Conservation Halton

November 2020

REPORT TO: **Conservation Halton Board of Directors**

REPORT NO: # CHBD 08 20 01

FROM: Hassaan Basit, President & CEO

DATE: Monday, November 16, 2020

SUBJECT: **Proposed Amendments to the CA Act and Planning Act - Bill 229**

Recommendation

WHEREAS the Province has introduced Bill 229, Protect, Support and Recover from COVID 19 Act - Schedule 6 – Conservation Authorities Act; and

WHEREAS Bill 229 introduces changes and new sections that could remove and/or significantly hinder conservation authorities' participation in and support of local planning appeal processes and their ability to protect development from natural hazards; and

WHEREAS conservation authorities protect residents, property, and local natural resources on a watershed basis by regulating development under the Conservation Authorities Act, ensuring compliance with the Regulations and engaging in reviews of applications submitted under the Planning Act; and

WHEREAS the changes allow the Minister to make decisions without consideration of local conditions, the Conservation Authority Board approved policies, watershed data and technical expertise; and

WHEREAS the Legislation suggests that the Minister will have the ability to establish standards and requirements for non-mandatory programs which are negotiated between the conservation authorities and municipalities to meet local watershed needs; and

WHEREAS CH and municipalities require a longer transition time to put in place new budgets as well as agreements for non-mandatory programs; and

WHEREAS the appointment of municipal representatives on CA Boards should be a municipal decision; and the Chair and Vice Chair of the CA Board should be duly elected; and

WHEREAS the changes to the 'Duty of Members' contradicts the fiduciary duty of a CA board member to represent the best interests of the conservation authority and its responsibility to the watershed; and

WHEREAS conservation authorities have already aligned approaches through Memorandums of Understanding with local watershed municipalities to reduce delays, avoid duplication and improve service delivery for all clients; and

WHEREAS changes to the legislation will create more red tape and costs for the conservation authorities, and their municipal partners, and cause delays in the development approval process; and

WHEREAS the province has made changes to the legislation that will limit the ability of CH to ensure compliance with the Act and our policies by not including stop work orders and modifying powers to enter property potentially resulting in more legal action; and

WHEREAS all watershed residents and municipalities value and rely on the parks, greenspaces and water resources within our jurisdiction for their health and well-being as well as CH's work to prevent and manage the impacts of flooding and other natural hazards and to ensure safe drinking water;

THEREFORE, BE IT RESOLVED

THAT the Conservation Halton Board of Directors **direct the Chair of Conservation Halton Board of Directors to convey the concerns and recommendations outlined in this report through a letter to The Premier of Ontario and the Ministers of Environment, Conservation and Parks, Natural Resources and Forestry, and Municipal Affairs and Housing.**

And

THAT the Conservation Halton Board of Directors **direct the CEO to provide a copy of this report and letter to all watershed municipalities, MPPs, MPs and other public sector stakeholders.**

Executive Summary

On April 5th, 2019 the Ministry of Environment, Conservation and Parks (MECP) posted proposals to amend the Conservation Authorities Act (CA Act) with the intent to help conservation authorities (CA) focus and deliver on their core mandate and to improve governance. The details about many of those changes was left to subsequent regulations. CH prepared submissions on the changes to the Act but it was passed in June 2019 under Bill 108 with little consultation or consideration for suggested modifications.

Since then, individual briefings with CAs were held with Minister's staff, ministry staff and local MPPs (October-November 2019), and general consultations on CAs with stakeholders were held in the winter of 2020. The results of those consultations have not been made public. CH also provided comments on the questions being posed by the ministry at these consultation sessions.

The details of many of the changes in Bill 108 were left to forthcoming regulations. Despite efforts by Conservation Ontario and individual CAs, MECP has not been willing to engage on the content of regulations.

On November 5th, 2020, the province released their budget Bill 229; Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020. Bill 229 includes amendments to 44 Acts, including Schedule 6, the Conservation Authorities Act. These new amendments are described in the Environmental Registry (ERO) posting "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".

