

**FURTHER TO AUTHORITY MEETING #11/05**  
**To be held Friday, January 27, 2005**

**Pages**

**7. SECTION I - ITEMS FOR AUTHORITY ACTION**

**LISTED ON AGENDA AS REPORT TO FOLLOW - ITEMS 7.3 & 7.4**

<b>7.3</b>	<b>ENVIRONMENTAL ASSESSMENT FOR THE DON MOUTH NATURALIZATION AND PORT LANDS FLOOD PROTECTION PROJECT</b> Terms of Reference	20-26
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**TO:** Chair and Members of the Authority  
Meeting #11/05, January 27, 2006

**FROM:** Adele Freeman, Director, Watershed Management

**RE:** **ENVIRONMENTAL ASSESSMENT FOR THE DON MOUTH  
NATURALIZATION AND PORT LANDS FLOOD PROTECTION PROJECT**  
Terms of Reference

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**KEY ISSUE**

Direction to staff to finalize the Terms of Reference for the Environmental Assessment for the Don Mouth Naturalization and Port Lands Flood Protection Project

**RECOMMENDATION**

**THAT staff be directed to complete the Terms of Reference for the Don Mouth Naturalization and Port Lands Flood Protection Project based on the report provided to the Authority, January 27, 2006;**

**THAT the said Terms of Reference be submitted to the Ministry of the Environment (MOE) with the concurrence of the Toronto Waterfront Revitalization Corporation (TWRC);**

**AND FURTHER THAT staff continue to support the City of Toronto in its view that the planning application with respect to the Home Depot Lands; property which lies within the EA Study Area as well as within the eastern portion of the East Bayfront; is premature.**

**BACKGROUND**

Toronto and Region Conservation Authority (TRCA) staff are currently proceeding with the Don Mouth Naturalization and Port Lands Flood Protection Project (DMNP). This project is the second half of one of the initial priority projects identified in March 2001 by the Federal Government, the Province of Ontario and the City of Toronto to initiate the revitalization of the Toronto Waterfront. TRCA was identified as the agent for this work and has signed an eligible recipient agreement with the Toronto Waterfront Revitalization Corporation (TWRC) to conduct this work.

In 2003, TRCA undertook a competitive procurement process to seek the services of a consulting team to lead the preparation of the Individual Environmental Assessment and Functional Design for the mouth of the Don and to address the flood risk to the regional storm level. Due to a number of factors, this project began in earnest in the spring of 2005.

The first step of the development of an Individual Environmental Assessment (EA) requires the development of a Terms of Reference (ToR) for the actual development of the Individual EA.

The public, agencies, utilities, interest groups and landowners have been consulted throughout the development of the ToR and will continue to be consulted during the preparation of the EA. This has included, to date, three meetings of an interagency Technical Advisory Committee (TAC) established by TRCA resolution #A243/01, four meetings of a Community Liaison Committee (CLC) established by TRCA Resolution #A89/05, two public forums, three smaller workshop sessions, and a site walk. In addition, numerous individual meetings/conversations have taken place with land owners or their agents and other stakeholders.

The draft Terms of Reference in its present form consists of 9 sections: Introduction; Proponent; Purpose of the Proposed Undertaking; EA framework; Description and Rationale for the Proposed Undertaking; Description, Evaluation and Rationale for " Alternatives to" the Undertaking; Description, Evaluation and Rationale for "Alternative Methods" of Carrying Out the Undertaking; Description of Environmental Potentially Affected by the Proposed Undertaking; and Consultation Plan. Approximately 9 figures will be included in the ToR depicting the Project Study Area, the Impact Assessment Area and the area currently prone to flooding under the Regional Storm.

### Goals and Objectives

At the outset of the project, a draft goal and set of objectives were presented to the public. The goal is a statement of the overriding purpose of the DMNP. The project objectives are statements of what the project is trying to achieve once implemented. In its current form the goal of the DMNP is to establish and sustain the form, features, and functions of a natural river mouth within the context of a revitalized City environment while providing flood protection up to the Regulatory flood.

