THE GOLDEN HORSESHOE GREENBELT

Background Discussion Paper

Ontario Property and Environmental Rights Alliance

November 18, 2004

Ontario Property and Environmental Rights Alliance

Established in 1994, the Ontario Property and Environmental Rights Alliance (OPERA) is a provincial coalition of trade associations and advocacy groups with a common mandate to *"protect and entrench in law, the rights and responsibilities of private landowners against arbitrary restrictions and decisions of government".*

Opera member organizations include:

Association of Rural Property Owners
Grey Association For Democracy and Growth
Lanark Landowners Association
Renfrew County Private Landowners Association
York Durham Farmers Assessment Association
Georgian Triangle Development Institute
Halton Regional Federation of Agriculture
Ontario Ski Resorts Association
West Carleton Rural Association
Wood Producers of Ontario Association

A number of concerned landowners also hold individual membership.

Correspondence may be directed to: R.A. (Bob) Fowler at (519) 369-2195 or opera@bmts.ca
This paper may be found on our website.

Prepared for OPERA by Dr. James White, P.Ag., C.A.C., the owner of a Century Farm in the NEC Plan area in Dufferin County, e-mail results@primus.ca

The Golden Horseshoe Greenbelt

Introduction

This paper provides a commentary of the process by which a Golden Horseshoe Greenbelt has been established. The greenbelt consists of the Niagara Escarpment, the Oak Ridges Moraine and a Protected Countryside area. It totals about 1.8 million acres running from South of Peterborough, across the north of Toronto to Lake Simcoe, north on the Niagara Escarpment to Tobermory at the top of the Bruce Peninsula and around Hamilton to Niagara Falls. Almost all of the area, with the exception of about 170,000 acres urban designated lands and about 168,000 acres between the urban areas and the Protected Countryside areas has been frozen in terms of future development.

This unparalleled taking of private land has been done in the name of stopping urban sprawl and protecting the environment. The legislation, which effectively devalues the present and future value of all of this private land, is worded to prevent claims for compensation. The system is unjust, unethical, undemocratic and very poorly designed in great haste.

This exercise was undertaken at the behest of urbanites and environmentalists who want to be assured of open green parklands where they can hike, fish, golf, etc. Lip service is given to protecting agricultural land but no positive programs to support farmers were presented. Farmers being by far the major landowners will bear the severe financial cost of the plan. Farming will degenerate in the area because young people will not take over existing or purchase farms in this area due to the lack of certainty of future programs, the continuing unavailability of services such as machinery dealers, feed mills, veterinarians, trucking, etc. The farm population will decrease and large areas will be rented to cash crop farmers who will mine the land. The owners will rent it for nominal sums or pay the cash croppers to ensure they benefit from reduced property taxes.

Many of the farms with lower class lands will become 100-acre estates. Farmers will take off-farm jobs and the total value of food production, farm services and rural communities will decline. Transport corridors, gravel pits, even landfills are an allowed uses in the Protected Countryside area. When developers leap frog over the Greenbelt and establish residential communities, as has occurred in Ottawa, there will be a greater need for roads which will inevitably not keep up to the increases in long distance motor traffic.

Eventually, areas will be designated for development as occurred with the earlier Greenbelt from Markham to Burlington. This will happen when there is a downturn in the economy and a need for jobs and taxes develops. While there is talk of a permanent greenbelt, nothing controlled by politicians is permanent except a desire for money and

power. There are people who can buy an election and have favourable planning designations approved. They will appear and work their magic when all the developable land has been consumed.

The Greenbelt is sure to be popular with environmentalists and other urbanites who get a free green park at the expense of present landowners. The government is taking advantage of the failure of legislators to pass property rights legislation at either the Ontario or National level. A grand theft is in process with the support of all three provincial parties. The legislature has become an assembly where none speak out.

The Development Industry has complained, a little, but it must be recognized that they have about 240,000 acres to develop. Half of it is in existing urban areas and half in large blocks between the Greenbelt Boundary and the urban boundary. They are set for many, many years as are the present owners of these areas. Ironically, these blocks not in the Greenbelt contain much of the highest quality land in Central Ontario. The Greenbelt protects lands with lower agricultural capability at the expense of prime agricultural lands in Halton, Peel, York and Durham. The claims of protecting agricultural lands is a sham except for the Niagara Fruitlands and the Bradford Marsh area.

Purpose

The purpose of this paper is to bring to Ontario citizens knowledge of the theft of 1.8 million acres of private property by the legislature of Ontario. This paper is prepared by members of the Ontario Property and Environmental Protection Alliance. Since it is based on a series of published articles and presentations made to various meetings, there is some repetition.

The Greenbelt Process

The Greenbelt exercise began with Bill 27 which received first reading December 16, 2003. An area consisting of the Regions of Durham, York, Peel, Halton, Hamilton and the northern portion of Niagara were designated and all development frozen for one year. The Niagara Escarpment and the Oak Ridges Moraine Plan Areas were also designated as part of the future Golden Horseshoe Greenbelt but because they were already under separate legislation, development was not frozen.

A Task Force was established with a mandate to comment on a Discussion Paper. After a series of consultations, the Task Force prepared a report which was generally

consistent with the Ministry of Municipal Affairs and Housing Discussion Paper. The Task Force, when faced with agricultural issues, especially that of viability, asked the government to have the Minister of Agriculture and Food appoint an Agricultural Advisory Task Force. The Minister appointed the former Canadian Minister of Agriculture, Lyle Van Clief and past president of the Christian Farmers Federation, Bob Bedggood. Some of their recommendations were included in the Draft Plan. The Greenbelt Draft Plan was circulated in late October and public meetings scheduled. Both daytime workshops and evening public meetings were held in eight locations.

