



## C1.1

December 9, 2022

**Jennifer Keyes**  
**Director**  
**Ministry of Natural Resources and Forestry**  
**Policy Division**  
**Natural Resources Conservation Policy Branch**  
**Natural Heritage Section**

**Re: Provincial legislative and regulatory proposals under Bill 23 affecting Conservation Authorities to support the Housing Supply Action Plan 3.0**

**ERO number: 019-6141**

**Notice type: Regulation**

**Act: Conservation Authorities Act, R.S.O. 1990**

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Thank you for the opportunity to comment on the proposed legislative and regulatory changes to the Conservation Authorities Act (CAA) under omnibus Bill 23 as outlined under ERO posting # 019-6141. Based on the review, the Niagara Escarpment Commission (NEC) provides the following Director level approved comments to assist the Government of Ontario in understanding how these changes are anticipated to impact the Niagara Escarpment Commission (NEC) in carrying out their functions under the Niagara Escarpment Planning and Development Act (NEPDA), which as of this date is not proposed to be changed. It is noted that although the postings on the environmental registry are currently active, the Province approved Bill 23 on November 28, 2022, and that comments submitted prior to the commenting deadline on December 9, 2022, will be considered for implementation purposes.

The purpose of the NEPDA is “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such development occurs as is compatible with that natural environment.” These lands, defined as the Niagara Escarpment Plan Area, are maintained in accordance with this purpose through the administration of the NEPDA and the application of Niagara Escarpment Plan (NEP) policies by the NEC.

Pursuant to the NEPDA, the NEC has developed processes for carrying out their functions related to development control and the processing of Niagara Escarpment Plan Amendments. These processes currently involve a coordinated review with our partner agencies (including CAs, upper and lower tier municipalities, and other

governmental and non-governmental bodies and corporations that may have an interest in development proposals and Plan amendments under the NEPDA), relying on expertise across circulated agencies, to avoid duplication of expertise and review by each agency. This coordinated review process is an example of an efficient system, in which expertise is shared and subsequent processes expedited due to the agency participation. The NEP contains many technical criteria that rely on CA review and comment as they are staffed with structural and water resource engineers, hydrogeologists and ecologists, expertise that currently does not reside in the NEC structure. While it is understood that CAs will continue to comment on applications that involve their regulated areas, some of these proposed changes may introduce an expertise gap, to which the NEC will need to strategize to ensure continued success in meeting the purpose and objectives of the NEP.

The following provides more details as to the proposed changes and operational implications to the current processes carried out by the NEC in administering the NEPDA and NEP:

Section/topic	Proposed change	Impact/comment/question
1. 21.1.1 of the CAA – enables CAs to provide municipal programs and services under a memorandum of understanding	Making 21.1.1 subject to proposed subsection 1.1: <i>An authority shall not provide under subsection (1), within its area of jurisdiction, a municipal program or service related to reviewing and commenting on a proposal, application or other matter made under a prescribed Act.</i> (for clarity, we understand that the NEPDA is intended to be included in a list of prescribed Acts)	Currently, the NEC receives regulatory comments from CAs relating to hazards, as well as advisory comments under an MOU with a municipality, if in place. These regulatory and advisory comments are essential to the NEC in assessing proposals against the more technical development criteria within the NEP as they are the result of qualified professional review by engineers, hydrogeologists or ecologists. Without access to this expertise the NEC will have to determine how it will fill this gap. The NEC is cognizant that this gap may result in process delays or additional costs to applicants where they are required to retain professional consultants more often and potentially cover the costs of peer reviewed studies.
2. 21.1.2 of the CAA - enables CAs to provide any other services and programs	Making 21.1.2 subject to proposed subsection 1.1: <i>An authority shall not provide under subsection (1), within its area of jurisdiction, a</i>	As noted above, the current NEC process is reliant on receiving expert comments from the CA. This proposed change eliminates an option for the NEC to enter into a MOU to garner this expertise and other options will need to

<p>(further to those under 21.1.1)</p>	<p><i>municipal program or service related to reviewing and commenting on a proposal, application or other matter made under a prescribed Act.</i> (for clarity, we understand that the NEPDA is intended to be included in a list of prescribed Acts)</p>	<p>be considered which as noted above may result in process delays or additional costs to applicants where they are required to retain professional consultants more often and potentially cover the costs of peer reviewed studies.</p>
<p>3. Subsection 28 (1), 28.1(19) – enables CAs to consider the control of flooding, erosion, dynamic beaches or pollution or the conservation of land.</p>	<p>Re-enacting section 25 of Schedule 4 to the <i>Building Better Communities and Conserving Watersheds Act, 2017</i>, which removes the ‘control of pollution’ and the ‘conservation of land’ and adding ‘unstable soils and bedrock’ while also maintaining ‘flooding’, ‘erosion’, and ‘dynamic beaches’ to the scope of CA review under the CAA or in consultation on applications under other legislation such as the NEPDA.</p>	<p>While there are no changes proposed to Section 21.1.3 of the CAA, which enables CAs to engage in consultation (i.e., to comment on applications under other legislation like the NEPDA) from a regulatory perspective, there are concerns that the removal of ‘control of pollution’ and ‘conservation of land’ from the scope of the CA review as related to their regulated areas will mean that there is less expert (e.g., engineer, hydrogeologist, ecologist) review of these matters. This will result in a gap toward administration of NEP policies that speak to:</p> <ul style="list-style-type: none"> <li>• water quality (as it relates to pollution in the form of sedimentation) in review of stormwater management proposals</li> <li>• complex erosion and sediment control plans</li> <li>• planning, design and construction practices that will minimize sedimentation and the introduction of nutrients or pollutants to a hydrologic feature</li> <li>• system impacts involving consideration of wetlands as flood attenuation and natural watercourse design that are currently provided under the regulatory scope of ‘conservation of land’</li> </ul>

		As noted in the other comments, the NEC currently relies on the expertise of CAs and will require options to address this gap. Removing 'control of pollution' and 'conservation of land' from the scope of CAs leaves a gap in professional expertise that may result in process delays or additional costs to applicants where they are required to retain professional consultants more often and potentially cover the costs of peer reviewed studies.
4. The Mandatory Programs and Services regulation (O. Reg. 686/21)	Review of CA owned lands to identify undeveloped lands that may support housing development.	NEC staff advise that many CA owned lands support the Bruce Trail along the Escarpment and that provides public access to the Escarpment per Objective 6 of the NEP. Most lands owned by CAs within the NEP Area contain significant natural heritage features and many of them are a part of the Niagara Escarpment Parks and Open Space System (NEPOSS), which is regulated by the NEP. The removal of lands from the NEPOSS requires an NEP amendment. Clear criteria must therefore be established for identifying eligible lands and avoiding impacts to the NEPOSS and conflicts with the NEP.

In summary of the comment table above, some of the changes under the legislative and regulatory proposals affecting conservation authorities to support the Housing Supply Action Plan 3.0 will introduce challenges to the current NEC comprehensive review process for applications under the NEPDA. If these changes are implemented as proposed, the NEC will need to review their processes and possibly existing structure to ensure that the NEC is able to continue to meet the purpose and objectives of the NEP. The need to address gaps in expertise may introduce delays in processing NEPDA applications, and in the long term may introduce additional costs to the NEC if engineers, hydrogeologists, and ecologists are to be retained as consultants or full-time staff, or by applicants who may be required to engage more often with consultants and possibly to cover the costs associated with a peer review system.

NEC staff appreciate your consideration of concerns related to operational implications of these changes. We look forward to an opportunity to discuss these impacts to be able

to effectively carry out our responsibilities under the NEPDA to ensure that the Escarpment will continue to be protected for future generations of Ontario.

Sincerely,

*Original signed by:*

Amaraine Laven  
Senior Strategic Advisor

c: Rob Nicholson, Chair, NEC  
Kathy Woeller, Director, NEC  
Kim Peters, Manager, NEC



# C1.2

December 9, 2022

Jennifer Keyes  
Director  
Ministry of Natural Resources and Forestry  
Policy Division  
Natural Resources Conservation Policy Branch  
Natural Heritage Section  
300 Water Street  
Peterborough, ON K9J 8M5

**RE: Proposed Amendments to the Ontario Land Tribunal Act, 2021  
Proposal Number 22-MAG011**

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The Niagara Escarpment Commission (NEC) appreciates the opportunity to comment on the above noted posting. As an agency of the Province of Ontario, the NEC works on behalf of the populace to ensure conservation of the Niagara Escarpment as a continuous environmental feature transecting south-central Ontario by ensuring the compatibility of development within the Niagara Escarpment Plan (NEP 2017) area.

