

TRCA STAFF REPORT – HEARING UNDER SECTION 28.0.1(7) OF THE CONSERVATION AUTHORITIES ACT

TO: Chair and Members of the Board of Directors
Friday, March 12, 2021 Hearing

FROM: John MacKenzie, Chief Executive Officer
Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATION FOR PERMIT UNDER O. Reg. 166/06 AND PURSUANT TO SUBSECTION 28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDERS)**
PICKERING DEVELOPMENTS (SQUIRES) INC.

KEY ISSUE

Application #1209/20/PICK for issuance of permission pursuant to Section 28.0.1 of the *Conservation Authorities Act* to Pickering Developments (Squires) Inc. to site grade, temporarily or permanently place, dump or remove any material, originating on the site or elsewhere, and interfere with a wetland to remove a Provincially Significant Wetland (PSW) located at 1802 Bayly Street, in the City of Pickering.

RECOMMENDATION

WHEREAS Toronto and Region Conservation Authority (TRCA) is legally required to grant permission for development on March 12, 2021, in accordance with Ontario Regulation 159/21;

AND WHEREAS TRCA’s Board of Directors and staff, using a science-based approach to decision making and TRCA’s Living City Policies, would ordinarily decline permission of such a permit;

AND WHEREAS TRCA’s Board of Directors must, under duress, adhere to the Province’s legally ordered directive, which conflicts with TRCA’s mandate to further the conservation, development, and management of natural resources in watersheds within our jurisdiction;

AND WHEREAS the only authorized power that TRCA’s Board of Directors has at their discretion is the ability to add conditions to the permission;

AND WHEREAS the applicant has raised concerns with potential conditions that may be placed on their application and requested a hearing before TRCA’s Board of Directors, which is taking place on March 12, 2021, to meet the legally mandated Provincial deadline;

THEREFORE, BE IT RESOLVED THAT TRCA’s Board of Directors approve conditions to the permission as outlined in this report, which are to be included in an agreement signed by all parties, in accordance with the conditions;

AND FURTHER THAT TRCA’s Chief Executive Officer be authorized to execute the agreement, as required by the *Conservation Authorities Act*.

BACKGROUND

Board Members Sitting as Hearing Tribunal

In considering the application, the Hearing Board is acting as a decision-making tribunal. The tribunal is to act fairly. Under general principles of administrative law relating to the duty of fairness, the tribunal is obliged not only to avoid any bias but also to avoid the appearance or apprehension of bias.

In holding this Hearing, the Hearing Board is to determine what conditions, if any, to impose as conditions to the permission. In doing so, the Hearing Board may only consider the permit application submitted by the applicant, the staff report, the applicant's report, the submissions to be made on behalf of the applicant and on behalf of TRCA staff, and such evidence as may be given.

Permit Application and Property Description

Pickering Developments (Squires) Inc. has applied for permission under O. Reg. 166/06 and Section 28.0.1 of the *Conservation Authorities Act* for development and interference with a wetland to bring in an unknown quantity of fill and grade to ultimately remove the Provincially Significant Wetland and other upland habitat 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 PSW and Significant Wildlife Habitat. Other potential features which may be present but have yet to be confirmed include Significant Woodland and Endangered Species habitat. The wetland is part of the Lower Duffin's Creek PSW Complex; which includes continuous hydrological connection to a portion of the PSW on the adjacent property and upstream hydrological connections to a PSW wetland complex off-site. A provincial staking exercise was conducted on the property to delineate the boundary by the Ministry of Natural Resources and Forestry (MNRF) on July 15, 2014, with TRCA staff and external consultants in attendance.

The subject property is composed of diverse intermixed habitats including woodland swamp (0.72 ha), marsh (11.2 ha), swamp thicket (6.07 ha), open wetland habitat (0.04 ha), woodland (0.95 ha), thicket (0.57 ha) and meadow (3.63 ha). The PSW on the subject property is approximately 18.0 ha. 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 and considered Significant Wildlife Habitat. Documented on the property include species considered Rare and Uncommon to Durham Region and those of regional concern to TRCA. Other faunal ecological functions documented on-site include breeding birds, usage by amphibians, and small to large rural and urban mammals. The subject property is in close proximity to other natural systems for migration connectivity by fauna to occur.

Minister's Zoning Order (MZO)

A MZO was issued on October 30, 2020, as Ontario Regulation 607/20, for lands including the lands subject to the permit application. The MZO permits a variety of commercial uses and includes no protections for natural areas, including the PSW, located on the lands subject to the permit application.

Prior to the issuance of the MZO, the Minister of Natural Resources and Forestry requested that TRCA enter into a Memorandum of Agreement with the applicant to proceed with further

discussions regarding the potential for off-site ecosystem compensation.

On October 23, 2020, TRCA's Board of Directors adopted amended RES.#A164/20, with respect to the request by the City of Pickering for an MZO 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;

On October 29, 2020, TRCA entered into a Memorandum of Agreement to review a proposal for ecosystem compensation which outlined the principals of that compensation, including both replication of the ecosystem structure and land-based compensation on lands that are not included within the municipal natural heritage system or equivalent.

Mandatory Permits for MZO Development Projects

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 (MNR) 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 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.

In summary, TRCA must issue a permit for development projects on lands subject to an MZO, outside of the Greenbelt, but can make that permission subject to conditions and must enter into an agreement with the landowner/applicant.

Prior to Bill 229, TRCA 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*. The *Planning Act* and Provincial Policy Statement do not permit development and site alteration in a PSW 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 PSWs and their associated minimum buffer setbacks, with the exception of public or essential infrastructure.

