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Niagara Escarpment Commission Commission de l'escarpement du Niagara

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Ontario's Niagara Escarpment
A World Biosphere Reserve

Sub. # 9344

July 15, 2010

N.E.C. DECISION

STAFF REPORT

JUL 15 2010

**RE: REQUEST TO AMEND THE PLANNING ACT BY THE BRUCE
 TRAIL CONSERVANCY**

BACKGROUND:

On April 26, 2010 the Niagara Escarpment Commission (NEC) received correspondence from the Bruce Trail Conservancy (BTC) requesting that the NEC support a change to the *Planning Act* (PA) to provide for an exception to subdivision control to allow conservation agencies like the BTC to acquire or dispose of land for conservation purposes where such lands are being acquired or disposed of in a manner consistent with the Niagara Escarpment Plan (NEP).

Similar requests were sent to the Minister of Municipal Affairs and Housing and to the Minister of Natural Resources. The matter was referred by these Ministers to the NEC for comment.

The BTC letter is attached for information.

SUMMARY RECOMMENDATION:

Support the BTC request, subject to modifications to the draft wording of the change to the PA.

JUSTIFICATION:

The BTC has indicated that its role of securing land has become increasing difficult, costly and time consuming where such land is being acquired or disposed of to further the conservation and parks and open space objectives of the NEP. As an agency not exempted from subdivision control the BTC must apply for severances and be granted the consent. Such severances are increasingly expensive in terms of application fees and land dedications.

Delays also flow from municipal or neighbour opposition and appeals. The ability to react quickly to lands which become available can be compromised and many potential opportunities to further the objectives of the NEP and secure the Bruce Trail and related conservation lands are lost. Many landowners are unwilling to wait the 6 months or more required to obtain a severance, even where there are no major problems (like appeals).

The BTC notes that other public agencies like the conservation authorities or ministries can acquire parkland or sensitive properties without the need for severance applications since they are currently exempted under the PA from subdivision control for these types of lands.

The BTC also points out that the majority of the money to secure land is obtained from donations and the work to identify suitable lands from volunteers. The current system sometimes uses significant portions of these donated funds and volunteer time to purposes that have more relationship to administrative fees and processing costs than actual land securement for the overall public benefit. Additionally, when monies become available through provincial or similar public programs such monies in most instances must be used quickly or be lost because of the limited funding or deadlines on the committed use of such public funds.

The BTC indicates that it has a strong conservation track record in supporting the NEP and specifically securing land for the parks and open space system on the Escarpment, including the Bruce Trail. The BTC does not believe that providing a PA exception with a proper checks and balances would compromise the NEP or open the door for abuse.

Specific examples of the current difficulties of land securements are outlined in the letter to the NEC (attached to this Report).

THE NEP:

The NEP reflects the purpose and Objectives of the *Niagara Escarpment Planning and Development Act* (NEPDA). The purpose and objectives lend themselves to land securement to further the environmental tenets of the NEPDA. Two of the specific objects related to the acquisition of land are to:

- Provide opportunities for outdoor recreation, and
- Provide for adequate public access to the Niagara Escarpment.

In this regard the NEP provides policies to promote and facilitate the purchase of lands for parks, open space and the Bruce Trail. The land division policies of the NEP specifically allow for parks, open space, trails and similar conservation severances. The BTC is given special status under the NEP as the agency which will lead in securing a permanent route for the Bruce Trail footpath, which

has become synonymous with the Niagara Escarpment. The NEP also provides for other conservation organizations to establish nature preserves in the area of the NEP. Approximately 20% of the NEP is now held by public park agencies or similar organizations (like the BTC) that hold land in the public trust for recreational and open space purposes.

Although regulation is very useful in protecting land, the most permanent form of protection is purchase by public park agencies or similar organizations for conservation purposes.

The BTC proposal is consistent with the NEP and would further that part of the Niagara Escarpment program aimed at permanently securing lands for conservation purposes.

ANALYSIS OF PA CHANGE:

The BTC's suggested wording for a new sub-section i) to Section 50(3) of the PA is:

- *The land or any use therein is being acquired or disposed of by a conservation body as defined in the Conservation Land Act, R.S.O. c.C.28 and is within the Niagara Escarpment Planning Area as defined by the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c.N.2 for purposes consistent with the Niagara Escarpment Plan prepared pursuant to that Act.*

The NEC staff has reviewed the *Conservation Land Act* (CLA) to ensure that the CLA and its Regulations either define or identify conservation bodies in a manner that is consistent with the NEP for those agencies and conservation organizations that are eligible to acquire lands for park, open space, trails and conservation purposes under the NEP. The definitions and Regulations of the CLA are consistent with the NEP.

