

# Private Landowner Contribution for Erosion Control Works

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| Category   | <b>Application to the General Public or Have Significant Implications</b> |                                 |
| Approved by  | Authority   |                                 |
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## PREFACE

The prevention, elimination or reduction of risk to life and property from flooding and erosion is one of the core mandates of Toronto and Region Conservation Authority. TRCA's Erosion Management Program seeks to fulfill this mandate through the ongoing identification and remediation of erosion hazards, carried out on a priority basis and subject to available funding. The Conservation Authorities Act gives conservation authorities the power to establish and undertake programs that help achieve its objectives, from developing watershed plans, to policies that guide the review of development applications, to various programs ranging from education and stewardship to the implementation of restoration activities. With respect to erosion control and remediation, TRCA has a long-standing management program to monitor erosion and instability-prone areas, and to implement stabilization works on a priority basis to the limit of available funding each year. This program is funded annually by TRCA's partners at the City of Toronto, and Peel, York and Durham regions, and on a project-by-project basis by the Ministry of Natural Resources and Forestry.

The majority of funding is applied toward the maintenance of existing erosion control structures along TRCA's rivers and valleys that protect public greenspace, park amenities and municipal infrastructure; however this program is extended to the protection of private property where homes and other essential structures have been confirmed as at-risk by erosion or instability as funding and priorities permit. Although TRCA is not compelled legally to assist private landowners with erosion control works, TRCA offers this assistance recognizing that staff has considerable experience in erosion hazard management, and the ability to support TRCA's municipal partners by mitigating past development decisions with cost-effective solutions that also foster resilient watersheds and contribute to the expansion of safe and enjoyable public greenspace.

Where staff has recommended that erosion control works be carried out to benefit private property, the benefiting landowners are subject to the execution of a binding erosion control agreement which, amongst other conditions, requires the benefiting landowner(s) to contribute to the cost of the project through the conveyance of land or a financial contribution in accordance with the approved scale provided herein.

## **1. PURPOSE**

The purpose of this policy is to ensure that private landowners benefiting from publicly-funded erosion control works contribute to the project. While it is preferred that this contribution be in the form of land conveyance to foster the expansion of public greenspace, it is recognized that situations exist where such conveyance is not achievable or desirable, therefore the policy also provides the option of contributing financially toward the cost of the work.

## **2. AUTHORITY**

This policy is being provided as an internal requirement for all erosion control projects funded by TRCA that provide a benefit to private property. This policy may be updated at any time, by the lead of TRCA's Erosion Management Program, with input from Property and Legal Services.

## **3. SCOPE**

This policy applies to TRCA's Erosion Management Program and all erosion control projects that provide a benefit to private property.

## **4. POLICY STATEMENTS / ACTION ITEMS**

### **4.1. Erosion Management Program**

TRCA has a long-standing Erosion Management Program (EMP) that aims to eliminate or reduce erosion and slope instability hazards throughout TRCA's jurisdiction, on a priority basis and subject to available funding.

### **4.2. Preference for Natural, Cost-effective Solutions**

TRCA endeavors to implement solutions that mimic natural solutions that are cost-effective and low maintenance to the fullest extent possible.

### **4.3. Voluntary Assistance**

TRCA is under no obligation to carry out erosion control works to protect private property, and offers this assistance on a limited and conditional basis.

### **4.4. Ineligible Properties**

Properties with known violations issued by TRCA or any of its regulatory partner agencies will not be eligible for assistance with erosion control works until the violation is resolved.

### **4.5. Land Conveyance**

The lands where the works are located are to be transferred to TRCA as the benefiting landowner's contribution to the project; to permit TRCA to monitor and maintain the completed works; to foster resilient ravine systems; and to expand public greenspace.

**4.6. Permanent Easement**

TRCA will require a minimum of a permanent easement over the work area and access routes where TRCA does not require title to the lands. A cash contribution in accordance with the approved scale will also be required.

**4.7. Full Cost Recovery**

Where agreement to policy 4.5 or 4.6 and 4.14 if applicable cannot be achieved, the benefiting owner(s) will be responsible for 100% of the cost of the works.

**4.8. Additional Conditions**

TRCA may add additional conditions to the contribution requirement depending on the cause(s) of the hazard and type and extent of works required to mitigate the hazard(s).

**4.9. Future Monitoring and Maintenance**

Where benefiting owners are responsible for 100% of the cost of the works, the benefiting landowner(s) assumes all responsibility for future monitoring and maintenance of such works.

**4.10. Reimbursement Option**

Where TRCA has identified funding to assist a property with erosion control works but is unable or unwilling to implement the work with its own forces, the option to reimburse landowners will be made available at TRCA's sole option, subject to confirmation that all permits and approvals have been obtained and the execution of a binding indemnification.