The Greenbelt Legislation

The Golden Horseshoe Greenbelt has its legal basis in two recent Bills. Bill 27, " An Act to establish a greenbelt study area and to amend the Oak Ridges Moraine Conservation Act 2001", was introduced on December 16, 2003. The second Bill 135, "An Act to establish a greenbelt area to make consequential amendments to the Niagara Escarpment Planning and Development Act, the Oak Ridges Moraine Conservation Act 2001 and the Ontario Planning and Development Act 1994" was introduced on October 28, 2004. The former received Royal Assent on June 2004 and the latter is expected to be enacted prior to December 16, 2004.

Bill 27 established the Greenbelt study area and placed a moratorium on changes from rural to urban uses, allowing time for research and consultation with stakeholders and the public on permanent greenbelt protection while protecting rural areas from further urbanization. The area was defined by maps and included the non-urban areas of Durham, York, Peel, Halton Regions, parts of Toronto and Hamilton and the tender fruit lands of Niagara plus the Niagara Escarpment Plan and the Oak Ridges Moraine

Conservation Plan. While neither the Act nor the Discussion Paper provided any acreage estimates, the land area in question was about 1 million acres, not including the NEC or the Oak Ridges Moraine**.**

Bill 27, in effect ,has frozen all applications and stayed all existing Ontario Municipal Board and similar hearings. The Minister was empowered to refuse to approve or modify any official plan. The legislation also empowered the Minister to make regulations to:

a) modify definitions of urban settlement areas or urban uses;
b) prohibit site alterations, the cutting or removal of trees or the grading of land in the greenbelt study area;
c) set out transitional rules as the Minister deems appropriate.

Why the Minister believed he needed to have the power to prevent all further tree cutting which would impact very negatively on all landowners with woodlots and destroy the sawmill and furniture industries in Central Ontario is unclear and very scary. Sections of the Oak Ridges Moraine Act and some municipal Official Plans refer to the harvest of trees as "destroying" them. They apparently do not realize or do not care that woodlots are like any other agricultural crop, only the time between harvests is several years rather than a few months.

This power appears to contradict the efforts of the Ministry of Natural Resources to encourage wise woodlot management. Hopefully, regulations will not be introduced regarding the cancellation of all tree cutting.. Education and incentives are more effective and a lot cheaper than command and control activities of green police. Such a regulation would represent termination of a business and thus may be open to court action for loss of income.

Bill 135 establishes the so-called "permanent" Greenbelt boundaries. The area involved is substantially larger than that of the Study Area demarcated in Bill 27. It is reputed to be about 1.8 million acres and includes the Niagara Escarpment Plan, the Oak Ridges Moraine Conservation Plan and those other lands the regulations describe. Since the Regulations have not been made public, the exact final boundaries are not known. The general areas are shown on a map in the Greenbelt Draft Plan, see Figure 1 and were available at the information sessions. The Act stipulates the two existing Plan Areas will continue as they have been. This creates an interesting problem for the Towns such as Caledon, that encompasses all three plans plus their town and regional official plans, to administer.

We anticipate that in a few years, all the Greenbelt may be designated as a United Nations Biosphere Reserve. The meeting handout refers to "creating a world class greenbelt". The NEC and ORM plan areas are already so designated. U.N. Biosphere Reserves are a complex, shadowy system designed to encourage ecosystem management, sustainable development and biodiversity. They were unveiled by a Task Force of UNESCO's Man and the Biosphere (MAB) Program in 1974. There are now about 400 projects in about 90 countries. A UN Convention on Biological Diversity was signed at the Earth Summit in Rio de Janeiro in 1992. The Biosphere Reserves are a vehicle to implement the Convention whose objectives are conservation of biological diversity, sustainable use of its components and fair and equitable sharing of benefits from genetic resources, all environmentalists code for control of all land uses.

The Biosphere Reserve designation was sought and applied to the NEC Plan area without ever informing or consulting landowners of what was intended or its implications. The environmentalist claim it is a great honour but to date we have neither seen nor heard of any real benefits. Any program designed by international bureaucrats and environmentalists, which is intended to manage and develop an area's natural resources, is to be treated with suspicion.

Bill 135 has 12 objectives which may be summarized as "sustain the countryside, preserve agricultural land, provide open space and control urbanization" While the importance of agriculture has been noted and agricultural land will be preserved, the overwhelming objective is environmental protection. The real purpose is revealed in the content of the Plan that includes establishing policies with respect to: land use designations; coordination of planning and development programs of the various provincial ministries; and supporting coordination of planning and development among municipalities. It is all about provincial control.

When it is completed, all municipalities, boards, agencies, etc. including the OMB, shall conform to the Greenbelt Plan. The good old, Queen's Park knows best, one size fits all dictum. The Greenbelt Plan takes precedence over official plans, a zoning by-law or policy statement under Section 3 of the Planning Act but not over the ORM Conservation Plan or the Niagara Escarpment Plan. No amendments will be allowed to the Greenbelt Plan which reduce the total land area in the Plan.

This Act will give the Minister extensive powers to: establish a Greenbelt Advisory Council; fix their terms of reference and appoint members; make various orders, defer hearing before the OMB; appoint hearing officers, etc. The Act explicitly states that no course of action or proceedings may arise as a result of an enactment or repeal of any part of the Act, or regulation made under the Act, as a result of a making of a plan or any thing done or not done in accordance with this act or the regulation. Furthermore, no costs, compensation or damages may accrue from any ministerial action. Section 19(6) states that nothing done or not done constitutes an expropriation or injurious affection for purposes of the Expropriation Act or claims otherwise at law.

The latter section obviously attempts to preclude any action for damages by landowners who will be deprived of much of their net worth. Since we have neither provincial nor federal property rights legislation and explicit legislation overrides common law, landowners appear to be without legal recourse until such time as property rights laws are enacted. Their only recourse appears to be political action.

The Golden Horseshoe Greenbelt
Discussion Paper

Background

One of the election promises the Liberals appear determined to actually fulfill is for a greenbelt around the Golden Horseshoe. When in opposition, they promised an Ottawa to Niagara greenbelt but now it is Lake Scugog area to Niagara plus the Niagara Escarpment Plan Area. The latter extends from the northern boundary of Peel through Dufferin, Simcoe, Grey and Bruce to Tobermory. The addition of this extra piece of belt which is under tight NEC development control legislation is strange. The Counties of Grey and Bruce are not even close to the Golden Horseshoe.

