

## **CORPORATE POLICY & PROCEDURE**

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**POLICY TITLE:** PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS  
**POLICY NO.:** DSP-7.01-P

<b>Chapter:</b>	4. Division-Specific Policies		
<b>Section:</b>	DSP-7 Restoration and Infrastructure		
<b>Effective Date:</b>	May 24, 2022	<b>Last Review Date:</b>	April 12, 2022
<b>Approval Authority:</b>	Chief Executive Officer		
<b>Issued to:</b>	All TRCA Employees		
<b>Policy Owner:</b>	Erosion Risk Management		

### **1. PURPOSE**

- 1.01. The purpose of this Policy is to ensure all erosion control and slope stabilization works funded through Toronto and Region Conservation Authority's (TRCA) Erosion Risk Management Program (ERMP) for the benefit of private landowners are implemented in a consistent and transparent manner based on confirmed risk to essential structures, such as homes and infrastructure. The ERMP offers assistance to the most seriously impacted private properties in TRCA's jurisdiction. Private landowners benefiting from publicly funded erosion control and slope stabilization works must contribute to the project in accordance with the terms of this Policy.
- 1.02. TRCA manages risks associated with the hazards of flooding, erosion, and slope instability through the delivery of a range of programs and services, including the ERMP. The ERMP is a long-standing program used to identify, monitor, and remediate erosion and instability-prone areas in TRCA's jurisdiction based on relative risk to essential structures, such as homes or infrastructure.
- 1.03. The ERMP directly supports TRCA's mission statement to protect, conserve, and restore natural resources and develop resilient communities through education, the application of science, community engagement, service excellence, and collaboration with our partners. The ERMP supports TRCA's municipal partners by mitigating past development decisions with cost-effective solutions that contribute to the expansion of public land base.
- 1.04. Erosion and slope instability issues transcend property boundaries and rarely impact one property in isolation. These issues are complex and often require solutions which are beyond the ability of individual private landowners to address. The ERMP is an established program whereby TRCA is able to coordinate turnkey solutions that address risk affecting multiple properties efficiently through one project.

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

- 1.05. This program is funded annually by TRCA's partners at the City of Toronto, and Peel, York and Durham Regions, and on a project-by-project basis from Provincial and Federal Governments.

## **2. SCOPE**

- 2.01. This Policy applies to TRCA employees who are responsible for implementing erosion control and slope stabilization projects through the ERMP.
- 2.02. This Policy applies to erosion control and slope stabilization works funded through the ERMP which meet the following criteria:
- (a) Works are located on privately owned property and for the express purpose of protecting privately owned assets;
  - (b) Works are located in an area subject to regulation under the Conservation Authorities Act;
  - (c) Works are located in a municipality or region where funding has been approved for erosion control & slope stabilization projects for the benefit of private properties;
  - (d) Where the site ranks highly enough for work relative to other sites awaiting assistance through the ERMP; and
  - (e) The work meets all other requirements outlined in this policy.
- 2.03. This Policy does not apply to works on publicly owned lands (e.g. erosion control and slope stabilization works which are entirely confined to TRCA owned lands).
- 2.04. This Policy does not apply to works involving Non-Benefiting Landowners (e.g. temporary construction access across private property or transition work at the end of a structure for the benefit of another neighbouring property).

## **3. POLICY**

### **Program Objectives**

- 3.01. Support for private landowners is conditional and solely dependent on funding received from TRCA's municipal partners (e.g. funding provided by the City of Toronto must be used to protect assets in the City of Toronto). The majority of funding is applied toward the maintenance of existing erosion control structures along TRCA's rivers and valleys that protect public greenspace, park amenities and municipal infrastructure; however this program is extended to the protection of private property where homes and other essential infrastructure have been confirmed as at-risk by erosion or slope instability as funding and priorities permit.
- 3.02. The preservation of tableland (e.g. backyards/terraces/gardens etc.) is not an objective of the ERMP. Replacement of lost tableland will not be a project consideration.
- 3.03. Facilitating future development on private property is not an objective of the ERMP. The remediation of erosion and instability-prone areas funded through the ERMP shall not be used to facilitate new development on or near a valley slope or watercourse.

