

# Land Use Planning in Ontario



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Recommendations of the  
Environmental Commissioner of Ontario  
from 2000-2010



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## BACKGROUND

Over the past decade, there have been dramatic changes in land use planning in Ontario, due to the shifting balance between the provincial and municipal roles in land use decisions, the creation of regionally based land use plans such as the Greenbelt Plan, and the introduction of growth plans to encourage urban intensification.

During this time, the Environmental Commissioner of Ontario (ECO) has documented, reviewed and analyzed the significant changes in land use planning law and policy and made many recommendations, some of which have prompted further action by the provincial government.

This primer pulls together and synthesizes the most significant articles on land use planning that have been written in the ECO's annual reports over the last 10 years. However, it is not intended to assess the government's response, or lack thereof, to these recommendations.

This primer covers a range of planning laws, policies and issues that include:

- the *Planning Act* and Provincial Policy Statement (PPS);
- the Ontario Municipal Board (OMB);
- regional plans for the Oak Ridges Moraine, Greenbelt and Lake Simcoe;
- planning for growth, transportation and aggregate extraction; and,
- natural heritage protection in planning.

The focus of this primer is on matters closely related to land use planning in the areas of Ontario governed by the *Planning Act*. It does not address issues related to land use planning in the Far North or on Crown land in general, nor does it cover topics that have a loose relationship with planning such as environmental assessment, waste management or source water protection.



Photo credit: C. Wilkinson

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## LEGAL FRAMEWORK IN SOUTHERN ONTARIO

### *Planning Act*

The *Planning Act*<sup>1</sup> is the primary law governing land use planning in Ontario. The Act has a crucial role in shaping both communities and the natural landscape in central and southern Ontario due to the broad powers over land use planning that it provides to provincial and municipal decision makers.

The legislation grants municipal governments authority to control the use of privately owned lands through a range of planning tools, including official plans, zoning bylaws, site plan controls and subdivision approvals.<sup>2</sup> At the same time, the *Planning Act* is intended to establish a land use planning system that is led by provincial policy, and to integrate matters of provincial interest in provincial and municipal planning decisions.<sup>3</sup>



Photo credit: Ministry of Infrastructure

The *Planning Act* allows the Minister of Municipal Affairs and Housing to issue policy statements, approved by the provincial Cabinet, on land use planning matters that are of provincial interest.<sup>4</sup> These detailed policy directions are known collectively as the Provincial Policy Statement (PPS) which is administered by the Ministry of Municipal Affairs and Housing (MMAH).<sup>5</sup>

All decisions on planning matters under the *Planning Act* must be “consistent with” the PPS. This includes decisions made by municipal councils, local boards, planning boards, provincial ministers, provincial government and agency officials, and the Ontario Municipal Board (OMB). Such decisions also must either conform, or not conflict, with any provincial land use plans in effect, such as the Greenbelt Plan.<sup>6</sup>

Prior to the 2004 amendments to the *Planning Act*, decision makers were required only to “have regard to” the PPS. This language allowed greater municipal discretion on whether or not to apply provincial policies in the PPS, and resulted in less provincial control over decisions.<sup>7</sup>

As a result, municipalities and the OMB applied the PPS in an inconsistent manner. Some decision makers merely paid lip service to the PPS under the “shall have regard to” standard, while others interpreted it to mean that provincial policy should be seriously considered, if not absolutely applied. For example, the OMB’s interpretation of the “have regard to” language of the *Planning*

Act and the extent to which the PPS is implemented varied depending upon which OMB member is presiding.<sup>8</sup>

A 2002 application for review under the *Environmental Bill of Rights, 1993*<sup>9</sup> (EBR) raised concerns that the “shall have regard to” language resulted in land use decisions contrary to the government’s own provincial interests as set out in the PPS.<sup>10</sup>

The new directive in the *Planning Act* to “be consistent with” the PPS is more prescriptive than the “shall have regard to” language. It directs decision makers to apply the PPS in planning decisions, so that provincial policy is likely to be applied more consistently in planning decisions, and provincial interests given priority. The requirement to be “consistent with” provincial policy lies somewhere on a spectrum between the “shall have regard to” standard and the stronger “conform with” requirement used in relation to provincial land use plans.<sup>11</sup>

For more information on the *Planning Act* from past ECO reports, see:

["Having Regard to the Planning Act?" in Thinking Beyond the Near and Now - ECO Annual Report 2002-2003](#)

["Strong Communities Act" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

## Provincial Policy Statement

The Provincial Policy Statement (PPS) is a key component of Ontario’s land use planning system. It provides direction on matters of provincial interest related to land use planning and development, and guides the provincial “policy-led” planning system. The current PPS came into effect on March 1, 2005.<sup>12</sup>

The PPS provides broad direction on land use patterns, forms of development, the management of some natural resources, and other issues, such as natural hazards. From an environmental perspective, the PPS is very important; it contains planning direction for woodlands, wetlands, wildlife habitat, air quality, and the quality and quantity of water. The PPS also plays a role in governing such land uses as aggregate extraction, agriculture, transportation, and other types of infrastructure.<sup>13</sup>

The stated intent of the PPS is to provide for appropriate development while protecting resources of provincial interest, public health and safety, and the quality of the natural environment. The PPS applies to any land use planning decisions made under the *Planning Act* by municipal councils, local boards, planning boards, provincial Ministers, provincial government and agency officials, and the OMB.<sup>14</sup>

The PPS represents “minimum standards” for planning authorities. It does not prevent decision makers from exceeding the requirements of the PPS, unless that would result in a conflict with other components of the PPS. However, “provincial plans” – such as the Greenbelt Plan, the

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Niagara Escarpment Plan, the Oak Ridges Moraine Conservation Plan (ORMCP), and the Lake Simcoe Protection Plan – take precedence over the PPS in the case of a conflict.<sup>15</sup>

The 2005 PPS states that MMAH will identify performance indicators for measuring the effectiveness of some or all of the policies in the PPS.<sup>16</sup> In 2010, MMAH released an initial set of performance indicators, developed to monitor the effectiveness of the PPS.<sup>17</sup> To a large extent, these indicators only determine how “consistent” official plans are with the PPS, rather than assessing whether provincial direction is achieving an actual on-the-ground effect, especially with regard to the conservation of natural heritage features and functions.<sup>18</sup>

Despite the requirement in the amended *Planning Act* that decisions made by planning authorities “shall be consistent with” the PPS, the 2005 PPS itself uses stronger or weaker language depending on the degree to which planning authorities are required to implement its sections. MMAH has noted that some parts of the PPS are expressed as positive or required directions by means of “shall.” Other parts use enabling or supportive language, which could be interpreted as being completely discretionary, including “should,” “promote,” “may permit,” “consider,” and “encourage.”<sup>19</sup>

For example, with regard to municipal official plans, which are the primary means of implementing many of these planning reforms, the PPS states that municipalities “shall” identify provincial interests in establishing land use designation and municipal policies. On the other hand, municipalities “should” coordinate cross-boundary issues that involve other planning authorities. Although the PPS states that municipalities “shall” keep their official plans up to date, they are only “encouraged” to develop indicators to monitor the implementation official plan policies.<sup>20</sup>

The PPS takes a selective approach in its requirements for the identification and planning of natural heritage features and functions. Not only does the PPS not require a municipality to identify natural heritage features, unless they are necessary for the hydrological integrity of the watershed, it also does not obligate a municipality to plan for the creation of a natural heritage system. Further, with the exception of specialty crop areas, municipalities are not required to identify prime agricultural lands. In both examples, the PPS does not specify or encourage municipalities to develop supporting policies that ensure that specified targets are met – even though that would constitute sound planning.<sup>21</sup>

### **Prioritizing Policies within the PPS**

The importance of the PPS cannot be overstated. It is the collection of quasi-rules that underpins Ontario’s approach to planning. It guides the practice of planning, literally shaping the landscape of the province. It also serves to reflect the priorities and values of the Ontario government.<sup>22</sup>

According to MMAH, the initiatives of the 2005 PPS “will provide an overall planning framework for Ontario that will help to create strong, sustainable communities, a strong economy, and will help to protect our environment and resources.” The policy changes are intended to achieve several government commitments, including refining the planning system, defining an urban and natural structure, aligning infrastructure, and providing a stronger “green” focus.<sup>23</sup>

Although MMAH has stated that there is “no implied priority” in the order in which the topic areas appear within the PPS, it is evident that some land uses are given priority over others. The 2005 PPS, along with other Ontario laws that shape how it is implemented, unequivocally establish priorities. Environmental planning and the protection of natural areas, wild species and water quality are not given the same importance as drivers for economic development.<sup>24</sup>

Municipalities are required to plan actively for residential and commercial growth and set aside sufficient lands in order to meet rigid growth targets. The 2005 PPS weaves in and facilitates the supporting mechanisms for this burgeoning growth, by granting special exemptions for infrastructure such as roads and corridors for electrical powerlines. The planning system presupposes this growth and has been explicitly designed for it. From a strictly traditional economic perspective, this approach might be sound.<sup>25</sup>



Photo credit: C. Wilkinson

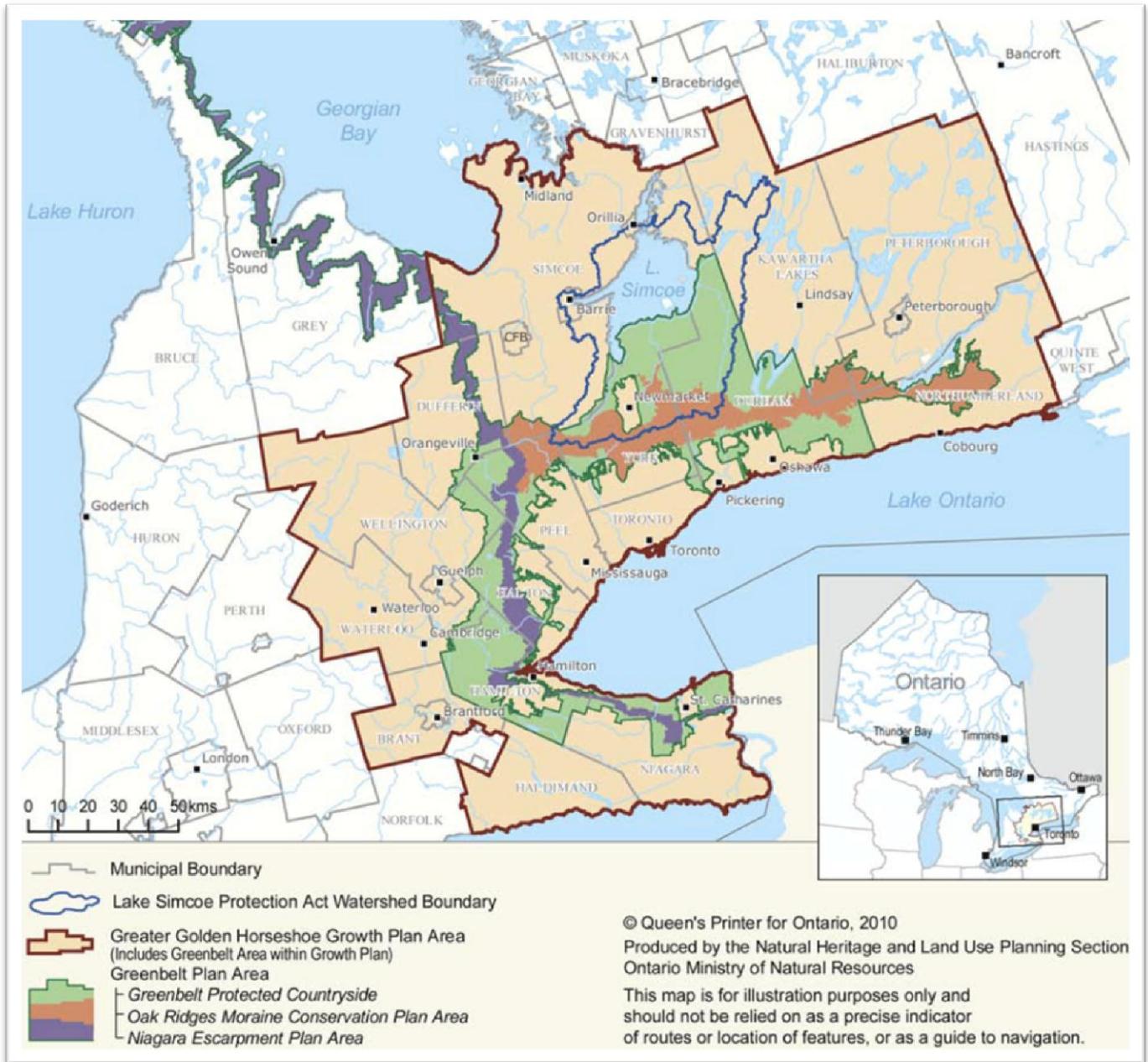
From an ecological or sustainability perspective, this planning approach will fail in the long term. Few of the critical elements of the natural environment – significant woodlands, wetlands, valleylands, species and sensitive water features – are adequately protected. In fact, virtually none of them are protected from the most invasive development activities, such as aggregate extraction or highway construction. Natural features are often treated simply as end-stage checks on development. Many natural features do not even have to be identified or comprehensively planned for by municipalities.<sup>26</sup>

