

Section II – Items for Executive Committee Action

TO: Chair and Members of the Executive Committee
Friday October 7, 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 345/22)**
Request for permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, Langstaff Bridge Transit Oriented Community (Part of Lots 35, 36 and 37, City of Markham and Town of Richmond Hill, Regional Municipality of York) by Condor Developments (CFN 67623)

KEY ISSUE

Issuance of permission pursuant to Section 28.0.1 of the Conservation Authorities Act (CA Act) to make site alterations within a Regulated Area to enclose a portion of the Pomona Mills Creek watercourse and site grade within lands located south of Langstaff Boulevard, east of Yonge Street, City of Markham, Regional Municipality of York.

RECOMMENDATION:

WHEREAS the Minister of Municipal Affairs and Housing (MMAH) issued a Minister’s Zoning Order (MZO) for the subject property on April 14, 2022, as Ontario Regulation 345/22;

WHEREAS Section 28.0.1 of the CA Act requires the Authority to issue permission for a development project that has been authorized by an 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 Section 28.0.1 of the CA Act requires that the Authority shall not refuse to grant permission for a development project that has been authorized by an MZO, outside of the Greenbelt, 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;

WHEREAS Section 28.0.1(6), of the CA 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 to mitigate any conditions or circumstances 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;

WHEREAS Section 28.0.1(24), of the CA 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;

WHEREAS TRCA staff, in the absence of an approved MZO, would not normally issue a Permit for a watercourse enclosure except in areas of necessary public infrastructure;

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WHEREAS it is not feasible to restore the degraded watercourse in an open state due to the grading constraints set by the fixed location of the Ontario Line Subway tunnel and the Metrolinx Go Transit station;

AND WHEREAS through design of the enclosure and an associated ecosystem compensation requirements it has been demonstrated there will be 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 Condor Developments in the City of Markham be granted permission through a Permit to enclose a watercourse and site grade in the City of Markham, Regional Municipality of York;

THAT TRCA staff seek full cost recovery in accordance with TRCA's Administrative Fee Schedule; and

AND FURTHER THAT the Executive Committee, authorize the entering into of an agreement to include comprehensive ecosystem structure, land-based compensation and a letter of credit related to the Permit for the 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 and additional conditions and have been agreed upon by the proponent with their filing of this application.
- An Agreement is required and will include standard and additional Permit conditions and ecosystem compensation.
- 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 Act to enclose a portion of the Pomona Creek watercourse and site grade to facilitate the development of the Bridge Transit Oriented Community on lands located south of Langstaff Boulevard, east of Yonge Street, within the City of Markham.

In 2021, a 25.40 ha portion of the Langstaff Gateway lands generally located west of Cedar Avenue, north of the cemetery, east of Yonge Street and south of Highway 407 was selected as a candidate site for a new master planning process under Infrastructure Ontario's Transit Oriented Communities (TOC) program. Additionally, and also in 2021, the Yonge North Subway

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Extension (YNSE) was provided with a new alignment through the centre of the Langstaff Gateway Community with a second station proposed further north in the Richmond Hill Urban Growth Centre as also planned through the TOC Program. The new YNSE alignment provides for general efficiencies along with an opportunity for additional stations between Finch Station and Richmond Hill Centre.

On August 14, 2022 the Minister of Municipal Affairs and Housing approved an Enhanced Ministers Zoning Order (EMZO) for the 25.40 hectare Bridge Station Transit Oriented Community (TOC, formerly known as Langstaff Gateway) under Ontario Regulation 345/22. In total, the Bridge Station TOC is anticipated to provide approximately 20,490 residential units (35,653 people) and between 9,400 and 12,300 new jobs (see **Attachment 1 – Ministers Zoning Order (MZO) - Ontario Regulation 345 22 - Map 302**).

Under the EMZO a portion of the Pomona Mills Creek watercourse will be enclosed for the purposes of delivering a larger surface park “Romeo Park” at 1.9 hectares within the Open Space 1 Zone. (see **Attachment 2 – Proposed Watercourse Enclosure**). Subsection 24(1) through (3) permits encumbered parkland within the Bridge Station TOC. Prior to the issuance of the EMZO, TRCA staff reviewed a submission that demonstrated that an open channel, combined with the increased fill required for a YNSE subway alignment through the centre of the site, would hinder accessibility in the Bridge Station TOC and provide for grading across the road network in excess of 5% slopes in several portions of the lands. This presents a challenge from an accessibility and active transportation standpoint given the highly urbanized and pedestrian-focused context of the road and block network to support significant new residential and employment densities mandated by the Province. Due to steepening of slopes which result from the new YNSE alignment, Pomona Mills Creek would become disconnected from the community and deeply incised to the point where guardrails and retaining walls would be required due to steep side slopes. A deeply incised and exposed creek channel surrounded by guard rails would interfere with street and trail network porosity and severely limit pedestrian accessibility in the east-west direction across the TOC lands. As such the Provincial direction has been to enclose the watercourse (see **Attachment 3 – Proposed Bridge Station TOC Cross Section**). TRCA staff has made all effort to examine options for retaining and restoring the creek in an open state.

