

**STAFF REPORT:**

**Planning**



**REPORT TO:** Mayor and Members of Council  
**MEETING DATE:** June 1, 2009  
**REPORT NO.:** PL.09.60  
**SUBJECT:** NEP 178 09 Harmonization of the NEP with the *Endangered Species Act, 2007*  
**PREPARED BY:** Cindy Welsh, MCIP, RPP  
Senior Policy Planner

#### **A. Recommendations**

**THAT Council does hereby receive Planning Staff Report PL.09.60, NEP 178 09 Harmonization of the NEP with the *Endangered Species Act, 2007*;**

**THAT Council support the initiative of the Niagara Escarpment Commission to harmonize the Niagara Escarpment Plan with the *Endangered Species Act, 2007*; and**

**THAT Council direct staff to forward these comments to the County of Grey and the Niagara Escarpment Commission.**

#### **B. Background**

On March 19, 2009, the Niagara Escarpment Commission (NEC) circulated to municipalities within the Niagara Escarpment Plan (NEP) Area the proposed Amendment to the Niagara Escarpment Plan PC 178 09 (Harmonization of NEP with the *Endangered Species Act, 2007*) for comments. The intent of the amendment is to amend the Niagara Escarpment Plan (NEP) objective, policies and definitions related to Species at Risk (SAR), Wildlife Habitat and Fish Habitat and to undertake general housekeeping matters in order to harmonize with the *Endangered Species Act, 2007*.

The *Endangered Species Act (ESA), 2007* came into force on June 30, 2008. This legislation replaces Ontario's original Endangered Species Act written in 1971. The NEP Amendment will strengthen the current policies with respect to habitat protection for SAR, while maintaining the integrity of those existing policies supporting habitat protection for general wildlife and fish species that may not be subject to the provisions of the ESA, 2007.

The ESA 2007 provides broader protection for species at risk and their habitats, greater support for volunteer stewardship efforts of private landowners, resource users, and conservation organizations, a stronger commitment to recovery of species, greater flexibility, increased fines, more effective enforcement and greater accountability, including government reporting requirements.

## The Blue Mountains Official Plan

Section 14 Niagara Escarpment Plan of the Town of the Blue Mountains Official Plan contains various references to sections of the Niagara Escarpment Plan. If the Niagara Escarpment Commission approves NEP 178 09, the Town will have to bring its Official Plan into conformity with the Niagara Escarpment Plan. This could be done at the time of the Town's Official Plan Five-year review. The sections that will have to be brought into conformity are as follows:

- Section 14.2.1 (1) (f) – amend by deleting and adding new text.
- Section 14.2.1 (1) (i) – amend by deleting and adding new text.
- Section 14.3.9 (15) – amend by deleting and adding new text.
- Section 14.3.10 Wildlife Habitat – amend the Objective by deleting and adding new text.
- Section 14.3.10 (1) – amend by deleting and adding new text.
- Section 14.3.10 (2a, b and c) – amend by deleting and adding new text.
- Section 14.3.10 (3a, b and c) - amend by adding new subsection.
- Section 14.3.11 Forest Management – amend the Objective by deleting and adding new text.
- Section 14.3.11 (2)(b) – amend by deleting and adding new text.
- Section 14.6 Definitions
  - amend *Wildlife Habitat* definition;
  - add definitions for Extirpated Species, Fish Habitat, Habitat of Endangered Species, Threatened Species, Special Concern and Extirpated Species, Habitat of Rare Species and SARO List.

The proposed Amendment to the NEP will complement and assist in facilitating the implementation of the provincial direction on SAR contained within the ESA, 2007, and bring the definitions related to SAR in line with current Ministry of Natural Resources (MNR) standards while maintaining the strength and integrity of the original NEP policies with respect to habitat protection for rare species. The changes being proposed reflect the provincial direction on SAR.

Planning Services Staff are of the opinion to offer support of the initiative of the Niagara Escarpment Commission to harmonize the Niagara Escarpment Plan with the *Endangered Species Act, 2007*. Staff are also cognisant of the fact that if the Niagara Escarpment Commission approves NEP 178 09, the Town will have to bring its Official Plan into conformity with the Niagara Escarpment Plan.

### C. The Blue Mountains' Strategic Plan

1. Managing growth to ensure the ongoing health and prosperity of the community.

### D. Environmental Impacts

The proposed Niagara Escarpment Plan does not appear to generate any significant environmental impacts that can be regulated by the Town.

## **E. Budget Impact**

Nil.

## **F. Attachments**

1. Niagara Escarpment Commission, Initial Staff Report – Proposed Niagara Escarpment Plan Amendment PC 178 09 (Harmonization of the Niagara Escarpment Plan with the *Endangered Species Act*, 2007), dated March 19, 2009.
2. Proposed Amendment to the Niagara Escarpment Plan PC 178 09 (Harmonization of the Niagara Escarpment Plan with the *Endangered Species Act*, 2007), dated March 19, 2009.
3. Species at Risk in Grey County, Ministry of Natural Resources.

