

"Inspiring a Healthy Environment"

August 16, 2013

Planning & Environment Committee
The Corporation of the City of London
P.O. Box 5035
300 Dufferin Avenue
London, Ontario N6A 4L9

Attention: Chair, Councillor Polhill and Committee Members

Dear Councillor Polhill and PEC Committee Members:

**Re: File No. OZ-8120 – UTRCA Comments on Planning Staff Report scheduled for August 20, 2013 Planning and Environment Committee (PEC) Meeting and PenEquity Realty Corporation's August 12, 2013 Submission to Council
3130 & 3260 Dingman Drive and the rear portion of 4397/4407 Wellington Road South, London, Ontario**

The Upper Thames River Conservation Authority (UTRCA) acknowledges receipt of the Planning Staff Report for the subject file. We have also reviewed PenEquity Realty Corporation's August 12, 2013 Submission to Council (through PEC) and we offer the following comments.

With regard to the Planning Report, on page 3 under the heading Status of the Wetland, it is noted that an OWES evaluation has been completed by the applicant's consultants (AECOM) which has concluded that the wetland is not provincially significant. The UTRCA has not had an opportunity to review this wetland evaluation and a representative from MNR has advised that the Ministry has just received the evaluation and that they have not reviewed it or accepted the findings. As indicated in the Planning Report, the MNR is the approval authority regarding wetlands and we will have to wait for them to confirm whether or not the wetland is provincially significant. That being said, UTRCA policy protects all wetlands having a size greater than 0.5 hectares (except in special circumstances such as the feature is in close proximity to a larger wetland and could be complexed). As was conveyed in previous correspondence to the City, UTRCA policy 3.2.6 - 2) (UTRCA Environmental Planning Policy Manual - June, 2006) stipulates that *new development and site alteration is not permitted in wetlands*. Furthermore, any development proposed within the area of interference surrounding the wetland, which is 120 metres in the case of a provincially significant feature and 30 metres for all other wetlands, would be subject to the completion of an Environmental Impact Study (EIS) to the satisfaction of the UTRCA that demonstrates that there is no impact on the hydrological function of the wetland and no potential hazard impact on the development. Appropriate buffers to protect the feature would also be determined through the preparation of the required EIS. The UTRCA would not be in a position to issue any approvals for development within the wetland feature and only limited development may be permitted within the area of interference.

The Conservation Authority requests clarification regarding the comment on page 4 of the PenEquity submission (August 12, 2013) which suggests that AECOM has confirmed that the (wetland) features on the property do not meet the definition and tests for a wetland pursuant to the Conservation Authorities Act. As per the definition in subsection 25 of Section 28 of the Conservation Authorities Act, “wetland” means land that,

- a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface,
- b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse,
- c) has hydric soils, the formation of which has been caused by the presence of abundant water, and
- d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water,

but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d). (“terre marécageuse”) 1998, c. 18, Sched. I, s. 12.

The wetland (OWES) evaluation that was completed by AECOM (July 26, 2013) generated the following information about the wetland on the subject property:

- 1. The wetland patch has an area of approximately 2.4 hectares.
- 2. It is a palustrine wetland consisting of both marsh and swamp wetland types.
- 3. The S1 Swamp Community is dominated by tall shrubs and consists of gray dogwood.
- 4. The S2 Swamp Community is dominated by deciduous trees containing a mix of Freeman’s and silver maple.
- 5. The M1 Marsh Community occurs throughout the tall shrubs swamp and consists of a variety of sedges, rushes and other hydrophytic herbaceous plants. These areas occur on raised moss hummocks.
- 6. The wetland areas persist due to perched surface water from rain and spring melt events.

Furthermore, the Golder’s analysis (June 3, 2013) identified high groundwater levels and Stantec’s evaluation (July 28, 2013) noted a seasonally high water table on the property. Based on all of these factors, the UTRCA contends that the wetland feature meets the definition for a wetland as set out in the Conservation Authorities Act.

We also note that on page 4 of PenEquity’s submission, it is suggested that because the wetland feature is not shown on the UTRCA’s Regulation mapping that the feature is not regulated. This is not the case. In accordance with Ontario Regulation 84/13 which amends Ontario Regulation 157/06 made pursuant to Section 28 of the Conservation Authorities Act, if the feature meets the definition, it is subject to regulation. The Regulation is attached for information. Given that the wetland meets the definition of the regulation, the wetland on the subject lands is a regulated feature.

