

**FURTHER TO WATERSHED MANAGEMENT ADVISORY BOARD AGENDA #3/03
To be held on Friday, July 11, 2003**

FURTHER TO:

Pages

5. PRESENTATIONS

NOT AVAILABLE TO MAKE THE PRESENTATION

- 5.2** A presentation by Mr. Dick Gordon of Cansult Limited, in regards to item 7.2 - Status of the Pine Valley Drive Link, OPA 600 OMB Appeal, and the Pine Valley Drive Link Environmental Assessment.
Invited to make a presentation

7. SECTION I - ITEMS FOR AUTHORITY ACTION

The project descriptions did not print out in the original agenda so the full report has been attached.

- 7.4 REMEDIAL ACTION PLAN (RAP) MEMORANDUM OF UNDERSTANDING (MoU) PROJECT PROGRESS REPORT 2002/2003 AND 2003/2004 PROPOSED PROJECTS** 26-31

LISTED AS REPORT TO FOLLOW ON AGENDA

- 7.8 LEGAL POSITION WITH RESPECT TO ENVIRONMENTAL ASSESSMENT PROCESS AND THE GTA NORTH TRANSPORTATION CORRIDOR** 38-46

TO: Chair and Members of the Watershed Management Advisory Board
Meeting #3/03, July 11, 2003

FROM: Adele Freeman, Acting Director, Watershed Management

**RE: REMEDIAL ACTION PLAN (RAP) MEMORANDUM OF UNDERSTANDING
(MoU) PROJECT PROGRESS REPORT 2002/2003 AND 2003/2004
PROPOSED PROJECTS**

KEY ISSUE

Year one of the 2002-2007 RAP MoU completed in March 2003 and a progress report has been prepared outlining RAP achievements. A list of proposed projects to be funded in 2003/2004 has been prepared

RECOMMENDATION

THE BOARD RECOMMENDS TO THE AUTHORITY THAT the Project Progress Report for 2002/2003 RAP MOU projects be received;

THAT the 2003/2004 Proposed Project Listing for the RAP MoU be approved;

AND FURTHER THAT staff report back to the Watershed Management Advisory Board in September when the RAP Team has completed its 5-Year Planning and Public Engagement Strategy (Communications Plan).

BACKGROUND

The Toronto and Region Remedial Action Plan (RAP) Memorandum of Understanding (MoU) was signed in 2002. This five-year agreement between Environment Canada, The Ministry of the Environment and the TRCA coordinates and implements projects to restore beneficial uses in the Toronto and Region Area of Concern (AoC).

At the January 10, 2003 Authority Meeting, Resolution #A285/02 was approved as follows:

THAT staff be directed to carry out the 2002/2003 activities as approved by the Federal and Provincial representatives;

AND FURTHER THAT staff be directed to provide annual updates on RAP implementation activities to the Authority.

Year one of the MoU was completed March 31, 2003. The following lists projects implemented in 2002/2003 under the \$400,000 budget (\$200,000 contribution from Environment Canada and The Ministry of the Environment respectively). For each project a brief summary of the progress and/or products that the RAP MoU funding has enabled is included. The dollar value indicated for each project reflects the RAP MoU contribution to these projects. While, in some cases, this contribution is small in terms of the entire project budget, it represents important matching, leverage and/or seed funding that enables these projects to be carried out.

2002/2003 Projects Completed Under the RAP MoU:

Clean Waters

Greenroofs for Stormwater Management - \$20,000

- Establishment of monitoring objectives for stormwater assessment;
- Development of a monitoring program for stormwater assessment;
- Purchase and installation of monitoring equipment and sensors; and
- Creation of a website to facilitate the sharing of project results with both a secure and public access components.

Rural Stewardship Program - \$10,000

- Assisted 43 private landowners in the establishment of best management practices on their property;
- Assembled information packages on a variety of related rural topics to distribute to landowners and other inquiries;
- Developed a partnership with Ducks Unlimited which allowed staff to participate in 27 public events (17 educational seminars, 4 public restoration events, and 6 public fairs/conferences); and
- Assisted in the implementation of 14 projects to improve water quality (through the reduction of phosphorous entering watersheds, native tree and shrub planting, and wetland creation)

Rural Water Quality Management Plan - \$10,000

- Set-up and validated the AGNPS model for the Humber River Watershed; and
- Completed fertilizer and land/use survey of the Centreville Creek subwatershed which will be used as input data for the model at the subwatershed scale.

