Toronto and Region Conservation Authority

Board of Directors (Hearing)
Agenda

March 12, 2021

10:00 A.M.

The meeting will be conducted via a video conference

Members of the public may view the livestream at the following link:

https://video.isilive.ca/trca/live.html

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1. ACKNOWLEDGEMENT OF INDIGENOUS TERRITORY

2. DISCLOSURE OF PECUNIARY INTEREST

3. HEARING UNDER SECTION 28.0.1(7) OF THE CONSERVATION AUTHORITIES ACT

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   Pickering Developments (Squires) Inc.

4. ADJOURNMENT

TRCA STAFF REPORT FOR HEARING

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by

PICKERING DEVELOPMENTS (SQUIRES) INC.

FOR THE PERMISSION OF THE CONSERVATION AUTHORITY
Pursuant to Regulations made under
Section 28, and Section 28.0.1 of the said Act

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March 8, 2021

NOTICE OF HEARING

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by

PICKERING DEVELOPMENTS (SQUIRES) INC.

FOR THE PERMISSION OF THE CONSERVATION AUTHORITY
Pursuant to Regulations made under
Section 28 and Section 28.0.1 of the said Act

TAKE NOTICE THAT a Hearing before the Board of the Conservation Authority will be held under Section 28.0.1, Subsection 7 of the Conservation Authorities Act via videoconference, at the hour of **10:00 a.m. on the day of March 12, 2021**, with respect to the application by Pickering Developments (Squires) Inc. to permit development within an area regulated by the Authority at the property municipally known as 1802 Bayly Street in the City of Pickering, Regional Municipality of Durham.

TAKE NOTICE THAT the applicant is invited to make a presentation and submit supporting written material to the Board of Directors in advance of the Hearing. Written material will be required by **Wednesday, March 10, 2021 at 4:30 p.m.,** to enable the Board members to review the material prior to the meeting.

TAKE NOTICE THAT the Hearing will be streamed live on TRCA's website. The rules governing the Hearing do not provide for third parties to participate. No delegations are permitted however members of the public may make written submissions to TRCA's Board of Directors and the applicant by **Wednesday, March 10, 2021 at 4:30 PM**, such that any public input can be included in the Hearing record. These submissions must be provided by the deadline noted, via email, to Alisa Mahrova, TRCA's Clerk and Manager, Policy: alisa.mahrova@trca.ca.

TAKE NOTICE THAT pursuant to Section 28.0.1 of the Conservation Authorities Act, a conservation authority is required to grant the permission applied for and may only impose conditions to the permission. The Hearing will therefore focus on the conditions to be imposed to the granting of the permission.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of

perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that if the applicant does not attend at this Hearing, the Hearing may proceed in the absence of the applicant.

DATED the 5 day of March, 2021

The Board of the Conservation Authority

Per: <Original Signed by>
John MacKenzie, M.Sc.(Pl) MCIP, RPP
Chief Executive Officer/Secretary-Treasurer

SECTION 28 (3)

CONSERVATION AUTHORITIES ACT

HEARING GUIDELINES

October 2005, Amended 2018 re. MLT, Amended 2020 re. Electronic Hearings

Ministry of Natural Resources
Ministère des Richesses naturelles

SECTION 28 (3)

CONSERVATION AUTHORITIES ACT

HEARING GUIDELINES

October 2005, Amended 2018 and 2020

Summary of Revisions

Revision No.	Date	Comments	Approval Authority
0	October, 2005	Guidelines prepared as an update to the October 1992 hearing guidelines.	Ministry of Natural Resources and Forestry Conservation Ontario council
1	May, 2018	Housekeeping amendments made reflecting changes to appeal process as a result of the *Building Better Communities and Conserving Watersheds Act*, 2017 and subsequent Order in Council.	Conservation Ontario Staff
2	September, 2020	Amendments made to incorporate the use of electronic hearings.	Conservation Ontario Council

(Note: Text in red represents the amendments made in 2020)

September 14, 2020

Re: Interim Update to the SECTION 28 (3) CONSERVATION AUTHORITIES ACT HEARING GUIDELINES

The corona virus disease (COVID-19) was declared a pandemic by the World Health Organization on March 11, 2020. During the Provincial state of emergency as a result of the COVID-19 virus, the Provincial government enacted Order in Council 73/20 under s. 7.1 of the *Emergency Management and Civil Protection Act.* While that order was enacted, Provincial limitation periods and procedural time periods were under suspension between March 16, 2020 and September 14th.

With the suspension on limitation periods being revoked as of September 14th and the need for continued social distancing, conservation authorities require alternate means to provide hearings under Section 28 of the *Conservation Authorities Act.* The purpose of this interim update to the Section 28 Hearing Guidelines is to incorporate the use of electronic hearings. The update to the Hearing Guidelines is complementary to an update to the "Conservation Authority Best Management Practices (BMPs) and Administrative By-Law Model" to incorporate electronic Board meetings.

As a reminder, the decision by the Provincial government to enact Order in Council 73/20 under s. 7.1 of the *Emergency Management and Civil Protection Act* will impact the scheduling of CA Hearings under Section 28 as well as the requirement for an applicant to file an appeal with the Mining and Lands Tribunal within 30 days. For any hearings that took place between March 16th and September 14th, 2020 the person who has been refused permission or who objects to conditions imposed on a permission will have 30 days after September 14th to file an appeal to the Mining and Lands Tribunal. For those CAs who have postponed hearings during the emergency period, they should be scheduled as soon as practical, keeping in mind that Administrative By-Laws and Hearing Guidelines may need to be amended to incorporate electronic meetings.

Amendments have been made throughout this document to incorporate electronic hearings. Conservation authorities are advised to review their internal Hearing Procedures to incorporate this update.

Sincerely,

Leslie Rich

Leslie Rich
Policy and Planning Liaison
Conservation Ontario

May, 2018

Re: Interim Update to the SECTION 28 (3) CONSERVATION AUTHORITIES ACT HEARING GUIDELINES

Subsection 28(15) of the *Conservation Authorities Act* provides that a person who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons may appeal to the Minister of Natural Resources and Forestry. Further to the passage of the *Building Better Communities and Conserving Watersheds Act,* 2017 effective April 3, 2018 this appeal has been assigned to the Mining and Lands Tribunal through Order in Council 332/2018. The Mining and Lands Tribunal is now a part of the Environment and Land Tribunal Cluster (ELTO) of the Ministry of the Attorney General.

By law, the appeal made under subsection 28(15) should be filed directly with the Mining and Lands Tribunal. A copy of the appeal letter to the Minister of Natural Resources and Forestry is unnecessary and can be treated as optional. Conservation authorities should notify appellants that they must file their appeals with the Tribunal within 30 days of their receipt of notice. An appeal may be invalidated if it is not filed with the proper office within that time period. The appellants should also be instructed to copy the conservation authority in their appeal letter.

Further to this updated information, an amendment has been made to **Appendix D "Notice of Decision – Model"** to incorporate the revised contact information for the appeal. Conservation authorities are advised to review their internal Hearing Procedures to incorporate this update. It is anticipated that this "Interim Update to the Section 28(3) Conservation Authorities Act Hearing Guidelines" will provide guidance to conservation authorities related to Section 28 hearings until such time as a new Section 28 regulation is created by the province.

Sincerely,

Leslie Rich
Policy and Planning Liaison
Conservation Ontario

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1.0 PURPOSE OF HEARING GUIDELINES

The purpose of the Hearing Guidelines is to reflect the changes to the 1998 Conservation Authorities Act. The Act requires that the applicant be party to a hearing by the local Conservation Authority Board, or Executive Committee (sitting as a Hearing Board) as the case may be, for an application to be refused or approved with contentious conditions. Further, a permit may be refused if in the opinion of the Authority the proposal adversely affects the control of flooding, pollution or conservation of land, and additional erosion and dynamic beaches. The Hearing Board is empowered by law to make a decision, governed by the Statutory Powers Procedures Act. It is the purpose of the Hearing Board to evaluate the information presented at the hearing by both the Conservation Authority staff and the applicant and to decide whether the application will be approved with or without conditions or refused.

These guidelines have been prepared as an update to the October 1992 hearing guidelines and are intended to provide a step-by-step process to conducting hearings required under Section 28 (12), (13), (14) of the Conservation Authorities Act. Similar to the 1992 guidelines, it is hoped that the guidelines will promote the necessary consistency across the Province and ensure that hearings meet the legal requirements of the Statutory Powers Procedures Act without being unduly legalistic or intimidating to the participants.

2.0 PREHEARING PROCEDURES

2.1 Apprehension of Bias

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias. The following are three examples of steps to be taken to avoid apprehension of bias where it is likely to arise.

(a) No member of the Authority taking part in the hearing should be involved, either through participation in committee or intervention on behalf of the applicant or other interested parties with the matter, prior to the hearing. Otherwise, there is a danger of an apprehension of bias which could jeopardize the hearing.

(b) If material relating to the merits of an application that is the subject of a hearing is distributed to Board members before the hearing, the material shall be distributed to the applicant at the same time. The applicant may be afforded an opportunity to distribute similar pre-hearing material. These materials can be distributed electronically.

(c) In instances where the Authority (or Executive Committee) requires a hearing to help it reach a determination as to whether to give permission with or without conditions or refuse a permit application, a final decision shall not be made until such time as a hearing is held.

The applicant will be given an opportunity to attend the hearing before a decision is made; however, the applicant does not have to be present for a decision to be made.

Individual Conservation Authorities shall develop a document outlining their own practices and procedures relating to the review and reporting of Section 28 applications, including the role of staff, the applicant and the Authority or Executive Committee as well as, the procedures for the hearing itself. Such policy and procedures manual shall be available to the members of the public upon request and on the Authority's website. These procedures shall have regard for the above information and should be approved by the Conservation Authority Board of Directors.

2.2 Application

The right to a hearing is required where staff is recommending refusal of an application or where there is some indication that the Authority or Executive Committee may not follow staff's recommendation to approve a permit or the applicant objects to the conditions of approval. The applicant is entitled to reasonable notice of the hearing pursuant to the Statutory Powers Procedures Act.

2.3 Notice of Hearing

The Notice of Hearing shall be sent to the applicant within sufficient time to allow the applicant to prepare for the hearing. To ensure that reasonable notice is given, it is recommended that prior to sending the Notice of Hearing, the applicant be consulted to determine an agreeable date and time based on the local Conservation Authority's regular meeting schedule.

The Notice of Hearing must contain the following:

(a) Reference to the applicable legislation under which the hearing is to be held (i.e., the Conservation Authorities Act).

(b) The time, place and the purpose of the hearing. OR for Electronic Hearings:
The time, purpose of the hearing, and details about the manner in which the hearing will be held.

Note: for electronic hearings the Notice must also contain a statement that the applicant should notify the Authority if they believe holding the hearing electronically is likely to cause them significant prejudice. The Authority shall assume the applicant has no objection to the electronic hearing if no such notification is received.

(c) Particulars to identify the applicant, property and the nature of the application which are the subject of the hearing.

Note: If the applicant is not the landowner but the prospective owner, the applicant must

have written authorization from the registered landowner.

(d) The reasons for the proposed refusal or conditions of approval shall be specifically stated. This should contain sufficient detail to enable the applicant to understand the issues so he or she can be adequately prepared for the hearing.

It is sufficient to reference in the Notice of Hearing that the recommendation for refusal or conditions of approval is based on the reasons outlined in previous correspondence or a hearing report that will follow.

(e) A statement notifying the applicant that the hearing may proceed in the applicant's absence and that the applicant will not be entitled to any further notice of the proceedings.

Except in extreme circumstances, it is recommended that the hearing not proceed in the absence of the applicant.

(f) Reminder that the applicant is entitled to be represented at the hearing by counsel, if desired.

It is recommended that the Notice of Hearing be directed to the applicant and/or landowner by registered mail. Please refer to **Appendix A** for an example Notice of Hearing.

2.4 Presubmission of Reports

If it is the practice of the local Conservation Authority to submit reports to the Board members in advance of the hearing (i.e., inclusion on an Authority/Executive Committee agenda), the applicant shall be provided with the same opportunity. The applicant shall be given two weeks to prepare a report once the reasons for the staff recommendations have been received. Subsequently, this may affect the timing and scheduling of the staff hearing reports.

2.5 Hearing Information

Prior to the hearing, the applicant shall be advised of the local Conservation Authority's hearing procedures upon request.

3.0 HEARING

3.1 Public Hearing

Pursuant to the Statutory Powers Procedure Act, hearings, including electronic hearings, are required to be held in public. For electronic hearings, public attendance should be synchronous

with the hearing. The exception is in very rare cases where public interest in public hearings is outweighed by the fact that intimate financial, personal or other matters would be disclosed at hearings.

3.2 Hearing Participants

The Conservation Authorities Act does not provide for third party status at the local hearing. While others may be advised of the local hearing, any information that they provide should be incorporated within the presentation of information by, or on behalf of, the applicant or Authority staff.

3.3 Attendance of Hearing Board Members

In accordance with case law relating to the conduct of hearings, those members of the Authority who will decide whether to grant or refuse the application must be present during the full course of the hearing. If it is necessary for a member to leave, the hearing must be adjourned and resumed when either the member returns or if the hearing proceeds, even in the event of an adjournment, only those members who were present after the member left can sit to the conclusion of the hearing.

3.4 Adjournments

The Board may adjourn a hearing on its own motion or that of the applicant or Authority staff where it is satisfied that an adjournment is necessary for an adequate hearing to be held.

