

## Section II – Items for Executive Action

**TO:** Chair and Members of the Executive Committee  
Friday, April 09, 2021 Meeting

**FROM:** Sameer Dhalla, Director, Development and Engineering Services

**RE:** **APPLICATION FOR PERMITS PURSUANT TO S.28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDERS) – Conmar (Fenmarcon Inc.), Lorwood Holdings Inc. and Fleur de Cap Developments/Cuenca Developments Inc. CFNs: 63914 & 63915**

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### KEY ISSUE

Issuance of permission pursuant to Section 28.0.1. of the *Conservation Authorities Act* to remove and relocate three Provincially Significant Wetlands to a corridor on an adjacent site, and allow topsoil stripping in preparation for the construction of a local road located at 11110 & 10980 Jane Street and 3180 Teston Road, in the City of Vaughan, Region of York.

### RECOMMENDATION

**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;

**WHEREAS** TRCA staff using a science-based approach to decision making and TRCA's Living City Policies, would customarily not support the issuance of a permit in support of development within a Provincially Significant Wetland;

**WHEREAS** the Provincially Significant Wetlands on the subject property have been impacted by their proximity to Highway 400, previous agricultural activities and are expected to be further degraded through planned infrastructure and approved urban development as isolated features in the landscape;

**WHEREAS** the Minister of Municipal Affairs issued a Minister's Zoning Order (MZO) for the subject property, including these wetlands on April 24, 2020.

**WHEREAS** TRCA staff were consulted prior to the MZO being requested and issued about the potential for a net ecological gain to be achieved by relocating these wetlands into a natural heritage system corridor on the property directly to the south;

**WHEREAS** TRCA staff, using a science-based approach has been able to, in this circumstance, support relocating the deteriorating Provincially Significant Wetlands to create a more resilient and cohesive Natural Heritage System on adjacent lands within the East Purpleville Creek subwatershed that is part of the Humber River watershed;

**WHEREAS** in correspondence received by the Minister of the Ministry of Natural Resources and Forestry in December 2020 the Minister indicated that MNR is re-classifying Provincially Significant Wetlands on the subject property;

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**WHEREAS** Section 28.0.1 of the *Conservation Authorities Act* requires the Authority to issue permission for a development project that has been authorized by a Minister's Zoning Order (MZO) issued under the *Planning Act*, outside of the Greenbelt;

**AND WHEREAS** Section 28.0.1 of the *Conservation Authorities Act* requires that the Authority shall not refuse to grant permission for a development project that has been authorized by a Minister's Zoning Order (MZO), outside of the Greenbelt, under subsection (3) despite, (a) anything in section 28 or in a regulation made under section 28; and (b) anything in subsection 3 (5) of the *Planning Act*;

**THEREFORE, LET IT BE RESOLVED THAT** Conmar (Fenmarcon Inc.), Lorwood Holdings Inc. and Fleur de Cap Developments/Cuenca Developments Inc. be granted permission to interfere with Provincially Significant Wetlands through relocation at 11110 & 10980 Jane Street and 3180 Teston Road subject to the conditions in Attachment 7 hereto.

**THAT** TRCA staff continue to seek full cost recovery on this permit application in accordance with TRCA's Administrative Fee Schedule;

**THAT** the Chief Executive Officer be authorized to execute an Agreement with the landowner;

**AND FURTHER THAT** TRCA staff report back to a future meeting of the Executive Committee or Board of Directors on the results of the wetland relocation as part of reporting on TRCA's Ecosystem Compensation Protocol.

### **MZO PERMIT SUMMARY**

- Section 28.0.1 applies, and the Committee must issue this permit.
- TRCA Staff support the issuance of this permit application based upon the conditions included herein and the forthcoming Agreement.
- It is our opinion that the required measures included in the conditions and Agreement can adequately mitigate effects on the tests of flooding, erosion, dynamic beaches, pollution and conservation of land.
- The conditions of this permit have been agreed to by the proponent and cannot be changed prior to approval.
- The Agreement has not been executed, and any additional requirements of the Committee in providing approval can be integrated therein.

## **BACKGROUND**

### **Permit Application and Property Description**

Conmar (Fenmarcon Inc.), Lorwood Holdings Inc. and Fleur de Cap Developments/Cuenca Developments Inc. applied for permission under O. Reg. 166/06 of the Conservation Authorities Act to strip topsoil for a local road, and to construct new wetlands for the relocation of existing Provincially Significant Wetland (PSW) vegetation and wildlife communities located within 11110 & 10980 Jane Street and 3180 Teston Road. The properties are located on the west side of Highway 400, on the north side of Teston Road, west of Jane Street in the City of Vaughan

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(Attachment 1). The lands subject to the application are known as the Block 34 East Lands.

