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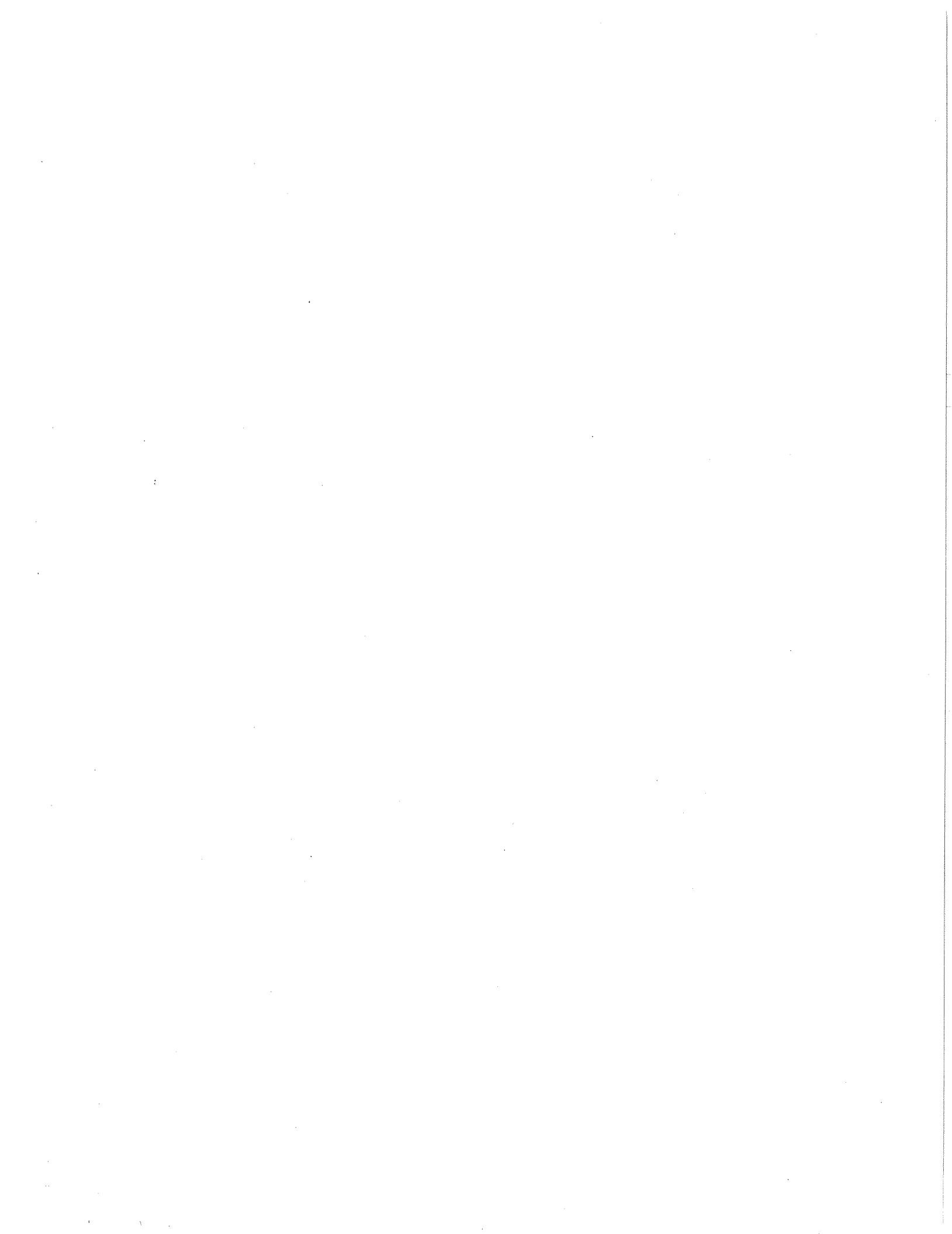
**"SUBMISSIONS OF CELA TO
ENVIRONMENTAL ASSESSMENT ADVISORY
COMMITTEE REGARDING PROCEDURES FOR
IDENTIFYING ENVIRONMENTAL RESOURCES"**

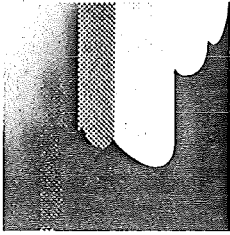
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July 29, 1992

