Court File No. CV-20-00001582-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:

ERWIN BANFI

Plaintiff

and

THE CORPORATION OF THE TOWN OF OAKVILLE, CONSERVATION HALTON, THE REGIONAL MUNICIPALITY OF HALTON, THE CORPORATION OF THE TOWN OF MILTON, THE KING IN RIGHT OF THE PROVINCE OF ONTARIO and ROBERT BURTON

Defendants

Proceedings under the *Class Proceedings Act*, *1992*

<u>FURTHER</u> FRESH AS AMENDED STATEMENT OF CLAIM

TO THE DEFENDANT(S)

A LEGAL PROCEEDING HAS BEEN COMMENCED AGAINST YOU by the plaintiff. The claim made against you is set out in the following pages.

IF YOU WISH TO DEFEND THIS PROCEEDING, you or an Ontario lawyer acting for you must prepare a statement of defence in Form 18A prescribed by the Rules of Civil Procedure, serve it on the plaintiff's lawyer or, where the plaintiff does not have a lawyer, serve it on the plaintiff, and file it, with proof of service, in this court office, WITHIN TWENTY DAYS after this statement of claim is served on you, if you are served in Ontario.

If you are served in another province or territory of Canada or in the United States of America, the period for serving and filing your statement of defence is forty days. If you are served outside Canada and the United States of America, the period is sixty days.

Instead of serving and filing a statement of defence, you may serve and file a notice of intent to defend in Form 18B prescribed by the Rules of Civil Procedure. This will entitle you to ten more days within which to serve and file your statement of defence.

IF YOU FAIL TO DEFEND THIS PROCEEDING, JUDGMENT MAY BE GIVEN AGAINST YOU IN YOUR ABSENCE AND WITHOUT FURTHER NOTICE TO YOU. IF

YOU WISH TO DEFEND THIS PROCEEDING BUT ARE UNABLE TO PAY LEGAL FEES, LEGAL AID MAY BE AVAILABLE TO YOU BY CONTACTING A LOCAL LEGAL AID OFFICE.

TAKE NOTICE THIS ACTION WILL AUTOMATICALLY BE DISMISSED if it has not been set down for trial or terminated by any means within five years after the action was commenced unless otherwise ordered by the court.

Date June 23, 2020 Issued by Online
Local Registrar

Address of court office: 491 Steeles Ave E
Milton, ON L9T 1Y7

TO: **THE CORPORATION OF THE TOWN OF OAKVILLE**
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THE CORPORATION OF THE TOWN OF MILTON
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MINISTRY OF THE ATTORNEY GENERAL
Province of Ontario
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720 Bay Street, 11th Floor
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ROBERT BURTON
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1225 Trafalgar Road
Oakville, ON L6H 0H3

1. The following terms used throughout this Statement of Claim have the following meanings, with any changes made *mutadis mutandis*:

"**Class Members**" includes any person who owns (or owned in the period as of June 23, 2018 to the present) or holds an interest in property in Oakville that has, or may suffer damage or loss based upon a weather event equivalent to, or less than, the Applicable Flood Event Standard, including the approximate area bordered by Burloak Drive, Lake Ontario, Winston Churchill Boulevard, and Dundas Street ("the Regulatory Flood Plain").

"**Damage or Loss**" means all damages, harms or losses arising from the location of the Class Members' property within the Regulatory Flood Plain, including: actual damage; flooding hazard risks; diminution of the value of such property; loss of reasonable use and enjoyment of such property; a threat to life; an inability to obtain sufficient or reasonably priced insurance for such property; mental distress; and/or, out of pocket expenses.

"**Flooding Hazard**" means pursuant to the Provincial Policy Statements, 1997, 2005, 2014 and 2020 the greater of: 1. the flooding resulting from the rainfall actually experienced during a major storm such as the Hurricane Hazel storm (1954) or the Timmins storm (1961), transposed over a specific watershed and combined with the local conditions where evidence suggests that the storm event could have potentially occurred over watersheds in the general area; 2. the one hundred year flood; and 3. a flood which is greater than 1 or 2 which was actually experienced in a particular watershed or portion thereof as a result of ices jams and which has been approved as the standard for that specific area by the Minister of Natural Resources.

"Applicable Flood Event Standard" means the Hurricane Hazel Flood Event Standard ("Regional Storm"), the 100 Year Flood Event Standard and the 100 year flood level plus wave uprush as established by, and further defined by, O. Reg. 162/06.

"Regional Storm" means the rainfall event and soil conditions existing during Hurricane Hazel that occurred with the Humber River watershed in Toronto in 1954, transposed over a specific watershed and combined with local conditions, as defined by Conservation Halton Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Policy Document April 27, 2006.

"**Regulatory Storm"** means the greater of the Regional Storm or the 100-year storm utilized for a particular area, as defined in Conservation Halton Policies and Guidelines for the Administration of Ontario Regulation 162/06 and Land Use Planning Policy Document April 27, 2006.

2. The Representative Plaintiff claims on his own behalf, and on behalf of the members of the Class, the following relief:

a) an Order certifying this action as a class proceeding and appointing himself as representative plaintiff of the Class and any appropriate subclass thereof;

b) special, general and aggravated damages and declarations for systemic negligence, nuisance, conflict of interest and breach of section 7 of the *Charter of Rights and Freedoms* and breach of fiduciary duty in the aggregate amount of $900,000,000.00;

c) punitive damages, except against the Defendant, The King In Right of the Province of Ontario, in the aggregate amount of $90,000,000.00;

d) a mandatory Order and, in the alternative, a declaration that the Defendants are required to fund and/or undertake the necessary steps to ameliorate the risk of flooding in the Regulatory Flood Plain and, in the further alternative, payment of the cost of such amelioration to the Class for the purpose of effecting such steps for such amelioration;

e) a mandatory Order and, in the alternative, a declaration that the Defendants are required when implementing steps necessary to ameliorate the risk of flooding in the Regulatory Flood Plain to address and remediate any environmental issues discovered, including caused from closed landfills and from any additional landfills discovered currently unidentified or unknown to the Defendants and, in the further alternative, payment of the cost of such amelioration to the Class for the purposes of effecting such steps for such amelioration;

f) pre-judgment and post-judgment interest in accordance with sections 128 and 129 of the *Courts of Justice Act*, R.S.O. 1990, c. C.43, as amended;

g) the costs of this proceeding on a substantial indemnity basis, plus HST; and

h) such further and other Relief as to this Honourable Court may seem just.

The Parties

3. The Representative Plaintiff, Shahid Mian is an individual residing in Oakville, who is a registered owner of a property located at 368 Lees Lane within the Regulatory Flood Plain. At the time of purchase in 2014, the property was not within the Regulatory Flood Plain.

4. The Defendant, The Corporation of the Town of Oakville ("Oakville") is a municipal corporation. At all material times, Oakville was responsible for planning and providing drainage in or near the Regulatory Flood Plain, including exercising operational decision-making power and authority in respect of Development Approvals that included subdivision approvals, condominium plans to individual site plan approvals, in or near, the Regulatory Flood Plain.

5. The Defendant Regional Municipality of Halton ("Halton") is an upper tier municipality of over 500,000 residents under the *Municipal Act, 2001*. At all material times, Halton was responsible for planning and providing drainage in or near the Regulatory Flood Plain, including exercising operational decision-making power in respect of Development Approvals that included subdivision approvals and other site plan approvals, in or near the Regulatory Flood Plain. Halton approved the Town of Oakville "Livable Oakville 2009" Official Plan on November 30, 2009 setting out land use planning and related development matters under the *Planning Act* as deemed to being consistent with the predecessor to PPS 2014.

6. The Defendant, Conservation Halton ("CH") is a body corporate established under the *Conservation Authorities Act* with operational decision-making power, capacity and authority as set out under that Act, at law and also with respect to providing technical advice, comment or review on natural hazards, planning matters and providing certain Development Approvals. It also exercises independent discretion on flood hazard matters, within Halton.

7. The Defendant, The Queen in right of the Province of Ontario ("Ontario") is a Province in Canada with capacity, powers, authority, conventions or law-making powers as set out under the *Constitution Act, 1867*. Ontario also delegated certain decision-making powers,

authority, and administrative discretion to the Defendants, with respect to Development Approval occurring in, or near the Regulatory Flood Plain.

8. The Defendant, The Corporation of the Town of Milton ("Milton") is a municipal corporation. At all material times, Milton was responsible for planning and providing drainage in or near the Flood Area, including exercising operational decision-making power in respect of Development Approvals that included subdivision approvals, condominium plans to individual site plan approvals, in or near the Regulatory Flood Plain. It remains one of the fastest growing municipalities in Canada, with a large population expected to be housed in thousands of newly constructed homes and residences, immediately north of the Town of Oakville's boundaries.

9 The Defendant Robert Burton ("Burton") is an individual who is the Mayor of Oakville since 2006 and is also *ex officio* the CEO of the Defendant Oakville, under the Municipal Act, 2001. He also sits on local Council, Halton Council and the CH Board of Directors, as well as various committees examining subjects including land use planning, flood hazard harms and development matters. He is a frequent development related advocate on matters including North Oakville and Saw-Whet development approvals, among other matters.

Expansion of the Regulatory Flood Plain -- and a Resulting Common Harm

10. The Regulatory Flood Plain contains numerous watershed land areas that catch rain and snow, including but not limited to, 14 Mile Creek, McCraney Creek, 16 Mile Creek, Bronte Creek, Sheldon Creek, Munn's Creek and Joshua Creek whose natural creek and stream system reaches ultimately drain in a southerly type direction into Lake Ontario. Eight (8) such major creek systems drain or outlet into Lake Ontario within Oakville alone.

11. The Defendants at various times, permitted and approved of extensive residential and commercial development and re-development at an alarming rate in the region approximately bounded by Burloak Drive, Lake Ontario, Winston Churchill Blvd. and the Town of Milton during the period 1986 to 2020, which had the effect of *destroying* the green space.

12. Thousands of Development Approvals were granted by the municipal Defendants over the past three decades, sourcing lucrative one-time development charges, planning, engineering and building permit fees and recurrent taxation revenues well in excess of $1 billion

for Oakville, Milton, Halton and CH. These activities also spawned other socio-economic benefits to the Defendants, including greater tax revenues, funding, grants, subsidies and services tied to population size or growth. To date, these lucrative development charges, planning, engineering and building permit fees and taxation revenues directly account for the vast majority of municipally sourced funding for Oakville, Halton, Milton and CH.

13. These socio-economic factors led to rapid urbanization, conflicts of interest, development and densification of the Oakville watershed -- and the surrounding municipalities. Permeable greenspace was replaced by more impervious surfaces, restricting infiltration of precipitation. With every new structure, street, patio, and roof-top, more storm water and melt had to run off into the creek, storm and stream systems, than would have otherwise occurred.

14. Therefore, without compensating with proper or adequate drainage, each such Development Approval and the new residences and structures created would increase the size of the Regulatory Flood Plain, the peak storm run-off and melt water flow rates and volumes and thus increase the risk of flooding and injury or death to persons and property damage.

15. As also noted at paragraph 64, the increased risk of flooding harms did not result from climate change or models. Rainfall inundation patterns have remained virtually unchanged over the past decades. Rather, the drainage of the same amount of precipitation has been profoundly affected by every new Development Approval, increasing the number of impervious surfaces, densities and structural volumes which impaired the infiltration of water into the ground and the natural evaporative and other ground water processes involved in the hydrologic cycle. The causal consequences of development land use were known to the Defendants.

16. In a 1963 engineering report entitled “Storm Water Sewer Trunks,” Oakville Storm Drainage recognized the flood risks posed by (then) current and future urbanization in Oakville in rainfall events, and the use of storm water drainage systems. Urbanization links to storm run-off timing and reduced infiltration were identified. A remedial cost estimation followed:

> An increase in urban development requires the closing of ditches, filling of low land and the construction of pavement and roofs, which tend to hasten the run-off of storm water and reduce its absorption into the ground, thus future land use becomes an important factor in designing adequate storm drainage. [...]

> In the 10 year period between 1964 and 1974, it will be possible to provide storm drainage for land already developed, and to prepare drainage for the land which will come into development in the same 10 years. The estimate of the total cost of the trunk sewers and outfalls is $4,770,750.00 requiring an average annual expenditure of $477,075.00 for the next 10 years. This expenditure could be borne by municipal tax income, debenture debt, subdividers' contributions, Provincial Government contributions and the Federal Government Winter Works Program.

17. A 1964 engineering report for the 16 Mile Creek Conservation Authority, a predecessor of CH, considered the "economics" and benefits of flood control schemes or storm water system solutions and/or flood control measures such as flood storage, stating at page 7:

> Storm sewers normally provide local protection against the runoff from a six hour rainfall of 2.55 inches, but flood protection is based on 7.2 inches of rainfall in six hours [...] As the cost of storm sewers is about $1,500 per acre for 2.55 inches of rainfall, it follows that proposed flood protection works are more economic than equivalent storm sewers [..] Property situated in a flood plain and protected by flood prevention works benefits directly, and lands which could not be developed near the flood plains through interruption of access and services may also benefit directly by flood control. If flood prevention schemes lead to improvement in per capita assessment, the community will benefit as a whole indirectly.

Defendants Common Conduct – Conceals the Rapidly Growing Flooding Harms

18. The Defendants were well aware of the cumulative effect of development leading to more impervious surfaces, which increases peak runoff timing, rates and volumes, which increases the risk of flooding and harm, from any rainfall and particularly from a weather event equivalent to the Regional Storm Event. They studied, measured, delineated and quantified the problem, damages, socio-economic impacts, proposed storage solutions and costs, as described in their own internal reports, studies and documents set out in this claim, below.

19. In fact, the number of buildings in the regulatory flood plain now subject to flood risks, building restrictions, increased insurance costs and damages increased 400% between 1986 and 2020 – according to the Defendants own data. This evidence of a widespread harm was not publicly disclosed, nor was the known link to *upstream* development approvals. In fact, Oakville *altered* a previous causal link between "development" leading to more run off and "flooding" in its 2019 website at paragraph 105 below – and substituted "climate change" as the flooding causal factor in a $639 million 2023 future "Rainwater Management" capital works strategy – debated by Council Members on July 11, 2023, to tackle town wide flooding risks. This admission about capital works fixes – arose years after the issuance of this 2020 claim.

