

### Section I – Items for Board of Directors Action

**TO:** Chair and Members of the Board of Directors  
Meeting #04/19, Friday, April 26, 2019

**FROM:** John MacKenzie, Chief Executive Officer

**RE:** **TRCA DRAFT COMMENTS TO ENVIRONMENTAL REGISTRY OF ONTARIO (ERO)**  
**Modernizing conservation authority operations - Conservation Authorities Act (ERO #013-5018)**

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#### KEY ISSUE

Toronto and Region Conservation Authority (TRCA) draft comments on the Government of Ontario's proposed amendments to the Conservation Authorities Act, 2017.

#### RECOMMENDATION

**WHEREAS the Province of Ontario has posted the proposed amendments to the Conservation Authorities Act, 2017, for public comment on the Environmental Registry of Ontario (ERO);**

**AND WHEREAS the ERO imposes a May 20, 2019 deadline for submission of comments to the Province;**

**THEREFORE LET IT BE RESOLVED THAT the Toronto and Region Conservation Authority (TRCA) staff report and draft comments on the Ontario government's proposed amendments to the Conservation Authorities Act, 2017, be received and that any comments from the Board of Directors be considered in informing TRCA's final ERO submission;**

**AND FURTHER THAT municipal partners and Conservation Ontario be so advised.**

#### BACKGROUND

On April 5, 2019, the Ministry of the Environment, Conservation and Parks (MECP) released a [proposed amendment to the Conservation Authorities Act](#), 2017, on the Environmental Registry of Ontario (ERO), due May 20, 2019. This request for comments is further to a comprehensive review of the legislation undertaken by the Province between 2015 and 2017. The ERO posting does not include the proposed written amendments to the Act or its associated regulations.

Conservation Ontario is coordinating a response on behalf of all 36 conservation authorities (CAs), in addition to the submissions made by individual CAs. The Province has stated that the proposed amendments to the *Conservation Authorities Act* (CA Act) are to help CAs focus and deliver on their core mandate and to improve governance. If passed, the amendments would:

- Clearly define the core mandatory programs and services provided by conservation authorities to be, natural hazard protection and management, conservation and management of conservation authority lands, drinking water source protection (as prescribed under the Clean Water Act), and protection of the Lake Simcoe watershed (as prescribed under the Lake Simcoe Protection Act);
- Increase transparency in how conservation authorities levy municipalities for mandatory

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and non-mandatory programs and services. Update the Conservation Authorities Act, an Act introduced in 1946, to conform with modern transparency standards by ensuring that municipalities and conservation authorities review levies for non-core programs after a certain period of time (e.g., 4 to 8 years);

- Establish a transition period (e.g. 18 to 24 months) and process for conservation authorities and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards;
- Enable the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority; and
- Clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority, similar to not-for profit organizations.

The Province is also proposing to proclaim un-proclaimed provisions of the Conservation Authorities Act related to:

- Fees for programs and services;
- Transparency and accountability;
- Approval of projects with provincial grants;
- Recovery of capital costs and operating expenses from municipalities (municipal levies);
- Regulation of areas over which conservation authorities have jurisdiction (e.g., development permitting);
- Enforcement and offences; and
- Additional regulations.

Draft comments on the related, yet separate, [proposed amendments to the Conservation Authorities Act regulation](#) are being presented to the Board in a separate staff report.

At meeting #3/19 of the Executive Committee, held on April 5, 2019, Resolution #B33/19 was approved as follows:

*THAT the Chair be authorized to call a special meeting of the Executive Committee to discuss TRCA's recommendations to the proposed amendments to the Conservation Authorities Act and associated regulations;*

*THAT an immediate request be made to the Province of Ontario for an extension to the commenting period from 45 days to 60 days;*

*AND FURTHER THAT staff provide a report at the special Executive Committee meeting, if called, that includes a government relations and communications strategy.*

Further to the above, at a special meeting of the Executive Committee, held on April 12, 2019, Resolution #B35/19 was approved as follows:

*WHEREAS the Province has posted on the Environmental Registry of Ontario two proposals for modernizing conservation authority operations and focusing conservation authority development permits on the protection of people and property;*

*LET IT THEREFORE BE RESOLVED THAT this presentation be received for information;*

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*AND FURTHER THAT the comments received from the Executive Committee be considered to inform the staff report to the Board of Directors on April 26, 2019.*

Further to the above direction, TRCA staff has reviewed the proposed amendments and drafted comments based on staff's day-to-day work in support of our municipal partners.

