

ONTARIO MUNICIPAL BOARD

1281216 Ontario Inc (Intracorp) has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to Zoning By-law 270-2004 of the City of Brampton to rezone lands respecting Part Lot 14 and 15ND, Concession 7 from "Recreational Commercial" and "Flood Plain" to "Executive Residential, Valley Land and Parkette" to permit residential uses
OMB File No. PL081113

1281216 Ontario Inc (Intracorp) has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal or neglect to enact a proposed amendment to the Official Plan for the City of Brampton to redesignate land at Part Lot 14 and 15ND, Concession 7 from "Recreational Commercial" to "Residential" to permit residential developments

Approval Authority File No. CO7E15.009

OMB File No. PL081175

1281216 Ontario Inc. (Intracorp) has appealed to the Ontario Municipal Board under subsection 51(34) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from the failure of the City of Brampton to make a decision respecting a proposed plan of subdivision on lands composed of Part of Lot 14 and 15ND Concession 7 in the Town of Brampton.

Approval Authority File No.: 21T-05014B

OMB File No. PL081174

WITNESS STATEMENT

OF

**QUENTIN HANCHARD, MES, MCIP, RPP
TORONTO AND REGION CONSERVATION AUTHORITY**

EXHIBIT _____

March 30, 2009

**WITNESS STATEMENT OF
QUENTIN HANCHARD, MES, MCIP, RPP**

Background

This witness statement has been prepared by:

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I am a Manager, Development Planning and Regulation with Planning and Development of the Toronto & Region Conservation Authority (hereinafter the "TRCA"). My responsibilities include: overall management of the TRCA's development planning and regulation services for the Region of Peel, in addition to Markham, Richmond Hill, Towns of Mono and Adjala; supervision of Planners; the review of planning-related documents and development applications received by the TRCA for comments pursuant to the Planning Act; the review of Ontario Regulation 166/06 permit applications pursuant to the Conservation Authorities Act; and the coordination of technical comments related to the latter two responsibilities. My curriculum vitae is attached as Attachment A to this witness statement.

I have been a Registered Professional Planner in the Province of Ontario since January 2004, and a full Member of the Canadian Institute of Planners. I have been previously qualified as an Expert Planning Witness at the Ontario Municipal Board.

I am familiar with the proposed plan of subdivision and the associated proposed Official Plan and Zoning By-law Amendments. I have visited the subject property.

In part, for my opinions I also rely on the opinion of TRCA colleagues Dena Lewis, Manager, Terrestrial and Aquatic Ecology and Mr. Ryan Ness, Manager, Water Resources. The list of documents on which I have relied is provided at the end of this Witness Statement.

Nature of Evidence

Issues List

My evidence will provide planning opinion on TRCA Issues 1-11 and 19 as per the agreed-upon issues list. Additional issues will be addressed by my colleagues Dena Lewis and Ryan Ness.

TRCA's Role and Responsibilities

Conservation Authorities are prescribed review agencies under Planning Act. The subject applications were circulated to the TRCA for review and comments. TRCA staff have provided a number of letters pertaining to the subject property. The TRCA reviews all Planning Act applications circulated to the TRCA based on policies outlined in the 1994 Valley and Stream Corridor Management Program (VSCMP, implemented under the Conservation Authorities Act as per Sections 20 and 21.

The VSCMP recognizes, among other things, that valley and stream corridors are dynamic systems formed by natural processes influencing their form and functions. These corridors provide numerous ecological functions including flood and drought mitigation, ground water discharge and recharge, fish and wildlife habitat and migration routes, water and air purification, climate stabilization and moderation of weather, detoxification and decomposition of wastes, as well as provisions for aesthetics, intellectual stimulation and recreational opportunities.

The VSCMP is organized to integrate the CA's responsibility to prevent, eliminate or reduce the risk to life and property from flooding, erosion, and slope instability. In addition, the VSCMP includes provisions to protect and regenerate the ecological health and integrity of natural systems, as well as provide opportunities for compatible public uses and enjoyment. As valley and stream corridors are vulnerable to development and associated anthropogenic impacts, the VSCMP established policies to direct land uses to ensure these systems are protected and/or enhanced. The cumulative impacts to natural systems from urbanization are also considered in making these ecosystem based planning decisions.

TRCA has an operational arrangement with City of Brampton to provide technical comments and environmental advice on planning matters. TRCA staff are members of Brampton's Growth Management and Development Review Team and provide advice and comments through this team and through written correspondence.

In accordance with memorandums of understanding (MOU) with other organizations and municipalities, (including an MOU with the Region of Peel), TRCA reviews applications for compliance with PPS Natural Heritage Policies and municipal policy. TRCA also establishes limits of development on properties that are adjacent to or affected by natural features associated with watercourse features. Through a memorandum of understanding in place between the Ministries of Natural Resources and Municipal Affairs and Housing and Conservation Ontario, Conservation Authorities have the direct delegated responsibility for reviewing development applications under Section 3 (Natural Hazards) of the PPS.

The TRCA is, under the provisions of the Conservation Authorities Act, able to pass regulations in areas of natural hazard requiring permits from it before any development may occur (Sec 28. C.A. Act). Under this power, Ontario Regulation 166/06 has been passed, to regulate Development, and Interference with Wetlands and Alterations to Shorelines and Watercourses, within the prescribes areas of TRCA's jurisdiction.