All rural landowners especially farmers in the Niagara Escarpment Plan Area as well as all of Peel, York, Hamilton, Halton Hamilton and most of the Niagara Regions should be aware that Bill 27 is an immediate government threat to their land values. On December 16, 2003, the Minister of Municipal Affairs introduced Bill 27, An Act to Establish a Greenbelt Study Area and to Amend the Oak Ridges Moraine Conservation Act. This Act defines the study area as all non-urban areas of the Greater Toronto Area plus the areas in the Oak Ridges Moraine and the Niagara Escarpment Plan Area. Simultaneously, all non-urban development was frozen for one year in all the above areas with the exception of the NEC Plan Area because it already comes under the Niagara Escarpment Act.

The Minister may make regulations retroactively and those who contravene a regulation are assumed guilty and have no recourse for any harm resulting from Ministerial actions. This smacks of a legalization of Ministerial dictatorship. While the cutting of trees and the grading of land have not yet been proscribed, it may be done at the whim of the Minister once the legislation is passed Woodlot owners need to be concerned as do lumber companies, firewood sellers and the manufacturers of furniture.

This draconian legislation has had second reading and will be passed in the near future. A legislative committee held hearings on three occasions in Toronto. All that remains is to determine when and where these restrictions will be applied. The legislation is permissive in nature, that is, it gives the Minister freedom to develop and proclaim regulations in regard to land use. The most threatening section is Number 8(2)b, which allows the Minister to make regulations prohibiting the cutting or removal of trees, site alterations or the grading of land in the greenbelt study area. If he chooses, the Minister can, with the stroke of his pen, eliminate the value of woodlots and put the lumbering, fuelwood and forestry equipment supply operations out of business. The economic impact will be substantial especially to landowners who consider trees a crop to be systematically managed and harvested. For further details of the legislation, go to the website of the Ministry at: MAH.gov.on.ca.

An interview by Anne Howden Thompson with Minister Gerritson was reported in the Ontario Farmer, May 11. When asked about the compensation to landowners the Minister said, he distinguishes between existing farms and the disruption of ongoing businesses. He does not consider down zoning farmland as a change in operation. If he decides to prevent all tree cutting, he will obviously be disrupting the sale of saw logs and firewood. Likely permanently.

Greenbelt area landowners with woodlots may wish to document their saw log and firewood sales to demonstrate they have such an enterprise before the no cut regulations are put into law by the Cabinet. Woodlot owners would also be well advised to have a woodlot plan developed by a professional forester. This may be a pre-requisite for all future tree cutting and such a plan demonstrates both the existence of a business operation and a concern for the environment.

Similarly, every other farmer or landowner with a land based enterprise which may be terminated by the coming Golden Horseshoe Greenbelt Plan should document their business situation. While the present Discussion Paper does not mention such restrictions, they are explicit in the Act which prohibits land grading or extraction. Nurseries, landscapers, etc. should monitor the Plan regulations when they are published. When it is finally enacted, could developers who purchased a property to create residential, commercial or industrial lots qualify for business disruption?

Task Force Report

Simultaneous to the introduction of Bill 27, the Minister of Municipal Affairs and Housing appointed a Task Force of 13 individuals to report on the boundaries, government structure, etc. Their report entitled Toward a Golden Horseshoe Greenbelt

was released May 13 and is available on the Ministry of Municipal Affairs and Housing website at mah.gov.on.ca. Go to the Green Belt Task Force and follow on.

Several evening public meetings have been scheduled on the Task Force Discussion Paper. A series of day-long sessions were also held at which only representatives of organizations have been invited to participate, one representative per organization. These meetings are for so called stakeholders, mainly of the Green Variety, but were not open to individual landowners, the real stakeholders. Each evening, after the stakeholder sessions, public meetings were held at which time anyone could speak for five minutes from 7:00 pm to 10:00 pm.

The Task Force Discussion Paper began by defining the function of the Greenbelt Protection Act 2004, Bill 27, as establishing a permanent greenbelt in southern Ontario which would protect environmentally sensitive lands and farmlands and help manage and contain urban growth. Not only did they assume these rather dissimilar objectives can be achieved by a permanent greenbelt, but they claim, without any examples or evidence that "good planning for the environmental and agricultural protection and sustainable development will result in economic benefits to the residents of the Golden Horseshoe. This is a typical environmentalist assumption which has not and cannot be proven.

They claimed the proposed legislation recognizes:

- The environmental and agricultural significance of the proposed Greenbelt Study Area to the people of Ontario;
- The proposed Greenbelt Study Area's importance as a source of food, water, natural heritage systems, greenspace, recreation and natural resources, which enhance quality of life; and
- The importance of continuing to protect the Niagara Escarpment and the Oak Ridges Moraine.

The legislation in Bill 27 assumed the above but provided no data to support these conventional wisdom assumptions. As J.K. Galbraith, who coined the term conventional wisdom asserted, it is usually outdated and incorrect.

There was a bunch more stuff about vision, goals, consultations and the background and context. All warm fuzzy stuff with no examples and no hard data. They even talk of Greenbelt case studies and claimed many growing metropolitan areas have established them. Later they identify the Ottawa Greenbelt, a classic failure in that at least two new committees have been established on its outside perimeter. Both Barrhaven and Kanata have populations in excess of 50,000 residents.

Greenbelts may prevent development inside their boundaries, but they are ignored by developers who purchase land on the outside such as recent activities in Bradford and Bond Head. Some day, in 20 or 30 years, the developers from Barrie will meet those from Toronto and the new mega city of Toba or Torbar will be created with its epicentre between Cookstown. And Bradford.

