
To: Mayor and Council

From: Jeff Schmidt, Chief Administrative Officer

Date: June 16, 2021

Subject: Proposed Amendments to the Conservation Authorities Act -
ERO Posting #019-2986

Report Highlights

- In 2018, the Province of Ontario made a commitment to collaborate with municipalities and other stakeholders to ensure that Conservation Authorities (CAs) focus and deliver on their core mandate.
- On June 6, 2019, the *More Homes, More Choice Act*, received Royal Assent which made amendments to the *Conservation Authorities Act*.
- In late 2019, the Province undertook extensive consultations with municipalities, the public, landowners, and other stakeholders, as well as conservation authorities, regarding the core role of conservation authorities.
- On December 8, 2020, Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 was approved which provided for additional changes to the *Conservation Authorities Act*.
- The Province of Ontario is proposing to proclaim the un-proclaimed provisions in the *Conservation Authorities Act* (stemming from amendments made in 2017, 2019 and 2020) through a staged process.
- The first of these proclamations occurred on February 2, 2021, and included provisions related to the conservation authority governance as well as items related to housekeeping amendments.
- As part of the next stage of this process, the Ministry of the Environment, Conservation and Parks is consulting on proposed regulations that have yet to come in effect and are aimed to ensure that conservation authorities focus and deliver on their core mandate.
- On May 13, 2021, the Province posted Environmental Registry of Ontario (ERO) Consultation 019-2986. The associated Consultation Guide (Appendix A), "Regulations Defining Core Mandate and Improving Governance, Oversight and Accountability of Conservation Authorities" was distributed to all Members of Council.
- Comments on the proposed regulations are due by June 27, 2021.

Background

The purpose of this report is to provide Council with an update on the Ministry of the Environment, Conservation and Parks (“MECP”) current consultation on proposed regulations associated with amendments made to the *Conservation Authorities Act* through the passing of Bill 108 (2019) and Bill 229 (2020). The regulations propose what programs/services Conservation Authorities in Ontario will be required to provide (Mandatory) versus those that they may provide (Non-Mandatory). Mandatory programs/services can be funded through municipal levies, whereas Non-Mandatory services may 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 still be provided as long as a Memorandum of Understanding is entered into by the CA and the municipality. Municipalities would have the option to fund any programs/services over and above those that are categorized as Mandatory. The proposed regulations include a deadline of January 1, 2023, for CAs and respective municipalities to have agreements in place for any Non-Mandatory programs/services.

In 2018, the Province of Ontario made a commitment in its “Made-in-Ontario Environment Plan” to collaborate with municipalities and other stakeholders to ensure that conservation authorities focus and deliver on their core mandate. As part of that commitment, the Province passed the *More Homes, More Choice Act, 2019*, which received Royal Assent on June 6, 2019, and made amendments to the *Conservation Authorities Act*. Later in 2019, the Province undertook extensive consultations with key stakeholders; including municipalities, the public, landowners, and conservation authorities. Through these consultations and feedback that was received, key legislative amendments were made through Bill 229, *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020*, which was passed on December 6, 2020. With this came a further defined role for CAs:

- Mandating CAs to issue permits where the Province has issued Ministerial Zoning Orders (MZO);
- Limiting the CAs 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 Local Planning Appeal Tribunal (LPAT);
- Enabling the Province to issue permits and allowing the applicant and Province to appeal CA permits to the LPAT;
- Indicating the term “Hazardous Lands” is now to be defined by Regulation.

On February 2, 2021, some of these amendments made through Bills 108 and 229 were proclaimed and were mostly administrative in nature. The rest of the amendments to the *Conservation Authorities Act* through Bills 108 and 229 have remained un-proclaimed and are not yet in effect.

On May 13, 2021, the Province posted Environmental Registry of Ontario (ERO) Consultation 019-2986. The associated Consultation Guide (Appendix A), “Regulations Defining Core Mandate and Improving Governance, Oversight and Accountability of Conservation Authorities” was distributed to all Members of Council. Through this posting the Province is proposing to proclaim more of the Bill 108 and 229 amendments and has issued proposed regulations that would implement these amendments.

The Province has proposed a phased approach to these remaining amendments and as such those that are not proposed to be proclaimed in Phase 1 (the subject phase) would be proposed to be proclaimed in Phase 2, which would allow for a staggered roll out of the associated regulations. The Province has indicated that Phase 2 will occur following the finalization of Phase 1 through a separate ERO consultation.

Comments on the proposed regulations as it relates to Phase 1 are due by June 27, 2021. Should Council wish to provide comments to this posting, discussion should occur at the June 16 meeting of Council and direction provided at that time.

