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The Regional Municipality of Durham Information Report

From: Commissioner of Planning and Economic Development
Commissioner of Finance
Report: #2022-INFO-22
Date: March 18, 2022

Subject:

Regulatory and policy proposals (Phase 2) under the Conservation Authorities Act, File: L14-45

Recommendation:

Receive for information

Report:

1. Purpose

- 1.1 On January 26, 2022, the province released an Environmental Registry of Ontario (ERO) Posting [#019-4610](#) and an associated [Consultation Guide](#) proposing new regulations and policies under the Conservation Authorities Act (CA Act) related to the mandate of Conservation Authorities (CAs) focused on:
- a. municipal levy provisions and CA budget processes;
 - b. classes of programs and services that the Minister would approve for CAs to charge a fee; and
 - c. transparency of CA operations.
- 1.2 The deadline for comments was February 25, 2022. Given the short commenting period, it was not possible to deliver Council-endorsed comments to the Ministry of Environment, Conservation and Parks (MECP) prior to their deadline. Therefore, Regional comments were provided to the MECP by way of a letter from the Commissioner of Planning and Economic Development (see Attachment #1). The

authority for the Commissioner to comment on behalf of the Region is provided under Delegation of Authority By-law 29-2020.

- 1.3 The Commissioner's letter concluded by stating that the comments are those of Regional staff; that we will bring the letter to the attention of Regional Council and will advise if there are any changes as a result. The comments provided are consistent with previous Regional positions on the CA Act.

2. Background

- 2.1 The CA Act was passed in 1946 in response to extensive flooding, erosion, deforestation and soil loss resulting from poor land, water and forestry management practices. The purpose of the Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario. The CA Act has been updated several times, most recently in 2019 and 2020.
- 2.2 The Act sets out "objects" or goals of a CA to deliver prescribed and core mandatory programs and services to ensure that CAs are in the best position possible to deliver on their mandate. These objects also provide CAs with the authority to deliver non-mandatory programs and services, either on a municipality's behalf, or that the CA determines are advisable.
- 2.3 To implement the most recent changes made to the CA Act, the province released regulatory proposals (Phase 1) in May 2021. The Region provided comments on this previous phase of regulations, as outlined within Report [#2021-INFO-82](#). The current ERO posting, and subject of this report, represents Phase 2.

3. Previous Reports and Decisions

- 3.1 The following Regional staff reports related to conservation authority matters have been provided to Regional Council in recent years:
 - a. Bill 139, Building Better Communities and Conserving Watersheds Act, 2017, and associated supportive documents, Report [#2017-INFO-79](#)
 - b. Proposed amendments to the Conservation Authorities Act and associated regulations, Report [#2019-P-27](#)
 - c. Durham's Response to Bill 108, Ontario's Housing Supply Action Plan, and related Regulatory Proposal Changes, Report [#2019-A-22](#)

- d. Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures) – Changes to the Conservation Authorities Act and Planning Act, Report [#2020-P-26](#)
- e. Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures) – Royal Assent, Report [#2021-INFO-1](#)
- f. Regulatory proposals (Phase 1) under the Conservation Authorities Act, Report [#2021-INFO-82](#)

4. Overview of Regulatory Proposals

Proposed Municipal Levies Regulation

- 4.1 Under the CA Act, CAs have the power to charge participating municipalities for their operating expenses and capital costs, if not funded by other revenue sources. The authority can determine the amount of levy required for expenses/costs and can apportion an amount of the total to each participating municipality. This levy is a debt due to the CA and may be enforced as such. Current cost apportionment methods include:
 - a. modified current property value assessment;
 - b. authority/municipal agreement; and
 - c. apportionment by the authority.
- 4.2 Modified current property value assessment combines the relative modified current property assessment dollars and the relative percentage of municipal jurisdiction within the CAs jurisdiction and creates a percentage of what each municipality is to pay of the total levy amount the CA determines for its annual budget. This approach must be used when apportioning administration costs and may also be used for apportioning maintenance and capital costs of a project, when all participating municipalities are to share these costs.
- 4.3 Alternatively, maintenance costs can be apportioned by agreement between the CA and participating municipalities on what the ‘benefit derived’ is for each participating municipality related to the maintenance costs where the modified current property assessment value-based method is not considered appropriate. Capital costs may also be apportioned by this method.
- 4.4 A third method is for the CA to decide for itself. This is the method often used for capital projects. The authority decides which participating municipalities should pay and how much each should pay based on benefits derived. This ensures that

municipal support of project capital costs is proportionate to the benefits they receive.