Submitted by:

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Ontario's Niagara Escarpment  
A World Biosphere Reserve

March 19, 2009

## INITIAL STAFF REPORT

**Re: Proposed Niagara Escarpment Plan Amendment PC 178 09  
(Harmonization of the Niagara Escarpment Plan with the *Endangered Species Act, 2007*)**

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**DATE:** March 19, 2009

**SOURCE:** Niagara Escarpment Commission (NEC)

**AREA:** The entire Niagara Escarpment Plan Area

### PROPOSAL:

To amend the Niagara Escarpment Plan (NEP) objective, policies and definitions related to Species at Risk (SAR), Wildlife Habitat and Fish Habitat and to undertake general housekeeping changes in order to harmonize with the *Endangered Species Act, 2007*.

### BACKGROUND:

The *Endangered Species Act (ESA), 2007* came into force on June 30, 2008. This legislation replaces the *Endangered Species Act, 1971*, which, while the first provincial legislation of its kind in Canada, was drafted and passed during a time when less was known about SAR and the related science of protection. Under the old Act, only endangered species were regulated and there were no policies and procedures developed to support the interpretation of the Act. The current NEP references the old *ESA*, within the objective of Section 2.8 Wildlife Habitat which states:

*"...to protect the habitat of endangered (regulated) as prescribed by the Endangered Species Act..."*

Furthermore, since the NEP was first approved in 1985, the language and definitions related to SAR and SAR habitat have been improved upon and better reflects current understanding and principles of conservation biology, including definitions developed and supported by the Ministry of Natural Resources (MNR).

An amendment to harmonize the NEP with the *ESA, 2007* would complement the current NEP policies respecting SAR, by further clarifying and broadening the scope of the species receiving habitat protection, providing automatic habitat protection for

endangered and threatened species, supporting mandatory recovery planning, promoting stewardship activities and providing legal protection. These enhanced ESA provisions lend support to the implementation of habitat protection of SAR within the NEP Area, as well as to the implementation of other Provincial Plans supporting SAR.

A recommendation was made in a June 19, 2008 Staff Information Report on the *ESA, 2007* to:

*“Direct staff to proceed with an amendment to the NEP that will harmonize Section 2.8 (Wildlife Habitat) and Section 2.6 (Fisheries) with the ESA, 2007, including the necessary revisions to the definitions throughout the NEP pertaining to species at risk and their habitats.”*

The above recommendation was supported by the NEC at the June 19, 2008 meeting.

### **SUMMARY RECOMMENDATION:**

*Instruct Staff to prepare the proposed Amendment PC 178 09 for circulation and notification in accordance with the provisions of Sections 7 and 10 of the Niagara Escarpment Planning and Development Act (NEPDA), based on the supported recommendation established on June 19, 2008 and the recommendations of this Report.*

### **ANALYSIS**

It is necessary to harmonize the relevant sections of the NEP pertaining to wildlife habitat, fish and to undertake general housekeeping amendments to the language throughout the Plan, in order to ensure a consistent and coordinated approach to SAR habitat protection through the implementation of the NEP the *ESA, 2007*, the Provincial Policy Statement (2005) (PPS) and all other provincial legislation respecting SAR. This will reduce confusion and contradiction amongst planning agencies and landowners within the NEP Area.

In the development of policies, guidelines and procedures for the implementation of the *ESA, 2007*, the MNR worked with the various program areas and ministries to ensure that government programs would be in compliance with the *ESA, 2007* and to ensure that the new Act be integrated with all relevant government programs. The NEC was included in this consultation process and MNR is in support of the proposed amendment approach to harmonize the updated *ESA, 2007* with the NEP.

Furthermore, amendments to the related Species at Risk (SAR) terminology, including the addition of new terminology, where appropriate, will reflect best current scientific knowledge and approaches to biodiversity conservation as well as provide consistency with the standardized language developed and currently applied by the MNR and within the *ESA, 2007*. The revisions to terminology and definitions will ensure consistency in interpretation of the NEP and the *ESA, 2007*.

### ***Other Provincial Policy***

A number of Provincial Plans, policy tools and initiatives currently provide for the protection of SAR in Ontario, outside of the *ESA, 2007* (including the NEP). The *ESA,*

2007 clarifies what requires protection and provides enforcement mechanisms that lend support to these other policies and initiatives. Provincial Policy Statements have included habitat protection statements since 1994. The *ESA, 2007* and the PPS (2005) each provide for the protection of SAR and their habitats, with some notable distinctions. Section 2.1 Natural Heritage of the PPS under the *Planning Act* currently provides for protection to the *significant habitat* of endangered and threatened species. The Greenbelt Plan (2005) also includes policies for the protection of the *significant habitat* of endangered, threatened and special concern species.

All agencies, including the NEC, must be consistent with the policies of the PPS; however, the PPS states that Provincial Plans take precedence over policies in the Provincial Policy Statement to the extent of conflict. This statement is mirrored in Part 2.1 of the NEP. With respect to land use planning, the PPS (2005), and provincial legislation including the NEP, will continue to provide for habitat protection as set out in their respective policy frameworks and Plans, as the role of these Plans were not altered by the coming into force of the *ESA, 2007*. The proposed Amendment to the NEP to harmonize with the *ESA 2007* will support the provincial direction on SAR.

