



February 25, 2022

Maria Vavro
Conservation and Source Protection Branch
Ministry of Environment, Conservation, and Parks
40 St. Clair Avenue West, 14th Floor
Toronto, ON
M4V 1M2

Re: Conservation Ontario's Comments on "Regulatory and policy proposals (Phase 2) under the Conservation Authorities Act" (ERO# 019-4610)

Dear Ms. Vavro,

Thank you for the opportunity to provide comments on the "Regulatory and policy proposals (Phase 2) 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 a CA on this proposal.

Conservation Ontario is generally supportive of the proposed content and direction of the *REGULATORY AND POLICY PROPOSAL CONSULTATION GUIDE: Regulations regarding Municipal Levies, Conservation Authority Budget Process, Transparency, and Provincial Policy for the Charging of Fees by Conservation Authorities*. 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 and policies under the *Conservation Authorities Act*. The comment period initiated by the ERO posting enabled Conservation Ontario as a network to provide additional perspective.

Conservation Ontario's comments pertain to areas in which clarity would be helpful in the proposed regulations, to ensure ease of implementation, and to avoid any potential misinterpretation of the provisions. Further to this, Conservation Ontario offers the following comments organized according to the sections of the consultation guide for the Ministry's consideration.

INTRODUCTION

The Proposal states in the Introduction that the proposals would be in effect for January 1, 2023, so that CA 2024 budgets and levy processes would follow them; recognizing that the budget and levy processes for the 2024 budgets are planned/negotiated in 2023. For clarity it would be helpful for that rationale to be provided in the effective date clause of the regulation to prevent any confusion that it's expected to apply to the 2023 budget with a January 1, 2023, effective date.

Part 1:
PROPOSED MUNICIPAL LEVIES REGULATION

Conservation Ontario supports the intent expressed for the proposed Municipal Levies Regulation which is “to ensure clear, consistent and transparent practice by the authorities and municipalities in the annual budget and municipal levy process and approval, and in the authority apportionment of project capital costs and operating expenses, including corporate administrative costs, to participating municipalities.” In general, Conservation Ontario supports the proposal for a new and updated regulation that is consistent with long-standing practices and processes that work well in the existing CA levy and budgetary process.

It is acknowledged that the intent of the new Municipal Levies Regulation is to apply the long-practiced budgeting, municipal levy processes, and voting and apportionment methods to the changed municipal levy context (e.g., Category 1,2,3 programs and services). The proposal to incorporate the two current levies regulations (O. Reg. 670/00 “Conservation Authority Levies”; O. Reg. 139/96 “Municipal Levies”) and update as appropriate, including terminology such as ‘general levy’, ‘special project levy’, and removing ‘matching’, and ‘non-matching’ levy is supported. As well, retention of the two existing voting methods and the three current methods of apportioning expenses/costs is supported.

In general, Conservation Ontario also supports the proposal to incorporate the standards and policy for the authority budget process as currently set out in regulation and provincial policy as summarized in Table 1. However, important points of clarification need to be addressed to ensure that the new municipal levies regulation meets its intent to provide flexibility and is not prescriptive to the point of encumbering current effective processes that have been established over many years. Through review of the proposal, some members raised some key concerns which could impede their ability to continue current best practices.

For example, in at least one case, a CA awaits confirmation of municipal approval of their municipal budget which includes the municipal levy allocation from the CA, before they approve their CA budget. In this case, there are well established CA/municipal collaborative budget processes where this practice has become the agreed upon norm. To accommodate this practice, it is recommended that the proposed regulation include an exception clause for the 30 day advance notice provision. This requirement should be waived where endorsement has already been attained from all funding municipalities for their municipal levy allocations prior to the CA providing final consideration and approval of the CA budget. Additionally, given these circumstances, at the meeting for the levy vote which generally is also the meeting for the CA budget vote, there should be an exception for a ‘weighted’ majority vote for the municipal levy allocations in the CA budget where they have already been approved by the participating municipalities through the approval of their municipal budget.

Although Conservation Ontario believes that there is a common understanding with respect to the areas of CA budgets that need to be reviewed and endorsed by CA municipal partners, it is requested that clarification be provided in the forthcoming regulation. Clarification is required that the continued role of the participating municipalities is to provide input to that participating municipality's component of a CA's budget, rather than their complete budgets which are approved by the CA General Membership (commonly referred to as the CA Board). Thus, CAs are to provide the portions of their budgets for which municipal funding is being levied, or for programs for which memoranda of understanding with the municipal partners exist. This will ensure that the conversations continue to focus upon the items that are of mutual interest to the CAs and the municipal partners, without any confusion around any

expectation for municipal partners to review programs and services which may not be within their purview. Generally, it is supported that CA draft and final consolidated budgets (including all projected operating and capital costs and revenues) will be provided to participating municipalities as a contextual reference document. As well, it is supported that they be made available to the public by posting them on the CA's website.