Erosion and Sediment Control Project - \$5,000

- Completed two reports: *Sediment Control Pond Monitoring Study* (Ryerson University, March 2003) and *Preliminary Assessment for Improved Design Criteria for Construction Sediment Control Ponds* (Clarifica Inc., March 2003).

Leithcroft Farm Retrofit - \$20,000

- Consultant was hired by Markham to undertake a Class Environmental Assessment to evaluate alternative stormwater pond retrofit designs; and
- A detailed design and report was prepared for the selected stormwater retrofit design by the consultant.

Technology Transfer - \$10,000

- Preparation of the Sediment Control Workshop took place in 2002/2003 and remaining funding was deferred to 2003/2004 for the workshop implementation (May 7, 2003). Surplus funding will be used to carry out additional technology transfer projects in 2003/2004 which will be reported on in next years' progress report.

Habitat Action

Regeneration Projects - \$5,000

- Habitat Implementation Plans for the Humber and the Etobicoke Mimico have been developed which determine potential restoration sites on TRCA property throughout the watershed, using digital ortho-photo interpretation; and

- Potential sites were ground truthed to determine the feasibility of those which were candidates for habitat restoration. Based on the information collected on-site, a short list of candidate sites for habitat restoration has been developed.

Fisheries Management Plans - \$20,000

- Data collection needs were met and the establishment of survey stations was completed. Because the project started late in the fiscal year, unspent funding will be deferred to the 2003/2004 fiscal year. Additional work will be reported on in next years' progress report.

Waterfront Habitat Restoration Strategy - \$20,000

- Establishment of a Aquatic Habitat Restoration Strategy Advisory Panel; and
- Completion of the Draft Toronto Waterfront Aquatic Habitat Restoration Strategy 2003.

Community and NGO Action

Community Stewardship Program - \$10,000

- Establishment of a Stewardship Resource Centre at the Boyd Field Centre; and
- Carried out more than 25 conservation seminars across the watersheds to educate private landowners and general interest groups.

Watershed on Wheels - \$20,000

- Program reached more than 12,916 student, 926 teachers/leaders, 45 Yellow Fish Road Program Groups and 35 Aquatic Planting Events at 20 wetland restoration sites; and
- Communications were enhanced with the decal design for the Watershed on Wheels truck, an aquatic plants sticker kit, and a new storm drain marking concept and door hanger for the Yellow Fish Road Program.

Monitoring and Research Action

Regional Monitoring Program - \$25,000

- Annual implementation of the Regional Monitoring Program was carried out including the development of the 2001 summary report.

Regional Reference Site - \$12,500

- Compilation of physical and biological data from more than 300 stations across the north shore of Lake Ontario; and
- Initial data analysis began.

Needs Further Assessment Items (Assessing Tumours in Fish) - \$20,000

- Terms of Reference was developed and Gartner Lee was retained to prepare the "Review and Assessment of the Status of Fish Tumors and Other Deformities as an Impaired Beneficial Use within the Toronto Area of Concern"; and
- Experts in fish pathology and monitoring met to establish a Draft Monitoring Protocol for the fish tumour monitoring to be carried out in 2003.

Sustainability

Watershed Strategy Implementation - \$60,000

- Newsletters, events, public policy and advocacy for all watersheds in the Toronto and Region AoC and the waterfront;

- Completion of the Cold Creek Conservation Area Management Plan (Humber Watershed), Lower Don EA Preliminary Agreements (Don Watershed), Etobicoke/Mimico Strategy (Etobicoke/Mimico Creek Watersheds); and
- Establishment of the Etobicoke and Mimico Creek Watersheds Alliance.

Terrestrial Natural Heritage - \$20,000

- Progress made in the areas of: field inventories, characterization, landscape analysis and target setting for the program.