In closing, based on our review of the Subject Land Status Report (AECOM May 2012) the UTRCA is of the opinion that the woodland on the property is significant and should be protected. It is also our opinion that there is a wetland on the subject property and that its significance still needs to be determined by the Ministry of Natural Resources. The OWES information has not been reviewed by MNR and while this is an important assessment for the purposes of determining the application of Provincial Policy to the proposal, the OWES does not directly influence the UTRCA implementation of its regulatory authority under Section

28 of the Conservation Authorities Act. As indicated, the UTRCA regulates wetlands, and the area of interference area around wetlands under Ontario Regulation 84/13 which amends Ontario Regulation 157/06 made pursuant to Section 28 of the Conservation Authorities Act. The UTRCA Board of Directors has approved a policy manual that guides staff in implementing the Regulation and in accordance with this policy, development is not permitted in wetlands and as indicated, any development proposed within the area of interference surrounding the wetland is subject to the completion of an Environmental Impact Study (EIS) that demonstrates that there is no impact on the hydrological function of the wetland and no potential hazard impact on the development.

We trust this information will be of assistance to the Planning and Environment Committee. If there are any questions, do not hesitate to contact Mark Snowsell, Christine Creighton or the undersigned.

Yours truly,
UPPER THAMES RIVER CONSERVATION AUTHORITY

A handwritten signature in blue ink, appearing to read 'Jeff Brick'.

Jeff Brick, MCIP, RPP
Coordinator, Hydrology and Regulatory Services
JB/CC/cc

Encl.

c.c. Sent via e-mail -
Applicant – PenEquity Realty Corporation (CMcCourt@penequity.com)
City of London – Councillor Joe Swan (joeswan@rogers.com) , John Fleming, Michael Tomazincic (mtomazin@London.ca) Andrew Macpherson, Heather Lysinski - PEC Secretary
Ministry of Natural Resources – Amanda McCloskey(amanda.mccloskey@ontario.ca)
UTRCA – Mark Snowsell

Source - <http://www.e-laws.gov.on.ca/html/regs>

**Conservation Authorities Act
Loi sur les offices de protection de la nature**

ONTARIO REGULATION 157/06

**UPPER THAMES RIVER CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT,
INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND
WATERCOURSES**

Consolidation Period: From February 8, 2013 to the [e-Laws currency date](#).

Last amendment: O. Reg. 84/13.

This Regulation is made in English only.

Definition

1. In this Regulation,

“Authority” means the Upper Thames River Conservation Authority. O. Reg. 157/06, s. 1.

Development prohibited

2. (1) Subject to section 3, no person shall undertake development or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,

- (a) river or stream valleys that have depressional features associated with a river or stream, whether or not they contain a watercourse, the limits of which are determined in accordance with the following rules:
 - (i) where the river or stream valley is apparent and has stable slopes, the valley extends from the stable top of bank, plus 15 metres, to a similar point on the opposite side,
 - (ii) where the river or stream valley is apparent and has unstable slopes, the valley extends from the predicted long term stable slope projected from the existing stable slope or, if the toe of the slope is unstable, from the predicted location of the toe of the slope as a result of stream erosion over a projected 100-year period, plus 15 metres, to a similar point on the opposite side,
 - (iii) where the river or stream valley is not apparent, the valley extends the greater of,
 - (A) the distance from a point outside the edge of the maximum extent of the flood plain under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side, and
 - (B) the distance from the predicted meander belt of a watercourse, expanded as required to convey the flood flows under the applicable flood event standard, plus 15 metres, to a similar point on the opposite side;
- (b) hazardous lands;
- (c) wetlands; or
- (d) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands and wetlands greater than 2 hectares in size, and areas within 30 metres of all other wetlands. O. Reg. 157/06, s. 2 (1); O. Reg. 84/13, s. 1 (1).

(2) All areas within the jurisdiction of the Authority that are described in subsection (1) are delineated as the “Regulation Limit” shown on a series of maps filed at the head office of the Authority under the map title

“Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses”. O. Reg. 84/13, s. 1 (2).

(3) If there is a conflict between the description of areas in subsection (1) and the areas as shown on the series of maps referred to in subsection (2), the description of areas in subsection (1) prevails. O. Reg. 84/13, s. 1 (2).

Permission to develop

3. (1) The Authority may grant permission for development in or on the areas described in subsection 2 (1) if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. O. Reg. 157/06, s. 3 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 157/06, s. 3 (2).

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1). O. Reg. 84/13, s. 2.

