

## Section II – Items for Executive Committee Action

**TO:** Chair and Members of the Executive Committee  
Friday, October 6, 2023 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 644/20) – 11260 Weston Road, City of Vaughan**  
CFN 68530 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines and Watercourses pursuant to Ontario Regulation 166/06, 11260 Weston Road, Vaughan, Ontario (Part Lot 29, Concession 6, City of Vaughan, Regional Municipality of York) by AMMP Holdings Incorporated

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### **KEY ISSUE,**

Issuance of permission for an area subject to a Minister’s Zoning Order (MZO) under the Planning Act and pursuant to Section 28.0.1 of the Conservation Authorities Act to interfere with wetlands, and to undertake development in the form of topsoil stripping, rough grading, and the construction of temporary sediment ponds within a Regulated Area at 11260 Weston Road, Part Lot 29, Concession 6, City of Vaughan, Region of York.

### **RECOMMENDATION:**

**WHEREAS** at its Board of Directors meeting on October 23, 2020, RES.#A164/20 approved the 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;

**WHEREAS** TRCA staff using a science-based approach to decision making and TRCA’s Living City Policies (LCP), would not customarily support the issuance of a permit in support of development within wetlands;

**WHEREAS** the Minister of Municipal Affairs and Housing (MMAH) issued a Minister’s Zoning Order (MZO) for the subject property on November 6, 2020, as Ontario Regulation 644/20;

**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 an MZO issued under the Planning Act, and where the lands in question are not located within the Greenbelt Area as identified through Section 2 of the Greenbelt Act;

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WHEREAS Section 28.0.1 of the Conservation Authorities 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 Area, 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 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, or unstable soil or bedrock and/or in the event of 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 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;

WHEREAS Section 28.0.1(25) of the Conservation Authorities Act provides that the agreement shall set out actions or requirements that the holder of the permission must complete or satisfy to compensate for ecological impacts and any other impacts that may result from the development project;

WHEREAS it has been confirmed that the wetlands on-site are not Provincially Significant Wetlands (PSWs), are smaller than 0.5 ha in size, and the ecological function of the wetlands can, in staff's opinion, be replicated with appropriate compensation nearby which is consistent with TRCA policy;

AND WHEREAS TRCA staff, in the absence of an approved MZO, would normally issue Section 28 Permits to facilitate topsoil stripping, rough grading, and the construction of temporary sediment ponds in preparation of future residential subdivisions, where it has been demonstrated that 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 AMMP Holdings Incorporated be granted permission through a Permit to interfere with wetlands, and conduct topsoil stripping, rough grading, and the construction of temporary sediment ponds in preparation of future residential subdivisions on the subject property, subject to the Standard Conditions within Attachment 7 and Additional Conditions within Attachment 8 hereto;

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

**AND FURTHER THAT the Board of Directors authorize the entering into of an agreement related to the Permit for the site works.**

### **MZO PERMIT SUMMARY**

- **Section 28.0.1 applies, and the Board must issue this permit.**
- **It is the opinion of TRCA staff that the required measures included in the conditions and Agreement can, if implemented effectively, adequately mitigate effects on the tests of flooding, erosion, dynamic beaches, unstable soils, and bedrock, as well as compensate for ecological impacts.**
- **The conditions of this permit have been agreed upon by the applicant and cannot be changed prior to approval without consent of the applicant.**
- **An Agreement is required and will include Standard and Additional Permit conditions.**
- **This report and approval are required to allow the applicant to proceed with construction.**

## **BACKGROUND**

### **Permit Application, Property Description and Background**

The applicant has applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the Conservation Authorities Act to facilitate topsoil stripping, rough grading, and the construction of temporary sediment ponds for future residential subdivisions on lands known municipally as 11260 Weston Road, within the City of Vaughan.

The subject lands are located within the Block 41 New Community Area that is bounded by Kirby Road in the north, Weston Road in the east, Teston Road in the south and Pine Valley Drive in the west. The property associated with the subject permit application is 20.84 ha (51.49 acres) and fronts onto Weston Road, in the northeast portion of the Block 41 study area between Teston Road and Kirby Road (Attachment 1 Location Plan).

The subject property has been subject to extensive review through the OPA 50 Secondary Plan and supporting East Purpleville Creek Subwatershed Study (SWS) approved in 2019. The subject lands are located within the East Purpleville Creek Subwatershed, a headwater sub catchment of the East Humber River. Surface drainage from the lands drain into a valley corridor of the East Purpleville Creek. Block 41 contains portions of the Greenbelt Area, Provincially Significant Wetlands (PSWs) and unevaluated wetlands, valley corridors, woodlands, headwater drainage features (HDFs) and flood/erosion hazards (Attachment 2 Drawing 2 Existing Natural Hazards and Attachment 3 Drawing 3 Natural Features). The natural heritage system (NHS) includes cool and cold-water aquatic habitat and endangered species habitats (i.e., redbreasted dace).

