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**COMMENTS ON A NEW APPROACH
TO LAND-USE PLANNING**

CIELAP Brief 94/3

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Comments on "A new approach to
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I. INTRODUCTION

The Canadian Institute for Environmental Law and Policy (CIELAP) closely followed the work of the Commission on Planning and Development Reform over the two years of its existence.¹ Consequently, the Institute was pleased to see the government of Ontario's prompt response to the Commission's recommendations contained in the consultation paper A New Approach to Land Use Planning. In general the government appears to have followed the Commission's recommendations quite closely and, as a result, we are strongly supportive of the paper's general direction. However, there are a number of specific concerns which we believe the government should address prior to the implementation of the measures proposed in the consultation paper.

II. PROPOSED AMENDMENT TO SECTION 3(5) OF THE PLANNING ACT.

The consultation paper proposes that Section 3(5) of the Planning Act be revised to require that planning authorities' decisions "shall be consistent" with provincial policies made under the Act. CIELAP is strongly supportive of an amendment to the Planning Act of this nature. The current "have regard to" language of this section is widely regarded to be too weak to have a significant effect on planning authorities' behavior with respect to provincial policy statements made under the Act. The proposed amendments would help to ensure that planning authorities make decisions consistent with the goals, objectives, and requirements of the provincial policy framework. This section of the Planning Act should also be amended to require that all planning authorities' decisions be consistent with the purposes of the Act.

III. PROPOSED COMPREHENSIVE POLICY STATEMENTS

A. Natural Heritage, Environmental Protection and Hazard Policies

GOAL 1

CIELAP is strongly supportive of the goals of this group of policy statements. However, their goals and contents of these statements should not be limited to the

protection of existing natural heritage features. The restoration, improvement and enhancement of these features, and of biodiversity, should also be articulated as a goal of these policy statements, and incorporated into the language of each individual statement.

CIELAP is very supportive of the proposed policies 1.1 and 1.2. However, a significant effort will be required by municipalities and the Ministry of Natural Resources to ensure that all significant ravines, river, stream, and natural corridors, habitat and other areas covered by the policy are identified and mapped. This responsibility should be established explicitly, either through the accompanying implementation policy statement, or within policy statements 1.1 and 1.2 themselves.

Policies 1.3 and 1.4 will permit some development in Areas of Natural and Scientific Interest (ANSI's), groundwater recharge areas, significant wildlife habitat, and riparian zones provided that there is no adverse affects on features and functions. More specific definitions of "adverse affects" than those provided in the definitions section of the policy statements will have to be developed in relation to the categories of land covered by these policies for them to be fully effective. Clear criteria must be established to distinguish between areas in which no development will be permitted and those in which "compatible development" will be permitted.

Policy 1.5 requires that development which results in a net loss of fish habitat in the same watercourse will be permitted. However, the definition of no net loss permits "appropriate compensation" for lost habitat as a form of "no net loss." This appears to imply that habitat can be destroyed provided that financial compensation is provided. This seems an inappropriate definition of "no net loss" and should be deleted from the definition. Similarly, the allowance of mitigation measures to "decrease the impact" of development on fish habitat under the definition of "no net loss" seems to suggest that some loss of habitat is acceptable. Consequently, this reference should also be removed from the definition of "no net loss."

GOAL 2

CIELAP is strongly supportive of proposed policies 2.1 and 2.2. These statements prohibit new development within the Regulatory Flood Standard, the Regulatory Beach Standard, and on lands within the 100-year erosion limits of ravines, river valleys and ravines.

The Institute also supports Policies 2.3 and 2.4, which restrict development on hazardous sites and contaminated lands. At the same time, we note that the implementation of these Policy statements will require a more systematic approach to the identification and documentation of such lands, and to their reclassification if sites are rehabilitated or remediated, than is currently the case. This matter should be addressed

by responsible agencies, particularly the Ministries of Natural Resources and of the Environment and Energy, as soon as possible.

B. Community Development and Infrastructure Policies

These policies are among the most important in the package of proposed policy statements presented in the consultation paper. We are especially supportive of statements 2, 3, 5 and 7 regarding urban form and intensification. However, this section's treatment of new development on unserviced lands is problematic. Policy statements 8, 10(d), 11(d), and 17(d) which make reference to various forms of septic systems, are of particular concern in this sense.

Septic systems were identified by the Commission during the course of its work as posing a significant threat to the environment and public health.² Consequently, their use should not be permitted in extensions to built-up areas as is proposed in policy 10. If proper infrastructure planning has taken place, there should be no need for septic systems in such locations.

The use of septic systems may be necessary in rural, recreational and remote location. However, clear definitions of what constitutes "long term suitability of sites" for septic systems will have to be developed by the Ministry of the Environment and Energy to accompany the proposed policy statements. Given the extent of the problems identified with the use of septic systems in the past, these definitions should be quite restrictive. A timetable for the development of such a guideline by the Ministry should be included either within the policy statements related to the use of septic systems, or within the implementation policy statement which is proposed in the consultation paper.

D. Agricultural Land Policies

The policies in section D of the consultation paper, along with certain provisions of section B, are intended to provide for the protection of agricultural land from development. Unhappily, policies B10(f) and B11(f) only provide absolute protection for specialty crop land. Given the importance and relative scarcity of prime agricultural land in Ontario, clear protection from development should be provided for Class 1 and 2 lands, as well as specialty crop lands.

