Item 8.3

Section III – Items for the Information of the Regional Watershed Alliance

TO: Chair and Members of the Regional Watershed Alliance
Meeting #4/20, Wednesday, November 18, 2020

FROM: John MacKenzie, Chief Executive Officer

RE: **UPDATE ON MUNICIPAL MEMORANDUMS OF UNDERSTANDING AND SERVICE LEVEL AGREEMENTS**

KEY ISSUE

Update on work underway to update and achieve Memorandums of Understanding (MOUs) and Service Level Agreements (SLAs) with partner municipalities in the context of the updated *Conservation Authorities Act* (CA Act) and relevant regulations.

RECOMMENDATION

WHEREAS Toronto and Region Conservation Authority (TRCA) RES.#A121/19, adopted at the June 21, 2019 Board of Directors meeting, directed staff to pursue and execute updated MOUs and SLAs with its partner municipalities in accordance with the amendments to the *Conservation Authorities Act* made by Bill 108 and designed to improve accountability and transparency around the work of conservation authorities funded by municipalities;

AND WHEREAS TRCA RES.#A237/19, adopted at the January 24, 2020 Board of Directors meeting, directed staff to continue to work with partner municipalities to execute updated MOUs and SLAs based on mutually agreed upon services and, additionally, to report back to the Board of Directors on the progress of these agreements once draft *Conservation Authorities Act* regulations are released;

AND WHEREAS TRCA RES.#A31/20 adopted at the April 24, 2020 Board of Directors meeting provides specific direction to staff when updating or developing *Planning Act* related Memorandums of Understanding and Service Level Agreements with partner municipalities;

AND WHEREAS the COVID-19 pandemic has delayed the expected release of the *Conservation Authorities Act* regulations;

IT IS RECOMMENDED THAT this progress report and presentation be received;

THAT staff continue to work with partner municipalities to execute updated MOUs and SLAs based on mutually agreed upon services;

AND FURTHER THAT staff report back to the Regional Watershed Alliance on the progress of these agreements once draft *Conservation Authorities Act* regulations are released.

BACKGROUND

A review of the *Conservation Authorities Act* (CA Act) was initiated in 2015 by the Ministry of Natural Resources and Forestry (MNRF). The objective of the review was to identify opportunities to improve the legislative, regulatory, and policy framework governing the creation, operation, and activities of conservation authorities. Following extensive consultation, the Government of Ontario introduced the *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139) which received Royal Assent on December 12, 2017. Bill 139 amendments to the CA Act that affected the mandate of conservation authorities included a new "purpose" section, minor adjustments to the "objects" and "power" sections, and new provisions addressing the following three categories of required and permitted programs and services:

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 (MOU).
3. *Other programs and services* that the authority may determine are advisable to further its objects.

The CA Act was amended, again, on June 6, 2019 as part of Schedule 2 of the *More Homes, More Choice Act* (Bill 108). While Bill 108 is now law, many of the provisions of the amended CA Act are still subject to enabling regulations to be proclaimed by the Lieutenant Governor in Council (approved by Cabinet) or by the Minister. Proposed regulations to enact the new legislation include:

- Mandatory Program and Service Regulations – standards and requirements;
- Transition Regulation – Transition Plan, consultation, timeframe to achieve compliance;
- Governing appointment of operating expenses and capital costs; and
- Classes of programs and services for fees and prescribed amounts.

Bill 108 retains the three categories of programs and services added by Bill 139 and specifies four areas of *mandatory programs and services* that may be prescribed by regulation:

1. Programs and services related to the risk of natural hazards.
2. Programs and services related to the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title.
3. Programs and services related to the authority's duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006.*
4. Programs and services related to the authority's duties, functions and responsibilities under an Act prescribed by the regulations (e.g. the *Planning Act*).

Bill 108 made minor changes to the provisions governing *municipal programs and services, (i.e.,non-mandatory),* that require an MOU or agreement be made available to the public, be reviewed at regular intervals, and that the programs and services an authority agrees to provide on behalf of a municipality be provided in accordance with the terms and conditions set out in the MOU or agreement. Bill 108 added criteria for *other programs and services, (i.e. non-mandatory)* that states that a conservation authority may provide, within its area of jurisdiction, such other programs and services it determines are advisable to further its objects. If municipal funding is involved, there must be an agreement in accordance with the regulations and with funding determined in accordance with the CA Act and associated regulations.