The NEC has reviewed the proposed amendments to the above Act and provides the following NEC Director approved comments on the potential impacts of these proposed changes. Our comments are focused on how the changes may affect the NEC's land use planning processes and decisions based on the Purpose and Objectives of the Niagara Escarpment Planning and Development Act (NEPDA) and the implementation of policies under the *NEP*. It is noted that although the postings on the environmental registry are currently active, the Province approved Bill 23 on November 28, 2022, and comments submitted prior to the commenting deadline on December 9, 2022, will be considered for implementation purposes.

The NEC supports a review and update of the Planning Act and Development Charges Act to reflect current good planning practice. For brevity on our observations, a synopsis of the change is provided, followed by broad policy implications (**bolded**), then NEC specific operational impacts (*italics*).

- 1. Increased power to dismiss if appellant has contributed to delay of hearing or failed to comply with a Tribunal order**

- **NEC failure to comply with a Tribunal order is an open-ended risk, pending the nature of the order**
2. Cost award may be issued to successful parties by unsuccessful parties as an incentive to not proceed through the Tribunal
    - *"unsuccessful" parties will be liable for financial penalty by participating in a legislative right (to appeal planning decisions)*
    - *This is essentially bringing a form of SLAPP (strategic lawsuits against public participation) policy into legislation*
    - *An alternative negotiated settlement mechanism "without going through the Tribunal" is not proposed*
    - **NEC is at risk for exposure to being subject to costs when appealing planning decisions**
  3. The L-G in Council may set hearing priorities according to government criteria such as housing
    - *Changes are not specified so comment cannot be provided until such details are identified*
    - **Resolution of NEC OLT cases may be influenced as a result, which would result in delays to decisions on NEC Development Permit appeals.**

Thank you for the opportunity to comment on the proposed updates to the Ontario Land Tribunal Act. The NEC appreciates your consideration of these operational implications and look forward to an opportunity to work with MNR Policy Division to ensure our ongoing ability to effectively carry out our responsibilities under the NEPDA, and by doing so, that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Joe Muller  
Senior Strategic Advisor

- c. Rob Nicholson, Chair Niagara Escarpment Commission  
Kathy Woeller, Director Niagara Escarpment Commission  
Kim Peters, Manager, Niagara Escarpment Commission



# C1.3

December 9, 2022

Jennifer Keyes  
Director  
Ministry of Natural Resources and Forestry  
Policy Division  
Natural Resources Conservation Policy Branch  
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300 Water Street  
Peterborough, ON K9J 8M5

**RE: Proposed Planning Act and City of Toronto Act Changes  
Environmental Registry Posting 019-6163  
Proposed changes to Ontario Regulation 299/19: Additional Residential Units  
Environmental Registry Posting 019-6197  
Proposed Planning Act and Development Charges Act, 1997 Changes  
Environmental Registry Posting 019-6172**

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The Niagara Escarpment Commission appreciates the opportunity to comment on the above noted postings. As an agency of the Province of Ontario, the Niagara Escarpment Commission (NEC) works on behalf of the populace to ensure conservation of the Niagara Escarpment as a continuous environmental feature transecting south-central Ontario by ensuring the compatibility of development within the Niagara Escarpment Plan (NEP 2017) area.

The NEC has reviewed the proposed amendments to the above Acts and regulations and provides the following NEC Director approved comments on the potential impacts of these proposed changes. Our comments are focused on how the changes may affect the NEC's land use planning decisions based on the Purpose and Objectives of the Niagara Escarpment Planning and Development Act (NEPDA) and the implementation of policies under the *NEP*. It is noted that although the postings on the environmental registry are currently active, the Province approved Bill 23 on November 28, 2022, and that comments submitted prior to the commenting deadline on December 9, 2022, will be considered for implementation purposes.



The NEC supports a review and update of the Planning Act, Regulations and the Development Charges Act to reflect current good planning practice: as the City of Toronto Act does not directly impact the NEP area, and are largely mirrored in the Planning Act, our comments are limited to the Planning Act, Regulations and the Development Charges Act. The NEC history of working in concert with the Ministry of Municipal Affairs and Housing reflects our ongoing coordination of policy development/refinement and development-specific projects. For brevity on our observations, a synopsis of the change is provided, followed by broad policy implications (**bolded**), then NEC specific operational impacts (*italics*).

### **ERO 019-6163**

1. Adding as-of right density increase to three units in urban areas, in one or two structures
  - supersedes local OP/zoning with no development charges, parkland dedications or cash-in-lieu
  - Applies where residential use is permitted in settlement areas with full water-wastewater servicing
    - *Impacts NEC in Urban Areas and Minor Urban Centres with applications not being circulated to the NEC by partner municipalities*
    - **In areas under Development Control this does not conform and conflicts with the NEP, which has primacy in the NEP Area.**
    - **Outside of Development Control this policy does not conform with and conflicts with the NEP as a commenting agency under this scenario**
    - **By not being circulated applications for accessory dwellings that may not be permitted under the NEP, the NEC cannot ensure that new development is compatible with the purpose of the Plan**
2. Residential developments below 11 living units are exempt from Site Plan Control
  - *Impacts NEC in Urban Areas and Minor Urban Centres with applications not being circulated to the NEC by partner municipalities*
  - **This removes municipal requirements of Site Plan Control for developments meeting this criterion**
  - **By not being circulated applications for residential developments that may not be permitted under the NEP, the NEC cannot ensure that new development is compatible with the purpose of the Plan**
3. Site Plan Control is subject to changes removing municipal regulation of architectural details and landscape design
  - These parameters are not set
    - *Impacts NEC with applications not being circulated to the NEC by partner municipalities*
    - **In areas under Development Control this does not conform and conflicts with the NEP, which has primacy in the NEP Area.**
    - **Outside of Development Control this policy does not conform with and is not supported by the NEC as a commenting agency**

4. Municipal lands subject to infrastructure projects are not subject to Site Plan Control unless they impact adjacent lands
  - *Impacts NEC with applications not being circulated to the NEC by partner municipalities*
  - **By not being circulated applications for infrastructure projects that may not be permitted under the NEP, the NEC cannot ensure that new development is compatible with the purpose of the Plan**
  
5. Public meetings are no longer required for draft plans of subdivision
  - **This may have a negative implication for the NEC with respect to public/stakeholder consultation as coordinated by municipalities**
  - **If subdivisions entail a NEP amendment, public meetings may be held**
  
6. Some upper tier municipalities have had their planning authority removed, and no longer qualify as public bodies under the Planning Act
  - *This impacts Halton, Niagara, and Peel in the NEP*
  - *Excludes Dufferin, Grey and Bruce*
  - *Upper tier OP policies in effect becomes lower tier OP policies*
  - **The affected upper tiers may no longer appeal at the OLT on NEC decisions for DPAs and NEPAs**
  - **These affected upper tiers will no longer draft regional OP policy which has a bearing on NEC conformity**
  - **Some upper tier municipalities provide essential subject matter expertise when reviewing NEC applications: the inferred loss of specialists impacts NEC reliance on partner agencies for their report review and comments**
  - **Any specialist gap will need to be addressed by additional NEC or lower tier staffing, or reliance on external peer, resulting in delays until instated**
  
7. Aggregate Resources
  - Planning Act applications to amend new OP, ZBA and Site Plans for aggregate operations are exempt from two-year freeze on applications
    - *The affects joint plan review timing for ARA applications*
    - **Deferral between Planning Act approvals and application for aggregate operations is removed**
    - **Applications to amend recently-approved planning decisions are deferred as they would have been subject to the appeal process: permitting immediate amendments for aggregate operations subverts current public planning**
  
8. Conservation Authorities
  - The scope of CA review and OLT appeals is reduced to natural hazard policies in the PPS.
  - Proposed policy simplifies the severance and disposal of CA lands
    - *The NEC relies on subject matter expertise in our partner agencies for evaluation of NEC amendment and permit applications*

- *These proposals impact CA lands within the NEP, including NEPOSS lands*
- **Conservation Authorities provide essential subject matter expertise when reviewing NEC applications: the inferred loss of specialists impacts NEC reliance on partner agencies for their report reviews and comments**
- **Any specialist gap will need to be addressed by additional NEC or lower tier staffing, or reliance on external peer, resulting in delays until instated**
- **Severance and disposal of CA lands will require their removal by NEP amendment of NEPOSS lands**