The proposal for CAs to provide a summary of how the authority considered opportunities for self-generated revenue has further raised concerns about the blurring of lines of budget control between the CA General Membership (i.e., commonly referred to as the CA Board) and the participating municipalities. Multiple concerns have been raised regarding the interpretation of the Guide that self-generated revenue from Category 3 programs and services is intended to off-set municipal levy. For clarity and to ensure local relevance/flexibility, the subject matter of the summary should not be so prescribed but should remain a high-level requirement for 'a statement summarizing how the authority considered opportunities for self-generated revenue'.

Conservation Ontario supports that Corporate Administrative Costs can be levied and are necessary to support an effectively functioning organization. Additionally, Conservation Ontario supports the inclusion of Corporate Administrative Costs in the Municipal Levies Regulation and for them to be accounted for in a transparent, detailed, and stand-alone manner in the authority's draft and approved consolidated budgets. It is recommended that the regulation allow for local flexibility in how to show corporate administrative costs by not being excessively prescriptive in the definition of corporate administrative costs.

**Part 2:
PROPOSED MINISTER'S REGULATION FOR DETERMINING AMOUNTS
OWED BY SPECIFIED MUNICIPALITIES**

CAs and their partner municipalities rely upon provincial funding for the Drinking Water Source Protection (DWSP) program under the *Clean Water Act*. We are pleased to see that no change is anticipated to the provincial funding for the program. It is essential that the province continue to fully fund the DWSP program as long as CAs 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.

Overall, the measures proposed are consistent with our expectations for how costs would be allocated for services provided by Source Protection Authorities, in fulfilling their responsibilities under the *Clean Water Act*. The proposed identification of specified municipalities, and the flexibility of choice of using three different apportionment methods (i.e., modified current property value assessment, agreement of the authority and municipalities, and, as decided by the authority) for determining costs to specified municipalities will provide greater clarity for recovering costs, should that be required. It is noted that carrying out this new process may take a considerable amount of time for negotiation and agreement on an apportionment method such that any changes to Provincial funding should provide adequate notice.

Part 3:
**PROPOSAL FOR MINISTER’S PUBLISHED LIST OF CLASSES OF PROGRAMS AND SERVICES
FOR WHICH A CONSERVATION AUTHORITY MAY CHARGE A FEE**

Conservation Ontario is supportive of the proposal to proclaim S. 21.2 in the *Conservation Authorities Act* (fees for programs and services) and the proposal for the Minister to publish a List of Classes of Programs and Services for which a CA may charge a fee (“List”). It is understood that this List will replace the set of discrete activities eligible for CA fees currently found with the *Policies and Procedures for the Charging of Conservation Authorities Fees* (1997) and instead will identify categories of programs and services that are eligible to be included in a fee schedule. A CA would be able to charge a fee for a program or service only if it is set out in the Minister’s list of classes. In general, Conservation Ontario agrees with the draft List that the Minister has provided (i.e., Table 2) and with the application of the user pay principle.

Conservation Ontario also supports the efforts of the province to ensure that CAs administer fees in a transparent and accountable manner. This includes the requirement for a CA to adopt and publish a written fee policy and fee schedule that lists the programs and services for which it charges a fee and the accompanying amount. Conservation Ontario is prepared to assist its members as they transition to these new requirements.

Through the creation and approval of individual CA fee policies, it is recommended that guidelines be developed regarding the types of fees that should be subject to reconsideration by its Members on an individual basis. Under the current fee regime, CAs are required to recover but not exceed the costs associated with administering the program, for certain mandatory programs and services such as their planning and permitting services. These types of activities may be more appropriate for reconsideration of fees than for example, category 3 programs and services delivered without a cost apportioning agreement. It is recommended that CAs, after consultation with the public, be empowered to identify the types of programs and services that would be subject to reconsideration of fees on an individual basis by its Members through its fee policy. This will support the transparency and accountability of operations, while allowing the Members to focus on the overall governance of the CA.

It is noted at times that CAs may offer programs and services that would fall into multiple classes simultaneously. For example, CAs may offer mandatory programs (i.e., category 1) which may lead to opportunities for additional fee for service work to other stakeholders, including the provincial and federal agencies and third-party businesses (i.e., category 3). It is recommended that the List be clear that the fees for a program or service could be applicable across multiple classes of programs and services and not limited to one class. In addition, the List should clarify that in instances where mandatory programs lead to opportunities for additional ‘fee for service’ work, there is no requirement for a CA to receive approval from their participating municipalities for the delivery of the services to other stakeholders (i.e., category 3).