Additionally, the NEC staff has reviewed the current exemptions in Section 50(3) from subdivision control under the PA to determine whether the policy treatment under the Statute for other agencies like ministries and conservation authorities is similar to those requested by the BTC for conservation bodies. For conservation authorities under sub-section e) the PA requires (in part since there are a number of land acquisition situations) that the acquisition of land must be "for the purposes of protecting sensitive land be under a project approved by the Minister of Natural Resources under Section 24 of the *Conservation Authorities Act*". Under the sub-section a declaration must be made by an officer of the conservation authority conclusively showing that such land is being acquired for the stated purpose provided for in the sub-section.

In order to provide similar checks and balances and to assure that there is always compliance with the lot creation and acquisition provisions respecting conservation lands in the NEP staff recommend the following rewording:

- ***The land or any use therein is being acquired or disposed of for the purposes of securing conservation land by a conservation body as defined or prescribed in the Conservation Land Act, R.S.O. c.C.28 and is within the Niagara Escarpment Planning Area as set out in the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c.N.2 for purposes approved by the Niagara Escarpment Commission as being consistent with the Niagara Escarpment Plan prepared pursuant to that Act.***

The changes to the paragraph do the following:

- Clearly limits the acquisition or disposal of land to securing "conservation land" which is defined under the *Conservation Land Act*,
- Includes those "conservation bodies" as are also prescribed (or may be prescribed) by Regulation under the *Conservation Land Act*, and
- Provides for review and sign off from the NEC that the proposal complies with the NEP before the section may be used by a conservation body to acquire or dispose of land.

CONCLUSION:

The BTC submission to have the PA modified is complementary to the purpose and objectives of the NEP and would also afford the BTC (and similar conservation bodies as defined or prescribed under the *Conservation Land Act*) similar treatment to ministries and organizations like conservation authorities that acquire or dispose of sensitive lands for the public benefit. The change to the PA would also make the process more efficient and cost effective and help promote land securement by eligible conservation organizations. Donated funds and volunteer services could then be focused on land negotiations and purchases and not administration (e.g., fees, dedications, appeals).

The NEP encourages land acquisition for a broad range of park, open space and recreation purposes (especially under Part 3 of the NEP) and therefore should support the BTC's initiative to change the PA to allow for securing conservation lands under specified terms and conditions set out in a new sub-section of the PA.

This change is unlikely, in staff's view, to be controversial and would be seen as a very positive green government initiative in the area of the NEP by the public and those organizations that support the protection of the natural features of the Niagara Escarpment. The PA's similar provisions that have applied to conservation authorities over many years have worked well and should also work well for conservation bodies with the appropriate restrictions.

There will be no direct costs to the province should the change to the PA take place.

RECOMMENDATION:

The Niagara Escarpment Commission support the Bruce Trail Conservancy's submission to the Minister of Municipal Affairs and Housing and to the Minister of Natural Resources that Section 50(3) of the *Planning Act* be amended, at the government's first opportunity, to provide for the acquisition or disposal of land for the purposes of securing conservation land in the area of the Niagara Escarpment Plan for the reasons set out in this Report.

The new sub-section i) should be generally constructed as follows to assure proper long-term oversight and compliance with the Niagara Escarpment Plan:

- *The land or any use therein is being acquired or disposed of for the purposes of securing conservation land by a conservation body as defined or prescribed in the Conservation Land Act, R.S.O. c.C.28 and is within the Niagara Escarpment Planning Area as set out in the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c.N.2 for purposes approved by the Niagara Escarpment Commission as being consistent with the Niagara Escarpment Plan prepared pursuant to that Act.*



Ken Whitbread, Manager

RECEIVED

APR 26 2010

NIAGARA ESCARPMENT
COMMISSION

April 16, 2010

Niagara Escarpment Commission
232 Guelph Street
Georgetown, Ontario
L7G 4B1

ATTENTION: David Johnston

Dear David:

RE: The Bruce Trail Conservancy

Thank you for our discussion at the last Securement meeting, April 13, 2010. As you know, I am a member of the Land Securement Secretariat of The Bruce Trail Conservancy (BTC) a committee whose job it is to assist and facilitate the acquisition of lands along the Niagara Escarpment for the purpose of establishing a conservation corridor and footpath from Niagara to Tobermory.

