

May 8, 2019

BY E-MAIL ONLY (glo@ontario.ca)

Ministry of the Environment, Conservation and Parks
Great Lakes and Inland Waters Branch
40 St. Clair Avenue West, Floor 10
Toronto, ON M4V 1M2

**Re: Response to Request for Comments
Modernizing Conservation Authority Operations
Conservation Authorities Act (ERO #013-5018)**

Thank you for the opportunity to comment on the posting on the Environmental Registry of Ontario (ERO) by the Ministry of the Environment, Conservation and Parks (MECP), of the proposal to amend the *Conservation Authorities Act*. We understand the government is undertaking a review of the Act to consider how conservation authorities can modernize and improve delivery of their core programs and services, as outlined in the "Made-in-Ontario Environment Plan". Please note that the following comments, as approved by Resolution #A62/19 on April 26 by the Board of Directors, were prepared in advance of the release of the detailed wording changes identified in Schedule 2 of Bill 108, on May 2, 2019. We may provide additional comments by separate letter.

As the ERO posting states, extreme weather events increasingly threaten our homes, businesses and infrastructure, and conservation authorities play a key frontline role in helping prepare for the cost and impact of climate change in their communities. We are encouraged that the posting references the important role that conservation authorities (CAs) fulfill in Ontario's land use planning and environmental protection process for natural hazard management, source water protection and conserving natural resources. Toronto and Region Conservation Authority (TRCA) is pleased that the Province continues to recognize the critical role that CAs play in dealing with the impacts of climate change as it relates to protecting public health and safety and the environment.

Further, TRCA supports the Province's intent to improve consistency among CAs, Board governance of CAs, and increase transparency in CA funding through partner municipal levy for mandatory and non-mandatory programs and services. TRCA has already been working towards achieving these objectives.

TRCA is further pleased that the Province is proposing to proclaim many of the un-proclaimed provisions that were enabled through the amendments to the *Conservation Authorities Act* in 2017. As the Province develops its suite of regulatory and policy proposals to support the proposed amendments and proclamation of un-proclaimed provisions of the Act, TRCA looks forward to being involved in the consultation process.

As you are aware, TRCA has an ongoing interest in the proposed amendments to the *Conservation Authorities Act* (CA Act) given our roles as:

- A regulator under Section 28 of the CA Act;
- A public commenting body under the *Planning Act* and the *Environmental Assessment Act*;
- A delegated commenting body to represent the Provincial interest in natural hazards;
- A service provider to our municipal partners;
- A resource management agency operating on a local watershed basis; and
- One of the largest landowners in the Greater Toronto region.

In these roles, and as stated in the *Made-in-Ontario Environment Plan*, CAs work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources.

Our response to the proposal encompasses seven general themes to modernize CA operations and governance, as follows:

1. Defining core mandatory programs and services;
2. Transparency in levy for mandatory and non-mandatory programs and services;
3. Transition period for CA-municipal agreements' transparency;
4. Minister appointed investigator for audits;
5. Duty of CA Board members;
6. Proclaiming un-proclaimed provisions of the 2017 CA Act; and
7. Additional proposed amendments.

The posting does not include the proposed written amendments to the CA Act or associated regulations.

With TRCA's roles, responsibilities and experience in mind, we offer the following responses to the proposed amendments.

PROPOSED CHANGE #1

Defining core mandatory programs and services

The Province proposes to amend the CA Act to clearly define the core mandatory programs and services provided by conservation authorities to be:

- Natural hazard protection and management;
- Conservation and management of conservation authority lands;
- Drinking water source protection (as prescribed under the Clean Water Act); and
- Protection of the Lake Simcoe watershed (as prescribed under the Lake Simcoe Protection Act).

TRCA RESPONSE

For the purpose of providing a comprehensive response to this first proposed change, TRCA's response is divided into seven sections, each with specific recommendations regarding potential ways to further improve the Act.

