Grand River Conservation Authority

Report number: GM-02-22-15

Date: February 25, 2022

To: General Membership of the Grand River Conservation Authority

Subject: Conservation Authorities Act Amendments - Phase 2 Regulations

# Recommendation:

THAT Report Number GM-02-25-15 – Conservation Authorities Act Amendments – Phase 2 Regulations be received as information;

AND THAT Report Number GM-02-25-15 – Conservation Authorities Act Amendments – Phase 2 Regulations be submitted to the Province through the Environmental Registry.

# Summary:

The Ministry of Environment, Conservation and Parks (MECP) is in the process of releasing regulations to implement in conjunction with amendments to the *Conservation Authorities Act* made in 2019/2020. The regulations are being released in two phases. Phase 1 regulations were released on October 4, 2021. In advance of releasing Phase 2 regulations, MECP has released a consultation guide (guide) to provide a description of the proposed Phase 2 regulations.

Phase 2 regulations will address the following items:

* municipal levy,
* the budget process,
* fees charged by Conservation Authorities, and
* increasing transparency

The guide is divided into the following four parts:

1. Municipal Levies Regulation.
2. Minister’s regulation for determining amounts owed by specified municipalities.
3. Minister’s published list of classes of programs and services in respect of which a conservation authority may charge a user fee.
4. Complementary regulations to increase transparency of authority operations.

This report provides an overview of the proposed phase 2 regulations and the potential impact on the GRCA.

# Report:

This report provides details on Phase 2 regulations under the *Conservation Authorities Act*. Details in the report are pulled directly from the MECP consultation paper posted on the Environmental registry. A copy of the Regulatory and Policy Proposal Consultation Guide is attached to this report.

On January 26, 2022 the MECP released proposed Phase 2 regulations to implement amendments to the *Conservation Authorities Act* made in 2019/2020. These regulations follow Phase 1 regulations, released on October 4, 2021, which included:

* *Ontario Regulation 686/21*: Mandatory Programs and Services
* *Ontario Regulation 687/21*: Transition Plans and Agreements for Programs and Services
* *Ontario Regulation 688/21*: Rules of Conduct in Conservation Areas.

The Phase 2 regulations are intended to improve governance and oversight in conservation authority operations and to ensure that *conservation authorities* focus and deliver on their core mandate of:

* helping protect people and property from the risk of natural hazards,
* the conservation and management of conservation authority-owned lands,
* their roles in drinking water source protection

The MECP proposal for Phase 2 regulations is divided into four parts:

1. Municipal Levies Regulation.
2. Minister’s regulation for determining amounts owed by specified municipalities.
3. Minister’s published list of classes of programs and services in respect of which a conservation authority may charge a user fee.
4. Complementary regulations to increase transparency of authority operations.

Details of the four parts of the regulations and the impact on GRCA follow.

PART 1 – MUNICIPAL LEVIES REGULATION

This is a Lieutenant Governor in Council (LGIC) regulation governing the apportionment by conservation authorities of their capital costs and operating expenses to be paid by their participating municipalities through municipal levies, as well as related conservation authority budgetary matters.

The province established conservation authorities through the *Conservation Authorities Act* based on resolutions by municipalities within a common watershed to address provincial and cross-municipal boundary interests in resource management, principally for water and natural hazard management. Municipalities were agreeing to fund the conservation authority which, under the *Conservation Authorities Act*, must be done through the levy provisions. A ‘levy’ is a compulsory financial charge on participating municipalities.

New legislative amendments and corresponding regulations now require that conservation authority programs and services be categorized into one of three categories:

1. programs and services every conservation authority is required to provide,
2. programs and services a municipality requests the conservation authority to undertake pursuant to a memorandum of understanding or agreement
3. programs and services the authority decides to adopt to further the purposes of the Act

Category 1 mandatory programs and services that conservation authorities must deliver may be funded by municipal levy or other revenue sources. Where such other revenue sources cannot fund the entire cost of these programs and services, a conservation authority will have the authority to levy their participating municipalities to fund these mandatory programs and services. Most of the mandatory programs and services reflect long-standing programs and services that the GRCA has provided.

