

Section III – Items for the Information of the Board

TO: Chair and Members of the Board of Directors
Friday, February 26, 2021 Meeting

FROM: John MacKenzie, Chief Executive Officer

RE: **MINISTER’S ZONING ORDERS UNDER THE PLANNING ACT AND PERMITS UNDER THE CONSERVATION AUTHORITIES ACT AS AMENDED BY BILL 229, PROTECT, SUPPORT AND RECOVER FROM COVID-19 ACT (BUDGET MEASURES), 2020**

KEY ISSUE

To update and inform the Board of Directors on the in-force amendments to the [Conservation Authorities Act](#) related to permits associated with a development project that has been authorized by a Minister’s Zoning Order (MZO) under the *Planning Act*, outside the Greenbelt; provide an overview of MZOs in TRCA’s jurisdiction; and advise of TRCA’s plan review and permitting process for MZO permits.

RECOMMENDATION

IT IS RECOMMENDED THAT this report on Minister’s Zoning Orders (MZOs) under the *Planning Act* in TRCA’s jurisdiction and the new in-force amendments to the *Conservation Authorities Act* regarding MZO permits be received.

BACKGROUND

The *Planning Act* gives the Minister of Municipal Affairs and Housing the authority to zone any property in Ontario by issuing a zoning order (MZO). Recently enacted legislative changes to Section 47 of the *Planning Act* through Bill 197, the *COVID-19 Economic Recovery Act, 2020* on July 21, 2020, provide more powers to the Minister’s authority to zone property across the province, with the exception of lands within the Greenbelt Area. The enhanced authority allows the Minister to:

- use inclusionary zoning and agreements to require affordable housing;
- remove municipal site plan control authority, (new MZO or amendment to an existing MZO);
- require agreements between the municipality and development proponent (or landowner) concerning site plan matters; and
- amend an enhanced zoning order without first giving public notice.

As noted in a recent Environmental Registry of Ontario (ERO) [posting](#), an enhanced MZO could be used to support the delivery of transit station infrastructure and the optimization of surplus lands (e.g., affordable housing and long term care homes), provide increased certainty for strategic projects, remove potential approvals delays, increase the availability of affordable housing, and provide additional value capture to enable economic recovery.

On November 5, 2020, the Province of Ontario introduced Bill 229, *Protect, Support and Recover from COVID-19 Act* (Budget Measures), 2020. Schedule 6 of Bill 229 proposed amendments to the *Conservation Authorities Act* (CA Act) and the *Planning Act*. Following second reading on November 23, 2020, Bill 229 was referred to the Standing Committee on Finance and Economic Affairs. On December 4, 2020, new amendments to Schedule 6 were introduced at Standing Committee specifically related to the issuance of permits under the CA Act where development

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has been authorized by an MZO under the *Planning Act*. Schedule 6 of Bill 229 as amended by the Standing Committee proceeded to third reading and received Royal Assent on December 8, 2020.

Minister's Zoning Order CA Permit

Section 28.0.1 of the amended [Conservation Authorities Act](#) is now in-force and 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](#). 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 pollution or the conservation of land;
 - 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.
- If the applicant still objects to conditions following a decision of the Hearing, the applicant has the option to either request a Minister's review (Ministry of Natural Resources and Forestry (MNRF)) or appeal to the Local Planning Appeal Tribunal (LPAT).
- All MZO-related CA permits must have an agreement with the permittee (can include other parties, e.g., municipalities, on consent of applicant).
- The agreement shall set out actions that the holder of the permission must complete or satisfy in order to compensate for ecological impacts, (where applicable), 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.