20. Rather than transparent and accountable government, Oakville and CH decided to politicize flood risk dangers to life and property "top down" from the expanding flood plains linked to development – by denying the science, concealing the known individual harms, making deals with developers, discounting flood plain resident's concerns and utilizing means whereby developers could use regional SWF, when Ontario stated that was contrary to PPS 2014 and provincial flood hazard policy. This was part of a public relations campaign to *conceal* and misdirect: the extent and magnitude of development related harms and flooding, CH and Oakville's failure to prevent flood risks, not spending to "fix" the growing flooding risks with capital works, hiding the regulatory flood plain expansion, and repeated *Planning Act* contraventions primarily in the*:*

- 2008 Town-Wide Flood Study Evaluation Results (42 Flood Prone Sites).
- 2009 Livable Oakville Official Plan (Schedule B with false flood plain lines).
- 2012 AMEC Morrison-Wedgewood Diversion Channel (1D Model Spills).
- Contravention of 1988 Flood Plain Planning Policy;
- Contravention of PPS 2014 & Predecessor (Sections 1.6.6.7., 2.2.1 and 3.1).
- Contravention of MNRF 2002 Technical Guide (Sections 4.1 & 4.6).
- North Oakville Development Approvals (Granted from 2007 to 2020).

21. Despite the knowledge and science that development increased risk of flooding harm to life and property and in fact resulted in expansion of the Regulatory Flood Plain, the Defendants continued to approve development without taking steps to prevent common harms, prevent expansion of the Regulatory Flood Plain though advised by their consultants and Ontario in 1986, 1992, 2000, 2002, 2008, 2011, 2012, 2014 and 2016 of those steps. As pleaded herein, the defendants failed to implement Ontario policy to prevent flood risks; rather they increased them. The Defendants failed to warn, remedy or prevent the growing common harm to life and property their internal reports and studies empirically indicated were causally linked to planning and development decision-making activities, they largely controlled.

22. A 1992 "Fourteen Mile Creek/McCraney Creek Watershed Planning Study" undertaken by Oakville examined (then) current watershed conditions and future development impacts on what is now West Oak Trails, above Upper Middle Road north to Dundas Street. It recognized an empirical *nexus* between Development Approvals and greater storm run-off and

flood hazards, should greater development be permitted in the essentially open greenspace and undeveloped lands north of Oakville. At page 8, that engineering Study presciently stated:

> Urbanization has a similar influence on the watershed and stream ecosystems. With the addition of paved surfaces, run off is increased and infiltration decreases.

23. The Defendants were aware, or should have been reasonably aware at all material times since at least 1963, the state of science and hydrology would reveal that :

a) the rate, timing and volume of storm run-off would increase from the numerous Development Approvals granted or permitted within or near the Regulatory Flood Plain that decreased the watersheds permeability, with or without stormwater controls;

b) increases in such storm-run off would increase the risk of flooding as well as the size of the Regulatory Flood Plain, meaning that property that had not been in the Regulatory Flood Plain was then within the Regulatory Flood Plain along with existing properties, and, as such, subject to building restrictions, increasingly severe harms and other similar restrictions;

c) increasing the Regulatory Flood Plain could foreseeably cause Class Members to sustain damages or losses and threaten the life and safety of residents;

d) continuing to grant or permit Development Approvals, would foreseeably continue to decrease infiltration and increase the Regulatory Flood Plain; and,

e) stormwater management facilities (“SWF”) could not be used to reduce flood flows, pursuant to guidelines issued by Ontario, at least as early as 2002.

24. Conservation Ontario is the umbrella policy and political association representing Ontario’s 36 local watershed management or conservation authorities with builders and government, whose core mandate is to prevent flood damage and flood risks. The Defendants and Conservation Ontario were fully aware of “downstream” flood risks linked to “upstream” watershed development in the GTA, at least as early as 1988 in Ontario flood plain policy described at paragraph 36. This effect was especially problematic for GTA watersheds where development moves from the downstream end towards headwater areas as in the Regulatory Flood Plain, since each new development increases “downstream” flood risks and harm.

25. A leading Conservation Ontario member, the Toronto and Region Conservation Authority (“TRCA”) stated in a 2013 public conservation presentation that legal liability may befall municipal actors who continued to permit “upstream” development to adversely affect

"downstream" flood flows and identified certain legal risks associated thereto. The TRCA outlined the rights of riparian owners not to be adversely affected by upstream and new development. The TRCA was the lead proponent on regulatory and engineered approaches to deal with the links between urbanization, liability and growing flood risks. TRCA was aware of the expanding Regulatory Flood Plain associated with growing development and urbanization from its own 2008 watershed studies. In 2013, the TRCA forewarned:

> "Accept liabilities of increased flood risks by continuing to permit development to occur despite known downstream impacts".

Some Flood Risk Management delegated to the Municipal Defendants

26. Ontario issued various guidelines, directions, policies and passed legislation and regulations, binding the Defendants, directing how, where and when development should occur that could impact, create or aggravate any natural or flooding related hazards, flood risks or environmental impacts. However, implementation of policy, roles and obligations and operational decision-making was delegated largely, but not exclusively, at a local level. The Municipalities failed to train all decision-makers, on Ontario flood hazard policy requirements.

27. As noted in paragraphs 26, 32, 34 and 35, the municipal Defendants, including CH, retained unfettered local operational decision-making power with respect to Development Approval for decades over both planning decisions and regulatory decision-making matters. Any appeals or reviews of those matters, if provided, are to regulatory tribunals or in some cases, judicial bodies. However, not all decision-making related to development is reviewable. Decision-making and actions that increased a threat to life, expanded regulatory flood plains or failed to model and map regulatory flood plains was the domain of the defendants.

28. CH was tasked to prevent flood damage and undertake accurate flood models and regulatory flood plain mapping to protect the public from harm. It failed in these core activities, sometimes "sub-contracting" or sub-delegating that responsibility to its municipal partner(s) or builders, who failed to produce updated or accurate flood plain maps and models to reflect intended development or the effect of a regulatory storm. CH, Oakville, Halton and Milton failed to cumulatively model and/or map the ever-expanding Regulatory Flood Plain to delineate the growing flooding hazards linked to urban development and densification they had

been routinely approving for decades, in exchange for lucrative development-based revenues. They also failed to assess watershed wide impacts, including upstream/downstream of proposed developments, on flood risks and common harms during the 1986 to 2020 period. CH represented to the public, they would safeguard the public from flooding risks, its website stating its goal is to "*Protect people from natural hazards*". CH has provided no protection to date.

29. In fact, conservation authorities drew criticism from Ontario in the Legislature, on social media and publicly for failing to carry out or focus on their "core mandate" and for a lack of "transparency" and "accountability". Ontario went further, studying the larger flooding issues. Ontario commissioned an Independent Special Advisor review of the 2019 Flood Events in Ontario to provide expert advice and recommendations on opportunities to improve the existing flood policy framework, while also identifying flood risks confronting development and compliance by conservation authorities with existing Ontario guidelines and policy, noting:

> The MNRF provides policy direction and technical guidelines to municipalities and conservation authorities to support their planning and regulatory roles. Many CAs have their own policies in place that, at times, are used to supersede or are seen to contradict provincial policy and technical guidelines.

30. The 2019 Special Advisor on Flood Events in Ontario specifically noted in Section 6.5.2 of his report up to $10,000 on average higher insurance premium expenses are borne by buildings located in "high risk flood zones" and that flood risks posed various insuring consequences. These insurance costs are an aspect of Damage and Loss common to the proposed class. The Special Advisor also identified perceived municipal conflicts of interest in decision-making, urban development and downstream flooding links, modelling and *delineating* flood hazard mapping as key to Ontario's policy led framework as well as risks posed by large Regional Stormwater Facilities, as follows:

> **6.1.4.5 Perceived conflicts of interest**
>
> Municipalities are ultimately responsible for making local planning decisions. Some stakeholders have raised concerns that this creates a conflict of interest for municipalities, as there is a perceived financial incentive not to limit development in areas prone to flooding and other natural hazards, despite potential future recovery and relief costs.
>
> **6.2.4.1 Use of regional flood control facilities**
>
> RFCFs retain significant volumes of stormwater runoff and could cause significant flood damages if they were to fail, raising concerns that the use of these facilities creates new, or aggravates existing, flood hazards, particularly when built immediately upstream of residential areas.

> […]
>
> The construction of these structures can be viewed as creating new hazards and thereby conflicting with provincial policy direction which states that "planning for stormwater management shall not increase the risks to human health and safety and property damage." In addition, the MNRF's Technical Guide specifies that stormwater management facilities are not to be used to provide any reduction in flood flows, and accounting for their storage in flood hazard mapping artificially reduces the extent of regulatory flood lines and is non-compliant with the MNRF's Technical Guide.

31. CH had a budget since 2015 over $30 million and received significant funding from the municipal Defendants, from Ontario and federally. However, it allocated only a *tiny* fraction of its annual budget to flood plain modelling or mapping. Proper and watershed wide flood plain modelling and mapping is an integral part of flood hazard management, decision-making and planning. As stated in an April 29, 2019 report to the CH Board of Directors:

> *Floodplain Mapping*
>
> The Engineering Department is responsible for the update and maintenance of Floodplain Mapping which identifies flood hazards and is used as part of the regulation limit for purposes of review associated with Ontario Regulation 162/06. Updated and accurate floodplain mapping is an important tool for Conservation Halton and partnering municipalities as it supports flood forecasting and warning, emergency planning and response, prioritization and planning for flood mitigation works and land use planning & approvals.

32. Conservation authorities also entered into service agreements to provide technical or advisory services or peer review to municipal partners on planning, flood mapping or flood hazard matters. CH provided "*peer review and technical clearance*" under an arrangement with Halton and Oakville, since 1999, on matters including flood hazards and flood plains. CH is also a "public commenting body" under the *Planning Act* and is to be notified of municipal planning policy documents and planning and development applications. CH assumed many roles and engaged in both planning and regulatory decision-making or review processes. CH exercised its own discretion -- over all aspects of flood hazard management in Halton.

33. The Defendants Oakville, Halton and Milton appointed key board members to CH's board of directors creating a potential "conflict of interest" between CH's core flood risk prevention mandate and member municipality individual economic or other interests. CH Board members were also Oakville, Halton and Milton councillors, who approved its budget, policies and guided its activities. CH Board members had imputed knowledge of watershed wide flood risks to life and property and local mapping failures. Council members often voted on the same matter in their capacity as a lower and/or upper tier municipal council under the *Municipal Act,*

2001 and as a decision-making body under section 28 of the *Conservation Authorities Act.* Good governance principles were often ignored or avoided, in the decision-making process.

34. Through Conservation Ontario, CH received delegated responsibility over "natural hazards" policy from Ontario under a 2001 Memorandum of Understanding ("MOU"), to review municipal policy documents and applications under the *Planning Act* to ensure consistency with section 3.1 of Provincial Policy Statement 2014 ("PPS 2014"). CH often failed to interpret or apply provincial policy and all of the words of natural hazard principles in a holistic and transparent manner to protect all watershed residents from flood risks or hazards. CH failed to heed Ontario direction provided in letters and in direct meetings set out herein, including the non-use or construction of regional SWF facilities, as a flood control measure.

Provincial Policy Statement 2014 (PPS 2014) and Predecessor Policies

35. The Defendant Ontario issued the PPS 2014 under section 3 of the *Planning Act*. PPS 2014 provided provincial policy direction on various planning and land use development matters, housing, transit and growth, including specific flood hazard areas and SWF use. The Defendants CH, Oakville, Halton and Milton failed to consider or operationally apply the intent or purposes of PPS 2014 as a whole, or its predecessor policy which sought to "prevent" or limit flood risks. The Defendants knew their actions resulted in the expansion of the Regulatory Flood Plain and increased threat to life and property, contrary to the intent and wording of PPS 2014. They "interpreted" PPS 2014 (and the predecessor policies) and implemented it operationally in a manner that supported large Development Approvals, higher densities and that maximized municipal revenues. On a watershed scale, this created and aggravated threat to life and property for the proposed class members, who had no ability to prevent or "fix" those harms.

36. The 1988 Flood Plain Planning Policy Statement was issued by Ontario under section 3 of *the Planning Act*, prior to PPS 2014 (and its predecessor) to govern an integrated planning and flood plain policy, with a clear preventative approach. It required consideration of upstream/downstream impacts and cumulative developmental effects, with new development not to take place that could aggravate or create flood related damages on a watershed wide basis, in planning and development decision-making. The Defendants disregarded and contravened its provisions with *ad hoc* decision-making, no cumulative assessments, piece-meal models and maps, which expanded flood hazards and increased Damage or Loss.

37. The Defendants also knew which sites were vulnerable or prone to flooding risks given they had identified, flagged and/or quantified those areas. The Defendants through CH Board of Director missives also knew the "*extent of the floodplain*" they portrayed to the public wasn't accurate. CH did not inform the public, or individually inform members of the class of this material fact and should have based on a special relationship of dependence, trust and vulnerability. Though both flood survey and mapping practice advances have occurred, CH identified the (i) severity of community wide harms and damages that flooding risks lead to and the (ii) unreliable state of its floodplain mapping in a March 21, 2019 Board of Directors report "*Floodplain Mapping Program Update*," and its use of unsuitable ARL "screening mapping":

> Failure to understand and mitigate flood risk can place a community at risk of significant disaster recovery costs, productivity losses, economic losses, destruction of cultural assets, environmental damage and social consequences, including injuries and deaths. […]
>
> FDRP modelling and mapping was not generated for all regulated watercourses but focused on communities at risk. Where there are no other guiding studies, the Approximate Regulatory Limit (ARL) mapping used as a regulatory screening tool applies simplified conservative calculations (20 x bankful channel width) or 'in-house' generic regulations models to estimate the flood hazard, which may not accurately reflect the extent of the floodplain.

