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Policy Review  
Lake Simcoe Region Conservation Authority  
Box 282  
Newmarket, Ontario  
L3Y 4X1

Dear Madam or Sir:

**Re: Watershed Development Guidelines**

I would like to provide staff and the Board with my comments on the June 2014 draft Watershed Development Guidelines, on behalf of my client the North Gwillimbury Forest Alliance.

***Subdivisions-in-Wetlands Policy and related issues***

I will refer below to my previous submissions regarding the subdivisions-in-wetlands Policy 11.4.1.2 in the present Watershed Development Policies: report of September 12, 2013; report of October 22, 2013; report of January 3, 2014; and letter to Mike Walters, July 28, 2014.

*Section 2.4, Planning First Philosophy, p. 20*

The first paragraph suggests that current planning policies should guide all Section 28 approvals henceforward, regardless of prior *Planning Act* approvals. This appears to be contrary to the positions that LSRCA took in establishing and defending the present Policy 11.4.1.2, which policy is proposed to be continued in modified form.

*Wetlands Guideline 8.3.2, p. 61*

This is the successor to Policy 11.4.1.2, and on balance, is no better than the present policy. I will refer to the example of Maple Lake Estates, because I am not aware of any other proposed development that would be exempted under the present policy and that might well also be exempted under the proposed guideline.

There is a glaring contrast between Guideline 8.3.2, which applies to provincially significant wetlands, and Guideline 8.3.3, which applies to other wetlands. To some extent that contrast can be found in the present Policies (between Policies 11.4.1.2 and 11.4.2), but it comes across much more strongly in the proposed Guidelines.

The bottom line is that under Guideline 8.3.2, the currently approved Maple Lake Estates development could well be granted a Section 28 permit because it's in a provincially significant wetland, whereas if it were in a less significant wetland, Guideline 8.3.3 would apply and no permit

could be granted. If one were to follow the twisted logic of these two guidelines, those advocating protection of the Paradise Beach-Island Grove wetland from that potential development should be encouraging the Ministry of Natural Resources and Forestry to downgrade the wetland's status, whereas the developer should be encouraging MNRF to keep the wetland provincially significant.

Criteria (b), (c), and (d) of Guideline 8.3.2 are straightforward, although, as NGFA counsel Leo Longo notes in his concurrent letter referenced below, they are not valid considerations under the *Conservation Authorities Act*.

Criteria (a) and (e) are not at all straightforward. Without any further explanation, judgement of what is a "reasonable" alternative location (on the subject lot? elsewhere?), and of whether the proposal is "designed to minimize the impact" on the wetland, is extremely subjective. And in whose judgement? The applicant's? Staff's? The public's? The Authority Board's?

As well, criterion (c), the direct successor to Policy 11.4.1.2, remains just as illogical as that policy is, and even more problematic as now proposed. Why an exemption for one type of lot creation in one type of regulated feature, when there are no other such exemptions in the Guidelines? Why registered plans of subdivisions only - why not registered consents? Why any registered plan, no matter how atypical (see my September 12, 2013 report)? And why "part of a registered plan of subdivision" (different and less straightforward wording than Policy 11.4.1.2)? Does the latter phrase mean that if Maple Lake Estates Inc. applies for a permit for the one lot that includes 99% of its property, it would fail that test, but if it applies for a permit for the entire registered plan that coincides with its entire property, it would pass?

Certainly, in the case of Maple Lake Estates, the currently-approved development meets criteria (b), (c) subject to the above comment, and (d). No doubt, Maple Lake Estates Inc. could demonstrate that it is absolutely convinced that the development also meets (a) and (e), and could pitch that to LSRCA staff and Board, however strenuously I might disagree.

The only proposed improvement from Policy 11.4.1.2 is the change from "will grant approval" to "may grant approval". My October 22, 2013 report said that "would certainly be an improvement". I also went on to note that:

"Whereas the present policy would provide blanket approval, the [policy proposed by staff in their report of October 9, 2013] would appear to allow a determination as to whether the tests of Section 28(1) of the *Conservation Authorities Act* and Section 3(1) of Regulation 179/06 would be met, regardless of the existence of a registered plan of subdivision."

