

The Regional Municipality of York

Committee of the Whole
Planning and Economic Development
May 13, 2021

Report of the Commissioner of Corporate Services and Chief Planner

Memorandums of Understanding with Conservation Authorities and Changes to the Conservation Authorities Act

1. Recommendations

1. Council direct staff to work with the Lake Simcoe Region Conservation Authority and the Toronto and Region Conservation Authority to update the current Memorandum of Understanding for Planning and Development Review to provide for efficient, timely, and cost-effective services.
2. That staff report back to Council on regulations related to the *Conservation Authorities Act* once released by the Province and any changes to York Region's current Memorandums of Understanding and Service Level Agreements.
3. The Regional Clerk circulate this report to the Chief Administrative Officers of Lake Simcoe Region Conservation Authority and the Toronto and Region Conservation Authority, the Clerks of the local municipalities, and the Ministry of Environment, Conservation and Parks for information.

2. Summary

This report updates Council on the status of York Region's current Memorandum of Understanding with the Lake Simcoe Region Conservation Authority and the Toronto and Region Conservation Authority as directed by Council at its meeting on December 17, 2020. The report includes an outline of current Memorandums of Understanding for planning services between the local municipalities and conservation authorities and summarizes recent changes to the *Conservation Authorities Act* related to conservation authority programs and services and potential impacts to York Region.

Key Points:

- York Region is supported by two conservation authorities, the Lake Simcoe Region Conservation Authority (LSRCA) and the Toronto and Region Conservation Authority (TRCA).
- The current Memorandum of Understanding between York Region, LSRCA and TRCA sets out how the conservation authority partners provide expertise and cost-

effective service to York Region for the review of planning and development applications.

- York Region relies on the conservation authorities to effectively deliver services required to address and enable growth. Conservation authorities' core programming assists the Region in protecting residents and their property, and Regional infrastructure, from flooding, erosion and other natural hazards while protecting Regional natural heritage systems and drinking water sources.
- Most of York Region's local municipalities have Memorandums of Understanding in place with the applicable conservation authority for development application plan review and technical services.
- Recent changes to the *Conservation Authorities Act* affecting conservation authority core services may have implications for York Region and its local municipalities.
- Outsourcing would not provide comprehensive, watershed-based plan review currently available to York Region through the Memorandum of Understanding.

3. Background

Watersheds in York Region are governed by two conservation authorities whose collective jurisdictions total over 6,800 square kilometres and watersheds cross multiple municipal borders

In Ontario, 36 conservation authorities are organized on a watershed basis. Within York Region, the crest of the Oak Ridges Moraine divides the two Conservation authorities' boundaries with water from the Lake Simcoe watershed flowing into Lake Simcoe, and within the TRCA's watershed into Lake Ontario (Attachment 1).

Watersheds do not end at, or follow, municipal boundaries (Attachment 2). The Lake Simcoe watershed is made up of eighteen subwatersheds, covers 3,400 square kilometres, and crosses twenty municipal borders, including York and Durham regions, Simcoe County, and the cities of Barrie, Kawartha Lakes and Orillia. TRCA's 3,467 square kilometre jurisdiction covers nine watersheds and Lake Ontario shoreline. These watersheds extend across Durham, Peel and York Regions, Dufferin and Simcoe Counties, and the City of Toronto, covering over 21 municipal boundaries.

Each conservation authority is governed by a Board of Directors. Board members are appointed by the municipalities in the watersheds and are generally comprised of municipal council representatives and can include citizen appointees. Current Board members of the Lake Simcoe Region Conservation Authority and the Toronto and Region Conservation Authority are listed in Attachment 3.