The MNR is working with the Ministry of Municipal Affairs and Housing (MMAH), to consider the need for harmonization of the *ESA, 2007* with *Planning Act* policies and procedures. MNR will provide guidance on how “Significant Habitat” under the PPS (2005) will be integrated with the “General Habitat” definition under the *ESA, 2007*. It is anticipated that the definition of “Significant Habitat” under the PPS (2005) and “General Habitat” of the *ESA, 2007*, will work towards protecting the same habitat.

Habitat descriptions are being developed by the MNR and will support the implementation of the *ESA 2007* and will also assist in the identification of SAR habitat within the NEP Area. Escarpment municipalities will continue to have consideration for SAR (as they did prior to the *ESA, 2007* coming into force), which means in terms of land use planning within the NEP Area, continuing to provide for habitat protection as set out in the NEP and PPS (2005), and now the *ESA, 2007*, with technical support to identify SAR and SAR habitat provided by MNR.

The Greenbelt Plan includes lands within the NEP. For lands within the NEP the requirements of the NEP with respect to SAR habitat protection continue to apply.

In addition to the above legislation, other key initiatives playing a role in the protection of SAR include *Ontario’s Biodiversity Strategy* (June 2005), which outlines a goal to conserve Ontario’s biodiversity and provide for the sustainable use of the province’s biological resources; and the *Provincial Parks and Conservation Reserves Act (2007)*, which will guide how special areas are planned and managed, including greater certainty that incompatible activities will not impact SAR habitat. An Amendment to the NEP to harmonize with the *ESA, 2007* will also work towards supporting these valuable provincial initiatives.

### ***Niagara Escarpment Plan (2005) Considerations***

A key difference between the *ESA, 2007* and the NEP with respect to protection of SAR and SAR habitat is that the NEP does not provide direct protection to the species, but rather to the habitat of the species (and thereby protecting the species). In addition, the

NEP has policy provisions aimed at protecting and minimizing impact to the habitat of all wildlife and fish species within the NEP Area, not only SAR.

The harmonization of NEP policies with the *ESA, 2007* will not weaken the extent and intent of habitat protection already provided by the NEP Section 2.8 Wildlife Habitat objective and policies. Specifically, “rare species” are a category of species defined and for which habitat protection is provided within the existing policies of Section 2.8 of the NEP. Rare species are those species that are identified, tracked and given a classification system by the Natural Heritage Information Centre (NHIC) of the MNR. These “rare species”, as defined in the NEP, are a separate category from “Endangered” (and Endangered regulated), “Threatened” and “Special Concern”. However, the “Rare” category is not a SAR policy area and the *ESA, 2007* does not deal with these species or their habitats.

Additionally, “special concern” species are currently a category of species that are included within the *ESA, 2007*, but are afforded limited habitat protection (protection is provided to the species). However, Section 2.8 of the NEP currently includes policies for the protection of the habitat of special concern species. Therefore, it is appropriate for the NEP to maintain consistency by retaining the policy provisions for these two categories of species.

The proposed Amendment to the NEP will complement and assist in facilitating the implementation of the provincial direction on SAR contained within the *ESA, 2007* and bring the definitions related to SAR in line with current MNR standards, while maintaining the strength and integrity of the original NEP policies with respect to habitat protection for “rare” and “special concern” species.

The *ESA, 2007* includes “flexibility tools” intended to balance social, economic and cultural considerations with protection. These tools may include the issuance of permits, agreements and regulations, that would potentially allow certain activities (*ESA, Section 17 (2)*), to occur that would otherwise be prohibited under the Act (under certain conditions). The issuance of any such permit under the *ESA, 2007*, does not absolve a person (s) from the permit requirements under the NEPDA and the NEP. The proposed Amendment to harmonize with the *ESA, 2007* will not alter this.

### ***Ontario Regulation 828/90***

If a person damages or destroys an area identified as habitat under the *ESA, 2007* they may be in contravention of that Act, notwithstanding approvals given under other Acts, including permits or exemptions issued under the NEPDA. It is the person(s) proposing to undertake an activity/development that is responsible for compliance with the *ESA, 2007*, even if the activity/development has been granted an exemption under Regulation 828/90. As such, no changes to Ontario Regulation 828/90 are required as a result of the coming into force of the *ESA, 2007* and this proposed NEP Amendment to harmonize with the *ESA 2007*.

### ***Habitat Definitions***

No definition of habitat was provided for under the previous *ESA (1971)*. The *ESA, 2007* provides for a clear definition of habitat. The *ESA, 2007* protects habitat based on two definitions. Protected habitat is based on either the “General Habitat Definition” in

the Act or prescribed through a regulation. “General Habitat” is defined in the *ESA, 2007* as:

*“...with respect to any species of animal or plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes including life processes such as reproduction, rearing, hibernation, migration or feeding” (S.2. ESA, 2007).*

Habitat protection under the *ESA, 2007* will be phased in for different categories of species. The “General Habitat” definition applies to endangered and threatened species which are newly listed (after June 30, 2008), and for the endangered species previously regulated under the old *ESA* (Schedule 1 of the *ESA, 2007*). The remaining “transition” species will receive habitat protection once a habitat protection regulation is developed and passed. The intent of the species-specific habitat regulation is to provide greater certainty of the area of habitat that is protected. These habitat regulations “*may prescribe areas where the species lives, used to live, or is believed to be capable of living*” [S. 54.(2)(b)].

