"Massaging the Conservation Authorities Act"

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Mayor Marolyn Morrison and Members of Council
Town of Caledon
Box 1000
Caledon East, On. L0N 1E0

Re: January 10, 2006 Delegation to Council Regarding the Conservation Authority O. Reg. 97/04, Development, Interference with Wetlands and Alterations to Watercourses, "Generic" Regulation Initiative

I have discovered the Credit Valley Conservation Authority [CVC] is proposing to regulate my entire fifteen acre property at the above address under a new regulatory initiative being carried out by all conservation authorities in Ontario under O. Reg. 97/04. This is a substantial change, as currently only a portion of my lands are subject to a fill regulation. CVC staff was unable to answer my questions at the December 13, 2005 Open House in Caledon East concerning my property in terms of what hazard was being identified; what the boundaries were for the hazard; and what policies are to be used to interpret the proposed regulated area. Consequently, I am unable to determine the impact on the reasonable use and enjoyment of my lands which may result from the proposed regulations.

In addition, as a result of my research into the origins and implementation of the O. Reg. 97/04, I wish to raise some general points about this new regulatory initiative which affect all land owners in Caledon and add further confusion to our complex municipal land use planning system. It appears this new regulatory initiative is based upon the application of vague and uncertain criteria, which will be combined with uncontrolled discretion for conservation authority staff, leaving significant scope for arbitrary interpretation and decisions.

Following below is a detailed set of notes along with a number of specific requests of Council.

Sincerely,
Original Singed by;

Ian G. Sinclair, O.A.L.A., M.A.E.S.

Observations, Comments and Council Requests in response to:
Proposed Conservation Authority Regulations: Development, Interference with Wetlands and Alterations to Watercourses under O. Reg. 97/04

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1. Some Conservation Authority Institutional History:

- Conservation Authorities, as agencies, are a broad community response to several important events; the clearing of inappropriate lands and subsequent farming activity in the Ganaraska and other areas led to blow outs of sandy soils, loss of ground water and reduced stream flows [response was massive reforestation programs followed by the 1946 Conservation Authorities Act]; Hurricane Hazel caused catastrophic life & property loss [response was some dam building and the regulation flood plain and fill areas]; the village of Walkerton's tragic contamination of drinking water through incompetent management [response is oodles of MoE regulation on all aspects of drinking water management & the Source Water Protection initiative] The reforestation and flood plain responses, through conservation authorities, have been very beneficial for the people of Ontario.
- **Municipal Agencies**: Conservation Authorities are creatures of member municipalities initiated under Section 2 of the Conservation Authorities Act by a majority vote of municipalities in a watershed, confirmed by the Minister of Natural Resources, and maintained at the pleasure of the member municipalities until a majority vote for dissolution under Section 13.1. Conservation Authorities are not provincial agencies. [For a list of provincial agencies, boards & commissions and criteria see PROVINCE OF ONTARIO MANAGEMENT BOARD SECRETARIAT LIST OF CLASSIFIED PROVINCIAL AGENCIES, 2004]
- **Objects**: Objects of a conservation authority are found in Conservation Authorities Act, Section **20.** (1) The objects of an authority are to establish and undertake, in the area over which it has jurisdiction, a program designed to further the conservation, restoration, development and management of natural resources other than gas, oil, coal and minerals. R.S.O. 1990, c. C.27, s. 20. A program is presumably a form of document, approved by the Board and amended from time to time, setting out what a Conservation Authority intends to address in its area of jurisdiction for the conservation, restoration, development and management of natural resources. It is not a budget or work plan which are other types of documents setting out the activities the Conservation Authority is initiating to achieve the program. In addition to gas, oil, coal and minerals the Ministry of Natural Resources has reserved aggregate resources, sand, shale, bedrock, etc. for itself and the Ministry of Environment has reserved water taking permits to it. The last time Credit Valley Conservation Authority [CVC] may of had a formal program was the 1956 Credit Valley Conservation Report
- **Natural Resource Concept**: The concept of what is a natural resource seems to be expanding from traditional interpretations of timber, minerals, energy, soils, etc. used as economic inputs, to now encompass something called ecological features and processes. With the expansion of the concept of natural resources to include such complex and poorly

understood natural entities as natural processes, there seems to be no general agreement on what the Objects of a conservation authority may now encompass. This is a problem.