#### **ERO 019-6197**

##### **9. Section 42 Calculations for parkland dedication are amended (reduced)**

- Land conveyance calculations reduce parkland dedication by 50%
- Cash in lieu conveyance calculations are reduced by 50%
- Minimum parkland dedication requirements are reduced
- Parkland dedication to municipality cannot be appealed, and may include encumbered and non-fee-simple parcels (e.g. Privately Owned Public Spaces or POPS)
  - *Development in NEP areas may be subject to reduction in parkland dedication*
  - *Parkland dedication may not be public space*
  - **The NEP may rely on parkland calculations for dedication numbers and evaluations**
  - **Parkland dedication calculations will be reduced within and outside of DC by these changes and exemptions for development under 11 units**
  - **POPS are not eligible for inclusion in NEPOSS**
  - **Increases in lot density and reduction in parkland may make it difficult for the NEC to ensure that new development is compatible with the purpose of the Plan**

#### **ERO 019-6172**

##### **10. Adding as-of right density increase to three units in urban areas, in one or two structures**

- supersedes local OP/zoning with no development charges, parkland dedications or cash-in-lieu
- Applies where residential use is permitted in settlement areas with full water-wastewater servicing
  - *Impacts NEC in Urban Areas and Minor Urban Centres with applications not being circulated to the NEC by partner municipalities*
  - **In areas under Development Control this does not conform and conflicts with the NEP, which has primacy in the NEP Area.**
  - **Outside of Development Control this policy does not conform with and conflicts with the NEP as a commenting agency under this scenario**
  - **By not being circulated applications for accessory dwellings that may not be permitted under the NEP, the NEC cannot ensure that new development is compatible with the purpose of the Plan**

Thank you for the opportunity to comment on the proposed updates to the Planning Act Ontario Regulation 299/19 and the Development Charges Act. The NEC appreciate your consideration of these operational implications and look forward to an opportunity to work with MNR Policy Division to ensure our ongoing ability to effectively carry out our responsibilities under the NEPDA, and by doing so that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Joe Muller  
Senior Strategic Advisor

- c. Rob Nicholson, Chair Niagara Escarpment Commission
- Kathy Woeller, Director Niagara Escarpment Commission
- Kim Peters, Manager, Niagara Escarpment Commission



# C1.4

December 16, 2022

Jennifer Keyes  
Director  
Ministry of Natural Resources and Forestry  
Policy Division  
Natural Resources Conservation Policy Branch  
Natural Heritage Section  
300 Water Street  
Peterborough, ON K9J 8M5

**RE: Conserving Ontario's Natural Heritage  
Environmental Registry Posting 019-6161**

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Thank you for the opportunity to comment on the Discussion Paper: *Conserving Ontario's Natural Heritage*. The Niagara Escarpment Commission (NEC) is an agency of the Province of Ontario and works on behalf of the people of Ontario to preserve the Niagara Escarpment substantially as a continuous natural environment, a vital corridor of green space through south-central Ontario, ensuring only such development occurs as is compatible with that natural environment.

The staff understands that the development of an ecological offsetting / compensation policy in Ontario that is currently being explored is intended to provide a tool for better land use decisions and help compensate for the loss of wetlands, woodlands, and other natural wildlife habitat in the province.

The following NEC Director-approved comments first provide the context by which the NEC is governed and operates, including the framework of the Niagara Escarpment Plan (NEP), which is then followed by areas of concern and potential implications for the Plan implementation.

## Context

- The NEPDA and the NEP include several Objectives that speak to the **protection, maintenance, and enhancement** of Escarpment natural heritage features. Protect, maintain and enhance are three pillars that are embedded in

several NEP policies, in order to achieve the Purpose of the NEP: *to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.* For example, the Objective of NEP Part 2.7 Development Affecting Natural Heritage is *to protect and where possible enhance natural heritage features and functions, to maintain the diversity and connectivity of the continuous natural environment.* Likewise, NEP Part 2.6 Development Affecting Water Resources includes the objective to ensure that hydrologic features and functions (which includes wetlands), including the quality, quantity, and character of groundwater and surface water, at the local and watershed levels, are protected, and where possible enhanced. Offsetting is therefore expressly unsupported by the NEP concerning wetlands, as development is prohibited with very few exceptions.

- The interrelated concepts of net gain, compensation, and ecological offsetting, and the application of these approaches throughout the Province are emerging concepts in the land use planning context. NEC staff has actively participated in past discussions on these topics through the initiatives of the Province as well as other environmental non-government organizations and has previously cautioned the application of such principles in the NEP Area. When the NEP was developed it was not envisaged that net gain and environmental compensation would be factors in dealing with land use proposals and as mechanisms to achieve the required development policies. The NEP supports the protection, maintenance, and enhancement of environmental features, which are not materially the same as net gain, compensation, and offsetting.
- To date, the Commission has not in practice endorsed these approaches in consideration of development applications within the NEP Area. The NEP objectives and land use policies respecting proposed development are structured such that protection and maintenance of natural heritage features and functions, where required, must first be achieved, and only then is the enhancement of natural heritage features considered as a means of supporting and achieving other objectives and policies of the NEP. Enhancement of Escarpment natural heritage and hydrologic features are achieved only in combination with the **maintenance of features** and through the **demonstration of compatible development**.

## Considerations

The NEC would welcome the opportunity to further discuss or receive clarity on the following areas, as it relates to the NEC in carrying out its processes to make decisions in conformity with the Plan:

- It is unclear how the approach of an “avoid, minimize, mitigate and offset” hierarchy would be strictly followed, whereby avoidance is the first principle and offsetting is the last resort.
- The application of an ecological offsetting/compensation approach applied uniformly across the province may not be appropriate and caution should be exercised. For example, the NEP Area is recognized provincially and internationally as a unique protected area, with the Purpose of the NEP *to maintain the Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure that only such development as is compatible with the natural environment occurs*. The Escarpment Natural Area Designation includes the Objective to protect the most natural Escarpment features: stream valleys, wetlands, and related significant natural areas, and where possible enhance the natural heritage and hydrological systems associated with the NEP Area. In this example, an offsetting approach may not be appropriate within the most sensitive Escarpment Natural Area designations of the Plan, including due to their close proximity and association with the Escarpment feature itself. Their removal has the potential to negatively impact the Escarpment feature and replication, in an alternate location (away from the Escarpment) is not feasible. Therefore, an ecological offsetting / net-gain approach may not be suitable in the NEP Area, unless it can be determined that such an approach is aligned with the Purpose, Objectives, and land use policies of the NEP.
- The NEP has long maintained strong policy provisions for natural heritage features, including wetlands. Wetlands, regardless of their significance, are identified in the NEP as Key Natural Heritage Features and Key Hydrologic Features where development is prohibited, with very limited exceptions. In relation to the PPS, the NEP policy exceeds the PPS standards. The Discussion Paper suggests that there would be limits to the application of offsets. In light of the NEP, clarity is required as to whether certain key natural heritage features should be off-limits for the application of an ecological offsetting approach. For example, some types of wetlands are not easily replicated, and their function within the NEP Area needs to be considered as well, not just replication of the feature. Newly created wetlands can often lack the structural diversity,

microhabitats, and appropriate hydrological regime to support certain breeding amphibians, including Species at Risk. Overall, additional research is required concerning the feasibility of replicating wetland functions for the long term before a compensation approach is accepted for these features.