Borehole Investigation Permit Granted February 26, 2021

On February 26, 2021, the TRCA Executive Committee, granted a permit with conditions for borehole testing on the property, adopted RES.#B112/20 and reiterated the position of the Board of Directors, as adopted at the October 23, 2020 Board of Directors meeting (amended Res.#A164/20, above). The motion reads (in part) as follows:

WHEREAS the Executive Committee reiterates the position of the Board of Directors, as adopted at the October 23, 2020 Board of Directors meeting (amended Res.#A164/20), that in recognition of Toronto and Region Conservation Authority's (TRCA) role as a watershed management and regulatory agency, and stewards of lands within TRCA's jurisdiction, the Board of Directors does not support development within wetlands, particularly, Provincially Significant Wetlands, and on this basis does not support development of this site as per the Minister's Zoning Order approved by the Province;

WHEREAS TRCA staff using a science-based approach to decision making and TRCA's Living City Policies, would customarily recommend declining the issuance of a permit in support of development within a Provincially Significant Wetland and, specifically, in the instance of this MZO;

TRCA Ordered to Grant Permission by March 12, 2021

On March 4, 2021, the Minister of Natural Resources and Forestry informed TRCA that pursuant to Subsection 28.0.1(35)(b)(i) of the Conservation Authorities Act the Minister made Ontario Regulation 159/21 requiring TRCA to issue a permit in response to the applicant's February 16, 2021 "Application for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses" on or before March 12, 2021.

RATIONALE FOR THE CONDITIONS TO THE PERMISSION

The purpose of the conditions is an attempt to mitigate any negative effects the works 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 filling of the site 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. To develop these conditions, it is important to understand the importance of the ecosystem services and contribution to the control of flooding and erosion that the existing wetland habitat provides, review the application in the context of its impacts on same, and identify measures to attempt to mitigate these impacts.

The Importance of Wetlands

Wetlands are unique and specialized habitats that form the interface between the aquatic and terrestrial system creating habitats important to a diversity of species. Across Ontario they can be identified as swamps, marshes, fens, bogs, mires, sloughs, and peatlands, occurring in lands that are seasonally or permanently covered by shallow water or where the water table is at or close to the surface. The survival and prevalence of wetlands on the landscape helps to protect the quality and well-being of ecosystems where people and organisms coexist.

Identified to be among the most productive and biologically diverse habitats on the planet, wetlands lead critical roles in providing benefits that communities value like ecosystem services. Wetland ecosystem services can include flood mitigation, groundwater recharge and discharge, erosion reduction, climate change mitigation, terrestrial and aquatic biodiversity habitat, food and medicinal sources, nutrient cycling, carbon sequestration, recreation/tourism, and cultural and spiritual significance. In Southern Ontario, economic benefits are annually valued over \$14 billion as green infrastructure. Studies have documented that wetlands maintained intact on the landscape can reduce the financial burden of major flood events in urban and rural areas up to 38%. By comparison, the costs for water filtration, flood mitigation and soil retention are much lower when wetlands are conserved in-situ rather than man-made infrastructure like stormwater management. In 2020 alone, the rise of conservation areas usage and ecotourism was a key aspect of Ontarians well-being both mentally and physically during the ongoing pandemic.

Currently experiencing heavy loss from pressures to land conversion, climate change, invasive species and pollution, a strategic road map was created for wetland conservation in Ontario (2017-2030) to halt net loss of wetland area and function where greatest by 2025. Historically, 65-87% of wetlands have been lost and removed off the landscape within the City of Pickering (State of Ontario Biodiversity Report, 2015). Systems like the Ontario Wetland Evaluation System by the MNRF identify the value and importance of wetlands at a Provincial scale to aid in the protection and sustainable management of these features. The scoring system recognizes the contributions of wetlands socially, biologically, hydrologically and for their special features. Wetland protection is embedded in legislation and policies at all levels of governments throughout Ontario and requires the collaborative commitment, efforts, and actions of all involved to ensure that resilient and sustainable ecosystems are maintained.

The Importance of Preventing Flooding and Erosion

Erosion is a natural process of gradual washing away of soil by water movement or seepage (at the ground surface), commonly occurring in one of the following manners:

- a) rainfall or snowmelt and surface runoff (sheet, rill, or gully erosion);
- b) internal seepage and piping;
- c) water flow (banks or base of river, creek, channel); and
- d) wave action (shorelines of ponds, lakes, bays).

The erosion process affects the soil at the particle level by dislodging and removing (transporting) the soil particles from the parent mass (with water movement as the agent). Erosion is exacerbated by urbanization and the replacement of natural features with impervious surfaces. This erosion can affect waterbodies, fish habitat and damage municipal infrastructure.

According to Environment Canada's "How Much Habitat Is Enough?" (2013), the recommended amount of natural cover needed for reasonably healthy and resilient ecosystems is 30 per cent forest cover and 10 per cent wetland. Natural cover in TRCA's jurisdiction has been measured at approximately 15 per cent in forests and 1 per cent in wetlands and, as such, it is critical to preserve and enhance what is left. A reduction in forests, wetlands, meadows and their species is also accompanied by increases in flooding and erosion. Changes in land use are often approved site-by-site without understanding how, cumulatively, they affect the region's Natural System and environmental health.

As such, it is important to consider that development and redevelopment should contribute to the prevention, elimination, and reduction in risk from flooding and erosion, and that water management on both an interim (under construction) and final phases of development be sufficient to achieve this objective as identified in TRCA's Living City Policies. It is also important in the absence of municipal stormwater approvals (in this case), that the interim and final stormwater management scheme for the proposed development confirms that the site will not result in flooding on adjacent properties and encourages maintaining the existing conditions water balance and downstream sediment loadings.

Review of Permit Application by TRCA staff

The application has been reviewed by TRCA's water resources, hydrogeology and ecology staff. The proposal will have an impact on the conservation of land (considered to be any impacts on the ecosystem) due to the removal of the wetland and upland habitat. Given the size and location of the habitat as a stopover point for migratory birds between the lakefront and the Oak Ridges Moraine, it cannot be replaced nearby in the Pickering urban area as there are no available target sites. There will be a net loss to the natural heritage system regardless of the ecosystem compensation plan, even if the compensation meets the requirements of the TRCA's [Guideline for Ecosystem Compensation](#). The Guideline was never developed for this unprecedented scenario. The filling may have an impact on the control of flooding / health or safety of persons or result in the damage or destruction of property if the surface water is not addressed appropriately on an interim and permanent basis.

