

Section IV - Ontario Regulation 166/06, as Amended

TO: Chair and Members of the Executive Committee
Friday, February 5, 2021 Meeting

FROM: Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATION FOR PERMITS PURSUANT TO S.28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER'S ZONING ORDERS) – PICKERING DEVELOPMENTS (SQUIRES) INC.**

KEY ISSUE

Issuance of permission pursuant to Section 28.0.1. of the *Conservation Authorities Act* to Pickering Developments (Squires) Inc. to interfere with a wetland to conduct borehole investigations on the Provincially Significant Wetland located at 1802 Bayly Street.

RECOMMENDATION

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 a Minister's Zoning Order (MZO), outside of the Greenbelt;

AND 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 a Minister's Zoning Order (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*;

THEREFORE, LET IT BE RESOLVED THAT Pickering Developments (Squires) Inc. be granted permission to interfere with a wetland to conduct borehole investigations on the Provincially Significant Wetland located at 1802 Bayly Street subject to the following conditions:

1. TRCA's standard permit conditions (Attached as Attachment 2);
2. The Owner shall ensure that access to the borehole sites is supervised on site by a qualified ecologist;
3. The Owner shall ensure that access to the borehole sites must take place in frozen conditions;
4. The permission shall expire on March 25, 2021 and all borehole investigation works shall take place prior to March 25, 2021;
5. The Owner shall ensure that no access is permitted into the Winterberry Organic Thicket Swamp on the south west portion of the property;
6. The Owner shall ensure that Borehole testing work shall not take place until an agreement is executed by the landowner and the TRCA.

AND FURTHER THAT the Chief Executive Officer be authorized to execute an Agreement with the landowner.

BACKGROUND

The Application

Pickering Developments (Squires) Inc. has applied for permission under O. Reg. 166/06 and Section 28.0.1 of the Conservation Authorities Act to interfere with a wetland to conduct borehole investigations on the Provincially Significant Wetland located at 1802 Bayly Street. The property is located west of Squires Beach Road, north of Bayly Street, east of the rail spur and south of Highway 401 in the City of Pickering (Attachment 1). The property is part of the Durham Live landholdings, part of which has been developed for a casino and hotel entertainment complex east of Squires Beach Road.

The property includes key natural heritage features and key hydrological features including a Provincially Significant Wetland (PSW), Significant Woodland, and Significant Wildlife Habitat. Other potential features which may be present 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, staff does not yet have a clear understanding of the surface water flows to and from the property. 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. The wetland is composed of diverse intermixed habitats of swamp, marsh, thicket, and open wetland habitat. In area there is approximately 9.7 ha marsh, 9.2 ha swamp and 0.2 ha open water. There is a Winterberry Organic Thicket Swamp in the south western portion of the property which is of regional significance within the Greater Toronto Area.

On October 23, 2020, the TRCA Board of Directors adopted amended RES.#A164/20, relative to a request by the City of Pickering for a Minister's Zoning Order on the property. The amended motion reads in part as follows:

THAT in recognition of our role as a watershed management and regulatory agency, and stewards of lands within our jurisdiction, the Board of Directors indicate that they do not support development within wetlands, particularly, Provincially Significant Wetlands;

THAT the Toronto and Region Conservation Authority (TRCA) acknowledge the subject lands west of Squires Beach Road contain natural and hydrological features, including a currently designated Provincially Significant Wetland and Significant Wildlife Habitat and that those lands warrant protection;

THAT prior to entering into any agreement for lands west of Squires Beach Road, the Board request that the Ministry of Natural Resources and Forestry consider the ecological value of the site, including the potential presence of endangered and threatened species, hydrological connections and ecosystem functions;

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; <...>

Item 10.1

Since the motion was adopted, the Ministry of Municipal Affairs and Housing has applied a Minister's Zoning Order to the lands which permits a variety of commercial uses. In addition, the MNRF has advised that it will not be reclassifying the PSW but is open to reviewing a request by the landowner to do so. Staff understand that no such formal request has been made.