Founded on a science-based watershed approach, conservation authorities have an important role helping achieve a healthy and safe natural environment throughout Ontario

Conservation authorities are local watershed management agencies whose core mandate is to undertake watershed-based programs to protect people and property from flooding and other natural hazards, including mitigating impacts to critical infrastructure, and to conserve natural resources for economic, social, and environmental benefits. The *Conservation Authorities Act*, 1946, was legislated by the Province in response to concerns expressed regarding the unhealthy state of the Province's renewable natural resources caused by poor land, water and forestry practices which led to extensive soil loss and flooding during the 1930s and 1940s. The LSRCA was founded in 1951 as the Upper Holland Valley Conservation Authority. It was expanded to a broader watershed in subsequent years to eventually cover the current area surrounding Lake Simcoe. The TRCA was specifically created in 1957 following Hurricane Hazel in 1954 that resulted in destroyed homes and infrastructure, and loss of life.

Conservation authority roles originate under the *Conservation Authorities Act*, *Planning Act*, *Clean Water Act* and *Lake Simcoe Protection Act*. Within their respective jurisdictions, main roles and services provided by conservation authorities include, but are not limited to:

- **Watershed management** (planning, implementation, monitoring, research and reporting)
- **Flood and erosion control management and prevention** (monitoring and warning, risk management, maintenance, structures)
- **Water quality and quantity management** (monitoring, source protection, watershed reporting stormwater)
- **Administering permits** for development and site alteration, including infrastructure works within their regulated area under Section 28 of the *Conservation Authorities Act*
- **Natural heritage protection** (land management, official plan input and review, land acquisition and securement, tree planting)
- **Watershed stewardship** (rehabilitation and restoration programs, fish and wildlife, water quality, woodlot management)
- **Technical support for land use planning** (plan input and review commenting agency, technical advice, Environmental Impact Study reviews, Class Environmental Assessment reviews, engineering and hydrogeologic reviews, fishery reviews, stormwater/ Low Impact Development studies, geotechnical reviews, natural heritage system design)
- **Education and recreation** (Manage conservation areas, parks, trails, environmental education programs and centres, outreach activities, water festivals).

The role of conservation authorities in the planning and development review process is administered and implemented based on legislated and delegated roles and responsibilities as a public commenting body, provincially-delegated responsibility for natural hazards, service provider, regulatory authority, resource management agency and landowner. As

partners, conservation authorities provide input for municipal decision-making to help guide growth, redevelopment, revitalization and intensification throughout their respective jurisdictions.

York Region has two Memorandums of Understanding and three Service Level Agreements in place with both conservation authorities

York Region's Memorandum of Understanding (MOU) was originally established in 2000 as a joint MOU with LSRCA and TRCA to provide services related to plan review and technical clearance services for development applications under the *Planning Act*. The MOU provides York Region with professional expertise for implementation of Provincial and Regional planning policies in the areas of natural hazards and natural heritage. It also enables the conservation authorities to appear on behalf of York Region at the LPAT to defend the Regional Official Plan's Sustainable Natural Environment policies and applicable provincial planning policies related to natural heritage and natural hazards. The MOU was updated in 2009 and approved by Regional Council. The current MOU has no expiration date but contains a provision agreeing to review the MOU on a periodic basis to reflect changes in programs or provincial policy changes and subsequent discussions.

York Region also has an additional MOU for the Oak Ridges Moraine Groundwater Program for collection, maintenance, and distribution of program data and information. This MOU is with the Regions of Durham and Peel, City of Toronto, and nine conservation authorities, including the LSRCA and TRCA, and has been in place since 2014.

In addition to MOUs, York Region has Service Level Agreements with both the LSRCA and TRCA. These SLAs were enacted to:

- Prioritize environmental permitting and approvals related to Regional capital projects
- Support York Region approvals under the Environmental Assessment Act, and associated regulation, to assist the Region in ensuring important capital projects are delivered in an efficient and timely manner
- Ensure a streamlined process of accessing and sharing data and reduce redundant data collection

Details on York Region's MOUs and SLAs can be found in Attachments 4 and 5.

Most local municipalities have independent Memorandums of Understanding for plan review services or are working towards them

Attachment 6 highlights the local municipalities in York Region that currently have a MOU or agreement for the conservation authorities to undertake plan review within their respective municipalities and provides details on existing MOUs and status of any MOU updates. All local municipalities within the Lake Simcoe watershed currently have MOUs for plan review with LSRCA. Of the local municipalities that fall within TRCA's jurisdiction, only the City of Markham has a current MOU in place for plan review. While some local municipalities

currently do not have formalized MOUs with TRCA, they informally rely on their comments, input and expertise in the development approval process.