A. Critical role of CAs in a growing and intensifying city-region and the Greater Golden Horseshoe (GGH)

It is necessary to continue to recognize the importance of operational flexibility in the CA Act and the importance of a watershed-based governance model that has enabled innovation in developing practical solutions to current and emerging issues (e.g., flood management, drinking water and Great Lakes water quality, climate change, rapid urbanization/growth). The role of CAs has evolved over time

to become critical on-the-ground implementers for a number of provincial and municipal goals and objectives related to natural resource management and protection of the natural environment. In the GGH, TRCA has played a critical role in addressing climate change risks and the impacts of rapid growth and urbanization within its area of jurisdiction and beyond through partnerships with other CAs and municipalities. This work to address climate change and mitigate the environmental impacts of planned growth supports the Province's and municipalities' efforts to address pressing environmental issues such as Lake Ontario water quality, flood and erosion hazard management, stormwater management, natural heritage systems planning and source water protection.

The posting and the *Made-In-Ontario Environment Plan* affirm the important role of CAs in the land use planning and environmental protection process. TRCA agrees given that CAs provide significant support to both the Province and municipalities in the implementation of the Provincial Policy Statement (PPS) and the Provincial Plans in our jurisdiction (i.e. Greenbelt Plan, Oak Ridges Moraine Conservation Plan, Growth Plan, Niagara Escarpment Plan, Central Pickering Development Plan and Parkway Belt West Plan). Accordingly, CA core roles are linked to other legislation such as the *Planning Act* and the *Environmental Assessment Act*, where we provide one-window review of natural hazard issues related to development applications and relevant sections of implementation of the PPS. CAs work through the planning process with both private and public proponents to facilitate sustainable development and infrastructure that is adequately set back from, and/or protected from, natural hazards and/or from environmentally sensitive areas. TRCA exercises all of its roles and responsibilities, (commenting body, regulator, resource management agency, service provider to municipalities and other agencies (e.g. Metrolinx), and landowner), in accordance with the Province's "*Policies and Procedures for Conservation Authority Plan Review and Permitting Activities*" (2010). Furthermore, in participating in Conservation Ontario's CA working group for all CAs to improve client service and accountability, increase speed of approvals, and reduce the notion of "red tape", staff recently reported to TRCA Board of Directors on our own ongoing streamlining efforts for reducing regulatory burden and meeting provincial priorities ([available here](#), pages 42 to 49). Through this work, we have identified additional opportunities for efficiencies in public agency review processes listed below. TRCA suggests further leveraging of CA expertise in natural resource management for facilitating timely reviews and approvals for development and infrastructure, where such CA capacity exists (e.g., within the GGH context). In recent submissions to the Province, the following recommendations to enable more timely reviews and approval were made by TRCA:

- Streamline provincial approvals by having CAs with expertise and capacity play a larger role in undertaking wetland evaluations and approvals, and staking of provincially wetlands;
- CAs could expand their role in wildlife management by administering fisheries timing windows and wildlife collection permits;
- CAs could play a role in the application of the *Endangered Species Act*, which could include habitat delineation, permit negotiation and issuance, timing window applications and Overall Benefit Permit planning and implementation. Through experience, science and monitoring expertise, CAs could assist in the development of a recovery strategy; and
- Transfer the review of Environmental Compliance Approvals along with associated resources for stormwater management under the *Ontario Water Resources Act* to CAs that have the

expertise in place and that have completed watershed plans with set stormwater management targets to ensure provincial interests are protected.

CAs add value to the growth planning process by bringing a regional perspective to cross boundary/watershed issues and across legislative review and approval processes (high level/strategic through to detailed design for both development and infrastructure). Where comprehensive redevelopment/community revitalization is proposed that includes areas of historical residential development within the flood hazard,

CAs also work with our provincial and municipal partners to seek opportunities for remediation and restoration to reduce risk and increase resiliency. In this way, increased housing supply is facilitated while risk is reduced and provincial and municipal policies for growth and development, public safety and environmental protection are upheld. Accordingly, it is important to recognize in the Act the important and diverse roles conservation authorities play as local implementation agents helping to achieve a number of provincial and municipal objectives.

