

Chief Executive Officer



February 11, 2022

BY EMAIL ONLY

**DRAFT FOR DISCUSSION**

Maria Vavro  
Ministry of the Environment, Conservation and Parks  
Conservation and Source Protection Branch  
40 St Clair Ave West, Floor 14  
Toronto, ON M4V 1M2

**RE: Regulatory and policy proposals (Phase 2) under the Conservation Authorities Act (ERO # 019-4610) posted on January 26, 2022**

Thank you for the opportunity to comment on the Ministry of Environment, Conservation and Parks (MECP) Environmental Registry of Ontario (ERO) posting on the Phase 2 regulatory proposals under the Conservation Authorities (CA) Act. These comments were endorsed by Toronto and Region Conservation Authority's (TRCA) Executive Committee of the Board of Directors on February 11, 2022, which will be received and endorsed by the Board of Directors on February 25, 2022.

TRCA has been an active participant in the current provincial government's four-year consultation process for proposed changes to the CA Act, advocating for enhanced regulations to advance conservation authority's objectives and requesting that the Province introduce legislation that builds on the best practices that TRCA has already implemented.

Through this process, there has also been an important educational component, when comparing TRCA's operations to the 35 other conservation authorities that operate within Ontario, especially pertaining to the proposed financial regulations included in this Phase 2 consultation.

**Key Facts:**

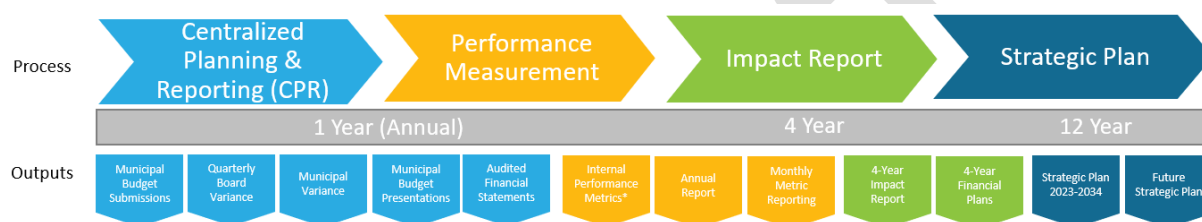
- TRCA's annual revenues are **five times larger** than the second largest conservation authority
- TRCA's revenue represents approximately **40%** of collective conservation authorities' revenues and this share is expected to continue growing due to the planned municipal population growth within our jurisdiction

TRCA's success is deeply rooted in open and transparent relationships with our partner municipalities, which has directly led to TRCA providing over \$120M in municipally funded and supported programs and services in 2020. As an independent not for profit corporation, we also regularly leverage funding from our municipal partners to attract millions of dollars of funding from senior levels of government, industry and the philanthropic sector in support of municipal and TRCA objectives.

Practices we have incorporated into our business models include:

- Best practice arrangements supported by participating municipalities, including regular financial reporting
- Providing enhanced value to our stakeholders leveraging municipal support through funding and grant opportunities, including all levels of government, philanthropic and additional private sector stakeholders
- Development of multi-year municipal levy budgets to provide stability and transparency to TRCA's partner municipalities

The following graphic highlights the magnitude that TRCA goes through to ensure that meaningful financial collaboration is the foundation of our relationship with governments and other funding partners.



As the Province is aware, although TRCA's Board of Directors consists of individuals appointed from its partner municipalities (including councillors and citizen representatives) in accordance with the guidelines set out in the CA Act, partner municipalities do not exercise control over TRCA.

TRCA's partner municipalities are not engaged in the direct financial management of the TRCA, including, but not limited to the following:

- TRCA's assets and liabilities
- Financial obligation is limited to the levy apportionment of funding as per Provincial regulations which is addressed through the annual municipal budget processes and any additional fee for service work that is mutually agreed to by both parties
- Preparation of TRCA financial statements which are independently audited
- TRCA's partner municipalities do not direct their appointees on how to vote on any matters (financial or non-financial) that are to be voted on by TRCA's Board. Rather, they vote in accordance with their fiduciary duty to make decisions in accordance with the best interests of TRCA

These truths are paramount to TRCA's financial success and represent the bedrock of our relationship with our municipal partners and allow us to provide products and services efficiently and cost-effectively, removing unnecessary steps that would delay delivery of key initiatives.