The applicant has made a proposal to purchase and convey to the TRCA, at no cost to TRCA, the property known municipally as 2870 Concession Road 8, Pickering and payment of \$3,517,000 cash-in-lieu to create a wetland or multiple wetlands totaling the same size elsewhere. The compensation proposal and staff's response are outlined in Attachment 4. TRCA staff do not agree that the applicant's compensation proposal will adequately compensate for the lost habitat as the amount of land is not sufficient to recreate the lost wetland habitat, nor is the land proposed for conveyance enough to recreate the lost PSW.

The applicant has provided a stormwater management scheme, grading plans and erosion and sediment control plans. This scheme is missing information, and the plans are not sufficient to address TRCA's stormwater management criteria and erosion and sediment control guideline.

RECOMMENDED CONDITIONS TO THE PERMISSION

1) Standard Conditions:

See Attachment 2

2) Special Conditions:

Expiration of the Permission

- 1. The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.**

This condition is to ensure there is no conflict with the Migratory Birds Convention Act assuming works start in late summer 2021.

Ecosystem Compensation Conditions

- 2. Prior to execution of the Agreement, the Permit Holder shall obtain written confirmation from MNRF confirming that the Ministry has no objection to the removal of 18 ha of Provincially Significant Wetland (PSW), and that the Ministry supports the ecosystem compensation plan as appropriate and adequate mitigation of the ecological impacts of the granting of the permission.**

TRCA may only impose conditions to the permit, including conditions to mitigate: "any effects the development project is likely to have on the .. conservation of land." TRCA's application of the "conservation of land" as described in "The Living City Policies for Planning and Development in the Watersheds of the TRCA", 2014, is premised on the need to recognize the relationship between landforms, features and functions in order to protect, manage and restore natural resources within the watershed. Both the Mining and Lands Commissioner and the courts have accepted a broad meaning of conservation of land to include, "all aspects of the physical environment, be it terrestrial, aquatic, biological, botanic or air and the relationship between them (611428 Ontario Limited vs. MTRCA, CA 007-92, February 11, 1994 p.38)". The Appeal Court solidified the "case law" that has been established in relation to the "conservation of land" test pursuant to Section 28 of the CA Act and that decision is a seminal decision.

Assessing the impacts to the conservation of land for both form and function of natural features, at both the local and regional scales of the watershed is also important. Within TRCA's watersheds, as stated in TRCA's Living City Policies, development impacts on the five tests are considered both incrementally and cumulatively in order to manage the risk to life and property, and to maintain, restore and enhance the ecological and hydrological functions of the systems contributing to the conservation of land.

TRCA's Living City Policies Section 8, Policy 8.7.2 states that "development and interference will not be permitted within provincially significant wetlands...or other wetlands greater than 0.5 ha in size." Policy 8.7.6 goes further to state that no new development is permitted within ...30 metres of a provincially significant wetland...and any contiguous natural features and areas that contribute to the conservation of land; or...10 metres of other wetlands...". MNRF in a letter dated October 14, 2020 stated that "MNRF is available to assist and support the TRCA to provide scientific peer review of the proposal or any other technical support or facilitation that TRCA requires to move forward. We at MNRF have done a preliminary review of the studies submitted by Beacon Environmental and believe there is merit in reviewing reclassification of the wetland areas west of Squires Beach Road."

As the proposal results in a significant negative precedent and does not meet TRCA's Living City Policies, staff recommend this condition to ensure that the relevant Provincial Ministry

provide unequivocal support for the wetland removal / reclassification and associated ecosystem compensation prior to the removal of the wetland.

3. **Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, for the cost of fill removal, drainage improvements, site grading and wetland restoration on 1802 Bayly Street, which TRCA shall be entitled to draw on to restore the site in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.**

This condition ensures that the wetland can be replaced in its original beneficial location if the commercial development project does not proceed. If the site is not developed for the uses approved in the MZO, it is staff's opinion that the site should be restored back to a wetland, and the site grading and wetland restoration secured prior to any works taking place to ensure the ecological impacts are reversed.

4. **Prior to execution of the Agreement, the Permit Holder shall convey to TRCA an easement over 1802 Bayly Street for the purpose of permitting TRCA to implement restoration site works including wetland restoration in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.**

This condition ensures that TRCA has access to the lands to restore the wetland if the commercial development project does not proceed.

5. **The Permit Holder shall convey to TRCA lands in the Duffins and Carruthers Creek watershed legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING, and any other lands suitable for wetland restoration that are not part of the municipal natural heritage system, key natural heritage features or natural areas or equivalent as identified in an approved municipal plan or provincial plan required to accommodate ecosystem structure compensation.**

This condition will ensure the conveyance of 2870 Concession Road 8 accommodate the necessary upland restoration and a portion of the wetland restoration. The conveyance will be subject to standard TRCA property transfer requirements including removal of a dwelling and other structures on the site, environmental site assessments, free and clear of encumbrances, including the removal of any buildings or structures that TRCA does not require.

However, this property only provides enough land to restore 3-5 ha of wetland. As such, the remaining approximately 14 to 16 ha of wetland restoration must take place on other lands. TRCA Restoration and Infrastructure staff have examined the public lands located within the City of Pickering that are not located in the municipal or provincial natural heritage system, including Transport Canada Lands and the Rouge Park and very few are suitable for wetland construction either due to lack of drainage area or issues related to tenants and aircraft bird strike avoidance. As such, the permit holder must identify additional privately-owned lands to convey to TRCA or fund the purchase of same and the significant staff administration costs to do so, in order to effect the appropriate wetland compensation. Please see Attachment 4 for more details of this major concern.