The TRCA has agreements in place with Fisheries and Oceans Canada (DFO) and the Ministry of Natural Resources (MNR) with respect to the consideration of proposals that would be subject to the Federal Fisheries Act.

Summary Opinion

It is my opinion that insufficient supporting evidence has been provided with respect to the proposed Official Plan Amendment, Zoning By-law Amendment, and Subdivision applications to establish their consistency with Provincial Policy, adherence to TRCA's policy and regulatory requirements, and consistency with City of Brampton Official Plan environmental policies. In the absence of this supporting evidence, it is my opinion that the above noted applications should be refused.

While the TRCA does not object to the principle of development on the tableland portions of this subject property, subject to meeting all applicable policy and regulatory requirements, the materials provided to date in support of this application have not established that the proposed development can be completed without having impacts upon adjacent properties not owned by the proponent, and without having significant negative impacts upon the natural environment. Based upon the information provided, consistency with the following policy documents has not been established:

- protecting and enhancing natural heritage features and their functions on a watershed basis; within the TRCA's Valley and Stream Corridor Management Program;
- the objectives of the Humber Watershed Plan, 2008;
- the objectives of the West Humber Subwatershed Plan;
- the policies of the Provincial Policy Statement (2005) – herein identified as the PPS;
- City of Brampton Official Plan Policies and objectives (1993/2006);
- Ontario Regulation 166/06 (*Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation*).

Based upon the above, and the evidence provided herein, it is my professional planning opinion, that the applications and associated appeals before the OMB, as submitted, should be refused.

Evidence in Support of Summary Opinion

My planning opinion regarding **Issue 1** is as follows:

Issue 1: What are the appropriate limits of development having regard to the environmental features and constraints on the subject lands which may include the natural heritage systems, features, functions, and areas, and to the site biodiversity consisting of fish, endangered and threatened species and other wildlife?

To date insufficient information has been provided by the proponent in support of the application to justify the proposed channel realignments and associated proposed corridor widths, as well as the proposed buffers between the natural features and proposed development.

Salt Creek Tributaries

The subject property is traversed by two tributaries of the West Humber River, which drain to a tributary of the West Humber River known as Salt Creek. In the applications before the Board, the proponent is proposing to realign these features and their corridors. It is our understanding that this realignment is being proposed to facilitate the development form that the applicant is seeking. As identified in the evidence provided by my colleague Ms. Lewis, realignments to watercourse features such as these may be considered based upon achieving a significant net improvement to the form and function of the natural system. Proposals for modifications to watercourse features are assessed by TRCA staff based upon our responsibilities under the *Conservation Authorities Act*, Ontario Regulation 166/06, and based upon the agreements in place between Fisheries and Oceans Canada (DFO) and the Ontario Ministry of Natural

Resources (MNR). The subject watercourses are regulated by the TRCA under Ontario Regulation 166/06, and a permit is required from the TRCA for alterations to watercourse features such as those proposed. In considering a proposal for alterations to a watercourse, TRCA staff must consider (among other items): the policies contained in TRCA's policy document – the Valley and Stream Corridor Management Program; Ontario Regulation 166/06 requirements; DFO and MNR requirements.

The evidence provided by my colleagues Ms. Lewis and Mr. Ness identify that the information submitted to date is insufficient to establish that the proposed realignments to the Salt Creek tributaries would meet TRCA policy requirements, and is insufficient to establish that the requirements of DFO and MNR - which are complementary to those of the TRCA – have been met.

TRCA Jurisdiction and Ontario Regulation 166/06

Pursuant to Section 28 of the Conservation Authorities Act, the TRCA may make regulations applicable to lands within its jurisdiction. Specifically, 28(1), subject to approval of the Minister, an authority may make regulations applicable in the area under its jurisdiction prohibiting, regulating or requiring the permission of the authority for development if, in the opinion of the authority, the control of flooding, erosion, dynamic beaches, pollution, conservation of land may be affected by the development. Conservation authorities policies, which form a 'program' as defined by the *Conservation Authorities Act* Must also be considered in the review of any application for a permit under this Regulation.

Under this authority, the TRCA has adopted Ontario Regulation 166/06 (The Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation), which replaced the TRCA's former Regulation – Ontario Regulation 158. In accordance with Ontario Regulation 166/06 a permit is required from the TRCA prior to any of the following works taking place:

1. Straightening, changing, diverting or interfering in any way with the existing channel of a river, creek, stream or watercourse, or for changing or interfering in any way with a wetland;
2. Development, if in the opinion of the authority, the control of flooding, erosion, dynamic beaches or pollution or the conservation of land may be affected by the development.

Development is defined as:

1. The construction, reconstruction, erection or placing of a building or structure of any kind;
2. Any change to a building or structure that would have the effect of altering the use or potential use of the building or structure, increasing the size of the building or structure or increasing the number of dwelling units in the building or structure;
3. Site grading;
4. The temporary or permanent placing, dumping or removal of any material, originating on the site or elsewhere.

