

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Meeting #6/20, Friday, September 25, 2020

FROM: Laurie Nelson, Director, Policy Planning

RE: **ENFORCEMENT AND COMPLIANCE PROGRAM REVIEW AND BUSINESS CASE**

KEY ISSUE

To report back on the outcome of Toronto and Region Conservation Authority's (TRCA) Enforcement and Compliance program review and business case to fulfill TRCA's s.28 development (permitting) regulations and s.29 parks and landholdings regulatory and mandatory program responsibilities under the *Conservation Authorities Act*.

RECOMMENDATION

WHEREAS, at its meeting on May 22, 2020, the Board requested that staff report back on the outcome of the Enforcement and Compliance program review and business case;

AND WHEREAS section 21.1(1) of the *Conservation Authorities Act* (CA Act) was amended by Bill 108 to require conservation authorities to provide mandatory programs and services related to i) the risk of natural hazards and ii) the conservation and management of lands owned or controlled by the authority, including any interests in land registered on title;

AND WHEREAS Toronto and Region Conservation Authority's (TRCA) Enforcement and Compliance staff have regulatory responsibilities under s. 28 development (permitting) regulations and s. 29 parks and landholdings of the CA Act;

THAT the Enforcement and Compliance program review, business case and financial details for 2021-2022 to fulfill TRCA's s.28 and s.29 regulatory and mandatory program responsibilities under the CA Act, as provided in this report, be received;

AND THAT the Province, as part of the CA Act review currently underway, increase the powers for Conservation Authority Enforcement Officers.

BACKGROUND

As a follow up to the [report](#) to the Board of Directors at Meeting #4/20 held on Friday May 22, 2020 regarding TRCA Enforcement and Compliance during Covid-19, staff have undertaken a comprehensive review of the Enforcement and Compliance program in an effort to effectively address increasing pressures on the business unit, stakeholder expectations and work volume. Enforcement staff prepared a business case to identify staffing needs, resources and budget to meet the future needs of the program in order to fulfill legislative and mandatory responsibilities under the *Conservation Authorities Act* (CA Act). TRCA staff examined available budgets to find funds to support elements of the business case that could be supported.

Up until 2006, Enforcement Officers were deployed to equally address both our section 28 and section 29 regulatory responsibilities under the CA Act. With increased development pressures and program funding sources, the decision to focus business unit operations from supporting

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s.29 parks and landholdings to s.28 development (permitting) regulations was made by senior TRCA staff.

Since 2012, there has been increasing demand on the business unit to provide corporate support to address significant issues occurring within our parks and landholdings. As urbanization pressures and population increase within our communities, there is a growing responsibility on TRCA to preserve and protect these valuable greenspaces. Ongoing violations and unlawful activities by irresponsible users continue to degrade the ecological integrity of the lands and poses a significant threat to the public's enjoyment and safety. Unlawful activities in which Enforcement Officers are confronted with range from illegal use and damaging effects of off-road vehicles; illegal and often commercial harvesting of flora and fauna; illegal hunting; encampments; aggressive individuals; drug cultivation; illegal dumping of waste soils and other materials; damage or theft of property; encroachments; liquor related offences and criminal offences.

TRCA parks and landholdings are a gateway to the public, exposing them to the significant contributions of TRCA in the protection and enhancement of our watersheds. They provide valuable opportunities for people to connect with nature and explore our numerous outdoor facilities and landholdings. Unfortunately, police resources to assist TRCA staff in the enforcement on our lands is becoming increasingly limited. Police services provide invaluable assistance to conservation authorities (CAs), particularly incidents of a criminal nature, however, there is an expectation that TRCA Enforcement Officers will address unlawful activities in an effective manner, particularly relating to Provincial offence-oriented matters.

Community stakeholders, TRCA partnering municipalities and agencies, and internal TRCA business units have an expectation that unlawful activities associated with development activities and unlawful activities on TRCA landholdings be addressed in an efficient and effective manner by the Enforcement and Compliance business unit.

In 2019, the Province initiated a review of the CA Act to modernize conservation authority operations, outlining core mandatory programs and services for CAs relating to the risks of natural hazards and the conservation and management of conservation authority lands. The TRCA Enforcement and Compliance business unit directly supports these legislated mandatory programs. The Enforcement and Compliance business unit has worked with TRCA Senior Leadership and the Board to advocate for the same powers as Provincial Parks, Ministry and municipal by-law officers but as of yet these changes have not been reflected in updated legislation and regulations as part of the CA Act review.

