

To: Warden and Members of County Council

From: Director of Community Planning

Responding to proposed Regulations under the Conservation Authorities Act

RECOMMENDATIONS

1. That County Council receive Report No. CP 2021-234 and endorse staff comments contained in Appendix 1 of Report No. CP 2021-234 as the County's formal response to the proposed regulations to the Conservation Authorities Act as set out in ERO No. 019-2986;
2. And further, that Report CP 2021-234 be circulated to the Area Municipalities for information.

REPORT HIGHLIGHTS

- The Province is proposing regulations under the *Conservation Authorities Act* intended to implement changes regarding the function and responsibilities of conservation authorities (CAs). The proposed regulatory changes were posted for review and comment on the Environmental Registry of Ontario (ERO) from May 13 to June 27, 2021.
- This report seeks to inform County Council of the proposed regulations under the Act and next steps in the consultation process, as well as the comments that were prepared and submitted to the Province by County staff on behalf of the County in order to meet the short review and commenting deadline set out in the ERO posting (Attachment No. 1).
- The staff comments were formulated by the Community Planning office based on review of the proposed changes, participation in the associated Provincial on-line workshops and initial discussions with CA partners.

Implementation Points

The recommendations contained in this report will have no immediate impacts with respect to implementation. However, the proposed regulations, once in effect, will impact how conservation authorities provide services and programs and how they are funded. This may have an impact on future budgets and the CA municipal levy paid by the County, as well as the various programs and services delivered by CAs within the County.







Financial Impact

The comments in this report will have no immediate financial impact beyond what has been approved in the current year's budget. However, as conservation authorities transition their budgeting and operations into the new regulatory framework, by 2023, there may be budget implications and impacts that will need to be considered in the future.

Communications

The Province is leading the consultation process on this proposal and is inviting responses from the public. Members of the public are encouraged to submit comments to the Province directly. However, staff will also be continuing to monitor any further Provincial consultation and developments on these proposed regulatory changes and reporting to County Council on any significant developments as well as circulating this report and any future reports to the Area Municipalities for their information.

Strategic Plan (2020-2022)

					
WORKS WELL TOGETHER	WELL CONNECTED	SHAPES THE FUTURE	INFORMS & ENGAGES	PERFORMS & DELIVERS	POSITIVE IMPACT
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DISCUSSION

Background

Conservation authorities (CAs) were established by the Province under the *Conservation Authorities Act*, through municipal resolutions, to address cross municipal boundary interests in resource management principally related to water and natural hazard management. Their watershed-based perspective and jurisdiction is intended to allow CAs to provide municipalities and the Province with the broader perspective necessary to support the management of inter-municipal as well as provincial natural resource issues like flooding, drought, erosion and water quality.

The Province has been working on proposed updates to the *Conservation Authorities Act* for several years and through multiple pieces of legislation, including Bill 139, *the Building Better Communities and Conserving Watershed Act, 2017*, which were previously outlined as part of [County Council Report CP 2017-225](#). The Province (i.e. Ministry of Natural Resources and Forestry - MNRF) also previously proposed changes under Section 28 of the *Conservation Authorities Act*, intended to improve consistency in requirements across all CAs through 'consolidating and harmonizing' the existing 36 individual CA regulations into one Ministry-approved regulation. These proposed changes were previously outlined as part of [County](#)

Council Report CP 2019-152 and still remain under review by the Province. However, it is staff's understanding that detailed regulations are intended to be released through an upcoming ERO posting.

Also outlined in County Council Report CP 2019-152 were proposed amendments to the *Conservation Authorities Act* aimed at helping conservation authorities focus and deliver on their core mandate and improve governance. These legislative amendments were incorporated into Bill 229 *the Protect, Support and Recover from COVID-19 Act (Budget Measures)*, 2020 which received royal assent in December of 2020.

