

**MAPLE LAKE ESTATES AND LSRCA'S SUBDIVISIONS-IN-WETLANDS POLICY
RESPONSE TO LSRCA BOARD MEETING**

prepared for
North Gwillimbury Forest Alliance
January 3, 2014

The North Gwillimbury Forest Alliance (NGFA) asked its planning consultant, Anthony Usher, MCIP, RPP, to respond to issues raised at the December 13, 2013 Lake Simcoe Region Conservation Authority (LSRCA) Board of Directors meeting regarding the Authority's Watershed Development Policy 11.4.1.2. My comments, conclusions, and recommendations are as follows.

Policies of Other Conservation Authorities

In my September 12, 2013 report, I reviewed the relevant wetlands policies for LSRCA's five nearest neighbour authorities (Central Lake Ontario, Credit Valley, Kawartha Region, Nottawasaga Valley, Toronto and Region).

In their October 9, 2013 report, staff presented a table of what they considered to be the transitional policies of those five authorities as well as Cataraqui Region, Grand River, and Niagara Peninsula. In my October 22, 2013 report, I took some issue with the staff analysis.

In their December 13, 2013 report, staff advised that they had been advised by LSRCA counsel to "do a thorough review of ten conservation authorities; the five that have changed their policies, as referenced in Mr. Usher's report [though my September 12, 2013 report did reference five authorities, it did not suggest they had changed their policies], and five additional authorities within the GTA area". The Board accepted the staff recommendation that this review be conducted.

At this time, I do not know which additional authorities staff intend to review.

There are eight conservation authorities with more than a sliver of jurisdiction within the Greater Toronto Area: LSRCA, the five neighbouring authorities I originally looked at, Ganaraska Region, and Halton Region.

A thorough review along the lines contemplated by LSRCA counsel should therefore be extended to all conservation authorities with significant jurisdiction in the Greater Golden Horseshoe Growth Plan area: the eight preceding, plus Grand River, Hamilton Region, Niagara Peninsula, and Otonabee Region.

I have therefore taken the information provided in my previous reports, extended it to all

12 Growth Plan area authorities, and presented it in the attached table. I look forward to staff's analysis.

Without repeating the analyses provided in my two previous reports, the table clearly shows that Niagara Peninsula is the only authority with a policy that could possibly be construed as providing a blanket exemption for development in subdivisions in wetlands, similar to LSRCA's Policy 11.4.1.2. The table also shows that NPCA staff have determined that their policy is obsolete and should be repealed.

Issues Raised by Board Members

I would like to respond to three issues raised by LSRCA directors at the December 13, 2013 meeting.

1. *Councillor Avia Eek (Township of King) - concerns about effects of repeal of Policy 11.4.1.2 on ability of Holland Marsh farmers to undertake necessary development*
 - ▶ The delineation of the boundaries of wetlands, whether or not provincially significant, is guided by the Ontario Wetland Evaluation System Southern Manual (Ministry of Natural Resources, 2013). The manual makes clear that farmlands are only to be considered wetlands where the majority of the vegetation consists of wetland plants. Cultivated, drained farmland is not to be mapped as wetland. Examples of agriculturally used lands that might be mapped as wetland would be woodlots (or sugar bushes) that are also swamps, and swamps used for pasturing.
 - ▶ I confirmed this for the Holland Marsh by reviewing wetland mapping against air photos. There is almost no provincially significant wetland in the Marsh between Highways 9 and 11, except west of the west end of Simcoe Road 8 (Canal Road). There are substantial provincially significant wetland areas between Highway 11 and Cook's Bay. However, the provincially significant wetland consists almost exclusively of forest or other undrained wetland, not cultivated land.
 - ▶ Because wetlands normally exclude cultivated land, the question that Councillor Eek raised, as to whether LSRCA might uniquely need Policy 11.4.1.2 because other conservation authorities don't have large agricultural areas that are drained former wetlands like Holland Marsh, does not apply.
 - ▶ The repeal of Policy 11.4.1.2 would only affect existing LSRCA policies where the subject lands are within a registered plan of subdivision. I reviewed the development fabric in the Holland Marsh. Although detailed, extensive research would be required to confirm this with certainty, based on my review of the development fabric in the Marsh and my professional experience, it is extremely unlikely that more than a tiny proportion of Marsh lots larger than 0.8 hectare (2 acres) are within registered plans of subdivision.