There are a number of endangered and threatened species which during this transition will lack habitat protection (under the *ESA, 2007*) until June 2013, unless a habitat regulation is made prior. This does not affect the implementation of the NEP policies for Wildlife Habitat. For planning purposes, the transition species (within the NEP Area) will continue to receive habitat protection through the policies of the NEP as well as the PPS. Therefore the original intent of the NEP policies with respect to the protection of habitat will be maintained through the proposed Amendment to harmonize with the *ESA, 2007*.

The NEP currently provides the following definition of “Wildlife Habitat”:

*“Areas of the natural environment where plants, animals, and other organisms, excluding fish, survive in self-sustaining populations, and from which they derive services such as cover, protection, or food.” (NEP 2005)*

The proposed Amendment includes a definition of Wildlife Habitat that is much more comprehensive and explicit than the current definition. The enhanced definition will not alter the intent of the original policies on Wildlife Habitat but rather assist in clear interpretation and consistent implementation of both the NEP and the *ESA, 2007*. The proposed amended definition also better reflects current science and MNR approaches to habitat conservation.

The proposed Amendment to the NEP will recognize and define the Species at Risk in Ontario (SARO) List. The SARO List is in a regulation under the *ESA, 2007* and will be Ontario’s official list of SAR. The SARO List will be the source for SAR, to inform land use planning within the NEP Area.

### **Amendment Considerations**

In reviewing the Amendment there are several key issues that must be addressed. All amendments must be considered against the purpose and objectives of the *NEPDA*, and the objectives and provisions of the NEP and be consistent with other Provincial policies.

*Does the proposed Amendment satisfy and reflect the purpose and objectives of the NEPDA?*

- a) The purpose of the Act 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”.
- b) The objectives of the Act are:
- To protect unique ecologic and historic areas;
  - To maintain and enhance the quality and character of natural streams and water supplies;
  - To provide adequate opportunities for outdoor recreation;
  - To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
  - To ensure that all new development is compatible with the purpose of the Act;
  - To provide for adequate public access to the Niagara Escarpment;
  - To support municipalities within the Niagara Escarpment Plan Area in their exercise of the planning functions conferred upon them by the *Planning Act*.

The current NEP includes policies pertaining to the protection of SAR habitat, which are applicable to all lands within the NEP Area are supportive of the purpose and objectives of the NEPDA and the NEP. The proposed Amendments to the NEP in order to harmonize with the *ESA, 2007* will maintain the original intent of the NEP policies with respect to the protection of wildlife habitat. The Amendment will reflect improved legislation and scientific knowledge, providing greater clarity and increased protection to SAR, and would therefore continue to meet the purpose and objectives of the NEPDA and the NEP.

*Does the Amendment satisfy and reflect the Niagara Escarpment Plan?*

The purpose and objectives of the NEP are those of the NEPDA. As discussed throughout this Report, the proposed Amendment does not change the original intent of Sections 2.6 New Development Affecting Water Resources (Fisheries) and 2.8 Wildlife Habitat, nor would the general housekeeping amendments related to Wildlife and Fish Habitats, proposed throughout the NEP.

#### *NEP Development Criteria*

The Development Criteria apply to the entire NEP and all NEP Designations. The Development Criteria are aimed at maintaining the natural environment while still allowing development which is compatible with the natural environment. No general housekeeping amendments are proposed for Section 2.2 General Development Criteria. Amendments to the Development Criteria of Section 2.6 New Development Affecting Water Resources (Fisheries), and Section 2.8 Wildlife Habitat are proposed to

harmonize with the *ESA, 2007*. The original overall intent of the Criteria within these Sections will not be altered with the proposed Amendment.

### **Other NEP Criteria**

In Section 2.1 of the NEP, the policies require that the NEC in exercising its authority shall be consistent with policy statements under the *Planning Act* and specific provisions of other Provincial policies. In considering Amendments to the NEP, the NEC should be satisfied that the PPS and Greenbelt policies should be reflected in the NEP to the extent that the policies do not conflict with the policy framework of the NEP, which is focused on long-term Escarpment protection.

Comment has been made earlier in this Report with respect to the PPS and the Greenbelt Plan and the relationship of the policies provisions for SAR habitat, with those of the NEP.

### **Justification for the Amendment**

Subsection 6.1 (2.1) of the NEPDA requires that justification be given as part of each Amendment. However, even if the proposed Amendment is justified at this stage, this is not an endorsement of the eventual approval of the Amendment in whole or in part.