While previously proposed changes to the act have been posted to the ERO for a period of public comment, these new changes are posted on the ERO for "information only using Section 33 of the Environmental Bill of Rights, 1993 (EBR) which 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". Nevertheless, the province is expected to conduct some direct consultations with stakeholders between now and November 23rd. The legislature is due to rise on December 10th and therefore Bill 229 is expected to be passed in the next few weeks.

Report

The proposed changes to the CA Act with comments on the effect of the change were provided by Conservation Ontario and are attached as **Appendix 1**. The changes can be categorized as:

1. Board Governance
2. Objects, Powers and Duties
3. Permitting
4. Land Use Planning
5. Enforcement
6. Other

Key changes to the act under each of these categories is discussed below.

1. Board Governance

Key Changes

a. 14(1.1) Mandate that the municipal councillors appointed by a municipality as members of a conservation authority be selected from that municipality's own councillors only
b. Replace the current discretion to set other "such additional requirements regarding the composition of the authority and the qualification of members" in a regulation (CA Act, s14(4)) with the discretion of the Minister to appoint a member "as a representative of the agricultural sector" (new CA Act provision 14(4))
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, particularly, members appointed by participating municipalities, "generally act on behalf of their respective municipalities" (new CA Act provision 14.1)
d. Limit the term of the Chair and Vice Chair of the Board of Directors to one year and to no more than two consecutive terms, and require the Chair and Vice Chair to rotate every two years between different municipalities (new CA Act provision 17(1.1))

Implications:

CH remains supportive of any changes made to enhance the transparency and accountability of CAs. This reflects the current practice and level of service that CH already provides to our member

municipalities, partners, customers and the public. There are several amendments that require posting of documents, board agendas and minutes, financial audits and standard accounting practices that are already undertaken at CH. We agree with those requirements.

The direction in clause 14.1 that members generally act on behalf of their respective municipalities is concerning. 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".

This change is contrary to the fiduciary responsibilities of a corporate body and undermines the stated purpose of conservation authorities to address conservation matters which transcend municipal boundaries.

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.

Recommendations:

i. Repeal the amendment to Section 14.1 "Duty of Members".

2. Objects, Powers and Duties

Key Changes:

a. 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))
b. 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 funded by municipal levy, would require all municipalities' agreement).

Implications:

The modifications to the objects should not materially change the way CH operates. However, since the regulations which detail the nature and scope of the mandatory programs and services have not yet been provided, we are unable to assess the real implications. Programs that enable CH to study the watershed, provide watershed planning, carry out restoration activities and deliver education programs may become unviable if each watershed municipality independently decides to periodically opt in/out.

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 for these programs are already developed with watershed municipalities and funding is negotiated annually through the budget process. CH has also been working on prescribing service standards and outcomes for each of these programs to ensure that such programs continue to evolve and offer good value and deliver critical science and insights to our partners. There is no provincial funding or support in these categories, although various provincial ministries seek data and reports from CH to further their mandates. This additional level of bureaucracy and oversight is unnecessary and duplicates effort.

Recommendations:

i. Repeal/amend all clauses and amendments relating to the ability for the Minister to prescribe standards and requirements for non-mandatory programs.

3. Permitting

Key Changes:

a. Authorizes 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).
b. Allows an applicant, within 15 days of a conservation authority issuing a permit with conditions or denying a permit, to request the minister to review the conservation authority's decision and allows the applicant to appeal directly to LPAT where the minister fails to make a decision within 30 days
c. Where the minister has taken over a permit application or is reviewing a permit decision by a conservation authority, allows an applicant to appeal directly to LPAT where the minister fails to make a decision within 90 days.
d. 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.
e. 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.

Implications:

Changes under section 28 will jeopardize public safety and environmental protections. The changes will limit a CA's ability to undertake non-partisan, transparent, and technically sound decision making and will allow individuals to circumvent the technical CA permitting process. The changes will result in more red tape, delays in approvals, increased legal costs and more litigious processes.