2. 1988 Conservation Authority Act Amendments & O. Reg. 97/04

- **Approval Dates**: Amendments to the Conservation Authorities Act were made in December 1998 within the Red Tape Reduction Act, an omnibus package of reforms covering many pieces of different legislation. Little public input was received regarding the amendments as there were only three speakers at the Parliamentary Committee addressing the CA Act amendment and one was Conservation Ontario.
- O. Reg. 97/04 ["Generic"] was approved May 2004 after an Environmental Bill of Rights [EBR] review process. [EBR Registry Number**:** RB03E6007]
- CVC, TRCA, Simcoe [Holland River] & Nottawasaga Conservation Authorities are all preparing new 97/04 Regulations affecting land owners in Peel
- **Top Down Administrative Perspective**: General aim of the "Generic" regulation is consistency of regulation & approach across all 36 conservation authorities in Ontario. Consistency and conformity is a top down provincial scale administrative perspective as opposed to a community based perspective arising from consultation with citizens of conservation authority watersheds reflecting their specific problems, needs and opportunities. This conformity and consistency approach runs counter to the claim that conservation authorities are community based agencies serving local needs and interests.
- Areas of regulation include flood, slopes, shorelines of Great Lakes and major inland lakes [stability & wave up rush], wetlands; most of which is a good thing where real hazards to life and property exist!
- Individual CA regulations under 97/04 may regulate any size, type, or significance level of wetland as long as the wetland meets the specific terms of the definition in the CA Act.
- **Artificial Crisis**: A drop dead date of May 2006 has been established for all existing conservation authority Fill, Construction & Alteration to Waterways regulations [O. Reg #146 for CVC, O. Reg. #158 for TRCA, O. Reg. #153 for LSCA, & O. Reg. #164 for NCA]. This short two year period creates an artificial crisis where each of the 36 Conservation Authorities must get some new regulation into place regardless of the magnitude of the task, issues of mapping accuracy or effective public participation.

3. Conservation Ontario: Assuming a Role in Public Policy and Implementation:

- Conservation Ontario was incorporated as a "not for profit" organization, #2002796 Ontario Limited, on May 1, 2001 with the 36 Conservation Authorities named as shareholders each with 10 common shares @ $1.00 per share

- Conservation Ontario Board membership is generally held by general managers of conservation authorities
- Conservation Ontario receives majority of annual 2004 budget $1,499,743 from the 36 Conservation Authority members $454,224 and provincial funding of $476,224 under Memorandums of Agreement through MNR for developing and implementing provincial policy initiatives.[Conservation Ontario; 2004 Annual Report]
- An association of conservation authorities for the purposes of holding an annual conference, training workshops, and representing all conservation authorities in forums such as the Walkerton Inquiry is a good thing and should be promoted.
- However, a concern with Conservation Ontario involvement in public policy formation and implementation is the secrecy available to corporations operating outside of the public eye. Public business should be public business. Open and traceable decisions are carefully protected under the Municipal Act and Planning Act for all municipalities but there seems to be no comparable protection under the Conservation Authorities Act. In addition, approximately two thirds of Conservation Ontario's budget is public money with no accounting of how, where and why it is being spent.
- In Conservation Ontario's Generic Regulation – Approval Process Document, Conservation Ontario has inserted itself into an approval role over individual conservation authority Boards of Directors decisions regarding their own regulation: [see also attached "Approval Process Flowchart"]

  "*Section 3.0 Conservation Authority Peer Review Component:*
  Conservation Ontario will take a significant role in ensuring that the individual Conservation Authorities' updated regulations are consistent with the Generic Regulation. To achieve these responsibilities, a Peer Review Committee will be formed and will report to Conservation Ontario.

  3.1 Committee Responsibilities and Roles:
  The Peer Review Committee's key responsibilities include determining that the individual Conservation Authority's regulation (text) and schedules (mapping) are in conformity with the Generic Regulation and that the approval process has been followed. The written endorsement of this committee will be required prior to submission of the updated regulation and schedules to the Minister of Natural Resources for approval.
  The Peer Review Committee will be required to advise the Minister of the following:
  • that the updated regulation and schedules followed the agreed upon approval process,
  and

• that the peer review committee has reviewed and endorsed the updated regulation and schedules and they are in conformity with the Generic Regulation.

