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Conservation and Source Protection Branch

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**Attention: Liz Mikel**

**Re: Proposed regulatory amendments to implement the legislative changes to the *Conservation Authorities Act* (ERO 019-2986)**

On behalf of the City of Toronto I am pleased to submit comments from City staff regarding ERO 019-2986 on the Environmental Registry of Ontario. We understand the Ministry of the Environment, Conservation and Parks (the Ministry) is proposing to move forward with the first of two phases of regulatory amendments to implement the legislative changes previously made to the *Conservation Authorities Act* and those recently made through the Protect, Support and Recover from *COVID-19 Act* (Budget Measures), 2020.

The proposals are outlined in a [Consultation Guide](https://ero.ontario.ca/notice/019-2986) which provides a description of the proposed regulations. The Guide does not include draft regulations. This first phase of the Ministry’s process is focused on the proposed regulations related to:

* mandatory programs and services to be delivered by conservation authorities;
* proposed agreements that may be required with participating municipalities to fund non-mandatory programs and services through a municipal levy;
* transition period to establish those agreements;
* requirement to establish ‘community’ advisory boards; and
* Minister’s section 29 regulation relating to conservation authority operation and management of lands owned by the authority.

**COMMENTS**

**Mandatory Programs and Services Related to the Management of Conservation Authority Land**

City staff support changes to the *Conservation Authorities Act* that improve the governance, oversight, accountability and efficiently of conservation authorities. Equally important is that the changes also support the long term protection of the integrity of conservation authority owned lands. These lands are held in the public interest as a legacy for all Ontarians to experience and enjoy, in perpetuity. This public value should be recognized through changes to the regulations that will ensure these lands and the resources they contain will be protected for the long term from encroachment and degradation.

Within the City of Toronto, conservation authority owned lands, mostly located in valleys and ravines and along the shoreline of Lake Ontario, form the base of the City's parkland system. In recent years, Toronto staff have documented increasing concerns with unlawful activities such as inappropriate fill placement on valley slopes and top of bank areas and encroachment of structures on both Toronto parkland and conservation authority-owned lands. In many cases the structures are placed on property boundaries causing impacts to both public and private landforms and natural heritage features and functions. There is an immediate need to improve deterrents to non-compliance. The pressures of increased development and population in Toronto watersheds have increased the risk to health and safety and property damage from illegal activities, trespass and encroachment activities, dumping and extreme weather events. City of Toronto staff are in support of enabling tools and mechanisms to manage these activities by enacting and enhancing the provisions for enforcement and compliance that are proposed to be added to the *Conservation Authorities Act* as soon as possible, including stop work orders, orders to comply, clarification for "after the fact" permits and a definition of an "officer" for enforcement purposes.

Section 29 of the *Conservation Authorities Act* refers specifically to regulations applicable to lands owned by the authority and the regulations associated with public use of authority property. Pressures for increased urbanization have resulted in expanded public use of parklands for recreation, nature appreciation and physical distancing. Along with this Toronto has seen an increase in unauthorized activities such as bike trail construction, commercial harvesting of edible plants, homeless encampments, and construction of unauthorized structures. Ongoing abuse by a relatively small number of irresponsible users degrades the ecological integrity of lands and impairs it for other users. Protection of natural heritage is not only critical to continued function of plant communities as assets which support habitat and canopy, but also in protecting slope stability. Loss of cover significantly increases the risk of slope failure as a result of the disruption to natural processes associated with ecology and hydrology. The ability to address unlawful activities on conservation authority lands both efficiently and effectively is desirable and should be facilitated through legislative change and if required through increased enforcement activities associated with expanded resources.

We would like to reinforce the importance of the forth coming Enforcement and Compliance provisions and emphasize that they be put in place as soon as possible.  Under the current regulations, conservation authorities have less authority to manage public lands than the province or Parks Canada yet they serve the same purpose and goals for public use and enjoyment, resource conservation and ecological services.  These lands are an important public asset that needs to be maintained for all Ontarians now and into the future. City staff strongly support strengthening and proclaiming regulations pertaining to enforcement and offenses under Section 30 of the Act.

It is our understanding that regulations under Section 30 will be proclaimed at a later time as part of changes to be proposed by the Ministry of Natural Resources and Forestry that relate to permitting under Section 28 of the Act. City staff strongly encourage the Ministry to ensure that the Section 30 changes will also enable provisions to ensure the management of conservation authority owned or controlled lands under Section 29, including monitoring and enforcement actions to ensure the maintenance of the property boundaries and protection of the land title from encroachments as well as to ensure the ecological integrity of the lands and to address illegal activity, with a goal also of making efficient use of public funds and ensuring that individuals do not receive a personal benefit at the expense of public resources.