Conservation Ontario Council Resolution

In response to the significant concerns raised by all CAs regarding the addition of Section 28.0.1 to the amended CA Act, Conservation Ontario Council passed the following resolution brought forward by TRCA's Chair and CEO on December 14, 2020:

Whereas conservation authorities have been requesting that a clause of indemnification or statutory immunity for the good faith operation of essential flood and erosion control infrastructure and programming be added to the Conservation Authorities Act (CA Act) consistent with the same statutory indemnification afforded to municipalities, the Province and agencies of the Province;

Whereas recent planning and permitting amendments to the CA Act by Bill 229 create considerable concerns that the science-based watershed approach to decision making will be superseded by the Minister or the Local Planning Appeal Tribunal;

Whereas under the new provisions of the CA Act an authority must issue a permit where a Minister's Zoning Order has been issued by the Minister of Municipal Affairs and

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Housing even if it is contrary to the desires of the authority Board and/ or the professional advice of authority staff;

Therefore, be it resolved that the Province be requested to amend the CA Act and/ or regulations to add a clause of indemnification for the good faith operation of essential flood and erosion control infrastructure and programming and/or issue indemnities under the appropriate Acts and regulations to conservation authorities that are compelled to issue permits due to the new provisions of CA Act and associated Planning Act Minister Zoning Order decisions.

In addition to the above, Conservation Ontario Council requested that MNRF provide a technical briefing to CA staff on the legislative changes affecting Section 28 of the CA Act to better understand the new requirements and implementation. On February 19, 2021, TRCA was advised that the Ministry of Natural Resources and Forestry (MNRF) will be hosting a technical webinar on the recent amendments for conservation authority regulatory staff on March 3, 2021. As Section 28.0.1 introduces new criteria and processes for permits associated with MZO's, and staff are aware of pending permit application submissions, this report is intended to explain TRCA's approach on processing these permit applications. Furthermore, at a prior meeting, members of the Board requested that staff provide an overview and status of MZO's within TRCA's jurisdiction.

Regulatory Process Interface with the Planning Process

TRCA conducts itself in accordance with the objects, powers, roles, and responsibilities set out for conservation authorities under the CA Act and the MNRF Procedural Manual chapter on CA policies and procedures for plan review and permitting activities. TRCA is:

- A public commenting body under the *Planning Act* and *Environmental Assessment Act*;
- An agency delegated the responsibility to represent the provincial interest on natural hazards under Section 3.1 of the Provincial Policy Statement;
- A regulatory authority under Section 28 of the *Conservation Authorities Act*;
- A service provider to municipal partners and other public agencies;
- A Source Protection Authority under the *Clean Water Act*;
- A resource management agency; and
- A major landowner in the Greater Toronto Area.

TRCA's role as a commenting body under the *Planning Act*, and pursuant to Memorandums of Understanding (MOUs) with partner municipalities, is separate and distinct from its regulatory role under the CA Act. In participating in the review of development applications under the *Planning Act*, TRCA strives to ensure that development approved under the *Planning Act* can also meet the regulatory requirements governing the issuance of permits under the CA Act. In these roles, and as stated in the Ministry of Environment Conservation and Parks (MECP) "A-Made-In-Ontario Environment Plan," conservation authorities work in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. Through MOUs and Service Level Agreements (SLAs), TRCA provides technical support to its provincial and municipal partners in implementing municipal growth management policies. Further, 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.

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TRCA understands the importance of stimulating growth in the Greater Golden Horseshoe as part of the economic recovery from the COVID-19 crisis, but has through our Board of Directors articulated our view that this should not come at the expense of the fundamental principles of the Growth Plan for “protecting what is valuable,” the Provincial Policy Statement for natural hazards and natural heritage, or ensuring the appropriate technical review and planning process takes place to ensure consistency between Section 47 (1) of the *Planning Act* and Section 28 of the CA Act.

