



Committee Report

To:	Warden Hicks and Members of Grey County Council
Committee Date:	June 24, 2021
Subject / Report No:	PDR-CW-17-21
Title:	Conservation Authority Act Regulatory Proposals – Phase 1 Comments
Prepared by:	Grey County Planning Staff
Reviewed by:	Kim Wingrove
Lower Tier(s) Affected:	All Municipalities
Status:	Adopted as presented by Committee of the Whole through Resolution CW99-21; Endorsed by County Council CC53-21

Recommendation

1. That Report PDR-CW-17-21 regarding an overview of the ‘Conservation Authority Act Regulatory Proposals – Phase 1’ be received; and
2. That Report PDR-CW-17-21 be forwarded onto the Province of Ontario as the County of Grey’s comments on the proposed changes regarding Environmental Registry posting # 019-2986; and
3. That the Report be shared with member municipalities and conservation authorities having jurisdiction within Grey County; and
4. That staff be authorized to proceed prior to County Council approval as per Section 25.6 (b) of Procedural By-law 5003-18, as amended.

Executive Summary

The Province has made several changes to the Conservation Authority (CA) Act over the past few years. Some of the changes made to the CA Act have not been proclaimed as they require regulations. The Province is rolling out proposed regulations to the CA Act in phases. The Province has recently released Phase 1 of the regulatory proposals on the Environmental Registry for review and comment. This report provides an overview of the proposed changes, outlines potential implications based on the proposed changes, and provides recommended comments to be shared with the Province for their consideration prior to passing the regulations.

Background and Discussion

The Ministry of Natural Resources and Forestry initiated a review of the *Conservation Authorities Act* (CA Act) in 2015 which included addressing roles, responsibilities, funding and governance of conservation authorities in resource management and environmental protection. The County provided initial comments on a [discussion paper](#) released by the Ministry seeking early feedback on the review of the Act. A link to the previous staff report providing initial comments to the Ministry can be found in the Attachments section of this report.

The Ministry released a further consultation document in 2016 entitled '[Conserving Our Future – Proposed Priorities for Renewal](#)' which was based on the comments received in response to the discussion paper. A staff report providing comments on this consultation document was provided to the Ministry. A link to that staff report can be found in the Attachments section.

Based on the comments received through the consultation at that time, the Ministry noted that there was general agreement that the overall conservation authority model and principles remained relevant. Most respondents agreed that the watershed continues to serve as an ecologically appropriate scale for many resource management activities. The Ministry also noted that all stakeholder sectors 'recognized the value and public benefit of conservation authority roles in providing environmental education, landowner and broader stewardship programs, and the provision of access to natural areas and recreational opportunities provided through conservation areas. Based on the feedback received, the Province made some minor changes to the *Conservation Authorities Act* in 2017.

In 2019, the Province proposed further changes to the CA Act. [Staff Report PDR-CW-22-19](#) provided an overview of the proposed changes as well comments that were provided to the Province. In June 2019, the More Homes, More Choice Act amended the CA Act to allow the Province to define the core mandates of conservation authorities through future regulations. On December 8, 2020, the Province passed Bill 229 being the "Protect, Support and Recover from COVID-19 Act" which contained further changes to the CA Act.

There are provisions that have not been proclaimed to date that stem from the amendments made to the CA Act over the past few years. The Province is rolling out regulatory proposals in phases that would proclaim some of those provisions that are currently not proclaimed. On May 13, 2021, the Ministry of Environment, Conservation and Parks (MECP) released a consultation guide on [Phase 1 of the regulatory proposals](#) to the CA Act on the Environmental Registry ([ERO Posting 019-2986](#)) and are asking for comments by June 27, 2021.

Overview of Phase 1 Proposed Regulatory Changes

The Phase 1 Regulatory Proposals can be categorized under 4 main areas:

- 1. Mandatory programs and services that conservation authorities must provide versus non-mandatory programs**
 - a. The Province has defined Mandatory Programs as programs and services related to the following (only items related to our area have been summarized below):