The land conveyed will be designated undevelopable in the applicable local or regional Official Plan per the existing Memorandum of Agreement.

6. **Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, to secure the conveyance of the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and to secure the conveyance of additional lands suitable for wetland restoration to TRCA, in accordance with the Ecosystem Compensation Plan approved by TRCA.**

This condition is required to secure the conveyance of lands identified in the Ecosystem Compensation Plan in Attachment 4.

7. **Prior to execution of the Agreement, the Permit Holder shall provide a cash payment to TRCA to secure the annual costs of property taxes and maintenance of the lands to be conveyed to TRCA, being the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and as well as the annual costs for the additional lands required to be conveyed to TRCA for wetland restoration, at a rate of not less than \$465/ha plus property taxes plus inflation in perpetuity.**

This condition is required to ensure that all costs arising from the conveyance of lands to TRCA are paid by the applicant. On Friday February 26, 2021, the Board of Directors endorsed the Greenspace Acquisition Project 2021-2030. The accompanying update discussed the need for a TRCA Land Management Strategy. All properties, regardless of the management category and intensity of public use, require regular and proper inspection, land planning, management and monitoring to ensure that TRCA lands support TRCA programs and services. Lands also incur insurance and property tax costs. TRCA Property and Risk Management staff recommend that the agreement require the landowner or the municipality to provide a reserve fund payment satisfactory to cover future land management, maintenance, taxes and insurance.

8. **Prior to the conveyance of any lands to TRCA, the Permit Holder shall provide to TRCA: a satisfactory Phase I Environmental Site Assessment Report, and if required, such further reports and assurances with respect to the environmental condition of the lands; a recent reference plan; and confirmation that all lands to be conveyed are free and clear of all encumbrances, including any buildings or structures that are not required by TRCA.**

This condition is required to ensure that all costs arising from the conveyance of lands to TRCA are free of contamination and encumbrances.

9. **Prior to execution of the Agreement, the Permit Holder shall provide a cash payment for ecosystem structure compensation to TRCA in the amount of \$4,426,216.41, for purposes in accordance with the Ecosystem Compensation Plan approved by TRCA.** The landowner is offering a total cash payment of \$3,350,000 plus a 5% administration fee, for a total of \$3,517,000 as a condition of permit issuance, based on 2017 ecosystem restoration costs. Per the Guideline for Ecosystem Compensation, current costs to restore (at the time of receipt of the funds) should be used in calculating the compensation funds. TRCA Ecology staff have examined the ecological land classification of the habitats to be removed and applied current costs to restore. Staff conclude that the cash payment should equal \$4,215,444.20 plus a 5% administration fee, for a total of \$4,426,216.41.

The landowner has offered to provide payment as a condition of permit issuance and for the payment to take place later when the exact amount is determined. TRCA staff has

determined the exact amount based on the habitat loss identified in the landowner's Environmental Impact Study and, as such, staff are of the opinion that the conditions should require payment be provided before the work takes place.

Environmental and Natural Hazard Conditions

- 10. Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the *Planning Act* for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.**

The application includes a temporary erosion and sediment control plan. This plan includes a temporary stormwater management strategy that requires pumping to manage the quantity and quality of stormwater during larger storm events. This plan is designed to be temporary until the site is fully developed and proper permanent stormwater management infrastructure can be installed and some of that infrastructure may require approvals from offsite landowners including Durham Region, Metrolinx or MTO. Staff understand that a major storm sewer pipe and outfall may need to be installed along the Bayly Street right-of-way owned by Durham Region to Duffins Creek in the Town of Ajax to address flows in post-development conditions.

The large format distribution warehouse proposal permitted under the MZO does not have Site Plan approval under the *Planning Act*. Without this approval, TRCA staff are concerned that the site may sit fallow and exposed with temporary stormwater controls for an indefinite period. This presents a risk to sedimentation of surrounding natural features, pollution and possibly off-site urban flooding. There is also no municipal enforcement control over the works as the City's Fill and Topsoil Disturbance By-Law exempts works within a regulated area as defined by regulations made under the *Conservation Authorities Act*. TRCA's enforcement powers are also limited under the *Conservation Authorities Act*.

- 11. Prior to execution of the Agreement, the Permit Holder shall provide revised stormwater management report, grading plans and erosion and sediment control plans, and an erosion and sediment control report and monitoring plans to TRCA's satisfaction to address TRCA technical comments including that any external areas currently draining into the site are addressed.**

This condition ensures that the limited drainage areas associated with surrounding properties is adequately addressed. TRCA technical staff are not satisfied with the grading and erosion and sediment control plans as they do not meet TRCA's Stormwater Management (SWM) Criteria or Erosion Settlement Control (ESC) Guideline. Also the limited drainage areas associated with surrounding properties must be considered. A revised SWM and ESC scheme is necessary prior to the Permit Holder's works commencing.

- 12. The Permit Holder shall ensure that the wetland removal is supervised on site by a qualified ecologist for the purpose of ensuring all relevant environmental legislation, approved plans and TRCA conditions are adhered to and that weekly monitoring reports, including ESC monitoring reports, are submitted to TRCA Enforcement staff.**

This condition is to ensure that if any species subject to environmental legislation are identified during construction, the work is modified to ensure the appropriate environmental legislation and / or TRCA conditions are complied with.

- 13. The Permit Holder shall undertake a transplantation and relocation plan for regionally, locally and TRCA rare and uncommon species/communities identified by the ecologist on the property as timing of works allows, and that a final report prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.**

This condition implements a mitigation measure pertaining to Section 4.10 and 5.3 of the Environmental Impact Study and requires the identification, relocating and transplanting of viable species within the existing Winterberry Organic Swamp and other portions of the PSW.

