

Item 10.1

Section IV – Ontario Regulation 166/06, As Amended

TO: Chair and Members of the Executive Committee
Meeting Date November 5, 2021

FROM: Sameer Dhalla, Director, Development and Engineering Services

RE: **APPLICATIONS FOR PERMITS PURSUANT TO ONTARIO REGULATION 166/06, AS AMENDED**
Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

KEY ISSUE

Pursuant to Ontario Regulation 166/06, as amended, written permission from the Authority is required for:

- a) straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
- b) development, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

A permit may be refused through a Hearing Process, if in the opinion of the Authority, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land is affected.

RECOMMENDATION

THAT permits be granted in accordance with Ontario Regulation 166/06, as amended, for the applications which are listed below:

MAJOR PERMIT APPLICATIONS 10.1 - REGULAR - FOR APPROVAL

Applications that involved a more complex suite of technical studies to demonstrate consistency with policies; applications that cover a significant geographic area, extensive modifications to the landscape, major infrastructure projects, applications requiring site specific conditions and permissions that extend beyond two years.

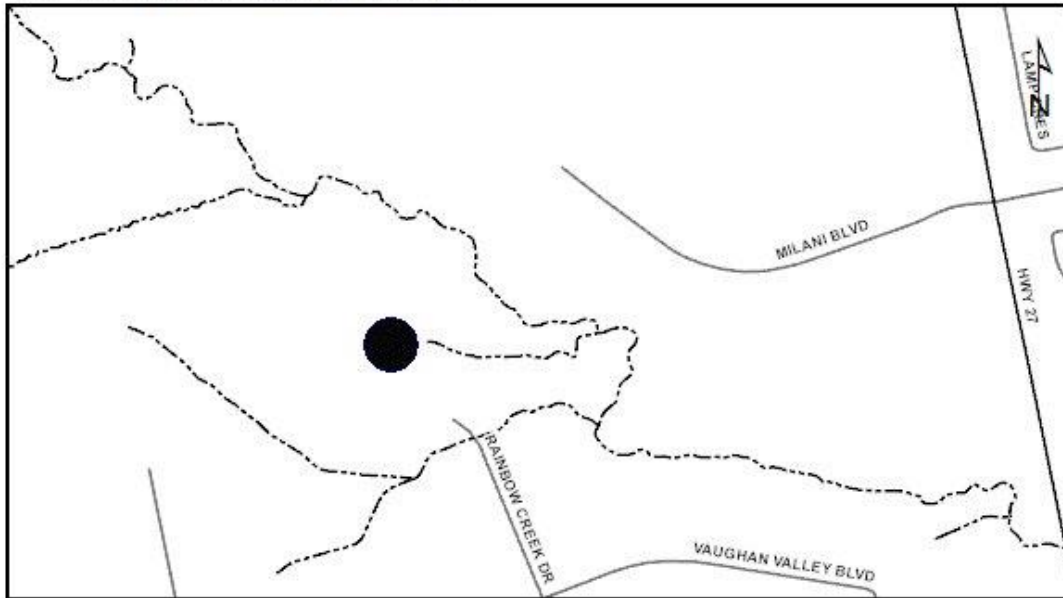
CITY OF VAUGHAN

10.1. 611428 ONTARIO INC.

To site grade on Part Lot 9, Concession 9, (north end of Rainbow Creek Drive), in the City of Vaughan, Humber River Watershed as located on the property owned by 611428 Ontario Incorporated. The purpose is to undertake works within a TRCA Regulated Area of the Humber River Watershed to permit fill placement/compaction and grading to level the property, and the installation of servicing connections from Rainbow Creek Drive to the south property limit.

