




COMMUNICATION UPDATE

TO:	Mayor and Members City Council
DATE:	March 14, 2022
SUBJECT:	Submission for Regulatory and Policy Proposals (Phase 2) Under the <i>Conservation Authorities Act</i> (City Wide)
WARD(S) AFFECTED:	City Wide
SUBMITTED BY: SIGNATURE:	Brian McMullen Director, Financial Planning, Administration and Policy Corporate Services Department 

Background

Amendments to the *Conservation Authorities Act* received Royal Assent on December 8, 2020. These changes were intended to improve the governance, oversight and accountability of conservation authorities (CAs), while respecting taxpayer dollars by giving municipalities more say over the conservation authority programs and services they pay for.

In October 2021, new regulations for Phase 1 were finalized to focus conservation authorities on their core mandate by prescribing mandatory programs and services they must provide, giving municipalities greater control over what conservation authority (CA) programs and services they will fund and consolidating "Conservation Areas" regulations.

Phase 1 Outcomes:

- O. Reg. 686/21: Definition of six Conservation authority mandatory programs and services;
- O. Reg. 687/21: Transition Plans and Agreements for Programs and Services provided under the Act;
- O. Reg. 688/21: Rules of Conduct in Conservation Areas: Consolidation of each of the current individual CA 'Conservation Areas' regulations made under Section 29 of the *Conservation Authorities Act* into one Minister's regulation.

On January 26, 2022, the Ministry of the Environment, Conservation and Parks initiated a “Comments Period” regarding the Regulatory and policy proposals (Phase 2) under the *Conservation Authorities Act* (ERO#: 019-4610). The regulatory and policy proposals under the *Conservation Authorities Act* are intended to improve conservation authority (CA) governance, oversight, transparency, and accountability. The proposals include regulations about:

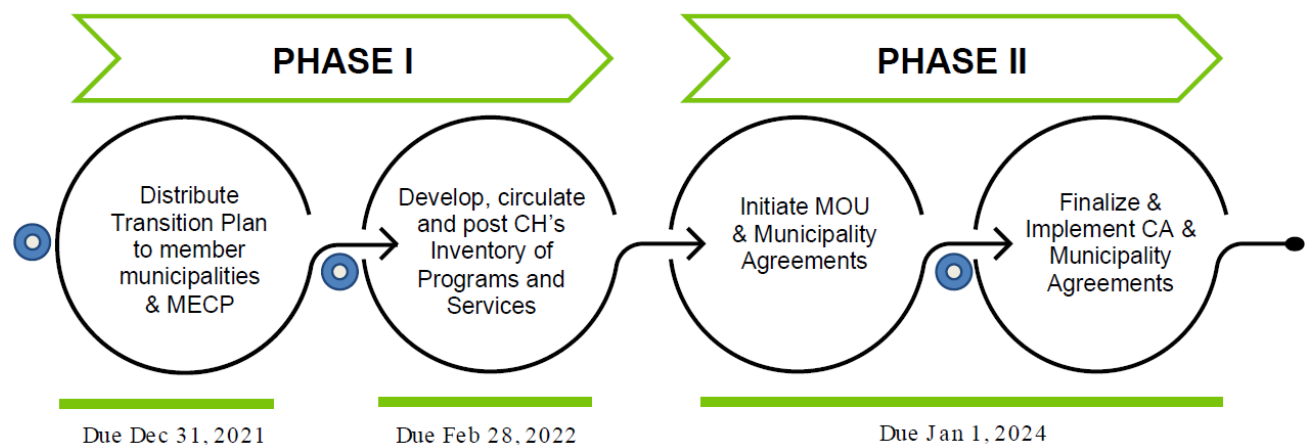
- a) the municipal levy;
- b) the budget process;
- c) the scope of the classes of programs and services that the Minister approves for CAs to charge fees;
- d) requirements to increase transparency of CA operations.

The City of Hamilton has submitted relevant comments on February 25, 2022 (details noted in Appendix “A” and “B” to this Communication Update).

Phase 2 Outcomes:

- a) ‘Municipal Levies Regulation’ that outlines details about:
 - the apportionment by CAs of their capital costs and operating expenses to be paid by their participating municipalities through municipal levies;
 - CA budgetary matters, including requirements that CAs distribute their draft and final budgets to relevant municipalities and make them publicly available;
- b) Determining Amounts Owed by Specified Municipalities Regulations that outlines details, about the methods available to CAs to determine costs specified municipalities may need to contribute for the CA’s mandatory programs;
- c) ‘Fee Classes Policy’ that outlines classes of programs and services for which a CA may charge a user fee;
- d) Regulations to increase transparency of CA operations.