In the event that the provincial government will not implement such protection, then clear guidance must be provided by the province in terms of what criteria have to be met to establish that there is "no alternative" to development on a prime agricultural area. A timetable and responsibility for the establishment of such a guideline should be provided either within the policy statements made under goal D, or within the proposed implementation policy statement.

E. Conservation Policies

These policies, in combination with some of the policies in section B have the potential to have a significant positive effect on urban design. They are strongly supported by CIELAP. However, the government's rationale for their separation from the contents of section B is unclear. The policies contained in section E should be integrated into the community infrastructure and development policies contained in section B. This would clearly indicate that energy conservation, water conservation and waste reduction, reuse and recycling are to be fully incorporated into community and infrastructure planning and development.

G. Interpretation and Implementation

Interpretation

This section states that conflicts between policy statements are to be resolved by clear meaning of words. The example following this statement appears to suggest that where there are conflicts between policy statements which appear to promote development (e.g. F1) and those which require prohibitions on development, the prohibition on development should rule out all other uses. This intention should be made clear by a direct statement within the interpretative policy statement that prohibitions on development for the purpose of preserving ground and surface waters, natural heritage and other environmentally significant features, shorelines, and fish and wildlife habitat will rule out all other uses.

Implementation

The Implementation policy statement contains a number of highly problematic elements. In particular, with the exception of policies 1 (time of taking effect) and 3 (affect on approvals in process), the principles and processes identified in this section should be incorporated into amendments to the Planning Act. This is especially important with respect to policies 2 (implementation through plans, etc.), 4 (preparation of guidelines), 5 (provision of information), 6 (relationship to other statutes), 7 (contents of municipal plans), and 8 (environmental impact studies).

Given the scope and importance of some of these policies, such an approach would be more consistent with the principles of administrative law and provide clearer direction to municipalities. In addition, prior to its incorporation into the Planning Act Implementation policy 8 (environmental impact statements) will require a much more detailed development of the applicability and contents of environmental impact statements. A much clearer definition of what is meant by the term "an infrastructure subject to the Planning Act which is not authorized under an environmental assessment process" and for which an environmental impact statement will be required, is especially

important in this context. The relationship between such a provision and the requirements of the Environmental Assessment Act must also be clarified.

Furthermore, as noted elsewhere in this submission, specific responsibilities and timetables for the preparation and provision of relevant guidelines and information by provincial agencies necessary for the implementation of policy statements should be provided, either within the implementation policy statement, or as components of the comprehensive policy statements themselves.

We regard the content of implementation policy 3 as a fair approach to undertakings which are already in the approval process when the new policy statements come into force.

IV. INTERVENOR FUNDING AT ONTARIO MUNICIPAL BOARD HEARINGS

The consultation paper suffers from a significant weakness in the sense that it makes no reference to the need to bring Ontario Municipal Board hearings under the provisions of the Intervenor Funding Project Act. Given the potential importance of the Ontario Municipal Board in the implementation and enforcement of the proposed policy statements, particularly in the context of the proposed amendment to section 3(2) of Planning Act. An amendment to the Intervenor Funding Project Act to provide for intervenor funding to public interest intervenors in Municipal Board hearings should be presented along with of the government's proposed package of amendments to the Planning Act. The provision of such funding was proposed by the Commission on Planning and Development Reform in its Final Report.³ The province should also take early action on the Commission's recommendations regarding the status of unincorporated associations before the Board and on the status of Board orders.⁴

V. CONCLUSIONS

The Consultation paper is an important step towards the implementation of a comprehensive set of policy statements under the Planning Act. This has long been regarded as being essential to an environmentally sound land-use planning system for Ontario.

CIELAP is strongly supportive of the proposed amendment to the Planning Act regarding the consistency of planning authorities' decisions with provincial policy statements, and of the general direction and content of the proposed policy statements. However, the components of the policy statements limiting the use of septic systems, and protecting prime agricultural land, should be strengthened. The criteria for allowing "compatible development" in natural heritage areas should also be clarified. In addition, specific responsibilities for the development by provincial agencies of guidelines and

information necessary to implement the policy statements should be established within the comprehensive policy statements themselves or as part of the implementation policy statement.

A number of the key elements of the implementation policy statement should be presented as part of a comprehensive set of amendments to the Planning Act regarding the land-use planning process, rather than being issued as policy statements to be made under the Act. In some cases, particularly with respect to the use of environmental impact statements, the proposals need to be developed in more detail prior to their incorporation into the Act. Finally, provision should be made for the establishment of intervenor funding for public interest intervenors at Ontario Municipal Board Hearings.

CIELAP welcomes the government's indications of its intent to move quickly in this area, and looks forward to further opportunities to contribute to the overhaul and reform of Ontario's land-use planning system.

ENDNOTES

1. See Winfield, M., Commentary on the Commission on Planning and Development Reform in Ontario's Draft Report (Toronto: Canadian Institute for Environmental Law and Policy, February 1993).

2. See A. Silversides, "Septics Issue 'A Sleeping Giant,'" New Planning News Vol. 1. No. 3., December 1991.

3. J. Sewell, G. Penford, T. Vigod, New Planning For Ontario (Toronto: Commission on Planning and Development Reform in Ontario, 1993), Recommendation 85.

4. Ibid., Recommendation 84.