

Consolidated Clause in Planning and Transportation Committee Report 2, which was considered by City Council on April 25, 26 and 27, 2006.

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**Toronto and Region Conservation Authority  
Regulation of Development, Interference with Wetlands and  
Alterations to Shorelines and Watercourses  
(Ontario Regulation 97/04)**

*City Council on April 25, 26 and 27, 2006, adopted this Clause without amendment.*

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**The Planning and Transportation Committee recommends that City Council adopt the staff recommendations in the Recommendations Section of the report (February 20, 2006) from the Chief Planner and Executive Director, City Planning.**

Action taken by the Committee:

The Planning and Transportation Committee requested staff to meet with officials from the Toronto Region Conservation Authority to develop a protocol for dealing with applications within the expanded area delineated by the amended section 28 of *The Conservation Authorities Act*.

**The Planning and Transportation Committee submits the report (February 20, 2006) from the Chief Planner and Executive Director, City Planning:**

Purpose:

To advise Council of the Toronto and Region Conservation Authority's proposed Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses which is scheduled to come into effect by May 1, 2006 in compliance with Ontario Regulation 97/04.

Financial Implications and Impact Statement:

There are no financial implications arising from this report.

Recommendations:

It is recommended that:

- (1) the Toronto and Region Conservation Authority be requested to amend the proposed Regulation of Development, Interference with Wetlands and Alterations to Shorelines

and Watercourses to eliminate the proposed 15 meter buffer in the City of Toronto, and if required, request the Province to amend the Generic Regulation to reflect the same;

- (2) the Toronto and Region Conservation Authority be requested to give notice to area municipalities of any future change or amendments to the maps attached to the Regulation setting out the Regulation Limit;
- (3) the Province of Ontario be requested to delay the enforcement of the Toronto and Region Conservation Authority's Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses until a transition protocol for projects in the pipeline has been established; and
- (4) the appropriate City officials be authorized and directed to take the necessary action to give effect thereto.

Background:

In 1995 the Province undertook a review of the *Conservation Authorities Act* under the direction of the Red Tape Commission. The intent was to bring clarity and consistency to existing legislation and eliminate regulations that are no longer needed, and to ensure consistency with the *Planning Act* and Provincial Policy Statement with respect to natural hazards and natural heritage features. This resulted in revisions to Section 28 (1) of the *Conservation Authorities Act* and these were incorporated into the *Act* in 1997.

Toronto City Council, at its meeting on October 28, 29 and 30, 1998 adopted a report outlining the City's concerns and position regarding the proposed changes to the *Conservation Authorities Act* for submission to the Standing Committee on Administration of Justice. City Council recommended a number of changes to the proposed amendments to the *Conservation Authorities Act* to 'clearly eliminate duplication and potential conflict between a municipality's planning authority under the *Planning Act* and a conservation authority's authority under the *Conservation Authorities Act*'. These included deletion of section 28 5 e) which allows conservation authorities to regulate 'other areas' as defined by the Minister where development should be prohibited; and to eliminate remaining concerns for duplication arising from the use of the term 'development' by clarifying details of the appropriate regulatory powers of conservation authorities in a supporting generic regulation or a Toronto and Region Conservation Authority (TRCA) specific regulation, or a memorandum of understating.

None of Council's concerns in these areas have been addressed.

Ontario Regulation 97/04, also known as the "Generic Regulation" was approved on May 1, 2004 and is consistent across Ontario. It provides for the content of Conservation Authority regulations for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses. Conservation Authorities have until May 1, 2006 to bring their current Fill, Construction and Alteration to Waterways Regulations into conformity with regulation 97/04. The TRCA's proposed Regulation will be before the Full Authority for endorsement at its meeting on March 24<sup>th</sup>, and then will be submitted to the Minister.

The draft Regulation mapping was provided to City staff on January 30, 2006 for review and comment by February 24, 2006. City of Toronto staff attended a Municipal Information Session held in October 2005; a public open house for Toronto residents was held on February 2, 2006.

This report discusses the implications of the TRCA's new Regulation to the City.

### Comments:

#### 1997 Amendments to the *Conservation Authorities Act*

The amendments to Section 28 of the *Conservation Authorities Act* allows conservation authorities to prohibit, regulate or require the permission of the authority for development if the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development in the regulated areas. It also allows Conservation Authorities to expand their area of regulation beyond the river and stream valleys to include wetlands, shorelines, and 'Other Areas' where, in the opinion of the Minister, development should require the permission of the authority.