After a long section on Environmental Protection similar to the rationale for the Niagara Escarpment Plan, there is a section on Agricultural Protection. The discussion paper gave passing recognition, as all planners do, to prime agricultural lands and specialty crop areas in the Niagara Region. In their short discussion on the viability of Agriculture, they identify the following as approaches and tools used in other jurisdictions: "land trusts, conservation easements, financial incentives, supporting infrastructure investment, education and marketing as well as land use plans and zoning". Most of these are control mechanisms which do nothing for farm incomes, which the authors failed to recognize is the primary requirement for farm viability.

The Greenbelt Task Force Report

The Task Force report entitled Advice and Recommendations to the Minister of Municipal Affairs and Housing closely followed the format and proposals in the Ministry Discussion Paper. The public consultations were structured to ensure the "appropriate" questions were asked and responded to. Partway through the consultation process, the Greenbelt Task Force requested that an Agricultural Advisory Task Force be established to study land use and viability. A discussion of this task force report may be found in the next chapter of this paper.

The Greenbelt Task Force made recommendations in regard to Land Use Policies including:

1. The necessity of proving that urban designated areas lack sufficient land which could be provided by intensification or redevelopment.
2. Elimination of lot creation for residential infill.
3. Land use policies which are consistent across the whole study area. The policies which are appropriate in Bruce County are not appropriate in Niagara. Consistency is the hobgoblin of small minds.
4. Secondary agriculture uses and agriculture uses must not erode the viability of prime agricultural areas.

They proposed to do the above by tightening the secondary uses for good tender fruit and grape lands, directing selected agricultural-related uses to settlement areas and exploring support mechanisms and incentives for secondary uses. These approaches are appropriate if implemented in a reasonable manner. They implicitly demonstrate the inconsistency of attempting to institute a single land use policy in all areas.

They proposed to protect the tender fruit and grape lands and the Holland Marsh by permanently restricting the settlement boundaries. Sounds nice but how do St. Catharines, Niagara Falls or Bradford grow? Looks like a simplistic solution to a very complex problem.

Other agricultural lands were to be permanently protected if they have contiguous areas sufficiently large to support the integrity of the agricultural economy and rural landscape. Protecting the rural landscape by freezing land uses is rather difficult to justify unless someone can value rural landscapes and is willing to compensate farmers to keep operating money losing enterprises.

Then the Task Force reverts to the conventional wisdom but unlikely solutions of research and education programs, promotion and marketing initiatives and supporting infrastructure. Either the Task Force members have no understanding that farmers operate businesses or that all the above already have been tried.

The final proposed support for agriculture is Taxation and Financial Tools. They suggest a review of the assessment system and easements and land trusts. A review of the assessment system is commendable but unlikely. The easements and land trusts stuff is environmental hocus pocus. On one hand, they want to freeze land uses thus seriously depreciating every farm owners' net worth and on the other hand are offering an inheritance tax concession financed by the Canadian taxpayer. Thanks but no thanks.

The Task Force also had recommendations on Transportation and Infrastructure, Natural Resources, Culture, Recreation and Tourism, and Administration and Implementation. They make many recommendations about protecting natural heritage, prime agricultural land, mineral resources, and natural resources and recreation. The needs of urbanites are considered while landowners are not even recognized as stakeholders. They are the prime stakeholders in fact and the others are only Interested Others.

The tools for implementation defined as regulatory include: the planning act, tree conservation, site alteration and topsoil by-laws under the Municipal Act, regulation of waterways by conservation authorities, lakes and rivers improvement act, Niagara Escarpment Commission development control permits and surprisingly the Foodland Guidelines long replaced by Policy Statements under the Planning Act.

Non-regulatory tools to be used were claimed to be: public education and land stewardship information, incentives and special programs, operated by non-government agencies and governments and land securement of private lands by conservation easements, donations of land, bequests of land and various tax incentive programs.

The one part of the Task Force Discussion Paper we agree with whole-heartedly is that it be administered, as is the Oak Ridges Moraine, by local municipalities on the basis of by-laws. The Development Control Permit System used in the Niagara Escarpment Plan Area must be rescinded and avoided at all costs. It is not democratic because all members of the commission are appointed by the provincial cabinet, they do not report in any way to the local residents and have been systematically co-opted by the NEC staff. This recommendation has not yet been implemented but likely will be because it downloads the cost of administration from the province to local municipalities.

The major concerns I have with the Task Force report is the almost total lack of recognition of who owns the 1.8 million acres to be planned, the ignoring of the fact that landowners are the primary and only true stakeholders and there is no recognition or discussion of costs. The cost to landowners of this proposal will be in the order of billions not millions of dollars. If there are 1.8 million acres involved and if the decrease in value is only an average of $10,000 per acre, the loss will be $18 billion. We believe this estimate is low.

The Greenbelt Agricultural Advisory Task Force

A two-person Task Force was appointed by OMAF Minister Peters at the request of the Greenbelt Task Force. They were mandated to seek input from farmers and technical experts on land use and planning issues. The Greenbelt Task Force did not feel competent to solve the problem of economic viability in the Golden Horseshoe so asked the government to establish an Agricultural Viability Task Force.

The team consisted of former federal minister of agriculture, the Honourable Lyle Van Clief and former Christian Farmers Federation of Ontario (CCFO) President, Bob Bedggood. The assignment was very challenging given the focus on viability a rather complex but vague and squishy concept.

Economic viability is an individual farm characteristic which can best be achieved by an individual manager utilizing his or her managerial, financial and physical resources within the context of the market. The government can influence the market system to a limited degree, but some will still fail and others

prosper. There is no simple formulae which can or will guarantee economic success for the farmers in the Greenbelt.

Given a difficult assignment by the provincial government, the two men chose to employ the ever-popular process of public consultation. Public consultation is all the craze with the McGinty government. It provides the appearance of listening to the public with little risk that the preferred policy, designed by the bureaucracy, cannot be implemented.