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

- 3.04. Slope stabilization and erosion control solutions which mimic the natural environment are given preference over vertical or 'hard' alternatives (i.e. regrading a slope to a stable inclination is always preferred vs. the construction of a vertical retaining wall). The ERMP aims to implement cost-effective, low maintenance solutions wherever possible. Vertical solutions (e.g. retaining walls) will only be considered where regrading or other similar solutions are not viable.
- 3.05. Lands acquired under the ERMP must comply with the *CS-5.16-P Contaminated Sites Policy*.

#### **Program Eligibility and Requirements for Assistance**

- 3.06. TRCA is under no obligation to carry out erosion control and slope stabilization works to protect private properties. Offers of assistance through the ERMP are offered on a limited and conditional basis. Although TRCA is not compelled legally to assist private landowners with erosion control works on private property, TRCA offers this assistance on a voluntary basis recognizing that TRCA has considerable experience in erosion hazard management.
- 3.07. Properties with encroachments on lands owned by TRCA or its municipal partners, or known violations issued by TRCA or its municipal partners will not be eligible for assistance through the ERMP. If violations are resolved at the sole expense of the private landowner, TRCA may consider the property eligible for assistance through the ERMP if all other requirements are met.
- 3.08. Works are implemented on a priority basis to the limit of available funding each year. Sites are prioritized for assistance based on risk to essential structures such as homes and infrastructure. Risk and priority rankings through the ERMP are quantified based on an assessment of three components:
- (a) Hazard assessment – The likelihood of erosion or slope failure based on the physical characteristics of the site (e.g. soil composition, geomorphologic features);
  - (b) Exposure assessment – The proximity of essential structures to the erosion hazard;
  - (c) Consequence of failure – A measure of the cost of repair or replacement of the infrastructure, the public health and safety cost of infrastructure failure, and/or the inherent social value of the infrastructure itself.
- 3.09. Private landowners awaiting assistance through the ERMP are prioritized based on a consistent, transparent, and defensible quantitative scoring methodology. This methodology involves a weighted scoring of site features based on engineering and other technical study results (e.g. geotechnical investigations, geomorphic or coastal analyses etc.).
- 3.10. The ERMP is dynamic and priority rankings may change at any time (e.g. upon the completion of new technical studies, new erosion hazard sites identified to TRCA, following severe storm events, or changes in program funding). Generalized priority rankings and timelines may be provided to landowners as a general reference only. TRCA accepts no liability whatsoever, now or in the future, related changes to priority rankings and timelines for implementation.

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

- 3.11. Where staff has identified that erosion control and slope stabilization works be carried out to benefit private property, proceeding with work is contingent on sufficient participation from critical properties in the proposed work area. There are added technical complexities and project costs for design and construction to isolate around individual properties and lot lines. Where TRCA is unable to secure signed agreements to proceed with one continuous solution across the impacted properties, work through the ERMP may be postponed indefinitely or cancelled.
- 3.12. Private landowners benefiting from publicly funded erosion control and slope stabilization works must contribute to the project. The default method of contribution for all projects is conveyance of lands where major structural works are constructed. The contribution method is non-negotiable and shall be determined at the sole discretion of TRCA. Land conveyance is the default method of contribution to achieve the following program objectives:
- (a) Ownership of the entire structure by one owner (TRCA) for future monitoring and maintenance through the ERMP;
  - (b) To limit future development of lands where erosion and slope instability hazards have been remediated through the ERMP; and
  - (c) To foster the expansion of public lands where erosion and slope instability hazards have been identified through the ERMP.
- 3.13. Where staff has recommended that erosion control and slope stabilization works be carried out to benefit private property, the Benefiting Landowners are subject to the execution of a binding Design Contribution Agreement and Erosion Control Agreement before work begins.
- 3.14. The Design Contribution Agreement requires, amongst other conditions, that Benefiting Landowners consent to the following requirements:
- (a) To provide a refundable design contribution deposit of \$2,000.00. A monetary contribution ensures that TRCA is compensated in part for the costs associated with design development should the landowners choose to withdraw from the project;
  - (b) If a landowner participates in the project, the cheque will be returned upon execution of the Erosion Control Agreement; and
  - (c) If a landowner withdraws from the project, the cheque will be retained and deposited by TRCA.
- 3.15. The Erosion Control Agreement requires, amongst other conditions, that Benefiting Landowners consent to the following requirements:
- (a) To contribute to the project through the conveyance of land or financial contribution or landowner reimbursement, as decided by TRCA, where permanent works are constructed;
  - (b) A permanent easement over the access routes where TRCA does not require title to the lands to allow access for future monitoring and maintenance of the structure, unless monitoring requirements can be addressed through an access agreement or through the restrictive covenant, and the permanent easement or access agreement shall clearly state that TRCA has no obligation to carry out any maintenance or future remediation works; and