As stated in the 1998 report adopted by City Council, the City had concerns with the amendments to Section 28 in terms of the potential consequence of duplication and conflict with municipal planning authority approval functions and conservation authority functions with respect to development, due to the use of the broader term 'development', the expansion of areas to which the regulation may apply, and vagueness of what could be identified as 'other areas' to be regulated. These concerns were not addressed in the text of the Generic Regulation or the TRCA's new Regulation. The implications are discussed in the following section.

#### TRCA's proposed Regulation

The Generic Regulation was approved on May 1, 2004 for all conservation authorities across Ontario. It establishes the requirements for content that a regulation made by an authority must meet, including the types of areas that authorities may regulate. The TRCA's new Regulation is in compliance with Ontario Regulation 97/04.

#### Restrictions on Development

The TRCA's new Regulation prohibits development, except where the Authority has given its permission, in or on the river and stream valleys (ravines); hazardous lands; the Lake Ontario shoreline; wetlands; and 'other areas' as approved by the Minister. The Regulation also prohibits alterations to watercourses or wetlands.

The current TRCA Fill Regulation states no person shall construct a building or structure within any area susceptible to flooding under a regulatory storm event; place fill within scheduled fill areas; and interfere or alter a watercourse.

The new Regulation is significantly broader than the existing regulation in that it prohibits 'development' vs. the construction of buildings or structures. 'Development' is defined within the Conservation Authorities Act to mean:

- (a) construction, reconstruction, erection or placing of a building or structure of any kind;
- (b) any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;
- (c) site grading; or
- (d) the temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

This was a concern of the 1998 report adopted by Council. This prohibition of development within the Regulation limits significantly expands the role of the TRCA into areas of development approval. It means that the TRCA's permission is required for development proposals such as live-work conversions, internal unit conversions, or alterations to existing buildings.

The Regulation outlines that the Authority may grant permission for development if, in the Authority's opinion, the control of flooding, erosion, dynamic beaches, pollution, or conservation of land will not be affected by the development. The permission may be given with or without conditions.

Pollution is defined in the amended Section 28 of the *Conservation Authorities Act* as 'any deleterious physical substance or other contaminant that has the potential to be generated by development in an area to which a regulation applies'. This definition is quite broad and it is not clear if it is intended to address more than water quality issues. The 1990 *Conservation Authorities Act* referred to control of pollution and conservation of land only in terms of how it could be affected by the placing or dumping of fill. The definition is sufficiently wide-ranging so as to permit its application to many different development impacts, whether or not they are related to the control of flooding and erosion. This situation could overlap with the City's role in addressing impacts during the approval of development.

#### Areas Affected

The new Regulation also considerably expands the area where a permit will now be required. While the City currently sends planning applications within the fill regulated and fill extensions areas to the TRCA for their review, a permit is only required from the Authority to construct in flood susceptible areas or to place fill within the fill regulated areas.

The new Regulation requires a permit for development in all the areas within the Regulation Limits, including the flood plain and adjacent valley slopes, shorelines and wetlands and a 15 metre allowance. This is a potential duplication of development approval functions between the TRCA and the City and could result in potential conflict of opinion between the TRCA and the City.

Map 1 illustrates the differences between the previous Fill Regulation Line and the new Regulation area. Under the existing Fill Regulation, 14,177 properties fall within the TRCA's jurisdiction and there are 12,371 buildings that fall within the Regulation line. Under the Proposed Regulation, there will be 35,206 properties within the TRCA's jurisdiction and 38,274 buildings that fall within the Regulation line. The proposed Regulation will establish

TRCA jurisdiction over 22,166 new properties that they currently do not regulate, while 27,293 new buildings will fall within the TRCA regulated area.

This also means that the TRCA can prohibit development that is on tableland 15 metres beyond the stable top of bank, which would appear to exacerbate the potential for duplication and potential conflict. For this reason, it is proposed that the TRCA limit the Regulation to the areas below top of bank, and other areas traditionally susceptible to flooding. The proposed 15 metre buffer should be eliminated as the City's development controls apply to these areas.

The following areas are proposed to be regulated under the TRCA's new Regulation:

#### Ravines (River and Stream Valleys)

The area regulated along river and stream valleys under the new Regulation is the greatest extent of the flooding and erosion hazard limits plus an allowance of 15 metres. The criteria used to determine the extent of hazard include crest of slope, the engineered and estimated flood lines and the meander belts. In the City of Toronto, the TRCA's crest of slope is consistent with the top of bank as defined by the Ravine Protection By-law.

