

## Section II – Items for Executive Action

**TO:** Chair and Members of the Executive Committee  
Friday, June 11, 2021 Meeting

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

**RE:** **APPLICATIONS FOR PERMITS PURSUANT TO S.28.0.1 OF THE CONSERVATION AUTHORITIES ACT (MINISTER’S ZONING ORDER, ONTARIO REGULATION 644/20)**  
CFN 65065 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 11120 Weston Road, Vaughan, Ontario (Lot 28, Concession 6, City of Vaughan, Regional Municipality of York) by Block 41 - 28E Developments  
CFN 65113 requesting permission for Development, Interference with Wetlands & Alterations to Shorelines & Watercourses pursuant to Ontario Regulation 166/06, 10970 Weston Road, Vaughan, Ontario (Lot 27, Concession 6, City of Vaughan, Regional Municipality of York) by Block 41 - 1212763 Ontario Limited

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### KEY ISSUE

Issuance of permission pursuant to Section 28.0.1 of the Conservation Authorities Act to remove and/or alter Provincially Significant Wetlands (PSWs) and unevaluated wetlands, and alter valley corridors and associated floodplain, to facilitate topsoil stripping, rough grading, and the construction of temporary sediment ponds in preparation of residential development within Block 41, at 11120 and 10970 Weston Road, in the City of Vaughan, Region of York.

### RECOMMENDATIONS

**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 and Provincially Significant Wetlands;

**AND WHEREAS** TRCA staff using a science-based approach to decision making and TRCA’s Living City Policies (LCP), would not customarily support the issuance of a permit in support of development within wetlands or Provincially Significant Wetlands;

**AND WHEREAS** the Minister of Municipal Affairs issued a Minister’s Zoning Order (MZO) for the subject properties on November 6, 2020, as Ontario Regulation 644/20;

**AND 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, and where the lands in question are not located with a Greenbelt Area as identified through Section 2 of the Greenbelt Act;

**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

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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*;

AND WHEREAS Section 28.0.1(6), of the *Conservation Authorities Act*, permits the Authority to attach conditions to the permission, including conditions to mitigate any effects the development may have on the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land and/or in the event of a natural hazard, might jeopardize the health or safety of persons or result in the damage or destruction of property;

AND WHEREAS Section 28.0.1(24), of the *Conservation Authorities Act*, provides that where a permit is to be issued pursuant to Ontario Regulation 166/06, the applicant is required to enter into an agreement with the Conservation Authority;

THEREFORE, LET IT BE RESOLVED THAT Block 41-28E Developments (11120 Weston Road) and Block 41-1212763 Ontario Limited (10970 Weston Road) in the City of Vaughan be granted permission to interfere with PSWs and conduct topsoil stripping on the properties subject to the conditions within Attachment 1 (Appendix A and B) hereto;

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

AND FURTHER THAT the Chief Executive Officer be authorized to execute an agreement with each of the landowners as required by the *Conservation Authorities Act*.

### 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 upon 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 Applications, Property Descriptions and Background

The owners/applicants, Block 41 - 28E Developments and Block 41-1212763 Ontario Limited have applied for permission pursuant to Ontario Regulation 166/06, and Section 28.0.1 of the Conservation Authorities Act to strip topsoil in preparation for residential development on lands known municipally as 11120 and 10970 Weston Road, within the City of Vaughan. The lands are located within the Block 41 New Community Area that is bounded by Kirby Road in the north, Weston Road in the east, Teston Road in the south and Pine Valley Drive in the west. The properties associated with the subject permit applications, are each approximately 43 ha (105 acres) and front onto Weston Road, approximately mid-block between Teston and Kirby Roads (Attachment 2).

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The properties have been subject to extensive review through the OPA 50 Secondary Plan and supporting East Purpleville Creek Subwatershed Study (SWS) approved in 2019. The subject lands are located within the East Purpleville Creek Subwatershed, a headwater subcatchment of the East Humber River. Surface drainage from the lands drain into two valley corridor systems associated with the East Tributary of Purpleville Creek. The block contains portions of the Greenbelt, Provincially Significant Wetlands (PSWs) and unevaluated wetlands, a valley corridor, headwater drainage features (HDFs) and flood hazards. The natural heritage system (NHS) includes cool and cold-water aquatic habitats and endangered species habitats (i.e., redbreasted dace).

