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May 5, 2015

Board of Directors
c/o Mr. Mike Walters, Chief Administrative Officer
Lake Simcoe Region Conservation Authority
Box 282
Newmarket, Ontario
L3Y 4X1

Dear Directors:

Re: Maple Lake Estates - Potential Section 28 Application

On behalf of my client the North Gwillimbury Forest Alliance, I would like to express my concerns about how the LSRCA might deal with a potential application by Maple Lake Estates Inc. (MLE), an affiliate of DG Group (formerly Metrus Development Inc.), for a *Conservation Authorities Act* Section 28 permit on its lands bounded by Deer Park Drive, Varney Road, Metro Road, and Woodbine Avenue in the Town of Georgina.

I am disappointed that the Board could not find a way to ensure that there would be no gap between the expiry of MLE's undertaking not to submit an application, and the coming into effect of the new Watershed Development Guidelines, whether by adopting the recommendation in my April 8, 2015 letter or alternative approaches suggested by others.

However, I recognize that MLE is now free to apply for a permit at any time before or after the new Guidelines come into effect on June 1, 2015, the only difference being that an application before that date would be subject to the old Watershed Development Policies including the subdivisions-in-wetlands Policy 11.4.1.2. (MLE may have already submitted an application by the time you read this.) CAO Mike Walters has made clear that the "five tests" of Regulation 179/06 will have to be met, even if an application is made before June 1. I also recognize that any Section 28 application is legally a matter between the applicant and the Authority.

That said, 58% of the MLE site is provincially significant wetland, and when 120 m of adjacent lands are added in, 95% of the site is within the Authority's regulated area. This is one of the key reasons for the active campaign of my client and others to bring about an exchange of the present MLE approvals, for approvals for DG Group elsewhere. As you well know, the potential granting of a Section 28 permit for this site is a matter of great public interest.

This would not be a routine Section 28 application, and should not be treated as such by staff and the Board. I believe this application would merit the highest level of professional scrutiny and public involvement that would not offend the applicant's rights under the *Conservation Authorities Act*. Therefore, I note the following.

1. Under section 3(3) of Regulation 179/06, only the Board, not delegated staff, may grant a permit valid for more than 24 months. MLE as currently approved is a very large development that would require many years to build out (in the order of 15 years, according to Town of Georgina population projections). Surely, MLE would require permits longer than 24 months.
2. The new Guidelines include Appendix F, Administrative Practices. Although technically this Appendix is not in effect till June 1, I assume that it codifies existing practices. For example, the list of delegated enforcement officers reflects Board approval of staff reports from 2012 and 2013.

Appendix F says that any application staff believe may affect the "five tests" is to be deferred to the Board. It is difficult to believe that an MLE application would not be understood to at least potentially affect at least one of the tests, most specifically "conservation of land".

Appendix F differentiates between minor and major applications. Surely an MLE application would be considered major, and therefore the 90 day review timeline would apply.

3. Without in any way prejudging the opinion of staff on this application, it seems highly likely that staff's opinion may include at least one of the following:
 - The application will require permits longer than 24 months.
 - The application may affect "conservation of land" or some other of the "five tests".
 - The application should be approved, but only subject to conditions.
 - The application should be refused.

If staff believe that *any one* of these apply, then the application would have be decided by the Board. As well, the Authority's Hearing Guidelines say that a Board hearing is required in yet another circumstance, "where there is some indication that the Authority may not follow staff's recommendation to approve a permit". Therefore, public uncertainty about how this matter may be handled would be greatly reduced by an advance commitment that the Board will decide on any MLE application, almost certainly without any additional disadvantage to the applicant.

4. The Hearing Guidelines state under the heading "Public Participation", that "The *Conservation Authorities Act* does not provide for third party status at a hearing". However, nothing in the *Act* prevents the Board, when deciding an application, from receiving and considering public submissions provided there is no inference they confer standing. By way of analogy, under the *Planning Act* site plan agreements similarly are matters between the applicant and the municipality, with no public involvement required and no third party appeal allowed. However, some municipalities choose to notify the public of, provide information to the public on, and/or allow public submissions on, site plan applications, either on a one-off basis or as a matter of general policy.
5. Finally, I note the opinion of the Environmental Commissioner of Ontario in considering an application for review of provisions of the *Conservation Authorities Act*:

"Applicants are able to appeal decisions made by the CA regarding permits issued under Section 28 of the *CAA* but there is no third party appeal process. This is important because CA permits are not prescribed as instruments under the

[*Environmental Bill of Rights, 1993*] and therefore not required to be posted on the Registry for public input. Currently, the public has limited, if any ability to participate in the issuance of CAA permits. It is at the discretion of the CA board to allow public delegations to the board before a permit decision is made. Environmental organizations have recommended MNR amend the CA board structure to include representation from non-municipal members, such as environmental organizations or the public, in order to participate in the review of permit applications. The ECO is not sure this is the best solution but suggests, at the least, MNR consider prescribing CA permits as instruments under the *EBR*." (Annual Report Supplement 2009/2010, p. 296.)

Of particular interest is that the Commissioner found that Authority Boards do have the discretion to allow public submissions, and also found that opportunities for public involvement in the issue of Section 28 permits should be improved.

Therefore, and further to Jack Gibbons's letter of April 30, 2015, I request that LSRCA commit to the following, if and when the Authority receives a permit application from MLE. I make these requests in light of the unique significance of and public interest in this potential application - I am not suggesting that any or all of these practices should be applied to all permit applications. Where I am requesting public notice, posting on the Authority's website would be satisfactory. Where I am requesting materials be available for inspection, they should also be posted on the Authority's website if practical.

- ▶ That any MLE application will be considered, debated, and decided upon by the Board in an open meeting.
- ▶ That once MLE is advised that its application is complete, the public be notified that a complete application has been received from MLE.
- ▶ That once the application is complete, MLE's application materials be available for public inspection under reasonable conditions, at least 30 days before the date the Board will decide on the application.
- ▶ That once they are made available to the Board, the staff report and the applicant's response be available for public inspection under reasonable conditions.
- ▶ That once MLE is notified of the Board meeting that will consider the application, the public be so notified.
- ▶ That the public be allowed to make written submissions prior to the Board meeting, which will be circulated to the Board.
- ▶ That the public be allowed to make oral submissions at the Board meeting, under reasonable conditions including reasonable time limits.

I look forward to your response.

Yours sincerely,

[original signed by]

Anthony Usher, MCIP, RPP

cc. Rob Baldwin