For example, TRCA's Erosion Risk Management Program focuses on the identification and remediation of shoreline and valley land erosion hazards throughout TRCA's jurisdiction and encourages proactive prevention, protection and management of erosion issues on private and public property. Under the governing planning process being the Class Environmental Assessment for Remedial Flood and Erosion Control Projects (2013) or Class EA under the CA Act where TRCA is the proponent, and the Municipal Class Environmental Assessment (MCEA) where the municipality is the proponent, sometimes with TRCA as a co-proponent, TRCA works with our municipal partners to protect public safety, essential infrastructure, recreational trails and treasured greenspace. TRCA is currently working with Conservation Ontario to streamline TRCA's Class EA to mirror the MCEA where appropriate, including the development of Schedules that prescribe the type and extent of consultation and reporting required based on the scope, cost and other factors that vary widely between projects.

We recommend that the Province maintain the broad mandate of conservation authorities, as currently stated in the CA Act. The objects and powers of CAs in the Act are written broadly and as such, allow CAs to conduct activities in response to local natural resource management needs and challenges, even as these have changed, evolved and intensified since the Act was created. We anticipate that the needs and challenges will continue to change over time, so the objects and powers should remain broad to continue to facilitate adaptation to emerging issues.

TRCA recommends that:

- **The current purpose and objects in the *Conservation Authorities Act* remain broad and unchanged, to facilitate continued innovation and adaptation for local watershed-based solutions to current and emerging issues;**
- **The role of CAs in the land use planning and environmental protection process, as linked to legislation including the *Planning Act*, *Environmental Assessment Act*, and the *CA Act* in supporting the implementation of provincial and municipal priorities, be recognized as a core mandatory program and service; and**

- **The Province leverage the expertise of CAs in natural resource management, where capacity exists, for additional opportunities for efficiencies in public review processes to enable more timely reviews and approvals.**

B. Natural Hazards Protection and Management

Conservation Authorities undertake watershed-based programs to protect people and property from flooding and other natural hazards, and TRCA recognizes hazard management as a provincially mandated program. TRCA watersheds contain numerous Special Policy Areas (SPA) and flood vulnerable areas (FVA) where lives and property can be at risk from flooding and erosion hazards. Well-developed flood forecasting and warning systems are vital to the safety and security of watershed communities. Continued operation and funding of the Federal-Provincial hydrometric network is critical for delivering the core functions of hazard management.

Additionally, several dams, reservoirs and other flood control structures are in place that watershed communities rely on for protection during flood emergencies. CAs assist their municipal partners to develop and put in place emergency response plans and water management plans to jointly prepare for climate change. Having these plans in place assists the Province in achieving outcomes in the *Made-In-Ontario Environment Plan* by being prepared for climate change and keeping people safe.

Regulations to limit new development in floodplains and other natural hazard areas are an important part of reducing longer term risk of flooding and other natural hazards. Many municipalities depend on conservation authorities to provide technical information to support development of municipal emergency preparedness plans. Many other TRCA programs support and enhance the natural hazard program. Tree planting, restoring natural areas and conservation services programs are examples of conservation authority activities that improve the landscape and make the watershed more resilient to the variations in precipitation patterns resulting from climate change. As such, natural hazards and natural heritage are intrinsically linked, and best addressed in a holistic manner through integrated watershed planning. Further, the integration of natural hazard, natural heritage and other watershed-based programs provides optimum cost savings and efficiencies.

It is of great concern to TRCA that these watershed and natural resource functions have been left out of the proposal to define a CA's core mandatory programs. The government's recent *Made-in-Ontario Environment Plan* references the importance of conservation in combatting climate change:

"... we know that climate change poses a serious threat to Ontario's natural areas and that conservation of these areas can play an important role in mitigating and adapting to climate change."

The Plan goes on to describe the CA role in conserving natural resources as follows:

"Work in collaboration with municipalities and stakeholders to ensure that conservation authorities focus and deliver on their core mandate of protecting people and property from flooding and other natural hazards and conserving natural resources".

Additionally, the *Conservation Authorities Act* purpose, as added to the Act in 2017, is not referenced, and reads:

"The purpose of this Act is to provide for the organization and delivery of programs and services that further the conservation, restoration, development and management of natural resources in watersheds in Ontario".

