

Attachment 5: TRCA Submission on ERO#019-3233

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BY E-MAIL ONLY (planningconsultation@ontario.ca)

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RE: Proposed Changes to Minister's Zoning Orders and the Planning Act (ERO #019-3233)

Thank you for the opportunity to comment on the Ministry of Municipal Affairs and Housing's (MMAH) Environmental Registry of Ontario (ERO) posting on proposed changes to the *Planning Act* so that certain Minister's zoning orders (MZOs) do not have to be consistent with the Provincial Policy Statement (PPS).

TRCA conducts itself in accordance with the objects, powers, roles, and responsibilities set out for conservation authorities (CAs) under the *Conservation Authorities Act* and the Ministry of Natural Resources and Forestry Procedural Manual chapter on CA policies and procedures for plan review and permitting activities. TRCA is:

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

In these roles, and as stated in the "A Made-In-Ontario Environment Plan," TRCA works in collaboration with municipalities and stakeholders to protect people and property from flooding and other natural hazards, and to conserve natural resources. Through Memorandums of Understanding and Service Level Agreements, TRCA provides technical support to its provincial and municipal partners in implementing municipal growth management policies. Further, TRCA recognizes the importance of efficiency, certainty, transparency and accountability in planning and design review processes, so that development and infrastructure projects can occur in a timely and environmentally sustainable manner.

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Government Proposal

We acknowledge that the *Planning Act* gives the Minister (of MAH) the authority to zone the use of land in Ontario, and that Minister's zoning orders (MZOs) can be used to protect provincial interest. Moreover, we recognize that, under the *Planning Act*, an MZO must be consistent with policy statements issued under the *Planning Act* (e.g., PPS) that are in effect on the date of the decision. We understand that, through Schedule 3 of the proposed Bill 257 (*Supporting Broadband and Infrastructure Expansion Act*, 2021) the *Planning Act* would be amended, such that an MZO need not be consistent with the PPS. Further, the changes would provide that any existing MZOs never had to be consistent with the PSS and that the proposed amendment would not apply to lands located within the Greenbelt Area.

The government's stated intent of the proposed changes is that they would permit the Minister to take other considerations into account when making decisions to support strong communities, a clean and healthy environment, and the economic vitality of the Province. Further, the ERO posting states that MZOs are a critical tool to support and expedite the delivery of government priorities such as transit-oriented communities, affordable housing, long-term care homes and strategic economic recovery projects by removing potential barriers and delays. These changes would ensure that the Minister, acting at their discretion, has the authority to provide their complete support for these critical projects.

General Comments

TRCA understands the importance of stimulating growth as part of the economic recovery from the COVID-19 crisis using the MZO provisions under the *Planning Act*, on a limited basis. However, the changes being proposed under Schedule 3 of Bill 257 would be contrary to the purposes of the *Planning Act*, as articulated through section 1.1, and would effectively disregard the objectives of the Province of Ontario's land use planning framework.

Many of the government's considerations and priorities as stated above are reflected in the recently updated PPS 2020, with the policies grouped into three main areas: Building Strong and Healthy Communities, Wise Use and Management of Resources and Protecting Public Health and Safety. The PPS recognizes the synergistic relationships between environmental, economic, and social factors in land use planning. The proposed amendments under Schedule 3 of Bill 257 ignore these important relationships except for lands in the Greenbelt. Such wholistic policy considerations should not be binding only for Greenbelt lands. It is particularly important for provincial interests such as protection and restoration of the natural environment be achieved not only for communities in the Greenbelt but also for urban, built up areas undergoing infill and redevelopment where greater demands are placed on natural resources for passive and active recreation and there is greater risk for water quality, quantity (including stormwater management/drainage issues), loss and degradation of natural habitats.

In section 4.0 of the PPS, Implementation and Interpretation, sub-section 4.6 states:

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The official plan is the most important vehicle for implementation of this Provincial Policy Statement. Comprehensive, integrated and long-term planning is best achieved through official plans. Official plans shall identify provincial interests and set out appropriate land use designations and policies. To determine the significance of some natural heritage features and other resources, evaluation may be required. In order to protect provincial interests, planning authorities shall keep their official plans up-to-date with this Provincial Policy Statement. The policies of this Provincial Policy Statement continue to apply after adoption and approval of an official plan.

