

SUPPLEMENTARY SUBCOMMITTEE REPORT

TO: Ecological and Environmental Advisory Committee

DATE: February 7, 2003

SUBJECT: **Halton Region's Official Plan Review: Directions Report**
"The Greening of Halton – Smart Growth, Smart Choices"
and the Changing of Directions in respect to Significant Woodlands

BACKGROUND

1. EEAC s-c re HOP recommends (as in early release of drafts to committees of EEAC as-a-whole and in final report to EEAC as seen in Main Report to which this report is a Supplement) approval & support for recommendation as in Directions Report (as per #8.1) to "add a new category "Significant Woodlands" to Greenlands B";

albeit with recommendation to remove first three criteria to a policy to specifically address woodland protection at time of development as part of urban envelope.
2. EEAC s-c re HOP has seen a counter proposal from agriculture interest groups, and a planner's "opinion", and the draft of a revised proposal from Halton staff and a letter sent by staff to HRFA (made in apparent response to agricultural interest groups counter proposal).

The following attempts to summarize the significant and relevant points of the documents in question:

- a) Elements of counter proposal from HRFA and as supported by several other agricultural interest group(s)
 - (i) significant woodlands only be identified when incorporated into urban envelopes;
 - (ii) encourage voluntary stewardship;
 - (iii) no EIA in 50m adjacent lands zone for agriculture
 - (iv) process to identify woodlands at time of HUSR or development
- b) Elements of a consultant planner opinion (BLS Consultants) commissioned by HRFA
 - (i) nothing in PPS 2.3.1 intended to limit agricultural uses
 - (ii) "professional planning opinion" that alternative approach offered by HRFA "meets and/or exceeds, in all respects, the requirements of the PPS (*note: detailed evidence, assessment rationale or argument is not provided by BLS – a stated opinion is provided*)
- c) Elements of Halton staff letter to HRFA
 - (i) HRFA approach may be a viable option

- (ii) agree woodlands protection need not be achieved by Greenlands B designation
 - (iii) will NOT apply EIA requirement to agricultural activities
- d) Elements of a change in direction proposal from Halton staff
- (i) apply suggested policy direction in Urban Areas only
ie do not apply suggested policy direction in Rural Areas
 - (ii) identify significant urban woodlands during WSSs and subWSSs and new HUSRs or at time of secondary plans
 - (iii) for developer submitted OPAs & ZBLAs in rural areas outside of HUSRs – an EIA will be required and significant woods identified through that EIA process
(note: though not stated, staff are seemingly indicating a belief that this can be initiated and completed to provide reports to guide a full Council decision within 90 days of receipt of an application – ie before (semi) automatic appeal to OMB by developer – it is not clear if the EIA assessment work required is to be undertaken by EEAC or a professional forester of the Regional or a Local municipality – such as currently operates in Oakville)
 - (iv) apply tree by-law and permit system with exemptions (proposal)
 - (v) assess legal uncertainties of tree by-law and permit system proposal aspects
 - (vi) promote stewardship, monitor coverage and measure against 30% target

COMMENTS:

In respect to the above, EEAC s-c HOP makes the following comments:

Compliance with Planning Act and Provincial Policy Statement (PPS)

Balancing Policy Directions

The Planning Act states in Part I Section 2 in respect to the Provincial interest, that
“The Minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,

- (a) the protection of ecological systems, including natural areas, features and functions;*
- (b) the protection of the agricultural resources of the Province;....”*

The Act does not indicate or imply that either (a) or (b) has supremacy over the other, but only that regard shall be had for both, among other matters.

Further, the PPS Policy Statement in respect to Natural Heritage (policy 2.3) states that

... *“nothing in policy 2.3 is intended to limit the ability of agricultural uses to continue”*; ...

speaks to a continued agricultural use – not a new use, nor does it state that agriculture as a broad area designation that may include significant woodlands and other significant natural heritage areas is to be interpreted to allow new expansions of agriculture into natural heritage areas as “agricultural uses to continue”. A continuing agricultural use is a continuing use, a new agricultural use is a new use.