Category 2 programs and services are those that a conservation authority delivers at the request of and on behalf of one or more municipalities. A memorandum of understanding (MOU) or service agreement between the parties will be required and would describe the programs or services to be delivered and will include provisions for how they are funded. MOUs or service agreements must be in place by January 1, 2024 for authorities to be able to levy for these category 2 programs and services.

Category 3 programs and services are those a conservation authority determines are advisable to deliver in their area of jurisdiction. In order to levy for these programs and services, the authority must have cost apportioning agreements in place with the participating municipalities who have individually agreed to fund the programs and services. Cost apportioning agreements need to be in place as of January 1, 2024, for authorities to be able to levy for these category 3 programs and services.

### MUNICIPAL LEVY

The Province is proposing to proclaim un-proclaimed provisions of the *Conservation Authorities* *Act* that provide expanded regulatory authority for the LGIC to develop regulations which will govern the apportionment of the authority operating expenses and capital costs and conservation authority budgetary matters in general.

In order to safeguard the effective and timely transition of conservation authority operations to the new funding framework, the new Municipal Levies Regulation would apply the long practiced municipal levy processes to the changed municipal levy context by:

* Maintaining consistency with current budget and municipal levy processes
* Using and adapting existing voting and apportionment methods and practices set out in current regulations or provincial policy.

The overall proposed approach is to provide direction as well as clarification where required while ensuring conservation authorities and municipalities have the necessary flexibility to respond to local circumstances.

The province is proposing that the Municipal Levies Regulation would:

* 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 (definitions are found in the Consultation Guide)
* Incorporate the standards and policy for the authority budget process as currently set out in regulation and provincial policy.

Additionally, the Municipal Levies Regulation would include:

* The two existing voting methods (i.e., the ‘one member, one vote’ and ‘weighted vote’, as set out in current legislation and regulation).
* The three current methods of apportioning expenses/costs (i.e., modified current property value assessment, agreement of the authority and participating municipalities, and as decided by the authority).

### CONSERVATION AUTHORITY BUDGETING

The province intends to leave the working relationship for authorities and municipalities to develop, and they can coordinate and communicate their fiscal and budgetary timelines and expectations.

To enable full transparency in the conservation authority budget process, it is proposed that the LGIC regulation would require each conservation authority to:

1. Publicly post its full draft budget, including the details related to operating and capital costs, on its website, a minimum of 30 days prior to the meeting to decide any municipal levy component of the budget.
2. Distribute a copy of the final approved conservation authority budget to the Minister and its participating municipalities; and, make the final budget available to the public by posting on its website and any other means the authority deems appropriate.

In addition, it is proposed that as part of the consultation process on the budget with the participating municipalities, conservation authorities would be required to provide a summary of how the authority considered opportunities for self-generated revenue.

### CORPORATE ADMINISTRATIVE COSTS

The regulations indicate that corporate administrative costs can be levied without an agreement however, these costs should be accounted for in a transparent and stand-alone manner in the authority’s budget. Corporate administrative costs represent costs that are not directly attributable to a specific program or service and are costs required to maintain the organization.

**Implications for GRCA –** Part 1 of the regulatory proposal provides a framework for municipal levies. A number of requirements are best practices and currently used by GRCA. As a result of creating the three categories into which programs and services must be categorized, and given the need to show corporate administrative costs separately, financial reporting will need to be adjusted. This impacts internal management reports, monthly financial reporting to the board, and the budget format. To facilitate changes in financial reporting, recording of certain financial transactions in GRCA’s accounting system will also be impacted.

## PART 2: PROPOSED MINISTER’S REGULATION FOR DETERMINING AMOUNTS OWED BY SPECIFIED MUNICIPALITIES

This part of the proposed regulation would allow conservation authorities to levy participating municipalities and ‘specified municipalities’ for the mandatory programs and services related to authority responsibilities under the *Clean Water Act*, 2006 and for the Lake Simcoe Region Conservation Authority mandatory policy implementation under the *Lake Simcoe Protection Act*, 2008. The regulation will allow the Authority to levy ‘specified municipalities’ that are not members of the Authority, and identifies a process for determining cost apportioning. The province has indicated that no change is anticipated to the provincial funding for the drinking water source protection program under the Clean Water Act, 2006 at this time.