TRCA recommends that:

- **The core mandatory programs of CAs be consistent with the purpose of the Act and the *Made-in-Ontario Environment Plan* to include reference to the management and conservation of natural resources.**

C. Management of Conservation Authority Lands

TRCA agrees that this is a core mandatory program of CAs.

TRCA owns and manages approximately 18,000 hectares of land in its nine watersheds and along the Lake Ontario shoreline. We also operate numerous conservation areas where user fees are collected to help cover operating costs. In addition to fee-supported conservation areas for public uses such as recreation and education, many parcels of land were purchased for hazard mitigation or environmental protection. With population growth in the watershed, there is additional pressure on these lands. User conflicts and public safety issues arise, and resources are required to prepare and implement management plans for these lands. As noted in the *Made-in-Ontario Environment Plan*, True environmentalism begins with a sense of civic responsibility that we foster through meaningful action close to home".

The lands owned, operated and managed by conservation authorities provide opportunities for natural-science and outdoor-based education programs and community engagement opportunities that help foster this sense of civic responsibility. These lands and programs are inter-linked and are important tools within a CA's suite of programs that help deliver on the important mandate of protecting, restoring and enhancing local watersheds and keeping communities safe from natural hazards, such as flooding, erosion and climate change.

Outdoor education programs and services across Ontario are delivered by a range of providers including school boards, CAs and other not-for-profits. Under the *Education Act* (Section 197.7), conservation authorities and school boards are enabled to enter into agreements for the provision of lands, programs or services related to natural science or out-of-classroom experiences. This provision was intended to leverage the local environmental science knowledge and greenspace systems of CAs in providing outdoor experiential learning opportunities to students and school boards that were locally-based, partnership-driven and supported the mandate of CAs. Further, the value of public agencies, such as school boards and conservation authorities, working collaboratively to leverage local greenspace and education centres maximizes the use of public assets and taxpayer funding.

Lands owned and managed by CAs serve an important public function for a diverse array of uses. The identification of the management of CAs lands as a core mandatory function is supported and the review should recognize the restoration, recreation, education and community engagement functions of CAs as supporting core mandatory programs and services related to CA land management.

TRCA recommends that:

- **The identification of the management of conservation authority lands as a core mandatory function is important to include in the CA Act. Non-core functions such as restoration, recreation, education and community engagement functions of CAs on CA owned lands should be acknowledged as necessary to support these core activities in the amended Act and implementing regulations; and**
- **As school boards are enabled to enter into agreements with conservation authorities for the provision of lands, programs or services related to natural science or out-of-classroom experiences under Section 197.7 of the *Education Act*, the *Conservation Authorities Act* should be amended to explicitly acknowledge and permit the important role that CAs play in providing greenspace, scientific knowledge and experiences for Ontario students by including reference to natural science and outdoor education in the Act.**

D. Drinking Water Source Protection (as prescribed under the Clean Water Act)

TRCA supports the Drinking Water Source Protection Program as a core mandatory function of CAs.

This legislated role includes:

- Establish and administer the Source Protection Committee (SPC) for local decision making (in our case, this is the Toronto and Region Source Protection Authority, or TRSPA);
- Assist the SPC in their powers and duties to be carried out under the Clean Water Act, 2006;
- Provide scientific, technical and administrative support and resources to the CTC SPC;
- Comply with an obligation to implement a significant threat policy or designated Great Lakes policy;
- Prepare annual progress reports for each source protection plan, submit to the SPC first and then to the Director, MECP;
- Propose and prepare updates to source protection plan and undertake necessary consultations leading to a submission to the MECP;
- Issue a Notice to municipal residential drinking water system owners, upon receipt and review of necessary technical work, to support source protection planning for new or changing systems.

In addition to the legislated requirements under the *Clean Water Act, 2006*, Toronto and Region Source Protection Authority (TRSPA) provides advice and program support to municipalities, the Province, and other stakeholders to resolve issues with policy implementation. Further, TRSPA staff are integral to the integration of source protection into local decisions in vulnerable areas identified in the CTC Source Protection Plan.

