

January 21, 2020

# INFORMATION REPORT

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

# Implications for the Niagara Escarpment Planning Program

# RECOMMENDATION:

That the Commission:

* Receive this report for information.

# REPORT PURPOSE:

To update the Commission on legislative changes made through the passing of Bill 229 – *Protect, Support, and Recover from COVID-19 Act*, specifically changes made through Schedule 6 and its impact on Niagara Escarpment Commission (NEC) partner agencies. Bill 229 was tabled as part of the Province’s omnibus budget thus there was, and is, no ability for the NEC to provide comments on the proposed changes.

# BACKGROUND

Bill 229, Protect, Support, and Recover from COVID-19 Act - 2020 Status: Royal Assent – December 8, 2020 (received)

Third Reading – December 8, 2020 (carried on division) Second Reading – November 23, 2020 (carried on division) First Reading – November 5, 2020 (carried)

## Acts Amended:

Omnibus Bills commonly make changes to many Acts; Bill 229 amended 99 separate Acts. No changes were made to the *Niagara Escarpment Planning and Development Act* (NEPDA).

# DISCUSSION:

The legislative changes proposed through the passing of Bill 229, *Protect, Support, and Recover from COVID-19 Act*, 2020 are broad and target a number of Acts. The focus of this review is on Schedule 6, which included number of changes to the *Conservation Authorities Act*.

Although no changes are proposed to the NEPDA through Bill 229, Conservation Authorities are important partners in the delivery of the Niagara Escarpment Plan program and in Ontario land use planning in general. Changes to how conservation authorities operate, and how their agency is defined in the land use planning processes of Ontario can have an impact on how the NEC delivers its programming.

# Conservation Authorities Act (CAA)

## Relationship to the NEPDA

NEC Development Permits and Plan Amendments are routinely circulated to conservation authorities for comment and review. Beyond providing comment and technical expertise on issues pertaining to natural heritage, water resources, and hazards, many conservation authorities are involved in supporting the Niagara Escarpment Biosphere program and operationally through managing and maintaining many parks with the NEPOSS. It is noted that currently, the NEC has not entered into any memorandums of understanding (MoUs) with conservation authorities (CAs) to formalize this partnership.

## Major Changes

* Section 14 of the CAA has been amended to require that at least 70 percent of conservation authority members (i.e., board members) appointed by participating municipalities are municipal councillors. An additional member may be appointed as a representative of the agricultural sector; this representative would have limited voting rights on the board.
* Section 20 of the CAA has been amended substantially to redefine the role of CAs within the development review process. The objects of a CA have been limited to the programs and services permitted under Sections 21.1, 21.1.1, and 21.1.2 of the CAA which are generally limited to the following:
  + Programs or services that meet descriptions that have been prescribed in the regulations:
    - Natural hazard risks;
    - Programs and services related to land owned and managed by the CA;
    - Programs and services related to the CAs’ obligations under the

Clean Water Act.

* + - Programs and services related to the CAs’ duties, functions, and responsibilities under an Act prescribed by the regulations.
  + Municipal programs and services that the CA agrees to provide through an MoU.
* Section 21.1.2 now requires that an MoU be in place should any municipal funding be required to recover costs of services provided through the MoU. A Transition Plan is also required to be developed by the CA in preparation for entering into such agreements.
* Section 21.1.2 now provides an applicant the ability to appeal a fee that has been charged for a program or service. A CA would have 30 days to consider the appeal before an applicant could further appeal the fee to the Local Planning and Appeals Tribunal (LPAT).
* Sections 23.2 and 23.3 have been added to the CAA and permit the Minister (Natural Resources and Forestry) to take certain actions and to recommend the Lieutenant Governor in Council appoint an administer to take control of the operations of a CA should an investigative report reveal inconsistencies in CA operations.
* Section 28.1 (8) of the CAA has been repealed and replaced with language that would permit an applicant to appeal a CA’s decision on a Permit to the LPAT should the Minister refuse to conduct such a review. Additionally, a provision has been incorporated to permit an applicant to appeal a non-decision within 120 days of an application being submitted to the CA.
* Section 28.0.1 has been added to the CAA to permit development to be carried out in the jurisdiction of a CA, without CA approval, if a Minister’s Zoning Order (MZO) has been made by the Minister (Municipal Affairs and Housing) under Section 47 of the *Planning Act* authorizing such development.
* Section 28.1.1 has been added to the CAA to allow the Minister (Natural Resources and Forestry) to order a CA to not issue a permit that would be prohibited under Section 28 of the CAA; the Minister may issue the Permit instead of the CA in this circumstance.
* Section 28.3 of the CAA has been amended to allow the appeal of a decision of a CA to cancel or alter a permit.
* Section 30.2 of the CAA has been amended to clarify the circumstance in which Conservation Authority Officers may issue stop work orders.
* Section 30.4 of the CAA has been amended to update and clarify in what circumstances an officer may issue stop work orders for contraventions of the CAA.

