

April 11, 2023

**BY EMAIL ONLY**

Mr. Sandy Dobbyn  
Niagara Escarpment Commission  
232 Guelph Street, 3<sup>rd</sup> Floor  
Georgetown, Ontario  
L7G 4B1

**RE: Proposed Niagara Escarpment Plan Amendment PC 225 22  
On-farm diversified Uses and Agricultural-related Uses in Escarpment  
Protection Area, and other agricultural related policy housekeeping matters.  
Environmental Registry No.: 019-6425.**

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Dear Mr. Dobbyn:

City of Burlington staff have reviewed the above noted proposed amendment to the Niagara Escarpment Plan (NEP), as well as the initial staff report that seeks input on potential future amendments to the NEP. It is our understanding that at the November 17, 2022, commission meeting, the Commission directed staff to initiate a Niagara Escarpment Plan amendment to address the following:

- Part 1.4.3.2 Escarpment Protection Area on-farm diversified uses and agriculture-related uses in prime agricultural areas.
- Agricultural uses within Earth Science Areas of Natural and Scientific Interest.

And to further explore:

- The winery policies contained within Part 2.8 of the NEP (2017).
- The potential for agricultural uses within key natural heritage features (KNHFs).
- Strategies for supporting the Agricultural System in the NEP area.

City of Burlington staff are providing the following comments on the amendment as it appears in Appendix 1 of the initial NEC Staff report dated November 16, 2022.

- 1. Part 1 Land Use Policies is amended by adding the following Permitted Use under Part 1.3.3 Permitted Uses of the Escarpment Natural Area designation:**

15. Maple sugar harvesting (for greater certainty, this includes the tapping of trees, and collection of sap, and does not include the development of buildings or facilities related to maple syrup production).

**Staff Comment:**

- In general, maple sugar harvesting is a benign land use within natural areas. It also only tends to be viable at scale in maple monocultures which may represent a lower quality woodland from a diversity perspective. However, most commercially viable maple sugar/syrup operations will rely on additional infrastructure that the amendment clarification would likely not permit.
- It is a general concern emanating from the agricultural community in Burlington that agricultural uses are being regulated at a “micro” scale which negatively impacts their commercial viability. Farmers have expressed concern that this often leads to certain agricultural uses being attractive only to large-scale operators who can afford to operate the use at a loss as part of a larger or diversified agricultural operation.
- While City staff have no issue with added permission as provided in the amendment, it should be anticipated that any commercially viable maple sugar harvesting operation would require additional infrastructure that would still be restricted within the Escarpment Natural Area (ENA) designation (ex. ATV trails, vacuum pump structures). It is recommended that additional permissions to locate small-scale ancillary structures that may be required for the maple sugar harvesting collection system also be considered to support the commercial viability of the newly added land use permission.

**2. Part 1 Land Use Policies Permitted Use Part 1.4.3 Escarpment Protection Area, Permitted Use 3 is amended as follows:**

2. Agricultural-related uses and on-farm diversified uses, ~~in prime agricultural areas.~~

**Staff Comment:**

- City staff are in full support of this proposed amendment to the permissions for ARUs/OFDUs within the Escarpment Protection Area (EPA) designation. In our opinion it represents a positive approach to supporting all agricultural uses in rural areas and brings the NEP into closer alignment with the Provincial Policy Statement (PPS) 2020 and other Provincial Plans regarding this issue.
- 3. Part 2.7 Development Affecting Natural Heritage is amended by adding a new subsection 2.7.2 which shall read:**

2.7.2 f) Expansions to *Existing uses* that are *Agricultural uses, agricultural-related uses and on-farm diversified uses* **outside of wetlands, provided there is no alternative and the expansion or alteration in the feature is minimized and where possible, temporary.**