- Notwithstanding that the NEP is an avoidance-first Plan, there may be limited circumstances where offsetting could be a consideration in the NEP Area (for non-significant features only), outside of the Escarpment Natural Area. Such an example may be essential transportation and utility facilities, which are determined to be necessary and in the Province's public interest, for non-significant natural heritage features, although avoidance remains the first principle. Additionally, in such limited circumstances, a net gain or benefit strategy should be applied (as opposed to a no-net loss approach, which could assume a 1:1 compensation ratio). A no-net loss strategy without a net-gain component, would not adequately address the losses to biodiversity, particularly in southern Ontario where 70% of wetlands have been lost, and considering the added threats of climate change to Ontario's wetlands, over the long term.
- Additionally, implementation of an ecological offsetting/compensation approach should consider requiring, where feasible, that compensatory restoration or creation of new natural heritage features be undertaken prior to the development taking place, to further ensure that offsetting is achievable and in advance of the proposed removal of extant natural heritage features.
- The off-setting activities should also be required to be implemented in the same catchment area or watershed as the feature(s) being impacted, and certainly where the NEP Area is concerned, within the NEP Area and compatible with the escarpment environment, and considers a landscape approach.
- Staff notes that the Discussion Paper identifies that in some cases, the baseline assessment and offset ratios would also be used to determine a compensation amount that would be paid to a fund that could be used to implement an offset, including construction, monitoring, and adaptive management. It is unclear in such a scenario who would be required to implement the restoration or creation of the offset feature(s).
- The development of standardized, formalized science- and data-based supporting tools (i.e., guidelines, effectiveness monitoring) will be necessary, to determine if such an approach is successful over the long term in achieving a net gain, and to drive and inform future policy development. Consistent with the Ministry of Natural Resources and Forestry (MNR) Statement of Environmental



Values, the province should continue to apply the Precautionary Principle to the application of ecological offsetting. Such an approach identifies that as our understanding of the way the natural world works and how our actions affect it is often incomplete, that caution should be exercised and special concern for natural values should be employed in the face of such uncertainty.

In summary, the NEP Area is recognized provincially and internationally through the UNESCO Biosphere designation as an area of ecological and geological significance. The UNESCO designation recognizes the Niagara Escarpment as an internationally significant ecosystem for its special environment and unique environmental land use plan.

The stated Purpose of the NEP is to maintain the Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure that only such development as is compatible with the natural environment, which needs to be acknowledged in any consideration of an offsetting/compensation approaches proposed within the NEP Area. Careful assessment needs to be given to the situations where an ecological offsetting principle could be considered in the NEP Area, given that the current NEP objectives and policies do not support such an approach, and to ensure that the Purpose and Objectives of the Plan continue to be upheld.

The NEC has a long and successful history of protecting the natural heritage features within the NEP Area and is committed to working closely with the province to continue to effectively carry out our responsibilities under the NEPDA, and in doing so, ensuring that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Lisa Grbinicek  
Senior Strategic Advisor

- c. Rob Nicholson, Chair, NEC
- Kathy Woeller, Director, NEC
- Kim Peters, Manager, NEC

# C1.5

December 30, 2022

**Jennifer Keyes**  
**Director**  
**Ministry of Natural Resources and Forestry**  
**Policy Division**  
**Natural Resources Conservation Policy Branch**  
**Natural Heritage Section**

**Re:                                    Proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario**

**ERO number:                    019-2927**

**Notice type:                    Regulation**

**Act:                                    Conservation Authorities Act, R.S.O. 1990**

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Thank you for the opportunity to comment on the proposed updates to the regulation of development for the protection of people and property from natural hazards in Ontario pursuant to the Conservation Authorities Act (CAA) under omnibus Bill 23, as outlined under ERO posting # 019-2927. NEC staff have reviewed the information supporting the above noted posting, including the “Regulatory proposal consultation guide”, prepared by the Ministry of Natural Resources and Forestry, dated October 2022. Staff is providing the following Director approved comments to assist the Government of Ontario in understanding how these changes are anticipated to impact the NEC in carrying out their functions under the Niagara Escarpment Planning and Development Act (NEPDA), which as of this date is not proposed to be changed. It is noted that although the postings on the Environmental Registry are currently active, the government approved Bill 23 on November 28, 2022, and that comments submitted prior to the commenting deadline on December 30, 2022, will be considered for implementation purposes.

The purpose of the NEPDA is “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and to ensure only such development occurs as is compatible with that natural environment.” These lands, defined as the Niagara Escarpment Plan Area, are maintained in accordance with this purpose through the administration of the NEPDA and the application of Niagara Escarpment Plan (NEP) policies by the NEC.

Pursuant to the NEPDA, the NEC has developed processes for carrying out their functions related to development control and the processing of Niagara Escarpment Plan amendments. These processes currently involve a coordinated review with our partner agencies, including conservation authorities (CAs), as well as upper and lower

tier municipalities, and other governmental and non-governmental bodies and corporations that may have an interest in development proposals and Plan amendments under the NEPDA, relying on expertise across circulated agencies, to avoid duplication of expertise and review by each agency. The subsequent order of approvals is prescribed by the NEPDA subsection 24(3), which requires an NEC development permit to be in place prior to any other approval. With respect to CA approvals, CAs are involved in the NEC process to ensure that the NEC approval is supportable by the CA at a later stage. Therefore, the detailed CA review typically takes place during the NEC process so the subsequent CA process is significantly expedited.

The following table provides a summary of changes proposed under the “regulatory proposal consultation guide” and potential implications of these changes to the NEC in administering the NEPDA and NEP:

Proposed change	Implication to NEC
1. Replacing the 36 regulations for each Conservation Authority under the Conservation Authorities Act with one single regulation	The NEP Area includes lands within multiple conservation authority jurisdictions. The development of a single regulation may improve consistency between these jurisdictions; however, the NEC has not previously identified this as a challenge. It is unclear if a single regulation will encompass all components of hazards or whether there will be an opportunity to enable CAs to develop policies that are specific to a particular watershed such as karst hazards which are of relevance and require consideration in portions of the NEP.
2. Changing the definition of ‘other areas’ related to all wetlands to be 30 m as opposed to 120 m for provincially significant wetlands and 30 m for all other wetlands	<p>The NEP directs consideration of impacts from development within 120 metres from a key hydrologic feature or key natural heritage feature. With respect to significant wetlands, NEC staff rely on the expertise of hydrologists, engineers, and ecologists staffed by a conservation authority to review studies and plans to determine impact within those 120m. This reduced scope of conservation authorities will remove that review of development proposed on the lands from 30 m to 120 m of a significant wetland but to which the NEP still requires consideration of impacts. Therefore, this has the potential to introduce a gap in expertise in the NEC development permit application process to which the NEC will need to consider and address.</p> <p>Staff note that the proposed changes to the Ontario Wetland Evaluation System may result in fewer wetlands being considered provincially significant, which has the same result as the change proposed here: reduced consideration of impacts from development adjacent to wetlands.</p>
3. Activities proposed for streamlined	NEC staff understand that the proposed regulation is to include provisions for permit streamlining or outright exemptions under the CAA. The activities proposed for

<p>approvals or CA permit exemptions</p>	<p>streamlining appear minor in nature, however NEC staff caution that there are some activities listed that would not be exempt from the requirement of an NEC development permit under Ontario regulation 828/90 and NEC staff would therefore typically look to conservation authority comment if in a CA-regulated area. This may result in the NEC processing a development permit in a regulated area in the absence of conservation authority input. It is not clear if the CA will have the ability to comment on a process under the NEPDA if a project is deemed as exempt under the CAA.</p>
<p>4. Change in definition of watercourse from “identifiable depression in the ground in which a flow of water regularly or continuously occurs” to “A defined channel, having a bed and banks or sides, in which a flow of water regularly or continuously occurs.”</p>	<p>The result of this change in definition is that fewer areas will be considered a regulated watercourse by the Conservation Authority. Currently, there is already a discrepancy between the NEP definition of a watercourse and that provided under the CAA. NEC staff advise that this change will bring the two definitions even greater out of sync than currently and may lead to more situations where NEC staff are required to treat a feature as a watercourse whereas the conservation authority will not. This may present a more confusing environment for applicants, and approval authorities.</p>
<p>5. Complete permit guidelines and other service standard improvements</p>	<p>To improve clarity of process for applicants, the complete application, technical guides, mapping standards, and overall service delivery standards may need to be communicated to the applicant by the CA through the NEC process where a development permit from the NEC is required first and a CA permit is required as a subsequent approval.</p>
<p>6. Coordination between CA regulations and municipal planning approvals</p>	<p>Proposed changes to the CAA to increase coordination between approval authorities include exempting development authorized under the Planning Act from requiring a permit under the CAA subject to as-of-yet unidentified conditions. It is noted that the proposal only addresses applications subject to the Planning Act, and not the NEPDA. For development in lands within the NEP Area and area of Development Control, a development permit from the NEC is required prior to any other approval. The NEC’s process involves a coordinated review involving conservation authorities and municipalities. NEC staff understand that CAs will continue to comment on applications under other legislation, however their comments</p>

	<p>will be limited to regulatory comments only and as the result of other changes under Bill 23, CA's regulatory scope has been narrowed to exclude consideration of control of pollution and conservation of land. NEC staff previously raised a concern about losing CA expertise in review of more complex erosion and sediment control plans, as this relates to the control of pollution and the expertise gap may be exacerbated by this proposed change. CA participation in review of applications under the NEPDA is an important part of the current NEC decision making process and in light of previously approved changes under Bill 23, expertise gaps are anticipated; staff are concerned about the impact of the proposed exemption process on potentially exacerbating these gaps in expertise and how those gaps will be filled through the NEC processes to ensure the objectives of the NEP continue to be met. In this light, the NEC seeks clarification on:</p> <ul style="list-style-type: none"><li>- Whether CAs will continue to be involved in review of applications under the Planning Act?</li><li>- How adherence to CA advice and guidance on regulation of natural hazards will be ensured without a subsequent CA permitting process?</li><li>- Whether there will be any impacts to permissions required under the CAA for projects subject to permissions under the NEPDA?</li></ul>
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In summary, these amendments have implications on future implementation of the NEP. Therefore, NEC staff would appreciate the opportunity to continue to review and comment on the implementation of these changes and further regulatory proposals.