In anticipation of the upcoming CA Act enabling regulations, and following TRCA Board direction, staff have begun meeting with our partner municipalities to discuss shared priorities and desired outcomes. This has led to agreement on the importance of developing new standardized agreements to ensure consistency, accountability, and transparency. Pursuing MOUs and SLAs with our partner municipalities will help us identify ongoing funding for TRCA's programs, projects and services for 2021 and beyond, while also supporting our municipalities in their needs, priorities and desired outcomes. Additionally, MOUs are good business practice and would allow a municipality to procure our services more easily through procurement policy exemptions.

To learn more about the amendments to the CA Act, please refer to TRCA's dedicated CA Act Update page.

At Board of Directors Meeting #11/19, held on January 24, 2020, Resolution #A237/19 regarding the "Update on Memorandums of Understanding and Service Level Agreements with Partner Municipalities' report was adopted as follows:

> *WHEREAS Toronto and Region Conservation Authority (TRCA) RES.#A121/19, adopted at the June 21, 2019 Board of Directors meeting, directed staff to pursue and execute updated Memorandums of Understanding (MOUs) and Service Level Agreements (SLAs) with its partner municipalities in accordance with the amendments to the Conservation Authorities Act made by Bill 108 and designed to improve accountability and transparency around the work of conservation authorities funded by municipalities;*
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> *AND WHEREAS the Conservation Authorities Act amendments prompt the need for agreements for non-mandatory programs and services to be negotiated with regional municipalities, City of Toronto and lower tier municipalities as part of the transition plan process following proclamation of the enabling regulations associated with the Bill 108 amendments to the Conservation Authorities Act; AND*
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> *WHEREAS TRCA delivers a significant amount of value-added services to its partner municipalities that will be further strengthened through SLAs, where formal agreements do not currently exist; AND*
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> *WHEREAS TRCA staff have held numerous meetings with municipal representatives in our jurisdiction since receiving Board of Directors direction on June 21, 2019;*
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> *THEREFORE, LET IT BE RESOLVED THAT staff continue to work with partner municipalities to execute updated MOUs and SLAs based on mutually agreed upon services;*
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> *THAT the Board of Directors representatives in lower tier municipalities request support from their municipal staff in ensuring that consideration is given for TRCA to be relieved from standard purchasing requirements based on their unique expertise and within the scope and mandate of the Conservation Authorities Act (e.g. flood and erosion management) in a manner similar to the City of Toronto and other municipalities in our jurisdiction;*
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> *THAT staff be directed when negotiating MOUs and SLAs that where there is any conflict between an upper and lower tier municipality for any services related to Planning*

Act matters, the municipality that is deemed the approval authority under the Planning Act shall prevail;

THAT staff report back to the Board of Directors on the progress of these agreements once draft Conservation Authorities Act regulations are released;

AND FURTHER THAT the Clerk and Manager, Policy, so advise municipal partners.

The topic of MOUs with municipalities for the purposes of review related to the *Planning Act* has also been raised both with partner municipalities and the Board of Directors. Most recently, at Board of Directors meeting #3/20, held on April 24, 2020, Resolution #A31/20 regarding the 'Update on Planning Act Related Memorandums of Understanding and Service Level Agreements with Partner Municipalities' was adopted as follows:

WHEREAS through Bill 108, the More Homes, More Choices Act, the Planning Act was amended to streamline development approvals processes and facilitate faster decisions by reducing decision timelines for municipalities and the province;

THEREFORE, LET IT BE RESOLVED THAT given the reduced timelines for application review under Bill 108, Toronto and Region Conservation Authority (TRCA) staff be directed when negotiating or updating Memorandums of Understandings (MOUs) and Service Level Agreements (SLAs) dealing with Planning Act matters, that agreements include provisions to ensure TRCA can provide comments within the statutory timeframes;

