

## Section II – Items for Executive Committee Action

**TO:** Chair and Members of the Executive Committee  
Friday, June 10, 2022 Meeting

**FROM:** Sameer Dhalla, Director, Development and Engineering Services

**RE:** **APPLICATION FOR PERMIT PURSUANT TO S.28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDER, ONTARIO REGULATION 515/21)**  
CFN 66806 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, Northwest Corner Bayly Street and Church Street, (Lot 15, Concession 1, City of Pickering, Regional Municipality of Durham) by Pickering Developments (Bayly) Inc.

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### KEY ISSUE

Issuance of permission pursuant to Section 28.0.1 of the *Conservation Authorities Act* to make site alterations within a Regulated Area for topsoil stripping, grading, installation of an exfiltration gallery and stormwater management outfall to facilitate a commercial development within the Northwest Corner Bayly Street and Church Street, (Lot 15, Concession 1, City of Pickering, Regional Municipality of Durham).

### RECOMMENDATION:

**WHEREAS** the Minister of Municipal Affairs and Housing issued a Minister’s Zoning Order (MZO) for the subject property on October 30, 2020, as Ontario Regulation 607/20;

**WHEREAS** the Minister of Municipal Affairs and Housing issued an amendment to the Minister’s Zoning Order (MZO) for the subject property on July 2, 2021, as Ontario Regulation 515/21;

**WHEREAS** Section 28.0.1 of the *Conservation Authorities Act* requires the Authority to issue permission for a development project that has been authorized by a Minister’s Zoning Order (MZO) issued under the *Planning Act*, and where the lands in question are not located within a Greenbelt Area as identified through Section 2 of the *Greenbelt Act*;

**WHEREAS** an MZO is not required to be consistent with the Provincial Policy Statement and Section 28.0.1 of the *Conservation Authorities Act* prohibits the Authority from refusing to grant permission for a development project that has been authorized by a Minister’s Zoning Order (MZO), outside of the Greenbelt 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*;

**WHEREAS** Section 28.0.1(6), of the *Conservation Authorities Act*, permits the Authority to attach conditions to the permission, including conditions to mitigate any effects the development may have on the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land and/or 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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**WHEREAS** Section 28.0.1(24), of the *Conservation Authorities Act*, provides that where a permit is to be issued pursuant to Ontario Regulation 166/06, the applicant is required to enter into an agreement with the Conservation Authority;

**AND WHEREAS** TRCA staff, in the absence of an approved MZO, would normally issue a Permit for the commercial development where it has been demonstrated there will no impact on the control of flooding, erosion, dynamic beaches, pollution, the conservation of land, or jeopardize the health or safety of persons or result in the damage or destruction of property;

**THEREFORE, LET IT BE RESOLVED THAT** Pickering Developments (Bayly) Inc. in the City of Pickering be granted permission through a Permit to make alterations within an area of interference of a Provincially Significant Wetland for topsoil stripping, grading, installation of an exfiltration gallery and stormwater management outfall to facilitate a commercial development within the Northwest Corner Bayly Street and Church Street, (Lot 15, Concession 1, City of Pickering, Regional Municipality of Durham);

**AND FURTHER THAT** the Executive Committee, authorize the entering into of the required agreement related to the Permit for the site works.

### **MZO PERMIT SUMMARY**

- Section 28.0.1 applies, and the Board must issue this permit.
- TRCA Staff support the issuance of this permit application as the applicant has demonstrated that it does not impact flooding, erosion, dynamic beaches, pollution, the conservation of land, or jeopardize the health or safety of persons or result in the damage or destruction of property.
- The conditions of this permit include standard conditions and one additional condition have been agreed upon by the proponent with their filing of this application.
- An Agreement is required and will include standard Permit conditions and one additional Permit condition.
- This report and approval are required to allow the applicant to proceed with construction.

### **BACKGROUND**

#### **Permit Applications, Property Descriptions and Background**

The owner has applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the *Conservation Authorities Act* for topsoil stripping, grading, installation of an exfiltration gallery and stormwater management outfall to facilitate a commercial development. The development is for a Porsche Experience Centre consisting of one building with two (2) surface parking lots, a driving circuit that includes a staging area, a handling track, a low friction handling course, a dynamic area, and a circular track. This development will be located on lands at the Northwest Corner Bayly Street and Church Street in the City of Pickering. The lands are part of the Durham Live development and located south of the existing Casino.

The MZO and MZO amendment converted the land use from agricultural to commercial including a mix of commercial uses (Casino, office space, parking garage, film studios, hotels, and related amenities). The site is located within the Duffins Creek watershed and includes

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Provincially Significant Wetlands and their associated 30 metre buffer which are zoned Natural Heritage and Open Space in the MZO, the latter of which are to be conveyed to the City of Pickering through a Development Agreement (see **Attachment 1, Location Map - Part of Lots 15 and 16, Concession 1 City of Pickering, Regional Municipality of Durham**).

