

Addendum No. 2 to Report PDR-PCD-13-09

To: Chair Wright and Members of the Planning and Community Development Committee

From: Scott Taylor, Senior Planner

Meeting Date: October 16, 2014

Subject: **Comments on proposed Niagara Escarpment Plan Amendment PC 201 13 regarding Harmonization with the *Endangered Species Act***

Status: Recommendation adopted by Committee as presented per Resolution PCD114-14; Endorsed by County Council November 4, 2014 per Resolution CC153-14;

Recommendation(s)

WHEREAS the County of Grey and member municipalities have been circulated on proposed Niagara Escarpment Plan Amendment Number PC 201 13 regarding harmonization with the *Endangered Species Act*;

AND WHEREAS the Niagara Escarpment Commission has requested comments on Amendment Number PC 201 13;

NOW THEREFORE BE IT RESOVLED THAT the Addendum No. 2 to Report PDR-PCD-13-09 be received;

AND FURTHER THAT staff be directed to forward Addendum No. 2 to Report PDR-PCD-13-09 on to the Niagara Escarpment Commission for their consideration in the review of the proposed Amendment Number PC 201 13.

Background

In June of 2009 the County of Grey provided comments on proposed Niagara Escarpment Plan Amendment (NEPA) Number PC 178 09, through report PDR-PCD-13-09. The purpose of the proposed NEPA was to harmonize the Niagara Escarpment Plan (NEP) with the *Endangered Species Act*. A copy of PDR-PCD-13-09 and the Addendum Report have been provided in the Attachments section of this report. Please note that the Addendum Report does not specifically relate to NEPA PC 178 09, but has been included for completeness sake.

Following significant consultation on NEPA PC 178 09, including comments from many municipal and aggregate stakeholders, there remained outstanding concerns with respect to the proposed amendment. The Commission later withdrew NEPA PC 178 09, in favour of coming forward with a new amendment, NEPA PC 201 13, which considered a similar subject matter and attempted to address concerns.

Further information on NEPA PC 201 13 can be found on the Niagara Escarpment Commission (NEC) website at the below link.

[Niagara Escarpment Commission Website](#)

The stated purpose of NEPA PC 201 13 is;

“To undertake a general amendment to the Niagara Escarpment Plan (NEP) to align, where determined to be appropriate and in keeping with the purpose and objectives of the NEP, the policies and definitions with respect to the protection of Species at Risk (SAR) habitat, with those of the Endangered Species Act, 2007 (ESA, 2007). To also address a number of related housekeeping matters respecting the definitions and terminology related to wildlife habitat and SAR, in order to ensure standardization with other provincial plans and the PPS, as appropriate, and ensure consistency throughout the Plan.”

The *Endangered Species Act (ESA) 2007* came into force on June 30, 2008. The Act affects all Provincial agencies, municipalities and private landowners throughout Ontario with respect to endangered species and species at risk. The ESA not only protects endangered species, but also their habitat as well. Being legislation, and not just planning policy, the ESA ‘trumps’ municipal land use controls, as well as policy in Provincial Plans such as the NEP. That being said, there is certainly merit in the NEC or a municipality ensuring that their policies are generally in harmony with the ESA.

Municipal Planning Comments

As is the County’s process with Niagara Escarpment Plan Amendments, the County circulated NEPA PC 201 13 to our member municipalities who have lands within the NEP, and requested comments. As of the time of writing this report, no municipal comments have been received. Should comments be received following this report having been sent to the Planning and Community Development Committee, staff can verbally apprise the Committee of said comments on October 16, 2014.

County staff have also had the opportunity to discuss this matter with County of Bruce staff, who have also shared their staff report on NEPA PC 201 13. Grey County Planning staff generally share the same comments as the County of Bruce.