BY FAX

Dr. Philip Byer
Chairman
Environmental Assessment Advisory Committee
65 St. Clair Avenue East, 7th Floor
Toronto, Ontario
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Dear Dr. Byer:

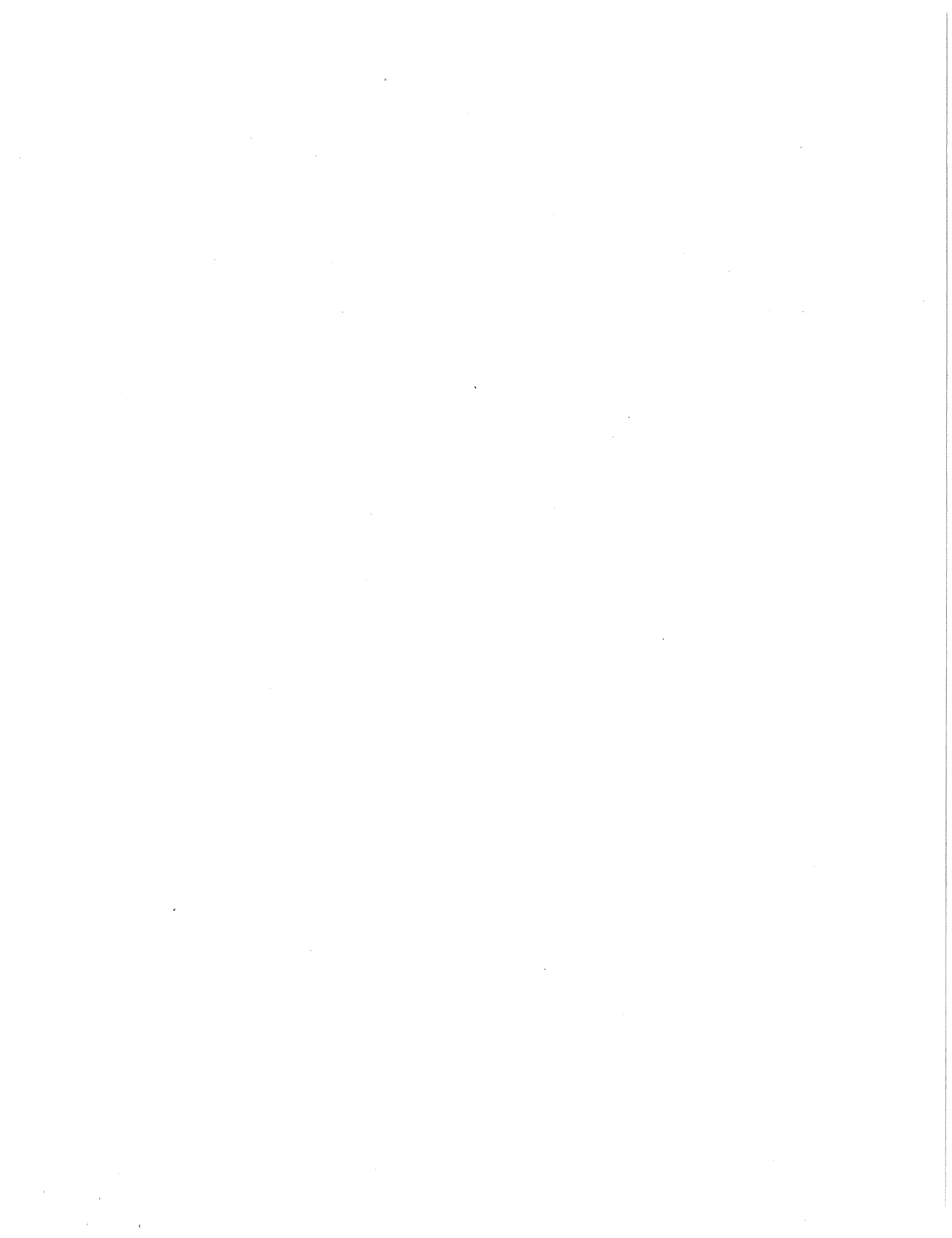
**RE: REFERRAL #51: PROCEDURES FOR IDENTIFYING
ENVIRONMENTAL RESOURCES**

I am writing to thank you for inviting CELA to participate in the initial meeting to discuss procedures for identifying environmental resources affected by development proposals.