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

- (c) A restrictive covenant registered on title to protect the structural integrity of the works depending on type and extent of works required. Restrictive covenant verbiage shall be determined by the design engineering consultant (e.g. limitations on excavation or loading on or near the structure).
- 3.16. The location and dimensions of the permanent easement, or access agreement, will be informed by future monitoring and maintenance considerations (e.g. the size and type of heavy equipment that may need access when the structure requires maintenance or replacement and the possibility that funding is available in the future for such maintenance or replacement).
- 3.17. Landowners are required to review the Erosion Control Agreement with their own legal counsel prior to signature. TRCA will reimburse landowners' reasonable legal review expenses up to a maximum of \$1,500.00 (excl. HST) for this process, upon submission of paid invoices and receipts to staff.
- 3.18. Prior to the commencement of works on site, staff must ensure the following conditions have been met:
  - (a) Design Contribution Agreement(s) must be executed;
  - (b) Erosion Control Agreement(s) must be executed;
  - (c) All necessary land conveyances have been finalized; and
  - (d) Permanent easement(s) and any restrictive covenants have been registered on title.
- 3.19. Where the Benefiting Landowners do not adhere to the terms outlined in this Policy and the Erosion Control Agreement, non-compliant landowners will be responsible for 100% of the cost of the works and/or repairs.
- 3.20. The Benefiting Landowners may make representation to the Board of Directors, Executive Committee, or any advisory board with regard to any aspect of the ERMP in accordance with procedures adopted by Authority Resolution #18/80 and Resolution #A141/18. Detailed delegation procedures are outlined under Section C.13 of the Board of Directors Administrative By-Law (CG-1.01-P).
- 3.21. TRCA accepts no liability whatsoever, now or in the future, related to being unable to proceed with work to protect private properties. In the event of future failure or worsening of any erosion situation affecting private lands, assistance with any stabilization works through ERMP cannot be guaranteed.
- 3.22. Where sites do not rank high enough for works through the ERMP:
  - (a) Private landowners may request for their property to be visually monitored on an annual basis through the ERMP to track visible changes on site;
  - (b) Private landowners are able to apply for a permit to complete their own works on their property through regulation under the Conservation Authorities Act. Approval of such applications will be subject to review by TRCA Development Planning and Permits staff and there is no guarantee that a permit will be issued. It is the responsibility of the private landowner to satisfy all necessary planning and permitting requirements prior to completing their own works.

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

### **Alternative Contribution Scenarios: Financial Contribution or Landowner Reimbursement**

3.23. It is recognized that situations exist where land conveyance is not achievable or desirable for TRCA (e.g. the adjacent lands are privately owned and conveyance would result in an inaccessible land parcel). Therefore, this Policy also provides for alternative contribution scenarios in lieu of land conveyance. These alternative contribution scenarios are offered for atypical projects at TRCA's sole discretion with approval of the Associate Director, Erosion Risk Management:

- (a) Financial contribution towards the cost of the work in accordance with the Landowner Contribution Schedule herein;
- (b) Landowner reimbursement for the cost of the work in accordance with the Landowner Contribution Schedule herein. Landowners would retain their own contractor to repair the erosion control and/or slope stabilization issues on their private property in accordance with this Policy.