We have caused correspondence to be sent to the Minister of Municipal Affairs and Housing who has sent it on to The Honourable Linda Jeffrey of M.N.R. for consideration. We seek an amendment to Section 50 (3) (h) of the *Planning Act of Ontario* to permit land conservation bodies such as the BTC to be exempt from the provisions of the legislation that requires formal consents to the severance and conveyance of land provided it is within the Niagara Escarpment Planning Area.. At present the exemption only applies to an easement over or covenant relating to the land and extends province-wide to a conservation body under the Conservation Land Act. In making the request we have asked for practical assistance which we believe will help to accomplish our goals expeditiously.

The Bruce Trail is alleged to be the oldest and longest footpath in Canada. The culture of conservation, the greenbelt philosophy, the preservation of native plants and animals and healthy recreation all play into the reason we continue to work diligently in aid of its secured future.

The BTC would like to preserve the balance of the corridor. We acquire lands through direct purchases or donations. We are often given a "handshake" agreement to establish Trail through a supportive landowner's property and of course we access parklands, nature reserves and conservation areas to continue

our ribbon of Trail. We have established an "optimum route" which we strive to attain.

The reason for our requesting an amendment to the *Act* is best illustrated by examples of difficulties we encounter in our land securements.

Example No. 1:

A property of 100 acres on the optimum route in the Bruce Peninsula is listed for sale. We approach the owner or agent and indicate that we would be interested in acquiring the 20 acres thereof that are adjacent to and forming part of the Niagara Escarpment. It cannot be developed. If the owner is agreeable the Transfer requires a Consent to sever pursuant to the *Planning Act*. This will now delay any sale for an average six months. This does not bode well for the seller or a potential third party purchaser. The seller moves on and the transaction is lost for many years until the property returns to the market. This same scenario also tragically plays out where the same seller wants to gift or donate the 20 acres and get on with the sale of the balance.

Example No. 2:

A property of 10 acres with a ski chalet in the Beaver Valley is on the market. We need the back 3 acres to complete our chain of properties on the optimum route corridor. It is a must buy for the BTC. We can proceed to buy the entire property but we now have the ski chalet which we cannot use. In this example we apply for a Consent to sever the front 7 acres with the chalet and again the time, cost, risk and liability is needlessly imposed upon us.

Example No. 3:

A vacant property of 3 acres abuts the Niagara Escarpment and is otherwise a building lot approved by the Niagara Escarpment Commission. The owner wishes to donate the rear one acre to the BTC where we have maintained trail based on a "handshake" for many years. This is important to our route, otherwise we will forced to use the road which is heavily travelled. The owner is selling the balance of the land but will await our severance application. The Official Plan of the municipality precludes the severance of land for the creation of a lot and the local planners argue that from the one lot we are creating two parcels, one of which would be landlocked. The donation fails and the donor sells the lands as a result of our failed application.

We have a wide membership and support network. Funding of our acquisitions is approximately Eighty (80%) percent by private donations. Ad hoc government programs as may be available from time to time provide the balance or approximately twenty (20%) percent. Seventy-five percent of our land acquisitions require a severance at a cost of between \$2,500.00 and \$5,500.00 per Application. These are needless donation dollars that could be put to work in the acquisition of more secured corridor.

The BTC is a "conservation body" as defined under Section 3 of the *Conservation Land Act of Ontario*. It operates within the Niagara Escarpment Planning Area and is recognized in The Niagara Escarpment Plan. The BTC is a not for profit corporation and a registered charity recognized by Canada Revenue Agency. We have a stellar track record and a purpose that benefits everyone. In the last five years we have acquired Ten Million Dollars worth of real estate which is translated into 38 kilometers of secured trail and 2,914 acres. In accomplishing this we entered into 65 real estate transactions. Our costs therefore become significant.

Our amendment to the Planning Act could be worded as follows:

The Planning Act is amended by adding the following after paragraph 50(3)(h):

- (i) the land or any use or right therein is being acquired or disposed of by a conservation body as defined in the *Conservation Land Act*, R.S.O. 1990 c. C. 28 and is within the Niagara Escarpment Planning Area as defined in the *Niagara Escarpment Planning and Development Act*, R.S.O. 1990, c.N.2 for purposes consistent with the Niagara Escarpment Plan prepared pursuant to that Act.

Your support of the proposed amendment is key to its passage. It is restricted to your planning area and therefore does not open any floodgates. Our hope is that an amendment with this intent could be passed before the Assembly under an omnibus Bill such as a Good Government Act. It is hoped that it could be considered within the existing legislative term.

Please advise if we could meet to discuss this important step for our organization. Thank you for your attention to this matter.