The approach taken by the PPS often means that environmental interests must be defended on a case-by-case basis, woodlot-by-woodlot and wetland-by-wetland. Supporters of natural heritage often bear the burden of proving the ecological significance of such areas, and must often justify their protection on the grounds that such features provide environmental services. Rather, the onus – starting at the very onset of the planning process – should be placed on the development pressures themselves to justify need. Taking such an ecologically sensible approach might require that individual development activities demonstrate their own “significance” and societal need to merit intrusion on a natural heritage system.<sup>27</sup>

The existing “development-first, environment-second” approach to planning has spawned a confusing mix of legislation and provincial plans. Rather than viewing an ecological feature, such as a provincially significant wetland, as being important enough to protect no matter where it is situated in the province, the PPS requires that separate rules be applied depending on its location. The result is that the same type of natural area will receive different treatment depending on whether it lies on specific parts of the Niagara Escarpment, in the Greenbelt, on the Oak Ridges Moraine, in the Lake Simcoe watershed, in southern Ontario or in northern Ontario.<sup>28</sup>

Laws such as the *Oak Ridges Moraine Conservation Act, 2001 (ORMCA)* the *Greenbelt Act, 2005* and the *Lake Simcoe Protection Act, 2008 (LSPA)* reflect a disturbing trend to protect notable natural heritage features on an individual basis rather than implement broader-based safeguards

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Source: Ministry of Natural Resources

as a provincial interest under the PPS. This tendency to protect by exception on a regionally specific basis rather than as a rule is both reactionary and problematic.<sup>29</sup>

A planning system that uses the PPS to be “complemented by provincial plans or locally-generated policies” ensures that inconsistent consideration, at best, will be given to the environment as currently applied. The natural environment must be treated as an integrated system and, at a minimum, given at least equal weight to other planning considerations.<sup>30</sup>

## Public Concerns about the PPS

The *Planning Act* requires that the Minister of Municipal Affairs and Housing begin a review of the PPS every five years.<sup>31</sup> The PPS is currently under review and MMAH began to seek public input in May 2010 with a policy proposal notice on the Environmental Registry (#[010-9766](tel:010-9766)). MMAH provided a review and comment period from May 12 to October 29, 2010 for the public to provide comments on its proposed review of the PPS to determine the need for revisions to it.<sup>32</sup>

In particular, MMAH asked the public to provide input on: which policies of the PPS are working effectively; policies that need clarification or refinement; policies that are no longer needed; new policy areas or issues that the government needs to provide land use planning direction on; and the additional support material needed to help implement the PPS.<sup>33</sup>

Although the notice and comment period for this initial stage of review ended in October 2010, the PPS review will continue and may lead to proposals for specific changes to the PPS.<sup>34</sup> This is an important opportunity for the public to participate in the current review of the PPS.

Between 1999 and 2009, members of the public submitted 28 applications for review that directly or indirectly requested changes to the PPS. These *EBR* applications raised a wide variety of concerns about Ontario's land use planning system. Many of these applications centre on the need to improve the requirements for environmental protection. Other applications expressed concerns that government policy changes are necessary to more broadly apply sustainable planning direction to issues such as infrastructure and transportation.<sup>35</sup>

In every case, MMAH denied these requests, on the grounds that either the PPS had already been reviewed within the last five years or it was in the process of being reviewed. In fact, MMAH has denied every single *EBR* application that it has ever received on any subject matter. Despite the nature of their mandates and their obvious role in land use planning issues, other ministries often deny these *EBR* applications by asserting that they are not directly responsible for the PPS.<sup>36</sup>

*“The ECO recommends that the Ministry of Municipal Affairs and Housing amend the Provincial Policy Statement to require that the long-term ecological function and biodiversity of natural heritage systems are maintained.” 2009-2010 Annual Report*

The ECO has made several recommendations on the need for changes to the PPS in the 2010 review, including the following:

- that the PPS be amended to prohibit new infrastructure such as highways in Provincially Significant Wetlands unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions;<sup>37</sup>
  - that the 2010 review of the PPS introduce effective mechanisms for protecting significant woodlands, including mechanisms for woodland evaluation, designation, tracking and reporting;<sup>38</sup> and,
  - that MMAH amend the Provincial Policy Statement to require integrated watershed management planning.<sup>39</sup>
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For more information on the Provincial Policy Statement from past ECO reports, see:

["2005 Provincial Policy Statement" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

## One Window Approach to Planning

MMAH is the lead government ministry with respect to land use planning. However, many other ministries, such as the Ministry of Natural Resources (MNR), Ministry of the Environment (MOE), Ministry of Transportation (MTO) and Ministry of Infrastructure (MOI) play an important role and are also responsible for many of the detailed policies used to implement the PPS.<sup>40</sup>

In the mid-1990s, the Ontario government introduced a One Window Provincial Planning protocol that made MMAH the point of contact for all land use planning matters in the province.<sup>41</sup> Under this system, MMAH is the “one window” into provincial planning services for municipalities, planning boards, developers and the public.<sup>42</sup> MMAH is the ministry with chief responsibility for:

- establishing and monitoring the policies in the PPS;
- providing provincial input, review, decision-making and appeal of municipal planning applications where the province remains the approval authority;
- providing provincial assistance as requested where municipalities or planning boards have approval authority;
- deciding whether other ministries should provide comments on a planning matter; and,
- determining if there is a provincial interest in a planning matter.<sup>43</sup>

The One Window protocol greatly diminished the role of other provincial ministries in land use planning. For example, MNR’s role has been limited to identifying significant wetlands. Under previous provincial wetland policies, MNR reviewed all proposed development applications affecting wetlands; today, MNR comments on very few planning proposals, and only if invited to by MMAH.<sup>44</sup>

In both 2001 and 2007, the ECO reviewed a sample of OMB decisions involving natural heritage policies and found that the OMB was more likely to protect wetlands when MNR staff appeared to provide evidence at hearings. MNR staff members were rarely involved, however, and their lack of direct participation contributed to rulings against wetlands protection. As a result, the One Window protocol has not been effective in protecting wetlands under the planning system.<sup>45</sup>

This problem has been exacerbated by cutbacks in staff at MNR and MOE that began in the mid-1990s. Because these ministries continue to be under-resourced, they would have limited capacity to contribute to the planning process even if they were brought into it more fully. The net effect of

provincial policies and budget priorities over the last 15 years has been to limit the ability of MOE and MNR to undertake their basic functions in a timely, effective and comprehensive manner.<sup>46</sup>

The ECO has called for a public review of the One Window Provincial Planning system and MNR's wetland evaluation program.<sup>47</sup>

For more information on One Window Provincial Planning and inadequate government resources from past ECO reports, see:

["Protecting Wetlands, or Draining for Development" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

[Doing Less with Less: How shortfalls in budget, staffing and in-house expertise are hampering the effectiveness of MOE and MNR - ECO Special Report 2007](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

## Ontario Municipal Board

The OMB is an independent adjudicative tribunal responsible for settling disputes over land use planning and other municipal issues. The OMB hears appeals related to land use planning under the *Planning Act* and other legislation. In determining appeals, the OMB interprets and applies policies, such as the PPS, as well as other provincial laws and policies.<sup>48</sup> As a result, OMB decisions have important consequences for land use planning and natural heritage protection in Ontario.<sup>49</sup>

The OMB has been the subject of a range of criticisms in the past. Critics have alleged that the OMB had:

- not always adequately considered provincial policy;
- overly favoured developers in its decisions;
- used its powers to substitute its opinions for the decisions of elected municipal councils; and,
- frequently had long, costly hearings, making them inaccessible to members of the public unless they hired lawyers and other experts, which is usually financially prohibitive.

Whether or not these criticisms are valid, they have contributed to shaping public perceptions of the OMB.<sup>50</sup>

In response to these concerns, the Ontario government has made a number of changes in recent years that affect the OMB. A significant change was the requirement that the OMB (along with other decision makers) "be consistent with" the PPS, one of the 2004 amendments to the *Planning Act*.<sup>51</sup>

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The amendments in 2004 also provided the Minister of Municipal Affairs and Housing with the power to declare a provincial interest in an appeal of an official plan or by-law before the OMB, if the minister believes it may adversely affect a matter of provincial interest.<sup>52</sup>

If the minister has declared a provincial interest, the OMB's subsequent decision will not be final and binding unless that decision is confirmed by Cabinet. Cabinet may decide to confirm, vary or rescind the OMB's decision, and in so doing, may direct the minister to modify the provisions of an official plan or amendment that adversely affects a matter of provincial interest, or repeal or amend a zoning by-law or amendment. Cabinet is under no obligation to adhere to the PPS when it reviews an OMB decision on the basis of a declared provincial interest. This has raised some concerns.<sup>53</sup>

This 2004 amendment reinstated a previous power of the provincial Cabinet to overturn decisions of the OMB. The power should assist the government in circumstances where it believes it must act to protect the public interest from being adversely affected, but may also bring increased lobbying pressure on the provincial government from parties who are not successful before the local decision-making body.<sup>54</sup>

Further amendments were made to the *Planning Act* in 2006 and came into force in 2007. These changes were intended to make the OMB more effective, transparent and user-friendly. While the OMB continues to have an important role in land use planning decisions, a number of its powers have been curtailed and returned to the municipalities.<sup>55</sup>

For example, when making a planning decision under the *Planning Act*, the decision maker, whether an approval authority or the OMB, must have regard to any decision that is made by a municipal council or another approval authority relating to the same matter, as well as to any supporting information and material that the municipal council or approval authority considered in making the decision. Decision makers must also have regard to recommendations and decisions of municipalities.<sup>56</sup>

For more information on the Ontario Municipal Board from past ECO reports, see:

["Strong Communities Act" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Providing Municipalities With New Tools For Sustainability" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)



Photo credit: C. Wilkinson

## Public Participation in Land Use Planning Decisions

### Opportunities for Public Input and Appeal

There are opportunities for public involvement in land use planning processes under the *Planning Act*. The public may participate in the development, amendment and review of local planning tools, such as official plans and zoning by-laws, through mechanisms such as:

- accessing information made available to the public by municipalities;
- attending public meetings, for which public notice must be given at least 20 days prior to the meetings;
- attending open house information sessions;
- providing written comments; and,
- speaking at public meetings.

Members of the public also have some rights to appeal to the OMB when they disagree with land use planning decisions.<sup>57</sup>

Prior to the 2007 amendments to the *Planning Act*, any person or public body had a right of appeal to the OMB regarding all or part of an official plan. The *Planning Act* now limits this right of appeal to:

- a person or public body that makes oral submissions at a public meeting or written submissions to the council before the plan is adopted;
- the Minister;
- the appropriate approval authority; and,
- where a request has been made to amend the plan, the person or public body that made the request.

Similar limitations on this broad right of appeal also apply to changes to zoning by-laws.<sup>58</sup>

This loss of broad appeal rights for local residents is significant and unfortunate. In the past, public interest group appeals on natural heritage and development issues resulted in many important OMB decisions that have protected natural heritage and limited development on agricultural land. Although in some cases, leave to appeal rights under the *EBR* may be available to interested individuals and groups, these will apply in a very narrow range of cases and, overall, there will be a reduction in appeal rights.<sup>59</sup>

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## The *Environmental Bill of Rights* and the *Planning Act*

The *EBR* applies to provincial decisions that affect the environment, but not to decisions made at the municipal level. As a result, most opportunities for public participation in land use planning decisions are available through processes provided under the *Planning Act*, rather than the *EBR*.

The *EBR* does, however, apply to decisions made by MMAH concerning environmentally significant acts, policies, regulations and approvals. Proposals to amend land use planning laws, such as the *Planning Act*, and policies, such as the PPS, must be posted on the Environmental Registry and the public has the right to comment on them under the *EBR*. Members of the public may also apply for a review of a land use planning law, policy, regulation or instrument, or a review of the need for a land use planning law, policy or regulation.

Prior to the mid-1990s, many municipal land use planning decisions, including official plans, required approval by MMAH and therefore would have been subject to the *EBR*. However, reforms to Ontario's land use planning system in 1996 delegated approval authority for official plans and official plan amendments to some municipal governments, meaning that fewer municipal planning decisions are placed on the Environmental Registry for public comment. The only planning approvals still posted on the Environmental Registry are those where the province continues to have approval authority.