The objectives are to:

1. Naturalize and rehabilitate the mouth of the Don River utilizing an ecosystem based approach.
2. Provide flood protection for Spill Zones 1 and 2.
3. Maintain the provision for navigation and existing flood protection through sediment, debris and ice management.
4. Integrate existing infrastructure functions that could not be reasonably moved or removed (including road, rails, utilities, trails, and power).
5. Encourage additional compatible recreation, cultural heritage opportunities and public/handicap accessibility.
6. Contribute to the revitalization and sustainability of the waterfront and coordinate with and inform other planning and development efforts and associated certain and foreseeable infrastructure.
7. Design and implement this project in a manner consistent with TWRC's Sustainability Framework.

The goal and objectives have been refined based on comments received at the various venues.

Key messages received from the public forum, TAC and CLC meetings have included:

1. People are eager to see the DMNP move forward.
2. The DMNP should have a mix of approaches to naturalization and flood protection that both “leave it to nature” and involve a “human fix”.
3. Naturalization opportunities should be maximized, with mixed views on the relative importance of flood protection.
4. There is a desire to see a delta and/or marsh as a key part of this project.
5. It is critical that the needs of this project be conveyed to and inform other projects in the area.
6. This project should not negatively impact use of the bike trails, Cherry Beach, the sailing clubs or existing areas of environmental value.
7. The DMNP should create improvements to the trail system, increased appropriate accessibility (including handicapped), and more options for people traveling south through the City to cross into the Port Lands.
8. The project needs to be developed in the context of the entire Don watershed and be adaptable over time.
9. Broadly speaking, many people are generally comfortable with the evaluation approach.
10. Public involvement in the process is critical.

#### Description of Study Areas

Two specific study areas have been defined for this project. The Project Study Area is the area available for the development of naturalization and flood protection alternatives. The Impact Assessment Study Area is a broader area in which direct and indirect effects of the DMNP construction and operation may be felt. Maps of both study areas are attached and colour copies will be available at the Authority meeting.

The Project Study Area consists of two parts: the Don mouth from the railway bridge to the harbour/lake and lands adjacent to the Lower Don River, and the Don narrows from the railway bridge north to Riverdale Park. This is the area in which project components will be constructed and operated.

The lands east of Parliament Street and south of Lakeshore Blvd., (known as the “Home Depot lands”), and the small quay at the entrance to the Keating Channel have been included in the Project Study Area to ensure that there is sufficient area to look at options for the river mouth. A 300 metre wide corridor immediately west of and parallel to the Don Roadway, which includes the proposed Don Greenway, connects the Keating Channel to the Ship Channel to address previously identified alignments for the Don River. As the consideration of alternatives and environmental effects proceeds during the EA, adjustments may be made to the Project Study Area.

The Impact Assessment Study Area encompasses the entire inner harbour, outer harbour, Toronto Islands, Ashbridges Bay and central waterfront areas. The Impact Assessment Study Area includes existing operations and infrastructure such as rail lines, rail yards, road networks, utilities, port operations, and other existing and proposed uses that might be affected by the DMNP or affect the design and operation of the DMNP.

### Temporal Boundaries

The temporal boundaries for the project which will be used as the basis for the effects assessment are as follows:

- Construction/Implementation – 2 to 5 years (target start date 2008);
- Establishment – defined as the timeframe for monitoring and adaptive management of the naturalization project (approximately the first 15 years after construction); and
- Post Establishment Monitoring – timeframe for monitoring and operational management (sediment, ice and debris) to identify further intervention if naturalized system cannot manage on its own (onwards from the establishment phase).

