

## MAPLE LAKE ESTATES - REVIEW OF SECTION 28 PERMIT APPLICATION

*prepared for*  
**North Gwillimbury Forest Alliance**  
September 12, 2015

On May 20, 2015, Maple Lake Estates Inc. applied to the Lake Simcoe Region Conservation Authority (LSRCA) for a *Conservation Authorities Act* Section 28 permit, to enable it to proceed with development of its Maple Lake Estates (MLE) lands in accordance with its planning approvals dating from the late 1980s and early 1990s.

In response to a freedom of information request from the North Gwillimbury Forest Alliance (NGFA), LSRCA disclosed the application, supporting materials, and associated correspondence in late August. NGFA then asked its planning consultant, Anthony Usher, MCIP, RPP, to review the application. My comments and conclusions are as follows.

Included in the application materials are submissions by various scientific and technical experts. I do not offer any opinion on the scientific or technical merits of these submissions or their adequacy for the purpose of a Section 28 application, but that should not be taken as endorsement.

All of the application materials are posted on NGFA's website.

### ***The Application***

As mentioned, on May 20, 2015, Maple Lake Estates Inc., an affiliate of the DG Group, submitted a permit application for "clearing, grubbing, site alteration, fill and grading within the Registered Plan of Subdivision". Subdivision plan 65M-2903 covers the entire 200 ha Maple Lake Estates property and, along with the companion official plan and zoning approvals, would permit development of a 1,073 unit residential development on leased sites plus associated recreational facilities.

Some studies were submitted with the application, but LSRCA subsequently advised that the application was incomplete and requested further materials. These have since been submitted, but I do not know whether LSRCA yet considers the application complete.

The applicant has submitted the following:

- ▶ Subdivision plan 65M-2903, registered in 1992.
- ▶ A concept plan, which reflects the development concept as originally approved, and in its present form has been in circulation since at least 2011.

- ▶ *A Soil Investigation for a Proposed Residential Development*, Soil-Eng Limited, 1989.
- ▶ *Erosion and Sediment Control Plans*, Cumming Cockburn Limited, 1991.
- ▶ Seven lot grading plans covering the first phases of the residential portions of the development, Cumming Cockburn Limited, 1989.
- ▶ *Stormwater Management Report*, Schaeffers Consulting Engineers, 2005. (This report is for the Lakeshore Estates subdivision across Metro Road North from MLE, and makes only incidental reference to MLE).
- ▶ *Environmental Impact Study*, Dillon Consulting, 2015.
- ▶ *Edge Management Plan*, Dillon Consulting, 2015.

### ***Review of Environmental Impact Study***

I will focus on a review of the *Environmental Impact Study* (EIS) as key to the applicant's justification of the Section 28 permit application. The *Edge Management Plan* supports and seeks to implement a portion of the EIS. The other materials were all prepared long ago for planning approval and site development purposes, and while they provide important background information, do not seek to justify the permit application.

Following is a summary of the EIS. Direct quotes from the EIS are in *italics*. My comments are clearly set apart from the rest of the summary by titles and bullets.

**Section 1** of the EIS provides an introduction to the work and a description of the development.

*[following a recitation of the MLE planning approvals] "One of the requirements in the [Town of Georgina] Official Plan before development can proceed is the preparation of an Environmental Impact Study (EIS) . . . . The scope of this EIS was prepared [sic] in consultation with the Lake Simcoe Region Conservation Authority (LSRCA) and follows the Terms of Reference (TOR) agreed to through correspondence between Metrus [now DG Group] and the Authority in January 2012 and March 2013."*

#### ***Comments:***

- ▶ The Georgina Official Plan provisions for MLE do not require that an EIS be prepared before development can proceed.
- ▶ This EIS appears to have been commissioned specifically to support a Section 28 permit application under the *Conservation Authorities Act*, and so that must be its purpose. The EIS has no planning approval purpose, as planning approval has

already been given.

- ▶ It is troubling that although the EIS acknowledges at some points that the development requires a Section 28 permit, it never says that is the purpose of the document.
- ▶ One would expect the agreed Terms of Reference to be included in the EIS. They are not, and up to now, they have not been disclosed by LSRCA. Therefore, it is impossible to evaluate the EIS against the Terms of Reference.

*"The residential development, servicing therein and ancillary recreational uses will be undertaken as part of Phase 1 of the project. The golf course is planned for Phase 2 of the project. This EIS addresses Phase 1 of the project."*

*Comments:*

- ▶ The application submitted by Maple Lake Estates is for the entire approved development.
- ▶ The approved development consists of five phases of dwellings, phases 3 through 5 of which are subject to holding provisions in the zoning bylaw. A golf course of at least nine holes, and a recreation centre, are required as part of phase 1.
- ▶ The phasing described in the EIS is inconsistent with the approved phasing. Most seriously, as a result of this misunderstanding of the planning approvals, the EIS does not address the golf course, at least part of which must be developed along with the first phase of dwellings.

