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LAWYERS

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File #: 18027

March 10, 2021

By email

Ms. Alisa Mahrova, Clerk, alisa.mahrova@trca.ca

Toronto and Region Conservation Authority

101 Exchange Avenue

Vaughan, ON., L4K 5R6

Dear Ms. Mahrova:

**Re: Item 3 on the Board of Director's Hearing Agenda – March 12, 2021
Permit Application by Pickering Developments (Squires) Inc.
1802 Squires Beach Road, Pickering (the "Property")**

We are solicitors to Pickering Developments (Squires) Inc. ("Pickering Developments"), the owner of the Property and the Applicant of the within permit application. The writer will be representing Pickering Developments at the hearing scheduled for 10am on Friday March 12, 2021. Kindly accept this letter as our client's written submission. We reserve the right to augment these written submissions with additional oral submissions at the oral hearing.

First and foremost, on behalf of our client, its consulting team and myself personally, I want to thank TRCA staff for the significant amount of work they have done not only on the within permit, but on the Durham Live project in general. Although Pickering Developments and TRCA staff do not always agree on things, we respect the important core work which TRCA does. We also appreciate the significant amount of time which TRCA staff have devoted to the within permit specifically and the Durham Live project in general. Durham Live is a critically important project for the City, Region and Province and represents a key element of the economic re-start. Our client is very proud to be at the forefront of assisting that economic recovery through Durham Live. Project Lonestar, the proposed development for the Property, has a huge role to play in all of this. TRCA staff are well aware of the timing crunch faced by Project Lonestar and our client appreciates the efforts made by everyone to get that project approved and under construction without any further delay.

We have reviewed the staff report and note that it sets out the history of the proposed development including the MZO (Issued October 30, 2020), the recent amendments to the Conservation Authorities Act and the recent timing regulation made thereunder. We will not repeat this history. We note, though, that pursuant to O. Reg. 159/21, the TRCA is required, in this hearing, to render a decision on the permit application by Friday March 12, 2021. We also note that pursuant to subsection 28.0.1(3) of the Conservation Authorities Act, the permit shall

be granted if the conditions in subsection 28.0.1(4) are met. TRCA staff do not debate that all such conditions have been met in this case. Accordingly, the law requires that TRCA issue the permit on Friday March 12, 2021. This hearing is, therefore, about determining any conditions which TRCA might wish to impose. This hearing is not about whether or not the permit will issue on March 12, 2021; it is only about the conditions to impose.

As you know, the Property is the subject of a Minister's Zoning Order (MZO 607-20). The area covered by the subject permit application is zoned Warehousing and Logistics Zone. Prior to the Minister of Municipal Affairs issuing the MZO, the Applicant and TRCA entered into a Memorandum of Agreement for Ecosystem Compensation (the "MOA"). The MOA contemplated the proposed site alteration of the Property as part of the eventual development of the Property. The MOA required ecological compensation and the proposed conditions should be consistent with the MOA.

Attached to this letter is a chart which identifies the proposed conditions and our client's response to each of them. We believe that presenting it in chart format assists the hearing process. Where the Applicant agrees with a condition that agreement is identified in green font. Where the Applicant agrees with the condition subject to clarification or modification, it is identified in amber font. Where the Applicant disagrees with the condition and wants it deleted, that is identified in red font.

TRCA staff have proposed thirteen (13) STANDARD CONDITIONS. We are pleased to advise that our client agrees with and consents to all of the STANDARD CONDITIONS.

TRCA staff have proposed twenty (20) SPECIAL CONDITIONS. As detailed on the attached chart, our client takes no major issue with half of the SPECIAL CONDITIONS but does take issue with the other half of them. The objections to these conditions are detailed in the attached chart and fall into the following broad categories:

1. Third Party Conditions
 - a. Some of the proposed conditions are not within the control of the Applicant and can only be fulfilled by third parties. Such a condition is clearly unreasonable.
2. Conditions which are not properly related to the within permit application.
 - a. Some of the conditions are overreaching since they do not deal with the within permit (topsoil stripping and pre-grading) but deal with a future site plan application.
3. Conditions which require the Applicant's consent
 - a. This relates to SPECIAL CONDITION #18. Section 28.0.1(24) of the Conservation Authorities Act requires that Applicant's consent for third parties to be added to the Agreement. The Applicant does not consent to the addition of the proposed additional parties.

4. Conditions which are unreasonable or *ultra vires* as detailed in the attached chart.

Our client looks forward to dealing with all of this at the upcoming oral hearing. I intend to make the presentation on behalf of the Applicant but I will have some of the Applicant's consultants available to answer questions if required. Thank you.

Yours very truly,

A handwritten signature in cursive script, reading "Ira Kagan". The signature is written in dark ink and is positioned below the closing "Yours very truly,".

Ira T. Kagan

Encl. Chart of Applicant's Response to Proposed Conditions

cc. Client

	TRCA Staff Report – <u>Standard</u> Conditions	Applicant's Response	Applicant's Reasons / Proposed Condition (if applicable)
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.	Agreed	N/A
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.	Agreed	N/A
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.	Agreed	N/A
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	Agreed	N/A

	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.	Agreed	N/A
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.	Agreed	N/A
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.	Agreed	N/A
8	The Owner acknowledges that the erosion and sediment control strategies outlined on the approved plans are not static and	Agreed	N/A

