

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, January 29, 2021 Meeting

FROM: Michael Tolensky, Chief Financial and Operating Officer

RE: **APPROVAL OF PROPERTY AND RISK MANAGEMENT POLICIES**

KEY ISSUE

Approval of updated Acquisition, Disposition, Encroachment and Contaminated Site policies, as well as approval of the amendments to the Board of Directors Administrative By-Law regarding indemnity provisions for Board members, officers and employees.

RECOMMENDATION

WHEREAS Toronto and Region Conservation Authority (TRCA) continues to review, update and manage its corporate policies;

AND WHEREAS staff have now reviewed, and updated key policies related to the administration of current and future land holdings;

AND WHEREAS TRCA's 1987 *Indemnification* policy requires a review and update according to the policy review schedule;

THEREFORE, LET IT BE RESOLVED THAT the updated and new Acquisition, Disposition, Encroachment and Contaminated Sites policies be approved;

THAT proposed amendment to the section B.17 Indemnification of the Board Members of the Board of Directors Administrative By-Law, as amended, be approved;

AND FURTHER THAT the approved amended TRCA Board of Directors Administrative By-law, as amended, be forwarded to the Minister of Environment, Conservation and Parks, Conservation Ontario, and be posted on TRCA's website.

BACKGROUND AND RATIONALE

TRCA staff are actively engaged in the review of existing and creation of new policies as part of its policy program. Over the last two years TRCA made significant strides toward a more modern suite of relevant policies, through the establishment and work of an internal Policy Committee – a group of subject matter experts from across TRCA divisions tasked with a systematic and comprehensive review and update of TRCA's existing policies as well as development of new policies, procedures and standard operating procedures (SOPs) intended to fill identified policy gaps.

The approval of the majority of TRCA's operational policies and procedures is delegated to the Chief Executive Officer. Under the Board of Directors Terms of Reference (ToR), contained in the Board of Directors Administrative By-Law, the Board of Directors is responsible for the approval of governance-related policies impacting any of the Board of Directors' responsibilities, including those listed in the terms of reference; policies that provide staff with benefits in excess of those provided by the *Employment Standards Act*; Investment and Reserve policies; and policies that concern fees charged by TRCA.

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Section 4 of the Board of Directors ToR discusses Board of Directors responsibilities as they relate to the approval of proposed acquisition and disposition of land. While the ToR do not explicitly speak to the Board of Directors' role in regard to the review and approval of encroachments and contaminated sites, all major encroachments and matters concerning site contamination are brought to the Board for its approval. As a major responsibility of the Board, any policies related to land management matters are brought forward for Board approval.

Property and Risk Management business staff have developed new CS-5.13-P Acquisition of Lands and CS-5.16-P Contaminated Sites policies and reviewed and updated the 1995 Surplus TRCA Land Sales policy, approved by the Authority at the January 27, 1995 meeting (Res.#A289/94) and 1977 Encroachments onto TRCA Owned-Lands policy approved by the Authority at the April 22, 1977 Authority meeting (Res.#40). Further, Property and Risk Management and the Clerk's Office undertook the review of the 1987 Indemnification policy previously approved by the Authority at the August 11, 1987 meeting (Res.#164). The results of the policy review are summarized below, first informed by the context of each respective program area. Pending approval of policies, staff have attached sample draft internal SOPs, which are approved by the CFOO, which operationalize the policies. The SOPs are included for information only and do not require Board approval.

Acquisition of Lands

TRCA began its land acquisition program in the 1950's and now owns over 15,000 ha of land within its' jurisdiction. The first acquisitions were made to further early conservation projects including flood control efforts outlined in the 1959 Plan for Flood Control. TRCA's most recent land securement strategy is outlined in the Greenspace Acquisition Project 2021-2030, as approved by the Board of Directors in RES #A28/20 ("GAP"). Among other things, GAP outlines the criteria and methods under which properties will be secured by TRCA. The criteria for securement within GAP are derived from TRCA's Greenspace Strategy, Valley and Stream Corridor Management Program, Terrestrial Natural Heritage System Strategy and various integrated watershed management plans. Other criteria for securement include provincial plans such as the Niagara Escarpment Plan, Oak Ridges Moraine Conservation Plan, Greenbelt Plan and Clean Water Act. TRCA acquires property rights in one or a combination of the following ways: fee simple, conservation easements, covenants, leases and agreements. The tools for securement include the planning process, donations, exchanges, municipal land transfers, expropriations, extended tenancies, right of first refusals, joint ownership arrangements, purchase and resale arrangements, and land management agreements.

