

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Thursday, November 10, 2022 Meeting

FROM: John MacKenzie, Chief Executive Officer

RE: **IMPACT OF BILL 23, MORE HOMES BUILT FASTER ACT, 2022**
Environmental Registry of Ontario (ERO) Posting 019-6141, and various related ERO postings

KEY ISSUE

Summary of and draft responses to the Government of Ontario's *Bill 23, More Homes Built Faster Act, 2022*, which has been referred to the Standing Committee on Heritage, Infrastructure and Cultural Policy, and which proposes to amend the Conservation Authorities Act (CA Act), the Planning Act, the Environmental Assessment Act, and several other Acts. The Bill is also accompanied by related policy and regulatory proposals on the Environmental Registry, for which a summary and preliminary draft responses are provided.

RECOMMENDATION:

WHEREAS *Bill 23, More Homes Built Faster Act, 2022* proposes to amend, among other Acts, the Conservation Authorities Act, with the most concerning amendments being to prohibit conservation authorities from reviewing and commenting on matters beyond natural hazard matters under prescribed Acts including the Planning Act and the Environmental Assessment Act;

AND WHEREAS Bill 23 has also been accompanied by a number of related policy and regulatory proposals on the Environmental Registry of Ontario (ERO) affecting Toronto and Region Conservation Authorities (TRCA) and municipal partner interests, with potential for negative impacts particularly related to the conservation authority permitting role under Section 28, including weakening of watercourse and wetland protections;

AND WHEREAS TRCA staff have been conducting an analysis of legislative changes and have provided a summary of and draft responses to Bill 23 and the ERO proposals;

THEREFORE LET IT BE RESOLVED THAT TRCA's Board of Directors endorse TRCA submissions to the Province;

AND FURTHER THAT the Clerk and Manager, Policy, provide a copy of this report to the Office of the Premier, Minister of Environment, Conservation and Parks, the Minister of Natural Resources and Forestry, the Minister of Municipal Affairs and Housing, the Minister of Finance, MPPs within TRCA's jurisdiction, TRCA's partner municipalities, neighbouring conservation authorities and Conservation Ontario.

BACKGROUND

Since 2015, the CA Act has been amended three times to provide further clarity and transparency surrounding the programs and services that conservation authorities (CAs) provide and the governance and operations of CAs. These previous amendments were

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undertaken through the *Building Better Communities and Conserving Watersheds Act, 2017* (Bill 139), the *More Homes, More Choice Act, 2019* (Bill 108), and the *Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020* (Bill 229). TRCA actively participated in these consultations and has worked diligently to implement resulting amendments in good faith in accordance with the direction from the Province, including participating in two further rounds of consultation on regulatory proposals, being a member of and playing a major role in the Province's multi-sectoral Conservation Authorities Working Group, and subsequently carrying out the direction of the Phase 1 and Phase 2 regulations already released by the Province.

On October 25, 2022, further amendments to the CA Act were proposed through *Bill 23, More Homes Built Faster Act, 2022*. On that same date, the following proposals were posted to the Environmental Registry for public comment:

- Regulatory proposal consultation guide on proposed regulations under Section 28 to protect people and property from natural hazards ([ERO #019-2927](#)).
- Discussion paper seeking feedback on the development of an ecological offsetting framework for natural heritage features ([ERO #019-6161](#)).
- Proposed updates to the Ontario Wetlands Evaluation System ("OWES") manual ([ERO #019-6160](#)).