As you know, time constraints at the meeting prevented CELA from fully discussing its views and recommendations respecting this important matter. Accordingly, I am writing to briefly outline some preliminary proposals to ensure that environmental resources are identified and protected in a timely, efficient and effective manner.

In light of issues raised at the meeting, this submission is divided into four main parts:

- scope and content of the review contemplated by the Environmental Assessment Advisory Committee (EAAC) in this matter;
- general principles respecting the identification and protection of environmental resources;
- short-term measures to identify and protect environmental resources; and
- long-term measures to identify and protect environmental resources.



PART I - SCOPE AND CONTENT OF THE EAAC REVIEW

Based on our understanding of your comments at the meeting, there appear to be two choices facing the Committee in conducting this review: either the Committee itself can develop and recommend detailed procedures for identifying environmental resources, or the Committee can simply recognize and encourage ongoing initiatives by various ministries and agencies for identifying environmental resources.

In our view, the public interest would be best served if the Committee were to adopt the former approach and recommend procedures for immediate and long-term implementation. Significant environmental resources are at considerable risk where such resources are unknown to or improperly identified by planning authorities and commenting agencies. For example, since the Creditview Bog had been improperly identified as a Class 6 wetland, the municipality approved subdivisions within the area. Similarly, the Class 1 (provincially significant) Leitrim Wetlands near Gloucester had not been inventoried or classified by the Ministry of Natural Resources (MNR) before Ministry staff decided not to object to a large-scale subdivision proposed within the wetland. Similar examples exist respecting headwater areas, woodlots, Carolinian forest, riverine corridors, habitat for rare or significant flora and fauna, and other significant environmental resources.

These examples clearly emphasize the need to ensure that the location, significance, value and function of environmental resources are properly identified and protected long before approvals are granted and bulldozers are grading the site. CELA strongly submits that Ontario can no longer afford to allow environmental resources to "slip through the cracks" and become casualties of the planning process due to shoddy or non-existent inventory work.

For these reasons, we believe that to the greatest extent possible, the Committee should attempt to develop and recommend procedures for identifying and protecting environmental resources. We recognize that this approach may involve some overlap with the work of the Commission on Planning and Development Reform; however, we doubt that EAAC would be duplicating much of the Commission's work for a number of reasons. First, the timeframe for the reporting and implementation of the Commission's proposed reforms is such that there is an undeniable need for interim measures to be undertaken as soon as possible. Second, while the Commission has recognized the need for reform in relation to mapping and information, it is unlikely that the Commission will get into the level of detail contemplated by the EAAC review. Finally, we submit that the Commission would benefit from a series of focused and detailed recommendations from EAAC respecting this matter. Similarly, we suggest that a detailed EAAC report will likely expedite the development and implementation of current governmental initiatives, many of which appear to be proceeding at a glacial pace. Accordingly, we submit that EAAC should not be reticent about developing detailed recommendations in order to bring about long-overdue and urgently required reform in this area.

We would also recommend that EAAC consider whether there are any ecological reasons to keep the review focused on land use planning on private land in southern Ontario, as opposed to land use planning on public land within southern and northern Ontario. On this issue, we submit that environmental resources must be properly identified and protected regardless of whether they occur on private or public land. For example, the fate of a Carolinian stand or a groundwater recharge/discharge area should not depend on whether the resource falls under the jurisdiction of the Planning Act, Public Lands Act or other legislation. If Ontario is to implement integrated, ecosystem-based land use planning, then a comprehensive and coordinated approach to identifying environmental resources is required for both private and public lands. This broad approach should permit holistic landscape-level planning and management (see below), which is required in the long-term to protect, conserve and restore environmental resources across the province. For this reason, CELA submits that EAAC should not focus the review exclusively on Planning Act procedures; instead, EAAC should attempt to identify mechanisms that may be applicable to both private and public land across Ontario.

II. GENERAL PRINCIPLES

We agree with comments at the meeting which suggested that municipalities should be primarily responsible under the Planning Act for assembling an environmental database and incorporating this information into official plans and other planning instruments. However, we note that some municipalities cannot or will not carry out such work due to a lack of staff, expertise or funds. Accordingly, we submit that provincial ministries and agencies must play a strong role in providing inventory information, technical assistance, and funding to municipalities. This is particularly true with respect to environmental resources (i.e. airsheds, watersheds or riverine corridors) which bisect or transcend municipal boundaries.

