Submission to the Standing Committee on Finance and Economic Affairs

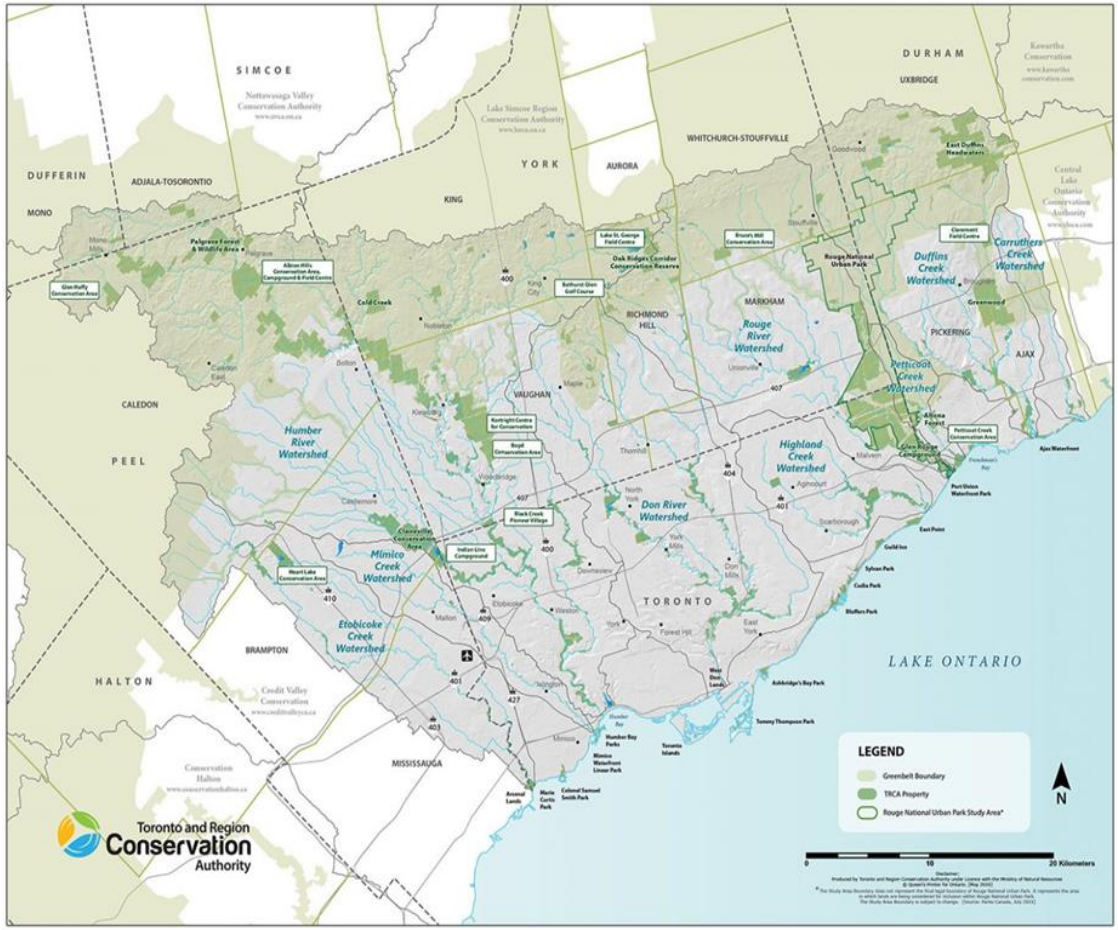
Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020
Schedule 6, Conservation Authorities Act

Presented by: Jennifer Innis, Chair
John MacKenzie, CEO

Toronto and Region Conservation Authority

November 30, 2020

TRCA Overview



As the largest of the 36 Provincial Conservation Authorities, TRCA's jurisdiction spans nine watersheds in addition to their collective Lake Ontario Shoreline:

- Carruthers Creek
- Don River
- Duffins Creek
- Etobicoke Creek
- Highland Creek
- Humber River
- Mimico Creek
- Petticoat Creek
- Rouge River

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TRCA Overview

TRCA's jurisdiction spans six upper-tier and 15 lower-tier municipalities.

Some of Canada's largest and fastest growing municipalities, including Toronto, Markham and Vaughan, are located entirely within TRCA's jurisdiction. Almost 5 million people live in our watersheds, and damage and costs from flooding are rising due to extreme weather events and climate change.

The context for TRCA's work is continuously evolving, making it important to adapt the organization's strategic direction so that it remains relevant and linked to those of our partners.