- ▶ Although the focus of Councillor Eek's question was on structures, I should note that the Watershed Development Policies indicate that "normal farming practices" on lands that were farmed as of January 1, 2006 are entirely exempt from LSRCA approval.

Therefore, repeal of Policy 11.4.1.2 will not change the ability of Holland Marsh farmers to erect structures, except in the most exceptional circumstances (e.g., construction in a swamp that has been identified as provincially significant wetland and is also within a subdivision lot). Development on Marsh farms is currently subject to other policies of the Watershed Development Policies and would continue to be so.

2. *Councillor John O'Donnell (Township of Ramara) - concerns about effects of repeal of Policy 11.4.1.2 on development of vacant lots in Lagoon City*

- ▶ No vacant residential lots at Lagoon City are located within provincially significant wetland. A few are located within unevaluated wetland areas.

Therefore, repeal of Policy 11.4.1.2 will not change the ability of owners of vacant lots at Lagoon City to develop their lots. Development at Lagoon City is currently subject to other policies of the Watershed Development Policies and would continue to be so.

3. *Councillor Barry Ward (City of Barrie) - questions about Castle Glen Estates development and its relevance to repeal of Policy 11.4.1.2*

- ▶ Castle Glen Estates is a large recreational development area in the Town of the Blue Mountains, in the Niagara Escarpment Plan area and in the jurisdiction of the Nottawasaga Valley Conservation Authority (NVCA).
- ▶ Planning policies supporting development in this area are long established, and considerable development has taken place. This included (as of 2004) a subdivision approved in 1969 that has been mostly developed but with a few vacant lots remaining, and a subdivision approved in 1976 but never developed.
- ▶ The applicant wished to replace existing Official Plan policies with new ones. This resulted in two Ontario Municipal Board appeals that were settled before hearings. The first, dealing with lands below the Escarpment brow, was approved by the Board in 2004. A resident association and an individual resident were the only parties opposing the settlement. The second, dealing with lands above the Escarpment brow, was approved by the Board in 2006. The Niagara Escarpment Commission was the only party opposed.
- ▶ The NVCA seems to have appeared at the first hearing, although the Board decision is unclear as to the Authority's position, and did not appear at the second.

- ▶ An amendment to the Niagara Escarpment Plan that would update the Plan with respect to Castle Glen and other recreational developments is currently under consideration by the Niagara Escarpment Commission.
- ▶ There are no provincially significant wetlands on or near Castle Glen Estates. There are some pockets of other wetland on the subject lands, but the applicant appears to have diligently sought to avoid them in its development plans.
- ▶ There does not appear to have been any decision of NVCA regarding Castle Glen that has been appealed to the Mining and Lands Commissioner. Nor do there appear to be any Court cases arising out of the planning approvals.

Therefore, it is not evident how any aspect of the Castle Glen Estates experience is relevant to the issue of repeal of Policy 11.4.1.2.

My Recommendations

My recommendations remain unchanged from those in my October 22, 2013 report. Mr. Longo, in his concurrent report of January 3, 2014, has provided a more detailed explanation of our proposed modifications to Policy 11.4.1.2, in the event that the Board is not prepared to repeal that policy outright.

* * *

This concludes my report. I will be pleased to discuss it further with NGFA, or LSRCA if NGFA so wishes, at any time.

[original signed and stamped by]

Anthony Usher, MCIP, RPP
January 3, 2014

Growth Plan Area Conservation Authority Policies Relevant to LSRCA Policy 11.4.1.2

Notes:

- ▶ Conservation authority: Along with name of authority, the date of the policy document parallel to LSRCA's Watershed Development Policies.
- ▶ General wetlands policies: Policies for development *within* regulated wetlands. These are compared to those recommended in Conservation Ontario's final draft Guidelines to Support Conservation Authority Administration of the "Development, Interference with Wetlands and Alterations to Shorelines and Watercourses Regulation", April 21, 2008 - see description in my September 12, 2013 report. The Conservation Ontario policies prohibit development within wetlands (whether or not provincially significant), with very limited exceptions. "Somewhat greater flexibility" - for example, a single detached dwelling may be permitted on a vacant lot of record that is wholly or partly within a wetland.
- ▶ Identified transition policy: Provided where there is a transition policy that is identified as such. Applies to all applications, wetland or otherwise.
- ▶ Emphasis added by me in some quotes.