NEC staff appreciate your consideration of concerns related to operational implications of these changes. We look forward to an opportunity to discuss these impacts to be able to effectively carry out our responsibilities under the NEPDA to ensure that the Escarpment will continue to be protected for future generations in Ontario.

Sincerely,

*Original signed by:*

Amaraine Laven  
Senior Strategic Advisor

c: Rob Nicholson, Chair, NEC  
Kathy Woeller, Director, NEC  
Kim Peters, Manager, NEC



# C1.6

December 30, 2022

Jennifer Keyes  
Director  
Ministry of Natural Resources and Forestry  
Policy Division  
Natural Resources Conservation Policy Branch  
Natural Heritage Section  
300 Water Street  
Peterborough, ON K9J 8M5

**RE: Review of A Place to Grow and the Provincial Policy Statement  
Municipal Affairs and Housing  
Environmental Registry Posting 019-6177**

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Thank you for the opportunity to comment on the above-noted Environmental Registry Posting undertaking a housing-focused policy review and consolidation of A Place to Grow (P2G 2020) regional planning document and Provincial Policy Statement (PPS 2020) into a single, province-wide planning instrument. The Niagara Escarpment Commission (NEC) is an agency of the Province of Ontario and works on behalf of the people of Ontario to preserve the Niagara Escarpment substantially as a continuous natural environment, a vital corridor of green space through south-central Ontario, ensuring only such development occurs as is compatible with that natural environment.

The following NEC Director-approved comments first provide the context by which the NEC is governed and operates, which is then followed by areas of concern and potential implications for the Plan implementation.

## Context

A Place to Grow (P2G 2020) is a regional land use plan first adopted in 2006, rooted in the Places to Grow Act (2005) that emphasizes making rational, coordinated and long-range planning decisions on growth from a regional and intergovernmental perspective. The Act directs that these decisions consider the environmental and economic strengths and priorities of the communities involved, stressing efficient use of infrastructure and a conservation-oriented approach.

The P2G 2020 plan mirrors and refines these broad planning directives for the Greater Golden Horseshoe that it applies to, for municipal official plans and local zoning by-laws to reflect the policies and mapping of the Plan. The P2G 2020 Greater Golden Horseshoe Growth Plan Area (Schedule 1) encompasses the Niagara Escarpment Plan (NEP) Area in the Counties of Simcoe and Dufferin, Regions of Peel, Halton and Niagara, and City of Hamilton: Part 1.2.3 of the P2G 2020 Plan stipulates that relevant Provincial Plans apply except when they conflict, in which case the direction that provides more protection to the natural environment or human health prevails.

The Purpose of the NEP as defined in the *Niagara Escarpment Planning and Development Act (NEPDA)* is “*To provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment*”. This purpose is enabled by seven objectives in NEPDA and NEP that direct the protection, maintenance and enhancement of Escarpment ecological and cultural heritage features, and open landscape character, while ensuring public access and recreational use, and permitting compatible development in conjunction with municipalities within the NEP. The purpose and objectives of the overall NEP are reflected in its land use planning policies and the use of development control to oversee and review development proposals.

### Questions Posed

The scope of comments sought in this policy consultation is framed by the questions posed.

1. What are your thoughts on the proposed core elements to be included in a streamlined province-wide land use planning policy instrument?
2. What land use planning policies should the government use to increase the supply of housing and support a diversity of housing types?
3. How should the government further streamline land use planning policy to increase the supply of housing?
4. What policy concepts from the Provincial Policy Statement and A Place to Grow are helpful for ensuring there is a sufficient supply and mix of housing and should be included in the new policy document?
5. What policy concepts in the Provincial Policy Statement and A Place to Grow should be streamlined or not included in the new policy document?

These questions are considered by the NEC below solely within the framework of the NEP.

### Comments

- 1) Adoption of a streamlined province-wide land use planning policy instrument plan has implications on the level of detail it can provide for planning at the regional level. The NEP provides planning at the regional and local levels oriented around the Purpose and Objectives of the NEP. Achieving the purpose and objectives of the NEP is contingent on maintaining the language and policy in the existing PPS and P2G giving precedence to the environmental protection offered by the NEP. This should encompass coordinated planning to support appropriate settlement and infrastructure intensities within identified areas and maintaining defined boundaries between areas meant for development and those that are not. This includes conserving and maintaining rural areas, natural and cultural heritage resources, surface and groundwater, and agricultural land. Firm urban boundaries provide certainty and prevent land speculation; land speculation ultimately has the effect of reducing the affordability of rural lands, especially in southern Ontario's prime agricultural areas where agricultural should be encouraged.

Public health and safety measures need to be maintained to manage natural and human-made hazards, with measures to ensure prudent resource extraction including mineral aggregates, minerals and petroleum.

- 2) Although the NEP largely covers rural areas, it should be noted that areas within the City of Hamilton and Region of Niagara fall within the NEP designation of "Urban Area" where intensification pressures exist. In most of these areas, municipal zoning bylaws provide guidance on land use. However, these zoning bylaws (and official plans) are required to conform to the NEP, as per the Niagara Escarpment Planning and Development Act (NEPDA). Regardless of what changes are made to the P2G/PPS framework, the NEC is mandated by the NEPDA to review and comment on municipal zoning bylaws to ensure the purpose and objectives of the NEP are upheld. This includes protecting access to the Escarpment and its visual prominence on the landscape, both of which contribute to community character and recreational opportunities within these municipalities. Language reiterating the conformity of municipal zoning and official plans to the NEP supports housing diversity and supply where it is appropriate: within the NEP Urban Area, where NEC development control does not apply and simplifies development applications.



- 3) The NEC supports clearer language to distinguish between settlement areas designated for intensification and growth, and rural areas designated for agriculture, conservation and other rural land use activities. Likewise, it should be recognized that rural settlement areas may not be appropriate for higher density development, given the lack of municipal services and the interest in preserving rural community character.
- 4) Sustainable development and infrastructure are key policy concepts shared and emphasized across the 2020 PPS and P2G plan. Implicit in these policies is the position that resources and infrastructure should not be over-extended but built at a sustainable scale and scope, with the corollary being that land should be used efficiently and urban sprawl avoided. The culture of conservation in the context of a changing climate should be maintained and reinforced, which also conforms to the Purpose and Objectives of the NEP.
- 5) The PPS 2020 and P2G are iterations of planning policy honed through practice and repeated review. As high-level planning policies and guidance, they provide direction to municipalities on the development and implementation of their local plans and by-laws. The NEC recommends that the scope of provincial planning policy is not reduced, but that municipalities and other planning authorities be provided the legislative means by which to streamline their processing of planning and development applications without sacrificing protection of the natural environment and resources.

### Conclusion

In summary, the policies of the NEP are not focused the supply of more and diverse housing in settlement areas, where the Plan largely defers to approval authorities under the Planning Act. However, updates to provincial planning policies as proposed under ERO 019-6177 may provide for clarification and direction on where such housing is most appropriate, which may not be in the NEP Area. In general, the NEC recommends that further discussion with the Ministry of Municipal Affairs and Housing staff should be undertaken to understand the implications noted above.