The Block 34 East Lands contain two valley corridors that form part of the East Purpleville Creek subwatershed, which is a subcatchment of the East Humber River system. These valley corridors converge west of Highway 400. The northern valley corridor at 11110 Jane Street contains a small tributary in the South-West corner of those lands that flows West under Highway 400. In addition, those lands contain a Headwater Drainage Feature (HDF) in the central portion of the site and Provincially Significant Wetlands (East Humber River Wetland Complex) in the North-West, which is the subject of this application. The southern valley corridor on the Block 34E Landowners' Group lands contain a larger tributary of the East Purpleville Creek valley system. The East Purpleville Creek valley system flows from the North-East to the South-West before flowing West under Highway 400. This larger tributary is a defined valley corridor, with a Regulatory Floodplain, and other PSWs, which are part of the same wetland complex.

The following development approvals are in affect or in process: Minister's Zoning Order (MZO) 173/20 (Attachment 2 - allows development of a distribution warehouse in the PSWs in the northern area of the site, and prestige employment uses in the southern PSW); a site plan for a warehouse development; a draft approved plan of subdivision for the warehouse property (Condor (Fenmarcon)); two plan of subdivision and zoning by-law amendment applications (Lorwood and Fleur de Cap/Cuenca); the third Draft of the Block 34 East Block Plan/Master Environmental Servicing Plan (MESP); and municipal fill permits and these site alteration Permit applications. All stages of the development process are taking place simultaneously.

This was the first site for which TRCA was approached respecting the concept of a MZO and staff commented to the Province supporting the principle of the wetland relocation subject to reclassification and relocation of the PSWs (Attachment 3). TRCA staff are supportive of the application subject to the relocation occurring given the overall benefit to the NHS. Staff concur with the recommendations of relocating the PSWs to the larger NHS located centrally on the southern block would result in a more robust system and net ecological gain. Protection of the individual PSWs in situ would ultimately result in their degradation due to their isolated nature and reduced quality contribution to the greater East Purpleville Creek valley system located West of Highway 400.

### **Minister's Zoning Order (MZO)**

An MZO was issued on April 24, 2020, as Ontario Regulation 173/20. The MZO applies to three properties located at Jane and Teston Road (11110 & 10980 Jane Street and 3180 Teston Road) in the City of Vaughan. The MZO permits a large format distribution Centre, associated outdoor storage and General Employment Area uses on the property. The mapping associated with this MZO identifies two areas to which the MZO applies (illustrated in Appendix 2), being those on which Provincially Significant Wetlands presently exist; areas in which development would not be otherwise permitted.

Prior to this MZO being enacted, the owners consulted with the City of Vaughan with respect to their development proposal and associated MZO request, and the City of Vaughan Council provided their endorsement of the MZO on October 29, 2019. Technical reports were completed in support of the MZO, including an Environmental Impact Study, which was circulated to TRCA staff for review. TRCA staff reviewed the Environmental Impact Study in addition to the supporting information provided in the Master Environmental Servicing Plan and Addendums for Block 34 East – Phase 1, and staff concurred with the findings. TRCA staff provided a letter on March 6, 2020, which provided support for the proposed wetland relocation subject to MNRF direction with respect to modifications to the PSWs, should the Province not delist the wetlands

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which are proposed to be relocated. In response, TRCA received a letter from the Director of the Ministry of Natural Resources and Forestry dated November 20, 2020 (Attachment 4) confirming MNRF support for “a comprehensive wetland restoration project that will retain, expand and enhance the long-term ecological functions of wetlands.” Subsequent to this letter TRCA received correspondence from the Minister of MNRF that the PSW’s on the subject lands were being re-classified (Attachment 5).

The landowners, through the approvals attained through the MZO, are proposing to relocate the isolated PSWs located in the North-West corner of northern property and the PSWs located in the South-East corner of the southern property (See Attachment 6). The PSWs are proposed to be relocated immediately adjacent to the larger central Purpleville Creek Natural Heritage System (NHS).

### **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 (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 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.