CS-5.13-P Acquisition of Lands Policy

CS-5.13-P Acquisition of Lands policy (**Attachment 1**) ensures that any acquisition of Land by TRCA is undertaken in a consistent, transparent, and effective manner, with appropriate consultation and accountability, in alignment with TRCA's strategic direction, core values, and the regulatory and legislative environment in which it operates. Acquisition of property will follow the following principles:

- Fairness: Ensure an open, transparent, and impartial process.
- Value Capture: Maximize the value for TRCA.
- Risk Management: Limit TRCA's exposure to risk and liabilities.

The policy further provides direction on roles and responsibilities for property acquisition and requires that all acquisitions be undertaken further to a Board of Directors resolution.

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Attachments 2 and 3 represent draft internal SOPs, which provide step-by-step instructions for achieving purposes of the policy.

Sale and Disposition of Real Property

TRCA has sizable land holdings across its jurisdiction. Frequently, TRCA is requested from member municipalities, and other government agencies, to dispose of certain interests in lands to support, federal, provincial, or municipal projects, infrastructure, and utilities. Infrastructure/and utilities on TRCA-owned property are generally registered through usage easements. Examples of municipal infrastructure easements include those associated with water/sewer services crossing through TRCA holdings. Other government dispositions may be fee-simple to support government projects, such as the disposition for the Rouge National Park, Bolton Bypass, Caledon EMS Station #302, and others.

As a conservation authority, TRCA does not typically sell or dispose of property into private ownership. However, there may be instances where lands may become surplus to TRCA and partner needs. In these instances, TRCA and partner conservation efforts may be advanced by the disposition of surplus property and attributing the revenue generated for TRCA projects (including the acquisition of conservation lands, managed/agreement forest lands or ecologically significant lands).

CS-5.14-P Sale and Disposition of TRCA Real Property Policy

CS-5.14-P Sale and Disposition of TRCA Real Property Policy (**Attachment 4**) carries forward and expands on the current policy for the sale and disposition of TRCA-owned land. The policy establishes the framework for sale and disposition of land and ensures that legislative and provincial policy requirements continue to be met, that TRCA fulfills its obligations to all parties that may be impacted, that the disposition of real property is undertaken in a consistent, transparent, and effective manner, and that the objects of TRCA are being met. The updated policy now incorporates provincial policy requirements for the disposition of conservation authority property. Sale or Disposition of land is subject to a Board of Directors resolution.

Attachment 5 represents a draft internal SOP, which provides step-by-step instructions for achieving purposes of the policy.

Encroachment onto TRCA Property

Lands secured by TRCA are from time to time subject to encroachment by adjacent landowners. Minor encroachments may consist of owners attempting to extend their lots onto adjacent TRCA tableland, planting of gardens, storage of chattel, or other minor instances. Major encroachments are where adjacent landowners substantially alter the TRCA lands, typically through the construction of built structures or altering grading/placing fill. While encroachments exist throughout TRCA's ownership, they are especially prevalent in historical residential areas adjacent to valley and stream corridors where boundary lines are not fenced or are not clearly demarcated.

Encroachments are of concern to TRCA because they:

- restrict or limit the use and enjoyment of public lands, previously acquired by TRCA for the benefit of all residents;
- may pose a safety hazard to the public and give rise to liability claims from resultant injuries;
- may compromise the integrity of natural heritage features and functions of the property;
- may compromise the integrity of cultural heritage values of the property;

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- may lead to claims of adverse possession and the loss of public assets;
- may destabilize public lands with resultant damage to adjacent private lands;
- may result in costs to restore degraded TRCA lands and private lands that are subsequently damaged; and
- may create an unfavorable precedent.