Many of the above noted changes to the *Conservation Authorities Act* are subject to additional details and requirements that are to be implemented through regulations, such as those being proposed through the current ERO posting. Given the range of functions and services (e.g. operation of a number of Conservation Areas, provision of environmental stewardship programs, identification and management of natural hazards, water quality and quantity monitoring, development review and mapping services related to natural heritage features/natural hazards etc.), that are currently provided by the CAs in Oxford, any proposed changes that could affect how these services are provided and/or costs to the County are of particular interest.

Overview of Proposed Regulations

Through ERO posting 019-2986 the Province initiated a 45 day consultation period to provide feedback on the scope and intent of the first of two phases of regulatory amendments intended to implement the legislative changes previously made to the *Conservation Authorities Act*. The deadline to submit comments on the posting was June 27, 2021. Given the short review and commenting window, Planning staff prepared and submitted comments on the proposed changes to the Province on behalf of the County. A copy of this response is included as Attachment No 1 to this report.

The regulations the government is currently proposing and seeking feedback on include:

- The mandatory programs and services that conservation authorities would be required to provide.
- Requirements for agreements between conservation authorities and their participating municipalities for the use of municipal levies to fund non-mandatory programs and services.
- Establish minimum requirements for agreements, including timelines for review and renewal.
- Detailed transition plans prepared by conservation authorities for coming into compliance with the regulations.
- The consolidation of each of the current individual CA 'Conservation Areas' regulations made under Section 29 of the *Conservation Authorities Act* into one Minister's regulation.
- Requirements for each CA to establish a community advisory board to provide for greater public input in CA matters.

To help further explain the proposed regulations the Province released a detailed CAA Phase 1 Regulatory Proposal Consultation Guide and also hosted a number of workshops in late May/early June.

In the coming months, the Province will also be consulting on the second phase of proposed regulations under the *Conservation Authorities Act*, including:

- Municipal levies governing the apportionment of CA capital and operating expenses for mandatory and non-mandatory (i.e. through municipal agreement) programs and services. This would also set out provisions pertaining to municipal appeals of CA municipal levy apportionments;
- CA costs not related to the delivery of programs or services; and
- Standards and requirements for the delivery of non-mandatory programs and services.

The specific timing for this additional consultation is unknown, however staff are monitoring for the release for these additional regulations and are requesting that the Province provide a longer commenting period (i.e. minimum 90 day postings) for that consultation so that affected municipalities have time to more fully consider the potential impacts of any proposed changes.

Overview of the regulatory framework and proposed implementation process

Under the proposed regulatory framework, all CA programs and services will be required to fit into three categories. Depending on the type of program or service, there may be other requirements that will need to be addressed/ implemented (i.e., agreements).

These categories include:

1. Mandatory programs and services

Mandatory programs or services are the programs or services mandated by the Province. They may be funded by provincial grants and/or CA self-generated revenue. Where such revenue sources cannot finance the entire costs of those programs, the costs must be raised through the municipal levy. No municipal agreement is required for these levy fees.

2. Non-mandatory programs and services requested by a municipality

These non-mandatory programs and services are those requested by municipalities to be completed or implemented by a CA (e.g., development review services for the evaluation of potential impacts on significant natural features). In these instances, municipal levies may only be used to fund these programs or services where a corresponding agreement is in place.

Where programs or services are provided at the request of the municipality the *Conservation Authorities Act* requires conservation authorities to have mutually agreed upon Memorandums of Understanding (MOUs) or other such agreements (i.e., service contracts) with their participating municipalities for the funding of non-mandatory programs and services to be delivered on behalf of a municipality at municipal request.

3. Non-mandatory programs and services an authority determines are advisable

Non-mandatory programs and services as determined by a CA, are deemed to be advisable by a CA to implement in its jurisdiction. For example, this may include programs and services relating to recreation and education provided by conservation authorities. In these instances, municipal

levies may also only be used to fund these programs or services where a corresponding agreement is in place for the municipal funding. Municipalities would decide whether to fund these programs and services by entering into agreements with a CA.

CAs may also continue to provide any non-mandatory programs and services without a municipal agreement if the programs and services are funded by revenue that is not from a municipal levy (e.g. provincial funding, user fees etc.).

