

### Section III – Items for the Information of the Board

**TO:** Chair and Members of the Board of Directors  
Friday, February 25, 2022 Meeting

**FROM:** Laurie Nelson, Director, Policy Planning

**RE:** **UPDATE ON MINISTER’S ZONING ORDERS UNDER THE PLANNING ACT IN TRCA’S JURISDICTION**

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#### KEY ISSUE

To update and inform the Board of Directors on the current state of Minister’s Zoning Orders (MZO) under the *Planning Act* in TRCA’s jurisdiction as per previous Board direction.

#### RECOMMENDATION

**IT IS RECOMMENDED THAT this report providing an update on the state of Minister’s Zoning Orders (MZO) under the *Planning Act* in Toronto and Region Conservation Authority’s (TRCA’s) jurisdiction be received.**

#### BACKGROUND

Since being enacted in 1946, the *Planning Act* has granted the Minister of Municipal Affairs and Housing (“the Minister”) the authority to zone and thereby control the use of any land in Ontario by issuing a zoning order (MZO). Historically, MZOs were sparsely used and generally issued to resolve emergencies, advance matters of heightened provincial significance, or to impose controls where local planning instruments could not. More recently, however, MZOs have been used more abundantly, particularly throughout the Greater Toronto Area, to expedite planning approvals for critical projects.

On July 21, 2020, legislative changes to the *Planning Act* were enacted through Bill 197, the *COVID-19 Economic Recovery Act*, to provide the Minister with enhanced zoning powers across the province, with the exception of lands within the Greenbelt Area, including the ability to:

- use inclusionary zoning and agreements to require affordable housing;
- remove municipal site plan control authority (new MZO or amendment to an existing MZO);
- require agreements between the municipality and development proponent (or landowner) concerning site plan matters; and
- amend an enhanced zoning order without first giving public notice.

On December 8, 2020, Bill 229, *Protect, Support and Recover from COVID-19 Act* (Budget Measures), 2020, received Royal Assent. Schedule 6 of Bill 229 included amendments to the *Conservation Authorities Act* (CA Act) specifically related to the issuance of permits under the Act where development is authorized by an MZO. Section 28.0.1 of the amended [CA Act](#) applies to a development project that is authorized by an MZO, within an area regulated under Section 28(1) of the CA Act, (the Regulated Area) outside of the Greenbelt Area. In TRCA’s case, the Regulated Area is prescribed in [Ontario Regulation 166/06](#).

TRCA, which has no authority in the issuance of an MZO, must now 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. Prior to Bill 229, TRCA had greater control, subject to appeal to the Mining and Lands Tribunal

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(now merged into a single tribunal called the Ontario Land Tribunal or “OLT”), over whether to issue a permit, regardless of whether there was an MZO issued under the *Planning Act*. For a detailed overview of the provisions of Section 28.0.1 of the amended CA Act, and how the regulatory process interfaces with the planning process and TRCA’s plan review and permitting process for MZO permits, please see the related [Board report](#) received on February 26, 2021.

On April 12, 2021, the *Planning Act* was amended through Schedule 3 of Bill 257, the *Supporting Broadband and Infrastructure Expansion Act, 2021*, so that an MZO does not have to be consistent with the Provincial Policy Statement (PPS). This amendment does not apply to lands located within the Greenbelt Area. In addition, the changes provided that any existing MZOs never had to be consistent with the PPS.

### RATIONALE

#### Analysis of MZOs in TRCA’s Jurisdiction

Due to legislative changes affecting MZOs and the issuance of permits under the CA Act, and the potential for projects involving MZOs to fall within TRCA’s Regulated Area, TRCA staff have been using publicly available information to identify and monitor MZOs issued by the Minister or requested through a municipal council resolution. This ongoing review is summarized in **Attachment 1** and the associated jurisdictional map, **Attachment 2**. Staff emphasize that this information, which dates back to January 2020 up to the time of writing, may not be complete and should not be relied upon as legal or professional advice in connection with any particular matter. The Province or applicable municipality should be consulted to confirm specific details on an MZO approval or request. In addition, some MZO requests may be unknown as yet to TRCA or be brought forward or considered after this report is public.