At Board of Directors Meeting held on October 28, 2022, Resolution #A163/22 was approved as follows:

WHEREAS on October 25, 2022, the Province of Ontario introduced Bill 23, More Homes Built Faster Act, 2022, which proposes amendments to various acts including the Conservation Authorities Act and Planning Act;

AND WHEREAS several related proposed legislative, regulatory, policy and other matters to achieve Ontario's Housing Supply Action Plan: 2022-2023 have been posted for consultation on the Environmental Registry of Ontario (ERO) and Regulatory Registry;

AND WHEREAS, Toronto and Region Conservation Authority (TRCA) works tirelessly with our partner municipalities, the province, and the development industry to support safe and resilient development and infrastructure in our watersheds that conserve natural resources and features intrinsically linked to manage flooding and erosion and that provide access to nature in urban areas;

AND WHEREAS the proposed changes will diminish TRCA's ability to serve and provide science-based expertise to its municipal partners, government agencies and other watershed stakeholders primarily in the areas of planning and environmental assessments, as well as permitting, contrary to recent Conservation Authorities Act amendments, regulations and consultation with TRCA's municipal partners and agencies on establishing new or updating existing memorandums of understanding/service level agreements;

THEREFORE, LET IT BE RESOLVED THAT TRCA staff immediately request that the Province remove the components of the Bill and draft regulations that would limit Conservation Authorities from commenting on planning and infrastructure projects under various prescribed Acts including the removal of the "conservation of land" and "pollution" as matters that are considered in permit decisions;

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AND THAT draft regulations including those reducing protection for watercourses and wetlands by changing their definition and standards for protection be instead strengthened to address risks from climate change and associated extreme weather events;

AND THAT staff report back to the Board of Directors on November 10, 2022 with an analysis of the legislative changes and ERO postings and receive comments from the Board to inform TRCA's submissions;

AND FURTHER THAT TRCA requests that the Province re-establish the multi-stakeholder, solutions-oriented Conservation Authority Working Group to provide meaningful input prior to finalizing the legislative, regulatory and policy changes.

RATIONALE

The further changes to the CA Act proposed in Bill 23 can be summarized as follows:

Disposition of Land:

- A disposition of land in respect of which the Minister had previously contributed funding will no longer require Minister's approval and the Minister must only be provided with notice of the proposed disposition. Additional public consultation requirements apply with respect to disposing of lands that meet certain criteria.

Conservation Authority Fees:

- The Minister will be able to issue a directive to conservation authorities to freeze the fees it charges for a specified period of time.

Restrictions on Non-Mandatory Services:

- Non-mandatory services (including programs and services requested by municipalities, provincial agencies, other infrastructure providers) cannot include services related to reviewing and commenting on certain matters under prescribed Acts, including the Planning Act and Environmental Assessment Act.

Changes to Provisions Governing Permits:

- The criteria for permit approvals will no longer include consideration of the effects on "pollution" and "conservation of land". Instead, those criteria are proposed to be replaced by consideration of the effects on "control of unstable soil or bedrock".
- The timeframe for a non-decision appeal of a permit application is reduced from 120 days to 90 days.
- Regulations may be enacted to exempt activities approved under the Planning Act from the requirement to obtain a permit, subject to any terms and conditions set out in the regulations.

Changes to Provisions Governing MZO Permits:

- The existing provisions in the CA Act governing permits for MZO's issued under Section 47 of the Planning Act will now also apply to Minister's Orders issued under Section 34.1 of the Planning Act. Regulations may be enacted limiting the types of conditions that may be attached to a permit for development authorized under an MZO.

Changes to Provisions Governing Planning Act Appeals:

- In addition, Bill 23 proposes further amendments to the Planning Act restricting the

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participation of conservation authorities in appeals related to planning matters:

- Subsection 1(4.1) of the Planning Act is further amended to revise the restriction limiting conservation authority participation in certain Planning Act appeals. The amendment to subsection 1(4.1) replaces the criteria of appeals that relate to, “prescribed natural hazard risks” with appeals that relate to, “natural hazard policies in any policy statement issued under section 3 of the Planning Act, except for those policies that relate to hazardous forest types for wildland fire”.

Comments and proposed amendments to Bill 23 recommended by staff can be found in Attachment 1, which is the submission being made by TRCA’s CEO to Standing Committee on November 10, 2022 in Brampton.