Public consultation, even at its best, represents only the opinions of those who feel strongly enough to participate. Self-selected participants seldom accurately represent the opinions of the total population. When the participation is limited to those selected by the researchers, as was done by this Task Force, the opinions of the participants are even less likely to reflect the full range of public preferences or ideas. Non-randomly selected samples of participants invariably are biased. Almost always, the bias is in favour of the largest, most visible organizations or pressure groups and those who are known to already hold strong opinions. In effect, the researchers usually get a rehash of conventional wisdom on which to build policy.

The recommendation of the Task Force reflect much of the conventional wisdom of the farm community already heard by the Task Force at their community workshops and public meetings. They recommended: permanent urban boundaries to address the fragmentation of agricultural land; future predictability of land use; preventing leap frog gaining by developers across the protected areas; fulfilling urban density criteria before the boundaries expand; and lowering infrastructure and servicing costs for urban communities. Clearly defined urban boundaries are obviously desirable but it is unclear how they will achieve all these other varied objectives.

On the issue of severances, they recommended a blanket denial, regardless of the quality of land or need for hamlet growth, except for surplus farm dwellings. These severances can only occur when the landowner who purchases an additional farm gives up all future development rights for the whole farm acreage where the house is located. While many will see this as a gain over the no severance crowd, farmers in many cases will be better off to simply bulldoze the house.

The landlord tenant legislation makes house rental very problematic. Few farmers want to be landlords or have the grief of trying to evict a tenant who refuses to pay rent and/or maintain the house. Sale of the surplus house is more attractive, especially if it is not located close to the homestead. But, the future cost of not being able to develop the remainder of the parcel is likely to exceed the amount gained from severing a house. It depends primarily on location. A property distant from the urban boundary may have little or no development value. One near an urban area will probably have development potential at some time in the future, thus giving up all future development rights will lead to a future net loss.

The Greenbelt boundaries are reputed to be permanent but reality suggests all political boundaries can be changed. When the supply of urban land runs out or the government policy changes, the landowners will force changes. Developers have longer time horizons and more influence than farmers or politicians. Never say permanent.

The suggestion that Minimum Distance Separation between livestock operations and other developments should be the same regardless of who is initiating the change is reasonable. Their support for the Farm and Food Production Protection Act and Agricultural Advisory Committees and endorsement of the status quo for on-farm businesses will receive general support.

Other, not unexpected, recommendations are to tax on-farm businesses at the farm rate and increase financial support for farmers who suffer livestock predation and crop damage by wildlife. Unfortunately,

even when the government claims to be doing the above, some individuals are being severely hurt. Farmers should either be paid to feed wildlife or be allowed To Whom It May Concern: kill or harvest nuisance animals.

The issue of trespass on private lands is one of the few considered which is of direct importance to Greenbelt landowners. The Task Force Discussion Paper and the Task Force Report emphasized the wonderful recreational uses to be created, seldom mentioning the fact that the land will remain privately owned. Farming is a semi-industrial process. Just because there are no visible walls, farmers cannot have people walking through their operation. No one would condone self-directed tours through a Ford plant or even government offices. But, the politicians are promising hikers, birdwatchers, fishermen, etc. that they will have access to the huge Greenbelt park outside the urban boundaries without considering who owns it.

One of the best ways for landowners to rectify this misinformation is to post every piece of property with "No Trespassing" signs. Even better, print a bunch of the Lanark Landowners Association 's No Trespassing, "This Land is Our Land - BACK OFF GOVERNMENT" signs. Rural Ontario is not a public playground for urbanites.
The Task Force recommended the two ever-present solutions of Support For Research and Promotion and Marketing. Not very original, of limited importance to land use planning but the government certainly needs reminding given shrinking OMAF budgets. The idea that the land use planning capacity of OMAF needs expanding is appropriate but only with qualifications. In the past, too many OMAF staff have had limited rural knowledge and tended to always "go by the book". Unfortunately, the "book" was written by people who had a strong bias against severances, little appreciation of history or willingness to compromise. The idea that civil servants should represent agriculture at Ontario Municipal Board Hearings, committees of adjustment, zoning and by-law hearings is interesting but flies in the face of common sense and the recent trend of the Department of Agriculture to curtail services to farmers. As a farm owner, I would hire the most credible expert witness and best lawyer available rather than look for a freebie. Few career civil servants have the expertise required and fewer, the stomach for cross-examination by a sharp lawyer. As a taxpayer, I have no desire to assist in financing their liability protection.

Now we come to what I believe are the major errors in the recommendations. The Task Force recommended mapping all Prime Agricultural lands, environmental payments and no compensation for landowners. The idea of mapping all Prime Agricultural land has problems in terms of both how to do it and its probable effects. There is no adequate tool for doing the mapping. First, we need a much more sensitive definition than all Class 1, 2 and 3 Canada Land Inventory lands. The CLI system was not designed for small site analysis and the maps are recognizant in nature. It is based on corn heat units and was used to estimate total agricultural land in Canada. The Land Evaluation and Area Review (LEAR) system is an improvement but half the score is based on CLI and half on factors such as percentage of the subject land in agriculture, surrounding areas in agriculture and parcel size. The weighting given to these three factors is open to the evaluators preference. This part of the system works best for small sites. The results will be open to much debate.

The second problem with mapping all prime agricultural lands is that once mapped, identified and designated, the bureaucrats will feel compelled to develop more rules to control all activities on these lands. Given the new Policy Statement on Planning and Bill 135, local municipalities must enact regulations that are "consistent with" provincial policies. More of the one size fits all nonsense. More regulation, more hassles, higher taxes but few benefits.

A food tax is a non-starter. Urbanites want and have been delivered cheap food. Any increase in food prices will be fought. A food tax at the cash register would lead to many politicians being defeated. No

political party is quite that stupid. Environmental stewardship payments to farmers/landowners are not very probable. How would the payments be determined? As a landowner in the Niagara Escarpment Plan Area which is in a U.N. Biosphere Reserve, with an Earth Science Area of Natural and Scientific Interest (ANSI) on all my property and a Life Science ANSI on my woodlot, I believe I deserve a lot more than those with flat boring Class 1 lands.