Any adjournments form part of the hearing record.

3.5 Orders and Directions

The Authority is entitled to make orders or directions to maintain order and prevent the abuse of its hearing processes. A hearing procedures example has been included as **Appendix B**.

3.6 Information Presented at Hearings

(a) The Statutory Powers Procedure Act, requires that a witness be informed of his right to object pursuant to the Canada Evidence Act. The Canada Evidence Act indicates that a witness shall be excused from answering questions on the basis that the answer may be incriminating. Further, answers provided during the hearing are not admissible against

the witness in any criminal trial or proceeding. This information should be provided to the applicant as part of the Notice of Hearing.

(b) It is the decision of the hearing members as to whether information is presented under oath or affirmation. It is not a legal requirement. The applicant must be informed of the above, prior to or at the start of the hearing.

(c) The Board may authorize receiving a copy rather than the original document. However, the Board can request certified copies of the document if required.

(d) Privileged information, such as solicitor/client correspondence, cannot be heard. Information that is not directly within the knowledge of the speaker (hearsay), if relevant to the issues of the hearing, can be heard.

(e) The Board may take into account matters of common knowledge such as geographic or historic facts, times measures, weights, etc or generally recognized scientific or technical facts, information or opinions within its specialized knowledge without hearing specific information to establish their truth.

3.7 Conduct of Hearing

3.7.1 Record of Attending Hearing Board Members

A record shall be made of the members of the Hearing Board.

3.7.2 Opening Remarks

The Chairperson shall convene the hearing with opening remarks which generally; identify the applicant, the nature of the application, and the property location; outline the hearing procedures; and advise on requirements of the Canada Evidence Act. Please reference **Appendix C** for the Opening Remarks model. In an electronic hearing, all the parties and the members of the Hearing Board must be able to clearly hear one another and any witnesses throughout the hearing.

3.7.3 Presentation of Authority Staff Information

Staff of the Authority presents the reasons supporting the recommendation for the refusal or conditions of approval of the application. Any reports, documents or plans that form part of the presentation shall be properly indexed and received.

Staff of the Authority should not submit new information at the hearing as the applicant will not have had time to review and provide a professional opinion to the Hearing Board.

Consideration should be given to the designation of one staff member or legal counsel who

coordinates the presentation of information on behalf of Authority staff and who asks questions on behalf of Authority staff.

3.7.4 Presentation of Applicant Information

The applicant has the opportunity to present information at the conclusion of the Authority staff presentation. Any reports, documents or plans which form part of the submission should be properly indexed and received.

The applicant shall present information as it applies to the permit application in question. For instance, does the requested activity affect the control of flooding, erosion, dynamic beach or conservation of land or pollution? The hearing does not address the merits of the activity or appropriateness of such a use in terms of planning.

- The applicant may be represented by legal counsel or agent, if desired
- The applicant may present information to the Board and/or have invited advisors to present information to the Board
- The applicant(s) presentation may include technical witnesses, such as an engineer, ecologist, hydrogeologist etc.

The applicant should not submit new information at the hearing as the Staff of the Authority will not have had time to review and provide a professional opinion to the Hearing Board.

3.7.5 Questions

Members of the Hearing Board may direct questions to each speaker as the information is being heard. The applicant and /or agent can make any comments or questions on the staff report.

Pursuant to the Statutory Powers Procedure Act, the Board can limit questioning where it is satisfied that there has been full and fair disclosure of the facts presented. Please note that the courts have been particularly sensitive to the issue of limiting questions and there is a tendency to allow limiting of questions only where it has clearly gone beyond reasonable or proper bounds.

3.7.6 Deliberation

After all the information is presented, the Board may adjourn the hearing and retire in private to confer. The Board may reconvene on the same date or at some later date to advise of the Board's decision. The Board members shall not discuss the hearing with others prior to the decision of the Board being finalized.

4.0. DECISION

The applicant must receive written notice of the decision. The applicant shall be informed of the

right to appeal the decision within 30 days upon receipt of the written decision to the Mining and Lands Tribunal.

It is important that the hearing participants have a clear understanding of why the application was refused or approved. The Board shall itemize and record information of particular significance which led to their decision.

4.1 Notice of Decision

The decision notice should include the following information:

(a) The identification of the applicant, property and the nature of the application that was the subject of the hearing.

(b) The decision to refuse or approve the application. A copy of the Hearing Board resolution should be attached.

It is recommended that the written Notice of Decision be forwarded to the applicant by registered mail. A sample Notice of Decision and cover letter has been included as **Appendix D**.

4.2 Adoption

A resolution advising of the Board's decision and particulars of the decision should be adopted.

5.0 RECORD

The Authority shall compile a record of the hearing. In the event of an appeal, a copy of the record should be forwarded to the Mining and Lands Tribunal. The record must include the following:

(a) The application for the permit.
(b) The Notice of Hearing.
(c) Any orders made by the Board (e.g., for adjournments).
(d) All information received by the Board.
(e) The minutes of the meeting made at the hearing.
(f) The decision and reasons for decisions of the Board.
(g) The Notice of Decision sent to the applicant.

Appendix A

NOTICE OF HEARING

IN THE MATTER OF
The Conservation Authorities Act,
R.S.O. 1990, Chapter 27

AND IN THE MATTER OF an application by

FOR THE PERMISSION OF THE CONSERVATION AUTHORITY
Pursuant to Regulations made under
Section 28, Subsection 12 of the said Act

TAKE NOTICE THAT a Hearing before the Executive Committee of the Conservation Authority will be held under Section 28, Subsection 12 of the Conservation Authorities Act at the offices of the said Authority (ADDRESS), at the hour of **, on the day of , 2020**, [for electronic hearings, include details about the manner in which the hearing will be held] with respect to the application by (***NAME***) to permit development within an area regulated by the Authority in order to ensure no adverse affect on (***the control of flooding, erosion, dynamic beaches or pollution or conservation of land./alter or interfere with a watercourse, shoreline or wetland***) on Lot , Plan/Lot , Concession , (***Street***) in the City of , Regional Municipality of , River Watershed.

TAKE NOTICE THAT you are invited to make a delegation and submit supporting written material to the Executive Committee for the meeting of (***meeting number***). If you intend to appear [For electronic hearings: or if you believe that holding the hearing electronically is likely to cause significant prejudice], please contact (***name***). Written material will be required by (***date***), to enable the Committee members to review the material prior to the meeting.

TAKE NOTICE THAT this hearing is governed by the provisions of the Statutory Powers Procedure Act. Under the Act, a witness is automatically afforded a protection that is similar to the protection of the Ontario Evidence Act. This means that the evidence that a witness gives may not be used in subsequent civil proceedings or in prosecutions against the witness under a Provincial Statute. It does not relieve the witness of the obligation of this oath since matters of perjury are not affected by the automatic affording of the protection. The significance is that the legislation is Provincial and cannot affect Federal matters. If a witness requires the protection of the Canada Evidence Act that protection must be obtained in the usual manner. The Ontario Statute requires the tribunal to draw this matter to the attention of the witness, as this tribunal has no knowledge of the affect of any evidence that a witness may give.

AND FURTHER TAKE NOTICE that if you do not attend at this Hearing, the Executive Committee of the Conservation Authority may proceed in your absence, and you will not be entitled to any further notice in the proceedings.

DATED the ___ day of , _____202X

The Executive Committee of the
Conservation Authority

Per:
Chief Administrative Officer/Secretary-Treasurer

Appendix B

HEARING PROCEDURES

1. Motion to sit as Hearing Board.

2. Roll Call followed by the Chairperson's opening remarks. For electronic hearings, the Chairperson shall ensure that all parties and the Hearing Board are able to clearly hear one another and any witnesses throughout the hearing.

3. Staff will introduce to the Hearing Board the applicant/owner, his/her agent and others wishing to speak.

4. Staff will indicate the nature and location of the subject application and the conclusions.

5. Staff will present the staff report included in the Authority/Executive Committee agenda.

6. The applicant and/or their agent will present their material

7. Staff and/or the conservation authority's agent may question the applicant and/or their agent if reasonably required for a full and fair disclosure of matters presented at the Hearing.[1]

8. The applicant and/or their agent may question the conservation authority staff and/or their agent if reasonably required for full and fair disclosure of matters presented at the Hearing.[2]

9. The Hearing Board will question, if necessary, both the staff and the applicant/agent.

10. The Hearing Board will move into camera. For electronic meetings, the Hearing Board will separate from other participants for deliberation.

11. Members of the Hearing Board will move and second a motion.

12. A motion will be carried which will culminate in the decision.

13. The Hearing Board will move out of camera.

14. The Chairperson or Acting Chairperson will advise the owner/applicant of the Hearing

[1] As per the Statutory Powers Procedure Act a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

[2] As per the Statutory Powers Procedure Act a tribunal may reasonably limit further examination or cross-examination of a witness where it is satisfied that the examination or cross-examination has been sufficient to disclose fully and fairly all matters relevant to the issues in the proceeding.

Board decision.

15. If decision is "to refuse", the Chairperson or Acting Chairperson shall notify the owner/applicant of his/her right to appeal the decision to the Mining and Lands Tribunal within 30 days of receipt of the reasons for the decision.

16. Motion to move out of Hearing Board and sit as Executive Committee.

Appendix C

CHAIRPERSON'S REMARKS WHEN DEALING WITH HEARINGS WITH RESPECT TO ONTARIO REGULATION ___/06

We are now going to conduct a hearing under section 28 of the Conservation Authorities Act in respect of an application by _____: , for permission to:_____

The Authority has adopted regulations under section 28 of the Conservation Authorities Act which requires the permission of the Authority for development within an area regulated by the Authority in order to ensure no adverse affect on (the control of flooding, erosion, dynamic beaches or pollution or conservation of land) or to permit alteration to a shoreline or watercourse or interference with a wetland.

The Staff has reviewed this proposed work and prepared a staff report, a copy of which has been given to the applicant and the Board. The applicant was invited to file material in response to the staff report, a copy of which has also been provided to the Board.

Under Section 28 (12) of the Conservation Authorities Act, the person requesting permission has the right to a hearing before the Authority/Executive Committee.

In holding this hearing, the Authority Board/Executive Committee is to determine whether or not a permit is to be issued, with or without conditions. In doing so, we can only consider the application in the form that is before us, the staff report, such evidence as may be given and the submissions to be made on behalf of the applicant. Only Information disclosed prior to the hearing is to be presented at the hearing.

The proceedings will be conducted according to the Statutory Powers Procedure Act. Under Section 5 of the Canada Evidence Act, a witness may refuse to answer any question on the ground that the answer may tend to incriminate the person, or may tend to establish his/her liability to a civil proceeding at the instance of the Crown or of any person.

The procedure in general shall be informal without the evidence before it being given under oath or affirmation unless decided by the hearing members.

If the applicant has any questions to ask of the Hearing Board or of the Authority representative, they must be directed to the Chairperson of the board.

Appendix D

(Date)
BY REGISTERED MAIL
(name)
(address)

Dear:

RE: NOTICE OF DECISION
Hearing Pursuant to Section 28(12) of the Conservation Authorities Act
Proposed Residential Development
Lot , Plan ; ?? Drive City of
(Application #)

In accordance with the requirements of the Conservation Authorities Act, the (***name***) Conservation Authority provides the following Notice of Decision:

On (***meeting date and number***), the Hearing Board/Authority/Executive Committee refused/approved your application/approved your application with conditions. A copy the Boards/Committee's resolution # has been attached for your records. Please note that this decision is based on the following reasons: (***the proposed development/alteration to a watercourse or shoreline adversely affects the control of flooding, erosion, dynamic beaches or pollution or interference with a wetland or conservation of land***).

In accordance with Section 28 (15) of the Conservation Authorities Act, An applicant who has been refused permission or who objects to conditions imposed on a permission may, within 30 days of receiving the reasons under subsection (14), appeal to the Minister who may refuse the permission; or grant permission, with or without conditions. Through Order in Council 332/2018 the responsibility for hearing the appeal has been transferred to the Mining and Lands Tribunal. For your information, should you wish to exercise your right to appeal the decision, a letter by you or your agent/counsel setting out your appeal must be sent within 30 days of receiving this decision addressed to:

Mining and Lands Tribunal
655 Bay Street, Suite 1500
Toronto, Ontario M5G 1E5

A carbon copy of this letter should also be sent to this conservation authority. Should you require any further information, please do not hesitate to contact (***staff contact***) or the undersigned.

Yours truly,

Chief Administrative Officer/Secretary Treasurer
Enclosure

Français

ONTARIO REGULATION 159/21

made under the

CONSERVATION AUTHORITIES ACT

Made: March 4, 2021
Filed: March 4, 2021
Published on e-Laws: March 4, 2021
Printed in *The Ontario Gazette*: March 20, 2021

PERMISSIONS GRANTED UNDER SECTION 28.0.1 OF THE ACT

1. With respect to an application to the Toronto and Region Conservation Authority dated February 16, 2021 for a permission to carry out part of a development project on lands in the City of Pickering that are more fully described in section 2 of Ontario Regulation 607/20 (Zoning Order — City of Pickering, Regional Municipality of Durham) made under the *Planning Act*, for which the requirements of subsection 28.0.1 (1) of the Act have been met, the Authority shall grant the permission on or before March 12, 2021.