### Alternatives To

The EA Act requires the identification and evaluation of “alternatives to” the undertaking or functionally different ways of solving the identified problem or opportunity. For the DMNP, “alternatives to” have been defined by the river’s discharge points to the lake. The “alternatives to” identified to be carried forward to the EA stage are representative of those put forward in the past. They have been refined and additional alternatives have been considered based on public comment received during the preparation of the ToR. Each alternative to be considered during preparation of the ToR underwent a screening level evaluation. From that evaluation, the following “alternatives to” have been identified as those with the greatest potential to meet the project goal and objectives and thus, will be carried forward to the EA stage:

- i. Do Nothing (required by the EA)
- ii. Discharge to the Inner Harbour
- iii. Discharge through the Port Lands to the Ship Channel
- iv. Two discharge points (primary and regional flood overflow) to the inner harbour and discharge through the Port Lands to the Ship Channel

Should other “alternatives to” be identified during the EA, they will be considered by TRCA if they are considered reasonable and if they have good potential to meet project objectives.

### Alternative Methods

“Alternative methods” are different ways of designing the river mouth and flood protection. Using river mouth environments within the southern Great Lakes Basin as examples, a long-list of “alternative methods” will be developed for each of the “alternatives to”. The identification of “alternative methods” gives prime consideration to the characteristics of the river and the ability to fulfill the naturalization and flood protection objectives in the context of the river conditions. This long list of “alternative methods” will undergo a technical feasibility assessment to identify those alternatives that have the greatest ability to meet the naturalization and flood protection objectives. The remaining short list of “alternative methods” will be refined or developed in more detail by addressing the other project objectives related to operational management, integration with infrastructure, and recreation and cultural opportunities. A preferred alternative will be selected from this shortened list of alternatives following a comparative evaluation process used to identify the best alternative that addresses the project goal and objectives.