## Impact to Niagara Escarpment Program.

No provisions of the NEPDA are set to be altered or repealed through Bill 229, thus there is limited direct impact to the NEP program. However; the following aspects of the changes are of current concern to NEC Staff.

## Development Review Services

As much of the lands under NEC Development Control have important characteristics associated with key natural heritage features, key hydrologic features, hazards, and slopes, proposals for development through Development Permit Applications and Plan Amendments are routinely circulated to CAs for comment. It is noted that this is done without formal MoUs in place to dictate the extent of that service, or the means by

which costs are recouped by the CA through the process. The changes to the CAA suggest that MoUs, including transition plans where fees are to be charged, must be developed to facilitate the provision of that service. However, the changes made to the CAA are specific to services being provided to municipalities and do not mention any requirements for how a CA might provide a service to a Provincial agency such as the NEC. As agreements between CAs and municipalities become more formalized there is a risk that municipal applications under the *Planning Act* circulated to CAs for review will be given priority over those circulated to the CA under the *NEPDA.*

Additionally, there is a risk that CAs might interpret the changes to the CAA under Section 21.1.2 as *requiring* an MoU be in place prior to commenting on any development application under any Act where fees will be required to recoup costs.

# NEPOSS & Niagara Escarpment Biosphere Program (NEB)

NEC Staff notes that CAs are important partners in the work that is undertaken through Part 3 – Niagara Escarpment Parks and Open Space System (NEPOSS) of the NEP (2017) as well as the grass-roots organizational work carried out through the NEB program. With current staffing and operational levels, it has been challenging to facilitate involvement of CAs in the NEPOSS park management/master planning exercises required by Part 3 of the NEP (2017) for all parks within the NEPOSS system. It seems that the changes applied through Section 21.1 (1) ii of the CAA will permit CAs to continue to operate and manage lands within their ownership, including parks with NEPOSS designations; however there is a risk that CAs will limit their participation in the preparation of Park Master/Management Plans if that work is not deemed to be in scope with Section 21.1 (1) ii of the CAA and where it may no longer be operationally feasible for a CA.

# SUMMARY & CONCLUSION:

There is and was no opportunity for NEC Staff to comment on the proposed changes to the CAA through Bill 229 since the Legislature and Lieutenant-Governor-in-Council made the changes through an Omnibus budgetary bill that requires no public or agency consultation. Thus, there was no corresponding Environmental Bill of Rights posting as is generally required when legislative changes are proposed to an Act or a series of Acts.

NEC Staff will continue to track how the changes to the CAA evolve and how they are being interpreted by local, regional, and Provincial planning authorities across Ontario and within the Niagara Escarpment Plan Area. There is no intention on the part of NEC Staff to cease viewing CAs as important partner agencies in the work to maintain, enhance, and restore the Escarpment environment. Opportunities to enter in formalized MoUs or similar agreements for planning review and technical services will continue to be explored to ensure that the historically good relationship between the NEC and the eight (8) CAs within the NEP area is maintained in the future.

# RECOMMENDATION:

That the Commission receives this report for information.

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