Commencement

2. This Regulation comes into force on the day it is filed.

Made by:
Pris par :

Le ministre des Richesses naturelles et des Forêts,

JOHN YAKABUSKI

Minister of Natural Resources and Forestry

Date made: March 4, 2021
Pris le : 4 mars 2021

Français

Back to top

Conservation Authorities Act, R.S.O. 1990, CHAPTER C.27

EXCERPT OF SECTION 28.0.1

Permission for development, zoning order

28.0.1 (1) This section applies to any application submitted to an authority under a regulation made under subsection 28 (1) for permission to carry out all or part of a development project in the authority's area of jurisdiction if,

(a) a zoning order has been made by the Minister of Municipal Affairs and Housing under section 47 of the *Planning Act* authorizing the development project under that Act;

(b) the lands in the authority's area of jurisdiction on which the development project is to be carried out are not located in the Greenbelt Area designated under section 2 of the *Greenbelt Act, 2005*; and

(c) such other requirements as may be prescribed are satisfied. 2020, c. 36, Sched. 6, s. 15 (1).

Definition

(2) In this section,

"development project" means a development project that includes any development as defined in subsection 28 (25) or any other act or activity that would be prohibited under this Act and the regulations unless permission to carry out the activity is granted by the affected authority. 2020, c. 36, Sched. 6, s. 15 (1).

Permission to be granted

(3) Subject to the regulations made under subsection (35), an authority that receives an application for permission to carry out all or part of a development project in the authority's area of jurisdiction shall grant the permission if all of the requirements in clauses (1) (a), (b) and (c) are satisfied. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(4) For greater certainty, an authority shall not refuse to grant permission for a development project under subsection (3) despite,

(a) anything in section 28 or in a regulation made under section 28; and

(b) anything in subsection 3 (5) of the *Planning Act*. 2020, c. 36, Sched. 6, s. 15 (1).

Conditions prescribed by regulations

(5) A permission granted under this section is subject to such conditions as may be prescribed. 2020, c. 36, Sched. 6, s. 15 (1).

Conditions specified by authority

(6) Subject to subsection (7), an authority may attach conditions to the permission, including conditions to mitigate,

(a) any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;

(b) any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or

(c) any other matters that may be prescribed by regulation. 2020, c. 36, Sched. 6, s. 15 (1).

Hearing

(7) An authority shall not attach conditions to a permission unless the applicant for the permission has been given an opportunity to be heard by the authority. 2020, c. 36, Sched. 6, s. 15 (1).

Reasons for conditions

(8) If, after holding a hearing, an authority grants the permission subject to conditions, the authority shall give the holder of the permission written reasons for deciding to attach the conditions. 2020, c. 36, Sched. 6, s. 15 (1).

Request for Minister's review

(9) The holder of a permission who objects to the conditions proposed in the reasons given under subsection (8) may, within 15 days of the reasons being given, submit a request to the Minister for the Minister to review the proposed conditions, subject to the regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Minister's review

(10) Within 30 days after receiving a request under subsection (9), the Minister shall reply to the request and indicate in writing to the holder of the permission and the authority whether or not the Minister intends to conduct a review of the authority's decision. Failure on the part of the Minister to reply to a request within the 30-day period is deemed to be an indication that the Minister does not intend to review the authority's decision. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(11) If a reply given under subsection (10) indicates that the Minister intends to conduct a review, the Minister may in the reply require the holder of the permission and the authority to provide the Minister with such information as the Minister considers necessary to conduct the review. 2020, c. 36, Sched. 6, s. 15 (1).

Information

(12) The holder of the permission and the authority shall submit to the Minister such information as was specified in the reply given under subsection (10) within the time period specified in the reply. 2020, c. 36, Sched. 6, s. 15 (1).

Publication of notice of review

(13) The Minister shall publish on the Environmental Registry notice of the Minister's intention to review a decision made by an authority and shall do so within 30 days of giving a reply to that effect under subsection (10). 2020, c. 36, Sched. 6, s. 15 (1).

No hearing required

(14) The Minister is not required to hold a hearing while conducting a review of an authority's decision. 2020, c. 36, Sched. 6, s. 15 (1).

Conferring with persons, etc.

(15) Before making a decision with respect to a review, the Minister may confer with any person or body that the Minister considers may have an interest in the review. 2020, c. 36, Sched. 6, s. 15 (1).

Minister's decision

(16) After conducting a review of an authority's decision, the Minister may confirm or vary the conditions that the authority proposes to attach to a permission granted under this section, including removing conditions or requiring that such additional conditions be attached to the permission as the Minister considers appropriate. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(17) In making a decision under subsection (16), the Minister shall consider,

(a) effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;

(b) conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or

(c) any other matters as may be prescribed by the regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Decision final

(18) A decision made by the Minister under subsection (16) is final. 2020, c. 36, Sched. 6, s. 15 (1).

Appeal

(19) The holder of a permission who objects to the conditions proposed by an authority in the reasons given under subsection (8) may, within 90 days of the reasons being issued, appeal to the Local Planning Appeal Tribunal to review the conditions if,

(a) the holder of the permission has not submitted a request to the Minister to review the conditions under subsection (9); or

(b) the holder of the permission has submitted a request to the Minister to review the conditions under subsection (9) and,

(i) 30 days have elapsed following the day the holder of the permission submitted the request and the Minister did not make a reply in accordance with subsection (10), or

(ii) the Minister made a reply in accordance with subsection (10) indicating that the Minister refused to conduct the review. 2020, c. 36, Sched. 6, s. 15 (1).

Same

(20) If the Minister indicates in a reply given under subsection (10) that the Minister intends to review an authority's decision and the Minister fails to make a decision within 90 days of giving the reply, the holder of the permission may, within the next 30 days, appeal the conditions proposed by the authority directly to the Local Planning Appeal Tribunal. 2020, c. 36, Sched. 6, s. 15 (1).

Notice of appeal

(21) Notice of an appeal under subsection (19) or (20) shall be sent to the Local Planning Appeal Tribunal and to the authority by registered mail. 2020, c. 36, Sched. 6, s. 15 (1).

Hearing by Tribunal

(22) The Local Planning Appeal Tribunal shall fix a date for a hearing of an appeal under subsection (19) or (20), give notice to all interested parties and give all necessary direction for the hearing. 2020, c. 36, Sched. 6, s. 15 (1).

Powers of the Tribunal

(23) The Local Planning Appeal Tribunal has authority to hear evidence and to confirm, vary, remove or add to the conditions attached to the permission as the Tribunal considers appropriate. 2020, c. 36, Sched. 6, s. 15 (1).

Agreement

(24) An authority that grants permission for a development project under this section shall enter into an agreement with respect to the development project with the holder of the permission and the authority and holder of the permission may agree to add a municipality or such other person or entity as they consider appropriate as parties to the agreement. 2020, c. 36, Sched. 6, s. 15 (1).

Content of agreement

(25) An agreement under subsection (24) shall set out actions or requirements that the holder of the permission must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project. 2020, c. 36, Sched. 6, s. 15 (1).

Limitation on development

(26) No person shall begin a development project until an agreement required under subsection (24) has been entered into. 2020, c. 36, Sched. 6, s. 15 (1).

Period of validity of permission and extension

(27) A permission granted by an authority under this section may be granted for a period of time determined in accordance with the rules that apply to permissions granted by authority under a regulation made under subsection 28 (1) and may be extended in accordance with the rules for extending permission set out in those same regulations. 2020, c. 36, Sched. 6, s. 15 (1).

Offence

(28) A person is guilty of an offence if the person contravenes,

(a) a condition of a permission granted under this section; or

(b) subsection (26). 2020, c. 36, Sched. 6, s. 15 (1).

Penalty

(29) A person who commits an offence under subsection (28) is liable on conviction,

(a) in the case of an individual,

(i) to a fine of not more than $50,000 or to a term of imprisonment of not more than three months, or to both, and

(ii) to an additional fine of not more than $10,000 for each day or part of a day on which the offence occurs or continues; and

(b) in the case of a corporation,

(i) to a fine of not more than $1,000,000, and

(ii) to an additional fine of not more than $200,000 for each day or part of a day on which the offence occurs or continues. 2020, c. 36, Sched. 6, s. 15 (1).

Monetary benefit

(30) Despite the maximum fines set out in clauses (29) (a) and (b), a court that convicts a person of an offence under subsection (28) may increase the fine it imposes on the person by an amount equal to the amount of the monetary benefit that was acquired by the person, or that accrued to the person, as a result of the commission of the offence. 2020, c. 36, Sched. 6, s. 15 (1).

Rehabilitation orders

(31) In addition to any penalty under subsection (29) or any other remedy or penalty provided by law, the court, upon convicting a person of an offence under subsection (28), may order the convicted person to,

(a) remove, at the convicted person's expense, any development within such reasonable time as the court orders; and

(b) take such actions as the court directs, within the time the court may specify, to repair or rehabilitate the damage that results from or is in any way connected to the commission of the offence. 2020, c. 36, Sched. 6, s. 15 (1).

Non-compliance with order

(32) If a person does not comply with an order under subsection (31), the authority that issued the permission under this section may arrange for any removal, repair or rehabilitation that was required in the order. 2020, c. 36, Sched. 6, s. 15 (1).

Liability for certain costs

(33) The person to whom an order is made under subsection (31) is liable for the cost of any removal, repair or rehabilitation arranged by an authority under subsection (32), and the amount is recoverable by the authority by action in a court of competent jurisdiction. 2020, c. 36, Sched. 6, s. 15 (1).

Conflict

(34) If the conditions in a permission granted under this section conflict with the terms of a zoning order made under section 47 of the *Planning Act*, the terms of the zoning order shall prevail. 2020, c. 36, Sched. 6, s. 15 (1).

Regulations, Minister

(35) The Minister may make regulations,

(a) prescribing requirements for the purposes of clause (1) (c);

(b) governing permissions granted under this section including,

(i) requiring that the permission be granted within a specified time period after the application is submitted to the authority,

(ii) prescribing conditions for the purposes of subsection (5), and

(iii) prescribing matters for the purposes of clause (6) (c);

(c) prescribing matters for the purposes of clause (17) (c);

(d) governing agreements required under subsection (24) including,

(i) prescribing the content of the agreements, and

(ii) specifying the time within which agreements are to be concluded and signed;

(e) exempting lands or development projects from this section or from a part of this section or the regulations made under this section, including from the requirement to enter into an agreement under subsection (24) or from including any provision of an agreement that is prescribed by a regulation under clause (d);

(f) respecting anything that is necessary or advisable for the effective implementation or enforcement of this section. 2020, c. 36, Sched. 6, s. 15 (1).

Regulations, Lieutenant-Governor in Council

(36) The Lieutenant-Governor in Council may make regulations governing Minister's reviews requested under subsection (9) and appeals under subsections (19) and (20) and specifying circumstances in which a review may not be requested or an appeal may not be made. 2020, c. 36, Sched. 6, s. 15 (1).

General or particular

(37) A regulation made under subsection (35) or (36) may be general or particular in its application. 2020, c. 36, Sched. 6, s. 15 (1).

Transition

(38) This section applies to an application for permission to carry out a development project that was submitted to an authority before the day this section came into force if the conditions described in clauses (1) (a), (b) and (c) have been satisfied as of that day. 2020, c. 36, Sched. 6, s. 15 (1).

TRCA STAFF REPORT – HEARING UNDER SECTION 28.0.1(7) OF THE CONSERVATION AUTHORITIES ACT

TO: Chair and Members of the Board of Directors
Friday**,** March 12, 2021 Hearing

FROM: John MacKenzie, Chief Executive Officer
Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATION FOR PERMIT UNDER O. Reg. 166/06 AND PURSUANT TO SUBSECTION 28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER'S ZONING ORDERS)**
PICKERING DEVELOPMENTS (SQUIRES) INC.

KEY ISSUE

Application #1209/20/PICK for issuance of permission pursuant to Section 28.0.1 of the *Conservation Authorities* Act to Pickering Developments (Squires) Inc. to site grade, temporarily or permanently place, dump or remove any material, originating on the site or elsewhere, and interfere with a wetland to remove a Provincially Significant Wetland (PSW) located at 1802 Bayly Street, in the City of Pickering.

RECOMMENDATION

WHEREAS Toronto and Region Conservation Authority (TRCA) is legally required to grant permission for development on March 12, 2021, in accordance with Ontario Regulation 159/21;

AND WHEREAS TRCA's Board of Directors and staff, using a science-based approach to decision making and TRCA's Living City Policies, would ordinarily decline permission of such a permit;

AND WHEREAS TRCA's Board of Directors must, under duress, adhere to the Province's legally ordered directive, which conflicts with TRCA's mandate to further the conservation, development, and management of natural resources in watersheds within our jurisdiction;

AND WHEREAS the only authorized power that TRCA's Board of Directors has at their discretion is the ability to add conditions to the permission;

AND WHEREAS the applicant has raised concerns with potential conditions that may be placed on their application and requested a hearing before TRCA's Board of Directors, which is taking place on March 12, 2021, to meet the legally mandated Provincial deadline;

THEREFORE, BE IT RESOLVED THAT TRCA's Board of Directors approve conditions to the permission as outlined in this report, which are to be included in an agreement signed by all parties, in accordance with the conditions;

AND FURTHER THAT TRCA's Chief Executive Officer be authorized to execute the agreement, as required by the *Conservation Authorities Act*.

BACKGROUND

Board Members Sitting as Hearing Tribunal

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias.

