



June 22, 2021

Liz Mikel  
Ministry of Environment, Conservation, and Parks  
Conservation and Source Protection Branch  
40 St. Clair Avenue West, 14<sup>th</sup> Floor  
Toronto, ON  
M4V 1M2

**Re: Conservation Ontario's Comments on "Regulatory proposals (Phase 1) under the Conservation Authorities Act" (ERO# 019-2986)**

Dear Ms. Mikel,

Thank you for the opportunity to provide comments on the "Regulatory proposals (Phase 1) under the Conservation Authorities Act". Conservation Ontario (CO) is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit in any way comments submitted by conservation authorities on this proposal.

Conservation Ontario staff have appreciated the opportunity to participate in the Conservation Authorities Working Group formed by the Ministry of Environment, Conservation and Parks (MECP) to provide input and feedback on the development of regulations under the *Conservation Authorities Act*. The public consultation process initiated by the ERO posting enabled Conservation Ontario as a network to provide additional perspective and these comments were endorsed at our June 21, 2021 CO Council meeting.

Conservation Ontario offers the following general comments on the sections of the consultation guide for the Ministry's consideration. Additional detailed comments have been provided in the attachments to this letter.

### **Part One: Programs and Services Delivered by Conservation Authorities**

#### **Mandatory Conservation Authority Programs and Services Regulation**

Using the Mandatory programs and services regulation framework, conservation authorities can review the current scope of their programs and services and make adjustments to align with regulated standards and requirements. In general, these standards and requirements will need a degree of flexibility to accommodate for the fact that many conservation authorities will require time and new money to put them in place.

The inclusion of core watershed-based resource management strategies as a mandatory program and service is supported because it provides a framework for conservation authorities and their member

municipalities to identify and prioritize the programs and services needed in each watershed to protect people and property from natural hazards and conserve natural resources. As well it can provide an organizing framework for categorizing the mandatory and non-mandatory programs and services for consultation with municipalities and for the establishment of an agreement with multiple schedules. Conservation Ontario will work with the conservation authorities on development of a template in this regard that would also serve for standardizing the language used with municipalities in the inventory of CA mandatory and non-mandatory programs and services required for their local Transition Plans. It is noted that flexibility is appropriate with regard to the details of how/when these are to be prepared and their scope to allow for regional variations and to assist in limiting implementation costs. Conservation Ontario strongly supports inclusion of a mandatory Core Watershed-based Resource Management Strategy as it will enable and encourage the integration of all other mandatory programs and identify non-mandatory programs.

In general, the Natural Hazard Mandatory program is consistent with the long-standing funding partnership with the Ministry of Natural Resources and Forestry (MNRF) for delivery. The recent 50% cut to MNRF funding for the natural hazards program makes ongoing effective implementation challenging and it is our understanding from *Ontario's Flooding Strategy* that MNRF will continue to provide funding in support of these mandatory programs. Ongoing flexibility in delivery, based upon local capacity and geography, will be required to avoid significant cost increases for numerous conservation authorities. Additionally it has been noted that one major omission from the list of mandatory programs and services is the development and implementation of nature-based solutions to reduce the risks of flooding, erosion, and drought. Many CAs' early mandates were focused on developing and implementing these nature-based solutions. It is requested that these private land stewardship activities be recognized and included in the list of mandatory programs and services.

With regard to the mandatory program and services related to the management of conservation authority land, there are new mandatory requirements proposed (e.g., strategy, management plans). Flexibility is appropriate with regard to the details of how/when these are to be prepared and their scope to allow for regional variations and to assist in limiting implementation costs. Additionally, "passive recreational opportunities" like walking trails that are provided to the public should be included as part of the mandatory program related to the management of CA land. Conservation Areas provide safe and enjoyable recreational experiences in areas where Ontarians need them most. In many cases there is no revenue generated by the use of passive recreational lands. Being required to close these properties due to a lack of funding will have a negative impact. Conservation Ontario recommends that recreational opportunities (e.g., walking trails, boat launches) be considered mandatory programs and services. Additionally, it is noted that municipalities and others have helped conservation authorities build comfort stations, interpretive centres and other infrastructure such as visitor parking lots within many conservation areas. It is recommended that the infrastructure associated with CA recreation and education programs be included in the mandatory conservation lands programs and services so that these valuable assets are maintained and continue to be used by Ontario residents.

It is appropriate that the Mandatory programs and services for conservation authorities related to Source Protection Authority Responsibilities under the *Clean Water Act* remain intact. It is essential that the province continue to fully fund the Drinking Water Source Protection program as long as conservation authorities are required to exercise and perform the powers and duties of a drinking water source protection authority; and implement programs and services related to those responsibilities. Municipalities do not have the capacity to absorb these program costs.