Throughout the consultation, the Province has taken note of our transparent governance processes and TRCA is heartened that many of the governance best practices introduced in the document are reflective of our existing best practices, including website disclosures pertaining to user fees, financial statements, budgets, bylaws, as well as meeting agendas and minutes.

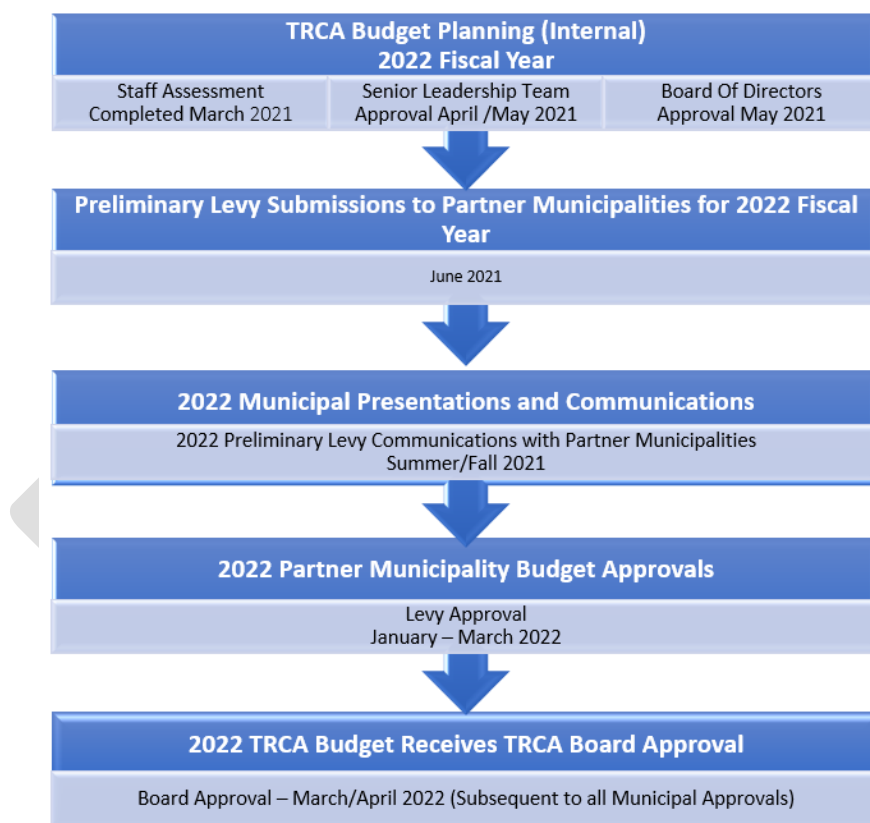
At the core of the consultation with the Province, has been the intention to build on what is already working between conservation authorities, municipalities, and other stakeholders noting the need to build in flexibility to recognize the difficulty of drafting legislation and regulations to govern all 36

diverse conservation authorities. As such, this response highlights the key areas in the consultation document that unintentionally divert from this intention and suggest simple changes that would allow the province to fulfil their pledge not to fix what is not broken.

## **Part 1 – Proposed Municipal Levies Regulation**

For our jurisdiction and for our participating single and upper tier partners in the Greater Toronto Area including York, Durham, Peel and the City of Toronto, the unequivocal best budget approval practice is for the conservation authorities' Boards of Directors to approve annual municipal levy apportionments after they have been approved by through the municipal budget process, which is the method that TRCA, nearby GTA CAs, and our participating municipal partners noted above have followed for years.

As depicted below, TRCA's annual budget process ensures ongoing collaboration with our partner municipalities, resulting in an evolution that ensures all parties are on the same page as it relates to priorities, deliverables and the required funding envelope to support these programs and services



Municipal councils only approve the municipal levy component of TRCA's budget. It is universally understood that programs and services offered using the user pay principle to further TRCA's organizational objectives are not intended to fund provincially mandated or municipally requested offerings, and vice versa. The existing collaborative budget process ensures that there are no modifications made to TRCA's draft budget, which receives unanimous approval from our Board of Directors on an annual basis, after the completion of the municipal budget cycle.