Phase 1

The amendments to be proclaimed and associated proposed regulations in Phase 1 are as follows:

1. Regulation for Mandatory and Non-Mandatory Programs/Services

Prior to the passing of Bill 229, the *Conservation Authorities Act* permitted CAs to provide services/programs above and beyond those that were deemed “mandatory” in the legislation. These Mandatory and Non-Mandatory programs were funded through the municipal levy and may or may not have an associated agreement in place between the CA and the participating municipality. When proclaimed, the Act will now categorize the programs/services as follows:

Mandatory Programs/Services

Mandated by the Province, these programs may be funded by provincial grants and/or conservation authority user fee revenues. Where such revenue sources cannot cover the entire costs of these programs, the remaining costs must be raised through municipal levy with, or without, an agreement in place. These mandatory programs/services include:

A) Risk of Natural Hazards

- Administration of permits issued under section 28.1 of the *Conservation Authorities Act*, including associated enforcement initiatives
- Land-use planning input on behalf of the Ministry of Natural Resources and Forestry (MNRF) related to the Natural Hazards policies of the PPS, 2020, including, when appropriate, *Planning Act* appeals to the Local

Planning Appeal Tribunal related to Natural Hazard policies, and input into review of applications for new or amended Special Policy Areas (i.e., two zone flood plain policies)

- Flood forecasting and warning
- Operation of infrastructure relating to water, erosion, etc.
- Low water monitoring and reporting
- Data collection to delineate and map hazard areas
- Communications, public awareness, and education regarding the risk of natural hazards present within the jurisdiction of the authority to public safety

B) Conservation Authority-Owned or Controlled Lands

- Development of strategies/management plan for CA owned lands
- Development of policies regarding acquisition and disposition of lands
- The provision of recreational opportunities or environmental education on CA owned lands are not included in the mandatory programs/services (including management and maintenance of lands for these purposes)

C) Responsibilities Under the *Clean Water Act, 2006*

- Administration of the prescribed requirements of the Act
- Maintaining and providing access to source protection data and information
- Implementing source protection plan policies and amending as necessary

D) LSRCA Responsibilities Under the *Lake Simcoe Protection Act*

- The Lake Simcoe Region Conservation Authority (LSRCA) is governed by both the *Conservation Authorities Act*, as well as the *Lake Simcoe Protection Act*. The Act is implemented through the Lake Simcoe Protection Plan (LSPP) which contains two sets of distinct policies. The “Designated Policies” and “Have Regard to” policies are those that have legal effect when implemented through a *Planning Act* or Section 28 *Conservation Authorities Act* instrument. The second set of policies are monitoring and strategic action policies of the LSPP are Mandatory for the functions and services of the LSRCA. This would mean that aside from the land use planning for natural hazards that is proposed to be Mandatory, as previously discussed, commenting on other matters such as natural heritage protection would not be included in the Mandatory category.

E) Provincial Water Quality and Quantity Monitoring

- Install and maintain equipment, collect samples/data, and send samples to the ministry laboratory for chemical analysis

- F) Development of a Core Watershed-Based Resource Management Strategy
- Document the current state of the relevant resources (principally water resources) within their jurisdictions in the context of the Mandatory Programs.
 - Page 18 of Appendix A includes a chart of the proposed Mandatory components of the Strategy. Page 19 of Appendix A includes the proposed Non-Mandatory programs/services that could also be included in the Strategy. If municipal levies are required to pay for these Non-Mandatory programs/services, an MOU would need to be in place with the participating municipalities

Non-Mandatory Programs/Services

i) Programs/Services on Behalf of a Municipality

The amendments that are proposed to be proclaimed along with the proposed regulations through the ERO allow for CA program/service delivery over and above those that are “Mandatory”. An example of this would be a municipality requesting a CA to provide input on municipal land use planning matters outside of natural hazard policies, such as natural heritage policies. Other examples could include stormwater management, wetland enhancement and restoration, natural heritage mapping and non-mandatory research.

Where a municipal levy is required to cover these Non-Mandatory programs, MOUs would need to reflect the funding arrangements.

ii) Programs/Services Deemed Advisable by the CA

Additionally, a CA would have the ability to deliver programs/services that it deems are advisable for its jurisdiction that are over and above the Mandatory programs/services previously discussed. These programs may be funded through provincial grants or CA user fee revenues. Where the programs are required to be funded in whole or part by municipal levy, the CA would be required to have agreements with each of the participating municipalities for the municipal funding. Municipalities would decide whether to fund these programs/services by entering into time limited agreements with the CA.

2. Regulation for Agreements Between CAs and Municipalities

The proposed amendments to the *Conservation Authorities Act* that have yet to come into effect, provide requirements for agreements between CAs and participating municipalities for the use of municipal levies to finance in whole or in

part the Non-Mandatory programs/services. These agreements are proposed to include:

- A provision that the participating municipality agrees to pay its apportioned levy for the Non-Mandatory program/service
- Set out the termination date of the agreement
 - Certain time periods may also be specified for the purposes of reviewing and renewing any such agreements that are reached
- Provisions governing early termination and governing notice and resolution of breaches of the agreement
- Transparency provisions (e.g., that agreements are available to the public online).