Enforcement of encroachment is difficult. Pragmatically, lands under management agreement with member municipalities are investigated and enforced by said municipality, subject to funding. TRCA lands not under management agreement, are managed internally subject to funding. TRCA's Greenspace Conservation Inventory and Audit program in the years 2018-2020 summarizes the encroachments found in Table 1. Encroachments in the City of Toronto are still under review by City and TRCA staff and have been reported on in previous reports related to encroachments in the City of Toronto.

Table 1: Staff Identified Encroachments on TRCA Land By Year				
Year	Peel	York	Durham	Total
2018	1	26		27
2019	20	57		77
2020	0	42	11	53

CS-5.15-P Encroachment onto TRCA Owned Lands Policy

CS-5.15-P Encroachment onto TRCA Owned Lands policy (**Attachment 6**) carries forward and expands on the current policy to resolve identified encroachments:

Removal - The preferred method to resolve encroachments as it allows the land to be reverted to its intended use.

Use of Encroachment Agreements - An interim arrangement to establish temporary permission for the encroachment. Although this is less preferable option, this may be the best method to address major encroachments.

Sale or Land Exchange - The least preferable option, and only considered when it is determined that a parcel of land is not required for TRCA purposes.

In addition, the updated policy sets out internal roles and responsibilities for implementation of the policy. Encroachment agreements greater than 5 years are subject to Board of Directors resolution.

Encroachments that are not resolved in accordance with the above methods, may require litigation and are subject to legal limitations and financial constraints.

Contaminated Sites

TRCA started using environmental investigations prior to property acquisition in the late 1980's. By the 2000's, a satisfactory Phase 1 Environmental Site Assessment ("ESA") completed by a Qualified Person under the *Environmental Protection Act*, was a consistent requirement prior to acquisition of land. In 2016 and 2017 staff undertook a review of all available property acquisition records to assess the contamination status of TRCA land holdings. Based on a review of available data, staff have categorized TRCA's property holdings into categories summarized in Table 2.

Table 2: TRCA Properties by Known Contamination Status	
Category	Hectares
Cat 1: Satisfactory Phase 1 ESA undertaken.	1,642.6

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Cat 2: Satisfactory documentation present to clear site.	192.9
Cat 3: Phase 2/follow-up recommended, found, and clear.	106.3
Cat 4: Phase 2/follow-up recommended was recommended, or indicated contamination	409.7
Cat 5: No ESA located	901.5
Cat 6: ESA not required (i.e. erosion control project)	89.6
Cat 7: No ESA but historic landfill exists on property	1,851.5
Cat 8: No ESA but adjacent land has contamination that most likely continues into subject property	6.3
No information available	9,914.1
Total	15,114.5

TRCA's land holdings are broad and are made up of riverine environments as well as many other ecological land classifications as well as hazard lands. Some areas, like for example the Don River Valley, have a long history of industrialization. In earlier urbanized areas of the jurisdiction (e.g. ravines in Toronto) additional unknown sites of contaminants may also be present or may affect TRCA lands. Some other potential sources of contamination that affect TRCA property include current, past, onsite and neighboring uses. These include 79 known historic landfills that intersect with TRCA land.

The precise location and severity of any contamination is not revealed until targeted sampling is undertaken by TRCA, a municipal partner or a third-party project proponent. Except in cases where there is a Certificate of Property Use ("CPU"), Environmental Compliance Approval ("ECA") or other requirement tied to TRCA property, or where TRCA might seek to change a property use from a higher to a lower risk use, TRCA does not have any obligations to undertake monitoring of contaminants on its lands nor does TRCA have any obligations with regard to reporting these potential contaminants to the Ministry of Environment Conservation and Parks ("MECP"), for audit purposes or otherwise. Monitoring obligations under most CPUs or ECAs registered to TRCA land (for example with closed landfills) are undertaken by TRCA's municipal partners.

CS-5.16-P Contaminated Sites Policy

CS-5.16-P Contaminated Sites policy (**Attachment 7**) formalizes TRCA's position on the acquisition, management and reporting of contaminated sites within its holdings. The policy is guided by the procedures outlined within O.Reg.153/04 Records of Site Conditions for properties contemplating high risk property use changes and sets Phase 1 ESAs as a minimum requirement prior to acquisition. Any identified contaminants are to be declared to the Board of Directors prior to closing of any property acquisition. The policy also provides direction on how TRCA will manage known and newly found contaminated sites in its possession.

