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October 30, 2009

By Email and Regular Mail

Reeve David Moore and Council
Township of McKellar
P.O. Box 69
701 Highway 124
McKellar ON P0A 1C0

Attention: Mr. Shawn Boggs, Clerk-Treasurer

**Subject: Further Partial Provincial One-Window Early Consultation Comments
Draft Official Plan Amendment No. 7 to the Official Plan of the Township of
McKellar (draft dated October 13, 2009)
MAH File No. 49-DP-090043**

On September 4, 2009, the Ministry of Municipal Affairs and Housing (MAH) provided partial one-window early consultation comments on the September 1, 2009 draft OPA 7 to the Official Plan of the Township of McKellar. At that time, comments from two partner ministries remained outstanding, but as we understood that a public meeting was imminent, we felt it prudent to provide you with the available comments. We understand that the OPA was not adopted at that scheduled public meeting, and that since that time, multiple revisions of draft OPA 7 have resulted from additional public consultation. We commend the Township's efforts to provide the public with these opportunities to participate in the land use planning process.

It is our understanding that at this time, the October 13, 2009 draft of OPA 7 is the most current draft. MAH is appreciative of the revisions made in support of many of the provincial comments provided previously. This letter will reflect concerns that remain outstanding from our original September 4th letter, comments received by MAH from the Ministry of Natural Resources (MNR) since that time, and new concerns with the draft OPA dated October 13, 2009.

Growth and Settlement

As stated in our September 4th letter, the 2005 Provincial Policy Statement (PPS) directs that growth be focused in settlement areas, with rural areas accommodating resource-based recreational uses and limited residential development. We therefore reiterate that the Township must consider the development potential of the Village, the projected population growth of the Township, and the implications (e.g. services, roads) of its apparent approach to focus residential growth in the rural/waterfront areas of the Township, which is not an approach that is consistent with the PPS.

It is noted that the settlement area boundaries of the Village of McKellar are not delineated on Schedule "A". MAH encourages the Township to do so, as well to identify the Village by name. The delineation of the settlement area boundaries could be part of this OPA or as part of the larger 5-year review which MAH has previously (through Minister Watson) and continues to strongly encourage the Township to initiate, given the age of the Official Plan and the requirements of Section 26 of the *Planning Act*.

The Waterfront designation is defined in draft OPA policy 16.2.1 as generally including lands within 150m of the shoreline. For the purposes of protecting water quality, MOE generally considers lands within 300m of a waterbody as having the potential to influence water quality. Given that the intent of this draft OPA is to provide thorough policy direction on waterfront development, including the protection of water quality, the Township should add a statement accordingly. MOE may provide further direction.

Waterfront Policies

With respect to updated land and environmental data, MNR has recently provided the Township with the most up-to-date information on known natural heritage features including: mapping of fish habitat type, Conservation Reserves, deer wintering habitat, and endangered and threatened species (general known occurrences). A table was prepared that listed, by waterbody, the sensitive fish values, significant wildlife habitat and species at risk. In addition, a values map showing updated deer wintering habitat mapping (2009) and general locations of known significant wildlife habitat and endangered and threatened species has been enclosed with these comments. We ask that they be reflected on Schedule A.

General Standards

MNR is supportive of draft OPA policy 17.5.3, which recognizes that the minimum requirement for the size of new lots should be increased where there are important habitat features such as deer wintering areas. There may also be a need for larger lots sizes where, through an evaluation of the feature and adjacent lands, additional area may be needed to buffer negative impacts on the identified feature. For example, in deer wintering areas, MNR recommends that new lot creation should generally only occur if each new lot has a general minimum lot size of 90 metres wide by 90 metres deep. For new shoreline lots where deer wintering habitat is restricted to a narrow fringe along the lakeshore, a minimum of 120 metres frontage is recommended. For other natural heritage features, lot size should be reflective of the distances required for the protection of the natural heritage feature.

MAH continues to recommend that the draft policy for exceptions to the general standards for zoning by-law amendments (draft OPA policy 17.5.5) state that these would only be considered if it is determined that a zoning by-law amendment would not be necessary. This comment is directed specifically to the language about responding to sound planning principles.