TRCA recommends that:

- **The Province maintain their financial and technical support for the Drinking Water Source Protection Program and that the identification of this program as a core mandatory program include continued financial support from the Ministry of Environment, Conservation and Parks for the role of Conservation Authorities, as prescribed under the Clean Water Act.**

E. Protection of the Lake Simcoe Watershed

This does not directly apply to TRCA, although we do support the importance of this as a core mandatory program for the Lake Simcoe Region Conservation Authority.

F. Watershed Focus

We note that the watershed focus of all CAs is not mentioned as a core role. This is a unique and important attribute of managing natural resources, as well as contributing to natural hazard and flood risk management. TRCA undertakes watershed-based programs that provide a wide range of benefits to watershed residents. Conservation Authority programs and services protect water, provide natural spaces and build resilience to extreme weather and flooding events. Investments in watershed based programs can help avoid future costs around challenges such as flood damages, business disruptions and public health issues. Residents of all watersheds rely on clean and sustainable drinking water, breathable air, green spaces and healthy rivers and streams for recreation, healthy soils, forests and wetlands that provide habitat for wildlife, as well as public health and many other benefits. Being in nature restores people and helps them to stay active and healthy. The *Conservation Authorities Act* established in 1946 was predicated on responding to local issues on a watershed basis. This role of CAs in undertaking programs on a watershed scale should be considered in developing amendments to the Act.

TRCA recommends that:

- **Consistent with the CA Act, the ability to manage local environmental issues on a watershed basis, be maintained for all conservation authorities.**

G. Protection and Restoration of the Great Lakes

Additionally, the proposed amendments to the CA Act do not reflect the role that many CAs play in the protection and restoration of the Great Lakes. The *Made-in-Ontario Environment Plan* includes a commitment to review and update Ontario's Great Lakes Strategy to continue to protect fish, parks, beaches, coastal wetlands and water by reducing plastic litter, excess algae and contaminants along our shorelines, and reducing salt entering waterways to protect our aquatic ecosystems. Since signing the eighth Canada Ontario Agreement (COA) in 2014, Ontario has directly invested \$15.3 million per year in Great Lakes programs. TRCA and other CAs have been long standing partners, helping the Province achieve its stated COA objectives. TRCA helps the Province monitor water quality and fish communities in Lake Ontario and its tributaries. Further, TRCA has been providing administration, coordination and professional services for the Toronto Remedial Action Plan Area for over 20 years. This work has resulted in some significant improvements in Great Lakes water quality over time, due to efforts by governments and other partners. Given the many increasing pressures facing Ontario's Great Lakes, such as population growth, rapid urban development, aging infrastructure and invasive species, it is important that the Province formally recognize long standing CA contributions that help the Province achieve its stated Great Lakes objectives.

TRCA recommends that:

- **The key role that many CAs play in the protection and restoration of the Great Lakes be identified and acknowledged as one of their core mandatory programs and services.**

PROPOSED CHANGE #2

Transparency in levy for mandatory and non-mandatory programs and services

- Increase transparency in how CAs levy municipalities for mandatory and non-mandatory programs and services.

- Update the *Conservation Authorities Act* to conform to modern transparency standards by ensuring that municipalities and CAs review levies for non-core programs after a certain period of time (e.g., 4 to 8 years).

TRCA RESPONSE

TRCA supports transparency in the levy to municipalities for mandatory services and programs through annual detailed budget submissions to municipalities. Over time, levies have evolved to cover non-core programs and services that could be covered by Memorandums of Understanding (MOUs) and/or Service Level Agreements (SLAs), but because of the transparency of TRCA's levy process, have never been raised as a concern by our partner municipalities. Upon ratification of changes to the Act, TRCA will work with our partner municipalities to develop these agreements and re-assess our levy requirements.

With that being said, TRCA has never levied a partner municipality without their approval of the dollar amount. Consistency with the administrative levy has become a distinct challenge, as our four central funding partners (Durham, Peel, Toronto and York) provide different annual funding envelopes to TRCA, leading to challenges with apportionment of expenses utilizing an equitable methodology. TRCA would like the Ministry's guidance on this matter to be addressed within the Act update, as we empathize with the cost constraints facing our municipal partners, but at that same time, want to ensure that potential inequity issues are resolved in a timely and sensible manner.

