

Report

Report No. DS2021-095	To: Council	Prepared By: Andria Leigh, Director, Development Services
Meeting Date: June 23, 2021	Subject: Proposed Changes to the Conservation Authorities Act –ERO Posting 019-2986	Motion # _____
Roll #:		R.M.S. File #:

Recommendation(s):	Requires Action <input checked="" type="checkbox"/>	For Information Only <input type="checkbox"/>
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It is recommended:

1. That Report No. DS2021-095 be received and adopted; and
2. That Council authorize Planning staff to make a submission through the Environmental Registry (019-2986) as generally outlined in Report DS2021-095 as the Township’s submission in addition to any other comments received from Council.

Background/Analysis:

The Ministry of Environment, Conservation, and Parks (MOECP) is currently consulting on proposed regulations (ERO Posting 019-2986 –refer to Schedule 1) that “focus Conservation Authorities on their core mandate by prescribing mandatory programs and services they must provide, give municipalities greater control over what Conservation Authority programs and services they will fund, consolidate “Conservation Authority” regulations and to require community advisory boards.”

This is the first of two phases of regulatory amendments to implement the legislative changes to the Conservation Authorities Act made through the passing of Bill 108 in 2019 and Bill 229 in 2020.

Bill 108 that received Royal Assent on June 6, 2019 identified the key programs and services conservation authorities are mandated to provide within their respective jurisdictions related to the risk of natural hazards including risk of flooding and other natural hazards.

Bill 229 that received Royal Assent on December 8, 2020 further defined the role of conservation authorities through:

- Mandating conservation authorities to issue permits where the Province has issued Ministerial Zoning Orders (MZO's)
- Enabling the Province to issue permits and allowing the applicant and Province to appeal these permits to the OLT
- Indicating the term "Hazardous Lands" to be defined by Regulation
- Limiting the conservation authorities role in the municipal planning process by excluding them as a "Public Body" under the Planning Act, removing their right to appeal planning applications to the Ontario Lands Tribunal (OLT)

On May 13, 2021, the Provincial Government posted on the Environmental Registry of Ontario (ERO) Consultation 091-2986. The ERO Posting and Consultation Guide are included as Schedules 1 and 2 of this Report.

This first phase of regulations included in this ERO posting considers:

- The mandatory programs and services to be delivered by conservation authorities
- The proposed agreements that may be required with participating municipalities to fund non-mandatory programs and services through a municipal levy;
- The transition period to establish those agreements
- The requirement to establish community advisory boards; and
- The Minister's Section 29 regulation relating to conservation authority operation and management of lands owned by the authority

The second phase of regulation, anticipated in the next few months following the finalization of the first phase regulations, will include consultation on municipal levies governing CA capital and operating expenses for mandatory program and services and for non-mandatory programs and services under municipal agreement. In addition, this will set out the provisions pertaining to municipal appeals of CA municipal levy apportionments, including who would hear those appeals. And finally this next phase of consultation will include the standards and requirements for the delivery of non-mandatory program and services, once they are confirmed through the first phase consultations.

The Consultation Guide and ERO Posting (Schedules 1 and 2 to this report) are divided into three sections:

Part One: Programs and Services Provided by Conservation Authorities (Mandatory and Non-Mandatory Programs and Services)

Part Two: Governance and Oversight of Conservation Authorities (Regulation requiring "Community" Advisory Boards)

Part Three: Other Regulatory matters (Section 29 Minister's regulation)

The regulations propose what programs and services that the Conservation Authorities in Ontario provide are considered Mandatory and which are considered Non-Mandatory.

Part One: Programs and Services Provided by Conservation Authorities (Mandatory and Non-Mandatory Programs and Services)

Mandatory Services (mandated by the Province) must be delivered and may be funded by provincial grants, user fees (conservation authority self-generated revenue), or municipal levy (with or without an agreement in place).