Key Steps and Due Dates



The City of Hamilton Experience

Parts of the City boundaries fall into the watershed areas of four different Conservation Authorities: Niagara Peninsula, Grand River, Halton and Hamilton. According to the existing Ontario Regulation 670/00, the levy for the participating municipalities are based on the following formula Section 2 of the O. Reg. 670/00 "Conservation Authority Levies" which reads as follows:

- (1) In determining the levy payable by a participating municipality to an authority for maintenance costs pursuant to subsection 27 (2) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the benefit derived or to be derived by each participating municipality determined,
 - (a) by agreement among the authority and the participating municipalities; or
 - (b) by calculating the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment. O.Reg. 670/00, s. 2 (1).
- (2) In determining the levy payable by a participating municipality to an authority for administration costs pursuant to subsection 27 (3) of the Act, the authority shall apportion such costs to the participating municipalities on the basis of the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment. O. Reg. 670/00, s. 2 (2).

The key factor in the regulation formula is "the ratio that each participating municipality's modified assessment bears to the total authority's modified assessment". In effect, the larger the municipality's assessment, the greater would be the levy burden.

Before the City of Hamilton's amalgamation, all the municipalities involved in the levy allocation formula were lower tier municipalities. When the City of Hamilton was established in 2001 and the amalgamated City's modified assessment was applied to the levy allocation formula, there was a severe distortion because:

- The amalgamated City's modified assessment was significantly higher than that of any of the former lower tier municipalities; and
- The new City had association with four different Conservation Authorities which amplified the levy allocation distortion.

Immediately after amalgamation, this anomaly was well understood by the City and the associated Conservation Authorities and in order to redress the situation, the City and the Conservation Authorities agreed to continue the levy allocation on the basis that existed prior to amalgamation and established appropriate levy allocation factors so that the amalgamated City of Hamilton would not be at a financial disadvantage.

This arrangement continued up to November 2014 when Niagara Peninsula Conservation Authority advised that it would no longer honour the 2001 agreement and reverted to the formula as defined in the regulations. The City appealed this decision and lost. The impact of this for the 2022 budget is summarized below.

Levy % Share for City of Hamilton				
Before and After Change in Methodology				
Impact Assessment Excludes Special Levy				
Conservation Authority	Per Agreement Year 2014	Per O. Reg. 670/00 Year 2022	Change	Impact on 2022 City Budget \$'000
Niagara Peninsula	3.99%	21.16%	17.17%	1,058.2
Grand River	2.40%	12.40%	10.00%	1,249.9
Halton	2.22%	7.19%	4.97%	528.6
Hamilton	99.30%	99.30%	0.00%	-
Total Impact				2,836.7

The City values the current opportunity to comment on the Phase 2 Regulatory and Policy Proposals under the *Conservation Authorities Act* and highlight this situation where the CA levy allocation is not consistent with the principle of “Benefit Derived” under the Act. To that effect, the City has filed a special communication to the Ministry as part of the feedback in relation to the Phase 2 proposals.

City Response to Phase 2 Proposal

The City’s response to the Phase 2 Proposal is provided in the two appendices to this report:

- Appendix “A”: City of Hamilton Letter to MECP ERO Number: 019-4610 Regulatory and Policy Proposals (Phase 2) under the *Conservation Authorities Act*, February 25, 2022
- Appendix “B”: City of Hamilton Submission Cover Letter on the Regulatory and Policy Proposals (Phase 2) under the Conservation Authorities (CA) Act (ERO Number 019-4610)

The following is the summary of the submission to the Ministry:

1. In principle, the City of Hamilton agrees with the approach of the Ministry of the Environment, Conservation and Parks to improve the governance, oversight and accountability of conservation authorities (CAs), while respecting taxpayer dollars by giving municipalities more say over the conservation authority programs and services they pay for;

2. The City of Hamilton requests that the language of the formula in Section 2 of the O.Reg. 670/00 "Conservation Authority Levies be modified so that in considering the modified assessment of the municipalities for the purpose of apportioning the CA levy:
- only the rateable property within a conservation authority's jurisdiction be used when calculating the levy apportionment; and,
 - for the purposes of determining the levy allocation:
 - if lower municipalities are part of the formula, then only the assessment of the previous lower tier area of the amalgamated city be considered; or,
 - only the assessment of the upper tier and single tier municipalities be considered.

APPENDICES AND SCHEDULES ATTACHED

Appendix "A" to Communication Update – City of Hamilton Letter to MECP ERO
Number: 019-4610 Regulatory and Policy Proposals (Phase 2) under the *Conservation Authorities Act*, February 25, 2022

Appendix "B" to Communication Update – City of Hamilton Submission Cover Letter on the Regulatory and Policy Proposals (Phase 2) under the *Conservation Authorities Act* (ERO Number 019-4610)

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