

### Section I – Items for Board of Directors Action

**TO:** Chair and Members of the Board of Directors  
Meeting #04/19, Friday, April 26, 2019

**FROM:** John MacKenzie, Chief Executive Officer

**RE:** **TRCA DRAFT COMMENTS TO ENVIRONMENTAL REGISTRY OF ONTARIO (ERO)**  
**Focusing conservation authority development permits on the protection of people and property (ERO #013-4992)**

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#### KEY ISSUE

Toronto and Region Conservation Authority (TRCA) draft comments on the Government of Ontario's proposal for a regulation that outlines how conservation authorities permit development and other activities for impacts to natural hazards and public safety.

#### RECOMMENDATION

**WHEREAS the Province of Ontario has posted for public comment on the Environmental Registry of Ontario (ERO) a proposal for a regulation that outlines how conservation authorities permit development and other activities for impacts to natural hazards and public safety;**

**AND WHEREAS the ERO imposes a May 21, 2019 deadline for submission of comments to the Province;**

**THEREFORE LET IT BE RESOLVED THAT the Toronto and Region Conservation Authority (TRCA) staff report and draft comments on the government's proposal be received, and that any comments from the Board of Directors be considered in informing TRCA's final ERO submission;**

**AND FURTHER THAT municipal partners and Conservation Ontario be so advised.**

#### BACKGROUND

On April 5, 2019, the Ministry of Natural Resources and Forestry (MNRF) released for public comment on the Environmental Registry of Ontario (ERO), [a proposal](#) for a regulation that outlines how conservation authorities permit development and other activities for impacts to natural hazards and public safety. Conservation Ontario is coordinating a response on behalf of all 36 conservation authorities, in addition to the submissions made by individual conservation authorities. The Province's 46-day commenting period for this ERO posting ends May 21, 2019.

The government's proposal is to create a regulation to replace the current Ontario Regulation 97/04 that governs the content of individual conservation authority regulations pursuant to section 28 of the *Conservation Authorities Act*. The government's intention is to further define the ability of a conservation authority (CA) to regulate prohibited development and other activities for impacts to the control of flooding and other natural hazards. The existing 36 individual conservation authority-approved regulations would be consolidated and harmonized into a single Minister of Natural Resources and Forestry-approved regulation. The Province has stated this measure will help to ensure consistency in requirements across all CAs, while still allowing for local flexibility based on differences in risks posed by flooding and other natural hazards.

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For the purposes of this regulation the Ministry is also proposing to:

- Update definitions for key regulatory terms to better align with other provincial policy, including: “wetland”, “watercourse” and “pollution”;
- Defining undefined terms including: “interference” and “conservation of land” as consistent with the natural hazard management intent of the regulation;
- Reduce regulatory restrictions between 30m and 120m of a wetland and where a hydrological connection has been severed;
- Exempt low-risk development activities from requiring a permit including certain alterations and repairs to existing municipal drains subject to the *Drainage Act* provided they are undertaken in accordance with the *Drainage Act* and *Conservation Authorities Act* Protocol;
- Allow conservation authorities to further exempt low-risk development activities from requiring a permit provided in accordance with conservation authority policies;
- Require conservation authorities to develop, consult on, make publicly available and periodically review internal policies that guide permitting decisions;
- Require conservation authorities to notify the public of changes to mapped regulated areas such as floodplains or wetland boundaries; and
- Require conservation authorities to establish, monitor and report on service delivery standards including requirements and timelines for determination of complete applications and timelines for permit decisions.

Once the Regulation is established, the Province is also proposing to bring into force un-proclaimed sections of the *Conservation Authorities Act* associated with conservation authority permitting decisions and regulatory enforcement.

At meeting #3/19 of the Executive Committee, held on April 5, 2019, Resolution #B33/19 was approved as follows:

*THAT the Chair be authorized to call a special meeting of the Executive Committee to discuss TRCA’s recommendations to the proposed amendments to the Conservation Authorities Act and associated regulations;*

*THAT an immediate request be made to the Province of Ontario for an extension to the commenting period from 45 days to 60 days;*

*AND FURTHER THAT staff provide a report at the special Executive Committee meeting, if called, that includes a government relations and communications strategy.*

Further to the above, at a special meeting of the Executive Committee, held on April 12, 2019, Resolution #B35/19 was approved as follows:

*WHEREAS the Province has posted on the Environmental Registry of Ontario two proposals for modernizing conservation authority operations and focusing conservation authority development permits on the protection of people and property;*

*LET IT THEREFORE BE RESOLVED THAT this presentation be received for information;*

*AND FURTHER THAT the comments received from the Executive Committee be considered to inform the staff report to the Board of Directors on April 26, 2019.*

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Further to the above direction, TRCA staff have reviewed the proposed amendments and drafted comments based on staff's day-to-day work in support of our municipal partners and as part of our mandated roles for the Province. Draft comments on "Modernizing conservation authority operations" ERO posting ([amendments to the Conservation Authorities Act](#)) are being presented to the Board in a separate staff report.

### **RATIONALE**

TRCA has an ongoing interest in the proposed regulation given our roles as a resource management agency, a regulator under Section 28 of the *Conservation Authorities Act*, and a public commenting body under the *Planning Act* and the *Environmental Assessment Act*.

TRCA's Ontario Regulation 166/06, "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation," was approved by the Minister of Natural Resources and Forestry in 2006 in conformity with the current content regulation, Ontario 97/04. Where applications for new development and/or servicing fall within TRCA regulated areas, TRCA works with both private and public proponents to facilitate sustainable development and infrastructure that is adequately set back and protected from natural hazards and/or from environmentally sensitive areas.