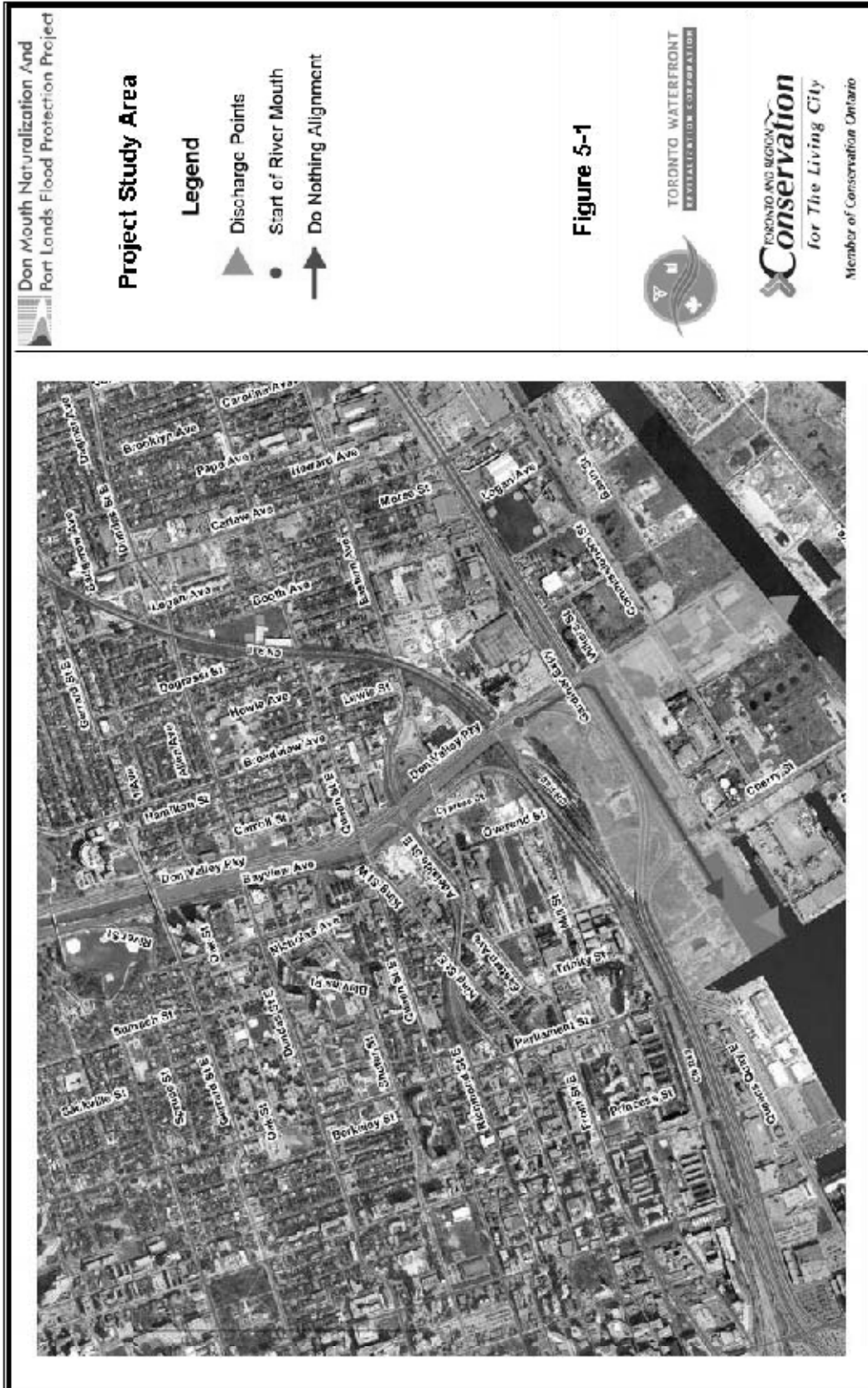
## **DETAILS OF WORK TO BE DONE**

- Mid January – Early February, 2006: Internal review of draft ToR, including incorporation of public comments from Public Forum #2, held January 10, 2006.
- January 17, 2006: TRCA to update MOE representatives on the status of the DMNP ToR.
- Early February, 2006: Draft ToR to be made available to the TAC, CLC, and members of the public listed on DMNP Public Distribution list (includes those who attended public meetings and those who have expressed interest in the project) for review and comment. Comments are due two weeks from the date of release of the draft.
- February, 2006: Internal review of draft ToR to incorporate comments received during the two weeks of public review.
- Early March, 2006: After incorporation of comments from the public review, ToR to be submitted to MOE.

## **FINANCIAL DETAILS**

Funding for the ToR has been provided by TWRC. TRCA has advised TWRC that an increase in the overall budget for the DMNP will be required to complete the environmental assessment. The principle reasons for this increase are due to: increased effort to scope the EA to a reasonable number of options; complexity of parallel infrastructure issues affecting the project; planning initiatives and development proposals that affect the project; requirement for technical analysis to address public and agency issues; increased study area in response to public and agency input; recognition of TWRC costs not originally allocated to the project; cost escalations due to delay in project start; and project management and transaction costs. TRCA staff will report back to the Authority regarding this request.

**Report Prepared by: Adele Freeman, extension 5238**  
**For Information contact: Adele Freeman, extension 5238**  
**Date: January 25, 2006**  
**Attachments: 2**





Den Mouth Naturalization And  
Port Lands Flood Protection Project

**Impact Assessment  
Study Area**

**Figure 5-2**



TORONTO WATERFRONT  
REVITALIZATION CORPORATION

TORONTO AND REGION  
**Conservation**  
for The Living City  
Member of Conservation Ontario

**TO:** Chair and Members of the Authority  
Meeting #11/05, January 27, 2006

**FROM:** Carolyn Woodland, Director, Planning and Development

**RE:** **BILL 51 AMENDMENTS TO THE PLANNING ACT AND CONSERVATION  
LAND ACT**

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**KEY ISSUE**

Summarizes key changes proposed by Bill 51 and offer additional changes.

