

Part II Order Request

28 August 2010

The Honourable John Wilkinson
Minister of the Environment
77 Wellesley Street West
Ferguson Block, 11th Floor,
Toronto, Ontario, M7A 2T5

BY E-Mail to Minister.moe@ontario.ca

Dear Minister Wilkinson,

Regarding: Kanata West EA Master Servicing Study,
Kanata West Stormwater Management Projects,
Kanata West Sanitary Servicing Projects, and
Carp River Restoration Plan (CRRP)
Class EA Notices of Completion
by Kanata West Owners Group (KWOG) & City of Ottawa
Issued July 30, 2010

I am submitting this Part II Order request pursuant to Section 16 of the EAA on behalf of the South March Highlands – Carp River Conservation Inc (SMHCRC). The SMHCRC is a public interest organization dedicated to the protection and conservation of the South March Highlands and to assuring sustainable development practices in the Carp River watershed. The SMHCRC is also the corporate arm of the Coalition to Protect the South March Highlands that has over 5,000 supporters in Ottawa and in 28 countries around the world.

The Coalition to Protect the South March Highlands has been extensively involved in the public planning process for developments occurring in the South March Highlands, which is adjacent to and partially within the Carp River watershed, and the SMHCRC is an appellant against the City of Ottawa in a request for a judicial review of the City's contravention of Section A 4.2.2 of the *Municipal Class Environmental Assessment* with respect to the Terry Fox Drive Extension Project. The corporate office of the SMHCRC is within the Carp River watershed.

Although the SMHCRC is opposed to development in the South March Highlands, we are not opposed to sustainable development in Kanata West and elsewhere in the Carp River watershed. We are, however, concerned whenever we see non-sustainable development activities that are conducted irresponsibly on a piece-meal basis, that short-cut appropriate processes, or that are performed without proper approvals.

Unfortunately we are NOT assured that all development projects and infrastructure (storm water and sanitary) in the Carp River Watershed have been included, coordinated and thoroughly evaluated for upstream and downstream impacts to prevent future flooding and infrastructure capacity problems.

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To remind the Minister that flooding in the Carp River is not a hypothetical concern but a very real and legitimate concern of the SMHCRC, we have included the following photo taken the day after the Sept 9, 2004 flooding event following Hurricane Francis. This photo was taken at Richardson Side Road looking east across the river that in its unflooded state is less than 5m wide. The Kanata West development is to be built on the same side of the river where the photo was taken, starting at the location of the photo and extending off to the right side. Note that the Glen Cairn community further upstream (not shown on the opposite bank right-hand side) was previously flooded in 1996 and 2002, and subsequently flooded in 2009.



We have two sets of substantive concerns relating to the process followed leading to these Notices of Completion, as well as to several unresolved technical issues arising from the flood plain modelling.

1. Illegal Process

- a) In Ottawa, there is no delegated authority given to City staff to post a Notice of Completion without the approval of City Council. These Notices of Completion were illegally posted in contravention of municipal law without prior approval by Council. The “direction” found in the Disposition section of the staff report that presented the Third Party Review report to Council 14 months ago is stale-dated.

To approve these Notices of Completion without a current approval of City Council is a corruption of municipal authority. It also creates a dangerous precedent that

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undermines the boundary for and limitations on delegated authority to staff.

The established process of requiring Council and Committee approval first has served the City of Ottawa, and the Regional Municipality before it, well in the past and there is no reason to end-run it. The established process is also consistent with the Ontario Environmental Bill of Rights that gives every citizen in Ontario the right to participate in environmental decision making. Denying civic process is a violation of the environmental rights of the citizens of Ottawa.

- b) Furthermore, these Notices of Completion were posted without consultation with the previous interested parties who requested Part II Orders in 2006. Many of those interested parties are members of our Coalition. Failure to consult with them is inconsistent with the purpose and spirit of the Environmental Assessment Process which, according to your Ministry, is to promote consultation in the EA process. Disregarding previous concerns is disrespectful of those interested parties and demonstrates that their concerns are of no importance to the proponents. Your Ministry should not tolerate this.
- c) The Carp River from Hazeldean Road to beyond the Village of Carp has been a Municipal Drain for over 100 years. This is a fact established in law and upheld in the courts of Ontario as far back as 1909 and 1910. Any modification of the main channel of the Carp River without acknowledging the applicability of and constraints imposed by the *Drainage Act* is illegal.
- d) Finally, these EAs lack sign-off from a licensed Professional Engineers who are prepared to stand behind these results and conclusions. The only sign-off that can be found is by Donald Moss for the Widening Alternatives report. How can the public be assured that the authors of the Class EAs are duly licensed and have taken professional responsibility for their work if Professional Engineers do not identify themselves and certify that the work is in accordance with accepted engineering and regulatory standards? Isn't this a violation of the *Professional Engineers Act* that regulates the profession in Ontario?

2. Unresolved Issues

In view of the illegal process followed, it is not surprising that several substantive issues arise.

- a) The flood analysis models are not calibrated with observed data. This produces results which are mere assertions unsupported by fact. At best, these models can be used for modeling interim alternatives whose accuracy is uncertain until the models are calibrated.