Yours truly,

Land Securement Secretariat
The Bruce Trail Conservancy



Submitted by Member
ROBERT D. GRANT

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RDG:ns

c.c. Beth Kummling, Executive Director
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Ontario's Niagara Escarpment
A World Biosphere Reserve

July 28, 2010

RECEIVED AUG - 4 2010

The Honourable Jim Bradley
Minister of Municipal Affairs and Housing
777 Bay Street, 17th Floor
Toronto ON M5G 2E5

and

The Honourable Linda Jeffrey
Minister of Natural Resources
Room 6630, Whitney Block
99 Wellesley Street West
Toronto ON M7A 1W3

Dear Ministers:

**RE: REQUEST TO AMEND THE PLANNING ACT BY THE BRUCE
TRAIL CONSERVANCY**

On April 26, 2010 the Niagara Escarpment Commission (NEC) received correspondence from the Bruce Trail Conservancy (BTC) requesting that the NEC support a change to the *Planning Act* (PA) to provide for an exception to subdivision control to allow conservation agencies like the BTC to acquire or dispose of land for conservation purposes where such lands are being acquired or disposed of in a manner consistent with the Niagara Escarpment Plan (NEP).

Similar requests were sent to the Minister of Municipal Affairs and Housing and to the Minister of Natural Resources. The matter was referred by these Ministers to the NEC for comment.

The NEC considered this matter at its July 15, 2010 meeting and adopted the following resolution:

The Niagara Escarpment Commission strongly supports the Bruce Trail Conservancy's submission to the Minister of Municipal Affairs and Housing and to the Minister of Natural Resources that Section 50(3) of the *Planning Act* be amended, at the government's first opportunity, to provide for the acquisition or disposal of land for the purposes of securing conservation land in the area of the Niagara Escarpment Plan for the reasons set out in this Report.

The new sub-section i) should be generally constructed as follows to ensure proper long-term oversight and compliance with the Niagara Escarpment Plan:

- *The land or any use therein is being acquired or disposed of for the purposes of securing conservation land by a conservation body as defined or prescribed in the Conservation Land Act, R.S.O. c.C.28 and is within the Niagara Escarpment Planning Area as set out in the Niagara Escarpment Planning and Development Act, R.S.O. 1990, c.N.2 for purposes approved by the Niagara Escarpment Commission as being consistent with the Niagara Escarpment Plan prepared pursuant to that Act.*

The rationale for this strong support is set out in the Staff Report attached but the NEC would like to highlight the following:

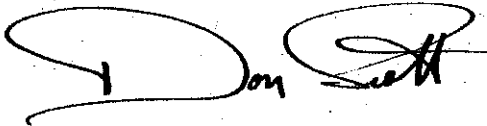
- The change to the PA is in the broad public interest since it promotes the acquisition of land for conservation, recreation and environmental purposes.
- The BTC submission to have the PA modified is complementary to the purpose and objectives of the NEP and would also afford the BTC (and similar conservation bodies as defined or prescribed under the *Conservation Land Act*) similar treatment to ministries and organizations like conservation authorities that acquire or dispose of sensitive lands for the public benefit.
- The change to the PA would also make the land acquisition process more efficient and cost effective and help promote land securement by eligible conservation organizations.
- Donated funds and volunteer services could be focused on land negotiations and purchases and not administration (e.g., fees, dedications, appeals).
- The NEP encourages land acquisition for a broad range of park, open space and recreation purposes, including the Bruce Trail (especially under Part 3 of the NEP) and the change to the PA would reinforce this direction set out in the NEP.
- This change is unlikely to be controversial and would be seen as a very positive green government initiative in the area of the NEP, which is a cornerstone of the Province's Greenbelt, by the public and those organizations that support the protection of the natural features of the Niagara Escarpment.
- The PA's similar provisions that have applied to conservation authorities over many years have worked well and should also work well for conservation bodies with the appropriate restrictions.
- There will be no direct costs to the province should the change to the PA take place.

In conclusion, the NEC asks that strong consideration be given to undertake the change to the PA outlined in this letter since such action would encourage and support land acquisition by conservation bodies for conservation purposes in the area of the NEP. A strong land securement program will significantly benefit the people of the Province now and in the future.

I would be pleased to meet and discuss the Commission's resolution further should there be a desire to do so.

The staff contact on this file is Ken Whitbread, NEC Manager, who can be reached at 905-877-4026 or ken.whitbread@ontario.ca

Your truly,

A handwritten signature in black ink, appearing to read "Don Scott". The signature is stylized with a large, sweeping initial "D" and a cursive "Scott".

Don Scott
Chair

- c. Ted Arnott, MPP (Wellington-Halton Hills)
- Valerie Stankiewicz (MNR)
- Alison MacKenzie (MNR)
- ✓ Beth Kümmling (BTC)
- Robert Grant (Counsel BTC)

C/KW/ BTC Letter of PA Change Support to Ministers July 28 2010