The following development approvals are in affect or in place on the subject properties: Minister's Zoning Order (MZO) 644/20 (Attachment 3) allows for the development of low-rise residential, low-rise mixed-use, mid-rise residential and mid-rise mixed-use development (Attachment 4); a Secondary Plan (OPA 50) with policies and land use designations for a new community within the Block 41 study area which includes a mix of housing, local retail, community facilities and schools for a planned population of some 13,000 people and 600 jobs; and an approved SWS. The Block 41 Secondary Plan was adopted by City of Vaughan Council on October 7, 2019 and approved by York Region Council on January 30, 2020. TransCanada Pipeline (TPL) appealed the decision to the Local Planning Appeal Tribunal (LPAT) shortly after. Staff understand a LPAT Settlement Hearing is scheduled for July 15, 2021, to resolve the outstanding appeal. It is our understanding that upon resolution of the Secondary Plan appeal, the Block 41 Landowners' Group, which includes the applicants associated with these permit applications, will file a Block Plan application and supporting Master Environmental Servicing Plan (MESP) with the City of Vaughan, which will be circulated to TRCA for review and comments.

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

On November 6, 2020, a Ministers Zoning Order (MZO) was issued as Ontario Regulation 644/20. It provided zoning permission for a 322 ha (~796 ac) portion of Block 41 that includes the subject properties associated with the requested permit applications. Through the Order, 11120 and 10970 Weston Road were provided with zoning permissions for low-rise residential, low-rise mixed-use, mid-rise residential and mid-rise mixed-use development.

The extent of the MZO appears to generally coincide with the extent of the Protected Countryside pursuant to the Greenbelt Plan. However, the MZO was approved without consultation or coordination with TRCA staff. As such, it appears the approved zoning permissions extend into existing natural heritage features (i.e., PSWs, unevaluated wetlands, HDFs, valley corridor) and hazards (i.e., floodplain) and the limits of these constraints cannot be confirmed in absence of detailed studies that are anticipated as part of the Block Plan application.

### **Mandatory Permits for MZO Development Projects**

Section 28.0.1 of the amended Conservation Authorities Act (CA 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;

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- 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 the 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 LPAT.
- All MZO-related CA permits must have an agreement with the permittee (can include all 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 applications have been reviewed by TRCA's geotechnical water resources, hydrogeology, and ecology staff. Despite several meetings with the applicants in early May 2021, as well as a site visit conducted on May 18, 2021, the materials submitted in support of the applications did not comprehensively document the existing state of natural heritage features and hazards on-site. Nor did the submitted material identify a suitable management strategy to mitigate the prospective impacts of development on the control of flooding, erosion, dynamic beaches, pollution, or conservation of land.

However, the material as submitted does identify the location of the natural features and hazards within, and immediately adjacent to the site (Attachment 5). Based on the submitted grading plans, the following are to be altered through the proposed topsoil stripping works: unevaluated wetland #1, #2, #3, #4 and #5, a portion of PSW #2, the 30-meter buffer associated with both PSW #1 and #2, Headwater Drainage Features, a valley corridor, and its associated Regulatory Floodplain at the west portion of 11120 Weston Road (Attachments 6 and 7).

During the Secondary Plan and SWS review, TRCA agreed to defer several detailed studies with the understanding that they would be addressed by the applicant's Master Environmental Servicing Plan (MESP) required in support of their future Block Plan application. Deferred studies include the completion of constraints mapping, Headwater Drainage Feature Assessment (HDFA), wetland evaluations, Environmental Impact Study (EIS), features-based water balance, hydraulic assessment, and geotechnical assessment.

The status of many of these items remain outstanding. It was our understanding that the Block Plan application and supporting MESP would be filed with the City of Vaughan and circulated to TRCA for review (later this year, upon resolution of the Secondary Plan appeal). However, the subject permit applications have recently been filed with TRCA prior to the submission and review of the Block Plan and MESP by the City and other agencies. Staff have identified the following considerations as part of our review.

