



March 9, 2021

Toronto Regional Conservation Authority
Board of Directors
Att: Alisa Mahrova, TRCA Clerk and Manager, Policy
Transmitted by email: alisa.mahrova@trca.ca.

Re: GOVERNMENT OF ONTARIO'S UNHERALDED REGULATION LEGALLY REQUIRING TRCA TO GRANT PERMISSION FOR DEVELOPMENT AT 1802 BAYLY STREET BY MARCH 12, 2021

To whom it may concern:

Thank you for the opportunity to provide input into the special hearing of TRCA's board of directors on March 12 on the development of 1802 Bayly Street in Pickering. I am writing in my capacity as a wildlife ecologist with several decades of experience and publication record on diverse conservation science-related issues in Ontario and Canada. I was a member of the Lake Simcoe Science Advisory Panel and am an expert in land use planning, impact assessment, the application of offsets and restoration. I am familiar with the kind of permit conditions at issue in this matter, and am knowledgeable about the environment and wildlife in the area in question.

As I understand it, the Ontario government has ordered TRCA to provide permission to the applicant to develop within a Provincially Significant Wetland (1802 Bayly Street, Pickering), which TRCA would not have issued on its own accord. Under "duress", the only authorized power that TRCA's Board of Directors now has at its discretion is the ability to add conditions to the permission to mitigate negative impacts from the removal of this wetland. Because the applicant is objecting to these conditions in some fashion, there will be a hearing before TRCA's Board of Directors on March 12 to which TRCA has welcomed public input.

Most wetlands in southern Ontario have been destroyed through agriculture and development and many of those that remain are in fragments. These ecosystems are characterized by high productivity and are home to a high diversity of organisms, including many species at risk. Wetlands are important for controlling flooding, filtering sediments and pollutants, and nutrient cycling, among other services. Wetlands are also notoriously difficult to restore relative to upland habitats, because of the need to recreate specific hydrological conditions (water quantity and quality) to restore functional attributes. The few wetlands that remain in southern Ontario are becoming increasingly important to safeguard.

The Ontario government has had a system in place for some time whereby Provincially Significant Wetlands (PSWs) are identified through scientific criteria as "being the most valuable". The Lower Duffins Creek Wetland Complex is one such PSW, more than half of which

stands to be filled in to enable the construction of a large warehouse. This will negatively affect the myriad services it provides right now, as habitat for biodiversity (including migratory birds), and as buffering capacity for neighbouring communities that are prone to flooding. The warehouse complex in question hardly constitutes an emergency or imperative use, and there is abundant available already converted (including industrial) land in the vicinity from which sites could be easily selected that would be far more appropriate to build this kind of structure. The PSW designation has been in place for some time (since 2005); the applicant would have known about the ecological sensitivity of the site, and that potential compensation measures would likely be very costly.

From my reading of the staff report and the special conditions, TRCA has clearly made a tremendous effort to come up with these conditions in a short period of time. As commendable as this is, I concur with two key aspects of TRCA's assessment:

- 1) These "conditions" will not be sufficient to make up for the environmental values that will be lost through the destruction of this wetland; and
- 2) The applicant's proposal to somehow compensate for this loss through the purchase and conveyance to TRCA of another property (2870 Concession Road 8) is wholly inadequate.

As for the special conditions themselves, I can see no reasonable grounds whatsoever for the applicant to object to any of them, given the scale of damage that will occur if this wetland is developed.

Moreover, I have the following suggestions for amendments to five of these conditions:

Special Condition #1: It is unclear how the dates of the permit would assure that work in 2021 would not conflict with the Migratory Bird Convention Act, as it assumes. I recommend that work dates be carefully specified in deference to migratory bird use of this site, which we know to be very important, given the limited availability of natural lands in the area.

Special Condition #2: I agree that it is vital for the permit holder to obtain written confirmation that MNR does not object to the destruction of the PSW and approves of the compensation plan as a precondition to the execution of the agreement. However, this agreement really must also include assurance that MNR has adequately satisfied its duty to consult and meaningfully accommodate affected First Nations. It is TRCA's responsibility to meaningfully protect the rights and interests of First Nations on the land where it has jurisdiction and actively work to ensure that Ontario meets its obligations.

Special Condition #5: While I support this condition, I have little confidence that there is suitable natural land available that could be used to offset the ecological damage from conversion of so much of the Lower Duffins Creek Wetland Complex. That means that this step

would have to be a precondition to the entry into an agreement. In other words, no work should proceed until TRCA has identified land that will adequately recreate the lost benefits from the removal of this PSW.

Special Condition #10: This condition requiring stormwater and sediment control plans to TRCA's satisfaction should be revised to require the actual approval of the site plan prior to the entry of the agreement. The construction would remove the natural capacity of this wetland to deal with increased flood risks to neighbouring communities.

Special Condition #17: Prior to the execution of the agreement, I recommend that an independent ecologist (approved by the TRCA) conduct thorough biodiversity surveys of the site at appropriate seasons for breeding birds, bats, amphibians and other species.

I am happy to answer any questions that arise from this submission.

Yours sincerely,



Justina C. Ray, Ph.D.
President and Senior Scientist