

June 17, 2021

Liz Mikel
Conservation and Source Protection Branch
40 St Clair Ave W
14th Floor
Toronto, ON M4V 1M2

Dear Ms. Mikel:

Subject: ERO #019-2986 – “Regulatory Proposals (Phase 1) under the Conservation Authorities Act”

Thank you for the opportunity to comment on Phase 1 of the Regulatory Proposals under the Conservation Authorities Act. Kettle Creek Conservation Authority (KCCA) has reviewed the Consultation Guide: “Regulations Defining Core Mandate and Improving Governance, Oversight and Accountability of Conservation Authorities” and offer the following comments.

Mandatory Programs and Services

A number of programs and services listed under the mandatory programs and services, which CAs may levy municipalities for without a municipal agreement are not currently offered by KCCA due to funding limitations. For example, the Ontario Low Water Response Program (OLWR) was 100% funded by the province until 2019. At that time the province notified KCCA that the grant funding for this program would no longer be provided. Consequently, KCCA’s Board of Directors passed a motion that KCCA would not implement the program locally until such time as the Ministry of Natural Resources and Forestry (MNRF) reinstated funding for full cost recovery. Other programs and services listed such as delineating and mapping hazard areas in the watershed are scaled based on available funds. KCCA seeks clarification that programs listed as “mandatory” would not be “required” to be implemented locally and entirely through municipal levy unless by resolution by KCCA’s Board of Directors.

In April of 2019, MNRF reduced KCCA’s Section 39 Transfer Payment for the Natural Hazard Management Grant – a mandatory program – from \$119,652 to \$61,769. Rather than pass that funding shortfall to its member municipalities, KCCA made the difficult decision to absorb these costs through the loss of one full-time staff person and forego developments in the GIS program area that would have helped KCCA develop data and digital-first approaches.

It is noted that the Source Water Protection Program is also listed as a mandatory program and service. This program has to-date been 100% covered by provincial funds. KCCA seeks assurance that provincial funding for these mandatory programs and services remain at its current level or is returned to previous

levels to prevent further pressure being placed on the municipal levy for mandatory programs and services. KCCA's budget could not withstand additional provincial funding cuts without impact to the municipal levy.

KCCA views the inclusion of the provincial water quality and quantity program as a mandatory service encouraging. However, it is noted that in the chart on page 18 of the Consultation Guide outlining mandatory programs, the potential funding mechanism for this provincial program is solely "municipal levy". KCCA assumes that MECP should be listed in the "potential funding mechanism" as it is recognized elsewhere in the text that MECP provides program management, technical leadership, lab analysis and training for this program. It should be noted that smaller CAs may not be able to support staffing for this program area if municipalities opt out of other established environmental monitoring and stewardship services. Particularly at smaller CAs, full-time staff are supported by a variety of program areas and funding sources – if one is removed the entire delivery model can be dismantled unintentionally.

On page 25, the consultation guide states that transition plans are to include, "any new mandatory programs and services the authority will need to provide to meet the requirements of the mandatory programs and services regulation." If this is to include Ontario Low Water Response Program, Ice Management Services, Management Plans and Strategies, Core Watershed Based Strategy and the various studies listed including climate change and updated mapping, the cost to the KCCA's member municipalities would be unbearable. Moreover, based on current funding levels, staffing and resources it would represent an undue hardship for smaller CAs to meet the proposed standards.

Clarification: *Please clarify if the regulation will require conservation authorities to deliver all mandatory programs and services or will delivery still be contingent on local capacity and support from member municipalities?*

Clarification: *Please clarify that MECP will continue to be a funding partner for the proposed mandatory Provincial Water Quality and Quantity Monitoring program.*

Recommendation: *That the province restore Section 39 funding to 2018 levels and continue to fully fund Source Protection Authority Responsibilities under the Clean Water Act through provincial transfer payments as municipalities do not have the capacity to absorb these program costs.*

Management of Conservation Authority Land

The consultation guide appears to imply that costs associated with the management of conservation owned lands with no element of recreation would qualify as a mandatory program and service. While lands with any element of recreation – including a passive recreation trail or day-use/picnic area – would be classified as a non-mandatory program and service.

KCCA currently manages various day-use properties as passive recreation facilities including a basic parking lot and natural surface trail and/or picnic area. These green spaces are valued by the public and

there is an existing public expectation that this is part of a conservation authority's core programming. This was evident during the pandemic when visitors to these open spaces surged.

According to the consultation guide, it would appear that this type of passive recreation is not to be considered mandatory and therefore would require a municipal agreement. However, it is very difficult to separate passive recreation such as this from a proven method of property security – which is included as a mandatory service of land owned by CAs. By providing safe public access to the property, KCCA has found that vandalism and unauthorized access/uses actually decreases – and is a more efficient and amiable use of resources than erecting fences and patrolling/enforcing unauthorized use. Moreover, these areas are often in one municipality but used by residents in the entire watershed or beyond. It will be difficult to separate out and assign costs of such shared resources to specific municipalities. What happens if one municipality does not wish to contribute?

Included in the mandatory programs and services is the development of a core watershed-based resource management strategy that documents the state of the relevant resources within the conservation authority's jurisdiction. This provides the opportunity for KCCA to demonstrate to member municipalities how the integrated delivery of non-mandatory programs and services such as tree planting and stewardship services (i.e. wetland creation) can mitigate and in some cases, contain costs associated with mandatory programs such as flood and erosion hazards. While KCCA staff sees value in the development of such a strategy, the province provides no guidance on resources to complete such a strategy and/or a timeframe in which it must be completed.