Regarding the review of levies, TRCA encourages changes to the CA Act only permitting a CA to levy for core programs and services. All additional funding provided should be governed by agreements, which should be reviewed a minimum of every four years, coinciding with the second year of our partner municipality councils' four-year terms. The current term of council ends on December 31, 2022, but by that time, the budget for the 2023 fiscal year is substantially complete and as such, the first year of council doesn't allow time for comprehensive review. Mandating a broad municipal review of CAs' projects and programs is a welcome change and TRCA wants to ensure that sufficient time is permitted to complete the undertaking.

Additionally, core programs require administrative/supporting functions and funds to deliver programs efficiently and effectively. To achieve transparency and accountability in the funding of core CA programs and services requires that the cost of support corporate services such as Finance, Records Management, Human Resources, IT/GIS (information technology/geographic information systems), artifact preservation and other functions, be included in the full cost accounting of providing all services and programs. The province should consider updating the Act in this regard with general principles, such as requiring cost recovery pricing for core programs, based on transparent, full cost accounting and consultation with stakeholders, and require that all non-core programs be responsible for paying their portion of a CA's administration functions.

TRCA recommends that:

- **Increased transparency in how conservation authorities levy municipalities for mandatory programs and services be supported;**
- **The review of non-mandatory programs occur every four years, coinciding with the second year of our partner municipality councils' four-year terms;**

- **Further guidance from the Ministry regarding the apportionment of levy be addressed within the update to the Act, to address cost constraints of our municipal partners while ensuring equity and timely resolution of disagreements; and**
- **The Province update the Act with general principles for transparency in levy funding, such as requiring cost recovery pricing for mandatory programs, based on transparent, full cost accounting and consultation with stakeholders, and require that all non-mandatory programs charge cost plus pricing to ensure they pay for their portion of a CA's administration functions.**

PROPOSED CHANGE #3

Transition period for CA-municipal agreements' transparency

Establish a transition period and process for CAs and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards.

TRCA RESPONSE

TRCA currently has a range of MOUs/SLAs with upper and lower tier municipalities and is supportive of this initiative. TRCA believes that MOUs/SLAs should be established for all non-core programs and services. However, due to the anticipated timelines needed for ratifying agreements, TRCA suggests that the transition period be extended to December 2022, to coincide with the existing term end of municipal councils.

TRCA recommends that:

- **Entering into agreements for the delivery of non-core programs and services be mandatory practice, and proposes that the transition period for entering into these agreements be extended to December 2022, to coincide with the existing term end of municipal councils.**

PROPOSED CHANGE #4

Minister appointed investigator for audits

Enable the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority.

TRCA RESPONSE

Transparency to our funders and stakeholders is of utmost importance to TRCA. We accomplish this through financial accountability clauses in MOUs/SLAs, in addition to our annual financial statement audit. We propose adding wording to the Act allowing either the Province or a CAs' partner municipalities to, at their own cost, request a third party audit of special purpose financial information, limited to the funding provided by the requesting organization. To do otherwise, could potentially lead to "fishing expeditions", increasing red tape and costs to CAs. This solution, which places onus on all parties, provides the required level of assurance that funds are being expended in accordance with agreements/expectations.

Further, this approach would allow our Board of Directors to retain their right to request additional audits/investigations by third parties as they deem necessary, in accordance with their fiduciary duties to the organization, which have been clarified through the subsequent proposed change to the Act. This

proposed solution would provide piece of mind to our partners, while respecting the vital role that our Board of Directors plays in governing our not-for-profit organization. Further to this point, if any stakeholder would like the opportunity to request that a CA undergo another type of investigation, they are able to attend a Board meeting and explain their motivation and have the Board vote on the requirement for such an examination in a transparent manner.