These programs include:

(a) Natural Hazards

- Section 28 Permits including enforcement
- Land Use Plan Input and Review related to the Natural hazards Policies of the Provincial Policy statement 2020
- Flood Forecasting and Warning
- Maintenance and Operation of Flood/Erosion Infrastructure
- Low Water Monitoring
- Communication, public awareness and education regarding the risk of natural hazards
- Data collection to delineate and map hazards areas

(b) Management of Conservation Authority Owned lands

- Administration of Section 29 Minister's regulation of "Conservation Areas" or lands including setting out fees, permits and enforcement activities
- Development of policies regarding acquisition and disposition of lands
- Development of strategies/management plan for Conservation Authority owned lands

(c) Programs and Services related to Source Water Protection responsibilities under the Clean Water Act, 2006

- Administration of Source Protection Committee
- Maintaining and providing access to source protection data and information
- Implementing Source Protection Plan policies and amending as necessary
- Tracking and reporting on progress of Source Protection Plans

(d) LSRCA Responsibilities under the Lake Simcoe Protection Act

- The Act is implemented through the Lake Simcoe protection Plan (LSPP) which has two sets of policies "Designated Policies (DP)" and "Have Regard to" policies. The mandatory programs and services related to the LSPP are detailed further through pages 13-15 of the Consultation Guide (Schedule 2 to this report). Clarity through the ERO submission will be sought to confirm whether commenting on other matters such as natural heritage protection from a land use planning perspective is considered

mandatory, similar to the land use planning for natural hazards which are considered mandatory.

- (e) Programs and Services Prescribed in Regulation (including Provincial Water Quality and Quantity Monitoring, and Development of a Core Watershed-Based Resource Management Strategy)
- To be prescribed in regulation within one year after the end of the transition period

Municipal levies may be required to fund the implementation of these mandatory programs and services. In order to successfully deliver the above noted program and services there are ongoing expenses that enable the Conservation Authority to effectively deliver these programs and services. The organizational costs include administrative, operating and capital costs that are not directly related to the delivery of any specific program or service but are the overhead and support costs for the conservation authority. The provincial government is proposing to address these ongoing organizational costs of conservation authorities that are not directly related to the delivery of any specific program or service through the un-proclaimed provision in the Conservation Authorities Act that enables an authority to establish a fixed minimal amount as the portion of the CA's operating expenses that a particular municipality is required to pay each year. This proposal will be consulted on in the Phase 2 regulation.

Non-Mandatory Programs and Services can be delivered but only if they are funded through grants and/or CA generated income. If these programs are not able to be funded in whole or in part by these revenue sources, the programs can be funded through municipal levies which must be in place through associated Memorandums of Understanding (MOU's) or service agreements between the Conservation Authority and partner municipality. The Municipality would have the option of whether to fund any programs or services over and above those that are categorized as Mandatory through the regulation.

These programs or services would include:

- (a) Programs and Services on Behalf of a Municipality
- These would be over and above the "Mandatory programs and services identified above. This could include, as discussed above request for input on land use planning matters beyond the natural hazard policies, such as natural heritage policies, or natural heritage mapping. If a Municipal levy is required to finance these non-mandatory programs and services, MOU's or agreements would be required to reflect these funding arrangements.
- (b) Programs and Services Deemed Advisable by the Conservation Authority
- These would be programs and services that the Conservation Authority deems are advisable that are above and beyond such as environmental education, stewardship programs and must be funded through user fees or other funding

As noted above, the proposed regulations include a transition period with a deadline of January 2023 for the Conservations Authorities and the municipalities to have agreements in place for any Non-Mandatory programs and services. The Township currently has MOU's with both the LSRCA and the NVCA, clarity is required from the province in regard to the proposed regulations and whether these current agreement automatically lapse in January 2023 and require new MOU's/agreements with both of these CA's and the Township.

The proposed Provincial regulations further details the agreement requirements for the use of municipal levies for non-mandated programs and services. These would include: termination date of the agreement, time periods for reviewing and renewing agreements, provisions governing early termination of the agreement, and transparency provisions.

