

**Section III – Items for the Information of the Board**

**TO:** Chair and Members of the Board of Directors  
Friday, September 27, 2024 Meeting

**FROM:** Laurie Nelson, Director, Policy Planning

**RE: UPDATE ON MINISTER’S ZONING ORDERS UNDER THE  
PLANNING ACT IN TRCA’S JURISDICTION**

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**KEY ISSUE**

To update and inform the Board of Directors on the current state of Minister’s Zoning Orders (MZOs) under the Planning Act in TRCA’s jurisdiction as per previous Board direction.

**RECOMMENDATION:**

**IT IS RECOMMENDED THAT this report on the state of Minister’s Zoning Orders (MZOs) under the Planning Act in Toronto and Region Conservation Authority’s (TRCA’s) jurisdiction, be received.**

**BACKGROUND**

Section 47 of the Planning Act authorizes the Minister of Municipal Affairs and Housing (“the Minister”) to make zoning orders (MZOs) that regulate the use of land in Ontario. On July 21, 2020, legislative changes to the Planning Act were enacted through Bill 197, the COVID-19 Economic Recovery Act, to provide the Minister with enhanced zoning powers across the province (e.g., remove municipal use of site plan control), with the exception of lands within the Greenbelt Area. The Planning Act was further amended on April 12, 2021, through Schedule 3 of Bill 257, the Supporting Broadband and Infrastructure Expansion Act, 2021, so that an MZO does not have to be consistent with the Provincial Policy Statement (PPS). This amendment does not apply to lands located within the Greenbelt Area. In addition, the changes provided that any existing MZOs never had to be consistent with the PPS.

**TRCA’s Role Related to Plan Review and Minister’s Zoning Orders**

TRCA works in collaboration with our regional and local municipalities, the building industry, provincial ministries, agencies, and stakeholders to advance a coordinated review and approval process that is informed by the latest watershed science and technical information. With the most

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highly urbanized and urbanizing watersheds in the province, TRCA recognizes the importance of efficiency, certainty, transparency and accountability in planning and design review processes, so that development and infrastructure projects can occur in a timely and environmentally sustainable manner and protect people and property from the risks of natural hazards.

Through participation in the review of development applications, TRCA strives to ensure that municipally approved development under the Planning Act can also meet the regulatory requirements governing the issuance of permits under the Conservation Authorities Act (CA Act). Key to this process is ensuring that natural hazard mapping and policies are reflected in municipal official plans and zoning by-laws consistent with the PPS and CA Act regulatory requirements. In addition, TRCA encourages the municipality to include our staff in pre-consultation meetings and to help set Terms of Reference (TOR) for technical studies as part of a complete Planning Act application and to meet TRCA's regulatory permitting requirements.

It has been TRCA's experience that municipally led strategic, comprehensive and coordinated planning processes that incorporate integrated watershed management through technical studies and analysis facilitate timely, safe, and resilient development and infrastructure to protect new and intensifying communities. In accordance with Section 21.1(1) of the CA Act and Ontario Regulation 686/21: Mandatory Programs and Services, TRCA is required to provide programs and services related to the risk of natural hazards within its jurisdiction. TRCA must, acting on behalf of the Ministry of Natural Resources (MNR) or in its capacity as a public body under the Planning Act, ensure that decisions under the Planning Act are consistent with the natural hazard policies of the PPS and conform to any natural hazard policies in a provincial plan.

TRCA is also mandated to undertake its duties, functions, and responsibilities to administer and enforce the provisions of Parts VI and Parts VII of the CA Act related to permits.

On December 8, 2020, the CA Act was amended by Bill 229, Protect, Support and Recover from COVID-19 Act (Budget Measures), 2020, with the addition of Section 28.0.1 specific to developments authorized by an MZO under the Planning Act, within an area regulated under Section 28(1) of the CA Act, (the Regulated Area) outside of the Greenbelt. As a result, a conservation authority is compelled to issue a permit, shall not

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refuse a permit, and may only impose conditions on the permit.

Section 28.0.1 of the CA Act was further amended on November 28, 2022, by Bill 23, the More Homes Built Faster Act, 2022. The tests of “pollution” and “conservation of land” were replaced with “unstable soil or bedrock” for permits related to MZOs and Community Infrastructure and Housing Accelerators (CIHA) and new provisions were included enabling the Minister of Natural Resources (MNR), by regulation to limit conditions to be applied to such permits.

On April 1, 2024, further amendments to the CA Act were proclaimed into force. There were no changes to the provisions of Section 28.0.1, however, the section was renumbered to Section 28.1.2.