TRCA recommends that:

- **The Province or any partner municipality be allowed to request an audit of special purpose financial information limited strictly to how their funds have been spent, at their cost, and that overall financial accountability remain as a fiduciary responsibility of the CA's Board of Directors.**

PROPOSED CHANGE #5

Duty of CA Board member

Clarify that the duty of conservation authority board members is to act in the best interest of the conservation authority, similar to not-for profit organizations.

TRCA RESPONSE

TRCA supports the clarification on the role of Board members to act in the best interests of the Conservation Authority. In fact, TRCA's Administrative By-law already clarifies that Board members shall act in the best interest of the CA, rather than their own municipality.

TRCA further encourages the Province to consider proposing additional amendments to applicable sections within the Act regarding the size of CAs' Boards of Directors. The size of TRCA's Board has notionally grown to 32 members in accordance with the existing legislation, however, has been held via Board direction to 28 members, which remains considerable for a not-for-profit organization. The size will continue to grow in our jurisdiction due to planned growth. We recommend that Board size that is enabled by legislation to be over 32 members be examined in the context of this review. TRCA staff also recognize the outcome of ongoing governance reviews being undertaken by the Province may also influence Board size and composition.

TRCA recommends that:

- **TRCA supports the amendment to clarify that the duty of conservation authority board members is to act in the best interest of the CA; and**
- **The Province examine the size of CAs' Board of Directors in the context of this review and consider any amendments to the CA Act regarding the maximum number of board members that may be appointed to a conservation authority by partner municipalities.**

PROPOSED CHANGE #6

Proclaiming un-proclaimed provisions of the 2017 CA Act

- Fees for programs and services
- Transparency and accountability

- Approval of projects with provincial grants
- Recovery of capital costs and operating expenses from municipalities (municipal levies)
- Regulation of areas over which conservation authorities have jurisdiction (e.g., development permitting)
- Enforcement and offences
- Additional regulations

TRCA RESPONSE

Regarding the proposal to proclaim un-claimed provisions of the Act, TRCA is supportive, but notes the following:

Fees for programs and services

No draft version of the proposed list of classes of programs and services in respect of which an authority may charge a fee has been provided for comment. A primary issue is that all CAs offer different offerings and even when they provide similar offerings, prices range depending on their geographic location, cost of providing the services and other factors. Due to higher operating costs in certain jurisdictions, it would be difficult or inadvisable to provide a consistent price listing. TRCA offers a variety of diverse programming, including initiatives at our Parks and Educational facilities and engagement initiatives throughout our jurisdiction. A provincially mandated fee structure could have a substantial impact on TRCA's financial sustainability and create red tape for operating activities. TRCA operates unique facilities which charge a wide variety of fees, such as Black Creek Pioneer Village and Bathurst Glen Golf Course (operated on behalf of the Province). In order to generate revenue to support core operations, TRCA has approximately 40 different lines of business charging for everything from film permits, to program/event fees, to initiatives in which third parties charge users and pay TRCA fees (i.e. weddings and events, escape rooms, high ropes courses, etc.). Rather than narrowly dictating what a CA can charge for specific initiatives, TRCA proposes that the Province should consider updating the Act in this regard with general principles, such as requiring cost plus pricing for associated fees, based on transparent, full cost accounting and consultation with stakeholders. As one of the largest landholders and property managers in the Greater Toronto Area, TRCA provides a substantial share of the open space systems needed to service redeveloping and intensifying communities. However, unlike municipalities, CAs do not have access to development charges to fund the expansion or strengthening of this infrastructure. Current funding mechanisms are not sufficient to support the public service demands resulting from the amount of growth that is occurring in TRCA's watersheds. Funding is needed not only for operations but land securement and asset management, including long term land care.

TRCA recommends that:

- **Flexibility be provided to CAs in respect of the charging of fees for diverse programs and services and that the CA Act be updated with general principles to be followed such as requiring cost plus pricing for associated fees, based on transparent, full cost accounting and consultation with stakeholders.**

PROPOSED CHANGE #7

Additional Amendments:

Risk Management/Indemnification Clause

Although it is not included in the Ministry's proposal, TRCA would like to request additional wording be added to the Act regarding risk management.