My hills with cows and their calves are also a lot more interesting than a soybean field. I would also claim support for my heritage rail fences and my picturesque if obsolete bank barn. If I build a stone fence, will I get even more money? While the money or a municipal tax deduction would be nice, it would inevitably lead to a dictum from the government "Thou shalt not change anything" and even worse, urbanites who believe that because I get tax benefits, they have some right to walk, snowmobile or bike through my property.

The government in their Greenbelt Plan and Bill 135," An Act to Establish a Greenbelt area et al" propose to take the Task Force's recommendation of no compensation to landowners. The government has never intended to compensate landowners. The legislation explicitly states that the zoning does not represent an expropriation.

The Task Force recommendation of no compensation is very discouraging to landowners. Surely they would not like the value of their own properties depreciated by government regulations and then been told, "No compensation unless we declare it expropriated". Their support for environmental payments but refusal to support compensation for assets is inconsistent. The idea that the state can arbitrarily steal most of the value of ones property without compensation is undemocratic, unjust, unethical and justification for any action landowners undertake. Unfortunately, until landowners demand property rights written into legislation, that's the way it is. Russia, China and almost all developed countries have property rights while Ontarians and Canadians do not. The Task Force report has been endorsed by the Christian Farmers Federation and as a result will likely be applied to areas well beyond the Greenbelt.

The Greenbelt Plan

It is very difficult to summarize a 34-page Plan and its implications in a few words. The Plan is a series of complex land designation purported to protect agriculture, the environment, culture, recreation and tourism opportunities, rural communities, and

infrastructure and natural resources. It consists of a series of land use designations and geographical specific policies. The implicit assumption is that, if you designate areas and limit what can be done with the land, you have a plan which will achieve your objectives.

Three broad areas are identified: the Oak Ridges Moraine Conservation Plan Area; the Niagara Escarpment Plan Area; and the Protected Countryside Area. The policies in the first two areas remain as they were, at least for now. The protected countryside area is new and the focus of the remainder of this paper.

Within the Countryside Protected area, four systems or areas have been identified, namely Agriculture system, Natural System Parkland Open Space and Trails and Settlement Area. The sense of priority is demonstrated by the fact the Natural Heritage and Settlement Systems areas are designated on the maps but the Agricultural and Parkland Open Space areas are treated as residual uses. As usual, the agriculture area is a residual or temporary use which acts as a reserve use until natural or residential uses develop.

Lands in the Agricultural System are designated as Specialty Crop Areas, Prime Agricultural Areas and Rural Areas. These designations are relatively consistent with those of most rural municipalities. Much has been made of the Niagara Specialty Crop lands and the vision of Napa Valley North. It is an interesting goal but will require even more government financial support. Many proponents seem to believe the grape is the only crop worthy of support. While important, so are tender fruits such as peaches, pears, cherries and other fruits and vegetables which require a moderate climate which exists nowhere else in the Greenbelt. The grape industry is still vulnerable to an extremely cold winter and to insect pests and bacterial diseases. The Bradford Marsh is also a Specialty crop area. It is ironic that one of the most productive and profitable cropping areas could not be established under existing environmental land and water use controls. It is to be hoped that expansion of the crop area will not be prevented by environmental concerns.
The Prime Agriculture Area policies allow normal farm priorities and a range of agricultural, agriculture-related and secondary uses. They cannot be redesignated in municipal plans for non-agricultural uses. Rural Area policies allow a range of recreational, tourism and resource based commercial and industrial uses. This, in effect, is the holding area for recreational based uses but included as agricultural to give the appearance of preserving farming activities.

The Natural System protection natural heritage, hydrologic areas and land forms. This is an environmental protection system which gives priority to environmental controls. Settlement areas are those existing towns and hamlets in the whole area. They will continue to be governed by municipal official plans. The true nature of these areas will

not be known until the Spring of 2005 when the Place To Grow programs and maps are made public. Modest growth is allowed as long as they do not expand into the Greenbelt. This means a freeze on existing municipal boundaries for hamlets and towns.

No changes in the land use designations or boundaries will be allowed until the 10-year review. All three components are to be reviewed at the same time. Based on the two NEC Plan reviews little change other than tightening of the rules will be allowed. The first five-year review made many recommendations which were opposed by the Staff and never implemented. The major one was to move from Development Control permits to normal municipal regulations. The second review conducted in 2001 was very narrow in scope and at this date still sits in the Minister of Natural Resources files, probably waiting for the implementation of Bill 135. Unless the 10-year review is changed substantially, it will continue to be a money wasting white wash. Lot creation policies are presented which are so narrowly defined that few, if any, will be created in the Greenbelt area.

Comments on the Greenbelt Plan

Justice and Equity

The Government needs to quit listening to environmentalists, civil servants and urbanites who want to freeze land uses. They need to revise their plan to be consistent with the reality that landowners, mainly farmers have no intention of giving up their equity for free for the convenience of others. "In the name of the public good" just doesn't pay the mortgage, maintain buildings, provide a return on equity, allow farm business expansion or pay for nursing home fees.

The landowners of Peel County made this clear at the recent consultation meeting. They are not amused and their anger is much deeper than the frustration of not being able to plant crops due to wet weather as claimed by the Ministry. The time frame that assumes the completion of a final plan by December is very unreal. It took 10 years to have the Niagara Escarpment Plan developed, reviewed and approved. "Haste makes waste" will prove to be no one's benefit.

The Government emphasizes the benefits to urbanites of all the wonderful recreational opportunities the plan will create. There is no recognition that these recreational activities are not compatible with agriculture, the primary land use or with the private owners of these lands. They appear to assume all comers will be welcome when in fact, they will be trespassers. Does the government plan to pass legislation to make trespass legal on rural properties?

