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VIA EMAIL AND REGULAR MAIL

The Corporation of the County of Lambton
789 Broadway Street, Box 3000
Wyoming Ontario N0N 1T0

**Re: County of Lambton Draft Official Plan
Written Submissions from Concerned Landowners**

Please accept these submissions in response to the Draft Lambton County Official Plan (“LCOP”). A large group of local landowners, known as the Concerned Landowners Legal Defence, have raised some significant concerns with LCOP.

We would ask that Council carefully consider the concerns in these submissions. The LCOP will have long lasting impacts on the community and these landowners are very concerned that, while the County has met the notice obligations in the *Planning Act*, affected landowners have not been fully advised about the significant impacts the LCOP on their land use designations.

The Maps provided in the LCOP are not specific or clear: they do not allow landowners to determine if their properties will be impacted. We strongly encourage Council to delay any decision on the LCOP until staff have done the work necessary to identify and notify individual landowners whose land use designation will change in the LCOP, particularly those whose property or properties will now be within or adjacent to the Natural Heritage Systems (Group A, B or C), and within the Recreation and Conversation Area.

Overview of Concerns

Although several changes have been made throughout the public consultation process, the LCOP does not appropriately balance the economy and the environment. Specifically, the LCOP uses language that is overly broad and overly restrictive, particularly in terms of the language surrounding Natural Heritage systems and development, which at times goes beyond the *Provincial Policy Statement, 2014* (“PPS”).

The current draft of the LCOP relies heavily on subjective language that is uncertain and subject to interpretation. For example, the word “may” is used approximately 186 times and the word “generally” is used 31 times. Other times the LCOP is far too restrictive and applies rigid definitions, such as the definition of “adjacent lands” that restricts development and site

alterations of privately held lands, even if the proposed changes are minor and are not likely to have any negative environmental impact.

Finally, there is also a much stronger emphasis on environmental protection in the LCOP and, while environmental protection is crucial to the County's long-term growth, the needs of the economy and private property rights must be balanced with the needs of the environment. The LCOP policies related to the Natural Heritage and, in particular, the expanded emphasis on buffer strips, linkages and corridors, will prohibit or severely restrict development approval and/or site alteration of existing developed lots. If these properties are so significant to the Natural Heritage System, we would encourage that the County expropriate them properly under the *Expropriations Act*, R.S.O. 1990, c. E. 26-Ontario and compensate everyone affected at current market value.

A significant onus and expense is being placed on the individual property owner by creating an expansive and overly broad list of circumstances where the property owner will be required to have an Environmental Impact Study ("EIS"). Not only will an EIS be required for development approval but, as it is currently drafted, *site alterations* for existing developed lands within 120 metres of Group A and B features will also require a full EIS unless they can show that there will be no likely negative impact and that there are some special circumstances. These restrictions are so significant that certain affected landowners may have a claim against the County for constructive expropriation without compensation.

The County may not be aware that population growth and development is already being negatively impacted. Buyers and developers are choosing to build elsewhere rather than face the onerous, time consuming, costly and unpredictable EIS process that they must complete with up to four government bureaucracies. Moreover, why build here when completion of an EIS is no guarantee that they will be permitted to submit an application for a building permit.

Proposed Changes to the Introduction

In order to address these concerns, the following principles should be embedded and highlighted within the Introduction to the LCOP:

- (i) Nothing in this Official Plan shall obligate landowners to sell or transfer privately held lands to the County or other public agencies to expand Natural Heritage Systems including woodlands, wetlands, buffer strips, linkages, corridors or wildlife habitat. Where landowners do have the opportunity to voluntarily sell or transfer privately held lands to the County or other public agency for expansion of Natural Heritage Systems, the expectation shall be that the transfer is for full market value of the lands;
- (ii) The County recognizes the important role that individual on-site septic services and individual on-site water services play in the County. Nothing in this Official Plan shall obligate landowners to decommission effectively functioning individual on-site septic services and individual on-site water services;

- (iii) This Official Plan does not support the objective of managed retreat from the shoreline;
- (iv) The County does not intend for this Official Plan to expand the Natural Heritage Systems (Group A, B and C features) beyond the areas identified in the 1998 Official Plan, unless required by the Provincial Policy Statement, 2014 or other legislative requirements; and
- (v) It is the intention of this Official Plan is to always balance the economy and the environment.