In addition, TRCA works routinely with provincial agencies (e.g., Metrolinx), utilities (e.g., Enbridge), and other public infrastructure providers, which may be exempt from TRCA's section 28 Regulation, to achieve shared objectives for sustainable infrastructure planning that supports growth, redevelopment and intensification.

TRCA's "The Living City Policies" (2014) directs staff participating in the review of applications under the *Planning Act* and the *Environmental Assessment Act*, to ensure that the applicant and municipal planning authority are aware of TRCA permitting requirements under the Regulation, where applicable; and further, our staff assist in the coordination of these applications to avoid ambiguity, conflict and unnecessary delay or duplication in the process.

In the last six years, TRCA issued on average, just over 1,000 development permits annually for applications that met the tests of the regulation. Hearings on appeal of applications recommended for refusal have been infrequent as TRCA makes every effort to work with applicants and municipalities to facilitate proposals within regulated areas that achieve compliance with TRCA regulatory policies. Much of this collaboration and negotiation is achieved at the earlier stages of the planning process so that TRCA assists municipalities and proponents in meeting provincial and municipal growth planning and environmental objectives from approval in principle through to detailed design.

TRCA supports the provincial government's efforts to improve efficiencies and consistency for regulating development and to streamline development approvals, as evidenced by TRCA's ongoing streamlining initiatives for our roles in the development and infrastructure planning processes as well as the regulatory permitting process.

In participating in Conservation Ontario's CA working group to improve client service and accountability, increase speed of approvals, and reduce the notion of "red tape", staff recently [reported \(pages 42-49\)](#) to TRCA Board of Directors on our own ongoing streamlining efforts for reducing regulatory burden and meeting provincial priorities. In addition, over the last year, TRCA has undertaken a comprehensive, jurisdiction-wide update to our regulation mapping, in which we have consulted extensively with municipal partners, the public and stakeholders such as the

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Building and Land Development Industry. These initiatives have helped inform our response to the government's ERO posting on CA permitting regulations.

At this time, the ERO posting does not contain proposed wording for new or amended legislation or regulations. We are communicating to the government that TRCA is looking forward to seeing the details of the proposed regulation in a future consultation process and would be pleased to provide further input at that stage.

TRCA staff's draft comments are contained within Attachment 1 to this report. Accompanying the draft comments are TRCA draft recommendations, which are consolidated below:

1. **TRCA supports the consolidation and harmonization of the existing 36 individual CA regulations into one regulation, but maintains that each CA should retain the ability to establish individual, Board-approved policies that reflect local conditions.**
2. **TRCA would support replacing the definition of a wetland in the *Conservation Authorities Act* with the Provincial Policy Statement definition.**
3. **TRCA recommends that an updated definition of watercourse in the *Conservation Authorities Act* include terminology from field-tested guidance and associated implementation guidance documents. Updating the definition of "watercourse" to be more descriptive and direct, and/or to harmonize terms with provincial policy, are initiatives that TRCA supports, subject to review of the pending definition from the Province.**
4. **TRCA recommends that the current definition of pollution be maintained but that its occurrence be tied to the enforcement and compliance provisions within the CA Act and associated regulations.**
5. **TRCA supports the establishment of definitions for undefined terms to address not only the role of CAs have in protecting life and property from natural hazards, but also in protecting natural features and their functions (e.g. wetlands, valleylands) to ensure resilience on the landscape to the effects of climate and land use change. The regulation and/or its definitions should recognize the inextricable link between natural hazard management and natural resources management (natural heritage and water resources).**
6. **TRCA recommends that the definition of "Interference" reflect the existing guidance from Conservation Ontario.**
7. **TRCA recommends that the definition for the conservation of land be consistent with the 1994 MLC decision, or at minimum, that it recognize the relationship between landforms, features and functions in order to protect, manage and restore natural resources within watersheds.**
8. **TRCA recommends a risk-based approach in which reduced regulatory restrictions between the 30 and 120-metre area of interference around a wetland be limited to built-up urban areas, to minor rural and agricultural activities, or where the hydrologic connection has either already been severed, or wetland water balance has already been addressed through review, approval and construction processes.**

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9. TRCA supports enabling legislation for a low-risk approach to permitting, subject to review of details in the forthcoming regulation.
10. TRCA supports the provincially-proposed requirements for conservation authority transparency and consultation, as they are consistent with TRCA's core values and current practices.
11. TRCA supports enhanced provisions for enforcement of CAs' permitting function through bringing into force un-proclaimed sections of the CA Act but would welcome further enhancements to deter infractions, including:
  - i. Orders to comply
  - ii. stop work order appeals only to the Minister
  - iii. clarification for "after the fact" permits
  - iv. definition of an officer for enforcement purposes.

### **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**

**Strategy 8 – Gather and share the best sustainability knowledge**

**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, with funding support provided by TRCA's participating municipalities to account 120-12. No additional funding is proposed to support the policy analysis work associated with the preparation of these comments.

### **DETAILS OF WORK TO BE DONE**

Upon endorsement of the draft comments by the Board of Directors, and recognizing any input received from Board members, Attachment 1 will be updated and submitted as TRCA's official comments to the ERO. Staff will continue to brief the Board on any provincial legislative, regulatory or policy changes that result from this circulation.

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**Date: April 25, 2019**

**Attachments: 1 – TRCA Draft Comments (ERO#013-4992)**