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April 22, 2015 File No. 112062

VIA EMAIL

Lake Simcoe Region Conservation Authority
120 Bayview Parkway, Box 282
Newmarket, Ontario L3Y 4X1

Attention: Mr. Mike Walters, CAO

Dear Board of Directors;

Re: BOD Meeting April 24, 2015
Agenda Item No. 2
Revised Watershed Development Guidelines

Re: Maple Lake Estates

We are counsel to the North Gwillimbury Forest Alliance.

The undersigned will be present at this Friday's Board of Directors meeting and will be making a deputation along with Jack Gibbons.

Over the past nineteen months, our client and its consultants have corresponded with the Authority and made deputations to the Board of Directors requesting the deletion of the subdivisions-in-wetlands policy 11.4.1.2.

The purpose of this written deputation is to support the recommendation that the revised Watershed Development Guidelines be approved as presented on Friday. However we respectfully request that the Guidelines take effect immediately upon their approval.

In this letter we wish to address the following topics:

1. The appropriate "effective" date of the revised Watershed Development Guidelines;

2. The Maple Lake Estates Inc / Metrus Development Inc. Undertaking; and

3. The relationship between these Guidelines, section 28 permits and *Planning Act* approvals.

Effective Date of Guidelines

Should this Board approve of the revised Watershed Development Guidelines at its meeting this Friday, there is no legal reason why such Guidelines should not take effect the same day.

A review of some previous revisions to the LSRCA Guidelines reveals that the effective date of such revisions has been the same day that the revisions were approved by the Board of Directors.

These revised Guidelines have gone through a considerable public process. While the process has taken longer than originally anticipated, it has been thorough and the Authority has ensured that drafts of the Guidelines have been available to the public as each draft was released.

The time to act is now. The revised Guidelines document that is before the Board of Directors is one that warrants Board approval. Furthermore, these Guidelines ought to take effect immediately to ensure that their enhanced environmental protections [including the removal of the subdivisions-in-wetlands policy] are applied immediately rather than allowing a period during which they are not in effect. Any delay in the application of the revised Guidelines will invite potential abuses and opportunism in the interim period with detrimental environmental consequences to the Watershed.

Don't permit this to occur.

The Metrus/Maple Lake Estates Undertaking

Some background is required to understand the context within which the Undertaking was provided.

At the January 17, 2014 BOD meeting, our client made a deputation reiterating its request for the immediate repeal of the subdivisions-in-wetlands policy 11.4.1.2.

LSRCA staff were recommending that a comprehensive review of the Watershed Development Policies be undertaken, and that the Authority consider deferral of the processing of section 28 permit applications pending the completion of the review. In speaking against our client's position as well as staff's deferral recommendation, Fraser Nelson submitted that neither was required as MLE/Metrus was offering to undertake not to submit a section 28 permit application for its MLE lands pending the completion of the comprehensive policy review.

The Board of Directors passed Resolution BOD-015-14:

> "RESOLVED THAT the LSRCA Board of Directors accept the verbal undertaking by Metrus Developments dated January 17, 2014 to not submit an application on its site during the comprehensive Watershed Development Policy review **and adoption of new policies** by the Board of Directors; and
>
> FURTHER THAT the verbal offer of this undertaking be reduced to writing." [emphasis added]

The written MLE/Metrus Undertaking was dated, signed and delivered on February 3, 2014. In it, MLE/Metrus undertook and agreed not to submit an application to the LSRCA until:

> 1) ***the LSRCA has concluded its review*** of the LSRCA Watershed Development Policy; ***and***
>
> 2) ***the LSRCA has implemented a new policy***. [emphasis added]

This Undertaking was to expire on January 1, 2015, but was subsequently extended to April 30, 2015.

This Undertaking is unequivocal. Maple Lake Estates Inc. and Metrus Development Inc. agreed not to submit an application to develop or proceed with its approved plan of subdivision until the Authority had concluded its review of its Guidelines, and the Board had **implemented** the new policy as directed by the Board of Directors at its meeting of January 17, 2014.