Part 4:
COMPLEMENTARY PROPOSALS TO INCREASE TRANSPARENCY OF AUTHORITY OPERATIONS

In general, Conservation Ontario is supportive of the proposed Minister’s regulation to establish the requirement for a “Governance” section on CA websites. As of September 23, 2021, all 36 CAs have endorsed a commitment to pursue governance, accountability, and transparency measures. Since endorsement of the Governance, Accountability and Transparency Initiative, Conservation Ontario and

the 36 CAs have worked to ensure each CA has a section of their website dedicated to publicly accessible governance materials. While there are some differences in the proposed content and formatting of these website sections from the CO best practice, in general, CAs are well positioned to address the proposed regulatory requirements by the effective date of January 1, 2023. Conservation Ontario will note that our experience has revealed that there is varying available resources and capacity at CAs to make updates to CA websites / establish new website pages. The Ministry is encouraged to consider the varying local contexts, resources, and capacity of Ontario's 36 CAs, and draft this regulation in such a way that all CAs are provided with sufficient time to address the regulatory requirements on an ongoing basis.

While CAs are supportive of ensuring transparency of operations and providing a Governance section on their websites, additional clarification is requested on a couple of elements of this proposal. One element is a request for clarification that personal phone numbers or emails of the Members of the CA are not meant to be shared on the proposed Governance webpage.

The second element of concern is the requirement to post **all** MOUs and agreements between CAs and municipalities. The requirement to post **all** MOUs and agreements between CAs and municipalities would result in a governance webpage that is no longer meaningful or useful to the public. For simplicity of use, it is recommended that this requirement be aligned with the inventory of programs and services requirement to include the Category 2 MOUs or Agreements and Category 3 cost apportioning agreements (i.e., the agreements posted should be those that are identified in the inventory). Throughout 2022 and 2023 there will be ongoing CA and municipal consultation on the inventory and the associated agreements that both parties deem appropriate. As required, this consultation will be reported on in progress reports by CAs to the Minister and participating municipalities. The Category 2 MOUs or Agreements and Category 3 cost apportioning agreements included in the Inventory will need to be renegotiated/updated and posted to the CA website by January 1, 2024. Better aligning this proposed regulation with the requirements outlined in O. Reg. 687/21 (Transition Plans and Agreements) would ensure consistency between what's posted and what's being negotiated and agreed upon between CAs and municipalities throughout the remainder of the Transition Period in 2023. This would avoid the posting of hundreds of CA/municipal agreements with varying levels of detail and would ensure that this requirement to post is necessarily focused on those high-level MOUs and agreements that are governing the delivery of programs and services, and not every single agreement related to a program or service.

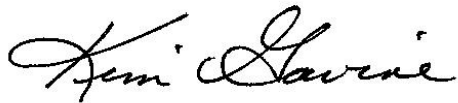
Without the above recommended clarification, concern has been raised that posting **all** CA/Municipal agreements **when amendments are made and providing notice** would require significant resources and would result in large amounts of material on a CA website that would become difficult for the public to navigate.

As well, it is questioned why an exception clause for the posting of Category 2 MOUs/agreements is necessary when Section 21.1.1(2) of the *Conservation Authorities Act* clearly lays out that each agreement will be shared with the public as it is determined in the MOU or agreement. This enables the CA and municipality through the MOU or agreement to discuss whether procurement processes, commercially sensitive information or personal privacy information needs to be protected. Posting of Category 2 MOUs or agreements should continue to be consistent with Section 21.1.1(2) of the *Conservation Authorities Act*. An exception clause in the regulation for posting Category 3 Cost apportioning agreements that relate to a procurement process or portions of agreements that contain commercially sensitive information is appreciated. For clarity it's recommended that reference be made

to protection of personal privacy information consistent with the *Municipal Freedom of Information and Protection of Privacy Act*. For example, cost apportioning agreements dealing with payment of a staff person could reveal the salary of an individual not otherwise available to the public.

Conservation Ontario looks forward to working closely with the Province on regulatory and policy priorities as the Province proceeds with implementation of the Phase 2 Regulatory proposals, as well as implementation of Phase 1 regulations further to amendments to the *Conservation Authorities Act*. Should you have any questions about this letter, please contact me at extension 231.

Sincerely,

A handwritten signature in black ink that reads "Kim Gavine". The signature is written in a cursive, flowing style.

Kim Gavine
General Manager

c.c. All CA CAOs/GMs

Conservation Ontario
120 Bayview Parkway, Newmarket ON L3Y 3W3
Tel: 905.895.0716 Email: info@conservationontario.ca

www.conservationontario.ca