**Staff Comment:**

- The report references the permissions of the Greenbelt Plan and the Growth Plan for expansions of existing *structures* supporting agricultural uses that are within KNHFs; however, the wording of the proposed NEP amendment would broadly permit expansions of all *agricultural uses* instead of limiting the permissions to existing structures. This would result in a separate standard for *agricultural uses* in key features within the NEP area as opposed to elsewhere. Clarification is sought as to why the NEC is proposing to be more permissive in this regard than other Provincial Plans.
- It is noted that unlike other Provincial Plans, the NEP is unique in its definition and policies relating to *existing uses*. Clarification is sought as to why the policies of Part 2.3 would not broadly apply in the examples provided, and, if those policies do not apply, why the issue is not being rectified within Part 2.3 rather than Part 2.7.2? The concern being that Part 2.3 provides policies regarding what scale of expansion is considered *minor* while Part 2.7.2 includes no such direction. Is it expected that the direction provided in Part 2.3.4 of the NEP will apply to restrict expansions?
- The wording of the proposed amendment suggests including language requiring that there be “no other alternative” and that the expansion is “temporary” where possible. How is it intended that the test of “no other alternative” for agricultural uses be implemented? Agricultural uses are seldomly temporary and are described as part of the *open landscape character* of the Escarpment.
- There is a general concern regarding the proposed wording of this amendment and that it may result in new agricultural uses incurring into key features under that auspices that they are existing. The example development permit application (DPA) provided in the NEC’s initial staff report, being DPA N/R/2018-2019/67, suggests that a proposed livestock operation was categorized as a similar use to an agroforestry use. While the NEP recognizes both as *agricultural uses*, in practice they operate differently. The argument that an applicant could remove the identified portion of the significant woodland as part of an agroforestry use is concerning as modern agroforestry

practices<sup>1</sup> generally do not include plantation clear-cutting; instead promoting successional growth through selective cutting and good forestry practices (stem exclusion, thinning, understorey invasive species eradication, etc.) The end result is not lands suitable for field cropping or livestock grazing but rather a successional woodland. In some cases, the plantation may be re-established to continue the agroforestry use.

- It seems the issue involved in the identified DPA is one of woodland quality, not existing use, and whether the identified plantation should form part of the significant woodland or whether it should have been excluded. This distinction is important given proposed direction of permitting maple-syrup harvesting, which is a recognized agricultural use, within the Escarpment Natural Area. Once that use is established the existing use policies proposed within Part 2.7.2 could be utilized to promote other forms of agricultural uses within a key feature under the justification that the entire class of uses are *existing* similar to the example DPA. Burlington Staff are requesting that other DPA examples where the issue has arisen be provided for review to better understand the extent of the problem.
- City staff notes that the example DPA provided is from Niagara Region; Halton Region, through its Regional Official Plan Review (ROPR), has considered options to address the quality of significant woodlands as it relates to identifying key features of the natural heritage system and establishing permitted uses. It may be best that the issue be addressed at the Regional or Local level where significant woodlands, outside the Provincial NHS, are identified and mapped.

**4. Part 2.7 Development Affecting Natural Heritage is amended by adding a new sub-section as follows:**

Notwithstanding Part 2.7.2, *Agricultural uses, agricultural-related uses, and on-farm diversified uses* may be permitted in Earth Science Areas of Natural and Scientific Interest, which is not also identified as any other Key Natural Heritage Feature, provided it has been demonstrated that the earth science values can be maintained and protected. Planning, design, and construction practices shall be identified that will keep disturbance to landform character to a minimum and ensure the protection of the geological or geomorphological attributes.

**Staff Comment:**

- ANSIs are largely the domain of MNRF. City staff are comfortable with the Ministry dictating the type of uses that may be permitted in those areas. In practice, it is

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<sup>1</sup> Afforestation Guide for Southern Ontario. OMNRF, 2019. Toronto: Queen's Printer for Ontario.  
<https://files.ontario.ca/ndmnrff-afforestation-guide-for-southern-ontario-en-2022-01-06.pdf>

rare within the City of Burlington, outside of mapping errors, that earth science ANSIs do not demonstrate the characteristics of other defined key features.

- It is noted that in the DPA application examples provided there was no real technical analysis of the *Earth Science Values* at issue; rather the Commission provided approval on the basis that MNRF did not object to the application.
- It should not be expected that City of Burlington development review staff will make comment on DPAs relating to *earth science values* or the complex hydraulic and geomorphological attributes present in *earth science* ANSI areas.

**5. The following definition is added to Appendix 2 Definitions:**

***Earth Science Values:*** values that relate to the geological, soil, and landform features of the environment

**Staff Comment:**

- No issue.

**Policies for further exploration**

**6. The winery policies contained within Part 2.8 of the NEP (2017).**

**Staff Comment:**

- City of Burlington staff would support the complete removal of winery-specific policies contained within the NEP in favor of treating the use as an agriculture-related use (ARU) or on-farm diversified use (OFDU).