Update to the Board of Directors Administrative By-Law

Section B.17 of TRCA's Board of Directors Administrative By-Law, as amended, states that "TRCA shall maintain an Indemnification policy with respect to Board Members, Officers and employees, which shall be reviewed by staff at minimum every five years".

TRCA's Indemnification policy was approved by the Authority at the August 11, 1987 meeting (Res.#164). The policy indemnified the Authority Members, Officers and Employees, their heirs and legal representatives, where they acted honestly, in good faith with a view to the best interests of TRCA and within the scope of their duties and responsibilities. The 1987 policy did not discuss the process and procedures associated with the indemnification.

The Clerk's Office and Property and Risk Management staff reviewed the Indemnification policy

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with a goal to clarify the existing document by clarifying the scope and documenting processes and procedures associated with the submission and review of indemnification requests. During the internal review process through the Policy Committee and the Senior Leadership Team, it was further decided that the existing policy should be split into two separate documents: an internal operational policy specific to TRCA employees and requests for indemnification by employees (*CS-5.12-P Indemnification*), approved by the Chief Executive Officer and a policy governing indemnification requests by TRCA's Board of Directors and advisory board members (s.B.17 of the Administrative By-Law), approved by the Board of Directors.

The two policies provide equal protections but have slight differences in the scope and procedure. For example, the proposed subsection B.17(3) discuss proceedings commenced under the *Municipal Conflict of Interest Act*, a subsection which would not be applicable to TRCA employees. Further, requests for indemnification by the Board Members and advisory board members under the proposed amendments would be reviewed by TRCA's Legal Counsel, who would be responsible for providing a report and a recommendation to the Executive Committee and to Board of Directors for their consideration. In the case of employee indemnification, the Chief Executive Officer, on advice of Legal Counsel or Chief Human Resources Officer, for matters arising for employment practices, is responsible for determining whether or not indemnity will be provided to the individual by TRCA. The Chair of the Board of Directors is responsible for determining if indemnity will be provided on behalf of the Chief Executive Officer.

Attachment 8 provides proposed amendments to section B.17 of Board of Directors Administrative By-Law.

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

Strategy 7 – Build partnerships and new business models

Strategy 11 – Invest in our staff

FINANCIAL DETAILS

Sources of funding for property acquisition are project specific. Typically, revenue from sale or disposition of TRCA lands is required to be refunded to the body that funded the original acquisition (e.g., Province, municipal partner, etc.). However, when opportunities present themselves TRCA seeks to obtain approvals from the Province and partners to use the proceeds of sales to further various TRCA operations or projects as reported to the Board of Directors. Funds for monitoring of encroachments for TRCA land holdings within Peel and York are funded through their respective Land Care program accounts. Funding for encroachment monitoring in Durham is funded through Durham land management accounts. The majority of TRCA lands within the City of Toronto are under management agreement with City of Toronto. Costs associated with undertaking studies associated with the Contaminated Sites policy are borne by the project proponent. Costs associated with managing a contaminated site on TRCA land are allocated to the applicable land management account associated with the contaminated site.

DETAILS OF WORK TO BE DONE

Upon approval, each of the attached policies will be published on TRCA's Policies and Procedures database and circulated to all affected staff.

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Upon the approval, the amended By-law will be posted on TRCA's website and circulated to the Minister of Environment, Conservation and Parks, and Conservation Ontario.

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Attachments: 8

Attachment 1: CS-5.13-P Acquisition of Lands Policy

Attachment 2: CS-5.13-S1 Acquisition of Lands SOP

Attachment 3: CS-5.13-S2 Valuation of Lands SOP

Attachment 4: CS-5.14-P Sale and Disposition of TRCA Real Property Policy

Attachment 5: CS-5.14-S1 Disposition of TRCA Real Property SOP

Attachment 6: CS-5.15-P Encroachment onto TRCA Owned Lands Policy

Attachment 7: CS-5.16-P Contaminated Sites Policy

Attachment 8: Proposed Amendments to the section B.17 of the Board of Directors Administrative By-Law, as amended.