In Toronto, the boundaries of the new Regulation limit along the river and stream valleys are generally consistent with the existing fill regulated areas plus the fill extension areas. Some new areas are identified, including the mouth of the Don and the Toronto Islands along flood vulnerable locations in the City which were determined through updates of the flood model. At the mouth of the Don River, 1,064 properties are currently regulated by the TRCA. The proposed Regulation will bring an additional 1,222 properties under TRCA jurisdiction (see attached Map 2). The Regulation limit does not account for the proposed berm at the mouth of the Don.

The boundaries of the new Regulation and the Ravine Protection By-law are not consistent with each other as they are intended for different purposes and are based on different criteria. For example, in an ill-defined valley the Regulation limit may extend beyond the Ravine Protection boundary, as it would be based on the extent of the flood plain.

#### Shorelines

The new Regulation governs the Lake Ontario shoreline where it may be affected by flooding, erosion or dynamic beaches plus an allowance of 15 metres. The current Fill Regulation regulates the shoreline along the Scarborough bluffs only.

#### Wetlands

An important change in the new Regulation is the addition of wetlands. The TRCA has mapped wetlands with an area of 0.5 ha or greater, based on the Ministry of Natural Resources wetland mapping and TRCA's Ecological Land Classification Vegetation Type. The Regulation also includes the Province's standard 'Area of Interference' which is 120 metres around all provincially significant wetlands and 30 metres around all other wetlands in Southern Ontario. In Toronto, there are very few wetlands which were not previously protected.

## Right of Appeal

The duplication of development approval functions is complicated by the lack of a common appeal and resolution process. There is potential for the City, which is a body charged with balancing many interests, to approve a development application that the TRCA, which is charged with addressing a smaller set of interests, might refuse. Appropriate resolution of such differences would be difficult given that a development proponent must appeal the City's decision to the Ontario Municipal Board, yet must appeal the TRCA's decision to the Minister of Natural Resources.

## Applicable law

On July 1, 2005, the *Building Code Statute Law Amendment Act, 2002*, amended the Ontario Building Code to introduce a definition of applicable law (OBC s.1.1.3.3.) for the purposes of Section 8 of the *Building Code Act*. Under Section 8, the Chief Building Official is obligated to issue a building permit if all applicable law has been complied with.

The current definition of applicable law includes regulations made by a conservation authority under Clause 28(1)(c) of the *Conservation Authorities Act* that prohibit construction of a building or structure in or on a pond or swamp or in any areas susceptible to flooding during a regional storm without a permit issued by the conservation authority. However, the definition did not reference the current (1997) version of the *Conservation Authorities Act*. Pending provincial government approval, the definition of applicable law is expected to be revised prior to May 1, 2006 to reference Ontario Regulation 97/04 and correct this technical error. This means that a building permit for a development within the generic regulation area can be withheld if the applicant does not receive approval from the TRCA.

## Implementation

Currently, the City sends all planning applications that are within the fill regulation and fill regulation extension areas to the TRCA for their review. Construction within a flood susceptible area or placement or dumping of fill within a fill regulated area requires a permit from the Authority. Building permits can only be withheld in areas susceptible to flooding.

The implementation of the new Regulation will mean that any development within a greatly expanded area will now require the TRCA approval prior to building permit issuance. This means an additional 22,166 properties will require the permission of the TRCA (for example this would apply to an additional 1,222 properties at the mouth of the Don River).

The new Regulation also differs in that the text of the Regulation prevails in the case of a conflict between the regulated area described in the text regulation and the mapping. This is a significant change from the current Regulation where the flood line schedules are registered together with the text Regulation and changes to mapping require that the Regulation be amended. Mapping can now be updated to reflect current technical information and data on an on-going basis. Given that the TRCA relies on municipalities to screen development applications for the applicability of Ontario Regulation 97/04, it is imperative that the TRCA makes the maps widely available with current data to landowners, developers and municipalities and that a protocol is developed on how the mapping is amended and the public and municipalities notified.

In addition, the issue of existing or pipeline projects or applications needs to be addressed. If, after the Regulation comes into effect, a development proponent has received planning approval for lands within the newly regulated area, but not a building permit, they would now be required to go to the TRCA which could result in a significant change of plans. As well, some planning applications may well be quite advanced and could be affected by the new regulation. A transition protocol is needed, but has not been provided for in the regulation.

Conclusions:

The TRCA's new Regulation will significantly expand the role of the TRCA in the City. Permission of the TRCA will be required for all 'development' in all areas within the Regulation Limits, where previously it was only required for construction within the flood susceptible areas. This can potentially lead to duplication of approval functions and potential conflicts of opinions, specifically on tableland properties within in the 15 metre allowance. A protocol for advising of amendments to the Regulation mapping and a transition protocol for development applications caught in the pipeline when the new Regulation comes into force need to be established.

