

Section I – Items for Board of Directors Action

TO: Chair and Members of the Board of Directors
Meeting #7/20, Saturday, October 24, 2020

FROM: John MacKenzie, Chief Executive Officer

RE: **DURHAM LIVE WETLAND COMPENSATION REQUEST**
Request to Enter into Memorandum of Agreement

KEY ISSUE

Authorization to execute a Memorandum of Agreement to review a proposal for ecosystem compensation to facilitate the development of the Durham Live lands containing a Provincially Significant Wetland located west of Squires Beach Road in the City of Pickering.

RECOMMENDATION

THAT authorization be given to TRCA's CEO to execute a Memorandum of Agreement to review a proposal for ecosystem compensation to facilitate the development of the Durham Live lands containing a Provincially Significant Wetland located west of Squires Beach Road in the City of Pickering, in the event the wetland is reclassified by the Ministry of Natural Resources and Forestry;

THAT the Ministry of Natural Resources and Forestry be requested to provide clarity with respect to its position on the applicability of ecosystem compensation to a Provincially Significant Wetland;

AND FURTHER THAT the Ministry of Municipal Affairs and Housing, Ministry of Natural Resources and Forestry, Region of Durham, City of Pickering and Town of Ajax be so advised.

BACKGROUND

Durham Live is an integrated mixed-use major tourist destination located in the City of Pickering, northwest of Bayly Street and Church Street and south of Highway 401. The property includes four parcels of land, one located west of Squires Beach Road, and three located east of Squires Beach Road (**Attachment 1**). A portion of the parcels to the east of Squires Beach Road are subject to approved zoning for a casino and hotel complex, now substantially built. The remainder of these lands east of Squires Beach Road are subject to a zoning by-law amendment application which is satisfactory to TRCA staff in principal. The parcel located west of Squires Beach Road (the "subject property") is the focus of this report.

According to the landowner's consultant, Durham Live is "...in serious discussions (backed by a Letter of Intent) with a very large employment user interested in the portion of the site west of Squires Beach Road." Staff understand that these discussions involve the development of an approximately 850,000 to 4 million square foot distribution centre and production facility known as "Project Lonestar". On [May 13, 2020](#), City of Pickering Council, upon the request of the landowner, approved a motion stating "That the Deputy Mayor, on behalf of Council, be directed to make a request to Minister Steve Clark, Minister of Municipal Affairs and Housing, for a Minister's Zoning Order for the Durham Live lands." This request was subsequently made to the Minister. On September 30, 2020, Durham Region Council expressed its support for the MZO request and directed staff to execute an Agreement between the Region of Durham, the landowner and the impacted municipalities, which Agreement provides Regional support for the

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Owner's request for the MZO in exchange for certain commitments as outlined in the [minutes](#).

Lands located west of Squires Beach Road includes approximately 22.8 ha (57 acres) of key natural heritage features and key hydrological features including Provincially Significant Wetland (PSW), Significant Woodland, and Significant Wildlife Habitat (**Attachment 2**). Other potential features which are likely to occur but have yet to be confirmed include Endangered Species habitat and seeps. The wetland is part of the Lower Duffin's Creek Provincially Significant Wetland Complex; however, it is located within the TRCA's Frenchman's Bay watershed. A provincial staking exercise was conducted on the property to delineate the boundary on July 15, 2014 by the Ministry of Natural Resources and Forestry (MNR) with TRCA staff and external consultants in attendance. TRCA staff inventoried flora and fauna on the subject property several years ago and this data, along with the an existing conditions report provided by the landowner's ecology consultant, identifies the wetland being composed of diverse intermixed habitats of swamp, marsh, thicket, and open wetland habitat, and the remaining natural features as including meadow and woodland. The landowner's planning consultant has stated that Project Lonestar would result in the removal of the wetland and upland habitat in their entirety.

On October 14, 2020, the Minister of Natural Resources and Forestry wrote to TRCA's CEO (**Attachment 3**). The letter states that MNR has requested that consideration of the zoning order be done alongside any negotiated compensation agreement between the municipality, property developer and Toronto and Region Conservation Authority (TRCA) in keeping with the principles of TRCA's [Guideline for Determining Ecosystem Compensation](#). The letter, as clarified by MNR staff, states that MNR have done a preliminary review of the report submitted by the landowner's ecologist and would proceed to review any request for reclassification of the wetland areas. TRCA staff understand that this would involve the landowner's consultant preparing a justification report for the reclassification for MNR review.

The Minister of Municipal Affairs and Housing and the two municipalities have expressed their strong support of the economic development benefits Project Lonestar would bring. However, TRCA staff cannot recommend the removal of a Provincially Significant Wetland (even through a process of ecosystem compensation) as it is inconsistent with the Provincial Policy Statement and TRCA's Living City Policies. As such, clear Provincial direction is required as to the status of the wetland and support for its removal for staff to proceed with considering the proposal.

