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COMMENTS ON THE POLICY STATEMENT
ON FOODLAND PRESERVATION

Prepared by

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TABLE OF CONTENTS

	<u>Page</u>
I. PREFACE	1
II. POSITIVE ASPECTS OF THE POLICY STATEMENT ON FOODLAND PRESERVATION	3
III. NEGATIVE ASPECTS OF THE POLICY STATEMENT ON FOODLAND PRESERVATION	4
IV. CONCLUSIONS	9

I. PREFACE

The Canadian Environmental Law Association (CELA) is a legal aid clinic specializing in environmental and conservation issues. We have represented the Association of Peel People Evaluating Agricultural Lands (APPEAL) at two Ontario Municipal Board hearings that considered the future designation of large tracts of prime agricultural lands in Caledon and in Brampton. As a result of our involvement we have acquired first hand knowledge of the demand for suburban growth and the significant resources arrayed against agricultural land in pursuit of more profitable land use designations.

Given the laxity of the existing Foodland Guidelines we recognize that there is a need for strong action to preserve prime agricultural land. The existing Foodland Guidelines have been unable to stem the tide of urbanization, or make urban development more efficient to reduce the need for agricultural land. Our fundamental criticism of the Policy Statement on Foodland Preservation is that it is not substantially different from the Foodland Guidelines. Consequently, it does not have the capability to adequately curb the trend towards urbanization of prime agricultural land. The only substantial difference contained in the Policy Statement on Foodland Preservation is contained in section 3.1.3, which is designed to restrict municipalities to ten year planning periods, when they are considering committing land for future urban development. While

this may slow down the rate at which prime agricultural land is consumed for non-agricultural purposes, this measure will in the long run not prevent the further loss of prime agricultural lands.

If this government is serious about agricultural land preservation (and we believe it is), it should reconsider the long-term usefulness of whether a policy statement to preserve foodland should be made under the Planning Act. Historically, the Planning Act has been oriented towards orderly urban growth. Consideration should be given to the value of introducing specific agricultural lands preservation legislation. Such legislation should be modelled on the Niagara Escarpment Planning and Development Act. Although the Escarpment Plan took many years to complete, it identified the important lands on the Niagara Escarpment, and will in accordance with the legislation require conformity by municipalities in their official plans and zoning by-laws. Other models which should be reviewed are legislation for preservation of agricultural lands enacted in Quebec and British Columbia.

At a minimum, this government should compare this Foodland Preservation Policy with the Ministry of Natural Resources' (MNR) Mineral Aggregate Resource Planning Policy. MNR appears to have been successful in forcing municipalities to map valuable mineral aggregate deposits, and to prevent development which would prevent future use of that resource base.

II. POSITIVE ASPECTS OF THE POLICY STATEMENT
ON FOODLAND PRESERVATION

Given that there must be an effective policy in place while other solutions are reviewed, we recognize that there are some strengths contained in the Policy Statement. They are as follows:

• Section 1.3.2 - Restrictions on residential lot creation

This section is of major importance, and its implementation is required as soon as possible, because municipalities such as Caledon appear to be granting excessive numbers of severances in anticipation of the policy's greater restrictiveness. In order to curb this practice, we recommend that the Ministry appeal every decision of the Land Division Committee where the recommendations of OMAF were not followed.

• Section 1.3.5 - Restrictions on further fragmentation

The prohibition against further fragmentation of land which is already fragmented is an important step towards preserving high priority agricultural land near urban centres. The policy recognizes the possibility for continued agricultural use of these lands. Existing farm operations in the areas concerned can rent the land, thereby increasing their own viability.

- Section 3.1.3 - A ten year time frame

This section specifies that the planning time frame used to justify the taking of agricultural land for urban uses cannot exceed ten years. This restriction is necessary because, as the Caledon and Brampton Official Plan hearings illustrate, developers will stretch the time frame used to justify land designations if other factors, such as growth trends, do not justify the acreage proposed for designation. This provision should be of major assistance to those attempting to avoid premature designation of agricultural lands.

- Sections 5.2, 5.3 - Restrictions on mineral extraction

The restrictions on mineral extraction contained in these sections are an improvement over what currently exists.

- Section 6.1.2 - Policies for public facilities on prime agricultural land

We recommend that this section should be expanded to include all types of development on agricultural land, not only public facilities.

III. NEGATIVE ASPECTS OF THE POLICY STATEMENT ON FOODLAND PRESERVATION

The overall weakness of the Policy Statement stems from the process that will determine the future of agricultural land. It will be up to the local municipality to appropriately designate

prime agricultural land. The review of the Official Plan by the Ministry of Agriculture and Food acts as an effective check against a local municipality's abuse of the policy, but only if there exists the will within the Ministry to do so. Local citizen groups may challenge a municipality's designation to the Ontario Municipal Board (OMB), but the results of the hearings are not always sympathetic towards preserving prime agricultural land. The OMB may even be antagonistic to the citizen groups' effort. (The recent OMB hearings in Niagara Region are an example of this occurrence.) Strong consideration should be given to the idea of implementing a specific Agricultural Lands Preservation Act. Under such an act, the province should be responsible for identifying areas of prime agricultural lands, and require the municipalities to preserve the areas identified.

• A stronger statement of purpose is required

This policy fails to include a strongly stated section outlining the purpose of the Foodland Preservation Policy. Stating that the document is prepared under section 3 of the Planning Act is not a statement of purpose. The purpose section should be strong and unambiguous, such as the following: "The purpose of this policy statement is to protect and preserve a land area which will be available for agriculture on a long-term basis, and to assert this as a priority over urban and other land uses proposed for this land area subject to the strict proof of need as described in this policy."