The committee would also review and provide recommendations on anomalies such as "other lands" and "exemptions." As part of the review role, the Peer Review Committee should also provide pre-consultation advice with Conservation Authorities prior to submission of the regulation and schedules, and on going technical advice throughout the preparation of the regulation and schedules.

3.2 Committee Structure

The Peer Review Committee will be structured as one multi-disciplinary committee covering all Conservation Authorities. The creation of regional sub-committees or an advisory committee may be considered to assist the Peer Review Committee and provide guidance to Conservation Authorities on local or regional matters that may affect the preparation of the regulation.

The Peer Review Committee would be comprised of six to 10 members representing the Conservation Authorities' main business areas such as water resources engineering, ecology, planning and regulations, mapping/GIS, and management. In addition to Conservation Authority representation, the Peer Review Committee will also include participant(s) from the Ministry of Natural Resources. The Conservation Authority representatives would be appointed by Conservation Ontario and the members would be exempt from reviewing their respective Conservation Authority's regulations."

Somehow the decisions of the democratically appointed conservation authority Boards, who are accountable to their respective Councils and the public, are to be vetted by committees formed under the auspices of a numbered company which has no public accountability and no legislative authority to do so.

- **Conformity Documents:** Conservation Ontario has developed a series of documents relating to Conservation Authorities Act Section 28, O. Reg. 97/04 "Generic Regulation", Development, Interference with Wetlands & Alterations to Watercourses; Generic Regulation – Approval Process Document; Guidelines for Developing Schedules of Regulated Areas; and Section 28 (3) Conservation Authorities Act – Hearing Guidelines. To the extent these documents are used to assist individual conservation authorities to rework and expand their own 97/04 regulations these are useful. However they may become, through their use as ridged guidelines stipulating only a certain regulatory approach, a means of fettering the discretion of both CA staff and Board members in achieving reasonable, fair and accurate regulations within their jurisdictions.
- **Conformity Documents Difficult to Access**: Credit Valley Conservation Authority has not made any of these Conservation Ontario documents on

which they have relied on in preparing the new mapping of proposed regulated areas available at their Public Open Houses and has instead referred people requesting copies to Conservation Ontario.

4. No Policy, No Distinction, No Comparison:

- **Absence of New Regulatory Policy – *But What does it mean?***: Credit Valley Conservation Authority and Toronto and Region Conservation Authority have not developed any new interpretive policy text to accompany their proposed new hazard land mapping schedules which includes wetlands and 30-120 meter setbacks from wetlands. Instead they have provided copies of their existing Fill, Construction and Alteration to Watercourses policies which relate to their O. Reg. 146 [CVC] & O. Reg. 158 [TRCA]. This failure to produce new policies appears to be contrary to a requirement of the new O. Reg. 97/04, Section 7 which states that, "A regulation shall specify (a) what information a person is required to provide to the authority in an application for permission under subsection 4(1) or 6(1).

  Without accompanying policy text, landowners can not determine how the new regulatory mapping will be interpreted and therefore what the maps mean.
- **No Distinction of Hazard**: CVC mapping shows only the proposed regulated areas and setbacks in a continuous manner without distinction between flood plain, steep slopes, wetland or construction & fill areas. Landowners can not determine what type of "hazard" may be mapped on either their or neighbouring lands. Conservation Authority or municipal staff cannot easily determine what tests a development proposal may have to meet inside an identified regulated area.
- **No Comparison of Old Regulatory Maps With New**: CVC has not provided mapping comparing what is regulated now and what is proposed to be regulated. Land owners can not compare the proposal with what is now regulated and determine how the new regulatory proposal will impact them. TRCA provided large scale 1:50,000 comparison mapping of existing versus proposed regulation areas at the December 13th Open House in Caledon East.

5. Problematic Wetland Identification:

- Wetlands are problematic to map accurately due to their fluctuating boundaries which depend upon seasonal precipitation, cycles of precipitation, dry periods followed by wetter years, and then there's beavers!

  In order for a wetland to be regulated under a 97/04 regulation, and withstand a legal challenge, it must meet the definition of wetland under the Conservation Authorities Act 28 (25):

  Definitions, In this section,

"watercourse" means an identifiable depression in the ground in which a flow of water regularly or continuously occurs; ("cours d'eau")

"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.