(4) A designate under subsection (3) shall not grant a permission for development with a maximum period of validity of more than 24 months. O. Reg. 84/13, s. 2.

Application for permission

4. A signed application for permission to undertake development shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing the type and location of the proposed development.
2. The proposed use of the buildings and structures following completion of the development.
3. The start and completion dates of the development.
4. The elevations of existing buildings, if any, and grades and the proposed elevations of buildings and grades after the development.
5. Drainage details before and after the development.
6. A complete description of the type of fill proposed to be placed or dumped.
7. Such other technical studies or plans as the Authority may request. O. Reg. 157/06, s. 4; O. Reg. 84/13, s. 3.

Alterations prohibited

5. Subject to section 6, no person shall straighten, change, divert or interfere in any way with the existing channel of a river, creek, stream or watercourse or change or interfere in any way with a wetland. O. Reg. 157/06, s. 5.

Permission to alter

6. (1) The Authority may grant permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or to change or interfere with a wetland. O. Reg. 157/06, s. 6 (1); O. Reg. 84/13, s. 4 (1).

(2) The permission of the Authority shall be given in writing, with or without conditions. O. Reg. 157/06, s. 6 (2).

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for alteration. O. Reg. 84/13, s. 4 (2).

(4) A designate under subsection (3) shall not grant a permission for alteration with a maximum period of validity of more than 24 months. O. Reg. 84/13, s. 4 (2).

Application for permission

7. A signed application for permission to straighten, change, divert or interfere with the existing channel of a river, creek, stream or watercourse or change or interfere with a wetland shall be filed with the Authority and shall contain the following information:

1. Four copies of a plan of the area showing plan view and cross-section details of the proposed alteration.
2. A description of the methods to be used in carrying out the alteration.
3. The start and completion dates of the alteration.
4. A statement of the purpose of the alteration.
5. Such other technical studies or plans as the Authority may request. O. Reg. 157/06, s. 7; O. Reg. 84/13, s. 5.

Cancellation of permission

8. (1) The Authority may cancel a permission granted under section 3 or 6 if it is of the opinion that the conditions of the permission have not been met. O. Reg. 157/06, s. 8 (1); O. Reg. 84/13, s. 6 (1).

(2) Before cancelling a permission, the Authority shall give a notice of intent to cancel to the holder of the permission indicating that the permission will be cancelled unless the holder shows cause at a hearing why the permission should not be cancelled. O. Reg. 157/06, s. 8 (2).

(3) Following the giving of the notice under subsection (2), the Authority shall give the holder at least five days notice of the date of the hearing. O. Reg. 157/06, s. 8 (3); O. Reg. 84/13, s. 6 (2).

Period of validity of permissions and extensions

9. (1) The maximum period, including an extension, for which a permission granted under section 3 or 6 may be valid is,

- (a) 24 months, in the case of a permission granted for projects other than projects described in clause (b); and
- (b) 60 months, in the case of a permission granted for,
 - (i) projects that, in the opinion of the Authority or its executive committee, cannot reasonably be completed within 24 months from the day the permission is granted, or
 - (ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the Authority or its executive committee, cannot reasonably be obtained within 24 months from the day permission is granted. O. Reg. 84/13, s. 7.

(2) The Authority or its executive committee may grant a permission for an initial period that is less than the applicable maximum period specified in subsection (1) if, in the opinion of the Authority or its executive committee, the project can be completed in a period that is less than the maximum period. O. Reg. 84/13, s. 7.

(3) If the Authority or its executive committee grants a permission under subsection (2) for an initial period that is less than the applicable maximum period of validity specified in subsection (1), the Authority or its executive committee may grant an extension of the permission if,

- (a) the holder of the permission submits a written application for an extension to the Authority at least 60 days before the expiry of the permission;
- (b) no extension of the permission has previously been granted; and
- (c) the application sets out the reasons for which an extension is required and, in the opinion of the Authority or its executive committee, demonstrates that circumstances beyond the control of the

holder of the permission will prevent completion of the project before the expiry of the permission.
O. Reg. 84/13, s. 7.

(4) When granting an extension of a permission under subsection (3), the Authority or its executive committee may grant the extension for the period of time requested by the holder in the application or for such period of time as the Authority or its executive committee deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 84/13, s. 7.

(5) For the purposes of this section, the granting of an extension for a different period of time than the period of time requested does not constitute a refusal of an extension. O. Reg. 84/13, s. 7.