However, the inclusion of criterion (e) muddies the waters relative to staff's 2013 proposal. That criterion does not appear to be the same as the "conservation of land" test, one of the "five tests" of the *Act* and Regulation 179/06 to which permits are legally subject. As well, none of the other criteria are even contemplated in the "five tests". Which would prevail - the "five tests", or the five criteria?

The present Policy 11.4.1.2, however unsatisfactory it may be, is straightforward. The "will" to "may" revision proposed by staff in October 2013 was also straightforward. The proposed guideline

is not. It is for that reason that I conclude that, even with the change from "will" to "may", the proposed Guideline 8.3.2 is no better than Policy 11.4.1.2.

The October 9, 2013 staff report claimed that Policy 11.4.1.2 was needed as a transition policy for the implementation of Regulation 179/06. My October 22, 2013 report demonstrated that there was limited justification for that claim and little need for a transition policy; my January 3, 2014 report further demonstrated that there was little precedent for a transition policy among other conservation authorities. That Policy 11.4.1.2 was a transition policy was further undermined by my later discovery that it had not been introduced until two and a half years after the regulation (Usher to Walters, July 28, 2014).

The word "transition" does not appear in the proposed Guidelines, except for a different (site design) purpose in Guideline 9.3.1. It is now over eight years since Regulation 179/06 came into effect. There is now no possible need for a transition policy, and no possible basis for claiming that Guideline 8.3.2 is one.

My opinion on the proposed Guideline 8.3.2 is therefore the same as on the present Policy 11.4.1.2, as provided in my September 12, 2013 report:

"I am unable to find any justification for Policy 11.4.1.2 of LSRCA's Watershed Development Policies:

- "▶ It is not required or supported by the *Conservation Authorities Act* or Regulation 179/06, and it appears to be contrary to their intent that in every instance, a determination must be made as to whether the tests of Section 28(1) of the *Act* and Section 3(1) of the regulation are met.
- "▶ It is not supported by the 2008 Conservation Ontario Guidelines.
- "▶ It is not required or supported by the 2010 MNR Policies and Procedures.
- "▶ There is no policy in any way similar in the companion policy documents of LSRCA's neighbouring authorities.
- "▶ There is no apparent need for such a policy within the context of the Watershed Development Policies document."

My October 22, 2013 and January 3, 2014 reports further looked into the question of the policies of other conservation authorities, broadening my inquiry to the 12 conservation authorities with significant jurisdiction within the Greater Golden Horseshoe Growth Plan area.

- ▶ The 11 other authorities besides LSRCA are: Central Lake Ontario, Credit Valley, Ganaraska Region, Grand River, Halton Region, Hamilton Region, Kawartha Region, Niagara Peninsula, Nottawasaga Valley, Otonabee Region, and Toronto and Region.
- ▶ Nine of these authorities have no policies that are in any way similar to the present Policy 11.4.1.2 or proposed Guideline 8.3.2, and these authorities would not permit development of

a previously-approved plan of subdivision in a provincially significant wetland.

- ▶ Grand River has a policy that might permit development of a previously-approved plan of subdivision in a provincially significant wetland. However, in my opinion the tests would be considerably stricter than in the proposed Guideline 8.3.2.
- ▶ Niagara Peninsula has a policy that might permit development of a previously-approved plan of subdivision in a provincially significant wetland. However, this policy is now considered to be obsolete and staff will be recommending its repeal.
- ▶ Therefore, in my opinion, LSRCA is the only Greater Golden Horseshoe conservation authority where Maple Lake Estates would automatically gain approval (under Policy 11.4.1.2) or still have a good prospect of doing so (under proposed Guideline 8.3.2).

As well, because the proposed Guideline would consider development on provincially significant wetlands that would not otherwise be permitted under the Provincial Policy Statement, it is contrary to the Planning First Philosophy on page 20.