- **Note that <u>all four tests</u> contained in the above definition must be met before a conservation authority may regulate an area of land as a wetland**.
- This CA Act wetland definition is different from the PPS 2005 under the Planning Act, the Oak Ridges Moraine Plan, the Greenbelt Plan or the approach taken in the Southern Ontario Wetland Evaluation System, principally by the addition of requirement [b] a connection with a surface watercourse.
- **Arbitrary Assumption**: The Conservation Ontario, <u>Guidelines for Developing Schedules of Regulated Areas</u>, contains the following statement," *The <u>requisite</u> function of a wetland – '…directly contributes to…hydrological function/through connection with a surface watercourse…" <u>is deemed to exist for all wetlands</u>. Where a surface connection between a wetland and a surface watercourse <u>is not apparent</u>, it is assumed that a groundwater connection exists between them, unless there is information to the contrary*." [underlining in the original] This surprising statement is contrary to the plain reading of the legislative definitions for a wetland and a watercourse in the Conservation Authorities Act. It also throws a costly scientific burden of proof onto the individual land owner to establish the existence or non-existence of ground water flows from a wetland to a watercourse, presumably any watercourse at any distance. Placing this burden of proof on the landowner is both unfair and the 'deemed' interpretation is not found within the legislation.
- To the extent that Conservation Authorities have relied upon this statement in drafting their O. Reg. 97/04 regulation mapping they have or

are proposing to regulate areas outside of their legislative mandate and unnecessarily assign landowners with onerous regulatory requirements and the burden of proof.

- **What is it that that the regulation of wetlands is attempting to solve?** The lack of a problem statement in the legislation clearly setting out the need for regulating wetlands is problematic because without it a performance based regulation is unlikely to be developed. Instead, a definition based regulation, without positive direction will exist. In other words, if the legislation is remedial, as it must be, then what is it that requires remediation? In addition, the lack of explanation of what is meant by the legislative phrase "*changing or interfering in any way with a wetland"* leads to confusion. Uncertainty of this kind should not exist where regulations are to be imposed.
- **Methodology & Data Level of Confidence**: Reconnaissance level methodology and digital remote sensing technology, possibly flown at 20,000 ft., can not possibly identify a landscape feature such as a wetland and determine a precise boundary which meets all four wetland tests; water at or near the surface, direct connection to a water course, hydric soils, and a hydrophytic plant community, at a level of confidence sufficient for legal regulation. The Conservation Ontario, Guidelines for Developing Schedules of Regulated Areas, confirms the difficulty in determining soil types; " *Hydric Soils – in the absence of field investigations the determination of hydric soils can be difficult and it may be necessary to infer this [requisite] condition based on an analysis of mapping, vegetation data, etc. Nevertheless, there are some circumstances where the wetland limits may not be detectable without specific information on hydric soils – such as the boundary between a cedar forest and a cedar swamp*."

  An additional concern with the accurate determination of wetland boundaries is that even if careful field tests of water tables, soils, and plant communities are carried out, the GPS ground sensors now commonly used for establishing fairly accurate geographical coordinates, +/- 1m, cannot reliably be used in forested areas where satellite reception is obscured.
- **Dumping the Accuracy Problem**: The conservation authority O. Reg. 97/04 initiative undertaken to date in Peel deliberately glosses over the mapping difficulties for wetlands, stream meander belts, top of bank and dumps the problem of defending the enjoyment & use of their lands onto the unsuspecting land owner who then must face the costs of proving the presence or absence of a mapped feature and its sensitivity to development, be it a slope, flood plain, or wetland. The conservation authority regulation schedules should meet the same high technical standards demanded of appellants by the Lands and Mines Commissioner [see the Appeals Process section below]. Excuses by conservation authorities of insufficient time and resources for the preparation of

accurate schedules can not be treated as reasonable when the initiative is designed to provide the basis for a legally enforceable permit process.

- **Wetlands as Hazard lands?** Through the amendment to the CA Act wetlands have suddenly become hazard lands where they were not before. This categorical change is contrary to approximately 25 years of debate in Ontario aimed at changing the general cultural perception of wetlands from areas of danger where bad insects, vapours, disease, quick sands, etc. exist, to areas for the public good where increased ecological productivity, diversity of plant and wildlife species and functions important for the hydrological cycle by holding onto precipitation for groundwater infiltration. The Provincial Policy Statements [PPS] 2005 under section 3.1 Natural Hazards, do not list wetlands as hazardous areas or features. However wetlands are listed under PPS section 2. Natural Heritage, and those policies relate to the recognition and protection of the beneficial or public good aspects of wetlands mentioned above, not hazards.