Permits are reviewed by TRCA staff and a recommendation is made to the TRCA's Executive Committee (the approval body). Given that the watercourse features, associated floodplains, meander belts, and associated riverine topography, is regulated in addition to a 15 metre area of interference, the requirements of the TRCA will have a substantial impact on whether the proposed watercourse alterations, and the currently proposed development form is viable or not. The information that has been submitted to date in support of this application is not sufficient for TRCA staff to conclude that the tests of the Regulation, namely the control of flooding, erosion, pollution, and conservation of land can be adequately addressed with this proposal. Among other issues, the potential impacts of the proposed watercourse realignments and channel modifications on downstream properties are unknown. Based upon the current subdivision design, the watercourses are to be realigned both north and south of the existing

residential properties on Tortoise Court. The potential interaction and interface between the sections of the watercourse that are to be realigned, and those that will remain in their current condition through private properties on Tortoise Court have not been established in the material provided. Changes to flooding, channel form, erosion, sedimentation (among other issues) may have significant negative impacts on private properties that are not part of the applications presently before the OMB. Consequently, in the absence of this being established, as the Manager, Development Planning and Regulation, I could not support the issuance of Ontario Regulation 166/06 permits for the works proposed on the subject property.

As the OMB has no jurisdiction with respect to the approval of permits issued under the *Conservation Authorities Act*, notwithstanding any decisions made by the OMB, necessary approvals from the TRCA, may not be attainable for works required on the subject property to facilitate the subdivision that is presently proposed and with the current level of information.

TRCA Valley and Stream Corridor Management Program

Section 21(1)(a) of the Conservation Authorities Act permits the Conservation Authority to develop programs and policies. Since TRCA's incorporation in 1957, the Conservation Authority has adopted several programs and policies outlining its approach to conservation, restoration, development and management of natural resources within its jurisdiction. These programs have, and continue to, evolve to reflect the advances in the scientific community and in the TRCA's own experience and knowledge of the watersheds within its jurisdiction. Central principles behind the programs and policies are to conduct planning for the protection and enhancement of natural features and their functions, as well as natural hazard management on a watershed basis.

In 1994 TRCA's Valley and Stream Corridor Management Program was implemented under Section 21 of the *Conservation Authorities Act*. TRCA reviews all Ontario Regulation 166/06 permit requirements and Planning Act applications circulated to TRCA in concert with the policies in this Program. The policies of the Valley and Stream Corridor Management Program have been recognized as relevant to the evaluation of development proposals in a number of OMB Decisions including Nos. 0247 and 2206.

My planning opinion on the proposal relative to the Valley and Stream Corridor Management Program is as follows:

1. *Defining the Valley Corridor*

Policy 3.1 of the Valley and Stream Corridor Management Program defines the limits of a stream corridor (a corridor without an associated landform) as being the greater of the Regulatory (Regional Storm) Floodplain or the meander belt of the watercourse (determined by the Authority to be 20 times the low flow channel width) plus 10 metres inland on each side of the watercourse. As the subject application proposes alterations to the Salt Creek tributaries on the subject property, in which the watercourses would be realigned into new channel blocks, this policy, and the principles which it supports would similarly apply to the proposed channel blocks. The size and alignment of these channel blocks is identified in the proposed draft plan of subdivision, and would be set through this plan if approved. The materials submitted to date in support of this application have not adequately established that the corridor widths will support the necessary channel form with appropriate buffers and setbacks. The evidence provided by my Colleague, Mr. Ness in this regard, has identified significant concerns with respect to the profile and alignment of the proposed channel, and its ability to meet natural channel design (geomorphic design) requirements that would satisfy the TRCA (and DFO), as well as floodplain and flood management setback requirements. In accordance with VSCMP policies, a minimum

10 metre buffer is required from the floodplain, which is considered to be part of the stream corridor. The evidence provided by Ms. Lewis similarly identifies that insufficient information has been provided to establish that the form and function of the channels would meet TRCA and DFO terrestrial and aquatic ecology design requirements. The information provided to date also does not establish long-term viability of the channel as an effective naturalized stream corridor and natural system, or that it results in a net environmental gain.

Section 3.3 of TRCA's VSCMP identifies some of TRCA's policies and procedures for identifying watercourse and alterations. This policy identifies that, proposed watercourse alterations which meet the criteria for consideration pursuant to Section 3.3.2 may be permitted if approved through the preparation and adoption of a subwatershed plan and/or corridor plan addressing incremental and cumulative impacts and approvals under the Federal Fisheries Act, if required, that demonstrates:

1. alternative protective measures such as additional setbacks are not viable
2. there will be no upstream or downstream effects on flooding erosion or slope instability
3. the use of natural channel design techniques which
 - a. maintain or enhance existing channel length and the natural meander wave length
 - b. use a range of particle sizes in the bed material and establishes or provides for the formation of pools and riffles at appropriate intervals
 - c. protect existing riparian features and functions or re establishes where appropriate a minimum 10m wide zone of riparian habitat on both sides of the watercourse
 - d. do not result in the restriction of fish movement or migration for spawning nursery or feeding
 - e. do not increase water temperatures by reducing shade decreasing water depth reducing groundwater flows or through inputs from surface draw dams or stormwater management facilities
 - f. do not decrease baseflow characteristics
 - g. do not reduce food sources through the reduction of in stream or terrestrial riparian vegetation
 - h. do not impair substrate characteristics and
 - i. do not impair water quality through the introduction of sediment or other contaminants or pollutants
4. no reduction fragmentation of wildlife habitat including forage water supply shelter and living space reduction of wildlife diversity or restriction of wildlife movement
5. the ecological integrity of the valley or stream corridor is maintained
6. Significant Areas will not be affected
7. disturbance to terrestrial vegetation is minimized
8. rehabilitation is incorporated into the proposed works

Policy 3.3.B of TRCA's VSCMP states that alterations to a watercourse are not permitted for the purpose of creating additional useable area and/or to accommodate development. Based upon the information to date, which fails to establish that the realignments proposed provide significant enhancements to the stream corridors, the proposal is not consistent with this policy.