**RECOMMENDATION**

**THAT** Toronto and Region Conservation Authority (TRCA) commend the Province for its reforms to the Ontario Municipal Board (OMB) and support the proposed amendments to the Planning Act and the Conservation Land Act, subject to the incorporation of further minor amendments set out in the following recommendations;

**THAT** section 7 of Bill 51 (contents of official plans) be amended to give clear guidance that official plans must address, at minimum, all matters of provincial interest, as listed in section 2 of the Planning Act;

**THAT** section 21(4) of Bill 51 (new types of land dedications as conditions of subdivision approval) be amended to include a new subsection as 51 (25)(e) of the Planning Act, to allow for the dedication to a public authority of natural hazards lands, natural heritage systems and natural heritage features and areas;

**THAT** TRCA supports the proposed amendment to the Planning Act to permit the approval of zoning amendments with conditions and recommends that any prescribed conditions allow for:

- an Environmental Impact Study, to determine protection requirements for Natural Heritage Features and Areas and for establishing the limits of development;
- a preliminary Stormwater Management Report, to identify conceptually how stormwater will be managed to prevent flooding and erosion hazards and protect water quality;
- the acquisition of or placing of covenants on Natural Heritage Features and Areas;
- the payment of fees associated with the processing and review of the application; and
- a timeline, such as 3 to 5 years, within which the conditions must be met, otherwise the conditional approval is void.

THAT TRCA work with our municipal partners to amend official plans, should they so choose, as provided for in various sections of Bill 51, to:

- specify sustainability criteria for redevelopment proposals seeking relief from fees in lieu of parkland dedication;
- specify information requirements to be submitted by applicants for consents, zoning amendments and the subdivision of land;
- and, contain policies allowing for zoning with conditions;

AND FURTHER THAT the Minister of Municipal Affairs and Housing, TRCA's participating municipalities and Conservation Ontario be advised of the position taken by TRCA with respect to Bill 51.

## **BACKGROUND**

The Province of Ontario has been engaged in ongoing planning reform for the past several years. Toronto and Region Conservation Authority (TRCA) has been involved through staff attendance at various consultation sessions, submissions to the province of comments approved by the Authority, contributing to comments submitted by Conservation Ontario and by having TRCA's solicitor delivering verbal submissions to the Greater Toronto Area (GTA) Task Force on Ontario Municipal Board (OMB) Reform. Most recently, through Resolution #B160/04, as approved at Executive Committee meeting #7/04, held on August 6, 2004, TRCA provided comments relating to Planning Act Reform and Implementation Tools, draft policies of the Provincial Policy Statement (PPS) and Ontario Municipal Board Reform. Prior to that, TRCA provided its initial comments on proposed reforms to the OMB, as approved at Executive Committee meeting #12/02, held on January 17, 2003, which authorized solicitor Bruce Ketcheson to present those comments to the GTA Task Force on OMB Reform. Staff reported to the Watershed Management Advisory Board meeting #1/05 on April 15, 2005 to provide a summary of the key changes to the PPS, as newly updated and effective March 1, 2005. The current report summarizes the changes related to OMB reform, additional changes to the Planning Act and new changes to the Conservation Land Act, as proposed through Bill 51.

## **SUMMARY AND ANALYSIS OF BILL 51**

### **OMB Reform**

The following table outlines TRCA's previous comments with respect to reform of the Ontario Municipal Board (OMB) and how they have been addressed through other initiatives, or are proposed to be addressed through Bill 51. In general, many of the concerns expressed by TRCA (and indeed by many municipalities) have been addressed in a fairly significant fashion.

