

## **ONTARIO'S GREENBELT PLAN MAY IMPACT CHARITABLE LAND USE**

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### **A. INTRODUCTION**

Commencing in 2004 and culminating in legislation in 2005, the Ontario government introduced new initiatives to protect Ontario's Greenbelt. Focusing its attention on the Greater Golden Horseshoe area around the western perimeter of Lake Ontario, the over 1.8 million acres of land contained therein has become "an area of permanently protected green space, farmland, vibrant communities, forests, wetlands, and watersheds."<sup>1</sup> This includes such environmentally and ecologically significant areas as the Niagara Escarpment, the Oak Ridges Moraine, and the Rouge Park. The initiative returns land use planning to the provincial government, which was previously delegated to the municipalities, effectively controlling resource extraction and the physical alteration of the land in an attempt to protect key environmentally sensitive land and farmlands from urban development and sprawl. All of this may negatively affect a land owner's rights without the benefit of any remedy, including lands owned or to be purchased by charities and not-for-profit organizations, particularly churches and religious organizations that may have large land holdings in rural areas. This *Charity Law Bulletin* reviews the legislation and the plan pertaining to the Greenbelt Area in order to inform charities and not-for-profit organizations that own or are considering purchasing real estate in the Greenbelt area.

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<sup>1</sup> Friends of the Greenbelt Foundation, <http://ourgreenbelt.ca>.

## B. GREENBELT ACT, 2005

The *Greenbelt Act, 2005*,<sup>2</sup> passed on February 24, 2005 and deemed effective on December 16, 2004, is legislation introduced by the Ontario government to implement its plan to protect greenspace in that part of southern Ontario that borders the urban communities that wrap around Lake Ontario, stretching from Niagara Falls to Toronto and east past Oshawa. The Act specifically designates the areas covered by the Oak Ridges Moraine Conservation Plan and the Niagara Escarpment Plan to be included in the Greenbelt Area, as well as any lands so designated by regulation.<sup>3</sup>

Under section 3 of the Act, the Lieutenant Governor in Council is authorized to establish a Greenbelt Plan, which was released in February 2005.<sup>4</sup> The objectives of the Greenbelt Plan include the following:

- To establish a network of countryside and open space areas which supports the Oak Ridges Moraine and the Niagara Escarpment;
- To sustain the countryside, rural and small towns and contribute to the economic viability of farming communities;
- To preserve agricultural land as a continuing commercial source of food and employment;
- To recognize the critical importance of the agriculture sector to the regional economy;
- To provide protection to the land base needed to maintain, restore and improve the ecological and hydrological functions of the Greenbelt Area;
- To promote connections between lakes and the Oak Ridges Moraine and Niagara Escarpment;
- To provide open space and recreational, tourism and cultural heritage opportunities to support the social needs of a rapidly expanding and increasingly urbanized population;
- To promote linkages between ecosystems and provincial parks or public lands;
- To control urbanization of the lands to which the Greenbelt Plan applies;
- To ensure that the development of transportation and infrastructure proceeds in an environmentally sensitive manner;
- To promote sustainable resource use; and
- Any other prescribed objectives.<sup>5</sup>

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<sup>2</sup> S.O. 2005, c. 1 [Act].

<sup>3</sup> *Ibid.*, s. 2.

<sup>4</sup> Ministry of Municipal Affairs and Housing, *Greenbelt Plan 2005* (Ontario: Ministry of Municipal Affairs and Housing, 2005). Approved by the Lieutenant Governor in Council, Order-in-Council No. 208/2005, to take effect on December 16, 2004 [Greenbelt Plan].

<sup>5</sup> Act, *supra* note 2, s. 5.