- 4.5 Proposed regulations will apply the long practiced municipal levy processes to the changed municipal levy context by:
 - a. Maintaining consistency with current budget and municipal levy processes (i.e., budget, voting, and apportionment methods); and
 - b. using and adapting existing voting and apportionment methods and practices set out in current regulations or provincial policy.
- 4.6 Phase 1 regulations under the CA Act require CAs to group programs and services into Category 1, 2 or 3, as outlined within Report [#2021-INFO-82](#). CAs will be able to levy for all Category 1 programs and services and only levy for category 2 and 3 programs and services with a municipal agreement and agreed to cost apportioning in place. The CA budget must now clearly show these programs and services categories and cost apportionment method for the municipal levy.
- 4.7 Current budget processes that the CAs and participating municipalities have developed are based on a mix of legislation, regulation, policy and guidance. The proposed regulation will update and consolidate current regulation, policy and guidance for the budget, where relevant, into the proposed Municipal Levies Regulation.
- 4.8 CAs would also be required to provide a summary of how they considered opportunities for self-generated revenue. A greater reliance on self-generated revenue can reduce demands on the overall municipal levy.
- 4.9 To enable full transparency, it is also proposed that the CAs would be required to:
 - a. publicly post their draft budget to their website;
 - b. distribute a copy of the final budget to the Minister and participating municipalities; and
 - c. make the final budget available to the public through their website or other means.

Proposed Minister's Regulation for Determining Amounts Owed by Specified Municipalities

- 4.10 This proposed regulation applies to 'specified municipalities'. These are municipalities that are designated by regulation for a source protection authority/area under the *Clean Water Act, 2006* or designated under a regulation of

the *Lake Simcoe Protection Plan, 2008* as a municipality in the Lake Simcoe Region Conservation Authority; however, a specified municipality is not a participating municipality of a CA under the CA Act.

- 4.11 The Region is a “participating” municipality of the Lake Simcoe Region Conservation Authority, so this proposed regulation is not applicable.

Proposal for Minister’s Published List of Classes of Programs and Services for Which a Conservation Authority May Charge a Fee

4.12 CAs can charge fees for services that are approved by the Minister. The Minister approved a list of services that is currently in effect and includes section 28 permit fees, plan review response to legal, real estate and public inquiries, extension services (e.g., technical advice, forest management, implementation of erosion control measures), information and education services, and sale of products. CAs can also charge admission fees for the use of lands they own or control and to their buildings and facilities on that land for recreational purposes.

4.13 The proposed regulation would ensure that a CA administers fees in a transparent and accountable manner such as requiring CAs to adopt and publish a written fee policy and fee schedule, and notify the public of changes. The CA would also be required to set out the frequency with which the fee policy and schedule will be reviewed. Additionally, CAs would be required to reconsider a fee at the request of any person who finds the fee contrary to the CAs fee schedule or excessive in relation to the program or service for which it was charged.

Complementary Proposals to Increase Transparency of Authority Operations

- 4.14 Complementary regulations are proposed to increase transparency of CA operations. These regulations would include:
- a. requiring CAs to include a Governance section on their website that includes membership information with contact information, authority bylaws, draft and final budgets, agreements between the CA and participating municipalities;
 - b. requiring that CAs post notice to their website when changes are made to existing agreements with participating municipalities or when new agreements are entered into.