For almost 50 years, the NEC has worked to protect the Niagara Escarpment through a unique planning framework that has remained fundamentally unchanged. Pressures related to population growth and new urban development are making it more challenging to protect the Escarpment. Any changes to the P2G/PPS planning framework need to consider the impacts on the Niagara Escarpment, including consideration of opportunities to improve protection of this UNESCO World Biosphere. The NEC is committed to working closely with the province to effectively carry out our

responsibilities under the NEPDA, and in doing so, ensuring that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Joe Muller  
Senior Strategic Advisor

- c. Niagara Escarpment Commissioners
  - Kathy Woeller, Director, NEC
  - Kim Peters, Manager, NEC



# C1.7

December 30, 2022

Jennifer Keyes  
Director  
Ministry of Natural Resources and Forestry  
Policy Division  
Natural Resources Conservation Policy Branch  
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300 Water Street  
Peterborough, ON K9J 8M5

**RE: Proposed Revocation of the Parkway Belt West Plan  
Ministry of Municipal Affairs and Housing  
Environmental Registry Posting 019 - 6167**

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Thank you for the opportunity to comment on the above-noted Environmental Registry Posting proposing the revocation of the Parkway Belt West Plan (PBWP). The Niagara Escarpment Commission (NEC) is an agency of the Province of Ontario and works on behalf of the people of Ontario to preserve the Niagara Escarpment substantially as a continuous natural environment, a vital corridor of green space through south-central Ontario, ensuring only such development occurs as is compatible with that natural environment.

The following NEC Director-approved comments first provide the context by which the NEC is governed and operates, which is then followed by potential implications and considerations for the Plan implementation.

## Context

The Parkway Belt West Plan (PBWP) is a provincial land use plan that was first approved in July 1978, with the goals of defining the boundaries of urban areas, linking those urban areas, providing a land reserve for future linear facilities, and providing a system of open space and recreational facilities. Municipalities' official plans and local zoning by-laws reflect the policies and mapping of the Plan (in most cases). Only a portion of the PBWP overlaps the Niagara Escarpment Plan (NEP) Area in the City of Burlington and the City of Hamilton. Part 2.3 of the Greenbelt Plan states that the

requirements of the PBWP continue to apply except for the sections of the Greenbelt Plan that set out policies for natural systems and parks and open space.

The following NEP amendments added lands to the NEP Area that were also in the PBWP Area. Once approved and designated in the NEP Area, these lands also remained subject to the PBWP. These amendments include:

**Amendment No. 176 (Cootes Paradise/Royal Botanical Gardens)**, was approved in December 2011, to amend the NEP to add and designate approximately 93 hectares (230 acres) of lands owned by the Royal Botanical Gardens, the City of Hamilton and Hydro One; which include easements for Hydro One (along two existing hydro lines), joining these lands to the main body of the NEP. The majority of these lands are now within the NEC Area of Development Control (with the exception of the lands designated as Urban Area).

**Amendment 177 08 (407 Gap lands)** – On June 14, 2010, the 407 “Gap Lands” in the City of Burlington, were added to the Niagara Escarpment Planning Area pursuant to the provisions of the *Niagara Escarpment Planning and Development Act* (NEPDA), through the filing of Regulation 235/10. The subject lands were then added to the NEP and designated (through Amendment 177 approved in January 2012), as Escarpment Natural Area and Escarpment Protection Area with a portion identified in the Niagara Escarpment Parks and Open Space System. Lands that were still required for PBWP purposes were excluded from inclusion in the NEP at that time. These lands remain outside of the NEC Area of Development Control.

**Amendment No. 179 (Pleasant View)**, was approved in October 2013, to add the Pleasant View Survey area lands (City of Hamilton), to the NEP and designate the lands in accordance with the provisions of the NEP. The Pleasant View Survey lands were included in the Niagara Escarpment Planning Area by Ontario Regulation 235/10 which was filed on June 14, 2010. In 2021, these lands were added to the NEC’s Area of Development Control under Ontario Regulation 642/21. It is staff’s understanding that the lands subject to these previous amendments to bring the lands into the NEP Area have also remained subject to the PBWP, resulting in a possible overlap of planning jurisdiction and challenges when amendments to the PWBW Plan were proposed that also required consistency with the NEP.

## Implications

It is NEC staff's understanding that there would be very few implications to the NEC as a result of the revocation of the PBWP. It is NEC staff's understanding that in the event of a conflict between the overlapping provincial plans, the more restrictive policies would apply. However, it has been recognized by the NEC that this overlap may be confusing to landowners, the municipalities as well as the NEC, as to what planning approvals may be necessary from the NEC or the local municipality when development is proposed in these areas.

In addition, some of the lands that were added to the NEP through the above-noted amendments were included in the area of Development Control and some are not (i.e., the "Gap Lands"). If the PBWP were to be revoked, for the lands which are currently in the NEP Area, the NEP would remain in effect, however, staff notes that further discussion would be required to determine if including the lands in the area of Development Control is desired or appropriate. Such a process was undertaken in 2021 when the Pleasant View Survey lands were added to the area of Development Control at the request of the City of Hamilton. In addition, there would need to be consultation with the affected municipality, as they may have different views on whether development should be regulated by Development Control under the NEPDA or municipal zoning.

## Conclusion

In summary, the NEC is generally supportive of the revocation of the Parkway Belt West Plan as it would create more certainty and reduce regulatory burdens, allowing for streamlining of planning processes. The policies of the NEP, for those lands within the NEP Area, will continue to provide a more up-to-date policy framework that would ensure the relevant objectives related to preserving open spaces, protecting natural heritage, and encouraging recreational land use are achieved. Staff observes that through the numerous amendments to the PBWP over the years, many of the non-infrastructure policies have been removed and the remaining goals are no longer applicable or will be better supported by the Provincial Policy Statement, the Growth Plan, and the NEP and Greenbelt Plans. However, staff provides that further discussion with the Ministry of Municipal Affairs and Housing staff should be undertaken in consultation with the NEC and the Ministry of Natural Resources and Forestry to understand the implications noted by staff above.

The NEC has a long history of protecting the Niagara Escarpment and is committed to working closely with the province to effectively carry out our responsibilities under the NEPDA, and in doing so, ensuring that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Lisa Grbinicek, MCIP, RPP  
Senior Strategic Advisor

- c. Rob Nicholson, Chair, NEC  
Kathy Woeller, Director, NEC  
Kim Peters, Manager, NEC



# C1.8

November 24, 2022

Jennifer Keyes  
Director, Resources Planning and Development Policy Branch  
Ministry of Natural Resources and Forestry  
Natural Resources Conservation Policy Branch  
Natural Heritage Section  
300 Water Street  
Peterborough, ON K9J 8M5

**RE: Proposed Updates the Ontario Wetland Evaluation System (OWES)  
Environmental Registry Posting 019-6160**

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Thank you for the opportunity to comment on the proposed updates to the OWES. The Niagara Escarpment Commission (NEC) is an agency of the Province of Ontario and works on behalf of the people of Ontario to preserve the Niagara Escarpment substantially as a continuous natural environment, a vital corridor of green space through south-central Ontario, ensuring only such development occurs as is compatible with that natural environment.

The NEC has reviewed the proposed revisions to the Ontario Wetland Evaluation System (OWES). In general, the NEC supports a review and update of the OWES manual to ensure that it reflects the best available science and incorporates widely accepted inventory and assessment methods. The modernization of OWES has the potential to contribute to the enhanced conservation of valuable wetland features and their functions. However, the changes currently proposed to the OWES raise some matters of potential operational and process implications as to how the NEC carries out its processes to make decisions in conformity with the Purpose and Objectives of the *Niagara Escarpment Planning and Development Act* (NEPDA) and the Niagara Escarpment Plan (NEP).

The following NEC Director approved comments first provide the context by which the NEC is governed and operates which is then followed by the possible implications.

## Context

The NEPDA is clear in its requirement that water, as a key part of the Escarpment's natural environment, should be protected through the implementation of the NEP. Section 8, which sets out the objectives of the NEP, includes the objective: *"to maintain and enhance the quality and character of natural streams and water supplies."* The NEP also includes the Objectives for the protection of key hydrologic and key natural heritage features, namely, to ensure that hydrologic features and functions including the quality, quantity and character of groundwater and surface water, at the local and watershed level, are protected and where possible enhanced. For clarity, wetlands are considered both a key hydrologic feature as well as a key natural heritage feature within the NEP. The NEC, through the objectives, land use designations and development criteria policies of the NEP, has a long and successful history of protecting Escarpment wetlands from incompatible development.

The NEC has identified, using spatial data obtained from the Southern Ontario Land Resource Information System (SOLRIS 2000 version 1.2), that approximately nine percent (9%) of the NEP Area is covered by wetlands<sup>1</sup>. The majority of these wetlands are located within the northern sections of NEP Area, particularly in the County of Grey, where more than half of all NEP Area wetlands can be found.

