

# A6 APPENDIX 4

August 17, 2021

Mr. R. Nicholson, Chair  
Niagara Escarpment Commission  
232 Guelph Street  
Georgetown, Ontario  
L7G 4B1

**RE: NEC File N/R/2018-2019/067**

Dear Mr. Nicholson,

We are representing Mr. David Migus in the above-noted Niagara Escarpment Development Application, and ask that you please consider the following position.

## **Executive Summary**

The Development Application, to permit a house, septic system, well, driveway, horse stable and fenced pasture should be approved since all uses are permitted with the NEP Escarpment Rural designation, and the agricultural use on the east half of the property will remain, even though the type of agriculture will change from agro-forestry to a hobby horse operation.

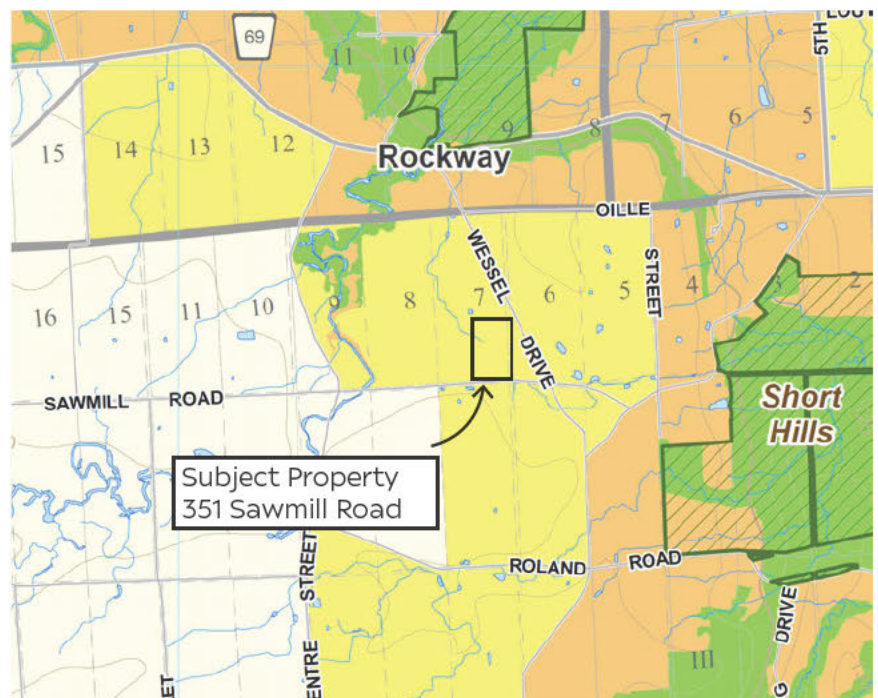
## **Escarpment Rural Area Designation**

The subject property is located within a large span designated as Escarpment Rural in Map 1 of the NEP. Permitted uses within this designation include:

Section 1.5.3

1. Agricultural Uses
2. Agriculture-related uses and on-farm diversified uses
3. Existing uses
4. Single dwellings

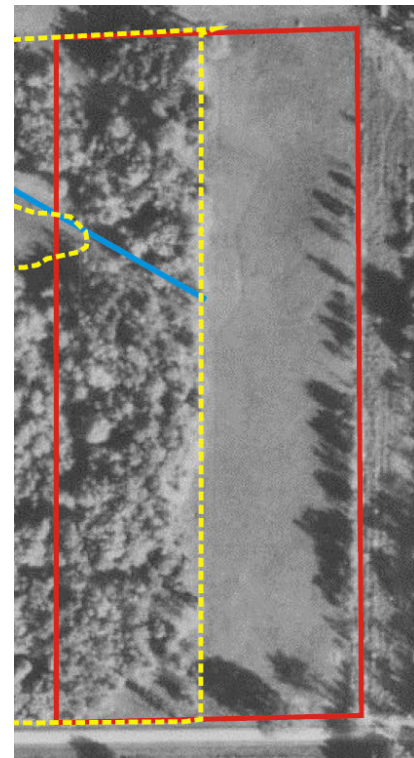
By virtue of the above, everything the applicant is proposing are permitted uses within the Escarpment Rural Area.



### Continuous Agricultural Use

Since the Migus family purchased the property in 1968, the east half of the property has operated as an Agricultural Use. As shown in the 1964 photo, the east half was a cultivated field at the time of purchase. In the late 1970's, the Migus family changed it to an agro-forestry operation by planting White Pine and Norway Spruce saplings with the intent to harvest the trees, and left the wet seepage area intact as tree establishment there proved to be unsuccessful.

The plantation is now mature enough to be commercially viable, and the landowner wants to harvest the trees and switch to a different agricultural use – a hobby farm with 1-2 horses along with a house, well and septic system. The use of the east half for agriculture will continue, even though the type of agriculture will change. The west half will also remain as it has been since 1964, as a natural, mature wooded area.