The General Manager of Toronto Water, the General Manager of Parks, Forestry and Recreation and the City Solicitor were consulted in the preparation of this report.

Contact:

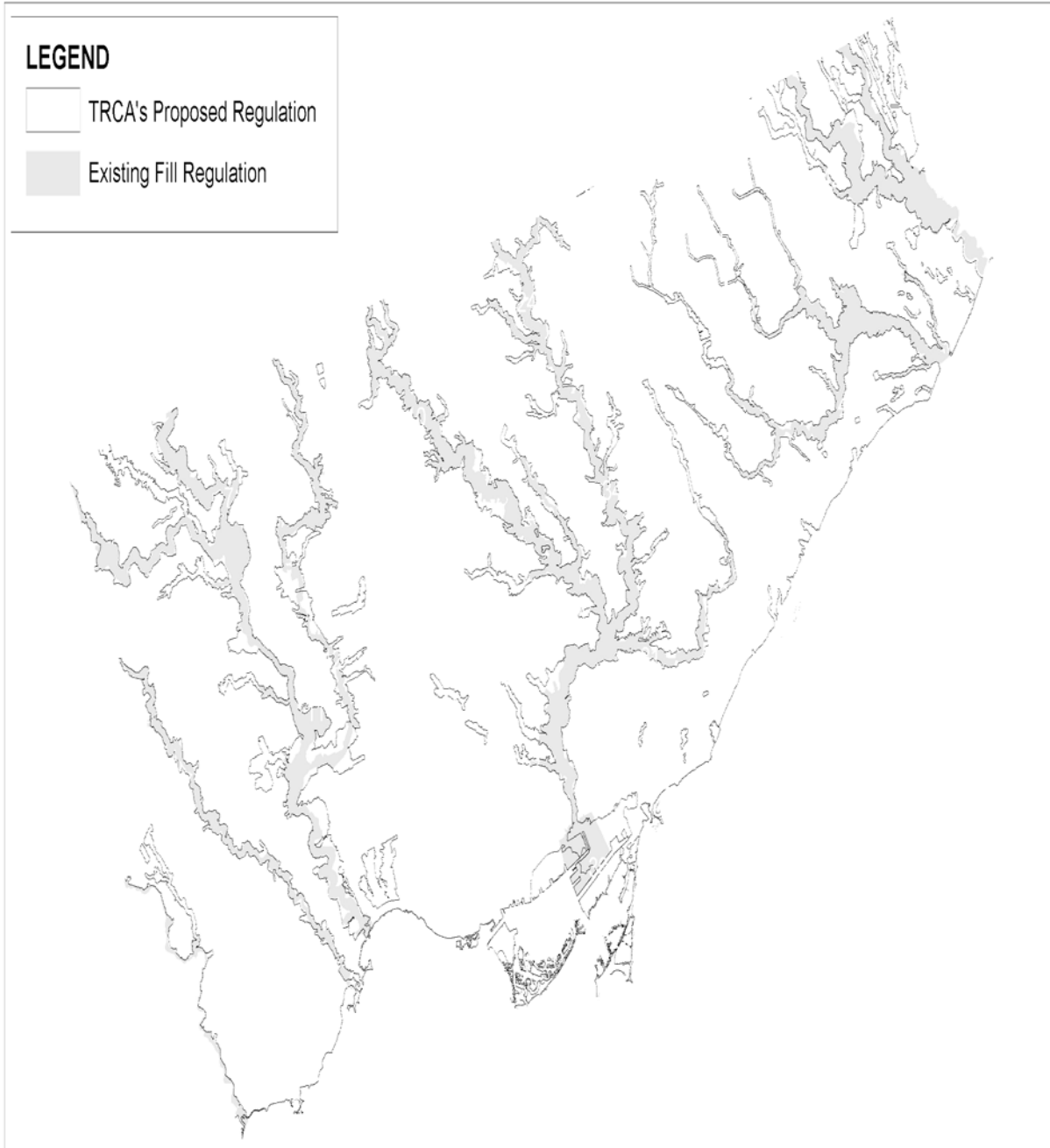
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The Planning and Transportation Committee considered a communication (March 3, 2006) from Brian Denney, Chief Administrative Officer, Toronto and Region Conservation for the Living City.

Map 1: Existing TRCA Fill Regulation and TRCA Proposed Regulation





Map 2: Existing and Proposed TRCA Regulated Properties