Specific Proposed Changes to the LCOP

In addition to the addition of those broad principles, changes are required to the following sections of the LCOP to ensure that property owner rights are appropriately protected:

- (i) **Map #1 – Growth Strategy** - Return Port Franks, Ipperwash and North Bosanquet to *Rural Settlement* designations and define Rural Settlements as not requiring centralized sewage collection;
- (ii) **Map #2 – Natural Heritage Systems** – Direct staff to identify and notify affected landowners and landowners adjacent to Group A, B and C features as well as those in the Recreation and Conservation Area. Allow individual landowners to review all research and supporting documents which form the basis of the map and to appeal the classification of their property or the adjacent property. In addition, improvements should be made to the key map to define the acronyms and symbols;
- (iii) **Draft Appendix Map A – Sourcewater Protection Map** – Staff has indicated that there are limited colours available, but some steps need to be taken to make the map legible and clear to landowners;
- (iv) **1.6** – The County projects a 11.6% decrease in population and a 24.6% reduction of the County workforce by 2031. We recommend that staff be directed to include within the LCOP a vision and strategy for maintaining or building the population base and workforce within the County and that this strategy be included within the LCOP;
- (v) **2.1.28** – Change “improvement” to “maintenance”
- (vi) **2.3.12** – Without a strategy to maintain and grow the population in place, imposing a target for intensification and redevelopment of 20% is not appropriate, particularly for a rural community. A target of 10% seems more reasonable and appropriate, particularly given the projection for a decrease in population and a lack of any current strategy for population growth;
- (vii) **2.5.8** – Divide clause into two sections and modify language:

- a. “Planning authorities may restrict and/or direct development away from vulnerable areas, where there is a potential for contamination, depletion, or other negative impacts.”
 - b. “Nothing in this Official Plan shall prohibit development within moderate to low risk Sourcewater Protection areas. In accordance with both Source Protection Plans (SPP) impacting Lambton County (Ausable Bayfield Maitland SPP and Thames Sydenham SPP), low to moderate threats to drinking water should be handled with education and outreach rather than regulation.”
- (viii) **2.7** – Remove the title and goals. Climate change control is not within the jurisdiction of the County. This subject is within the jurisdiction of the federal government. We recognize that the PPS references Energy Conservation, Air Quality and Climate Change, but the PPS directs that planning authorities shall support those initiatives through *land use and development patterns*. Not through direct policies on Climate Change. It is not appropriate or possible for the OP is to create initiatives on Climate Change. The policies in the OP should relate to land use and development patterns, not issues which are outside of the County’s jurisdiction. Identify goals that relate to land use and development patterns, which are within the County’s jurisdiction. A goal and policy about carbon emissions is not capable of providing guidance on the actual physical development of the municipality;
- (ix) **2.7.6** – If Council keeps Section 2.7, change the first sentence of Section 2.7.6 to accurately reflect that the County cannot create mandatory programs and policies related to Climate Change and that any program: “... that encourage private businesses and property owners to *voluntarily* adopt practices... ” Provide wording to make it clear that there is no jurisdiction to force private property owners to comply with municipal Climate Change initiatives.
- (x) **4.1.17** – Remove this section. The promotion of this objective was a significant factor in many houses being removed in Rural Agricultural Bosanquet resulting in several struggling towns, school population decreases, threatened closure of schools, and store closures.
- (xi) **7.1.6** – Change the language: “... for all new or significantly redeveloped County roads.” Add in language to confirm that where the County must acquire private property to meet the new 30 metre minimum for roads, property owners shall be adequately compensated;
- (xii) **7.3.8** – Change to: “*Where parkland is required to be dedicated as a condition to an approval for a plan of subdivision*, lands may be required to be dedicated for trail purposes where appropriate.” This more accurately reflects that this authority comes from Section 51.1 of the *Planning Act*;
- (xiii) **7.10** – Remove “to minimize development on private services.” The LCOP places undue emphasis on municipal water and sewer systems without giving due regard for

the cost of providing this infrastructure. Provided the private water and septic are developed and maintained in a manner consistent with PPS section 1.6.6, there should be recognition in the LCOP of the role and benefit of private septic systems and wells. PPS section 1.6.6.2 states that municipal water and sewage is the preferred form of serving *settlement areas*. Much of the County is rural and utilizes private water and septic in a way that is safe; sustainable; feasible; financially viable and complies with all regulatory requirements and the other factors referred to in PPS 1.6.6.1;