38. PPS 2014 (and its predecessor policy) stated they contained minimum standards only, were to be interpreted in their entirety and best implemented through Official Plans and by-laws. This policy wasn't implemented in the Official Plans and regulatory flood plain maps of the Defendants Halton, Oakville or Milton, nor was its predecessor. Flood risk to life and property was to be prevented. Further, Ontario and municipalities would establish, and Ontario was to monitor so-called "performance indicators" that related to PPS 2014. In practice "lip-service" was paid to PPS 2014 policies, including flood hazard matters, Ontario merely used a "checklist", without actually examining application of Ontario flood hazard policy to each delegated development approval, or that delineation of flood risk hazards in regulatory flood plain models or regulatory mapping was done on either an individual or a watershed wide basis:

> 4.14 The Province, in consultation with municipalities, other public bodies and stakeholders shall identify performance indicators for measuring the effectiveness of some or all of the policies. The Province shall monitor their implementation, including reviewing performance indicators concurrent with any review of this Provincial Policy Statement.

39. Ontario systemically failed to adequately or properly identify, supervise, enforce, review, audit or monitor the implementation, selection or efficacy of any such performance indicators. Ontario had empowered municipalities to assume responsibility and accountability for

the management of flood risk areas, some associated liability and the risk relative to planning and decision-making for land uses in these areas. Ontario did not model or map the regulatory flood plain. It delegated that function after 1986. Ontario turned a "blind eye" to suspected and known harms to life and its knowledge of the inadequate state of regulatory flood plain mapping and conflicts of interest in development, identified by the Special Advisor in the 2019 Report.

40. Ontario as a delegator of specific functions, responsibility and decision-making related to flood hazard policy and planning matters – failed to enforce, investigate, supervise, control, revoke or correct the unlawful, *ad hoc* and conflict ridden decision-making by its delegates CH, Oakville, Milton and Halton. Ontario delegated by way of instrument, statute and practice. Ontario is directly and vicariously liable in law, for its own failures and the watershed wide municipal acts as set out herein, of the various municipal defendants, since 1986.

41. Conservation authorities, decision-makers, Ministries and municipalities have a legal obligation under section 2, and subsections 3(5) and (6) of the *Planning Act* to provide comments and make planning decisions in a manner consistent with PPS 2014 and its predecessor policy and not disregard Provincial interests. CH, Halton, Milton and Oakville ignored this statutory dictum – and policy framework. Further, subsection 14(4) of the *Places to Grow Act*, 2005 prohibits actions that would ignore environmental or human health matters.

42. While PPS 2014 addressed storm water flow, minimizing cross watershed impacts of water, not using SWF if it increased risks to health and safety or property damage, PPS 2014 did not implicitly or explicitly encourage development, redevelopment, intensification or construction in areas that may increase, aggravate or create flood risks to persons or property or to the environment. Rather, it stressed prevention. PPS 2014 provides that development should generally be outside of hazardous lands which may be impacted by flooding hazard and not create or aggravate known risks. The Defendants failed at prevention.

43. Article 4.6 of PPS 2014 was subject to being "*implemented*" in accordance with *The Charter of Rights and Freedoms*. The various municipal actors failed to do so, including failing to comply with the *Charter* for predecessor planning and flood plain policy. Their conduct as described herein in fact both created and increased a measurable threat to life and security. This infringement was not in accordance with the principles of fundamental justice. A sufficient causal connection between development activities and watershed wide threats to life existed.

44. Ontario established an integrated planning and flood hazard management policy led framework, largely delegating operational decision-making to the municipal level and did not wish to place lives or property in any danger, harm the environment, expand the existing regulatory flood plain or aggravate known flood prone areas. The Defendants repeatedly contravened this framework, as described herein. To implement this scheme regulatory flood models and mapping were necessary to delineate flood hazards and risk to life:

> 3.0 Protecting Public Health and Safety
>
> Ontario's long-term prosperity, environmental health and social well-being depend on reducing the potential for public cost or risk to Ontario's residents from natural or human-made hazards. Development shall be directed away from areas of natural or human-made hazards where there is an unacceptable risk to public health or safety or of property damage, and not create new or aggravate existing hazards.

Defendants Increase Flood Risks and Expand the Regulatory Flood Plain

45. Oakville, Milton, Halton and CH were primarily responsible for decades for increasing the risks of flooding, threats to life and the substantial increase in the Regulatory Flood Plain. . The defendants were entrusted with public and environmental well- being under statute, policy and at law, as particularized herein and failed to ensure watershed wide risks to life and property weren't created or aggravated. Each such decision, comment, submission or advice by each that "affected a planning matter" that was *inconsistent* with Ontario policy, was a contravention of subsections 3(5) and (6) of the Planning Act. Each ignored hydrologic and hydraulic models, complaints and reports revealing increased flood flow rates, volumes, and an expanding Regulatory Flood Plain. They knew a regulatory encumbrance was being created. Development was approved upstream from Oakville -- and downstream from Milton by each.

46. In practice, Oakville would not issue any Development Approval pursuant to section 8 of the *Building Code Act, 1992* until the Defendant CH granted tacit Development Approval over any proposed development that required CH approval. This municipal "partnership" manifested itself at many watershed locations, where once standing permeable green-space was permitted to be developed into tens of thousands of new homes, often by way of a developer "deal", with building densities in excess of those permitted under local zoning restrictions, further restricting water infiltration. As noted in paragraphs 70, 71 and 94, Halton's actions were a "rubber-stamp" role devoid of any science or actual flood impact assessments. Halton failed to supervise or revoke any of its delegated decision-making functions.

47. Oakville Council in 2000 adopted the "*North Oakville Strategic Land Use Options Study*" which lay behind the development of almost 7,000 acres of green space from agricultural into future dense urban development, through an official plan amendment. That 2000 Study recognized future North Oakville development would in fact have adverse consequences:

> The proposed development in North Oakville will have a profound effect on the landscape of this area. One of the major considerations will be the impact of stormwater runoff on receiving water bodies since this link mirrors the change between land use and potential adverse impacts on receiving waters. Changes in the landscape of an area due to urbanization can result in problems such as flooding […]

48. Oakville, CH, Halton and Burton participated in a 2007 development "deal" over almost 7,000 acres of North Oakville greenspace being urbanized and densified, with thousands of new homes, streets and impervious surfaces that would adversely expand the downstream Regulatory Flood Plain. The 2006 "North Oakville Creeks Sub Watershed Study" identified flooding risks posed from new development north of Dundas Street to downstream riparian owners, existing flooding in streams south of Dundas and a hierarchy of various SWF controls to *limit* peak run-off flows. That 7,000 acres was also a lucrative source of municipal income.

49. The 2006 North Oakville Study failed to examine downstream flooding risks south of Dundas Street though aware that massive proposed new development in North Oakville would drain downstream into the Morrison-Wedgewood Diversion Channel, noted at paragraph 100, below and increase both flows and water levels leading to spills or flooding. The future development related revenues was the guiding criteria, not Ontario flood hazard policy, threats to life or property, or the interests of downstream residents. That Study provided:

> **Flood Protection**
>
> Flood protection goals include protecting the public and property from flood damages that could result from increased runoff rates and volumes due to new development. Also, downstream riparian landowners have the right to receive runoff quantity and quality in the current state. The targets will maintain runoff peak flow rates from new development to existing levels for the 2-year through 100-year return periods and the Regional Storm.

50. Most of the risk-sharing measures adopted by the Defendants, such as regulatory flood maps or studies focused on overland flooding (e.g. riverine), rather than the problems of urban flooding (e.g. storm run-off, infiltration and sewer back-ups), which related to the same storm event. Both types of flood hazards are linked to Development Approvals. The Defendants knew flood risks were real and they accessed *federal* National Disaster Mitigation

Plan (“NDMP”) funding for flood mapping, flood risks, disaster planning and specific flood mitigation program cost sharing projects, located within or in proximity to, the Regulatory Flood Plain. NDMP funding was in fact provided directly or indirectly to each municipal Defendant.

51. This Claim identifies the Defendants unilateral conduct from 1986 to 2020 and the common harms that resulted from their failure to prevent flooding risk and statutory breaches. It seeks redress for Damage or Loss suffered by Class Members because of the foreseeable and known expansion of the Regulatory Flood Plain, the failure to model and map it, the failure to ensure flood reduction capital works projects were undertaken, the growing regulatory encumbrance, diminution in price and increased flood hazard risks to life and property from both riverine and urban floods, spills, caused, aggravated or contributed to, by the Defendants common and impugned conduct. Each defendant had a material role to play.

52. The Class Members have no means of precluding or preventing the Damage or Loss caused, aggravated or contributed to, by the Defendants. The Class Members are wholly vulnerable to the unilateral steps undertaken by the Defendants and their lack of evidence-based impugned decision making that resulted in the expansion of the Regulatory Flood Plain. Decision making and analysis to identify, prevent or fix evidence of harm, implement capital works, fix known flooding harms and to reduce the flood plain, was absent from 1986 to 2020.

53. *Ontario Regulation 162/06* made under section 28 of the *Conservation Authorities Act* sets out the jurisdiction of CH in respect of flood hazards matters and the granting of Development Approval. Its jurisdiction is linked to the growing flood plain area. Without cumulative regulatory flood plain models and maps CH couldn’t hold an informed opinion as to the severity or extent of actual flood risks. CH should not have approved any development permits or made technical comments or decisions, without science. To do so created or aggravated a common harm, was negligent and put more lives and property at flood risk. Moreover, the CH failure to “fix” or remedy any flood risks with capital works as recommended and detailed in cost/benefit analysis presented in a multitude of internal studies and reports from 1986 to 2020 increased the Damage or Loss suffered by Class Members.

54. The Defendants were often led by lucrative municipal revenues from recurrent business and residential taxation revenues and one-time development charges under the *Development Charges Act, 1997*. Other related building permit and planning application fees

derived from each Development Approval also provided significant revenue and cost-recovery fee sources. None of the official plan documents of Halton, Oakville or any policy or direction under the "*Growth Plan for the Greater Golden Horseshoe, 2006*" stated that intensification, re-development or new development growth should occur in, or in proximity to, hazardous lands or flood plains or in a manner that would increase or aggravate downstream flood risks, the regulatory flood plain, flood flows, natural hazards or create or aggravate any dangers, adverse environmental impacts, risk or damage to persons or property or limit access to flooded streets or vehicles. The official plans of Oakville and Halton don't supplant Ontario flood hazard policy. The Official Plan of Halton didn't in fact delineate the known Oakville regulatory flood lines.

55. By 2019, development charges imposed on a single "new" home constructed in Oakville were increased by Oakville Council to over $72,000 -- being among the highest in Ontario's 444 municipalities. Development charges became a key funding and budgetary tool.

The Defendants outline known Flood Risk concerns and Harms to Ontario

56. Conservation Ontario wrote a letter on May 13, 2011 to Ontario recognizing a causal link between upstream Development Approval and downstream expansion of the regulatory flood plain. That letter acknowledged development caused adverse impacts and that use of SWF to reduce flood flows was "prohibited" by MNRF policy and set out the Defendants proposal to address these flood risks, by using regional SWF:

> As it is now understood that upstream urbanization has the potential to increase flood hazard limits in downstream areas, the purpose of this letter is to request that the Province provide specific direction on how to address the flood impacts which are occurring as a result of urbanization.

57. Conservation Ontario wrote another letter dated August 24, 2011 to Ontario outlining the urgency arising from pending Development Approvals facing GTA conservation authorities and the proposed use of SWF and flood storage to "reduce" any increased regulatory flood flows and flood hazards. The Defendants recognized this was contrary to Ontario policy but desired to continue SWF use, by *interpreting* MNRF Guidelines in a manner that permitted this SWF engineering practice, though Ontario rebuffed SWF use to reduce flood flows or flood hazards. MNRF did not permit a "structural" use of SWF – in place of proper flood hazard measures, stating on many occasions it increased flooding risks. Oakville, CH, Milton and Halton used SWF in an attempt to approve new development as a "no-cost" solution to reduce

existing flooding hazards, recognized to be linked to cumulative development approvals. This way, they didn't have to spend money on capital work flood "fixes", as Ontario urged.

58. Ontario had issued MNRF Guidelines in 2002, still unchanged, that expressly prohibited the use of stormwater management facilities or controls in Ontario to "reduce" flood flows -- under heading "4. Special Flood Hazard Conditions". The Ontario policy on management of flood hazard risks was prevention based. The MNRF Guidelines clearly stated:

> **4.6 Stormwater Management Ponds**
>
> Stormwater management facilities cannot be used to provide any reduction in flood flows.

59. Ontario MNRF engineers presented a "slide show" on "Regional Flood Control Facilities" to CH and MNRF staff at a January 11, 2016 meeting. Both Oakville and CH were provided with that slide deck. The slide show "Preamble" stated the problem in large part as:

> MNRF has been experiencing increased pressure from Municipalities and Conservation Authorities to consider "structural" mitigation measures to control excess stormwater resulting from increased urbanization of upstream portions of watersheds. This methodology of utilizing structural mitigation measures is contrary to current MNRF Policies and Guidelines and fraught with potential issues related to public safety.

One such slide clearly prohibited the use of regional SWF as a flood control means, as contrary to PPS 2005, in fact stating:

> As the use of stormwater management ponds to control "flooding" (as defined in the PPS) would "*increase the risk to human health and safety and property damage*" it is contrary to the PPS.

60. Ontario then sent a letter to Halton dated April 18, 2016 re-iterating its position as to the non-use of SWF in flood control measures, and the application of related flood hazard principles, in approving development. Prior to that 2016 Halton letter, Ontario through MNRF, had previously informed CH and Halton in 2011, 2014 and in 2016 that SWF could not be used as a "structural" method to lessen flood risks. E-Mails from MNRF to CH, Halton and Oakville documenting this prohibition, were ignored. Ontario stated in fact that use of SWF in this manner actually increased downstream flood risks. That 2016 letter warned and stated in part:

> Section 1.6.6.7 of the PPS includes polices for stormwater management planning, including that it shall not increase risks to human health and safety and property damage.
>
> [...]