Based on staff’s analysis to date, within TRCA’s jurisdiction 48 MZOs have been approved or requested since 2020. Of these, 34 MZOs have been issued by the Minister, 9 await the Minister’s decision, and 2 have been deferred by municipal councils. In one case it was determined that an MZO was not required, and in two other cases requests were denied by the Minister. In other instances, the Province has refused a council’s request to revoke an MZO and has issued an Amending Zoning Order to remove certain land and zoning permissions in response to a request to revoke an MZO.

Excepting those on provincially owned lands and one in the City of Toronto, all MZOs issued since 2020 have been endorsed by municipal councils. Overall, a range of different land uses have been identified in the MZOs, although the majority reflect a mix of residential and commercial uses at varying densities and many intend to facilitate long-term care, seniors housing and/or rental units as a prevailing component of development. More recently, TRCA staff have observed a predominance of MZOs issued in our jurisdiction that were issued to facilitate low-density residential development in addition to critical projects and or employment uses.

Of the 48 known locations where an MZO has been requested or issued in TRCA’s jurisdiction, 32 are partially or entirely located within TRCA’s Regulated Area. In multiple instances, TRCA has been engaged in upfront discussions with municipal staff to identify conditions of approval for TRCA permits associated with MZOs (e.g., technical studies and environmental protection, rehabilitation and/or ecosystem compensation plans). In addition, the Chair and CEO have reached out on several occasions to Ministers office staff in Municipal Affairs and Housing (MMAH), Northern Development, Mines, Natural Resources and Forestry (MNDMNR) and Environment, Conservation and Parks (MECP), to apprise them of TRCA concerns. In many of these occurrences, TRCA generally had no objection to the MZO in principle given that in many cases the projects had been subject to municipal review through *Planning Act* processes (e.g., municipally initiated secondary plan processes) and TRCA’s interests would be satisfactorily

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addressed through the subsequent stages of the planning approvals process or CA Act permitting process. However, in many other instances, TRCA staff have not been notified prior to the MZO request and/or consulted prior to the Minister's issuance of an MZO. This is despite TRCA's regulatory authority and/or previous involvement in related subwatershed studies, secondary plans, and related planning applications.

Although the timing and extent of engagement with TRCA on MZOs varies, in most of these circumstances, TRCA was contacted after the fact by the applicant's consultant and/or municipal representatives to attempt to work through TRCA's issues and concerns. Currently, 4 TRCA permits have been issued for development projects on lands subject to an MZO, in accordance with Section 28.0.1 of the CA Act.

### Challenges

MZOs can authorize a form and scale of development within natural features and hazards contrary to provincial and municipal policies, conservation authority requirements, previous agreements, and OMB/LPAT/OLT settlements. For example, in the case of one MZO issued in Pickering, TRCA's Board of Directors has been legally required, under duress, to permit development within and interference to a Provincially Significant Wetland on lands subject to an MZO. Without the MZO and amended *Planning Act* and CA Act framework TRCA staff would have recommended refusal of the application to TRCA's Executive Committee as it would not meet the tests of our section 28 regulation.

MZOs approved on a site-by-site basis, outside the normal development approvals framework under the *Planning Act*, limit opportunities to effectively protect, avoid and mitigate impacts to natural heritage features, flooding, erosion and to determine the type and location of stormwater controls; these are matters typically addressed through a comprehensive review and analysis process (e.g., Master Environmental Servicing Plans, Functional Servicing Plans, Environmental Impact Studies). The technical expertise, review of required technical and coordinated studies, and input of the local municipality and CA, as per the current development approval process under the *Planning Act*, including site plan control, official plan and subdivision plan requirements, and associated public notice and input, are critical to avoid negative impacts and ensure coordinated, efficient and equitable development and servicing arrangements, and should apply to MZOs, particularly larger-scale proposals in sensitive areas.