RATIONALE

Current Challenges and Limitations

Although the Enforcement and Compliance team maintains a customer service-oriented, solutions-based approach, and continues to strive to maintain our proactive compliance objectives, workload increases through the complexity of permit files, challenging violation negotiations, non-compliance issues, investigations, prosecutions, and increasing occurrences and responsibilities associated with our landholdings continues to challenge our capacity to address occurrences in a timely manner. Corrective actions, through the issuance of charges, has become more frequent in the interest of public safety, natural hazards, and the preservation of ecological features within our watersheds.

Outside of current management agreement lands, TRCA actively manages approximately 10,900 ha (27,000 acres) of property throughout our watersheds and regulates 70,144 ha

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(173,000 acres) of private and publicly owned lands through our s.28 regulatory jurisdiction under the CA Act.

From 1985, the Enforcement and Compliance team was comprised of four (4) TRCA Enforcement Officers (including a manager) to patrol our lands and watersheds. In 2003, the staff complement was increased to five (5) Enforcement Officers (including the manager) to address increased development pressures. Only recently, in 2018, the additional position of “Development Inspector” was approved through TRCA’s Senior Leadership Team (since reclassified to Enforcement Officer) increasing the total staff complement by two (2) officers over a 35-year period.

From the period between 2003 to 2019, Development planning permits requiring compliance inspections expanded from 365 to 1182, which amounts to a 223% increase. Complaints between 2016 to 2019 have increased 38% and in 2020 complaints are estimated to exceed our 2019 figures by 40% alone. To date in 2020, Enforcement and Compliance has received 181 s.29 complaints, with only 27% of those being Covid-19 related.

Under normal operating circumstances, the business unit is working at capacity to ensure that our regulatory responsibilities are being adequately managed. With the onset of the Covid-19 pandemic, TRCA’s enforcement responsibilities were dramatically increased to provide for an ongoing presence and deterrent at our parks and trails. TRCA Enforcement Officers have been providing coverage 7-days-per-week, with rotating weekend shifts since April 4, 2020, while focusing development regulation efforts on higher priority files. As a result of this increased coverage and exposure of TRCA Enforcement on our landholdings over the past several months, the public and TRCA municipal partners have acknowledged our important role.

The current staff resources allocated to TRCA Enforcement and Compliance were not sufficient to sustain an effective presence and deterrence function within our parks and landholdings while fulfilling the s. 28 responsibilities of our Act. Officers are responsible for significant geographical areas comprised of several municipalities per officer within our watersheds.

Between 2008 and 2018, the enforcement presence within our parks and landholdings has been less than 3% of our time. In response to identified health and safety concerns, Enforcement Officers were deployed in our conservation areas in 2018 and 2019 on 5 strategic weekends shifts to assist with historical problems occurring within these parks. To date in 2020, the Enforcement and Compliance business unit has allocated 20% of our time to our landholdings.

Requested Investment into TRCA Enforcement and Compliance Program

TRCA’s current staff complement is six (6) Enforcement Officers, including the manager. The current 2020 budget is comprised of operating costs at \$780,000 and legal at \$60,000 for a total of a \$840,000 funded through operating levy.

Maintaining an enforcement presence on our landholdings is a significant financial investment and an important component to proper land management and to maintain the health and safety of our stakeholders. As an update to the Board in response to direction received, the following proposal for additional personnel, equipment, and operating expenses was requested and approved through the TRCA’s Senior Leadership Team (SLT) to effectively address both our s.28 and s.29 regulatory and mandatory program responsibilities under the CA Act. The proposed business case was reviewed, refined and vetted through a collaborative process with TRCA’s SLT and the Strategic Business Planning and Performance business unit. A series of proposed actions (A-G) are outlined below.

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A. Additional Enforcement Officers

The approved business case included the addition of 3 Enforcement Officers over the next two years. An additional two (2) officers in early 2021 and one (1) additional officer in early 2022, to facilitate attendance in the Conservation Authority Level 1 Officer Training Courses in March.

The additional positions will provide for a greater overall service level throughout our watersheds to support our municipalities, internal business units, and on our landholdings. It will allow us to effectively contend with the increased compliance challenges within our jurisdiction, establish staff depth and coverage for vacations, illness, and training, prepare the business unit for the pending s.30 enhanced enforcement provisions of our Act, and provide for better service level for the development industry regarding erosion and sediment control measures, particularly as TRCA progresses to a performance management approach.

Establishing a staff complement of eight (8) officers and a Manager will allow for weekend and staggered shift scheduling and allow for greater officer presence, officer safety, reduce the geographical coverage required by each officer, and provide ongoing annual support to our conservation areas and landholdings between the periods of spring and fall.

B. Addition of an Allocated Enforcement Administrative Technician

The approved business case included the addition of an allocated Enforcement Administrative Technician assigned to screen complaints and properties, correspond with stakeholders and internal business units, provide data input support for officers relating to complaints and inquiries, process violations, Non-conformance notices, expired permit reminders, and assist the manager with corporate security responsibilities.