If the Minister issues an order to take over and decide on a permit application, or the application is decided in front the LPAT, it is unclear how the application will be evaluated. Decisions would be made without regard for local conditions, watershed context, or CA Board of Directors' approved regulatory policies. The proposed process lacks transparency. Without the non-partisan and technical expertise of CAs (i.e., water resources engineering, environmental planning and ecological expertise), or in the absence of a complete, technically sound permit submission for a development proposal, it is unclear how risks to life, property or the environment will be evaluated. If the Minister issues a permit before a CA has decided on a file, the process risk losing all transparency and becoming politicized. Decisions

will lack consistency with CA policies and procedures and may result in precedent-setting decisions, cumulative impacts, risk to public safety and property damage and lead to future management challenges.

The proposed 120-day timeline for a CA to make a decision does not acknowledge the efforts that CAs have made to find efficiencies and streamline their permit review processes. In 2019, CH issued 95% of minor permits and 98% of major permits within 30 days and 90 days respectively. The proposed timeframe also fails to recognize the 'Client Service Standards for Conservation Authority Plan and Permit Review' that was adopted CA-wide and developed by CO and CAs in collaboration with the province, AMO, landowners groups and the building industry. This document establishes industry standards and procedures to ensure that the CA plan and permit review processes are transparent, predictable and fair.

The CA decision timeframe is also problematic in that it oversimplifies the permitting process and there is no ability for a CA to "stop the clock" when an application is in the applicant's hands. This typically happens when insufficient technical information or rationale is provided by applicants or additional technical information is required to enable adequate analysis by staff to determine if Board-approved policies are being met, and a decision can be rendered. Applicants can intentionally "run down the clock" and put the decision-making power in the hands of the Minister or LPAT. If legislative timelines are to be imposed, CAs must have the ability to "stop the clock" to better reflect actual time that an application is in for CA review. CH has been openly publishing service standards for the past four years and meets regularly with developer groups and municipalities to ensure our fees, process and service standards are transparent and consistent.

Finally, the proposed changes will result in increased legal costs and these costs will be borne by taxpayers, municipalities (municipal levy), and/or all permit applicants. Instead of spending time processing permit applications, more CA staff time would go to preparing for and attending unnecessary LPAT hearings and will lead to a more burdensome, litigious and adversarial process. We feel these changes will undo all the hard work we have done over the past four years. Service delivery will suffer.

Individuals have been able to access the Mining and Lands Tribunal to adjudicate decisions of the conservation authority at no cost to them, unless they chose to provide support for their application with technical experts and/or legal counsel. The LPAT has a filing fee which may exceed the cost of the permit for individuals. While the development community may be familiar with LPAT, the Mining and Lands Tribunal has the history and experience in adjudicating *Conservation Authorities Act* cases. One can expect delays at LPAT and potentially decisions that are inconsistently determined and applied.

<u>Recommendations:</u>

i. Repeal/amend all clauses and amendments that would authorize the Minister review permits, make permit decisions or suspend conservation authorities' abilities to issue permits.

ii. 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.

iii. Alternatively, amend to specify in the legislation that the appeal for a non-decision after 120 days can only be made when the conservation authority has deemed the application to be

complete (similar to provisions contained within the Planning Act) and that there is an ability to "stop the clock" when an application is not in the hands of the CA.

iv. Amend to retain Mining and Lands Tribunal as the appeal body.

4. Land Use Planning

Key Changes:

a. The Schedule also proposes an amendment to the Planning *Act* to remove conservation authorities as public bodies by adding them 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 with no right to appeal municipal planning decisions or be party to an LPAT hearing.

Implications:

Changes to section 2(1) of the Planning Act specifically remove conservation authorities as public bodies under the Act. By doing so, our ability to appeal municipal planning decisions or to be a party to a planning appeal is lost and we will no longer be able to participate in negotiated settlements. This could result in planning decisions that fail to consider hazard risks and for which CA permits cannot be approved. Planning approvals should only be issued for development that can be permitted under CA regulations.

If CAs are unable to appeal land use decisions that conflict with Section 3.1 of the Provincial Policy Statement (PPS) or do not comply with CA regulatory policies, the Province and municipalities would be responsible for ensuring that people and property are protected from natural hazards. This tool is a necessary but seldom used tool in our toolbox. When necessary, CH attends LPAT hearings to ensure that policies and development conditions are imposed to reduce flood risks and to ensure mitigation and setbacks are in place to address other natural hazards such as erosion hazards or along the Lake Ontario shoreline. Extreme weather events and changing climate increase the importance of our role in the planning process.