In holding this Hearing, the Hearing Board is to determine what conditions, if any, to impose as conditions to the permission. In doing so, the Hearing Board may only consider the permit application submitted by the applicant, the staff report, the applicant's report, the submissions to be made on behalf of the applicant and on behalf of TRCA staff, and such evidence as may be given.

Permit Application and Property Description

Pickering Developments (Squires) Inc. has applied for permission under O. Reg. 166/06 and Section 28.0.1 of the *Conservation Authorities Act* for development and interference with a wetland to bring in an unknown quantity of fill and grade to ultimately remove the Provincially Significant Wetland and other upland habitat located at 1802 Bayly Street. The property is located west of Squires Beach Road, north of Bayly Street, east of the rail spur and south of Highway 401 in the City of Pickering (Attachment 1). The property is part of the Durham Live landholdings, part of which has been developed for a casino and hotel entertainment complex east of Squires Beach Road.

The property includes key natural heritage features and key hydrological features including a PSW and Significant Wildlife Habitat. Other potential features which may be present but have yet to be confirmed include Significant Woodland and Endangered Species habitat. The wetland is part of the Lower Duffin's Creek PSW Complex; which includes continuous hydrological connection to a portion of the PSW on the adjacent property and upstream hydrological connections to a PSW wetland complex off-site. A provincial staking exercise was conducted on the property to delineate the boundary by the Ministry of Natural Resources and Forestry (MNRF) on July 15, 2014, with TRCA staff and external consultants in attendance.

The subject property is composed of diverse intermixed habitats including woodland swamp (0.72 ha), marsh (11.2 ha), swamp thicket (6.07 ha), open wetland habitat (0.04 ha), woodland (0.95 ha), thicket (0.57 ha) and meadow (3.63 ha). The PSW on the subject property is approximately 18.0 ha. There is a Winterberry Organic Thicket Swamp in the south western portion of the property which is of regional significance within the Greater Toronto Area and considered Significant Wildlife Habitat. Documented on the property include species considered Rare and Uncommon to Durham Region and those of regional concern to TRCA. Other faunal ecological functions documented on-site include breeding birds, usage by amphibians, and small to large rural and urban mammals. The subject property is in close proximity to other natural systems for migration connectivity by fauna to occur.

Minister's Zoning Order (MZO)

A MZO was issued on October 30, 2020, as Ontario Regulation 607/20, for lands including the lands subject to the permit application. The MZO permits a variety of commercial uses and includes no protections for natural areas, including the PSW, located on the lands subject to the permit application.

Prior to the issuance of the MZO, the Minister of Natural Resources and Forestry requested that TRCA enter into a Memorandum of Agreement with the applicant to proceed with further

discussions regarding the potential for off-site ecosystem compensation.

On October 23, 2020, TRCA's Board of Directors adopted amended RES.#A164/20, with respect to the request by the City of Pickering for an MZO on the property. The amended motion reads in part as follows:

> *THAT in recognition of our role as a watershed management and regulatory agency, and stewards of lands within our jurisdiction, the Board of Directors indicate that they do not support development within wetlands, particularly, Provincially Significant Wetlands;*
>
> *THAT the Toronto and Region Conservation Authority (TRCA) acknowledge the subject lands west of Squires Beach Road contain natural and hydrological features, including a currently designated Provincially Significant Wetland and Significant Wildlife Habitat and that those lands warrant protection;*
>
> *THAT prior to entering into any agreement for lands west of Squires Beach Road, the Board request that the Ministry of Natural Resources and Forestry consider the ecological value of the site, including the potential presence of endangered and threatened species, hydrological connections and ecosystem functions;*
>
> *THAT authorization be given to TRCA's CEO to execute a Memorandum of Agreement to review a proposal for ecosystem compensation to facilitate the development of the Durham Live lands containing a Provincially Significant Wetland located west of Squires Beach Road in the City of Pickering, in the event the wetland is reclassified by the Ministry of Natural Resources and Forestry;*
>
> *THAT the Ministry of Natural Resources and Forestry be requested to provide clarity with respect to its position on the applicability of ecosystem compensation to a Provincially Significant Wetland;*

On October 29, 2020, TRCA entered into a Memorandum of Agreement to review a proposal for ecosystem compensation which outlined the principals of that compensation, including both replication of the ecosystem structure and land-based compensation on lands that are not included within the municipal natural heritage system or equivalent.

Mandatory Permits for MZO Development Projects
Section 28.0.1 of the amended Conservation Authorities Act is now in-force and applies to a development project that has been authorized by an MZO under the Planning Act, within an area regulated under Section 28(1) of the CA Act, outside of the Greenbelt Area. In TRCA's case, the regulated area is prescribed in Ontario Regulation 166/06.

The provisions of this new section of the Act are summarized as follows:

- CAs shall issue a permit.
- CAs may only impose conditions to the permit, including conditions to mitigate:
    - any effects the development project is likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land;
    - any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property; or
    - any other matters that may be prescribed by regulation.
- An applicant has the right to a Hearing before the authority (Board) if there is an

objection to the permit conditions being imposed by the CA.

- If the applicant still objects to conditions following a decision of the Hearing, the applicant has the option to either request a Minister's review (MNRF) or appeal to the Local Planning Appeal Tribunal (LPAT).
- All MZO-related CA permits must have an agreement with the permittee (can include other parties, e.g., municipalities, on consent of applicant).
- The agreement shall set out actions that the holder of the permission must complete or satisfy to compensate for ecological impacts, (where applicable), and any other impacts that may result from the development project.
- The agreement must be executed before work commences on the site; some enforcement provisions through court proceedings are in effect for MZO permits.

In summary, TRCA must issue a permit for development projects on lands subject to an MZO, outside of the Greenbelt, but can make that permission subject to conditions and must enter into an agreement with the landowner/applicant.

Prior to Bill 229, TRCA had greater control, subject to appeal to the Mining and Lands Tribunal, over whether to issue a permit or not regardless of whether there was an MZO issued under the *Planning Act*. The *Planning Act* and Provincial Policy Statement do not permit development and site alteration in a PSW unless it was infrastructure approved under the *Environmental Assessment Act*. Aligned with provincial policy, the Board-approved TRCA Living City Policies do not permit development in PSWs and their associated minimum buffer setbacks, with the exception of public or essential infrastructure.

Borehole Investigation Permit Granted February 26, 2021

On February 26, 2021, the TRCA Executive Committee, granted a permit with conditions for borehole testing on the property, adopted RES.#B112/20 and reiterated the position of the Board of Directors, as adopted at the October 23, 2020 Board of Directors meeting (amended Res.#A164/20, above). The motion reads (in part) as follows:

> *WHEREAS the Executive Committee reiterates the position of the Board of Directors, as adopted at the October 23, 2020 Board of Directors meeting (amended Res.#A164/20), that in recognition of Toronto and Region Conservation Authority's (TRCA) role as a watershed management and regulatory agency, and stewards of lands within TRCA's jurisdiction, the Board of Directors does not support development within wetlands, particularly, Provincially Significant Wetlands, and on this basis does not support development of this site as per the Minister's Zoning Order approved by the Province;*
>
> *WHEREAS TRCA staff using a science-based approach to decision making and TRCA's Living City Policies, would customarily recommend declining the issuance of a permit in support of development within a Provincially Significant Wetland and, specifically, in the instance of this MZO;*

TRCA Ordered to Grant Permission by March 12, 2021

On March 4, 2021, the Minister of Natural Resources and Forestry informed TRCA that pursuant to Subsection 28.0.1(35)(b)(i) of the Conservation Authorities Act the Minister made Ontario Regulation 159/21 requiring TRCA to issue a permit in response to the applicant's February 16, 2021 "Application for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" on or before March 12, 2021.

RATIONALE FOR THE CONDITIONS TO THE PERMISSION

The purpose of the conditions is an attempt to mitigate any negative effects the works are likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land; and any conditions or circumstances created by the filling of the site that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property. To develop these conditions, it is important to understand the importance of the ecosystem services and contribution to the control of flooding and erosion that the existing wetland habitat provides, review the application in the context of its impacts on same, and identify measures to attempt to mitigate these impacts.

The Importance of Wetlands

Wetlands are unique and specialized habitats that form the interface between the aquatic and terrestrial system creating habitats important to a diversity of species. Across Ontario they can be identified as swamps, marshes, fens, bogs, mires, sloughs, and peatlands, occurring in lands that are seasonally or permanently covered by shallow water or where the water table is at or close to the surface. The survival and prevalence of wetlands on the landscape helps to protect the quality and well-being of ecosystems where people and organisms coexist.

Identified to be among the most productive and biologically diverse habitats on the planet, wetlands lead critical roles in providing benefits that communities value like ecosystem services. Wetland ecosystem services can include flood mitigation, groundwater recharge and discharge, erosion reduction, climate change mitigation, terrestrial and aquatic biodiversity habitat, food and medicinal sources, nutrient cycling, carbon sequestration, recreation/tourism, and cultural and spiritual significance. In Southern Ontario, economic benefits are annually valued over $14 billion as green infrastructure. Studies have documented that wetlands maintained intact on the landscape can reduce the financial burden of major flood events in urban and rural areas up to 38%. By comparison, the costs for water filtration, flood mitigation and soil retention are much lower when wetlands are conserved in-situ rather than man-made infrastructure like stormwater management. In 2020 alone, the rise of conservation areas usage and ecotourism was a key aspect of Ontarians well-being both mentally and physically during the ongoing pandemic.

Currently experiencing heavy loss from pressures to land conversion, climate change, invasive species and pollution, a strategic road map was created for wetland conservation in Ontario (2017-2030) to halt net loss of wetland area and function where greatest by 2025. Historically, 65-87% of wetlands have been lost and removed off the landscape within the City of Pickering (State of Ontario Biodiversity Report, 2015). Systems like the Ontario Wetland Evaluation System by the MNRF identify the value and importance of wetlands at a Provincial scale to aid in the protection and sustainable management of these features. The scoring system recognizes the contributions of wetlands socially, biologically, hydrologically and for their special features. Wetland protection is embedded in legislation and policies at all levels of governments throughout Ontario and requires the collaborative commitment, efforts, and actions of all involved to ensure that resilient and sustainable ecosystems are maintained.

The Importance of Preventing Flooding and Erosion

Erosion is a natural process of gradual washing away of soil by water movement or seepage (at the ground surface), commonly occurring in one of the following manners:

a) rainfall or snowmelt and surface runoff (sheet,rill, or gully erosion);
b) internal seepage and piping;
c) water flow (banks or base of river, creek, channel); and
d) wave action (shorelines of ponds, lakes, bays).

The erosion process affects the soil at the particle level by dislodging and removing (transporting) the soil particles from the parent mass (with water movement as the agent). Erosion is exacerbated by urbanization and the replacement of natural features with impervious surfaces. This erosion can affect waterbodies, fish habitat and damage municipal infrastructure.

According to Environment Canada's "How Much Habitat Is Enough?" (2013), the recommended amount of natural cover needed for reasonably healthy and resilient ecosystems is 30 per cent forest cover and 10 per cent wetland. Natural cover in TRCA's jurisdiction has been measured at approximately 15 per cent in forests and 1 per cent in wetlands and, as such, it is critical to preserve and enhance what is left. A reduction in forests, wetlands, meadows and their species is also accompanied by increases in flooding and erosion. Changes in land use are often approved site-by-site without understanding how, cumulatively, they affect the region's Natural System and environmental health.

As such, it is important to consider that development and redevelopment should contribute to the prevention, elimination, and reduction in risk from flooding and erosion, and that water management on both an interim (under construction) and final phases of development be sufficient to achieve this objective as identified in TRCA's Living City Policies. It is also important in the absence of municipal stormwater approvals (in this case), that the interim and final stormwater management scheme for the proposed development confirms that the site will not result in flooding on adjacent properties and encourages maintaining the existing conditions water balance and downstream sediment loadings.

Review of Permit Application by TRCA staff
The application has been reviewed by TRCA's water resources, hydrogeology and ecology staff. The proposal will have an impact on the conservation of land (considered to be any impacts on the ecosystem) due to the removal of the wetland and upland habitat. Given the size and location of the habitat as a stopover point for migratory birds between the lakefront and the Oak Ridges Moraine, it cannot be replaced nearby in the Pickering urban area as there are no available target sites. There will be a net loss to the natural heritage system regardless of the ecosystem compensation plan, even if the compensation meets the requirements of the TRCA's Guideline for Ecosystem Compensation. The Guideline was never developed for this unprecedented scenario. The filling may have an impact on the control of flooding / health or safety of persons or result in the damage or destruction of property if the surface water is not addressed appropriately on an interim and permanent basis.

The applicant has made a proposal to purchase and convey to the TRCA, at no cost to TRCA, the property known municipally as 2870 Concession Road 8, Pickering and payment of $3,517,000 cash-in-lieu to create a wetland or multiple wetlands totaling the same size elsewhere. The compensation proposal and staff's response are outlined in Attachment 4. TRCA staff do not agree that the applicant's compensation proposal will adequately compensate for the lost habitat as the amount of land is not sufficient to recreate the lost wetland habitat, nor is the land proposed for conveyance enough to recreate the lost PSW.

The applicant has provided a stormwater management scheme, grading plans and erosion and sediment control plans. This scheme is missing information, and the plans are not sufficient to address TRCA's stormwater management criteria and erosion and sediment control guideline.
RECOMMENDED CONDITIONS TO THE PERMISSION

1) **Standard Conditions:**
   See Attachment 2

2) Special Conditions:

Expiration of the Permission

1. **The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.**

   This condition is to ensure there is no conflict with the Migratory Birds Convention Act assuming works start in late summer 2021.