> Provincial expectations are that municipalities and conservation authorities are undertaking appropriate risk management assessments. Stormwater management control cannot be used in place of proper hazard management.

Defendants knew about development related flood risks & damage before 2001

61. Increased run-off and flood hazards within the 14 Mile Creek watershed and the link to "upstream" development in Oakville was questioned by some residents within the Regulatory Flood Plain following a 78mm rainfall-related flooding damage event on May 12-13, 2000 (which also flooded and damaged 37 private properties in the Munn's Creek Watershed, dozens of homes in every Oakville Ward and public lands and streets). In a September 29, 2000 petition letter to Oakville, Council, the local MPP and Mayor, those distressed residents stated:

> There is great concern with 14 Mile Creek and its future impacts on our properties. The creek is now virtually a storm water drainage channel or ditch taking all the storm water and runoff water from new development which continues to take place upstream as well as from this area. The volume of water in the creek is increasing every year.

62. Inclusion of a property in the Regulatory Flood Plain whose delineation was determined by CH and/or Oakville had devastating economic effects in addition to posing risks to persons and property. The Defendants owed a duty of care to avoid the Damage or Loss alleged; the Defendants breached that duty by failing to observe the applicable standard of care; Class Members sustained Damage or Loss caused by the Defendant's conduct. Oakville and CH misled residents by *omission* and misdirection to believe flooding hazards weren't linked to Development Approvals that worsened flooding risks, increased the regulatory flood plain and/or caused damages. This was a breach of a duty of care, a conflict of interest and was materially misleading or false, constituting a negligent misrepresentation and equitable fraud.

63. The elements of a negligent misrepresentation by omission, including an inferred reliance on the public authorities concealments and omissions are present as the Defendants (a) owed a duty of care to Class Members by relationship and dependence (b) made untrue, inaccurate and / or misleading representations, including by omission, to Class Members (c) the Defendants acted negligently in so doing (d) the Class Members inferentially relied upon these negligent omissions, which caused foreseeable damages, loss and upset.

64. At least as early as 1986, increased flood risks and flood levels within the 14 Mile Creek watershed in Oakville were identified by Philips Engineering, including recognized "upstream development pressure". Climate change was not a cited factor. Flood Risks and damages to property and buildings were identified, studied and quantified based on various factors and methodologies. At least one flood storage "reservoir" exceeding 20 acres in size near the QEW was also proposed as part of a solution, to reduce damage, along with other flood prevention measures. It was apparent that flooding risks and damages of a direct and indirect nature arose in connection with increased development activity – as direct and indirect property damages were specifically calculated in that 1986 report. Pages 10 and 17 of that 1986 report, by Philips Engineering, acknowledged that development nexus and a "real" threat to life:

> *Review of the Regional and 100 Year flood plains on both the 14 Mile Creek and McCraney Creek, indicates that hazards to life may be a real problem. […]*
>
> *Upstream development pressure (i.e. north of the QEW to Highway No. 5) imparts an increased flooding potential to downstream residents. Prime industrially-zoned land, north of Speers Road to the North Service Road is also subject to flooding potential*.

65. In that 1986 Philips report, CH prepared various charts outlining flood damage to dozens of buildings within the 14 Mile Creek watershed of the Regulatory Flood Plain in great detail. In fact, CH has been aware for over 33 years of the damage and the severity of the harms caused to persons or property within the Regulatory Flood Plain and the extent of persons and property – situated in the growing Regulatory Flood Plain. CH did not after 1986. advise Oakville residents – of these flood hazard harms known to be linked to development approvals, that could imperil their lives and had caused property damage, from either riverine or urban flooding. CH failed in its core mandate to protect or warn the public of the development link to the growing flood hazards and to produce accurate flood plain models and regulatory flood plain maps. This constituted a breach of the duty of care owed to Class Members, a failure to make informed decisions as a delegate of Ontario, in representing the provincial interests under the *Planning Act* and negligence. Mounting scientific evidence of harm possessed by CH in internal and external reports, science and studies was ignored, mis-stated or concealed.

66. The 1992 study referred to in paragraph 22, above, acknowledged that known flood risks to both persons and property existed in the current urban areas, in the 14 Mile and McCraney Creek watersheds that could not be reduced downstream with diversions or SWF – and that future development presented greater flood risks, stating at pages 11 and page 70:

> Problems with flooding and erosion have occurred on both Fourteen Mile and McCraney Creek in the past. Areas of flooding potential exist in the urbanized areas adjacent to and downstream of the QEW to Lake Ontario.
> […]
>
> Even with complete diversion of flows from all drainage areas above Upper Middle Road, flood flows exceed the capacity of the Fourteen Mile Creek and McCraney Creek.

67. Evidence of growing flood risks to life and property across the local watersheds and the link to development was measurable and manifest. At a July 11, 2023 Council Meeting, Oakville Councillor O'Meara admitted when discussing the proposed long term capital works strategy to address various town wide flooding harms: "*From what I have heard from the CAO and from what I have dozens and dozens and if not hundreds of residents whose basements are under water and every month they call me and say what are you doing. […] This is what we need to do - we are underfunded. The communities south of the QEW are under water - they are under water and we need to do this."* In fact, the earlier 1993 Lower Morrison/ Wedgwood Study estimated local flood damages, identified 68 buildings subject to regulatory flooding harm and estimated $4.6 million in flood and erosion works, to remediate these harms.

2008 Town-Wide Flood Study identifies Failure to stop Risks to life and property

68. The 2008 Oakville Town Wide Flood Study identified over 40 existing flood-prone sites that posed significant risk of harm to lives and property, including "spills", homes, businesses and public roadway flooding. However, the regulatory "flood line" depicted on those 42 flood prone sites, were in fact over 20 years old in many cases, which was misleading to the public and concealed the *current* severity of community wide harms to life and property. That permitted development upstream to continue unabated which given the known harms and Ontario flood hazard policy, also contravened section 3 of the *Planning Act*. The 2008 study assessed threat to life based on a matrix, involving MNRF Guidelines and flood water depth, velocity, vehicular access, basement flooding and safety. The staff reports made Council and senior decision-makers aware of the flood damage centres, threats to life, flooding depths at an individual property level and the use of SWF by builders as a "partner" or "stakeholder" to address flooding risks in addition to capital work projects, which weren't undertaken:

> The majority of flood control projects would be conducted as Town of Oakville's capital work projects, in that the Town of Oakville would incorporate the projects into its Capital Works Program. There may be occasion where development proponents may assume a partner or stakeholder role (i.e. such as potential North Oakville stormwater management over control).

69. The 2008 Town-Wide Flood Study in which Oakville and CH were involved in the scope, evaluation and reporting of findings *precisely* calculated, for differing storm events, the:

- expected flooding depths at each property -- to an exact *centimetre*.
- expected site specific damages at each property to an exact "penny".
- risks or threats to life at each and every property
- whether each "basement" would flood, or not

For example, at 322 Lees Lane: the detailed site evaluations were compiled in associated slides containing the aggregate data evaluated across dozens of flood prone sites, one of which slides below depicts "damages" and "threat to life" and "emergency vehicle access" results in calculations contained in Appendix E of the 2008 Town-Wide Flood Study. In fact for 322 Lees Lane the defendants flood risk and damage assessment states or depicts for that property:

- A "flood elevation" of 86.51 metres
- A Damage Cost (Regulatory Storm) of $18,675.35
- A Basement Flooding (Yes)
- A measurable Threat to Life

Site Evaluation Results

Summary of site Evaluation Results

Site	Name	Location	Road Crossings	Private Vehicle Access	Emergency Vehicle Access	Private Vehicle Access To Facilities	Emergency Vehicle Access To Facilities	Private Multi-User Driveway Access	Threat To Life	Direct Damages	Indirect Damages	Rank	Priority
12	MCCR0630M	4th Line & Rebecca St											1
25	WEDG0145T	Morrison Rd & Cumnock Cr											2
30	WEDG0634M	Wedgewood Dr & Alscot Cr											3
23	WEDG0895T	Morrison Rd & Cynthia Ln											4
26	WEDG1810M	Duncan Rd & Avon Cr											5
10	MCCR1920M	4th Line & Bridge Rd											6
27	WEDG1549M	Wedgewood Dr & Devon Rd											7
33	MORR0405T	Maple Ave & Anthony Dr											8
31	WEDG0200M	Wedgewood Dr & Lakeshore Rd											9
11	MCCR1705M	Shaw St & Winston Rd											10
36	MORR2445T	Morrison Rd & Baldwin Dr											11
37	MORR1910M	Chartwell Rd & Cedar Grove Blvd											12
9	MCCR2177M	4th Line & Speers Rd											13
35	MORR0098T	Chartwell Rd & Cedar Grove Blvd											14
22	WEDG2190M	Ford Plant											15
38	MORR0869M	Morrison Rd & Cleaver Dr											16
7	FOUR1018M	Rebecca St & Willowbrook Rd											17
8	FOUR0440M	Lakeshore Rd & Willowridge Ct											18
5	FOUR2895M	3rd Line & Speers Rd											19
6	FOUR2213M	Bridge Rd & Warminster Dr											20
24	WEDG0622T	Morrison Rd & Cynthia Lane											21
2	SHEL1088E	Rebecca St & Great Lakes Blvd											22
43	JOSH3979M	Royal Windsor Dr											23
39	MORR0338M	Lakeshore Rd & Morrison Rd											24
32	MORR0700T	Cornwall Rd & Trafalgar Rd											25
3	SHEL0010M	South of Lakeshore R	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA	NA

Note: Site 3 has not been assessed as it is part of an on-going EA which will assess and recommend flood control measures

High Medium Low

This is repeated in a *similar* common methodology across the Oakville watershed at each specific address as derived from an evaluation matrix. However, the individual data, individual damage costs and site risks set out in the 2008 Town-Wide Flood Study were not disclosed by CH or Oakville -- to each known addressee. Rather, Oakville developed a "communications strategy" and "education strategy" for the public in a 2008 Report to Council to "*diffuse some of the anticipated fear and anxiety*" to arise. Oakville failed to fix or remedy those known flooding risks, choosing to embark upon more studies rather than employing capital work projects.

70. The Defendant Halton also made multiple payments to both Burlington and Oakville residents, following major storm events in 2014 and otherwise, ostensibly of an "ex-gratia" nature related to a combination of riverine and pluvial flooding. The payments were responding to basement flooding and sewer surcharge, related to extraneous storm water inflows from storm run-off, impairing or compromising the closed sewer system. Thus another result of excess development storm run-off is the effect on urban flooding and related damage. Halton planning and development decision-making -- failed to identify or prevent these added flood damages, from excess storm run-off, increasingly linked to development. Halton did not independently assess technical or flood hazard policy requirements, simply "rubber-stamping" lower tier development decisions or desires. Halton failed to warn residents of known hazards.

71. Milton and Halton each failed to assess and eliminate downstream impacts of its development approvals and planning decision making from 1986 to 2020 in or near the Oakville watershed did not create or aggravate adverse impacts on class members on a cumulative cross-jurisdictional basis, contrary to PPS 2014 and predecessor policy. Milton and Halton were entrusted with the well-being of the public and the environment. Though each Council made decisions, each had also delegated development decision-making to planning staff. These staff members weren't trained or supervised in flood hazard matters. They knew from internal reports and studies of flood prone sites north of Oakville and Milton would worsen downstream flows through Oakville. This practice was contrary to Ontario flood hazard policy and subsection 3(5) of the *Planning Act*. Milton was beset with flooding sites and damages throughout its watershed during its development. Each is also jointly and severally liable, as is Ontario.

72. The use of SWF credit(s) accepted or approved by the various Defendants also artificially *understated* the amounts, and timing of rainfall and storm run-off flows expected from a storm event into the Regulatory Flood Plain. It was known new development increased the

volume and peak flow rate of runoff, while reducing infiltration. MNRF Guideline 4.6 and PPS 2014 did not support this practice of "shrinking" regulatory flood plains or reducing regulatory flows. The Defendants and builders participated in this scheme, to advance the economic and personal interests of each. The interests of class members were *subjugated* to those economic and personal interests. At the same time, actual flood risks had materially increased for Class Members based on a weather event equivalent to, or less than, the Regulatory Storm Event. This scheme implemented by the defendants after 2002 -- was unknown to Class Members.

73. As the 2019 Munn's Creek Flood Mitigation Opportunities Study identified 4 flood prone areas and flood hazard risks in a regional storm event; these consisted of several homes on McCraney Street West, Culham Street, Osborne Crescent and the Oakville golf course, flooded streets and yards. Those areas previously had suffered flooding damages in the May 2000 rainfall event. That 2019 Study stated at page 42, the Defendants also allowed SWF credit to reduce "modelled" flood flows in that sub-watershed, though not permitted by Ontario:

> It is understood that in the GAWSER model, storage credit was provided to stormwater management facilities under the Regional Storm event, as per the North Oakville Subwatershed Study (TSH et al., 2006). As discussed with CH at the start of the project, the model for the current study also includes storage credit for SWMF under the Regional event for those ponds located north of Dundas Street West

74. The Defendants stormwater management designs or models -- accepted from applicant builders, (i) allowed 100 year storm events, flood storage or flood control, less rainfall and run-off that a Hurricane Hazel storm (ii) did not examine the "cumulative" effects on watershed flood flows, volumes or flow rates. This was negligent and "artificially" reduced storm run-off timing and volumes, but had the opposite effect of increasing regulatory flood flows and mapped flood plain affected by each newly approved building site. This was contrary to Ontario flood hazard policy. CH and Oakville also permitted builders to *de-facto* model and map what CH then "adopted" as the regulatory flood plain models or mapping for a creek or stream reach near a proposed development site. This effective *sub-delegation* wasn't authorized by Ontario. It was done with full knowledge the builders were using methods and models that would minimize the modelled impact of a proposed development, including SWF use. There were no *actual* controls in place, to ensure PPS and MNRF policy was followed by builders.

