

Section I – Items for the Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, February 25, 2022 Meeting

FROM: John MacKenzie, Chief Executive Officer

RE: **UPDATE ON MEMORANDUMS OF UNDERSTANDING AND SERVICE LEVEL AGREEMENTS WITH MUNICIPALITIES AND REQUESTED BOARD APPROVAL OF TRCA PROGRAMS AND SERVICE INVENTORY AS REQUIRED UNDER THE CONSERVATION AUTHORITIES ACT PHASE 1 REGULATIONS**

KEY ISSUE

To provide an update to the Board of Directors on work underway to update and achieve new and updated 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 and to obtain Board approval of the Programs and Services Inventory in fulfillment of requirements under O.reg. 687/21 under the Conservation Authorities Act.

RECOMMENDATION

THAT this progress report be received;

THAT the Board of Directors approve the attached draft Programs and Services Inventory, as required by *O.Reg. 687/21: Transition Plans and Agreements for Programs and Services under Section 21.1.2 of the Act*;

THAT staff continue to report back to the Board of Directors on the progress of developing and executing Memorandum of Understanding and Service Level Agreements with our municipal partners;

AND FURTHER THAT the Clerk and Manager, Policy, circulate this report to TRCA's municipal partners and the Ministry of Environment, Conservation and Parks, in fulfillment of requirements associated with the development of a Transition Plan, and that this report also be circulated to Conservation Ontario, neighbouring conservation authorities, the Ministry of Northern Development, Mines, Natural Resources and Forestry, and Ministry of Municipal Affairs and Housing.

BACKGROUND

Since 2015, the *Conservation Authorities Act* (CA Act) has been amended several times in order to introduce measures that provide further clarity and transparency surrounding the various types of programs and services that conservation authorities (CAs) provide to, and on behalf of, municipalities. 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, CAs will need to execute Memorandums of Understanding (MOUs) and Service Level Agreements (SLAs) with partner municipalities to deliver services deemed to be municipal (non-mandatory). Background on the resulting CA Act amendments and implications for the provision of municipal (non-mandatory) services to partner municipalities, as well as a full description of related Board

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resolutions directing TRCA staff to undertake discussions with municipal partners to develop and execute MOUs and SLAs, was presented at the Board of Directors February 26, 2021 meeting (RES.#A26/21). Updates on MOU and SLA discussions with municipalities were received by the Board of Directors at the June 24, 2021 meeting (RES.#A143/21) and the November 19, 2021 meeting (RES.#A224/21).

Finalized CA Act Phase 1 regulations were released by the Ministry of Environment, Conservation and Parks (MECP) on October 1, 2021. A review of the Phase 1 regulations 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 MOU-SLA Update brought forward at the November 19, 2021 Board of Directors meeting (RES.#A224/21).

In accordance with the Phase 1 regulations, TRCA also brought forward a Transition Plan for Board approval at the November 19, 2021 Board of Directors meeting (RES.#A224/21). The Transition Plan lays out a workplan and timelines for meeting the various requirements set out in the Phase 1 regulations including the development of an inventory of programs and services, undertaking discussions with participating municipalities, and developing and executing MOUs with participating municipalities. The approved Transition Plan was circulated to MECP, other relevant Provincial Ministries, participating municipalities and other partner municipalities within TRCA's jurisdiction.

The Phase 1 regulations also direct CAs to prepare an inventory of programs and services and circulate the inventory to all participating municipalities in the CA's area of jurisdiction, as well as any other municipality that the CA has entered into, or intends to enter into, an agreement with. The inventory must be completed and submitted to MECP And participating municipalities by **February 28, 2022** but changes can be made to the inventory after that date in response to municipal feedback. The inventory must include:

- Costs associated with delivering the listed programs and services;
- A classification of the programs and services according to which category they fall under (Category 1 – mandatory programs and services provided under section 21.1 of the Act; Category 2 – municipal programs and services provided under section 21.1.1 of the Act; and Category 3 – other programs and services provided under section 21.1.2 of the Act that the authority has determined to be advisable to further the purpose of the Act);
- An explanation of the rationale for categorizing programs and services as Category 1;
- Identification of the municipalities on behalf of which Category 2 programs and services are provided and the date on which agreements were entered for those services;
- The funding sources for Category 3 programs and services currently being delivered and whether agreements will be entered with municipalities after the transition date in order to continue delivering those programs and services.

