

### **3.0 LEGISLATIVE FOUNDATION**

The following section is a summary of the legislative and policy framework that establishes TRCA's responsibilities in the planning and development process. For a more detailed description of the legislative foundation, TRCA's Planning and Development Procedural Manual should be consulted.

#### **3.1 CONSERVATION AUTHORITIES ACT**

The *Conservation Authorities Act* provides the legal basis for TRCA's mandate to undertake *watershed* planning and management programs that prevent, eliminate, or reduce the risk to life and property from *flood hazards* and *erosion hazards*, as well as encourage the conservation and *restoration* of natural resources.

##### **3.1.1 Objects of a Conservation Authority**

Section 20 of the *Conservation Authorities Act* sets out the objects of a conservation authority (CA):

20. The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals. R.S.O. 1990, c. C.27, s. 20.

##### **3.1.2 Powers of a Conservation Authority**

For the purposes of accomplishing these objects, section 21 of the *Conservation Authorities Act* assigns numerous powers to a conservation authority (CA) as follows:

- (a) to study and investigate the watershed and to determine a program whereby the natural resources of the watershed may be conserved, restored, developed and managed;
- (b) for any purpose necessary to any project under consideration or undertaken by the authority, to enter into and upon any land and survey and take levels of it and make such borings or sink such trial pits as the authority considers necessary;
- (c) to acquire by purchase, lease or otherwise and to expropriate any land that it may require, and, subject to subsection (2), to sell, lease or otherwise dispose of land so acquired;
- (d) despite subsection (2), to lease for a term of five years or less land acquired by the authority;
- (e) to purchase or acquire any personal property that it may require and sell or otherwise deal therewith;
- (f) to enter into agreements for the purchase of materials, employment of labour and other purposes as may be necessary for the due carrying out of any project;
- (g) to enter into agreements with owners of private lands to facilitate the due carrying out of any project;

- (h) to determine the proportion of the total benefit afforded to all the participating municipalities that is afforded to each of them;
- (i) to erect works and structures and create reservoirs by the construction of dams or otherwise;
- (j) to control the flow of surface waters in order to prevent floods or pollution or to reduce the adverse effects thereof;
- (k) to alter the course of any river, canal, brook, stream or watercourse, and divert or alter, as well temporarily as permanently, the course of any river, stream, road, street or way, or raise or sink its level in order to carry it over or under, on the level of or by the side of any work built or to be built by the authority, and to divert or alter the position of any water-pipe, gas-pipe, sewer, drain or any telegraph, telephone or electric wire or pole;
- (l) to use lands that are owned or controlled by the authority for purposes, not inconsistent with its objects, as it considers proper;
- (m) to use lands owned or controlled by the authority for park or other recreational purposes, and to erect, or permit to be erected, buildings, booths and facilities for such purposes and to make charges for admission thereto and the use thereof;
- (m.1) to charge fees for services approved by the Minister;
- (n) to collaborate and enter into agreements with ministries and agencies of government, municipal councils and local boards and other organizations;
- (o) to plant and produce trees on Crown lands with the consent of the Minister, and on other lands with the consent of the owner, for any purpose;
- (p) to cause research to be done;
- (q) generally to do all such acts as are necessary for the due carrying out of any project.  
R.S.O. 1990, c. C.27, s. 21; 1996, c. 1, Sched. M, s. 44 (1, 2); 1998, c. 18, Sched. I, s. 11.

Section 20 of the *Conservation Authorities Act* provides the mandate for a CA to offer a broad resource management program, while section 21 provides the mandate to have *watershed*-based resource management programs and/or policies that are approved by the Board of Directors. All of TRCA's watershed research programs inform policy development and application in the planning and development process.

### **3.1.3 Regulations of a Conservation Authority**

Under the provisions of section 28 of the *Conservation Authorities Act*, TRCA administers a Development, Interference with Wetlands and Alterations to Shorelines and Watercourses regulation. Through this regulation, TRCA has the ability to:

- (a) prohibit, regulate or require the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- (b) prohibit, regulate or require the permission of the authority for development, if in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

The policies for the implementation of TRCA's regulation are contained in Section 8.0 of The Living City Policies.

### **3.2 PLANNING ACT AND ENVIRONMENTAL ASSESSMENT ACTS**

Under the *Planning Act* and the environmental assessment acts (federal and provincial), TRCA is a commenting agency and provides input on planning matters in various capacities.