- 14. Prior to execution of the Agreement, the Permit Holder shall provide written support from Durham Region and the City of Pickering that the two municipalities are satisfied with and have secured future stormwater management infrastructure required for Site Plan approval of the proposed commercial development including, but not necessarily limited to, permanent ponds, low impact development technologies, storm sewer(s) and outfall(s), both on and off site.**

This condition is to ensure that permanent stormwater management infrastructure is financially secured prior to any works taking place to ensure long term water management concerns are addressed. The amount of security must be determined with the landowner, Durham Region and the City of Pickering. Staff are concerned that the site could lay fallow for several years with only temporary stormwater controls.

Additional Permits Required

- 15. Prior to execution of the Agreement, the Permit Holder shall obtain permit, on behalf of the City of Pickering, to construct the required culvert under Squires Beach Road needed to accommodate a temporary storm pump hose to service the Permit Holder's work.**

The landowner's engineering consultant identifies that a temporary sediment pond is required prior to the start of site grading. This pond is to be pumped to a sewer outlet approximately 700 m east of Squires Beach Road. The pump hose is to run through a proposed temporary culvert under Squires Beach Road, then extend east to the Durham Live lands just west of Church Street. This portion of Squires Beach Road is within the TRCA regulated area and is owned by the City of Pickering. As such, the City is required to obtain a permit from TRCA for this culvert.

- 16. Prior to execution of the Agreement, the Permit Holder shall obtain a permit for altering a wetland at 1702 Squires Beach to address negative impacts to the PSW on that property due to the Permit Holder's work.**

The provincially significant wetland extends north onto lands at 1702 Squires Beach Road (referred to as the 0.31 ha "notch" wetland in the Environmental Impact Study). The study identifies the notch wetland as being entirely contiguous with the wetland immediately to the south. The study identifies the notch wetland as having high sensitivity to impacts and states

that negative effects are therefore anticipated on the ecological integrity of this feature even if hydrological mitigation measures are implemented. TRCA Ecology staff agree with this assessment and the landowner has included the notch wetland in its ecosystem compensation proposal.

TRCA policy states that development and interference will not be permitted within provincially significant wetlands. The notch wetland is located on lands not owned by Pickering Developments (Squires) Inc. Further, 1702 Squires Beach Road is not subject to a MZO, meaning that TRCA has permitting authority over the notch wetland and the majority of its area of interference. Given these constraints, TRCA staff cannot recommend approval of interference with a provincially significant wetland located off site unless a separate permit application is made by that landowner, and permission is granted by TRCA's Executive Committee. To not address such off-site impacts could open TRCA up to liability.

As the proposal would result in negative impacts to the conservation of land on an off-site provincially significant wetland, TRCA staff recommend that the conditions ensure that the impacted landowner concurs with the impacts and that the appropriate Provincial and TRCA policies be applied to the notch wetland through the appropriate permitting process.

- 17. Prior to the execution of the agreement, the Permit Holder shall provide a copy of any permit required under the *Endangered Species Act* from the Ministry of Environment, Conservation and Parks (MECP) for the works, or shall provide confirmation from the MECP that no such permit is necessary.**

This condition is required to satisfy TRCA that all required MECP permits are obtained.

Agreement Conditions

- 18. Parties to the Agreement: The Permit Holder agrees to add the Province of Ontario, Regional Municipality of Durham and City of Pickering as parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act*.**

This condition is required to allow for the two subsequent conditions, which are a direct result of the Province's issuance of the MZO, at the request of the City of Pickering with the support of the Regional Municipality of Durham, endorsed via council resolutions.

- 19. Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.**

This condition will ensure TRCA is not subject to future liability or costs due to the permission being granted. This condition is required in recognition that TRCA would ordinarily decline permission of such a permit, but that TRCA's Board of Directors was forced, under duress, to adhere to the Province's legally mandated directive to provide permission, which conflicts with TRCA's mandate to further the conservation, development and management of natural resources in watersheds within TRCA's jurisdiction.

20. Irrevocability: All parties to the Agreement required under Section 28.0.1(24) of the Conservation Authorities Act agree that if future legislation or regulations are enacted impacting the permitted area, there will be no ability to reduce the agreed upon conditions.

This condition is required as protection from further future Provincial interference. For instance, if the Province were to enact legislation that would remove the Provincially Significant Wetland classification from the property, which existed at the date of this Agreement, no party to the Agreement could reopen the matter, to argue that conditions were based on erroneous information.

SUMMARY CONCLUSION

Approval of permission for development and interference with a Provincially Significant Wetland does not meet the requirements of TRCA's Living City Policies. However, the Act requires the Authority to issue such a permit on these lands as they are subject to a MZO. Staff has therefore reviewed the application and do not support the works proposed as the removal of 18.0 ha of Provincially Significant Wetland does not meet TRCA policy.

Professional Planners involved in preparing this report are bound by a code of conduct. The code requires Professional Planners to acknowledge the inter-related nature of planning decisions and their consequences for individuals, the natural and built environment, and the broader public interest. While staff recognize the economic benefits that may result from the development, in staff's opinion the removal of a Provincially Significant Wetland and its associated ecosystem of this size and in this location has negative consequences for the natural environment and is not in the public interest.

Given the requirements of Section 28.0.1 of the Act that TRCA is required to grant the permission, coupled with the mandatory order issued to TRCA on March 4, 2021 (O. Reg. 159/21) that TRCA grant the permission on or before March 12, 2021, staff recommend the above referenced conditions be applied to the permission in an effort to mitigate negative impacts on the control of flooding, erosion, dynamic beaches or pollution or the conservation of land, or any 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.