75. Ontario floodplain planning policy at paragraph 36, above warned against ignoring cumulative upstream/downstream development impacts on a watershed basis and that

"new" development could not create or aggravate damages or risk. Ontario prohibited SWF as a regional flood structure, as contrary to PPS 2014 1.6.6.7. However, Ministry of Environment staff granted many SWF application "approvals" within the Oakville watershed under the *Environmental Protection Act* without examining *cumulative* downstream flood risks, as required under Ontario policy or law, or determining if regulatory flows had been reduced, contrary to MNRF 2002 Technical Guideline section 4.6 and failing to examine whether any resulting regulatory flood plain mapping lines had been "reduced", contrary to section 4.1. The municipal defendants were also involved by Ontario, in this approval process. This operational decision-making was negligent, dangerous and violated Ontario policy, for which Ontario is also liable.

76. This flood modelling and mapping approach resulted in Development Approvals granted in or near the Oakville watersheds, comprised of thousands of new homes, driveways and impervious surfaces -- having no apparent measurable increase in each separately modelled storm run-offs or flood flows; whereas the aggregate flood flows, harm and/or flood risks to Class Members resulting from each of those Development Approvals had *substantially* increased. The Defendants conduct exploited Oakville resident's lack of knowledge whether a purported flood plain map complied with Ontario policy, or not, or what flooding risks were "hidden". There is an inferred reliance and expectation of good faith that the Defendants were adhering to policy and the law. Residents didn't know if SWF credit is given, or if SWF use is approved. That was a breach of fiduciary obligations and unconscionable, towards the more vulnerable residents. SWF use as flood control structures was contrary to MNRF policy and PPS 2014. MNRF repeatedly conveyed this policy position to the municipal Defendants, as set out in paragraphs 56 to 60 and 103, herein and in evidence to be introduced at trial.

77. Without cumulative and current regulatory flood plain models and maps and upstream/downstream assessments of proposed development impacts at each site across the watersheds, approvals should not have been granted by the Defendants elected Councils, or by their planning staff delegates of over 40,000 new individual residential units in Oakville and Milton over the 1986 to 2020 period, when known adverse flood risks to life and property and growing property restrictions evident in internal reports were placed on Class Members. The Defendants failed to conduct or require any post-performance test results, analysis, audit or monitor of actual flood flows, volumes, timing or target flow rates linked to each new Development Approval, and as such being negligent and careless and a breach of their fiduciary duty. No performance indicators were adhered to or enforced to protect the public.

Bonus density and height allowances increase density and flood risks

78. The Defendants Oakville and Milton also routinely granted builders a bonus height or density beyond that allowed by prevailing zoning restrictions in the watershed in *exchange* for the provision of millions of dollars in community benefits in the form of cash, park space, transit or value per unit, under section 37 of the *Planning Act*. This development approval approach further increased: (i) the amounts of impervious surfaces and building densities per acre; (ii) total municipal revenues (iii) flood risks in, or in proximity to, the Regulatory Flood Plain, and (iv) cumulative watershed wide risks to life and property.

79. The Defendants individually benefitted financially receiving recurrent and one-time tax revenues, fees and development charges totalling over $1,000,000,000 from granting Development Approvals in, or in proximity to, the Oakville watershed as pled in this claim and in evidence to be introduced at trial. In years prior to 2020, over 120 political donations were in fact made to the Mayors of Oakville and Milton, and 11 of the Defendants elected office holders as set out by them in Form 4 provincial filings, from various builders, developer proponents, individuals and/or related persons, many of whom also happened to receive Development Approvals and bonus heights or densities. Additionally, builders receiving development approvals i) provided a sum of $50,000 that benefited an Oakville councillor who concealed this fact and still participated in development and planning decision-making, and ii) Council decision makers accepted gifts from builder proponents, related to professional sporting events. This underlies the conflict of interest, statutory contraventions, breach of fiduciary duty and delegation role failures in flood hazard and SWF approval matters, as particularized herein.

80. In fact, many developer proponents had high-level access to influence Halton, Ontario, CH, Burton and Oakville *elected* development decision-makers from 2006 to 2020 to discuss proposed and current development applications, propose new deals, SWF or flood hazard related matters, as evidenced in business record E-Mails, to be introduced at trial. This ad hoc access and influence of developer proponents – doesn't appear in Council meeting minutes or Town records. This is not a criteria in the *Planning Act* or the *Municipal Act, 2001*. The municipal defendants approved of development and regional SWF approvals, that did not comply with Ontario flood policy or the law. Mattamy Homes had high level 2016 access to Halton, CH, Oakville and Ontario decision-makers, including the Premiers office in this regard.

A Public Relations Campaign -- Distorts the Defendants role in known Harms

81. Many of the 1,000 hydraulic models CH used to define the regulatory flood hazard were based on inaccurate 1980's Flood Damage Reduction Program (FDRP) mapping. The Defendants knew this impaired their ability to assess flood hazard risks posed to life and property as a delegate of Ontario -- or to advise or decide on planning matters. Confronted by mounting scientific evidence and reports identifying the increasing environmental, property and public harms understood to be linked to development approvals the Defendants used public relations approaches to distort or conceal their roles and the known causes. After 1986, CH and Oakville suggested: (i) extreme weather or new modelling as the cause of increased flood risks (ii) erosion caused flooding in heavy rainfall (iii) homeowners were responsible for CH flood plain queries and flood model costs (iv) positive values with SWF use (concealing Ontario's rejection of SWF use) would reduce or eliminate flooding hazards (v) homeowners could obtain sufficient insurance coverage, if available, (vi) homeowners were responsible for flooding damage and prevention, and (v) use of flood maps– that *shrunk* regulatory flood lines.

82. A 2010 Town of Oakville Annual Water resource Program and Monitoring Report stated that Glen Oak residents near McCraney Creek also petitioned the Town in 2002 over flooding concerns -- and a storm water project was initiated to address flooding from rainfall. In fact, that 2010 Report stated that due to the effects of urbanization in the watershed, the hydrologic processes had been altered and that damage to properties had or would occur:

> As development has occurred, and continues to take place, [,,,] The creeks have been continuously adjusting to their environment and as a result some have become unstable and are causing, or have the potential, to cause damage to properties..

Saw-Whet Development *ad hoc* Approval increased cumulative flood hazard risks

83. The April 2015 Functional Servicing Report ("FSR") filed in support of the Bronte Green at Saw-Whet golf course development proposal, stated post-development storm run-offs would result in a 263% increase over pre-development run-off levels with no controls. That FSR acknowledged the connection between new development and reduced infiltration, increasing storm run-off. Any new development would have a similar increase in storm or melt water run-off, velocity, peaks, volumes and Flood Risks.. Cumulatively, each new development approval created an expanding regulatory encumbrance and an unreasonable nuisance, on existing

watershed residents. However, page 17 of that FSR stated the effect of proposed SWF and various Low-Impact Development ("LID") measures on flood risks would be:

> There will be no anticipated impact to the existing floodplain as this development is designed to control post development flows to pre-development conditions for all storm events up to and including the regional event.

84. In fact, 2015 expert statements filed on behalf of Oakville and Conservation Halton before the OMB Saw-Whet proceeding set out serious flood-related deficiencies and risks with the proposal including (i) SWF storm water quantity and quality issues (ii) overstated infiltration rates (iii) improper run-off co-efficients to lower modelled flows (iv) aggravation or creation of downstream flood risks (v) 2015 HEC RAS model inadequately defining the regulatory flood hazards and, (vi) non-compliance with Ontario policy and MNRF Technical Guidelines for flood hazard delineation. These risks were not all remedied prior to Oakville and Halton Councils, respective 2016 Saw-Whet settlement "approvals". In fact, Oakville was the approving authority for the Saw-Whet subdivision, as filed under the *Planning Act*.

85. Oakville Planning and Development Council Meeting met "in camera" to vote on aspects of the Saw-Whet application on May 16, 2016, which is a contravention of subsections 239(5) and 244 of the *Municipal Act, 2001* -- requiring public votes. This Saw-Whet related "vote" was stated in a December 2016 E-Mail among Councillors Tom Adams, Alan Elgar and Mayor Burton to and from an unnamed individual, where Alan Elgar purportedly states:

> *In fact, I only received clearance yesterday from the Commissioner of Planning allowing me to tell you that a vote had taken place and when that happened!*

86. After that May 16, 2016 Council meeting, Oakville's Assistant solicitor continued advising residents in E-Mails "*there are many technical issues with the storm water management work which have not been properly addressed*", not informing the resident that a secret 2016 vote had occurred, or the fact the number of residential units to be approved was increased from 760 as proposed in 2015 -- to over 1,181 in 2016. The Mayor received a 2016 E-Mail from residents alleging a lack of transparency, development interests were preferred and alleging Council's actions in this matter "*put the community at risk*".

87. An earlier technical review letter of April 4, 2014 from CH to Oakville with respect to various reports in support of the development of Saw-Whet and the larger Merton lands,

admitted known watershed downstream flood risks to homes and persons and raised numerous deficiencies and/or concerns. An increase in downstream flood flows that cause damage and harm was identified. Among a number of criticisms, it was stated at page 4 of that letter that:

> Staff are unable to support the proposed 200 L/s increase in Regional Storm Flows within 14 Mile Creek. Given the known presence of multiple downstream Flood Damage Centres, including multiple residential homes within the existing regulatory flood plain, insufficient documentation has been submitted to confirm that the proposed increase will not have a negative flooding impact downstream.

88. In fact, a December 1, 2000 letter from CH to Halton addressed downstream concerns over Saw-Whet golf course flooding related to water discharge from a Regional reservoir, then under construction at Upper Middle Roade. That CH letter to Halton stated:

> Flood damage centres have been identified along Fourteen Mile Creek downstream of the reservoir and, as such, any discharges to Fourteen Mile Creek are of concern to Conservation Halton.

Though the Defendants were aware of multiple "downstream" flood damage areas at risk below Saw-Whet -- that development was approved by Oakville and Halton Council in a 2016 vote that will generate development charges, fees and recurrent taxation revenues of approximately $100 million over a five-year period. In fact, a 4.605 acre site at 1179 Bronte Road was given to the developer as part of the "settlement", described by Halton as a "planning solution". This land permitted Bronte Green to address SWF issues, build even more homes and increase its profits.

89. Though municipalities are responsible for stormwater management, including proposing various "controls" or measures from the lot level to end of pipe or SWF facilities, Oakville allowed use of SWF to reduce downstream flood flows or hazards resulting from its "agreement" with the developer to permit development of Saw-Whet, a practice not permitted by the spirit or wording of MNR Guidelines, PPS 2014 or the 2015 letter from Ontario, referred to at paragraph 103, below. In fact, the Saw-Whet proposal was initially planned only for 760 residences, not the 1,181 density finally agreed upon by the Defendants, or the approved number. Oakville's web-site contained the following statement on the Saw-Whet OMB approved "settlement", dated July 6, 2017:

> Constructing storm water management systems which insure that there will be no additional risk of downstream flooding

A "regulatory encumbrance" is *unilaterally* imposed upon Class Members

90. The Official Plan(s) of Oakville from 2006 to date, approved by Halton, did not expressly dictate extensive "upstream" residential and business development and new construction in the Regulatory Flood Plain of thousands of new homes, structures, roads, sidewalks and streets, to be located north of Upper Middle Road if flood risks were created or aggravated or the Regulatory Flood Plain expanded. The regulatory flood plain limits or hazard lands set out in the Official Plan documents of Oakville or Halton or upon which CH permitted development could occur, are ambiguous and inaccurate. In fact, the "flood plain" depicted in Schedule B to the Official Plan was not a regulatory flood plain as of 2009, or 2020. The extent of the regulatory flood plain hazards, including at least 10 Oakville "spill" sites, haven't been properly modelled or mapped, nor has the extent and severity of the cumulative harms been disclosed. The regulatory flood plain delineation in planning documents -- fell upon CH. Class Members have no ability to model or map a regulatory flood plain, nor delineate its hazards.

91. Land use planning and development in Oakville was governed under two policy frameworks: Livable Oakville (Official) Plan and the North Oakville Secondary Plans. Neither contemplated any Development Approval upon the former Saw-Whet golf lands, located entirely within or in proximity to, the Regulatory Flood Plain. Furthermore, both Saw-Whet and North Oakville involved consensual development "deals" with developers and the Defendants. Ontario growth policy did not dictate new homes be developed, or intensification occur in or near areas that could create or aggravate flood hazards, or downstream of the proposed development. This had the effect of *reducing* permeable green-space, increasing building restrictions downstream, increasing a threat to life, impairing the water cycle and expanding the Regulatory Flood Plain. Halton failed to correct or protect the interests of Class Members or the provincial interest.

92. This individual site specific *ad hoc* development planning approach utilized by the Defendants from 1986 to 2020 -- failed to limit watershed wide flood hazard risks and harm to life and property. Rather, it in fact measurably increased the severity of watershed flood hazard risks and harms with each new development approval. However, in other individual cases involving Class Members in the Regulatory Flood Plain, the Defendants declined Development Approvals to construct or enlarge an existing home on the basis that adverse flood risks would be created or aggravated, but not recognizing any "upstream" SWF credit to reduce flood flows or run-off the Defendants allowed for builder Development Approvals. This created a "two-tier"

arbitrary flood hazard scheme in Oakville: one standard for large builders and another standard for residents. Commonly, neither standard relied upon cumulative watershed wide regulatory flood plain models and maps nor complied with Ontario policy or statutory requirements.