Our client and the LSRCA have relied upon that MLE/Metrus Undertaking not to file any LSRCA application or proceed with any development of the MLE subdivision lands, until the revised LSRCA Watershed Development Guidelines had been implemented [by the April 30, 2015 deadline].

To now fail to implement your new Guidelines before the April 30, 2015 date would be a travesty. These new Guidelines emphatically prohibit private development within provincially significant wetlands. As noted above, to delay the implementation of these Guidelines to June 1, 2015 would allow a section 28 permit application being made in the interim period.

We understand that, notwithstanding this Undertaking, an application has recently been filed for a section 28 permit on the MLE lands. This is contrary to both the letter and spirit of the Undertaking. Respectfully, the application file ought to be closed by the Authority and the application returned to the applicant.

Section 28 Permits and Planning Act Approvals

As this Board is aware, *Planning Act* approvals are not a relevant consideration in exercising its jurisdiction under the *Conservation Authorities Act*.

For ease of reference, note the following which was delivered by the Mining and Lands Commissioner in her speech to the Urban Development Institute and found posted at http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@omlc/documents/document/stdprod_109752.pdf.

> *"Attention is drawn to the underlying premise of the Conservation Authorities Act. It recognizes that there is an inherent inability in certain lands to withstand encroachment and development. The question in an application or appeal, and based upon the facts of the case, is whether the land in question has any of those characteristics, and to what extent, so as to determine whether the requested permission may be allowed, allowed with conditions or refused. At the most extreme end of the considered risks, certain lands are simply too flood prone, with the attendant potential risk to a loss of life and property. For others, the impact on certain types of necessary natural ecosystem resources and their functions is too extreme. In such cases, there are no mitigating measures available to permit the requested activity.*
>
> *By the provisions of the Conservation Authorities Act, a CA has over those lands within its jurisdiction, the power to outright prohibit, regulate or grant permission to a private property owner the right to develop his or her land as he or she sees fit. For the purpose of an application under Section 28, Official Plan designations or zoning are not relevant. Just to be clear, lands having a certain designation for municipal planning purposes such as residential, industrial or commercial, does not mean that a permission under Section 28 must follow as a forgone conclusion."* [emphasis added]

We would also reference the Deputy Mining and Lands Commissioner's decision in file no. CA008-01 cited as *Rinaldi v. Lake Simcoe Region Conservation Authority*; http://www.mnr.gov.on.ca/stdprodconsume/groups/lr/@mnr/@omlc/documents/document/mnr_e002037.pdf.

In this decision, the Deputy Commissioner asked the following two questions:

> "Does the fact that the lots are registered and could and do receive municipal services have any bearing on the decision of the Tribunal?; and

> Do the planning issues under the *Planning Act* have any relevance to the decision of the Tribunal?"

At pages 34-36 of the decision, the Deputy Commissioner answers both questions in the negative.

It is stated "just because the [subdivision] plan was registered did not guarantee him any development rights".

Further, dealing with the inapplicability of the *Planning Act* considerations and approvals, it is stated;

> "Conservation Authorities do not consider, nor do they have the power to consider, the relative merits of competing interests. Their mandate is to determine the impact of a proposal on the very limited capacity of land within their jurisdiction and based upon the degree of severity, to allow or refuse permission".

This Board has an independent jurisdiction to exercise its power under the *Conservation Authorities Act* to achieve the purposes set out under that Act. "Development rights" under the *Planning Act* should have no bearing on the decision to be made by this Board.

This Authority has the unfettered power to make a policy decision and choose its policy direction. Neither our client nor private landowners can judicially challenge a policy decision of the Authority when same is within its jurisdiction, properly considered and made in good faith.

Yours truly,

AIRD & BERLIS LLP

Leo F Longo per:

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LFL/ly

c. Jack Gibbons, North Gwillimbury Forest Alliance
Anthony Usher, Anthony Usher Planning Consultant

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