

Section III – Items for the Information of the Board

TO: Chair and Members of the Board of Directors
Thursday, November 10, 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 third 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 third progress report to be submitted to the Province by January 1, 2023, 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 Natural Resources and Forestry (MNR) and Ministry of Environment, Conservation and Parks (MECP), 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).

Thus far, TRCA has drafted and submitted two of six MOU progress reports within the timelines required by the Transition Regulation. These two progress reports were brought forward as part of the quarterly MOU update brought to the June 24, 2022 Board of Directors meeting (RES.#A79/22) and the September 23, 2022 Board of Directors meeting (RES.#113/22). The current Board of Directors report is intended to fulfill the requirement for the submission of the second MOU progress report to MNRF, due January 1, 2023.

TRCA was also advised on August 30, 2022 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*, rather than the MECP. TRCA will continue to provide MOU progress reports to both the MNRF and MECP during 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 October 21, 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
- City of Toronto
- Region of Durham

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- 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 the following discussions on the inventory have taken place:

- York Region staff met with TRCA staff on September 16, 2022, to request clarification on certain program areas, including which components of the program areas fell under Category 1, 2, or 3. TRCA provided clarification to the satisfaction of York Region staff and will provide information on any similar follow-up questions.
- Region of Peel staff provided written comments, questions, and requests for clarification on certain program areas, including which components of the program areas fell under Category 1, 2, or 3, on September 26, 2022. TRCA staff are reviewing the questions and compiling the rationale for service and program classification.
- Durham Region staff met with TRCA staff on July 18, 2022 to discuss questions on the inventory of programs and services. TRCA has provided formal written responses. The Region has received inventories from all five As within their boundaries, compared them and will be meeting the other CAs to determine a consistent approach. A follow up meeting has been scheduled for October 27, 2022.
- City of Toronto staff requested clarification on the Transition Plan and the classification, cost and funding sources of program areas to be included in the inventory on October 13, 2022. TRCA staff are compiling a response and a follow up meeting is scheduled for November 15, 2022.

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, that would warrant edits to the draft inventory at this time. Some municipalities have indicated that they are still working internally to review the draft inventory and coordinate any comments on it. TRCA will continue to 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

Any discussions thus far with participating or partner municipalities on the inventory, summarized above, have been to clarify the information in the inventory and at this time, 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, that require edits to the draft inventory. TRCA is waiting on any additional feedback from participating and partner municipalities on the draft inventory and

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continues to schedule 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 second MOU progress report submitted to MECF, on September 23, 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 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 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 Phase 2 regulations.

The primary challenge that TRCA staff encountered regarding execution of municipal agreements was the October 2022 municipal elections, which delayed agreements from being brought forward to, and approved by, Councils. In addition, some high growth municipalities have indicated they have higher priorities for this term of Council that must be accomplished, or other municipal priorities that need to be brought forward to new Councils 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. TRCA staff continue to work with municipal staff, where municipal staff are willing, throughout the election and post-election phase 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

TRCA continues to work closely with adjoining CAs and CAs that share municipal jurisdictions with TRCA in order to coordinate the MOU process as much as possible, and to facilitate a consistent level of service across municipal jurisdictions. Some participating municipalities within TRCA's jurisdictions, as well as participating municipalities and associated lower tier partner municipalities, have also engaged in meetings to share information, processes and their understanding of the MOU process. TRCA anticipates that this will help provide some consistency in the MOU process and associated content across our jurisdiction.

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 update reports to the Board of Directors and, in order to comply with the requirements of the Phase 1 regulations, will continue to ensure that the content of the Board reports align with the Progress Reports required by the Province. Staff will ensure that MOU 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:

- 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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Attachments: 1

Attachment 1: Municipal MOU Status Progress Table (November 10, 2022)