  The regulation of wetlands as hazard lands by conservation authorities is in conflict with the PPS and contributes to confusion, not consistency in the land use planning system. This confused state of affairs is contrary to the clarifying intent of the Red Tape Act which instituted the amendments the Conservation Authorities Act back in 1998.
- **Lack of Procedural Fairness**: The process for wetland identification and determination of a significance rating through the Southern Ontario Wetland Evaluation System is not open and transparent, and is characterized by; no notice to an affected land owner of the results of a wetland evaluation study [local or provincial significant]; no peer review of wetland evaluation field work and resulting reports; wetland files not conveniently available [Held at MNR district offices by appointment and reproduced at own cost]. [Note: recourse to the MNR Natural Heritage Information Centre available on the web is not a useful resource as data may be out of date and incomplete]. An MNR civil servant in the Aurora District Office who signs off on a wetland evaluation report, establishing an area of land as both a wetland and provincially significant, effectively makes a decision affecting landowners which is onerous under the PPS 2005, Section 2.1.3. Provincially significant status automatically becomes a land use prohibition under the PPS and development proposals on adjacent lands [up to120 meters] must demonstrate that there will be no *negative impacts* on the natural features or on their *ecological functions*.
- The conservation authorities claim the PPS is part of their mandate and as a consequence they have the right to prohibit development based on the terms of the PPS. Neither the Planning Act nor the PPS expressly names conservation authorities to be bound by their terms however.
- **Conservation Authority Wetland Identification Not Transparent**: The Southern Ontario Wetland Evaluation System has been established by the Ontario Ministry of Natural Resources on behalf of the province as the official procedure, as amended from time to time for identifying and ranking wetlands. The Southern Ontario Wetland Evaluation System

advocates an approach to wetland evaluation which is characterized by an open file subject to new information, repeat site visits, use of different areas of expertise botanist, fisheries biologist, wildlife biologist, soils science, GIS/ remote sensing expertise, etc. Establishing provincial significance of a wetland is not either a one time site expedition, a desktop re-evaluation of old information or a GIS/ remote sensing exercise.

By comparison to the Southern Ontario Wetland Evaluation System, the wetland identification process by the conservation authorities used in preparing their own O. Reg. 97/04 regulation is not documented in an open or traceable manner.

There is no explanation of the process taken by CVC to determine how identified wetland areas contained in their mapping schedules have met all the four tests contained in Section 28 [25] of the CA Act. The identification of every wetland based on the "deeming" and "inferring" interpretations recommended by Conservation Ontario in Guidelines for Developing Schedules of Regulated Areas, does not meet a plain reading of the legislation.

6. Appeal Process under Conservation Authorities Act:

- **Denial of an Appeal Process**: The Conservation Ontario document titled Generic Regulation - Approval Process Document February 2004, states, "The Act and the anticipated Regulation do not contain an appeal process and it is therefore recommended that the local consultation process anticipate objections and include a clear process for reviewing and documenting concerns raised." Given the extent of lands covered by the proposed conservation authority schedules and the complexity in determining features such as wetlands and hazardous slopes accurately, the challenge of "getting it right" the first time is very high. Both errors and the identification of trivial features are bound to occur through such a mapping process associated with this O. Reg. 97/04 initiative. The high likelihood of errors raises the importance of an easily accessible and user friendly appeal process. Surprisingly, contrary to principles of administrative justice, this process is claimed not to exist!
- The first level of appeal should be through the Conservation Authority Board which approves the policy & specific permit decisions, as recommended by staff, in the first place. Note; it is a common practice by conservation authority boards to hold all appeal hearings "in camera". With this practice people affected by the decisions have no opportunity to observe and hear the evidence and deliberations for appeal hearings.
- The second level of appeal is to the Lands & Mines Commissioner who hears technical/scientific evidence only and does not seek a balance between competing land use policies considerations or considers planning matters. [From Linda M. Kamerman, Mining and Lands Commissioner, Edited Speaking Notes for Speech to UDI March 20th, 2002] If a clear error in law has been made

then a decision by the Lands & Mines Commissioner should be able to be appealed to the Courts.