1964 Airphoto - 351 Sawmill Road

### Existing Use

NEC staff have indicated that the east half of the property is not considered to be an Existing Use, but rather an Agricultural Use. Since the agricultural product is a plantation of White Pine and Norway Spruce, then removal of the trees is in keeping with best practices for agriculture.

### Key Natural Heritage Feature

Section 2.7.2 of the NEP states that development is not permitted in key natural heritage features. Since the east half of the property is currently an agro-forestry plantation, it cannot be considered a natural heritage feature since it was planted for the express purpose of harvesting.

There are no policies in the NEP that require an agro-forestry plantation to be considered a natural heritage feature after a certain period of time. If this was the case, then there would be no incentive to start an agro-forestry operation in the Niagara Escarpment area because it would then be considered a natural heritage feature and it would not be permitted to be harvested.

If the NEC would like to have agro-forestry operations become natural heritage features that would then be subject to Section 2.7.2 of the NEP, then a policy amendment to the NEP should be enacted so that landowners are made aware that if they start an agro-forestry operation then they will not be able to harvest it as it will be considered instead a natural heritage feature.



Current airphoto from EIS Report

## **Environmental Impact Assessment**

The EIS and subsequent amendment by Coleville confirms that the east half of property is structurally and ecologically a tree plantation and early successional forest that is markedly different from the mature, natural forest in the west half. The edge of natural forest roughly follows the alignment of the forested patch in the 1964 air photo, but extends slightly further to the east so that the natural forest line is now roughly half way through the property. The EIS notes that the proposed development plans are to retain the mature natural forest, and that all proposed tree removal is on the east half that contains the plantation.

The EIS and amendment conclude that:

- Tree removal from the eastern part of the property will not impact the function of the natural heritage features on or adjacent to the woodlot, or the habitat of any significant wildlife species, in particular bat roosting habitat
- The following mitigative measures should be implemented:
  - A limit of work fence should be installed no less than 1m from the drip-line of trees to be retained to ensure roots are not compacted or injured.
  - The removal of trees and vegetation should be timed to minimize impacts on any wildlife species. It is recommended that tree removal be completed prior to March 15 or after October 31 to minimize impacts to bird and bat species that may be utilizing the woodland on the property.
  - If tree removal is required in this window, it is recommended that a search of active bird nests be completed prior to removal to ensure no impact to nesting birds.
  - A light duty silt fence should be installed around the building envelopes prior to any construction or site alteration works on the Subject Property to prevent sediment from being mobilized and discourage wildlife from entering the work areas.
  - It is recommended that trees be retained on the east side of the property where possible.
  - Any exterior lighting should be directed away from the woodland if possible. This can be accomplished by the use of shades or directional lighting.
  - To maintain soil moisture conditions in this woodland and avoid impacts to vegetation, it is recommended that grading on this property maintain existing overland flow patterns and downspouts be directed to lawn or amenity areas to provide for infiltration.
  - To assist with avoiding impacts to trees in the woodland, it is recommended that structures be located a minimum of 10m from the woodland where possible.
  - A straw bale check dam should be installed in the watercourse until vegetation in the cleared pasture becomes established

The mitigative measures listed above have been incorporated into the Landscape Plan (see below) to the degree possible.

## **Landscape Plan**

Niagara Region issued a memo dated May 11, 2021, (see Appendix) indicating no objection to removal of the plantation and the proposed development subject to a landscape plan stamped by a registered landscape architect that illustrates the following:

1. Naturalized vegetative buffer that would aid in prevention of encroachment into the remaining woodlot and filtering surface run-off from the new horse paddocks to the watercourse

2. The Landscape Plan should identify and illustrate the location of native trees, shrubs and/or groundcovers to be planted within the naturalized vegetative buffer

IF NEC approval is granted, we will prepare a Landscape Plan, see Appendix, that illustrates the proposed development, proper setbacks from the intermittent stream /seepage area, and the above mitigative measures, and will submit the Landscape Plan for approval to Niagara Region.

### **Conclusion**

The entire property is designated as Escarpment Rural in the Niagara Escarpment Plan, so the NEC must rely on municipalities and studies to determine if a woodlot is significant. As a result of the EIS process, both Niagara Region and Town of Pelham have indicated no objection to the proposed development, with the Region's approval being subject to approval of an acceptable Landscape Plan.

The agro-forestry plantation was already 6 years old by the time the NEP was enacted in 1985. The intent of the NEP is not to take away the right of farmers to harvest crops. Instead, the intent of the NEP is to allow agro-forestry operators to carry on their business, which includes both planting and harvesting of trees.

We believe the proposed development to be in conformity with the intent of the Niagara Escarpment Plan regarding agro-forestry, settlement and significant woodlot preservation. We ask the NEC to grant approval to the proposed Development Application to permit harvesting of the tree plantation and construction of the house, septic system, well, driveway, horse stable, fencing and pasture as shown in the Landscape Plan.

