

Office of the Chair



November 13, 2020

Dear Member of Provincial Parliament:

Re: Permitting, Planning and Enforcement Concerns with Proposed Amendments to the *Planning Act* and Sections 28, 29, and 30 of the *Conservation Authorities Act*

TRCA is the largest Conservation Authority in Ontario with almost 5 million people living in our jurisdiction that includes 9 watersheds and over 70 km of Lake Ontario Shoreline stretching from Mississauga to Ajax and across the Oak Ridges Moraine from Mono in the west to Uxbridge in the east. TRCA issues up to 1,000+ permits per year and is home to some of Canada's largest and fastest growing municipalities, including Toronto, Markham, Brampton, and Vaughan. We advance flood infrastructure, trails and restoration projects and work with municipalities and applicants to ensure timely issuance of development and infrastructure approvals, while protecting our communities from the risks of flooding and erosion. We are also experts at ensuring our watersheds and the Lake Ontario shoreline are protected, restored, and made more resilient to impacts of climate change including more extreme weather events.

TRCA was actively involved in the provincial consultation on the Conservation Authorities Act (CA Act) by attending every session, meeting with officials in several ministries, and providing multiple submissions to the Province. Since the amendments in Bill 229 were released, TRCA has consulted with our key stakeholders, including municipal councillors and staff at the single tier, six upper and fifteen lower tier municipalities that we serve, and heard similar concerns from them around these specific amendments.

TRCA Support for Transparency and Accountability Provisions

TRCA remains supportive of all changes made to enhance the transparency and accountability of conservation authorities, which represent current practice and level of service that TRCA already provides. We want to discuss how we can further support the government on enacting and implementing these measures as part of this Bill.

Concerns About Weakened Enforcement Powers Despite Increasing Illegal Activities

Throughout the consultation process, TRCA, as the single largest landowner in the Greater Toronto Area, has been adamant in urging the Province to enhance the enforcement powers of conservation authorities. Enhancing these powers is essential to address issues like illegal large-scale filling operations and the destruction of natural features increasing in frequency within municipalities in our jurisdiction. In order to adequately manage natural hazards and the natural resources of our lands that are subject to increased illegal fill operations, filling of wetlands, and dumping, TRCA requested similar powers to those of Provincial Enforcement Officers to accomplish our mandate.

The unproclaimed provisions under section 30 (enforcement and offences) need to be reinstated. The amendments directly impact an officer's ability to effectively address TRCA's permit compliance objectives, work with proponents and stakeholders to proactively address compliance issues, and limit an officer's ability to address significant impacts to natural hazards and features that might jeopardize the health and safety of persons or result in significant damage to property in an efficient and timely manner.

Significantly limiting the conservation authority's ability to enter lands (s. 30.2), within the authority's jurisdiction is inconsistent with similar municipal and provincial legislation, and coupled with the removal of a Stop Order provision (s. 30.4) does not afford officers an ability to "prevent or reduce the effects or risks" associated with illegal and egregious activities, and puts the onus on an authority to engage in a time consuming and costly injunction process.

Lastly, the TRCA, through our May 21, 2019 correspondence to the Province, requested enhanced enforcement provisions to allow TRCA officers, under s.29 of the Act, to adequately protect our significant public landholdings (18,000 ha) to effectively address ongoing abuses and unlawful activities, similar to the protections afforded to Ontario's Provincial Parks.

Planning Act and S. 28 and 30 CA Act Amendments Run Counter to Provincial Flood Advisor Recommendations and recent PPS Planning Act Changes

We are also concerned with proposed amendments to the *Planning Act* which would limit our ability to be an independent Party at LPAT to protect our landholdings and to fulfill our mandate. TRCA attends LPAT hearings to ensure that policies and development conditions are imposed to reduce flood risks and to ensure mitigation and setbacks are in place to address natural hazards such as erosion hazards near steep slopes or along the eroding and hazardous Lake Ontario shoreline. Extreme weather events and changing climate increase the importance of our role in the planning process.