Sustainability: Waterfront - \$20,000

- TRCA staff provided in-kind services to the Waterfront Workgroup of the Sustainability Round Table (SRT) which included commenting on key documents and consultation between the SRT and the Toronto Waterfront Revitalization Corporation.

Sustainability: Living City Centre - \$20,000

- Sustainable Communities Design Charette was carried out in February 2003.

Administration and Supply Costs - \$62,500

- Completion of RAP MoU documents such as: the 5-Year MoU, 2002/2003 Budget and Project Descriptions, 2002/2003 Project Progress Report, 5 Year Strategies, Website Update, Great Lakes Sustainability Fund Project Submissions, and other projects as assigned by RAP Team Members. Monthly RAP Team meetings were also coordinated through this funding allocation.

Waterfront Regeneration Trust (WRT) Support - \$10,000

- Completion of transition from a 4-party agreement (which included the WRT) to a 3-party agreement. WRT was compensated through RAP MoU funding for website alterations, staff time on transition issues and Suzanne Barrett's representation at Wet Weather Flow on behalf of the RAP.

A detailed progress report indicating project achievements and status has been prepared and submitted to Environment Canada and the Ministry of the Environment. TRCA staff Lisa Turnbull, the Community Liaison Officer for the RAP, will attend each of the watershed council and task force meetings to provide information on the 2002/2003 progress and the 2003/2004 programs.

Year 2 of the RAP MoU

Projects proposals were submitted to the RAP Team (consisting of TRCA, Environment Canada and Ministry of the Environment staff representatives) in February 2003 for the 2003/2004 fiscal year. Selections were made based on project compatibility with goals and objectives of the RAP and also the Canadian-Ontario Agreement for the Great Lakes Basin Ecosystem (COA), resigned in March of 2002. As in the 2002/2003 projects outlined above, many of the 2003/2004 projects will use RAP MoU funding in conjunction with the contribution of other partner funding and resources.

Proposed Projects for 2003/2004

Clean Waters

Greenroofs for Stormwater Management - \$30,000

- The Greenroofs for Stormwater Management project will be carried out at two locations to assess the potential of greenroof infrastructure aiming to reduce the quantity and improve the quality of stormwater runoff in a new building (York University) and in a retrofit situation (Eastville Community Centre site).

Erosion and Sediment Control - \$30,000

- The objectives of the Erosion and Sediment Control Project is to: enhance and assist in the development of guidelines for effective control of sediment and other runoff pollutants from construction sites by conducting performance analysis of the Richmond Hill sediment control pond, to increase awareness of erosion and sediment control, and to implement an Erosion and Sediment Control By-Law.
- The Burdenet Creek Erosion Control Optimization Study will also be completed under this funding to provide a preferred management plan for restoration of the watershed.

Wet Weather Flow Support - \$5,000

- Funding has been allocated to be directed at a project which supports the City of Toronto's Wet Weather Flow Management Master Plan. A specific project will be identified after further consultation with City of Toronto staff and RAP Team members.

Habitat Action

Terrestrial Natural Heritage Policy Development - \$30,000

- A planning consultant has been retained to facilitate discussions about the Terrestrial Natural Heritage (TNH) system implementation and assist the TRCA TNH team to write the final recommendations and strategy components of the program.

Habitat Implementation Plan - \$5,000

- Contribution will be made to the Habitat Implementation Program which will help put the Terrestrial Natural Heritage Strategy into action in the western watersheds: Etobicoke Creek, Mimico Creek and Humber River.

Education and NGO Action

Stewardship Projects (including Watershed on Wheels) - \$60,000

- Funding will support: Watershed on Wheels, the Aquatic Plants Program, Yellow Fish Road, the Stewardship Resource Centre, Stewardship Conservation Seminars, the Multi-cultural Environmental Stewardship Program, and the Private Land Stewardship Agriculture Program.

Sustainability Education - \$10,000

- Specific projects are to be determined (in consultation with TRCA education staff and RAP Team members).

Monitoring and Research

Regional Monitoring Program - \$35,000

- Implementation includes the continuation of the Regional Watershed Monitoring Program, the refinement of the tools used to measure and report on ecosystem indicators (Regional Reference Site approach), and enhancement of the methods for reporting on and sharing the information and data collected.