The corridors, once created, are, in accordance with TRCA policies and current Brampton policies, to be conveyed into public ownership. While it is our understanding that the proponent is proposing to dedicate these lands accordingly, TRCA staff could not recommend that any public agency take ownership of these channels until such time as the long-term maintenance of

the channels, impacts on adjacent properties, and any associated liabilities are fully established and understood. Having these channels remain in private ownership would not meet the policy objectives of the TRCA for long term protection of valley lands, would not meet the corresponding policy objectives of the City of Brampton – as outlined in the witness statement of Ms. Jorgenson, and would remain the long-term responsibility, and potential liability of the proponent.

2. *Policies to Protect the Valley Corridor*

The main thrust of the TRCA's policies and procedures for valley and stream corridors is noted in Section 4.1 of the Valley and Stream Corridor Management Program and "*is to prevent new development that would introduce risk to life and property associated with flooding, erosion and slope stability and/or is not compatible with the protection and rehabilitation of these natural resources in the natural state*" (pg. 25, underline added). The following specific policies apply to the proposal on the subject property:

Policy 4.1.1.A. *New urban development shall not be permitted within valley and stream corridors, except in areas of existing development as set out in Section 4.2.* As noted above, as submitted Policies 3.1 and 3.3 of TRCA's VSCMP have not been satisfied. This proposal results in the development of a new residential subdivision within existing stream corridors, without establishing viable, enhanced alternatives that meet TRCA's policy requirements for watercourse alterations. Consequently, the applications are not consistent with this policy.

Policy 4.1.1.F., *Structures associated with new urban development adjacent to valley corridors should be in compliance with municipal rear/side lot setback requirements, and Policy 4.1.1.I., Establishment of woody vegetation adjacent to valleylands should be included in all new development proposals to discourage encroachment.* These policies recognize the negative impacts created by development located too close to valley corridors. These impacts include short and long-term degradation of the features and functions of the natural heritage system. This policy, in combination with the other policies above, typically results in the property line of new lots being created 10 metres inland from the greatest of the applicable natural heritage or natural hazard related constraints. In order to accommodate an appropriate rear yard amenity space, a further 7.5 metre minimum setback within the adjacent lots is typically applied. This allows for the valley feature to be protected while allowing for use and enjoyment of private property by the occupants. The subject proposal appears to include only setbacks within the lots, as it has not been established that the appropriate buffers – as identified above – have been integrated.

3. *Proposed setbacks to the West Humber River Tributary*

The western portion of the subject property is located adjacent to one of the main tributaries of the West Humber River. This tributary, having a defined valley corridor, is considered to be a 'valley corridor' under TRCA's VSCMP.

Where the Regulatory floodplain is contained within the valley corridor, Policy 3.1.1 of the Valley and Stream Corridor Management Program defines the limits of a valley corridor as the greater of the physical top of bank, predicted long term stable slope line, and/or significant area, plus 10 metres inland. The valley corridor boundary is illustrated in Figures 5 and 6 of the Valley and Stream Corridor Management Program.

While it is acknowledged that there is historic development within this area (such as the development south of this site) in which a 10 metre buffer was not achieved, past planning

decisions within these areas cannot be the sole criterion on which current and future buffer requirements are established. In historic discussions between TRCA staff and the proponents pertaining to the subject property, and related TRCA correspondence, TRCA staff identified the need for a 10 metre buffer from the West Humber tributary in accordance with TRCA VSCMP policy requirements. As lesser buffers were integrated into the developments to the south of the subject property, TRCA staff was at that time willing to consider whether reductions to the 10 metre buffer requirement would be appropriate. The applicant subsequently proposed a 2.5 metre buffer adjacent to the valley corridor (which is similar to that on downstream properties adjacent to this site) which is currently reflected on the proposed draft plan of subdivision. Based upon the evidence of my colleague Ms. Lewis, sufficient ecological rationale has not to date been provided to support a buffer reduction in this area. Additionally, subsequent to the early discussions on the subject property, a 10 metre buffer requirement, consistent with TRCA's VSCMP has been integrated into the 2006 Brampton Official Plan. While this Plan was not in place at the time of submission of this application, its policies are being considered as being reflective of the current goals and objectives of the City, which integrate more current environmental planning. The witness statement of Ms. Jorgenson provides additional details on these policies, and supports the 10 metre buffer requirement of the 2006 Official Plan.

