

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, September 23, 2022 Meeting

FROM: John MacKenzie, Chief Executive Officer

RE: UPDATE AND PROGRESS REPORT ON MUNICIPAL MEMORANDUMS OF UNDERSTANDING
Update on Memorandums of Understanding with participating and partner municipalities

KEY ISSUE

To provide an update to the Board of Directors on work underway to update and develop new Memorandums of Understanding (MOUs) and other agreements with participating and partner municipalities in the context of the updated *Conservation Authorities Act* (CA Act) and regulations, and to obtain Board approval of the second progress report on this work, as required under O.Reg. 687/21, Transition Plans and Agreements for Programs and Services Under Section 21.1.2 of the Act under the Conservation Authorities Act ("Transition Regulation") and to be submitted to the Province.

RECOMMENDATION:

THAT the update on Memorandums of Understanding and Toronto and Region Conservation Authority's (TRCA) progress report, be received;

THAT TRCA's Board of Directors approve this progress report in fulfillment of the second progress report to be submitted to the Province by October 1, 2022, as required by O.Reg. 687/21: Transition Plans and Agreements for Programs and Services under Section 21.1.2 of the Act;

AND FURTHER THAT the Clerk and Manager, Policy, circulate this report to TRCA's municipal partners, the Ministry of Environment, Conservation and Parks (MECP), and the Ministry of Natural Resources and Forestry (MNRF) in fulfillment of requirements associated with the development and submission of regular progress reports, and that this report also be circulated to Conservation Ontario, neighbouring conservation authorities, and the Ministry of Municipal Affairs and Housing (MMAH).

BACKGROUND

Since 2015, the CA Act has been amended three times to provide further clarity and transparency surrounding the programs and services that conservation authorities (CAs) provide and the governance and operations of CAs. These amendments were undertaken through the Building Better Communities and Conserving Watersheds Act, 2017 (Bill 139), the More Homes, More Choice Act, 2019 (Bill 108), and the Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020 (Bill 229). As a result of these amendments to the CA Act, conservation authorities will need to execute MOUs with partner municipalities to govern the funding of municipally requested non-mandatory programs and services, and cost apportioning agreements to govern the funding of other non-mandatory programs and services a CA has determined are advisable to further the purposes of the CA Act. Regular updates have been provided to the Board of Directors including at the Board of Directors' meetings on

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February 26, 2021 (RES.#A26/21), June 24, 2021 meeting (RES.#A143/21), and November 19, 2021 meeting (RES.#A224/21).

Finalized CA Act Phase 1 regulations were released by the MECP on October 1, 2021. A review of the Phase 1 regulations, including the Transition Regulation, and requirements for TRCA under these regulations are outlined in the TRCA report Finalized Phase 1 Regulations Under the Conservation Authorities Act, Environmental Registry of Ontario Posting (ERO #019-2986) (RES.#A211/21), at the Board of Directors meeting held on October 22, 2021, as well as in the update brought forward at the November 19, 2021 Board of Directors meeting (RES.#A224/21).

In accordance with the Transition Regulation, TRCA brought forward a Transition Plan for Board approval at the November 19, 2021 Board of Directors meeting (RES.#A224/21), and a draft inventory of programs and services at the February 25, 2022 Board of Directors meeting (RES.#A8/22). Both the Transition Plan and the draft inventory were circulated to the MECP and participating municipalities in accordance with the deadlines set out in the Transition Regulation.

Finalized Phase 2 regulations were released April 20, 2022, which set out requirements associated with the process for conservation authority budgets, the apportionment (formerly referred to as 'levy') to participating municipalities, and the methodology for the determination of the apportionment amounts owed to the conservation authority from participating municipalities, and the public sharing of governance-related information, including the requirement to post high level parent MOUs with municipalities to a conservation authority's website. A detailed update on the Phase 2 regulations was brought forward at the June 24, 2022 Board of Directors meeting (RES.#A84/22).

TRCA drafted and submitted the first of six MOU progress report, required by the Transition Regulation, as part of the quarterly MOU update brought to the June 24, 2022 Board of Directors meeting (RES.#A79/22). The current Board of Directors report is intended to fulfill the requirement for the submission of the second MOU progress report to MECP, due October 1, 2022.

On August 30, 2022, TRCA was advised that through new Orders-In-Council made pursuant to the *Executive Council Act*, the MNRF has been designated as the Ministry responsible for administering the *Conservation Authorities Act*. Moving forward, MECP no longer has duties, functions or responsibilities under the CA Act. MECP, which led the legislative and regulatory changes since 2018, will support MNRF during the transition period. Staff will continue to apprise the Board on any further details regarding this change and will continue to circulate this report to MECP to assist with this transition.

RATIONALE

Comments or feedback from municipalities regarding the inventory

As of July 25, 2022, TRCA had shared the draft inventory with its participating municipalities (Peel Region, York Region, City of Toronto, Durham Region, Town of Mono and Township of Adjala-Tosorontio), as well as other partner local municipalities within TRCA's jurisdiction.

Between January 1 and September 1, 2022, TRCA has had formal meetings with the following municipalities within our jurisdiction to present the draft inventory and to move forward MOU discussions with municipalities within our jurisdiction:

- Region of Peel
- York Region

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- City of Toronto
- Region of Durham
- Township of Adjala-Tosorontio
- City of Brampton
- Town of Caledon
- King Township
- City of Markham
- Town of Stouffville
- City of Vaughan
- City of Pickering
- Township of Uxbridge

In addition, a number of less formal discussions have occurred between TRCA and municipal staff across the jurisdiction to ensure necessary work under existing MOUs and agreements can continue while the new MOUs are being prepared.