Use of the municipal levy, as well as execution of agreements as applicable, are required to be with the “participating municipality”. Under the *Conservation Authorities Act* it is Oxford County that is the participating municipality.

Comments

The following provides an overview of the intent of the proposed regulations along with the related comments prepared and submitted to the Province by County Planning staff (i.e. as detailed in Attachment 1):

Mandatory conservation authority programs and services

It is clear that the intent of the Province is to better standardize and streamline the services and programs provided by conservation authorities, which is in keeping with what the County has requested through past consultations. However, it is unclear how the current regulatory proposals will assist in ensuring consistent delivery of services and programs between and among conservation authorities. Further, staff have some concern that the proposed framework may actually result in greater inconsistencies in service delivery due to additional limitations in funding availability and the further downloading of costs for mandatory programs and services to municipalities.

The Province is proposing through the regulations to recognize mandatory programs and services as those mandated by the Province. Where provincial funding and other revenues sources do not cover the cost of mandatory programs and services the municipal levy may be used without an agreement. In the Oxford context, mandatory programs and services are specifically related to:

- risk of natural hazards;
- conservation and management of lands owned or controlled by a CA, including any interests in land registered on title;
- CA duties, functions and responsibilities as a source protection authority under the Clean Water Act, 2006; and
- other programs or services prescribed by the regulation.

Natural Hazards

With respect to natural hazards, it is difficult to fully comprehend the scope of these mandatory programs and services, given that the review and update under Section 28 of the *Conservation Authorities Act* remains outstanding. Section 28 includes the ability of a CA to prohibit certain development activities on lands that could be unsafe for development because of naturally

occurring processes associated with flooding, erosion, dynamic beaches or unstable soil/bedrock; or prohibit activities based on inference with or alterations to a watercourse or wetland.

That said, the proposed scope of the regulations appears to omit the review of and identification of new two zone floodplain policy areas or Special Policy Areas (SPAs) as a mandatory program or service. The County includes multiple areas of existing two-zone floodplain and are currently reliant on the input of CAs to provide expertise pertaining to water resource engineering and natural hazards to ensure that areas are appropriately mapped and protected through planning policy. This function of Conservation Authorities should be clarified and included as a mandatory program or service which is funded through the Province and aligned with the requirements for natural hazards under the Provincial Policy Statement (PPS), 2020.

Flood control infrastructure

Under the proposed regulation, only the operation and maintenance of any water control infrastructure owned or controlled by the CA that mitigates risk to life and property damage from flooding or supports low flow augmentation is proposed to be included as a mandatory service. This means that a municipal levy would only apply to water control infrastructure that does not have a demonstrated flood management or flow augmentation role, where an agreement with the County is first put in place (i.e. as a non-mandatory service). Agreements would be required with the County to maintain levy support for the maintenance and upkeep of the infrastructure under the proposed regulation as a non-mandatory service.

The proposed regulation would appear to require these agreements with the participating municipality (i.e. the County). However, in some cases, this infrastructure may be of greatest interest or concern to the Area Municipality. As such, staff have requested that the proposed regulation consider how input and participation from the Area Municipalities is to be incorporated into the agreement process.

In addition, the Province provides funding support through the Water and Erosion Control Infrastructure (WECl) program for the maintenance and repair programs of water control infrastructure for conservation authorities. Planning staff are requesting that the Province continue to provide this financial support to the conservation authorities, in place of relying on municipal levies through an agreement to support this program, as major repairs to water control infrastructure can require significant funds, studies and permits. Provincial funding should be maintained to avoid municipalities being required to cover the costs of major maintenance projects.

Conservation Authority owned lands

The proposed regulations also include new requirements for the management of CA owned lands, including the development of strategies, management plans and policies related to acquisition, disposition, use, classification and property management. As a mandatory program or service, the preparation and upkeep of these plans could be funded via municipal levy, should no other funding sources be available.

Staff note that passive recreational functions (including trails) are not recognized as a mandatory program or service within the proposed regulation for CA owned lands. Having access to nature for passive use and to support overall wellbeing is essential and the CA trail networks serve as part of the broader public trail system within the County. As such, Planning staff are

recommending that current passive recreational functions be included as a mandatory program or service.