The current in-force provisions of the CA Act related to MZO permits are summarized below:

- The Conservation Authority (CA) shall issue a permit.
- The CA 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 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 Board, the applicant has the option to either request a Minister’s review (MNR) or appeal to the Ontario Land Tribunal (OLT).
- All MZO-related CA permits must have an agreement with the permittee (can include additional 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 protect and/or compensate for ecological impacts (where applicable), and any other impacts

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that may result from the development project.

- The agreement must be executed before works commence on the site.

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/Executive Committee approval is required for all TRCA MZO permit applications.

### **RATIONALE**

#### **Analysis of MZOs in TRCA's Jurisdiction**

Due to the potential for projects involving MZOs to be located within the TRCA's Regulated Area, TRCA staff have used publicly available information (e.g., Environmental Registry of Ontario (ERO), reviews of municipal council agendas), as well as engagement of TRCA staff on specific files, to monitor and track MZOs issued by the Minister or requested through a municipal council resolution since 2020.

The last MZO [status report](#) was provided to the Board of Directors on February 25, 2022. The following is a summary of the status of issued and requested MZOs in TRCA's jurisdiction as of August 30, 2024, and as set out in more detail in the attachments to this report.

Attachment 1: Issued MZOs in TRCA Jurisdiction (Within Regulated Area) Since 2020

Attachment 2: Issued MZOs in TRCA Jurisdiction (Outside of Regulated Area) Since 2020

Attachment 3: Requested MZOs in TRCA Jurisdiction (Since 2020)

Attachment 4: Map of Issued and Requested MZOs in TRCA Jurisdiction (Since 2020)

The tables in the attachments include links to the issued MZO regulation and associated schedule, related ERO postings and TRCA Authority/Executive related permit reports. As noted, staff depend on publicly available information to identify and monitor MZOs within TRCA's jurisdiction. As such, this information may not be complete and should not

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be relied upon as legal or professional advice in connection with any particular matter. The Province or applicable municipality should be consulted to confirm specific details on an MZO approval or request.

Where an MZO request is known, TRCA proactively communicates policy, technical and regulatory interests in a timely manner to municipal and provincial officials and the applicants. In several cases, TRCA has been engaged in upfront discussions with municipal staff to identify conditions of approval for TRCA permits associated with MZOs (e.g., technical studies and environmental protection, rehabilitation and/or ecosystem compensation plans where applicable).

Based on staff analysis, 61 MZOs have been issued by the Minister in TRCA's jurisdiction since January 2020, of which 29 are located partially or entirely within TRCA's Regulated Area. To date, TRCA has approved 23 permits related to 14 MZO developments. In a number of instances, TRCA generally had no objection to the MZO in principle, given that a number of projects had been previously subject to municipal review through Planning Act processes (e.g., municipally initiated secondary plan processes involving TRCA review) or where TRCA's interests would be satisfactorily addressed through the subsequent stages of the planning approvals process or CA Act permitting process.

In other instances, TRCA staff were not notified prior to an MZO request and/or consulted prior to the Minister's issuance of an MZO within a TRCA regulated area despite TRCA's mandatory roles for managing the risks associated with natural hazards, and CA Act regulatory authority. For some of these files, the CEO and senior staff reached out to staff in MMAH, MNR, Ministry of Environment, Conservation and Parks (MECP) and Ministry of Transportation (MTO), to apprise them of TRCA concerns and regulatory interests, and to encourage or facilitate coordination to avoid any potential conflict with various provincial approval processes.

### **Provincial Review of Past MZO Decisions**

As directed by the Board of Directors, TRCA staff submitted correspondence to MMAH on November 28, 2023, in response to the Minister's October 23, 2023 announcement to review past MZO decisions. Based on staff's experience with MZO files and to address challenges, TRCA recommended that:

- Given the potential risk to public health and safety or property from

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natural hazards and the growing risks from climate change and extreme weather events, the approval of an MZO be consistent with the PPS and that the Planning Act be amended accordingly;

- If an MZO is being considered within a regulated area under the CA Act within TRCA's jurisdiction, that MMAH staff consult with TRCA in order that the requirements of obtaining a CA Act permit are considered and can be satisfied, prior to approval of the MZO by the Minister; and
- That an approved MZO schedule accurately reflect the natural hazards and features on the subject lands and that the schedule be included with the MZO for clarity and certainty (schedules are not posted with the regulations on e-laws). Furthermore, that the provisions of an MZO acknowledge the requirements of the CA Act (e.g., development setbacks, technical and flood remediation studies, ecosystem compensation, etc.).

On December 23, 2023, the Minister of Municipal Affairs and Housing consulted through the ERO ([019-8001](tel:019-8001)) on several proposals to potentially revoke, amend or enhance monitoring for specific MZOs where limited progress has been made towards implementation of the proposed project. TRCA submitted comments to the ERO on three proposed revocations, one proposed amendment and three proposed enhanced monitoring of issued MZOs. Links to the relevant postings are noted in the attachments to this report.