- **High Technical Evidence Standards**: An appeal to the Lands and Mines Commissioner must be accompanied with sufficient technical, expert information; "*Primarily, one needs an engineer specializing in hydrology, hydraulics and watershed management. Knowledge of the movement of water, surface and ground water, recharge and discharge capacities and functions, stable slope engineering and soil properties may also be relevant. Knowledge of construction engineering to withstand hydrostatic pressures generated by flood waters, if flood waters are going to be involved, is absolutely necessary. Then, there may also be involved a coterie of biologists, or one generalist. There are several categories of relevance to the necessary determinations found in the legislation. Your biologist may require knowledge of wetlands ecosystems, hydrophytic plants and soils [that is waterlogged] endangered species, indigenous flora and fauna and ecosystems in general. The ability to critique and assess an existing wetlands evaluation according to either the Southern or Northern Ontario Wetlands Evaluation would be of assistance in cases where a provincially significant wetland designation is being applied*." [From Linda M. Kamerman Mining and Lands Commissioner, Edited Speaking Notes for Speech to UDI March 20th, 2002]
- **Two Sides for High Technical Standards**: The necessary implication of Commissioner Kamerman's informal statement of requirements for evidence on appeals of individual permit applications before the Lands and Mines Commission is that all of those noted areas of expertise were and are used by the conservation authorities to set their regulatory boundaries and determine their related policies in the first place. And further, that all of the technical and scientific information developed and held by conservation authorities and MNR is readily available to the public and affected landowners.

7. "**Other Areas**"

- Conservation Authorities Act Section 28 (5) The Minister shall not approve a regulation made under clause (1) (c) unless the regulation applies only to areas that are,
  (e) other areas where, in the opinion of the Minister, development should be prohibited or regulated or should require the permission of the authority. 1998, c. 18, Sched. I, s. 12.
- **No Prior Notice**: The idea of "other areas" was to provide for unusual hazard land conditions such as karst limestone formations or leda soils which can shrink or slump unexpectedly, for example. However this legislative provision is becoming controversial in its use to extend the regulatory jurisdiction of Conservation Authorities over substantial new

land areas adjacent to wetlands which were unanticipated either in the EBR public review process for O. Reg. 97/04 or the 1998 amendments to the Conservation Authorities Act through the Red Tape Reduction Act. As there has been no public notice of this intention to regulate such large areas outside of wetlands up to 120 meters, there has been no opportunity for debate or comment from municipalities and affected landowners on the implications of this important interpretation.

- **Unique Legislative Interpretation**: The Conservation Ontario document Guidelines for Developing Schedules of Regulated Areas recommends to all conservation authorities that "other areas" may be interpreted to include setbacks from wetlands up 120 meters as a screening mechanism for requiring an assessment of potential development related impacts. The justification for attempting to regulate "other areas" adjacent to wetlands is by reference to Section 28 of the Conservation Authorities Act which states: "*28. (1) Subject to the approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction, … (b) prohibiting, regulating or requiring the permission of the authority for straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;*"
- **"Changing or Interfering"**: The phrase, "*changing or interfering in any way with a wetland"*, is being interpreted to cover activities outside of wetland areas as defined in the Conservation Authorities Act which may in some way change or interfere with the wetland. The problem with this interpretation is the breadth of land coverage that is encompassed, far beyond a plain reading of the legislative language which must meet all four tests for wetlands as defined in the Conservation Authorities Act. There is no express reference to lands adjacent to wetlands in the legislation.

  If wetlands are really hazard lands then there is no need to regulate adjacent lands at all. On the other hand, if wetlands are areas of important ecological functions to society in general then regulation of adjacent areas may have some validity. Once again there is confusion over what is to be achieved and why, in the proposed regulation of wetlands.
- **Important Discretionary Caveat**: The Conservation Ontario, Guidelines for Developing Schedules of Regulated Areas contains the following caveat regarding the inclusion of lands adjacent to wetlands, " *Whenever adjacent lands exhibit a contributory role in supporting the functions of the wetland, they should be considered as candidate lands for inclusion into the regulation schedule as 'other areas'*". This caveat signals to the conservation authorities the discretionary decision which must be made in identifying each specific wetland and the adjacent lands, if any, for regulatory purposes. No criteria or tests are provided for determining "a contributory role" for adjacent lands. Documentation has not been available at CVC's or TRCA's Open Houses to demonstrate how the

"contributory roles" of adjacent lands have been determined for regulatory purposes.

Without documentation the public and landowners in particular have no idea what activity or development may be prohibited or conditions applied on their lands. Nor do municipalities.