MZOs requested by a municipality's Council on a site-by-site basis and approved by the Province as of right are not held to the test of official plan policies meant to protect provincial interests. MZOs occurring outside the normal development approvals framework under the *Planning Act*, limits critical public, agency, and stakeholder input. There are no requirements for public notice, public consultation, or appeal provisions associated with MZO powers, overriding municipal official plans, zoning and associated public and agency consultation that all serve to ensure provincial interests are being met.

Connection to CA Permits under the Conservation Authorities Act

In conjunction with the recent legislative changes through Schedule 6 of Bill 229, this proposal would affect TRCA's permitting role under Section 28 of the CA Act. Within CA regulated areas, CAs are now required to issue a permit for development on lands subject to an MZO (outside the Greenbelt), which the Authority may have otherwise not issued based on our science-based approach to decision making, and which may also conflict with provincial and municipal policy.

TRCA has and continues to work in collaboration with our regional and local municipalities to successfully advance a coordinated review and approval process on various sites subject to the MZO process. These include Mayfield West and the Canadian Tire Distribution Warehouse in the Town of Caledon, and the Block 34E – Phase 1 lands in the City of Vaughan. With these projects, the natural heritage features or natural hazards were appropriately identified and impacts avoided, mitigated, or compensated for in cooperation with municipalities and the Ministry of Natural Resources and Forestry (MNRF).

However, in the absence of the collaborative exercises noted above, we are concerned that MZOs may continue to authorize development contrary to provincial and municipal policies and CAs' regulatory requirements, particularly if the proposed changes are enacted. The proposed removal of the requirement to consider the PPS in MZO areas (outside the Greenbelt), in combination with the recent changes made to the CA Act, indicates that lands which have long since been protected from development in the interest of the public (e.g., Provincially Significant Wetlands, flood plains, valley lands and public greenspace, etc.) may now be developed in support of specific interests taking priority over other essential considerations in the public interest as expressed through the PPS.

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TRCA acknowledges the importance of removing barriers to building more affordable housing and long-term care facilities and stimulating economic and job growth, especially during times of much needed economic recovery due to the COVID-19 pandemic. However, through our Board of Directors, we have articulated our view that such priorities should not come at the expense of the fundamental principles for “protecting what is valuable” in the Growth Plan or ensuring the appropriate technical and planning process takes place to ensure consistency between the *Planning Act* and S.28 of the *CA Act*

In our experience, we continue to pay a price for historic land use and development decisions that allowed for development in hazardous lands and environmentally sensitive areas done without the contemporary science-based knowledge of the wide-spread environmental, social, and economic impacts that would result, nor the corresponding legislative, policy, and planning structure necessary to mitigate them. Schedule 3 of Bill 257 has the potential to perpetuate and assign validity to similar development decisions, in stating that MZO were never meant to be consistent with provincial policy.

The upfront comprehensive studies, pre-consultation with review and approval agencies, and public consultation are key components of good planning and are arguably a more effective means of creating certainty for time sensitive and context sensitive economic development. The municipal implementation of official plan policies consistent with the PPS should continue to be the “most important vehicle for implementation of the Provincial Policy Statement.” Accordingly, it is TRCA’s preference to work with municipalities and applicants to facilitate technically sound development proposals through the current, well-established municipal plan review and CA permitting process that respects provincial, municipal and TRCA policies and requirements.

RECOMMENDATION:

Based on the above, and consistent with TRCA’s submission dated January 30, 2021 to the Province on the enhanced MZO provisions, (ERO#019-2811), TRCA recommends:

- **That Schedule 3 be withdrawn from Bill 257 and that all land use planning decisions, including those associated with MZOs, be consistent with the Provincial Policy Statement.**

If Schedule 3 of Bill 257 is approved, TRCA recommends:

- To ensure the potential risk to public health and safety or property from natural hazards can be mitigated, that the Minister of Municipal Affairs and Housing consult with TRCA if an MZO is being considered within a regulated area under the *Conservation Authorities Act*.
- That where a municipality relies on TRCA for expert technical input related to natural heritage matters, that the Minister consult with TRCA.

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- That a streamlined process be considered for MZO's which allows for public notice and input.

Thank you once again for the opportunity to provide comments on the proposed amendments to the *Planning Act* so that an MZO is not required and deemed to never have been required to be consistent with the Provincial Policy Statement. Should you have any questions, require clarification on any of the above, or wish to meet to discuss our remarks, please contact the undersigned at 416.661.6600, extension 5281 or at laurie.nelson@trca.ca.

Sincerely,

- Original signed by -

Laurie Nelson, MCIP, RPP
Director, Policy Planning

BY E-MAIL

cc:

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