TRCA has worked in collaboration with our regional and local municipalities to successfully advance such a coordinated review and approval process on various sites subject to the MZO process. These include Mayfield West and the Canadian Tire Distribution Warehouse in the Town of Caledon, and the Block 34E – Phase 1 lands in the City of Vaughan. With these projects, the natural heritage features or natural hazards were appropriately identified and impacts avoided, mitigated, or compensated for in cooperation with municipalities and MNRF. However, in absence of a collaborative exercise noted above, an MZO may authorize a form and scale of development contrary to provincial and municipal policies and conservation authority regulatory requirements. For example, the area of developable land defined in the MZO may not accurately reflect natural hazards (e.g., flood plains, steep slopes, and erosion hazards) or natural features (e.g., wetlands) and their associated required setbacks outlined in provincial, municipal and TRCA policies. There is also a need to ensure that the development approved through the MZO does not create or exacerbate erosion or flooding hazards for existing and proposed development and infrastructure. To date, the MZOs we have seen do not provide guidance on how natural hazards can be addressed without causing adverse impacts on adjacent properties, or how any natural features are to be avoided, mitigated, or compensated. The technical expertise and input of the local municipality and CA as per the current development approval process under the *Planning Act*, including site plan control and public notice, are critical and should apply to MZOs.

Analysis of MZOs in TRCA’s Jurisdiction

Based on publicly available information on the ERO, council agendas and engagement of TRCA on specific files, TRCA staff have undertaken an exercise to identify MZOs within TRCA’s jurisdiction approved by the Minister of Municipal Affairs and Housing or requested through a municipal council resolution since 2020. The outcome of this review is summarized in **Attachment 1** and associated jurisdictional map, **Attachment 2**. Staff emphasize that this information may not be complete and should not 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. In addition, some MZO requests may be brought forward or considered after this report is public.

Based on staff’s analysis to date, within TRCA’s jurisdiction, 30 MZOs have been approved or requested by municipal councils since 2020. Of these, 22 have been issued by the Minister, 4 await the Minister’s decision, and 2 have been deferred by municipal Council. In one case it has been determined that an MZO is not required and 2 were refused by the Minister. Excepting those on provincially owned lands and one in the City of Toronto, all MZOs issued since 2020 have been endorsed by local Councils. Overall, a range of different land uses are identified in the MZOs, although the majority reflect a mix of residential and commercial uses at varying densities and many intend to facilitate long-term care, seniors housing and/or rental units as a prevailing component of development.

Of the 30 known locations, 20 are at least partially located within TRCA’s Regulated area. In multiple instances, TRCA was engaged in upfront discussions with municipal staff to identify

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conditions of approval for TRCA permits (e.g. technical studies and environmental protection, rehabilitation and/or ecosystem compensation plans). In these occurrences, TRCA generally had no objection to the MZO in principle given that TRCA's interests would be satisfactorily addressed through the planning approvals process. However, in many other instances, TRCA staff were not notified prior to a Council endorsement to request an MZO and/or consulted prior to the Minister's issuance of an MZO. This is despite TRCA's regulatory authority and/or previous involvement in related subwatershed studies and secondary plans. In most of these circumstances, TRCA has been contacted by the proponent's consultant and/or municipal representatives to attempt to work through TRCA's issues and concerns after the fact.

Finally, there remain a few MZOs (approved and requested) that contemplate development within natural features and natural hazards contrary to provincial, municipal and TRCA's Living City Policies, as well as previous agreements and OMB settlements. The absence of upfront engagement with TRCA presents challenges, including, but not limited to: tracking Council meetings of its member municipalities to ascertain when MZOs are requested; determining the extent of natural features and hazards; determining necessary measures to mitigate on-site and downstream impacts associated with zoning and development locations that are essentially pre-determined and/or approved. MZOs approved on a site-by-site basis, outside the normal development approvals framework under the *Planning Act*, limit opportunities to effectively protect, avoid and mitigate impacts to natural heritage features, flooding, erosion and to determine the type and location of stormwater controls; these are matters typically addressed through a comprehensive review and analysis process (e.g., Master Environmental Servicing Plans, Functional Servicing Plans, Environmental Impact Studies). TRCA is proactively communicating our technical and policy concerns, if an MZO request is known, to municipal and provincial officials and the applicant, which is particularly critical given the recent amendments to the CA Act.