The justification for supporting the initial consideration and processing of this Amendment to harmonize the NEP objectives, policies and language respecting SAR habitat with that of the *ESA, 2007*, is as follows:

1. The Amendment does not conflict with the purpose and objectives of the NEPDA and the NEP and strengthens the protection afforded to the habitat of SAR on the Escarpment. In doing so it supports the overall objective of the NEP to provide for the maintenance of the Escarpment and to ensure only compatible development with that natural environment and the objective to protect unique ecologic areas, which are considered to include SAR habitat. The objective to “*maintain and enhance the quality and character of natural streams and water supplies*”, is also supported by the Amendment through the harmonization of the policies related to Fisheries, with the *ESA, 2007*.
2. In addition to modifications to policies and definitions in order to harmonize with the *ESA, 2007*, the Amendment involves housekeeping items related to modernizing language referring to SAR and their habitats that are in need of updating to reflect the most current science and standardized terminology being applied by MNR, within other provincial legislation, and also reflected within the *ESA, 2007*. The housekeeping amendments also allow for consistency of language throughout the Plan, therefore avoiding any issues with interpretation.
3. The Amendment will ensure that the NEP is supporting a consistent and coordinated approach to the protection of SAR habitat through the various Provincial Plans and legislation and will reduce confusion and contradiction amongst the various planning agencies. The Amendment is consistent with the PPS; no PPS conflict has been identified. Furthermore, MNR will also be considering the need for harmonization of habitat provisions of the PPS with the *ESA, 2007*.
4. The Amendment will maintain the original intent of the protection measures provided to general Wildlife Habitat and Fisheries Habitat, through the NEP

policies, while strengthening the protection for endangered and threatened species habitat in the NEP Area, and reflecting current standards in the language pertaining to SAR and their habitat.

5. The overall objective of NEP Section 2.8 Wildlife Habitat, currently gives consideration to the *ESA (1971)*. Given that the current NEP objective for 2.8 refers to the outdated ESA which has been replaced with an Act that provides greater protection to SAR and SAR habitat, it is logical to amend the Plan to reflect the updated legislation, while maintaining the consistency of the original intent of the policies.

In drafting the Amendment the key issue to be addressed relates to the proposed revisions to NEP policies and definitions pertaining to SAR and their habitats, specifically:

- To establish the appropriate changes in language and definitions within the NEP with respect to SAR in order to reflect the current *ESA, 2007*, while ensuring that the original intent of the NEP policies protecting SAR, Wildlife Habitat and Fish Habitat are not weakened through the harmonization.
- To ensure that the NEP and the *ESA, 2007* are mutually reinforcing, providing an overall consistency and coordinated approach to the protection of SAR habitats within the NEP Area.

### **Conclusion**

Subject to the above considerations respecting the amendments to language and definitions, there is adequate information and justification to warrant the circulation and consideration of the Amendment. The Amendment to harmonize with the *ESA, 2007* results in an improved NEP policy framework for SAR. The changes reflect the provincial direction on SAR that should be reflected in a Provincial Plan like the NEP.

### **Recommendation**

The Niagara Escarpment Commission instruct staff, in accordance with this Report, to prepare the proposed Amendment PC 178 09 for circulation and notification pursuant to Subsection 6.1(2) of the *Niagara Escarpment Planning and Development Act*.

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Lisa Grbinicek  
Senior Strategic Advisor  
*Original signed by*

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Ken Whitbread  
Manager  
*Original Signed by*

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**Ontario's Niagara Escarpment  
A World Biosphere Reserve**

March 19, 2009

**RE: Proposed Amendment to the Niagara Escarpment Plan PC 178 09  
(Harmonization of NEP with the *Endangered Species Act*, 2007)**

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**Recommendation:**

That the Niagara Escarpment Commission initiate the attached proposed Amendment for circulation and notification pursuant to Subsection 6.1 (2) of the *Niagara Escarpment Planning and Development Act*.

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Lisa Grbinicek  
Senior Strategic Advisor

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Ken Whitbread  
Manager

**PROPOSED AMENDMENT PC 178 09  
TO THE NIAGARA ESCARPMENT PLAN**

**Harmonization of the Niagara Escarpment Plan with the  
*Endangered Species Act, 2007***

**(March 19, 2009)**

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**Part A – The Preamble**

**Part B – The Amendment**

## **THE AMENDMENT**

### **PART A – The Preamble**

#### **PURPOSE:**

To undertake a general amendment to the Niagara Escarpment Plan (NEP) to harmonize the objective, policies and definitions with respect to the protection of Species at Risk (SAR) habitat, with those of the *Endangered Species Act, 2007 (ESA, 2007)*. To also address a number of related housekeeping matters pertaining to the language related to SAR, wildlife habitat and fish habitat, to reflect updated knowledge and to ensure consistency.

#### **AREA:**

The entire Niagara Escarpment Plan Area

**INITIATOR:** Niagara Escarpment Commission (NEC)

#### **BASIS:**

Under Section 6.1(2) of the *Niagara Escarpment Planning and Development Act (NEPDA)*, the NEC may initiate an amendment to the NEP, provided that the NEC is satisfied that the amendment is justified.

This Amendment reflects the need to harmonize the existing SAR habitat protection provisions of the NEP, with the updated *ESA, 2007* which came into force in June 2008, replacing the previous ESA which is outdated having been drafted and passed in 1971. The Amendment will strengthen the current policies with respect to habitat protection for SAR, while maintaining the integrity of those existing policies supporting habitat protection for general wildlife and fish species that may not be subject to the provisions of the *ESA, 2007*.

Policies and definitions related to SAR and SAR habitat being amended in the NEP are consistent with the purpose and objectives of the NEPDA and the NEP respecting the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment and in the objective to protect unique ecologic areas, which includes the protection of SAR habitat. The proposed Amendment also respects provincial legislation such as the *ESA, 2007* and the *Federal Fisheries Act*. The Amendment will ensure a consistent and coordinated approach to the protection of SAR habitat through the various Provincial Plans and legislation.