TRCA staff are also reviewing the ERO postings and offer the following preliminary comments that will inform written submissions to the Province:

- Regulatory proposal consultation guide on proposed regulations under Section 28 to protect people and property from natural hazards ([ERO #019-2927](#)).
 - The definition of “watercourse” would change from “an identifiable depression in which water regularly or continuously flows” to, “a defined channel having a bed, and banks or sides.” TRCA’s concern is that headwater drainage features (HDFs) would no longer be regulated as watercourses and their functions would not be maintained on the landscape. This new definition is being proposed despite the well understood functions that HDF’s or headwater watercourses play in being integral to watershed health, e.g., flood control, habitat provision, organic matter conveyance, evapotranspiration, maintenance of water flow, infiltration, and water quality. The proposed definition’s exclusion of HDFs ignores the current accepted best practice in the plan review process of assessing HDFs using the conservation authority HDF Guideline adopted by many municipal partners, a consistent and predictable framework for determining appropriate management of these features. Further, these features can be associated with a regulatory flood plain, which may not have opportunity to be assessed if HDFs are not captured in the regulation.
 - Approvals for “low-risk activities” (e.g., non-habitable accessory structures and unenclosed detached decks/patios less than 10m² outside hazardous land, wetland, or watercourse) would be exempt from permits if conditions are met (i.e., requiring that an activity be registered with an authority). Additional clarity is needed regarding approval authority, exemption criteria, hazard and feature identification, and fee recovery for services rendered.
 - Potential regulation(s) that would exempt development authorized under the Planning Act from requiring a permit. Feedback requested on these changes include the need for additional clarity as to which Planning Act authorizations would be exempt, what requirements or conditions should be in place, what regulated activities should not be exempt, and in which municipalities should such exemptions apply.
- Discussion paper seeking feedback on the development of an ecological offsetting framework for natural heritage features ([ERO #019-6161](#)).
 - The objective of this approach includes stopping the net loss of natural heritage in Ontario and is to be developed in consideration of principles based on net gain, avoidance first, transparency and accountability, limits to offsets, and being informed by best available science and Traditional Knowledge.

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- Several components are currently unclear, e.g., what baseline assessments will be determined, and what offset ratio would constitute an “acceptable net gain” or “greater conservation outcome”? Would offsets occur within the same watershed? Would land value be a factor? Would there be consideration for local conditions as well as upstream/downstream impacts that could impact stormwater management and flood mitigation?
- Significant growth across TRCA’s jurisdiction continues to place immense stress on natural heritage systems, features, and functions. TRCA and our municipal partners have successfully used ecosystem compensation as a valuable tool as a last resort, to help ensure critical ecosystem functions and services lost through growth-related development approved through MZO’s and or through infrastructure processes including environmental assessment outcomes, are restored back on the landscape. As outlined in TRCA’s Living City Policies, in some instances, natural feature impacts and associated compensation are not the preferred option of environmental management, regardless of evaluation, given they are a diminishing resource and essential components of mitigation and resilience to climate change and unchecked urban expansion.
- TRCA would be concerned where there would be a significant increase in the quantity of natural heritage features subject to offsetting resulting from the proposed changes to the Ontario Wetland Evaluation System (OWES), potential changes to the Planning Act Provincial Policy Statement, and supporting definitions and documents. A broad applicability is implied in the Discussion Paper which calls into question the feasibility of habitat creation at such a large scale; it would be challenging to achieve specific conditions needed for successful implementation, e.g., wetland catchment, land availability, connectivity to existing natural heritage systems.
- The principles and approach in TRCA’s Guideline for Determining Ecosystem will be used to inform feedback on the development of an ecological offsetting framework. In doing so, TRCA will highlight the importance of replicating, to the extent possible, and without significant delay, the same ecosystem structure and functions that are to be lost.
- Proposed updates to the Ontario Wetlands Evaluation System (“OWES”) manual ([ERO #019-6160](#)).
 - The updated OWES manual would maintain that wetlands less than 2 ha need not be evaluated while no longer recognizing the evaluation potential of wetland “complexing”, which accounts for smaller wetlands interconnected by larger hydrologic, social, and ecological functions. It would also expose existing Provincially Significant Wetlands (PSWs) to re-evaluation in isolation. This would significantly reduce the number of PSWs afforded greater environmental protections. Subsequent wetland impacts/removal would diminish their essential natural functions, including flood mitigation, erosion control, conserving and purifying water, supporting biodiversity, and carbon sequestration.
 - The changes contemplated are concerning given that across the Greater Toronto Area, wetlands only cover approximately 1% of surface area and are small (<2 ha in size). Within TRCA’s jurisdiction they are becoming increasingly scarce, particularly in Toronto where around 90% of historic wetlands have been lost.
 - TRCA’s municipal partners rely on TRCA’s science-based technical expertise to assist with the identification, review, and protection of wetlands. The proposed changes would download responsibilities in evaluating their significance to municipalities, without additional funding or supports. The contemplated changes