In addition, City staff strongly support establishing a working group that would be tasked to review enforcement issues and to develop effective solutions to enforcement problems. City staff would be happy to participate in discussions for improvement of enforcement provisions.

**Non-mandatory Programs and Services**

Municipalities, including the City of Toronto, have a strong interest in maintaining non-mandatory programs and services that add value to our organizational mandate. Many services are currently offered by the Toronto and Region Conservation Authority (TRCA) under agreements that are prepared on a project by project basis, some of which undergo extensive pre-planning but others that are drafted to support emergency management or unexpected requirements. It is important that flexibility be retained to address such unexpected needs (e.g. Lake Ontario flooding). Toronto supports the review of existing Master Service Agreements and ad hoc agreements to support a MOU and future service contracts. Toronto is supportive of the initiative to clarify what is mandatory and non-mandatory in the suite of programs and services that TRCA offers and to better understand the funding mechanisms associated with these. Toronto supports the authority of local conservation authorities like the TRCA to recommend non-mandatory programs and services that the authority determines to be advisable and will support discussions of funding mechanisms, including municipal funding if required.

**Clarification re Core Watershed-based Resource Management Strategy**

The proposed Core Watershed-based Resource Management Strategy as a way to guide programs and services is a positive idea but needs further clarification before adding it to the mandatory programs of a conservation authority. Possible areas for further discussion include:

* Clarify title and purpose to minimize confusion with watershed planning which is more technical as opposed to the organizational focus of the Core Watershed-based Resources Management Strategy.
* Provide greater clarity around how the Strategy is going to be developed and used.  Who would develop, who would own, who would be informed, and who be consulted on the Strategy?  What is the frequency of the Strategy?
* What is the role of member municipalities? If municipalities are funding the majority of the services being identified in the strategy, should municipal priorities be clearly synchronized with the Strategy?  What if they are not? Is it possible to have municipal and conservation authority strategies diverge from each other?  For the Strategy to work effectively it should be jointly developed and maybe even jointly approved.
* How will information on the performance of the strategy be used?  Is annual progress reporting a meaningful time frame? Who is accountable if performance is weak?
* In the table on Page 18, "Flood and Erosion Control Infrastructure Operation" should be divided into two parts as they are different things (e.g. one line for Flood Control Infrastructure Operation, and another line for Conservation Authority owned Erosion Control Infrastructure Operation).

One particular area where further discussion is required relates to erosion control structures. Erosion control infrastructure is typically only partially owned by conservation authorities. Clarity is required as to whether conservation authorities will become the lead on all erosion control infrastructure or just the infrastructure that is deemed to be in their ownership.  In Toronto, many such structures are technically owned by the City and the City organizes and pays for their maintenance.  In these circumstances, the City also chooses when an asset should be repaired or replaced.  Conservation authorities may set a different service level than a municipality.  As such, having the conservation authority lead for all erosion control infrastructure could result in increased funding needs from a municipality.  Conversely, having conservation authorities be responsible would address who owns the orphaned erosion control structures which conservation authorities do not have sufficient funds to renew and municipalities are not willing or able to take over ownership.

**Transition timelines**

The proposed timelines for completing municipal agreements is exceptionally tight. In addition, municipal elections will occur in the fall of 2022 and it will not be possible to obtain Council endorsements after July 2022 further shortening the timeframe available for putting the required conservation authority/municipal agreements in place, and transitioning municipal budgets to the new funding model for conservation authorities for 2023. While it is understood that the Ministry is proposing to authorize the granting of extensions to the prescribed date, it is recommended that the Ministry extend the time to complete this process in the legislation by at least one year to account for the 2022 municipal election and the need to plan well in advance of 2023 for municipal budgets.

It is further recommended that the Province allow for at least a 6 month transition period between adoption of any new regulation (which does not address enforcement) and when it becomes effective to allow for municipalities to incorporate any changes into municipal budget cycles. As stated above, the City continues to request that regulations which address enforcement be proclaimed and become effective as soon as possible.

**Community Advisory Boards**

City staff support the proposed approach to structure conservation authority community advisory boards with minimal prescribed requirements, while enabling local flexibility to reflect a conservation authority’s circumstances. The regulations should address to whom the boards are accountable and scope (e.g., scope should not include permits) to avoid the potential for conflicts.

City staff welcome the opportunity to provide input on regulatory proposals respecting the *Conservation Authorities Act*. Thank you for the opportunity to provide these comments. If you have questions, or if you need additional information, please feel free to follow up with me directly or with Jane Weninger, Senior Planner, City Planning Division at [jane.weninger@toronto.ca](mailto:jane.weninger@toronto.ca)

Yours sincerely,



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Chief Planner and Executive Director,

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Cc:

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