### Strategic Lawsuits Against Public Participation

Many Ontario residents and neighbourhood groups are concerned about development proposals in their communities. Unfortunately, these residents and ratepayer organizations often lack the resources and specialized knowledge necessary to navigate the complex planning approval process. The system is hugely weighted in favour of those in the development industry, who have the resources, knowledge and experience (and access to a stable of planning, environmental and other professionals with specialized expertise) to skillfully argue their case before the OMB. The resources that developers are prepared to invest to overcome residents' objections far surpass the capacity of most citizens groups, environmental organizations, and even conservation authorities and municipalities.<sup>60</sup>

Adding to this asymmetry is the threat of Strategic

*"The ECO recommends that MMAH take the lead in developing legislation to discourage developers from using cost applications and similar tactics to frustrate public participation in the planning approval process." 2008-2009 Annual Report*

Lawsuits Against Public Participation or “SLAPP suits.” They are civil court actions that have little or no substantial basis or merit, but are advanced with the intention to suppress participation in public policy and decision-making.<sup>61</sup>

In the land use planning context, SLAPP suits are advanced by developers to discourage local residents from participating in the planning approval process, to divert citizens groups’ financial and/or other resources from public participation, or to punish residents for participating. SLAPP suits, whether successful or not, affect far more than the specific individuals or groups that are targeted as defendants; such lawsuits can deter others from participating in the same or other matters of public concern, out of fear of the financial liability that could ensue.<sup>62</sup>

A recent case before the OMB highlighted this issue, when a group of concerned residents and members of the public participated in an OMB hearing regarding approvals for Big Bay Point Resort, a proposed \$1 billion luxury resort project on the shores of Lake Simcoe. After successfully obtaining the required approvals to proceed, the developer sought a costs award of \$3.2 million dollars against the group of opponents and their lawyers. The OMB ultimately denied the developer’s claim for costs.<sup>63</sup>

The ECO recommended in 2009 that MMAH take the lead in developing legislation to discourage developers from using cost applications and similar tactics to frustrate public participation in the planning approval process.<sup>64</sup> An Anti-SLAPP Advisory Panel, appointed by the Ontario government to consult with the public and provide advice on potential legislation to prevent the use of SLAPP suits, presented its recommendations to the government in October 2010. The panel also recommended that Ontario adopt “anti-SLAPP” legislation.<sup>65</sup> For more information on public participation in land use planning decisions from past ECO reports, see:

["Providing Municipalities With New Tools For Sustainability" in Reconciling Our Priorities - ECO Annual Report 2006-2007](#)

["Cost awards and SLAPP" in Building Resilience – ECO Annual Report 2008-2009](#)

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## ENVIRONMENTAL PLANNING

### The Niagara Escarpment

Ontario's Niagara Escarpment is a unique geological feature – a ridge of sedimentary rock that rises up to 510 metres at its highest point and runs 725 km from Niagara to Tobermory. The Escarpment has been designated as a World Biosphere Reserve because it provides habitat to numerous and diverse animal and plant ecosystems in its forests, wetlands, cliffs and streams.<sup>66</sup>



Source: Niagara Escarpment Commission

In 1973, the Ontario government recognized the need to protect this significant landform and enacted the *Niagara Escarpment Planning and Development Act (NEPDA)*.<sup>67</sup> The Act provides authority for the development and implementation of the Niagara Escarpment Plan (NEP).<sup>68</sup> The plan, which is revised and updated periodically, includes land use policies and criteria for proposed developments. The Niagara Escarpment Plan divides the Niagara Escarpment into seven land use designations: Natural; Protection; Rural; Recreation; Urban; Minor Urban; and Mineral Resource Extraction.<sup>69</sup>

Those making decisions on matters under the *Planning Act* must conform with, or not conflict with, provincial plans in effect, including the Niagara Escarpment Plan.<sup>70</sup>

The government has established the Niagara Escarpment Commission (NEC) as a regulatory agency operating under the *NEPDA*. The NEC fulfils a range of functions that include: making decisions on development permit applications; considering recommendations on Plan amendments; commenting on official plans, development proposals, consent applications, environmental assessments; and reviewing Niagara Escarpment Plan policy issues.<sup>71</sup>

The Niagara Escarpment is now included within the protected Greenbelt region, discussed below.

For more information on the Niagara Escarpment from past ECO reports, see:

["Amendments to Regulation 828, Niagara Escarpment Planning and Development Act" in Changing Perspectives - ECO Annual Report 1999-2000](#)

## The Oak Ridges Moraine

### Achieving Protection for the Oak Ridges Moraine

The Oak Ridges Moraine is a unique ecological and hydrogeological feature that spans more than 160 km in southern Ontario. Its diverse natural habitats are home to a wide range of plant and animal species, including many species at risk. The Moraine also supports substantial surface water resources and holds significant groundwater resources. By 2000, the Oak Ridges Moraine faced enormous development pressures that threatened to further fragment and degrade it. The *ORMCA*<sup>72</sup> was the culmination of a long process of public advocacy to protect the moraine.<sup>73</sup>



Source: Ministry of Municipal Affairs and Housing

In March 2000, members of the public submitted *EBR* applications requesting long-term protection for the Oak Ridges Moraine. The applicants were concerned that existing land-use planning laws and policies were not adequate to safeguard the ecological integrity of the Oak Ridges Moraine. In response, MMAH denied this request on the grounds that existing land use planning guidelines, policy and legislation already provided the needed protection.<sup>74</sup>

The ECO concluded that the ministry's reasons for denying the applications were inappropriate because compelling evidence had been presented that: existing land use policies were not adequately protecting the moraine; new scientific and technical information was available; and development pressure was harming the environment. In that report, the ECO recommended that MMAH, in consultation with other ministries and the public, develop a comprehensive long-term protection strategy for the Oak Ridges Moraine.<sup>75</sup>

Despite denying the *EBR* applications, the Ontario government passed the *ORMCA* approximately 18 months later in order to better protect the Oak Ridges Moraine. The Act provided authority to establish the *ORMCP*<sup>76</sup> by regulation. The Plan was finalized in April 2002.<sup>77</sup>

*“The ECO recommends that MMAH, in consultation with other ministries and the public, develop a comprehensive long-term protection strategy for the Oak Ridges Moraine.” 2000-2001 Annual Report*

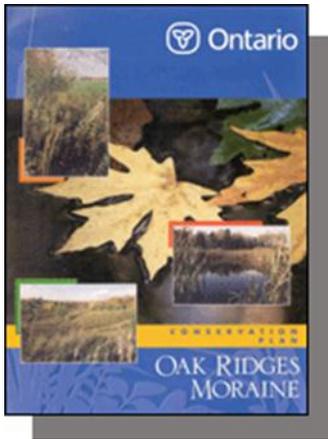
The *ORMCA* requires that decisions relating to the Oak Ridges Moraine that are made under the *Planning Act* or the *Condominium Act, 1998*<sup>78</sup> by municipal councils, local boards, municipal planning authorities, provincial Ministers, provincial government and agency officials, and the OMB must conform with the *ORMCP*.<sup>79</sup> Municipal official plans must be brought into conformity with the *ORMCP*. The Plan will prevail if it conflicts with an official plan, zoning by-law or the *PPS*.<sup>80</sup>

### **The Oak Ridges Moraine Conservation Plan**

The *ORMCP* is intended to protect the ecological and hydrological integrity of the Oak Ridges Moraine area, and ensure that only land and resource uses that maintain, improve or restore the ecological and hydrological functions region are permitted. It provides land use and resource management planning direction that goes beyond the general directions found in the *PPS*.<sup>81</sup>

The Plan sets out four land use designations and the permitted uses for each: Natural Core Areas to protect areas with a high concentration of key natural heritage and hydrologically sensitive features; Natural Linkage Areas to protect linkages between the Natural Core Areas and along rivers and streams; Countryside Areas to provide an agricultural and rural buffer; and Settlement Areas to focus and contain growth. The *ORMCP* provides the public with recreational access to a trail running the length of the Plan area, and a public park.<sup>82</sup>

Municipalities are encouraged to enact more restrictive policies than those in the plan, except regarding agricultural uses or pits or quarries. New pits and quarries are permitted in all designations other than Natural Core Areas, although applications for pits and quarries must meet



ORMCP criteria as well as the requirements of the *Aggregate Resources Act (ARA)*. The implementation document attached to the ORMCP states that future review of the plan may consider whether to change the provisions of the plan to permit establishing new mineral aggregate operations and wayside pits, and expanding existing ones, in Natural Core Areas. Members of the public and the ECO are concerned that this is not ecologically justifiable.<sup>83</sup>

While golf courses, serviced playing fields, serviced campgrounds and ski hills are allowed in Countryside Areas, applications must demonstrate that water use and application of fertilizers and pesticides will be kept to a minimum. Transportation, infrastructure and utilities are permitted throughout the plan area, including public highways, transit lines, railways, gas and oil pipelines, sewage and water service systems, and power transmission and telecommunications lines. The ECO observed that allowing transportation and utilities in the entire Plan Area, including Natural Core Areas and where there are natural heritage or hydrologically sensitive features, seems contrary to the objectives of the plan.<sup>84</sup>

### **Review, Public Participation and Implementation**

A review of the ORMCP must be carried out every 10 years to determine whether it should be revised, but such a review is prohibited from considering removing land from the Natural Core Areas or Natural Linkage Areas. In addition, the Minister of Municipal Affairs and Housing may make amendments to the Plan, but they must conform to the objectives of the plan.<sup>85</sup>

The *ORMCA* requires public participation for any decisions made under the Act. In the 10-year review of the Plan, the minister must consult with affected ministries and public bodies and with the council of each municipality or municipal planning authority with jurisdiction in the Moraine area, and ensure that the public is given an opportunity to participate in the review. A more limited consultation requirement applies to proposed amendments to the plan.<sup>86</sup>

In addition, the public has the right under the *EBR* to receive notice and the opportunity to comment on changes to the *ORMCA*, and on regulations, policies and certain instruments under it. Members of the public also may make applications for review in relation to the *ORMCA* and related policies, regulations and instruments.<sup>87</sup>

*“The ECO recommends that the Ministries of Municipal Affairs and Housing, Natural Resources, and Environment and Energy begin planning and implementing the promised systems for monitoring and evaluating the Oak Ridges Moraine Conservation Plan.” 2001-2002 Annual Report*

The implementation document released with the ORMCP in 2002 stated that the provincial government would develop technical guidelines to help users of the plan understand, interpret and implement the provisions of the plan.<sup>88</sup>

Working with MNR and MOE, MMAH has prepared a series of 17 technical papers that represent the Ontario government's approach to implementation of plan policies. They are intended to assist approval authorities, applicants, landowners, interested stakeholder groups and others in implementing policies and applying technical requirements found in the ORMCP. The technical papers address:

- identification of key natural heritage features;
- significant wildlife habitat;
- supporting connectivity;
- landform conservation;
- identification and protection of vegetation protection zones for Areas of Natural and Scientific Interest;
- identification of significant portions of habitat for species at risk;
- identification and protection of significant woodlands;
- preparation of natural heritage evaluations;
- developing watershed plans;
- preparing water budgets;
- water conservation plans;
- hydrological evaluations for hydrologically sensitive features;
- sub-watersheds;
- wellhead protection;
- recreation plans;
- sewage and water system plans; and,
- stormwater management plans.<sup>89</sup>

MTO has developed a guidance document entitled *Environmental Protection Requirements for Transportation Planning and Highway Design, Construction, Operation and Maintenance – Oak Ridges Moraine Component*.<sup>90</sup> It provides MTO's interpretation of how the ORMCA applies to provincial highway projects, including new and modified highways and related structures such as interchanges, bridges, access roads, and drainage works. Although allowing transportation and utilities in the entire plan area seems contrary to its objectives, this guidance document does a reasonable job of incorporating most of the requirements of the ORMCP into its Environmental Protection Requirements.<sup>91</sup> For more information on the Oak Ridges Moraine from past ECO reports, see:

["Protecting the Oak Ridges Moraine" in Having Regard - ECO Annual Report 2000-2001](#)

["Oak Ridges Moraine Conservation Act" in Developing Sustainability - ECO Annual Report 2001-2002](#)

["Environmental Protection Requirements for Highway Projects: The Oak Ridges Moraine" in Neglecting our Obligations - ECO Annual Report 2005-2006](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