Beginning July 1, 2022, CAs are also required to provide quarterly Progress Reports to MECP on the status of discussions with participating municipalities and MOU development.

The deadline for completion of the second phase of the transition period, which includes the execution of MOUs and SLAs with partner municipalities for Category 2 and Category 3 programs and services, remains **January 1, 2024**.

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TRCA continues to participate in the Province's Conservation Authorities Working Group (CAWG), which was announced December 16, 2020, as the Province develops Phase 2 - CA Act regulations, which focus on municipal levy, budget process and provincial policy for the charging of CA fees. For more details regarding Phase 2, please refer to Agenda Item 8.3 of TRCA's Executive Committee Meeting held on February 11, 2022.

RATIONALE

TRCA has prepared an Inventory of Programs and Services ("the Inventory") (**Attachments 1 and 2**) to fulfill the requirements laid out in O. Reg. 687/21: Transition Plans and Agreements for Programs and Services Under Section 21.1.2 of the Act. The Inventory outlines the following categories of programs and services offered by TRCA:

- Category 1 programs and services - the mandatory programs and services provided under section 21.1 of the Act.
- Category 2 programs and services - the municipal programs and services provided under section 21.1.1 of the Act.
- Category 3 programs and services - the other programs and services provided under section 21.1.2 of the Act.

The attached Inventory, which is being circulated to participating municipalities, includes the following components:

- A Preamble, which outlines the purpose of the Inventory, the components of the Inventory, and additional information to guide the review and use of the Inventory;
- An overview of each of TRCA's Service Areas and associated Program Areas; and
- The categorization of TRCA Service Areas and Program Areas into the categories outlined above, including rationale and additional details, as needed.

Active TRCA accounts are largely the basis for this Inventory; however, the Inventory also reflects services that TRCA has previously, and will likely provide again, to municipalities and other partners. TRCA anticipates that its implementation of the amendments to the Act, specifically, the new sections 21.1, 21.1.1 and 21.1.2, and the mandatory services and transition regulations, will primarily be through the existing budget process with participating municipalities, using the levy for mandatory services and MOUs and SLAs with both participating municipalities and other municipalities for non-mandatory, municipally requested services. TRCA does not anticipate a need to use cost apportioning agreements because all service agreements with participating municipalities for non-mandatory services will be for municipally requested services.

The Inventory will provide the basis for discussions with participating municipalities for the provision of municipally requested programs and services. The Inventory is currently in a draft format and may be adjusted based on input from participating municipalities.

Developing and Executing MOUs and SLAs with Partner Municipalities

Staff continue to undertake discussions with partner municipalities on TRCA's service areas and program areas as part of the development of new and updated MOUs and SLAs. The release of the Phase 1 CA Act regulations provides additional clarity and certainty for municipalities to enter into MOUs and SLAs with TRCA. While municipalities that are currently levied for TRCA services (i.e. City of Toronto and the Regional municipalities of Peel, York and Durham) may

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wish to understand the Phase 2 levy regulations prior to entering into new or updated overarching agreements with CAs, these municipalities have also expressed a desire to see TRCA's draft inventory and to continue discussions on MOU and SLA development. Thus far, TRCA has either held or has scheduled discussions with York Region, Peel Region, Durham Region and the City of Toronto to share our draft inventory and answer preliminary questions from our participating municipalities.