While many of the concepts included in Table 1 of the consultation document may be relevant to conservation authorities in Ontario that have a different or less established collaborative and robust budgeting process, based on their geographic and political factors and the types of programs they deliver, they are not applicable to TRCA and our partner municipalities and even nearby CAs.

#### **Issue #1**

The need to notify municipalities 30 days in advance of budget approval and the concept of “weighted voting” related to municipal levy approval is redundant given that our municipalities have already approved the apportionments included in TRCA’s draft budget.

#### **Issue #2**

Introducing the requirement for TRCA to have our Board of Directors approve our draft budget and then wait a minimum of 30 days before a final approval vote would needlessly add time to our budget process.

We anticipate that this prescriptive change would push TRCA’s final budget approval to May/June, meaning that at the same Board of Directors meetings, TRCA would be approving our audited financial statements for the prior year, our final budget for the current year, and providing a preliminary update on the subsequent year municipal levy envelopes. This is far from ideal.

#### **Issue #3**

The proposal for conservation authorities to provide their full budgets to their partner municipalities for review and justify to their partner municipalities why self-generated revenues are not being used to further reduce municipal levy funding, blurs established municipal budget roles.

The proposed requirement to present full budgets to partner municipalities may make sense in certain contexts for smaller conservation authorities, but in TRCA’s jurisdiction, our partner municipalities specifically request that our budget presentations/documents solely focus on the municipal levy apportionments, as these are the only amounts that our partner municipalities are approving within their budget processes.

For additional context, in 2020, TRCA generated over \$162M in revenue, of which only \$60M (37%) related to municipal levy apportionments. TRCA and our municipal partners have found the budget process to be more understandable and fruitful by focusing on the specific municipal programs and services that we are delivering for the levied funds, rather than the entirety of our budget, for which they do not have an oversight role.

Along these same lines, TRCA’s municipal partners are generally aware of the extent of self-generated programs and services that TRCA offers to our other stakeholders, and they appreciate that such initiatives are done to further our mandate, rather than to offset municipal costs, however, they do not have direct involvement in such initiatives. This proposed regulation could be inadvertently construed as a provincial effort to legislate municipal control over conservation authority operations and lead to discussions on directing the use of self-generated revenues, which historically have been used to primarily support our parks and education initiatives, to instead fund specific municipal initiatives, a proposition which TRCA and our municipal partners explicitly oppose.

Outside of introducing an unnecessary level of time consuming processes and added administration with our municipal parties who are satisfied with the current approach, such well-intentioned regulations could also undermine TRCA’s legal status as an independent body operating as a registered charity, obstructing our ability to leverage municipal funding in support of

shared objectives. As an example, in 2019 and 2020, TRCA was awarded over \$65.5M in grants from the private sector and other levels of government to support shared conservation authority and municipal priorities in our jurisdiction, including over \$56M in federal Disaster Mitigation and Adaptation Funding (DMAF) to support vital erosion work within our jurisdiction. The resounding success of TRCA's funding and grants initiatives has been widely celebrated by TRCA's Board of Directors and our municipal partners and as such, any regulation that potentially puts our ability to continue operating as an independent registered charity in jeopardy would be inconsistent with the Province's intention to build on what is currently working.

### **Recommendation**

***TRCA respectfully requests that the regulations recognize that where a conservation authority waits to approve their budget until after municipal levy allocations have been approved by their municipalities, there is no need for additional prescriptive oversight that impacts the well-established collaborative working relationships and prolongs the budget process.***

***Further, the regulations must recognize that the continued role of the participating municipalities is to approve that participating municipality's component of a conservation authority's budget, rather than their complete budgets, for which the participating municipality does not have legal oversight.***

***Further, if this needs to be prescribed specifically for TRCA in the regulation recognizing our well established municipally endorsed processes similar to other matters specific to TRCA already present in provincial CA Act/regulations (e.g., Board composition) we request the regulation do so.***

### **Part 3: Proposal for Minister's published list of classes of programs and services for which a CA may charge a fee**

The magnitude of world class programs and services that TRCA offers, whether provincially regulated, municipally requested, or those that further organizational objectives, are unmatched by any other organization in our field. In 2019, prior to the pandemic, TRCA generated over \$36M in fees, which exceeds the **total** revenues of every other conservation authority.