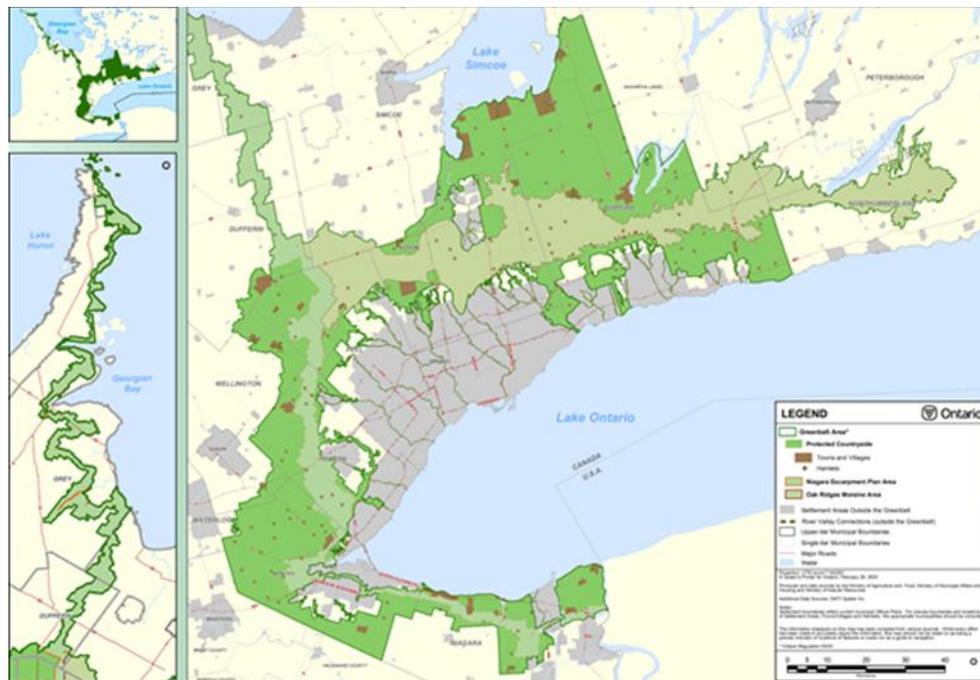
## The Greenbelt

### Achieving Protection for the Greenbelt

The Greater Golden Horseshoe area is one of the fastest growing regions in North America, with the province planning for the settlement of another 4 million people in the area by 2031. For decades, urban development has promoted inefficient land use patterns that have devoured significant amounts of southern Ontario's agricultural lands and natural areas. Urban sprawl continues to threaten the remaining lands and has generated political and economic pressures on the provincial government to assume a leadership role in coordinating regional and provincial planning in the Greater Golden Horseshoe.<sup>92</sup>

During the 2003 provincial election, after an extended reluctance to intervene, the government committed to protecting a greenbelt area in the Greater Golden Horseshoe. In February 2005, the government passed the *Greenbelt Act, 2005*,<sup>93</sup> which provided the authority to protect a greenbelt of agricultural and environmentally sensitive land in the Golden Horseshoe from urban sprawl. The Act allows for the establishment of a Greenbelt Plan.<sup>94</sup>

The *Greenbelt Act* requires that decisions relating to the Greenbelt that are made under the *Ontario Planning and Development Act, 1994*,<sup>95</sup> the *Planning Act* or the *Condominium Act* by municipal councils, local boards, municipal planning authorities, provincial Ministers, provincial government and agency officials or the OMB must conform with the Greenbelt Plan.<sup>96</sup> Affected municipalities must bring their official plans into conformity with the Greenbelt Plan. The Greenbelt Plan prevails where there is a conflict with an official plan, zoning by-law or the PPS.<sup>97</sup>



Source: Ministry of Municipal Affairs and Housing

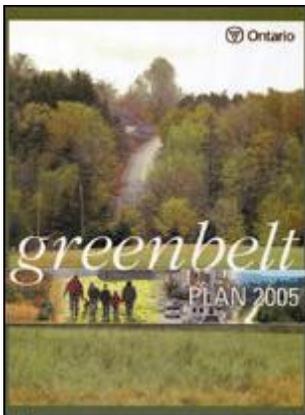
Although the *Greenbelt Act* preserves land around and in the Oak Ridges Moraine and Niagara Escarpment areas, it does not revoke or replace the *ORMCA* or the *NEPDA*, the existing laws protecting those areas. This raises the question of which of these land use planning regimes should take precedence in the case of a conflict. The *Greenbelt Act* provides that the ORMCP and Niagara Escarpment Plan (NEP) prevail over the Greenbelt Plan in their areas of application. However, the Act also gives Cabinet the power to make regulations to override anything in the ORMCP or the NEP if necessary for the operation of the Greenbelt Plan.<sup>98</sup>

## The Greenbelt Plan

The Greenbelt Plan covers an area of more than 328,000 hectares of lands already subject to the requirements of the NEP and the ORMCP, as well as a newly added 400,000 hectares of land described as Protected Countryside that are subject to the *Greenbelt Act* and Greenbelt Plan. The combined total area of the Greenbelt is approximately 728,000 hectares.<sup>99</sup>

The Protected Countryside includes three basic land use designations related to agricultural uses: Specialty Crop Areas; Prime Agricultural Lands; and Rural Lands. The Greenbelt Plan also allows for Settlement Areas – land within the Greenbelt designated for urban uses.<sup>100</sup>

Specialty Crop Areas have the greatest protection, with no expansions of Settlement Areas allowed into these areas, and no new non-agricultural uses permitted. Prime Agricultural Lands are not protected from Settlement Area expansions, which are permitted at the 10-year review subject to conditions, but these areas are protected from other new non-agricultural uses. Within areas designated as Rural Lands, a wide range of institutional, commercial, and recreational uses are permitted. While the Greenbelt Plan has some strong policies aimed at preventing the expansion of urban communities into the Protected Countryside, it is a concern that Settlement Areas within the Protected Countryside are permitted to expand into Prime Agricultural Lands.<sup>101</sup>



Throughout the Protected Countryside, residential lot severances are strictly controlled and the development of adult lifestyle and retirement communities is prohibited. The Greenbelt Plan prohibits the expansion of settlement areas located outside the Protected Countryside into the Protected Countryside. The remaining 15 per cent of the Protected Countryside is occupied by existing settlement areas, within which land uses are governed by municipal plans and related programs.<sup>102</sup>

Layered over the three basic land use designations is a Natural Heritage System, where enhanced protections are provided for key natural heritage and hydrologic features, including policies setting out restrictions and requirements for any development or site alteration near these features or their protection zones. Outside the Natural Heritage System and within the Protected Countryside, the policies of the PPS guide the protection of key natural heritage features, but the list of key features

protected under the PPS is not as comprehensive as those protected under the Natural Heritage System.<sup>103</sup>

Infrastructure – including water and wastewater treatment systems, waste management systems, and transportation facilities and corridors – is permitted throughout the Protected Countryside, including within key natural heritage features if the need can be demonstrated and there are no feasible alternative locations.<sup>104</sup>



Photo credit: C. Wilkinson

New mineral aggregate operations can be established, without justifying need, throughout the Protected Countryside except within certain key natural heritage features within the Natural Heritage System. New or expanded mineral aggregate operations within the Natural Heritage System are subject to enhanced site rehabilitation requirements as set out in the Greenbelt Plan. Any such operations within the Protected Countryside but outside of the Natural Heritage System are subject to a more limited list of enhanced rehabilitation requirements.<sup>105</sup>

The Greenbelt Plan permits renewable resource activities, including forestry, water taking, fisheries, conservation, and wildlife management activities, throughout the Protected Countryside, including within key natural heritage features. Recreational uses, including major uses such as ski hills, golf courses, and campgrounds, are also permitted within rural areas of the Protected Countryside, subject to conditions. Within the Natural Heritage System, proposals for major recreational facilities require additional planning to minimize water, nutrient and biocide use.<sup>106</sup>

Municipalities are free to enact stricter requirements than those set out in the plan, if they do not conflict with it. However, they cannot enact stricter policies to regulate agricultural uses or mineral aggregate operations.<sup>107</sup>

The policies designed to protect the Greenbelt's natural features and functions, while stronger than the protections offered by the PPS, are not suitably protective in the long term for the Greenbelt area. The ECO has expressed concerns about the uses that the plan permits across the Protected Countryside and, in some instances, near or within key natural features. Natural heritage policies should be at least as strong as those in the NEP and ORMCP. Introducing consistency across these plans would eliminate the complexities and confusion that arise when multiple plans with differing policies apply to lands in such close proximity.<sup>108</sup>

The Greenbelt Plan also fails to challenge status quo approaches to transportation, as demonstrated through plan policies permitting highways and aggregate extraction operations in most of the Protected Countryside, thereby compromising the Plan's expressed goal of offering protection to natural heritage, water resource systems and agricultural lands. The ECO believes this fundamental weakness of the plan could lead to transportation corridors that generate additional growth pressures that would threaten the Protected Countryside and beyond.<sup>109</sup>

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## Review, Public Participation and Implementation

The *Greenbelt Act* requires that a review of the Greenbelt Plan be carried out every 10 years, in conjunction with reviews of the ORMCP and the NEP. The Minister of Municipal Affairs must consult with affected public bodies as well. The Act also requires the Minister to ensure that the public is given an opportunity to participate in the 10-year review. In addition, the minister may propose amendments to the areas designated as Protected Countryside in the Greenbelt Plan at any time and undertake consultation on these amendments.<sup>110</sup>

The public has the right under the *EBR* to notice and the opportunity to comment on changes to the *Greenbelt Act*, and on regulations and policies under it. Members of the public also may file applications for review under the *EBR* in relation to the *Greenbelt Act* and related policies and regulations.<sup>111</sup>

The *Greenbelt Act* establishes a Greenbelt Council whose duties include: tracking the success of plan implementation; identifying issues emerging from implementation; and advising on the development of Greenbelt Plan performance measures.<sup>112</sup> In 2010, MMAH developed a draft Performance Monitoring Framework that includes sample indicators to measure the performance of the Greenbelt Plan. It is intended that this monitoring framework will be useful to support the 10-year review of the Greenbelt Plan. This review of the Greenbelt Plan, along with the ORMCP and NEP, will begin in 2015.<sup>113</sup>

The role of the province in plan implementation appears to be very limited, apart from the Greenbelt Council. Municipalities are charged with designating prime agricultural and rural lands, and identifying and delineating the boundaries of key natural heritage features, with minimal and sometimes no guidance from the province. This has generated concern among stakeholders – including municipalities – regarding the potential for inconsistent plan implementation across the Protected Countryside and the lack of resources and expertise at the municipal level to take on these implementation responsibilities. Further, while the plan sets out a process for monitoring the success of implementation through performance measures, it is unclear who will ultimately assume responsibility for steering this process.<sup>114</sup>

It is important that the government assume a larger role in the Greenbelt Plan's implementation by providing clear guidelines and direction to municipalities and other agencies that will play a part in Plan implementation. Providing provincial resources in the form of staff expertise and funding would also facilitate implementation of the Greenbelt Plan.<sup>115</sup>

MMAH has introduced criteria that will be used to evaluate municipal requests to expand the boundaries of the Greenbelt. This process is intended to allow municipalities to identify areas that they wish to have included in the Greenbelt. In preparing a submission to expand the Greenbelt, municipalities must demonstrate how they have addressed each of the criteria.<sup>116</sup>

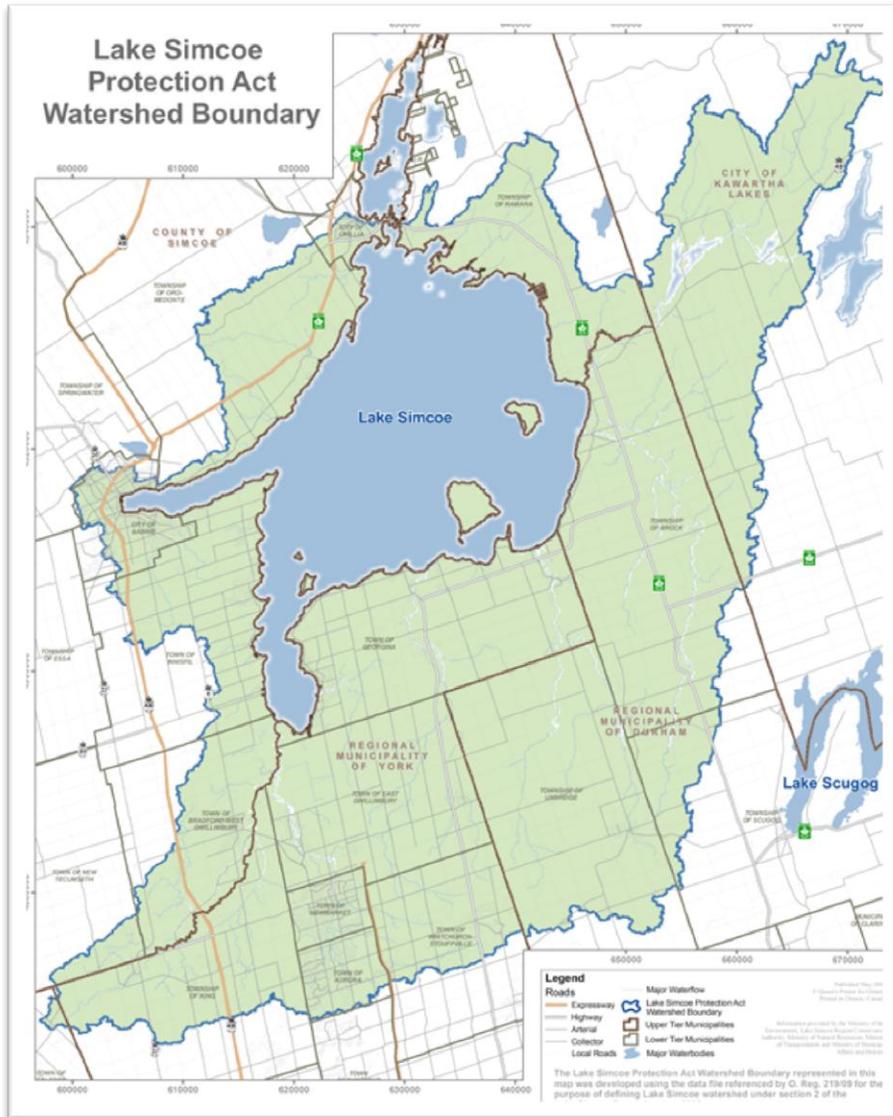
For more information on the Greenbelt from past ECO reports, see:

["The Greenbelt Act, 2005, and the Greenbelt Plan" in Planning Our Landscape, ECO Annual Report 2004-2005](#)

## Lake Simcoe Watershed

### Achieving Protection for Lake Simcoe

Located about an hour north of Toronto, the Lake Simcoe watershed is home to approximately 350,000 permanent residents and an additional 50,000 seasonal residents. The watershed crosses 23 municipal boundaries, including those that make up York and Durham Regions. It also contains a portion of the Oak Ridges Moraine, regulated under the *ORMCA*, and the provincially designated Greenbelt, regulated under the *Greenbelt Act*.<sup>117</sup>

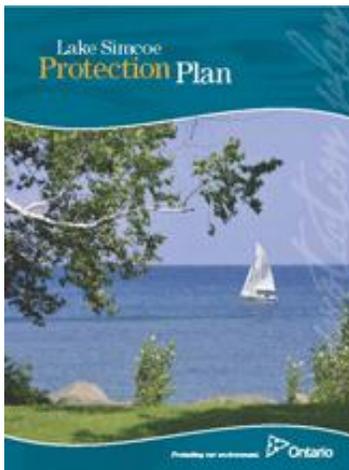


Source: Ministry of Municipal Affairs and Housing

Aside from the Great Lakes, Lake Simcoe is Ontario's largest inland lake. The Lake Simcoe watershed is a mix of agricultural, natural and urban lands and is considered a prime cottage and fishing destination. During the 1970s, the health of the lake began to deteriorate, notably impairing the ability for lake trout and other cold water fish species to reproduce naturally. Over the last few decades, extensive development pressure has been evident in the watershed.<sup>118</sup>

In 2008, the Ontario government passed the *LSPA*<sup>119</sup> in order to protect and restore the Lake Simcoe watershed's ecological health.<sup>120</sup> The *LSPA* allows for the creation of the Lake Simcoe Protection Plan, which was finalized in 2009 to address water quality concerns and other threats to the watershed. The plan consists of targets, indicators, and policies organized into categories, including: aquatic life, water quality, water quantity, shorelines and natural heritage, other threats and activities (e.g., invasive species, climate change and recreational activities), and implementation.<sup>121</sup>

*"The ECO recommends that the Ministry of Municipal Affairs and Housing amend the Provincial Policy Statement to require integrated watershed management planning."*  
2009-2010 Annual Report



The Lake Simcoe Protection Plan is an example of a landscape-level approach based on integrated watershed management planning to address environmental concerns. Over the past decade, the Ontario government has enacted site or landscape-specific legislation to enhance environmental protection, including the *Greenbelt Act*, the *ORMCA* and now the *LSPA*. This trend in landscape-specific law, policies and land use plans clearly suggest that there is inadequate protection for ecosystem features and functions in southern Ontario's overall land use planning system, as guided by the *Planning Act* and the PPS.<sup>122</sup>

Rather than implementing measures to fix specific environmental degradation after it has occurred, the government should focus on conserving and protecting all our wildlife, wetlands, forests, lakes and rivers before they are degraded. Integrated watershed management, currently practiced by most conservation authorities, is an excellent example of how natural landscape features can be conserved and protected in Ontario's land use planning context.<sup>123</sup>

In 2010, the ECO recommended that the PPS be amended to ensure that sufficient protection is provided to all of Ontario's ecologically and hydrologically significant features through integrated watershed management planning.<sup>124</sup>

For more information on Lake Simcoe from past ECO reports, see:

["Lake Simcoe: The Province Steps In" in Building Resilience - ECO Annual Report 2008-2009](#)

["A Watershed Moment? Ontario Introduces the Lake Simcoe Protection Plan" in Redefining Conservation - ECO Annual Report 2009-2010](#)

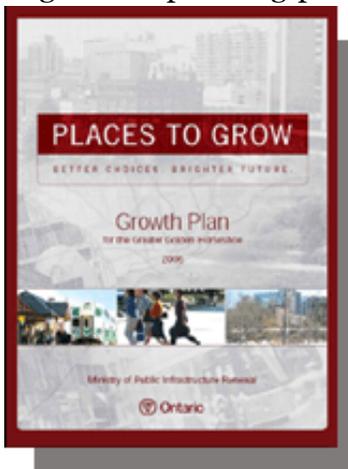
## PLANNING FOR GROWTH

### Places to Grow

Southern Ontario is one of the fastest growing regions in North America. The area is already home to 94 per cent of the province's population (or 36 per cent of Canada's population of 32.8 million people) and the government projects that by 2031 an additional four million people will settle in the Greater Golden Horseshoe (the GGH is an area in southern Ontario, extending roughly from Niagara Falls to Georgian Bay to Peterborough). This rate of growth is unprecedented in Ontario.<sup>125</sup>

To cope with the projected population and economic growth in southern Ontario over the next few decades, the Ontario government enacted the *Places to Grow Act, 2005*<sup>126</sup> to provide the legal and policy framework needed to facilitate the development of growth plans for different regions of Ontario, and to amend these plans as required. The Act, now the responsibility of the Ministry of Infrastructure, requires the Minister to prepare a proposed growth plan for designated areas.<sup>127</sup>

The first growth plan prepared under the Act was the Growth Plan for the Greater Golden Horseshoe, 2006<sup>128</sup> (GGH Plan). The GGH Plan is a framework that establishes specific density targets and planning priorities for managing growth in the region.<sup>129</sup> The Act and the GGH Plan



were seen as critical to the success of the *Greenbelt Act* and Greenbelt Plan. The goal of preserving outlying natural, rural, and agricultural lands is inextricably linked to the need to formulate and implement plans to direct, control and transform the nature of urban growth in southern Ontario.<sup>130</sup>

The GGH Plan is guided by the province's desire to plan and manage growth in a manner that supports a strong and competitive economy, protects the natural environment and agricultural lands, optimizes the use of existing and new infrastructure, and enhances quality of life in communities throughout the region. It is hoped that these goals will be achieved through the promotion of intensification and re-urbanization, including brownfield redevelopment, wherever possible.<sup>131</sup>

The GGH Plan establishes overarching growth management policies and goals that address: where and how to grow; infrastructure needed to support growth; and protection of natural systems, prime agricultural areas and aggregate resources. Key policy directions and goals in the GGH Plan include the following:

- directing growth to built up areas within the Greater Golden Horseshoe by establishing urban growth centres and intensification corridors;
  - establishing development intensification targets, by the year 2015 and on, of a minimum of 40 per cent of all residential development occurring annually within the built-up area of each upper- and single-tier municipality;
-

- establishing residential and employment density targets within urban growth centres in order to support public transit and promote mixed use development; and,
- making public transit the first priority for transportation infrastructure planning and major transportation investments.<sup>132</sup>

While it is important to promote urban growth and intensification in southern Ontario, the GGH Plan does include policies that concern the ECO. For example, the Plan proposes that growth and intensification take place in watersheds where communities are already struggling with water supply and wastewater treatment issues. These communities will eventually require major upgrades to their water and wastewater infrastructure to accommodate the projected population growth.<sup>133</sup>

The GGH Plan does include a requirement that, prior to expanding existing water and wastewater systems or building new systems, municipalities should implement water conservation and demand management strategies. However, the GGH Plan does not require that population allocations be appropriately adjusted in communities where watersheds are close to carrying capacity. Instead, the GGH Plan favours the artificial extension of water and wastewater capacity in such communities, through major infrastructure projects designed to pipe water in from outside of the local watershed and, in some cases, to pipe wastewater back out.<sup>134</sup>

Long-distance transport of water and wastewater also requires costly infrastructure and significant ongoing energy supplies to run the pumps that move water and wastewater. In addition, such projects are exempt from the natural heritage protection provisions set out in the PPS, the Greenbelt Plan and the ORMCP, even though their construction can cause significant environmental impacts.<sup>135</sup>

The approach used in the GGH Plan reverses the sustainable planning process; it elevates the province's goal of accommodating population increases – with economic growth as the central driver – over the need to live within ecosystem limits. The emphasis on large infrastructure projects sets up irreconcilable priorities. This approach is not sustainable over the long run, and may only serve to export the capacity challenges to more distant watersheds.<sup>136</sup>

It is unclear whether the GGH Plan will allow for radical reductions in growth allocations if major shortcomings in water and wastewater servicing emerge in communities targeted for growth. The plan does allow for population allocations to be revisited after five years, but does not indicate what factors were used to determine the existing allocations, or what factors might result in changing those

*“The ECO recommends that MMAH undertake public consultation on the government’s population growth modeling and projections in order to provide a transparent context for land use planning decisions.” 2004-2005 Annual Report*

*“The ECO recommends that MMAH work with the Ministry of Public Infrastructure Renewal (now the Ministry of Infrastructure) to increase the GGH Plan’s intensification and density targets above existing business-as-usual development targets.” 2006-2007 Annual Report*

allocations. It appears that accommodating economic growth by population expansion – rather than respecting ecosystem limits – has been the primary driving force in the allocation process. In the interim five-year period, municipalities are obligated to plan to accommodate the existing population projections outlined in the GGH Plan. In effect, this obligation will impose large-scale infrastructure projects as the solution to inadequate water and wastewater capacity in designated urban growth areas.<sup>137</sup>

For more information on Places to Grow from past ECO reports, see:

["Limits to Growth in the 2005 Provincial Policy Statement" in Planning our Landscape - ECO Annual Report 2004-2005](#)

["Places to Grow Act and the Draft Growth Plan for the Greater Golden Horseshoe" in Planning our Landscape - ECO Annual Report 2004-2005](#)

["Irreconcilable Priorities: The Challenge of Creating Sustainable Communities in Southern Ontario" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

["Living Sustainably within a Watershed, or Pushing beyond Natural Limits?" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

## Transportation

It is important to recognize the connections between transportation system planning and land use planning. When roads are built or expanded in southern Ontario, either farmland or natural areas are almost always lost. The loss of either carries a significant environmental penalty. For example, the continued availability of local sources of produce, meat and dairy products is key to strategies that reduce greenhouse gas emissions.<sup>138</sup>

Transportation trends in Ontario show: a preference for the use of automobiles for mobility; an average of one vehicle for every two people across the province; and low vehicle occupancy rates of typically 1.2 persons.<sup>139</sup> If these trends continue, the province will need to continue to devote thousands of hectares of land in the GGH to new or expanded roads and highways to accommodate the transportation of Ontario's growing population, in addition to freight transportation of goods and raw materials.<sup>140</sup>

The link between transportation system and land use planning is noted in the *Planning Act*, which was amended in 2006 to recognize, as a matter of provincial interest, "the promotion of development that is designed to be sustainable, to support public transit and to be oriented to pedestrians."<sup>141</sup> The PPS includes policies on transportation systems and requires that transportation and land use considerations be integrated at all stages of the planning process. The PPS promotes a land use pattern, density and mix of uses "that minimize the length and number of vehicle trips and support the development of viable choices and plans for public transit and other alternative transportation modes, including commuter rail and bus."<sup>142</sup>

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The GGH Plan seeks to move more people by transit and fewer by automobile, while continuing to accommodate a high volume of freight on highways.<sup>143</sup> The plan states that public transit will have first priority for transportation infrastructure planning and major transportation investments, and includes policies that:

- promote transit-supportive densities; and,
- support a transportation network that links urban growth centres through an extensive multi-modal system anchored by efficient public transit along with highway systems to move people and goods.<sup>144</sup>

Some of the municipalities identified in the GGH Plan as urban growth centres, like downtown Guelph and Hamilton, Mississauga City Centre and Kitchener are already very close to achieving the density targets they are expected to meet by 2031 under the GGH Plan. However, these centres have not moved substantially away from automobile-based mobility and toward an integrated live-work and transit-based environment. Road expansion will continue in the Greater Toronto Area (GTA) unless and until there is a major shift in lifestyle by the residents of the GGH. The lack of



Photo credit: Ministry of Infrastructure

progress to date in shifting away from a car-based culture calls into question the efficacy of the GGH Plan's density targets in promoting the hoped-for mobility changes in the future.<sup>145</sup>

Along with transit upgrades, highway network expansion continues to be a significant element of transportation planning in southern Ontario. Both public transit and highway infrastructure projects for the GTA have been announced since the GGH Plan was finalized.<sup>146</sup>

New roads, particularly the multi-lane 400-series highways, can have a profound impact on green spaces. The preferred alignment and most

economical method of road construction is frequently a straight line – that being, by definition, the shortest distance between two points. This approach usually results in the alignment passing through green space at some point. Natural heritage features, such as provincially significant wetlands “protected” under the 2005 PPS, are not exempt from encroachment.<sup>147</sup>

A “balanced” approach to investing in both highway and transit infrastructure is unlikely to achieve the GGH Plan's landscape protection goals. The Ontario government's 2007 budget dedicated \$6.5 billion to the provincial highway system and \$4.5 billion to transit improvements. Preventing further infringement on agricultural and green space by road-based transportation will be difficult if the majority of transportation spending continues to be dedicated to highway and road expansion.<sup>148</sup>



Photo credit: C. Wilkinson

Over the long term, the GGH Plan is seeking densities for satellite communities that are about half of the densities set for the City of Toronto. Furthermore, the GGH Plan envisages that 60 per cent of new development will continue on greenfield sites and this development must achieve only one-quarter of the density of a major urban area; this density is only slightly higher than that achieved in recently built suburbs. Most transit experts agree that these densities are not sufficient to succeed in significantly raising transit ridership. If communities in southern Ontario do not achieve a dramatically more compact and integrated urban form, then

these communities likely will not succeed in raising transit ridership, improving rates of walking and cycling, diminishing automobile use and, thereby, curbing the need for further road expansion.<sup>149</sup>

To ease congestion on southern Ontario's road network, even greater changes will be needed through measures like prioritizing transit over automobile use in the GGH, and making much greater use of rail and, where viable, water transport to transport freight. Highly effective efforts to intensify urban settlement patterns, prioritize transit use, and reduce the use of automobiles will be critical to ensuring that existing green spaces and agricultural areas in the GGH are not further fragmented by road expansion.<sup>150</sup>

The province will likely encounter increasing difficulty in the years ahead reconciling the goals of green space protection in the GGH and providing for personal mobility, if mobility is achieved mainly through highway and automobile-based travel. These two competing priorities will continue to clash and cause further environmental degradation in the GGH unless improvements are made to the GGH Plan.<sup>151</sup>

For more information on transportation and land use planning from past ECO reports, see:

["A Sustainable Transportation System for Ontario: MOE and MTO Remove One Roadblock But Others Remain" in Neglecting our Obligations: ECO Annual Report 2005-2006](#)

["Creating a Sustainable Transportation System, or Paving over the Landscape?" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

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## Brownfields

The National Round Table on the Environment and the Economy describes a brownfield as an “abandoned, vacant, derelict or underutilized commercial or industrial property where past actions have resulted in actual or perceived contamination and where there is an active potential for redevelopment.”<sup>152</sup> Brownfield lands may need to be cleaned up before they can be redeveloped.

Redevelopment of brownfield sites benefits the environment by improving soil, water and air quality. The re-use of these sites also contributes to urban revitalization and curbs sprawl that would otherwise consume valuable green space, including agricultural lands. It is estimated that for every hectare of brownfield land used for redevelopment, 4.5 hectares of greenfield land are saved.<sup>153</sup>

The *Planning Act* was amended in 2006 to recognize, as a matter of provincial interest, the promotion of development designed to be sustainable such as brownfield redevelopment.<sup>154</sup>

The Act also gives municipalities the authority to designate community improvement project areas through their official plans and by-laws. Municipalities may then prepare community improvement plans for these areas to promote revitalization through a range of measures such as brownfield cleanup and redevelopment.<sup>155</sup>

The PPS instructs planning authorities to identify and promote opportunities for intensification and redevelopment where possible, including on brownfield sites. The PPS also recognizes that long-term economic prosperity should be supported by redevelopment of brownfield sites.<sup>156</sup> The focus in the GGH Plan on the intensification of the existing built-up area supports the redevelopment of brownfield sites.<sup>157</sup>

In addition to land use planning policy, the Ontario government has taken other measures to encourage brownfield redevelopment. In 2001, the government enacted the *Brownfields Statute Law Amendment Act* to provide clear rules for cleanup and environmental liability, mechanisms to ensure quality cleanup, and planning and financing tools to enable the process.<sup>158</sup>

It is encouraging to see that incremental progress is being made toward the creation of a regulatory environment more conducive to brownfield redevelopment. It is important that the province continue its progress toward a full suite of effective tools to facilitate the reuse of brownfield sites in Ontario.<sup>159</sup> For more information on brownfield redevelopment from past ECO reports, see:

["Developing Sustainability: Reusing Brownfields/Saving Greenfields" in Developing Sustainability - ECO Annual Report 2001-2002](#)

["Encouraging Brownfield Redevelopment - Ontario Regulation 153/04" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Brownfield Development Becomes More Transparent" in Neglecting Our Obligations - ECO Annual Report 2005-2006](#)

["Legislative Brownfield Reform" in Getting to K\(No\)w - ECO Annual Report 2007-2008](#)

## Aggregates

### Aggregate Extraction

Aggregate pits and quarries (that produce stone, sand and gravel) require approval from MNR under the *ARA*<sup>160</sup>. They often also require approval under other provincial statutes, such as the *Planning Act*. Determining the sites of new pits and quarries, and deciding whether to expand existing sites, is one of the most difficult and controversial land use decisions being made in Ontario today, in part because of conflicting priorities in provincial policy.<sup>161</sup>

Aggregates are very heavy, but low-cost materials, so trucking costs are significant, and create pressure to extract aggregates as close to markets as possible. Since aggregates are a key ingredient for building public infrastructure, the Ontario government also has a longstanding policy of encouraging aggregate extraction as close to markets as possible. As a general rule, municipal councils must give the aggregate industry access to local deposits of aggregate, regardless of local need for aggregate, or concern from local residents. Municipalities can find this situation frustrating, since they have very limited powers to deal with day-to-day compliance problems, yet must accept aggregate sites.<sup>162</sup>

Ontario's geology dictates where the best deposits of high-quality aggregate can be found; the Niagara Escarpment, the Oak Ridges Moraine and the Carden Plain are all excellent sources for many specialty aggregate products. More than 75 per cent of aggregates used in the Greenbelt come from the Niagara Escarpment and the Oak Ridges Moraine plan areas. However, these are also regions with significant natural heritage, providing unique habitats and remnant green corridors in a landscape that is otherwise rapidly urbanizing.<sup>163</sup>

Aggregate operations remove virtually all vegetation, topsoil and subsoil to reach the sand, gravel or bedrock beneath. By necessity, extraction also removes all natural habitat, disrupts pre-existing stream flows, changes final grades on the land, and alters drainage patterns. Although the *ARA* requires operators to rehabilitate pits and quarries to the satisfaction of MNR and some sites have been successfully rehabilitated,<sup>164</sup> an *EBR* review of rehabilitation confirmed that most operators are not conducting progressive or final rehabilitation as required. Sites are rarely returned to their original condition.<sup>165</sup>

There are additional, stronger rehabilitation requirements for specially designated areas of the province, under the NEP, the ORMCP and the Greenbelt Plan. Unfortunately, not all operators comply with these rehabilitation requirements, and many worked-out sites are being left in a disturbed state.<sup>166</sup>

Pits and quarries are allowed almost everywhere in Ontario, under certain conditions. Even within the NEP, ORMCP and Greenbelt Plan, very little land is off-limits. The NEP allows new pits and quarries in the largest land use zone with an amendment to the plan. The ORMCP allows new pits and quarries within all but the most protective zone, and this will be re-examined during the first 10-year review of the plan. The Greenbelt Plan allows pits and quarries in all areas except for provincially significant wetlands, some woodlands and endangered species habitat.<sup>167</sup>

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## Aggregates and Land Use Policy

The PPS states that “as much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible” and “demonstration of need... shall not be required.” In addition, the *ARA* clearly states that it applies “despite any municipal by-law, official plan or development agreement,” and that MNR need only “have regard to” any other planning and land use considerations when approving applications for aggregate licences.<sup>168</sup>

Some municipalities have noted that they would not approve any other land use without full and open justification of the need. Even in areas of the province where the municipality and the public know there are ample reserves, the municipality cannot require an applicant to demonstrate need.<sup>169</sup>

While on the one hand, municipalities are directed by the PPS to provide access to aggregates, the same document also directs them to maintain “linkages and related functions among surface water features, ground water features, hydrologic functions and natural heritage features and areas.” So the siting or expansion of pits and quarries in southern Ontario is becoming increasingly controversial.<sup>170</sup>

Municipalities have little practical authority to restrict the approval of new pits and quarries under the existing land use planning system. They also are often reluctant to restrict new operations because of the costly possibility of facing an OMB hearing.<sup>171</sup>

The PPS provides general policy direction on matters of provincial interest, reflecting the Ontario government’s stated priorities for the establishment of such land uses as aggregate operations. However, it does not contain any reference to cumulative effects or their consideration in municipal decision-making. Moreover, municipal decisions on the zoning of lands typically do not assess cumulative impacts beyond a general level. Making broad societal choices should not be confused with site-specific technical assessments.<sup>172</sup>

The GGH Plan states that the provincial government will work with municipalities, producers of aggregates and other stakeholders to: identify significant mineral aggregate resources for the GGH; develop a long-term strategy for wise use and conservation; and identify opportunities for recycling and coordinated approaches to rehabilitation.<sup>173</sup>

## Public Concerns

This current process for approving pits and quarries often results in frustrated local residents feeling disenfranchised by both their local politicians and the provincial government.<sup>174</sup>

In the past, most applications to site or expand pits and quarries have been approved, despite the potential environmental impacts and the legitimate concerns raised by municipalities, citizen groups and individuals.<sup>175</sup> There have been two notable recent exceptions; in April 2010, a Minister’s Zoning Order under the *Planning Act* blocked a proposal submitted by St. Mary’s Cement Inc. to develop an aggregate quarry in Flamborough;<sup>176</sup> and in November 2010, an OMB decision ruled against a proposal for a quarry in Caledon.<sup>177</sup>

Over the years, the ECO has received a number of *EBR* applications requesting a review of the current regulatory framework for aggregate extraction. Applicants have raised the need for an aggregates conservation strategy, improved rehabilitation policies, revisions to the PPS, and new procedures for processing applications.<sup>178</sup>

One of the reasons the public is so concerned about new sites is because of problems with compliance at existing sites. Illustrating the scope of the problem, MNR recently completed an inventory of all existing pits and quarries in the Oak Ridges Moraine area to assess licensee compliance with the *ARA*. The results of the inventory indicated that 100 out of 121 sites had compliance problems.<sup>179</sup>

### **Need for an Aggregates Conservation Strategy**

Representatives of the aggregate industry in Ontario, along with MNR, have stated that there is a critical need for new licensed supplies of aggregate because depletion of existing sources is significantly outpacing the licensing of new sources, and that demand is projected to grow. However, it has been difficult to evaluate the validity of these statements because of the lack of publicly available data on aggregate demand and supply.<sup>180</sup> In 2010, MNR released six papers and a consolidated report as part of an updated State of the Aggregate Resource in Ontario Study. The papers spoke to a range of topics that included aggregate consumption and demand, and reuse and recycling.<sup>181</sup>

The ECO has recommended that MNR develop an aggregates conservation strategy. In response, MNR stated that it remained committed to “contributing to” an aggregate resources strategy, but considered completion of a recycling study as a prerequisite step before developing the larger aggregate resources strategy.<sup>182</sup> As that study has now been completed, the ECO looks forward to the development of an aggregate resources strategy.