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do not identify an approval process for wetland evaluation, re-evaluation, and/or delineation/mapping. Wetland evaluations (and re-evaluations) would be “approved” once a certified wetland evaluator submits an evaluation to the municipality. This would contradict the science-based principle of peer review and iterative application review process under the Planning Act, which could cause confusion and delays, particularly if there is disagreement regarding the accuracy/results of the evaluation or applicable policy.

- Proposed Changes to O. Reg 299/19: Additional Residential Units ([ERO 019-6197](#)); and proposed changes to the Planning Act and the City of Toronto Act to address the “missing middle”, create higher density around transit, streamline municipal planning responsibilities and limit third party appeals for all planning matters ([ERO 019-6163](#)).
 - Up to 3 units per lot would be allowed “as-of-right” within many existing urban areas, without the need to change zoning or official plans. Municipalities would also be required to implement “as-of-right” zoning for transit supportive densities around specified transit station areas. It is imperative that policy direction in section 3.1 of the Provincial Policy Statement (PPS) related to Natural Hazards be adhered to in the implementation of these permissions to ensure risk to life and property are not increased by virtue of intensification within a natural hazard.
 - Planning policy and approval responsibilities would be removed from certain upper-tier municipalities (Durham, Halton, Niagara, Peel, Simcoe, Waterloo York). Responsibilities related to implementing regional/county official plans would be downloaded to local municipalities and MMAH would be responsible for approving lower-tier official plans. TRCA would submit that this creates challenges for regional and watershed-based planning coordination and oversight where it is most appropriate such as for growth management, watershed planning, systems-based environmental and agricultural protection, drinking water source protection, water and wastewater master planning, and transportation planning. This is particularly concerning when considered in combination with the diminished roles of CAs as proposed under Bill 23. TRCA’s experience with watershed planning and subwatershed planning is that this type of work supported by the Region with involvement of lower tiers municipalities, creates certainty for all stakeholders and saves time while achieving other efficiencies at successive stages of Planning Act and Environmental Assessment Act processes.
 - CA appeals of land use planning decisions would be limited to matters that affect land they own, or where the CA is the applicant. Likewise, a CA could only act as a public body in specific appeals where the appeal relates to natural hazard policies in provincial policy statements. In keeping with other Bill 23 changes, this would effectively eliminate CA appeal rights related to natural heritage features, endangered species protection, aggregate extraction, etc.
 - All aspects of Site Plan control would be exempt for residential development up to ten units. This would remove the ability for municipalities to regulate architectural details and landscape design, curtailing the ability to use Site Plan control as a means to implement green development and urban design standards. Standards incorporated into zoning by-laws would continue to apply. In current practice, TRCA’s municipal partners engage TRCA regularly to advise on their development of green development and urban design standards and this area is an example of our valuable advisory role in the plan input and plan review process. Many of these site level matters that TRCA advises municipalities on

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assist partner municipalities in addressing climate change, flooding, and other impacts from increasingly more extreme weather events.