Given the requirements of Section 28.0.1 of the Act which requires TRCA to grant the requested permissions, TRCA staff are proposing a comprehensive ecosystem compensation agreement with the landowner. The agreement is predicated on the following:

1. The Owner shall either: a) provide a one-time cash payment to TRCA for the purposes of off-site compensation in the form of watercourse restoration works within the TRCA Regulated Area of Pomona Mills Creek located south of the Holy Cross Cemetery (see **Attachment 4 – Proposed Watercourse Restoration Works**); or b) the Owner shall implement these watercourse restoration works at the Owner's cost further to an approved TRCA permit within two years of the execution of the Agreement.
2. The Owner shall convey to the City of Markham approximately 11 ha of land being a portion of the former golf course and tableland south of Markland Street, west of Woodbine Avenue, north of 16th Avenue and east of Cache Woods Court at no cost to TRCA or the City of Markham (see **Attachment 5 – Lands to be Conveyed**).
3. The Owner shall provide a one-time cash payment to TRCA for the purposes of achieving a net ecological gain on the lands to be conveyed.
4. If, despite best efforts of TRCA, City, and the Owner, the lands in paragraph 2 cannot be conveyed to the City, the Owner, City and TRCA shall work together to

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- identify alternative lands that meet or exceed the compensation provided through the lands identified in paragraph 2.
5. If, despite best efforts of TRCA, City, and the Owner, alternative lands in paragraph 4 cannot be conveyed to the City, the Owner shall provide a one-time cash payment to TRCA equivalent to the sum of the amount in paragraph 3 and an amount equal to the area of loss (approximately 0.9 ha) multiplied by the appraised value identified in a final appraisal prepared further to TRCA's Terms of Reference for Appraisal Services.

TRCA staff would support works commencing, subject to TRCA's Standard Conditions (**Attachment 6 – Standard Conditions**) and Additional Conditions (**Attachment 7 – Additional Permit Conditions**) to allow time for TRCA, City and the Owner to agree on certain technical matters (including Regional Storm passage, erosion control and long term maintenance matters), review the ecosystem compensation agreement, and for the Owner to provide substantial securities to ensure implementation of the agreement. To be clear, works would not commence until the additional conditions are satisfied and secured through the required Agreement.

Mandatory Permits for MZO Development Projects

Section 28.0.1 of the amended 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 OLT.
- 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, 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, hydrogeology, and ecology staff and, further to several discussions with the applicant's consulting team, they are generally satisfied that matters related to flooding, erosion, pollution and conservation of land can be addressed through a revised plan to include four 3 metre diameter culverts. As such, the proposed site alteration would not impact:

- the control of flooding – the culverts will convey the regional storm floodplain;
- erosion – no geotechnical/slope stability issues have been identified and the works will have no impact on downstream erosion;
- 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 – a significant ecosystem compensation program is proposed and will be secured to ensure no net loss of natural heritage system, and a net gain to the existing natural heritage system;
- 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 works have been sized and located based on current best practices.

Policy Guidelines:

While the proposed works are not consistent with Section 8.4 (General Regulation Policies) and 8.5 (Valley and Stream Corridors) of the Living City Policies for Planning and Development in the Watersheds of the Toronto and Region Conservation Authority, as these policies do not generally support the enclosure of watercourses to facilitate development, the enclosure is required to facilitate other provincial growth planning initiatives, including infrastructure, and staff have made "best efforts" to compensate for the loss of the degraded watercourse through ecosystem compensation.

SUMMARY CONCLUSION

Approval of permission for development within the valley and stream corridor is required to allow site alteration to commence. Staff are recommending that work proceed only after TRCA's additional conditions are satisfied, which will be included in the Agreement as required by the updated CA Act.

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Attachments: 7

Attachment 1: Ministers Zoning Order (MZO) - Ontario Regulation 345/22 - Map 302

Attachment 2: Proposed Watercourse Enclosure

Attachment 3: Proposed Bridge Station TOC Cross Section

Attachment 4: Proposed Watercourse Restoration Works

Attachment 5: Lands to be Conveyed

Attachment 6: Standard Permit Conditions

Attachment 7: Additional Permit Conditions