Ecosystem Compensation Conditions

2. **Prior to execution of the Agreement, the Permit Holder shall obtain written confirmation from MNRF confirming that the Ministry has no objection to the removal of 18 ha of Provincially Significant Wetland (PSW), and that the Ministry supports the ecosystem compensation plan as appropriate and adequate mitigation of the ecological impacts of the granting of the permission.**

   TRCA may only impose conditions to the permit, including conditions to mitigate: "any effects the development project is likely to have on the .. conservation of land." TRCA's application of the "conservation of land" as described in "The Living City Policies for Planning and Development in the Watersheds of the TRCA", 2014, is premised on the need to recognize the relationship between landforms, features and functions in order to protect, manage and restore natural resources within the watershed. Both the Mining and Lands Commissioner and the courts have accepted a broad meaning of conservation of land to include, "all aspects of the physical environment, be it terrestrial, aquatic, biological, botanic or air and the relationship between them (611428 Ontario Limited vs. MTRCA, CA 007-92, February 11, 1994 p.38)". The Appeal Court solidified the "case law" that has been established in relation to the "conservation of land" test pursuant to Section 28 of the CA Act and that decision is a seminal decision.

   Assessing the impacts to the conservation of land for both form and function of natural features, at both the local and regional scales of the watershed is also important. Within TRCA's watersheds, as stated in TRCA's Living City Policies, development impacts on the five tests are considered both incrementally and cumulatively in order to manage the risk to life and property, and to maintain, restore and enhance the ecological and hydrological functions of the systems contributing to the conservation of land.

   TRCA's Living City Policies Section 8, Policy 8.7.2 states that "development and interference will not be permitted within provincially significant wetlands…or other wetlands greater than 0.5 ha in size." Policy 8.7.6 goes further to state that no new development is permitted within …30 metres of a provincially significant wetland…and any contiguous natural features and areas that contribute to the conservation of land; or…10 metres of other wetlands...". MNRF in a letter dated October 14, 2020 stated that "MNRF is available to assist and support the TRCA to provide scientific peer review of the proposal or any other technical support or facilitation that TRCA requires to move forward. We at MNRF have done a preliminary review of the studies submitted by Beacon Environmental and believe there is merit in reviewing reclassification of the wetland areas west of Squires Beach Road."

   As the proposal results in a significant negative precedent and does not meet TRCA's Living City Policies, staff recommend this condition to ensure that the relevant Provincial Ministry

provide unequivocal support for the wetland removal / reclassification and associated ecosystem compensation prior to the removal of the wetland.

3. **Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, for the cost of fill removal, drainage improvements, site grading and wetland restoration on 1802 Bayly Street, which TRCA shall be entitled to draw on to restore the site in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.**

   This condition ensures that the wetland can replaced in its original beneficial location if the commercial development project does not proceed. If the site is not developed for the uses approved in the MZO, it is staff's opinion that the site should be restored back to a wetland, and the site grading and wetland restoration secured prior to any works taking place to ensure the ecological impacts are reversed.

4. **Prior to execution of the Agreement, the Permit Holder shall convey to TRCA an easement over 1802 Bayly Street for the purpose of permitting TRCA to implement restoration site works including wetland restoration in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.**

   This condition ensures that TRCA has access to the lands to restore the wetland if the commercial development project does not proceed.

5. **The Permit Holder shall convey to TRCA lands in the Duffins and Carruthers Creek watershed legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING, and any other lands suitable for wetland restoration that are not part of the municipal natural heritage system, key natural heritage features or natural areas or equivalent as identified in an approved municipal plan or provincial plan required to accommodate ecosystem structure compensation.**

   This condition will ensure the conveyance of 2870 Concession Road 8 accommodate the necessary upland restoration and a portion of the wetland restoration. The conveyance will be subject to standard TRCA property transfer requirements including removal of a dwelling and other structures on the site, environmental site assessments, free and clear of encumbrances, including the removal of any buildings or structures that TRCA does not require.

   However, this property only provides enough land to restore 3-5 ha of wetland. As such, the remaining approximately 14 to 16 ha of wetland restoration must take place on other lands. TRCA Restoration and Infrastructure staff have examined the public lands located within the City of Pickering that are not located in the municipal or provincial natural heritage system, including Transport Canada Lands and the Rouge Park and very few are suitable for wetland construction either due to lack of drainage area or issues related to tenants and aircraft bird strike avoidance. As such, the permit holder must identify additional privately-owned lands to convey to TRCA or fund the purchase of same and the significant staff administration costs to do so, in order to effect the appropriate wetland compensation. Please see Attachment 4 for more details of this major concern.

   The land conveyed will be designated undevelopable in the applicable local or regional Official Plan per the existing Memorandum of Agreement.

6. **Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, to secure the conveyance of the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and to secure the conveyance of additional lands suitable for wetland restoration to TRCA, in accordance with the Ecosystem Compensation Plan approved by TRCA.**

   This condition is required to secure the conveyance of lands identified in the Ecosystem Compensation Plan in Attachment 4.

7. **Prior to execution of the Agreement, the Permit Holder shall provide a cash payment to TRCA to secure the annual costs of property taxes and maintenance of the lands to be conveyed to TRCA, being the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and as well as the annual costs for the additional lands required to be conveyed to TRCA for wetland restoration, at a rate of not less than $465/ha plus property taxes plus inflation in perpetuity.**

   This condition is required to ensure that all costs arising from the conveyance of lands to TRCA are paid by the applicant. On Friday February 26, 2021, the Board of Directors endorsed the Greenspace Acquisition Project 2021-2030. The accompanying update discussed the need for a TRCA Land Management Strategy. All properties, regardless of the management category and intensity of public use, require regular and proper inspection, land planning, management and monitoring to ensure that TRCA lands support TRCA programs and services. Lands also incur insurance and property tax costs. TRCA Property and Risk Management staff recommend that the agreement require the landowner or the municipality to provide a reserve fund payment satisfactory to cover future land management, maintenance, taxes and insurance.

8. **Prior to the conveyance of any lands to TRCA, the Permit Holder shall provide to TRCA: a satisfactory Phase I Environmental Site Assessment Report, and if required, such further reports and assurances with respect to the environmental condition of the lands; a recent reference plan; and confirmation that all lands to be conveyed are free and clear of all encumbrances, including any buildings or structures that are not required by TRCA.**

   This condition is required to ensure that all costs arising from the conveyance of lands to TRCA are free of contamination and encumbrances.

9. **Prior to execution of the Agreement, the Permit Holder shall provide a cash payment for ecosystem structure compensation to TRCA in the amount of $4,426,216.41, for purposes in accordance with the Ecosystem Compensation Plan approved by TRCA.** The landowner is offering a total cash payment of $3,350,000 plus a 5% administration fee, for a total of $3,517,000 as a condition of permit issuance, based on 2017 ecosystem restoration costs. Per the Guideline for Ecosystem Compensation, current costs to restore (at the time of receipt of the funds) should be used in calculating the compensation funds. TRCA Ecology staff have examined the ecological land classification of the habitats to be removed and applied current costs to restore. Staff conclude that the cash payment should equal $4,215,444.20 plus a 5% administration fee, for a total of $4,426,216.41.

   The landowner has offered to provide payment as a condition of permit issuance and for the payment to take place later when the exact amount is determined. TRCA staff has

determined the exact amount based on the habitat loss identified in the landowner's Environmental Impact Study and, as such, staff are of the opinion that the conditions should require payment be provided before the work takes place.

Environmental and Natural Hazard Conditions

10. **Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the *Planning Act* for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.**

    The application includes a temporary erosion and sediment control plan. This plan includes a temporary stormwater management strategy that requires pumping to manage the quantity and quality of stormwater during larger storm events. This plan is designed to be temporary until the site is fully developed and proper permanent stormwater management infrastructure can be installed and some of that infrastructure may require approvals from offsite landowners including Durham Region, Metrolinx or MTO. Staff understand that a major storm sewer pipe and outfall may need to be installed along the Bayly Street right-of-way owned by Durham Region to Duffins Creek in the Town of Ajax to address flows in post-development conditions.

    The large format distribution warehouse proposal permitted under the MZO does not have Site Plan approval under the *Planning Act*. Without this approval, TRCA staff are concerned that the site may sit fallow and exposed with temporary stormwater controls for an indefinite period. This presents a risk to sedimentation of surrounding natural features, pollution and possibly off-site urban flooding. There is also no municipal enforcement control over the works as the City's Fill and Topsoil Disturbance By-Law exempts works within a regulated area as defined by regulations made under the *Conservation Authorities Act*. TRCA's enforcement powers are also limited under the *Conservation Authorities Act*.

11. **Prior to execution of the Agreement, the Permit Holder shall provide revised stormwater management report, grading plans and erosion and sediment control plans, and an erosion and sediment control report and monitoring plans to TRCA's satisfaction to address TRCA technical comments including that any external areas currently draining into the site are addressed.**

    This condition ensures that the limited drainage areas associated with surrounding properties is adequately addressed. TRCA technical staff are not satisfied with the grading and erosion and sediment control plans as they do not meet TRCA's Stormwater Management (SWM) Criteria or Erosion Settlement Control (ESC) Guideline. Also the limited drainage areas associated with surrounding properties must be considered. A revised SWM and ESC scheme is necessary prior to the Permit Holder's works commencing.

12. **The Permit Holder shall ensure that the wetland removal is supervised on site by a qualified ecologist for the purpose of ensuring all relevant environmental legislation, approved plans and TRCA conditions are adhered to and that weekly monitoring reports, including ESC monitoring reports, are submitted to TRCA Enforcement staff.**

This condition is to ensure that if any species subject to environmental legislation are identified during construction, the work is modified to ensure the appropriate environmental legislation and / or TRCA conditions are complied with.

13. **The Permit Holder shall undertake a transplantation and relocation plan for regionally, locally and TRCA rare and uncommon species/communities identified by the ecologist on the property as timing of works allows, and that a final report prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.**

    This condition implements a mitigation measure pertaining to Section 4.10 and 5.3 of the Environmental Impact Study and requires the identification, relocating and transplanting of viable species within the existing Winterberry Organic Swamp and other portions of the PSW.

14. **Prior to execution of the Agreement, the Permit Holder shall provide written support from Durham Region and the City of Pickering that the two municipalities are satisfied with and have secured future stormwater management infrastructure required for Site Plan approval of the proposed commercial development including, but not necessarily limited to, permanent ponds, low impact development technologies, storm sewer(s) and outfall(s), both on and off site.**

    This condition is to ensure that permanent stormwater management infrastructure is financially secured prior to any works taking place to ensure long term water management concerns are addressed. The amount of security must be determined with the landowner, Durham Region and the City of Pickering. Staff are concerned that the site could lay fallow for several years with only temporary stormwater controls.

Additional Permits Required

15. **Prior to execution of the Agreement, the Permit Holder shall obtain permit, on behalf of the City of Pickering, to construct the required culvert under Squires Beach Road needed to accommodate a temporary storm pump hose to service the Permit Holder's work.**

    The landowner's engineering consultant identifies that a temporary sediment pond is required prior to the start of site grading. This pond is to be pumped to a sewer outlet approximately 700 m east of Squires Beach Road. The pump hose is to run through a proposed temporary culvert under Squires Beach Road, then extend east to the Durham Live lands just west of Church Street. This portion of Squires Beach Road is within the TRCA regulated area and is owned by the City of Pickering. As such, the City is required to obtain a permit from TRCA for this culvert.

16. **Prior to execution of the Agreement, the Permit Holder shall obtain a permit for altering a wetland at 1702 Squires Beach to address negative impacts to the PSW on that property due to the Permit Holder's work.**

    The provincially significant wetland extends north onto lands at 1702 Squires Beach Road (referred to as the 0.31 ha "notch" wetland in the Environmental Impact Study). The study identifies the notch wetland as being entirely contiguous with the wetland immediately to the south. The study identifies the notch wetland as having high sensitivity to impacts and states

that negative effects are therefore anticipated on the ecological integrity of this feature even if hydrological mitigation measures are implemented. TRCA Ecology staff agree with this assessment and the landowner has included the notch wetland in its ecosystem compensation proposal.

TRCA policy states that development and interference will not be permitted within provincially significant wetlands. The notch wetland is located on lands not owned by Pickering Developments (Squires) Inc. Further, 1702 Squires Beach Road is not subject to a MZO, meaning that TRCA has permitting authority over the notch wetland and the majority of its area of interference. Given these constraints, TRCA staff cannot recommend approval of interference with a provincially significant wetland located off site unless a separate permit application is made by that landowner, and permission is granted by TRCA's Executive Committee. To not address such off-site impacts could open TRCA up to liability.

As the proposal would result in negative impacts to the conservation of land on an off-site provincially significant wetland, TRCA staff recommend that the conditions ensure that the impacted landowner concurs with the impacts and that the appropriate Provincial and TRCA policies be applied to the notch wetland through the appropriate permitting process.

17. **Prior to the execution of the agreement, the Permit Holder shall provide a copy of any permit required under the *Endangered Species Act* from the Ministry of Environment, Conservation and Parks (MECP) for the works, or shall provide confirmation from the MECP that no such permit is necessary.**

    This condition is required to satisfy TRCA that all required MECP permits are obtained.