93. A Functional Service Report ("FSR") or Stormwater Management Report prepared by an expert compared the resulting storm run-offs, volumes and flood flows on an isolated pre-development and post-development basis, not on a cumulative watershed wide basis based on a regulatory storm event. It was, or should have been, readily apparent from the science, data and reports the expanding regulatory flood plains across Oakville and increased flows were related to land use – and increasing development. Despite the known flood risk link to development, upstream or backwater factors weren't fully reflected in all hydrologic or hydraulic models or watershed floodplain mapping. However, "upstream" Flood Risks also resulted as in 2000, and will likely re-cur, from the Defendants conduct described herein as blockages or obstructions of any structures, bridges, drains, grates and existing creeks or watercourses, occur in a rainfall run-off storm event. Lack of proper routine maintenance of watercourses and conveyances by the defendants, was also negligent and quite common.

94. Class Members were not informed by the Defendants that thousands of "upstream" and infill Development Approvals over the decades, causally contributed to a regulatory encumbrance affecting or prohibiting certain uses, alienation or development of their lands or property, or their lives were imperilled because Oakville's creeks, streams and diversion channels were now known to overtop and flood, in even lesser than the Regulatory Storm. The Defendants breached the duty of care by failing to warn all residents they subjected their lives and property to increasingly severe harms -- by continuing to grant development approvals and this link was known and contained in many reports and studies from 1986 to 2020. Halton Council did so from 1986 until some developments approvals were delegated to Oakville and Milton by 1998. Halton Councillors from Milton and Oakville comprised the majority of Halton Council – and continued making development related decisions during the entire 1986 to 2020 period. The Defendants ignored and contravened Ontario flood plain policy and Ontario direction and guidance. Flood risks to life and property were rapidly expanded.

95. Rather, CH enacted an internal policy limiting reconstruction in much of the Regulatory Flood Plain to 50% of the existing footprint or gross floor area of a structure and not allowing development in high risk areas. However, builders of large projects that would otherwise increase watershed flood risks and harm in the Regulatory Flood Plain due to

increased densities and impervious surfaces were allowed to use SWF, flood storage, select actual or synthetic input data, selectively choose model assumptions, choose their own model calibration, use inaccurate models and use lower rainfall modelling assumptions. Class members were not informed of this “double” standard for builders – or preferential treatment.

96. Measured flood flows increased for “downstream” residents from each new “upstream” Development Approval, but not at each new development site. Aside from being illogical, these practices were not followed by all conservation authorities, thus creating a local “two-tier” flood hazard and flood mapping scheme. Oakville and CH allowed massive “upstream” development, discarding MNRF Guidelines for the protection of persons and property or PPS 2014, or interpreting these in a manner that supported outward and upward growth. Oakville and CH lacked both a sufficient number, and accurate types, of rainfall and flood flow gauges throughout the watershed -- to collect reliable and accurate data.

97. Public title searches of individual properties located in the Regulatory Flood Plain did not disclose the nature or existence of any such “regulatory encumbrance”, or policy openly impairing an informed home purchase decision process. On-title filings with CH and an existing homeowner only occurred by consensual agreement, in very limited cases, where restricted conditional development was permitted to occur. This also represents a furtive shifting of risk upon homeowners and/or their insurers, for any unknown flood risk and/or Damage or Loss, resulting from aggregate Development Approval activity engaged in by the various municipal Defendants. This is neither transparent, nor accountable, and also violates the rule of law.

98. In many cases, Class Members within or outside of the Regulatory Flood Plain also had their existing property or dwellings now unilaterally included within the Regulatory Flood Plain due to the increasing flood risks arising from these aggregate Development Approvals, which was most often not modelled or mapped by CH or Oakville. Limits on property use were *furtively* being imposed on Class Members without their consent by the Defendants. This in fact occurred with the property at 368 Lees Avenue, referenced at paragraph 3. The 2008 Town Wide Flood Study did not depict that property, as being in the regulatory flood plain. Those models and maps in the 2008 Study were in most cases over 20 years old.

99. Recently, the 2019 “Wedgewood Morrison Diversion Channel Flood Risk Mapping Study and Spill Quantification” admitted that a regulatory storm event would overflow

or “spill” that flood conveyance and this was known as far back as 2012. That study depicted 1D/2D model mapping showing almost 100 homes, businesses and many streets under water, some under over a metre of water, in a regional storm, but this risk is not reflected in CH ARL mapping. This is grossly negligent, as this suspected flood hazard went unstudied for years.

100. In fact, a 2012 *Morrison-Wedgwood Diversion Channel Spill Control Class Environmental Assessment Final Report of Conservation Halton* identified developmental causal impacts on the diversion channel flooding and peak flows. It was known the diversion channel would overtop in 2012 and posed threats to life. That study identified and mapped 1D model “spill” areas in mid-town resulting from a regulatory storm collecting upstream runoff:

> *The Town of Oakville recognized that future development would only increase flooding conditions within the local creek systems [….] Since 1964 the Town of Oakville has incurred significant development north of the QEW highway, much of it without storm water management flood control, resulting in increased peak flows.*[1]

101. In fact, 3 (three) distinct “spill” areas currently posing flood hazard risks to life and property at Oakville Place shopping Centre, nearby homes & businesses and the QEW were identified by CH in a June 25, 2020 Board of Director flood plain mapping “update”. Those spills were predicted to result in flood ponding exceeding 6 (six) feet in depth which will also overtop or flood the QEW in the event of a regulatory storm, and continue into South Oakville. The Defendants utilized 2 sets of “maps” for Oakville Place – that conceal actual flood hazard risks. The mapping created by CH – gave SWF reduction credit and contravenes PPS 2014.

102. Measurable increases in the Regulatory Flood Plain and flood flows delineated by CH were revealed in “draft” 2015 Oakville AMEC-based modelling used by the Defendants CH and Oakville to deny or limit some Class Members from Development Approvals, from the 2013 to 2017 period. This “draft” modelling predicted regional flood elevations substantially higher than any previous 1992 Phillips flood modelling of the 14 Mile Creek watershed and revealed significant increases to downstream flood flows, velocities, depths, and volumes.
CH models increased both the flood levels and Regulatory Flood Plain even further in “draft” 2017 modelling, which it relied upon to deny or limit some Development Approvals. In the two (2) years between the 2015 and 2017 flood plain modelling, the flood levels (and Regulatory

1. See section 1.3 of 2012 *Morrison-Wedgwood Diversion Channel Spill Control Class Environmental Assessment Final Report of Conservation Halton*” by Amec (authored by Ron Scheckenberger).

Flood Plain) measurably rose almost an additional (2) two feet. This growing flood risk and expanding flood plain was replicated in neighbouring Oakville watersheds as well.

103. According to the "14 Mile & McCraney Creeks Flood Mitigation Opportunities Study" dated December 2, 2014, those two creek systems were at risk. That study identified 210 properties within the 14 Mile Creek watershed being at flood risk with a weather event equivalent to Regulatory Storm Event. This has not been fixed to date. Many homes not previously in the Regulatory Flood Plain were included in the CH 2017 flood plain modelling. That study did not identify *per se* the "cause" of existing flood risks or riparian rights impacts. MNRF sent an E-Mail and letter dated May 5, 2015 entitled "MNRF Comment on Regional Flood Control Facilities" to Oakville with specific concerns about Oakville's preferred 14 Mile & McCraney Creek drainage plans, and enclosing the 2002 MNRF Technical Guideline, referred to in paragraph 58, above while stating:

- MNRF's interest is "*public health and safety, and natural heritage protection*";
- SWF's were not permitted "*to reduce downstream flows & floodlines*";
- Ontario recommended the Town "*evaluate the impact of common law riparian rights*"

104. Following the January 11, 2016 meeting with CH referred to at paragraph 59, above a January 19, 2016 E-Mail between MNRF senior staff set out the rationale for denying regional SWF use as a flood control structure to permit development to continue, or to "shrink" regulatory flood plains, or increase local development, communicating this position again to CH:

> We intend to communicate the MNRF's position, once again, to Conservation Halton that we do not support the construction of Regional Flood Control structures. It appears that developers and perhaps municipal planning departments are of the opinion that in so doing more land would be available for development through using these larger storm pond structures rather than more smaller ones, or that holding back flood flows could allow for shrinking of flood lines downstream and therefore allow for increased development.

105. Notwithstanding this prohibition on regional SWF use, CH indicated to Oakville Planning in a March 9, 2016 letter it would continue to *"issue permits to recognize and support regional storm water management control facilities*". It in fact continues to date to do so. Oakville's website inferentially made a link in 2019 between flood risk and development, under "Stormwater Management". It indicated SWF would be used to reduce flood flows, though blaming flood risks on increased "rainfall" was misleading. As noted in paragraph 15, above, there isn't more "extreme" rainfall – those patterns remaining virtually unchanged. SWF was the

local municipal solution to the now worsened known development related flood risks to lives and property. The use of SWF as a regional control structure to reduce flood flows or flooding was not a practice permitted by Ontario, as outlined in paragraphs 56 to 60 above, contravening s. 1.6.6.7 of PPS 2014 and MNRF 2002 Guidelines:.

Stormwater management is more essential than ever

Have you noticed a lot of extreme rainstorms over the last few years? You're not imagining things. In Southern Ontario, we are experiencing more intense and more frequent rainfall than ever.
As our town continues to grow, develop and redevelop/intensify there is less natural ground for the stormwater to soak into. Instead the stormwater runs onto our roads, driveways, and sidewalks, which can lead to floods. And that's not all, stormwater releases pollution into our community. Stormwater management practices have improved over time and as such some older neighbourhoods are more vulnerable to flooding.

Fortunately, we're on the job! We've had a stormwater system in place for over fifty years that we continue to enhance. We are now gaining an improved and extensive understanding of our system that will help us address deficiencies and make improvements.

106. CH and Oakville were aware of flood hazards, flood risks and flooding problems in the event of significant rainfall events, evidenced by its engaging in channel widening, erosion controls and channel deepening in the Flood Area, through various channel improvement and diversion projects. Many residents of Shelburne Place on East Sheldon Creek also experienced basement and property flooding damages in a 2014 and 2017 rainfall event, less than a regional storm. The Sheldon Creek flood risks to properties and streets has not been fixed. The flooding damages and harm were related to both riverine and sanitary discharge flooding, from the same rain event. Oakville and CH approved of these homes being built in a suspected flood plain. As foretold in 1963, the regulatory flood plain and levels kept expanding correlated to increased Development Approvals above Upper Middle Road and to a lesser extent, intensification, and infill Development Approvals, within the major Oakville watersheds. The expansion of the regulatory flood plain and increased flood flows did not result solely from the use of more accurate data, models, and mapping methods – urbanization was the *key* factor.

107. MNRF funding for flood mitigation/flood proofing was unavailable since the mid 1990's. Funding and responsibility shifted to the municipal Defendants. The Defendants failed to carry out sufficient and accurate watershed flood modelling/mapping of the Regulatory Flood Plain to measure the growing flood hazards. It was known that Development Approvals increased impervious surfaces, causing more Flood Risks. The Defendants were also aware before 2000 their storm water run-off assumptions over impervious surfaces were wrong -- and

understated flood flows and flood limits, which continued to grow. The preventative approach to flood risks that Ontario established had failed – as development approvals granted by the defendants only increased flood risks further, cumulatively. The Defendants were negligent and were aware before 2000 that development approvals they granted, and could grant, had a sufficient causal connection to the environmental flood risks and watershed wide threats to life.

Two sets of flood maps or flood models for 14 Mile Creek and other watersheds

108. The Defendants CH and Oakville often utilize "draft" flood modelling, generic regulations, screening tools and/or piecemeal flood mapping for flood hazard risks or for delineating regulatory flood limits within the Regulatory Flood Plain while aware those models, methods and/or the derived results were *insufficient* under Ontario technical guidelines and Ontario policy. The Defendant Oakville and CH used *ad hoc* site-specific builder flood "models" and mapping as a no-cost proxy for proper flood mapping and modelling, which they co-opted. Some flood models and maps sanctioned by, or prepared for the Defendants gave SWF credit to reduce peak flood flows or volumes, allowed assumptions, parameters, data, or methodologies chosen to suit site specific run-off targets, while some did not. In some cases, several variables were utilized to reflect even lesser run-off impacts.

109. The Defendants exploited Oakville resident's lack of knowledge of flood plain modelling, mapping and technical, policy and hydrology related requirements. There is an inferred reliance and expectation of good faith that the Defendants were adhering to policy and the law. Residents didn't know if SWF credit is given, or if SWF use is approved. That was a breach of fiduciary obligations and unconscionable, towards the more vulnerable residents. Class Members relied upon the Defendants to safeguard their, property, safety, environmental and economic well-being. CH and Oakville used insufficient and/or inaccurate flood models, data and/or flood mapping within the Regulatory Flood Plain. The result of which was to deny some Development Approvals within the Regulatory Flood Plain, whilst permitting others to proceed. Further, conflicts could arise internally among the Defendants, as to whether or how development should proceed, or not, at a particular site, including the large Glen Abbey golf course development proposal beside 16 Mile Creek and at Saw-Whet golf course. Use of a "two-tier" flood plain mapping and modelling schemes allowed builders' Development Approvals to proceed, which Class Members were not aware of. Such conduct constitutes a breach of the standard of care expected of the Defendants, as responsible municipal actors. The class

members *impliedly* relied upon the Defendants to act in good faith and not harm their interests.

110. A March 21, 2019 report to the CH Board of Directors acknowledged the importance of "accurate" flood plain mapping as a component of evidence based decision-making and to the *interests* of property owners and their informed decision-making needs would necessitate reliance by residents on that flood plain mapping, which CH was responsible for:

> Floodplain mapping that accurately delineates flood hazards is an important first step in building community flood resiliency; it forms a basis for mitigation planning and provides critical information to respond to potential flooding. Flood plain mapping also provides an understanding of risk and allows property owners to make informed decisions on property purchases, development and insurance needs.

111. A HEC-RAS model developed by, or on behalf of, CH for 14 Mile Creek and "updated" by AMEC Foster Wheeler in or about 2012 to 2015, was intended to be for "screening" purposes only to "estimate flood hazard limits and not for regulatory flood plain mapping. CH used or permitted the use of inappropriate, out dated, inaccurate or flawed flood plain modelling with respect to Development Approvals in the Regulatory Flood Plain, but did not disclose this fact to Class Members who may have applied for Development Approvals, but were denied permission based on unsuitable flood models or related mapping. E-Mails from CH staff, including Charles Priddle, to residents seeking building approvals after 2006– concealed the extent of flooding harms known throughout the Oakville watershed.