• Definition of marginal land

By including class 5 and 6 lands in the definition of marginal lands, this policy fails to acknowledge that these lands, which are usually used for livestock grazing, may in fact be important agricultural lands. The previous policy recognized this and included the following under section 3.8:

In some counties or townships where livestock grazing is an important part of the local agricultural industry, some soils may merit a higher priority than their classification number would suggest. They may constitute areas of ongoing viable agriculture because of their importance for grazing livestock.

We recommend that this policy recognize that in some situations class 5 and 6 lands constitute prime agricultural land because of their importance for grazing livestock. The definition of marginal land should be revised accordingly.

• Densities of urban developments must be Increased

This policy fails to specify that densities of urban development must be increased in order to preserve agricultural land.

A recent study by Environment Canada showed that small municipalities were the biggest offenders in terms of consumption per capita of agricultural land for urban proposals. Yet arguments based on allowing development to meet existing densities, the need for a range of new housing types, and market conditions are consistently raised and accepted at OMB hearings, despite their implications for agricultural land.

- Policies for justification

Section 3.2 of this policy relies on the same criteria which have been largely ineffective in the past. Some suggestions which should be considered are: a requirement that Official Plans must permit increased densities for existing single family homes; place restrictions on the construction of single-storey industrial and commercial buildings; limit ground-level as opposed to multi-storey parking lots; require that infilling and redevelopment potential be considered in the calculation of need. The policy should also consider prohibiting any new urban designations where there is no Regional Official Plan in place. The lack of an approved Regional Official Plan for Peel allowed the consideration of the Mississauga and Brampton Official Plans in isolation. As a result, large tracts of prime agricultural lands were consumed in the process.

- The criteria in section 3.2.1.2

The criteria in section 3.2.1.2 for the justification of acreage needed is vague. Specifically, land area is to be calculated on the basis of population increase to be accommodated at "reasonable density" for the municipality under consideration. We recommend that the word "reasonable" be replaced with "efficient". In addition, a numerical standard, based on urban type densities, should be included for new residential development.

- Limitation of the Policy Statement

The Policy Statement is limited to land not previously designated for urban use, except where an important agricultural resource is involved. This limitation fails to preserve prime agricultural land which was redesignated but never developed. We recommend that if no development has taken place over a specified period of time, the lands in question should be redesignated for agriculture.

- Implementation

The last paragraph of the section on implementation should be strengthened to read: "Existing approved official plans and zoning by-laws should be amended to conform with this policy statement at such time as they come up for review." We submit that this wording can be justified, despite the wording in the Planning Act, which merely requires that municipalities shall "have regard to" provincial Policy Statements. Their interpretation and use of the Policy Statement will depend upon the strength of its content and wording.

- Lack of ample justification for policy

Another weakness may be the policy's brevity in comparison to the 1978 Guidelines. There is ample justification for provisions contained in the policy, but it is not adequately enunciated. Because of the Supreme Court of Canada's decision in Re The Corporation of the Township of Innisfil v. The Corporation of the Township of Vespra et al. (1982) 15 M.P.L.R. at 250, which upheld

the proposition that government policy may be challenged, either by cross-examination or evidence. Therefore, the policy should contain strong justification and supporting background material. This is particularly important since in some cases the Ministry of Agriculture and Food will not be appearing at a hearing, but the policy will be used by other parties in their attempt to preserve foodland.

IV. CONCLUSIONS

Upon reviewing the Policy Statement on Foodland Presevation, it is our conclusion that the Policy Statement is only marginally better than the Foodland Guidelines, 1978. The improvements over past policy pertain to restrictions on residential lot creation (section 1.3.2), restrictions on further fragmentation (section 1.3.5), a ten year planning framework (section 3.1.3), restrictions on mineral extraction (sections 5.2, 5.3) and policies for public facilities on prime agricultural land (section 6.1.2).

In some respect the Policy Statement on Foodland Preservation is weaker than the Foodland Guidelines. The "purpose" section does not establish and state the purpose as being the preservation of agricultural lands. The definition of marginal lands includes class 5 and 6 grazing lands, which in some cases may be of extreme importance to livestock farming. The brevity of the

Policy Statement in comparison to the Foodland Guidelines results in a lack of clarity and justification for the provisions contained in the policy.

In order to improve the framework for preservation of prime agricultural land in Ontario we recommend that specific agricultural lands preservation legislation be introduced. Such legislation could be modelled on Ontario's Niagara Escarpment and Development Act, or legislation such as enacted in British Columbia (Land Commission Act, RSBC, c. 1979, c. 9).

The Policy Statement on Foodland Preservation can be improved by:

- requiring municipalities to provide documentation of need for prime agricultural land for non-agricultural purposes prior to council's adoption of a amendment to redesignate land use;
- a stronger statement of purpose should be provided;
- the recognition that class 5 and 6 lands are not necessarily marginal lands;
- provision that urban densities should be increased in order to preserve agricultural land;
- a restriction on construction design which used large amounts of agricultural lands, i.e., one storey industrial and commercial buildings;
- a requirement that infilling and redevelopment potential be considered when calculating need;

- allowing no new urban designations where there is no Regional Official Plan in place;
- replacing the word "reasonable" with "efficient" in section 3.2.1.2;
- establishing a numerical standard based on urban densities for new developments;
- providing for the redesignation of prime agricultural land currently designated for non-agricultural uses, but not developed;
- strengthening the implementation section;
- providing more justifications for the policy.