TRCA is hopeful that we will be able to maintain our current funding mechanisms for the existing programs and services that we provide these partner municipalities. Through the Phase 2 regulation development process, we are actively working with the Province through the CAWG and through direct discussions with MECP staff to allow our current levying practices, which align to the municipal budgeting process, are transparent, and are supported by our partner municipalities, to continue, rather than introduce unnecessary complexities and additional municipal and TRCA Board approval elements for a process that is working well for all parties.

Local municipalities, which are not levied for CA services and instead receive them through the corresponding regional government, or on a fee-for-service basis, can and should enter into MOUs and SLAs with TRCA based on the following rationale:

- Where a local municipality wishes to procure TRCA to deliver fee for service work, an established MOU and SLA will allow for a more streamlined procurement and agreement process;
- The process of developing and executing MOUs and SLAs with partner municipalities provides a forum for TRCA to understand the needs of each municipality now and into the future, as well as helping partner municipalities understand the breadth of TRCA services;
- Where needed, TRCA can offer services that a municipality may not have in-house;
- Many municipalities have procurement by-laws or policies that allow them to procure services from CAs or non-profit organizations, such as TRCA; and
- Having an overarching MOU and SLA(s) to cover most fee for service work between TRCA and a municipality allows for greater transparency and administrative ease for both organizations.

Since the last update to the Board of Directors on the MOU-SLA process (November 19, 2021 meeting), discussions with many partner municipalities have continued to progress (**Attachment 3**).

This progress includes the following:

- Information sessions and discussions on the Phase 1 regulations have been held with many partner municipalities in order to help them understand the new regulations and associated implications. Relevant TRCA Board reports have also been circulated to municipal partners for their information.
- Discussions on MOUs and SLAs have progressed to a more detailed stage with many municipalities. Detailed discussions include developing a municipality-specific process for developing and executing MOUs and SLAs, municipal staff review and discussion of TRCA's list of services, considering which services they currently utilize or might utilize, and utilizing the template MOU and SLA drafted by TRCA in the development of MOUs and SLAs for execution. This may also include municipal staff conferring with their legal counsel and/or their procurement/purchasing staff to understand any limitations and

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- whether amendments may be required to current municipal procurement mechanisms.
- Where relevant, staff have undertaken some joint meetings with municipal staff and neighbouring conservation authorities to better coordinate the development of MOUs and SLAs to ensure consistent services across a municipal jurisdiction that may include multiple conservation authorities.
- Across the TRCA jurisdiction, new MOU's and SLA's have been arrived at with municipal partners for programs and projects in support of shared municipal and TRCA objectives.

While the new regulations have set out a deadline of January 1, 2024, for the execution of agreements with participating municipalities, TRCA continues to recommend that partner municipalities work with TRCA to develop and execute MOUs and SLAs for Q1/Q2 2022. This is due to the benefits of entering into these agreements, outlined above, as well as the fact that TRCA and municipal staff have already worked with many partner municipalities to develop advanced drafts of MOUs and SLAs that can now be finalized based on the newly released regulations.

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 worthwhile effort 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 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. However, the proposed addition of new process, reporting and municipal approval requirements proposed by the Province in their Phase 2 consultation document may unintentionally result in additional staff time for TRCA and its municipal partners and result in budget approval delays. TRCA continues to try to clarify and address 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 with the goal of having our current approach, which is efficient, working well and municipally supported, recognized in the wording of the upcoming regulations.

DETAILS OF WORK TO BE DONE

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

- July 1, 2022 (Expected board reporting – June 2022)
- October 1, 2022 (Expected board reporting – September 2022)
- January 1, 2023 (Expected board reporting – November 2022)
- April 1, 2023 (Expected board reporting – March 2023)

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- 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: 3

Attachment 1: TRCA Inventory of Programs and Services

Attachment 2: TRCA Programs and Services - 2020 Financial Information

Attachment 3: Municipal MOU/SLA Status Progress Table