TRCA Comments	How Comments Have Been Addressed
<p>Need for a Comprehensive Approach to Planning to avoid/minimize negative environmental impacts by:</p> <ul style="list-style-type: none"> <li>● Having stronger and clear provincial policy and legislation;</li> <li>● Monitoring the outcomes of OMB decisions to determine if impact mitigation measures are actually working; and</li> <li>● Preventing the strategic early filing of planning applications in order to shelter under older, less protective policies.</li> </ul>	<ul style="list-style-type: none"> <li>● A comprehensive planning approach has been put in place within TRCA jurisdiction through provincial plans and policies such as the PPS 2005, Greenbelt Act and Plan, Places to Grow Act (and future Growth Plan) and Clean Water Act. In particular, watershed planning has been given greater prominence.</li> <li>● Bill 51 requires planning decisions to be based on the provincial plans and policies in place at the time of decision (not at the time of filing the application).</li> <li>● Bill 51 requires municipalities to have up-to-date official plans and zoning by-laws.</li> <li>● Monitoring of OMB decisions has not been specifically addressed.</li> </ul>
<p>Timeframes Associated with Appeals:</p> <ul style="list-style-type: none"> <li>● Time allowed for review of complex scientific information is too short;</li> <li>● Applications are often incomplete and appeals are filed prior to receipt of all relevant information;</li> <li>● There is a need to redefine what constitutes a complete application.</li> </ul>	<ul style="list-style-type: none"> <li>● The Strong Communities Act, 2004 amended the Planning Act to provide longer review times before appeals to the OMB may be launched.</li> <li>● Bill 51 provides that hearings now deal with only information previously submitted by an applicant, not new information, making them potentially less onerous and time-consuming.</li> <li>● Bill 51 enhances the prescribed information that must be submitted and permits municipalities, through official plan policies, to establish additional information requirements.</li> </ul>
<p>Cost Recovery from the appellant for staff resources compelled to provide expedited reviews and attendance at OMB hearings.</p>	<ul style="list-style-type: none"> <li>● This has not been addressed for conservation authorities. However, new limitations on who can appeal, what can be appealed, introduction of new materials and what body will hear the appeal, may help to reduce overall costs spent on hearings.</li> <li>● Municipalities appear to be provided some relief with the authority to charge fees to appellants to the new local appeal body that may be established to hear appeals to municipal decisions on minor variances and consents.</li> </ul>

## **Planning Reform and Promoting Sustainable Development**

In addition to reform of the OMB, Bill 51 amends the Planning Act in several ways to provide additional tools for implementation of provincial policies. The amendments to the Planning Act relate to promoting sustainable development, intensification and brownfield redevelopment. Some of the more significant changes of relevance to TRCA detailed in Bill 51 (additional to those identified above) include:

- Amending section 2 of the Planning Act to add to the list of matters of provincial interest "the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians." (s.2);
- Requiring that official plans be updated every five years to conform with/be consistent with provincial plans and policies, as well as requiring zoning by-laws to be updated within three years after the official plan update (s.12);
- Amending the definition of "community improvement" to include "improvement of energy efficiency" and allowing for grants or loans to be made for eligible costs related to the (re)development of lands and buildings for the provision of energy efficient retrofits (s.13);
- Allowing for official plans to contain policies specifying what kinds of information need to be submitted in support of amendments to zoning by-laws (s.14), plans of subdivision (s.21) and consents (s.22);
- Allowing for official plans to contain policies to permit zoning approvals with conditions (s.14);
- Allowing for relief from fees in lieu of parkland dedication for redevelopment applications, provided that official plans contain sustainability criteria (s.16);
- Strengthening the criteria to be considered in the review of draft plans of subdivision to include "the extent to which the plan's design optimizes the available supply, means of supplying, efficient use and conservation of energy." (s.21);
- Broadening the conditions with respect to highway dedications that may be applied to a conditional approval of a plan of subdivision to include pedestrian pathways, bicycle pathways and public transit right of ways (s.21);

The proposed amendments lend further support to planning for growth and development to be undertaken in a more sustainable and energy efficient manner. In general, staff support these proposed amendments to the Planning Act and have the following suggestions for how Bill 51 can be improved.