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
Lake Simcoe Region (March 2012)	No development in provincially significant wetlands (except for Policy 11.4.1.2); for other wetlands, similar to CO Guidelines, with somewhat greater flexibility	No	

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
Central Lake Ontario (April 2013)	Similar to CO Guidelines, with somewhat greater flexibility	Policy 8.2.1: "The Plan Review policies will generally apply to all applications that have been received by CLOCA and which [sic] Authority staff has not yet provided written comments. It is CLOCA's intent to not use the policies within this Chapter to raise new concerns with approved draft plans of subdivision and secondary plans for which CLOCA had not previously identified concerns. <i>This, however, does not preclude Authority staff from applying policies in the [Policy and Procedural Document] to applications in which Authority staff had previously provided written comments which are contrary to those contained in the [Policy and Procedural Document].</i> In such cases Authority staff must be of the opinion that updated comments are critical to meeting the objectives of the [Policy and Procedural Document], the [Provincial Policy Statement] policy(s) and/or watershed plan policy."	No
Credit Valley (April 2010)	Similar to CO Guidelines; plus some development may be permitted in wetlands	No	No

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
	that are less than 2 ha and not provincially significant		
Ganaraska Region (draft, August 2013)	Similar to CO Guidelines	No	No
Grand River (January 2013)	No development in provincially significant wetlands; some development may be permitted in certain other wetlands that are less than 0.5 ha (less than 2 ha if human-made)	No	Policy 8.4.3: "Subdivision or Condominium Development within a wetland or an area of interference previously approved by a municipality under the <i>Planning Act with GRCA support may be permitted provided that:</i> a) <i>the proposed development met the GRCA policies in effect at the time of draft plan approval and,</i> b) <i>the proposed development is modified in accordance with the policies in Section 8 – Policies for Wetlands and Areas of Interference, wherever possible."</i>
Halton Region (August 2011)	Similar to CO Guidelines	No	No
Hamilton Region	Similar to CO	Applications prior to 2006 regulation are	No

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
(October 2011)	Guidelines, with somewhat greater flexibility	subject to prior regulation	
Kawartha Region (August 2013)	<p>Similar to CO Guidelines, with somewhat greater flexibility</p> <p>Policy 4.6.2.1(1): "New development will not be permitted within a wetland, <i>regardless of previous approvals provided under the Planning Act</i> or other regulatory process (e.g., Building Code Act), except as outlined [in this section]."</p>	No	No
Niagara Peninsula (October 2011)	Similar to CO Guidelines, with somewhat greater flexibility; plus some development may be permitted in wetlands that are less than 2 ha and not provincially or	Applications prior to 2006 regulation are subject to prior regulation	Policy 3.24.1.b: "For development in [a wetland], this policy does not include those instances where development and/or site alteration has been approved pursuant to an application made under the <i>Planning Act</i> or

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
	locally significant		<p>other public planning or regulatory process."</p> <p><i>NPCA staff advise this policy was intended to apply to approvals prior to the 2006 regulations. However, the policy is now considered outdated, and staff intend to recommend its repeal.</i></p>
Nottawasaga Valley (August 2009)	Similar to CO Guidelines	No	No
Otonabee Region (May 2012)	<p>Similar to CO Guidelines, with somewhat greater flexibility</p> <p>Policy 8.1(1): "New development will not be permitted within a wetland, <i>regardless of previous approvals provided under the Planning Act</i> or other regulatory process (e.g., Building Code Act), except as outlined</p>	No	No

<i>Conservation authority</i>	<i>General wetlands policies</i>	<i>Identified transition policy</i>	<i>Policy similar to LSRCA 11.4.1.2</i>
	below."		
Toronto and Region (draft, January 2013)	Similar to CO Guidelines, with somewhat greater flexibility	No	No