It is proposed that agreement arrangements between CAs and municipalities could be flexible according to program/service circumstances (i.e., an agreement for a program/service could be with one or more participating municipalities or could be separate agreements per participating municipality).

3. Regulation for Transition Plans

Un-proclaimed provisions in the *Conservation Authorities Act* would, once proclaimed, also establish a requirement for a transition plan for conservation authority/municipal agreements to be in place, with the ability to prescribe other additional matters in the regulation. The Ministry of the Environment, Conservation and Parks is proposing January 1, 2023, as the prescribed date by which agreements must be in place for authorities to use or continue to use the levy powers under the *Conservation Authorities Act* for their participating municipalities to fund non-mandatory programs/services the authority determines are advisable. An extension of 90 days may be granted where an authority, with the support of one or more participating municipalities, submits a written request.

The proposed regulations will require each conservation authority to develop and implement a transition plan that includes:

- A workplan and timeline outlining the steps the CA plans to take to develop and enter into agreements with its participating municipalities.
- The preparation of an inventory of all the authority's programs/services, with clear indication for each program/service which of the three categories it fits into and how they are funded (e.g., provincial, federal, municipal funding, municipal levy, and user fee revenue).
- The consultation process with participating municipalities on the inventory.
- A list of any new Mandatory programs/services for which the authority will seek municipal agreement to fund via municipal levies, including

estimated amounts requested/required from the participating municipalities to do so.

- A list of Non-Mandatory programs/services that do not require municipal agreements (if the programs/services are funded by revenue that is not from a municipal levy).
- Steps taken and/or to be taken to enter into these agreements.

Page 26 of the attached Consultation Guide, Appendix A, includes a proposed timeline for the various aspects of the Transition Plan to be completed.

4. Regulation to Require Community Advisory Boards

The Province is proposing to proclaim the un-proclaimed provision of the *Conservation Authorities Act* related to advisory boards and to develop a proposed regulation to require CAs to establish community advisory boards, that can include members of the public, to provide advice to the authority. It is proposed that the regulation governing community advisory boards include the following:

- Requiring that members reside in the authority's jurisdiction
- Permitting membership from members of the public
- Setting a minimum number of members at 5
- Ensuring, where possible, members represent the geographic range of the authority's jurisdiction
- Ensuring that a variety of members are sought, including youth and indigenous representatives
- Enabling the appointment process of members by public notification and application
- Setting a minimum of one authority member (and an alternate) be appointed to the community advisory board and a maximum authority representation of 15%
- Requiring that administrative support to community advisory boards be provided by the CAs
- Requiring that meetings of the community advisory board be open to the public, with limited exceptions

5. Section 29 Minister's Regulation

Once the new section 29 of the *Conservation Authorities Act* is proclaimed, a Minister's regulation is proposed to consolidate the current individual authority section 29 'Conservation Area' regulations regarding activities on lands owned by CAs into one regulation.

Current section 29 regulations manage activities on all authority owned land including the use by the public of the lands and services available; the prohibition of certain activities; setting fees for access and use of lands including recreational facilities; administering permits for certain land uses; and protecting against property damage and for public safety. The regulations set out prohibited activities (i.e., damaging property or vegetation, excessive noise), and activities requiring permits (e.g. hunting, fund raising, public performance, public meetings, camping permits, day use permits, permits for all-terrain vehicles, off-road vehicles and snowmobiles), the locations for public access and use (e.g. swimming, boating and fires), time periods for public access, management of animals brought by the public, and motor vehicle use on CA owned land.

Phase 2

The ERO posting indicates that the MECP will be consulting on Phase 2 of the proposed regulations under the *Conservation Authorities Act* following the completion of Phase 1.

The next amendments to be proclaimed and associated regulations to be consulted on will include municipal levies governing CA capital and operating expenses for mandatory programs/services and for non-mandatory programs/services under municipal agreement. The proposals will also set out provisions pertaining to municipal appeals of CA municipal levy apportionments, including who would hear those appeals.

The next phase will also consult on the standards and requirements for the delivery of Non-Mandatory programs/services once they are confirmed through Phase 1 consultations and implementations.

Financial Implications

There are no immediate financial implications associated with this report. Any recommended changes to existing or new MOUs will require further discussion and consideration by Council.

Pillars of Commitment

The above initiative supports the following Strategic Pillars of Commitment:

- Infrastructure, Financial Management & Service Delivery

Approvals

Submitted by: Jeff Schmidt, CPA, CGA, Chief Administrative Officer

Financial Implications Reviewed by: Jas Rattigan, CPA, CGA, Director of Finance

Approved by: Jeff Schmidt, CPA, CGA, Chief Administrative Officer

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Attachments

Appendix A - Consultation Guide “Regulations Defining Core Mandate and Improving Governance, Oversight and Accountability of Conservation Authorities”