Under section 6, the Greenbelt Plan may set out policies concerning land use designations, as well as policies prohibiting or restricting and regulating use of land or the erection, location and use of buildings or structures. Actions of any municipality within the Greenbelt Area must conform with the Greenbelt Plan, and with the exception of the Oak Ridges Moraine Conservation Plan or the Niagara Escarpment Plan, the Greenbelt Plan prevails in the case of a conflict with an official plan, a zoning by-law or a policy statement under the *Planning Act*.<sup>6</sup>

The Minister of Municipal Affairs and Housing is mandated to review the Greenbelt Plan every ten years to determine whether it should be revised.<sup>7</sup>

The Act permits the Minister to appoint a hearing officer to conduct hearings into amendments to the Greenbelt Plan, and to make recommendations to the Minister as a result of those hearings. Although the Minister is to submit the report to the Lieutenant Governor in Council, the Minister has the discretion to make whatever recommendation the Minister considers appropriate.

What should be cause for concern for the many charities and not-for-profit organizations as existing land owners affected by the Greenbelt Plan is what the government has termed the “limitation on remedies” under section 19 of the Act. The Act clearly states that no cause of action arises as a direct or indirect result of anything done or not done in accordance with the Act or its regulations. As such, a land owner cannot receive costs, compensation or damages, and anything done or not done under the Act will constitute an expropriation or injurious affection.

### **C. GEOGRAPHIC SPECIFIC POLICIES IN THE PROTECTED COUNTRYSIDE**

The Greenbelt Plan “identifies where urbanization should not occur in order to provide permanent protection to the agricultural land base and the ecological features and functions occurring on this landscape.”<sup>8</sup> Four geographic areas are included in the Greenbelt Plan: lands within the Oak Ridges Moraine area; lands within the Niagara Escarpment Plan area; lands within the Parkway Belt West Plan area; and lands within the Protected Countryside area. Acts and policies relating to the first three geographic areas continue to apply to these areas in addition to the Greenbelt Plan’s policy on Parkland, Open Space and Trails. However, where

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<sup>6</sup> *Ibid.*, ss. 7 and 8.

<sup>7</sup> *Ibid.*, s. 10.

<sup>8</sup> Greenbelt Plan, *supra* note 4 at 3.

there is conflict between the policies, the original policy will prevail. The entirety of the Greenbelt Plan applies to the lands contained in the Protected Countryside area.

The Greenbelt Plan specifies three types of Geographic Specific Policies that apply to specific lands within the Protected Countryside: Agricultural System, Natural System and Settlement Areas.

#### 1. Agricultural System

The Agricultural System is made up of areas in which prime agricultural and specialty crop lands predominate and in which there are active agricultural and related activities. Under the Greenbelt Plan, there are four Specialty Crop Area policies that apply in the Agricultural System:

- agricultural and secondary uses are supported and permitted;
- lands cannot be redesignated for non-agricultural uses;
- towns/villages and hamlets are not permitted to expand into these areas; and
- new land uses must comply with a minimum distance separation formulae.<sup>9</sup>

Similar policies apply to the Prime Agricultural Area with some refinements, such as lands may be redesignated for non-agricultural uses if they are refinements that are subject to the criteria identified in the municipal implementation policies contained in the Greenbelt Plan.

Rural Area policies differ from those in the Special Crop or Prime Agricultural areas. The six policies that apply include the following:

- uses, such as recreational, tourism, institutional and resource-based commercial/industrial uses, are allowed to continue and expand subject to the existing use policies in the Greenbelt Plan;
- existing and new agricultural uses are allowed and normal farm practices are supported and permitted;
- settlement area expansions are permitted into rural areas;
- other uses may be permitted subject to the general policies of the Greenbelt Plan;

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<sup>9</sup> *Ibid.* at 13.

- new multiple units or multiple lots for residential dwellings are not permitted. More specifically, new lots for any use are not permitted if the creation would extend or promote strip development; and
- new land uses must comply with the minimum distance separation formulae.

## 2. Natural System

The Natural System provides a continuous and permanent land base necessary to support human and ecological health in the Greenbelt and beyond. As such the policies pertaining to the Natural System seek to protect areas of natural heritage and hydrologic and/or landform features. According to the Greenbelt Plan, the Natural System is made up of a Natural Heritage System and a Water Resource System that “often coincides given ecological linkages between terrestrial and water based functions.”<sup>10</sup> The former includes areas with the highest concentration of the most sensitive and/or significant natural features and functions, while the latter is made up of both ground and surface water features and their associated functions.