5. Regional Comments on Regulatory and Policy Proposals (Phase 2)

- 5.1 Planning and Economic Development and Finance staff collaborated on the review of the Regulatory and Policy Proposals (Phase 2) and offered the following comments to the province in the letter dated February 25, 2022 (see Attachment #1):
- a. The Consultation Guide provides an “intent” to draft a regulation but does not provide detailed wording. It is difficult to provide comprehensive feedback in the absence of draft regulatory wording.
 - b. The Region previously requested that the province provide appropriate transition funding to support implementation of the Phase 1 Regulations. Such funding has yet to be committed.
 - c. To maintain consistency, the Region is supportive of the direction to continue applying long practiced municipal levy processes. It is critical that municipalities continue to have the opportunity to provide direct input to the CAs on the annual municipal levy and authority budget to ensure alignment with overall municipal levy targets, taxpayer affordability and strategic priorities of the municipality.
 - d. The Consultation Guide indicates that operating expenses for mandatory programs and services are proposed to be apportioned against all participating municipalities using the modified current property value assessment method. Where there may be operating expenses that do not apply to all participating municipalities, it is proposed that those operating expenses may be apportioned by agreement between the authority and participating municipalities, or as decided by the authority, rather than the modified current property value assessment method. The Region is supportive of the continued flexibility for the authority and participating municipalities to agree to an alternative apportionment basis. It is important that this determination be an agreement between the authority and the participating municipalities and not simply decided by the authority.
 - e. A goal of the Region’s Strategic Plan 2020-2024 is to provide exceptional value to Durham taxpayers through responsive, effective and fiscally sustainable service delivery. To that end, the Region supports the requirement for CAs to provide a summary of how they considered opportunities for self-generated revenue to support the programs and services they provide and support a user-pay principle where fees are charged by the CAs.

- f. As part of the Region's submission to the Phase 1 Regulatory Proposals, it was recommended that the province continue to contribute funding to the drinking water source protection portfolio. The Region understands the assertion, through this phase of consultation, that there are currently no anticipated changes to ongoing provincial funding for the source water protection program.
- g. Under the proposal for a Minister's published list of classes of programs and services for which a CA may charge a fee, a CA would be required to reconsider a fee at the request of any person who finds the fee to be excessive or contrary to the CA's fee schedule. The CA can then vary the amount of the fee, order that no fee be charged or confirm the original fee. This process may contribute to unnecessary administrative burden with little benefit, aside from providing an avenue for fee complaints.
- h. The Region is supportive of efforts to increase transparency through complementary proposals related to authority operations, such as maintenance of a Governance section on CA websites and notice of new or amended agreements with municipalities and annual budgets and other financial information. Increasing transparency and accessibility of CA budgets and associated financing is critical for municipalities and the public as the majority of funding for CAs comes from municipal levies which directly impacts taxpayers and the financial context for municipal governments. While these requirements may not add significant administrative costs, they still have an impact. The Region recognizes that staffing capacity remains an issue from the perspective of our CA partners and encourages the province to provide appropriate long-term funding to facilitate these regulatory changes.

6. Conclusion

- 6.1 This phase of regulatory and policy proposals under the CA Act largely represents what is currently occurring and already set out in existing regulation and policy, with the introduction of increased transparency measures.
- 6.2 Over the next two years, Regional staff will work closely with the CAs to implement requirements from associated Phase 1 Regulations, including the review of inventories of CA programs and services and establishment of agreements for Category 2 and 3 programs and services. Progress will be reported to Regional Council through future reports.

6.3 A copy of this report will be forwarded to the area municipalities and conservation authorities for their information.

7. Attachments

Attachment #1: Letter dated February 25, 2022 to the Ministry of Environment, Conservation and Parks, Regulatory and Policy Proposals (Phase 2) under the Conservation Authorities Act.

Respectfully submitted,

Original signed by

Brian Bridgeman, MCIP, RPP
Commissioner of Planning and Economic
Development

Original signed by

Nancy Taylor, BBA, CPA, CA
Commissioner of Finance



Sent via Email

February 25, 2022

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Brian Bridgeman, MCIP, RPP
Commissioner of Planning and
Economic Development

Dear Ms. Vavro:

**RE: Region of Durham Response to ERO Posting #019-4610:
Regulatory and policy proposals (Phase 2) under the
Conservation Authorities Act**

On January 26, 2022, the province released Environmental Registry of Ontario (ERO) Posting #019-4610 proposing Phase 2 regulations and policy under the Conservation Authorities Act (CA Act) focused on:

- municipal levy provisions;
- CA budget processes;
- classes of programs and services that the Minister would approve for CAs to charge fees; and
- transparency of CA operations.

Regional staff have been very involved in past consultations and provided comments on previous Phase 1 Regulatory Proposals. Regional staff also participated in a webinar on February 8, 2022, hosted by the province.