- (xiv) **Clarify “Development” and “Development Approval”** – Throughout the public consultation process concerns have been raised that the new and increased restrictions on “development” would include *site alterations* or situations where *building permits* are required. Staff has noted in the commentary to Chapter 8.1.9 that “Development means development requiring planning approval. A building permit is not planning approval” but that statement is not within the LCOP. We would recommend including a statement that site alterations and approvals for building permits are not considered development or development approvals under the LCOP;
- (xv) **Clarify restrictions on “Adjacent Lands”** - Restrictions placed on adjacent lands throughout Chapter 8 are significant and can be onerous, even where the proposed development or site alteration is minor and even if no negative impacts are anticipated. While it may be attractive to use this type of formula because it is administratively efficient, creating an automatic 120 metre designation severely and unreasonably limits property rights and it puts landowners to the cost of a full EIS – even where it is not likely that development or site alterations would have a negative impact on the feature or area. The LCOP relies on the Natural Heritage Reference Guide to define “adjacent lands.” Rather than relying on this document, the LCOP should adopt the definition from the PPS. The PPS defines adjacent lands as: “*those lands contiguous to a specific natural heritage feature or area where it is likely that development or site alteration would have a negative impact on the feature or area.*” LCOP should adopt and apply the same definition as in the PPS, which only imposes restrictions where the land is contiguous to a feature or is likely to have a negative impact;
- (xvi) **Clarify the use of the word “Improve”** – Staff have indicated that their interpretation of “improve” means to “expand.” This is not consistent with the PPS. Improve should be defined in the definition section as increasing the utility or enhancing the existing Natural Heritage features or systems and will not include “expansion” unless specifically identified.
- (xvii) **8 & 8.8.36** – Define “adjacent” as found in the definition section of the PPS: “Those land contiguous to specific *natural heritage feature or area* where it is likely that development or *site alteration* would have a *negative impact* on the feature or area. Remove reference to 120 m or 400’ adjacent areas in this document.

- (xviii) **8.1 – Natural Heritage Systems** – Change language to: “To identify, map, protect, restore and, *where possible*, improve natural heritage systems within the County” to be consistent with PPS section 2.1.2. [*NOTE: this change should be made throughout the LCOP, particularly 2.1.28 and Chapter 8*];
- (xix) **8.1.7** - Add the following wording, “Nothing in this section shall obligate landowners to sell or transfer privately held lands to the County or other public agencies to expand Natural Heritage Systems including woodlands, wetlands, buffer strips, linkages, corridors or wildlife habitat. Where landowners do have the opportunity to voluntarily sell or transfer privately held lands to the County or other public agency for expansion of Natural Heritage Systems, the expectation shall be that the transfer is for full market value of the lands.
- (xx) **8.1.12** – Change language to: “Nothing in the Natural Heritage Policies is intended to limit the ability of agricultural uses to continue” to be consistent with PPS section 2.1.9. The LCOP limits this statement to “existing uses”... “in these areas”, which is not consistent with the PPS;
- (xxi) **8.1.13** – Add statement at the end of the last sentence “... and any such acquisition shall compensate the landowner at full market value”;
- (xxii) **8.2** – Add: “while protecting private land ownership to function without government pressure to release land to expand these features.”
- (xxiii) **8.2.2** – Add the language: “... except in accordance with regulations under the Conservation Authorities Act.”
- (xxiv) **8.2.2** – As “adjacent lands” is currently defined within the LCOP, this requires property owners with lands which are *already developed* and within 120 metres of Group B features to incur the costs of a full EIS in every circumstance, including where there is a *site alteration* proposed. This includes minor alterations and circumstances where there is no likely *concern* about possible negative impacts from the proposed alteration. In many cases, the cost of an EIS will far exceed the site alterations. This is an unfair result that effectively sterilizes the use and value of already developed land within the County;
- (xxv) **8.2.4** – Remove this section. Any addition of significant natural areas that are to be added to Group A, B, or C should be added by way of updating the LCOP or through an amendment to allow for notice, public participation and consultation. It exceeds the County’s jurisdiction to pre-emptively deem the LCOP to be amended if, at some point, a subsequent study identifies land as having Natural Heritage features;
- (xxvi) **8.2.7** – Remove the 10% slope criteria for valleylands and replace with the PPS definition of valleylands: “mean a natural area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year”;