Additionally, the West Humber tributary has subsequently been identified as an Urban River Connection in the Greenbelt Plan, which emphasizes the significance of this valley corridor. Policy 3.2.5 (2) of the Greenbelt Plan identifies the following, which is applicable to this site: "The river valleys that run through existing or approved urban areas and connect the Greenbelt to inland *lakes* and the Great Lakes are a key component of the long-term health of the Natural System. In recognition of the function of the urban river valleys, municipalities and conservation authorities should:

- (2) In considering land conversions or redevelopments in or abutting an urban river valley, the better planning approaches are ones that:
 - a. Establish or increase the extent or width of *vegetation protection zones* in *natural self-sustaining vegetation*, especially in the most ecologically sensitive areas (i.e. near the stream and below the *stable top of bank*);
 - b. Increase or improve *fish habitat* in streams and in the adjacent riparian lands;
 - c. Include landscaping and habitat restoration that increase the ability of native plants and animals to use valley systems as both *wildlife habitat* and movement corridors; and
 - d. Seek to avoid, minimize and/or mitigate impacts associated with the quality and quantity of urban run-off into the valley systems;

Cumulative Impacts

Various policy documents recognize that the natural heritage system, including valley and stream corridors, are vulnerable and sensitive to the incremental and cumulative effects of land uses and land use change. These include the City of Brampton 2006 Official Plan, Region of Peel Official Plan and Principal 4 of TRCA's Valley and Stream Corridor Management Program. In addition, the courts have upheld the Conservation Authority's ability to consider cumulative impacts of potential future development applications when considering approval or refusal of a TRCA permit (611428 Ontario Limited v. Metropolitan Toronto and Region Conservation Authority, April 22, 1996).

As Manager of Development Planning and Regulation, I receive proposals for development adjacent to valley corridors on a regular basis. Through past planning decisions, some of which were in the absence of current science regarding the need for environmental buffers, buffers of less than 10 metres have been provided. As identified in the witness statement of my colleague Ms. Lewis, these planning practices of the past should not be perpetuated into the future, and cannot form the sole basis of present and future environmental planning. The applicant's proposal if approved will result in negative impacts to the natural heritage system and the valley corridor, through unmitigated impacts.

As valley system of the West Humber tributary is not a part of this application, is being retained in private ownership to support a realigned golf course, and has only a 2.5 metre buffer proposed from the established top of bank to the adjacent lots, in my opinion, the proposal is not consistent with multiple policies of the Valley and Stream Corridor Management Program, the policies and objectives of Brampton's current Official Plan, and the broader objectives of the Greenbelt Plan.

My planning opinion regarding **Issue 2** is as follows:

Issue 2: Is all of the development that is currently proposed located outside of the Regulatory Floodplain, consistent with Section 3 of the Provincial Policy Statement.

Section 3 of the *Planning Act* identifies that, in respect of the exercise of any authority that affects a planning matter, the decisions affecting planning matters, "shall be consistent with" policy statements issued under the Act. The 2005 PPS is the policy statement applicable to the subject applications.

Section 3.1.2 of the PPS identifies that 'Development and Site alteration shall not be permitted within: d) a floodway regardless of whether the area of inundation contains high points of land not subject to flooding'. 'Development' is a defined term in the 2005 PPS, as follows: "means the creation of a new lot, or change in land use, or the construction of buildings and structures, requiring approval under the Planning Act...". Floodway is also a term defined in the PPS, the following excerpt of which is applicable to the site, "For river, stream and small inland lake systems, means the portion of the floodplain where development and site alteration would cause a danger to public health and safety or property damage. Where the one zone concept is applied, the floodway is the entire contiguous floodplain".

As provided in TRCA's letter of March 13, 2009, in addition to the evidence of my colleague Ryan Ness, the stormwater management report has not established that development proposed as part of the subject applications will be outside of emergency spillway or major storm flow routes associated with existing stormwater management ponds located north of Countryside Drive. On the basis of the above, the applicant has not established that the proposed development is consistent with Section 3.1.2 of the PPS.

My planning opinion regarding **Issue 3** is as follows:

Issue 3: Has the development application adequately identified the natural heritage systems, features and functions of the subject property and any necessary connections with the adjacent lands?

1. The evidence provided by my colleagues Ms. Lewis and Mr. Ness identify that there are deficiencies in the materials provided. Based upon this evidence, it has not been demonstrated in the supporting material submitted to date that:

- a. the proposed watercourse corridors represent a no net loss of fisheries habitat, or that the requirements of DFO will be met through the proposed design;
- b. the design of the proposed channels corridors fulfills the geomorphological, natural systems, natural hazard, and target aquatic species enhancement objectives of the TRCA and the DFO. TRCA staff are not satisfied based upon the materials submitted to date that the proposed design of the westerly corridor is conducive to an appropriate natural channel design that will enhance the environment;
- c. the proposed development has been designed to allow for connectivity between the subject lands and adjacent lands or that the watercourse and floodplain corridors can appropriately tie into existing watercourses outside of this plan of subdivision;
- d. the proposed development maintains or improves the site's ecosystem and hydrology;
- e. the filling of the ponds will maintain current groundwater conditions and hydrology on the site.

Section 2 of the PPS outlines Provincial requirements for natural heritage features and systems in planning decisions.

Section 2.0 addresses Wise Use and Management of Resources. Specifically, Section 2.1 addresses Natural Heritage. The PPS represents the latest Provincial policy direction to not only "protect" the diversity and connectivity of natural features, but also to protect the long-term ecological function and biodiversity of natural heritage systems. In addition, the policy states that these features and functions should be "restored" and, where possible, "improved." The policy recognizes a shift in environmental planning to natural systems based planning, rather than only natural feature based planning, in which the larger implications of potential impacts on the environment must be considered. It is a current indicator of what is comprehensively described as "good planning." More specifically:

Policy 2.1.1 identifies that "Natural features and areas shall be protected for the long term".

Policy 2.1.2 identifies that "The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.

