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Canadian Environmental Law Association
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Dear Mr. Leach, Ms Beresford and Mr. McKinstry,

RE: PROPOSED PROVINCIAL POLICY STATEMENT

The Canadian Environmental Law Association (CELA), founded in 1970, is a non-profit, pubilc interest organization specializing in environmental law and policy. CELA's casework and law reform activities in land use planning and resource conservation matters extend back more than fifteen years in Ontario.

Many times during our twenty six year history, our law reform priorities have been determined by our case work as well as the many additional requests for representation that we do not have the resources to accommodate. When we are faced with a huge increase in requests for legal representation in the same area of law, it is soon very clear that law reform is the long term solution that is most in the public interest. Nowhere has this conclusion been clearer than in land use planning law.

For this reason, CELA devoted considerable time and resources to the four year effort undertaken by the previous government to reform Ontario's land use planning system. Before and during that effort we were extensively involved in land use casework and the many investigations and analyses of the deficiencies of the land use planning system.

OVERALL COMMENTS ON THE PROPOSED POLICY

As a result of many years of involvement in the planning process and the previous reform effort, we are able to say with authority, certainty and considerable disappointment that Bill 20 and the proposed Provincial Policy Statement substantially reinstates the mess that was land use planning in Ontario in the late 1980s. Ontarians will see a return to protracted site-specific battles, community discord, costly delay and poor decisions. Indeed, some of the changes take the clock back even further such as the deletion of affordable housing requirements and the over 50% reduction of wetlands that would be potentially protected by the policy. The overall impact will be further worsened by the staffing cuts throughout the provincial civil service. The expertise of provincial staff is often essential to ensuring that the provincial interest is respected in planning decisions. The public often needs to rely upon this expertise since resources to hire independent experts is so often inadequate or unavailable.

With the loss of the "shall be consistent with" standard in the Planning Act, the reinstated framework that decision makers "shall have regard to" provincial policies means that policies can and will be ignored.

The proposed policy statement is replete with vague and qualifying language. Much debate will arise over what the policies mean. The reform effort filled crucial gaps in environmental policy. However, every significant reform that was achieved has been removed. Policies to protect natural heritage have been gutted. In particular, Ontario has lost policies that would have enabled permanent protection of natural heritage features and sensitive groundwater resources. The policy of "no means no" is again "no means maybe" or "no means later". The inevitable result will be the steady loss of water quality and the remnants of natural heritage that exist in southern Ontario. Similarly, policies and related legislative changes that would have curbed the environmental damages and huge economic costs of urban sprawl and poor rural planning have been gutted. The agricultural land policies have been significantly weakened. Conservation policies have been largely eliminated. Policies to require minimun levels of affordable housing have been eliminated. The overall result will be an enormous loss of environmental and social benefits in Ontario with a disproportionately negative effect on lower income people.

THE "PRINCIPLES"

The so-called "principles" contained in the policy give primacy to economic growth. In a process that is inherently development-driven, this change to the policies is unnecessary and counter-productive. The lack of environmental policy in the planning system was one of the primary reasons for the reform effort. This lack of environmental policy included both a lack

of policies to ensure *permanent* protection of natural heritage systems and groundwater resources as well as a lack of environmentally-enlightened planning in the land development process. It was also a key reason for the many controversies and delays in the planning process. Now, with removal of clarity in both the status and intent of the policies, the inevitable result will be a return to controversial and time consuming decision-making.

The "principle" of promoting efficient development and land use is laudable but is not supported by the rest of the policy. "Efficient" development will not occur with the removal (in the policies and in Bill 20) of key provisions to limit urban sprawl. Instead, long term public costs of urban sprawl will continue to spiral upward. A recent study for the Golden Task Force confirms this fact: the GTA could save $1billion a year if it curbed sprawl - and adopted development patterns that would have been achieved with the very planning rules that are scrapped by this government's set of planning "reforms". A similarly narrow concern for long term public costs is expressed in the third "principle" which states that such costs will be avoided by directing development away from hazardous areas. The long term public costs of publicly-financed urban sprawl should be of equal, overarching concern. In this revised planning system, they will be easily ignored and the costs will continue to be needlessly incurred and passed along to the public.

THE FALLACY OF "MINIMUM STANDARDS"

Much has been said about the fact that these revised policies are minimum standards and municipalities are free to put in place environmental or other planning requirements that are more stringent. This perspective is simplistic and false. With the return to the "shall have regard to" standard and the vague and weaker policies, municipalities that try and exert stronger planning controls will face challenges by developers.