Needs Further Assessment (Assessing Tumours in Fish) - \$40,000

- Field collection and sampling will be done at selected sites and pathological analysis of fish livers samples will be made to continue with the previous years' work assessing tumors in fish. Collected data will be analyzed and a final report produced.

Sustainability

Watershed Strategy Implementation - \$100,000

- Activities, communications (including report cards for the Don and Humber), public policy and advocacy for all the watersheds in the Toronto and Region AoC and waterfront will be supported.

Living City Centre - \$30,000

- Funding will support the following Living City Centre projects: Super Sustainable Schools, Mayor's Megawatt Challenge and the demonstration of Sustainable Communities through the Block planning process.

Waterfront Sustainability Support - \$30,000

- TRCA staff time on the Sustainability Roundtable, Waterfront Sub-Group, will be funded.

Administration

General Administration - \$25,000

- Funding will be used to cover TRCA administration costs associated with the RAP MoU.

RAP Liaison/Communications/Materials/Watershed Toolkit - \$70,000

- Staff salary and materials will be funded. Communications, materials and the completion of a "Watershed Toolkit", is also included in this allocation.

The 2003/2004 RAP MoU reflects a \$50,000 increase in funding from both Environment Canada and The Ministry of the Environment. The contributions for this fiscal year will be \$250,000 respectively, totaling \$500,000.

The RAP Team is currently in the process of drafting its 2002- 2007 5-Year Plan and Public Engagement Strategy. Reports will be complete by September 2003 and brought to the Watershed Management Advisory Board for information. Both documents will outline key deliverables under the RAP MoU for 2002-2007.

Report prepared by: Lisa Turnbull, extension 5325
For Information contact: Lisa Turnbull, extension 5325
Date: June 20, 2003

TO: Chair and Members of the Watershed Management Advisory Board Meeting #3/03, July 11, 2003

FROM: Adele Freeman, Acting Director, Watershed Management Division

RE: LEGAL POSITION WITH RESPECT TO ENVIRONMENTAL ASSESSMENT PROCESS AND THE GTA NORTH TRANSPORTATION CORRIDOR

KEY ISSUE

A legal position related to the rights of the TRCA to influence the GTA North Transportation Corridor Environmental Assessment Proposal.

RECOMMENDATION

THE BOARD RECOMMENDS TO THE AUTHORITY THAT the legal opinion response related to the Environmental Assessment Process and the GTA North Transportation Corridor be received.

BACKGROUND

Issues of concern related to the transportation corridor study for the GTA North Transportation Corridor were identified at the February 21, 2003 Authority Board Meeting and June 13, 2003 Watershed Management Advisory Board Meeting. Resolution #D32/03 from the latter meeting is as follows:

THAT staff report back on the legal position of TRCA (related to the EA process) and how the Source Protection Planning Regulation for conservation authorities can be utilized with respect to highway planning.

Staff requested TRCA's solicitor to provide the requested legal position, which is attached to the staff report.

For Information contact: Carolyn Woodland, extension 5214

Report prepared by: Carolyn Woodland, extension 5214

Date: July 9, 2003

Attachments: 1



Memorandum

Date : July 9, 2003
To : Carolyn Woodland
From : J.Wigley
Subject : GTA North Transportation Corridor. Process and Legal Rights.

Introduction

Request has been made to clarify the legal rights of the TRCA in connection with the proposed extension of Highway 427 (the "GTA North Transportation Corridor"). The context in which this arises relates to the question of how the TRCA can legally go about influencing that decision.

This is an extremely complicated question. There are of course broad legal rights set out in the Conservation Authorities Act and other pieces of legislation. Within each of those acts and their associated regulations there are numerous other rights. The "right" to make a comment on an application or project is valuable but clearly the right to refuse or condition that application or project is more significant. In addition to this, there are "political" rights that are every bit as "legal" and may be legitimately used to influence a decision that is being made.

To try to simplify, the TRCA's legal rights can best be broken down in the following areas:

- Conservation Authorities Act rights.
- Environmental Assessment Act rights
- Oak Ridges Moraine Conservation Act rights
- Expropriations Act Rights
- Planning Act rights
- Fisheries Act rights

Conservation Authority Act

The Authority has the right to establish a program, 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.

