

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Friday, November 22, 2024 Meeting

FROM: Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATIONS FOR PERMITS PURSUANT TO SECTION 28.1.2 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDER, ONTARIO REGULATION 483/22)**
PER-DPP-2024-00397, 0 and 12245 Torbram Road, Caledon, Ontario (Part of Lots 17-20, Concession 6, Town of Caledon, Regional Municipality of Peel) by Rice Group.

KEY ISSUE

Issuance of permit pursuant to Section 28.1.2 of the Conservation Authorities Act for lands subject to a Minister’s Zoning Order (MZO) under the Planning Act to undertake alterations within a Toronto and Region Conservation Authority (TRCA) Regulated Area to facilitate topsoil stripping associated with a future industrial development at 12245 Torbram Road, Town of Caledon, Region of Peel.

RECOMMENDATION:

WHEREAS the Minister of Municipal Affairs and Housing (MMAH) issued an MZO for the subject property on September 9, 2022, as Ontario Regulation 483/22;

WHEREAS Section 28.1.2 of the Conservation Authorities Act requires TRCA to issue a permit 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 28.1.2(6), of the Conservation Authorities Act, allows TRCA to attach conditions to the permit, 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 a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property;

WHEREAS Section 28.1.2(17), of the Conservation Authorities Act, provides that where a permit is to be issued, the applicant is required to enter into an agreement with TRCA;

AND WHEREAS Section 28.1.2(18), 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;

AND WHEREAS, in the absence of an approved MZO, TRCA would normally issue a permit for the construction of an industrial plan of subdivision, if it has been demonstrated there will be no impact on the control of flooding, erosion, dynamic beaches, and unstable soils or bedrock, or jeopardize the health or safety of persons or result in the damage or destruction of property;

THEREFORE, LET IT BE RESOLVED THAT Rice Group, in the Town of Caledon be issued a permit to strip topsoil in advance of a future industrial development at 12245 Torbram Road, Town of Caledon, Region of Peel;

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

AND FURTHER THAT the required agreement reflect and secure the approved conditions, and any actions or requirements that the permit holder must complete or satisfy to compensate for ecological impacts and any other impacts that may result from the development project.

BACKGROUND

Permit Applications, Property Descriptions and Background

The owner has applied for permission pursuant to Section 28.1.2 of the Conservation Authorities Act (CA Act) to conduct the final topsoil stripping phase within TRCA's Regulated Area in advance of an industrial development at lands known municipally as 0 and 12245 Torbram Road, Caledon, Ontario (Location of Subject Lands – **Attachment 1**). The lands subject to the MZO are located East of Torbram Road, West of Airport

Road, and immediately North of Mayfield Road (MZO Map #314 - **Attachment 2**).

The entirety of the industrial subdivision lands is approximately 174.80 hectares. The subdivision contains the remaining portion of a tributary to the West Humber River, approximately 3.84 ha of riparian wetlands, as well as the floodplain and erosion hazards associated with the tributary, and the regulated allowance to these features (Constraints Analysis Map – **Attachment 3**).

Previous permissions have been issued by TRCA for topsoil stripping on the property, which resulted in the removal of regulated features. The first permit was approved on June 23, 2023 (CFN 68146 - RES.#A 112/23) and a second permit approved on May 10, 2024 (CFN 70685 - RES.#B 37/24). The subject application is for the final topsoil stripping stage within areas regulated by TRCA and involves the removal of two online ponds and the remaining portions of the tributary and riparian wetlands.

TRCA staff confirmed the limits of the slopes, wetlands and the dripline of contiguous valley and stream corridor vegetation with the applicant's consultants in 2021. Applications for an Official Plan Amendment, Draft Plan of Subdivision and Zoning Bylaw Amendment were deemed complete by the Town of Caledon in September 2021 and circulated to TRCA staff for review. A Comprehensive Environmental Impact Study and Management Plan (CEISMP), a similar study to a Master Environmental Servicing Plan (MESP), was submitted with the applications to characterize the features on site and conduct the typical impact analyses and mitigation proposed to minimize impacts.

A Minister's Zoning Order (Ontario Regulation 483/22) was issued on September 9, 2022, to convert the zoning on the property from agricultural to prestige industrial to permit a warehouse distribution centre and prestige industrial uses on the subject land holdings. The MZO did not protect the existing natural hazards and regulated features in a suitable Environmental Policy Area (EPA). The lands subject to the MZO abut lands within the Greenbelt Plan area to the southwest. The lands within the Greenbelt contain a larger valley corridor of the West Humber River and do not form part of the MZO.

The 2021 Draft Plan of Subdivision application proposes the creation of 7 industrial blocks, 3 environmental protection area blocks, 2 stormwater management blocks, and internal public streets. In total, the development is planned to include 8 industrial, warehouse and distribution buildings, with a total area of approximately 555,268 m² (5,976,855 ft²). Several application submissions with supporting technical work have been reviewed by TRCA staff culminating with TRCA staff supporting approval of the latest submission on July 23, 2024, subject to several recommended conditions (Draft Plan of Subdivision Map - **Attachment 4**). Blocks 12 and 13 within the proposed plan of subdivision contain the regulated hazards associated with this permit application.