Upper-Tier Municipality	Lower-Tier Municipality	% of Population Within TRCA Jurisdiction
Dufferin County	Mono (Town)	5
Durham Region	Ajax (Town)	86
Durham Region	Pickering (City)	95
Durham Region	Uxbridge (Township)	19
Peel Region	Brampton (City)	63
Peel Region	Caledon (Town)	55
Peel Region	Mississauga (City)	33
Simcoe County	Adjala-Tosorontio (Township)	4
Toronto (Single-Tier)	Toronto (City)	100
York Region	Aurora (Town)	4
York Region	King (Township)	45
York Region	Markham (City)	100
York Region	Richmond Hill (City)	99
York Region	Vaughan (City)	100
York Region	Whitchurch-Stouffville (Town)	43

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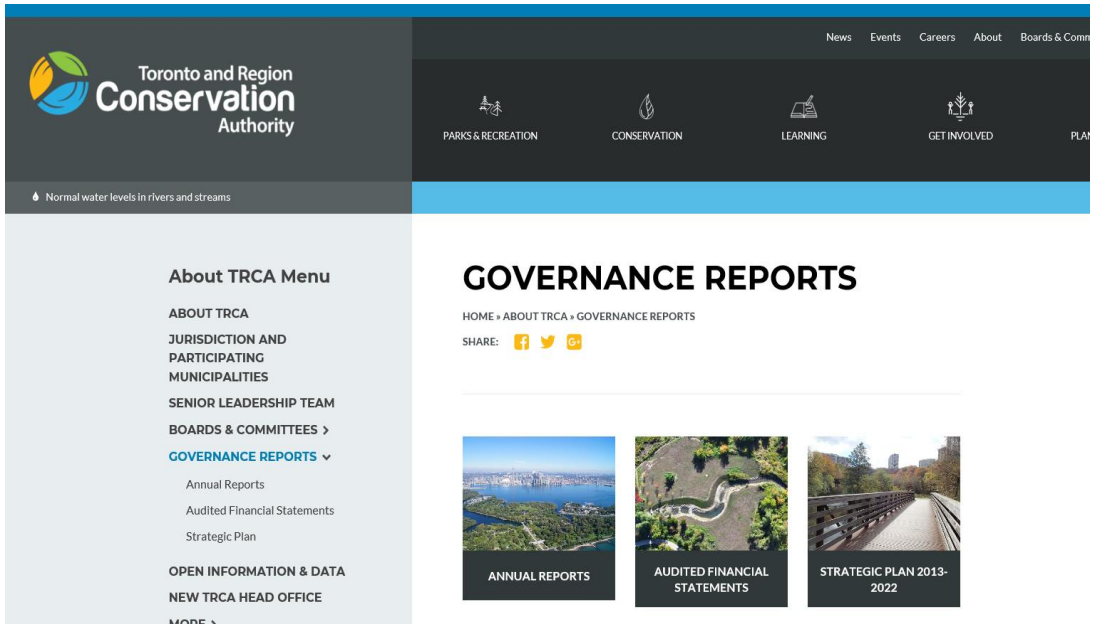
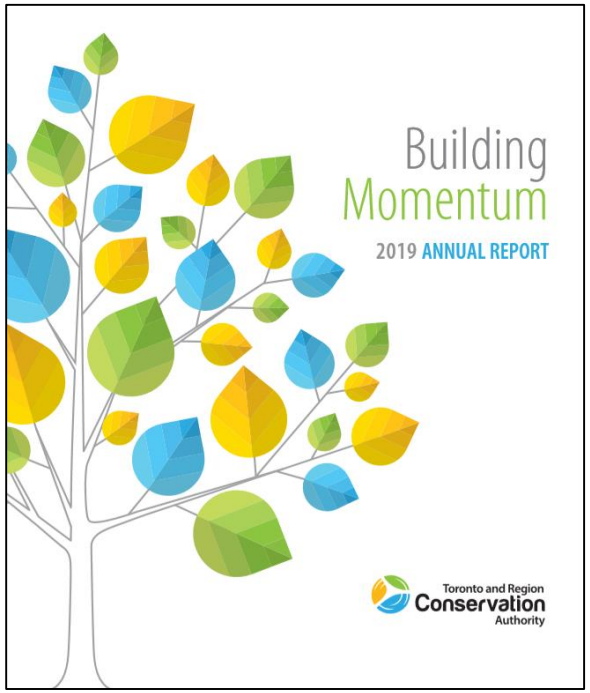
Bill 229: Transparency and Accountability

TRCA supports amendments to enhance transparency and accountability as it is consistent with TRCA's current practice and levels of service to our stakeholders.



