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November 30, 2020

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

Dear Chair Sandu and Committee Members:

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

### **Schedule 6, *Conservation Authorities Act***

On behalf of the Association of Municipalities of Ontario (AMO) and our members, we would raise a growing number of serious concerns regarding changes introduced in Schedule 6.

While there was preliminary consultation in general terms about updating certain aspects of the *Conservation Authorities Act*, these specific changes were not subject to greater consultation and do not reflect what the majority of municipal governments were seeking. In fact, many municipal governments have identified several of these proposed amendments have the potential to create a breakdown in conservation authority (CA) governance and stymie operations so that the mandate and goals of conservation authorities may be frustrated.

### **Conflict in Law (Duties of Members Clause 14.1 of the Act, Section 3 of Schedule 6):**

If approved as is, this draft legislation may create a conflict between the fiduciary duty of all board members to put the interest of the conservation authority first, and the proposed amendment requiring board members to act on behalf of their municipal councils. This governance change on how CA Board members are to conduct themselves and whose interests they are representing is a fundamental administrative law change. It may cause more conflict on the board as the fiduciary duty to work together in a common direction is no longer clear and may decrease the ability of the board to manage its role and responsibility effectively.

It also raises the question of whether each municipal representative would need to get local council approval on agenda items prior to voting at the conservation authority (CA) Board. Finally, the core basis for a conservation authority is that there are environmental matters that need to be dealt with across jurisdictions in a holistic watershed manner, rather than in the distinct interest of individual municipal councils.

**CA Board Composition and Terms of Chair/Vice Chair (Subclauses within Clauses 14 and 17 of the Act, Sections 2 and 5 Schedule 6):**

Municipal council members have raised concerns about the proposed 'up to two-year' term of the chair/vice chair which we understand is to be taken in rotation. While there is agreement one municipality or individual should not dominate the chair indefinitely, a restriction on the number of multi-year terms would be preferable. This way, the CA Board members could choose their chair based on skill, capacity, and their demonstrated fairness.

Further, smaller councils have indicated that the ability to appoint non-council members to CA Boards has been helpful. In some places, there are a large number of committee obligations for council members, and they simply do not have the person hours to be at all the boards and committees they should attend. Having the option of appointing a non-council member to a CA has been one way to relieve this problem.

There is reference to the Minister being able to over-ride local memoranda of understanding between municipal governments and conservation authorities for locally desired services. Although this ministerial ability may never be used, its existence causes concern. This clause should be removed as these are local agreements about local matters and paid for locally.

Where CAs encompass rural lands and agriculture is prominent, generally there are CA Board members who are also farmers, so agriculture is represented. In the areas where additional agricultural insights are needed, the best practice is to have an agricultural advisory committee reporting to the CA Board. If the intent is to have municipal influence over the CA Board, it is unclear why the addition of a non-municipal representative is proposed rather than striking agricultural advisory committees.

**Fees (Subsection 21.2 of the Act, Schedule 6 Section 11):**

AMO supports clearly defensible fees and that they should be available publicly. Conservation Authorities have made improvements in this regard over the past couple of years. We are concerned that, under the proposed amendments, third parties would be able to appeal or adjust those fees. The CA Board should be able to set fees that reflect the value of the service. If fees are not fully realized, because of third party appeals, then the municipal contributions may increase. This seems to go against the thrust of protecting municipal interests and managing financial costs.

## **Development Approvals (Various changes to Section 28 and Section 30.4 of the Act, Schedule 6 Sections 16 ,17 and 20):**

There are a number of changes to development approvals that are also creating questions. While we appreciate the One Window approach for the province to manage its own interests, CAs have several roles in the development approval process. CAs normally provide advice to municipal governments on how specific development applications are impacted by the Provincial Policy Statement. Should decisions of councils on applications be appealed, municipal governments need to be able to call on CA staff as their witnesses at the Local Planning Appeal Tribunal. While removing CAs as a public body may assist with one of the roles CAs take in the development process, it may frustrate other roles.

It is vital that development decisions be based on good local science and data. Some of the proposed amendments have raised questions about the potential to circumvent this important lens. In times when people need to abide by the limitations on a property's uses due to erosion or flooding hazards, we must do all we can to rely on science and ensure we are not facilitating losses or damages to properties. It is increasingly difficult to find insurance for certain properties. In some cases, emergency services cannot attend properties in storm conditions. Local science-based development approvals and permits are essential to protect people and property.

The removal of the unproclaimed "stop work order" clause is also of concern. Illegal dumping of soils is a significant problem. This clause was intended to harmonize conservation authority and municipal by-laws and powers to close loopholes. While great strides are being made by the Ministry of Environment, Conservation and Parks on the management of excess soils, local ability to enforce is needed. Both municipalities and CAs need this power to allow quick action on this illegal activity without adding administrative burden to either.

### **Other:**

There are a number of changes which bring about more transparency and bring administrative practices to current standards which are supported by AMO. These include: Section 4, amending Clause 15 of the Act to make public minutes and agendas, Sections 7 and 8, amending Clauses 20 and 21 of the Act to harmonize clauses in the Act and Section 13 which adds Ministerial oversight (Clause 23.2 of the Act).

### **Recommendation:**

AMO and our members are seeking clarity on these matters which will take time. At the same time, we are mindful that the Schedule is a part of the Budget Bill, which we know must proceed swiftly.

- Our preferred option would be to withdraw Schedule 6 from Bill 229 and work on these matters separately.
- If withdrawal of Schedule 6 is not possible, we ask that the proclamation of Schedule 6 is delayed until these matters can be clarified and any operational problems can be resolved.

Any changes to the *Conservation Authorities Act* are very important to municipal governments. Municipal governments **are the key funders** of Conservation Authorities. Municipal governments and conservation authorities both are open to meeting with the government to reach a workable outcome. Over the past number of years, tremendous effort has been put forward by municipal governments to find a collective path forward that refines certain matters and bolsters the ability to protect the environment in a meaningful way. Municipalities were looking for needed refinements, not this proposed wholesale change.

We need a system that is workable, not one that attempts accommodation to the extent it is ineffective. We understand that 'one size does not fit all'. Changes must create a framework that allows for local circumstances and avoids a structure which frustrates core business.

At a time when the public is very concerned about climate change and increased flooding and storm events, there are a substantial number of questions and concerns are coming from municipal governments about implementing these changes effectively. It is critical that we make sure that the changes to the *Conservation Authorities Act* are a positive step forward, without unintended consequences.

Sincerely,



Graydon Smith  
AMO President  
Mayor of the Town of Bracebridge

cc. The Honourable Steve Clark, Minister, Municipal Affairs and Housing  
The Honourable Jeff Yurek, Minister, Environment, Conservation and Parks