Section 2 of the *Planning Act* is of particular relevance to CAs since it outlines matters of provincial interest, such as:

- (a) the protection of ecological systems, including natural areas, features and functions;
- (c) the conservation and management of natural resources and the mineral resource base;
- (o) the protection of public health and safety;
- (p) the appropriate location of growth and development.

These matters, for which all approval authorities shall have regard to, in carrying out their responsibilities under the *Planning Act*, directly support the mandate of CAs.

Section 3 of the *Planning Act* enables the Province to issue policy statements on matters related to municipal planning that are of provincial interest. Among the provincial interests detailed in the Provincial Policy Statement, 2014 (PPS) are Natural Heritage (Section 2.1), Water (Section 2.2), and Natural Hazards (Section 3.1). The PPS states that all comments and decisions affecting planning matters “shall be consistent with” these policy statements, as well as provincial plans; these would include the Niagara Escarpment Plan (1990), the Oak Ridges Moraine Conservation Plan (2002), the Greenbelt Plan (2005), and the Growth Plan for the Greater Golden Horseshoe (2006).

For *infrastructure* reviewed under the Ontario or Canadian environmental assessment acts, the PPS defers all review to the environmental assessment process. For public *infrastructure* and large private *infrastructure* projects, Ontario’s *Environmental Assessment Act* is the principal review mechanism. When the provincial *Environmental Assessment Act* was approved in 1975, CAs were directed to provide technical clearance for natural resources management on applications made under the Act. Technical advice is also sought from TRCA for applications made under the *Canadian Environmental Assessment Act*. The majority of TRCA’s environmental assessment review falls under the provincial process.

Figure 3.1 is a depiction of TRCA's various interactions in the planning and development process through legislation, regulations, programs, policies, and agreements. **(see figure in Jan 25, 2013 version – unchanged)**

#### **3.2.1 TRCA’s Commenting Roles**

The Ministry of Natural Resources (MNR), Ministry of Municipal Affairs and Housing, and Conservation Ontario have a memorandum of understanding (MOU) defining the roles and relationships for implementing delegated responsibilities under the Provincial One Window Planning System. In 2010, the Province approved the “Policies and Procedures for Conservation Authority Plan Review and Permitting Activities” for inclusion in MNR’s Policies

and Procedures for Conservation Authorities Manual, which also provides clarity about the roles and responsibilities of CAs in the planning and regulatory permitting process. In keeping with the Provincial MOU and policies and procedures, TRCA undertakes the following roles and activities (summarized in Table 3.1):

- **Regulatory Authority** - In administering TRCA's Section 28 regulation, as referred to in Section 3.1.3 above, TRCA is the approval authority for permits under this regulation. In TRCA's review of applications under the *Planning Act* and environmental assessment acts, TRCA staff ensure that proponents and the provincial or municipal planning authority(ies) are aware of the Section 28 regulation and requirements under the *Conservation Authorities Act*, and assist in the coordination of these applications to eliminate unnecessary delay, duplication, or conflict in the process.
- **Delegated Provincial Interest** - As outlined in the Conservation Ontario/Ministry of Natural Resources/Ministry of Municipal Affairs and Housing Memorandum of Understanding on CA Delegated Responsibilities, CAs have been delegated the responsibility of representing the provincial interest on natural hazards encompassed by Section 3.1 of the PPS 2005. This delegation requires CAs to review and provide comments on municipal policy documents (Official Plans and comprehensive zoning by-laws) and applications submitted pursuant to the *Planning Act* as part of the Provincial One-Window Plan Review Service.
- **Public Commenting Body (Planning)** - Pursuant to the *Planning Act*, TRCA is a "public commenting body," and therefore must be notified of municipal policy documents and planning and development applications under the *Planning Act*. TRCA comments according to its Board-approved policies as a local resource management agency to the municipality/planning approval authority on these documents and applications.
- **Public Commenting Body (Environmental Assessment)** – Pursuant to the federal and provincial environmental assessment (EA) Acts, TRCA is also identified as a commenting body. TRCA reviews and comments on Individual and Class EAs that occur within TRCA's jurisdiction under the Acts. Proponents of an EA are required to identify and consult with government agencies, including CAs if the proposed project has the potential to affect an item related to a CA's areas of interest. The Canadian Environmental Assessment Agency and the Ontario Ministry of the Environment are responsible for the administration of the Canadian and Ontario EA Acts respectively, and for ensuring that proponents meet the requirements of the applicable act.
- **Resource Management Agency** – In accordance with Section 20 and 21 of the *Conservation Authorities Act*, CAs are local watershed-based natural resource management agencies that develop programs that reflect local resource management needs within their jurisdiction. Such programs and/or policies (e.g.s, watershed plans, fisheries management plans, The Living City Policies) are approved by the CA Board and may be funded from a variety of sources including municipal levies, fees for services, provincial and/or federal grants and self-generated revenue.
- **Service Provider** - The provision of planning and environmental assessment advisory services to municipalities is implemented through service agreements or MOUs with participating municipalities or as part of a CA's approved program activity. In this respect, the CA is essentially acting as a technical advisor to municipalities. The

agreements cover the CA's areas of technical expertise such as water management, natural hazards, and natural heritage.