TRCA's Response to ERO Posting

The Ministry of Municipal Affairs and Housing (MMAH) recently invited comments through [ERO #019-2811](#) on the enhanced MZO provisions as enacted by Bill 197. In correspondence dated January 30, 2021, TRCA made the following recommendations and best practices to guide implementation:

1. That site plan control under the *Planning Act*, which requires local, technical expertise for implementation, remain with municipalities.
2. To ensure the potential risk to public health and safety or property from natural hazards can be mitigated, that the Minister consult with TRCA if an MZO is being considered within a regulated area under the *Conservation Authorities Act*.
3. That where a municipality relies on TRCA for expert technical input related to natural heritage matters, that the Minister consult with TRCA.
4. That the approval of an MZO be consistent with the Provincial Policy Statement, 2020.
5. That a streamlined process be considered which allows for public notice and input.

TRCA Plan Review/Commenting and Permitting Process for MZOs

TRCA understands the importance of stimulating growth as part of the economic recovery from the COVID-19 crisis using the enhanced MZO provisions under the *Planning Act* on a limited basis. However, staff also feel that upfront comprehensive studies, pre-consultation with review and approval agencies, and public consultation are key components of good planning and are arguably a more effective means of creating certainty for time sensitive and context sensitive economic development. It is staff's preference to work with municipalities and applicants to facilitate technically sound development proposals through the current, well-established municipal plan review and CA permitting process that respects provincial, municipal and TRCA

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policies and requirements. Nonetheless, given the recent amendments to both the *Planning Act* and CA Act, TRCA staff will implement the following principles, processes and best management practices related to an MZO to reflect the new framework:

Plan Review/Commenting:

1. TRCA will conduct itself in accordance with the objects, powers, roles, and responsibilities set out for CAs under the CA Act and the MNRF Procedural Manual chapter on CA policies and procedures for plan review and permitting activities.
2. Through Memorandums of Understanding (MOUs) and Service Level Agreements (SLAs), TRCA will provide technical support to its provincial and municipal partners in implementing provincial and municipal growth management policies so that development and infrastructure projects can occur in a timely and environmentally sustainable manner.
3. TRCA will recommend that the approval of an MZO be consistent with the Provincial Policy Statement, 2020.
4. TRCA will assess an MZO in accordance with municipal policies, TRCA's Board approved Living City Policies and TRCA's regulatory and permitting requirements under Section 28 (1) and 28.0.1 of the *Conservation Authorities Act*.
5. TRCA will request that an MZO respect any previous agreements with the Province, municipality and TRCA (e.g., previous OMB/LPAT settlement/agreement).
6. TRCA will recommend that natural hazards (e.g., flood plains, steep slopes, erosion hazards, etc.), natural features (e.g., wetlands, woodlots, etc.) and natural heritage systems and their associated required setbacks outlined in provincial, municipal and TRCA policies be delineated in an MZO and protected from development.
7. TRCA will recommend that an MZO include conditions for the proponent to complete the technically appropriate studies, (e.g., Master Environmental Servicing Plan, Functional Servicing Plan, Flood Study, Geotechnical Study, Environmental Impact Study, subwatershed plan/or amendment for larger scale sites, etc.) to the satisfaction of the municipality and TRCA.
8. TRCA will recommend that the applicant or requesting municipality confirm that other relevant federal or provincial legislative requirements are being met (e.g., Endangered Species Act, Migratory Birds Convention Act, Fisheries Act, etc.).
9. Where impacts to natural features or systems cannot be avoided or mitigated, TRCA will recommend compensation be provided in accordance with TRCA's Guideline for Determining Ecosystem Compensation.
10. TRCA will advocate that municipal staff and proponents consult with TRCA to ensure that TRCA's policy, technical and regulatory issues can be addressed prior to an MZO request being considered by a municipal Council. Where TRCA has not been consulted prior to a municipal Council endorsement of an MZO within an area regulated by TRCA under the CA Act, TRCA will request the Minister of Municipal Affairs and Housing and Ministry staff to consult with TRCA in order that the requirements of obtaining a conservation authority permit are considered and can be satisfied prior to approval of the MZO.
11. TRCA staff will track plan review time spent on MZO files and will seek full cost recovery in accordance with TRCA's Administrative Planning Fee Schedule.