Summary of Section 28.0.1 of the Conservation Authorities Act (Minister's Zoning Orders)

Under the newly added Section 28.0.1 of the *Conservation Authorities Act* through Bill 229, a Conservation Authority is required to issue permission for a development project that has been authorized by a Minister's Zoning Order (MZO), outside of the Greenbelt. A Conservation Authority 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"; and "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".

No development work may begin until an agreement is fully executed by the landowner and the Conservation Authority. This agreement will set out actions or requirements that the holder of the permission must complete or satisfy in order to compensate for ecological impacts and any other impacts that may result from the development project. A Conservation Authority's Board of Directors is the approval body of the conditions and content of the agreement, and this may be delegated to the Executive Committee.

An Authority shall not refuse to grant permission despite anything in section 28 or in a regulation made under section 28. That is, the Authority can no longer consider the tests of O. Reg 166/06 including the control of flooding, erosion, pollution or conservation of land as reasons to refuse to issue a permit. Rather the Authority can only impose 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; and 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. The Authority shall also not refuse to grant permission despite anything in subsection 3(5) of the *Planning Act*.

In summary, the Authority must issue a permit for development projects permitted on lands subject to a Minister's Zoning Order, outside of the Greenbelt, but can make that permission subject to conditions and must enter into an agreement with the landowner/applicant. The applicant has the right to a Hearing before the Authority (Board of Directors) if there is an objection to the permit conditions being imposed by the Conservation Authority. If the applicant still objects to the conditions imposed by the Conservation Authority following the Hearing, then the applicant has the option to either request a review by the MNRF or appeal to the Local Planning Appeal Tribunal (LPAT).

Prior to Bill 229, the Conservation Authority had greater control, subject to appeal to the Mining and Lands Tribunal, over whether to issue a permit or not regardless of whether there was an MZO issued under the *Planning Act*. Prior to Bill 229, the *Planning Act* and Provincial Policy Statement did not permit development and site alteration in a Provincially Significant Wetland unless it was infrastructure approved under the Environmental Assessment Act. Aligned with provincial policy, the Board approved TRCA Living City Policies do not permit development in Provincially Significant Wetlands and their associated minimum buffer setbacks,

Item 10.1

Staff understand that the purpose of the current application for borehole investigation is to further understand the groundwater and soil characteristics for a proposed distribution warehouse permitted under the MZO. The borehole investigations will be conducted using a tracked vehicle following a specific route over several days in frozen conditions and will avoid the most sensitive portions of the Provincially Significant Wetland. Access will be supervised by an ecologist to ensure little to no disturbance to the wetland, and to minimize the spread of any invasive species by entering areas subject to invasive phragmites at the end of the process. The applicant will be requested to agree to the TRCA's standard conditions in order to mitigate any impacts to the conservation of land.

The permit to conduct borehole investigations does not grant permission to the applicant to site grade, service, and develop the distribution warehouse on the Provincially Significant Wetland. Staff understand that such application to alter / remove the wetland is forthcoming and will be thoroughly reviewed by staff and brought back to the Executive Committee or Board of Directors for consideration at a later date. Staff will report back at that time, recognizing the new CA Act requirements of Bill 229.

RATIONALE

The purpose of the above conditions is to mitigate any negative effects the borehole investigations are likely to have on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land; and any conditions or circumstances created by the borehole investigations 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. The application has been reviewed by TRCA's water resources, hydrogeology and ecology staff. The proposal may have an impact on the conservation of land (considered to be any impacts on the ecosystem) due to the access by tracked vehicles. TRCA's ecology staff is of the opinion that if access is tightly controlled, takes place in frozen conditions and avoids sensitive habitats then there will not likely be impacts to the ecosystem.

