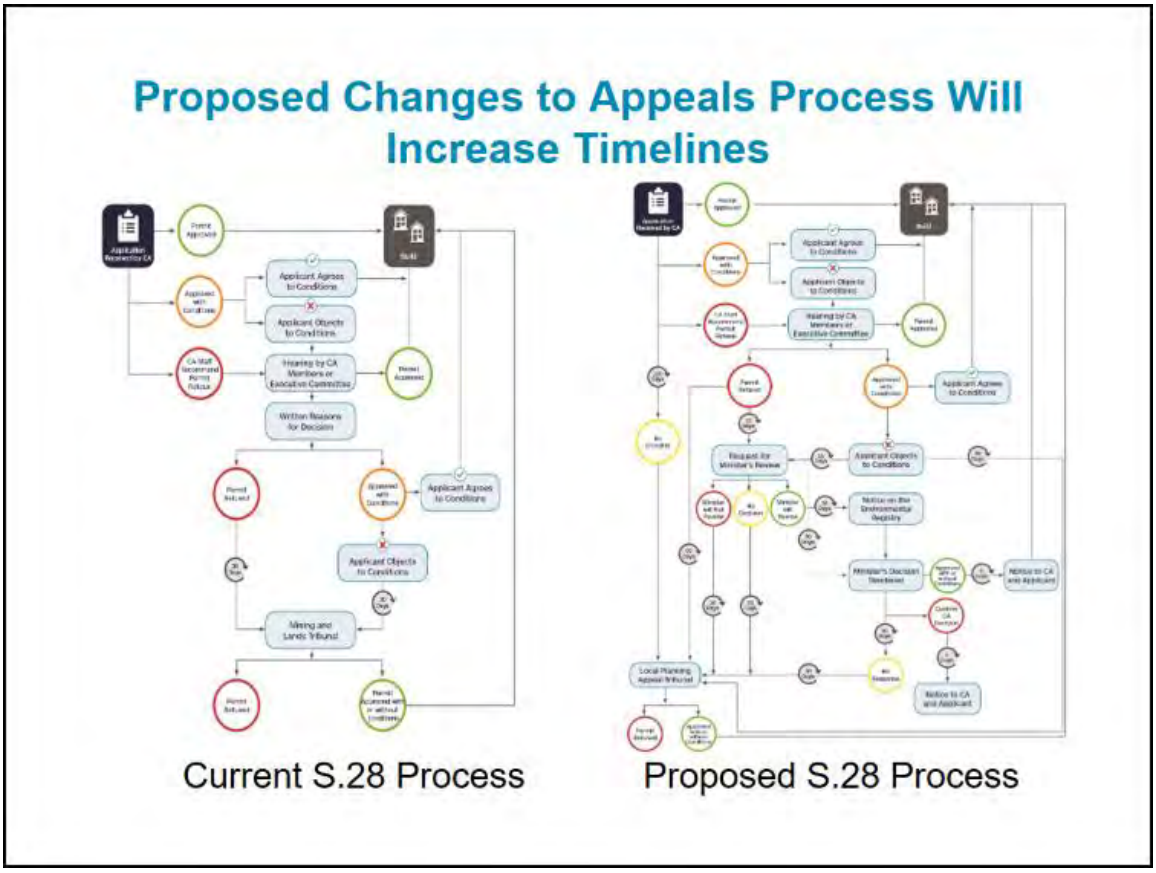
Watershed boundaries have been selected three times over political boundaries as the most logical unit for managing the issues for which we are mandated – first in 1946 to address land management issues; again in 1956 to address flood management in the wake of Hurricane Hazel and most recently in 2002 by Justice O'Connor as a result of the Walkerton inquiry.

All of these watershed events recognized that good land management results in good water management – the science of which has been proven time and again.

When carrying out our source protection and natural hazard functions, we apply watershed and science-based information, tools and decision making to inform our response.

If the development or infrastructure process is to go smoothly, a number of technical issues related to natural hazards and watershed management, as well as all the municipal issues, need to be satisfied at the front end of projects to avoid bigger issues at the tail end of a project. If the project cannot meet technical requirements it is modified, and in some circumstances heads to appeals – where CAs defend both the natural hazard and source protection requirements under our mandated responsibilities, as well as supporting municipalities in upholding the provincial policy statement for natural heritage.

Schedule 6 also significantly complicates the process by introducing two new appeal mechanisms – one directly to the Minister of Natural Resources and Forestry for a Section 28 permit and as well through the LPAT instead of the Mining and Lands Tribunal which has adjudicated Section 28 appeals for decades. The existing and proposed processes are illustrated in the following figure. It is clear that the new system is more complicated, and we expect it to take much longer given LPAT case back logs.



The proposed changes to the Act allow a proponent to appeal directly to the Minister of Natural Resources and Forestry for a Section 28 permit – which the Minister is given the rights to issue – before or after a CA has considered it from a technical perspective. Given that CAs have the tools and technical specialists that form the science based permitting decisions and are not available directly to the Minister, this reduces the Minister's decision to a political one instead of a science and engineering based one. Our communities expect a standard of care that has been in place for over 60 years. Who will accept the liability for decisions made without science or technical merit?

This power of the Minister to override CAs is being connected with the use of Ministers Zoning Orders to allow for land uses in areas of hazards which jeopardize the health and safety of communities.