- **Landowner** – Occasionally, CAs become involved in the planning process as a proponent or landowner. Where there is a real or perceived conflict of interest between the role as a proponent or landowner and the role as a commenting agency, a CA may request the planning authority to implement alternate review mechanisms to address the CA's commenting responsibilities. Additionally, CAs ensure that any comments provided as a landowner are separate from comments provided under a technical, advisory, and/or regulatory role. TRCA is a major landowner in the GTA, owning close to 18,000 hectares of land.

Table 3.1 provides a summary of these roles and activities and the nature of the comments associated with each role.

**Table 3.1: Conservation Authority (CA) Roles in Planning and Development**

<b>CA ROLE</b>	<b>TYPE OF ROLE</b>	<b>REQUIRED OR VOLUNTARY</b>	<b>REPRESENTING</b>	<b>RESULT</b>
<b>Regulatory Agency</b>	Decision making	Required	Provincial interests	CA decision required
<b>Delegated "Provincial Interest"</b>	Reviewing/ Commenting	Required	Provincial interests	CA comments must be considered
<b>Public Commenting Bodies</b>	Reviewing/ Commenting	Depends on how role is defined	CA Board interests	CA comments should be considered
<b>Resource Management Agencies</b>	Reviewing/ Commenting	Voluntary	CA Board interests	CA comments may be considered
<b>Service Providers</b>	Service	Terms of the agreement	Terms of the agreement	Depends on terms of service agreement
<b>Landowners</b>	Review/ Commenting	Voluntary	CA Board interests	CA comments may be considered

Source: (adapted from) MNR Procedural Manual: Policies and Procedures for Conservation Authority Plan Review and Permitting Activities, May 2010

Table 3.2 is a listing of various pieces of legislation, programs, policies and guidelines that TRCA may use to inform their comments on applications from the planning and development process. This table is a simplistic summary of various statutes, plans, and programs, may not be exhaustive, and should not be relied upon for legal or professional advice in connection with any particular matter.

**Table 3.2: Legislation, regulations, policies, plans, and programs affecting TRCA's jurisdiction**

	Primary Purpose	Lead & Assisting Roles
<b>Federal</b>		
<i>Fisheries Act</i> (R.S.C., 1985, c. F-14) (last amended Nov 25, 2013)	An Act respecting fisheries to manage threats to the sustainability and productivity of Canada's commercial, recreational and Aboriginal fisheries.	Fisheries and Oceans Canada (DFO);
<i>Navigable Waters Protection Act</i> (R.S.C., 1985, c.N-22, last amended 2009)	To protect Canadian navigable waters from interference with navigation.	Transport Canada; TRCA directs proponent to Transport Canada when reviewing a watercourse crossing in navigable waters
<i>Migratory Birds Convention Act</i> (1994), consolidated January 12, 2010	To implement a convention for the protection and conservation of migratory birds, as populations and individual birds, in Canada and the U.S.A.; main prohibition is the destruction of wildlife habitat during nesting season.	Environment Canada; TRCA staff provide advice that the removal or pruning of trees should take place outside of the nesting season, however, it is the responsibility of the proponent to ensure compliance with the Act
<i>Species at Risk Act</i> (2002)	To protect wildlife species at risk in Canada.	Environment Canada, Parks Canada, and Fisheries and Oceans Canada; TRCA may direct proponent to applicable federal authority as a courtesy (TRCA does not screen under SARA but may provide data to the federal government if available)
<i>Canadian Environmental Assessment Act</i> (2012),	To establish a federal environmental assessment process; applies to projects for which the federal government holds decision-making authority, as proponent, land administrator, a source of funding, or regulator.	Canadian Environmental Assessment Agency or the lead regulatory agency; TRCA provides technical clearance
Toronto and Region Remedial Action Plan (RAP) (1987)	To clean up the waterfront, rivers, habitats and waters of the Toronto region. RAPs are also being implemented in 42 other areas around the Great Lakes.	Environment Canada, Ontario Ministry of the Environment, Ontario Ministry of Natural Resources, and TRCA.
<b>Provincial</b>		
<i>Planning Act</i> (1990)	To provide for a land use planning system led by provincial policy.	Municipalities are approval authorities; TRCA is a commenting agency