Part Two: Governance and Oversight of Conservation Authorities (Regulation requiring "Community" Advisory Boards)

The proposed regulations will require Conservation Authorities to establish Community Advisory Boards that will provide advice and recommendations to the authority regarding strategic priorities and associated policies, programs and services. The Board will identify opportunities for community engagement and potential community outreach opportunities. The regulation to establish the community advisory boards will require members to resident in the authority's jurisdiction, set the minimum number of members at 5, establish the process for renewal of board members, and ensure a wide variety of member education/experience appointed to the board.

Part Three: Other Regulatory Matters (Section 29 Minister's Regulation)

The Province intends to consolidate the existing Section 29 "Conservation Areas" regulations regarding activities on lands owned by conservation authorities into one new regulation. The regulations will manage the activities on all Conservation Authority owned lands, will prohibit certain types of activities, set out the fees for access and use of lands including recreational areas, and establish the activities that require permits. CA staff will have limited enforcements powers on conservation authority owned lands and will need to rely on municipal law or police for enforcement purposes.

Through the Transition regulations that are mandated, Conservation Authority will be required to consult with affected municipalities to determine what services each municipalities wants the conservation authority to deliver on their behalf. The consultation as noted above will also include the services the Conservation Authority deems are necessary to deliver and whether the municipality is willing to fund them and enter into the required agreement. Under the existing MOU's with both the NVCA and LSRCA the conservation authorities provide plan review services (technical/environmental expertise) associated with development applications. Should the new MOU's not include the Conservation Authority providing these services save and except the Natural Hazards that are mandated, the services would continue to be

required by the municipality through either the retention on in house staff with the necessary technical skills or retaining of third party consultants, both of which have financial implications to the Township and/or developers.

Financial / Legal Implications / Risk Management:

There are no current implications as a result of adopting this report. However, there may be future implications (financial and legal) that would result from the implementation of the final regulations based on changes to existing MOU's or the creation of new MOU's with both LSRCA and NVCA or the requirement for outsourcing of the work currently undertaken by the CA's that may have financial implications based on the hiring of consultants with costs that are unknown at this time.

Policies/Legislation:

- Conservation Authorities Act

Corporate Strategic Goals:

In 2016, Council adopted the Township's Strategic Plan. The following Goals of the Plan are relevant to the proposed legislated changes:

Enhanced Communications & Customer Service – We demonstrate a culture of open communication and engagement that delivers on 'customer come first'.

Balanced Growth – We support business and job creation while protecting our natural environment.

Inclusive, Healthy Community – We are a community that is safe, accessible and inclusive.

Consultations:

N/A

Attachments:

Schedule 1: ERO Posting (019-2986)
Schedule 2: Ministry of the Environmental, Conservation and Parks - Regulatory Proposal Consultation Guide

Conclusion:

This report provides an update for Council in regard to the ERO Posting (Regulatory Proposals (Phase 1) under the Conservation Authorities Act) as currently posted for comment on the Environmental Registry (#019-2986).

Staff are generally supportive of the proposed regulations and as noted in this report specific Township comments will be provided through the ERO posting to seek greater clarity on the potential implications to the Township.

On this basis, staff are recommending to Council that Planning Staff be authorized to submit comments on behalf of the Township through the EBR posting consistent with those identified in Report DS 2021-095.

Respectfully submitted:

Andria Leigh, MCIP, RPP, Director, Development Services

Approvals:
Robin Dunn, CAO

Date:
June 17, 2021

Schedule 1

Environmental Registry of Ontario

Regulatory proposals (Phase 1) under the Conservation Authorities Act

ERO number

019-2986

Notice type

Regulation

Act

Conservation Authorities Act, R.S.O. 1990

Posted by

Ministry of the Environment, Conservation and Parks

Notice stage

Proposal

Proposal posted

May 13, 2021

Comment period

May 13, 2021 - June 27, 2021 (45 days) Open

Last updated

May 13, 2021

This consultation closes at 11:59 p.m. on:

June 27, 2021

Proposal summary

We are proposing new regulations to focus conservation authorities on their core mandate by prescribing mandatory programs and services they must provide, give municipalities greater control over what conservation authority programs and services they will fund, consolidate “Conservation Areas” regulations and to require community advisory boards.