Section 7 of Bill 51 defines the required contents of official plans rather vaguely as "goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality..." Staff recommend that clearer direction should be given that the contents of official plans must address, at minimum, all matters of provincial interest, as specified in section 2 of the Planning Act.

As noted above, section 21(4) of Bill 51 proposes to amend sub-clause 51 (25) (b) of the Planning Act to allow as a condition of subdivision approval the dedication of lands for pedestrian pathways, bicycle paths and public transit right of ways. TRCA staff recommend that a new part (e) be added to sub-section 51 (25) of the Planning Act to permit as a condition of approval the dedication to a public authority of natural hazards lands, natural heritage systems and natural heritage features and areas. These are lands that TRCA typically tries to protect through the planning process and prevents development from occurring on these lands in accordance with the PPS.

With respect to allowing for and prescribing conditions of approval for zoning amendments, staff strongly support this provision of Bill 51. This would allow staff to request studies in support of the application at an early stage in order to ascertain the level of impacts predicted and give to development proponents a measure of certainty as to what costs/restrictions they may face in order to minimize/mitigate predicted impacts. In particular, staff recommend that suitable conditions to zoning approval would be to have the ability to require, as dictated by site-specific circumstances:

- an Environmental Impact Study, to determine protection requirements for Natural Heritage Features and Areas and for establishing the limits of development;
- a preliminary Stormwater Management Report, to identify conceptually how stormwater will be managed to prevent flooding and erosion hazards and protect water quality;
- the acquisition of or placing of covenants on Natural Heritage Features and Areas;
- the payment of fees associated with the processing and review of the application; and
- a timeline, such as 3 to 5 years, within which the conditions must be met, otherwise the conditional approval is void.

Additionally, a number of the amendments proposed in Bill 51 would require their adoption into municipal official plans in order to make the proposed amendments effective. This includes: sustainability criteria (to permit relief from fees in lieu of parkland dedication); allowing for conditions of zoning approval; and for the specifying of information requirements that need to be submitted in support of amendments to zoning by-laws, plans of subdivision and consents. TRCA planning staff will need to work closely with our municipal counterparts to ensure appropriate criteria, conditions and information requirements are included in official plan policies.

### **Conservation Land Act Amendments**

The major change to the Conservation Land Act (CLA) is to include protection of water quality and quantity and watershed protection and management as purposes for which conservation easements and covenants may be established. "Further purposes" may be added by regulation. Also, Bill 51 amends the CLA to include as a purpose "conservation, preservation or protection of land for agricultural purposes".

Also, there are technical amendments to the legislation to facilitate creation and preservation of conservation easements and covenants and Bill 51 further provides that "construction and demolition" on land subject to a conservation easement or covenant requires approval of the conservation body that is a party to the easement or covenant.

Bill 51 amends the Planning Act to ensure subdivision control and part lot control provisions of section 50 do not interfere with creation of conservation easements and covenants. The Conveyancing And Law of Property Act is amended to prevent conservation easements or covenants from being modified or discharged by a court. Similarly, The Land Titles Act is amended to exempt conservation easements or covenants from various technical restrictions that apply to easements and covenants in general. Finally, the Municipal Act is amended to clarify that land sold for tax arrears remains subject to conservation easements or covenants.

Staff support all of the proposed amendments.

**Amendments to the Duffins Rouge Agricultural Preserve Act, 2005 (Bill 16)**

Bill 16 also proposes to amend the Conservation Land Act, in particular, subsection 3(2) which defines the purposes for which conservation easements or covenants may be created, to include as a purpose "conservation, preservation or protection of land for agricultural purposes". Bill 16 and Bill 51 have provisions to ensure that the amendments to subsection 3(2) as described in the foregoing section on Bill 51 are consistent.

**Report prepared by: David Burnett, extension 5361**

**For Information contact: David Burnett, extension 5361 & Jim Dillane, extension 6292**

**Date: January 20, 2006**