Agreement Conditions

18. **Parties to the Agreement: The Permit Holder agrees to add the Province of Ontario, Regional Municipality of Durham and City of Pickering as parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act*.**

    This condition is required to allow for the two subsequent conditions, which are a direct result of the Province's issuance of the MZO, at the request of the City of Pickering with the support of the Regional Municipality of Durham, endorsed via council resolutions.

19. **Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.**

    This condition will ensure TRCA is not subject to future liability or costs due to the permission being granted. This condition is required in recognition that TRCA would ordinarily decline permission of such a permit, but that TRCA's Board of Directors was forced, under duress, to adhere to the Province's legally mandated directive to provide permission, which conflicts with TRCA's mandate to further the conservation, development and management of natural resources in watersheds within TRCA's jurisdiction.

20. **Irrevocability: All parties to the Agreement required under Section 28.0.1(24) of the Conservation Authorities Act agree that if future legislation or regulations are enacted impacting the permitted area, there will be no ability to reduce the agreed upon conditions.**

    This condition is required as protection from further future Provincial interference. For instance, if the Province were to enact legislation that would remove the Provincially Significant Wetland classification from the property, which existed at the date of this Agreement, no party to the Agreement could reopen the matter, to argue that conditions were based on erroneous information.

SUMMARY CONCLUSION

Approval of permission for development and interference with a Provincially Significant Wetland does not meet the requirements of TRCA's Living City Policies. However, the Act requires the Authority to issue such a permit on these lands as they are subject to a MZO. Staff has therefore reviewed the application and do not support the works proposed as the removal of 18.0 ha of Provincially Significant Wetland does not meet TRCA policy.

Professional Planners involved in preparing this report are bound by a code of conduct. The code requires Professional Planners to acknowledge the inter-related nature of planning decisions and their consequences for individuals, the natural and built environment, and the broader public interest. While staff recognize the economic benefits that may result from the development, in staff's opinion the removal of a Provincially Significant Wetland and its associated ecosystem of this size and in this location has negative consequences for the natural environment and is not in the public interest.

Given the requirements of Section 28.0.1 of the Act that TRCA is required to grant the permission, coupled with the mandatory order issued to TRCA on March 4, 2021 (O. Reg. 159/21) that TRCA grant the permission on or before March 12, 2021, staff recommend the above referenced conditions be applied to the permission in an effort to mitigate negative impacts on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land, or any circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.

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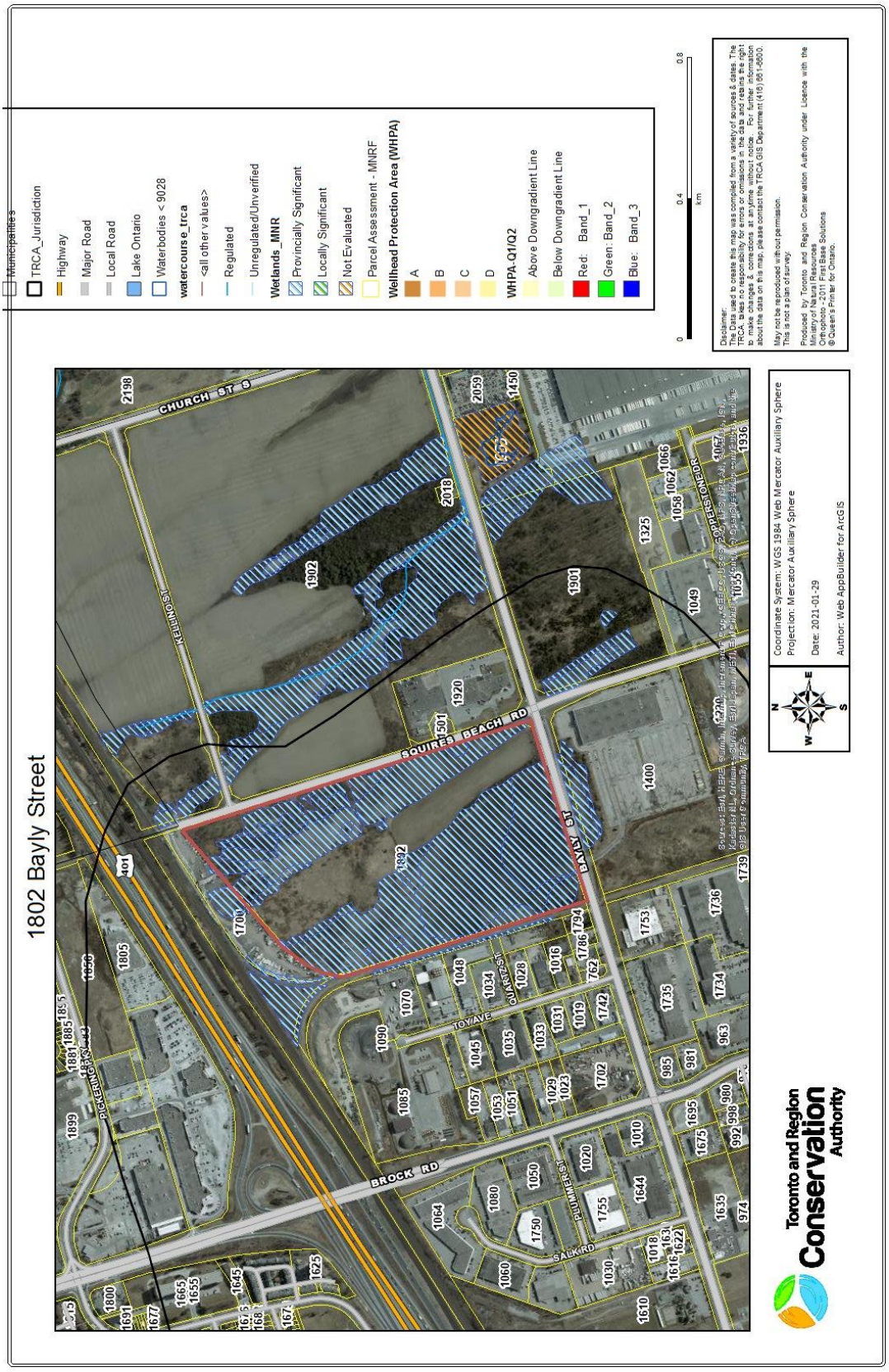
Date: March 8, 2021
Attachments: 4

Attachment 1: Location Map
Attachment 2: TRCA Standard Permit Conditions
Attachment 3: Special Permit Conditions
Attachment 4: Ecosystem Compensation Plan

Attachment 1: Location Map



Attachment 2: TRCA Standard Permit Conditions

1. The Owner shall strictly adhere to the approved TRCA permit, plans, documents and conditions, including TRCA redline revisions, herein referred to as the “works”, to the satisfaction of TRCA. The Owner further acknowledges that all proposed revisions to the design of this project that impact TRCA interests must be submitted for review and approval by TRCA prior to implementation of the redesigned works.

2. The Owner shall notify TRCA Enforcement staff 48 hours prior to the commencement of any of the works referred to in this permit and within 48 hours upon completion of the works referred to herein.

3. The Owner shall grant permission for TRCA staff, agents, representatives, or other persons as may be reasonably required by TRCA, in its opinion, to enter the premises without notice at reasonable times, for the purpose of inspecting compliance with the approved works, and the Terms and Conditions of this permit, and to conduct all required discussions with the Owner, their agents, consultants or representatives with respect to the works.

4. The Owner acknowledges that this permit is non-transferrable and is issued only to the current owner of the property. The Owner further acknowledges that upon transfer of the property into different ownership, this permit shall be terminated and a new permit must be obtained from TRCA by the new owner. In the case of municipal or utility projects, where works may extend beyond lands owned or easements held by the municipality or utility provider, landowner authorization is required to the satisfaction of TRCA.

5. This permit is valid for a period of two years from the date of issue unless otherwise specified on the permit. The Owner acknowledges that it is the responsibility of the owner to ensure a valid permit is in effect at the time works are occurring; and, if it is anticipated that works will not be completed within the allotted time, the Owner shall notify TRCA at least 60 days prior to the expiration date on the permit if an extension will be requested.

6. The Owner shall ensure all excess fill (soil or otherwise) generated from the works will not be stockpiled and/or disposed of within any area regulated by TRCA (on or off-site) pursuant to Ontario Regulation 166/06, as amended, without a permit from TRCA.

7. The Owner shall install effective erosion and sediment control measures prior to the commencement of the approved works and maintain such measures in good working order throughout all phases of the works to the satisfaction of TRCA.

8. The Owner acknowledges that the erosion and sediment control strategies outlined on the approved plans are not static and that the Owner shall upgrade and amend the erosion and sediment control strategies as site conditions change to prevent sediment releases to the natural environment to the satisfaction of TRCA.

9. The Owner shall repair any breaches of the erosion and sediment control measures within 48 hours of the breach to the satisfaction of TRCA.

10. The Owner shall make every reasonable effort to minimize the amount of land

disturbed during the works and shall temporarily stabilize disturbed areas within 30 days of the date the areas become inactive to the satisfaction of TRCA.

11. The Owner shall permanently stabilize all disturbed areas immediately following the completion of the works and remove/dispose of sediment controls from the site to the satisfaction of TRCA.

12. The Owner shall arrange a final site inspection of the works with TRCA Enforcement staff prior to the expiration date on the permit to ensure compliance with the terms and conditions of the permit to the satisfaction of TRCA.

13. The Owner shall pay any additional fees required by TRCA in accordance with the TRCA Administrative Fee Schedule for Permitting Services, as may be amended, within 15 days of being advised of such in writing by TRCA for staff time allocated to the project regarding issues of non-compliance and/or additional technical review, consultation and site visits beyond TRCA's standard compliance inspections.

Attachment 3: Special Permit Conditions

Expiration of the Permission:

1. The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.

Ecosystem Compensation Conditions

2. Prior to execution of the Agreement, the Permit Holder shall obtain written confirmation from MNRF confirming that the Ministry has no objection to the removal of 18 ha of Provincially Significant Wetland (PSW), and that the Ministry supports the ecosystem compensation plan as appropriate and adequate mitigation of the ecological impacts of the granting of the permission.

3. Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, for the cost of fill removal, site grading and wetland restoration on 1802 Bayly Street, which TRCA shall be entitled to draw on to restore the site in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.

4. Prior to execution of the Agreement, the Permit Holder shall convey to TRCA an easement over 1802 Bayly Street for the purpose of permitting TRCA to implement restoration site works including wetland restoration in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.

5. The Permit Holder shall convey to TRCA lands in the Duffins and Carruthers Creek watershed legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING, and any other lands suitable for wetland restoration that are not part of the municipal natural heritage system, key natural heritage features or natural areas or equivalent as identified in an approved municipal plan or provincial plan required to accommodate ecosystem structure compensation.

6. Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, to secure the conveyance of the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and to secure the conveyance of additional lands suitable for wetland restoration to TRCA, in accordance with the Ecosystem Compensation Plan approved by TRCA.

7. Prior to execution of the Agreement, the Permit Holder shall provide a cash payment to TRCA, to secure the annual costs of property taxes and maintenance of the lands to be conveyed to TRCA, being the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and as well as the annual costs of property tax and maintenance of the additional lands required to be conveyed to TRCA for wetland restoration, at a rate of not less than $465/ha plus property taxes in perpetuity.

8. Prior to the conveyance of any lands to TRCA, the Permit Holder shall provide to TRCA: a satisfactory Phase I Environmental Site Assessment Report, and if required, such further

reports and assurances with respect to the environmental condition of the lands; a recent reference plan; and confirmation that all lands to be conveyed are free and clear of all encumbrances, including any buildings or structures that are not required by TRCA.

9. Prior to execution of the Agreement, the Permit Holder shall provide a cash payment for ecosystem structure compensation to TRCA in the amount of $4,426,216.41, for purposes in accordance with the Ecosystem Compensation Plan approved by TRCA.

Environmental and Natural Hazard Conditions

10. Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the *Planning Act* for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.

11. Prior to execution of the Agreement, the Permit Holder shall provide revised stormwater management report, grading plans and erosion and sediment control plans, and an erosion and sediment control report and monitoring plans to TRCA satisfaction to address TRCA technical comments including that any external areas currently draining into the site are addressed.

12. The Permit Holder shall ensure that the wetland removal is supervised on site by a qualified ecologist for the purpose of ensuring all relevant environmental legislation, approved plans and TRCA conditions are adhered to and that weekly monitoring reports, including ESC monitoring reports, are submitted to TRCA Enforcement staff.

13. The Permit Holder shall undertake a transplantation and relocation plan for regionally, locally and TRCA rare and uncommon species/communities identified by the ecologist on the property as timing of works allows, and that a final report prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.

14. Prior to execution of the Agreement, the Permit Holder shall provide written support from Durham Region and the City of Pickering that the two municipalities are satisfied with and have secured future stormwater management infrastructure required for Site Plan Approval of the proposed commercial development including, but not necessarily limited to, permanent ponds, low impact development technologies, storm sewer(s) and outfall(s), both on and off site.

Additional Permits Required

15. Prior to execution of the Agreement, the Permit Holder shall obtain permit, on behalf of the City of Pickering, to construct the required culvert under Squires Beach Road needed to accommodate a temporary storm pump hose to service the Permit Holder's work.

16. Prior to execution of the Agreement, the Permit Holder shall obtain a permit for altering a wetland at 1702 Squires Beach to address negative impacts to the PSW on that property due to the Permit Holder’s work.