**Section 2** of the EIS reviews the planning context for the proposal. With the following exceptions, I make no comment on this material, because for the above reasons it is not pertinent to the Section 28 application. That should not be taken as an endorsement of the planning review.

*"However, the [Ministry of Natural Resources] has confirmed, in a letter dated October 18, 2004, that the Ministry recognizes the legal status of the existing Registered Plan of Subdivision applicable to the subject property, which predates more recent wetland work and allows for the plan to be implemented as proposed . . . ."*

*Comment:*

- ▶ By letter of March 11, 2015, the Ministry of Natural Resources and Forestry rescinded its October 18, 2004 letter, considering it to be superseded by LSRCA's regulatory authority under the *Conservation Authorities Act*. This happened before the EIS was completed.

*"Section 2(1) of [LSRCA's] Regulation [179/06] states that '. . . no person shall undertake development, or permit another person to undertake development in or on the areas within the jurisdiction of the Authority that are,*  
*d. wetlands."*

*Comments:*

- ▶ There is a serious omission from this quote from Regulation 179/06. Equally prohibited from development, is
  - "e) other areas where development could interfere with the hydrologic function of a wetland, including areas within 120 metres of all provincially significant wetlands, and areas within 30 metres of all other wetlands."
- ▶ As the EIS notes, the majority of the MLE property is provincially significant wetland, 58% by NGFA's analysis. With other wetlands included, the total wetland area is 60%. However, when the "other areas" (adjacent lands) are included, the total area in which development is prohibited without a permit rises to 95%.

**Section 3** of the EIS describes the inventory work undertaken by the consultants, which was generally undertaken in 2012 and 2013. This included:

- review of land title history
- review of historical air photos
- botanical surveys (spring, summer, and fall)
- ecological land classification of the property using the Ministry of Natural Resources classification system
- delineation of wetland boundaries using the Ministry of Natural Resources wetland evaluation system in effect at the time
- breeding bird survey (June)
- amphibian surveys (April-June)
- incidental wildlife observations
- species at risk database review.

**Section 4** of the EIS provides the results of the inventory work. The following findings are of particular interest.

*"The mean [Coefficient of Conservatism] for the site was 4.0 out of a possible 10 indicating a relatively naturally occurring environment." [This coefficient is an indicator of the probability of a plant occurring in an unaltered natural environment. The average of the coefficients for all 241 plant species found on the site is 4.0.]*

*"Revisions to the wetland/woodland boundaries were areas previously shown as upland in [Ministry of Natural Resources and Forestry] mapping but fieldwork results indicate*

*those areas are actually wetland (based on vegetation and soil). In addition, some wetland areas in the southwest corner the [sic] subject property were delineated as upland Poplar forest. Upland and wetland communities are shown on Figure 4."*

*Comment:*

- ▶ Based on the data presented in the EIS, the wetland area of the property is now 61%.

Three Ontario species at risk are found on the property: butternut, monarch [butterfly], and barn swallow. The western chorus frog, a federal species at risk, is also present.

*Comment:*

- ▶ The EIS authors seem to be unaware that in Ontario, species at risk include species of special concern status such as the monarch.

*"Natural features within and adjacent to the subject property were analyzed to determine their ecological function. At the larger landscape scale, the subject property exists as part of a larger tract of forest and swamp communities situated to the east, south and west (Arnold C. Matthews Nature Reserve) of the property. This connectivity generally meets the resource, habitat, and reproductive needs of many plant and animal species. However, the extent to which these natural features are fragmented due to major roads (e.g. Woodbine Avenue), active agriculture, and residential areas limits their ecological function within the larger watershed-scale landscape."*

*Comment:*

- ▶ South of the Canadian Shield and outside of provincial parks and conservation reserves, all of Ontario's natural features are fragmented to some extent by roads and human uses. This is certainly no more true at MLE (which as a single 200 ha landholding, is unusually unfragmented), and in the overall North Gwillimbury Forest (one of the largest forest blocks remaining in the southern part of the Lake Simcoe watershed), than anywhere else.

**Section 5** of the EIS provides the authors' assessment of the impacts of the development.

*"The development plan as per the Registered Plan of Subdivision is shown in Figure 8. Note as previously mentioned in Section 1.0, potential development impacts are described for Phase 1 (residential development) only in this regard."*

*Comment:*

- ▶ As previously noted, failure to address the impacts of the golf course is a serious

omission.