It follows that having established that program, the TRCA has the right to tell others what their actions are doing to that program.

The Authority has a fill and flood regulation that prohibits persons from constructing or filling in certain areas. This right is clearly stronger than any other within the Act. However, the regulation does not bind the Crown (though usually they will try to follow it) and frequently implementing legislation for major projects of the Crown will contain provisions that allow the Minister to override or ignore the Authority's regulation. For example in the Highway 407 Act, we find this:

“s.52. A regulation made under section 28 of the Conservation Authorities Act does not apply to the owner with respect to management of Highway 407 on the Highway 407 lands.”

The Authority clearly has the right to expropriate lands for its purposes and obviously to own lands for those purposes. If the province wishes to take land it can do so under the Expropriations Act and clearly, if TRCA is an affected owner, it may claim compensation.

Environmental Assessment Act

Environmental assessment is part of public decision making at all levels of government in Canada. Ontario's *Environmental Assessment Act* establishes a systematic review process to evaluate the environmental impact of proposed activities prior to the granting of government funds. The Act applies to public sector projects, but not to private projects unless specially designated. Therefore the Act requires that all provincial road/transportation projects undergo an environmental assessment and obtain approval from the Ministry of the Environment (MOE).

The Act imposes a self-assessment process that includes mandatory public and municipal consultation at key stages, as well as detailed reviews by the MOE and both federal and provincial regulatory agencies. It requires consultation with affected parties, and consideration of all reasonable alternatives. The following key steps represent the EA process generally:

- i. Proponent undertakes preliminary background studies and needs assessment.
 - a. A “right” may exist at this stage to suggest (not require) that certain studies need to be done to the satisfaction of the TRCA.
- ii. Proponent prepares Terms of Reference for EA and submits same to MOE.
 - a. Again there may be a right to suggest (not require) that such Terms of Reference contain certain provisions.
- iii. MOE reviews Terms of Reference and decides whether to approve.
 - a. If the Terms become known, again suggestions can be made to the MOE as to the content.
- iv. Once approved, proponent prepares EA according to approved Terms of Reference.
- v. Proponent submits EA to MOE with description of undertaking and its potential effect on the environment, also outlining possible alternatives.
- vi. EA submitted to all interested provincial government ministries and agencies, as well as certain federal bodies, following which a summary review is prepared by MOE.
- vii. Minister releases EA and its government review to public for comment (minimum 30 days).
 - a. TRCA is entitled to comment like anyone else.

- viii. Following period of public review, Minister may decide to approve EA, approve EA with conditions, reject EA, refer some or all of EA to mediation, or refer some or all of EA to a hearing
- ix. If EA accepted, 15-day public review held; if no requests for hearing emerge, Minister may decide, with Cabinet approval, to accept EA.
 - a. TRCA may request that a full hearing be held.
- x. If hearing to be held, notice given to proponent, reviewers, and affected public; pre-hearing meetings or preliminary hearings may be held to exchange documents and determine issues.
 - a. TRCA can put forward its case as to the appropriateness of the EA and the locations proposed.
- xi. Environmental Assessment Board prepares its decision based on hearing testimony.
- xii. Minister has 28 days to rescind Board's decision or request another hearing.
 - a. TRCA will have appeal rights to the Courts depending on the circumstances assuming it participated in the hearings.

EA Process for GTA North Transportation Corridor

The Ministry of Transportation for Ontario (MTO) has initiated an individual environmental assessment process for the GTA North transportation corridor. The EA Terms of Reference must be submitted for review and approval by the MOE prior to undertaking the formal EA study. The EA Terms of Reference phase is scheduled for completion in the fall of 2003. As part of the consultation process, the MTO contacted a number of municipalities with the intention of forming a *Municipal Advisory Group* that would meet throughout the process to provide input and assist with the study. We understand there are also other groups such as the "Stakeholders Advisory Group" and the "Oak Ridges Moraine Working Group". All of these are commenting groups and we understand that TRCA has been invited to participate in them.

