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April 22, 2016

Ms. Mary Elder, MCIP, RPP  
Principal Planner  
Norfolk County Community Planning  
Langton Administration Building  
22 Albert Street  
Langton, ON N0E 1G0

Re: **Norfolk County Hastings Drive Zoning By-law Study  
Issues / Options Report & Final Recommendations**

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Dear Ms. Elder,

The Ministry of Municipal Affairs and Housing (MMAH) has reviewed the above-noted report, as per the mandate of this Ministry with respect to provincial interests in land use planning and development. The report was also circulated to the Ministry of Natural Resources and Forestry (MNR), and the Ministry of the Environment and Climate Change (MOECC) through the One-Window Provincial Planning Service for review. The following comments are based on Provincial staff's review of the report, and the final recommendations for the use of properties located along Hastings Drive in Long Point.

MMAH staff note that the report provides a useful summary of the various planning issues affecting the Hastings Drive study area, and a number of options are provided for development / no development scenarios and site alteration. Section 2.1, Planning Act, on page 21 of the report states the following:

*“Although cottages are not currently a permitted use in the Zoning By-law, the cottages within the study area on Hastings Drive were built prior to the prohibition of the use. Therefore, these cottages are permitted to remain as ‘non-conforming’ buildings and structures and retain certain rights in accordance with the Planning Act and Zoning Bylaw.”*

This statement could be considered a legal interpretation respecting the status of existing cottages on Hastings Drive relative to the “non-conforming” provisions in the Planning Act, and the Zoning By-law. There are other references to the “non-conforming” status of cottages in the report. It is respectfully suggested that planning opinions respecting “non-conforming”, and “legal non-conforming” status be avoided in the final adopted report, since ultimately the determination of non-conforming status under the Planning Act would rest with lawyers and/or the courts.

MMAH staff note that recommended options #3, 10 and 13 indicate that no site alteration is permitted. It is understood that the recommended options are to be implemented through an amendment to the Norfolk County Zoning By-law. With respect to site alteration, the County should consider the authority to pass a site alteration by-law under Section 142 of the Municipal Act, 2001.

### **Ministry of Natural Resources and Forestry (MOECC) Comments**

MNRF staff has been attending Technical Advisory Committee (TAC) meetings to provide input into the creation of the MHBC Issues and Options report regarding Hastings Drive Zoning for Norfolk County. The final version of the Issues and Options report was circulated to our office via email on April 4th, 2016. Prior to that circulation, MNRF staff attended a TAC meeting where the report was reviewed and discussed and at that meeting staff also had a chance to view a draft zoning by-law amendment.

MNRF staff is in agreement with, and supportive of the recommendations provided in Section 6.0 of the Issues and Options report (page 50). The recommendations outline generally no site alteration or new development on Hastings Drive. The report suggests that the following options are appropriate (copied from the report):

*“Option 3: Maintain existing Hazard Lands zone and regulations and clarify that new development (including RVs/trailers) or site alteration is prohibited; permitted uses would include a park, but no associated structures would be permitted; park to be defined as per By-law 1-Z-2014*

*Option 10: Permit private boat launches with no associated structures or site alterations*

*Options 12: Cleaning up debris and old shoreline structure material (\*cleaning up not deemed to be a land use)*

*Option 13: Permit day use activities; no buildings/structures or overnight accommodations are permitted; no site alteration is permitted”*

At the last TAC meeting, it was discussed that there was an oversight in the report and it was intended to recommend that site alteration MAY BE PERMITTED associated with permitted uses, provided approval from appropriate agencies (specifically discussed were MNRF & LPRCA) is received. MNRF recommends that Fisheries and Oceans Canada should also be consulted for approvals. The discussed option to include site alteration associated with permitted uses is not shown in the newly circulated version. MNRF staff feel strongly that the option of no site alteration is consistent with the PPS,

2014 (specifically Sections 2.1 and 3.1) and accordingly requests clarification from the County on their intent to allow site alteration in the zoning by-law.

In accordance with the PPS, 2014, site alteration in this area will trigger Section 2.1.7 which states:

*“Development and site alteration shall not be permitted in habitat of endangered species and threatened species, except in accordance with provincial and federal requirements.”*

Hastings Drive is within or within 120m of a Provincially Significant Wetland, a Provincially Significant Life Science Area of Natural and Scientific Interest and, as mentioned above, it is Regulated and General Habitat for a number of species protected under the Endangered Species Act (2007). The recommended options are consistent with the PPS, 2014 as currently written in the draft report circulated on April 4th. Policy 3.1 of PPS, 2014 is mandated to the local conservation authority (LPRCA), and they should be consulted respecting natural hazards. It is noted that other agency approvals and/or permits may be required if existing cottage owners wish to develop their properties further, and MNRF staff is in agreement with that.

### **Ministry of the Environment and Climate Change (MOECC) Comments**

It is understood that the study was undertaken in order to determine appropriate land use and zoning regulations for these lands. While a number of lots were originally created by an OMB-approved plan of subdivision in 1954, more recently the County has prohibited development due to hazard conditions and the presence of provincially significant wetlands and other natural heritage resources. Despite this, there has been an introduction of uses (trailers, RVs) being placed on vacant lots in contravention of the approvals.

The Issues/Options Report makes note of the following:

- This reach of the Shoreline Management Plan is prone to damage caused by wave action such that permanent development is not supported;
- Structural protection within this reach would likely result in destruction of sand shoreline;
- A number of provincial species at risk inhabit the area such that protection of their habitat results in development constraints;
- New development should not be permitted, nor should modifications to existing seasonal cottages or conversion to year-round use; and
- Reasonable access cannot be guaranteed year-round.

Section 3.2 speaks to the infrastructure-related comments that were received through public consultation. Suggestions included the provision of water/sewers (which we assume to mean municipal servicing), septic systems and holding tanks, and road improvements. It should be noted that any further consideration of such infrastructure improvements would need to be done within the scope of an environmental assessment following the requirements of the Municipal Environmental Assessment.

It is noted that options for consideration were categorized on the basis of extent of development that would be permitted:

1. No Development
2. Limited New Development
3. Full Development
4. Site Alteration

The interests and mandate of MOECC are relevant to the options identified under the Limited New Development and the Full Development categories as they raise servicing concerns surrounding the ability to provide water and sanitary facilities for campers and residents. Further consideration of these options should be based on at least some kind of preliminary assessment as to the ability to even provide the most basic services in the case of day camping, to the ability to extend full services for year-round residential uses.

The report has also noted that should Council wish to permit any of the options that would allow the building of new structures (some of which raise servicing issues) that an OPA be required to permit these uses. This suggestion has merit as it could be used as the process by which preliminary technical evaluation can be made as to the feasibility and impacts relating to the provision of an appropriate level of servicing. This appears to be suitable for the integration of the OPA with the MEA Class EA process to look at road, water and sanitary servicing options as part of the consideration of permitting uses that will result in alteration and construction of new structures.

We would appreciate the opportunity to review the draft zoning by-law amendment prior to a final Council decision, and the Ministry requests notice of passing for the zoning by-law amendment.

Please do not hesitate to contact me if you have any questions or concerns.

Regards,

*Erick Boyd*

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Team Lead – Planning (A)

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