Thus far, the draft inventory has been well received by municipalities within TRCA's jurisdiction and there have been no additional comments or concerns on the service areas and program areas included, nor on how components of these services and programs have been classified by TRCA within Category 1, 2, and/or 3. Some municipalities have indicated that they are still working internally to review the draft inventory and coordinate any comments on it. As such, TRCA will schedule follow up meetings, particularly with participating municipalities, to obtain feedback on the inventory once municipal staff have indicated that they have completed a fulsome review of the draft inventory and have comments to share.

Summary of changes made to the inventory to address municipal comments

TRCA is expecting feedback from participating and partner municipalities on the draft inventory and is scheduling meetings to obtain comments. Any changes made to the inventory pending further discussion with municipalities will be noted in future progress reports.

Update on cost apportioning agreements

TRCA does not anticipate a need to enter into cost apportioning agreements under Section 21.1.2 of the CA Act. Since the last update to the Board of Directors, which included the first MOU progress report submitted to MECP, on June 24, 2022, TRCA has continued to work with participating and partner municipalities to develop and execute MOUs and other agreements for municipally requested programs and services under Section 21.1.1 of the CA Act. TRCA is also coordinating this work with other conservation authorities that share municipal jurisdiction with TRCA. A summary of the current status of municipal MOUs and work to move them forward can be found in **Attachment 1**.

Difficulties experienced in developing agreements by transition date

TRCA has taken a proactive response to developing required agreements with municipalities. As such, most municipalities within TRCA's jurisdiction are well acquainted with the need for developing agreements for municipally requested services.

While the Phase 1 CA Act regulations have set out a deadline of January 1, 2024, for the execution of cost apportioning agreements with participating municipalities under Section 21.1.2 of the CA Act, TRCA is also applying this deadline to the development and execution of MOUs and other agreements under Section 21.1.1 and shall work with participating and partner municipalities to develop and execute MOUs in 2022. This is due to the benefits of entering into

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these agreements, the requirements of the budget process, as well as the fact that TRCA and municipal staff have already collaborated with many municipalities within our jurisdiction to develop advanced drafts of MOUs that can now be finalized based on the newly released Phase 2 regulations.

The primary challenge that TRCA staff foresee regarding execution of municipal agreements remains the October 2022 municipal elections, which are anticipated to delay agreements from being approved by Councils. In addition, some high growth municipalities have indicated they have higher priorities for this term of Council that must be accomplished prior to dedicating municipal staff resources into MOU development. Others have questioned the need to expedite MOU development when existing agreements and fee for service work is proceeding well. However, TRCA staff plan to continue to work with municipal staff, where municipal staff are willing, throughout the election to undertake the background work required prior to bringing the agreements forward for Council approval in an effort to execute MOUs in early 2023. At this time, TRCA does not foresee the need to request an extension to the January 1, 2024 deadline for having MOUs in place with participating and partner municipalities. Staff will continue to re-assess whether an extension request may be required in 2023 reports to the Board based on the status of MOU approvals across our jurisdiction at that time.

Additional updates

As a follow up to the release of the finalized Phase 2 regulations, TRCA has prepared new draft template MOUs for participating municipalities (**Attachment 2**) and other partner municipalities (**Attachment 3**). These draft templates reflect requirements set out by the amendments to the Act and new regulations. The MOU templates have been circulated to the participating and partner municipalities within TRCA's jurisdiction, as appropriate, and have also been shared with other conservation authorities with which TRCA shares municipal jurisdictions to ensure consistency for municipal partners.

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

This report supports the following strategy set forth in the TRCA 2013-2022 Strategic Plan:
Strategy 7 – Build partnerships and new business models

FINANCIAL DETAILS

There is no immediate financial impact due to carrying out the recommendations above. However, it should be noted that this undertaking is involving significant time from staff in all divisions across the organization along with municipal partners. The process of undertaking agreements with municipalities related to municipally requested programs and services provided by TRCA under the amended *Conservation Authorities Act*, as well as with other external organizations, is expected to have positive financial impacts for TRCA based on the interest from most municipalities in providing funding and or jointly seeking funding for a selection of TRCA service areas that support areas of need for the municipalities in question and shared municipal and TRCA interests. However, the addition of new process, reporting and municipal approval requirements by the Province in the Phase 2 regulations may unintentionally result in additional staff time for TRCA and its municipal partners and result in budget approval delays. TRCA has emphasized these matters of concern to our municipal funding partners and neighbouring conservation authorities through input on the Phase 2 regulations and through discussions with MECP staff.

DETAILS OF WORK TO BE DONE

Staff will continue to bring forward quarterly MOU-SLA update reports to the Board of Directors and, in order to comply with the requirements of the Phase 1 regulations, will continue to ensure

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that the content of the Board reports align with the Progress Reports required by MECP. Staff will ensure that MOU-SLA update reports are brought forward to the Board according to timelines that align with the following Progress Report deadlines set out in the Phase 1 regulations:

- January 1, 2023 (Expected Board reporting – November 2022)
- April 1, 2023 (Expected Board reporting – March 2023)
- July 1, 2023 (Expected Board reporting – June 2023)
- October 1, 2023 (Expected Board reporting – September 2023)

TRCA staff will also continue to carry out discussions and MOU development with both participating municipalities and other partner municipalities in accordance with the timelines set out in TRCA's Transition Plan.

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Attachment 1: Municipal MOU Status Progress Table (September 23, 2022)

Attachment 2: Template Participating Municipality MOU

Attachment 3: Template Partner Municipality MOU