Item 10.1

MAP LOCATION: Rainbow Creek Drive, Vaughan



The permit will be issued for the period of November 5, 2021 to November 4, 2023 in accordance with the following documents and plans which form part of this permit:

- **Drawing No. 18-021-01, Servicing Plan, prepared by M.E. Hall, Condeland Consulting Engineers, dated September 2021, Revision No. 1 dated September 1, 2021, received by TRCA on September 2, 2021;**
- **Drawing No. 18-021-02, Grading Plan, prepared by M.E. Hall, Condeland Consulting Engineers, dated September 2021, Revision No. 1 dated September 1, 2021, received by TRCA on September 2, 2021;**
- **Drawing No. 18-021-03, Storm Tributary Plan, prepared by M.E. Hall, Condeland Consulting Engineers, dated September 2021, Revision No. 1 dated September 1, 2021, received by TRCA on September 2, 2021;**
- **Drawing No. 18-021-04, Sanitary Tributary Plan, prepared by M.E. Hall, Condeland Consulting Engineers, dated September 2021, Revision No. 1 dated September 1, 2021, received by TRCA on September 2, 2021;**
- **Drawing No. 18-021-05, Erosion and Sediment Control Plan, prepared by M.E. Hall, Condeland Consulting Engineers, dated September 2021, Revision No. 1 dated September 1, 2021, received by TRCA on September 2, 2021.**

RATIONALE

The application was reviewed by staff on the basis of the following information:

Proposal:

The purpose of the application is to undertake works within a TRCA Regulated Area of the Humber River Watershed in order to permit fill placement/compaction and grading to level the property, and the installation of servicing connections from Rainbow Creek Drive to the south property limit in support of a future industrial/employment development. The subject lands are located at the terminus of Rainbow Creek Drive, east of the Highway 427 extension and west of the Rainbow Creek valley corridor.

Item 10.1

As background, a TRCA Fill Permit Application (#334/90/VAUG) to permit the placement of approximately 67,000 cubic metres of fill to facilitate an industrial development was submitted to TRCA on December 9, 1990, for the subject lands. A staff report dated February 24, 1992 to the TRCA Executive Committee recommended refusal of the permit application given proposed impacts on "conservation of land". At the time, it was staff's position that the proposed works would have the effect of removing a portion of a valley corridor system associated with the Rainbow Creek Tributary that bisects the subject lands. Given staff's position on the proposed development, the Authority was involved in a lengthy hearing and appeals process which began in 1992. Below is a brief chronology of the hearing and appeals process:

- On March 13, 1992, the Executive Committee sat as a Hearing Board and refused the permit application. A hearing was held, resulting in the refusal to issue permission. Written confirmation was provided by the Executive Committee on March 14, 1992 (Resolution #2).
- The applicant appealed to the Mining and Lands Commissioner (MLC). MLC treated the appeal (#CA007-92) as a new hearing and received evidence from the applicant and TRCA in February and March 1993. The MLC issued an Order dated February 11, 1994, dismissing the appeal due to the impacts on "conservation of land".
- The applicant appealed the MLC decision to the Divisional Court of the Ontario Court of Justice and the appeal was dismissed on April 22, 1996.
- On July 6, 1996, the Ontario Court of Appeal reviewed the applicant's motion of leave to appeal the Divisional Court decision and dismissed the motion.

On the subject property, there are two converging valley corridor features. The valley corridors include the main channel of the Rainbow Creek Tributary along the northeast portion of the site and a valley corridor associated with a headwater drainage feature (HDF) located at the southwest portion of the site. Based on recent site visits conducted by TRCA staff, there has been material change to the site - particularly the westerly valley corridor. In particular, the subject lands and the associated natural features were impacted by the construction of the Highway 427 extension, a portion of which was expropriated by the Ministry of Transportation (MTO). Also, the valley corridor historically had greater flows. Due to significant development in the surrounding landscape since the initial TRCA Fill Permit Application was submitted, the feature no longer has significant flows. The highway extension was also constructed without a culvert to allow for the passage of water under the highway. Based upon this, the limits of the valley corridor were determined to now terminate approximately 85 m west of the southeast corner of the site. The landform extends further west of this area associated with the HDF, but is not as apparent as the areas staked by TRCA on July 24, 2020, and is ill-defined. An Environmental Impact Study (EIS) completed by the applicant identifies that this landform is not significant given its short length, small catchment area, lack of vegetation, diversity, and habitat value. However, the valley portion staked by TRCA is proposed to be protected given its defined valley slope and associated floodplain. The applicant submitted a HDF Assessment in accordance with TRCA's HDF Assessment Guideline, which determined that the HDF does not warrant protection in-situ. TRCA staff agree with the HDF Assessment for the subject property and that the ultimate development scenario can replicate and enhance the existing ecological functions of this HDF by directing clean roof water to the remaining downstream sections, as well as through the creation of the new wetland feature.