### **RATIONALE**

TRCA provides technical support to its municipal partners in implementing the natural heritage, natural hazard and water resource policies of municipal and provincial plans. In working with approval authorities, along with private and public proponents, TRCA supports comprehensive planning to ensure that development and infrastructure are adequately set back and protected from natural hazards and environmentally sensitive areas. TRCA achieves these goals in the following capacities, by acting as:

- A public commenting body under the Planning Act and Environmental Assessment Act;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement (PPS);
- A regulatory authority under section 28 of the Conservation Authorities Act;
- A service provider;
- A resource management agency; and
- A landowner, being second only to the Province in area of land ownership in TRCA jurisdiction.

TRCA also collaborates with provincial and municipal partners to seek opportunities for remediation and restoration to reduce risk and increase resiliency, where comprehensive redevelopment/community revitalization is proposed that includes areas of historical residential development within the flood hazard. Additionally, the recently released Made-in-Ontario Environment Plan (2018) states the province will "...work in collaboration with municipalities and stakeholders to ensure that conservation authorities focus and deliver on their core mandate of protecting people and property from flooding and other natural hazards, and conserving natural resources."

The current Conservation Authorities Act was amended in 2017 to include an updated defined purpose and object, which are as follows:

- **Purpose, s. 0.1:** The purpose of this Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario.
- **Objects, s. 20(1):** The objects of an authority are to provide, in the area over which it has jurisdiction, programs and services designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals.

A new section 21.1(1) of the Act, entitled Programs and Services, was added in 2017, which sets out three categories of programs and services that a CA is required or permitted to provide within its area of jurisdiction:

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### Programs and services

**21.1 (1):** The following are the programs and services that an authority is required or permitted to provide within its area of jurisdiction:

1. Mandatory programs and services that are required by regulation.
2. Municipal programs and services that the authority agrees to provide on behalf of municipalities situated in whole or in part within its area of jurisdiction under a memorandum of understanding referred to in subsection (3).
3. Such other programs and services as the authority may determine are advisable to further its objects.

### Mandatory programs and services

**(2)** Programs and services referred to in paragraph 1 of subsection (1) shall be provided in accordance with such standards and requirements as may be set out in the regulations.

A further area of change for the Conservation Authorities Act in 2017 was to have an administrative by-law (a requirement for all CAs). TRCA passed its administrative by-law September 28, 2018.

Many of the amendments to the Act in 2017 were enabling only and will come into effect through future regulations, either under the Minister's approval or through Provincial Cabinet.

Areas of the 2017 review where TRCA requested amendments that were not incorporated into the updated legislation included certain enforcement provisions, where TRCA recommended that Section 30 be amended to include an order to comply, a stop work order be appealed directly to the Minister, clarification regarding "after the fact" permits, and further that any new or updated regulations include a definition of an officer for enforcement purposes. Additionally, TRCA also requested an immunity provision for risk management purposes, as the potential liability associated with CA flood and erosion control infrastructure, funding challenges for maintenance and upgrades, and the increased exposure associated with climate change led TRCA to recommend that a clause be added to the Act with respect to flood and erosion control liability, to protect CAs operating in good faith from prosecution. The immunity provision was also not incorporated into the updated legislation.

TRCA staff's draft comments are contained within Attachment 1 to this report. Accompanying the draft comments are TRCA draft recommendations, which are consolidated below.