***The provision to have the Minister issue permits must be removed from Schedule 6*.**

Proposed consequential amendments to the *Planning Act* will have significant consequences to public safety:
Schedule 6 removes the CA as a public body under a consequential amendment to the *Planning Act*, removing our right to appeal planning act decisions.

Conservation authority participation in the planning appeals process ensures that watershed science and data is being applied to planning and land use decisions. Without an ability to look at planning applications on a watershed basis and consider one municipality's impacts to another municipality downstream, we run the risk of the plan review process being piecemealed and ultimately the potential to exacerbate risks associated with flooding and natural hazards and for cumulative negative environmental impacts (including for water quality/drinking water). One painful example of this is the Walkerton drinking water

tragedy that occurred 20 years ago where people died and thousands more became sick. The Inquiry ultimately led to the establishment of the Drinking Water Source Protection Program which has links to many components of municipal and conservation authority business including critical *Planning Act* and building permit file reviews based on the highest standards of science available.

Further, this proposed amendment removes the conservation authorities' right to appeal *Planning Act* decisions as a landowner. Credit Valley Conservation owns over 7000 acres in the watershed. A significant portion of our lands were acquired to protect natural heritage features and functions for the greater public good. This proposal will significantly limit the authorities' ability to conserve and manage our own lands from the impact of adjacent uses. This proposed amendment to the *Planning Act* appears to be contradictory to Section 21.1 (1) 1 ii of the *Conservation Authorities Act* that indicates that an authority shall provide programs and services related to the conservation and management of lands owned or controlled by the authority, yet making us the only landowner in Ontario without the right to appeal applications that affect our lands.

The consequential amendment to the planning act must be repealed

The Proposed Amendments Will Increase Costs:

More appeals means more costs to taxpayers

New delays created through this revised regulatory system will mean more costs for developers, conservation authorities, taxpayers and the Province to manage this excessive appeal system. Conservation authority financial and staff resources will have to be redirected to working through the appeals processes, leaving less time to process applications and to undertake watershed work on mandated activities.

Compliance

Despite recent reports by both the Auditor General and the Special Advisor on Flooding which recognized that the conservation authorities lack basic tools to ensure compliance with the Act and regulation, Bill 229 proposes to repeal Section 30.4 Stop Orders. Without the proper enforcement tools, the conservation authority is unable to stop unpermitted work early, before it gets out of control, thereby increasing both the likelihood of environmental damages and financial costs for restoration and/or remediation. This will also make conservation authorities more dependent on the Provincial court process to address violations – at extreme cost to the environment and to the taxpayer.

A stop work order would assist conservation authorities in stopping work in progress such as the dumping of large-scale fill into floodplains and wetlands. Stopping illegal activities early reduces costs for the conservation authority, the municipalities, the watershed and even the accused – as the costs associated with remediating the site would be limited. This tool is necessary to stop development which poses significant threats to life, property and the watershed without having to resort to costly injunctions and prosecution.

Ill-Advised Development Costs More in the Long-Term

Conservation authorities' involvement in the planning process is a critical component of Ontario's current approach to emergency management. The first pillar of emergency management is prevention – directing people and property outside of areas of risk. The Special Advisor on Flooding noted that "[t]he main legislative tools used to support this approach include the *Planning Act* together with the Provincial Policy Statement and the *Conservation Authorities Act".* If political interference overrides CA science-based standards, it could put people in harm's way and unnecessarily cost the economy millions of dollars in property and infrastructure damages.

We ask that you repeal the removal of section 30.4 Stop Work Orders

About Credit Valley Conservation Authority:
Situated within one of the most-densely populated regions of Canada, the Credit River Watershed contains some of the most diverse landscapes in southern Ontario including the Niagara Escarpment, Greenbelt and a portion of the Oak Ridges Moraine. The Credit watershed is approximately 1000 sq km incorporating both rural municipalities of Amaranth, Erin, Mono, East Garafraxa, Halton Hills and Caledon as well as major centres of Orangeville, Brampton, Georgetown, a sliver of Oakville and Mississauga. Almost one million people call the Credit River watershed home. We operate ten conservation areas, four of which are actively staffed. The Credit River has several flood vulnerable communities, largely legacies of early settlement. Our budget is supported by the Region of Peel (96.1%), Region of Halton (2.4%) with the remaining 1.5% by the other five municipalities.

Conclusions:
The modifications in this bill will limit the effectiveness of the CA by the Province signaling from the outset of any planning application that ***no matter what a CA says, the CA cannot appeal and the CA can be circumvented in the permitting process by having the Minister issue a permit without the review of a CA***.

The Minister of Environment Conservation and Parks asks us to focus on our mandates and defined what those are under Bill 108. We cannot be mandated to undertake certain functions on behalf of the people of Ontario and not be empowered to carry them out with all the relevant and modern tools that others have. Therefore, we respectfully ask you to **remove schedule 6 from Bill 229.** Conservation authorities have been and are willing to work with the province on changes to the act and our processes that will meet the objectives of both the province and the CAs – which ultimately will benefit the health and well-being of the people of Ontario. We stand ready to work together.

We are available to discuss any of these comments with you.

Your sincerely,

[redacted]
Karen Ras
Chair

[redacted]
Tom Adams
Vice Chair

CC: Hon. Rod Phillips, Minister of Finance - rod.phillipsco@pc.ola.org
Hon. Doug Ford, Premier of Ontario - doug.fordco@pc.ola.org