- **No new Interpretive Policy**: There is no accompanying text to the proposed regulations under O. Reg. 97/04 available at the Public Open Houses describing how these "other areas" will be treated once regulated, only the existing Fill, Construction and Alteration to Watercourses policies have been provided. The inclusion of 120 meter setbacks in mapping in order to regulate these large land areas through conditions on permits requires a whole new set of Board approved policies based on proven ecological science not just general theory or hunches about "contributory roles".
- **Confusion of Regulatory Purpose:** There is a glaring philosophical conflict in the approach taken, on the one hand to regulate wetlands as hazard lands for building purposes due to their unstable soil characteristics [a matter already adequately covered under the Ontario Building Code] and wetlands as beneficial natural features contributing to important ecological functions on the other. If wetlands are hazard lands due to soil problems then there is no purpose or justification in regulating any adjacent lands especially up to 120 meters away from the "hazardous" soils of concern. If wetlands are important natural features then why are they being treated as hazard lands in the same manner as unstable slopes, flood plains, Great Lake Shorelines, etc. which hold inherent dangers to life and property associated with them?

8. Confusion and conflict with the Planning Act , Official Plan/Zoning and Conservation Authorities Act:

- **'Tabla Rasa'**: There is implicit but hugely important assumption in the addition of wetlands and the incorporation of 120 m setbacks into regulations that conservation authorities are now primarily in the land use control business and not natural resource management according to their Section 20 Objects [see above]. This land use assumption is further demonstrated by the various conservation authority Natural Heritage Planning and Watershed Management Strategies [see; Watershed Planning From Recommendations to Municipal Policies; A Guidance Document] undertaken to provide direction for managing urban growth. These initiatives seem to be being conceived and implemented 'tabla rasa' as if there were no municipal official plans, zoning or Municipal Act by-laws such as woodland & fill in place. The Town of Caledon fill and woodland by-laws have a proven history of effective environmental protection and flexibility and have been developed and put in place for many years. Further stacking up of permits on top of each other is unnecessary and causes duplication.

- **Balance versus Narrow Technical Focus**: The scope and philosophy of decisions made under Section 28 of the Conservation Authorities Act are quite different in nature from decisions under the Planning Act. Focus under Section 28 is on the "*inherent capacity of that land in that location, in relation to its surroundings"* to withstand development impacts. There is no broad seeking of a balance between competing policies. "*For purposes of an application under section 28, Official Plan designations or zoning are not relevant. Just to be clear, lands having a certain designation for municipal planning purposes such as residential, industrial or commercial, does not mean that permission under section 28 must follow as a foregone conclusion. For purposes of development, which includes most kinds of construction as well as the placement of fill, for purposes of straightening or channelling a watercourse or interfering with a wetland, the overriding considerations which govern are determinations concerning the inherent capacity of that land in that location, in relation to its surroundings, to withstand in a physical sense, the proposed development, alteration or encroachment*." [From Linda M. Kamerman Mining and Lands Commissioner, Edited Speaking Notes for Speech to UDI March 20th, 2002]

  The narrow technical focus of Section 28 decisions are contrasted clearly by the statements of direction contained in the PPS 2005 which demand the consideration of all the policies as a whole and the seeking of an appropriate balance. "*The Provincial Policy Statement is more than a set of individual policies. It is intended to be read in its entirety and the relevant policies are to be applied to each situation. A decision-maker should read all of the relevant policies as if they are specifically cross-referenced with each other. While specific policies sometimes refer to other policies for ease of use, these cross-references do not take away from the need to read the Provincial Policy Statement as a whole*." [from Part Three: How to read the Provincial Policy Statements in PPS 2005] Implementation Section 4.3 of the PPS 2005 states; "*This Provincial Policy Statement shall be read in its entirety and all relevant policies are to be applied to each situation*. The PPS envision a trading off between competing priorities while the Conservation Authorities Act Section 28 approach intends a more categorical approach to the determination of the physical capacity to withstand development. These are two fundamentally different perspectives about how decisions are to be made.

<u>Some Specific Sources of Confusion</u>:

- The setback distance of up 120 metres originated in the 1987 Wetlands Provincial Policy Statement as a recommended distance used to trigger the study of potential impacts on wetlands stemming from a proposed development. CVC is proposing to use the 120 meter setback uniformly for all wetlands regardless of significance while

TRCA is proposing to use 120 meters for significant wetlands and 30 meters for locally significant wetlands.