In our view, there are three major objectives which must be achieved in order to secure the identification and protection of environmental resources:

1. Uniform or standardized definitions of specific environmental resources must be developed in order to ensure consistency, certainty and predictability within the planning process. Otherwise, environmental resources may be defined differently and accorded varying levels of protection by individual municipalities. We believe that provincial ministries and agencies should take the lead in developing such definitions and requiring their use in official plans (i.e. by specifying minimum inventory requirements for official plans).

While it is beyond the scope of this preliminary submission to offer detailed definitions for each environmental resource in Ontario, we would suggest that standardized definitions for the following terms should be incorporated into planning instruments:

(a) wetland

- locally significant
- regionally significant
- provincially significant

(b) woodlot

- locally significant
- regionally significant
- provincially significant

(c) fisheries

- major fish communities by lake/streams
- bait fish lakes
- spawning/nursery areas
- migration areas/routes
- headwater lakes
- food supply areas

(d) wildlife habitat

- waterfowl nesting/staging areas
- heronries
- raptor nests
- important habitat for furbearers and game species
- important habitat for non-game species
- migration routes/travel corridors

- important habitat for rare, threatened or endangered species

(e) significant communities of flora/fauna

- old growth stands

(f) unique or significant geological features

- ravine
- riverine valley
- escarpment/cliff
- shorelands/riparian zones
- moraine/esker

(h) unique or significant hydrogeological features

- groundwater recharge/discharge area;
- floodplains
- potable water sources
- significant aquifers

(i) Areas of Natural and Scientific Interest (ANSI)

- approved/candidate areas
- regionally significant
- provincially significant

(j) prime agricultural land

- CLI Class 1 - 3
- specialty crop land
- areas of local agricultural significance

(k) sites of cultural or archaeological interest

- cultural landscapes
- structural remains
- archaeological sites
- traditional use sites

(l) forests

- protection/production forest
- tree research/improvement areas

(m) wild rice production areas

(n) mineral/aggregate deposits

(o) recreational/visual resources

- national/provincial/municipal parks
- hiking/nature trails
- canoe routes/access points
- significant viewsheds

Please note that the above list is not exhaustive but is intended to illustrate the many kinds of environmental resources which must be defined and mapped by planning authorities. We also recognize that some of these definitions (i.e. wetlands) already exist, but we wish to emphasize that these definitions must all be developed and integrated within a comprehensive framework for identifying environmental resources.

2. Once common definitions have been developed, planning authorities must undertake comprehensive inventories to determine whether such resource features exist within their jurisdiction. For example, municipalities should be required to identify environmental resources in their official plans (i.e. by appropriate designations in separate maps or overlays). CELA recognizes, however, that publicizing the precise location of certain resources or features (i.e. endangered species habitat or native burial sites) may be counter-productive to the conservation

of such values, and we would expect in such exceptional cases that the sites will be protected, but they might not be publicly mapped.

To assist in the required inventory work, it will be necessary for provincial ministries and agencies to integrate their existing inventories; to make such information accessible to or retrievable by municipalities; and to develop methodologies for identifying (and assessing the significance of) various environmental resources. Acceptable methodologies and criteria for assessing direct and cumulative impacts upon environmental resources should also be developed to avoid reliance upon self-serving (and often inadequate) impact studies carried out by developers and their consultants. This is not to say that proponents should no longer be required to conduct biophysical inventories or impact assessments; in fact, the onus should be on proponents to carry out studies to determine whether a particular site can be developed without jeopardizing significant environmental resources, both on-site and off-site. However, municipalities and commenting agencies should have access to accurate independent information (i.e. baseline data) about a site's natural values and features long before proponents apply for planning approval.

In addition, information on environmentally significant land uses and infrastructure must be collected and mapped, particularly with respect to:

- (a) roads/railways/utilities/pipelines/ transmission lines
- (b) sewage/waste disposal sites
- (c) airports/air strips

It is our understanding that much information on environmental resources, land uses and infrastructure already exists within provincial ministries and agencies (i.e. the Ministry of Natural Resources, Ministry of Environment, and Conservation Authorities). However, it is necessary for these information systems to be integrated, updated, and incorporated into planning documents, particularly at the municipal level.