Planning Analysis on NEPA PC 201 13

In general County Planning staff would support the intent of NEPA PC 201 13. Furthermore, County staff are appreciative of the work and consultation that has gone into NEPA PC 201 13 and its predecessor PC 178 09 by NEC staff. In reviewing the proposed NEPA PC 201 13 County staff would raise the following items for further consideration by the NEC;

1. Section 2.8 Wildlife Habitat – contains a subsection 1(c) which prohibits the creation of lots which include the habitat of an endangered or threatened species, except for the following circumstances;
 - i. *“Land acquisition by a public body for park and open space, or pedestrian trail purposes;*
 - ii. *Land acquisition by an approved conservation organization;*
 - iii. *For the purpose of enlarging existing lots;*
 - iv. *For the purpose of correcting a conveyance as defined by this Plan.”*

County staff would generally support the intent of this policy, but believe that the implementation could disproportionately impact farm lot creation. County staff understand the rationale behind not creating a new residential lot in the habitat of an endangered species. However there may be cases, where it has been justified through proper environmental study, that a larger farm could be divided in two (i.e. splitting an 80 hectare farm parcel into two 40 hectare parcels), without having a deleterious effect on endangered species habitat. In limited cases the same may also be said for a surplus farm dwelling severance, where the larger retained parcel was prohibited from constructing any further residential dwellings.

2. Section 2.8.2 of NEPA PC 201 13, would appear to restrict new development in areas of wildlife habitat, except as follows;

“Notwithstanding Part 2.8.1, development may be permitted in the following circumstances provided the requirements of the Endangered Species Act (2007) are met, in addition to all other requirements of this Plan, to the satisfaction of the NEC:

- a. *Development of a single dwelling and accessory or incidental uses on an existing lot of record.*
- b. *Development in the habitat of the following species subject to the following exemption regulations under the Endangered Species Act, 2007: O. Reg. 242/08 as amended s. 23.5 (Barn Swallow), 23.6 (Bobolink), 23.7 (Butternut) and 23.8 (Chimney Swift).*

- c. *Development in an Urban Area, Minor Urban Centre, Escarpment Recreation Area or a Mineral Resource Extraction Area designation, which was designated as of July 17, 2014.*
- d. *Development within a park or open space area identified within Appendix 1 of this Plan where such development is authorized under a Master or Management Plan approved in accordance with Part 3 of this Plan as of July 17, 2014.*
- e. *Development of a transportation or utility facility where such development is determined to be essential under the policies of this Plan.*
- f. *Development where the only purpose of the activity is to assist in the protection and recovery of the species.”*

Subsection (b) of this section should likely reference the possibility for future exemptions to the ESA i.e. “*Development in the habitat of the following species subject to the following exemption regulations under the Endangered Species Act, 2007: O. Reg. 242/08 as amended s. 23.5 (Barn Swallow), 23.6 (Bobolink), 23.7 (Butternut) and 23.8 (Chimney Swift), in addition to any other species for which future exemption regulations are also issued.*”

Section 2.8.2 appears to limit the permitted uses in areas of habitat to those uses listed under bullets (a) – (f). It may be worth noting here that further uses could be permitted, as per the permitted uses within land use designations in the NEP, where appropriate environmental study has demonstrated that there is no negative impact on the ESA species or habitat.

Financial / Staffing / Legal / Information Technology Considerations

At this stage there are no direct financial, staffing legal or information technology considerations stemming from this report, or the changes proposed through NEPA PC 201 13.

Theoretically NEPA PC 201 13 could have an impact on County properties within the Niagara Escarpment Plan area, including forest tracts, roads, or the Grey Roots property. However, the County is legislatively required to comply with the *Endangered Species Act* and it is unlikely that NEPA PC 201 13 will have any further restriction on said County properties beyond those already imposed by the ESA and associated Regulations.

Link to Strategic Goals / Priorities

Action item 2.10, under goal 2 of the County’s Strategic Plan speaks to the management of growth through the creation and application of sound land use planning policies. NEPA PC 201 13 would certainly fall under the category of managing growth

through the application of land use planning policy. Although County staff have raised a few issues with NEPA PC 201 13, the County is appreciative of the opportunity to comment on the proposed Amendment and would be happy to review any future iterations of the Amendment.

Attachments

[PDR-PCD-13-09 Endangered Species Act, 2007, Niagara Escarpment Plan Amendment No. PC 178 09 and related regulations](#)

[Addendum to PDR-PCD-13-09 Endangered Species Act Niagara Escarpment Plan Amendment No. 178 09 and related regulations](#)

Respectfully submitted by,

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Director Sign Off: *Randy Scherzer*