### **New Zoning Order Framework**

On April 10, 2024, MMAH released a new zoning order framework to guide how requests for zoning orders under Section 47 of the Planning Act are submitted and considered. The framework includes intake thresholds, submission expectations, and the process for ministry assessments and decision-making (including public consultation). The following is a summary of the information found on the Province's Zoning Order Framework [webpage](#).

The Minister will consider requests for zoning orders that meet at least one of the following intake thresholds:

- requests that deliver on a provincial priority that is supported by a minister (e.g., long-term care, hospitals, transit-oriented communities, educational facilities, housing priorities, economic development, manufacturing, etc.)

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- requests that are supported by a single-tier or lower-tier municipality (e.g., through a municipal council resolution or a letter from a mayor where the municipality has been designated with strong mayor powers).

Submission expectations for consideration of a request include:

- a description of the project and how it supports governmental objectives;
- a map and description of the subject lands;
- a copy of the draft zoning order;
- a description of consultation with the public and engagement with Indigenous communities;
- for municipally supported zoning order requests, evidence of municipal support for the proposed project and information related to land ownership and name of the requestor;
- rationale on why the project requires ministerial zoning relief rather than following municipal planning processes;
- a description of any licenses, permits, approvals, permissions or other matters that would be required for the project after the zoning order is made;
- justification for the exemption of the application of provincial and local land use policies to downstream approvals, where requested;
- anticipated timelines related to applying for downstream approvals (for example, site plan, plan of subdivision, building permit);
- anticipated timing for project completion;
- justification for the use of any the enhanced authorities, where requested;
- information related to how and when servicing (water/wastewater) will be addressed; and
- a commitment that if a zoning order is made, the landowner will notify the Minister 30 days in advance of the sale of any land to which it applies.

MMAH will assess requests for zoning orders that meet at least one of the intake thresholds and may ask for additional information to be provided to make a decision. Requests that have met zoning order framework requirements are posted as a public notice on the ERO for a minimum of 30 days, except where the request for the zoning relief is deemed time

sensitive.

If the Minister chooses to make a zoning order, it becomes a regulation under the Planning Act once filed and is published on e-Laws. If a request is refused, the requestor will be notified. The process to amend or revoke a zoning order is also described in the framework.

As stated on the webpage, zoning orders address the zoning of a site. They do not provide a proponent with approval to start construction and do not exempt them from obtaining other downstream approvals such as plan of subdivision approval, environmental approvals, building permits and other applicable permits.

### **Community Infrastructure and Housing Accelerator Orders**

On June 6, 2024, through Bill 185, the Cutting Red Tape to Build More Homes Act, the Province repealed the provisions in the Planning Act for the Minister to make Community Infrastructure and Housing Accelerator (CIHA) orders. While no CIHA orders will be made going forward from this date, the Minister may instead consider making an MZO in response to this request, provided there is municipal support and other information outlined in the zoning order framework is provided. As noted in Attachment 3, there have been CIHAs requested in TRCA's jurisdiction, of which four are within regulated areas.

### **Relationship to TRCA's 2023-2034 Strategic Plan**

This report supports the following Pillars and Outcomes set forth in TRCA's 2023-2034 Strategic Plan:

#### **Pillar 1 Environmental Protection and Hazard Management:**

- 1.1 Deliver provincially mandated services pertaining to flood and erosion hazards

#### **Pillar 1 Environmental Protection and Hazard Management:**

- 1.4 Balance development and growth to protect the natural environment ensuring safe sustainable development

#### **Pillar 2 Knowledge Economy:**

- 2.3 Advocacy and adaptability in the face of policy pressures

#### **Pillar 2 Knowledge Economy:**

- 2.4 Integrate environmental considerations and science into decision making



### FINANCIAL DETAILS

Staff are engaged in this policy analysis work per the normal course of duty, with funding support provided by TRCA's participating municipalities to account 120-12. Programs and services related to ensuring that TRCA satisfies its responsibilities under the Planning Act and its duties, functions, and responsibilities to administer and enforce the provisions of Parts VI and VII of the CA Act and any regulations made under those Parts, are mandatory under O. Reg. 686/21.

### DETAILS OF WORK TO BE DONE

Staff will continue to monitor, and track issued and requested MZOs within TRCA's jurisdiction. Accordingly, staff will proactively advise municipalities, proponents and the Province, consistent with O. Reg. 686/21 and the permitting provisions related to MZOs in Section 28.1.2 of the CA Act. TRCA staff are committed to working collaboratively with municipalities, provincial ministries and agencies, the building industry and stakeholders in a manner that is informed by the latest watershed science and achieves safe and resilient communities.

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**Date: August 30, 2024**

**Attachments: 4**

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