Taking these models at face value, they show that the 100-year peak flows at the rural / urban split downstream will increase by over 60% - an unacceptable outcome

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that will result in significant erosion and flooding in the rural and environmentally sensitive areas.

It is our understanding that the detailed model data predicts negative flows that suggest that water will flow upstream in the absence of tidal influence. This is clearly preposterous and speaks to the need to use calibrated models as well as to the need for due diligence review of modelling analysis, input & output data, and all parameters & assumptions via an open process involving independent professional engineers. We do not consider the TPR to be sufficiently independent for that purpose since they are the developer of the model. It is standard engineering practice to ensure that quality assurance is performed by engineers who did not produce the work being reviewed.

The lack of published information about peak flows undermines confidence in the results and leads to concerns that critical model parameters may be incorrectly set – as they were in 2006. Neither is there any comparison between Existing and Post-Development results. Failure to accommodate the completely developed condition of the Fernbank lands was a major reason for Part II Order requests in 2006 and continuing to exclude them produces results which do not reflect the entirety of upstream and downstream impacts. How can the impact of new development be reasonably assessed without straightforward and fully-transparent tables showing comparisons of peak-flows against an existing condition?

Perhaps that is why, according to a letter published in the project documentation, the MNR's engineers could not make sense of the data and deferred to the Mississippi Valley Conservation Authority's approval of these models. This is disturbing given that there is an unresolved request for an operational audit of the MVCA due to its repeated failure to manage flood plains in accordance with well-accepted engineering principles. We will provide you with a copy of that request if you wish.

Had the proponents followed a proper process that provided for public consultation prior to posting these Notices of Completion, these errors and issues might have been resolved prior to this stage.

- b) The impact of Terry Fox Drive Extension is not fully included in the flood models. TFDE is both immediately downstream (phases 4 & 5) from Kanata West as well as upstream (phases 1 – 3). TFDE's phase 4 SWM models assume that Kanata West will accommodate TFDE's 2010 impact – including impact of the floodplain, water travel time, as well as the increased runoff from the roadway. The Widening Alternatives report considers TFDE's impact on flood plain but nowhere is the impact of run-off or the potential for cut/fill alternatives to affect travel time discussed in the documentation. The model (Table 4-1) also shows a significant increase (10 cm) in flood elevation at Huntmar Drive which should not be permitted.
- c) Glen Cairn is an existing development that is immediately upstream and has well-known flooding issues that have not yet been resolved. Due to the sluggish behaviour of the Carp River, development downstream may adversely affect flood levels in Glen Cairn, and may compete with flow from the Glen Cairn community.

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Should these issues not be solved before existing flood levels, travel times, and capacity are affected by new development? If approvals for new development are to be granted prior to solving outstanding problems from existing developments, shouldn't an allocated reserve be made to allow headroom for a solution for Glen Cairn?

- d) Why haven't approved developments such as Fernbank (approved over a year ago), or the draft-approved Richardson Ridge development by Regional Group on the opposite side of the Carp from Kanata West, been included in the modelling? Shouldn't actual and predicted-fully developed conditions be shown as being accommodated under different scenarios in addition to whatever hypothetical target flows might be modelled? Without a baseline of actual data there is no rational basis for believing that the hypothetical "worst-case scenario" is accurate because the models cannot be calibrated.
- e) Why is the hydraulic analysis for sewage based on a 1983 flood elevation? Shouldn't it be based on the currently predicted flood elevations (after accounting for the impact of & remediation for existing developments)?
- f) How much headroom exists for the handling of emergency flows for both storm and sewage? This is particularly important given the rising level of uncertainty in weather patterns due to climate change. Shouldn't it be clear how close or far the infrastructure is from overload should extreme conditions prove to be worse than anticipated?

The City does not allocate capacity, depending instead on monitoring flows after-the-fact. The policy is "first-come-first-served" and "just-in-time" upgrades and is not precautionary. This policy needs to be reviewed in light of more than 1000 homes flooding in Glen Cairn and Stittsville in Kanata South when the Hazeldean Pumping Station, which depended on monitored flows to trigger upgrades, did not reach its 2021 design limit due to lack of a safety margin. Shouldn't there be a regulated allocated reserve capacity as a prudent safety margin?

- g) Why is Kanata West to be the only place in Ontario where a 2-zone flood plain policy is applied to a greenfield development? The established practice in Ontario is to apply a 2-zone flood plain policy only to areas of historical development. There is no such thing as a hybrid, or "modified one-zone". Inventing new water management regimes to suit proponents' purposes is not contemplated by the *Environmental Assessment Act* and should be rigorously resisted by your Ministry. Public safety demands that only proven and well-established methods be employed for managing flood levels. The established practice in Ontario is to disallow the filling-in of a floodplain in greenfield developments.

Consequently, we request that these Environmental Assessments be elevated and integrated into a single, coordinated, and comprehensive Individual Assessment and that you direct the proponents to ensure that adequate consultation occurs with all interested parties and to comply with all applicable laws.

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In the alternative, we request a Minister's Order imposing further conditions on these development proposals so that our concerns can be alleviated. In doing so we trust that you will reflect the Ministry's Statement of Environmental Values that promotes an ecosystem approach to environmental protection and resource management, and is based on a precautionary, science-based approach to decision making to protect human health.

Respectively submitted by



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