For lands within the Natural Heritage System, the following policies apply:

- The full range of existing and new agricultural, agricultural-related and secondary uses and normal farm practices are permitted;
- New buildings or structures for agriculture, agriculture-related and secondary uses are not subject to the Natural Heritage System policies;
- New permitted development or site alteration must demonstrate that: there will be no negative effects on key natural heritage features or key hydrologic features and their functions; connectivity between key natural heritage features and key hydrologic features is maintained or enhanced; the removal of other natural features not identified as key natural heritage features and key hydrologic features should be avoided; and the disturbed area of any site should not exceed 25%;
- Where non-agricultural uses are contemplated, applicants must demonstrate that at least 30% of the total developable area of the site will remain or be returned to natural self-sustaining vegetation; connectivity along the system and between key natural heritage features or key

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<sup>10</sup> *Ibid.* at. 15.

hydrologic features located within 240 m of each other is maintained or enhanced; and buildings or structures do not occupy more than 25 percent of the total developable area and are planned to optimize the compatibility of the project with the natural surroundings; and

- These policies do not apply within the existing boundaries of settlement areas, but do apply when considering expansions to the same.<sup>11</sup>

Lands falling within the Water Resource System are subject to four policies:

- All planning authorities must provide for a comprehensive, integrated and long-term approach for the protection, improvement or restoration of the quality and quantity of water;
- Municipalities and conservation authorities should ensure that watershed plans are completed and used to guide planning and development decisions;
- Cross-jurisdictional and cross-watershed impacts need to be considered in the development of watershed plans; and
- Municipalities must protect vulnerable surface and ground water areas from development that may adversely affect the quality and quantity of ground surface waters.<sup>12</sup>

In addition to these policies, the Greenbelt Plan prohibits development or site alteration on lands designated as having key hydrologic features and key natural heritage features. Further, any proposal for new development or site alteration within 120 m of a key natural heritage feature or a key hydrologic feature requires a natural heritage evaluation and hydrological evaluation.<sup>13</sup>

### 3. Settlement Areas

Settlement Areas are defined as Towns/Villages and Hamlets, and the Greenbelt Plan separates the Settlement Areas into these two categories. Towns/Villages will have the largest concentration of population, employment and development, while the Hamlets will play a lesser role in accommodating the same. Under the Greenbelt Plan, municipal land use plans will continue to apply, but the municipalities are encouraged to continue their efforts to support the long-term viability of the

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<sup>11</sup> *Ibid.* at 16-17.

<sup>12</sup> *Ibid.* at 18.

<sup>13</sup> *Ibid.* at 19.

settlements through appropriate planning. Settlement Areas outside of the Greenbelt Area are not permitted to encroach onto the Greenbelt lands.

#### D. CONCLUSION

According to statistics from the Ontario government, the Greenbelt Area includes lands that are under the most significant development pressure in southern Ontario, with the current projection that the population in the Golden Horseshoe will grow from about 7 million today to about 11 million by 2031.<sup>14</sup> As such, the government is understandably attempting to protect environmentally and ecologically significant lands from urban development and sprawl. The vision of the Greenbelt Plan is to protect the affected lands against the loss and fragmentation of the agricultural land base, while supporting agriculture as the predominant land use; to give permanent protection to the natural heritage and water resource systems; and provide for a diverse range of economic and social activities associated with rural communities, agriculture, tourism, recreation and resource uses.

However, within these laudable goals, there are some significant implications for land owners in the affected Greenbelt Area, including charities and not-for-profit organizations. The Greenbelt Plan places significant restrictions on the use and development of the land. Whether intending to develop existing property or purchase property within the Greenbelt Area, charities and not-for-profit organizations as present land owners or potential land owners are advised to carefully review the Greenbelt Plan to determine their rights and obligations thereunder in order to ensure compliance before proceeding to develop or purchase affected land.

<sup>14</sup> Ministry of Municipal Affairs and Housing website <[www.mah.gov.on.ca](http://www.mah.gov.on.ca)>.