	<b>Primary Purpose</b>	<b>Lead &amp; Assisting Roles</b>
Provincial Policy Statement (2014)	Municipal land use planning decisions must be consistent with matters of Provincial interest outlined in the PPS; advice, comments, or submissions provided by an agency of the government, that affect a planning matter, must be consistent with the PPS.	Ministry of Municipal Affairs and Housing/municipalities; TRCA provides technical clearance on Natural Heritage, Natural Hazard, and Water components of the PPS
MNR/MMAH/CO Memorandum of Understanding (2001)	To delegate responsibility to CAs for upholding the natural hazards section of the PPS, under the provincial “one window” planning system; to outline roles in the review of <i>Special Policy Areas</i> (SPAs) under Section 3.1 of the PPS	Conservation authorities where the Province is not involved; for SPAs, MNR and MMAH; conservation authorities participate in SPA review
<i>Environmental Assessment Act</i> (1990)	To provide for the protection, conservation, and wise management of the environment; applies to public sector projects and major private sector projects.	Ministry of the Environment; TRCA provides technical clearance
<i>Greenbelt Act</i> and Plan (2005)	To designate a Greenbelt Area and establish a Greenbelt Plan; to protect about 1.8 million acres of environmentally sensitive and agricultural land in the Golden Horseshoe from urban <i>development</i> and sprawl.	Municipalities; TRCA provides technical clearance
<i>Oak Ridges Moraine Conservation Act</i> and Plan (2001)	To provide land use and resource management planning direction to decision makers, landowners and other stakeholders on how to protect the Moraine’s ecological and hydrological features and functions.	Municipalities; TRCA provides technical clearance
<i>Niagara Escarpment Planning and Development Act</i> and Plan (1990, rev. 2005)	To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such <i>development</i> occurs as is compatible with that natural environment.	Niagara Escarpment Development Commission; municipalities; TRCA provides technical clearance
<i>Places to Grow Act, 2005 and Growth Plan for the Greater Golden Horseshoe</i> (2006)	To enable decisions about growth to be made in ways that sustain a robust economy, build strong communities, promote a healthy environment, and a culture of conservation.	Municipalities; TRCA provides technical advice where applicable
<i>Lakes and Rivers Improvement Act</i> (1990)	To provide for the management, protection, preservation, and use of the waters of the lakes and rivers of Ontario and the land under them.	Conservation Authorities on behalf of Ministry of Natural Resources, except for works involving a dam
<i>Ontario Water Resources Act</i> (1990) – Section 34 Permits to Take Water – Section 53 Certificates of Approval for SWM facilities	To provide for the conservation, protection and wise use and management of Ontario’s waters; an MOE Permit is required for water takings (ground and/or surface) of over 50,000 litres per day; an MOE Certificate of Approval is required for stormwater management facilities	Ministry of the Environment; TRCA provides technical clearance
<i>Endangered Species Act</i> (2007)	To identify species at risk based on the best available scientific information, including information obtained from community knowledge and aboriginal traditional knowledge. To protect species that are at risk and their habitats, and to promote the recovery of species that are at risk. To promote stewardship activities to assist in the protection and recovery	Ministry of Natural Resources; TRCA may direct proponents to MNR (TRCA does not screen under ESA but may provide data to the Province if available)