Policy 2.1.5 identifies that "Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements."

Policy 2.1.6 further identifies that, "Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4, and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions".

Policy 2.2.1, which provides policies on Water, identifies that "Planning authorities shall protect, improve or restore the quality and quantity of water by:

- e) maintaining linkages, and related functions among surface water features, ground water features, hydrologic functions and natural heritage features and areas".

In my opinion, for the multiple reasons stated in earlier sections of this witness statement, and in the evidence provided by my colleague Ms. Lewis, it has not been established that the proposed

development results in the “protection” of ecological features or functions, or that it provides for “restoration” and “improvements” to these features and functions. It has similarly not been established that the functions among surface and ground water features, hydrologic functions and natural heritage features and uses will be maintained. Therefore, consistency with these sections of the PPS has not been established, and in the absence of this confirmation, the proposed development does not represent good planning.

TRCA’s VSCMP also identifies the need for connectivity and linkages to adjacent greenspaces: ***Policy 4.1.1.K., Development proposals adjacent to valley and stream corridors should protect and establish linkages to adjacent greenspaces and built communities.***

As noted in the discussion above, this proposed plan is being considered in isolation of the valleylands adjacent to the site, and does not consider connectivity of the natural systems within this site to publicly owned lands in the West Humber tributary corridor. This lack of connectivity will significantly hinder if not preclude the opportunity for public agencies who own and manage adjacent natural systems to comprehensively manage these systems, and to provide public access in appropriate locations. This proposal also does not provide for ecological linkages between the features on the property, and the West Humber tributary valley corridor. As such, the proposal as submitted is not consistent with this policy.

My planning opinion regarding **Issue 4** is as follows:

Issue 4: Does the proposed development meet policy requirements of the City’s applicable Official Plan to maintain, protect and enhance the natural heritage systems, and represent a net environmental gain as per the objectives of the 2006 Official Plan?

Evidence provided by Ms. Jorgenson identifies that the proposal is not consistent with City Policy requirements, or the objectives of the 2006 Official Plan. As provided in my evidence, and that of my colleagues Mr. Ness and Ms. Lewis, TRCA staff are of the opinion that insufficient evidence has been provided to conclude the this proposal will protect and enhance the natural heritage systems or that the proposed development will represent a net environmental gain, as per the objectives of the 2006 Brampton Official Plan. In the absence of this being established to the satisfaction of the TRCA, my professional planning opinion is that the subject applications have failed to establish that this proposal will protect and enhance the natural heritage systems or that the proposed development will represent a net environmental gain.

My planning opinion regarding **Issue 5** is as follows:

Issue 5: Do the proposed reconstructed ponds and features represent an enhancement of the environmental features and functions of the City’s applicable Official Plan and a net environmental gain as per the objectives of the 2006 Official Plan?

As provided in my evidence, and that of my colleagues Mr. Ness and Ms. Lewis, TRCA staff are of the opinion that insufficient evidence has been provided to conclude the this proposal will protect and enhance the natural heritage systems or that the proposed development will represent a net environmental gain, as per the objectives of the 2006 Brampton Official Plan. In the absence of this being established to the satisfaction of the TRCA, my professional planning opinion is that the subject applications have failed to establish that this proposal will represent an enhancement of the environmental features and functions of the City’s applicable Official Plan and a net environmental gain as per the objectives of the 2006 Official Plan.

My planning opinion regarding **Issue 6** is as follows:

Issue 6: Is the proposed application consistent with the Natural Heritage Policy 2.1 of the PPS?

As provided in my evidence on Issue number 3 above, as well as the evidence of my colleagues Mr. Ness and Ms. Lewis, in my opinion, the application as submitted is not consistent with Section 2 of the Provincial Policy Statement.

My planning opinion regarding **Issue 7** is as follows:

Issue 7: Are there any environmentally hazardous and/or ecologically sensitive lands, [and/or natural heritage systems] that should be dedicated to the City? If so, does the Board have jurisdiction to order such dedication?

Although excluded from the application before the Board, the applicant is the owner of the adjacent valleylands, and it is our understanding that the applicant is retaining these lands in private ownership for golf course purposes. The applicant's subdivision proposal, if approved, will result in the severance of the valleylands from the subject property. These lands include hazard lands and are part of the natural heritage system, and provide direct linkages to the adjacent valley system which is in public ownership. Retaining these lands in private ownership for an intensified golf course use precludes future opportunities for comprehensive valleyland restoration and enhancements, consistent with the objectives of the City of Brampton Official Plan, VSCMP, Greenbelt Plan, and the West Humber Subwatershed study.

TRCA's VSCMP identifies the following in Policy 4.1.1.D, "*Valley and stream corridors which form part of new urban development proposals should be set aside for public ownership.*" In my opinion, the subject application as currently framed does not meet that policy.

As a valleyland identified as a Greenbelt 'External Connection', the Greenbelt Plan identifies the following objectives in Section 3.2.5(1).

"The Natural Heritage System is connected to local, regional and provincial scale natural heritage, water resource and agricultural systems beyond the boundaries of the Greenbelt.