The 2019 Provincial Flood Advisor's report noted the important role that CAs play in the land use planning process. The main legislative tools used to manage flood risk, the report states, include the *Planning Act* together with the 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. Similarly, the Made in Ontario Environment Plan asserts that within the context of environmental planning, conservation authorities' core mandate is protection from natural hazards and conserving natural resources.

This change may also remove our right to appeal planning decisions as a landowner. This is of significant concern as CH owns and manages over 10,000 acres of land for habitat protection, community recreation and flood hazard management.

Furthermore, in certain circumstances, should an LPAT decision be contrary to conservation authority regulations and policies, and a subsequent permit application is denied by the conservation authority, a second appeal to LPAT is possible, exposing LPAT members to potential conflict of interest concerns.

Recommendation:

i. Repeal proposed change to Planning Act or limit a CA's ability to appeal planning decisions to those related to natural hazards.

ii. Clarify intent of Planning Act changes with respect to CAs as a landowner.

5. Regulatory Enforcement

Key Changes:

a. Eliminated the (not yet proclaimed) powers for officers appointed by conservation authorities to issue stop orders (CA Act provision 30.4)
b. Clarified conditions for officers appointed by conservation authorities to enter lands without a warrant for the purposes of:
    - determining whether to issue a permit (amendment to unproclaimed CA Act provision 30.2(1))
    - ensuring compliance with the prohibitions, regulations, or permit conditions, only when the officer has "reasonable grounds to believe that a contravention" (new CA Act provision 30.2(1.1)).

Implications of Changes:

Changes to section 30.4 of the Conservation Authorities Act removes the power of CAs to issue stop orders to persons carrying out activities that could contravene or are contravening the Act. This tool was recently added to the legislation (2019), after years of debate, to enable CAs to immediately stop activities which could cause high risk to life and property and environmental damage and allow time for a negotiated resolution of the matter. The removal of this tool and narrowing of the powers of entry (Sect. 28(20) and 30.2) curtails a CAs ability to "prevent or reduce the effects or risks" associated with illegal and egregious activities, such as illegal placement of fill, wetland destruction, etc., and puts the onus on an authority to engage in a time consuming and costly injunction process. It shifts the legal instrument to another agency and increases administrative burden on both conservation authority, municipality or other agency.

Recommendations:

i. Maintain the ability for stop work orders and reinstate the powers of entry for purposes of permitting and compliance.

6. Other

Key Changes:

a. Requirement for a transition plan for making the changes to the non-mandatory programs and services and developing agreements or MOUs with partners, including provincial ministries.

Comments:

In a briefing with Ministry staff, it was noted that the expected transition period for the implementation of MOUs would be one year, such that the changes would take effect January 2022 budget year.

It is CH's experience with existing MOUs that they can take up to two years to finalize given that there may be multiple municipalities and CA departments involved.

Given that the CH budget is typically completed by May of the previous year to meet Region of Halton timelines, this leaves a limited window to:

- change our budget model;
- inventory all programs and determine apportionment and benefits to individual municipalities
- assess all programs and services against the regulations
- enter discussions with all our municipalities (up to 11);
- draft budgets for the selected programs and services
- substantially complete negotiations.

This transition period is unreasonable, as municipalities are unlikely to meet this timeframe given continued COVID-19 restrictions, workloads, and that this may not be their implementation priority. Depending on the municipality and the type of agreements they may also require Council approval.

Recommendation:

i. That the transition be effective no earlier than for fiscal year 2023 (January).

Appendix 2 provides a letter of comments to the Premier as well as Ministers of Environment Conservation and Parks, Natural Resources and Forestry, Municipal Affairs and Housing and Finance. Upon approval by the board it is our intent to submit it to the name's parties for their consideration. It will also be provided to watershed MPPs, MPs, municipalities and other public sector stakeholders.