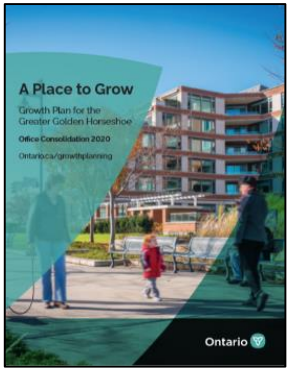


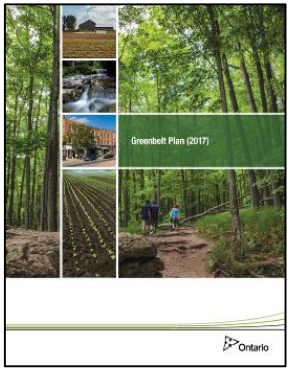
Bill 229 – TRCA Recommendations

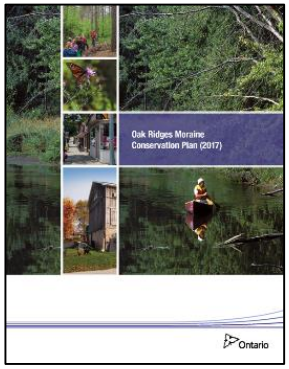
- Municipalities and community organizations in our jurisdiction, along with our neighbouring conservation authorities, have requested that Schedule 6 be removed from Bill 229.

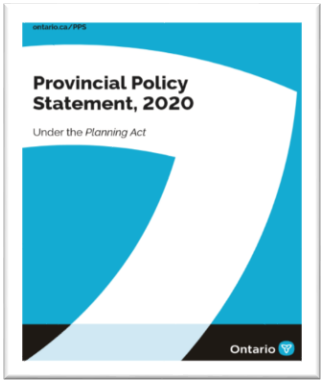
- TRCA can support moving forward with transparency and accountability components in Schedule 6, but is requesting that governance, planning, permitting and enforcement provisions in Schedule 6 be:
  1. Removed from Bill 229, or
  2. Immediately amended to address significant public concerns as part of Bill 229
- If the government intends on immediately passing amendments to address public concerns with Schedule 6, TRCA requests that the proposed amendments provided in our submission related to governance, planning, permitting and enforcement amendments be adopted so that we can continue to fulfill our core mandate of protecting communities and the natural environment.

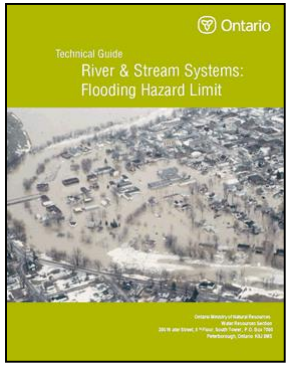
Why the CA Act and Regulation are so important – local, science-based decision making







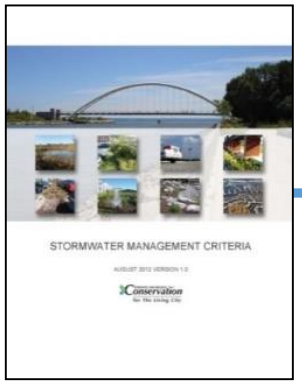


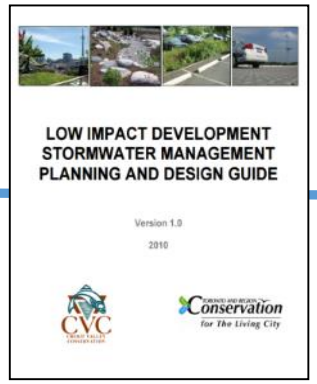


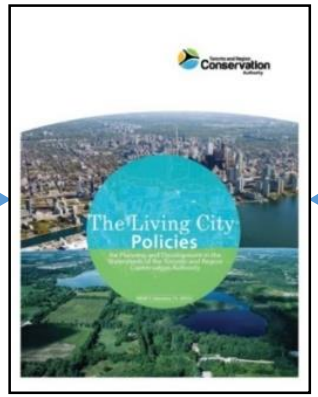
Provincial Plans, Policies & Technical Guidelines

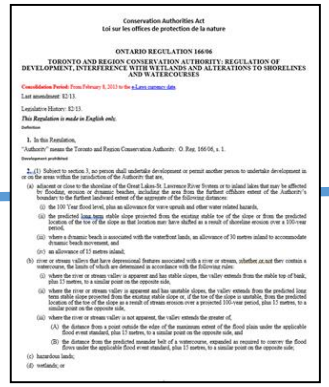
Municipal plan input, development and environmental assessment review, permitting and compliance, policy analysis, technical expertise & advice