If the subject property was not adversely impacted by the Highway 427 extension and extensive development in the surrounding area, development on this property would not be appropriate in accordance with the previous decisions made by the TRCA Executive Committee. However, the

Item 10.1

features on the subject property have been impacted, and the site conditions are now different than they were in 1990, and any proposed works on the subject property should be reviewed on their merits based upon the natural heritage system in place today. A staff report was taken to the November 20, 2020 Board of Directors Meeting (#8/20). Resolution #A189/20 was approved by the TRCA Board of Directors which authorized TRCA staff to consider a TRCA permit application based on current site conditions.

This TRCA permit application is considered to be Phase 1 of a two-staged development. Phase 2 will involve final grading, servicing, and restoration/enhancement works. A separate TRCA permit will be required for the Phase 2 works. The Phase 2 permit will include an enhancement and compensation plan for the buffers, compensation area, and proposed wetland area. The restoration works will increase the ecological function of the local area and mitigate the predicted impacts on the natural heritage features and associated functions. Specifically, to compensate for encroachments into the buffer area, additional tableland is being added to the natural heritage system (NHS) adjacent to the Rainbow Creek valley corridor. A land base of 0.06 ha is proposed to be removed from the NHS due to the proposed encroachment. However, the compensation area incorporated into this plan provides a ratio of more than 1:1 adjacent to the NHS, which will be restored as part of the Phase 2 permit. Also, the restoration/compensation strategy will involve the construction a wetland feature at the southeast corner of the site which coincides with the extent of the existing Regulatory Floodplain. The wetland will provide more habitat function and an overall increase in ecological function within the valley corridor. A significant restoration plan is also proposed within the northeast valley corridor.

As part of the application, the applicant has submitted erosion and sediment control plans and details consistent with TRCA's erosion and sediment control guideline.

Control of Flooding:

The proposed development is located outside of the Regulatory Floodplain. As such, no impacts to the storage and/or conveyance of flood waters are anticipated.

Pollution:

Appropriate erosion and sediment controls will be installed and maintained throughout all phases of construction.

Dynamic Beaches:

Not applicable.

Erosion:

A geotechnical report has been submitted to verify the location of the long-term stable top of slope that considers both slope stability and toe erosion processes. The report also verifies that the proposed grading works will not adversely impact slope stability and toe erosion. Grading operations will also be accommodated without the use of retaining wall structures. As such, the applicant's geotechnical consultant has confirmed that there are no geotechnical and/or slope stability concerns associated with this project.

Conservation of Land:

Despite the significant history associated with this site, the EIS submitted in support of this application has provided evidence that there are no removals from significant natural heritage features as defined in the Provincial Policy Statement (PPS, 2020) and Natural Heritage Reference Manual (NHRM, 2010) and that the removal of the HDF feature and some minor

Item 10.1

encroachment associated with grading into the buffer of a non-significant valley corridor can be adequately mitigated and compensated.

Plantings

All future restoration and enhancement plantings as part of the Phase 2 permit application will be native and non-invasive consistent with TRCA's planting guidelines.

Policy Guidelines:

The proposal is consistent with Section 8.4 - General Regulation Policies of The Living City Policies for Planning and Development in the Watersheds of the TRCA.

CFN: 65307 - Application #: 0779/21/VAUG

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Date: October 25, 2021