Stages of Individual Environmental Assessment

At each of these stages, TRCA has legal rights to try to influence the outcome of that stage. The process is highly dynamic. Legal rights may take the form of simple comment and suggestion to requiring a hearing.

- a. Terms of Reference Preparation (Proponent - MTO)**
 - description and purpose of undertaking
 - focus on environmentally significant issues and potential environmental impact, and monitoring strategy for environmental effects
 - defines content of eventual EA document, establishing eventual EA framework
 - alternatives must be reviewed and evaluated
 - **consultation plan** defines how proponents will consult with the public, with municipalities, with review agencies, and other stakeholders such as TRCA during EA preparation, in order to facilitate public consultation before irreversible decisions are made, and allowing stakeholders and public agencies to identify unreasonable proposals in advance
 - amending procedures, schedule, and timelines established

- proponent must give **public notice of the proposed Terms of Reference**, indicating where and when members of the public may inspect the proposed Terms of Reference and state that they may give their comments about the process to the MOE
 - proponent must give **same information** contained in the public notice **to clerk of each municipality in which undertaking to be carried out**. TRCA will have the opportunity to receive this material and normally will be provided with it as a commenting agency.
 - **public review and comment on Terms of Reference completed**
- b. Terms of Reference Review and Decision (MOE) – potential Amendments**
- Proponent submits proposed Terms of Reference to MOE
 - EA Branch makes recommendations to Minister
 - Minister makes decision to approve/approve with amendments/refuse/order mediation
 - Minister’s Terms of Reference decision final
 - Approved Terms of Reference represents commitments made by proponent and approved by Minister, but does not guarantee approval of proposed undertaking
- c. EA Preparation (Proponent – MTO)**
- once Terms of Reference approved, proponent may prepare EA according to approved Terms of Reference
 - proponent’s EA document evaluates project, its potential environmental effects, and proposed mitigation measures
 - EA consists of project description, decision making process, environmental impact and analysis, alternatives examined, mitigation and monitoring, and **results of consultation process**
 - proponent responsible for where EA will start, but must provide rationale and justification
- d. EA Review and Decision (MOE) – potential Amendments**
- proponent submits EA to the MOE by means of Notice of Submission
 - proponent must give **public notice of EA submission**, indicating where and when members of the public may inspect EA, and must state that they may give their comments to the MOE
 - proponent must give the **same information** in the public notice **to clerk of each municipality in which undertaking to be carried out**
 - MOE accepts public and government comments on EA submission
 - MOE review document prepared, Notice of Completion of Review
 - **Public, government agencies, and other interested parties comment on MOE review document**
 - Minister makes a decision based on the proponent’s submission, recommendations of government review team, comments received from interested parties, and consistency with approved Terms of Reference, and decision approved by Cabinet

Consultation

As seen in the outline above, consultation is mandatory throughout the preparation of both the Terms of Reference and the EA itself. The consultation process should include the requisite notices, open houses, meetings and site liaison committees, allowing the public, the interested municipalities, and other stakeholders various opportunities to comment at specified times through communications to the MOE. The MOE considers the comments received and the results of the various consultations when making its decisions.

Timelines

There are regulated timelines¹ for each stage in the Terms of Reference and EA review and approval process, which translate roughly as follows:

Proponent's Terms of Reference and Mandatory Public Consultation	No timelines
Terms of Reference Review and Decision	
Government/Public Review	5 weeks
EA Branch Recommendations	2 weeks
Senior Management Sign-off	1 week
Minister's Decision	<u>4 weeks</u>
	12 weeks
EA Review and Approval Process	
Public/Agency Review of EA	7 weeks
EA Review/Notice of Completion	5 weeks
Final Public Comment Period	5 weeks
MOE Evaluation and Minister's Decision	13 weeks

Unfortunately, there is no penalty for not meeting the regulated timelines.

TRCA Role

Agencies such as TRCA review EA documents and provide input to ensure that their and other government policies and standards are upheld. They also provide technical standards, guidelines, and expertise. The TRCA works in partnership with regional and local municipalities and the City of Toronto, providing information and technical support in the EA process with respect to public sector projects. TRCA often works in conjunction also with other Authorities and Conservation Ontario.