**7. The potential for agricultural uses within key natural heritage features (KNHFs).**

**Staff Comment:**

- If this is to be considered, City of Burlington staff are of the opinion that the appropriate vehicle would be through a Coordinated Plan review as noted below. This broad change would be in opposition to PPS and Growth Plan direction. Given the overlapping nature of these documents, and the general protection afforded to KNHFs, this cannot be completed in isolation without introducing conformity and/or jurisdictional issues.
- It is noted that many agricultural stakeholders, in previous Plan reviews, have asked for this change. Previous coordinated reviews have not implemented these suggestions.

## 8. Strategies for supporting the Agricultural System in the NEP area.

### Staff Comment:

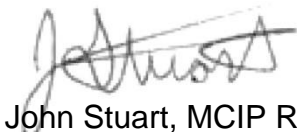
- There is a general acceptance from planning professionals of the policy direction developed and supported largely starting in the 2005 PPS framework, which seeks to protect delineated Natural Heritage Systems (NHSs) made up of defined KNHFs from development, including agricultural development.
- In areas where agricultural operations are established, recognizing normal farm practices, good forestry practices, and implementing OMAFRAs Permitted Uses in Ontario's Prime Agricultural Area Guidelines have demonstrated support for the agricultural system as a whole. COB Staff will continue to engage in efforts aimed at supporting this system but short of introducing negative impacts to the defined NHS.
- There is further opportunity to support the agricultural system as it relates to the implementation of Niagara Escarpment Plan policies which may have a unique impact on agricultural operations. For example, the definition of "existing use" contained within Appendix 2 of the NEP, particularly item c), would benefit from additional guidance/clarity on appropriate implementation within the distinct context of an agricultural operation.
  - The requirement that the existing use "has continued without interruption after the effective date as set out under a), b), or c)" does not acknowledge the distinct nature of agricultural uses in that a farm property is in a constant state of flux with many components which are not static or stationary (i.e. beyond fixed buildings and structures).
  - For example, a common agricultural practice is the rotation of field crops and livestock grazing areas and paddocks, whereby fields may remain fallow for a period of time either to rebuild soil health, or in response to changing market conditions for certain commodities. In practice, these areas are at risk of no longer meeting the requirement of "continued without interruption", despite the ongoing existence of an agricultural operation on the property at large, and may default to the more restrictive designation of Escarpment Natural Area without necessarily meeting the criteria outlined in section 1.3.2, Part I of the NEP.
  - Further, it is unclear what is considered acceptable documentation in terms of verifying that an agricultural use has "continued without interruption" within a certain portion of the property, which can be challenging for landowners where the extent of the applicable land use designations may have been determined on the basis of aerial imagery alone.
  - City staff requests that this definition be reviewed in the context of the changing nature of agricultural uses, and that additional guidance be developed to avoid unintended restrictions to existing agricultural uses. Additional clarity for landowners wishing to request the consideration of mapping refinements outside

of a development application or a formal NEP review process or would also be beneficial.

- What would best support the agricultural community in the City of Burlington is access to technical resources, consistent decision-making, and efficient, technical-based review of DPAs by the implementing authority. As communicated during Burlington's 2022 ROMA delegation with the Ministry of Natural Resources and Forestry, City staff remain open to discussing opportunities for further collaboration to support streamlined cross-agency review of Niagara Escarpment Development Permit Applications. Opportunities include, but are not limited to:
  - a formalized pre-consultation process for the municipal review component - supported by clear complete application requirements and technical specifications scoped to an agricultural context, as well as joint commitment to consistent review timelines;
  - mutually agreed upon criteria for verifying the commercial status of an agricultural operation; and
  - a shared understanding of which matters are appropriately addressed through a Niagara Escarpment Development Permit approval, as opposed to Permit conditions which are to be met through municipal processes such as Building Permit and Business Licencing applications.
- Given the recent changes to the Provincial planning framework including, but not limited to: the potential revocation of the Parkway Belt West Plan, removals from the Greenbelt Plan area, Bill 23, and the recently proposed Provincial Policy Statement and Growth Plan, it may be best suited that any envisioned policy changes to the NEP (2017) be addressed at the time of the next coordinated review. This would help to ensure consistency within the Provincial planning framework and avoid jurisdictional issues where possible.

Thank you for the opportunity to comment on the proposed Niagara Escarpment Plan Amendment. We trust the above comments will be helpful in furthering the Commission's work on supporting agriculture and protecting natural heritage in general. Should you have any questions or wish to discuss please do not hesitate to contact the undersigned at your convenience.

Sincerely,



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