Prior to, and post *Bill 108 – More Homes, More Choice Act, 2019*, both conservation authorities commenced a review of their MOUs and/ or are actively engaging their local municipalities, including all of York Region municipalities, to update current MOUs or formally establish MOUs. However, this process has been put on hold as all parties are awaiting the upcoming release of the regulations by the Province.

Recent changes to the *Conservation Authorities Act* look to refocus and redefine the role of the conservation authorities

In 2017, the Province started a review to clearly define the core mandate of conservation authorities under the *Conservation Authorities Act*, with a greater focus on natural hazard management and source water protection. Key legislative changes through Bill 108, and more recently Bill 229, were made to improve accountability and transparency around the work of conservation authorities.

In July 2017, York Region submitted a [response](#) on proposed amendments to the *Conservation Authorities Act* under *Bill 139 – Building Better Communities and Conserving Watershed Act, 2017*. York Region Council provided a [response](#) to *Bill 108* on May 17, 2019. In June 2019, York Region submitted a [response](#) to discussion papers on *Modernizing the Conservation Authorities Act and Development Permitting*. York Region supported the Province taking action to define the core mandate of conservation authorities under the *Conservation Authorities Act*. Recognizing the importance of the conservation authorities, York Region Council recommended the core mandate of conservation authorities include: watershed management and enforcement, stormwater management, source water protection, mapping and managing flood risks, natural hazard lands, shoreline management, wetlands, assessing/monitoring natural heritage features, and establishing climate change adaptation guidelines. In November 2020, York Region [supported](#) LSRCA and TRCA resolutions regarding *Bill 229 – Protect, Support and Recover from COVID-19 (Budget Measures), 2020*.

Passed by the Province in 2019, *Bill 108* identified key programs and services (core business) conservation authorities are mandated to provide within their respective jurisdictions related to:

- Risk of natural hazard
- Conservation and Management of lands owned or controlled by a conservation authority
- Duties, functions and responsibilities as a source protection authority under the *Clean Water Act*
- Duties, functions and responsibilities under an Act prescribed in the regulations

In addition to the identified core services, *Bill 108* enables conservation authorities to provide supportive municipal programs and services, referred to as discretionary services on behalf of a municipality located in their respective jurisdiction through a MOU or other agreement.

Bill 229, passed in December 2020, further defined the role of conservation authorities by:

- Requiring conservation authorities to issue permits where the Province has issued Ministerial Zoning Orders (MZO)
- Limiting their role in the municipal planning process by excluding conservation authorities as a “Public Body” under the *Planning Act*, removing their right to appeal planning applications to the Local Planning Appeal Tribunal (LPAT)
- Enabling the Province to issue permits and allowing the applicant and Province to appeal conservation authority permits to the LPAT
- Directing conservation authority Board Member composition and redirecting their decision-making focus from interests of the conservation authority or watershed to that of the represented municipality
- Indicating the term “*Hazardous Lands*” is now to be defined by Regulation.

The legislative changes resulting from *Bill 108* and *Bill 229* have potential impacts for municipalities, including York Region, particularly if municipalities rely on conservation authorities to provide programs and services outside of what has been identified as a core service. Any services beyond the identified core services would require a MOU or other agreement to be enacted between the municipality and the respective conservation authority(ies), which have yet to be defined. The full impacts of these legislative changes are not fully understood as the Province has yet to release the associated regulations.

Regional Council directed staff to report back on the status of the current Memorandums of Understanding with the conservation authorities

York Region received communication from the TRCA, dated October 20, 2020, regarding an update on their municipal Memorandums of Understanding (MOUs) and Service Level Agreements (SLAs) . The TRCA Board of Directors by way of resolution, directed its staff to pursue and execute updated MOUs and SLAs, based on mutually agreed upon services, with its partner municipalities in accordance with the recent changes made to the *Conservation Authorities Act* by *Bill 108*. In response, Regional Council directed staff to report back on the status of MOUs in York Region and the local municipalities with the LSRCA and TRCA, including the potential to contract services.