(6) The Authority or its executive committee may refuse an extension of a permission if it is of the opinion that the requirements of subsection (3) have not been met. O. Reg. 84/13, s. 7.

(7) Before refusing an extension of a permission, the Authority or its executive committee shall give notice of intent to refuse to the holder of the permission, indicating that the extension will be refused unless,

- (a) the holder requires a hearing, which may be before the Authority or its executive committee, as the Authority directs; and
- (b) at the hearing, the holder satisfies the Authority, or the Authority's executive committee, as the case may be,
 - (i) that the requirements of clauses (3) (a) and (b) have been met, and
 - (ii) that circumstances beyond the control of the holder will prevent completion of the project before the expiry of the permission. O. Reg. 84/13, s. 7.

(8) If the holder of the permission requires a hearing under subsection (7), the Authority or its executive committee shall give the holder at least five days notice of the date of the hearing. O. Reg. 84/13, s. 7.

(9) After holding a hearing under subsection (7), the Authority or its executive committee shall,

- (a) refuse the extension; or
- (b) grant an extension for such period of time as it deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1). O. Reg. 84/13, s. 7.

(10) Subject to subsection (11), one or more employees of the Authority that have been designated by the Authority for the purposes of this section may exercise the powers and duties of the Authority under subsections (2), (3) and (4), but not those under subsections (6), (7), (8) and (9). O. Reg. 84/13, s. 7.

(11) A designate under subsection (10) shall not grant an extension of a permission for any period that would result in the permission having a period of validity greater than 24 months. O. Reg. 84/13, s. 7.

Appointment of officers

10. The Authority may appoint officers to enforce this Regulation. O. Reg. 157/06, s. 10.

Flood event standards

11. The applicable flood event standard used to determine the maximum susceptibility to flooding of lands or areas within the watersheds in the area of jurisdiction of the Authority is the observed 1937 flood event described in Schedule 1. O. Reg. 157/06, s. 11.

12. Revoked: O. Reg. 84/13, s. 8.

13. Omitted (revokes other Regulations). O. Reg. 157/06, s. 13.

SCHEDULE 1

1. The observed 1937 flood event means the historical 1937 flood which was experienced throughout the Upper Thames River watershed. The 1937 flood event is estimated to be equivalent to a 1:250-year return and

was approved by the Minister of Natural Resources as the Upper Thames River Conservation Authority's flood standard on February 21, 1989.

O. Reg. 157/06, Sched. 1.

ONTARIO REGULATION 84/13
made under the
CONSERVATION AUTHORITIES ACT

Made: November 27, 2012
Approved: February 6, 2013
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Amending O. Reg. 157/06

(UPPER THAMES RIVER CONSERVATION AUTHORITY: REGULATION OF DEVELOPMENT,
INTERFERENCE WITH WETLANDS AND ALTERATIONS TO SHORELINES AND WATERCOURSES)

Note: Ontario Regulation 157/06 has not previously been amended.

1. (1) Clause 2 (1) (d) of Ontario Regulation 157/06 is amended by striking out “but not including those where development has been approved pursuant to an application made under the *Planning Act* or other public planning or regulatory process” at the end.

(2) Subsection 2 (2) of the Regulation is revoked and the following substituted:

(2) All areas within the jurisdiction of the Authority that are described in subsection (1) are delineated as the “Regulation Limit” shown on a series of maps filed at the head office of the Authority under the map title “Ontario Regulation 97/04: Regulation for Development, Interference with Wetlands and Alterations to Shorelines and Watercourses”.

(3) If there is a conflict between the description of areas in subsection (1) and the areas as shown on the series of maps referred to in subsection (2), the description of areas in subsection (1) prevails.

2. Section 3 of the Regulation is amended by adding the following subsections:

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for development in or on the areas described in subsection 2 (1).

(4) A designate under subsection (3) shall not grant a permission for development with a maximum period of validity of more than 24 months.

3. (1) Paragraph 1 of section 4 of the Regulation is amended by striking out “the development” at the end and substituting “the proposed development”.

(2) Paragraph 4 of section 4 of the Regulation is amended by striking out “after development” at the end and substituting “after the development”.

(3) Paragraph 5 of section 4 of the Regulation is amended by striking out “after development” at the end and substituting “after the development”.

(4) Section 4 of the Regulation is amended by adding the following paragraph:

7. Such other technical studies or plans as the Authority may request.

4. (1) Subsection 6 (1) of the Regulation is amended by striking out “grant a person permission” and substituting “grant permission”.