Approval of permission to interfere with a Provincially Significant Wetland for the purposes of investigating future development of that wetland does not meet the requirements of TRCA's Living City Policy. However, the Act requires the Authority to issue such a permit on these lands subject to a Minister's Zoning Order. Staff has therefore reviewed the application and recommend the above referenced conditions be applied to the permission in order to mitigate negative impacts on the conservation of land.

Report prepared by: Steven Heuchert, extension 5311

Emails: steve.heuchert@trca.ca

For Information contact: Steve Heuchert, extension 5311

Emails: steve.heuchert@trca.ca

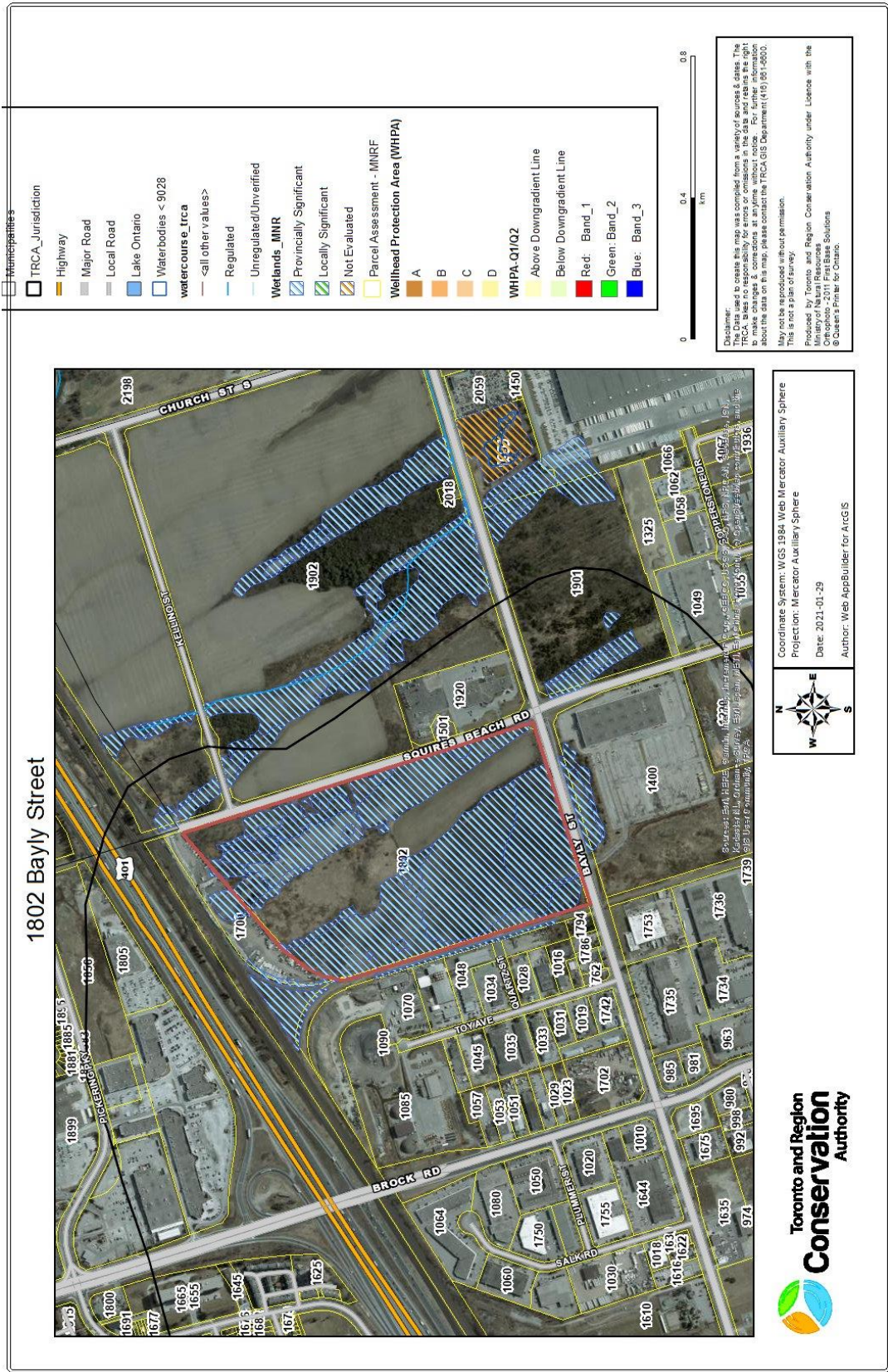
Date: January 29, 2021

Attachments: 2

Attachment 1: Location Map

Attachment 2: TRCA Standard Permit Conditions

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Attachment 2: TRCA Standard Permit Conditions

1. The Owner shall strictly adhere to the approved TRCA permit, plans, documents and conditions, including TRCA redline revisions, herein referred to as the “works”, to the satisfaction of TRCA. The Owner further acknowledges that all proposed revisions to the design of this project that impact TRCA interests must be submitted for review and approval by TRCA prior to implementation of the redesigned works.
2. The Owner shall notify TRCA Enforcement staff 48 hours prior to the commencement of any of the works referred to in this permit and within 48 hours upon completion of the works referred to herein.
3. The Owner shall grant permission for TRCA staff, agents, representatives, or other persons as may be reasonably required by TRCA, in its opinion, to enter the premises without notice at reasonable times, for the purpose of inspecting compliance with the approved works, and the Terms and Conditions of this permit, and to conduct all required discussions with the Owner, their agents, consultants or representatives with respect to the works.
4. The Owner acknowledges that this permit is non-transferrable and is issued only to the current owner of the property. The Owner further acknowledges that upon transfer of the property into different ownership, this permit shall be terminated and a new permit must be obtained from TRCA by the new owner. In the case of municipal or utility projects, where works may extend beyond lands owned or easements held by the municipality or utility provider, landowner authorization is required to the satisfaction of TRCA.