Source Water Protection and the Clean Water Act

The Province has indicated that the proposed regulation is intended to recognize the existing roles and responsibilities each CA has with respect to implementing programs and services related to their responsibilities as a source protection authority under the *Clean Water Act*.

That said, the proposed regulations appear to be shifting some of the responsibilities for source protection, including completing municipal related land use mapping (e.g., impervious surfaces and managed lands) necessary to determine the risk posed by prescribed drinking water threats, and responding to requests to review proposals in wellhead protection areas and intake protection zones, to the CAs. These responsibilities should generally remain with municipalities as the drinking water system owner, unless an agreement to provide such services on behalf of the County is entered into with the CA.

In addition, staff note that the Province has committed to funding support for the SWP program through March of 2022. This new regulation, as proposed, enables the Province to potentially shift the program funding to municipal levy based funding in the future. The Province should continue to fund the SWP program and should instead look for opportunities to create efficiencies regarding CA duties, functions, and responsibilities under the Clean Water Act (e.g. streamlining and reducing the existing annual reporting burden regarding SWP plan implementation).

Other programs prescribed by regulation

The Province is also proposing to prescribe two additional areas as mandatory programs or services, specifically: A “Core Watershed-based Resource Management Strategy” and the “Provincial Water Quality and Quantity Monitoring”. These two services/programs will be prescribed through a future regulatory proposal and Planning staff are requesting that the Province release any regulations related to these two programs in the very near future in order to ensure they are included in upcoming discussions between municipalities and conservation authorities in order to understand potential costs, resource needs and implications through the agreement process and transition to the new budgeting framework.

Core watershed-based resource management strategy

The Province is proposing that each CA be required to develop a core watershed-based resource management strategy (“strategy”) that documents the current state of the relevant resources (e.g. water resources) within their jurisdictions in the context of the mandatory programs and services. Each strategy is intended to provide for a longer-term plan for the delivery of the mandatory programs and services that all conservation authorities must deliver, inform an adaptive management approach to address the issues or threats that these mandatory programs and services may be addressing (e.g. natural hazards), and help ensure effective and efficient use of funding.

Aspects of watershed-based resource management are already within the scope of the proposed mandatory programs and services, and there may be existing information that can be used to support the preparation of these strategies. The Province has also indicated that these strategies may also incorporate aspects of non-mandatory programs or services where applicable.

While Planning staff appreciate the potential value such a strategy may provide, including from a watershed planning perspective, staff are suggesting that MECP staff should clarify how these plans are proposed to be developed and how their preparation would be funded, along with their future review and update. In addition, the types of timelines, resources and data gathering needs should also be considered in order to ensure a consistent minimum standard between all strategies for all watersheds.

Provincial quality and quantity monitoring

The Province has indicated that the proposed scope of the regulations is recognizing existing programs, specifically, the Provincial stream monitoring program and the Provincial groundwater monitoring program that are led by the MECP but administered at the local level by Conservation Authorities.

While the consultation guide also makes reference to the Provincial Water Quality Monitoring Network and the Provincial Groundwater Monitoring Network, it omits references to other supportive monitoring programs, including those which support municipal sewage treatment plants which rely on stream flow and water quality information for compliance with certificate of approval (COA's) for these facilities. Planning staff are recommending that the scope and description for this program and the proposed regulation should be further clarified.

Non-mandatory conservation authority programs and services

Details regarding standards and requirements for the delivery of non-mandatory programs and services are to be proposed through an additional phase of regulations to be released in the future. This regulation proposal focuses specifically on the related logistical elements including requirements for municipal agreements for the provision of non-mandatory programs and services, required transition plans for implementing these changes, and proposed timelines for implementation.

Agreements

CAs will be required to enter into agreements with the County, as the participating municipality, to use municipal levies to finance, in whole or in part, non-mandatory programs and service. Where the municipal levy is used for mandatory programs or services no agreement is required.