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The following development approvals are in effect or in place on the subject property:

- Minister's Zoning Order (MZO) 644/20 (Attachment 4 Ontario Regulation 644/20) allows for the development of low-rise residential, low-rise mixed-use, mid-rise residential and mid-rise mixed-use development (Attachment 5 Zoning Permissions Map);
- Secondary Plan (OPA 50) with policies and land use designations for a new community within the Block 41 study area which includes a mix of housing, local retail, community facilities and schools for a planned population of 13,000 people and 600 jobs; and an approved SWS. The Secondary Plan was adopted by City of Vaughan Council on October 7, 2019, and approved by York Region Council on January 30, 2020. OPA 50 was subsequently appealed to the Ontario Land Tribunal (OLT). The OLT approved the Secondary Plan through a Decision on August 18, 2021, bringing the Secondary Plan into full force and effect for the Block Plan study area.

During the review of the Secondary Plan and SWS, TRCA agreed to defer several detailed studies with the understanding that they would be addressed through the Master Environmental Servicing Report (MESP), a study required in support of the Block Plan Application. Some of the deferred studies include the completion of constraints mapping, HDF Assessments, wetland evaluations, Environmental Impact Study (EIS), features-based water balance, hydraulic assessments, and geotechnical assessments. The Block 41 landowners group filed their Block Plan Application (City File #BL.21.2020) and supporting MESP to the City of Vaughan in early 2022 and TRCA staff provided comments in May 2022. The purpose of this Block Plan is to establish the extent and precise location of the various community elements in the Block Plan study area including parkland, elementary schools, secondary schools, stormwater management facilities, etc. The intent of the Block Plan Application is to also provide for the development of a detailed phasing plan and serves as a comprehensive blueprint for future individual Draft Plan of Subdivision Applications. Recognizing that the Block Plan Application and MESP are not approved, this TRCA Permit Application has been reviewed with Block Plan/MESP technical issues remaining unresolved. Through the applicant's technical submissions, the TRCA Permit Application has resolved all outstanding Block Plan/MESP natural heritage and natural hazard technical issues related to the subject property. As a result, the proposed works are located outside of all protected natural heritage features and natural hazards with adequate mitigation measures being proposed.

There are unevaluated wetlands (Wetland #3 and #4 as referenced in Attachment 3) located on the tableland portion of the subject property which have historically been situated in minor depressional areas surrounded by active agricultural lands. Wetland #3 is 0.17 ha and Wetland #4 is 0.29 ha in size. Historic tilling activities have impacted these minor wetlands and several other minor wetlands have been removed within the Block 41 study area. The applicant completed an evaluation (per TRCA and Provincial standards) of the wetlands on-site and it was determined that the wetlands are not significant and do not qualify as PSWs. Staff agree with the evaluation that the wetlands

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are small, low functioning, supported by ephemeral local surface water and comprised of common wetland species. Further, TRCA's LCP policies state that development may be permitted within wetlands less than 0.5 ha in size where it can be demonstrated to the satisfaction of TRCA that the wetland is not part of a PSW. The policy also states that the ecological and hydrological functions of the wetland must be maintained or enhanced through compensatory restoration works. During discussions between staff and the applicant's consultant, the feasibility of attempting to retain these features in a future urban fabric was determined to be low. As such, the ability to relocate, replicate and enhance the quality of wetland features at suitable locations was conceptually presented to TRCA (Attachment 6: Drawing 4 Restoration, Parks, and Stormwater Management Facilities) and is intended to be addressed in more detail with the forthcoming MESP submissions in support of the Block Plan Application. Compensation for the removal of the wetlands on-site is proposed as part of the broader Block 41 study area in the form of restoration south of the subject lands within existing agricultural lands in the Greenbelt Area but adjacent to the natural heritage system. The final form of compensation required to meet TRCA's requirements will be determined through concurrent planning applications and future MZO permit applications. However, as detailed in this report, the applicant has agreed to provide compensation for any ecological impacts resulting from this application in accordance with TRCA's guideline for ecosystem compensation and the recommendations of the MESP and a compensation provision will be included in the agreement required with this MZO permit.

At present time, there are no formal Draft Plan of Subdivision Applications filed with the City of Vaughan for the subject property. However, Draft Plan of Subdivision Applications are expected to be filed with the City of Vaughan soon.