THAT such provisions provide a mechanism to ensure official plan policies for complete applications are regularly reviewed to ensure TRCA's requirements are fully reflected; provide for strengthened coordination with TRCA in the municipality's pre-application process; and provide for coordinated representation of municipal and TRCA interests for Local Planning Appeal Tribunal (LPAT) appeals, where feasible;

THAT TRCA continues to work with BILD, consultants, development companies and municipal partners on updated TRCA guidelines, that help with the streamlining of applications;

THAT TRCA ensure that any fees for services provided to municipalities that are recouped from the taxpayers or service users, be collected in accordance with the Municipal Act as well as the Conservation Authorities Act and associated regulations;

AND FURTHER THAT the Clerk and Manager, Policy, so advise BILD, the Clerks, the Chief Planning Officials, the Chief Financial Officers, and Legal Counsel of our municipal partners.

Framework for Undertaking Agreements with Municipalities

The following agreements are proposed as the basic framework for non-mandatory *municipal programs and services* with our partner municipalities:

Memorandum of Understanding (MOU)

For the purposes of establishing principles for collaboration and partnership with municipalities, an MOU will be used to set out the relationship, roles and responsibilities when no funding is being exchanged. MOUs may provide for the possibility of future fee-for-service or other agreements to implement.

Service Level Agreement (SLA)
The SLA is intended to provide the overarching framework for TRCA and the municipality to work together to deliver *municipal programs and services*. The SLA will address services that the municipality will provide explicit funding for and which are considered non-mandatory under the amended CA Act. The SLA will include a schedule that lists the type of services that the municipality may engage TRCA in providing. It is proposed that an SLA will be developed initially with Letter Agreements that encompass either existing or new projects/programs being subsequently developed.

Letter Agreements
A Letter Agreement will be prepared for each project, program, initiative or type of service that the municipality engages TRCA to deliver. A Letter Agreement will include, but not be limited to, project scope, deliverable and associated timelines, relevant key performance indicators, and funds to be provided in exchange for the services.

Individual Agreements for Complex Municipal Projects
Some projects that TRCA carries out for municipalities, such as significant construction projects, will require a full agreement that is separate from, and not based on, a Letter Agreement template.

RATIONALE
To date, the following work has been completed by TRCA staff to progress MOUs and SLAs with partner municipalities.

Discussions with Partner Municipalities
The reception of meetings with some of our partner municipalities has been overwhelmingly positive. Although some municipalities have communicated their desire to wait for the final CA Act regulations to be released before developing an MOU, these discussions have still confirmed the importance of TRCA as a resource and delivery agent of municipal programs and projects. The meetings have also sparked productive discussions related to mutual interests and cooperation on significant projects and future funding opportunities.

TRCA Senior Leadership and Government and Community Relations staff have met, or have upcoming meetings scheduled, with the following municipalities:

- The Regional Municipality of Durham
- City of Pickering
- Town of Ajax
- Township of Uxbridge
- City of Toronto
- City of Brampton
- City of Mississauga
- Town of Caledon
- City of Markham
- City of Vaughan
- Town of Whitchurch-Stouffville
- Township of King
- Town of Mono
- Township of Adjala-Tosorontio
- The Regional Municipality of Peel (to take place as part of budget meetings)

- The Regional Municipality of York (to take place as part of budget meetings)

Development of Detailed List of Services

At these meetings, TRCA provided a list of potential programs and services that could be offered including, but not limited to:

- Development and Environmental Assessment planning and permitting
- Studies, assessments, and/or reviews
- Ecological restoration, planting and wildlife management
- Conservation land management and trails
- Environmental monitoring
- Erosion monitoring and management
- Property management
- Watershed planning
- Climate change and applied research
- Community/business/industry engagement, education and community learning
- Archaeology
- Conventional and urban agriculture
- Master and management planning
- GIS and mapping services

Based on discussions with municipal staff, TRCA staff continue to refine the list of services (Attachment 1) to ensure that municipalities are provided with a complete list of services that showcases the important work that TRCA can offer. Given that the CA Act enabling regulations have not yet been released, the list of TRCA services laid out in Attachment 1 are structured according to TRCA's current budget framework and encompasses the entirety of services offering by TRCA, rather than being divided into mandatory and non-mandatory services. Once the CA Act regulations are released, this list of services may be further refined and restructured.