In my September 12, 2013 and October 22, 2013 reports, I recommended that Policy 11.4.1.2 be deleted. Failing that, I suggested modifications should the Board feel that some policy regarding subdivisions was still needed, to reflect the unique conditions and circumstances of the Lake Simcoe watershed. In my October 22, 2013 report, I wrote, "I understand that Policy 11.4.1.2 was intended as a transition policy and that staff believe such a policy is still required", and on that basis suggested a modified policy to reflect those considerations.

Now, with no apparent further justification for a transition policy, it would be better to simply remove proposed Guideline 8.3.2, rather than attempt to tinker with what is a fundamentally inappropriate policy.

As well, concurrent with this letter, NGFA's counsel, Leo Longo, is providing you with his legal opinion (by letter, September 26, 2014) that the proposed Guideline is "unlawful and bad policy".

*Wetlands Guideline Section 8.5, p. 63*

As written, these guidelines could be applied to any wetland, whether or not provincially significant. In my view, to apply such policies to development in a provincially significant wetland would be completely inconsistent with the Provincial Policy Statement, and contrary to the Planning First Philosophy on page 20.

### ***Other issues***

*Summary of Revisions table, page 2*

This table suggests the proposed new Guidelines are simply another in the series of Watershed Development Policies revisions since 1994. In fact this is a complete rewrite, as opposed to the often relatively minor revisions listed in the table. The change of title from Watershed Development Policies to Watershed Development Guidelines is also inconsistent with the "just the latest revision"

approach this table suggests.

It is not clear why after 30 years, the title should be changed from "Policies" to "Guidelines". Some explanation and justification should be provided.

*Section 1.3, Need for Guidelines, page 10*

I do not understand the first bullet. LSRCA did introduce in November 2008 the present Section 11 of the Policies, which was intended to implement the wetlands aspect of Regulation 179/06, arguably the most important change in that regulation (even though as indicated above, I believe that Policy 11.4.1.2 is contrary to the intent of the regulation). Staff may feel that certain aspects (which may or may not include Policy 11.4.1.2) of the present Policies do not fully reflect the regulation. However, the bullet suggests that LSRCA has been totally negligent for the last eight years and has done nothing to implement the regulation, which is not so.

*Section 1.5, Monitoring, page 12*

I don't agree with the proposal in paragraph 3 to allow staff to make minor technical amendments. The scope of what constitutes minor technical amendments (such as "correcting ambiguous language") is itself ambiguous and allows too much discretion to staff. The "housekeeping amendment" provisions commonly found in official plans and zoning bylaws are much more precisely scoped. Such provisions can also be justified because they avoid costly, time-consuming, and appealable *Planning Act* procedures. The proposed Guidelines, on the other hand, could be amended at any time by the Authority Board and that decision would not be appealable.

Under this proposal, it appears that as a planning consultant, I might only become aware of a "minor technical amendment", that a staff member thought was too insignificant to take to the Board, through diligent comparison of the Guidelines I downloaded today versus those I downloaded last month - there is no reason why the "minor technical amendment" would even be noted in the Summary of Revisions.

*Figure 2, p. 18*

Two problems with this map:

- ▶ The most important change with Regulation 179/06 was the introduction of wetlands as regulated areas, so it's odd that the example map shows no wetlands.
- ▶ It also seems odd to show a type of map which is not available except on request. Only the regulated areas maps are available online. The map series shown should be too.

*Section 5.1, Regulatory Flood Standards, p. 32*

It's confusing to the reader to state that the Talbot system is under the Timmins Storm standard, without further explanation, when the next page shows the standard map wherein all of the Lake Simcoe watershed is under the Hurricane Hazel/100 year standard.

*Section 8.1, Importance of Wetlands, p. 59*

This introductory section describes the ecological importance of wetlands and their importance to LSRCA resource management programs. It completely ignores the fact that LSRCA regulates development in wetlands under Regulation 179/06 and that the purpose of Chapter 8 is to guide the application of that regulation. Section 11.3 of the present Policies is much better in that regard.

\* \* \*

I hope these comments will assist staff in the development of the next version. Please advise me of further public consultation milestones, as I may wish to make a written submission on the revised draft Guidelines and make a delegation to the Authority Board.

Yours sincerely,

*[original signed by]*

Anthony Usher, MCIP, RPP