The Province is proposing to establish requirements through the regulations regarding the nature and content of agreements and potentially timelines for their review and update. County staff are recommending that the regulations be proposed at a high level and left flexible in order to allow municipalities and conservation authorities to work together to develop an agreement framework, including review and update provisions, that work for their respective jurisdictions, rather than these being mandated by the Province.

In addition, County staff are requesting that the Province clarify how the Area Municipalities within the County will be able to participate in the preparation of agreements at the County level, as the delivery of some of these programs and services may functionally occur at the local/lower tier level and as such lower tier municipalities should be included in the consultation process regarding the review of the CA inventory of programs and services and preparation of related agreements. This process should also provide for sufficient time within the agreement preparation processes to achieve this.

Finally, the regulations should also be left flexible so that the County can consider whether joint negotiations and agreements with/between multiple conservation authorities is desirable or appropriate for its specific circumstances. Given that there is significant variation in capacity/expertise of staff, and range and extent of services provided between various conservation authorities; and that there are also complex and differing needs in the delivery of services within varying watersheds - joint agreements may not be appropriate in all cases or for all matters. As such this should be left flexible for the County to determine with each of the respective CAs.

Transition Plans

The proposed regulation will require each CA to develop and implement a transition plan that includes:

- a work plan and timeline outlining the steps the CA plans to take to develop and enter into agreements with its participating municipalities;
- preparation of an inventory of all of the authority's programs and services;
- consultation process with participating municipalities (i.e. the County) on the inventory;
- a list of any new mandatory programs and services the authority will need to provide to meet the requirements of the mandatory program and services regulation;
- a list of non-mandatory programs and services for which the authority will seek municipal agreement to fund via municipal levies, including estimated amounts requested/required from the participating municipalities to do so;
- a list of non-mandatory programs and services that do not require municipal agreements (where funded by revenue that is not from a municipal levy); and
- steps taken and/or to be taken to enter into these agreements.

CAs will be required to submit copies of their transition plan to the Minister of the Environment, Conservation and Parks for information purposes (not approval); share with the participating municipalities; and make the plans available to the public online, by a date in the regulation (currently proposed as December 31, 2021).

With respect to transition plans, Planning staff have identified two areas of concern:

- Municipalities should have input into the development of the workplan and timelines with respect to any and all agreements where they are subject to a municipal levy, and not just the review of the inventory of programs and services, in order to consider their own resources and timelines in terms of how it may factor into the completion of the agreements.
- The list of any new mandatory programs and services the authority will need to provide as a result of the regulatory changes, should also include identification of the proposed funding sources for these programs and services. Furthermore, where separate fees are proposed to offset or prevent the use of the municipal levy, these fees should be directly related to the program or service and reflect an appropriate cost for the technical level of service provided (fees for development review/ CA permit review). This should be with aim to establish a minimum base level of service between and among all Conservation Authorities.

Timing

The MECP is proposing January 1, 2023 as the prescribed date by which agreements must be in place for authorities to use, or continue to use, the municipal levy under the Conservation Authorities Act for their participating municipalities to fund non-mandatory programs and services the authority determines are advisable, so it would be in place for the fiscal year of 2023. The Province has also proposed several milestones in order to achieve the 2023 deadline, including:

By December 31, 2021:

- Inventory of programs and services to be completed, including identifying which of the authority's non-mandatory programs and services will require agreements with participating municipalities to continue financing (in whole or in part) through the municipal levy.
- Completion of consultation with participating municipalities on the inventory undertaken to ensure they agree with the authority's classification of its programs and services.
- List of steps set out by the authority to be taken to enter into any agreements with participating municipalities for funding of CA determined programs and services.

Through 2022:

- Quarterly reports by conservation authorities on the status of progress made in attaining agreements with municipalities, provided to the Minister and made public.

By December 31, 2022:

- All required CA/municipal agreements for non-mandatory programs and services the CA determines are advisable 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.