The NEP was one of the first environmental land use plans which established a foundation based on a land use designation system with identified criteria designed to explicitly map natural features and areas and ascribe to these areas permitted uses and associated land use policies. The ability to delineate and map areas and apply specific land use designations is a key strength of the NEP.

The Escarpment Natural Area Designation includes the objective to maintain the most natural Escarpment features: stream valleys, wetlands, and related significant natural areas. Escarpment Natural Area Land Use Designation Criterion 4 includes all wetlands identified as being Provincially Significant as identified through OWES and all other remaining wetlands (evaluated and non-evaluated) greater than 20 hectares in size. The interpretation of including provincially significant wetlands in Escarpment Natural Area has been undertaken for some time now, including through the processing of NEP Amendments and at the time of a Plan Review.

The NEP has long maintained strong policy provisions for natural heritage features, including wetlands. Wetlands regardless of significance, are identified as Key Natural

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<sup>1</sup> Consistent with the Greenbelt Plan (2005) Performance Indicators Baseline reporting for Wetlands in the NEP Area, Municipal Affairs and Housing (MMAH).



Heritage Features and Key Hydrologic Features where development is prohibited, with very limited exceptions. In relation to the PPS, the NEP policy exceeds the PPS standards. While the application of the OWES in determining wetland significance does not alter the direct protection afforded to wetlands in the NEP Area, the NEP does rely on the science-based methodology to assist in making decisions respecting mitigation (i.e., determining appropriate setbacks), and to accurately map the Escarpment Natural Area designation.

### Considerations

The NEP Program has valued the long-time role of the MNRF, the NEC's parent Ministry, as the administrator for the OWES. The MNRF, in NEC staff's view, has been very effective in ensuring standardization and consistency in the process is achieved in the designation of wetlands as provincially significant. Staff understands that the proposed legislation will remove oversight by the MNRF or conservation authorities to review and confirm wetland evaluations, leaving this responsibility to "decision-makers". From the perspective of a provincial land use agency involving numerous jurisdictions from north to south, there is value for wetland evaluations to continue to be reviewed and have oversight by a single entity, preferably with the demonstrated subject matter expertise and with an objective view. The Wetland Conservation Strategy for Ontario (2017-2030), prepared by the Province identifies that *the conservation of wetlands will be improved by making wetland evaluation results available to support informed decisions about land use and resource development.*

Potential re-delegation of oversight of the OWES to local "decision-makers" (e.g., municipalities), could result in an inconsistent approach to wetland evaluations, which may have implications for how NEC land use proposals are assessed and for the application of the NEP land use designation criteria.

The NEC would welcome the opportunity to further discuss and receive clarity on the following considerations, as it relates to the NEC in carrying out its processes to make decisions in conformity with the Plan:

- Record keeping and data sharing. It is unclear as to who will maintain the provincially significant mapping layer and records and whether land use planning agencies, such as the NEC who rely on this information in the assessment of land use planning applications and for mapping purposes, will have consistent access to accurate data for decision-making purposes, as is currently available through the MNRF. A further complication as to data administration is that natural features, including wetlands often do not follow municipal boundaries.

- “Decision-maker”. In the NEP Area, the NEC is the land use authority with primacy in decision-making as prescribed by the NEPDA. Clarity is requested as to whether the NEC will be assigned as the “decision-maker” with respect to where OWES evaluations are required in order to inform planning decisions under the NEPDA. Such a responsibility may result in staffing and resourcing implications.
- Landowner/Applicant implications. Clarity is requested as to whether there may be an expectation that landowners/applicants be required and pay for third-party peer reviews to confirm the findings of field investigations.

The NEC further understands that the proposed changes to the OWES would no longer allow wetlands to be complexed together, treating each wetland independently, resulting in smaller wetlands being unlikely, in most cases, to meet the criteria to be designated as provincially significant. The proposed revision would enable individual wetland units that are currently part of a previously evaluated wetland complex to be re-evaluated (re-scored and re-mapped), without requiring a complete re-evaluation of all units in the existing wetland complex.

Potential operational implications for further consideration include:

- Removal of complexing of wetlands may not support the systems-based approach that is embedded in the Provincial Plans and municipal Natural Heritage Systems. The 2017 NEP identifies a broader landscape approach to protecting the natural environment and identifies that the Plan should be implemented in a way that recognizes the natural heritage system of the Niagara Escarpment and associated natural heritage features. Smaller isolated wetlands are part of this system.
- Implications for the Conservation Land Tax Incentive Program (CLTIP). For example, currently, the presence of the Escarpment Natural Area designation is identified as a criterion for eligibility to participate in the CLTIP. The inability for smaller wetland features to be considered part of a complex for designation as Escarpment Natural Area may compromise the future eligibility for the CLTIP.
- Implications to the process of NEP Land Use Designation mapping. The Coordinated Land Use Plan Review resulted in updates to the Land Use Designation Criteria and mapping. The Cabinet approved the 2017 NEP maps as the most up-to-date mapping. Permitting re-evaluations of smaller wetlands outside of the context of a larger wetland complex may create inaccurate land use mapping in the NEP Area should smaller wetlands currently part of a wetland complex lose their status as being provincially significant. The NEC generally does not alter mapping on an ad-hoc basis (a Plan Amendment is

required). Plan-wide changes to mapping only take place during the time of a Plan Review, if identified as in scope of the Review.

- In removing the complexing of smaller wetlands, additional changes to the OWES scoring process for smaller, isolated wetlands were not also undertaken. The System, therefore, may not adequately allow for the importance of some of these smaller, isolated wetlands to be considered.
- Conservation authorities are still identified in the OWES “Sources of information” section as (an agency) “that may have useful biological or general wetland information” and the NEC would agree that CAs have demonstrated expertise and possess valuable local knowledge of wetlands within their respective watersheds. However, it is uncertain if an unintended consequence of the Bill 23 regulations, including the elimination of the ability for CAs to act as a commenting agency on applications under the NEPDA, would create a barrier to consulting a CA for this valuable information when requested as part of the review of a NEC amendment or development permit application. Additionally, the removal of the ability for CAs to use wetland evaluations as part of their regulatory review and as part of watershed planning may have implications for the review of NEC development applications by the NEC, given the role wetlands play in flood attenuation and groundwater recharge, and the relevancy of these processes to the evaluation of development proposals by the NEC.

The Wetland Conservation Strategy for Ontario (2017-2030) prepared by the Province, identifies that a review of the method for mapping and evaluating wetland significance should be undertaken in a manner that does not compromise the quality or accuracy of the OWES process. The Strategy also identifies the concept of tailoring the process to the variety of land use planning frameworks in the province. The NEC is supportive of these identified approaches and would welcome the opportunity to work with the Ministry to further identify improvements that would support the Purpose and Objectives of the NEP.

In summary, the NEC has a long and successful history of protecting wetlands within the NEP Area and is committed to working closely with the Province so as to be able to continue to effectively carry out our responsibilities under the NEPDA, and in doing so, ensuring that the Escarpment will continue to be protected for future generations of Ontario.

Yours truly,

*Original signed by:*

Lisa Grbinicek  
Senior Strategic Advisor

- c. Rob Nicholson, Chair, NEC  
Kathy Woeller, Director, NEC  
Kim Peters, Manager, NEC



# C1.9

November 24, 2022

Gavin Downing  
Director  
Ministry of Culture and Multiculturalism  
Citizenship, Inclusion and Heritage Division  
Heritage Branch  
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**RE: Proposed Updates to the Ontario Heritage Act (OHA) and its Regulations  
Environmental Registry Posting 019-6196**

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The Niagara Escarpment Commission appreciates the opportunity to comment on the above noted posting.

The Niagara Escarpment Commission (NEC) is an agency of the Province of Ontario, working on behalf of the populace, ensuring the conservation of the Niagara Escarpment as a continuous natural and cultural heritage environment transecting south-central Ontario by ensuring the compatibility of development within the Niagara Escarpment Plan (NEP 2017) area.

The NEC has reviewed the proposed amendments to the Ontario Heritage Act (OHA) and related regulations and provides the following NEC Director approved comments on the potential impacts of these proposed changes as they may affect the identification and conservation of cultural heritage resources by the NEC through by its decisions made in conformity with the Purpose and Objectives of the Niagara Escarpment Planning and Development Act (NEPDA) and the NEP.