112. Oakville experienced a number of major storm events since 1986, delivering over 50mm of precipitation in the Regulatory Flood Plain that caused both local and widespread flooding and damage. This manifested itself in both backyard and street flooding, but also in basement flooding that is attributable to surcharging sanitary sewers, storm sewers and/or overflowing watercourses. It should have been reasonably apparent that flood risks linked to urbanization were real and were not decreasing over time. Such storm events with rainfall in excess of 50 mm in a short duration occurred in 2000, 2005, 2009, 2013, 2014, 2017 and 2018. The Oakville 2010 Report referred to in paragraph 81 above, considered a "significant rainfall event" for assessing SWF performance -- when total rainfall volumes were greater than "30 mm"

113. As noted in paragraphs 56 to 61 above, the Defendants were aware of the effect their discrete Development Approval had on flood risks and Damage or Loss to Class Members. They also knew existing infrastructure, hydraulic structures or roads were not sized to handle

regional storms and would overtop or flood, in even lesser storm events. The Defendants knew or ought to have known the vulnerable public would also be "cut-off" from essential services or rescue and put at risk, in storm flooding events. Expected flooding depths in excess of 6 (six) feet from escaping waters described at paragraph 101, will imperil lives. A relationship of proximity existed as did likely harms, sufficient to ground a duty of care to Class Members.

114. Class Members economic, environmental and safety interests were disregarded and the Defendants *de facto* transferred all the risks of new development and urbanization over the past decades to Class Members, who purchased or sold property in the Regulatory Flood Plain unaware of mounting flood risks. The Defendants placed themselves in a widespread conflict of interest – which they concealed, The Defendants Oakville, Halton, Milton and Burton were aware their conduct and contravention of Ontario flood hazard policy was causing Damage or Loss to the Class Members from development activity and decisions they made. This also tolls any limitation periods that may be raised, based on such an equitable fraud.

115. The Defendants Oakville, CH, Halton, Milton and Burton placed themselves in a conflict of interest in planning, flood hazard and development related matters by favouring their economic and personal interests in granting aggregate Development Approvals, when it was foreseeable that Damage or Loss would befall Class Members in the Regulatory Flood Plain. They failed to make decisions that did not aggravate or create flood risks to life and property. The defendants were entrusted with residents well-being under statute, policy and at law as particularized herein. The interests and well-being of all municipal residents were disregarded under section 224 of the *Municipal Act, 2001* and at law, nor was accountable and transparent government followed. The interests and well-being of Class members were adversely impacted by continuing nuisances and incrementally greater flood risks and threats to life and harms imposed upon them. Class Members were subjected over time to an ever-expanding Regulatory Flood Plain which increased their Damage or Loss. This conflict of interest was unaddressed.

Special Duties and Responsibilities – imposed by the Legislature after 2006

116. In fact, "special responsibilities" were imposed by the legislature after 2006 under section 226.1 of the Municipal Act, 2001 upon the CEO and Head of Council of a municipality to "promote the purposes of the municipality". Individual conduct is caught by section 226.1. A fundamental purpose of a municipality is to ensure transparency and openness in decision-

making by identifying to the public how decisions were made and upon which law, procedure, and policy they were made. This section was breached as internal reports, MNRF E-mails and letters since 2006 stated planning decision-making and SWF use contravened Ontario policy and increased downstream flood risks to lives and property. These material facts were concealed by the Head of Council, Regional Chair and by Halton, Oakville and Milton.

117. Additionally, the growing harms to the "economic and environmental" well being of municipal residents from 2006 to 2020 as set out in this Claim, were concealed by the Head of Council, Regional Chair, Council and staff; namely; the expanding floodplains; the failure to prevent flooding risks and harms under Ontario policy; failing to examine upstream/downstream impacts of each proposed development; the link between development approvals and harm, contraventions of subsections 3(5) and (6) of the Planning Act; ignoring scientific warnings in internal 1986 to 2020 reports, staff correspondence and MNRF E Mails; Charter breaches of growing threat to life, and failures to recommend or implement major capital work fixes to the watershed wide flood hazards. Section 226.1 of the Municipal Act, 2001 clearly provides:

> **226.1** As chief executive officer of a municipality, the head of council shall,
>
> a. uphold and promote the purposes of the municipality;
> b. promote public involvement in the municipality's activities;
> c. act as the representative of the municipality both within and outside the municipality; promote the municipality locally, nationally and internationally; and
> d. participate in and foster activities that enhance the economic, social and environmental well-being of the municipality and its residents.

118. The Defendants turned to, promoted and approved of SWF use, many rated for only a 100 year storm, to deal with and control the timing of the peak run-off flows and lessen the existing and expected flood risks and to limit the resulting watershed wide flood plain expansion they had largely created, though Ontario prohibited this use of SWF as regional flood control structure, as contrary to PPS 2014 and 1.6.6.7 in particular. Despite this prohibition – the Defendants disregarded PPS 2014 and MNRF 2002 Technical Guide.

119. The Defendants decision-making over the 1986 to 2020 period favoured development and SWF approvals whether they were acting as a delegate or a principal. The Defendants acted in a conflict of interest that was un-addressed. They breached their statutory,

delegated and fiduciary duties to Class Members and disregarded residents well-being, environmental well-being, protection of lives and property interests; preferring instead development related interests and lucrative revenues. Further, the municipal defendants didn't approve capital projects to "fix" the growing flooding risks and regulatory encumbrances, linked to the development approvals they were issuing; ignoring the mounting evidence of harms.

120. As the Auditor General of Ontario noted in the 2018 Special Audit of the NPCA, municipal development priorities often "conflict" with conservation authorities' interests and decision-making may not be independent of municipal pressure, given significant annual municipal funding. Additionally, elected officials oftentimes had involvement on particular development file proposals, which cumulatively led to increased flood risks. Oakville and Halton officials, including decision-makers, often meddled in individual development applications and matters skewering specific development application decision-making, including Saw-Whet. Individual involvement with builders development proposals in fact occurred with Halton, CH and Oakville on the use of regional SWF issue with Ontario, in early 2016.

121. In fact, Oakville knew by 2010 that SWF didn't always perform as intended to reduce downstream flooding – particularly from a design and maintenance perspective, stating in the 2010 Engineering Report of Oakville referred to in paragraph 81, above:

> The preliminary results of hydraulic assessments of SWMPs indicate that although a few of the monitored pons are attenuating peak flows and thereby controlling runoff rates from the developed areas to the target rates established in the pond design, others are not performing as intended. The proper functioning of ponds reduces the potential for downstream flooding and erosion.

122. The Defendant Ontario also benefited economically as a result of the acts and omissions of the municipal Defendants. Ontario also has imputed knowledge of the flood risks and dangers to life and property, from the Defendant's conduct. Ontario is also aware of the matters identified in the 2019 Report of the Special Advisor, at paragraphs 29 and 30 herein, Class Members also rely on. Ontario also had a legal duty to properly supervise, review and monitor the Defendants Development Approval activities at all times and/or under its delegated powers, which caused or contributed to foreseeable Damage or Loss to Class Members and it failed to do so, for which it is also vicariously liable at law in negligence and in nuisance. Ontario is liable at law and under the *Crown Liability and Proceedings Act* for the common harms known to be created or aggravated by itself and its delegates, CH, Milton, Halton and Oakville – over the 1986 to 2020 period at issue in this claim. In particular, Ontario was aware the municipal

defendants approved of both large developments and regional SWF's by Mattamy Homes in North Oakville and Milton – contrary to PPS 2014 and MNRF guidelines. A February 10, 2016 Email revealed senior MNRF officials turned a "blind eye" to this policy violation operationally:

> The other aspect here is, what are we going to do about these facilities that in process? […] Anything that has been approved, and is farther along in the planning process than the secondary plan stage, we're not going to worry about. I think that's the best we can do, given this is stepping in to address what we see as an issue of CA interpretation and application of PPS.

123. Builders seeking Development Approval in the Regulatory Flood Plain bore the initial costs of providing and funding SWF, to control local flood flows. The Defendants utilized builders as "partners" and proxies to control flood risks, through various SWF that ultimately reverted to the municipal Defendants. New homeowners bore the flow-through costs of both development charges and local SWF at the time of home purchase. Oakville, Milton, Halton and CH reaped the economic benefits of granting Development Approvals and furtively shifted the resulting risks and liabilities to third parties, Class Members and to Halton taxpayers.

124. The severe street, creek, home and basement flooding experienced in several "downstream" creek watersheds in Burlington following the 2014 intense rainfall event of over 100 mm of rain made flood risks, flood flows and flood levels from rain events apparent to the Defendants. Downstream watershed residents in Burlington and Oakville were affected. Sheldon Creek in Burlington flows into downstream Oakville neighborhoods. It was apparent that a severe storm in a neighboring municipality would have a dramatic effect and could cause damage and loss, including risks to life, downstream in Oakville. PPS 2014 required these cross-jurisdictional watershed wide effects be addressed and prevented. They were not.

Negligence, Nuisance, Equitable Fraud and Breach of *Charter* and Fiduciary Duty

125. The long-term prosperity, environmental health, and social well-being of Oakville depends upon the Defendants reducing the potential exposure of its residents including the Class Members to costs and risks from natural and/or human-made hazards. This dependence and trust and vulnerability, is the basis for a duty of care as well as a fiduciary duty, including the breach of those duties. It underlies the conflict of interest and the *Charter* infringements.

126. An implied and/or express *ad hoc* fiduciary obligation was created and owed to vulnerable Class Members by the Defendants, to act in their best interests by protecting them from such flood risks and their known link to Development Approval, which they failed to do in

favour of their individual or aggregate interests. Class Members were entirely vulnerable and dependant and the Defendants were in a position to exercise unilateral discretionary decision-making to effect their legal and economic interests, as a result of their actions. An undertaking to act in their interests was implied. The Defendants profited at the expense of Class Members, were unjustly enriched and abused their trust and confidence. The preventative approach to flood policy failed – as each development approval only increased flood risks, cumulatively. Those tasked with the well-being of residents under statute, at law and under Ontario policy were in fact the *instruments* of their harms. The Defendants were acting in more than one role at all times -- and failed to properly consider the interests and well-being of Class Members.

127. Despite this fiduciary duty grounded in dependency, vulnerability and the ability of the Defendants unilateral and discretionary operational decision making and actions to impair their interests and directly affect the threats posed to their life and property, and the express and implied undertaking to act in their best interests and transparency and accountability as grounded in sections 224 and 226.1 of the *Municipal Act, 2001* and subsection 3(5) of the *Planning Act* -- given the knowledge that development approvals continued to increase the severity of common harms, the Defendants continued to permit development, without also undertaking steps to ameliorate such increased risk of flooding and threats to life, readily identified in reports and studies. The Defendants failures as particularized herein, are sufficiently causally connected to the causes of action and Damage or Loss, pleaded.

128. The Defendants knew before 2020 that over a thousand structures, properties and many streets in Oakville would be affected, flooded or impassable, in the event of a storm, even less than a regional storm. They dispensed with evidence-based decisions and policy in granting Development Approvals. They chose to do so, despite an awareness of steps that could be undertaken to reduce the Regulatory Flood Plain and harms being advised by their expert engineering consultants and by Ontario in 1986, 1992, 2000, 2002, 2008, 2011, 2012, 2014 and 2016 that such steps should be undertaken, to reduce flood risks and damage or loss to life and property, in accordance with Ontario policy and MNRF Guidelines. A sufficient causal link between a breach of the duty of care linked to development and urbanization and foreseeable Damage and Loss to downstream residents was identified in 1986. It was repeated in 1992, 2000, 2008, 2011, 2012, 2016 and on numerous other occasions, set out herein. They are jointly and severally liable in this respect at law, for the failures herein and the resulting Damage or Loss that increased substantially over the 1986 to 2020 period.

129. These impugned cumulative actions and omissions by the Defendants, individually and collectively, constitute causes of action in negligence, nuisance and breach of fiduciary duty and *Charter* infringements. The Defendants are liable at law for the harm their *unilateral* conduct caused to Class Members, which was both reasonably foreseeable and measurable to date. The Defendants knew their *ad hoc* development approach was not only contrary to Ontario flood hazard and planning policy; it resulted in watershed wide harms.