To support the connections between the Greenbelt's Natural System and the local, regional and broader scale natural heritage systems of southern Ontario, such as the Lake Ontario shoreline, including its remaining coastal *wetlands*, the Great Lakes Coast, Lake Simcoe, the Kawartha Highlands, the Carolinian Zone and the Algonquin to Adirondack Corridor, the federal government, municipalities, conservation authorities, other agencies and stakeholders should:

1. Consider how activities and land use change both within and abutting the Greenbelt relate to the areas of external connections identified in this Plan;
2. Promote and undertake appropriate planning and design to ensure that external connections are maintained and/or enhanced; and
3. Undertake watershed based planning, which integrates supporting ecological systems with those systems contained in this Plan.

The river valleys that run through existing or approved urban areas and connect the Greenbelt to inland *lakes* and the Great Lakes are a key component of the long-term health of the Natural System. In recognition of the function of the urban river valleys, municipalities and conservation authorities should:

1. Continue with stewardship, remediation and appropriate park and trail initiatives which maintain and, to the extent possible, enhance the ecological features and functions found within these valley systems;

Continue with stewardship, remediation and appropriate park and trail initiatives which maintain and, to the extent possible, enhance the ecological features and functions found within these valley systems;”

Although the Board may not have jurisdiction to order such a dedication of lands – as identified in this issue – failure to include these lands or the requirement for appropriate planning for these lands may hinder or preclude the ability of the applicants to meet Provincial, City and TRCA policy objectives with the development proposed.

My planning opinion regarding **Issue 8** is as follows:

Issue 8: Does the proposed development implement storm water management best practices? Do the stormwater management ponds offset the loss of natural features and functions and represent an environmental enhancement and net environmental gain of fisheries and wildlife habitat as per the City’s applicable Official Plan the Region of Peel Official Plan and TRCA storm water management policies and guidelines?

Expert evidence on the technical elements of this issue has been provided by my colleagues, Ms. Lewis and Mr. Ness. In their evidence, Mr. Ness and Ms. Lewis have concluded that to date insufficient information has been provided to establish that storm water best practices are being proposed for integration, and that insufficient information has been provided to conclude that the proposal represents an environmental enhancement and net environmental gain of fisheries and wildlife habitat as per the City’s applicable Official Plan the Region of Peel Official Plan and TRCA storm water management policies and guidelines.

Section 2.2.1 of the PPS identifies that “Planning authorities shall protect, improve or restore the quality and quantity of water by: (g) ensuring stormwater management practices minimize stormwater volumes and contaminant load, and maintain or increase the extent of vegetative and pervious surfaces”. Based upon the materials provided to date, it is not clear that the existing hydrologic functions are being maintained.

Based upon the above, and the evidence provided by my colleagues, it is my professional planning opinion that the subject application has not demonstrated consistency with this section of the PPS, and has failed to establish that the subject application is consistent with best management practices.

My planning opinion regarding **Issue 9** is as follows:

Issue 9: Can the water balance measures that are proposed achieve the objectives of the TRCA and City of Brampton? To the extent that these measures are proposed to be located on lands outside of the subject lands, can these measures be effectively maintained on private properties?

Expert evidence on the technical elements of this issue has been provided by my colleagues, Ms. Lewis and Mr. Ness. In their evidence, Mr. Ness and Ms. Lewis have concluded that to date insufficient information has been provided to establish the water balance measures that are proposed achieve the objectives of the TRCA. Similarly, it is our opinion that insufficient information has been provided to establish that the measures can be effectively maintained in the

long term. As the water balance for this site will be premised upon the long term function of these measures, it cannot be concluded, at this time, that the measures can achieve the required function.

My planning opinion regarding **Issue 10** is as follows:

Issue 10: Does the proposed development conform with City's Official Plan policies at the date of application with regards to buffers and setbacks? How much weight should be given to the proposed development's consistency with the objectives of the City's 2006 Official Plan policies with regards to buffers and setbacks and good planning principles? Does the proposed buffer achieve the environmental policies and objectives of the 2006 Official Plan and represent environmental enhancement or net environmental gain?

As provided in my evidence above, as well as the evidence of my colleagues Mr. Ness and Ms. Lewis, in my opinion, the application is not consistent with TRCA's policies or with the policy objectives of the 2006 Official Plan. As the City's official plan policies regarding buffers are consistent with those of TRCA's VSCMP, which has been in place since 1994, and have been broadly applied throughout TRCA's jurisdiction, the buffer policies in the 2006 Official Plan should be considered as being reflective of good environmental planning. As provided in my evidence above and (that below with respect to the Humber Watershed Plan), as well as that of my colleagues, the proposed buffers do not represent environmental enhancement or net environmental gain, and consequently do not in my opinion achieve the environmental policies and objectives of the 2006 Official Plan.

My planning opinion regarding **Issue 11** is as follows

Issue 11: Will the proposed development give rise to negative impacts to the Salt Creek and West Humber River Tributaries as a result of the proposed foundation drain collectors that are designed to redirect water to the West Humber River? Are these impacts consistent with the policies and objectives in the City's applicable Official Plan and those of the TRCA?

Expert evidence on the technical elements of this issue has been provided by my colleagues, Ms. Lewis and Mr. Ness. In their evidence, Mr. Ness and Ms. Lewis have concluded that to date insufficient information has been provided to establish that the proposed foundation drain collectors will not result in significant impacts to the groundwater system, or to the baseflow of the two Salt Creek tributaries that traverse the site. Additionally, this information is insufficient to establish consistency with Policy 2.2.1 of the PPS (as identified above) which states that,

“Planning authorities shall protect, improve or restore the quality and quantity of water by:
e) maintaining linkages, and related functions among surface water features, ground water features, hydrologic functions and natural heritage features and areas”.