The absence of upfront engagement with TRCA prior the request or issuance of an MZO typically presents challenges, such as:

- The area of developable land defined may not accurately reflect the extent of natural hazards (e.g., flood plains, steep slopes, and erosion hazards) or the location and significance of natural features (e.g., wetlands, tributaries) and their associated required setbacks outlined in provincial, municipal and TRCA policies.
- Further to the above, there is a need to ensure that development does not create or exacerbate erosion or flooding hazards for existing and proposed development and infrastructure. For example, certain MZO requests propose intensive land use permissions in flood vulnerable areas, including provincially designated Special Policy Areas (SPAs), without technical and flood remediation studies or considering the need for provincially supported (joint Ministerial MNDMNRF and MAH) SPA approvals where required.
- Some development or zoning permissions are ultimately pre-determined or approved without guidance on how natural hazards can or will be addressed without causing adverse impacts on adjacent properties, or how impacts on natural features are to be avoided, mitigated, or compensated for.
- TRCA is not always informed of forthcoming MZO requests or approvals and as a result is

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proactively monitoring public sources of information (e.g. municipal council agendas, Environmental Registry of Ontario, etc.) and relying on other landowners with concerns about coordinated development and MZO requests jumping the queue in terms of orderly logical municipally led development through the MZO request process.

Due to the complexity and time-sensitive nature of MZOs, TRCA staff are forced to divert substantial senior staff time and effort from ongoing planning and development review and approvals processes to track, analyze and respond to MZO-related proposals in an expedited fashion. Based on our experience, TRCA staff have determined that it is next to impossible to fully recoup the costs associated with this redirection. However, staff are making all efforts to recoup costs by tracking time spent on these applications and noting it in the required agreement related to subsequent CA Act permits on sites where MZOs are granted.

Despite the above noted challenges, where an MZO request is known, TRCA proactively communicates our technical and policy concerns in a timely manner to municipal and provincial officials and the applicants; this is particularly critical given the related CA Act amendments. TRCA also continues to leverage our work with regional and local municipal partners and provincial ministries and agencies to successfully advance coordinated and timely reviews and approvals of projects on sites subject to the MZO process. In doing so, TRCA's science-based approach to decision making is applied to help ensure natural heritage features and hazards are appropriately identified and impacts are avoided, mitigated, or compensated for to the extent possible under this new legislative framework and more frequently used MZO approval process.

### **Relationship to Building the Living City, the TRCA 2013-2022 Strategic Plan**

This report supports the following strategies set forth in the TRCA 2013-2022 Strategic Plan:

**Strategy 2 – Manage our regional water resources for current and future generations**

**Strategy 4 – Create complete communities that integrate nature and the built environment**

**Strategy 7 – Build partnerships and new business models**

**Strategy 8 – Gather and share the best sustainability knowledge**

**Strategy 12 – Facilitate a region-wide approach to sustainability**

### **FINANCIAL DETAILS**

Staff are engaged in this policy analysis work per the normal course of duty, with funding support provided by TRCA's participating municipalities to account 120-12. No additional funding is proposed to support the policy analysis work associated with the preparation of these comments. As per Board direction, staff are tracking the review of MZOs to recoup costs for staff time and review through any subsequent permit processes recognizing the increased use of the MZO tool.

### **NEXT STEPS**

- TRCA will continue to identify and monitor MZOs within TRCA's jurisdiction approved by the Minister or requested through a municipal council resolution since 2020.
- TRCA will continue to proactively advise municipalities, applicants, and the Province of any policy, technical and regulatory issues where MZO requests are known.
- Where TRCA has not been consulted prior to an MZO request within an area regulated by TRCA under the CA Act, TRCA will request the Minister of Municipal Affairs and Housing and Ministry staff consult with TRCA such that the requirements of obtaining a TRCA permit are considered and can be satisfied prior to approval of the MZO.
- TRCA will educate staff, municipalities, and applicants, as required, on the new permitting provisions related to MZOs in Section 28.0.1 of the amended CA Act.

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Attachments: 2

Attachment 1: Table – Approved or Requested Minister's Zoning Orders in TRCA Jurisdiction

Attachment 2: Map – Minister's Zoning Orders (MZOs) in TRCA Jurisdiction