*"Direct impacts are those that are immediately evident as a result of the development. Typically, the adverse effects of direct impacts are most evident during the site preparation and construction phase of a development. The potential direct impacts of the proposed residential development are:*

- Swamp fragmentation and alteration of the hydrologic regime;*
- Forest fragmentation;*
- Tree and vegetation removal;*
- Sedimentation of natural features; and*
- Loss of and/or disturbance to wildlife and wildlife habitat."*

*"The residential development requires the removal of trees and ground vegetation to create space for construction . . . . At the landscape level, this will result in a reduction in forest cover and an increase in fragmentation of forested areas. Some fragmentation has already occurred on the property as a result of past agricultural land uses (e.g. cattle pasture), vegetation clearing 10-20 years ago, and current uses of the property, which include some forest harvesting activity and recreation (e.g. all-terrain vehicle operation). Therefore, the development will increase the extent to which forest communities are already fragmented . . . ."*

*"The proposed development will require the removal of approximately 43.13 ha of vegetation within the subject property . . . . This 43.13 ha area of vegetation removal represents approximately 25.9% of the total vegetated area of the subject property . . . ."*

*"On a site level, the impacts of tree and vegetation removal may include:*

- Direct loss of trees;*
- Decreased floral species richness and abundance;*
- Negative edge effects, include altered soil conditions and water availability;*
- Alteration of microclimate;*
- Loss of native seed banks; and,*
- Physical injury, root damage, and compaction of trees not intended for removal that may result from construction operations."*

*"There is the potential for swamp, forests, drainage features, and Lake Simcoe to be impacted as a result of development if construction best practices are not implemented. Potential impacts to these features are generally associated with sedimentation during construction and may include:*

- Reduced water quality and degradation of downstream aquatic habitat (e.g. along the Lake Simcoe shoreline);*
- Increased erosion of the drainage features which may increase sediment loads downstream and to Lake Simcoe as a result of potential increases of water flow during peak volume; and,*
- Disturbance to or loss of additional vegetation due to the deposition of dust and/or*

*overland mobilization of soil."*

*"Habitat for flora and fauna may be impacted by construction in the following ways:*

- *Direct wildlife mortality;*
- *Disruption to natural wildlife movement and breeding patterns due to construction operations;*
- *Avoidance of habitat due to construction disturbance; and,*
- *Loss of wildlife habitat."*

*Comments:*

- ▶ On June 11, 2015, I wrote LSRCA that,

". . . it is my professional planning opinion that on the basis of [Mining and Lands Commissioner] jurisprudence, and a plain reading of the 'conservation of land' definitions in [LSRCA's] Watershed Development Guidelines that rely on that jurisprudence, a permit to enable MLE could not possibly be shown to not affect the 'conservation of land'."

- ▶ I see nothing in the above description of impacts to change my opinion.

**Section 6** of the EIS describes proposed measures to mitigate impacts through "good design, construction practices and/or restoration and enhancement activities".

*"A variety of mitigation techniques can be used to minimize or eliminate the above-mentioned impacts. Specifically, are [sic] eight key areas identified for mitigation, enhancement and/or restoration, including:*

- *Low Impact Development Techniques;*
- *Corridor Conservation and Wildlife Movement Strategy;*
- *Wildlife Impact Mitigation during Construction;*
- *Edge Management Plan;*
- *Environmental Restoration and Enhancement Plan;*
- *Erosion and Sediment Control Plan;*
- *Environmental Monitoring Plan; and*
- *Stewardship Opportunities."*

*Comment:*

- ▶ This confirms that the authors do not believe that all impacts can be completely mitigated. Therefore my opinion remains that the "conservation of land" test cannot be met.

The **Edge Management Plan** is appended to the EIS and was also submitted as a stand-

alone report. It is intended to fulfil the mitigation technique of the same name proposed in the above list. Noting that there has been some clearing on the property since development was approved, this Plan indicates the further clearing that development will require, and outlines how forest edge impacts could be minimized post-development.

*[As regards the Environmental Restoration and Enhancement Plan in the above list:] "Subject to discussions with LSRCA, ecological restoration may be required as compensation for the loss in forest/swamp area as a result of the proposed development. As opportunities for on-site planting are limited, it is recommended that financial support be made to the LSRCA for off-site planting where the LSRCA deems appropriate within the Lake Simcoe watershed. A compensation payment amount will be determined based on the total area of forest/swamp proposed for removal."*

Also appended to the EIS, though nowhere referenced in the main body of the report, is a Forest/Swamp Loss Compensation Methodology, which concludes as follows:

*"Approximately 45.39 ha of forest/swamp communities (i.e., woodland) are proposed for removal, resulting in the loss of approximately 31,904 trees. Since Maple Lake Estates in [sic] an approved Registered Plan of Subdivision, which includes approval for the removal of trees, there is no requirement to replace trees at the typical 2:1 ratio. Therefore, it is proposed to plan at 30% of the loss of forest/wetland. Based on our analysis, it is recommended that 9,571 trees be planted."*

*Comments:*

- ▶ The LSRCA Watershed Development Policies applicable to this application only permit the creation of new wetland to compensate for wetland lost, where the wetland is not provincially significant or the development is infrastructure. Neither of these apply to MLE.
- ▶ The applicable Watershed Development Policies make no reference to compensatory forest planting, nor to any 2:1 or other "typical" tree replacement ratio.
- ▶ There is nothing in the accepted definitions of "conservation of land" that suggests that compensation for unmitigated impacts can be factored into that test.
- ▶ The 2009 decision of the Mining and Lands Commissioner finding that the application of Derek Russell failed the "conservation of land" test, which is described in my June 11, 2015 letter, refers to compensation, as the applicant had proposed some compensatory actions through a ravine stewardship plan. Although those compensatory measures were not directly before the Commissioner, the decision notes that:

"The tribunal accepts that the [compensatory and stewardship] policies [of

the Toronto and Region Conservation Authority] are meant to encourage landowners to participate in naturalization and restorative programs on a voluntary basis. The purpose is not to allow either method to be used as a carrot by the landowner to get something they want from the Authority."

- ▶ I am not aware of any other decision on the "conservation of land" test in which compensation was taken into account.

**Section 7** of the EIS provides a summary, which is worth reproducing in full. I have highlighted in **bold face** points that in my opinion merit particular emphasis.

*"This EIS was prepared for the Registered Plan of Subdivision Maple Lake Estates property in the Town of Georgina. The findings of the biophysical inventory, which consisted of secondary source reviews and comprehensive field studies, are presented in this EIS. The Registered Plan of Subdivision predates most provincial and municipal policies with respect to the natural environment for this area; however, natural features occur on and adjacent to the property and have been examined and documented in this EIS.*

*"The majority of the property consists of forested swamp, with additional areas of deciduous forest, coniferous forest, thicket, meadow, and row crop. Six frog/toad species and a salamander species were observed during field studies. In addition, 61 avian (bird) species were observed during field studies, 12 of which are considered to be area-sensitive. A total of 241 plant species were observed, including Butternut, a species at risk protected under the [Endangered Species Act, 2007]. **At the landscape scale, natural features on the subject property connect to features on adjacent properties (e.g. Arnold C. Matthews Nature reserve to the west) and are in close proximity to Lake Simcoe. Overall, the subject property exists as part of a high functioning regional ecological system.***

*"As per the Registered Plan of Subdivision, the development proposes the construction of a residential community and ancillary recreational uses (Phase 1) and a golf course (Phase 2). **Potential impacts of Phase 1 may include swamp fragmentation and alteration of hydrologic regime, forest fragmentation, tree and vegetation removal, sedimentation of swamp and forest areas, and loss of potential wildlife habitat. These impacts will be avoided or minimized** by implementing the mitigation, restoration, and management measures described in this report. These include innovative Low Impact Development techniques, a corridor and forest interior conservation strategy, wildlife impact mitigation during construction, edge management, ecological restoration, erosion and sediment control, environmental monitoring, and stewardship initiatives. The development of the Registered Plan of Subdivision Phase 1 lands will be constructed in a manner that **minimizes ecological effects outside of the approved lands** through the use of best construction practices and mitigation measures."*

*Comments:*

In conclusion, it is my professional planning opinion that the EIS:

- ▶ Does not show full understanding of Regulation 179/06, does not seek to address the requirements for a Section 28 permit, and by not providing the previously agreed Terms of Reference fails to demonstrate their fulfilment; therefore, the EIS does not properly support the DG Group's permit application.
- ▶ Does not show full understanding of, and does not fully address, the development for which the Section 28 permit is being sought; therefore, the EIS does not properly support the permit application.
- ▶ Does nothing to change my previously provided opinion that it cannot possibly be shown that the permit applied for would not affect the "conservation of land".
- ▶ Even with the above limitations, demonstrates that the affected wetland and woodland are valuable natural heritage and hydrologic features, and that not all impacts of the proposed development on those features can be mitigated.
- ▶ In proposing to compensate for wetland and woodland loss by paying LSRCA to plant trees elsewhere in the Lake Simcoe watershed, is advancing a scheme in support of the permit application that is inconsistent with Authority policy and does not appear to be consistent with Mining and Lands Commissioner jurisprudence.

*[original signed and stamped by]*

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Anthony Usher, MCIP, RPP  
September 12, 2015