The concept of compensation is unrecognized based, we assume, on the widely held opinion of environmentalists that property rights do not exist. I suggest they create

legislation that allows everyone access to all private swimming pools in urban areas and see how the owners react. It would be inconvenient but would do a lot less to depreciate the value of houses than this plan will do for rural landowners. When farmers grasp the significance of having their lands frozen and depreciated, they incredulously ask me "But can the government do this?" Unfortunately, it appears that they have the legislative power and have already done so and they will continue to do so if we allowed.

In the 1970's, all unworked mining claims in northern Ontario reverted to the crown without compensation. No compensation has been paid to owners of land in the Niagara Escarpment Plan Area or the Oak Ridges Moraine but the Ottawa Greenbelt lands were expropriated. Many politicians, the government and environmental lawyers, use the fact that property rights are not part of the Constitution to deny all property rights, even those based on common law and despite the fact Canada signed the United Nations Universal Declaration of Human Rights. It states *"No one shall be arbitrarily deprived of their property"*.

Bill 27, which established the Golden Horseshoe Greenbelt Task Force allows the province to arbitrarily deprive landowners of the use of their property, their income from the sale of lumber and firewood, not only in the future but also retroactively to protect the Minister from all actions. A large number of court cases and planning hearings have, based on common law, reiterated the rights of owners to enjoy quiet use of their property. Unfortunately, the legislature has the power to override Common Law.

A classic example was the comment made by John White, the then Treasurer of Ontario, when asked during Second Reading of the NEC Act in 1973 why they did not purchase all the lands involved. *"In my view and the view of my colleagues, this is completely unnecessary …. We can conserve through planning designation for the benefit of all our people"*. Obviously, his definition of "all our people" did not include NEC Plan area residents. This philosophy, deeply embedded in the bureaucracy is *"we don't have to buy it because we have the power to designate it in any way we want, regardless of the landowners' interests"*. The result is that government *"doesn't buy what it can steal"*.

Judge Riddell stated in 1908, *"the prohibition, 'thou shalt not steal' has no legal force on the sovereign body. We have no such restrictions upon the power of the Legislature as is found in some States."* Almost every state has property rights except Canada. China recently passed property rights legislation.

One must recognize the power of the state to do what it wishes. Having power and being right are not the same. The tenth commandment regarding coveting and the eighth regarding stealing have long been part of the basis of our legal system and should remain so.

Those who claim landowners have no rights should consider the following:

A. The late Mr. Justice McRuer, when he was Chief Justice of the High Court, said in relation to a case between Bridgman and the City of Toronto (1951 O.R. 489 at page 496)

> *"Everyone has a right to use his property in any way that he may see fit, so long as he does nothing that will be a legal nuisance to his neighbours. That is a common law right, it is a question of liberty that is to be jealously guarded by the courts, and while one's rights may be affected by proper legislative action, until that is done, one's personal common law rights are to be strictly guarded. In the construction of any Act, either of the Legislature or of a municipal government which is limited in its legislation to the authority conferred on it, one must place a strict construction on any statute or by-law which is restrictive in its nature of the liberty of the subject or the liberty with which he may exercise those rights which the common law gives him over his property."*

B. OMB Hearing File S920062. The Hearing Officer refers to the position of Save The Rouge Valley System Inc. this way:

> *"There is an unstated assumption held by S.T.R.V.S. Inc. that an owner's proprietary interests can be set aside and that these lands can be treated as public parks without the clear intent of the public authority to acquire or expropriate. The board has always viewed, with askance, the appropriateness of such an assumption. In short, the Board has not been persuaded that these lands should be left in their natural state."*

There are many more similar decisions by OMB hearing officers and judges which demonstrate our property rights under the common law. These include:

C. From the City of London Official Plan (30MBR266)

> *"In general, the Board does not agree with placing private lands in an open space category, particularly in the absence of detailed plans by the municipality in acquiring such lands".*

D. From Township of Nepean Restricted Area By-law 73-76 (90MBR36)

> *"The Board has always maintained that if lands in private ownership are to be zoned for conservation or recreational purposes for the benefit of the public as a whole, then the appropriate authority must be prepared to acquire the lands with a reasonable time otherwise the zoning will not be approved."*

E. Hauff v City of Vancouver – Restrictions of Use

> *"To deprive an owner of existing rights of enjoyment of his property, with a view of reducing the price payable in the event that the state may wish to buy it later is a confiscatory act which violated principles inherent in our constitutional system."*

F. Supreme Court of Canada, Cartwright, Abbott, Martland, Judson and Spence, J.J., Mar. 18, 1965 in a case involving City of Ottawa et al v Boyd Builders Ltd.

"An owner has a prima facie right to utilize his own property in whatever manner he deems fit subject only to the rights of surrounding owners, eg. nuisance, etc. This prima facie right may be defeated or superseded by rezoning if three prerequisites are established by the municipality, (a) a clear intent to restrict or zone existing before the application by the owner for a building permit, (b) that council has proceeded in good faith, and (c) that council has proceeded with dispatch."

The court decisions go on but landowners will have to initiate court actions if they want to utilize their common law rights.

In conclusion, let me spell it out in simple landowners terms:

- This land is our land.
- We purchased it, we paid for it.
- We pay taxes and
- We will not share it with the government or trespassers.
- The public use of our private property is a non-starter.
- The present proposal is trespass and shoplifting on a grand scale, nothing less.
- If you want to use our land, buy it.
- Ontario has good expropriation legislation. If you want a Greenbelt, buy our land. If you cannot afford it, go away. Breaking one more promise won't change the next election but it will make a difference for those running in the Greenbelt area.

<u>Governance</u>

The Greenbelt Plan creates a mish mash of overlapping governance systems. As noted earlier, some regions will have up to five sets of separate or overlapping rules. We strongly support local municipal continuing by means of by-laws as exists in the Oak Ridges Moraine in preference to Development Control as implemented in the Niagara Escarpment Plan Area. While we are concerned about the power, of the Niagara Escarpment Commission, the Committee on the Niagara Escarpment (CONE) and environmentalists, to convince the government to use Development Control to implement and enforce the final plan.