In the area of environmental protection, this outcome is already occurring in the City of London. The London annexation process required the preparation of an extensive official plan amendment. For over two years an enormous amount of work went into the preparation of that OPA and included detailed sub-watershed plans in order to incorporate environmental policies and land use designations in the revised official plan. That effort expended considerable resources and included broad community participation. It followed the direction of the Comprehensive Set of Policy Statements and the clear standard of "shall be consistent with". It incorporated clear direction as to which environmentally significant lands should be zoned for protection. Now, developers are insisting on the removal of these environmental protections and have stated that the City will face an OMB challenge if the environmental provisions are not weakened. Therefore, despite an extensive public consultation process and the achievement of broad consensus about the protection of environmental features in the annexed lands, it is highly unlikely that these objectives will be incorporated into the revised Official Plan.

The return to vague rules that can be ignored means that the City of London does not have the planning tools to implement stronger environmental protection measures than are

contained in the so-called "minimum standards" contained in these proposed new policies. Therefore, regardless of the extensive public consultation and detailed set of studies that gave rise to the environmental protection measures in London's draft OPA, the City now has little choice but to accept the developers demands. In the unlikely event that the City sticks to the original environmental protection directions in the draft OPA and is successful at the OMB, an enormous amount of time and money will need to be spent to mount its case.

With lack of clarity as to the legal status and the actual meaning of the policies, these kinds of OMB challenges will likely recur from Kenora to Cornwall. The province's objective of streamlining the planning process, (through the use of "minimum standards" that can be ignored), will not be achieved.

The above example is about planning for protection of specific environmental features. However, curbing sprawl is equally a matter of environmentally-enlightened planning since it has to do with attempts to limit urban boundaries for the sake of limiting automobile dependence, making public transit viable, limiting the expansion of, and using more efficiently, costly infrastructure, protecting surface waters and groundwater recharge areas, etc. It is just as likely that attempts to curb sprawl within the proposed Provincial Policy Statement and under Bill 20 will face similar challenges from developers wanting to develop whatever they want, wherever they happen to own land. This outcome is especially likely given the removal, in Bill 20, of the ability to turn down a development application on the basis of "prematurity".

LOSS OF ENVIRONMENTAL PROTECTION

The environmental protection measures contained in the new policies will be largely ineffective. First and foremost, as already noted, the return to the "shall have regard to" standard means that the policies can and will be ignored. (We have documented several examples of this fact in our submission to the Standing Committee on Resources Development which reviewed Bill 20. Many more examples exist and can be documented.) When the policies are ignored, contentious matters will very likely be the subject of OMB appeals from concerned citizens. Or, as noted above, if the policies are applied or attempts are made to go beyond the "minimum standards" in the policies, they will be the subject of OMB challenges by developers. Given the enormous inequities between citizens and developers, OMB challenges by citizens groups will be limited by their ability to pay for legal and expert representation. Nevertheless, the consistently high level of public concern (i.e., greater than 75%) for environmental protection evident in public opinion polls practically guarantees that public objections to environmentally destructive planning decisions will not subside.

In addition to the vague legal status of the policies, key environmental protection measures have been eliminated. Policies regarding natural heritage protection, water quality and energy and waste management have been substantially weakened. In particular, the "no means no" protection for natural heritage features and areas has been eliminated. The limited protection that remains for the habitat of threatened and endangered species does little more than

reiterate what is already contained in the *Endangered Species Act*. And, the continued protection for provincially significant wetlands is undermined by both the "have regard to" standard and the change in the extent of land that is covered by the policy. The decision to protect only those provincially significant wetlands south and east of the Canadian Shield eliminates protection for approximately 50% of the wetlands that had been covered by the previous policy. And, the policy is further weakened by eliminating the protection for wetland complexes. So too, the "no means no" protection for sensitive groundwater recharge areas has been eliminated; perhaps one of the most ill-informed and short-sighted (economically as well as environmentally) revisions in the entire proposed policy.

Finally, the removal of the requirement for an Environmental Impact Study to assess the acceptability of development in environmentally sensitive areas spells a huge loss in quality control over how these decisions will be made. These quality control provisions should have been *strengthened* over what existed in the previous policies. Instead, they have been eliminated.