Both the provincial water quality [i.e., Provincial Water Quality Monitoring Network (PWQMN), Ontario Benthic Biomonitoring Network (OBBN)] & water quantity (i.e., Provincial Groundwater Monitoring Network (i.e., PGMN) monitoring programs are examples of successful cost sharing programs between MECP and conservation authorities. These long standing programs provide important trend data in support of effective water management.

Attachment 1 provides specific detailed comments on some of the Mandatory programs and services (A to F) that would further improve clarity of the regulatory proposal and upcoming regulations.

#### **Conservation Authority Costs Not Related to Delivery of Programs and Services**

It is critical that this proposal be finalized as soon as possible. As conservation authorities consult with participating municipalities on the inventory of programs and services and pursue MOUs/agreements with their member municipalities, all concerned will want to understand the full budget implications of comprehensive (i.e., mandatory and non-mandatory) CA program and service delivery including these ongoing operating expenses. Placement of this section in the Mandatory program and services section seems to imply that application would be limited to overhead of mandatory program delivery which would be inconsistent with the legislative framework [Section 27 (1), (1.1) and (1.2)] that provides for delivery of programs and services that are mandatory, municipal and, for “other” (i.e., those that the CA considers advisable) only where there is a municipal agreement in place. The inclusion of on-going organizational costs under mandatory programs and services is strongly supported in that these costs are necessary to deliver all other programs and services and should therefore be apportioned to municipalities as part of the conservation authority’s municipal levy. Similarly, the core administrative staff (full FTE) are necessary to support the organization as a whole and the costs associated with the development and management of Community Advisory Boards as well. Finally, it is most appropriate that organizational costs be apportioned to member municipalities following the modified CVA formula as part of the conservation authority’s municipal levy.

#### **Non-Mandatory Conservation Authority Programs and Services**

Conservation authorities will work hard to meet the challenging timelines however their success will depend on the Government enacting Phase one and two regulations in a timely manner; a substantial delay in their finalization may make these timelines unachievable.

Allowing flexible agreement arrangements (agreements with multiple municipalities, agreements covering multiple programs and services) is strongly supported as this practical approach will ensure the most efficient use of taxpayer money and will be the least administratively burdensome for member municipalities. Further clarity is required with regard to municipal agreements and confirmation that they are required with the municipalities that negotiate the CA’s budget and appoint representatives (i.e., Regions and Counties in some cases). This clarity is also necessary to ensure that the appropriate municipalities are consulted on the Transition Plan.

As previously stated, Conservation Ontario will work with the conservation authorities on development of a Transition Plan template to facilitate timely completion. The submission of the Transition Plan by December 2021 to the government, our municipal partners and sharing it with the public demonstrates our commitment to transparency and accountability. The quarterly reporting to the government and the public on the progress of obtaining these agreements is positive for transparency and accountability and, given the pressures to meet these timelines, it needs to be kept simple. Conservation Ontario can work with the CAs on development of a standard reporting template. It is noted that the timing of CA/municipal budget processes for the 2023 budget year will necessitate that the agreements be

drafted well before December 31, 2022 but this date provides maximum flexibility for their finalization. CAs support that the agreements be available to the public online. For those exceptional circumstances that delay implementation, it is appreciated that a safety net is provided in the form of the ability for the Minister to grant an extension to the Transition Period where an authority, with the support of one or more municipalities, submits a written request. It is noted that CAs do not fully control timing in respect of implementation as they are subject to municipal participation, timelines and agreement. The fiscal fall-out and recovery from COVID and the upcoming municipal election could make it difficult for some municipalities to execute agreements with their conservation authorities in 2022.

## **Part Two: Governance and Oversight of Conservation Authorities**

### **Regulation to Require 'Community' Advisory Boards**

CAs rely upon and support engagement of the public and stakeholders and Indigenous communities in their watershed management work. CAs have long embraced the concept of advisory boards/committees and numerous CAs utilize such vehicles. Currently, conservation authorities have the ability to establish Advisory Boards and committees in their Administrative By-laws as enabled through *Section 19.1 (1) An authority may make by-laws,*

...