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Date: March 8, 2021

Attachments: 4

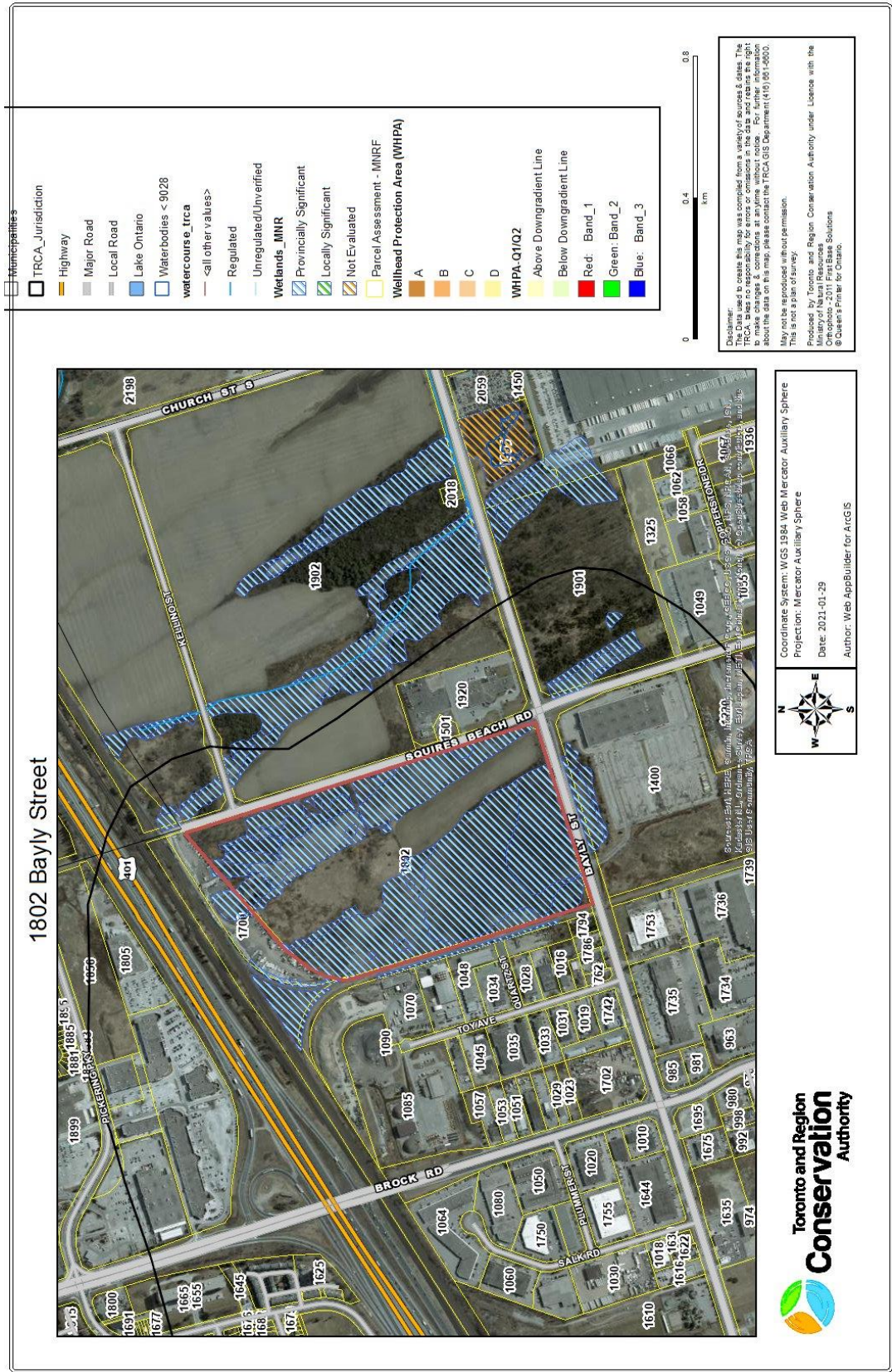
Attachment 1: Location Map

Attachment 2: TRCA Standard Permit Conditions

Attachment 3: Special Permit Conditions

Attachment 4: Ecosystem Compensation Plan

Attachment 1: Location Map



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.
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.

Attachment 3: Special Permit Conditions

Expiration of the Permission:

1. The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.

Ecosystem Compensation Conditions

2. Prior to execution of the Agreement, the Permit Holder shall obtain written confirmation from MNRF confirming that the Ministry has no objection to the removal of 18 ha of Provincially Significant Wetland (PSW), and that the Ministry supports the ecosystem compensation plan as appropriate and adequate mitigation of the ecological impacts of the granting of the permission.
3. Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, for the cost of fill removal, site grading and wetland restoration on 1802 Bayly Street, which TRCA shall be entitled to draw on to restore the site in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.
4. Prior to execution of the Agreement, the Permit Holder shall convey to TRCA an easement over 1802 Bayly Street for the purpose of permitting TRCA to implement restoration site works including wetland restoration in the event the site servicing and commercial development is not substantially under construction within two years of the granting of this permission.
5. The Permit Holder shall convey to TRCA lands in the Duffins and Carruthers Creek watershed legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING, and any other lands suitable for wetland restoration that are not part of the municipal natural heritage system, key natural heritage features or natural areas or equivalent as identified in an approved municipal plan or provincial plan required to accommodate ecosystem structure compensation.
6. Prior to execution of the Agreement, the Permit Holder shall provide a letter of credit to TRCA, to TRCA's satisfaction, to secure the conveyance of the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and to secure the conveyance of additional lands suitable for wetland restoration to TRCA, in accordance with the Ecosystem Compensation Plan approved by TRCA.
7. Prior to execution of the Agreement, the Permit Holder shall provide a cash payment to TRCA, to secure the annual costs of property taxes and maintenance of the lands to be conveyed to TRCA, being the lands legally identified as PT LT 7 CON 8 PICKERING, PT 1, PL 40R18008 S/E PT 1, PL 40R19990 CITY OF PICKERING for land-based ecosystem compensation, and as well as the annual costs of property tax and maintenance of the additional lands required to be conveyed to TRCA for wetland restoration, at a rate of not less than \$465/ha plus property taxes in perpetuity.
8. Prior to the conveyance of any lands to TRCA, the Permit Holder shall provide to TRCA: a satisfactory Phase I Environmental Site Assessment Report, and if required, such further

reports and assurances with respect to the environmental condition of the lands; a recent reference plan; and confirmation that all lands to be conveyed are free and clear of all encumbrances, including any buildings or structures that are not required by TRCA.