It is also recognized that TRCA could benefit from services or supports offered by some of the municipalities within our jurisdiction, including increasing efficiencies and capacity. Such services could include items such as data sharing, land management, Indigenous engagement, translation services and others (Attachment 2) and can encompass both fee-based and in-kind services. It is further recognized both TRCA and partner municipalities can benefit from coordination of complementary policy and program initiatives. As such, it is contemplated that the MOUs and SLAs could also include municipal services that TRCA would benefit from obtaining, as well as lay out the mechanisms and scope for TRCA-municipality cooperation.

Scan of Municipal Procurement/Purchasing Policies/Bylaws

TRCA staff have completed a review of all partner municipality's procurement/purchasing policies and by-laws. This review has identified which municipalities exempt TRCA from procurement processes, which municipalities can currently sole source TRCA services under non-competitive or limited tendering processes, and which municipalities may need to amend their policies/by-laws to allow sole sourcing in the future. In addition to the review of procurement/purchasing policies and by-laws, a template Corporate Report (Attachment 3) has been drafted to assist municipalities in amending procurement/purchasing by-laws/policies, where required, to allow a municipality to procure TRCA services through procurement policy exemptions. These reports are being tailored for each municipality, in collaboration with municipal staff.

Draft MOU and SLA

To further assist partner municipalities during MOU/SLA development, TRCA staff have drafted a template MOU (Attachment 4) and SLA (Attachment 5). These templates have been provided to some partner municipalities for review and comment. Based on feedback and the specific needs/interest of individual municipalities, these templates will be amended and tailored as required.

Municipal Project Maps

Detailed Municipal Project Maps, and associated project briefs, have been developed and produced for each municipality TRCA staff have met with. These maps and briefs showcase a suite of priority projects undertaken by TRCA staff within the municipality, projects that TRCA has collaborated with the municipality on or present an opportunity to collaborate, and TRCA services and programs which municipalities have expressed interest in. These Project Maps are being utilized to help facilitate MOU discussion with partner municipalities.

MOU/SLA Project Dashboards

TRCA staff have created draft MOU/SLA Project Dashboards with the objective of providing a progress report on MOU/SLA development in a concise visual graphic. These project dashboards can be customized based on the jurisdiction of interest (i.e. Regional, jurisdiction-wide, single lower-tier municipality) and will succinctly provide MOU/SLA development updates. The MOU/SLA Project Dashboards will be populated with information over the coming months, except for detailed financial information which will come at later stages, as the development and execution of these agreements progress. See Attachment 6 for templates of a TRCA-wide and a Region-specific MOU/SLA Project Dashboard.

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. The process of undertaking agreements with municipalities related to non-mandatory municipal 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 early 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.

DETAILS OF WORK TO BE DONE

At this time, the timing of the release of enabling regulations by the Province is tentatively expected to be Q4 2020. Regardless of the timing of the release, it is expected that a transition period will be provided for entering MOUs that will be in line with the municipal budget cycle.

TRCA staff will:

- Communicate, once known, to TRCA Board of Directors, Regional Watershed Alliance, municipal partners and relevant stakeholders, information related to the draft enabling regulations;
- Continue to meet with municipal partners in order to initiate the development of MOUs based on municipal preferences and needs;
- Work with municipalities, where required, to address any potential procurement policy approvals or required by-law amendments to support updated MOUs and SLAs;

- Reach out to neighbouring Conservation Authorities in order to coordinate MOU development;
- Present an overview of our proactive approach to addressing upcoming requirements to Conservation Ontario members, and,
- Update existing, and finalize new MOUs and SLAs, as appropriate.

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Attachments: 6

Attachment 1: Detailed List of TRCA Programs and Services
Attachment 2: Sample of Municipal Services
Attachment 3: Template Corporate Report
Attachment 4: Template Memorandum of Understanding
Attachment 5: Template Service Level Agreement
Attachment 6: Sample MOU/SLA Project Dashboards