4. Analysis

York Region’s partnership with both conservation authorities has many value-added benefits

The level of technical expertise, continuity of service, process efficiencies and historic knowledge of the watershed currently available to York Region through the existing MOUs and SLAs with the LSRCA and TRCA comes with several benefits related to:

- Risk management accountability
- Efficient, timely processes, consistent input and service/program continuity
- Access to specialized experts and comprehensive data to assist with Regional approvals and processes
- Cost efficiencies

Each of these benefits are detailed further as to how they are being delivered and achieved.

Conservation authorities assist York Region and have accountability for risk management

Risk management and watershed health are a shared responsibility between all levels of government including York Region. Risk management accountability is provided to York Region in part through the current MOUs and SLAs with the conservation authorities. The conservation authorities' have a delegated responsibility to represent the provincial interest on natural hazards encompassed by Section 3.1 of the Provincial Policy Statement for development applications under the *Planning Act*. Conservation authorities are also regulators for development and site alteration in flood-prone and erosion-prone areas and help deliver services and programs in partnership with all levels of government for flood and erosion control and prevention.

York Region relies on the conservation authorities for effective management of hazard lands and technical expertise for risks associated with natural hazards. Provincial and regional planning policy conformity related to natural hazards is addressed by the conservation authorities during the planning and development review process and through York Region's MOU for plan review. Natural hazards are addressed by the conservation authorities permitting process for which York Region is required to obtain permits for any capital infrastructure projects within the authority's regulated area.

Conservation authorities benefit the Region by gathering and managing significant amounts of data on a watershed basis, required to effectively model and manage flood risks. This benefits Regional capital infrastructure projects often located within regulated areas, including floodplains. The Region leverages conservation authority modelling at both the watershed and local levels to inform infrastructure design in a manner that can manage extreme weather events to support long-term asset management and reduce potential liabilities for York Region. With the increase of severe weather events associated with climate change, accurate modelling of flood risks, stream flows, and stormwater runoff is critical to help inform the approximately \$4B in infrastructure investments planned by York Region over the next 10 years.

Conservation authorities also lead implementation of source water protection plans that operationalize tools that reduce risk and consider actions across the watershed, not just within a single municipality or Region. They provide York Region efficiencies in source water protection through expertise and experience particularly related to water balance and

recharge management, in-depth review of source water protection plans, and watershed plans that municipalities can leverage to simplify compliance.

Conservation authorities are tied to their jurisdiction in perpetuity. This is a benefit to York Region as they are able to ensure compliance with conditions of approval for post-development monitoring typically associated with infrastructure approval, whereas an outsource firm may not in 5 years or 10 years later.

Conservation authorities provide York Region with efficiencies and a consistent watershed approach for input into planning review and permitting approvals

As an independent review body, conservation authorities have streamlined plan review and permitting processes in place with clear, defined roles and responsibilities, creating efficiencies for development application review. Throughout 2020, both conservation authorities combined processed over 1,000 planning applications and 670 permits in York Region. In the development review process, the conservation authority's role is threefold as a commenting agency, delegated authority for provincial interests related to natural hazards, and permit regulator. Conservation authorities operate on a "planning-first" principle, meaning that if a conservation authority permit cannot be issued, the Authority cannot support the planning application. As conservation authorities are typically involved in all stages of the development review process, this approach provides efficiencies throughout the entire process allowing applicants and municipalities to be aware of any environmental and technical concerns at the outset of the process.

The protection, restoration and enhancement of the natural environment, and safety of persons and property, is carried out by the LSRCA and TRCA during the review of development applications with a watershed lens. Through the current MOU both conservation authorities support York Region's planning and development review process by providing a scientific-based, systems approach to technical review to implement provincial and regional planning policies. This in-turn provides local municipalities and Council with coordinated, consolidated comments from a natural heritage and natural hazards perspective that are consistent across the watershed. Efficiencies resulting from the current SLAs prioritizing and expediting environmental permits and approvals for Regional capital projects enables York Region to get important infrastructure in the ground sooner.