In addition to amendments to the policies within Parts 2.6 and 2.8, and definitions in Appendix 2, the Amendment also includes a number of “housekeeping” matters

related to outdated and inconsistent language contained within the Plan, that once revised, will reflect updated science and standardized terminology developed and applied by MNR. This will allow for consistency in interpretation throughout the NEP and with other provincial policies and legislation.

## **PART B- The Amendment**

### **The Niagara Escarpment Plan is amended by deleting and adding text to the Objective of Section 2.8 Wildlife Habitat as follows:**

The objective is to minimize the impact of development on wildlife habitat and protect the habitat of endangered, threatened, special concern and extirpated species, in a manner consistent with the *Endangered Species Act, 2007* and to protect the habitat of rare species.

#### **Part 2.8.1 Wildlife Habitat is amended by deleting policy 1 in its entirety, and substituting the following policy:**

1. Part 2.8.2 does not apply where the habitat is fish habitat. All other policies of this Plan respecting fish habitat including, but not limited to, Part 2.6.14 and 2.6.15 Fisheries, apply as well as Part 2.8.3 Wildlife Habitat, if the habitat is habitat of a fish species that is endangered, threatened, special concern or extirpated, as defined in this Plan.

#### **Part 2.8.2 a), b) and c) Wildlife Habitat is amended as follows:**

2. Development in wildlife habitat will be designed so as to:
  - a) Minimize the impacts upon the habitat;
  - b) Maintain corridors and linkages with adjacent areas;
  - c) Enhance habitat wherever possible.

#### **Part 2.8 Wildlife Habitat is amended by adding the following new sub-section 2.8.3 a) through c), which shall read:**

3. In the habitat of endangered, threatened, special concern, extirpated and rare species
  - a) Development that would damage or destroy the habitat of endangered or threatened species will not be permitted, except under limited circumstances, in accordance with an authorization provided under the *Endangered Species Act, 2007*.
  - b) Development will be designed so as to minimize the impacts upon the habitat of special concern species and rare species. The proponent of any development will supply as part of any application a report prepared by a qualified expert that identifies the protection measures to be undertaken to minimize any impacts on the habitat of a species of special concern or a rare species, including consideration of Part 2.8.2 of this Plan.
  - c) Development that would damage or destroy the habitat of extirpated species for which a regulation protecting the habitat of that species has been made under the *Endangered Species Act, 2007* will not be permitted except under

limited circumstances, in accordance with an authorization provided under the *Endangered Species Act, 2007*.

**Part 2.6 Fisheries, the introductory paragraph and Part 2.6.14 the introductory paragraph and sub-section d) and Part 2.6.15 are amended as follows:**

The objective is to ensure that water resources are maintained in a clean and healthy condition so that there is no net loss of aquatic ecosystems including fish habitat or wildlife habitat which depend upon lakes, watercourses, wetlands, and groundwater systems for their existence in accordance with both the *Canada Fisheries Act* (for fish habitat) and any associated protocols or policies that have been established under that Act.

14. Development or redevelopment adjacent to significant fishery resources shall demonstrate the following:
  - d) Maintenance of vegetative buffers in accordance with the sensitivity of the fishery resource and the development criteria; and
15. Public access to fishery resource areas shall be maintained or, wherever possible, improved subject to Part 2.6.14.

**The following Appendix 2, Definitions, is amended by deleting the current definitions and substituting the following in their place:**

**Endangered Species** - any species listed on the SARO List as endangered.

**Rare Species** – any species of wild animal, plant or other organism that is tracked and identified by the Natural Heritage Information Centre of the Ministry of Natural Resources as provincially rare, excluding any endangered, threatened, extirpated or special concern species as defined in this Plan. A provincially rare species is a species that in the Natural Heritage Information Centre classifications could range from critically imperilled because of extreme rarity or very steep declines; to imperilled because of rarity due to a very restricted range, very few populations, steep declines or other factors; to vulnerable due to a restricted range, relatively few populations or recent and widespread declines.

**Special Concern Species** - any species listed on the SARO List as special concern.

**Threatened Species** - any species listed on the SARO List as threatened

**Wildlife Habitat** - an area of the natural environment which a wild animal, plant or other organism, excluding fish, uses, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding and includes places that are used as dens, nests, hibernacula or other residences and further includes any specific corridors or linkages that are part of the habitat. The habitat of any species designated or identified by the Ministry of Natural Resources as an “invasive species” is not considered “wildlife habitat” for the purposes of this Plan.

**The following Definition in Appendix 2 is amended to read:**

**Fish Habitat** – the spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend, directly or indirectly, in order to carry out their life processes. “Fish” for the purposes of this Plan has the same meaning as it does in the *Canada Fisheries Act*. The habitat of any species designated or identified by the Ministry of Natural Resources as an “invasive species” is not considered “fish habitat” for the purposes of this Plan.

**The following Definitions are added to Appendix 2:**

**Extirpated Species** – any species listed on the SARO List as extirpated.

**Habitat of Endangered Species, Threatened Species, Special Concern and Extirpated Species, means:**

- a) Where a regulation has been made prescribing the habitat of an extirpated, endangered or threatened species on the SARO List under the *Endangered Species Act, 2007*, the area prescribed by that regulation is the habitat for the species, or
- b) For any other species on the SARO List, the area on which the species depends, directly or indirectly to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding and includes places that are used as dens, nests, hibernacula or other residences.

