



CITY OF HAMILTON
CORPORATE SERVICES DEPARTMENT
Legal and Risk Management Services Division

TO:	Mayor and Members of General Issues Committee
COMMITTEE DATE:	May 1, 2019
SUBJECT/REPORT NO:	Conservation Authorities Act Review (LS15027(d)) (City Wide)
WARD(S) AFFECTED:	City Wide
PREPARED BY:	Eleonora Filippone (905) 546-2424 Ext. 4707
SUBMITTED BY:	Nicole Auty, City Solicitor Legal and Risk Management Services Corporate Services
SIGNATURE:	

RECOMMENDATION(S)

That the Office of the Mayor forward a submission to the Ministry of the Environment, Conservation and Parks, consistent with the contents of Appendix “A” attached to Report LS15027(d) and in a form acceptable to the City Solicitor, regarding the proposed amendments to the Conservation Authorities Act and ERO (Environmental Registry of Ontario) notice number 013-5018.

EXECUTIVE SUMMARY

Starting in 2015, the Province of Ontario undertook a review of the Conservation Authorities Act. Over the ensuing two years, a Discussion Paper was released and feedback sought from municipalities and other stakeholders in the areas of governance, funding mechanisms, and roles and responsibilities of conservation authorities in Ontario. The City made submissions throughout the review and consultation process.

In December 2017, Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017 was passed by the provincial legislature and received royal assent. Schedule 4 of the Bill made amendments to the Conservation Authorities Act. Many of the amendments which received royal assent were not proclaimed into force.

On April 5, 2019, the Ontario Ministry of the Environment, Conservation and Parks (MECP) posted ERO (Environmental Registry of Ontario) notice number 013-5018 (the “ERO Notice”). MECP is proposing to introduce amendments to the Conservation

OUR Vision: To be the best place to raise a child and age successfully.

OUR Mission: To provide high quality cost conscious public services that contribute to a healthy, safe and prosperous community, in a sustainable manner.

OUR Culture: Collective Ownership, Steadfast Integrity, Courageous Change, Sensational Service, Engaged Empowered Employees.

Authorities Act, which if passed, “would help conservation authorities focus and deliver on their core mandate, and to improve governance.”

MECP is proposing to proclaim un-proclaimed provisions of the Conservation Authorities Act related to:

- 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.

Submissions on the ERO Notice are due to MECP by May 20, 2019. City staff proposes the submission contained in Appendix “A” to this report, the content of which is consistent with the City’s previous submissions in the Conservation Authorities Act review.

Alternatives for Consideration – Not Applicable

FINANCIAL – STAFFING – LEGAL IMPLICATIONS

Financial: Un-proclaimed provisions of the Conservation Authorities Act enable the Lieutenant Governor in Council to prescribe how a conservation authority may apportion capital costs and operating expenses among its member municipalities. The regulation prescribing such apportionment was not released with the ERO Notice. It is unknown whether or when the Province will release a new regulation prescribing capital costs and operating expenses. Appendix “A” provides submissions on apportionment of such costs and expenses.

Staffing: None.

Legal: Un-proclaimed provisions of the Conservation Authorities Act propose to change the roles, responsibilities, funding and governance of conservation authorities. Details with respect to many amendments will be prescribed by regulation, which were not released with the ERO Notice. Appendix “A” provides submissions on those various matters.

HISTORICAL BACKGROUND

The Province launched a review of the Conservation Authorities Act in July 2015 with the release of a Discussion Paper. During Phase 1 of the review process, the City made a submission by letters dated September 23, 2015 and October 16, 2015.

Phase 2 of the review process was launched in May 2016, at which time the Province identified five priorities for updating the Act:

1. Strengthening oversight and accountability in decision-making.
2. Increasing clarity and consistency in roles and responsibilities, processes and requirements.
3. Improving collaboration and engagement among all parties involved in resource management.
4. Modernizing funding mechanisms to support conservation authority operations.
5. Enhancing flexibility for the province to update the Act framework in the future.

During Phase 2, the City made a submission to the Province by letter dated September 1, 2016.

Following such review process, the Province proposed amendments to the Act as set out in Schedule 4 of Bill 139, the Building Better Communities and Conserving Watersheds Act, 2017. The City made a submission to the Province by letter on July 31, 2017.

Bill 139 was passed by the provincial legislature and received royal assent in December 2017, though many provisions were not proclaimed into force.

On April 5, 2019, MECP posted the ERO Notice, which proposes to introduce amendments to the Act and proclaim un-proclaimed provisions of the Act. MECP is accepting submissions from stakeholders until May 20, 2019.

POLICY IMPLICATIONS AND LEGISLATED REQUIREMENTS

The legislative changes proposed by the Province to the Conservation Authorities Act are set out in this report under the Executive Summary and Analysis and Rationale for Recommendation. The full extent of their implications on City policies will not be known until new regulations under the Act are released.

RELEVANT CONSULTATION

During the earlier consultation periods, all City Departments were asked to provide feedback on improvements to the Conservation Authorities Act. Responses were received from Corporate Services, Public Health Services, Public Works, and Planning and Economic Development and were incorporated in the previous submissions made to the Province. Those same Departments were consulted again for feedback on the ERO Notice, and they have updated their comments or confirmed their previous comments, which are incorporated into the submission in Appendix “A” to this report.

ANALYSIS AND RATIONALE FOR RECOMMENDATION(S)

According to the ERO Notice, the proposed amendments to the Conservation Authorities Act would, if passed:

- 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, and drinking water source protection (as prescribed under the Clean Water Act)
- increase transparency in how conservation authorities levy municipalities for mandatory and non-mandatory programs and services
- update the Conservation Authorities Act to conform with modern transparency standards by ensuring that municipalities and conservation authorities review levies for non-core programs after a certain period of time (eg. 4 to 8 years)
- establish a transition period (eg. 18 to 24 months) and process for conservation authorities and municipalities to enter into agreements for the delivery of non-mandatory programs and services and meet these transparency standards
- enable the Minister to appoint an investigator to investigate or undertake an audit and report on a conservation authority
- 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.

The Province is also proposing to proclaim un-proclaimed provisions of the Conservation Authorities Act related to:

- 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 (eg. development permitting)
- enforcement and offences
- additional regulations.

The ERO Notice states that in the spring 2019, the Province will also develop and consult on a suite of regulatory and policy proposals to support the proposed amendments to and proclamation of un-proclaimed provisions of the Conservation Authorities Act. It is unknown what that consultation process will look like.

The full implications of the proposed amendments to the Conservation Authorities Act are not yet known, as un-proclaimed provisions of the Act allow the Minister and Lieutenant Governor in Council to prescribe regulations on the programs, services, funding, powers and governance of conservation authorities. Staff proposes making a submission to MECP, consistent with the previous submissions made by the City, on the proposed amendments and the details which are yet to be released and may have significant consequences to the City.

ALTERNATIVES FOR CONSIDERATION

None.

ALIGNMENT TO THE 2016 – 2025 STRATEGIC PLAN

Economic Prosperity and Growth

Hamilton has a prosperous and diverse local economy where people have opportunities to grow and develop.

Healthy and Safe Communities

Hamilton is a safe and supportive City where people are active, healthy, and have a high quality of life.

Clean and Green

Hamilton is environmentally sustainable with a healthy balance of natural and urban spaces.

APPENDICES AND SCHEDULES ATTACHED

Appendix “A” to Report LS15027(d) – Draft submission to the Ministry of the Environment, Conservation and Parks