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MZO Permit Process:

1. TRCA will seek full cost recovery on permit applications in accordance with TRCA's Administrative Permitting Fee Schedule.
2. An applicant shall undertake pre-consultation with TRCA staff to determine the requirements for a complete permit application, including any technical studies and/or assessments, site plans and/or other plans as required by TRCA. Processing of a permit application shall not commence until such time as it is deemed complete by TRCA staff and the applicable permit fee is received; the applicant will be notified accordingly.
3. TRCA will process, assess, and report on a permit application in accordance with TRCA's Board approved Living City Policies and the applicable provisions of the CA Act.
4. Where impacts to natural features or systems cannot be avoided or mitigated, compensation will be required in accordance with TRCA's Guideline for Determining Ecosystem Compensation.
5. TRCA's standard permit conditions will be imposed (**Attachment 3**).
6. TRCA will impose any other special 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; or
 - any other matters that may be prescribed by regulation.

Conditions imposed to mitigate impacts of the development activity and risk to public health and safety or property from natural hazards may be substantive and onerous if these matters were not taken into consideration prior to the issuance of an MZO under the *Planning Act*.

7. The applicant/owner shall enter into an agreement with TRCA. On consent of the applicant, other parties can be included in the agreement (e.g., municipality). The agreement shall set out actions that the holder of the permission must complete or satisfy in order to compensate for ecological impacts, (where applicable), and any other impacts that may result from the development project. The agreement shall also include clauses related but not limited to TRCA enforcement and compliance, indemnification of the Authority and insurance coverage protecting the Authority from any claims.
8. The agreement between the applicant/owner and TRCA must be executed before any development activity commences on the property.
9. Where an applicant has agreed to the permit conditions, staff will report on the permit application to the Executive Committee for their decision and approval. Any additional permit conditions imposed by the Executive Committee at this time will be subject to the agreement of the applicant.
10. An 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 TRCA. In such an instance, the Hearing will be conducted in a manner consistent with the MNR/Conservation Ontario Hearing Guidelines, as amended 2020. The applicant and TRCA staff will be afforded the opportunity to appear before the Board of Directors.

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11. If the permit holder still objects to the conditions imposed by an authority following a Hearing, the applicant has the option to either request a Minister's review of the conditions (MNRF) or appeal to the Local Planning Appeal Tribunal (LPAT) within the timeframes set out in Section 28.0.1.
12. Following the decision of the Minister's or LPAT to confirm, vary, remove, or add to the permit conditions, the Authority shall execute an agreement with applicant/owner.

Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

Strategy 2 – Manage our regional water resources for current and future generations

Strategy 4 – Create complete communities that integrate nature and the built environment

Strategy 7 – Build partnerships and new business models

Strategy 8 – Gather and share the best sustainability knowledge

Strategy 12 – Facilitate a region-wide approach to sustainability

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. No additional funding is proposed to support the policy analysis work associated with the preparation of these comments. As per Board direction, staff are tracking the review of MZOs to recoup costs for staff time and review recognizing the increased use of the MZO tool.

NEXT STEPS

- TRCA will continue to proactively advise municipalities, applicants, and the Province of any policy, technical and regulatory issues where MZO requests are known.
- Where TRCA has not been consulted prior to a municipal Council endorsement of an MZO within an area regulated by TRCA under the CA Act, TRCA will request the Minister of Municipal Affairs and Housing and Ministry staff to consult with TRCA in order that the requirements of obtaining a conservation authority permit are considered and can be satisfied prior to approval of the MZO.
- TRCA will educate staff, municipalities, and applicants, as required, on the new permitting provisions related to MZOs in Section 28.0.1 of the amended CA Act.

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Attachment 1: Table – Approved or Requested Minister's Zoning Orders in TRCA Jurisdiction, as of February 2021

Attachment 2: Map – Approved or Requested Minister's Zoning Orders in TRCA Jurisdiction

Attachment 3: TRCA Standard Permit Conditions