

Appendix 9.1.6 – Fragmentation of Hazard Lands

FRAGMENTATION OF HAZARDOUS LANDS (*Information Brief: June 1998*)

Many Conservation Authorities have adopted municipal plan review policies which discourage the fragmentation of flood plains and hazardous slope areas. The basis for this policy approach at the UTRCA office has been:

- 1) our interpretation of previous and existing Provincial Planning Policy
- 2) minimizes the number of owners of land that is subject to Fill, Construction and Alteration to Waterways Regulations
- 3) for new development, hazard avoidance is the preferred method of management

Provincial Policy Statement (1997)

The Provincial Policy Statement provides the following direction (words that are in *italics* are defined in the definition section of the PPS):

- 3.1.1 Development will be generally directed to areas outside of:
 - b) *hazardous lands* adjacent to *river and stream systems* which are impacted by *flooding* and/or *erosion hazards*;
- 3.1.2 *Development and site alterations* will not be permitted within:
 - c) *a floodway*

PPS Definitions:

<i>development</i>	means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the <u>Planning Act</u> ;
<i>hazardous lands</i>	means property or lands that could be unsafe for development due to naturally occurring processes....Along <i>river and stream systems</i> , this means the land, including that covered by water, to the furthest landward limit of the <i>flooding</i> or <i>erosion hazard</i> limits.
<i>site alteration</i>	means activities, such as fill, grading and excavation, that would change the landform and natural vegetative characteristics of a site.

The PPS provides a policy basis for discouraging, if not prohibiting, fragmentation of flood plain lands. The PPS also provides a general policy direction that development, which can be interpreted to include lot creation, should avoid slope hazards.

Implementation

The Conservation Authority's concern with allowing the severance or fragmentation of hazard lands relates to our responsibilities for regulating these areas. Section 28 of the Conservation Authorities Act deals with Fill, Construction and Alteration to Waterways. Under this legislation, and its enacting Regulations, a Conservation Authority may regulate any watercourse alteration. The Authority may also regulate construction within the flood plain area of a watercourse. The Conservation Authority may also identify broader hazard areas for fill regulation. Under the existing legislation these fill regulation areas must be mapped and properly registered in order for the Authority to implement the Fill Regulation provisions of Section 28 of the Conservation Authorities Act. Most Conservation Authorities have included hazardous areas beyond the flood plain in the fill regulated area in order to enact a comprehensive hazard management program.

It is certainly recognized that all lot creation involving hazardous lands can not, and should not, be prohibited. In practice there are cases where the inclusion of some flood plain/hazard land with each parcel is the best solution. However, it must be recognized that each time that a new parcel is created that includes an area of land regulated by the Conservation Authority, the Authority has an additional landowner to keep advised of the regulated areas and to potentially deal with through the permitting or violation process. In the case of large rural parcels, the number of additional lots created is probably manageable, however, in areas where multiple lot creation is occurring for residential purposes, the potential exists for an extreme increase in the number of additional owners of regulated land.

In the case of residential lot creation, the ultimate owners of the lot often have an expectation that they will be able to develop/use their entire lot. In cases where flood plain or hazardous lands have been included with the lot, the following type of conflicts can arise:

Utility sheds and other types of secondary structures (i.e. pools, pool sheds, play houses, elaborate fencing/landscaping etc.) can end up being located in the flood plain or slope hazard area of the parcel. These types of structures are often established without a building permit and as a result the municipality and the Conservation Authority may not be made aware of the encroachment until well after the fact. When a flood or slope failure occurs, there can be significant property damage and the area of flooding or slope failure can actually be significantly expanded due to the illegal structures/uses aggravating the hazard process. The landowners at the time of the occurrence will demand that the flooding/slope failure be arrested or that they be compensated for loss.

Summary

To address the potential for hazard land fragmentation, many of the Conservation Authorities encourage the inclusion of policies in planning documents that discourage fragmentation of hazard lands. It is our opinion that there is a basis in Provincial Policy for this type of approach. By having this type of policy in municipal planning documents, the potential conflicts that may arise are dealt with proactively, the potential for damage is reduced and the long term cost of implementing a hazard regulation program is minimized.