Clearly and consequently, a balance has to be sought and achieved. Policy put forward by Halton’s professional staff in the Directions Report should have, and in our opinion, did, achieve this.

If the policy was originally deemed to be appropriate and in keeping with professional planning rationale but is now considered to be in error – explanation of the errors should be highlighted - not forgotten or ignored.

If an “error” is identified as by a private planning opinion (as per BLS Consulting) on behalf of a particular interest group, it should be a necessary adjunct that Halton staff subsequently provide their own confirmation or denial of that private opinion for Halton residents and the public record.

Where Should Significant Woodlands Policy Apply

The PPS Policy respecting Natural Heritage (as in Policy 2.3.1.b) states (in part):

Natural Heritage features and areas will be protected from incompatible development....

Development and site alteration maybe permitted in

“significant woodlands” south and east of the Canadian Shield

if it has been demonstrated that there is no negative impacts on the natural features or the ecological functions for which the area is identified.

Clearly, the PPS recognizes that “significant woodlands” can and are to be identified south and east of the Canadian Shield. However, there is no included statement that either directly or indirectly suggests that such woodlands are only to be identified in “urban areas” south and east of the Canadian Shield.

Designated “rural” areas of Halton include:

The Niagara Escarpment (Escarpment Protection Area, Escarpment Rural Areas and Escarpment Natural Areas.

Provincially identified Wetlands (that are often wooded complexes)

ANSI’s

Regional ESA’s

And Regional Forest Tracts.

It is very doubtful if the public’s elected representative at the Province approved the PPS in the belief that nothing of “significance” (not valleylands, nor woodlands nor habitat areas etc) would, should or could be identified in rural areas. Equally, to suggest that Queens’ Park intended such features as significant rural woodlands such as occur on the Niagara Escarpment and elsewhere, are only to be identified when they are to be consumed with a designated urban

boundary as a significant urban woodland – presumes and promotes the preposterous. It may satisfy the legality of the PPS Requirements (see below) but not the spirit behind it.

Meeting PPS Requirements

The statement by BLS Consultants that the HRFA proposal meets the requirements of the Provincial Policy is a very precise and a technically correct statement but also one of very little accuracy for the general public or the proper consideration of the alternative HRFA proposal.

Simply put, as there is “no requirement” in professional planning terms to meet any PPS policy direction – only to “have regard for” – even clear cutting the whole of Halton could be seen as being in complete compliance with the requirement of the PPS.

Regional staff should comment on this private planner opinion expressed on behalf of a particular interest group (ie EEAC) – just as is recommended herein in respect to the BLS/HRFA opinion.

Fairness and Openness

The Planning Act also identifies, as in Section 1.1.d, that one of the purposes of the Act is

...to provide for planning processes that are fair by making them open, accessible, timely and efficient; ...

Fairness and openness are clearly recognized by professional planners as a necessary component of good planning and in keeping with the applicable statute.

That a recognition of woodlands is made only when such lands are included within the urban growth boundary, and that restrictions are only then to be encouraged on such lands, is contrary to the needs of fairness and openness. Land value relates to permitted use. If uncertainty as to land use is effectively hidden until such time as it is to be included within an urban growth boundary, then fairness and openness regarding future land use and land value, is unfairly compromised – both by encouraging a false expectation and by hiding pertinent information from the public.

It is here suggested that a mechanism be found whereby the recent identification (plus any subsequent modifications) of significant woodlands for all of Halton (urban and rural areas alike) be publicly provided and available for the benefit of present and future farmers, speculators, developers and the residents of Halton. (see suggested OP overlay below). And it is further suggested that any measures and approvals required in respect to the identified lands be also similarly provided and available. [This should also include clarity as to what is not to be required by farmers and rural landowners etc.]

