
REPORT TITLE: **Response to Provincial Consultation on Regulatory Proposals (Phase 1) under the Conservation Authorities Act**

FROM: Kealy Dedman, Commissioner of Public Works

RECOMMENDATION

That the staff comments on the Regulatory Proposals (Phase 1) under the *Conservation Authorities Act*, attached as Appendix I to the report of the Commissioner of Public Works, listed on the June 24, 2021 Regional Council agenda, titled “Response to Provincial Consultation on Regulatory Proposals (Phase 1) under the Conservation Authorities Act”, be endorsed;

And further, that a copy of the subject report be forwarded to the Ministry of the Environment Conservation and Parks, the Cities of Brampton and Mississauga, the Town of Caledon, Toronto and Region Conservation Authority, Credit Valley Conservation, Conservation Halton, Nottawasaga Valley Conservation Authority and Lake Simcoe Region Conservation Authority.

REPORT HIGHLIGHTS

- Through proposed regulations under the *Conservation Authorities Act* (CA Act), the Province has identified mandatory and non-mandatory programs and services for conservation authorities.
- The Province has also identified the requirement for agreements between conservation authorities and their participating municipalities for the use of municipal levies to fund non-mandatory programs and services that an authority determines are advisable in its jurisdiction.
- All required conservation authority/municipal agreements and the transition to the new funding model for conservation authorities would need to be in place and reflected in budgets for January 1, 2023.
- The regulatory proposals need to provide greater consideration and clarity on how climate change will be integrated into all mandatory programs beyond just the associated impacts relating to natural hazards.
- Source Water Protection which has from its inception been funded by the Province is now a mandatory activity and will potentially require municipal funding if provincial funding commitments are reduced in the future.
- Issues regarding the need for sustainable funding of mandatory programs and services relating to the management of natural hazards are also identified.
- The Region encourages the Province to expedite consultation on Section 28 (permitting) regulatory proposals and the enactment of all Section 30 provisions including Stop Orders to deal with enforcement matters such as large scale filling and development activities in highly sensitive and risk regulated areas.

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- Staff comments to the Province as part of the consultation process are attached for Council's consideration and endorsement (Appendix I).
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DISCUSSION

1. Background

Bill 229 was a provincial budget bill that proposed amendments to 44 Acts, including the CA Act, through Schedule 6. The bill received Royal Assent on December 8, 2020, as reported by the Commissioner of Public Works to Regional Council at its March 25, 2021 meeting titled "Implications of Recent Changes to the *Conservation Authorities Act* Through Bill 229, Protect, Support and Recover from COVID 19 Act (Budget Measures), 2020", Resolution 2021-320.

The provisions of the CA Act, as amended by Bill 229, prescribe the mandatory programs and services to be provided by CAs and the manner by which they are funded. They also enable CAs to provide non-mandatory and other programs and services subject to agreements, prescribed standards and requirements to be set out in regulations. It was intended that legislative proposals would be phased-in over several years with enabling provisions coming into force when supporting regulatory, policy and program details were available.

Following the enactment of Bill 229 last year, a Working Group was established by the Province in January 2021 and their first task included advising on the first phase of proposed regulations that will implement the CA Act and impact conservation authorities and their participating municipalities.

The Working Group's membership consisted of representatives from conservation authorities, Conservation Ontario, the Association of Municipalities of Ontario as well as the development and agricultural sectors.

a) Current Consultation

On May 13, 2021 the Ministry of Conservation and Parks (MECP) released the first phase of proposed regulations under the CA Act for consultation.

The proposed regulations are focussed on:

- mandatory programs and services CAs would be required to provide, including core watershed-based resource management strategies;
- the proposed agreements that may be required with participating municipalities to fund non-mandatory programs and services;
- the transition period to establish agreements;
- the consolidation of the current individual CA 'Conservation Area' regulations made under Section 29 of the CA Act into one Minister's regulation; and
- requirements for each CA to establish a community advisory board to include members of the public, and how they may be governed.

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The MECP has included a consultation guideline on the proposed regulations which provides more details.

Later this year, consultation on a second phase of proposed regulations will take place and will include:

- details on municipal levies related to mandatory and non-mandatory programs and services; and
- standards for the delivery of non-mandatory programs and services.

2. Summary of the Phase 1 Regulatory Proposals

a) Mandatory Conservation Authority Programs and Services Regulation

The CA Act, as amended, prescribes the following categories of mandatory programs and services which CAs are required to provide where applicable in their specific jurisdictions. The categories are described along with a general summary of the proposed regulations that would address how the programs and services are delivered.

i) Risk of natural hazards.

Under this category, it is proposed that each CA would be required to implement a program or service to help manage the risk posed by the natural hazards within their jurisdiction, including flooding, erosion, dynamic beaches, hazardous sites as defined in the Provincial Policy Statement (PPS), 2020 and low water/drought as part of Ontario's Low Water response.