	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.	Agreed	N/A
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.	Agreed	N/A
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.	Agreed	N/A
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.	Agreed	N/A
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	Agreed	N/A

	review, consultation and site visits beyond TRCA's standard compliance inspections.		
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	TRCA Staff Report – <u>Special Conditions</u>	Applicant's Response	Applicant's Reasons / Proposed Condition (if applicable)
1	The permission shall expire on March 25, 2022 and all works shall take place prior to March 25, 2022.	Agreed	N/A
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.	Delete	This is not a condition which the Applicant can fulfill. It requires a 3 rd party (MNRF) to fulfill it. Moreover, the legislature has already spoken through the recent amendments to the Conservation Authorities Act (s. 28.0.1) which requires that the permit issue (meaning elimination of the wetland) and through O. Reg. 159/21 which requires TRCA to render its decision by Friday March 12, 2021.
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.	Agreed	N/A
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	Agreed	N/A

	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.	Agreed with clarification	Confirmation is requested that this requirement will be included in the Agreement as an obligation of the Applicant and that it is not a pre-condition of permit issuance or of signing the 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.	Agreed with clarification	The provision of security is acceptable but the Agreement should make it clear that once the lands are conveyed to TRCA, the security shall be immediately released. There would be no need for the security to remain in place post conveyance.

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.	Delete	This condition is not reasonable. Firstly it would be impossible to calculate the present day value of payment 'in perpetuity'. Secondly, TRCA often obtains lands for free during the development approval process and the developer is never required to pay TRCA's ongoing maintenance expenses or property taxes. These expenses (like salaries, head office expenses, research, education, etc.) are properly paid out of TRCA's funding sources. They are a cost of doing business.
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.	Agreed with clarification	Confirmation is requested that this condition will be fulfilled after the permit is issued and after the Agreement is signed. The Agreement will provide for this requirement.
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	Agreed	N/A

	Ecosystem Compensation Plan approved by TRCA.		
10	Prior to execution of the Agreement, the Permit Holder shall submit drawings that shall form part of its Site Plan application under the <i>Planning Act</i> for the proposed commercial development, showing the stormwater and erosion and sediment controls for the Site Plan application to TRCA's satisfaction.	Delete	The permit before TRCA in this hearing is a permit to strip topsoil and conduct pre-grading. This is not a permit respecting the site plan approval. The present permit proposes what is essentially an interim development condition. The reports filed in support of this interim development condition demonstrate that stormwater and erosion control will match the pre-development condition (i.e. the present state). TRCA will be circulated on the site plan application and is a commenting agency on it. Any required further TRCA permits will be applied for in the future. The Applicant will, if requested by TRCA, send TRCA staff the full site plan application forthwith.
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.	Agreed with modification	The Applicant was only advised of TRCA staff's comments at 1:31pm on Wednesday March 10, 2021. This chart was required to be filed with TRCA by the end of business that same day. Accordingly there was insufficient time to deal with the comments. The Applicant proposes that the requirement to address technical comments be included as an obligation in the Agreement but not be made a condition of signing the Agreement.

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.	Agreed	N/A
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.	Agreed with modification	<p>This condition has come as a surprise to the Applicant and was not previously discussed in the many technical meetings between TRCA staff and the Applicant (or its technical advisors). The condition is also not consistent with the October 2020 Memorandum of Agreement between the Applicant and TRCA. Nevertheless the Applicant is agreeable to a modified condition as follows:</p> <p>“The Permit Holder shall undertake a transplantation and relocation plan for rare species (at any level), if project timing allows that transplantation to occur within the growing season (i.e., May through October) and that a final report will be prepared by an ecologist be submitted to TRCA Enforcement staff certifying that this condition has been fulfilled.”</p>

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.	Delete	Consistent with the Applicant's comment to Special Condition #10, this condition is not reasonable nor relevant to the present permit. This condition deals with the ultimate stormwater management solution for the ultimate development. That ultimate development is the subject of the site plan application to which TRCA will comment upon.
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.	Delete	The proposed condition suggests that <u>another</u> permit is required, presently, from TRCA, for the culvert. It further suggests that another permit application needs to be made. The Applicant disagrees. The details of and need for the culvert were provided in the within permit application and the permit which TRCA will issue on March 12, 2021 should and must include any required TRCA permission for the construction of the permit. The City of Pickering is aware of this position and agrees with it.
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	Delete	This condition is neither reasonable nor capable of being fulfilled by the Applicant. The Applicant is not the owner of 1702 Bayly Street. That

	impacts to the PSW on that property due to the Permit Holder's work.		property is not governed by the MZO and so the regulatory regime for that permit is different than for 1802 Bayly Street (which the applicant does own and which is governed by the MZO). Moreover, the stormwater report filed in support of the within permit properly deals with the wetland located on 1702 Bayly Street.
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.	Agreed with modification	The Applicant is in discussions with MECP. The condition should be revised to require that any permit should be obtained <u>prior to the removal of any regulated habitat</u> from the subject lands (e.g., removal of certain trees) and <u>not</u> prior to signing the Agreement. A provision should be included in the Agreement which requires this but the MECP permit should not be made a condition of signing the Agreement.
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 <i>Conservation Authorities Act</i> .	Delete	The Applicant does not consent to the addition of other parties to the Agreement. Not only are those parties not required but their addition has the potential to significantly delay the finalization and execution of the Agreement. Section 28.0.1(24) of the <u>Conservation Authorities Act</u> permits the addition of parties but only where the TRCA and Applicant agrees to same.

			The Applicant does not agree to same here.
19	Indemnity: All parties to the Agreement required under Section 28.0.1(24) of the <i>Conservation Authorities Act</i> agree to indemnify and save harmless TRCA from any claims related to the permission, in perpetuity.	Delete	This is an unreasonable condition. The present permit is for topsoil stripping and pre-grading and that work will be completed within a relatively short period of time. It represents and interim development condition. The final development condition will be the construction of the project and it will have its own long term storm water management solution. That solution is subject to approval by the City (with input as required from TRCA and others).
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.	Delete	The parties cannot and should not try to contract out of any future provincial amendments to either legislation or regulations.