Extension requests

The Province is also proposing to allow extensions to the prescribed date for completing municipal agreements subject to a written request from a CA with support from a participating municipality at least 90 days before the end date in the transition period regulation describing: the length of extension requested, the steps the CA has taken to implement its transition plan and enter into agreements with municipalities and the rationale for providing an extension.

While an efficient process to transition into the new regulatory framework, including clear and reasonable timelines, staff have identified concerns regarding the overall timelines. Given the remainder of regulations yet to be proposed, to expect the completion of the transitions plans, including municipal engagement, by the end of 2021 is unlikely to be achieved.

In addition, while the ability to request extensions to the January 1, 2023 deadline is recognized, given the municipal election in the fall of 2022, the expectation that municipalities will be able to negotiate and enter into agreements with conservation authorities by the spring/early summer of

2022 is highly unlikely. As such, Planning staff are encouraging the Province to reconsider the aggressive timelines proposed, rather than creating an expectation that extension requests will be necessary from the outset of this process.

Community Advisory Boards

The Province is also proposing a regulation to require conservation authorities to establish community advisory boards (CABs), which can include members of the public, to provide advice to the authority. The proposed regulation would establish minimum baseline requirements for the establishment of CABs, including:

- include members of the public which reside in the authority's jurisdiction;
- setting a minimum number of members on a community advisory board at 5;
- ensuring, where possible, members represent the geographic range of the CA and that a variety of members are sought (e.g. youth, indigenous etc.);
- enabling the appointment process of members by public notification and application;
- setting a minimum of one authority member (and an alternate) be appointed to the community advisory board and a maximum authority representation of 15%; and
- requiring that administrative support to CABs be provided by the CA.

CABs would also be subject to the by-laws of a CA, and would be subject to a Terms of Reference which would establish the composition, activities, functions, duties, and procedures of the CAB. This could be amended over time, to ensure matters considered by the Committee are relevant and provide value, and that the membership of the board has the necessary skills to carry out those tasks. The proposed regulations will require the Terms of Reference document to outline specific functions and activities of the CAB scoped to the authority's needs, and at a minimum enable members to:

- provide advice and recommendations to the authority on the authority's strategic priorities and associated policies, programs and services and co-ordinate with other environmental initiatives in the authority's jurisdiction (e.g. municipal);
- identify opportunities for community engagement and potential community outreach; and
- carry out any other functions as identified in the Terms of Reference.

Planning staff are suggesting that conservation authorities should seek input from municipalities in the development of their Terms of Reference document. This would allow for discussion on the scope of the proposed committees, and potentially consider ways to create efficiencies for engagement between these committees and reduce potential for overlap with other provincially mandated committees (e.g. planning advisory committees required under the Planning Act). Planning staff would also like to better understand how costs to support these committees will be leveraged and are suggesting that use of the municipal levy should be avoided.

The Province is also proposing to consolidate all of the current individual CA regulations made under Section 29 of the Conservation Authorities Act into one Minister's regulation. Staff have not identified any comments or concerns with respect to this part of proposal.

Conclusions

As outlined in this report, these regulations will result in significant changes in the administration and funding structures for programs and services offered by conservation authorities, as well as the scope and breadth of these programs and services.

Conceptually, staff support many of the proposed changes presented in principle, however, further clarification and detail needs to be provided by the Province for municipalities to adequately assess the implications and support conservation authorities efforts to prepare and consult on proposed inventories and transition plans, and any required agreements. Therefore, staff are also requesting the Province to provide a formal opportunity for municipalities to review and provide feedback on the outstanding draft regulations as soon as possible and that they provide for an appropriate amount of time to participate and provide feedback.

County Planning staff will continue to monitor the progress of the consultation exercise and will advise County Council of any relevant changes and/or opportunities for comment on matters that may be of particular interest or concern to the County or Area Municipalities. Planning staff will also advise County Council regarding implementation progress and consultations regarding transition plans and inventories for programs and services prepared by the respective conservation authorities once they become available.

SIGNATURES

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ATTACHMENTS

Attachment 1 - Oxford response to ERO Posting 019-2986, June 25, 2021