- i. Risk of Natural Hazards – the proposed regulations would require each conservation authority to implement a program or service to help manage the risk posed by the natural hazards including: flooding, erosion, dynamic beaches, hazardous sites (as defined on the Provincial Policy Statement (PPS) 2020), and drought. The program shall be designed to: identify natural hazards, assess risks associated with natural hazards, manage risks associated with natural hazards; and promote public awareness of natural hazards. It should be noted that this includes the continued Development Permit and Planning Act application reviews that conservation authorities conduct under Section 28 of the Act and Section 3.1 of the PPS, respectively.
- ii. Management of Conservation Authority owned or managed lands – the regulatory proposal would require each conservation authority to implement the following mandatory programs and services related to the conservation and management of lands owned or controlled by the conservation authority:
 - Administering the proposed Section 29 Minister’s regulation on public use of land owned and managed by CA’s
 - Having a strategy for all conservation authority owned lands including policy for securing, acquiring and disposing of conservation authority owned lands
 - A management plan for each property owned by the conservation authority (one management plan could cover multiple properties on common circumstances)
 - Management and maintenance of conservation authority owned lands including: protecting, restoring natural heritage features, ecologically sensitive lands; and monitoring and enforcement.

**Other land uses such as recreational opportunities or environmental education on conservation authority owned land are not ‘mandatory programs or services’ but can continue if the conservation authority has other funding sources.

- iii. Drinking Water Source Protection – the regulatory proposal would require conservation authorities to implement programs and services related to those responsibilities as source protection authorities under the *Clean Water Act*
- iv. Other Items to be Prescribed:
 - Core Watershed-Based Resource Management Strategy – MECP is proposing that each conservation authority be required to develop this strategy which would document the current state of the relevant resources (principally water resources) within their jurisdiction in the context of ‘mandatory programs and services’.

- Water Quality and Quantity Monitoring
- b. 'Non-mandatory programs and services' are essentially any program and service provided by a conservation authority that is not listed/defined as a 'mandatory program and service' under the CA Act and the proposed regulations. Conservation authorities can continue to provide 'non-mandatory programs and services' either:
- i. At the request of and on behalf of a participating municipality through a memorandum of understanding (e.g. planning agreements for natural heritage review, Risk Management Official (RMO) Agreements, and for Grey County – managing/maintaining County Forests and Trails); or
 - ii. Where the conservation authority determines the programs and services are advisable to implement in the CA's jurisdiction. If municipal funding is required for these programs and services, each municipality would then decide whether to fund these CA programs and services and if so, would be required to enter into agreements with the conservation authority. The current agreement the County has with GSCA to manage the County Forests and Trails may fall under this category but will require further review once the detailed regulations are released by the Province.

2. Transition plans and agreement timelines between conservation authorities and participating municipalities for using municipal levies to fund non-mandatory programs and services

- a. The Province is proposing a regulation (Municipal Agreements and Transition Period regulation) that would set out what would be required of these conservation authority/municipal agreements and how they would need to be developed.
- b. Conservation authorities could provide non-mandatory programs and services without any municipal agreement if funded by revenue that is not municipal levy.
- c. The proposed regulation could require that the agreements:
 - i. Include a provision that the participating municipality agrees to pay its portion of levy for the non-mandatory program or service
 - ii. Set out periods of review and the termination of the agreement(s)
 - iii. Include provisions governing early termination, notice, and resolution of breaches of the agreement
 - iv. Include transparency provisions (e.g. agreements to be made available to the public online).
- d. MECP is proposing that agreement arrangements be flexible according to program or service circumstances

- e. Proposed regulations would require each CA to have a transition plan for entering into agreements with municipalities and would govern matters to be included in the transition plan
- f. In terms of proposed timelines:
 - i. Transition plans to be completed by conservation authorities by December 31, 2021 (this would also include a mandatory CA inventory of programs and services)
 - ii. MoU/Agreements for non-mandatory programs and services are required to be in place by January 1, 2023
 - iii. MECP is proposing to authorize the granting of extensions to the prescribed date for completing municipal agreements where a conservation authority (with the support of one or more participating municipality in the CA) submits a written request for the extension to the Minister at least 90 days before the end date in the transition period regulation.

3. Requirements for conservation authorities to establish community advisory boards

- a. Regulatory proposals would require conservation authorities to establish community advisory boards that can include members of the public.
- b. MECP is proposing to include as much flexibility as possible for the conservation authorities to determine the composition, activities, functions, duties and procedures of the community advisory board to be addressed in terms of references and by-laws approved by the conservation authority.

4. Consolidation of the current individual 'Conservation Area' regulations made under Section 29 of the CA Act into one Minister's regulation

- a. Current Section 29 regulations manage activities on all conservation authority owned land, including the use by the public of the lands and services on that land, setting fees for access and use of the land, prohibited activities, activities requiring permits, locations and time periods for public access and use, etc.
- b. MECP is not considering any significant change for the proposed Minister's regulations to what is in the current section 29 regulations, but rather consolidating into one Minister's regulation.