**Habitat of Rare Species** – for a rare species the definitions of “Wildlife Habitat” or “Fish Habitat” as defined in this Plan apply.

**SARO List** – the Species at Risk in Ontario List regulation made under the *Endangered Species Act, 2007*.

**The following Sections are amended as follows, based on the above amended Definitions:**

**Part 1.3 Escarpment Natural Area, the introductory paragraph, is amended to read:**

Escarpment features which are in a relatively natural state and associated stream valleys, wetlands and forests which are relatively undisturbed are included within this designation. These contain important wildlife and fish habitat and geological features and cultural heritage features and are the most significant natural and scenic areas of the Escarpment. The policy aims to maintain these natural areas.

**Part 1.5 Escarpment Rural Area, Development Policies for Mineral Extraction, sub-section 1 a) ii) is amended as follows:**

- 1 a) ii) The habitat of endangered, threatened, special concern and extirpated species, in a manner consistent with the *Endangered Species Act, 2007* and the habitat of rare species, all as set out in Part 2.8 of this Plan;

**Part 1.6 Minor Urban Centre, Development and Growth Objective 9 is amended as follows:**

9. Development and growth should be compatible with and provide for the protection of unique ecologic areas, wildlife and fish habitat, streams and water supplies and other environmentally sensitive areas, both inside and adjacent to the Minor Urban Centres.

**Part 1.7 Urban Area, Development Objective 9 is amended as follows:**

9. Growth should be compatible with and provide for the protection of unique ecologic areas, wildlife and fish habitat, streams and water supplies and other environmentally sensitive areas, consistent with Part 2 the Development Criteria of this Plan, both inside and adjacent to Urban Areas.

**Part 1.8 Escarpment Recreation Area, Objective 6 and Development Objective 4 are amended as follows:**

**Objective**

6. To ensure that future recreational development is compatible with cultural and natural heritage values (e.g. wildlife and fish habitat) in the area.

**Development Objective**

4. Growth should be compatible with and provide for the protection of unique ecologic, historic and archaeological areas, wildlife and fish habitat, streams and water supplies and other environmentally sensitive areas both inside and adjacent to Escarpment Recreation Areas, consistent with Part 2, the Development Criteria both inside and adjacent to Escarpment Recreation Areas.

**Part 2.6.18 New Development Affecting Water Resources (Flood Plains) is amended as follows:**

18. Where possible, such projects should be designed and located to avoid or minimize the impact on wetlands, wildlife and fish habitat, source areas, streams, steep slopes and other areas of visual and environmental significance.

**Part 2.9 Forest Management, the introductory statement and Part 2.9.2 b) is amended as follows:**

The objective is to maintain and enhance the forests and associated wildlife and fish habitat.

2. Approval to cut is conditional upon:
  - b) Minimizing disruption of wildlife and fish habitat.

**Part 2.13.8 Recreation is amended as follows:**

8. Trails will be located and designed to avoid wherever possible steep slopes, wetlands, erosion-prone soils, agricultural areas and ecologically sensitive

areas such as deer-wintering yards and significant wildlife and fish habitat and Areas of Natural and Scientific Interest.

**Part 2.16.5 The Bruce Trail is amended as follows:**

5. All uses within the Trail corridor shall be located and designed, where possible, to avoid steep slopes, wetlands, erosion prone soils and ecologically sensitive areas such as sensitive wildlife and fish habitat and sensitive areas within Areas of Natural and Scientific Interest.

**Part 3.1.2, the first paragraph of the Section titled Parks and Open Space System Concept is amended as follows:**

The System, which is linear in nature, is based on public lands acquired to protect distinctive features and significant areas along the Escarpment. Feature areas are waterfalls, distinctive landforms associated with the Escarpment and significant wildlife and fish habitat. Historical and archaeological sites, often found associated with these feature areas, are also incorporated.

**Part 3.1.4, the fourth paragraph of the Section titled Parks and Open Space Classification Policy is amended as follows:**

Managing agencies will be encouraged to bring parks or open space areas into conformity over a number of years, especially where monitoring shows that existing uses have exceeded the carrying capacity of the site or area. It is also recognized that some parks or open space areas may be managed in pursuit of objectives such as flood control and resource production, in addition to those presented in Part 3.1.1. Where that is the case, wildlife and fish habitat protection and scenic values, as well as the Objectives of Part 3 of this Plan, will be taken into account in the Park Master/Management Plan or management of the area.

**Part 3.1.4.1 the first paragraph of the section titled Recreation and Commercial Uses in Parks and Open Space is amended as follows:**

Where permitted by the Park Classification, recreation uses in parks and open space, other than in Recreation Parks, shall be incidental or secondary to the protection of land within the park or open space area for public enjoyment and as wildlife and fish habitat. The introduction of intensive uses like downhill ski slopes, golf courses, golf driving ranges, banquet halls, full service restaurants, lodges, hotels, conference centres, retreats, schools, spas and buildings with provision for fully serviced overnight accommodation, as distinct from camping, shall not be permitted. Small scale retail and visitor service facilities may be permitted, especially if developed in conjunction with interpretative displays and information.