17. Prior to the execution of the agreement, the Permit Holder shall provide a copy of any permit required under the Endangered Species Act from the Ministry of Environment, Conservation

and Parks (MECP) for the works, or shall provide confirmation from the MECP that no such permit is necessary.

Agreement Conditions

18. Parties to the Agreement: The Permit Holder agrees to add the Province of Ontario, Regional Municipality of Durham and City of Pickering as parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act*.

19. Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.

20. Irrevocability: All parties to the Agreement required under Section 28.0.1(24) of the Conservation Authorities Act agree that if future legislation or regulations are enacted impacting the permitted area, there will be no ability to reduce the agreed upon conditions.

Attachment 4: Ecosystem Compensation Plan

There are two components to ecosystem compensation identified in TRCA's Guideline for Determining Ecosystem Compensation, 2018 (Guideline):

1) Replacing the Ecosystem Structure (the actual habitat being removed); and
2) Replacing the Land Base (the land that is being developed instead of remaining in a natural state).

1) Replacing the Ecosystem Structure

The landowner proposed a total cash payment of $3,350,000 plus a 5% administration fee, for a total of $3,517,000, based on a rough estimate identified in the Memorandum of Agreement. This rough estimate was based on 2017 costs to restore and an estimate of habitat size.

Per the Guideline, current costs to restore (at the time of receipt of the funds) should be used in calculating the compensation funds. TRCA Ecology staff have examined the ecological land classification of the habitats to be removed in the Environmental Impact Study and applied current (2021) costs to restore. Staff conclude that the cash payment should equal $4,215,444.20 plus a 5% administration fee, for a total of $4,426,216.41.

The total amount TRCA staff recommend is calculated as follows:

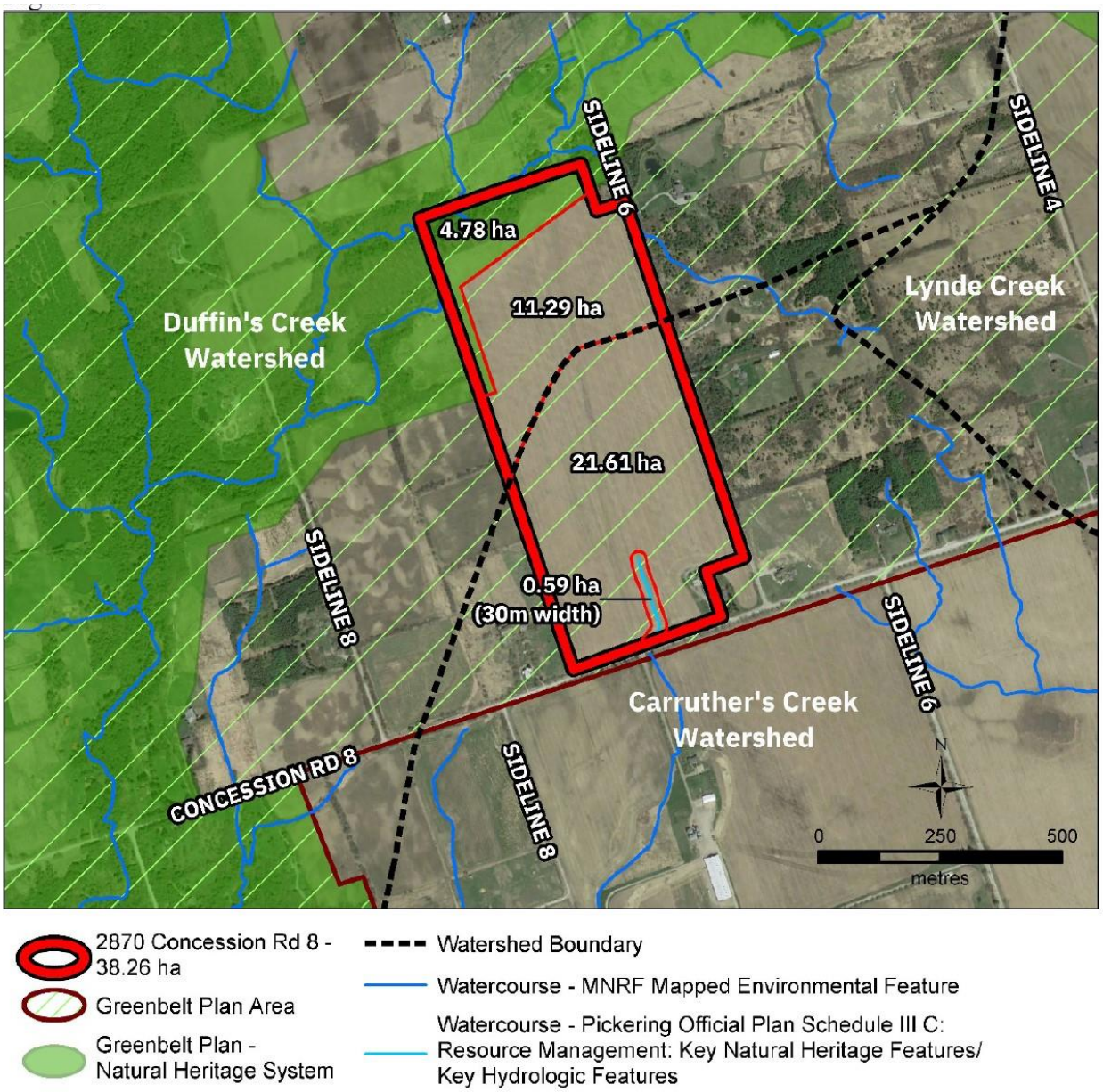
ELC Code	ELC Description	Size (ha)	Basal Area Ratio	Planting Area Required	Cash-in-lieu Required 2021 Value
CUT1	Mineral Cultural Thicket	0.39	1:1	0.39	$59,459
CUW1	Mineral Cultural Woodland	0.7	3:1	2.1	$277,098
FOD4	Dry-Fresh Deciduous Forest	0.25	3:1	0.75	$151,831
SWD4-1	Willow Mineral Deciduous Swamp	0.13	3:1	0.39	$78,952
SWD3-2	Silver Maple Deciduous Swamp	0.59	3:1	1.77	$358,322
MAM2-10	Forb Mineral Meadow Marsh	17.31	1:1	1.38	$257,034
MAS2	Mineral Shallow Marsh			2.12	$394,864
MAS2-1	Cattail Mineral Shallow Marsh			7.7	$1,434,177
SAF1-3	Duckweed Floating-leaved Shallow Aquatic			0.04	$7,450
SWT2-2	Willow Mineral Thicket Swamp			2.09	$411,890
SWT2-5	Red-osier Mineral Thicket Swamp			1.92	$378,387
SWT3-7	Winterberry Organic Thicket Swamp			2.06	$405,978
Total Replacement Planting or Cash-in-Lieu		19.37		22.32	$4,215,444
Total Cash-in-Lieu with 5% Management Fee:					**$4,426,216**

Note: ELC = Ecological Land Classification (habitat type), numbers rounded to nearest dollar.

2) Replacing the Land Base

The applicant has made a proposal to purchase and convey to the TRCA, at no cost to TRCA, the property known municipally as 2870 Concession Road 8, Pickering (see Figure 1).

Figure 1. 2870 Concession Road 8



2870 Concession Road 8 is 38 ha (93 acres) in size and is primarily an agricultural field in the Greenbelt, with 16.27 ha in the Duffins Creek Watershed and the remaining 22.2 ha in the Carruthers Creek Watershed. 32.89 hectares of the property is designated Prime Agricultural Areas and are not part of an existing Natural Heritage System, Key Natural Heritage Features or Natural Areas or equivalent. It is located approximately 12 km north of the existing Provincially Significant Wetland. Staff and the applicant's ecology consultant anticipate that the property

could be enhanced to restore approximately 3-5 ha of wetland and all the upland habitat.

This property physically exceeds the size of the habitat to be removed at 1802 Bayly Street. However, it only provides enough land to restore 3-5 ha of PSW. As such, the remaining 13 to 15 ha of wetland restoration will have to take place on other lands.

TRCA Restoration and Infrastructure staff have examined the public lands located within the City of Pickering that are not located in the municipal or provincial natural heritage system, including Transport Canada Lands and the Rouge Park and very few are suitable for wetland construction either due to lack of drainage area or issues related to tenants and aircraft bird strike avoidance. As such, additional privately-owned lands must be identified for conveyance to TRCA or the value of such lands must be identified to fund the purchase of same and the staff administration costs to do so, to implement wetland compensation consistent with the Memorandum of Agreement.

The value of 2870 Concession Road 8 is not known to TRCA staff at this time; however, the value of the lands could be established through an appraisal. The value of other lands necessary to implement the remaining wetland construction is also unknown. The Guideline states that cash-in-lieu shall be calculated as follows:

- Applying the per hectare market value of the development site to the area of land being removed from the natural system; or.
- Calculating the difference between the pre-existing market value of the development site and the market value of the development site after the ecosystem has been removed.

Given the value of industrial development lands in Durham is approximately $1.5 million / ha (rough estimate). If approximately 15 ha is required cash-in-lieu, then approximately $22.5 million would need to be secured. However, taking cash in lieu would be at great risk to TRCA. Staff do not have a good understanding of whether this funding would be enough to secure lands elsewhere that are suitable for constructing between 13 to 15 ha of wetland. The staff time to identify suitable lands, determine if they are for sale, procure appraisals and environmental site assessments, remove any structures or address any environmental site issued, and then close on the lands would be considerable.

Further investigation and analysis are required to identify the further financial contribution from the applicant if cash-in-lieu is to be considered, prior to execution of the Agreement.

Kagan Shastri LLP
LAWYERS

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File #: 18027

March 10, 2021

By email
Ms. Alisa Mahrova, Clerk, alisa.mahrova@trca.ca
Toronto and Region Conservation Authority
101 Exchange Avenue
Vaughan, ON., L4K 5R6

Dear Ms. Mahrova:

Re: Item 3 on the Board of Director's Hearing Agenda – March 12, 2021
Permit Application by Pickering Developments (Squires) Inc.
1802 Squires Beach Road, Pickering (the "Property")

We are solicitors to Pickering Developments (Squires) Inc.)("Pickering Developments"), the owner of the Property and the Applicant of the within permit application. The writer will be representing Pickering Developments at the hearing scheduled for 10am on Friday March 12, 2021. Kindly accept this letter as our client's written submission. We reserve the right to augment these written submissions with additional oral submissions at the oral hearing.

First and foremost, on behalf of our client, its consulting team and myself personally, I want to thank TRCA staff for the significant amount of work they have done not only on the within permit, but on the Durham Live project in general. Although Pickering Developments and TRCA staff do not always agree on things, we respect the important core work which TRCA does. We also appreciate the significant amount of time which TRCA staff have devoted to the within permit specifically and the Durham Live project in general. Durham Live is a critically important project for the City, Region and Province and represents a key element of the economic re-start. Our client is very proud to be at the forefront of assisting that economic recovery through Durham Live. Project Lonestar, the proposed development for the Property, has a huge role to play in all of this. TRCA staff are well aware of the timing crunch faced by Project Lonestar and our client appreciates the efforts made by everyone to get that project approved and under construction without any further delay.

We have reviewed the staff report and note that it sets out the history of the proposed development including the MZO (Issued October 30, 2020), the recent amendments to the Conservation Authorities Act and the recent timing regulation made thereunder. We will not repeat this history. We note, though, that pursuant to O. Reg. 159/21, the TRCA is required, in this hearing, to render a decision on the permit application by Friday March 12, 2021. We also note that pursuant to subsection 28.0.1(3) of the Conservation Authorities Act, the permit shall

be granted if the conditions in subsection 28.0.1(4) are met. TRCA staff do not debate that all such conditions have been met in this case. Accordingly, the law requires that TRCA issue the permit on Friday March 12, 2021. This hearing is, therefore, about determining any conditions which TRCA might wish to impose. This hearing is not about whether or not the permit will issue on March 12, 2021; it is only about the conditions to impose.

As you know, the Property is the subject of a Minister's Zoning Order (MZO 607-20). The area covered by the subject permit application is zoned Warehousing and Logistics Zone. Prior to the Minister of Municipal Affairs issuing the MZO, the Applicant and TRCA entered into a Memorandum of Agreement for Ecosystem Compensation (the "MOA"). The MOA contemplated the proposed site alteration of the Property as part of the eventual development of the Property. The MOA required ecological compensation and the proposed conditions should be consistent with the MOA.

Attached to this letter is a chart which identifies the proposed conditions and our client's response to each of them. We believe that presenting it in chart format assists the hearing process. Where the Applicant agrees with a condition that agreement is identified in green font. Where the Applicant agrees with the condition subject to clarification or modification, it is identified in amber font. Where the Applicant disagrees with the condition and wants it deleted, that is identified in red font.

TRCA staff have proposed thirteen (13) STANDARD CONDITIONS. We are pleased to advise that our client agrees with and consents to all of the STANDARD CONDITIONS.

TRCA staff have proposed twenty (20) SPECIAL CONDITIONS. As detailed on the attached chart, our client takes no major issue with half of the SPECIAL CONDITIONS but does take issue with the other half of them. The objections to these conditions are detailed in the attached chart and fall into the following broad categories:

1. Third Party Conditions
    a. Some of the proposed conditions are not within the control of the Applicant and can only be fulfilled by third parties. Such a condition is clearly unreasonable.

