CANADIAN ENVIRONMENTAL LAW ASSOCIATION
L'ASSOCIATION CANADIENNE DU DROIT DE L'ENVIRONNEMENT

VIA FACSIMILE and Regular Mail

February 24, 2006

Ken Petersen, Manager
Provincial Planning & Environmental Services Branch
777 Bay Street, 14th Floor
Toronto, ON M5G 2E5

Dear Mr. Petersen:

Re: EBR Registry Number AF05E0001 -
Bill 51 *Planning and Conservation Statute Law Amendment Act*, 2005

We are writing to provide the Canadian Environmental Law Association's comments with respect to Bill 51 - Planning and Conservation Statute Law Amendment Act, 2005.

CELA is a public interest group founded in 1970 for the purpose of using and improving laws to protect the environment and conserve natural resources. Funded as a community legal clinic specializing in environmental law, CELA represents individuals and citizens' groups before trial and appellate courts and administrative tribunals on a wide variety of environmental issues. In addition to environmental litigation, CELA undertakes public education, community organization, and law reform activities.

I - DECISIONS OF COUNCIL - Section 2.1

CELA supports the proposal to require approval authority for the OMB to have regard for decisions made by municipal council, and any supporting information in decisions that it considers.

II - COMPLETE APPLICATIONS - 22(5)(6)

CELA submits that strong local democratic decision-making must be enhanced and opportunities for appeal where municipalities have not had an opportunity to fully carry out their decision-making responsibilities should limited. Accordingly, CELA supports proposed new Sections 22(5) and 22(6) providing for more clear rules regarding what constitutes a complete application, and allowing municipalities to specify additional content for complete applications.

III - MATERIAL ON APPEAL - Section 34(24.2)

CELA strongly objects to proposed s. 34(24.2). The thrust of this section provides that information and material that was not provided to the municipality before council made a decision under this section shall not be admitted as evidence at the hearing of an appeal under subsection (11) or (19) unless:

> (a) the Municipal Board is of the opinion that it was not reasonably possible to provide the information and material to the municipality before the council made its decision; or

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(b) the information and material is introduced into evidence by a public body.

CELA submits that the proposed new rules regarding complete applications, plus (i) the proposed new rules requiring that the matter be returned to council if the new information could have materially affected council's decision (in s. 34 (24.3)), plus (ii) the new provisions that the OMB must have regard to the municipal decision, will together constitute a sufficient improvement over the current situation whereby municipal councils sometimes find that they are not given all the relevant information before they are expected to make a decision.

However, as proposed, section 34(24.2) will unduly impact on the public and its ability to meaningfully participate in appeals before the OMB. Applicants often have the business imperative and time while planning their application that provides them with sufficient resources, time and incentive to prepare their application for council. Members of the public have much more limited time and resources to review the applicants' plan and material, to evaluate the issues, and to retain expert or legal advice. Furthermore it will often be unnecessary for members of the public to retain expert or legal advice, depending on the resolution of the planning application. In addition, there is no provision for intervenor funding for members of the public to participate in planning applications planning and appeal. The result of the proposed change in s. 34(24.2) will be that only the most affluent members of the public who are highly motivated, perhaps out of personal interest or impact, will be able to participate in planning appeals. The danger is that it will create significant barriers to the public participation process under the *Planning Act*, and cause significant inequities resulting in less meaningful access for the planning and appeal process.

CELA recommends that proposed s. 34(24.2) be deleted from the bill. However, CELA does support the power of the OMB to return matters to councils when it appears to the board that new information could have made a difference for councils' consideration of the issues as provided in section 34(24.3) and 34(24.4).

The same discussion also applies to proposed section 17(19) which should be deleted as well as 17(36.1), 17(44.1) and, 17(44.2) which should all also be deleted.

CELA also supports the submission of Ontario Nature that the complete application material be made available to the public immediately upon receipt of the council.

IV - APPEALS

Bill 51 proposes in a new 34(19.1) to restrict appeals from council planning decisions such that those that are not public bodies and who did not make an oral submission before the decision are not entitled to appeal. If enacted, this provision limits the appeal rights compared to the present provision which, in effect, permits any person to appeal. CELA strongly objects to this proposed amendment. In some cases, residents do not become aware of a proposal or council decision until they see a notice of passing of a by-law or read about it in their local newspaper. In some circumstances, residents or members of the public may nevertheless have a significant interest in the matter either in their own right or in respect of the impact on their community or the environment. There is no pressing reason of which CELA is aware to restrict the appeal right as proposed, nor has there been public discourse that the present appeal rights are causing any problems. This provision would mean that applicants would always have appeal rights, public bodies' appeal rights are protected, but new constraints are imposed for public appeals. CELA recommends that proposed 34(19.1) be deleted on the grounds that it is unjustified and contrary to the public interest.

IV - ENERGY RELATED PLANNING DECISIONS

Bill 51 proposes to exempt from the *Planning Act* undertakings relating to energy if they have either been subject to environmental assessment or exempted from an environmental assessment, including by way of an exempting regulation. The result is that ALL energy related undertakings will be exempted from the provisions of the Planning Act (including PP provisions) because all of those not covered by the *Environmental Assessment Act* are purported to be exempted in existing *Environmental Assessment Act* regulations (see Ontario Regulation 116/01 and sections 14 and 15 of Regulation 334).

Accordingly, for example, any proposed new nuclear facilities would purportedly be exempt from the application of the *Planning Act*. All other energy undertakings would also be exempt from *Planning Act* coverage because they are either subject to environmental assessment or are exempted either explicitly or through the regulatory provisions listed above. CELA strongly objects to this proposal and urges the province to remove section 23 of Bill 51 (i.e. the proposed new section 62.0.1 should be deleted).

CONCLUSION

CELA supports sections. 2, 3, 4, 6, 7,and 8 of the Bill, except the portions of the Bill pertaining to sections 17 and 34 discussed above.

If you have any questions regarding the above, please do not hesitate to contact us.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION
per
Theresa McClenaghan