**4.11. Reimbursement Amount**

Where the reimbursement option has been selected by TRCA, the eligible reimbursement amount shall be determined based on staff's estimate of the cost to construct the work with its own forces, minus the property owner's financial contribution in accordance with the approved scale if no land is conveyed.

**4.12. No Contribution Required**

Where works are carried out on TRCA-owned lands for the protection of private property, the cash contribution will be waived.

**4.13. Indemnification Agreement**

In all cases, TRCA will require some form of binding indemnification agreement signed by the benefiting landowner(s) which may be registered on title.

**4.14. Restrictive Covenant**

In addition to conveyance or an easement, TRCA may require some form of restrictive covenant registered on title to protect the structural integrity of the works.

#### 4.15. Guarantee of Payment

Where a cash contribution is required, the benefiting landowner(s) are required to agree to provide a Letter of Credit or other promissory note to TRCA's satisfaction prior to the commencement of work.

#### 4.16. Breach of Payment

If the benefiting landowner(s) fail to make payment in accordance with the agreed payment terms, collection efforts up to and including legal action will be taken

#### 4.17. Representation to the Authority

The benefiting owner(s) may make representation to the Authority, Executive Committee, or any advisory board with regard to any aspect of the erosion control programs in accordance with procedures adopted by Authority Resolution #A227/16.

#### 4.18. Financial Contribution Schedules

Where required, the cash contribution from the benefiting landowner(s) will be based on Schedules A and B for residential and commercial properties, respectively.

##### **Schedule A. Owner Contribution Schedule – Residential Properties**

| Value of Works        | Owner Contribution    | Maximum Contribution |
|-----------------------|-----------------------|----------------------|
| \$0 - \$15,000        | 20% of the total cost | \$3,000              |
| \$15,000 - \$30,000   | 20% of the total cost | \$6,000              |
| \$30,000 - \$50,000   | 20% of the total cost | \$10,000             |
| \$50,000 - \$75,000   | 20% of the total cost | \$15,000             |
| \$75,000 - \$100,000  | 20% of the total cost | \$20,000             |
| \$100,000 - \$200,000 | 25% of the total cost | \$50,000             |
| \$200,000+            | 30% of the total cost | TBD                  |

##### **Schedule B. Owner Contribution Schedule – Commercial Properties**

| Value of Works        | Owner Contribution    | Maximum Contribution |
|-----------------------|-----------------------|----------------------|
| \$0 - \$15,000        | 25% of the total cost | \$3,750              |
| \$15,000 - \$30,000   | 25% of the total cost | \$7,500              |
| \$30,000 - \$50,000   | 25% of the total cost | \$12,500             |
| \$50,000 - \$75,000   | 25% of the total cost | \$18,750             |
| \$75,000 - \$100,000  | 25% of the total cost | \$25,000             |
| \$100,000 - \$200,000 | 30% of the total cost | \$60,000             |
| \$200,000+            | 35% of the total cost | TBD                  |

## 5. AUDIT COMPLIANCE

Procedures and guidelines pursuant to the Private Landowner Contribution for Erosion Control Works policy shall be developed to ensure audit implementation compliance.

## 6. DEFINITIONS

**Conveyance** - the legal process of transferring property from one owner to another.

**Easement** - The right to cross or otherwise use someone else's land for a specified purpose.

**Erosion** – River erosion is the wearing away of the bed and/or banks of a stream or river. Slope erosion is the movement of soil from wind or water from the face of the slope.

**Flooding** – An overflow or inundation of water that comes from a river or other body of water and causes or threatens damage. It occurs as the results of relatively high streamflow overtopping the banks of a river or stream.

**Indemnification Agreement** – A legal contract that indemnifies (holds harmless) one of the parties in a contract for specific actions that might cause damage to the other party.

**Letter of Credit** - A letter issued by a bank to another bank to serve as a guarantee for payments made to a specified person under specified conditions.

**Restrictive Covenant** - A covenant imposing a restriction on the use of land so the integrity of the erosion control works are preserved.

## 7. REFERENCES

**Ontario Regulation 166/06: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses**

<http://www.trca.on.ca/dotAsset/15293.pdf>

**Technical Guide – River and Stream Systems: Flooding Hazard Limit (Ontario Ministry of Natural Resources)**

<http://www.renaud.ca/public/Environmental-Regulations/MNR%20Technical%20Guide%20Flooding%20Hazard%20Limit.pdf>

**Technical Guide – River and Stream Systems: Erosion Hazard Limit (Ontario Ministry of Natural Resources)**

Electronic copy available upon request from TRCA at [erosionmonitoring@trca.on.ca](mailto:erosionmonitoring@trca.on.ca)