- The Province is seeking input on the proposed integration of the PPS and A Place to Grow (the Growth Plan) into a new province-wide planning policy instrument to leverage housing-focused policies, streamline policies that result in duplication, delays or burden housing development, protect the environment and public health, and ensure growth management is supported ([ERO 019-6177](#)).
 - As the ERO states, PPS policies, “allow flexibility in their implementation provided that the original intent of the policy is upheld,” where planning decisions under A Place to Grow, “must demonstrate that provincial direction is explicitly satisfied.” TRCA has engaged in collaborative work with partner municipalities to help update and implement provincial policies related to watershed planning, identification, and protection of the natural heritage and water resource systems (including features, areas, and functions), including through recent comprehensive official plan reviews. If Growth Plan policies, which must be explicitly satisfied, are absorbed into more flexible provincial direction, planning decisions may have less regard for critical environmental policy requirements, especially if regional planning oversight is removed.
 - Further, through such amalgamation, strong environmental protections within the Growth Plan could be diluted in favour of higher-level, province-wide housing-focused policy direction without regard for the environmental planning challenges specific to the Greater Golden Horseshoe.
 - Policies pertaining to the wise use and management of resources (e.g., natural heritage, water), protecting public health and safety (e.g. natural hazards), integrated infrastructure and land use planning to support growth (e.g., water, wastewater and stormwater management) and protecting what is valuable (natural heritage and water resource systems, key natural features, etc.) are fundamental to effective land use and environmental planning and any changes to increase housing supply should not come at the expense of public safety and the environment.
- Changes are also proposed that would revoke the Central Pickering Development Plan ([ERO 019-6174](#)), revoke the Parkway Belt West Plan ([ERO 019-6167](#)) and require the expansion of wastewater treatment services for York Region ([ERO 019-6192](#)). TRCA is considering these proposals relative to our interests and would like to review the proposed municipal policy frameworks that would need to be updated to replace these area and regionally specific plans prepared under the Ontario Planning and Development Act. TRCA is seeking greater detail from provincial and municipal officials on these questions and will respond accordingly.
- Proposed amendments to the Greenbelt Area boundary regulation ([ERO 019-6217](#)), include proposed changes to the Greenbelt Plan that would remove or redesignate 15 areas of land and add lands in the Paris Galt Moraine area ([ERO 019-6216](#)), and proposed changes to the Oak Ridges Moraine Conservation Plan that would redesignate lands in the Oak Ridges Moraine Conservation Plan area ([ERO 019-6218](#)).
 - These related consultations are seeking feedback on proposed changes to the Greenbelt to accommodate housing supply. A number of the proposed areas are within TRCA’s jurisdiction. TRCA is undertaking a review of these sites and will

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provide comments based on available data and scientific information and in accordance with The Living City Policies.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 2 – Manage our regional water resources for current and future generations

Strategy 4 – Create complete communities that integrate nature and the built environment

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Strategy 12 – Facilitate a region-wide approach to sustainability

FINANCIAL DETAILS

Staff are engaged in this policy analysis work per the normal course of duty. No additional funding is proposed to support the policy analysis work associated with the preparation of these comments. However, provisions related to the Minister's ability to freeze fees for CA's and municipalities and proposed changes that may limit the use of development charges (DC's) for growth related studies, and which would revise formulas for calculating DC's, would negatively impact TRCA and our partners financially. These changes, if passed, would fetter TRCA and partner efforts to advance studies necessary to accommodate planned growth including new housing considering provincial and stakeholder interests.

DETAILS OF WORK TO BE DONE

Staff are undertaking the following next steps:

- Presentation and written submissions to Standing Committee on November 10, 2022;
- Written submissions on Bill 23 and the related ERO postings on or before the end of respective commenting periods in November and December 2022.

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Attachments: 1

Attachment 1: TRCA Comments and Proposed Amendments to Bill 23