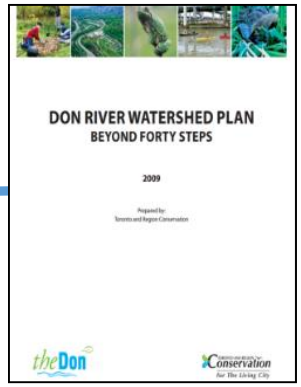
CA Watershed Plans, Policies, Regulation & Technical Guidelines











Bill 229: Planning Act Amendments

BILL 229

<u>Planning Act</u>

26. Subsection 1 (2) of the *Planning Act* is amended by striking out "all ministries" and substituting "all conservation authorities under the *Conservation Authorities Act* and all ministries".

TRCA RECOMMENDATION

Remove or add new subsection 1(2.1) to the *Planning Act* to scope focus of CA appeals

Limitation, conservation authorities

(2.1) The term "public body" in subsection (1) excludes all conservation authorities under the *Conservation Authorities* Act in respect of subsections 17 (24), (36), (40) and (44.1), 22 (7.4), 34 (19) and (24.1), 38 (4), 45 (12), 51 (39), (43), (48) and (52.1) and 53 (19) and (27), except in relation to the **risk of natural hazards, or the conservation and management of lands owned or controlled by the authority**.

RATIONALE

Amendment will focus conservation authority appeals and party status to matters related to:

- risks of natural hazards
- the conservation and management of lands owned or controlled by the authority

Conservation Authority Regulated Areas

Bill 229: CA Act Permitting Amendments

BILL 229

- Authorize the **Minister** of Natural Resources and Forestry to issue an order to take over and decide an application for a permit in place of the CA (i.e. before CA has made a decision on an application).
- Allows an applicant to request the **Minister** to review a CA's decision and/or appeal non-decisions to the LPAT within prescribed timeframes.
- Provide permit applicants with the ability to appeal CA permit fees to the LPAT.

TRCA RECOMMENDATION

- **Retain current permit approval and appeal process (remove proposed two-tier process)**
- **Retain the Mining and Lands Tribunal as the appeal body**
- **Revise proposed amendment to include complete application requirements**

RATIONALE

- TRCA issues 1,000+ permits/year in a timely manner with no appeals in several years.
- Removes CA decision-making authority that operates on local, science-based technical expertise.
- The LPAT does not have the same science-based experience adjudicating conservation authority legislation, policies, regulatory tests or permits as that of the Mining and Lands Tribunal, which has decades of case law

Enforcement and Compliance Challenges

Unlawful large-scale filling

Unlawful filling on unstable slope

Imminent risk from illegal construction

with potential impacts on TRCA-owned lands

Unlawful wetland destruction

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Unlawful activities – TRCA landholdings

Bill 229: Enforcement Amendments
(Warrantless Entry Provisions)

BILL 229

- Changes to the circumstances when an entry to land may be exercised by a CA **officer** so that such circumstances are similar to, but **narrower** than, the entry powers now in effect in section 28 of the Act.

TRCA RECOMMENDATION

Revision to 30.2 (1) - Entry without warrant, permit application

An **authority or an** officer appointed by an authority under section 30.1 may enter any land situated in the authority's area of jurisdiction, without a warrant and without the consent of the owner or occupier, if,

(a) an application has been submitted under section 28.1 or 28.1.1 for a permit to engage in an activity with respect to the land;

(b) the entry is for the purpose of determining whether to issue a permit; and

(c) the officer has given reasonable notice of the entry to the owner and to the occupier of the property.

RATIONALE

The revision to 30.2(1) would permit conservation authority staff who are not officers (e.g., CA technical staff) to access a property for purposes of considering a permit application.

Bill 229: Enforcement Amendments
(Warrantless Entry Provisions)

BILL 229

- Changes to the circumstances when entry to land may be exercised by a CA **officer** so that such circumstances are similar to, but **narrower** than, the entry powers in effect in s. 28 of the Act.

TRCA RECOMMENDATION

Revision to Section 30.2(2) - Entry without warrant, compliance

(1.1) An officer appointed by an authority under section 30.1 may enter any land situated in the authority's area of jurisdiction, without a warrant and without the consent of the owner or occupier, if,

(a) the entry is for the purpose of ensuring compliance with subsection 28 (1) or a regulation made under section 28.5 or with the conditions of a permit issued under section 28.1 or 28.1.1 or of a permit issued under a regulation made under clause 28.5 (1) (c);

(b) the officer has reasonable grounds to believe that a contravention of a provision of the Act or a regulation referred to in clause (a) or of a condition of a permit referred to in clause (a),

(i) is causing or likely to have a significant effect on the control of flooding, erosion, dynamic beaches or the pollution or conservation of land, or

(ii) is likely to create conditions or circumstances in the event of a natural hazard that might jeopardize the health and safety of persons or result in significant damage or destruction of property; ~~**and**~~ **<u>or</u>**

(c) the officer has reasonable grounds to believe that the entry is required to prevent or reduce the effects or risks described in clause (b).