The Region's partnership with both conservation authorities has laid the foundation over the years to coordinate streamlined processes and find efficiencies that avoid duplication of staff efforts. They provide York Region with access to the professional expertise needed to assist with regional reviews and approval processes and reduce process redundancies from a regional perspective. Examples of these efficiencies include the various economic development projects (Condor Walmart, Fed Ex, Costco and Home Depot) in West Vaughan where planning permissions and permits for early works were all completed within relatively short timeframes in close cooperation with York Region and City of Vaughan staff.

Partnership with conservation authorities provides York Region access to specialized experts and comprehensive data assisting Regional processes

Partnership with the conservation authorities allows York Region to have access to a wide range of environmental and technical experts York Region currently does not have on staff necessary to effectively conduct plan review and undertake environmental approvals/ Environmental Assessment (EA) submissions for infrastructure projects. Through the partnership with the conservation authorities, York Region has access to data that support regional processes including plan review, flood analysis, flood monitoring, preparation of EA/ Environmental Compliance Approval (ECA) submissions, water monitoring and source protection.

York Region relies on the LSRCA and TRCA to scope and review technical environmental studies, provide technical knowledge and expertise related to the implementation and conformity with provincial and regional planning policies for natural heritage, natural hazard and water resources and provide technical expert witness testimony at the LPAT. York Region also relies on conservation authorities for their expertise, data, and support throughout the EA process and in completing Permit To Take Water and ECA applications, along with maintaining compliance with EA/ECA conditions of approval. Conservation authority support for York Region's EA processes includes access to supporting data helping to meet federal and provincial requirements related to endangered species and surface water monitoring that supported wastewater treatment facility proposals.

The technical professionals available to York Region through the current arrangement act as an extension to Regional staff. Without this the Region would have to hire the applicable technical staff and/or tender out to a third party to undertake these services on behalf of the Region. Doing so could lead to duplication of efforts, services possibly being needed by multiple outsourced firms, resulting in a more complex review process and potential elongated approval times and inefficiencies. Technical information required to undertake and support technical reviews is often required and provided by conservation authorities who have extensive historical context and knowledge of their respective watersheds. An outsourced third party may need to access the information from the conservation authorities, resulting in added steps and time for the application process.

Cost efficiencies result from sharing resources and operating on a cost recovery model versus a for profit model

The plan review and technical clearance of conditions of approval articulated in the MOU fall within the operating levy portion of the conservation authorities' budgets. No additional costs, beyond the operating budget amounts, are incurred by York Region for the service provided by the conservation authorities. Currently the conservation authorities review consultant's technical studies in support of an application at no extra cost. Application review fees typically charged by the conservation authorities are on a cost recovery basis, whereas services rendered by a private company would typically include "for profit" costs. The following are examples of cost efficiencies associated with conservation authority involvement in the development review process:

- For a plan of subdivision application in York Region, the total cost for a full review by the conservation authority across all disciplines, and including permitting, was approximately \$80K. The local municipality uses an external engineering consultant for their technical / peer review which resulted in the cost for only the engineering review was more than \$350K.
- Looking to outsource services covered by the municipality's general levy contribution (\$40K) to the conservation authority, it was determined the municipality could not replicate the technical expertise for the same services for flood forecasting, stormwater and development engineering, planning review, natural heritage review, hydrogeology review, geomorphic and aquatic habitat, etc., at the same cost.

Conservation authorities provide efficiencies by having environmental experts on staff working on behalf of York Region and local municipalities across the watershed. Hiring the environmental and technical professional staff to build the capacity internally within the Region or hiring external consultants to complete the work would not result in cost or service level efficiencies while potentially sacrificing consistency across the watershed.