Tourist Commercial and Commercial Development and Redevelopment

The draft OPA provides policy direction for residential development and tourist commercial development and redevelopment, but provides little direction for new commercial development, which is permitted in the Waterfront designation through an OPA, as per draft OPA policy 17.7.3.

Lake Trophic State

Draft OPA policy 17.8.3.1.3 should recognize that if a lake is nearing its capacity, it may be necessary for a lakeshore capacity assessment to be undertaken as per the MOE's Lakeshore Capacity Assessment Handbook, even for the proposed creation of fewer than three lots (excluding the retained). This statement also applies to draft OPA policies 17.8.3.3.2 and 17.19.4.1 (Trophic State Capacity Study). MOE may provide further comments on this matter of provincial interest to ensure consistency with PPS Section 2.2.

Shoreline Development Capacity

Draft OPA policy 17.8.3.3.1 sets out when Council will require a site evaluation report, and draft OPA policy 17.19.2 provides more specific details. We would like to reiterate our September 4,

2009 comment suggesting that Council should consider whether situations may arise where such a report would be appropriate for a proposed development of fewer than five lots. For example, a situation could arise where there are water quality concerns on a lake with declining water quality but that is not yet at capacity, or where the more general protection of natural heritage features should be considered as per PPS policy 2.1.1 and 2.1.2, or perhaps where an issue of local concern has been identified. Council may wish to have policy direction in the OPA providing them with the discretion to require a site evaluation.

The MNR-recommended minimum distance for riparian area natural vegetated cover for fish habitat on inland waterbodies on the Canadian Shield is 30 metres. Draft OPA policy 17.8.3.3.2.1 sets a 10m setback for principal buildings in the Waterfront designation. Please include additional policy direction that this setback should be 30m where there is Type 1 or Unknown fish habitat.

Natural Heritage Features

Under Section 2 of the *Planning Act*, municipalities have a responsibility to protect ecological systems, including natural areas, features and functions, as detailed further in the PPS. In support of this, the Township's OP should recognize the status of endangered and threatened species, as identified on the Species at Risk in Ontario list, and ensure that they are using the best available information about the habitats of the listed species.

Information was provided to the Township of McKellar following the Parry Sound District MNR's January 2009 Municipal Endangered Species Act Workshop. Information regarding species at risk was provided at the workshop and a Species at Risk Excel Tool for Parry Sound District was later sent to the Township. The information listed three threatened species and two species of special concern that are known to occur or presumed to occur within the Township. We encourage the Township to consider this information, as appropriate given associated policy direction in the PPS, to ensure that land use planning decisions are consistent with the PPS.

On the enclosed Values mapping for the Township of McKellar, general locations of known occurrences of endangered and threatened species are shown. Please revise Schedule "A" to identify these known occurrences.

Draft OPA policy 17.9.1.2 identifies that Type 1 fish habitat is recognized in the Township's implementing zoning by-law. Fish habitat classification mapping has been provided to the Township as resource information. Critical Habitats (Type 1 fish habitat) are those which have high productive capacity, are rare, highly sensitive to development, or have a critical role in sustaining fisheries (e.g., spawning and nursery areas for some species, and ground water discharge areas). "Unknown" fish habitat refers to areas where no information currently exists. Until specific information is generated, these areas should be treated in the same manner as Critical Habitats (Type 1).

We encourage fish habitat classification mapping (as provided by the MNR in 1997) to be considered when new development applications are being proposed and therefore the listing of significant natural heritage features in this policy should include the broader "Ministry of Natural Resources fish habitat classification mapping" rather than Type 1 fish habitat only. A specific policy should indicate that further studies may be required to determine negative impacts of new development before it is permitted, for example, where a new shoreline residential lot is proposed that would be fronted entirely by Type 1 or "Unknown" fish habitat.

Draft OPA policy 17.9.1.3 recognizes that no provincially significant wetlands (PSWs) have been identified in McKellar Township. There are, however, numerous unevaluated wetlands that can provide a variety of ecological, social and economic benefits. Wetlands maintain and improve water quality, help control flooding, provide habitat for fish and wildlife (including endangered and threatened species), and contribute to the substantial social and economic benefits such as hunting, fishing, wildlife viewing, and appreciation of nature in general. While not required under the wetland policies of the PPS, the Township is encouraged, through policy, to protect these unevaluated wetlands from incompatible development.