Halton Specific Issues and Solutions

Recent Loss of Halton's Woodlands & Voluntary Stewardship

Permitting and encouraging voluntary stewardship is a non-issue. The issue is whether it can be depended upon. Evidence of recent farm-to-developer land transfer and development suggests that the farmers and the development industry need more help – and that it should indeed be provided to them by the Region.

In the last period for which MNR data is available (1981 to 1995) forest cover has clearly declined in Halton:

Burlington	15.6% loss
Halton Hills	10.4% loss
Milton	12.2% loss
Oakville	15.5% loss

The anecdotal contention from the farming community that woodland coverage has increased under their stewardship appears dubious for Halton as a whole (albeit supported somewhat by data from several small sub-watershed area studies in south west Halton).

That woodlands on farms not sold to developers or farmer-speculators may increase in size prior to any such sale, is logical but irrelevant. Farmers in Halton are influenced by prevailing economic pressures not to continue to farm all of their previously cleared lands – ie to abandon marginal lands to nature. But overall, the woodlands in Halton are also clearly diminishing due to urban expansion on former farmlands.

And though voluntary stewardship should be encouraged - it cannot, based on recent data, be relied upon to satisfy the Region's policy direction. If stewardship can be encouraged by accessing supporting funding from other levels of government and agencies, and this can be promoted by the application of the Region's bureaucratic resources on behalf of Halton farmers, it is an appropriate policy direction. However, as farmers seemingly prefer to forgo the financial opportunities available and to practice voluntary stewardship – voluntary stewardship should be permitted and facilitated. But voluntary stewardship should not be relied on by the Region to meet the declared policy direction given the data provided above.

However, and notwithstanding the above, voluntary designation of Significant Woodlands should also be permitted by the Region. The Region's policies should allow for voluntary landowner requests for lands to be "designated" as significant woodlands in order to allow and encourage the eligibility of such land owners for tax relief or Kyoto credits.

Designation and/or Overlay

We believe that designation of Significant Woodlands as lands within Greenlands B and for all related policy to apply, is an appropriate policy direction to satisfy the PPS and Halton's needs.

However, given the strong public outcry among farmers, rural landowners, speculators and developers objecting in principle to any designation being imposed it is here suggested that

consideration be given to the use of an alternate four-step approach (policy, overlay and by-law), as below.

1. Policy be included in the Official Plan to confirm that the Region shall have regard to significant woodlands as are recognized and occur in Halton in keeping with Provincial policy, guidelines and manuals and Halton's existing policies, and that the EIA Guidelines will apply in respect to Greenlands A and B, and will be applied within 120 m of Provincial Wetlands but only within 50 m of all other designated Greenlands.
2. The identifying criteria, and a series of maps to detail present designations and proposed designations and an overlay map (or reference map) be included in, or appended to, the Official Plan to clearly indicate
 - (i) the 4 criteria (bullets 4 through 7 in Directions Report) that denote present identifying significance and the 3 criteria (bullets 1 through 3 in the Directions Report) that denote future development significance;
 - (ii) the identified significant woodlands that are already designated as part of Greenlands A or B;
 - (iii) the identified significant woodlands that are to be designated as part of the newly expanded Greenlands A or B in keeping with new Provincial information and designations (ANSI's and Provincial Wetlands etc);
 - (iv) the significant woodlands areas that are not included in any current or required Greenlands A or B designation but that are to be incorporated within Greenlands B when the lands are to be included within the approved urban growth boundary as part of subsequent HUSR/P study or any private OPA or ZBLA.
3. Policy to support a Regional Tree By-law be included in the Official Plan to require a tree-cutting permit be issued by the Region in all cases (including where exemptions from requirements apply) before trees are cut in the areas denoted by the overlays (see 2 above) in the Official Plan, as significant woodlands.
4. Significant woodlands as have been identified by the seven made in Halton criteria and as occur currently in Halton's urban areas (as delineated by the approved urban growth boundary) and as and when non-designated significant woodlands in rural areas become incorporated within future urban growth boundaries, as following Halton Urban Structure Review/Plans or OPAs or ZBLAs, are to be designated as significant woodlands in Greenlands B.