3. After the location and significance of environmental resources have been assessed and mapped, then planning authorities must develop substantive protection for such resources into their planning instruments. It goes without saying that merely identifying environmental resources does not assure their immediate or long-term protection. Therefore, CELA strongly submits that not only should significant environmental resources be identified upfront, but they must also be protected against pre-approval site preparation and ill-advised planning approvals. As described below, this will require a variety of regulatory and non-regulatory tools. Thus, by the time an applicant applies for a planning approval, any significant

environmental resources upon the subject-property and adjoining lands should be well-known to the planning authorities and well-protected in law.

III. SHORT-TERM MEASURES FOR IDENTIFYING ENVIRONMENTAL RESOURCES

In our view, there are a number of short-term measures which can be undertaken within the next 1 - 2 years to expedite the identification and protection of environmental resources. These may be summarized as follows:

- 1. Develop concise definitions of environmental resources which should be identified and protected within planning processes.** Priority should be given to defining environmental resources and natural features (i.e. wetlands, agricultural lands, woodlots, coldwater fisheries, and headwater areas) that are particularly sensitive to development or that have experienced critical losses or degradation within Ontario. These definitions may be given to planning authorities as definitions under the Planning Act or, in the interim, in policy statements or guidelines.
- 2. Coordinate and integrate existing inventories conducted by ministries and agencies to produce centralized and accessible databases respecting known environmental resources at the local, regional and provincial level.** As noted above, many ministries and agencies already possess considerable information about certain resources (i.e. Forest Resource Inventory (FRI) maps, Aggregate Resource Inventory Program (ARIP) surveys, floodplain mapping, ANSI mapping, wetland mapping, soils mapping, etc.), but little of this information appears to be integrated on an inter-ministerial basis; organized on an ecosystemic basis; or usable on a variety of different spatial scales. Existing inventories possessed by municipalities should also be integrated and coordinated.
- 3. Require municipalities to expand and enhance the environmental databases underlying regional and local official plans.** As new official plans are developed and old plans are amended, municipalities should be required by law to prepare proper and comprehensive environmental inventories which should be reflected in the official plan via appropriate designations and protective policies. In the short-term, municipalities should be provided with access to existing governmental inventories which apply to their territorial jurisdiction. However, there are undoubtedly various gaps and deficiencies in these existing inventories, which means that municipalities will have to undertake their own inventory work. In theory, this could be accomplished through municipal staff or consultants; however, under the current fiscal climate there may be few municipal funds available for such work. Accordingly, municipalities should be creative in designing low-cost methods to inventory their jurisdictions, and should consider using local residents and non-governmental organizations (i.e. naturalist clubs, ratepayers associations, local environmental groups) to carry out data collection and mapping exercises.

Several recent projects demonstrate the efficacy of utilizing citizens to carry out both large-scale and local environmental inventories:

- the comprehensive Atlas of the Breeding Birds of Ontario (Federation of Ontario Naturalists/Long Point Bird Observatory, 1988) was compiled through the field work of over 1,300 volunteer naturalists who surveyed almost 300 nesting bird species in Ontario's 1,068,587 square km landmass. In particular, southern Ontario was divided into 10 km x 10 km grid units, and northern Ontario was divided into 100 km x 100 km units, and in each unit a specified level of field work was carried out. This massive project (over 180,000 hours of field work) was carried out with the support of a variety of governmental and corporate sponsors. A similar atlas of Ontario's mammals is currently underway.

- the City of Ottawa successfully completed a pilot project to test the feasibility of using citizens to inventory environmental resources within a particular municipal district. The volunteers were given a two-page form (with check-off boxes and comment spaces) and brief written instructions, and they produced a verifiable record of environmental information (i.e. ecosystem types, habitat suitability, tree species/size, percentage of canopy cover, land uses, unknown dump sites, etc.). This information was then recorded on municipal maps for use by municipal planners when considering development proposals. The methodology of the pilot project has been modified slightly and is now being implemented on a city-wide basis.

- natural heritage inventory work in the Muskoka area is currently underway under the direction of Ron Reid, and it funded jointly by private foundations and government agencies.

4. Require or encourage the creation of municipal environmental advisory committees. Where such committees are properly constituted (i.e. with a mix of local interests), they are an extremely valuable adjunct to municipal planning procedures, and members are often quite knowledgeable about significant environmental resources unknown to municipal staff. Ideally, these committees should be organized on an ecosystemic (i.e. watershed or bioregion) basis, but in the short-term they could be established at a local and regional basis.

