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

Brief #369
April '99

SUBMISSION BY
THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION
TO THE MINISTER OF MUNICIPAL AFFAIRS AND HOUSING
REGARDING A
PROPOSAL TO CLASSIFY PLANNING ACT INSTRUMENTS
UNDER THE ENVIRONMENTAL BILL OF RIGHTS

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PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) is a public interest group founded in 1970 to use and improve 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.

The purpose of this brief is to respond to the proposal to classify *Planning Act* instruments under the Environmental Bill of Rights, which was posted on the *Environmental Bill of Rights 1993* (EBR) electronic registry (EBR Registry Number: RF9E0003), as well as to the proposal for a Regulation to exempt Minister's Zoning Orders under clause 47(1)(a) of the *Planning Act* (EBR Registry Number: RF9E0004).

PART II - SUMMARY OF GENERAL COMMENTS

These are CELA's recommendations regarding the Proposed Classification of *Planning Act* Instruments under the *Environmental Bill of Rights*.

- CELA encourages the Ministry of Municipal Affairs and Housing in complying with its obligations under the EBR to classify the approvals under the *Planning Act* in accordance with the *Environmental Bill of Rights* and encourages MMAH to commence the process of posting notices of instruments on the EBR as soon as possible.
- The instruments described in the Proposal should be classified as Class II instruments, rather than as Class I instruments.
- A broader list of approvals should be classified as Class II instruments, as set out in detail below.
- Minister's Zoning Orders should not be exempt from classification.
- A section should be added providing for review of the classification within two years of the date of promulgation of the Regulation.

PART III - DETAILED RECOMMENDATIONS

The Appendix outlines in detail the sections of the *Planning Act* that CELA submits should be classified as Class II Instruments under the *Environmental Bill of Rights* classification system.

PART IV - DISCUSSION

Classification as Class II Instruments

CELA submits that the instruments should be classified as Class II instruments; not merely as Class I instrument. Classification as Class II allows the minister to consider giving more than 30 days for comment, to consider giving enhanced public participation pursuant to section 24 of the *Environmental Bill of Rights*, and requires the giving of additional notice pursuant to section 28. Because the types of decisions to be classified will often have their effects in local communities, the types of notice described in section 28 (a choice of local newspaper notice, door to door flyers, signs, actual notice to community leaders, actual notice to community organizations, and mailings, for example) are appropriate in addition to posting on the electronic registry of the EBR.

Rationale for inclusion

As to some of the specific reasons for inclusion of the sections listed in the Appendix in the list of sections for which decisions should be posted, we note the following.

We presume most land use planning decisions to have environmental implications. For any particular decision, the contrary may be demonstrated. We further concern ourselves, as environmental lawyers and community legal workers, with the opportunities for public notice, information, participation in decisions, meaningful input, and appeal recourse available to the public. Therefore, our comments are based upon these concerns.

Environmental implications are engaged by issues such as who the decision makers are, and as to how decisions are made. For example, are the decision makers local, and therefore somewhat familiar with the local environment? Do they have environmental expertise? Are they accustomed to dealing with environmental issues? Does their mandate clearly include environmental issues?

Another example arises with respect to the definition of planning areas. If a new planning area is to be specified, then, for example, it should not bisect a watershed. New planning boundaries should follow watershed boundaries where possible. Similarly, planning areas should not bisect major wetland complexes and similarly, the natural boundaries of other natural heritage complexes should be respected in allocating planning authority.

We have included the sections where the Minister retains environmental authority and his or her decisions have environmental implications.

Official plans, of course have numerous environmental implications in terms of both protecting or developing alongside natural areas, and the form and structure of settlement patterns. Similarly, environmental implications arise from the decisions to approve or amend official plans. The environmental consequences of official plan decisions are long lasting.

Property conditions policies also have environmental implications in many cases; it may be that in some cases they do not, which could be demonstrated so as to make a decision not to post on the registry in a particular case.

Decisions relating to community improvement areas may have environmental implications; as well as decisions relating to community improvement programs, in which case the potential decisions should be posted.

The adoption of a development permit system regulation would have environmental consequences, and the draft text of any proposed regulation should be posted. Thereafter, potential decisions to approve adoption of development permit areas should also be posted.

In all of these cases, of course, the posting obligation arises where the Minister or the MMAH is the decision maker (including the possible approval of another body's decision). It is for this reason that potential decisions to move approval authority from the Minister or MMAH to a municipality, as is contemplated, (and is underway), should be posted. This will give an opportunity for comment as to any anticipated environmental implications that may arise

from the change in decision making or approval authority.