*“The ECO recommends that the Ministries of Natural Resources and Transportation collaborate on a strategy for conserving Ontario’s aggregate resources. This strategy, which should be developed with public consultation, should consider both road construction needs and the need to conserve aggregate resources.” 2002-2003 Annual Report*

### **Improving Aggregates Planning**

The ECO has noted that Ontario’s current land use planning system is weighted in favour of extractive and destructive uses of the land. It often is deterministic in nature and does not include a discussion of the need for any given project. This approach undermines the resilience of the lands, waters, and other aspects of the natural environment that communities value and upon which they depend.<sup>183</sup>

The ECO has urged the Ontario government to reconcile its conflicting priorities between aggregate extraction and environmental protection by:

- making the aggregates strategy promised in the Growth Plan a high priority;
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- giving municipalities more say in the siting of pits and quarries; and,
- developing a new mechanism to quickly screen out inappropriate proposals that should not proceed.<sup>184</sup>

MNR should develop a regionally based planning approach, involving the assessment of cumulative effects, when considering an individual approval for a new or expanded aggregate operation. Such an approach is logical as geologic formations naturally cluster favourable locations for pits and quarries.<sup>185</sup>

This same clustering effect also is driven by a provincial land use planning directive which explicitly encourages that aggregate be made available close to markets. As a result, land use conflicts are almost assured: some of the highest quality aggregate deposits are found in the areas of the greatest ecological and social significance in southern Ontario. The broader land use planning process under the *Planning Act* should, conceptually, consider cumulative effects as part of its decision-making process.<sup>186</sup>

For more information on aggregates and land use planning from past ECO reports, see:

["Aggregate Use in Road Construction" in Thinking Beyond the Near and Now - ECO Annual Report 2002-2003](#)

["Aggregate Extraction on the North Shore of Lake Superior" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Rehabilitation of Pits and Quarries in Ontario" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Ontario's Sand and Gravel Extraction Policy: Overdue for Review" in Neglecting our Obligations - ECO Annual Report 2005-2006](#)

["The Aggregate Resources Act: Conservation ... or Unconstrained Consumption" in Neglecting our Obligations - ECO Annual Report 2005-2006](#)

["Preserving Natural Areas, or Extracting Aggregates Wherever They Lay?" in Reconciling Our Priorities - ECO Annual Report 2006-2007](#)

["Our Cratered Landscape: Can Pits and Quarries be Rehabilitated?" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

["The Swiss Cheese Syndrome: Pits and Quarries Come in Clusters" in Building Resilience - ECO Annual Report 2008-2009](#)

## Green Energy

In 2009, the Ontario government passed the *Green Energy and Green Economy Act, 2009*<sup>187</sup> (*GEGEA*) which enacted the *Green Energy Act, 2009*<sup>188</sup> to assist in removing barriers to and promoting opportunities for renewable energy generation facilities. The *GEGEA* also amended the *Environmental Protection Act*<sup>189</sup> (*EPA*) to introduce a new class of approvals for renewable energy projects. A Renewable Energy Approvals Regulation<sup>190</sup> (“REA Regulation”) was made under the *EPA*.

The REA Regulation has streamlined approval process for renewable energy projects by integrating all former MOE regulatory approval requirements into a single process based on a “one window, one permit” approach. Also, the government has exempted most renewable energy projects that generate electricity from the requirements of the *Environmental Assessment Act*<sup>191</sup> (*EAA*).

In addition, the *GEGEA* made amendments to the *Planning Act* so that most planning approval requirements no longer apply to renewable energy projects. Prior to the REA Regulation coming into force, most electricity projects were subject to sometimes onerous official plan amendments and/or zoning by-law amendments as required by municipalities, in addition to undergoing an environmental screening process under the *EAA*, and obtaining a certificate of approval under the *EPA*. As a result, the process to gain the requisite approvals for a renewable energy project was often complex, expensive and time-consuming.<sup>192</sup>

Although the new applications process has been streamlined, the ECO believes that it places a sufficiently high burden on project proponents to be thorough and transparent throughout the application process. Proponents will be required to expend a significant amount of upfront effort in public, municipal and Aboriginal consultations, along with the preparation of site-specific studies and required documentation. A key component of such transparency will be granting the public and local municipalities adequate opportunities – early and throughout the process – to view and comment on all relevant reports, as well as the final application. It is only in this manner that the local public is able to provide informed comments and gain a better understanding of what is being proposed.<sup>193</sup>

For more information on the impact of the *GEGEA* on land use planning from past ECO reports, see:

["Ramping Up Renewables: MOE's Renewable Energy Approvals" in Redefining Conservation - ECO Annual Report 2009-2010](#)

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## NATURAL HERITAGE PROTECTION IN PLANNING

Progressive land use planning should begin at the landscape level. The significant natural functions of the environment – watersheds, moraines, large natural areas – should act as the critical first screen for later site-specific land use decisions. By initially establishing natural limits upfront, greater certainty is then achieved when localized decisions need to be made. Knowing upfront where different forms of development are appropriate or not, based on natural limits, is a sound approach to planning.<sup>194</sup>

Policies in the PPS purport to address the long-term protection of natural heritage, although they are often superceded by other planning priorities that promote development.<sup>195</sup> MNR has prepared a Natural Heritage Reference Manual, updated most recently in 2010, to provide technical guidance on implementing the natural heritage policies found in the PPS.<sup>196</sup>

*“The ECO recommends that MMAH amend the Provincial Policy Statement to prohibit new infrastructure such as highways in Provincially Significant Wetlands unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions.” 2006-2007 Annual Report*

The ECO has given special attention to the areas of natural heritage planning discussed below – wetlands, woodlands and groundwater protection.

### Wetlands

Wetlands are critically important ecosystems, providing: water storage, storm protection and flood mitigation, shoreline stabilization and erosion control, groundwater recharge, and water purification through retention of nutrients, sediments, and pollutants. Wetland conservation can help maintain hydrologic flow patterns and mitigate some of the environmental impacts of climate change. In addition, wetlands provide critical habitat and breeding grounds for many plants and animals, including a number of species at risk.<sup>197</sup>

Wetlands make up about one-third of the province’s land base, and are most prevalent in northern Ontario. However, wetland losses have been most severe in southern Ontario: about 72 per cent of the wetlands present prior to European settlement had been destroyed, and some areas of southern Ontario have lost almost all their wetlands. Within the Great Lakes Basin, an estimated 65 per cent of coastal wetlands have been converted to other land uses.<sup>198</sup>

The major threats to wetlands include drainage for agriculture, development and road construction. Other stressors include large water-takings, contaminated runoff and invasive species. Dredging, urban and cottage development, and the manipulation of lake levels threaten coastal wetlands. For over 20 years, Ontario provincial policy has stated that wetlands should be protected. However, wetlands continue to lose out to other priorities, such as residential

development and new pits and quarries, depriving future generations of the benefits that wetlands could provide.<sup>199</sup>

The PPS prohibits development and site alteration in significant wetlands, also referred to as provincially significant wetlands (PSWs), in much of southern and central Ontario. It allows development on lands adjacent to PSWs, and in PSWs in northern Ontario, but only if it has been demonstrated that there will be no negative impacts on the wetlands or their ecological functions. The current PPS, unlike earlier provincial policy on wetlands, does not address locally significant wetlands or wetlands that have not yet been evaluated for their significance.<sup>200</sup>

Ontario's policy approach to protecting wetlands through the land-use planning system has several weaknesses:

- exemptions allow for infrastructure works, agriculture and some resource extraction activities;
- protection depends on evaluations and official designation in land use plans;
- responsibility and jurisdiction is fragmented; and,
- decision-makers are permitted too much discretion in applying the policies.<sup>201</sup>

Infrastructure and drainage works are permitted within PSWs. The infrastructure exemption includes sewage and water systems, waste management systems, electric power generation and transmission, pipelines, transit and roads, and associated facilities. The PPS gives clear priority to transportation and infrastructure corridors over PSWs despite the well-documented impacts of roads reaching far beyond their physical footprints. For example, they disrupt hydrology, cause significant direct wildlife mortality, and bar access to critical breeding and hibernation sites.<sup>202</sup>

Another major contributor to wetland destruction is that most protections, such as the PPS, apply only to PSWs. Some municipalities and conservation authorities go further and include protections for locally significant wetlands, but decision-makers are unlikely – and to some extent unable – to use tools that they have available to protect wetlands unless the wetland has been identified as significant by MNR.<sup>203</sup>

Significant wetlands are defined in the 2005 PPS as areas “identified as provincially significant” by MNR “using evaluation procedures established by the Province, as amended from time to time.” MNR developed the Ontario Wetlands Evaluation System (OWES) to evaluate the significance of wetlands. MNR is responsible for the identification, whether the evaluation is carried out by ministry staff or others using MNR's manuals. After being identified, wetlands must then be designated as such in municipal official plans for the PPS protection provisions to apply. Locally significant wetlands (e.g., wetlands that do not score high enough by OWES to be considered provincially significant) and unevaluated wetlands are not protected under the *Planning Act* or the PPS.<sup>204</sup>

The PPS prohibits development in areas adjacent to PSWs, unless it has been demonstrated that there will be no negative impacts on the wetlands or their ecological functions; however, the PPS no

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longer quantifies the term “adjacent.” In a controversial 2006 decision on a quarry expansion within the Niagara Escarpment Plan Area, the provincial Cabinet allowed quarrying within 15 and 25 metres of provincially significant wetlands.<sup>205</sup>

In addition to the PPS, which is applied across Ontario, there are a number of area-specific land use plans such as the NEP, the ORMCP, the Lake Simcoe Protection Plan and the Greenbelt Plan, that contain protections for wetlands. The strongest protection for wetlands in Ontario is provided by the ORMCP, which sets out requirements for all wetlands and not just PSWs. The Greenbelt Plan and the Lake Simcoe Protection Plan also include special policies for all wetlands, but allow aggregate operations in most wetlands, prohibiting them only in PSWs. However, this still provides a more stringent prohibition on pits and quarries within PSWs in the Greenbelt Plan area than anywhere else in southern Ontario.<sup>206</sup>

The ECO has recommended that MMAH amend the PPS to prohibit new infrastructure such as highways in PSWs unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions.<sup>207</sup>

For more information on wetlands and land use planning from past ECO reports, see:

["Protecting Wetlands, or Draining for Development?" in Reconciling our Priorities - ECO Annual Report 2006-2007](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

["The Drainage Act: Drying up Ontario's Wetlands" in Redefining Conservation - ECO Annual Report 2009-2010](#)

## Woodlands

Southern Ontario has had a long history of intensive land settlement and deforestation.<sup>208</sup> Approximately 80 per cent of southern Ontario's original woodland cover has been lost.<sup>209</sup> Much of the land in this part of the province is held privately or by municipalities. Today, a substantial amount of the forest cover in southern Ontario exists because private landowners maintain woodlands, and municipalities and conservation authorities maintain forested sites.<sup>210</sup>

Forest cover in urban and developed areas is vital for a number of reasons. The canopy of trees can intercept falling rain, slowing the rate of storm run-off and thus reducing soil erosion and water quality problems. Trees in urban areas provide natural cooling in summer when the urban heat island effect and the demand for space cooling is greatest. Trees also draw pollutants and carbon dioxide, a greenhouse gas, from the atmosphere, thereby buffering climate change and improving local air quality. Strips or bands of extensive



Photo credit: C. Wilkinson

tree cover running through urban areas can provide both habitat and migration corridors for wildlife.<sup>211</sup>

The loss of forest cover can lead to faster storm drainage, less moisture retention, less shade for natural cooling, less habitat for wildlife and poorer air quality. Furthermore, the forests in the urban areas of southern Ontario may have – or support – tree species that are not commonly found anywhere else in Canada, which is a significant consideration for the conservation of Ontario’s biodiversity.<sup>212</sup>

Despite the importance of urban forest cover, there is little direct regulation by the provincial government in this area. The make-up and maintenance of virtually all urban forests are handled either by the local municipality, conservation authorities, or thousands of individual landowners. MMAH has some authority over forests and natural heritage under the *Municipal Act*,<sup>213</sup> the *Planning Act* and the PPS. MNR has a great deal of regulatory involvement in forestry matters on Crown land in Ontario, but has only a very small staff with forest expertise that could be applied to urban areas. It has also been suggested that the Ministry of Culture could play a greater role, under the *Ontario Heritage Act*,<sup>214</sup> by ensuring key representative trees are given greater protection.<sup>215</sup>

The PPS provides an open-ended definition of significant woodlands, and lacks an explicit requirement to protect significant woodlands. Unlike provincially significant wetlands, it is the municipality’s discretion to evaluate or identify significant woodlands, as MNR has no formal role. Although MNR’s Natural Heritage Reference Manual includes recommended criteria for municipalities to identify significant woodlands, municipalities may choose to develop their own. The result is that, typically, only larger municipalities with ample planning staff devote more than a passing mention to addressing significant woodlands in their official plans.<sup>216</sup>

*“The ECO recommends that MMAH’s 2010 review of the PPS introduce effective mechanisms for protecting significant woodlands, including mechanisms for woodland evaluation, designation, tracking and reporting.” 2008-2009 Annual Report*

Moreover, MMAH does not track the actual number of significant woodlands designated in municipal official plans. MMAH interprets its role as only checking to see if official plans give mention to significant woodlands, not whether any are actually protected on the ground.<sup>217</sup>

The PPS does not provide sufficient safeguards to protect the province’s significant woodlands. The ECO has recommended that MMAH’s 2010 review of the PPS introduce effective mechanisms for protecting significant woodlands, including mechanisms for woodland evaluation, designation, tracking and reporting.<sup>218</sup>

For more information on woodlands and land use planning from past ECO reports, see:

["Southern Ontario’s Forests: Problems on the Landscape?" in Choosing our Legacy - ECO Annual Report 2003-2004](#)

["Sustaining the Urban Forest" in Planning our Landscape - ECO Annual Report 2004-2005](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

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## Groundwater Protection

Land use planning has the potential to adversely affect the quality and quantity of groundwater. This issue has been the subject of multiple applications for review under the *EBR*, as illustrated in the Grand River watershed.