- (xxvii) **8.3** – Change to: “To maintain and improve the quality of existing wetlands in the County. Remove: “...to increase the overall wetland coverage in the County”.

Add the following from the definition section of the PPS: “Periodically soaked or wet lands being used for agricultural purposes which no longer exhibit wetland characteristics are not considered to be wetlands for the purposes of this definition of wetlands.”

- (xxviii) **8.4.2** – Replace with the PPS definition of woodlands. Remove all additional criteria included in this draft OP.;

- (xxix) **8.4.3** – As above, define “adjacent” in accordance with the PPS. The PPS defines adjacent lands as “those lands contiguous to a specific natural heritage feature or area where it is likely that development or site alteration would have a negative impact on the feature or area.” Remove the imposition of 120 m or 400’ buffer zone around the natural feature.

- (xxx) **8.4.8** – Any change to the Woodlands Conservation By-law should be done in a separate process that allows for notice, public participation and consultation. It exceeds the County’s jurisdiction to pre-emptively decide that the Woodlands Conservation By-law shall be amended to conform with the LCOP;

- (xxxix) **8.6.10** –Add the following wording, “However, where land along watercourses is privately owned, landowners will not be required to create vegetated buffers.”;

- (xxxix) **8.6.11** – Add the following wording to the end of this Section, “Nothing in this Official Pan shall prohibit development within moderate to low risk Sourcewater Protection area. In accordance with both Sourcewater Protection Plans (SPP) impacting Lambton County (Ausable Bayfield Maitland SPP and Thames Sydenham SPP), low to moderate threats to drinking water should be handled with education and outreach rather than regulation.”

- (xxxix) **8.8.3.1** – Change section wording to shift the burden to the County/Municipality rather than leave the responsibility 100% on private land owner to prove the negative. Before requiring an EIS, the local governments must provide evidence that it is likely that development or site alteration would have a negative impact on the feature or area in accordance with the definition of “adjacent” as above.

- (xxxix) **8.8.3.6** – As above, change definition of “adjacent lands” to comply with the PPS. Also, amend the section to read consistently with 8.8.3.7 and confirm that an EIS will not be required for *site alteration* unless an exception or alternative requirement has been given in this Plan;

- (xxxix) **8.8.3.7** – In the first sentence, add “Notwithstanding anything else in this Official Plan, no Environmental Impact Study will be required...” and remove “due to special

circumstances.” If no negative impacts are anticipated, that is sufficient to avoid the cost associated with an EIS. Requiring no anticipated negative impacts plus special circumstances is too onerous and is not justified in the circumstances;

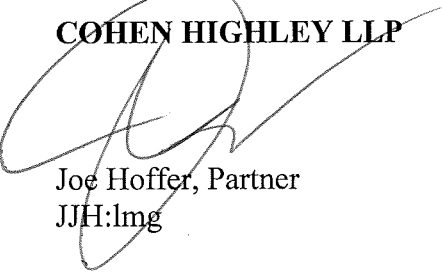
(xxxvi)**8.9.3** – Change: “Except for agricultural development or development supporting agricultural uses, new development will generally be...”

While the LCOP itself is not operative to regulate land use, when passed, it will have a direct and significant impact on the use of privately held land within the County. We would ask that Council ensure that these issues are appropriately investigated prior to passage of the LCOP. In order to properly investigate and respond to the arguments raised by the property owners, we encourage Council to defer any decision on the LCOP at this time.

Should you have any questions or concerns, please do not hesitate to contact the undersigned.

Yours very truly,

COHEN HIGHLEY LLP



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Enclosure(s): Endorsements