Exemption for Minister's Zoning Orders

With respect to the specific proposal for an exemption of Minister's Zoning Orders under clause 47(1)(a) of the *Planning Act* from the Part II notice requirements of the *Environmental Bill of Rights*, CELA submits that a blanket exemption is not necessary to achieve the purposes described in the proposal. The proposal notes that Minister's Zoning Orders may be used for reasons that include public health and safety, protection of a public or provincial interest and therefore may need to be issued swiftly. CELA submits that these objectives are already ensured by section 29 of the *Environmental Bill of Rights*.

Section 29(1) permits a minister to act without first posting notice on the EBR where the delay in giving notice to the public, in allowing time for public response or in considering the response to the notice would result in

- (a) danger to the health or safety of any person;
- (b) harm or serious risk of harm to the environment; or
- (c) injury or damage or serious risk of injury or damage to any property.

CELA submits that these encompass all of the objectives stated in the proposal. Where section 29(1) of the *Environmental Bill of Rights* does not apply, the application should be posted for public notice and comment. On the other hand, a blanket exemption of these types of orders will mean loss of public notice, comment and other rights pursuant to the *Environmental Bill of Rights* for these types of decisions.

Review Provision

We note that the Ministry of Environment classification regulation contains a provision that provided as follows:

10. The Minister of Environment and Energy shall review sections 2 to 9 of this Regulation within two years after the day on which this Regulation is filed and shall prepare proposals to amend the classification scheme that these sections set out as the Minister considers advisable."

CELA submits that such a review section would be a prudent addition to MMAH's classification regulation.

We trust that the foregoing comments are of assistance.

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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**APPENDIX
DETAILED LIST OF SECTIONS OF PLANNING ACT
THAT SHOULD BE CLASSIFIED UNDER THE EBR**

Section 4(1) - Delegation of Minister's powers to municipality

Section 4(2) - Delegation of Minister's powers to planning board

Section 4 (2.1) & (2.2) - Delegation of Minister's powers where no request is made

Section 5 (2) - Minister's approval to sub-delegation of official plan amendments by municipalities & conditions

Section 6 - Ministry undertakings

Section 7 - Minister's grants for planning duties

Section 9 - Minister to define planning area

Section 10 - Minister to define planning area in unorganized territory

Section 14.1(2) - Minister approval of by-law by two or more local municipalities establishing joint planning area

Section 14.4(2) - Minister approval of by-law to expand planning area

Section 14.5(2) - Ministerial approval of removal of municipality from planning area

Section 14.6(2) & (3) - Dissolution of municipal planning area

Section 14.7(4) - approval of a plan by a municipal planning authority

Section 17(1) - Minister approvals of official plans

Section 17(6) - Minister removal of powers of upper tier municipalities to do official plan approvals

Section 17(8) - Minister revocation of an order under 17(6) & reversion to the council of approval authority

Section 17(9) - Minister order to exempt a plan etc. from Ministerial approval

Section 17(10) & (11) - Minister order to allow an approval authority to exempt plans from

its own approval & imposition of conditions on same

Section 17(12) - Minister's removal of exemptions

Section 17(34) - Where Minister is approval authority - approval, modification etc. of a plan

Section 23 (1) - Where Minister requests amendment of a plan because of a matter of provincial interest

Section 26(3) - Where Minister is approval authority - direction to undertake a revision of an official plan

Section 28(3) - Minister approves acquisition of land within a proposed community improvement project area (note the authority to clear, grade and prepare such land in (3)(c)).

Section 28(5) - Minister may deem provisions relating to community improvement to be a community improvement plan
Should be posted prior to the deeming decision

Section 28(8) - Minister approves exercise of power or authority that otherwise conflicts with Municipal Act so as to proceed with community improvement plans

Section 29(1) - Minister approves municipality entering agreement with governmental authority or agency for carrying out studies etc. for improvement of the municipality

Section 30 - Minister & Lieutenant Governor in Council approve agreement for financial assistance with community improvement program

Section 31 (2) - Minister approves property conditions policy by-law (note the municipal powers, including establishment of demolition control area by-law in later subsections and sections once approved)

Section 47(1) - Minister order to exercise any of the powers conferred on councils for zoning by-laws, interim control by-laws, temporary use provisions, designation of plans of subdivision to be deemed not to be registered re: any land in Ontario

Section 47(2) - Minister order to allow minor variances

Section 50 (1.1) - Minister's removal of powers of council for consents to subdivision. Minister's exercise of powers thereby transferred to him or her should be posted prior to the consent decisions

Section 50 (1.4) & (1.5) - Minister delegation of power removed in 50(1.1) to a planning

authority & subsequent revocation of delegation order

Section 51 & 51.1 - Where Minister is approval authority, and designation and revocation of status as approval authority to or from councils for purposes of plan of subdivision approvals & re: parkland dedication

Section 53 - Where Minister is approval authority for consents to subdivision

Section 70.2 - Development permit system
Text of any proposed regulations should be posted

Section 70.3 - Sewage and water services system regulations
Text of any proposed regulations should be posted.