On this page

1. [Proposal details](#)
2. [Supporting materials](#)
3. [Comment](#)
4. [Connect with us](#)

Proposal details

On December 8, 2020, Bill 229, the Protect, Support and Recover from *COVID-19 Act* (Budget Measures), 2020, which made changes to the *Conservation Authorities Act* and the *Planning Act*, received Royal Assent.

These changes will improve the governance, oversight and accountability of conservation authorities, while respecting taxpayer dollars by giving municipalities more say over the conservation authority programs and services they pay for.

The Ministry of the Environment, Conservation and Parks (MECP) is now proposing to move forward with our first of two phases of regulatory amendments to implement the

legislative changes previously made to the *Conservation Authorities Act* and those recently made through the *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020.

The regulations the government proposes to introduce as part of the first phase would set out the following:

- Mandatory programs and services that conservation authorities would be required to provide, including core watershed-based resource management strategies.
- A requirement for agreements between conservation authorities and their participating municipalities for the use of municipal levies to fund non-mandatory programs and services an authority determines are advisable in its jurisdiction.
 - The proposed regulation may set out a specific time in which the agreements must be reviewed and to determine whether or not the agreements will be renewed.
- Details of the transition plan conservation authorities must prepare, including an inventory of the authority's programs and services, the consultation process with participating municipalities on the inventory, and steps taken to enter into these agreement(s) with participating municipalities for the use of municipal levies for non-mandatory programs and services the authority determines are advisable in its jurisdiction.
- The consolidation of each of the current individual conservation authority 'Conservation Areas' regulations made under Section 29 of the *Conservation Authorities Act* into one Minister's regulation. This would set out, for example, prohibited activities and activities requiring permits on conservation authority owned lands.
- Requirements for each conservation authority to establish a community advisory board to include members of the public, and providing that conservation authority by-laws may govern the operation of these and other advisory boards that may be established by the authority.

Greater detail on these proposed regulations can be found in [a Consultation Guide](#).

In the coming months, the MECP will be consulting on the second phase of proposed regulations under the *Conservation Authorities Act*, including:

- Municipal levies governing the apportionment of conservation authority capital and operating expenses for mandatory programs and services and for non-mandatory programs and services under municipal agreement. This would also set out provisions pertaining to municipal appeals of conservation authority municipal levy apportionments, including who would hear those appeals.
- Standards and requirements for the delivery of non-mandatory programs and services.

Supporting materials

- [Conservation Authorities Act](#)
- [More Homes, More Choice Act, 2019 \(Bill 108\)](#)
- [Made-in-Ontario Environment Plan](#)
- [Online consultation with stakeholders](#)
- [Protect, Support and Recover from COVID-19 Act \(Budget Measures\), 2020 \(Bill 22...](#)

[Related ERO notices](#)

- [Updating the Conservation Authorities Act](#)

View materials in person

Important notice: Due to the ongoing COVID-19 pandemic, viewing supporting materials in person is not available at this time.

Please reach out to the Contact listed in this notice to see if alternate arrangements can be made.

Comment

Let us know what you think of our proposal.

Have questions? Get in touch with the contact person below. Please include the ERO number for this notice in your email or letter to the contact.

[Read our commenting and privacy policies.](#)

Submit online

[Submit a comment](#)

Submit by mail

Liz Mikel

Conservation and Source Protection Branch

40 St Clair Ave W 14th Flr

Toronto, ON M4V 1M2

Contact Liz Mikel

Phone number

[705-313-0563](tel:705-313-0563)

Email address

ca.office@ontario.ca