2. Conditions which are not properly related to the within permit application.
    a. Some of the conditions are overreaching since they do not deal with the within permit (topsoil stripping and pre-grading) but deal with a future site plan application.

3. Conditions which require the Applicant's consent
    a. This relates to SPECIAL CONDITION #18. Section 28.0.1(24) of the Conservation Authorities Act requires that Applicant's consent for third parties to be added to the Agreement. The Applicant does not consent to the addition of the proposed additional parties.

4. Conditions which are unreasonable or *ultra vires* as detailed in the attached chart.

Our client looks forward to dealing with all of this at the upcoming oral hearing. I intend to make the presentation on behalf of the Applicant but I will have some of the Applicant's consultants available to answer questions if required. Thank you.

Yours very truly,

Ira T. Kagan
Encl. Chart of Applicant's Response to Proposed Conditions
cc. Client

	TRCA Staff Report – Standard Conditions	Applicant's Response	Applicant's Reasons / Proposed Condition (if applicable)
1	The Owner shall strictly adhere to the approved TRCA permit, plans, documents and conditions, including TRCA redline revisions, herein referred to as the "works", to the satisfaction of TRCA. The Owner further acknowledges that all proposed revisions to the design of this project that impact TRCA interests must be submitted for review and approval by TRCA prior to implementation of the redesigned works.	Agreed	N/A
2	The Owner shall notify TRCA Enforcement staff 48 hours prior to the commencement of any of the works referred to in this permit and within 48 hours upon completion of the works referred to herein.	Agreed	N/A
3	The Owner shall grant permission for TRCA staff, agents, representatives, or other persons as may be reasonably required by TRCA, in its opinion, to enter the premises without notice at reasonable times, for the purpose of inspecting compliance with the approved works, and the Terms and Conditions of this permit, and to conduct all required discussions with the Owner, their agents, consultants or representatives with respect to the works.	Agreed	N/A
4	The Owner acknowledges that this permit is non-transferrable and is issued only to the current owner of the property. The Owner further acknowledges that upon transfer of the property into different	Agreed	N/A

	ownership, this permit shall be terminated and a new permit must be obtained from TRCA by the new owner. In the case of municipal or utility projects, where works may extend beyond lands owned or easements held by the municipality or utility provider, landowner authorization is required to the satisfaction of TRCA.		
5	This permit is valid for a period of two years from the date of issue unless otherwise specified on the permit. The Owner acknowledges that it is the responsibility of the owner to ensure a valid permit is in effect at the time works are occurring; and, if it is anticipated that works will not be completed within the allotted time, the Owner shall notify TRCA at least 60 days prior to the expiration date on the permit if an extension will be requested.	Agreed	N/A
6	The Owner shall ensure all excess fill (soil or otherwise) generated from the works will not be stockpiled and/or disposed of within any area regulated by TRCA (on or off-site) pursuant to Ontario Regulation 166/06, as amended, without a permit from TRCA.	Agreed	N/A
7	The Owner shall install effective erosion and sediment control measures prior to the commencement of the approved works and maintain such measures in good working order throughout all phases of the works to the satisfaction of TRCA.	Agreed	N/A
8	The Owner acknowledges that the erosion and sediment control strategies outlined on the approved plans are not static and	Agreed	N/A

	that the Owner shall upgrade and amend the erosion and sediment control strategies as site conditions change to prevent sediment releases to the natural environment to the satisfaction of TRCA.		
9	The Owner shall repair any breaches of the erosion and sediment control measures within 48 hours of the breach to the satisfaction of TRCA.	Agreed	N/A
10	The Owner shall make every reasonable effort to minimize the amount of land disturbed during the works and shall temporarily stabilize disturbed areas within 30 days of the date the areas become inactive to the satisfaction of TRCA.	Agreed	N/A
11	The Owner shall permanently stabilize all disturbed areas immediately following the completion of the works and remove/dispose of sediment controls from the site to the satisfaction of TRCA.	Agreed	N/A
12	The Owner shall arrange a final site inspection of the works with TRCA Enforcement staff prior to the expiration date on the permit to ensure compliance with the terms and conditions of the permit to the satisfaction of TRCA.	Agreed	N/A
13	The Owner shall pay any additional fees required by TRCA in accordance with the TRCA Administrative Fee Schedule for Permitting Services, as may be amended, within 15 days of being advised of such in writing by TRCA for staff time allocated to the project regarding issues of non-compliance and/or additional technical	Agreed	N/A

	review, consultation and site visits beyond TRCA's standard compliance inspections.		

	TRCA Staff Report – Special Conditions	Applicant's Response	Applicant's Reasons / Proposed Condition (if applicable)
1	The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.	Agreed	N/A
2	Prior to execution of the Agreement, the Permit Holder shall obtain written confirmation from MNRF confirming that the Ministry has no objection to the removal of 18 ha of Provincially Significant Wetland (PSW), and that the Ministry supports the ecosystem compensation plan as appropriate and adequate mitigation of the ecological impacts of the granting of the permission.	Delete	This is not a condition which the Applicant can fulfill. It requires a 3rd party (MNRF) to fulfill it. Moreover, the legislature has already spoken through the recent amendments to the Conservation Authorities Act (s. 28.0.1) which requires that the permit issue (meaning elimination of the wetland) and through O. Reg. 159/21 which requires TRCA to render its decision by Friday March 12, 2021.
3	Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, for the cost of fill removal, site grading and wetland restoration on 1802 Bayly Street, which TRCA shall be entitled to draw on to restore the site in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.	Agreed	N/A
4	Prior to execution of the Agreement, the Permit Holder shall convey to TRCA an easement over 1802 Bayly Street for the purpose of permitting TRCA to implement restoration site	Agreed	N/A

	works including wetland restoration in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.		
5	The Permit Holder shall convey to TRCA lands in the Duffins and Carruthers Creek watershed legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING, and any other lands suitable for wetland restoration that are not part of the municipal natural heritage system, key natural heritage features or natural areas or equivalent as identified in an approved municipal plan or provincial plan required to accommodate ecosystem structure compensation.	Agreed with clarification	Confirmation is requested that this requirement will be included in the Agreement as an obligation of the Applicant and that it is not a pre-condition of permit issuance or of signing the Agreement.
6	Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, to secure the conveyance of the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and to secure the conveyance of additional lands suitable for wetland restoration to TRCA, in accordance with the Ecosystem Compensation Plan approved by TRCA.	Agreed with clarification	The provision of security is acceptable but the Agreement should make it clear that once the lands are conveyed to TRCA, the security shall be immediately released. There would be no need for the security to remain in place post conveyance.

7	Prior to execution of the Agreement, the Permit Holder shall provide a cash payment to TRCA, to secure the annual costs of property taxes and maintenance of the lands to be conveyed to TRCA, being the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and as well as the annual costs of property tax and maintenance of the additional lands required to be conveyed to TRCA for wetland restoration, at a rate of not less than $465/ha plus property taxes in perpetuity.	Delete	This condition is not reasonable. Firstly it would be impossible to calculate the present day value of payment 'in perpetuity'. Secondly, TRCA often obtains lands for free during the development approval process and the developer is never required to pay TRCA's ongoing maintenance expenses or property taxes. These expenses (like salaries, head office expenses, research, education, etc.) are properly paid out of TRCA's funding sources. They are a cost of doing business.
8	Prior to the conveyance of any lands to TRCA, the Permit Holder shall provide to TRCA: a satisfactory Phase I Environmental Site Assessment Report, and if required, such further reports and assurances with respect to the environmental condition of the lands; a recent reference plan; and confirmation that all lands to be conveyed are free and clear of all encumbrances, including any buildings or structures that are not required by TRCA.	Agreed with clarification	Confirmation is requested that this condition will be fulfilled after the permit is issued and after the Agreement is signed. The Agreement will provide for this requirement.
9	Prior to execution of the Agreement, the Permit Holder shall provide a cash payment for ecosystem structure compensation to TRCA in the amount of $4,426,216.41, for purposes in accordance with the	Agreed	N/A

	Ecosystem Compensation Plan approved by TRCA.		
10	Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the *Planning Act* for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.	Delete	The permit before TRCA in this hearing is a permit to strip topsoil and conduct pre-grading. This is not a permit respecting the site plan approval. The present permit proposes what is essentially an interim development condition. The reports filed in support of this interim development condition demonstrate that stormwater and erosion control will match the pre-development condition (i.e. the present state). TRCA will be circulated on the site plan application and is a commenting agency on it. Any required further TRCA permits will be applied for in the future. The Applicant will, if requested by TRCA, send TRCA staff the full site plan application forthwith.
11	Prior to execution of the Agreement, the Permit Holder shall provide revised stormwater management report, grading plans and erosion and sediment control plans, and an erosion and sediment control report and monitoring plans to TRCA satisfaction to address TRCA technical comments including that any external areas currently draining into the site are addressed.	Agreed with modification	The Applicant was only advised of TRCA staff's comments at 1:31pm on Wednesday March 10, 2021. This chart was required to be filed with TRCA by the end of business that same day. Accordingly there was insufficient time to deal with the comments. The Applicant proposes that the requirement to address technical comments be included as an obligation in the Agreement but not be made a condition of signing the Agreement.

12	The Permit Holder shall ensure that the wetland removal is supervised on site by a qualified ecologist for the purpose of ensuring all relevant environmental legislation, approved plans and TRCA conditions are adhered to and that weekly monitoring reports, including ESC monitoring reports, are submitted to TRCA Enforcement staff.	Agreed	N/A
13	The Permit Holder shall undertake a transplantation and relocation plan for regionally, locally and TRCA rare and uncommon species/communities identified by the ecologist on the property as timing of works allows, and that a final report prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.	Agreed with modification	This condition has come as a surprise to the Applicant and was not previously discussed in the many technical meetings between TRCA staff and the Applicant (or its technical advisors). The condition is also not consistent with the October 2020 Memorandum of Agreement between the Applicant and TRCA. Nevertheless the Applicant is agreeable to a modified condition as follows: "The Permit Holder shall undertake a transplantation and relocation plan for rare species (at any level), if project timing allows that transplantation to occur within the growing season (i.e., May through October) and that a final report will be prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled."

14	Prior to execution of the Agreement, the Permit Holder shall provide written support from Durham Region and the City of Pickering that the two municipalities are satisfied with and have secured future stormwater management infrastructure required for Site Plan Approval of the proposed commercial development including, but not necessarily limited to, permanent ponds, low impact development technologies, storm sewer(s) and outfall(s), both on and off site.	Delete	Consistent with the Applicant's comment to Special Condition #10, this condition is not reasonable nor relevant to the present permit. This condition deals with the ultimate stormwater management solution for the ultimate development. That ultimate development is the subject of the site plan application to which TRCA will comment upon.
15	Prior to execution of the Agreement, the Permit Holder shall obtain permit, on behalf of the City of Pickering, to construct the required culvert under Squires Beach Road needed to accommodate a temporary storm pump hose to service the Permit Holder's work.	Delete	The proposed condition suggests that another permit is required, presently, from TRCA, for the culvert. It further suggests that another permit application needs to be made. The Applicant disagrees. The details of and need for the culvert were provided in the within permit application and the permit which TRCA will issue on March 12, 2021 should and must include any required TRCA permission for the construction of the permit. The City of Pickering is aware of this position and agrees with it.
16	Prior to execution of the Agreement, the Permit Holder shall obtain a permit for altering a wetland at 1702 Squires Beach to address negative	Delete	This condition is neither reasonable nor capable of being fulfilled by the Applicant. The Applicant is not the owner of 1702 Bayly Street. That

	impacts to the PSW on that property due to the Permit Holder's work.		property is not governed by the MZO and so the regulatory regime for that permit is different than for 1802 Bayly Street (which the applicant does own and which is governed by the MZO). Moreover, the stormwater report filed in support of the within permit properly deals with the wetland located on 1702 Bayly Street.
17	Prior to the execution of the agreement, the Permit Holder shall provide a copy of any permit required under the Endangered Species Act from the Ministry of Environment, Conservation and Parks (MECP) for the works, or shall provide confirmation from the MECP that no such permit is necessary.	Agreed with modification	The Applicant is in discussions with MECP. The condition should be revised to require that any permit should be obtained prior to the removal of any regulated habitat from the subject lands (e.g., removal of certain trees) and not prior to signing the Agreement. A provision should be included in the Agreement which requires this but the MECP permit should not be made a condition of signing the Agreement.
18	Parties to the Agreement: The Permit Holder agrees to add the Province of Ontario, Regional Municipality of Durham and City of Pickering as parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act*.	Delete	The Applicant does not consent to the addition of other parties to the Agreement. Not only are those parties not required but their addition has the potential to significantly delay the finalization and execution of the Agreement. Section 28.0.1(24) of the Conservation Authorities Act permits the addition of parties but only where the TRCA and Applicant agrees to same.

			The Applicant does not agree to same here.
19	Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.	Delete	This is an unreasonable condition. The present permit is for topsoil stripping and pre-grading and that work will be completed within a relatively short period of time. It represents and interim development condition. The final development condition will be the construction of the project and it will have its own long term storm water management solution. That solution is subject to approval by the City (with input as required from TRCA and others).
20	Irrevocability: All parties to the Agreement required under Section 28.0.1(24) of the Conservation Authorities Act agree that if future legislation or regulations are enacted impacting the permitted area, there will be no ability to reduce the agreed upon conditions.	Delete	The parties cannot and should not try to contract out of any future provincial amendments to either legislation or regulations.