**Schedule A. Landowner Contribution Schedule**

<b>Property Type</b>	<b>Landowner Contribution</b>	<b>Example Scenario where total value of the work is \$1,000,000 incl. HST.</b>
Single Residential Property	<b>40%</b> of the total value of the work (incl. HST)	Benefitting Landowner must contribute \$400,000
Two (2) or more Residential Properties	<b>50%</b> of the total value of the work (incl. HST) divided equally between all Benefitting Landowners	Five (5) Benefitting Landowners participating. Each landowner must contribute \$100,000 each, calculated as the \$500,000 Landowner Contribution divided equally between Benefitting Landowners
All Commercial, Institutional, or Industrial Properties (single or multiple)	<b>60%</b> of the total value of the work (incl. HST) divided equally between all Benefitting Landowners	Benefitting Landowner must contribute \$600,000. Where more than one property, Landowner Contribution divided equally between Benefitting Landowners

3.24. The value of works is determined via an estimate prepared by TRCA Construction Services staff or a third party estimator. The value of works includes all costs associated with planning and implementing the project (e.g. staff time for project management, securing all necessary permits and approvals, contract administration, construction, and project closeout).

3.25. Where Benefitting Landowners do not convey lands to TRCA, the Benefitting Landowners maintain ownership of the structure and assume all responsibility for future monitoring and maintenance of the structure.

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

- 3.26. In the case of financial contribution or landowner reimbursement, TRCA will require a binding Erosion Control Agreement signed by the Benefiting Landowners prior to construction which may be registered on title.
- 3.27. Where financial contribution is determined to be the preferred contribution method for the works, Benefiting Landowners must consent to the following requirements:
- (a) Landowner contributions are calculated including harmonized sales tax (HST). Where TRCA is eligible for an HST rebate on a project by project basis, landowner contributions will be calculated using a lower HST rebate percentage;
  - (b) To execute a Design Contribution Agreement and provide a non-refundable deposit of 25% of the total landowner contribution to fund development of detailed designs. Benefiting Landowners will be required to pay the remaining 75% of the total landowner contribution prior to implementation.
- 3.28. Where financial contribution is determined to be the preferred contribution method for the works, and where the project involves multiple Benefiting Landowners, landowners must contribute equally to the cost of the works in accordance with the Landowner Contribution Schedule. (e.g. A project involves 5 Benefiting Landowners and the total cost of the work is \$1,000,000 incl. HST. The landowner contribution rate for two or more private residential properties is 50% of the total value of the works. Benefitting landowners must contribute \$100,000 each, calculated as the \$500,000 Landowner Contribution divided equally between the 5 Benefiting Landowners). Landowner contribution schedules have been structured to favour multi-property projects and cooperation amongst stakeholders.
- 3.29. Where landowner reimbursement is determined to be the preferred contribution method for the works:
- (a) Benefiting Landowners would retain their own contractor to repair the erosion control and/or slope stabilization issues on their private property in accordance with this Policy. TRCA would reimburse Benefiting Landowners in accordance with the applicable Landowner Contribution Schedule;
  - (b) The eligible reimbursement amount shall be determined based on the estimated value of the work, minus the landowner's financial contribution in accordance with the applicable Landowner Contribution Schedule;
  - (c) Benefiting Landowners would be subject to a review and verification process by staff to ensure the works meet all objectives of the ERMP. Requirements would be made available to landowners once this contribution method was selected.
  - (d) Works determined by staff to be outside of the scope of the ERMP shall not be eligible for reimbursement (e.g. repairs to a driveway damaged during construction or landscaping improvements).
  - (e) Landowners shall be responsible for any and all expenses above the agreed-upon eligible reimbursement amount included in the Erosion Control Agreement (e.g. change orders, delays, revisions, unforeseen damages of any kind).

**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

## **RESPONSIBILITY**

- 3.30. On advice of the Chief Executive Officer, TRCA may accept, revise or rescind this Policy.
- 3.31. The Associate Director, Erosion Risk Management is responsible for:
- (a) Approval of the general erosion control works before initiation of a project by staff;
  - (b) Approval of major scope changes which deviate from previously approved scope of work;
  - (c) Approving the selected contribution method in accordance with this Policy, including authorizing all financial contribution or landowner contribution scenarios.
- 3.32. Erosion Risk Management staff are responsible for:
- (a) Correspondence with private landowners throughout the project;
  - (b) Negotiating the Design Contribution and Erosion Control Agreements with private landowners;
  - (c) Ensuring all necessary land conveyances, permanent easements, restrictive covenants, or financial contributions are finalized prior to work in accordance with this Policy.
- 3.33. TRCA Property, Assets and Risk Management staff are responsible for:
- (a) Drafting, review, and approval of Design Contribution and Erosion Control Agreements in accordance with this Policy;
  - (b) Providing support for Erosion Risk Management Staff to secure executed Design Contribution and Erosion Control Agreements.
  - (c) Preparing and submission of the board report for land conveyance approval by the Executive Committee and Board of Directors.
- 3.34. TRCA Legal Counsel
- (a) Review, and approval of Design Contribution and Erosion Control Agreements in accordance with this Policy, and drafting of any Restrictive Covenant or Permanent Easement.