After extensive collaboration with the Town, Region of Peel, and applicant, a compensation block containing a restored natural heritage system is proposed on the subdivision lands to not only replicate the loss of features associated with this application and the overall subdivision plan, but to also provide an enhancement to the system, which has been historically altered on the lands. The final configuration of the block has been determined and it will be 8.54 hectares in size (Block 12 EPA Concept Restoration Design - **Attachment 5**). A total of 4.47 hectares of non-Provincially Significant Wetland (PSW) will be removed within the overall subdivision. TRCA Planning Ecology staff have indicated that the compensation block would provide sufficient compensation for the removal of the features on site. The proposed compensation is discussed in detail under the rationale section in this report.

The 8.54-hectare compensation block proposed for compensation addresses the requirement for ecological compensation under the CA Act s.28.1.2 (18). Conditions have been proposed with this application to ensure that the compensation block is implemented. Additional mechanisms to ensure the block's implementation will be included in the anticipated approval of the Draft Plan of Subdivision and eventual subdivision agreement. The applicant has agreed to the additional TRCA permit conditions related to the compensation block.

Mandatory Permits for MZO Development Projects

Section 28.1.2 of the CA Act applies to a development project that has been authorized by an MZO under the Planning Act, within an area regulated under the CA Act, outside of the Greenbelt Area. The provisions of Section 28.1.2m of the Act are summarized as follows:

- The CA 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 the regulation.
- An applicant has the right to a Hearing 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 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 OLT;
- All MZO-related CA permits must have an agreement with the permittee (and 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 compensate for ecological impacts, and any other impacts that may result from the development project; and
- The agreement must be executed before work commences on the site; it is an offence to commence the works without a signed agreement.

In summary, TRCA must issue a permit for development projects on lands subject to a 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

Review of Permit Application by TRCA Staff

The application has been reviewed by TRCA's technical staff. The proposed site alteration does not impact:

- the control of flooding – portions of the lands are within the floodplain

associated with the tributary to be removed on site; impacts are not anticipated up and downstream of the site; temporary sediment ponds have been sized to accommodate flood flows in the construction phase and flood storage will be replicated within the compensation block;

- erosion – no erosion concerns are anticipated, and the proposed watercourses have been designed to accommodate flows from the site to mitigate any potential for bed scour or bank erosion;
- dynamic beaches – the lands are not located along the Lake Ontario shoreline;
- unstable soil – there are no unstable soils impacted by the proposed development;
- unstable bedrock – karst topography or other forms of unstable bedrock are not located within or immediately adjacent to the site;
- 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 culverts have been sized in accordance with TRCA's guidelines. The application does not result in development, which would render areas inaccessible during a Regulatory Storm event or as a result of natural hazards.

Under existing conditions, the remaining portion of the tributary on site flows through two online ponds (an upper pond and lower pond). Two large anthropogenic embankment dams restrict outflows from the ponds. Each online pond has a perched outlet culvert through its respective embankment dam, restricting fish passage. Flows from the lower pond pass under Mayfield Road eventually converging with the West Humber River approximately 850 metres downstream.

The remaining riparian wetlands totaling approximately 3.84 ha and the portion of the remaining tributary will be removed as a result of this application. The development associated with this application, including the removals, is proposed to occur in the Spring of 2025. The riparian wetland Ecological Land Classification (ELC) communities to be removed with this phase of construction include the following:

- Pondweed Mixed Shallow Aquatic - SAM1-4 – 0.31 ha
- Reed-canary Grass Mineral Meadow Marsh - MAM2-2 – 2.84ha
- Mineral Shallow Marsh / Shallow Aquatic MAS2/SA – 0.46 ha

- Mineral Meadow Marsh - MAS2 – 0.18 ha
- Willow Mineral Thicket Swamp - SWT2-2 – 0.05 ha

The wetland communities on site were identified by GEI Consultants Inc. and the boundaries, as noted above, later confirmed by TRCA staff in 2021. GEI evaluated the wetlands and determined that the wetlands do not meet the scoring criteria to be considered PSWs under the Ontario Wetland Evaluation System (OWES). The CEISMP submitted with the noted planning applications identifies that the wetlands proposed for removal have been altered by present and historical anthropogenic land use (e.g., construction of online ponds and agricultural land practices that affect the extent and conditions of wetlands).

Compensation for the removals will occur in the proposed Block 12, which is to be designated Environmental Protection Area (EPA) through the implementing OPA providing protection of the block and compensation in perpetuity. The construction of the EPA block is proposed to occur starting in mid-2025. A total of 862 linear metres of new watercourse will be created in the proposed EPA block. Natural channel design principles have been incorporated into the proposal. Wetland removals from the earlier two phases and this phase will be replicated on site in the EPA block at a ratio of greater than 1:1. While 4.47 hectares of wetland across the entirety of the subdivision will be removed (Note: 0.63 ha of wetland removed through two previous TRCA permits), 5.01 hectares of wetland will be created within the Compensation/EPA block. The wetland communities to be created include Submerged Shallow Aquatic (SA), Mineral Shallow Marsh (MAS), and Meadow Marsh (MAM) and these communities have been proposed based on the water depths and hydrological inputs anticipated and based on the communities targeted for this planning area. The wetlands will be constructed over clay soil with an added 300mm deep layer of hydric soils to support wetland vegetation growth.