9. Prior to execution of the Agreement, the Permit Holder shall provide a cash payment for ecosystem structure compensation to TRCA in the amount of \$4,426,216.41, for purposes in accordance with the Ecosystem Compensation Plan approved by TRCA.

Environmental and Natural Hazard Conditions

10. Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the *Planning Act* for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.
11. Prior to execution of the Agreement, the Permit Holder shall provide revised stormwater management report, grading plans and erosion and sediment control plans, and an erosion and sediment control report and monitoring plans to TRCA satisfaction to address TRCA technical comments including that any external areas currently draining into the site are addressed.
12. The Permit Holder shall ensure that the wetland removal is supervised on site by a qualified ecologist for the purpose of ensuring all relevant environmental legislation, approved plans and TRCA conditions are adhered to and that weekly monitoring reports, including ESC monitoring reports, are submitted to TRCA Enforcement staff.
13. The Permit Holder shall undertake a transplantation and relocation plan for regionally, locally and TRCA rare and uncommon species/communities identified by the ecologist on the property as timing of works allows, and that a final report prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.
14. Prior to execution of the Agreement, the Permit Holder shall provide written support from Durham Region and the City of Pickering that the two municipalities are satisfied with and have secured future stormwater management infrastructure required for Site Plan Approval of the proposed commercial development including, but not necessarily limited to, permanent ponds, low impact development technologies, storm sewer(s) and outfall(s), both on and off site.

Additional Permits Required

15. Prior to execution of the Agreement, the Permit Holder shall obtain permit, on behalf of the City of Pickering, to construct the required culvert under Squires Beach Road needed to accommodate a temporary storm pump hose to service the Permit Holder's work.
16. Prior to execution of the Agreement, the Permit Holder shall obtain a permit for altering a wetland at 1702 Squires Beach to address negative impacts to the PSW on that property due to the Permit Holder's work.
17. Prior to the execution of the agreement, the Permit Holder shall provide a copy of any permit required under the Endangered Species Act from the Ministry of Environment, Conservation

and Parks (MECP) for the works, or shall provide confirmation from the MECP that no such permit is necessary.

Agreement Conditions

18. Parties to the Agreement: The Permit Holder agrees to add the Province of Ontario, Regional Municipality of Durham and City of Pickering as parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act*.
19. Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.
20. Irrevocability: All parties to the Agreement required under Section 28.0.1(24) of the *Conservation Authorities Act* agree that if future legislation or regulations are enacted impacting the permitted area, there will be no ability to reduce the agreed upon conditions.

Attachment 4: Ecosystem Compensation Plan

There are two components to ecosystem compensation identified in TRCA's [Guideline for Determining Ecosystem Compensation](#), 2018 (Guideline):

- 1) Replacing the Ecosystem Structure (the actual habitat being removed); and
- 2) Replacing the Land Base (the land that is being developed instead of remaining in a natural state).

1) Replacing the Ecosystem Structure

The landowner proposed a total cash payment of \$3,350,000 plus a 5% administration fee, for a total of \$3,517,000, based on a rough estimate identified in the Memorandum of Agreement. This rough estimate was based on 2017 costs to restore and an estimate of habitat size.

Per the Guideline, current costs to restore (at the time of receipt of the funds) should be used in calculating the compensation funds. TRCA Ecology staff have examined the ecological land classification of the habitats to be removed in the Environmental Impact Study and applied current (2021) costs to restore. Staff conclude that the cash payment should equal \$4,215,444.20 plus a 5% administration fee, for a total of \$4,426,216.41.

The total amount TRCA staff recommend is calculated as follows:

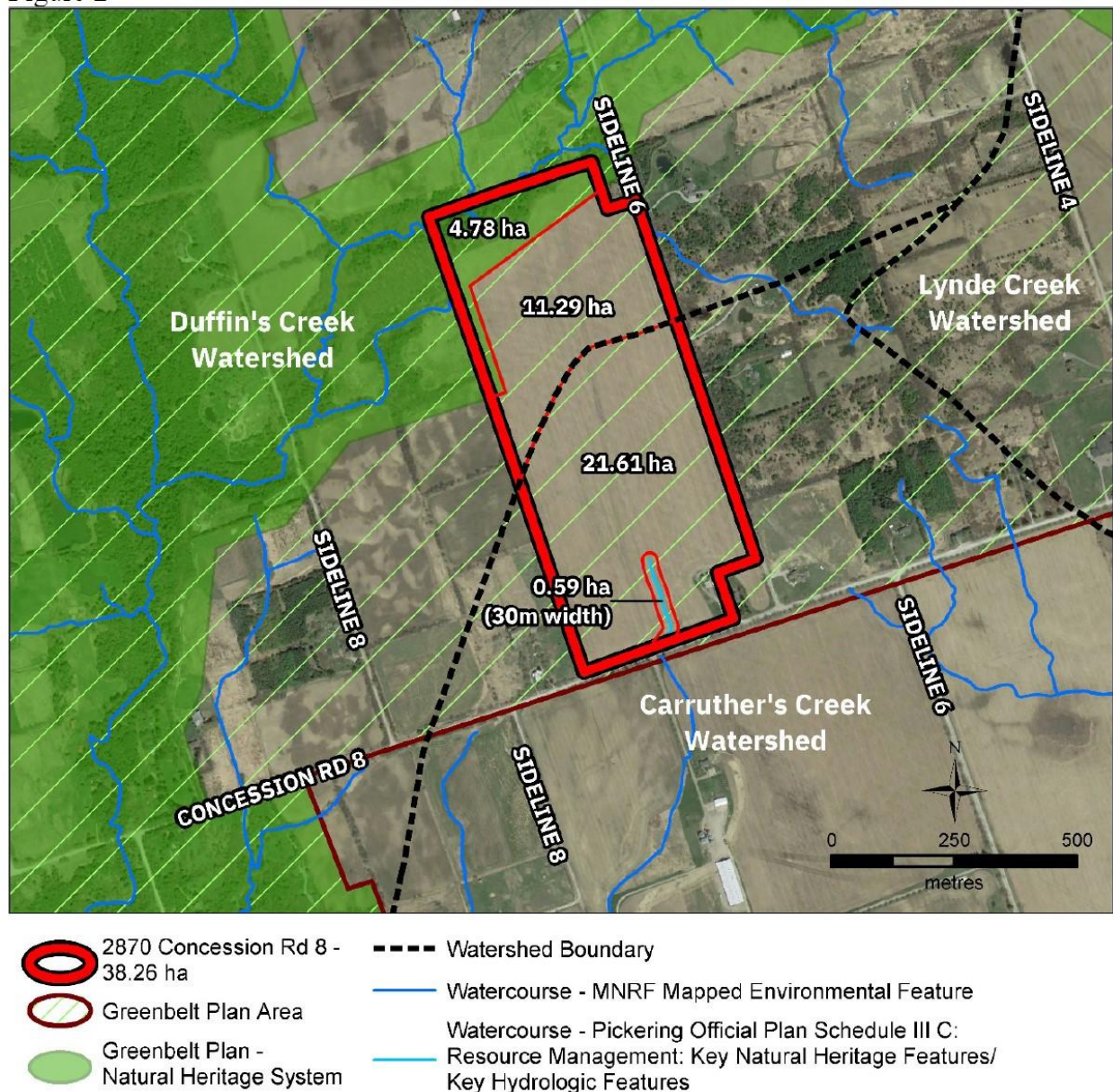
ELC Code	ELC Description	Size (ha)	Basal Area Ratio	Planting Area Required	Cash-in-lieu Required 2021 Value
CUT1	Mineral Cultural Thicket	0.39	1:1	0.39	\$59,459
CUW1	Mineral Cultural Woodland	0.7	3:1	2.1	\$277,098
FOD4	Dry-Fresh Deciduous Forest	0.25	3:1	0.75	\$151,831
SWD4-1	Willow Mineral Deciduous Swamp	0.13	3:1	0.39	\$78,952
SWD3-2	Silver Maple Deciduous Swamp	0.59	3:1	1.77	\$358,322
MAM2-10	Forb Mineral Meadow Marsh	17.31	1:1	1.38	\$257,034
MAS2	Mineral Shallow Marsh			2.12	\$394,864
MAS2-1	Cattail Mineral Shallow Marsh			7.7	\$1,434,177
SAF1-3	Duckweed Floating-leaved Shallow Aquatic			0.04	\$7,450
SWT2-2	Willow Mineral Thicket Swamp			2.09	\$411,890
SWT2-5	Red-osier Mineral Thicket Swamp			1.92	\$378,387
SWT3-7	Winterberry Organic Thicket Swamp			2.06	\$405,978
Total Replacement Planting or Cash-in-Lieu		19.37		22.32	\$4,215,444
Total Cash-in-Lieu with 5% Management Fee:					\$4,426,216

Note: ELC = Ecological Land Classification (habitat type), numbers rounded to nearest dollar.

2) Replacing the Land Base

The applicant has made a proposal to purchase and convey to the TRCA, at no cost to TRCA, the property known municipally as 2870 Concession Road 8, Pickering (see Figure 1).

Figure 1. 2870 Concession Road 8



2870 Concession Road 8 is 38 ha (93 acres) in size and is primarily an agricultural field in the Greenbelt, with 16.27 ha in the Duffins Creek Watershed and the remaining 22.2 ha in the Carruthers Creek Watershed. 32.89 hectares of the property is designated Prime Agricultural Areas and are not part of an existing Natural Heritage System, Key Natural Heritage Features or Natural Areas or equivalent. It is located approximately 12 km north of the existing Provincially Significant Wetland. Staff and the applicant's ecology consultant anticipate that the property

could be enhanced to restore approximately 3-5 ha of wetland and all the upland habitat.

This property physically exceeds the size of the habitat to be removed at 1802 Bayly Street. However, it only provides enough land to restore 3-5 ha of PSW. As such, the remaining 13 to 15 ha of wetland restoration will have to take place on other lands.

TRCA Restoration and Infrastructure staff have examined the public lands located within the City of Pickering that are not located in the municipal or provincial natural heritage system, including Transport Canada Lands and the Rouge Park and very few are suitable for wetland construction either due to lack of drainage area or issues related to tenants and aircraft bird strike avoidance. As such, additional privately-owned lands must be identified for conveyance to TRCA or the value of such lands must be identified to fund the purchase of same and the staff administration costs to do so, to implement wetland compensation consistent with the Memorandum of Agreement.

The value of 2870 Concession Road 8 is not known to TRCA staff at this time; however, the value of the lands could be established through an appraisal. The value of other lands necessary to implement the remaining wetland construction is also unknown. The Guideline states that cash-in-lieu shall be calculated as follows:

- Applying the per hectare market value of the development site to the area of land being removed from the natural system; or.
- Calculating the difference between the pre-existing market value of the development site and the market value of the development site after the ecosystem has been removed.

Given the value of industrial development lands in Durham is approximately \$1.5 million / ha (rough estimate). If approximately 15 ha is required cash-in-lieu, then approximately \$22.5 million would need to be secured. However, taking cash in lieu would be at great risk to TRCA. Staff do not have a good understanding of whether this funding would be enough to secure lands elsewhere that are suitable for constructing between 13 to 15 ha of wetland. The staff time to identify suitable lands, determine if they are for sale, procure appraisals and environmental site assessments, remove any structures or address any environmental site issued, and then close on the lands would be considerable.

Further investigation and analysis are required to identify the further financial contribution from the applicant if cash-in-lieu is to be considered, prior to execution of the Agreement.