RATIONALE

Clauses should be independent of each other. For greater certainty, clause (a) is intended for **<u>compliance</u>** (e.g., auditing approved permits and conditions)

Clause (b) is intended for significant **<u>contraventions</u>** (e.g., no permits or significant non-compliance with an approval) - allows for early negotiations to achieve compliance.

Clause (c) is intended as immediate action to **<u>prevent or reduce effects</u>** that pose an imminent risk or threat (e.g. large –scale filling); without a stop work order there is no mechanism in place to achieve compliance

Bill 229: Enforcement Amendments
(Stop Order – Repealed)

BILL 229

- Stop Order Section 30.4 repealed in its entirety and removes an officer's ability to stop works under any circumstances.

TRCA RECOMMENDATION

Amend and scope Section 30.4

Stop Order
30.4 (1) An officer appointed under section 30.1 may make an order requiring a person to stop engaging in or not to engage in an activity if the officer has reasonable grounds to believe that the person is engaging in the activity, has engaged in the activity or is about to engage in the activity and, as a result, is contravening,
(a) subsection 28 (1) or a regulation made under subsection 28 (3) or under section 28.5~~; or~~
~~(b) the conditions of a permit that was issued under section 28.1 or under a regulation made under clause 28.5 (1) (c)~~.

RATIONALE

- Provides greater clarity and certainty regarding the scope of a CA's ability to issue a stop work order tied to the tests of the regulation
- Would remove the ability to issue a stop work order for contravening conditions of a permit

Bill 229: Enforcement Amendments (Enhanced Provisions)

BILL 229
• No changes proposed to enforcement provisions regarding CA landholdings relating to Section 29.

TRCA RECOMMENDATION
• **Additional provisions are needed. Similar protections afforded to Ontario's Provincial Parks and Provincial Enforcement Officers needed for CAs.**

RATIONALE
• TRCA one of the largest landowners in GTA • Limits ability to protect and effectively address ongoing abuses of public land and address unlawful activities and protect our valuable greenspaces and our watersheds for future generations

Bill 229: Governance Amendments
(Member Responsibilities)

BILL 229

Duty of Members

14.1 - Every member of an authority shall act honestly and in good faith and, in the case of the members appointed by participating municipalities, shall generally act on behalf of their respective municipalities.

TRCA RECOMMENDATION

- **Every member of an authority shall act honestly and in good faith with a view to furthering the objects of the authority**.

RATIONALE

- Counter to the watershed-based governance model established by the Act and the NPCA Audit recommendation.
- Board members have a fiduciary duty to act on behalf of the CA they are appointed to, rather than their respective municipalities – otherwise, potential conflict of interest.

Bill 229: Governance Amendments (Authority Members)

BILL 229

Municipal councillors appointed

14 (1.1) - The members of the authority shall be municipal councillors chosen by each municipal council from among its own councillors.

TRCA RECOMMENDATION

Citizen representatives

- **14 (1.2) - Where a participating municipality is unable to adhere to subsection (1.1), a conservation authority may request Minister approval for the participating municipality to appoint a defined number of citizen representatives.**

RATIONALE

- Municipalities may not be reasonably able to comply with new Section
- For example, 60% of City of Toronto Council would be required to be members of the authority
- Eliminates the highly valued, local needs perspective of municipally-appointed citizen representatives

Bill 229: Governance Amendments (Term Limits)

BILL 229
<u>Term of Chair, vice-chair</u> 17 (1.1) - A chair or vice-chair appointed under subsection (1) shall hold office for a term of one year and shall serve for no more than two consecutive terms.

TRCA RECOMMENDATION
• **CA terms should align with municipal council terms (terms of two years and shall serve for no more than two consecutive terms).**

RATIONALE
• CA term limits should align with municipal council terms to facilitate business continuity and consistency in business operations.

Bill 229 - Summary Recommendation

TRCA supports the transparency and accountability provisions in Schedule 6 in Bill 229 but is requesting that the governance, planning, permitting, and enforcement provisions be either removed from the omnibus bill or significantly amended, as per TRCA's recommended amendments, so that conservation authorities can fulfill their core mandate of protecting communities and the natural environment.

Toronto and Region
Conservation
Authority