

Section III – Items for the Information of the Board

TO: Chair and Members of the Board of Directors
Friday, February 26, 2021 Meeting

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 forthcoming regulations.

RECOMMENDATION

IT IS RECOMMENDED THAT this progress report be received;

THAT staff report back to the Board of Directors on the progress of Memorandum of Understanding and Service Level Agreements once *Conservation Authorities Act* regulations are released;

AND FURTHER THAT the Clerk and Manager, Policy, circulate this report to TRCA’s municipal partners, and the Province, including the Ministry of Environment, Conservation and Parks, Ministry of Natural Resources and Forestry, and Ministry of Municipal Affairs and Housing.

BACKGROUND

A review of the *Conservation Authorities Act* (CA Act) was initiated in 2015 by the Ministry of Natural Resources and Forestry (MNR). 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).

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.

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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 financing is required, there must be an agreement in accordance with the regulations and with funding determined in accordance with the CA Act and associated regulations.

The CA Act was amended again on December 8, 2020, through the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229). These amendments make minor revisions to the provisions governing agreements for the delivery of non-mandatory programs and services, including standards and requirements for delivery of the programs and services.

Many of the provisions of the CA Act have not been proclaimed, and are subject to enabling regulations. Anticipated regulations 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.

In anticipation of the upcoming CA Act enabling regulations, and following TRCA Board direction, staff have been meeting with our partner municipalities to discuss shared priorities and desired outcomes for MOUs and SLAs. 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 in part as follows:

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;

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;

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 at 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 in part 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;

Furthermore, at [Board of Directors Meeting #6/20](#) held on September 25, 2020, staff were authorized to continue working partner municipalities to develop and execute MOUs and SLAs for non-mandatory services and fee for service work. Staff also shared several resources that have been developed to move forward MOU and SLA development and execution. These resources included:

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- A detailed list of TRCA services
- A draft template MOU and SLA
- A template Corporate report to support municipalities in bringing forward agreements to Council
- A template MOU/SLA update dashboard

In addition, staff have developed project maps and briefs outlining the work that TRCA is doing in each municipality to facilitate initial municipal discussions. Staff also undertook a review of procurement by-laws and/or policies for each municipality in TRCA's jurisdiction to understand whether any amendments to procurement mechanisms may be required in order to enter into an MOU and SLA.

The Province has also indicated that they will be providing a deadline by which conservation authorities will be required to enter into agreements with partner municipalities for the provision of non-mandatory services. Following the amendments to the [Conservation Authorities Act](#) and [Planning Act](#) through Schedule 6 of [Bill 229](#) on December 8, 2020, the Province [announced](#) the formation of a Conservation Authorities Working Group on December 16, 2020. As noted on the Province's [website](#), this working group will provide input on the first phase of proposed regulations to implement the changes to the Act, that will be subject to stakeholder and public consultation, including: the mandatory programs and services that conservation authorities would be required to provide; the agreements between municipalities and conservation authorities and the transition period associated with non-mandatory programs and services; and how local community members can participate in their conservation authorities through community advisory boards. TRCA has representation on the Working Group, with additional representation from other conservation authorities, Conservation Ontario, the Association of Municipalities of Ontario, and the development and agriculture sectors.

RATIONALE

Staff have been undertaking discussions with partner municipalities since June 2019, with discussions increasing in frequency and productivity over the last six to eight months. The productivity of MOU/SLA discussions has been supported by the resources developed by staff and described above.

Since the last update to the Board of Directors on the MOU-SLA process (Meeting #6/20, September 25, 2020), discussions with many partner municipalities have progressed (Attachment 1). This progress includes the following:

- Initial discussions and/or meetings have been undertaken with all municipalities within TRCA's jurisdiction.
- Discussions on MOUs and SLAs have progressed to a more detailed stage with many municipalities. These detailed discussions include municipal staff reviewing TRCA's list of services, considering which services they currently utilize or might utilize, and reviewing any additional considerations, both internally and with TRCA staff. These detailed discussions may also include municipalities reviewing the template MOU and SLA with their legal counsel and/or conferring with their procurement/purchasing staff to understand any limitations and whether amendments may be required to current municipal procurement mechanisms.
- The execution of MOUs and/or MOUs moving to an advanced stage of development or approval. This includes where an MOU and the associated list of services has been drafted and is under review.

Staff have also reached out to neighbouring conservation authorities to provide updates on

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discussions with municipalities and to coordinate future discussions, where desired by a municipality.

TRCA staff and municipalities recognize that depending on the timing of the CA Act regulations and the results of the Conservation Authorities Working Group, some MOUs may need to be updated to cover any non-mandatory services needed. Some municipalities are preferring to wait until the regulations are released to finalize and execute MOUs but, given the time required to develop these agreements, are working with TRCA staff to move the MOUs and SLAs forward to an advanced stage.

The Province has indicated that the first task of the Provincial Conservation Authority Working Group's will include looking at the first phase of proposed regulations that impact conservation authorities and their participating municipalities. TRCA will continue to support the Working Group and will formally respond to any proposals or consultation documents that may be forthcoming from the Province.

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 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

- Communicate, once known, to TRCA Board of Directors, municipal partners and relevant stakeholders, information related to the enabling regulations;
- Continue to meet with municipal partners in order to continue development and execution 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;
- Continue working with neighbouring Conservation Authorities in order to coordinate MOU development; and,
- Update existing, and finalize new MOUs and SLAs, as appropriate.

Report prepared by: Nancy Gaffney, extension 5313, Victoria Kramkowski, extension 5707

Emails: Nancy.Gaffney@trca.ca, Victoria.Kramkowski@trca.ca,

For Information contact: Nancy Gaffney, extension 5313, Victoria Kramkowski, extension 5707

Emails: Nancy.Gaffney@trca.ca, Victoria.Kramkowski@trca.ca

Attachments: 1

Attachment 1: Municipal MOU/SLA Status Progress Table