5. Encourage the use of aboriginal ecological knowledge. Native communities often have a greater knowledge of local environmental resources than the planning authorities who purport to manage such resources. This knowledge should be utilized by planning authorities (i.e. through appropriate native consultation programs, and the issuance of notices in native languages where appropriate).

6. Reform the timing and content of notices under the Planning Act. While it is desirable to have comprehensive environmental data at the outset of planning, it is likely that data

gaps will exist for certain resources or for certain areas. This problem can be partially remedied by ensuring that public notices respecting development proposals are issued much earlier in the process. This principle is true of all planning exercises, but is especially applicable to notices under the Planning Act, which are often criticized as ineffective and confusing. CELA submits that notice reforms under the Planning Act are long overdue and cannot await the completion of the report by the Commission on Planning and Development Reform. These reforms should allow the public to bring environmental information forward long before staff reports are completed and the parties' positions are solidified. CELA therefore recommends:

- that a Planning Act notice be issued no later than 7 days after the municipality receives a completed application from a proponent seeking planning approval (i.e. OPA, re-zoning, consent, etc.). This notice should simply advise the public that an application for a particular property has been received, and should provide particulars on the proposal and invite public comments thereon. This notice should also contain a short reference to the public's right to request the Minister of Environment to designate the proposed undertaking under the Environmental Assessment Act. This notice should be in addition to the current notice respecting public meetings, which often turn out to be meaningless charades since key decisions have already been made by that time; and

- that current service requirements for notices under the Planning Act be amended to ensure proper and timely notice to the public. The standard 120 m requirement for personal written notice is inadequate, particularly in the rural setting. We therefore submit that notices be given wider circulation to ensure that persons with knowledge of environmental resources affected by the proposal are, in fact, notified of the proposal in a timely manner. Such notices should also be put on the Environmental Registry to be established under the Environmental Bill of Rights to ensure maximum coverage.

7. Make "participant funding" available at the earliest stages of the planning process, and require "pre-submission consultation" on development proposals likely to affect environmental resources. It is generally recognized that while intervenor funding is important at public hearings, "participant funding" is equally important since it allows parties to participate at earlier stages of the planning process. Indeed, many critical if not irreversible decisions are made during the early planning stages, when important design and operation decisions are being made. Accordingly, CELA submits that participant funding should be payable by proponents and/or municipalities to allow interested persons in order to obtain competent and independent assessments of environmental resources likely affected by development. Similarly, CELA submits that proponents should be required to undertake more formalized pre-submission consultation with municipalities, agencies and interested citizens to ensure that environmental concerns are identified and resolved as early

as possible. It is hoped that this and other "alternative dispute resolution" mechanisms will reduce the number and length of OMB hearings.

8. Enhance non-regulatory initiatives intended to identify and protect environmental resources. Various ministries and non-governmental organizations have undertaken various programs (i.e. landowner contacts, conservation land tax rebates, stewardship agreements, conservation easements, trusts, etc.) to identify and protect significant environmental resources. CELA supports these programs but submits that they could be broadened to maximize their impact (i.e. expand the conservation land tax rebate beyond provincially significant wetlands and ANSI's).

9. Prohibit pre-approval site preparation and require restoration where environmental resources have been illegally damaged or destroyed. The failure of the Planning Act to prohibit pre-approval site preparation is a major loophole which has permitted the destruction of significant environmental resources, even where the presence of such resources was known to the developer and municipality. By prohibiting such conduct and by requiring environmental restoration, it is hoped that developers would be deterred from degrading environmental resources; in fact, this may serve as an incentive for developers to find out what is on their property in order to assess their potential liability. In our view, the need for this reform is so compelling that it cannot await the completion of the work by the Commission on Planning and Development reform.

10. Issue a Natural Heritage Protection Policy Statement under s.3 of the Planning Act. At the present time, only one policy Statement exists to protect and conserve a particular environmental resource (i.e. wetlands). It is abundantly clear that other resources require interim protection through the issuance of an appropriate Policy Statement. This could be done either through an "umbrella" Policy Statement which requires municipalities to identify, protect and conserve "natural heritage", which could be defined broadly to include the various environmental resources listed above in Part II. Alternatively, "resource-specific" Policy Statements could be issued (i.e. for woodlots, hydrogeological resources, or fish and wildlife habitat). At this time, CELA has no strong preference as between the "umbrella" or "resource-specific" approach, although we note that it may be quicker to develop an "umbrella" Policy Statement. We also note that it may be easier to emphasize an ecosystem approach in an "umbrella" Policy Statement. Again, this work should not await the Commission's final Report on planning reform.

