

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, June 24, 2022 Meeting

FROM: John MacKenzie, Chief Executive Officer

**RE: FINALIZED PHASE 2 REGULATIONS UNDER THE CONSERVATION
AUTHORITIES ACT**
Environmental Registry of Ontario Posting (ERO #019-4610)

KEY ISSUE

Overview of the recently released Ministry of Environment, Conservation and Parks (MECP) finalized Phase 2 Regulations under the *Conservation Authorities Act* and next steps.

RECOMMENDATION:

IT IS RECOMMENDED THAT this overview of the recently issued Phase 2 Regulations and Minister’s Fee Classes Policy under the *Conservation Authorities Act* be received;

AND THAT all agreements entered into between Toronto and Region Conservation Authority (TRCA) with municipal partners reflect the requirements of the Phase 2 Regulations;

AND THAT as required by Section 21.2 of the *Conservation Authorities Act*, a fee policy be brought forward for approval by TRCA’s Board of Directors prior to January 1, 2023.

BACKGROUND

On January 26, 2022, MECP posted on the [ERO](#) a “REGULATORY AND POLICY PROPOSAL CONSULTATION GUIDE: Regulations regarding Municipal Levies, Conservation Authority Budget Process, Transparency, and Provincial Policy for the Charging of Fees by Conservation Authorities” for public comment on the Environmental Registry of Ontario (ERO) for a 30-day public commenting period ending February 25, 2022. A staff report and draft comment letter was received and endorsed by the Executive Committee and submitted to the ERO on February 11, 2022. This submission to the ERO posting was endorsed by the Board of Directors at their meeting on February 25, 2022, and Resolution #A18/22 was approved as follows:

WHEREAS on January 26, 2022, the Ministry of Environment, Conservation and Parks (MECP) posted a “REGULATORY AND POLICY PROPOSAL CONSULTATION GUIDE: Regulations regarding Municipal Levies, Conservation Authority Budget Process, Transparency, and Provincial Policy for the Charging of Fees by Conservation Authorities” for public comment on the Environmental Registry of Ontario (ERO);

AND WHEREAS THE ERO imposes a deadline of February 25, 2022 for submission of comments on Phase 2 of the MECP’s regulatory and policy proposals under the Conservation Authorities Act;

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THEREFORE, LET IT BE RESOLVED THAT Toronto and Region Conservation Authority (TRCA) draft comments to ERO #019-4610 be endorsed with any comments from the Executive Committee of the Board of Directors to inform the final submission to the ERO;

AND FURTHER THAT staff report back to the Board of Directors on February 25, 2022, with TRCA's final ERO submission for information and with any further recommendations based on planned discussions with MECP staff;

AND FURTHER THAT the Chief Financial and Operating Officer, so advise TRCA's partner municipalities, the Ministry of Environment, Conservation and Parks, and Conservation Ontario.

RATIONALE

On April 22, 2022, MECP posted the Notice of Decision and the Phase 2 regulations and the Minister's Fee Classes Policy on the [ERO](#). The notice includes a summary of the 24 comments received as consultation feedback and responses to that feedback. The regulations address the municipal levy funding mechanism (now referred to as "apportionment"), the conservation authority budget process and transparency measures, pursuant to the recent amendments to the Act. The Minister's fee policy identifies broad classes of fees under which conservation authorities may charge user fees.

The Phase 2 regulations align with TRCA's framework for implementing the amendments to the Act in respect of the three categories of programs and services, being: Category 1 – legislated as mandatory by the Province, Category – 2 requested by partner municipalities, and Category 3 – other programs and services that the conservation authority determines are advisable to further the purpose of the Act. The budget regulation provides clarification that will enable streamlining the budget process and agreement framework with participating municipalities, in particular, through its provisions governing the apportionment for non-mandatory services and general expenses related to mandatory and non-mandatory services. The Minister's Fee Classes Policy generally reflects TRCA's existing administration of its fee schedules for user fees, and summarizes additional requirements and procedures under the Act for the reconsideration and appeal of fees.

Through engagement with our partner municipalities on the inventory and the agreement framework for non-mandatory programs and services, TRCA is at the forefront of meeting the new regulatory requirements, as we continue to establish comprehensive, updated Memorandums of Understanding (MOUs) with participating municipalities and partner municipalities. Based on feedback received from our municipalities to date, TRCA does not anticipate any changes to its self-sustaining programs and services that benefit our watersheds and the close to 5 million residents and diverse stakeholders within our jurisdiction. Since the outset of this process, TRCA has been supportive of agreements to ensure transparency and accountability with our stakeholders and funding partners.

The following sections of this report provide a high-level overview of the new regulations filed on April 20, 2022, and the new Minister's Fee Classes Policy dated April 11, 2022, and the timing for coming into force.

Ontario Regulation 402/22: Budget and Apportionment

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This regulation, (refer to **Attachment 1**), prescribes certain requirements for a conservation authority's budget process and apportionment methods and includes revocation of the current regulations that govern levies. The regulation sets out the process conservation authorities must follow when preparing a budget, including consultations and rules and procedures governing budget meetings. These requirements will require minor adjustments to TRCA's existing budget process and consultations. In addition, the regulation prescribes the methods for apportioning operating expenses and capital costs to participating municipalities for Category 1, Category 2 and Category 3 programs and services. The Province has advised that the regulation will take effect July 1, 2023 and apply to budgets for subsequent calendar years.