## RATIONALE

### **Review of Permit Application by TRCA Staff**

The application has been reviewed by TRCA's geotechnical, water resources, hydrogeology and ecology staff. The application materials document and evaluate the state of the existing wetlands which were degraded and included invasive species. The application presents a proposal developed in consultation with TRCA technical staff to relocate the wetlands to complement the East Purpleville Creek Natural Heritage System (NHS) and create additional wetland areas of similar character accommodating the features and functions within the existing NHS resulting in net ecological benefit. The new wetlands are of comparable size and character and will be constructed to support the successful transplantation of plant material and relocation and/or migration of wildlife from the existing wetlands. Attachment 6 shows the location of all PSW's and new wetlands and provides a summary of the land areas. The total NHS area will exceed the existing NHS area by 0.191 ha.

### **Recommended Conditions to the Permission**

The recommended conditions, as outlined in Attachment 7, will:

- ensure successful relocation of the PSW's;
- 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;
- mitigate any conditions or circumstances created by the development project that, in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property.

The proposed new wetlands are located outside of the regional storm flood plain and will have no impact on the flood plain. Sediment and erosion control measures will be installed and maintained throughout construction to prevent sediment from migrating from the site into the adjacent features. There are no erosion-related (e.g. meander belt, geotechnical/slope stability) issues associated with this application.

With respect to mitigating impacts on the conservation of land, three isolated and degraded tableland Provincially Significant wetlands and three isolated and degraded unevaluated tableland wetlands are proposed to be removed and compensated for within and adjacent to the NHS. The wetland relocation/compensation areas have been designed for improved ecological functions through increased diversity of wetland vegetation and wildlife habitats, the improvement of contributing habitat for Redside Dace, and naturalization of the wetlands through micro-grading and edge curvature. Wetlands within the NHS will be further enhanced through the management of invasive species such as Common Reed (Phragmites).

The proposed Block 34 East NHS is 18.049 ha in size and exceeds the NHS area requirements (17.858 ha) by 0.191 ha. The increase in NHS area and natural heritage enhancements are expected to allow for a net ecological gain to be achieved. The proposed monitoring plan and adaptive management strategy will evaluate the performance of the created wetlands and upland enhancement habitat of the NHS, and provide necessary adjustments through adaptive management, should they be required.

The proposed spine road topsoil stripping and wetland relocation plan has been developed in a manner that will allow for the timely relocation of wetlands with the goal of maintaining the provision of ecosystem services, including wildlife and their habitats associated with the existing wetlands. This will be achieved through a wildlife rescue operation, the provision of water inputs during the interim and ultimate phases and scraping and stockpiling wetland soils and native seed bank for use in the wetland relocation areas.

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It is expected that the proposed NHS will satisfy the following objectives:

- Protect the ecological integrity and functions of retained natural heritage features with appropriate buffers that will include plantings of native trees and shrubs;
- Establish an increase in vegetation community types, including wetland vegetation communities and upland shrub thicket and deciduous forest habitat;
- Establish an increase in native plant species diversity;
- Enhance habitat for Monarch Butterflies;
- Create wetland pools that provide appropriate amphibian breeding habitat;
- Provide additional wildlife enhancement features such as turtle basking logs, bat roosting condominiums, and wildlife habitat brush piles;
- Establish native shrubs and trees surrounding the watercourse and wetlands to provide shading for thermal cooling of Redside Dace contributing habitat;
- Improve water quality of Redside Dace contributing habitat through the design of the created wetlands that will polish water;
- Replicate baseflow and coarse sediment supply functions of Redside Dace contributing habitat through the design of clean water collector pipes and the alluvium deposits; and
- Manage invasive plant species.

### 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 *Conservation Authorities Act* requires the Authority to issue such a permit on these lands as they are subject to an MZO, issued under the *Planning Act*. Staff has therefore reviewed the application, and in this instance, due to the degraded nature of the features, the likelihood of further degradation in the future, the correspondence from MNRF indicating that the PSW's will be reclassified, and the ability to achieve a net environmental gain, staff are supportive of the issuance of a permit with conditions.

Given the requirements of Section 28.0.1 of the Act that requires TRCA to grant the permission, staff recommend the conditions included as Attachment 7 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: April 1, 2021**

**Attachments: 7**

Attachment 1: Location Map

Attachment 2: MZO 173/20

Attachment 3: TRCA Letter to MMAH October 30, 2020

Attachment 4: MNRF Letter November 20, 2020

Attachment 5: Minister of MNRF Correspondence to TRCA dated December 8, 2020

Attachment 6: GEI/Savanta drawing

Attachment 7: TRCA Standard Permit & Site-Specific Permit Conditions