### **Minister's Zoning Order (MZO)**

On November 6, 2020, an MZO was issued as Ontario Regulation 644/20. It provided zoning permission for a 322 ha (796 acre) portion of Block 41 that includes the subject property associated with the requested permit application. Through the Order, 11260 Weston Road was provided with zoning permissions for low-rise residential, mid-rise residential and mid-rise mixed use. The extent of the MZO appears to generally coincide with the extent of the Protected Countryside pursuant to the Greenbelt Plan. Please note that the subject property is not located within the Greenbelt Area. The approved zoning permissions associated with the subject property appear to be located outside of the proposed natural heritage system and compensation will be provided to mitigate impacts to small, isolated wetlands on the subject property, which has been confirmed as part of the Block Plan Application and TRCA Permit Application reviews.

### **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.

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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 unstable soil or bedrock;
  - 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. No hearing was requested for this permit application and the applicant has confirmed their consent to the conditions.
- If the applicant still objects to conditions following a decision of the Hearing Board, the applicant has the option to either request a Minister's review (Ministry of Natural Resources and Forestry) 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 to satisfy to compensate for ecological impacts, 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 Area, 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 planning, geotechnical, water resources, hydrogeology, and ecology staff. The proposed site alterations do not impact:

- The control of flooding – all works are located outside of the Regional Storm Floodplain;
- Erosion – the proposal is located outside of the riverine erosion hazard and no geotechnical/slope stability issues are anticipated based on the reports submitted in support of the application;
- Dynamic beaches – not applicable;
- Unstable soil – no organic soil or marine clays are located on the lands subject to the MZO;
- Unstable bedrock – there are no sinkholes, caverns or other hazards associated with karst topography on the subject lands or immediately adjacent to the site;
- And/or in the event of a natural hazard, might jeopardize the health or safety of

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persons or result in the damage or destruction of property – the stormwater management facilities have been sized and located based on current best practices.

Note that upon royal assent, Bill 23 repealed clause 28.0.1(6)(a) of the CA Act, removing the ability of CAs to attach conditions mitigating the effects an MZO development project would have on the conservation of land and pollution. It is worthwhile to note that an agreement under 28.0.1(25) can still require compensation for ecological impacts. As a result of Bill 23, the amended clause 28.0.1(6) now includes the ability to attach conditions mitigating the effects of a development project on unstable soil and bedrock.

For clarity, Bill 23 also proposed to similarly repeal, under clause 28.1(1)(a), the conservation of land and pollution tests and add unstable soil and bedrock tests by way of amendment, for applications where an MZO has not been issued, but this does not come into force until an enabling regulation is proclaimed.

Even though this application was submitted prior to royal assent of Bill 23, the application is now subject to the amendments of the Bill. However, the application in staff's opinion would not have affected the conservation of land or pollution test as the development project will mitigate any construction-related impacts to the natural heritage system and is located outside of the erosion and sediment controls, accordance with TRCA's guidelines.

### **Recommended Conditions to the Permission**

Section 28.0.1 of the Conservation Authorities Act allows for conditions to be attached to:

- Mitigate any effect the development project may have on the control of flooding, erosion, dynamic beaches, or unstable soil or bedrock;
- Mitigate 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; and,
- Compensate for ecological impacts that may result from the development project.

Recognizing the requirements of Section 28.0.1 of the Conservation Authorities Act and the concurrence of the applicant regarding additional conditions (Attachment 8) being imposed for this permit, staff cannot oppose the permit request.

### **Policy Guidelines**

The proposed works are consistent with Section 8.4 (General Regulation Policies), 8.5 (Valley and Stream Corridors) and 8.7 (Development and Interference with Wetlands and Development within Other Areas (Areas of Interference) of the Living City Policies for Planning and Development in TRCA Watersheds.

### **SUMMARY CONCLUSION**

Approval of permission for development and interference within natural heritage features including an unevaluated wetland generally does not meet the requirements of

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TRCA's LCP. However, the wetlands are not significant and are smaller than 0.5 ha in size, and TRCA's LCP policies may permit the removal of non-significant wetlands that are less than 0.5 ha with appropriate compensation. Also, the CA Act requires the Authority to issue such a permit on these lands as they are subject to an MZO, issued under the Planning Act. Staff has therefore reviewed the application and have created a site-specific condition that reflects staff technical reviews and the Board approved TRCA Ecosystem Compensation Guideline to mitigate the tests and will include provision within the required agreement to compensate for ecological impacts, as prescribed in the CA Act.

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**Date: August 25, 2023**

**Attachments: 8**

Attachment 1: Location Plan

Attachment 2: Drawing 2 Existing Natural Hazards

Attachment 3: Drawing 3 Natural Features

Attachment 4: Ontario Regulation 644/20

Attachment 5: Zoning Permissions Map

Attachment 6: Drawing 4 Restoration, Parks, and SWM Facilities

Attachment 7: Standard Permit Conditions

Attachment 8: Additional Conditions