TRCA has become aware of the Province's [proposed](#) modernization of the Crown liability framework through the introduced Crown Liability and Proceedings Act (CLPA) in Bill 100. It is staff's understanding that these updates aim to reduce time and money spent by both courts and ultimately the taxpayer from frivolous claims against the Province.

While it is understood that CAs are not Crown Agencies, and that the language within CLPA will not affect the CAs' operations, we do note that, in a similar way to the Crown, the programs and services offered by the CAs are also exposed to frivolous litigation. Ultimately, the cost of this exposure is also borne by the taxpayer.

We further note that a similar source of litigation, formerly aimed at Ontario municipalities as a result of storm sewer operations, was recognized by the Ontario Legislature as an unreasonable public burden. This public burden led to changes to the *Municipal Act*, s.449, effectively granting statutory immunity for certain classes of action against municipalities for their operations. Similarly, and in some cases, broader provisions have also been legislated in other Canadian jurisdictions, such as wording in s.95 of *The Water Security Agency Act*.

In the context of this strong legislative precedent in multiple Canadian jurisdictions and the potential public liability associated with CAs' programs and services, particularly in the areas of flood risk and erosion risk management, some form of statutory immunity for the good faith operation of these essential services, programs and infrastructure is warranted.

Particularly in the face of increased liability exposures associated with climate change, some form of statutory immunity for the good faith operation of this essential infrastructure and programming is warranted. TRCA would request that a clause to this effect be added to the Act.

TRCA recommends that:

- **A clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure, and programming be added to the CA Act.**

Enforcement and Offences

TRCA supports proclaiming un-proclaimed sections of the Act for better deterrents to non-compliance with section 28 regulations. During the 2017 CA Act review and amendments, TRCA was pleased to see substantial amendments were made to the Act to enhance enforcement mechanisms, i.e., the ability to stop work, the ability to enter privately-owned land (for the purpose of ensuring compliance with permit approvals and conditions and with reasonable grounds to believe an offence has occurred), and the significantly higher (offence) penalties than those currently identified in the Act. TRCA had also recommended that Section 30 be amended to include:

- An order to comply;

- A stop work order be appealed directly to the Minister;
- Clarification regarding “after the fact” permits;
- And further, that any new or updated regulations include a definition of an officer for enforcement purposes.

TRCA would like to reiterate these comments and ask the Province to reconsider these matters.

With respect to stop work orders, TRCA recommended that an accompanying “order to comply” be added to the Act to facilitate immediate, albeit interim, mitigation at the expense of the party engaged in the offending activity. Moreover, it was noted that individuals who receive a stop work order have the ability to appeal to the authority, and if not satisfied, to the Minister of Natural Resources and Forestry. TRCA had no objection to an appeal to the Minister. However, it was suggested that an appeal to the Authority may result in the “apprehension of bias” should the individual make application to apply for a permit for the offending works, which could not meet the tests of the Regulation and would be subject to a hearing before the Authority. This scenario raised a further issue of “permits after the fact”. TRCA pointed out previously that guidance on how authorities approach these scenarios be clarified in the Act, so as to avoid the potential for duplicative processes under the Act and through the courts. Finally, TRCA had recommended that the definition of an officer be included in any new or updated regulation under section 28, as well as section 29 regulations governing lands and property owned by a CA.

The immediate need for improved deterrents to non-compliance is acute in TRCA’s highly urbanized watersheds given current development and population pressures, increasing risks to health and safety and property damage from illegal activities, trespass, dumping and extreme weather events.

TRCA recommends that:

- **Enhanced provisions for enforcement and compliance be added to the CA Act, including stop work orders, orders to comply, clarification for “after the fact” permits and a definition of an “officer” for enforcement purposes.**

Thank you once again for the opportunity to provide comments on this important initiative. TRCA would be pleased to discuss these and other opportunities for modernizing conservation authority operations and governance through amendments to the CA Act. Should you have any questions, require clarification, or wish to meet to discuss any of the above remarks, please contact the undersigned at your earliest convenience.

Sincerely,

<Original signed by>

John MacKenzie, M.Sc.(PI), MCIP, RPP
Chief Executive Officer