Respectfully,



Janis Fedorowick, OALA, CSLA, OPPI, MCIP, RPP  
Wavefront Planning and Design



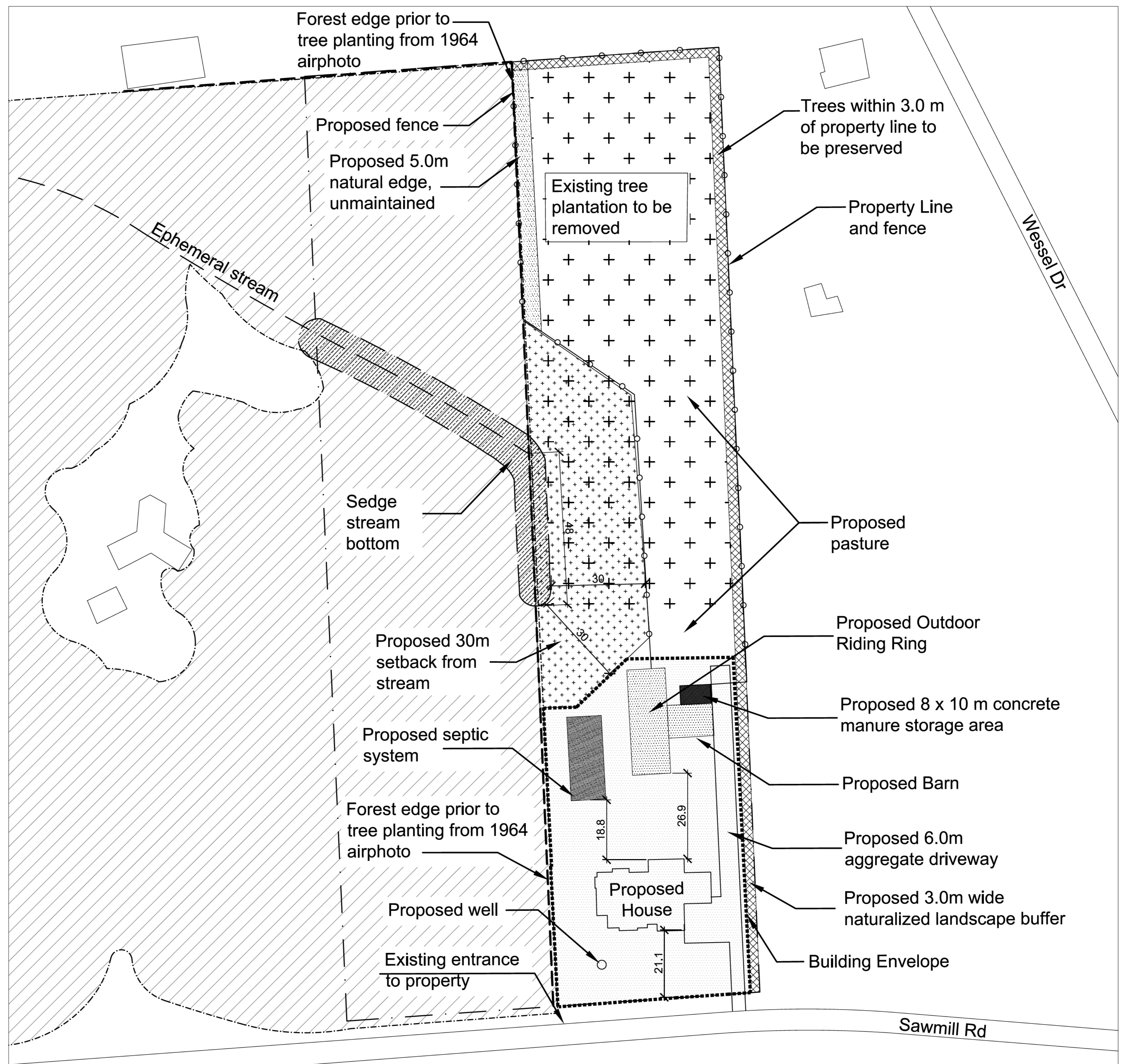
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Key Map

Legend

- Property line
- Creek
- Extent of forest in 1964
- Proposed fence
- Significant Forest to be Preserved



REV	DATE	DESCRIPTION	DWN	CHK
1	2021 AUG 08	SUBMITTED TO CLIENT FOR REVIEW	MT	JF
2	2021 AUG 30	SUBMITTED TO NEC FOR HEARING	MT	JF

9 Leawood Court, St. Catharines, ON  
 Phone: 289 952-9404  
 www.wavefrontplanning.com

**WAVEFRONT**  
 Planning and Design

Quality

DRAWN:	DATE:
DRAWING CHECKED:	DATE:
Approved	
DIRECTOR/MANAGER	JF
DATE:	

Client **David Migus**

Address  
 351 Sawmill Road  
 Pelham, ON

Project Name  
**PROPOSED RESIDENTIAL AND HOBBY FARM**

Drawing Title  
**SITE LAYOUT PLAN**

File No.  
**SAW-2021**

Date  
 27/07/2021

Scale  
 1:1400

Sheet

**L1**