A REGULATORY MINEFIELD

SUMMARY OF EVENTS FOLLOWING ENACTMENT OF THE RED TAPE REDUCION ACT AND THE COMING INTO FORCE OF THE AMENDMENTS TO THE CONSEVATION AUTHORITIES ACT, ESPECIALLY SECTION 28.

After passage of the amendments to the CA Act in late 1998, the Ministry of Natural Resaourcs (MNR) took 6 years to come up with a "generic regulation", approved by Cabinet, as required by Section 28. This was Ontario Regulation 97/04 which went into effect May 1, 2004 following on the heels of the provincial election. Since then someone somewhere has instructed each CA to have their revised draft regulation done, endorsed by Conservation Ontario's "Peer Review Committee" procedures, and sent thence directly to MNR to complete the Ministerial approval process, in order to have the approved the new regulatory regulation in place by May 1, 2006. Or else, (someone has threatened) lose their regulatory authority.

In the past few weeks each CA has been hosting last minute public presentations, not meetings, to explain that their new "generic regulation" is simply a means of updating the previous regulation, known as "Fill" regulations. The public presentations guidance directive from Conservation Ontario to members was at best the very minimum considered necessary to secure ministerial approval in this respect.

The problem stems from the definition of "wetland" in the "Natural Heritage" Section of the Provincial Policy Statement under Ontario's Planning Act, on the one hand, and the new definition of "wetland" in the revised CA Act of 1998. In short, the CA's are choosing to use the PPS definition instead of the one in their own Act for the purposes of defining the areas subject to CA regulatory control. This approach provides an enhanced area of regulatory jurisdiction, well beyond that mandated by the CA Act definition, and moves CA's into an entirely different and expanded regime of regulatory control and land use planning policy, which obviously they very much desire. This subliminal strategy if allowed to proceed without intervention significantly overlaps and duplicates existing land use controls and planning presently residing in the hands of municipalities, and coordinated with other agencies including CA's. There are tax and new cost implications for everyone as well.

The PPS definition deals with areas that have been evaluated in terms of among other things "Social" and "Special Features" factors related to PPS "Natural Heritage", in turn related to recreation, education, hunting, trapping, species at risk and other "natural heritage" values, built into the PPS "wetland" evaluation process and definition. (Wetland Evaluation Manual, 3rd Edition). The CA Act definition focuses on Natural Hazards, and these are also included and defined in the Public Health and Safety Section of the PPS, e.g. flooding, erosion and so on, where the sitting of development should be prohibited or regulated because of risks to human life and property.

Conservation Ontario produced a very much "in house" "restricted" Technical Manual setting out how PPS "wetlands" might be used in lieu of those prescribed by the CA Act, and how the PPS "adjacent land" is to be incorporated by referring to the "adjacent land" in Official Plans as being the "other areas" referred to in Section 28 of the new CA Act. It was also pointed out that the Official Plans from which these "wetlands" were being imported, already had gone through a public review process, thus further public consultation would be unnecessary.

Details of the drafting process have been exceedingly obscure. Even the Municipal representatives appointed to the CA Board have been less than fully informed. Similarly most Municipalities are unaware of the implications of what has been going on. In recent weeks a rather benign handout has been circulated (narrowly). No mention until just recently that the "wetlands" shown in areas subject to CA regulatory control would simply be those as defined according to the Provincial Policy Statement. There was **never any mention that the CA Act defined CA "wetlands" differently for the purposes of CA regulatory contro**l. Further no mention that as a matter of course, **the 120 metre "adjacent land" in O.P. schedules would be the "other areas" referred to the new Section 28 of the CA Act,** instead of the maximum 15 metres stated in Ontario Regulation 97/04.

Some may recall that among the many election issues of the day, two pertained to the Planning Act. One was "shall be consistent with" vs. "shall have regard to", and the second was 120 metre distance of the boundary line of the "adjacent land" area from the boundary of the "wetland". True to its election promises, the newly elected Progressive Conservative government revised the PPS to read "shall have regard to", and decided the distance pertaining to adjacent lands was to be left up to municipalities.

In this latter regard the late Ottawa Carleton then decided 30 metres (endorsed by the Rideau Valley Conservation Authority of the day) therefore would be sufficient for the purposes of the Planning Act under their jurisdiction. But then MNR appealed this 30 m. decision to the OMB. This matter eventually went to mediation where it was finally settled by an agreement that the 30 m. would be acceptable in the countryside for rural residential severances, but it would be 120 m. for "Tim Horton's parking lots" or subdivisions. The City of Ottawa O.P. still refers in part to a 30m. buffer "adjacent land" zone around "wetlands" under its jurisdiction.

To exacerbate matters for some in the countryside, MNR evaluators have a technique they have incorporated into their PPS evaluation process referred to a "complexing". Where there are insignificant or unevaluated "wetlands" not too far (750 metres) from a "significant" one, these may be complexed with the "significant" one without further assessment or evaluation. It is a very subjective tool, and seems to have been employed after a fact as a method of thwarting some who offend or who expresses an interest in using their land in a manner or for a purpose that is not in accord with local political, community, or other bureaucratic wishes. No other reason need be given.

No review of the "generic regulations" now being reviewed is available, nor does the CA Act provide for an appeal process. No appeals allowed. The Minister's approval is final.