## **4. DEFINITIONS**

- 4.01. "**Benefiting Landowner**" means a private landowner who is directly benefiting from erosion control and slope stabilization work through the ERMP. A landowner is defined as benefiting when works are completed through the ERMP for the express purpose of protecting their privately owned asset (i.e. homes and other essential infrastructure).
- 4.02. "**Conveyance**" means the legal process of transferring property from one owner to another.
- 4.03. "**Easement**" means the right to cross or otherwise use someone else's land for a specified purpose.
- 4.04. "**Encroachment**" means an interference with or intrusion onto another's property, including physical structures such as decks, pools, sheds, and retaining walls, as well



**Policy Title: PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS**  
**Policy No.: DSP-7.01-P**

as non-structural such as storage of materials, gardens and grass cutting of an area greater than one meter onto TRCA lands.

- 4.05. **“Erosion”** means erosion is the wearing away of the bed and/or banks of a shoreline, stream, or river. Slope erosion is the movement of soil from wind or water from the face of the slope.
- 4.06. **“Erosion Control Agreement”** means a binding Agreement between two or more parties regarding erosion control and slope stabilization works and services.
- 4.07. **“Essential Structures”** means active habitable residential/commercial/industrial structures such as homes or businesses, and supporting infrastructure. This definition includes buried infrastructure and utilities. Sheds, fences, swimming pools, decks, and backyard tableland are not considered essential structures in the ERMP.
- 4.08. **“Financial Contribution”** means a monetary payment for the Works provided.
- 4.09. **“Flooding”** means an overflow or inundation of water that comes from a river or other body of water and causes or threatens damage. It occurs as the results of relatively high flow overtopping the banks of a river, stream, or larger body of water including elevated lake water levels.
- 4.10. **“Non-Benefiting Landowner”** means a landowner who owns private property which may be impacted by works in support of other directly Benefiting Landowners (e.g. temporary construction access across private property or transition work at the end of a structure for the benefit of another neighbouring property).
- 4.11. **“Reimbursement”** means monetary payment by TRCA to a Benefiting Landowner for approved erosion control works they are performing that are deemed valid and acceptable by TRCA under the ERMP.
- 4.12. **“Restrictive Covenant”** means a covenant imposing a restriction on the use of land so the integrity of the erosion control works are preserved.

## 5. ADMINISTRATION

*Administered by the Clerk's Office*

Administered by the Grants Office			
<b>Review Schedule:</b>	5 Years	<b>Next Review Date:</b>	April 12, 2027
<b>Supersedes:</b>	Private Landowner Contribution for Erosion Control Works, approved January 27, 2017		
<b>Related Legislation, Regulations and Guidelines:</b>	<ul style="list-style-type: none"><li>• Conservation Authorities Act, R.S.O. 1990, c. C.27</li><li>• Toronto And Region Conservation Authority: Regulation of Development, Interference With Wetlands and Alterations to Shorelines and Watercourses, O. Reg. 166/06</li></ul>		
<b>Related Policies and Policy Tools:</b>	<ul style="list-style-type: none"><li>• Supporting SOP for the Private Landowner Contribution for Erosion Control Works Policy</li><li>• Erosion Risk Management Program – Works and Access Agreement</li><li>• Design Contribution Agreement</li><li>• Erosion Control Agreement</li></ul>		
<b>Revision History</b>			

**Policy Title:** PRIVATE LANDOWNER CONTRIBUTION FOR EROSION CONTROL WORKS  
**Policy No.:** DSP-7.01-P

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n/a	January 27, 2017	Approval resolution #A227/16
1	May 24, 2022	Policy in effect