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- **PSWs:** Portions of PSW #1 and #2 and their 30 m buffer area have been activity farmed since 2016 and the applicant intends to submit a request to MNRF to delist portions of the PSWs where topsoil stripping is proposed. The applicant intends to prepare a technical brief that explains the rationale for delisting by MNRF, which will be included as an Appendix within the forthcoming MESP.
- **Unevaluated Wetlands:** Unevaluated Wetlands #1, #2, #3, #4 and #5 are located on the tableland portion of the subject property and have historically been situated in minor depressional areas surrounded by active agricultural lands. Historic tilling activities have removed several of these minor wetlands. During the Secondary Plan and SWS review, the wetlands were surveyed by the applicant's environmental consultant in coordination with MNRF staff (2014). Through the most recent submission, staff have confirmed that the unevaluated wetlands are small, low functioning, supported by ephemeral local surface water and comprised of common wetland species. During discussions between staff and the applicant's consultant, the feasibility of attempting to retain these features in a future urban fabric was determined to be low. As such, the ability to relocate, replicate and enhance the quality of wetland features at suitable locations was conceptually presented to TRCA staff and is intended to be addressed in more detail with the forthcoming MESP. TRCA can support in principle the removal and replication of these small unevaluated wetlands subject o MNRF confirmation.
- **HDFs:** The SWS identified that several HDFs, that have been identified as Contributing Habitat of Redside Dace, require further study. Some HDFs have associated valley corridors and floodplains that require assessment.
- **Valley Corridor and Floodplain:** Top of Bank staking occurred with TRCA staff in 2014 and 2015 in the western portion of 11120 Weston Road associated with the Central HDF feature. Not all the top of bank limits were agreed upon during the staking process. Notably, a relatively small length of the west side of the central tributary was jointly agreed to. The applicant has confirmed that the upcoming MESP is intended to resolve this issue.

Staff would not customarily support the issuance of a permit in support of topsoil stripping prior to the outstanding studies and the resolution of issues noted above. However, recognizing the requirements of Section 28.0.1 of the amended CA Act and the concurrence of the applicants regarding the additional conditions being imposed for these permits, staff are not opposed to the permit requests.

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

The recommended conditions, as outlined in Attachment 1, are intended to:

- Mitigate any effects the development project may have on the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land; and,
- 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.

### **SUMMARY CONCLUSION**

Approval of permission for development and interference within natural heritage features and hazards including PSWs, unevaluated wetlands, HDFs, valley corridor and floodplains generally does not meet the requirements of TRCA's Living City Policies. However, the CA Act requires the Authority to issue such a permit on these lands as they are subject to an MZO, issued under

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the *Planning Act*. Staff has therefore reviewed the applications, and have created site-specific conditions to mitigate the tests, as prescribed in the CA Act.

Given the requirements of Section 28.0.1 of the Act which requires TRCA to grant the requested permissions, TRCA staff are proposing a phased release of the permit. As outlined below, there are portions of the subject property that are Regulated by TRCA for which we have received sufficient information, and for which TRCA staff would support works commencing at this time, subject to TRCA's Standard Conditions. There are other portions of the subject lands that are Regulated by TRCA, and for which additional technical materials are required. Accordingly, it is staff's intention to release this permit in two phases, which will allow works to proceed at this time on lands for which technical issues are resolved, and to allow for the time for additional materials and confirmation to be provided for the other areas, prior to the release of phase 2 of the permit. To facilitate this, the special conditions identified in Attachment 1 are required to be fulfilled prior to the release of the phase 2 permit. The mandatory agreement required for all MZO permits will recognize the conditions identified within Attachment 1 as relating to phase 1 and phase 2 of the permit release, as follows:

Appendix A identifies conditions to be applied to the subject lands located outside the natural features/hazards and their associated buffers. It would consist of TRCA's standard conditions as identified within the permit applicant. These conditions must be addressed by the applicants prior to the release of each Phase I permit.

Appendix B identifies conditions to be applied to the subject lands where further study is required to clarify the location/extents of natural features/hazards and their associated buffers. The applicants would be responsible for addressing the "Standard Conditions" identified in Appendix A as well as the "Special Conditions" identified in Appendix B prior to the release of each Permit for Phase II.

It is the opinion of TRCA staff that the conditions as provided will serve to successfully mitigate the prospective negative impacts on the control of flooding, erosion, dynamic beaches, pollution, or the conservation of land, or the 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: June 2, 2021**

**Attachments: 7**

Attachment 1: Proposed Permit Conditions (Appendix A and B)

Attachment 2: Location Map of Block 41 and Subject Properties

Attachment 3: Ministers Zoning Order (MZO) - Ontario Regulation 644/20

Attachment 4: Ministers Zoning Order (MZO) - Zoning Permissions Map

Attachment 5: Subject Properties - Location of Existing Natural Hazards

Attachment 6: Subject Properties - Provincially Significant Wetlands (PSWs) and other unevaluated wetlands

Attachment 7 Subject Properties - Location of Headwater Drainage Features (HDFs)