In addition, all CAs will be required to complete a management plan and strategy for all conservation authority owned lands. Again, while the province has provided for some flexibility on how these plans are developed (one plan can be developed for smaller, similar properties) there is no timeframe for completion or provision on how these plans will be funded and may impact the municipal levy.

Recommendation: *That the province include passive recreational opportunities (such as walking trails) that are provided free of charge to the public as an eligible mandatory activity on conservation authority lands. Passive recreation on CA owned lands is a cost-effective means of reducing encroachment and other illegal activities and promotes equitable access to green infrastructure.*

Recommendation: *That completion of the required documents (conservation land management plans and strategies and the watershed-based resource management strategy) be phased in similar to requirements under the AODA where smaller conservation authorities are given more time to comply with new requirements. This will ensure implementation can progress for larger conservation authorities while providing smaller conservation authorities, with less capacity/resources, time to complete these tasks.*

Regulation for Municipal Agreements and Transition Period

KCCA is encouraged by the flexibility provided so that one overarching agreement can be provided to all member municipalities rather than agreements with each member municipality.

Likewise, it is encouraging that the Minister may grant an extension from the December 31, 2022 deadline on the completion of municipal agreements with the support of one or more municipalities. Nevertheless, the timing and capacity of CAs and member municipalities to develop these transition plans and agreements is seen as a challenge – especially at or around the time of municipal elections. Further, there may be value in developing the resource management strategies and conservation management plans prior to the development of municipal funding agreements to ensure the agreed upon services are meeting the needs of the watershed.

On page 22 of the Consultation Guide the province notes consideration of a minimum levy that would provide for on-going organizational costs including administrative, operating and capital costs which are not directly related to any specific program or service but are the overhead of a conservation authority. The government is proposing to address these costs in Phase 2 of the regulation development along with a proposed levy regulation. It would be beneficial to have the details of this regulation and the levy regulation to inform comments on this phase of regulations.

Recommendation: *KCCA supports allowing flexible agreement arrangements with municipalities (e.g. agreements with multiple municipalities, agreements covering multiple program and services) as this is an efficient use of financial and administrative resources.*

Recommendation: *KCCA supports the Minister being able to grant an extension for completing a municipal agreement where an authority, with the support of one or more municipalities, submits a written request.*

Recommendation: *In order to complete transition plans by December 31, 2021 and municipal agreements by December 31, 2022, final regulations, including the levy regulation are required. A substantial delay in the finalization of regulations may make these timelines unachievable.*

Recommendation: *That the province work with conservation authorities and Conservation Ontario to prepare sample strategies and management plans or provide training on how existing documents may be revised to fulfill the intent of the regulation.*

Community Advisory Board

It is important that the proposed Community Advisory Boards not duplicate the work of the conservation authority's Board of Directors. There is no guidance provided on whether the administration costs associated with these Boards would be covered as a mandatory cost. It is assumed that this would be supported through municipal levy and that no provincial funds are available. In addition, at least one authority member is required to sit on this Advisory Board. In the future, as all authority members will be required to be municipal councilors, this will involve more commitment/time from municipal representatives.

Therefore, it is important to provide as much flexibility in developing the terms of reference for this board to ensure that it is meeting local needs, capacity and does not over extend available resources.

Clarification: *The minimum functions and activities of the Community Advisory Board is to provide advice and recommendations to the authority on strategic priorities, programs and services, additional opportunities for community engagement and community outreach opportunities. However, there is no distinction between mandatory and non-mandatory programs and services. Can the province provide clarification on the Conservation Authority's Board of Directors requirements to accept/follow or implement the recommendations of the Advisory Committee?*

Recommendation: *If required to form a Community Advisory Board, conservation authorities' Board of Directors should be able to develop and approve a Terms of Reference that outlines the composition, activities, functions, duties and procedures that best meets the local needs and available resources. As few requirements as possible should be prescribed to ensure the Community Advisory Board can meet the local watershed needs.*

Recommendation: *That the minimum number of members be changed from 5 to "5 or 3 where a conservation authority has 10 or fewer municipally-appointed members on its Board of Directors". Smaller CAs may have difficulty in recruiting and retaining members and providing administrative support to a larger committee, which may further stress limited staffing and financial resources.*

Recommendation: *That with the support of one or more municipalities, that the CA be able to defer the establishment of the Community Advisory Board until 2023 to allow sufficient time following the development of transition plans, municipal agreement and budget to develop a terms of reference, advertise, recruit and appoint members.*

Section 29 Minister's Regulation

KCCA has no concerns with the consolidation of the Minister's regulation. Caution should be taken to ensure that all CAs are not required to enact Part 1 Offences under the Provincial Offences Act which would require having Provincial Offences Officers to enforce rules and regulations on CA owned lands. Currently, KCCA staff rely on issue identification and refer to OPP/local police services for enforcement for occurrences that cannot be managed through compliance and education methods. It would be difficult for KCCA to recover costs associated with Provincial Offences Training for operation staff without passing on an expense to users of CA owned lands for non-mandatory services (camping) or to the municipality for enforcement on CA owned lands not related to recreation.

Recommendation: *That CAs not be required to enact Part 1 Offences under the Provincial Offences Act but that the tool exist for those CAs that choose to use it for the orderly and safe use of their properties.*

Thank you for the opportunity to comment on the proposed Phase 1 regulations.

Sincerely,

Elizabeth VanHooren

Elizabeth VanHooren
General Manager

cc:
Conservation Ontario
Member Municipalities