Potential Implications of Proposed Changes

1. **What we don't know at this stage** – MECP has noted that in the coming months they will be consulting on the next phase of the regulatory proposals related to municipal levies and standards and requirements for non-mandatory programs and services. The next phase of regulatory proposals will also include policy and guidance to implement the legislative and regulatory framework. Therefore, until municipalities and conservation authorities are able to review the details being proposed in the next phase

of the proposed regulations, it is difficult to understand the potential implications for the Phase 1 proposed regulations that are currently available for comment. It is recommended that these details be provided to municipalities and conservation authorities prior to finalizing and passing the Phase 1 regulatory proposals.

2. **Non-mandatory programs and service restrictions** - If the proposed regulations put restrictions on what non-mandatory services can be provided by a conservation authority through agreements, then this could have an impact on existing programs and services that the County and local municipalities rely on as well as an impact on future collaboration and partnership opportunities with conservation authorities (e.g. partnering with conservation authorities on implementation of the Climate Change Action Plan, partnering to update subwatershed plans, natural heritage review, and specifically for Grey County – continuing our contract with GSCA to manage the County's Forests and Trails).
3. **Inconsistent delivery of non-mandatory programs and services potentially resulting in confusion and a patchwork of services** - The proposed framework would allow municipalities to opt-in and continue to fund non-mandatory programs and services being offered by conservation authorities and also allow municipalities to opt-out. If some municipalities decide to opt out of certain programs and services, then this could cause other municipalities to pay additional costs for the non-mandatory programs and services and collectively there may not be enough funds to continue certain programs and services. This framework could also create a patchwork of programs and services offered throughout the County which could create confusion over who provides what programs and services and result in programs and services not being provided consistently across the County or the watershed.
4. **Impact on staff resources for conservation authorities and county/municipal staff** - The proposed regulatory framework will have an impact on staff resources for conservation authorities as well as county/municipal staff to be able to complete/update the MoU's/Agreements for the non-mandatory programs and services. The provincial and municipal election may also impact the ability to meet the proposed timelines. The release of the next phase of the regulatory proposals could also have an impact on meeting the proposed timelines if these details are not provided in a timely fashion.
5. **New mandatory requirements and administrative requirements could add additional strain to rural conservation authorities** - Rural conservation authorities tend to already run on lean staff resources and budgets. The additional requirements under the framework is likely to inflict additional strain on rural conservation authorities to administer the framework and to address any new service standards and requirements regarding delivery of the mandatory programs (e.g. possible increases in natural hazard management, administering the proposed community advisory boards, developing property management plans, developing a core watershed-based resource management strategy and land management strategy). These new mandatory requirements could have an impact on delivering non-mandatory services and programs as limited CA staff resources will need to focus on meeting mandatory requirements.
6. **Recreation and Education exclusion from 'Mandatory' definition for conservation authority owned lands** - The proposed regulations exclude recreation and

environmental education opportunities on conservation authority owned land from the 'mandatory programs and services'. The recreational and educational opportunities that are currently offered in the various conservation owned lands are very important to Grey County residents and visitors to our area and by not making these 'mandatory' could result in some of these opportunities no longer being offered due to funding constraints, etc. During the COVID 19 pandemic, Grey County and other municipalities across the Province have seen greatly increased demand for outdoor recreational and natural spaces. With CAs being one of the largest landowners in the Province, they are well positioned to help provide these spaces, including related educational content, during the pandemic and into the post-pandemic future. When comparing such spaces to municipally-operated parkland, it is not always reasonable to assume that such spaces (i.e. either parkland or CA properties) will be revenue generating (or even revenue neutral) and still be accessible to residents and visitors. The County sees great merit in having CAs continue to own and operate such spaces and educational opportunities.

Some of the educational programming also serves as an opportunity to connect Grey County's youth to careers and jobs within the realm of forestry, environmental conservation, and general land stewardship. Finding trained and qualified individuals for the above noted sectors, has proven to be more challenging in our area. By not recognizing these environmental education opportunities as 'mandatory', this is likely to have considerable impact on their ability to continue, having longstanding implications on the County's economic development efforts in filling the need of local employers.