Other Alternatives

If the HRFA and the Region believe the need for protection of significant woodlands is only required after such woods are incorporated within an approved urban boundary, the Region should recommend, adopt policy and advocate (as perhaps via AMO) for changes to the Planning Act that removes the right of developers to appeal to the OMB for development proposals outside the approved urban envelope – or at least lose the 90 day loophole and impediment to good planning.

Consider the establishment of Agricultural/Countryside Easements as per the established practice in the Region of Durham and elsewhere that has been accepted as a very successful policy direction for many years.

Efficacy of a Tree By-law Approach

By-laws are tools whereby policy is implemented and not normally an alternate or replacement for policy direction in isolation. Should the by-law route be ultimately recommended and adopted by the Region it will be essential, given that the “devil or the angel” is always buried in the details of any such by-law, that a clear OP policy be established, not only to implement such a by-law, but to direct the purpose and practice of the by-law. This will be especially necessary in respect of decisions to permit tree and/or woodlot clearance under a Regional review of permits to be applied for in all cases or whether the need or not to even apply for a permit rests solely with the landowner or developer.

It is here recommended that an appropriate review be undertaken as to the validity and appropriateness of any tree/woodlot removal and/or woodlot management plan as by a professional forester in keeping with the practices currently performed by the Town of Oakville’s forester and a tree cutting permit only be awarded subject to an applicant’s successful satisfaction of that review. We believe this to be far more onerous than the original designation and EIA approach under a Greenlands B designation but we also believe it to be the only honest alternate to it under the by-law approach.

If, contrary to this advice as above the Region wishes to inform landowners that they will not have to apply or provide information and commitment in support of such permit to remove a tree, woodland or woodlot requests, the Region should be asked to demonstrate the conformity of their proposed alternate policy implementation tool with the PPS.

Given the Regions’ own admission of legal aspects yet to be resolved regarding such matters as regional versus local by-laws and permit system, Forest Act based authority versus (new) Municipal Act based authority for such a by-law and permit system, then a clear policy and Plan “B” to address the questions if the directions and tools are *ultra vires* will be needed to assuage those in Halton who wish to see the spirit of the PPS addressed appropriately.

If the four-step approach of policy, overlay, by-law and urban designation as recommended above is not adopted - then the following comments should also be noted. Without a public disclosure of even the to-be-designated-significant-when-turning-urban-woodlands, the application of a tree cutting permit system will represent secret planning behind close doors, and should not be deemed a fair and open practice, or good planning. The avoidance of permit review requirements for all (including permitted exemptions) would also be a hollow promise to address and implement provincial policy direction.

It is apparent that even the designation of “significant woodlands” under Greenlands B and development assessment under EIA provisions would do nothing to halt the development of such areas for which development proposals have been submitted (eg as Oakville OPA 198 lands of the Trafalgar Moraine) as such proposals were made prior to the subsequent designation and are “grand-parented”. Consequently, any subsequent development proposal, or OPA or ZBLA

accompanying any developers proposal, made within rural (ie non-urban approved) lands where no designation is previously approved will also be grand-parented should no designation be previously approved and made public. Consequently, a tree by-law to address both the ongoing management of significant woodlands and to address potential clear cutting in anticipation of selling for an unimpeded highest-and-best use based land value is needed.

Communication

Given the very considerable controversy engendered by the proposed significant woodlands policy direction and the readily apparent role of misconception and myth over reality it is here suggested that the Region consider providing clarity to better inform future discussion and decision making and to discourage current myths from replacing reality for ever in the public mind.

Clearly, policy regarding significant woodlands is of concern to both bona fide farmers, farm owners (620 farms in Halton) and developers, as well as to the residents of Halton (approximately 375,000) who though they largely live in urban areas, are concerned that the community they live in includes and protects “countryside”. All of these need to be informed as to the reality of what was really proposed and what it really would have meant to everyone in Halton, as well as to be informed as to whatever consensus approach is ultimately developed and accepted

It is hoped that such information will serve the purpose of facilitating the development of a more acceptable approach in future to other significant heritage issues.