Similarly, the Township may wish to consider adopting a site alteration by-law, as provided for under the provisions of Section 142 of the *Municipal Act*, 2001. Such a by-law can prohibit or regulate "the placing or dumping of fill" amongst other matters and may be helpful in ensuring that property owners do not place fill in valuable wetland habitats.

Draft OPA policy 17.9.1.4 identifies deer wintering habitat as significant wildlife habitat known to occur in the Township. The mapping previously provided to the Township by MNR has recently been updated (see enclosed Values map). Previous mapping was based on historical aerial

survey mapping and on the ground site inspections documenting the winter distribution of deer over many years since the surveys were first conducted in the 1950s. During several recent winters, deer distribution has been documented using standard inventory procedures, resulting in the enclosed mapping.

There has been a significant shift to the west in the winter deer distribution from the traditional habitat centered around Centre Road. Deer now inhabit most of the shoreline and vicinity of Manitouwabing Lake and Robinson Lake. The MNR District's Wildlife Biologist attributes this shift to the influence of private supplemental feeding of deer by several residents and property owners throughout this area. Now that deer have been attracted to these areas, it is important to their health and survival to protect the shelter and adjacent food supplies that they will continue to rely on despite the supplemental feedings.

Please revise Schedule "A" to reflect this new 2009 mapping for deer wintering areas.

Significant wildlife habitat within the Township of McKellar includes other species' habitat in addition to deer habitat. Other species with significant habitat requiring protection include several bird species that are sensitive to disturbance during the breeding season (great blue heron, osprey, red-shouldered hawk and northern goshawk). The Township should consult the MNR's Significant Wildlife Habitat Technical Guide for more technical direction about land use planning where these species are involved. This Technical Guide could also be referenced in draft OPA policy 17.19.5.3, which currently only references the MNR's Natural Heritage Reference Manual.

The enclosed Values map includes the general locations of known occurrences of nesting sites within the Township. Please revise Schedule "A" to identify these known occurrences. Please also note that most sites of significant wildlife habitat are not known and therefore have not yet been mapped.

Where Development is Not Permitted

This policy should be revised to state that "No development is permitted in the significant habitat of endangered and threatened species or provincially significant wetlands."

Where Development May be Permitted

This policy as currently written is not consistent with the Natural Heritage policies of Section 2.1 of the PPS. Draft OPA policy 17.9.3.1 should reflect that development and site alteration shall not be permitted within significant wildlife habitat unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions (PPS policy 2.1.4d).

Further, evaluation of the ecological function of the adjacent lands and demonstration that there will be no negative impacts on natural heritage features and areas identified as significant habitat of endangered species and threatened species, significant wetlands (if identified in the future), significant wildlife habitat and fish habitat or on their ecological functions should also be required (PPS policy 2.1.5).

These PPS policies apply to development proposals involving a known natural heritage feature, regardless of the number of lots being proposed. The draft OPA policy should be revised accordingly. Draft OPA policy 17.19.2 (Site Evaluation Report) and draft OPA policy 17.19.5 (Natural Heritage Evaluation) should also be revised to be consistent with the PPS.

We recommend that draft OPA policy 17.9.3.1 be modified to require that a site evaluation report be prepared in order to evaluate the impacts from the proposed development on known natural heritage features and areas and their ecological function. Natural features and areas include:

- Ministry of Natural Resources Type 1 fish habitat or Unknown fish habitat
- Provincially Significant Wetlands (if identified in the future)
- Significant Wildlife Habitat including deer wintering areas
- Adjacent lands to the natural heritage features and areas

Draft OPA policy 17.9.3.2 should also apply to Unknown fish habitat.

Adjacent Lands:

The Township may wish to include a policy that requires the assessment of negative impacts by a qualified wetland specialist be undertaken for lands adjacent to any provincially significant wetland should one be identified in the future. MNR recommends that lands within 120 metres

of these wetlands should be considered adjacent lands unless evaluation proves that an alternate width would be appropriate.

Shoreline Structures

This is appropriate section to include a floodplain policy for Lake Manitouwabing. MNR recommends that flood plain management for Lake Manitouwabing be implemented through use of the “one zone” approach. That is, no new development, expansion of existing uses and/or site alteration (i.e. filling) should be permitted below the regulatory flood elevation. The intent of this recommendation is to ensure adequate protection from new development from flood hazards and to ensure that new development does not result in increased flood-related hazards on other properties.