5. This permit is valid for a period of two years from the date of issue unless otherwise specified on the permit. The Owner acknowledges that it is the responsibility of the owner to ensure a valid permit is in effect at the time works are occurring; and, if it is anticipated that works will not be completed within the allotted time, the Owner shall notify TRCA at least 60 days prior to the expiration date on the permit if an extension will be requested.
6. The Owner shall ensure all excess fill (soil or otherwise) generated from the works will not be stockpiled and/or disposed of within any area regulated by TRCA (on or off-site) pursuant to Ontario Regulation 166/06, as amended, without a permit from TRCA.
7. The Owner shall install effective erosion and sediment control measures prior to the commencement of the approved works and maintain such measures in good working order throughout all phases of the works to the satisfaction of TRCA.
8. The Owner acknowledges that the erosion and sediment control strategies outlined on the approved plans are not static and that the Owner shall upgrade and amend the erosion and sediment control strategies as site conditions change to prevent sediment releases to the natural environment to the satisfaction of TRCA.
9. The Owner shall repair any breaches of the erosion and sediment control measures within 48 hours of the breach to the satisfaction of TRCA.

Item 10.1

10. The Owner shall make every reasonable effort to minimize the amount of land disturbed during the works and shall temporarily stabilize disturbed areas within 30 days of the date the areas become inactive to the satisfaction of TRCA.
11. The Owner shall permanently stabilize all disturbed areas immediately following the completion of the works and remove/dispose of sediment controls from the site to the satisfaction of TRCA.
12. The Owner shall arrange a final site inspection of the works with TRCA Enforcement staff prior to the expiration date on the permit to ensure compliance with the terms and conditions of the permit to the satisfaction of TRCA.
13. The Owner shall pay any additional fees required by TRCA in accordance with the TRCA Administrative Fee Schedule for Permitting Services, as may be amended, within 15 days of being advised of such in writing by TRCA for staff time allocated to the project regarding issues of non-compliance and/or additional technical review, consultation and site visits beyond TRCA's standard compliance inspections.