The GGH Plan, which establishes specific density targets and planning priorities for the region, expects the region's population to increase by four million people by 2031. The plan establishes five urban growth centres within the Grand River watershed. These communities depend on groundwater and/or limited surface water supplies for drinking water. Nutrients and other pollutants from treated and untreated wastewater are discharged into the Grand River.<sup>219</sup>

There is a tension between meeting the GGH Plan population targets and protecting the water resources of watersheds. If demand for water outstrips supply, municipalities will need to import water to deal with water shortages. They must also ensure water infrastructure can handle the discharged water. The effects of climate change have further compounded the situation; by mid-century, southern Ontario will experience an average 2.6 degrees Celsius warming in the summer with consequent increased evapotranspiration.<sup>220</sup>

This tension is particularly acute in the Grand River watershed, which includes the Waterloo Moraine and the Paris and Galt Moraines. Moraines are a geological feature formed at the edge of glaciers traversing across the landscape. The glacial sand and gravel deposits act like a sponge, absorbing rain and snowmelt. The water stored in the moraine's aquifers is filtered and slowly released into lakes, rivers and streams. As such, moraines can be an important source of drinking water and act as a recharge/discharge area for watersheds. The forested areas of the moraine typically support diverse ecological habitats.<sup>221</sup>

The ECO has received three separate sets of applications for review outlining the need for a new policy or act to protect the Waterloo, Paris and Galt Moraines. The applicants asserted that increased growth would detrimentally affect the quality and quantity of groundwater, and increase the risk of well contamination, floods and water shortages. The applicants also contended that existing policies and laws are insufficient to protect the moraines. Although MNR and MMAH denied all three applications, MOE agreed to review the necessity of a law or policy to protect the moraines. The review excluded policies not under MOE's mandate – including the PPS, the Greenbelt Plan and the GGH Plan – along with other relevant legislation decided within the last five years.<sup>222</sup>

MOE concluded that new provincial policy or legislation was not required to protect the moraines. Although not reviewed, the report contended that the *Clean Water Act, 2006*, the PPS, the Greenbelt Plan and the *Ontario Water Resources Act* provide adequate protection for groundwater recharge in the Upper Grand River watershed.<sup>223</sup>

MOE provided excellent benchmarking information on the moraines, but did not assess whether the ecological capacity of the moraines can realistically accommodate the projected growth in the region. Nor did it examine the cumulative environmental effects from the projected growth.<sup>224</sup>

Not only does the GGH Plan fail to require population allocations be adjusted for communities with watersheds close to or already at carrying capacity, it favours large-scale infrastructure projects aimed at overcoming the natural limits to growth. It has been proposed to address possible future water shortages by constructing a pipe to Lake Erie. Such infrastructure projects override ecological carrying capacities and are exempt from natural heritage protections in the PPS and Greenbelt Plan, despite their significant environmental effects. Provincial policies, such as the GGH Plan, favour development over sustainable planning processes.<sup>225</sup>

A comprehensive systems-based plan for natural heritage protection and land use planning is needed. These moraines extend across several cities and regions, each with their own official plans and zoning. The resulting piecemeal approach to planning and protection can leave environmentally significant areas vulnerable or under-protected, thereby compromising the entire landscape. Although the province's land use planning laws and policies are laudable in some respects, the ECO's past reviews reveal that they were often ineffective in preventing, curtailing or modifying environmentally destructive developments.<sup>226</sup>

Natural features, such as moraines, should be the basis upon which local land use planning decisions are weighed. However, the province does not specifically identify such moraines as a landform or natural heritage feature to be considered for protection. On numerous occasions, the province has asserted its planning system is adequate to protect significant environmental features. Yet, it has created specific laws and policies for several vulnerable regions, including the Oak Ridges Moraine, the Greenbelt and Lake Simcoe.<sup>227</sup>

The province must use the opportunity of the 2010 PPS review to make a strong commitment to ecosystems-based planning in Ontario. MMAH should revise the PPS to require that the diversity and connectivity of natural features, as well as their long-term ecological function and biodiversity, be maintained and restored.<sup>228</sup>

For more information on groundwater protection and land use planning from past ECO reports, see:

["Land Use Planning and Protecting Groundwater Resources" in Getting to K\(No\)w - ECO Annual Report 2007-2008](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

["Pushing for Natural Heritage Planning on the Waterloo and Paris-Galt Moraines" in Redefining Conservation - ECO Annual Report 2009-2010](#)

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## Species at Risk and Habitat Protection

The PPS states that development and site alteration shall not be permitted in “significant habitat” of endangered species and threatened species.<sup>229</sup> However, as noted above, some land uses are given priority over others and the protection of natural areas and wild species is not given the same importance as economic drivers in the implementation of the PPS.<sup>230</sup>

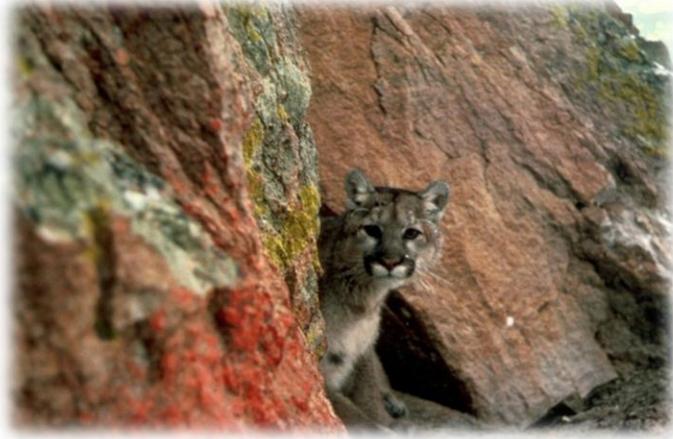


Photo credit: U.S. Fish and Wildlife Service

It is difficult to evaluate the effectiveness of the PPS's measures for protecting significant wildlife habitat, as well as the significant habitat of threatened and endangered species. MMAH does not track the area of lands that are set aside as significant wildlife habitat. Protection for significant wildlife habitat is dealt with on a development-specific basis, functioning on an almost entirely reactionary basis. As such, the PPS provides negligible

comprehensive protection for species at risk. The ECO believes that the PPS provides insufficient measures to prevent the continued degradation and loss of natural features, such as the habitat of native species.<sup>231</sup>

For more information on species at risk, habitat protection and land use planning from past ECO reports, see:

["2005 Provincial Policy Statement" in Planning Our Landscape - ECO Annual Report 2004-2005](#)

["Reforming Land Use Planning" in Building Resilience - ECO Annual Report 2008-2009](#)

[The Last Line of Defence: A Review of Ontario's New Protections for Species at Risk. ECO Special Report to the Legislative Assembly of Ontario. February 2009.](#)

## SUMMARY OF THE ECO'S RECOMMENDATIONS

The following list includes formal recommendations related to land use planning made by the ECO over the past 10 years:

### **Changing Perspectives – ECO Annual Report 1999-2000**

- The ECO recommends that the ministries assist municipalities to ensure that ecosystem fragmentation is adequately considered in land use planning decisions and that provincial interests in protecting natural heritage and functioning forest ecosystems are safeguarded.

### **Having Regard – ECO Annual Report 2000-2001**

- The ECO recommends that MTO adopt a leadership role on long-range integrated transportation planning throughout the province, and especially for the GTA region.
- The ECO recommends that MMAH and other ministries consider, as part of the five-year review of the Provincial Policy Statement, the need for clearer provincial requirements for municipalities regarding the protection of environmentally significant lands.
- The ECO recommends that MMAH, in consultation with other ministries and the public, develop a comprehensive long-term protection strategy for the Oak Ridges Moraine.

### **Developing Sustainability – ECO Annual Report 2001-2002**

- The ECO recommends that the Ministries of Municipal Affairs and Housing and Natural Resources develop performance indicators for natural heritage protection under the Provincial Policy Statement and provide their findings to the public.
- The ECO recommends that the Ministries of Municipal Affairs and Housing, Natural Resources, and Environment and Energy begin planning and implementing the promised systems for monitoring and evaluating the Oak Ridges Moraine Conservation Plan.

### **Thinking Beyond the Near and Now – ECO Annual Report 2002-2003**

- The ECO recommends that the Ministries of Natural Resources and Transportation collaborate on a strategy for conserving Ontario's aggregate resources. This strategy, which should be developed with public consultation, should consider both road construction needs and the need to conserve aggregate resources.

### **Choosing our Legacy – ECO Annual Report 2003-2004**

- The ECO recommends that MNR ensure that the aggregate industry operates in compliance with existing rules, and that the ministry demonstrate to the public that its compliance and enforcement programs for this industry are working effectively.
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### **Planning Our Landscape – ECO Annual Report 2004-2005**

- The ECO recommends that MMAH undertake public consultation on the government's population growth modeling and projections in order to provide a transparent context for land use planning decisions.
- The ECO recommends that MNR and MMAH develop a coordinated urban forest strategy to protect urban and heritage trees, working together with municipalities, ENGOs and local agencies.

### **Neglecting Our Obligations – ECO Annual Report 2005-2006**

- The ECO recommends that MTO take the lead with MMAH and MOE and collaborate on a strategy to reduce the environmental impact of the transportation sector in Ontario, hold public consultations on the strategy, and post the strategy on the Environmental Registry.
- The ECO recommends that MMAH, MTO, MNR and MOE collaborate to develop technical guidance regarding municipal roads in the ORM Plan area and finalize their draft guidance to municipalities regarding natural heritage and water protection.

### **Reconciling Our Priorities – ECO Annual Report 2006-2007**

- The ECO recommends that MNR significantly speed up the process of wetland identification and evaluation and ensure that Provincially Significant Wetlands are incorporated into municipal official plans.
- The ECO recommends that MMAH amend the Provincial Policy Statement to prohibit new infrastructure such as highways in Provincially Significant Wetlands unless there are no reasonable alternatives and it has been demonstrated that there will be no negative impacts on their ecological functions.
- The ECO recommends that the provincial government reconcile its conflicting priorities between aggregate extraction and environmental protection. Specifically, the province should develop a new mechanism within the ARA approvals process that screens out, at an early stage, proposals conflicting with identified natural heritage or source water protection values.
- The ECO recommends that MMAH work with the Ministry of Public Infrastructure Renewal (now the Ministry of Infrastructure) to increase the GGH Plan's intensification and density targets above existing business-as-usual development targets.

### ***Building Resilience – ECO Annual Report 2008-2009***

- The ECO recommends that MMAH's 2010 review of the PPS introduce effective mechanisms for protecting significant woodlands, including mechanisms for woodland evaluation, designation, tracking and reporting.
- The ECO recommends that MMAH take the lead in developing legislation to discourage developers from using cost applications and similar tactics to frustrate public participation in the planning approval process.

### ***Redefining Conservation – ECO Annual Report 2009-2010***

- The ECO recommends that the Ministry of Municipal Affairs and Housing amend the Provincial Policy Statement to require integrated watershed management planning.
- The ECO recommends that the Ministry of Municipal Affairs and Housing amend the Provincial Policy Statement to require that the long-term ecological function and biodiversity of natural heritage systems are maintained.



Photo credit: C. Wilkinson

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## ENDNOTES

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<sup>2</sup> *Planning Act*, R.S.O. 1990, c. P.13.

<sup>3</sup> *Planning Act*, R.S.O. 1990, c. P.13, ss. 1.1-3.

<sup>4</sup> *Planning Act*, R.S.O. 1990, c. P.13, s. 3.

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