The NEPDA is clear in its requirement that cultural heritage resources should be protected through the implementation of the NEP in Section 8 of the Act. The NEC, through the objectives, land use designations and development criteria policies of the NEP, has a long and successful history of protecting cultural heritage, including First Nations and Metis interests, within the Escarpment Area from incompatible development. The NEP was one of the first land use plans based on a land use designation system explicitly identifying archaeology, built heritage and cultural heritage landscape resources as priorities for their conservation and management, and remains a hallmark strength of the NEP in combination with cultural heritage policy in the

Provincial Policy Statement (2020). These policies provide for methodological guidance in for planning decisions made under the NEP.

The NEC supports a review and update of the Ontario Heritage Act (OHA) and related regulations to reflect current good cultural heritage planning practice. Modernization of the OHA and related regulations may be used to improve the management and conservation of cultural heritage resources, including those of Indigenous and Metis interests. The NEC history of working in concert with the Ministry of Culture and Multiculturalism reflects our ongoing coordination of policy development/ refinement and development-specific projects. We have reviewed the proposed changes in this context and have comments for our colleagues at MCM to consider for their NEC implications. For brevity on these observations, a synopsis of the section change is provided, followed by broad policy implications (**bolded**), then NEC specific operational impacts (*italics*).

OHA Part III proposing changes to:

- O.Reg 10/06 Criteria and process for identifying Provincial Heritage Properties (PHPs) of Cultural Heritage Value or Interest (CHVI)
  - **Unable to identify policy implications as no specific changes are provided.**
  - *Changes to these criteria and processes may influence the identification and conservation of PHPs within the NEP*
- Standards and guidelines (S&Gs) for the conservation of PHPs
  - **Unable to identify policy implications as no specific changes are provided.** *Changes to these S&Gs may affect how PHPs are conserved within the NEP*

OHA Part III proposed changes will provide for:

- Exemption of Crown, Ministry and Prescribed Public Bodies (PPBs) from following S&Gs for PHPs when working on provincial priorities:
  - transit, housing, long-term care, infrastructure, etc.
    - **Provisions appear to circumvent due diligence in the management of archaeology, built heritage and cultural heritage landscapes**
    - **It is unclear as to whether Indigenous/Metis consultation has occurred respecting this proposal. These exemptions appear to conflict with other legislation and policy not subject to Bill 23**
    - *If applied, such exemptions may limit the capacity of the NEC to fulfil its role in conserving PHPs within the NEP area*

OHA Part IV proposing changes to:

- Require municipalities to place their Municipal Heritage Registers online
  - **This is largely in place through municipalities and the Ontario Heritage Trust**
  - *There is no significant impact to the NEC*

- Permit owners permitted to appeal inclusion on register at any time
  - **This is largely existing in effect.**
  - *There is no significant impact to the NEC.*
- Require non-designated properties included on Municipal Heritage Registers to meet one or more O.Reg 9/06 CHVI criteria
  - **This is largely in effect already, but formalizes that requirement**
  - *There is no significant impact to the NEC*
- Require that non-designated properties on a Municipal Heritage Register that are subject to a notice of intention to designate (NOID) for which a designation by-law is not passed, or where NOID is successfully appealed, be removed from the Register
  - **Mandatory removal from the register when meeting one or more O.Reg 9/06 criteria for CHVI appears to generate a conflict where a property has been determined to be of CHVI by its original inclusion on the register, but is prohibited from being on the register, and is likely subject to legal challenges on this basis.**
  - *Identification of potential cultural heritage resources is part of evaluations for planning applications*
    - *Removal of candidate, non-designated properties from the heritage register means they are no longer flagged as potential resources*
    - *As a result, there is risk to the NEC through inability to address previously identified potential resources that may no longer be screened for their potential CHVI because of their removal from a Register.*
    - *May result in additional cultural heritage screening burden by applicants to address this new data gap.*
- Existing and future non-designated properties on a Municipal Heritage Register are to be removed after two years if they are not subject to a NOID during this two-year interval
  - **Mandatory removal from the register when meeting one or more O.Reg 9/06 criteria for CHVI appears to generate a conflict where a property has been determined to be of CHVI by its original inclusion on the register, but is prohibited from being on the register, and is likely subject to legal challenges on this basis.**
  - *Identification of potential cultural heritage resources is part of evaluations for planning applications*
    - *Removal of candidate, non-designated properties from the heritage register means they are no longer flagged as potential resources*
    - *As a result, there is risk to the NEC through inability to address previously identified potential resources that may no longer be screened for their potential CHVI because of their removal from a Register.*
    - *May result in additional cultural heritage screening burden by applicants to address this new data gap.*
- On removal from register, properties may not be placed on register for five years

- **Mandatory removal from the register when meeting one or more O.Reg 9/06 criteria for CHVI appears to generate a conflict where a property has been determined to be of CHVI by its original inclusion on the register, but is prohibited from being on the register, and is likely subject to legal challenges on this basis.**
- *Identification of potential cultural heritage resources is part of evaluations for planning applications*
  - *Removal of candidate, non-designated properties from the heritage register means they are no longer flagged as potential resources*
  - *As a result, there is risk to the NEC through inability to address previously identified potential resources that may no longer be screened for their potential CHVI because of their removal from a Register.*
  - *May result in additional cultural heritage screening burden by applicants to address this new data gap.*
- Properties subject to Part IV designation must meet two or more O.Reg 9/06 CHVI criteria
  - **This is largely in effect already, but formalizes that *de facto* requirement**
  - There is no significant impact to the NEC.
- Notice of Intention to Designate may only be posted if a property is already on a Municipal Heritage Register at the time of a prescribed Planning Act event
  - **This is largely in effect so represents the *status quo***
  - **Inclusion of non-designated properties on the Municipal Heritage Register was introduced in 2002 with housekeeping changes to the OHA. Prior to this, municipalities retained "built heritage inventories" that effected the same purpose, and by Official and Secondary Plan policy could restrict demolition (the current effect of having non-designated properties on the Register) of inventoried properties. It is likely that this practice would be reinstated, but not systematically**
  - **With mandatory removal of non-designated properties from the heritage register specified above, potential cultural heritage properties are not flagged in advance of prescribed Planning Act events**
  - *Identification of potential cultural heritage resources is part of evaluations for planning applications*
    - *Removal of candidate, non-designated properties from the heritage register means they are no longer flagged as potential resources*
    - *As a result, there is risk to the NEC through inability to address previously identified potential resources that may no longer be screened for their potential CHVI because of their removal from a Register.*
    - *May result in additional cultural heritage screening burden by applicants to address this new data gap.*

OHA Part V proposing changes to:

- Require that Heritage Conservation Districts meet O.Reg 9/06 CHVI



- **This is largely in effect already, but formalizes that *de facto* requirement**
- *There is no significant impact to the NEC*
- Establish regulations to amend/repeal HCD by-laws
  - **Removal of HCD by-laws is already permitted, but guidelines/regulations may be useful to provide a framework for this process**
  - *There is no significant impact to the NEC*

OHA Part VI proposing changes to:

- Conduct a miscellaneous cost analysis for municipalities and stakeholders
  - **Unable to identify policy implications as no specific changes are provided Prior discussion of municipal compensation for "loss of development value due to OHA designation" suggests this may be the ambit of this contemplation, but this is speculative. Loss of value compensation**
  - **Potential conveyance of costs to designating authorities may dissuade designations and conservation of cultural heritage properties**
  - *NEC risk exposure is a lack of municipal protection afforded for properties of cultural heritage value due to risk perceived by the municipality*

Thank you for the opportunity to comment on the proposed updates to the Ontario Heritage Act and related regulations. In summary, the NEC has a long and successful history of cultural heritage conservation within the NEP Area, and will continue to do so through the strong protection provisions of the NEP.

The NEC has an interest in working with the Ministry of Culture and Multiculturalism to ensure that the updates to the Ontario Heritage Act and related regulations continue to support the NEC in carrying out our responsibilities under the NEPDA, and in doing so ensuring that the Escarpment will continue to be protected for future generations of Ontarians.

Yours truly,

*Original signed by:*

Joe Muller  
Senior Strategic Advisor

- c. Rob Nicholson, Chair Niagara Escarpment Commission
- Kathy Woeller, Director Niagara Escarpment Commission
- Kim Peters, Manager, Niagara Escarpment Commission
- Paula Kulpa, Senior Policy Advisor Heritage Policy and Services Unit