The position will need a high degree of confidentiality, and significant training to maintain a distinct knowledge of our legislation, jurisdiction and regulatory responsibilities, and provide invaluable administrative support to the Manager and Enforcement Officers.

Enforcement and Compliance is looking into establishing a “Tips” line and email address, and to establish a better presence on our website to provide the public a portal to identify concerns and provide a better understanding of TRCA enforcement roles and responsibilities. In addition, this position will work with TRCA Communications and Marketing Services to fulfill the proposed communication strategy of the business unit and provide for a more efficient and effective customer service connection.

The position will collect important background information from partnering agencies and support the development of the Enforcement and Compliance Guideline, protocols, and standard operating procedures for all s.28 and s.29 officers, in consultation with our Human Resources Department and relevant SLT members.

C. Staff Succession Planning

The approved business case included establishing an effective succession plan for the business unit. As part of this effort it was proposed that a competition be held in early 2022 for the supervisory role of Senior Enforcement Officer. This position will provide for greater supervisory and health and safety coverage of Enforcement Officers, support TRCA senior staff and the manager in addressing high priority issues and files, and provide for greater depth of the business unit for court proceedings, weekend shifts, vacation schedules, and illness coverage.

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This position will remain primarily a field position but will have ongoing mentoring opportunities for potential future advancement within TRCA. This position has remained vacant, due to funding concerns, for several years due to funding concerns, but already exists within the framework of TRCA, and has been assigned a Range and Step within TRCA's full time salary grid. The recruitment for the position will allow for an open and transparent competition and allow for existing Enforcement Officers to apply for this promotion, as well as allow experienced applicants from external agencies as an opportunity to onboard a talented individual into TRCA. This is not an additional position above the three (3) officers previously requested.

D. Increased Legal Budget

Officers are currently dealing with a significant number of s.28 related offences within our jurisdiction, which are leading to prosecution to achieve a desired outcome. Given the existing negotiation skill set of our officers, the team has maintained an ability to work within a modest legal budget. However, a growing trend of non-compliance has been occurring over the past few years, coupled with increasing disregard for our regulations and permit requirements, which will put substantial pressure on our existing legal budget moving forward. Currently, there are no mechanisms in effect under the CA Act to recover legal costs.

Concurrent with efforts to strengthen legislation and regulations as part of the CA Act review, it is proposed that the team's legal budget be increased by 40%, (\$40,000), to adequately address future legal fees associated with unlawful activities within our regulatory jurisdiction and to look at opportunities to carry forward unused expenditures associated with the enforcement legal budget into the next operating year to ensure an appropriate contingency is maintained to address significant enforcement legal matters.

E. Vehicles and Equipment

Additional officers will require the addition of allocated patrol vehicles. Working with our Fleet Manager, an effective vehicle for TRCA enforcement has been determined to be a pickup truck with an estimated use of 20,000 kms per vehicle annually.

In addition, staff requested to acquire two (2) all-terrain vehicles (ATVs) in order to provide officers the effective equipment required to conduct internal patrols on our significant landholdings to investigate matters and to serve as an effective deterrent associated with abuses on our landholdings, particularly as it relates to unlawful hunting, the damaging effects of off-road vehicles, and public safety (i.e., missing persons, visitor injuries). Alternative forms of travel, such as foot patrols or bicycles, are effective in certain locations, however, are time consuming and limit the availability and effectiveness of staff as a deterrent to undesirable activities. TRCA will be working with partnering agencies to establish our credentials under the *Off-Road Vehicles Act*, amongst other important provincial legislation.

F. Training

New officers to TRCA are required to successfully complete a two-day certification course in Confrontation Management, while existing Enforcement Officers are required to complete a one-day annual recertification. This course consists of a theoretical component discussing relevant provincial and federal legislation, effective communications, conflict resolution and de-escalation techniques, and consists of a hands-on training component associated with the officer safety and specialized equipment use. TRCA has a long-standing relationship with our external training company who specializes in law enforcement personnel and comprehends the specific challenges that TRCA Enforcement Officers face.

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In addition, TRCA Enforcement Officers will be required to successfully complete a required ATV training course prior to deploying this specialized equipment onto our properties. Several training courses are available through reputable training providers within the GTA.

Lastly, new Enforcement Officers will be enrolled in the Canadian Certified Inspector of Erosion and Sediment Controls (CAN-CISEC) course to aid in effectively identifying and addressing mitigation requirements associated with our s.28 development regulation responsibilities.

SLT Recommendation – Proposals A to F

In anticipation of the upcoming CA Act enabling regulations, TRCA staff have initiated the process to identify programs and services as mandatory (core) and non-mandatory (i.e., municipal or other programs and services), for budget planning purposes. On this basis, SLT agreed to support Proposals A to F through the reallocation of non-mandatory budget funds and the shifting of existing mandatory funds.