# Species at Risk in Grey County

## Township of Georgian Bluffs

Species Name	Scientific Name	Provincial Status Designation
Massasauga	<i>Sistrurus catenatus</i>	Threatened
Black Tern	<i>Chlidonias niger</i>	Special Concern
Milksnake	<i>Lampropeltis triangulum</i>	Special Concern
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
Tuberous Indian-plantain	<i>Arnoglossum plantagineum</i>	Special Concern
Least Bittern	<i>Ixobrychus exilis</i>	Threatened
Northern Map Turtle	<i>Graptemys geographica</i>	Special Concern
King Rail	<i>Rallus elegans</i>	Endangered

## City of Owen Sound

Species Name	Scientific Name	Provincial Status Designation
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Butternut	<i>Juglans cinerea</i>	Endangered

## Municipality of Meaford

Species Name	Scientific Name	Provincial Status Designation
Black Tern	<i>Chlidonias niger</i>	Special Concern
Bald Eagle	<i>Haliaeetus leucocephalus</i>	Endangered
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Loggerhead Shrike	<i>Lanius ludovicianus</i>	Endangered
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
Massasauga	<i>Sistrurus catenatus</i>	Threatened

## Township of Chatsworth

Species Name	Scientific Name	Provincial Status Designation
Milksnake	<i>Lampropeltis triangulum</i>	Special Concern
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
Eastern Prairie Fringed-orchid	<i>Platanthera leucophaea</i>	Endangered

NOTE: These lists are for known endangered, threatened and special concern species occurrences and habitat, and therefore are not considered fully inclusive for all potential rare species and habitat in these areas. List up-to-date as of February 4, 2009. In many cases, site assessment will be required to determine species present and extent of habitat.

For additional information on rare species please refer to the Natural Heritage Information Centre [http://nhic.mnr.gov.on.ca/nhic\\_.cfm](http://nhic.mnr.gov.on.ca/nhic_.cfm)

Status for species as per the Species at Risk in Ontario List (SARO)

### Town of Grey Highlands

Species Name	Scientific Name	Provincial Status Designation
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Milksnake	<i>Lampropeltis triangulum</i>	Special Concern
Loggerhead Shrike	<i>Lanius ludovicianus</i>	Endangered
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
Eastern Prairie Fringed-orchid	<i>Platanthera leucophaea</i>	Endangered
Redside Dace	<i>Clinostomus elongatus</i>	Threatened
Butternut	<i>Juglans cinerea</i>	Endangered
Least Bittern	<i>Ixobrychus exilis</i>	Threatened

### Town of the Blue Mountains

Species Name	Scientific Name	Provincial Status Designation
Louisiana Waterthrush	<i>Seiurus motacilla</i>	Special Concern
Milksnake	<i>Lampropeltis triangulum</i>	Special Concern
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Butternut	<i>Juglans cinerea</i>	Endangered

### Township of West Grey

Species Name	Scientific Name	Provincial Status Designation
American Ginseng	<i>Panax quinquefolius</i>	Endangered
American Hart's tongue fern	<i>Asplenium scolopendrium</i> var. <i>americanum</i>	Special Concern
Milksnake	<i>Lampropeltis triangulum</i>	Special Concern
Eastern Ribbonsnake	<i>Thamnophis sauritus</i>	Special Concern
Redside Dace	<i>Clinostomus elongatus</i>	Threatened

### Township of Southgate

Species Name	Scientific Name	Provincial Status Designation
Henslow's Sparrow	<i>Ammodramus henslowii</i>	Endangered
Black Tern	<i>Chlidonias niger</i>	Special Concern
Redside Dace	<i>Clinostomus elongatus</i>	Threatened

NOTE: These lists are for known endangered, threatened and special concern species occurrences and habitat, and therefore are not considered fully inclusive for all potential rare species and habitat in these areas. List up-to-date as of February 4, 2009. In many cases, site assessment will be required to determine species present and extent of habitat.

For additional information on rare species please refer to the Natural Heritage Information Centre  
[http://nhic.mnr.gov.on.ca/nhic\\_cfm](http://nhic.mnr.gov.on.ca/nhic_cfm)

Status for species as per the Species at Risk in Ontario List (SARO)

### Species in Grey County\*

Species Name	Scientific Name	Provincial Status Designation
American Ginseng	<i>Panax quinquefolius</i>	Endangered
Spotted Turtle	<i>Clemmys guttata</i>	Endangered

**\*Information for these species is provided on a County-wide basis due to the sensitive nature of the specific locations. For additional information, please contact Midhurst District MNR Office**

NOTE: These lists are for known endangered, threatened and special concern species occurrences and habitat, and therefore are not considered fully inclusive for all potential rare species and habitat in these areas. List up-to-date as of February 4, 2009. In many cases, site assessment will be required to determine species present and extent of habitat.

For additional information on rare species please refer to the Natural Heritage Information Centre [http://nhic.mnr.gov.on.ca/nhic\\_cfm](http://nhic.mnr.gov.on.ca/nhic_cfm)

Status for species as per the Species at Risk in Ontario List (SARO)