The proposed regulation covers the administration of Section 28 permits and include:

- land use planning input related to natural hazard policies;
- flood forecasting and warning;
- operation and maintenance of water and erosion control infrastructure owned by the CAs;
- ice management services;
- low water monitoring and communications;
- the collection, provision of technical information needed to support natural hazard management, including hazard mapping, plans and policies, and
- technical studies; and related communications and education.

ii) Conservation and management of lands owned or controlled by a conservation authority, including any interests in land registered on title.

Each CA will be required to implement the mandatory 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, within their jurisdiction.

Under the regulation, these will include requirements to prepare strategies for all CA owned or controlled lands; policies regarding the securement/acquisition and disposition of land; management plans for each property or group of properties owned or controlled by a CA; and the management and maintenance of the lands based on the management plans.

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iii) Conservation authority duties, functions and responsibilities as a source protection authority under the *Clean Water Act, 2006*.

Under the *Clean Water Act, 2006* CAs are required to exercise and perform the powers and duties of a drinking water source protection authority. The mandatory requirements as detailed in the proposed regulation include:

- the provision of scientific, technical and administrative support to source protection committees and their composition;
- the preparation of amendments to assessment reports and source protection plans;
- responsibilities for undertaking consultation on proposed amendments; and
- implementing policies assigned to CAs, reporting on progress, and maintaining and providing access to source protection data, mapping, and information.

iv) Lake Simcoe Region Conservation Authority duties, functions and responsibilities under the *Lake Simcoe Protection Act, 2008*.

Under the *Lake Simcoe Protection Act, 2008* the Lake Simcoe Region Conservation Authority is under an obligation to ensure that its Section 28 CA Act permit decisions conform to the applicable designated policies in the Lake Simcoe Protection Plan and have regard to other specified policies. The regulations would specify mandatory policy monitoring and strategic actions where the Lake Simcoe Region CA is identified as a lead body or collaborating body in the Lake Simcoe Protection Plan. These responsibilities would only apply to a small portion of the Lake Simcoe Watershed located in the Region of Peel.

v) Conservation authority duties, functions and responsibilities under other legislation prescribed by regulation.

This category of mandatory programs and services refers to responsibilities that may be assigned to CAs through other legislation. At this time the proposals are only prescribing on-site sewage system (septic systems) approvals by the North Bay-Mattawa Conservation Authority as a mandatory responsibility under the CA Act which is already prescribed in a regulation under the *Building Code Act*.

vi) Other programs or services prescribed by the Regulation within a year after the end of the transition period.

This additional authority allows for the prescribing of other programs and services not listed in previous mandatory categories. The transition period effectively ends December 31, 2022 as the transition to the new funding model for CAs and municipalities would be reflected in the budget for January 1, 2023. The one year time period would end December 31, 2023. The proposals currently identify the following to be prescribed under this category.

Core Watershed-based Resource Management Strategy

The MECP is proposing that each CA be required to develop a core watershed-based resource management strategy that documents the current state of the relevant

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resources within their jurisdictions in the context of the mandatory programs and services (principally water resources). Such strategies would characterize current state conditions and provide recommended management approaches and actions relating to the CAs mandatory programs and services. The proposed regulations contemplate the ability of the CAs to expand the scope of such strategies to cover a broader range of natural resource areas than what is covered in their core mandate (e.g. beyond managing risks related to natural hazards). However, these would require funding through a non-mandatory mechanism such as through a MOU for additional scope that is provided at the request of a municipality.

Provincial Water Quality and Quantity Monitoring

The Ministry is proposing mandatory programs and services for CAs related to water quality and groundwater quantity monitoring to be prescribed in this category with the possibility of additional programs and services prescribed later within the timeframe enabled by the Act.

b) Non-Mandatory Programs and Services

The MECP is proposing to develop a “Municipal Agreements and Transition Period Regulation” that would establish standards and requirements for entering into agreements for municipal funding of conservation authority initiated non-mandatory programs and services.

i) Municipal Agreements

Under the Act agreements between conservation authorities and their participating municipalities are required for the use of municipal levies to fund non-mandatory programs and services an authority determines are advisable in its jurisdiction.

Suggested requirements in the Agreements and Transition Period Regulation would set out that agreements include a provision that the participating municipality agrees to pay its apportioned levy for the non-mandatory program or service. The Regulation could also require agreements to set out termination dates, time periods for the purposes of reviewing/renewing agreements, early termination provisions, and provisions for transparency (e.g. making agreements publicly available).

ii) Transition Plans

The proposed regulations would govern the matters to be addressed in each authority’s transition plan and would require each CA to develop and implement a transition plan that includes a workplan and timeline outlining the steps the conservation authority plans to take to develop and enter into agreements with its participating municipalities.

By December 31, 2021 CAs would complete a transition plan that would require the preparation of an inventory of all of the authority’s programs and services, indicating which of the three categories they fits into:

- mandatory programs and services where municipal levy could be used without any agreement;
- non-mandatory programs and services at the request of a municipality with municipal funding through a MOU; and
- non-mandatory programs and services an authority determines are advisable.

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The Transition plan would also be required to indicate how the programs are funded (e.g., provincial, federal, municipal funding, municipal levy, and self generated revenue).

Through the course of the municipal and conservation authority fiscal year 2022, CAs would have to provide to MECP quarterly reports (using a template developed by the Province) on the status of progress made in attaining agreements with municipalities and make the reports public.