MNR previously advised the Township in 1995, as input to the Comprehensive Zoning By-law, that “No buildings or structures should be permitted “below the elevation of 242 metres above Canadian Geodetic Datum, within 800 metres of Manitouwabing Lake – except for accessory docks, non-habitable boat-houses, flood or erosion structures and small pump-houses (less than 0.9 square metres)”. A policy should be put in this section of the amendment and also within draft OPA policy 18.8 Lake Manitouwabing of the amendment to prohibit all buildings and structures below the elevation of 242 metres C.G.D.

The Township may also wish to consider providing a reference to “Section 21.3 Flood Plain Management” of the current OP.

Complete Applications

MAH notes that the October 13, 2009 version of draft OPA 7 was revised to include OPAs in the complete application policies (draft OPA policy 17.18.1) but was not revised to include land division applications and a reference to the role of the Planning Board. The subsequent draft OPA Section, 17.19.1, General Policy for Studies or Demonstrations Required”, states that applicants may have to “undertake studies as conditions of a development or redevelopment application or approval”. This still may cause some uncertainty about the applicability of complete application provisions.

Site Evaluation Report

Please see previous comments in this letter reflecting provincial recommendations for the Site Evaluation Report policies.

This policy should also recognize the potential for new general commercial uses, or redevelopment of general commercial uses. Draft OPA policy 17.7.3 states that no new commercial or new tourist commercial development will be permitted except through an approved OPA.

It is noted that draft OPA policy 17.19.5.2 (Natural Heritage Evaluation) now references the Site Evaluation Report policies to clarify the relationship between the two. This could be further clarified by rewording subsections 17.19.2.1.5 and 17.19.2.1.6 under the Site Evaluation Report. For example, these could be combined into one subsection as follows: “natural heritage protection (e.g. endangered and threatened species, significant wildlife habitat, fish habitat) through a Natural Heritage Evaluation”.

Trophic State Capacity Study + Natural Heritage Evaluation

Please see earlier comments in this letter regarding appropriate triggers for these studies to ensure consistency with the PPS.

In addition, it is recommended that wording be inserted before the 2nd sentence of draft OPA policy 17.19.5.3 to state that the evaluation will assess the ecological function of the natural features and adjacent lands and determine if there will be negative impacts on the natural features or on their ecological function.

Lake Specific Policies

The September 4th, 2009 letter from MAH identified a concern that several of these specific lake policies stated that new development or redevelopment would generally not be supported, but then outlined criteria for development. We note that the references to development being discouraged have been removed, and would suggest that this does not need to be the approach taken by council, if they indeed wish to limit development on these specific lakes. Rather, the policy direction could be clarified such that development will be discouraged, but in the event that development is proposed, Council will only consider it if the specified criteria, at the very

least and in addition to all other planning matters such as zoning by-law amendment requirements, are met.

The Lake Manitowabing policies (draft OPA Section 18.8) state that there are “few remaining shoreline areas on the lake that may be available for future development” (draft OPA policy 18.8.4). This appears somewhat inconsistent with the statement in draft OPA policy 18.8.9 that there are 220 existing vacant lots and potential for 100 additional lots on the lake. The first statement should be revised to more accurately reflect the development potential remaining. The reference to “extra-care” being taken for development proposals on Lake Manitowabing is still of concern (draft OPA policy 18.5.5), not because of the intent of the Township to protect the lake and its features, but because of the potential interpretation that less care can be taken on other lakes. Providing some guidance on what form this “extra care” would take may add clarity.

If you have any questions or would like to discuss these provincial comments further, please feel free to call me at (705) 564-6817 or toll free at 1-800-461-1193 x46817. Should the October 13, 2009 draft of OPA 7 be further revised, the province requests that these subsequent draft(s) of OPA 7 be provided to MAH in a timely manner. Further provincial one-window early consultation comments may be provided at that time.

Sincerely,

(Original Signed By)

Bridget Schulte-Hostedde
Planner
Northeastern Municipal Services Office

encl.

cc: John Jackson, John Jackson Planner Inc.
Kim Benner, MNR Bracebridge
Paula Allen, MOE Sudbury