Based upon the above, in the absence of conclusive evidence that the proposed foundation drain collectors will not give rise to negative impacts to the Salt Creek and West Humber River tributaries, it is my professional planning opinion that the application has not established consistency with Provincial Policies, the objectives of the Official Plan, and TRCA's policies regarding stormwater management – as articulated by my colleagues.

My planning opinion regarding **Issue 19** is as follows:

Issue 19 - What weight, if any, should be given to whether the design brief explores sufficient opportunities for the implementation of Low Impact Development?

My previous planning evidence identified that the maintenance and enhancement of existing surface and ground water features and functions has not been established through the materials provided to date. This includes the discussion above on consistency with Section 2.2 of the PPS. The City of Brampton and TRCA have strongly encouraged the integration of low impact development measures into this proposal to better maintain, and where possible enhance the surface and ground water form and function.

Further, consistency with Section 1.8 of the Provincial Policy Statement, which provides policies on Energy and Air Quality has not to date been demonstrated. Section 1.8.1 identifies the following: "Planning authorities shall support energy efficiency and improved air quality through lands use and development patterns which: (e) promote design and orientation which maximize the use of alternative or renewable energy, such as solar and wind energy, and the mitigating effects of vegetation".

Section 2.2.1 of the PPS identifies that, "Planning authorities shall protect, improve or restore the quality and quantity of water by: a) using the watershed as the ecologically meaningful scale for planning". A watershed plan has been in place for the Humber River since 1997. An updated watershed plan was recently updated and released in June of 2008. This plan, and the draft sections of the Plan, prior to its adoption, provided guidance for TRCA's comments on the subject applications. The recently released consolidated watershed report provides the following recommendations which must be considered for this site:

The *Humber River Watershed Plan Implementation Guide* includes subwatershed regeneration plans that identify high priority regeneration actions associated with three integral management directions:

- **Expand the terrestrial natural heritage system** by creating and enhancing natural cover in the target terrestrial natural heritage system and riparian areas. Secure the 1.2 per cent (approximately 446 hectares) of the targeted system that is not yet protected by policy mechanisms and achieve an increase in natural cover of 500 hectares or 1.7 per cent over 2002 levels by 2012.
- **Build sustainable communities** by improving stormwater management, naturalizing landscapes and undertaking other projects to increase the urban tree canopy.
- **Recognize and enhance the regional open space system** to provide nature-based recreation and cultural heritage experiences by extending the inter-regional trail network and creating links to local trails, securing additional lands for greenspace and minimizing the impacts of public use on natural habitats and wildlife." (p. 153)

The Plan also provides the following with respect to the West Humber Subwatershed, in which the subject site is located:

- "Most of the remaining subwatershed is in the Peel Plain with poorly drained clay and clay till soils, limited groundwater recharge and low baseflow, especially in the summer months. In these areas innovative engineered infiltration measures, rainwater harvesting and green roofs will be valuable tools to avoid increasing surface runoff during development, and reduce erosion problems at existing sites in the City of Brampton and the City of Toronto.
- Aquatic habitats should also be enhanced to improve populations of targeted fish species, focusing on reddsides dace.

- Additional greenspace lands should be acquired to link the City of Brampton and the Town of Caledon trail systems and meet the recreation needs of the growing population.” (p.154)

Until such time as more conclusive evidence can be provided

1. identifying that there are no significant potential impacts of this development on surface and ground water resources,
2. that the proposed development is consistent with PPS policy 1.8.1, and,
3. the objectives of the Watershed Study, as noted above, are satisfied,

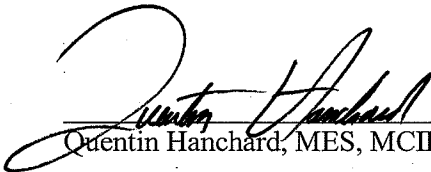
additional opportunities for integrating low impact development measures to minimize the potential impacts of this development to the greatest possible extent should be further explored.

Summary

As identified in the Summary Opinion section provided at the beginning of this witness statement, it is my opinion that insufficient supporting evidence has been provided with respect to the proposed Official Plan Amendment, Zoning By-law Amendment, and Subdivision applications to establish their consistency with Provincial Policy, adherence to TRCA’s policy and regulatory requirements, and consistency with City of Brampton Official Plan environmental policies. In the absence of this supporting evidence, it is my opinion that the above noted applications should be refused.

Disclaimer

This witness statement has been prepared based on the information available at the time of its preparation, March 30, 2009. Modifications may be made to this statement if new information is provided during or prior to the hearing.



Quentin Hanchard, MES, MCIP, RPP

Material Relied Upon

Conservation Authorities Act, R.S.O., 1990.

The Provincial Policy Statement, 2005.

Valley and Stream Corridor Management Program, Toronto and Region Conservation Authority, October 1994.

Humber River Watershed Plan, June 2008.

Witness Statement of Dena Lewis and Ryan Ness, TRCA.

Witness Statement of Susan Jorgenson, City of Brampton.

611428 Ontario Limited v. Metropolitan Toronto and Region Conservation Authority, April 22, 1996.

Ontario Regulation 166/06.

Applicant’s submissions.

OMB Decision No. 0247.

OMB Decision No. 2206.