In the context of the GTA North Transportation Corridor mention has been made of various working groups of which the Authority is part. The Authorities that are most affected by the Transportation Corridor clearly can form their own working group to collaborate on multi jurisdictional environmental issues. Such a group may be duplicative of the municipal working groups however.

¹ *Deadlines*, O. Reg. 616/98.

TRCA's regulations with respect to Flood and Fill Lines are relevant to the process in the context of the identification of areas that are environmentally sensitive and need to be considered. As noted though the Ministry however may not, when it comes to actually building the 427, be forced to obtain permits under the Regulation from the Authority.

Oak Ridges Moraine Conservation Act

This Act establishes the Oak Ridges Moraine Conservation Area. Within that Area, various designations are established; Natural Core Area, Natural Linkage Area, Countryside Area, and Settlement Area. The act provides for principles of protection within those respective areas. As a result, if the Act applies the TRCA can raise relevant objections to the applications being made.

It must be noted however that section 7 of the Act states,

7. (1) A decision that is made under the Planning Act or the Condominium Act, 1998 or *in relation to a prescribed matter*, by a municipal council, local board, municipal planning authority, *minister of the Crown* or *ministry*, board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, *shall conform* with the Oak Ridges Moraine Conservation Plan.

There are specific provisions in the plan itself concerning transportation land uses.

41. (1) Transportation, infrastructure and utilities uses include,
- (a) public highways;...
- (2) An application for a transportation, infrastructure or utilities use with respect to land in a Natural Linkage Area shall not be approved unless,
- (a) the need for the project has been demonstrated and there is no reasonable alternative; and
 - (b) the applicant demonstrates that the following requirements will be satisfied, to the extent that is possible while also meeting all applicable safety standards:
 - 1. The area of construction disturbance will be kept to a minimum.
 - 2. Right of way widths will be kept to the minimum that is consistent with meeting other objectives such as stormwater management and with locating as many transportation, infrastructure and utility uses within a single corridor as possible.
 - 3. The project will allow for wildlife movement.
 - 4. Lighting will be focused downwards and away from Natural Core Areas.
 - 5. The planning, design and construction practices adopted will keep any adverse effects on the ecological integrity of the Plan Area to a minimum.

Similar sorts of provisions exist for other areas.

A decision to build the 427 or to do the EA or to seek a fill permit is not taken under the Planning Act or the Condominium Act and it must be “prescribed” before the Ministry must comply with the ORMCA.

TRCA’s rights under this Act are limited.

Expropriations Act

TRCA has an expropriation power. So does the Ministry for the purposes of building roads. The Ministry can expropriate land from TRCA as necessary. There is an interesting question as to whether the TRCA can expropriate the land back from the Ministry but the better answer is they cannot.

Under the Expropriations Act, compensation can be awarded. This will most likely take the form of simple market value. Little if any other damages to TRCA are likely though the damage to the environment may be great.

Planning Act

TRCA has a variety of commenting functions under the Planning Act. It can also initiate proceedings under the Act in the form of appeals. It frequently requests that municipalities include its comments in subdivision and site plan agreements though there is no legal requirement to do so.

In creating the GTA North Transportation Corridor however the province may not necessarily implement any changes under the Planning Act other than cause the respective municipalities to recognize in their OP’s the fact that the corridor is located where it is. While the municipalities changes to their planning documents can be appealed, this is hollow if all they are doing is recognizing a reality.

Fisheries Act

The Fisheries Act is federal legislation and in this area, TRCA has entered an agreement with DFO and the Province to review and categorize applications that may be made. TRCA does not make the decision to allow or not; that is made by DFO. The agreement is more administrative than legal.

Constitutionally the federal legislation will take precedence over any conflicting provincial activity. In this regard, TRCA will have the “right” to make comment to DFO on the applications that may be received.

Court Proceedings

The TRCA will generally have the right to proceed to court for appropriate relief if it perceives that a law has been broken which will affect it in some way. This could take the form of an injunction against activity, damages or simply a declaration of wrongdoing.

Source Protection Planning Regulation

There is no Source Protection Planning Regulation at this point in time. The Regulation is in the very early stages of consideration. There are no rights therefore under it.