Recommendations for Province to Consider

Based on the potential implications highlighted above, County staff would recommend the following comments be provided to the Province to be considered prior to finalizing and approving the proposed regulations:

1. **Release phase 2 regulatory proposals prior to finalizing and passing the Phase 1 regulations** - It is recommended that the next phase of regulatory proposals be released prior to finalizing and passing the regulations being proposed in Phase 1. This would allow conservation authorities and municipalities to review all the regulatory proposals being considered in order to truly understand the potential implications for the proposed changes and to provide comprehensive comments to the Province.
2. **Flexibility for non-mandatory programs and services** - It is recommended that the regulations provide as much flexibility as possible for conservation authorities and counties/municipalities to continue 'non-mandatory programs and services' being provided today as well as into the future.
3. **Regulatory framework to allow consistent development of non-mandatory programs and services both at the county/regional scale as well as at the watershed scale** - It is recommended that the proposed regulatory framework allow for the consistent delivery of non-mandatory programs and services both on a county/region-wide basis as well as consistently across the watershed. This can be achieved by allowing conservation authorities and multiple municipalities throughout the County to enter into a single MoU/Agreement or by working collectively to create a consistent MoU/Agreement template that all local conservation authorities, counties, and

municipalities can utilize. This would help to ensure that there is a consistent level of programs and services county-wide and across the watershed. Conservation authority staff and County/municipal staff were working on creating a consistent MoU/ Agreement template prior to the release of the proposed regulations. Staff hope that the regulatory proposals will not impact the work that has been done to date and will allow the option for multiple municipalities to enter into a single MoU/Agreement with a conservation authority.

4. **Provincial funding to support new mandatory programs and services and administration of the non-mandatory programs and service requirements** – it is recommended that the Province consider providing additional funding to conservation authorities to support the proposed new mandatory programs and services that are being proposed in the new regulatory framework. Additional provincial funding should also be considered to support the additional administrative requirements associated with the non-mandatory programs and services. The additional funding would allow conservation authorities to not have fund to these new requirements from other sources, including through increased municipal levies.
5. **Proposed timelines should be extended** - It is recommended that the proposed timeline (January 1, 2023) for conservation authorities and counties/municipalities to enter into MoU/Agreements for non-mandatory programs and services be extended by at least one year to January 1, 2024. Given the on-going pressures faced by the pandemic, as well as the fact that a provincial and municipal election will be occurring in 2022 which could result in changes at the provincial and municipal governments causing 'lame duck' periods, etc., the current timeframes will be difficult to achieve. Extending the deadline by one year would allow conservation authorities and counties/municipalities enough time to finalize/update the MoU's/agreements. The extension would also allow more time to review and understand the Phase 2 regulatory proposals once they are released.
6. **Include recreation and education opportunities on conservation lands as 'mandatory programs and services'** – Grey County residents and visitors to Grey County rely on the recreation and education opportunities that conservation authorities currently provide on some of the conservation owned lands. By adding these to the 'mandatory' definition it will ensure that these opportunities continue to be provided for current and future residents and visitors to our area. Through the pandemic, the importance of outdoor recreational opportunities and environmental education has been heightened and we anticipate that this will continue in a post COVID environment.

Legal and Legislated Requirements

Conservation Authorities Act

Planning Act

Financial and Resource Implications

The proposed regulations could have an impact financially to conservation authorities as well as on counties/municipalities. It is recommended that additional provincial funds be provided to conservation authorities to offset any additional costs associated with the new proposed mandatory requirements as well as the costs to administer the new requirements associated with the 'non-mandatory programs and services'.

Should some municipalities opt-out of non-mandatory programs and services, this could cause a financial impact to those municipalities who wish to opt-in to the programs and services and could result in the ability of those municipalities to collectively fund the program and services. Counties/municipalities may also have to take on additional programs and services if the conservation authorities are no longer able to offer certain non-mandatory programs and services due to staff and financial constraints.

The proposed regulatory framework also has the ability to hamper future partnerships and collaboration with conservation authorities. In rural areas such as Grey County, working together through partnerships and collaboration is how we are able to move forward with initiatives. If this collaboration is impacted in any way, then it could cause an impact on county/municipal staff resources and result in financial impacts if additional staff is required to replace these partnerships.

Relevant Consultation

- Internal (CAO, Planning)
- External (Conservation Authorities, Municipalities)

Appendices and Attachments

[PDR-PCD-36-15 - Conservation Authority Act Review](#)

[Addendum to PDR-PCD-36-15 - Conservation Authority Act Review - Second Phase](#)

[PDR-CW-22-19 Conservation Authority Act Changes](#)

[Environmental Registry of Ontario Posting – ERO 019-2986](#)