**Implications for GRCA**: The GRCA is the lead conservation authority for source water protection planning for the Lake Erie Source Protection Region. Long Point Region CA, Catfish CA and Kettle Creek CA are all part of that region. The proposed regulation will allow GRCA, as the lead CA in the Lake Erie Region, to levy municipalities who are members of adjacent CAs for costs associated with Source Protection planning, should the province ever reduce funding for this work.

The Province recently requested lead conservation authorities to begin budgeting for two year program cycles which provides greater funding sustainability for the program. At this time, the Province has indicated that it will continue to fund the Source Protection Program.

Should the Province reduce the amount of funding currently provided, it is request that ample notice be provided to conservation authorities so that there is sufficient time to determine the appropriate approach to determine municipal levy and the corresponding budgeting process.

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

The Province is proposing to proclaim s. 21.2 of the *Conservation Authorities Act*, which provides that the Minister may determine a list of ‘classes of programs and services’ that a conservation authority may charge a fee for. An authority would be permitted to charge a fee for a program or service only if it is set out in the Minister’s list of classes of programs and services. Once a conservation authority is granted the power to charge a fee for a program and service, the authority may determine the fee amount to charge.

The proclamation of s. 21.2 would ensure that a conservation authority administers fees in a transparent and accountable manner. Under the regulation a conservation authority will be required 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 amount to be charged.
* notify the public if it makes changes to the fee schedule
* set out the frequency with which the authority will conduct a review of its fee policy and fee schedule,
* clearly identify the process for carrying out a review of the policy, and the circumstances and procedures under which any person may request the authority to reconsider a fee
* reconsider a fee at the request of any person who finds that a fee the authority has charged is contrary to their fee schedule or excessive in relation to the program or service for which it was charged. After being requested to reconsider a fee, the authority may either vary the amount of the fee to be charged, order that no fee be charged or confirm the original amount of the fee.

**Implications for GRCA** - Table 2 of the guide (page 16) identifies categories where fees may be charged. There are a number of areas where GRCA currently charges fees; it is expected that those activities that are currently funded through the generation of fees will continue. Additional resources will be required to manage the new processes that will need to be implemented to meet the transparency considerations associated with establishing and modifying fees. In addition, to ensure fees are defensible, there will be a need to complete an analysis of some GRCA fees, for example planning and permits fees. Funding for these studies will be through the Transition Reserve.

## PART 4: COMPLEMENTARY PROPOSALS TO INCREASE TRANSPARENCY OF AUTHORITY OPERATIONS

Through a Minister’s regulation conservation authorities will be required to maintain a Governance section on their website in a conspicuous and easily accessible location for the public to access key information. This section must include:

* the conservation authority membership with email and phone contact information;
* authority bylaws;
* draft and final budgets;
* category 2 and 3 agreements between conservation authorities and municipalities;
* meeting schedule
* other relevant governance documents (e.g. strategic plans).

The *Conservation Authorities Act* already requires the following to be posted on the authority website: financial statements, meeting agendas and meeting minutes.

In addition, the authority would be required to include a notice on the website when it amends or enters into a new MOUs or other agreement with municipalities and ensure the most up to date version of the agreements are available on the authority’s website. The regulation would provide an exception for agreements that relate to the authority participating in a procurement process or portions of agreements that contain commercially sensitive information.

**Implications for GRCA:** The requirements of Part 4 are not expected to cause a significant impact, as they represent best practices, many of which are already in place. The proposed regulations will require staff resources to manage the additional information requirements related to category 2 and 3 agreements.

# Financial Implications:

Additional costs are anticipated to implement these regulations and would be addressed in future budget exercises. Any funding that will be required to implement supporting studies would be funded through the Transition Reserve.

# Other Department Considerations:

Not applicable.

# Submitted by:

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