The 2019 Provincial Flood Advisor's report notes the important role that conservation authorities play in the land use planning process. The main legislative tools used to manage flood risk, the report states, include the *Planning Act* together with the Provincial Policy Statement (PPS) and the *Conservation Authorities Act*. As a result of the Flood Advisor's recommendations, the 2020 PPS was revised to state that mitigating natural hazard risks, including those associated with climate change, will require the Province, planning authorities, and conservation authorities to work together. Similarly, the Made in Ontario Environment Plan asserts that within the context of environmental planning, conservation authorities' core mandate is protection from natural hazards and conserving natural resources.

The proposed changes to planning, permitting and enforcement provisions in the Act are incongruent with recommendations of the Provincial Flood Advisor, the updated Provincial Policy Statement under the *Planning Act*, and do not reflect the concerns raised by the public and municipalities in our jurisdiction. These proposed changes, if passed, will increase risk to public infrastructure and private property, and will ultimately diminish TRCA's and our municipal partners' ability to protect the environment and fulfill our obligations to the communities we serve.

The proposed amendments to sections 28 and 30 of the CA Act and the *Planning Act* amendments included in this Bill that would eliminate our ability to independently represent ourselves at LPAT run counter to Provincial Flood Advisor report findings. What is proposed would serve to diminish the effective integration of the legislative tools and undermine the ability of conservation authorities to meaningfully contribute to our collective responsibility for public safety and natural resource management with other parties at forums such as LPAT when necessary.

Compendium Regulations and Amendments Must Be Reviewed Concurrently

Without having regulations to support these amendments, concerns are prevalent that there may be unintended consequences or inefficiencies and ineffective outcomes. TRCA currently issues over 1,000+ permits per year with no appeals in many years; most Greater Golden Horseshoe CAs issue permits well within Conservation Ontario streamlining initiative timelines. This begs the question why there are proposed changes that would create a two-tier permitting process, allowing applicants to circumvent a process that is working well to reach the same end of issuing a permit. As well, the proposed option for applicants to request a review of an authority's permit decision could have operational impacts related to fees, could bog down an already stressed LPAT system, and create confusion and uncertainty for applicants. It is also unclear whether there is capacity in the Ministry and in LPAT for this new two-tier system, as in our experience, there is not.

Governance Concerns

There are two governance amendments in sections 14 and 17 of the Act that must be revised prior to this Budget Bill being enacted, as they are impractical to implement. As an example, section 14 would require 60% of the City of Toronto Council to sit on TRCA's Board and permits Board members to act on behalf of their respective municipalities, which is in contravention to their fiduciary responsibilities.

This issue was raised throughout the consultation process, in accordance with the Auditor General's special audit of the Niagara Peninsula Conservation Authority; at that time, the Ministry's response to the first recommendation in the audit report cited the need for board members to act in the best interest of the conservation authority for which they are appointed. Moreover, for members to act on behalf of their municipality is counter to the intent of the CA Act which was to transcend political boundaries for municipalities sharing a watershed to collectively manage and protect its resources.

Concluding Comments and Request to Discuss Our Concerns

In closing, while we remain supportive of transparency and accountability provisions, if the amendments impacting planning, permitting and enforcement, cannot be strengthened to allow us to fulfill our mandate, we would respectfully request that they be rescinded from this Bill. The removal of these amendments at this time would give the Province time to work with its stakeholders to prepare Act changes and supporting regulations concurrently to ensure they work well together, are properly resourced and communicated, and are aligned with other government objectives such as reducing flood risk and preparing for the impacts of a changing climate.

Thank you for your consideration of this request and I look forward to discussing this matter at your earliest convenience.

Sincerely,

Jennifer Innis
Chair

John MacKenzie, M.Sc. (PI) MCIP, RPP
Chief Executive Officer