COMMUNICATIONS PLAN:

CH has prepared a press release on some of the more troubling aspects of the proposed changes to the Act. We will be communicating the implications of these changes to municipal members, the public and other partners.

We will be distributing key messages on various social media platforms.

FINANCIAL IMPLICATIONS:

The changes outlined in the act have the potential to fundamentally change the CA budget as well as limit revenue recovery from planning and permitting activities. Without the regulations we are unable to assess the full impact.

Signed & respectfully submitted:

Hassaan Basit
President & CEO/ Secretary-Treasurer

FOR QUESTIONS ON CONTENT: Hassaan Basit, hbasit@hrca.on.ca, 905 338 1158 x 2270

Appendix 1

Conservation Ontario's Summary of Proposed Amendments to the *Conservation Authorities Act* & *Planning Act* through Bill 229 and Implications

Description of Proposed Amendments	Implications to Conservation Authorities
Existing aboriginal or treaty rights Section 1 is amended to include a non-abrogation clause with respect to aboriginal and treaty rights.	No concern.
Members of authority 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.	There may be a municipal concern. 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. There may be a municipal concern. 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. There may be a municipal concern. 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. Significant concern. 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.

Description of Proposed Amendments	Implications to Conservation Authorities
Meetings of authorities 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.	No concern. 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.
Chair/vice-chair 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.	There may be a municipal concern. Municipal Councillor interest and availability regarding this requirement is to be determined.
Objects 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.	No concern. 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”.
Powers of authorities 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.	No concern
Programs and Services 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	Significant concern. 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

Description of Proposed Amendments	Implications to Conservation Authorities
21.1.1 allows authorities to enter into agreements with participating municipalities to provide programs and 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.	programs and services are subject to such standards and requirements 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.
Agreements for 'other programs and services' 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. *All programs and services must be provided in accordance with any prescribed standards and requirements. * *NOTE- this new addition is addressed as a significant concern under Programs and Services above.*	Potential concern. 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.
Fees for programs and services 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	Some concern. 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.

Description of Proposed Amendments	Implications to Conservation Authorities
matter directly to the Tribunal if the authority fails to render a decision within 30 days.	
Provincial oversight 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 Minister may also recommend that the Lieutenant Governor in Council appoint an administrator to take over the control and operations of the authority.	No concern. This appears to be an expansion of powers previously provided to the Minister.
Ministerial Review of Permit Decisions 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.	Significant concern. 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. 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.
Minister's Order Re. S. 28 Permit 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,	Significant concern. These powers appear to be similar to a Minister Zoning Order provided for under the *Planning Act.* Should the Minister decide to use these powers it is appears that the CA may

Description of Proposed Amendments	Implications to Conservation Authorities
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.	be required to ensure compliance with the Minister's permit.
Cancellation of Permits 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.	Some concern. 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.
Entry Without Warrant, Permit Application 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.	Some concern. 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 and 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.
Entry Without Warrant, Compliance 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.	Significant/Some concern. 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).
Stop (work) Order 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	Significant concern. This is an important enforcement tool that conservation authorities have been requesting for years. Without this tool, conservation authorities must obtain an injunction

Description of Proposed Amendments	Implications to Conservation Authorities
carrying on activities that could contravene or are contravening the Act, is repealed.	to stop unauthorized activities which represents a significant cost to the taxpayers.
Regulations Made by Minister and LGIC The regulation making authority in section 40 is re-enacted to reflect amendments in the Schedule.	No concern.
Throughout the legislation all references to the Mining and Lands Commissioner has been replaced with the Local Planning Appeal Tribunal	Some concern. 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.
Planning Act – Exclusion of CAs as Public Body Subsection 1(2) of the *Planning Act* 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.	Significant concern. There is lack of clarity on the implications of this amendment. The intent of the amendment is to remove from conservation authorities the ability to appeal to LPAT any *Planning Act* 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.

Appendix 2

Draft Letter from the Chair of the Conservation Halton Board of Directors regarding concerns related to the proposed Amendments to the CA Act and Planning Act - Bill 229- attached to this report.