Background

There are five CAs within Durham Region, including:

- Toronto and Region (TRCA)
- Central Lake Ontario (CLOCA)
- Ganaraska Region (GRCA)
- Kawartha Region (KRCA)
- Lake Simcoe and Region (LSRCA)

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The Region has close working relationship with each of the CAs within Durham. In 1996, the province delegated the Provincial Plan Review function to Durham through a Memorandum of Understanding. To carry out these responsibilities, the Region entered a Partnership Memorandum with its five CAs to coordinate the discharge of their responsibilities with respect to natural heritage and hazard land protection through the land use planning process. The Partnership Memorandum has been updated and renewed twice since 1996.

CAs also play a key role in the implementation of source protection planning in partnership with municipalities that supply water to reduce risks to drinking water. These roles were established in the Clean Water Act, 2006. All five CAs in Durham are very engaged in their roles as a Source Protection Authority.

Regional Staff Comments on Phase 2 Regulatory and Policy Proposals

It is our understanding that these new regulatory and policy proposals largely reflect what is currently occurring and set out in existing regulation/policy. The following outlines the Region's comments regarding the Phase 2 Regulatory and Policy Proposals.

1. The Regulatory and Policy Proposal Consultation Guide provides an "intent" to draft a regulation but does not provide detailed wording. It is difficult to provide comprehensive feedback in the absence of draft regulatory wording.
2. The Region previously requested that the province provide appropriate transition funding to support implementation of the Phase 1 Regulations. Such funding has yet to be committed.
3. To maintain consistency, the Region is supportive of the direction to continue applying long practiced municipal levy processes. It is critical that municipalities continue to have the opportunity to provide direct input to the CAs on the annual municipal levy and authority budget to ensure alignment with overall municipal levy targets, taxpayer affordability and strategic priorities of the municipality.
4. The Regulatory and Policy Proposal Consultation Guide indicates that operating expenses for mandatory programs and services are proposed to be apportioned against all participating municipalities using the modified current property value assessment method. Where there may be operating expenses that do not apply to all participating municipalities, it is proposed that those operating expenses may be apportioned by agreement between the authority and participating municipalities, or as decided by the authority, rather than the modified current property value assessment method. The Region is supportive of the continued flexibility for the authority and participating

municipalities to agree to an alternative apportionment basis. It is important that this determination be an agreement between the authority and the participating municipalities and not simply decided by the authority.

5. A goal of the Region's Strategic Plan 2020-2024 is to provide exceptional value to Durham taxpayers through responsive, effective and fiscally sustainable service delivery. To that end, the Region supports the requirement for CAs to provide a summary of how they considered opportunities for self-generated revenue to support the programs and services they provide and support a user-pay principle where fees are charged by the CAs.
6. As part of the Region's submission to the Phase 1 Regulatory Proposals, it was recommended that the province continue to contribute funding to the drinking water source protection portfolio. The Region appreciates the assertion, through this phase of consultation, that there are currently no anticipated changes to ongoing provincial funding for the source water protection program.
7. Under the Proposal for a Minister's published list of classes of programs and services for which a CA may charge a fee, a CA would be required to reconsider a fee at the request of any person who finds the fee to be excessive or contrary to the CA's fee schedule. The CA can then vary the amount of the fee, order that no fee be charged or confirm the original fee. This process may contribute to unnecessary administrative burden with little benefit, aside from providing an avenue for fee complaints.
8. The Region is supportive of efforts to increase transparency through complementary proposals related to authority operations, such as maintenance of a Governance section on CA websites and notice of new or amended agreements with municipalities and annual budgets and other financial information. Increasing transparency and accessibility of CA budgets and associated financing is critical for municipalities and the public as the majority of funding for CAs comes from municipal levies which directly impacts taxpayers and the financial context for municipal governments. While these requirements may not add significant administrative costs, they still have an impact. The Region recognizes that staffing capacity remains an issue for our CA partners and encourages the province to provide appropriate long-term funding to facilitate these regulatory changes.

Thank you for the opportunity to provide input to the Phase 2 Regulatory and Policy Proposals under the CA Act. Given the short commenting period, they comments

are those of Regional staff. We will bring this letter to the attention of Regional Council, and you will be advised of any changes.

Sincerely,

Collen Goodchild

for

Brian Bridgeman, MCIP, RPP

Commissioner of Planning and Economic Development