The entire property is 91.6 ha (226 acres) however this Permit only deals with a 12.6 ha (31 acre) portion at the southeast corner of the site, east of the Provincially Significant Wetland. This portion of the property was subject to extensive review with the landowner and City including consultation prior to the MZO being approved, the staking of the PSW, dripline and continuous design meetings between TRCA Staff, the City, and the Consulting Team. The wetlands and development limits were defined, and buffers determined in consultation with the applicant's engineering and environmental consultants. While Site Plan approval has not yet been granted, the City of Pickering has stated in writing that it supports the issuance of the permit.

This Permit includes grading and temporary erosion and sediment controls including an outlet located in the Regulated Area to facilitate drainage and prevent erosion during topsoil stripping and rough grading. The proposal also includes an infiltration trench along the east side of the buffer to facilitate post-construction wetland water balance. See **Attachment 2, Proposed Works**.

### **Mandatory Permits for MZO Development Projects**

Section 28.0.1 of the amended *Conservation Authorities Act* (CA Act) 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 the 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 LPAT.
- All MZO-related CA permits must have an agreement with the permittee (can include all 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,

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outside of the Greenbelt, and can make that permission subject to conditions and must enter into an agreement with the landowner/applicant. Consistent with current practice, Board approval is required.

### **RATIONALE**

#### **Review of Permit Application by TRCA Staff**

The application has been reviewed by TRCA's water resources, ecology and hydrogeology staff. Subject to a satisfactory response to technical comments provided on May 18, 2022 and May 27, 2022, the proposed site alteration does not impact:

- the control of flooding – all works are located outside of the regional storm floodplain;
- erosion – no geotechnical/slope stability issues have been identified;
- dynamic beaches – not applicable;
- pollution – sediment and erosion control measures will be installed and maintained through construction to prevent sediment from migrating from the site onto the adjacent lands or features;
- conservation of land – no vegetation will be removed, no adverse impacts to nearby natural features are anticipated, and the currently unvegetated wetland buffer will be planted with native species;
- and/or in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property – the temporary stormwater facilities have been sized and located based on current best practices

#### Policy Guidelines:

The proposed works are consistent with Section 8.4 (General Regulation Policies) and 8.7 (Development and Interference within Wetlands and Development within Other Areas (Area of Interference)) of the Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority.

#### Note on Site Conditions:

Shortly after the application was filed TRCA staff noted that there is a poorly drained area developing within the previously farmed lands on the subject property which has recently begun to pond in the spring, and which has Cattails and European Common Reed establishing within it. This area is not captured in TRCA's regulatory mapping. Upon request, the applicant's ecology consultant prepared an addendum to their Environmental Impact Study based on site visits, flora and fauna inventory work, and analysis of historical aerial photography. The EIS Addendum concludes that this seasonally ponded area was only created over the past two years in direct consequence of earthworks which interfered with previous drainage patterns. The ponding area is isolated and does not meet TRCA's criteria for being a wetland. TRCA Ecology staff agree with this conclusion. As a result, the applicant has committed to ensure that an ecologist attend the site just prior to the disturbance of the area to confirm there is no bird nesting activity or use of the area by bird fledglings. If, in the event that any such uses remain present, a protection zone around that area is to be delineated, with work in that particular area held off until such time as the ecologist is able to provide a clearance that nesting/fledgling use is complete. This commitment, however, is outside of the context of this permit as a TRCA permit is not required to develop the ponding area.

### **SUMMARY CONCLUSION**

Approval of permission for development within the area of interference of a wetland is required to allow the commercial development to commence. Staff are recommending the issuance of this Permit based upon TRCA's standard permit conditions and one additional condition, which will be included in the Agreement as required by the updated *Conservation Authorities Act*. See

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***Attachment 3, Standard Permit Conditions and Attachment 4, Additional Permit Condition.***

**Report prepared by: Steven Heuchert, extension 5311**

**Email: [steve.heuchert@trca.ca](mailto:steve.heuchert@trca.ca)**

**For Information contact: Steve Heuchert, extension 5311**

**Email: [Steve.Heuchert@trca.ca](mailto:Steve.Heuchert@trca.ca)**

**Date: May 27, 2022**

**Attachments: 4**

Attachment 1: Ministers Zoning Order (MZO) - Ontario Regulation 515/21, Map 265

Attachment 2: Proposed Works

Attachment 3: Standard Permit Conditions

Attachment 4: Additional Permit Condition