By December 31, 2022 all required conservation authority/municipal agreements would need to be in place, and the transition to the new funding model for conservation authorities and municipalities would be reflected in authority budgets for 2023.

d) Consolidation of the current CA ‘Conservation Area’ Regulations

The consolidation is proposed of each of the current individual conservation authority ‘Conservation Areas’ regulations made under Section 29 of the *Conservation Authorities Act* into one Minister’s regulation. This would set out, for example, prohibited activities and activities requiring permits on conservation authority owned lands.

The Ministry is intending for the regulation to be broadly consistent with the policy principles and provincial content that has been used in the past. The current regulations will continue until such a time that the new Minister’s regulation replaces them.

Current section 29 regulations manage activities on all authority owned land including the use by the public of the lands and services available; the prohibition of certain activities; setting fees for access and use of lands including recreational facilities; administering permits for certain land uses; and protecting against property damage and for public safety.

e) Establishing Community Advisory Boards

The province is proposing to proclaim an un-proclaimed provision of the CA Act that would require CAs to establish community advisory boards, that can include members of the public, to provide advice to the authority.

The government is also proposing to make a Minister’s regulation to provide greater clarity that conservation authority by-laws are applicable to the community advisory boards. The by-laws could apply to any matter not addressed by the regulation, such as community advisory board meetings. The Minister’s regulation would also clarify that the by-laws can speak to any other advisory boards an authority decides to establish.

The government is considering an approach to structure the conservation authority community advisory boards with minimal prescribed requirements. The government would defer other specific details related to the composition, activities, functions, duties, and procedures of the community advisory board to a Terms of Reference document, which would be developed and approved by each authority and reiterated in the authority’s by-laws.

The creation of community advisory boards would not preclude CAs from having other advisory boards as they may deem necessary.

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3. Regional Comments on the Phase 1 Regulatory Proposals

Staff have completed a review of the Phase 1 Regulatory proposal and have compiled comments which brings to the Province's attention the Region's support or concerns regarding the proposed policies. These include:

Mandatory Program and Services

- Support for the mandatory programs and services related to the risk of natural hazards.
- The need to include monitoring the health of natural systems as a mandatory program and service.
- Seeking clarity on how addressing climate change will be integrated into all mandatory programs of CAs.
- Support for the mandatory programs and services related to the conservation and management of land owned or controlled by CAs.
- Concerns about excluding the recreational uses of land owned or controlled by CAs from the list of mandatory programs and services.
- Support for the mandatory programs and services related to source protection, which is one of the components of the Water Resources Policies in the Region of Peel Official Plan.
- Seeking clarity on future funding of the source protection program which will now require municipal funding as it has been identified as a mandatory program and service.
- Clarifying whether subwatershed planning and updating watershed plans will be a component of the Core Watershed-based Resource Management Strategy.
- Support for the mandatory programs and services related to water quality and quantity monitoring.

Non-Mandatory Conservation Authority Programs and Services

- List of non-mandatory programs and services highlights the underfunding of programs, such as invasive species management, that will have a greater impact as the effects of climate change continue to become further established.
- Concerns about the specific exclusion of education programs from mandatory programs delivered on CA owned and managed lands.
- Some CAs may find establishing of advisory boards somewhat duplicative and the administrative support that is required somewhat burdensome given their staffing complement.
- Additional costs for the resources required to draw up and agree on MOUs (e.g. administrative and legal expenses).
- The inconsistency of financial health across municipalities could jeopardize the long-term municipal funding of non-mandatory programs and services which are shared across municipal boundaries.
- The Region is very concerned that the Province has provided no reassurances that existing levels of funding will be provided to support CAs in addition to the levy from participating municipalities. This could jeopardize programs such as source water protection.
- The Section 28 (permitting) regulatory proposal is still pending and the Region encourages the Province to expedite the enactment of all Section 30 provisions including Stop Orders to deal with enforcement matters such as large scale filling and development activities in highly sensitive and risk regulated areas.

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More details about each area listed above as well as Regional staff comments to the Province are to be found in Appendix I of this report.

4. NEXT STEPS

Subject to Council's approval and endorsement staff will submit the comments in Appendix I to the Province before the close of the consultation deadline of June 27, 2021. Further, Staff will continue to coordinate internally and externally with the CAs and with local municipalities to determine any needed consistency or opportunities to consolidate future memorandums of understanding and service level agreements when the new regulations come into effect.

In addition, staff will continue to monitor the status of regulations and will report back to Council when these become available and the implications for the Region of Peel can be fully assessed.

APPENDICES

Appendix I – Draft Letter - Region of Peel's Response to Provincial Consultation on the Phase 1 Regulatory Proposals under the *Conservation Authorities Act*

For further information regarding this report, please contact Adrian Smith, Chief Planner and Director of Regional Planning and Growth Management, Ext. 4047, Adrian.smith@peelregion.ca.

Authored By: Learie Miller, Advisor, Environment Planning

Reviewed and/or approved in workflow by:

Department Commissioner, Division Director and Legal Services.