### TRCA recommends that:

1. The current purpose and objects in the *Conservation Authorities Act* remain broad and unchanged, to facilitate continued innovation and adaptation for local watershed-based solutions to current and emerging issues;
2. The role of CAs in the land use planning and environmental protection process, as linked to legislation including the *Planning Act*, *Environmental Assessment Act*, and the CA Act in supporting the implementation of provincial and municipal priorities, be recognized as a core mandatory program and service;

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3. The Province leverage the expertise of CAs in natural resource management, where capacity exists, for additional opportunities for efficiencies in public review processes to enable more timely reviews and approvals;
4. The core mandatory programs of CAs be consistent with the purpose of the Act and the *Made-in-Ontario Environment Plan* to include reference to the management and conservation of natural resources;
5. The identification of the management of conservation authority lands as a core mandatory function is important to include in the CA Act. Non-core functions such as restoration, recreation, education and community engagement functions of CAs on CA owned lands should be acknowledged as necessary to support these core activities in the amended Act and implementing regulations;
6. As school boards are enabled to enter into agreements with conservation authorities for the provision of lands, programs or services related to natural science or out-of-classroom experiences under Section 197.7 of the *Education Act*, the *Conservation Authorities Act* should be amended to explicitly acknowledge and permit the important role that CAs play in providing greenspace, scientific knowledge and experiences for Ontario students by including reference to natural science and outdoor education in the Act;
7. The Province maintain their financial and technical support for the Drinking Water Source Protection Program and that the identification of this program as a core mandatory program include continued financial support from the Ministry of Environment, Conservation and Parks for the role of Conservation Authorities, as prescribed under the Clean Water Act;
8. Consistent with the CA Act, the ability to manage local environmental issues on a watershed basis, be maintained for all conservation authorities;
9. The key role that many CAs play in the protection and restoration of the Great Lakes be identified and acknowledged as one of their core mandatory programs and services;
10. Increased transparency in how conservation authorities levy municipalities for mandatory programs and services be supported;
11. The review of non-mandatory programs occur every four years, coinciding with the second year of our partner municipality councils' four-year terms;
12. Further guidance from the Ministry regarding the apportionment of levy be addressed within the update to the Act, to address cost constraints of our municipal partners while ensuring equity and timely resolution of disagreements;

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- 13. The Province update the Act with general principles for transparency in levy funding, such as requiring cost recovery pricing for mandatory programs, based on transparent, full cost accounting and consultation with stakeholders, and require that all non-mandatory programs charge cost plus pricing to ensure they pay for their portion of a CA's administration functions;**
- 14. Entering into agreements for the delivery of non-core programs and services be mandatory practice, and proposes that the transition period for entering into these agreements be extended to December 2022, to coincide with the existing term end of municipal councils;**
- 15. The Province or any partner municipality be allowed to request an audit of special purpose financial information limited strictly to how their funds have been spent, at their cost, and that overall financial accountability remain as a fiduciary responsibility of the CA's Board of Directors;**
- 16. TRCA supports the amendment to clarify that the duty of conservation authority board members is to act in the best interest of the CA;**
- 17. The Province examine the size of CAs' Board of Directors in the context of this review and any consider amendments to the CA Act regarding the maximum number of board members that may be appointed to a conservation authority by partner municipalities;**
- 18. Flexibility be provided to CAs in respect of the charging of fees for diverse programs and services and that the CA Act be updated with general principles to be followed such as requiring cost plus pricing for associated fees, based on transparent, full cost accounting and consultation with stakeholders;**
- 19. A clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure and programming be added to the CA Act; and**
- 20. Enhanced provisions for enforcement and compliance be added to the CA Act, including stop work orders, orders to comply, clarification for "after the fact" permits and a definition of an "officer" for enforcement purposes.**

### **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 8 – Gather and share the best sustainability knowledge**

**Strategy 12 – Facilitate a region-wide approach to sustainability**

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### **FINANCIAL DETAILS**

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 the preparation of these comments.

### **DETAILS OF WORK TO BE DONE**

Upon endorsement by the Board of Directors, and recognizing any input received on the staff comments, the attached draft comment letter will be updated and submitted as TRCA's official comments to the ERO. Staff will continue to brief the Board on other legislative changes that result from this circulation.

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**Date: April 25, 2019**

**Attachments: 1 – TRCA Draft Comments (ERO #013-5018)**