This is a testament to our ability to monetize our assets and offer world class programs and services to a variety of stakeholders. TRCA is delighted that the provincial consultation guide adopts many practices already in effect at TRCA, including Board approval of our user fee schedule on a periodic basis and posting of fees on our website.

Many of these programs and services have well defined offerings that fall into multiple categories. For instance, a regulated program may lead to the opportunity for a municipality to engage TRCA to complete additional discretionary programs, and there may be an opportunity for TRCA to offer additional fee for service work to other stakeholders including provincial and federal agencies and private sector partners, using the user pay principle, or leverage additional funding through grant opportunities.

TRCA's lone issue with this aspect of the consultation guide revolves around the possible misinterpretation that there is a requirement for conservation authorities to receive approval from their partner municipalities to utilize the user pay principle when there is municipal funding involved in the overall program or service.

Given that the proposed wording of regulations is only generally described in the proposal, TRCA wanted to raise the potential conflicts that would arise if the wording of the regulation is not clarified as municipalities do not dictate the terms of programs and services that conservation authorities offer to further their own objectives, nor do they dictate what stakeholders we conduct business with.

Where TRCA completes work on behalf of our municipal partners, there are clear parameters regarding costs, timelines, deliverables, and several other key elements that are mutually agreed upon, which are independent of all aspects of the user pay principle.

A significant concern with the possible misinterpretation that could arise relates to equating user fees with fee-for-service arrangements. A prime example of an issue that could arise, would be TRCA's Partner's in Project Green program, which has the financial support of 100+ companies in the Greater Toronto Area, and is further supported by TRCA's partner municipalities, for which TRCA completes specific deliverables which are mutually agreed upon. Whether TRCA is completing fee for service work on behalf of the program participants does not impact the financial interests of our partner municipalities, however, the wording in the consultation guide could be interpreted to mean TRCA would need to receive municipal approval to proceed with this independent work. As such, the need to develop cost apportionment agreements, where municipality funding is not contingent on fee for service work introduces a level of complexity that is not operationally practical and which could unfortunately reduce the positive impact of such programs.

***Recommendation***

***TRCA requests that this section be updated to reflect that if a program or service is permitted by the province to be offered, that the only condition for charging a fee is that the user pay principal exist, consistent with current best practices OR that the second condition be based on contingent municipal funding which relies on the conservation authority to raise additional funding through fee for service work.***

**Part 4: Proposal to require certain information including all agreements and amendments to agreements with municipalities on a conservation authorities website**

TRCA fully supports ensuring transparency of conservation authority operations, however, there are some concerns with the requirement that CAs include a notice on their website every single time the CA amends or enters into a new MOU or other agreement with municipalities. This requirement, should it ultimately be included in the transition regulation, should be scaled back to refer only to agreements governing the delivery of programs and services, but not every single agreement related to a program or service. In addition, TRCA requests that the exceptions identified in the proposal be expanded through input and further dialogue with conservation authorities prior to enacting the amendments to the transition regulation.

***Recommendation***

***TRCA requests that the proposed requirement to post agreements with municipalities be limited to overarching MOUs and other Agreements that deal specifically with programs and services, and that the classes of exceptions be broadened.***

Thank you once again for the opportunity to provide comments on the Phase 2 regulatory and policy proposal posted to the ERO. Should you have any questions, require clarification on any of

the above, or wish to meet to discuss our remarks, please reach out at your earliest convenience at 416.667.6290 or at [john.mackenzie@trca.ca](mailto:john.mackenzie@trca.ca).

Sincerely,

John MacKenzie, M.Sc. (PI) MCIP, RPP  
Chief Executive Officer

cc:

The Honourable David Piccini, Minister of the Environment, Conservation and Parks  
Chloe Stuart, Assistant Deputy Minister, Ministry of the Environment, Conservation and Parks  
Jennifer Innis, Chair, Toronto and Region Conservation Authority  
Hassaan Basit, President and CEO, Conservation Halton  
Stephen Conforti, City of Toronto, Executive Director, Financial Planning Division  
Jason Li, Regional Municipality of York, Commissioner and Regional Treasurer  
Stephanie Nagel, Regional Municipality of Peel, Treasurer and Director of Corporate Finance  
Joanne Cermak, Regional Municipality of Durham, Director of Financial Services