- It is difficult to compare municipal zoning designation lines with the proposed 97/04 CA regulatory mapping.
- There is confusion between Conservation Authority regulations and official plans for the various setback distances for natural environmental features, flood plain, regulation limits + 15m allowances, etc. Municipalities and conservation authorities should discuss the potential to harmonize environmental and hazard land setbacks wherever possible.
- Environmental feature setbacks 30 to 120 m may trigger unnecessary minor variances for development or building within the setbacks due to "applicable law" provision under Ontario Building Code 1133 1(c)
- There is a problem of double/triple permitting, both the Planning Act and Conservation Authorities Act and in some cases Niagara Escarpment Plan, with requirements for different timelines and different setbacks. This stacking up of permissions, fees, different requirements and duplication may erode the public's acceptance of environmental regulations. Measuring the benefits of all this regulatory activity becomes problematic.
- O. Reg. 97/04 CA regulations may become a constraint to achieve urban intensification where setbacks artificially increase the area of un-buildable land [gross density increases with environmental regulations]
- There is now a chicken or egg problem; does a development proponent make a re-zoning application first or a CA permits first where one may thwart the other?

8. Requests of Council:

1. Conservation Authority Mapping Depiction:

The proposed regulatory mapping is vague and confusing by not distinguishing between flood plains, slopes, wetlands and other hazardous areas. Landowners and municipal planning staff cannot determine what policy tests may be applied to a specific parcel of land. Request the conservation authorities to depict the specific hazard on the schedules.

2. Slopes & Soils:

I. **Request our Conservation Authorities to map "hazardous" slopes accurately in the Town of Caledon according to the high technical standards for evidence required by the Lands and Mines Commissioner and omitting trivial features such as landscape berms and stable soils exhibiting no observable erosion or potential land slumping hazards.**

II. **Establish and publish the criteria for determining a hazardous slope condition to be used both for mapping and for site specific evaluations.**

3. **Wetlands:**
    I. **Request our Conservation Authorities to map wetlands and their boundaries, as defined in the Conservation Authorities Act, in the Town of Caledon accurately, according to the high technical standards for evidence required by the Lands and Mines Commissioner. This shall require site visits and notification of landowners as the boundaries can not be determined from algorithms for digital remote sensing.**
    II. **Establish a readily available and inexpensively accessible wetland data base at the Town of Caledon offices for the benefit of both Caledon land owners and staff.**
    III. **Confirm the correct reading of the Conservation Authorities Act to intend wetlands as hazard lands.**
    IV. **As the "other lands" interpretation is not supported explicitly in the legislation, eliminate any wetland setbacks from the proposed conservation authority O. Reg. 97/04 schedules for the Town of Caledon.**
    V. **Ensure that a fair & open process and policy text for determining "interference" for wetlands be developed prior to approval of any new regulation.**
    VI. **As the improved mapping and policy development will take some time and resources, request the Minister of MNR to consider the existing flood plain and hazard land mapping, O. Reg. #146 CVC, O. Reg. #158 TRCA, O. Reg. #153 Simcoe CA., and O. Reg. #164 Nottawasaga CA. as sufficient regulation for an additional interim period of at least one year.**

4. **Review Conservation Authorities:**
    I. **Review the current legislation and conservation authority practices to ensure there is a useable, open, transparent appeal process for all land owners.**
    II. **Institute a municipal review of what the Objects of our conservation authorities may encompass and secondly; what the Town of Caledon, in the context of the Region of Peel, want our conservation authorities' Section 20 program to include and achieve for us.**
    III. **Clarify the role of Conservation Authorities in land use planning to increase value added activity, and reduce duplication which causes unnecessary costs to the taxpayer, in the context of Municipal Official Plan & Zoning provisions under the Planning Act, Municipal responsibility under the PPS, and the Town's Fill By-law under the Municipal Act.**
    IV. **Research and clarify the role of Conservation Ontario in public policy development and implementation.**

5. **Develop an individual landowner compensation mechanism for the costs of determining the type of hazard or natural feature, if any are found, and the boundaries of it.**

6. **Formulate a made in Caledon, Community Based Approach to Sustainability as a viable alternative to the confiscation of our landscape through Oak Ridges Moraine, Greenbelt, Niagara Escarpment, Places to**

Grow Plans and top down regulatory schemes such as this "Generic" initiative.

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