The Minister of Municipal Affairs and Housing has requested that TRCA enter into a Memorandum of Agreement with the landowner to proceed with further discussions regarding off-site ecosystem compensation. In the event the wetland is declassified, the compensation, were it to be supported by TRCA's Board of Directors, must include two components, either or both of which could be provided wholly or in part through cash-in-lieu:

- a) replicating, to the extent possible and without significant delay or lag time, the same ecosystem structure and associated level of ecosystem functions of the Natural Areas proposed to be lost; and
- b) replicating the land base of the Natural Areas as close to the Lands as possible, at location(s) outside of but connected to the identified natural system and suitable for replicating the Natural Areas proposed to be lost to make up the loss.

The review would be predicated upon the landowner providing an Ecosystem Compensation Plan prepared by a qualified ecology professional to TRCA.

RATIONALE

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Consideration of the removal of such a large wetland is unprecedented under the TRCA's Living City Policies and regulatory authority. As such, staff is requesting authorization to enter into a Memorandum of Agreement to continue discussions with the parties further to the Minister's request, or to proceed per the direction the Board of Directors sees fit.

FINANCIAL DETAILS

Account codes 110-01 and 110-05 has been established to provide for TRCA's services related to Development Planning and Permit matters.

DETAILS OF WORK TO BE DONE

Staff and internal legal counsel will continue to represent the interests of TRCA during any negotiations with the landowner, Province or municipalities, per the direction of the Board of Directors. Ultimately, if the Province provides clear direction with respect to the status of the wetland and support for its removal, then a TRCA permit will be required under current regulatory authority. A request for direction from the Board of Directors will be brought forward at that time.

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Date: October 21, 2020

Attachments: 3

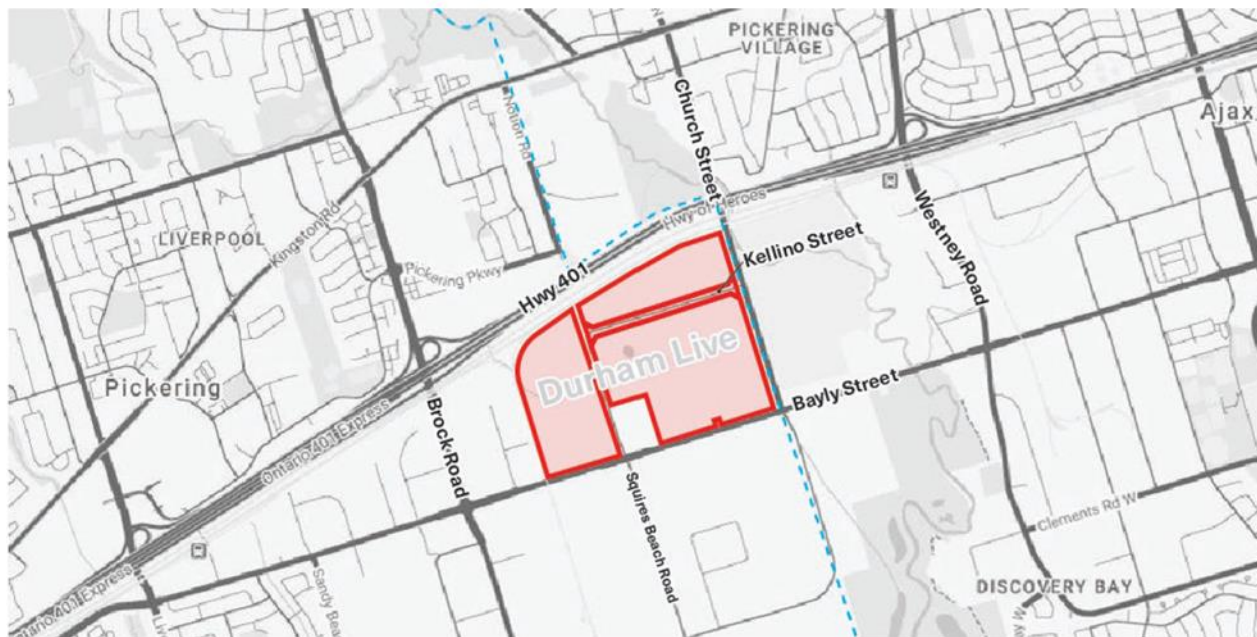
Attachment 1: Durham Live Location Map

Attachment 2: Map of Provincially Significant Wetland

Attachment 3: October 14, 2020 Letter from the Minister, Natural Resources and Forestry to TRCA's Chief Executive Officer

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Attachment 1: Durham Live Location Map



Source: MGP Planning, Planning Opinion Report, March 2020