(2) Section 6 of the Regulation is amended by adding the following subsections:

(3) Subject to subsection (4), the Authority’s executive committee, or one or more employees of the Authority that have been designated by the Authority for the purposes of this section, may exercise the powers and duties of the Authority under subsections (1) and (2) with respect to the granting of permissions for alteration.

(4) A designate under subsection (3) shall not grant a permission for alteration with a maximum period of validity of more than 24 months.

5. Section 7 of the Regulation is amended by adding the following paragraph:

5. Such other technical studies or plans as the Authority may request.

6. (1) Subsection 8 (1) of the Regulation is amended by striking out “cancel a permission” and substituting “cancel a permission granted under section 3 or 6”.

(2) Subsection 8 (3) of the Regulation is amended by striking out “the giving of the notice” and substituting “the giving of the notice under subsection (2)”.

7. Section 9 of the Regulation is revoked and the following substituted:

Period of validity of permissions and extensions

9. (1) The maximum period, including an extension, for which a permission granted under section 3 or 6 may be valid is,

- (a) 24 months, in the case of a permission granted for projects other than projects described in clause (b); and
- (b) 60 months, in the case of a permission granted for,
 - (i) projects that, in the opinion of the Authority or its executive committee, cannot reasonably be completed within 24 months from the day the permission is granted, or
 - (ii) projects that require permits or approvals from other regulatory bodies that, in the opinion of the Authority or its executive committee, cannot reasonably be obtained within 24 months from the day permission is granted.

(2) The Authority or its executive committee may grant a permission for an initial period that is less than the applicable maximum period specified in subsection (1) if, in the opinion of the Authority or its executive committee, the project can be completed in a period that is less than the maximum period.

(3) If the Authority or its executive committee grants a permission under subsection (2) for an initial period that is less than the applicable maximum period of validity specified in subsection (1), the Authority or its executive committee may grant an extension of the permission if,

- (a) the holder of the permission submits a written application for an extension to the Authority at least 60 days before the expiry of the permission;
- (b) no extension of the permission has previously been granted; and
- (c) the application sets out the reasons for which an extension is required and, in the opinion of the Authority or its executive committee, demonstrates that circumstances beyond the control of the holder of the permission will prevent completion of the project before the expiry of the permission.

(4) When granting an extension of a permission under subsection (3), the Authority or its executive committee may grant the extension for the period of time requested by the holder in the application or for such period of time as the Authority or its executive committee deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1).

(5) For the purposes of this section, the granting of an extension for a different period of time than the period of time requested does not constitute a refusal of an extension.

(6) The Authority or its executive committee may refuse an extension of a permission if it is of the opinion that the requirements of subsection (3) have not been met.

(7) Before refusing an extension of a permission, the Authority or its executive committee shall give notice of intent to refuse to the holder of the permission, indicating that the extension will be refused unless,

- (a) the holder requires a hearing, which may be before the Authority or its executive committee, as the Authority directs; and
- (b) at the hearing, the holder satisfies the Authority, or the Authority’s executive committee, as the case may be,

- (i) that the requirements of clauses (3) (a) and (b) have been met, and
- (ii) that circumstances beyond the control of the holder will prevent completion of the project before the expiry of the permission.

(8) If the holder of the permission requires a hearing under subsection (7), the Authority or its executive committee shall give the holder at least five days notice of the date of the hearing.

(9) After holding a hearing under subsection (7), the Authority or its executive committee shall,

- (a) refuse the extension; or
- (b) grant an extension for such period of time as it deems appropriate, as long as the total period of validity of the permission does not exceed the applicable maximum period specified in subsection (1).

(10) Subject to subsection (11), one or more employees of the Authority that have been designated by the Authority for the purposes of this section may exercise the powers and duties of the Authority under subsections (2), (3) and (4), but not those under subsections (6), (7), (8) and (9).

(11) A designate under subsection (10) shall not grant an extension of a permission for any period that would result in the permission having a period of validity greater than 24 months.

8. Section 12 of the Regulation is revoked.
Commencement

9. This Regulation comes into force on the day it is filed.

Made by:

UPPER THAMES RIVER CONSERVATION AUTHORITY:

IAN WILCOX
General Manager and Secretary Treasurer

JEFFREY J. BRICK
Coordinator, Hydrology and Regulatory Services

Date made: November 27, 2012.

I approve this Regulation.

MICHAEL JOHN GRAVELLE
Minister of Natural Resources

Date approved: February 6, 2013.