	<b>Primary Purpose</b>	<b>Lead &amp; Assisting Roles</b>
	of species that are at risk.	
<i>Clean Water Act</i> (2006)	To protect existing and future sources of drinking water. Specifically, to protect the quality and quantity of drinking water at its source.	Ministry of the Environment; Ministry of Natural Resources: municipalities and conservation authorities
<i>Ontario Heritage Act</i> (1990)	To give municipalities and the provincial government powers to preserve the heritage of Ontario, with its primary focus being to protect heritage properties and archaeological sites.	Ministry of Tourism, Culture and Sport; TRCA for TRCA-owned lands and TRCA-managed lands
<i>Green Energy Act</i> (2009)	To boost investment in renewable energy projects and increase conservation, creating green jobs and economic growth to Ontario; applications under the Act are not exempt from permits under conservation authority regulations, but permit applications can only be assessed using 4 of the 5 tests of a CA regulation (i.e., the “conservation of land” test cannot be used).	Ministry of Energy and Infrastructure; TRCA processes <i>Green Energy Act</i> applications for energy infrastructure under Ontario Regulation 166/06, as required
<i>Public Lands Act</i> (1990)	Outlines the use, management, sale and disposition of public lands and forests; also empowers the Province to construct and operate dams on waterways throughout the Province; public lands are crown lands, school lands, and clergy lands.	MNR; TRCA provides technical clearance where applicable
<i>Building Code Act</i> (1992)	Governs standards for the construction and demolition of buildings.	Municipalities; TRCA provides technical clearance
<b>Municipal</b>		
Regional and Municipal Official Plans, Zoning By-laws, Site Plan Control (requirements of <i>Planning Act</i> ) including fill, tree and ravine and natural feature protection by-laws, growth management & sustainability plans, natural heritage system policies and significant area designations in OPs	To allow for the orderly <i>development</i> of a municipality, while incorporating and implementing Provincial planning direction (PPS, ORM and Greenbelt Plans, etc.).	Regional Municipalities; Local Municipalities; TRCA provides input to the development of these municipal policies, plans and by-laws, and provides advice to municipalities in their application.
<b>Conservation Authorities</b>		
<i>Conservation Authorities Act</i> (1990)	The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, <i>restoration</i> , <i>development</i> , and management of natural resources other than gas, oil, coal, and minerals.	Conservation authorities; many <i>watershed</i> partners

	Primary Purpose	Lead & Assisting Roles
<b>TRCA</b>		
TRCA Watershed Plans, Fish Management Plans, Stormwater Management Criteria Document, LID SWM Planning and Design Guide, Erosion and Sediment Control Guideline for Urban Construction, Headwater Drainage Features Guidelines, and other <i>TRCA Standards</i> found in the Planning and Development Procedural Manual	(The Province encourages CAs to develop watershed and subwatershed management plans) to inform municipalities in their creation and updating of official plan policies. Watershed plans may also provide technical information and recommendations for municipalities when making decisions on planning and environmental assessment applications. In the case of other TRCA guidelines and studies are carried out under Section 21 of the <i>Conservation Authorities Act</i> : To study and investigate the watershed...; and to cause research to be done; and to further the science that helps TRCA and its municipal partners plan for more sustainable development.	TRCA; municipalities; other <i>watershed</i> partners
Ontario Regulation 166/06 (Development, Interference with Wetlands, and Alterations to Shorelines and Watercourses) (2006)	To prohibit, regulate, or require the permission of the Authority for <i>development (1)</i> if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land may be affected by the <i>development (1)</i> ; and, To prohibit, regulate, or require the permission of the Authority for straightening, changing, diverting, or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland.	TRCA
The Living City Policies (20xx)	A program to further the conservation, <i>restoration, development,</i> and management of natural resources, as per Section 21 of the <i>Conservation Authorities Act</i> , that guides TRCA's role in planning and in environmental assessments, and in the application of Ontario Regulation 166/06.	TRCA; municipalities, to the extent the program is incorporated into their official plans (OPs)
Environmentally Significant Areas Study (1982, 1994)	Identifies areas of environmental significance based on specific criteria and suggests direction for their recognition and management.	Municipalities, to the extent the program is incorporated into their OPs; (no longer in use by TRCA)
Terrestrial Natural Heritage System Strategy (2007)	To identify the natural heritage system and to set targets for increasing <i>natural cover</i> within TRCA's jurisdiction; implemented in The Living City Policies.	TRCA; municipalities, to the extent the Strategy is incorporated into OPs
Toronto Waterfront Aquatic Habitat Restoration Strategy (TWAHRS) (2003)	To maximize the <i>ecological integrity</i> of the Toronto waterfront by ensuring that waterfront revitalization incorporates improvements to aquatic habitats.	TRCA; City of Toronto

	<b>Primary Purpose</b>	<b>Lead &amp; Assisting Roles</b>
<b>Other</b>		
Rouge Park Management Plan (1994)	To guide <i>development</i> of the Rouge Park south of Steeles Avenue East.	City of Toronto; TRCA
Rouge North Management Plan (2001)	To guide <i>development</i> of the Rouge Park north of Steeles Avenue East.	City of Markham, Towns of Richmond Hill, and Whitchurch-Stouffville; York Region; TRCA

Notes: "TRCA technical clearance" is as it relates to natural hazards and natural heritage, including water management.

There are many technical guidelines associated with the above listed pieces of legislation and programs, e.g., MNR Technical Guidelines, Natural Heritage Reference Manual.