It should be noted that the position of citizens' and environmental groups on the previous policies was one of lukewarm support. On the basis of experience in the planning process and in the previous reform effort, and on the basis of the scientific literature, it is clear that a *systems* approach to natural heritage protection, including ground and surface water resources, is necessary. Although laudable, the previous policies would have helped to provide protection for barely the skeleton of a natural heritage system in southern Ontario. Only a tiny fraction of land area could have been permanently protected by the policies. Further protection and even much-needed restoration of adjacent lands and connecting links, corridors and buffer areas would have been unlikely except in the most environmentally-enlightened municipalities. It is in these areas of protection for natural links, corridors, adjacent lands and buffer areas, and for the intrinsic value of biological diversity that the proposed Provincial Policy Statement falls especially short.

By eliminating the "no means no" protection (and being able to ignore policy altogether) and the requirement for Environmental Impact Studies, costly and environmentally destructive development proposals and approvals will likely increase dramatically throughout southern Ontario.

LOSS OF TOOLS TO CURB SPRAWL

Bill 20 and the proposed Provincial Policy Statement remove crucially important tools to curb sprawl. As with the environmental and water quality protection policies, the return to the "shall have regard to" standard means that the policies can and will be ignored. Several other legislative changes contained in Bill 20 further limit the ability of municipalities to curb sprawl. Our comments on those changes are contained in our submission to the Resources Development Committee.

The vague language in these policies is unlikely to significantly influence development

patterns. Gone are the requirements that existed in the Growth and Settlement Policy Guidelines which were developed prior to and alongside the Sewell Commission consultation effort. Those guidelines and the related policies that arose from the Sewell process represented a broad consensus. They arose from an understanding, both subjectively obvious and, more recently, empirically known, that sprawl wastes billions of dollars. Sprawl also eliminates non-renewable agricultural lands and, when poorly controlled in rural areas, contributes to ground and surface water contamination. The need to control sprawl is critical and the choice should not be, as it now is, optional. Instead of providing policy direction to the crucial task of changing the form of development, the revised policies provide vague platitudes and will be mostly ineffectual.

Gone are requirements that settlement area expansion occur as a logical extension of existing built-up areas. Also gone are requirements to justify extensions to settlement areas on the basis of analyses of infrastructure costs, existing opportunities for infill development, intensification, etc. The corresponding elimination of the definitions for "settlement areas", "built-up areas" and "intensification" reveals how unimportant this logical staging of development is within these policies. The related change, both in the policies and Bill 20, is the deletion of requirements to ensure that infrastructure (and staging of infrastructure) is in place for new developments. This lack of serious concern for the enormous costs of poor planning is also evident in the elimination of policies requiring the assessment, and determination of acceptability, of the long term public costs of rural development.

Also weakened to the point of being useless, or eliminated altogether, are conservation policies (for energy, water and waste reduction) and policies for development to have a compact form, mix of uses, and densities that efficiently use land, infrastructure and public service facilities, including public transit. The elimination of policies explicitly prohibiting development in specialty crop lands will mean short-sighted erosion of this precious, non-renewable resource in southern Ontario. Also eliminated from matters of provincial interest are: policies requiring the integration of human and social services planning with land use planning; policies to maintain or provide reasonable public access to public land or water bodies; policies to require 30% of development to be affordable housing; and policies to encourage affordable and non-profit housing on surplus government lands. By eliminating these matters as being of provincial interest, and combined with the changes noted above, the proposed Provincial Policy Statement clearly favours the narrow, private interest of the development industry to the exclusion of the interests of the broader community.

This favouritism is also apparent in the changes to housing policy whereby the policy has been strengthened to require, "at all times", that municipalities maintain at least a 10 year supply of land for new residential development and redevelopment. As well, there is a new policy that housing will be provided by: "adopting cost-effective development standards for new residential development and redevelopment, where appropriate, to reduce the cost of housing". It is clear that this policy is intended to support recently proposed changes to the Building Code which propose to strip out energy conservation measures that provide considerable long term savings to homeowners. It may also allow for the installation of

hugely inefficient electric heating instead of the more expensive (up-front to developers) cost of running natural gas lines. Both changes are euphemisms for severely compromising building and development standards that are more expensive for developers but pay off in long term savings to consumers.

For the foregoing reasons, and as we stated in our submission to the Resources Development Committee, Bill 20 and the proposed Provincial Policy Statement should be withdrawn.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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