130. More specifically, the Defendants' unilateral actions and omissions that constitute systemic negligence, joint and several liability, vicarious liability, conflict of interest and that form the basis of a claim for nuisance and breach of fiduciary duty and common harm of Class Members, include, but are not limited to:

a) Failing to accurately map the entire Regulatory Flood Plain using models that rely upon the Regulatory Storm Event, which also failed to assess cumulative upstream and downstream development impacts, within Oakville watersheds;

b) Failing to maintain a complete and temporally accurate map of the entire Regulatory Flood Plain depicting regulatory flood hazard extents and failing to distribute those regulatory flood plain maps to Class Members; that concealed the severity of cumulative flood hazard risks to life and property;

c) Failing to manage or permit or approve development and/or comply with good water management practices such that the Regulatory Flood Plain would have been restricted and/or reduced and would not have unreasonably expanded;

d) Assessing individual risk in allowing development to occur without systematically assessing cumulative upstream/downstream watershed wide development impacts, which unreasonably expanded the Regulatory Flood Plain and increased the risk of flooding harms to life and property resulting from storms that are less than the standard of the 100-year storm or the regional storm;

e) Failing to adhere to Ontario policy, guidelines and direction in order to support watershed development and maximize lucrative development and tax revenues;

f) Failing to warn or advise residents that Ontario PPS 2014 and MNRF 2002 Technical Guidelines did not permit regional SWF flood control use, or downstream credit with SWF, to reduce regulatory flows, which created risk.

g) Breaching the duty of care when reviewing planning applications or engaging in discretionary application decision-making and failing to warn residents of adverse development impacts on downstream flood flows and the regulatory flood plain;

h) Sub-delegating non-delegable flood hazard management to builder proponents;

i) Failing to model or map all suspected "spill" areas that posed flood hazard risks, including the Morrison-Wedgewood "spills" identified in 2012, but not fixed;

j) Failing to set out current and accurate regulatory flood hazard mapping in the 2009 Livable Oakville Official Plan, as approved by Halton;

k) Failing to protect class members from the increasingly high threat to life, known to be linked to development approvals, which also contravened the *Charter*;

l) Ontario failing to properly supervise, audit or monitor the municipal defendants, particularly upon being made aware of the downstream flood risks by 2006 and the construction, approval and use of regional SWF, contrary to Ontario policy;

m) Repeated contraventions of subsections 3(5) and (6) of the *Planning Act* by each of the municipal defendants and Ontario, over the 1986 to 2020 period.

n) A perceived and actual conflict of interest in not adhering to Ontario policy and law to protect residents well-being and safety, by favouring development;

o) Using SWF and related control measures as a proxy for proper flood hazard management, by artificially reducing existing and future peak and total flood flows, in order to permit new development to continue in, or near the regulatory floodplain, though prohibited by Ontario and often not performing as designed;

p) Failing to advise the public that a causal link existed between the Defendants granting of Development Approvals and a growing harm to life and property;

q) Failing to train, educate and supervise municipal decision-makers into each of the specific requirements of PPS 2014 and the MNRF 2002 Technical Guide.

r) Failure to prevent flood hazard harms to life and property on a cumulative basis and subjugating Class Member interests to personal and economic interests.

s) CH's unilateral rejection of Ontario's "3 choices" to address the known increased downstream flood risks and harms linked to granting development approvals – as set out in a CH Briefing Note dated February 19, 2016 to Hassaan Basit;

t) Failing to use reasonable skill, care and failing to take corrective action in the investigation of, examination of and measurement of cumulative flood impacts prior to and as part of the granting of development related approvals;

u) Failing to fix or ameliorate the known flooding risks to life and property present in the Oakville watershed with appropriate capital works from 1986 to 2020;

v) Failing to ensure transparency and accountability and the social, economic and environmental well-being and interests of residents under sections 224 and 226.1 of the *Municipal Act, 2001, the Planning Act* and provincial policy were met, and

w) Imposing a unilateral regulatory encumbrance on Class Members restricting the reasonable use and enjoyment of their property now located in a floodplain.

131. The Class Members plead and rely upon the principle enunciated in the case of *Rylands v. Fletcher*. As a result of the allegations in paragraphs 106, 107 and 130, water has escaped and flowed from land owned and/or controlled by the Defendants onto the properties of Class Members, causing damage to such property including – but not limited to - basement flooding from surcharging sanitary sewers, storm sewers and/or overflowing watercourses. Such water escaped in 2000, 2005, 2009, 2013, 2017 and 2018. Such water will escape again in the next Regional Storm Event and/or a Regulatory Storm Event. Notwithstanding their knowledge of such flow of water and damage, the Defendants have failed or refused to take any or adequate steps to prevent the further flow of water onto the properties of the Class Members.

132. The Class Members plead that a continuing nuisance has been caused by the unreasonable expansion of the Regulatory Flood Plain and the Defendants systemic conduct. This continuing nuisance has substantially and unreasonably interfered with the Class Members' quiet reasonable use and enjoyment of their property. Amongst other complaints, Class Members have been denied building permits and/or development approval, which would have been granted but for the expansion of the Regulatory Flood Plain. For example, Class Members have been denied the permission and/or approval to construct additions to existing homes or to construct new builds on lots recently purchased for such purpose or to construct additional structures on their existing property. Additionally, Class Members have suffered water damage from weather events in 2000, 2005, 2009, 2013, 2017 and 2018 and will continue to have water flow onto their property. These community wide harms, were in fact concealed.

133. Due to this continuing unreasonable nuisance and stigma arising from owning property within the expanded Regulatory Flood Plain, the Class Members' properties have been subject to diminished property values and adverse sale impediments. As well, the Class Members have suffered from anxiety and mental distress associated with owning lands within the Regulatory Flood Plain.

134. Given the expansion of the Regulatory Flood Plain arises primarily from Development Approvals, the actions and omissions described in paragraph 130 and the risks to life and property were concealed from Class Members, as was the contravention of Ontario flood hazard policy and MNRF 2002 Technical Guide provisions against SWF use to reduce regulatory flows and shrink flood line regulatory maps, this behaviour warrants an award of punitive and aggravated damages in these circumstances and as a public interest matter.

135. The Class Members state that the Defendants have conducted their affairs in a high-handed, arrogant and capricious manner with a wanton disregard for the safety and well-being of the vulnerable Class Members and in a manner they were aware was prohibited by Ontario. The Defendants' conduct was reckless, reprehensible, unconscionable and departed to a marked degree from ordinary standards of decent behaviour. The Defendants' reckless disregard for the Class Members well-being is deserving of punishment and condemnation by means of an award of punitive damages. The Defendants systemic conduct was not only linked to causing the universal harms over the pendency of the Class Period, but the severity of harm for Class Members. Class Members had no means to prevent this harm, imposed upon them.

136. The Class Members' reasonable expectation of quiet use, enjoyment and alienability of their property and land within the Regulatory Flood Plain has been violated and trampled upon by the impugned and furtive conduct of the Defendants for economic gain -- as set out and particularized in this claim and in evidence to be introduced at trial. Class Members have as a result suffered damages to their reasonable use and enjoyment of their property.

137. The Defendants, individually and collectively, were repeatedly told by consultants, engineers, in empirical reports and by Ontario of the necessary and corresponding steps to reduce the risk of flooding and threats to life and property as well as the Flood Area. Persistently, the Defendants chose to not follow such recommendations or evidence and, therefore, exposed more Class Members to damages and to increased Damage and Loss. A recognized duty of care is owed by the municipal defendants and Ontario as set out in ***Scarborough Golf and Country Club Ltd. v. Scarborough (City) et al.*** including riparian rights, in negligence and liability in nuisance as pleaded herein.

138. The Class Members had no means of precluding or preventing the Damage or Loss caused, aggravated or contributed to, by the Defendants, individually and collectively. They can't stop Oakville creeks or streams from flooding, or overland or urban flooding. Class Members are wholly vulnerable to the discretionary steps undertaken by the Defendants that resulted in increased flood flows and the large expansion of the Regulatory Flood Plain, the duty to be informed and repeated breaches of subsections 3(5) and (6) of the *Planning Act.*

139. Only the Defendants, individually and collectively can reduce the Regulatory Flood Plain, prevent flood hazard common harms and ameliorate or mitigate the damages and

harm to the Class Members. The Defendants while undertaking to act in a fiduciary role for the well-being of Oakville residents had a duty to act in their best interests and did not, upon any standard, openly violating MNRF policy and PPS 2014 and section 3 of the *Planning Act*. The defendants have no legal, policy or statutory immunity from liability – in this factual matrix.

140. The Defendants violated this duty and obligation by conducting themselves in planning and development related matters, in the unlawful manner set out in this Claim which harmed the environment and caused Damage or Loss to Class Members. The public interest and trust doctrine has been engaged. The governmental actors failed to protect the physical environment from harms for class members who are the beneficiaries dependent on the lawful use of discretionary powers to safeguard the environment and public safety. The Defendants acts and omissions have shown a disregard for the environment or harms to it, or to individual Class Members. Damages are sought for harms to the environment – and to Class Members.

141. On that basis, the Class Members seek a mandatory Order and, in the alternative, a declaration that the Defendants are required to fund and/or undertake the necessary steps to ameliorate the risk of flooding in the Regulatory Flood Plain and, in the further alternative, payment of the cost of such amelioration to the Class for the purpose of effecting such steps for amelioration and mitigation. Significant risks to life and property subsist.

142. Only the Defendants, individually and collectively, had the ability to identify and remediate any environmental issues, including caused by closed landfills and any currently unidentified or unknown landfills, which issues will create a catastrophic environmental disaster and universal harm in the event of a Regulatory Storm and accompanying flooding. On that basis, the Class Members seek a mandatory Order and, in the alternative, a declaration that the Defendants are required to fund and/or undertake the necessary steps to ameliorate any environmental risks, including caused by closed landfills and any currently unidentified or unknown landfills and, in the further alternative, payment of the cost of such amelioration to the Class for the purpose of effecting such steps for such amelioration.

143. A Class proceeding is the most just, expeditious, fair and least expensive process to have all such claims adjudicated before this Court, with a strong public interest component present and a mechanism to address any related matters, relating to flood risks. No tribunal can adjudicate the common issues, provide the relief sought or “fix” the harms done. No

tribunal can provide the declaratory remedies sought, or award aggregate damages sought.

144. An orderly manner of disposing of multiple claims over time is available here, rather than a multitude of individual claims that would be expensive, lengthy and would also impair principles of affordable and access to justice, behaviour modification and a court supervised remedy and claims process. Class members cannot seek a remedy from any court individually, to "fix" the creek and conveyance systems, which require municipal capital works.

145. Common questions of fact and law arise regarding the duty of care owed by the Defendants to Class Members, the threat to life and common harm as a result of the impugned activities described herein, fiduciary duties or obligations and the created nuisance and the Flood Risks that Class Members were subjected to arising from the Defendants systemic, widespread and unilateral conduct, are best adjudicated through the class proceedings process. The actions and inactivity of the named Defendants, as particularized herein, is the focus. Any development causal links to the related watershed harms identified herein is a central issue.

146. The representative Plaintiff will fairly and adequately represent the class members' interests. Class Members will be notified of this claim in person, through advertisements and through the auspices of the Defendants property records and a plan for the orderly conduct of the steps in this litigation, leading to when certification is in place. The representative Plaintiff does not have an interest that conflicts with the interests of other class members on the common issues.

147. The result of a growing regulatory encumbrance and common harm is discriminatory, unfair and occurred without the knowledge or informed consent of Class members. It limits land use and enjoyment, deprives them of equal protection and benefit of the law and causes and has caused Damage or Loss which also constitutes a contravention of the *Charter of Rights and Freedoms*. Private and public law rights were ignored.

148. The Plaintiffs plead the real threat to life and security by the impugned systemic conduct of the various Defendant governmental actors violates their section 7 legal rights guaranteed under *The Charter of Rights and Freedoms*. Accordingly, the nature of the governmental actors conduct described herein, the deprivation of legal rights and the resultant concealment of the common harms and wrongs was clearly wrong, in bad faith an abuse of trust

and power and contravenes Ontario flood hazard policy. It ignored the growing threat to life and security linked to their development and planning decision-making, justifying a monetary award to compensate and deter such conduct under section 24 of the *Charter*. The egregious breach and serious repercussions in these special circumstances, justifies a higher award for compensation, vindication and deterrence. Damages are a just and appropriate remedy.

149. Unaddressed, the threats to life and property described herein will simply increase further generationally with each development approval and contravention of the law. The rule of law also requires these governmental actors face accountability and justice. The Defendants failed to operationally apply the intent or purposes of PPS 2014 as a whole, or its predecessor policy which sought to "prevent" or limit flood risks on a watershed basis -- in their capacity as a delegate, or principal, in connection to development related decision-making. A raft of internal reports, studies and analysis clearly depicting, measuring and delineating common harms, watershed wide risks to life and property weren't followed. Each defendant and Ontario is liable at law, and in damages, for such wrongs and harm in this factual matrix.

150. The Defendants knew their local development and planning approval decision-making and *ad hoc* practices, violated Ontario preventative flood hazard policy and resulted in the watershed wide expansion of the Regulatory Flood Plain and increased threat to life and property, contrary to the intent and wording of PPS 2014. Though entrusted with environmental and social well-being, the evidence and science was ignored, denied or avoided for decades. A conflict of interest went unaddressed – and affected local decision-making in these matters.

151. Many Class Members may now not be able to obtain any or sufficient insurance indemnification, relating to the Defendants impugned conduct, as described in this claim. They also suffer the stigma of now living in a flood plain, bearing all economic harms and physical risks. In fact, the 1964 Tomlinson Report at paragraph 17 above, contained a flood related "damages methodology" averaging flood damage diminution of 5% of property values located in specified Oakville flood plains compared to those not in a flood plain. These adverse flood damage diminutions to Oakville flood plain properties were not publicly disclosed by the defendants Oakville, Halton, Milton or CH. The only alternative is to accept all risks, known or not -- or attempt to move or sell their property. That doesn't fix or end actual harms.

152. Class Members have suffered actual damages and out-of-pockets expenses as a result of weather events in 2000, 2005, 2009, 2013, 2014, 2017 and 2018 and will continue to suffer such losses in storms less than the equivalent of Regulatory Storm Event or a 100-year storm.

153. The Plaintiff pleads and relies upon the following statues, as amended:

(a) *Class Proceedings Act*, *1992*, S.O. 1992, c. 6;
(b) *Courts of Justice Act*, R.S.O. 1990, c. C.43;
(c) *Negligence Act*, R.S.O. 1990, c. N.1.l;
(d) *Municipal Act, 2001,* S.O. 2001, c. 25;
(e) *Planning Act,* R.S.O. 1990, c. P.13.;
(f) *Places to Grow Act, 2005, S.O. 2005, c. 13;*
(g) *Crown Liability and Proceedings Act, 2019, S.O. 2019, c.7, Sched. 17;*
(h) *Conservation Authorities Act, R.S.O. 1990, c. C.27; and*
(i) *The Charter of Rights and Freedom, Constitution Act, 1982.*

154. The Plaintiff commences this action under the *Class Proceedings Act, 1992* and proposes that this action be tried at the Town of Milton.

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-and-

THE CORPORATION OF THE TOWN OF OAKVILLE et al.
Defendants

Court File No. CV-20-00001582-00CP

ONTARIO
SUPERIOR COURT OF JUSTICE

PROCEEDING COMMENCED AT
MILTON

FURTHER FRESH AS AMENDED STATEMENT OF CLAIM

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