*(e) providing for the composition of its executive committee and for the establishment of other committees that it considers advisable and respecting any other matters relating to its governance;... .*

Conservation Authorities were legally required to approve Administrative By-laws (which govern the procedure of the Authority) in compliance with Section 19.1 by December 2018. For the Ministry's reference, Attachment 2A provides relevant excerpts from "Conservation Authority Best Management Practices (BMP) and Administrative By-Law Model" (CO, April 2018) and it is respectfully submitted that an additional regulation to address Community Advisory Boards in Conservation Authority (CA) By-Laws is unnecessary in this regard. Enabling the use of the CA Administrative By-laws for defining the details of meeting procedures avoids confusion of differing requirements/ procedures and consolidates it all into one resource for the public and CA. The relatively new rules governing CA General Membership (see Attachment 2A) should be considered sufficient for the Advisory Boards with no need to prescribe separate procedures and processes for community advisory boards in regulation. Bylaws can be updated as needed to adequately address procedures such as formation, meetings, code of conduct, conflict of interest, attendance, reporting and removal.

It is requested that the regulation not restrict or complicate the ability to convert existing Advisory Boards or Committees to meet the minimum requirements of Community Advisory Boards and/or to demonstrate that a CA has an equivalent and effective means of seeking public input (i.e., the advice of their watershed community). Some conservation authorities have requested the ability to call their community advisory board by a different name (e.g., advisory committee) and propose that their Administrative By-law and/or Terms of Reference could stipulate that this committee fulfills the regulatory requirements of the community advisory board.

If CAs are required to establish a Community Advisory Board, it is important that it augment not duplicate the work of the CA General Membership. Conservation authorities therefore support the requirement that Boards of Directors develop and approve a Terms of Reference that outlines the composition, activities, functions, duties, and procedures of the community advisory board for their authority. Structuring community advisory boards with minimal prescribed requirements that may be

scoped within the terms of reference will enable local flexibility and effectiveness. As indicated in our comments above on “Conservation Authority Costs Not Related To Delivery Of Programs And Services”, and in the absence of provincial funding, it is our expectation that the costs associated with the development and ongoing management of Community Advisory Boards would be eligible for municipal levy. This further emphasizes the need to enable scoping of the Terms of Reference of the Community Advisory Board to enable affordability although it is noted that administrative support alone for these types of committees/advisory boards can be extensive and stretch the already limited capacity of smaller CAs.

The proposed timing for establishment of Community Advisory Boards is unclear. Community Advisory Board creation and implementation should coincide with the implementation of new municipal agreements in January 2023 and reflect the input of new councils taking office in November 2022 and appointing their representatives to the Conservation Authority (CA) General Membership. This would enable the current CA General Membership and staff to focus their attention on the Transition Period requirements. Making creation of the Community Advisory Boards the responsibility of the 2023 CA General Membership, would enable them to clearly finalize a relevant terms of reference consistent with, for example, the strategic priorities resulting from decisions made/agreements reached during the Transition Period. This has the additional benefit of putting the Community Advisory Board on a similar cycle as the CA General Membership which it is intended to advise. Sufficient time will be required to prepare a Terms of Reference, advertise and appoint a community advisory board. As a final note in support of deferral, setting up and managing Community Advisory Boards will require staff and CA General Membership resources which will be significantly challenged, in many conservation authorities, by the Transition Period requirements and timelines.

Attachments 2A and 2B provide specific details on the CA Administrative By-Law Model (2A) and specific detailed comments on what is proposed to be prescribed (2B).

### **Part Three: Other Regulatory Matters**

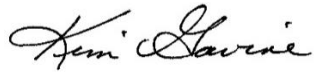
#### **Section 29 Minister’s Regulation**

Conservation Ontario is pleased to see the province’s commitment to maintaining this regulatory program. The consolidation of the individual Conservation Areas regulations into one Minister’s regulation will assist the public in understanding the CAs’ regulatory authority under Section 29. The regulation, however, requires updates. All public green space (conservation areas, municipal parks, provincial parks) experienced a significant increase in use during the pandemic. This increase, which is expected to continue post-pandemic, challenged conservation authority staff, municipal bylaw officers and provincial park wardens. It is recommended that a working group be formed of enforcement staff from conservation authorities, municipalities and the province to ensure all parties and levels of government have the tools they need to ensure the orderly use of their properties and to ensure public and staff safety and security. This may require a redesign of the Section 29 regulation and CA regulatory powers to better align with bylaws made under the *Municipal Act* as well as the *Provincial Parks and Conservation Reserves Act*. The basis for additional updates to the regulation is provided in Attachment 3.

Conservation Ontario looks forward to working closely with the Province on regulatory and policy priorities as the Province proceeds with implementation of the Phase 1 Regulatory proposals, as well as

other regulatory proposals to be included in Phase 2 to implement the amendments to the *Conservation Authorities Act*. Should you have any questions about this letter, please contact me at extension 231.

Sincerely,



Kim Gavine  
General Manager

3 Attachments

c.c. All CA CAOs/GMs