G. Body Worn Cameras

Proposal: With recent public concerns over transparency and misconduct in law enforcement, the addition of body worn cameras for TRCA Enforcement Officers is being proposed for consideration. Although the majority of TRCA interactions with the public are customer service oriented, certain interactions with aggressive individuals can be volatile and lead to confrontation when attempting to obtain compliance. Social media releases of interactions between law enforcement during challenging situations can be misconstrued, as they are a small snapshot in time as opposed to relaying the entire situation leading to enforcement actions.

Coupled with future training opportunities for TRCA Enforcement Officers, the addition of body worn cameras would provide accurate documentation of an entire event to avoid unnecessary public scrutiny if an accusation is made against our staff. Additionally, documenting our interactions with the public can be an invaluable learning tool for staff to reflect on actions and communications during an encounter with problematic people.

A preliminary consultation with TRCA legal has occurred, and it has been determined that the law enforcement provisions within the *Municipal Freedom of Information and Protection of Privacy Act* (MFIPPA) provides for the lawful authority for the use of body worn cameras by TRCA Enforcement Officers. There are specific requirements to be adhered to and specific restrictions on the use of data that is collected. Information Technology and Records Management staff have reached out to our member police agencies to obtain public records associated with any established policies, procedures, privacy considerations, vendors, and standard operating procedures for the use of body worn cameras, and a vendor who supplies this specialized equipment has identified their willingness to participate in a pilot project with TRCA.

This specific proposal remains a work in progress as outreach continues to determine costing, to look at the development of internal policies and operating procedures, and to determine appropriate record storage retention requirements of video footage. At the present time, TRCA Conservation Parks staff members, designated as Provincial Offences Officers, have not been included in the proposal for the use of body-worn cameras. Although they have an important supporting role for TRCA compliance initiatives within our conservation areas, and to provide additional support to TRCA Enforcement Officers, they are primarily responsible for park operations and maintenance.

SLT Recommendation – Proposal G

As the proposal regarding body worn cameras requires further investigation and consultation, SLT did not recommend financial support at this time.

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 7 – Build partnerships and new business models

Strategy 9 – Measure performance

FINANCIAL DETAILS

The financial details associated with this business case are as follows:

Existing 2020 Budget:	\$840,000
2021 (January - December)	annual increase of \$ 372,710
Proposed 2021 Budget:	\$1,212,710
2022 (January - December)	annual increase of \$ 145,840
Proposed 2022 Budget:	\$1,358,550

The proposed increase will allow for three additional staff in 2021, with a fourth to be added in 2022, to provide additional capacity to the team. The business case also covers increased legal costs and the required direct costs for these staff members, including vehicles/equipment.

The funding for these increases will come from the redeployment of existing operating levy received from TRCA's partner municipalities, primarily through the Education and Outreach service area. Education and Outreach is currently reassessing its business model in anticipation of changes to the *Conservation Authorities Act*, as it is widely expected that operating levy will not be permitted to fund programs and services which are not deemed by the Act to be mandatory.

This proposed business case has been reviewed and vetted through TRCA's Senior Leadership Team and budget allocation confirmed by the Strategic Business Planning and Performance business unit.

DETAILS OF WORK TO BE DONE

Albeit small, this business unit has proven to be extremely effective in its enforcement and compliance efforts over the years. To meet the growing needs of our stakeholder, partnering agencies and internal business units, the program enhancements outlined in this report are needed to fulfill our legislative and mandatory responsibilities under s.28 and s.29 of the CA Act. Although Covid-19 has had an immediate impact on this business unit, the reality is that TRCA parks and landholdings have received extensive public exposure over the past few months, and staff have uncovered numerous long standing unauthorized activities that are negatively impacting our properties. If issues remain unaddressed, the continued misuse of our lands has the potential to harm our positive reputation as an effective land manager.

Enforcement and Compliance will continue to work closely with internal business units across the organization, including our Conservation Parks and Conservation Lands and Trails business units, and will continue to maintain and foster partnerships with our member municipalities, police services and provincial agencies.

In addition, and based on the ongoing assessment of TRCA greenspaces with a high frequency of unsuitable use, TRCA's Education and Training Division will explore opportunities to enhance community programming to support the introduction of positive activities that engage local

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residents in developing a stronger appreciation, understanding and connection to TRCA's greenspaces. The intent of these programs would be to reduce negative use of TRCA greenspaces by introducing more families and residents to local natural systems through TRCA programs. These opportunities would be subject to funding capacity, however, enhanced programming and positive public use traditionally have a correlative effect of decreasing negative behaviours and activities on targeted greenspaces with high incidences of unsuitable use.

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