We anticipate local control will be downloaded to municipalities. This model allows the Provincial government to shuffle the cost onto the people most impacted. With the power of the Planning Act requirement that municipal by-laws "must be consistent with" provincial policy, the province gets a free ride at the local taxpayers expense.

Development Control should be avoided. It has the possibility of being very undemocratic, subjective and inequitable. The Development Control System is permanently flawed because:

1. The Commissioners are all appointed by the Cabinet. Half are nominated by the rural counties and the other half are simply friends of the government with no residency requirements. This is not democratic.
2. The number of representatives is one per county or region regardless of the area involved. Grey county with over half the land area has only one representative, the same as Simcoe which has only a small area in the plan.
3. The staff, not the Commissioners make the policies and decisions. The Commissioners almost always accept staff recommendations and they have no power to hire or fire staff regardless of their conduct.
4. The decisions tend to be arbitrary. An applicant has no by-laws to indicate what rights they have to use their land.
5. The procedures used to make decisions are arbitrary and undemocratic. An applicant has only five minutes to state their case, witnesses are not sworn, cross-examination is not allowed. The appeal process is before a hearing officer appointed by the Commission and decisions cannot be appealed.

At the operational level, the hearing officers who reviewed the Proposed Niagara Escarpment Plan, the two who completed the first review and OMB hearing officers have made a number of comments about how the staff have implemented Development Control. The three experienced OMB hearing officers who reviewed the NEC Proposed Plan from 1980 to 1983 recommended that the plan be implemented by upper level municipalities. This recommendation was repeated in 1993 by the two experienced Environmental Assessment hearing officers who conducted the First Plan Review. They stated "the implementation of the development control system be reviewed with a view to designing a process that is open, timely, consistent and predictable". Implicitly, they were saying that Development Control is none of the above.

The same three hearing officers stated that:
"The procedure used by the NEC in dealing with development control permits represents a denial of natural justice, even though such was perhaps not intended". (P.51, Vol 1)

In terms of representation as stated by Mary Munroe and John McClellan who conducted the Plan Review in 1991-93:
"In terms of land use planning and land use controls, for residents of the Plan Area, the Commission is the local municipality". They recommended responsibility of the plan area be returned to upper level municipal governments. This was recommended in the original NEC Act but has never been implemented. We still have government by individuals appointed by the Cabinet.

Mr. A.J.L. Chapman, at an OMB hearing regarding an application for a plan of subdivision by Kent & Lois McClure which was opposed by the Niagara Escarpment Commission stated:
"the Board will give no weight to the Commission's guidelines because, in my opinion, they are unreasonable and because they were adopted and applied in a manner that denied natural justice to landowners in the Niagara Escarpment Area."

Negative Impacts
The Greenbelt Plan will not stop, but just delay urban sprawl. When development in the blocks between the Urban Boundaries and the Greenbelt have been developed, new growth areas will be identified. These will be the adjoining lands, not new towns further from urban influences. The future development blocks are plums to keep the developers happy and appear to have achieved that purpose.

Leap frogging of the Greenbelt is in progress in Simcoe County while at the same time, the Town of Orangeville has been enclosed in a green garrote which will limit future growth to existing boundaries. Roads and utilities will consume more land. Previous Greenbelts have all ended up as transit corridors and urban development areas. This one will be no different because it even allows landfill site and the expansion of gravel pits. Property taxes in the Greenbelt will probably rise because of limited increases in assessment.

Agriculture will decrease for the many reasons identified in this paper. Individual landowners will be left without anticipated retirement funds, farms will not be transferred to children and there will be no incentive to protect the land. The only sure way to protect agricultural land is to provide farmers with a reasonable level of income. Private landowners have a far superior record of protecting natural resources than government bureaucrats. People who do not understand systems or their history cannot be entrusted to control them.

Our Recommendations

To The Provincial Government

1. Do not apply the advice of the Agricultural Advisory Team to all Ontario. It will be tempting to say we have a Task Force report etc., etc., but it is based only on opinions of a few selected individuals.
2. Avoid a development control system of governance.
3. If an advisory committee is established, require that all members are true stakeholders, ie. Greenbelt landowners and preferably Greenbelt residents.

4. Recognize that the area is not a park-like playground. It is an area owned and operated by farmers and other rural residents who must not be required to share it with urban trespassers.
5. Investigate means to compensate landowners. Forget land trusts as they provide very limited compensation.
6. Recognize that the area of land being farmed will decrease and future investments in agricultural infrastructure and services will all be reduced. Rural communities will be threatened.
7. Provide funds to municipalities to cover the cost of the downloading of planning and by-law enforcement. Rural taxpayers must not be further burdened for services for non-residents.
8. Review those legal cases where government has down zoned lands in an effort to purchase them for less money. Precedence indicates this is not legal. Se Hauff v City of Vancouver and a case in Streetsville, Ontario where riverside property was down zoned and then expropriated.

<u>To Municipal Governments</u>

1. Request monies to cover the planning, implementation and governance costs the downloading of these services by the provincial government.
2. Insist on adequate lands to allow reasonable residential, commercial and industrial growth beyond 10 years.
3. Insist the province provide and finance adequate roads to service the increase in tourism.
4. Treat Conservation Authorities and Non-Government agencies with extreme caution.

<u>To Landowners</u>

1. Boycott all government actions which reduce your control of your land.
2. Post every property with No Trespass signs. Call the police if anyone trespasses.
3. Lobby provincial and federal politicians for landowner property rights.
4. Refuse any and every trail, hiking or fishing group access to your land.
5. Appeal your property assessment on the basis that its market value land uses have been reduced.
6. Communicate with your elected officials at all three levels of government. Make them aware of your anger.
7. Hire legal council to investigate the legality of the partial taking of lands. Also, investigate the implications of rights conferred in crown deeds.
8. Keep a record of all people who want to enter your land. Insist on seeing identification and take photos or videos of them.
9. Form local landowner associations to assist others in refusing entry to anyone without a search warrant.