The EPA block will also include a variety of habitat types including three woodland community types over 2.96 hectares (Fresh-moist Oak-Maple – Hickory Deciduous Forest (FOD9), Fresh-Moist Sugar Maple Forest (FOD6), and Dry-Fresh Sugar Maple Forest (FOD5), 0.11 hectares of thicket (Upland Thicket, Speckled Alder Mineral Thicket Swamp (SWT2-1), and Willow Mineral Thicket Swamp (SWT2-2), and a 0.24 hectares upland meadow on one of the created side slopes. The planting densities proposed are 2,000 trees per hectare with a minimum canopy coverage of

60% and 4,444 shrubs per hectare for thickets. Turtle and amphibian overwintering habitat potential is built into the design as well.

The extent of the existing and proposed Regulatory floodplain conditions has been mapped through a hydraulic analysis completed by the applicant's engineering consultant. Floodplain storage will be replicated within the natural heritage system block. An embankment is proposed immediately north of Mayfield Road in order to passively control the increases in peak flows during a Regional Storm event that result from the proposed tableland development. The embankment would only function to hold back peak flows during a Regional Storm/Hurricane Hazel event as proposed stormwater management facilities would provide quantity controls up to a 100-year event. No long-term maintenance is anticipated to the embankment given its limited function. While the embankment serves a functional purpose by controlling peak flow increases, MNR guidance does not permit such controls to be relied upon for the establishment of flood hazard limits (i.e., the embankment cannot be used to reduce the Regional Storm peak flows for floodplain modelling purposes). Thus, the floodplain modelling, in the absence of such upstream facilities, has shown that flood waters would overtop Mayfield Road in a regulatory storm event. To avoid overtopping Mayfield Road, relief culverts are proposed adjacent to the existing Region of Peel culvert under Mayfield Road. Analysis completed by the consulting engineer demonstrates that the relief culverts would only be required once the most northerly block in the subdivision is developed and fully serviced (i.e., Block 7). A specific condition of Draft Plan approval has been recommended by TRCA staff to address the relief culvert requirement. As a result, no floodplain impacts are anticipated resulting from the proposed application or eventual industrial subdivision development.

Two hybrid wetland stormwater facilities are proposed upstream of the compensation/EPA block within a portion of what is now the upper online pond. TRCA's stormwater criteria have been met based on the latest pond designs. The stormwater facilities are slated to be constructed in 2026 once 50% of the subdivision blocks are paved and serviced.

As detailed above, the applicant has agreed to recommended conditions that secure the implementation of the proposed compensation in Block 12, which will compensate for ecological impacts in accordance with requirements under the CA Act. Staff are working with the applicant to

finalize the construction plans for the compensation area. A staff recommended condition for Board approval would require finalization of the construction plans prior to the execution of the required permit agreement. The implementation of compensation within the EPA block is also recommended TRCA condition of Draft Plan approval. The costs of implementing the compensation will be secured through the related subdivision agreement.

Policy Guidelines:

The proposed works are 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 TRCA Watersheds.

SUMMARY CONCLUSION

Approval of permission for development within the TRCA's regulated area is required to allow development to commence. Staff are recommending the approval and issuance of a permit related to this application based upon the applicant's agreement to TRCA's standard permit conditions (Standard Conditions - **Attachment 7**), and additional conditions to ensure plans are finalized prior to works initiating, to ensure related approvals are obtained, and to ensure that the features removed are replicated on site (Additional Conditions – **Attachment 8**).

Prior to the approval of the MZO, TRCA staff anticipated that alterations would be proposed, which would improve ecological function and connectivity within the natural heritage system on site. The online ponds and past agricultural activity have degraded the features on site and have contributed to thermal loading within the watercourse downstream of the ponds. The proposed compensation block and enhancements proposed will replicate the loss of features on site and will improve connectivity with the broader system. The CA Act requires TRCA to issue a permit on these lands as they are subject to a MZO, issued under the Planning Act. Staff has therefore reviewed the application and have recommended additional conditions to ensure that compensation will be implemented to mitigate ecological impacts, as prescribed in the CA Act.

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Attachments: 8

Attachment 1: Location of Subject Lands

Attachment 2: Minister's Zoning Order (MZO) from Ontario Regulation
483/22 – Map 314

Attachment 3: Constraints Analysis Map

Attachment 4: Draft Plan of Subdivision Map

Attachment 5: Block 12 EPA Concept Restoration Design

Attachment 6: Proposed Works

Attachment 7: Standard Permit Conditions

Attachment 8: Additional Permit Conditions