11. Retain the power to designate environmentally significant development under the Environmental Assessment Act. At the present time, the threat of designation under the Environmental Assessment Act is hollow since private sector development has not been designated to date. However, CELA submits that it is necessary to retain this power to ensure that the environmental impacts of particularly significant developments can be fully and rigorously assessed in an open and public manner under the Act. Nevertheless, the Minister must actually use this power in appropriate cases (i.e. the Lagoon City development

within a provincially significant wetland on Lake Simcoe) in order to provide meaningful environmental assessments (and, incidentally, a deterrent to shoddy land use planning).

IV. LONG-TERM MEASURES FOR IDENTIFYING ENVIRONMENTAL RESOURCES

There are also a variety of long-term measures that can be undertaken to identify and protect environmental resources. These may be summarized as follows:

1. Develop and implement geographic information systems (GIS) as expeditiously as possible. While various GIS pilot projects and demonstration programs have been established by certain ministries and agencies across Ontario, the pace of GIS implementation appears to be occurring very slowly. This is largely due to the cost and time associated with digitalizing existing base map information and collecting additional data where required. However, CELA notes that Ontario Hydro and some Ontario forestry companies are now using GIS technology on an operational basis, and we submit that ministries and municipalities should expedite the implementation of GIS. While there are costs associated with GIS, we submit that the long-term benefits justify the expenditure. However, we recognize that GIS is only a tool and that land use planning objectives must still be developed to ensure that environmental resources are identified and protected, with or without GIS.

2. Develop and implement joint landscape-level planning and management to ensure the protection and conservation of biological diversity. CELA submits that land use planning on private and public lands must ensure that all ecosystem types are identified, maintained and perpetuated in proportion to their occurrence and spatial configuration in the natural landscape. In our view, maintenance of a diverse mix of functioning natural ecosystems will contribute greatly to the conservation of biological diversity (i.e. species diversity, genetic diversity, and ecosystem diversity). Accordingly, it is necessary for planning authorities, including municipalities, to take a broad "landscape-level" approach to planning to ensure that natural patterns, habitats, connective corridors, and ecosystem functions are maintained. For example, this approach may mean that development is disallowed within locally significant wetlands if they are the last wetlands in the regional or local landscape. Similarly, in some highly urbanized areas, this may mean that degraded ecosystems and connectivity may have to be rehabilitated, and that proposed development may have to be modified, deferred or denied until landscape diversity has been restored and maintained.

3. Develop comprehensive monitoring programs and indicators of ecosystem health. A one-time "snap-shot" of the location and significance of environmental resources will not be sufficient to ensure the sustainability of Ontario's natural heritage. Thus, CELA submits that it is critically important that planning authorities be empowered and equipped to track accruals and depletions in environmental resources. This will involve both qualitative and quantitative assessments, and will require the development of comprehensive monitoring

programs, particularly for cumulative effects, and the identification of indicators of ecosystem health (i.e. water quality or habitat suitability).

4. **Implement regulatory protection for significant environmental resources.** There is a growing consensus that guidelines, policies or management directions are not as strong or effective as legislation or regulation designed to protect environmental resources. Accordingly, CELA strongly submits that the province must develop strong regulatory protection for significant environmental resources. For example, the major reason why the Niagara Escarpment is still largely intact is the passage of the Niagara Escarpment Planning and Development Act, and we submit that such large-scale environmental land use plans may be appropriate for other significant bio-regions in Ontario (i.e. the Oak Ridges Moraine). For other environmental resources, specific legislation (i.e. a wetlands protection statute) or regulations under the Planning Act are necessary to ensure long-term protection of such resources.

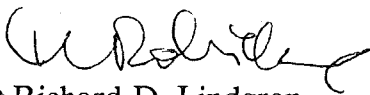
V. CONCLUSIONS

CELA believes that this referral offers EAAC an important opportunity to identify and recommend detailed procedures to ensure the identification and protection of environmental resources within Ontario. We respectfully urge the Committee to consider the preliminary proposals outlined in this submission, and we look forward to participating further in the referral process.

Please contact me if you have any questions or comments about this matter.

Yours truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION



per Richard D. Lindgren
Counsel