Ontario Regulation 401/22, Determination Of Amounts Under Subsection 27.2 (2) of the Act

This regulation, (refer to **Attachment 2**), deals with the determination of the apportionment under subsection 27.2 (2) of the Act, which pertains to specified municipalities that are designated by regulation for a source protection authority/area under the *Clean Water Act, 2006* or designated under a regulation of *the Lake Simcoe Protection Plan, 2008* as a municipality in the Lake Simcoe Region Conservation Authority. It does not apply to TRCA. The Province has advised that the regulation will take effect July 1, 2023 and apply to budgets for subsequent calendar years.

Ontario Regulation 400/22: Information Requirements

This regulation, (refer to **Attachment 3**), seeks to increase transparency of conservation authority operations by requiring the public posting of prescribed information on a Governance section of a conservation authority's website, including information about the conservation authority's members, meetings, draft and final budgets, and certain agreements between CAs and municipalities for programs and services. The Province has clarified that Category 2 MOUs to be posted to a conservation authority's website are higher level parent agreements that typically run several years, that procurement agreements are not required to be posted to the conservation authority's website, and that any information or document required to be posted is also subject to the provisions of the *Municipal Freedom of Information and Protection of Privacy Act*. TRCA is already generally compliant with these requirements through the posting of information and existing plan review MOUs on the Governance page of its website. The regulation provides that it comes into force on July 1, 2022.

Ontario Regulation 399/22, Amending O. Reg. 687/21 (Transition Plans And Agreements For Programs And Services Under Section 21.1.2 of the Act)

This regulation, (refer to **Attachment 4**), amends the transition regulation regarding the use of user fees for Category 3 programs and services, where a cost apportioning agreement is in place. The Province has advised that the amendment to the regulation will be proclaimed into force effective January 1, 2023.

Minister's Fee Classes Policy

As per the decision notice on the ERO, the Minister has also released a Minister's Fee Classes Policy (refer to **Attachment 5**). This policy includes the list of the classes of programs and services for which a conservation authority may charge a fee. Pursuant to the new Section 21.2 of the Act, a conservation authority may only charge a user fee for a program or service if it is set out in this list. The Minister's policy provides that in order for a conservation authority to charge a fee, the User-Pay Principle must be appropriate, which is when a class of persons directly benefits from a program or service delivered by a conservation authority. Further, Section 21.2 of the Act requires a conservation authority to administer the charging of fees in a

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transparent and accountable manner by adopting, publishing and maintaining a written fee policy, including provision for reconsideration of the fee charged and appeal of the reconsideration decision or non-decision. In addition, where Category 2 or Category 3 programs and services are provided pursuant to an MOU or cost apportioning agreement, respectively, the provisions of such agreements shall include provisions permitting the conservation authority to charge a user fee for the program or service. The Minister's Fee Classes Policy is generally consistent with TRCA's existing administration of its fee schedules for user fees. TRCA's updated fee policy will incorporate the new requirements and procedures under the Act for the reconsideration and appeal of fees. The Province has advised that the new Section 21.2 will be proclaimed into force on January 1, 2023.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 2 – Manage our regional water resources for current and future generations

Strategy 4 – Create complete communities that integrate nature and the built environment

Strategy 7 – Build partnerships and new business models

Strategy 8 – Gather and share the best sustainability knowledge

Strategy 12 – Facilitate a region-wide approach to sustainability

FINANCIAL DETAILS

TRCA staff are engaged in this policy analysis work per the normal course of duty, with funding support provided by TRCA's participating municipalities to account 120-12. No additional funding is proposed to support the policy analysis work associated with implementing the recommendations set out in this report.

DETAILS OF WORK TO BE DONE

TRCA staff are undertaking the following next steps:

- Updating agreement templates in accordance with the streamlined agreement framework enabled through the Phase 2 regulations.
- Continuing to work with partner municipalities to finalize and execute agreements in 2022 and 2023 and ensure coordination with the budget process as it pertains to participating municipalities.
- Bringing forward a fee policy for approval by TRCA's Board of Directors prior to January 1, 2023, reflecting the requirement of the Act and the Minister's Fee Classes Policy.
- Ongoing communication updates to TRCA's Board of Directors on work underway to update and achieve agreements with upper and lower tier municipalities.

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Date: June 21, 2022

Attachments: 5

Attachment 1: Ontario Regulation 402/22, Budget and Apportionment

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Attachment 2: Ontario Regulation 401/22, Determination of Amounts Under Subsection 27.2 (2) of the Act

Attachment 3: Ontario Regulation 400/22, Information Requirements

Attachment 4: Ontario Regulation 399/22, Amending O. Reg. 687/21 (Transition Plans and Agreements For Programs and Services Under Section 21.1.2 of the Act)

Attachment 5: Minister's Fee Classes Policy