Recent legislative changes and forthcoming regulations will likely result in updates to York Region's current agreements with both conservation authorities

Changes to the *Conservation Authorities Act* addressing the mandate of the conservation authorities received Royal Assent on December 8, 2020. Until the implementing regulation is released from the Province, expected imminently, the impacts of these legislative changes are currently unknown. Programs and services provided on behalf of municipalities may be prescribed and prevail over MOUs if there is a conflict.

Once released, further analysis is required to understand implications to the conservation authorities' roles and services and their full impacts on York Region current processes, practices, and agreements. York Region will review services and projects undertaken by the conservation authorities to determine whether they fall into the conservation authorities' mandated responsibilities. To date, possible services outside of core services that may need to be addressed in an agreement include planning and development review on behalf of municipalities. It is anticipated that existing agreements between municipalities (regional and local) and partner conservation authorities will need to be updated and/or established based on agreed upon services. This will allow York Region, and local municipalities, an opportunity to evaluate and update the current arrangements based on evolving responsibilities. Municipalities have 18 months from when the new regulations take effect to enter into agreements.

Any update to York Region's MOU would be undertaken in consultation with both conservation authorities, local municipalities and BILD. Opportunities for further process improvements will also be examined. Staff will report back to Council on the impacts of the new regulations and prior to any updates to the existing Memorandum of Understanding.

5. Financial

York Region's current MOU for plan review is currently fully funded by the review fees and the conservation authorities general levy and is not an extra cost to the Region. The plan review services, and technical expertise provided to the Region by both conservation authorities continues to provide significant efficiencies in environmental resources and knowledge throughout the Region's active development review process.

Council reviews and approves conservation authority budgets on an annual basis. Conservation authorities operating budgets include York Region's share of each conservation authority's general levy budget and additional funding for conservation authority special capital and reforestation. As more information is released by the Province on the detailed regulations, further review will be undertaken to determine appropriate updates needed, and budget impacts will be determined and reflected in the 2022 or 2023 budget.

6. Local Impact

For plan review, York Region's current MOU ensures a consistent expert review and consolidated comments provided to the local municipalities on planning and development applications on behalf of the Region. The current SLAs assists York Region in getting important regional projects built and in operation sooner within the area municipalities.

While it is recognized that local municipalities negotiate their respective MOUs with the conservation authorities based on their own needs, there are benefits and efficiencies with consistent MOUs for planning services, across the watershed(s), for the local municipalities and the Region. Local municipalities may also be impacted depending on the extent of the legislative changes and forthcoming regulations affecting the mandated roles of conservation authorities.

7. Conclusion

Conservation authorities assist York Region with ongoing regional efforts to achieve environmental goals. Since 2000, a Memorandum of Understanding between York Region, LSRCA and TRCA has been in place providing the Region with environmental and technical expertise related to natural heritage and natural hazard matters on development applications. This arrangement, together with the additional agreements outlined in this report, work well as conservation authorities are best positioned to provide environmental programs and review services that result in York Region being able to deliver a consistent, efficient, timely, cost-efficient level of service. The value-added benefits to York Region include risk management accountability, and consistency to support plan review and application processes throughout the watershed, providing access to specialized technical experts and high-quality data. Given there is continuing benefit to the Region, the conservation authorities, local municipalities, and the public of the efficiencies of one agency providing this service through the MOU arrangement, staff is not recommending these services be outsourced.

Recent changes in legislation through *Bill 108* and *Bill 229* affect conservation authorities mandated roles and core services. While the full impacts of these legislative changes are currently unknown, York Region's current arrangements with both the Lake Simcoe Region Conservation Authority and the Toronto and Region Conservation Authority have resulted in a collaborative effort in plan review and permitting, and consistency throughout the watersheds.

For more information on this report, please contact Karen Whitney, Director, Community Planning and Development Services at 1-877-464-9675 ext. 71505. Accessible formats or communication supports are available upon request.

Recommended by:



Paul Freeman, MCIP, RPP
Chief Planner



Dino Basso
Commissioner of Corporate Services

Approved for Submission:



Bruce Macgregor
Chief Administrative Officer

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Attachments (6)
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