RECOMMENDATIONS

1. That the Region be informed that EEAC still favours as the preferred alternative in respect to the significant woodlands policy direction issue raised in the Directions Report, the comprehensive designation of all significant woodlands in Halton, in urban and rural areas alike, as Greenlands B, to which all current Greenlands policies and practices are to apply.
2. That in the absence of support for the above approach, an alternate four-step (policy, overlay, by-law and urban designation) approach, as outlined below, be considered by the Region.

Step One:

Policy be included in the Official Plan to confirm that the Region shall have regard to significant woodlands as are recognized and occur in Halton in keeping with Provincial policy, guidelines and manuals and Halton’s existing policies, and that the EIA Guidelines will apply in respect to Greenlands A and B, and will be applied within 120 m of Provincial Wetlands but only within 50 m of all other designated Greenlands.

Step Two:

The identifying criteria, and a series of maps to detail present designations and proposed designations and an overlay map (or reference map) be included in, or appended to, the Official Plan to clearly indicate

- (a) the 4 criteria that denote present identifying significance and the 3 criteria that denote future development significance;
- (b) the identified significant woodlands that are already designated as part of Greenlands A or B;
- (c) the identified significant woodlands that are to be designated as part of the newly expanded Greenlands A or B in keeping with new Provincial information and designations (ANSI's and Provincial Wetlands etc); and
- (d) the significant woodlands areas that are not included in any current or required Greenlands A or B designation but that are to be incorporated within Greenlands B when the lands are to be included within the approved urban growth boundary as part of subsequent HUSR/P study or any private OPA or ZBLA.

Step Three:

Policy to support a Regional Tree By-law be included in the Official Plan to require a tree-cutting permit be issued by the Region in all cases (including where exemptions from requirements apply) before trees are cut in the areas denoted by the overlays (see 2 above) in the Official Plan, as significant woodlands.

Step Four:

Significant woodlands as have been identified by the seven made in Halton criteria and as occur currently in Halton's urban areas (as delineated by the approved urban growth boundary) and as and when non-designated significant woodlands in rural areas become incorporated within future urban growth boundaries, as following Halton Urban Structure Review/Plans or OPSa or ZBLAs, are to be designated as significant woodlands in Greenlands B.

3. That the Region allow for voluntary landowner requests for lands to be "designated" as significant woodlands in Halton, in perpetuity, and as in presently designated rural areas (ahead of urban designation) in order to allow and encourage the eligibility of such landowners for tax relief or Kyoto credits.
4. That Region planning staff provide their own professional and official statement of opinion in respect to the alternate HRFA proposal and the questions raised above. And that their opinion be provided to Regional Council prior to their forthcoming deliberation of OP and Direction Report matters.
5. That Region Staff should inform Council of their opinion of alternate policy satisfying measures, including but not limited to, the use of Countryside/Agricultural Easements.
6. That Regional Council should be advised of staff 's opinion as to their own ability to address and report adequately on EIA requirements for significant woodland assessments within 90 days of a private development proposal. And that as a corollary, Regional Council may wish to consider establishing a Council policy direction to advocate for the removal of the right of developers to appeal to the OMB after 90 days where the proposed development is outside of the designated urban envelope.

7. That the alternate tree by-law approach as presented by regional staff, in the absence of the other two steps outlined under the three-step approach as above, should not be approved as policy prior to the details being clearly resolved, fully portrayed to the public and fully discussed.
8. That staff continue to attempt to best portray the reality of the situation to the people of Halton, and represent and inform the needs and wishes of all who live in Halton in an appropriate communications strategy.

Respectfully Submitted by:

Leslie Adams
Jennifer Dockstator
Geza Gaspardy
Christopher Morgan
Marsha Paley

CM/cm

Adopted by EEAC as circulated February 12, 2003