

August 10, 2001

NIAGARA ESCARPMENT PLAN REVIEW

Final Submission by the

Coalition on the Niagara Escarpment

1. INTRODUCTION

The Coalition on the Niagara Escarpment (CONE) made oral submissions to the Niagara Escarpment Plan Review public hearing in St. Catharines on July 27, 2001 regarding Wineries and in Milton on August 7, 2001 regarding Rural Tourism, Signage, and Intensive Recreational Development in Escarpment Parks. We shall take the opportunity of this final written submission to highlight some of the points we covered at the oral hearings. Our complete set of written comments on all topics dated June 1, 2001 is available on the Environmental Review Tribunal website.

2. WINERIES

CONE shares many common goals with the Niagara wine industry. We recognize the need to promote the Niagara wine industry and winery-related agri-tourism, and we recognize the high quality of the wines produced by the industry. We also recognize the need to protect the agricultural land base on the Niagara Escarpment as much as the need to protect natural areas such as the forests of the Escarpment. Where we may differ with some members of the industry in some instances is with respect to the actual measures needed to achieve these goals.

2.1 Minimum Lot Size

Objective 4 of the Niagara Escarpment Plan is "to maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery." The issue of minimum lot size for a winery is one that requires a delicate balancing of the preservation of the natural landscape with the allowance for and promotion of compatible farming.

CONE disagrees with the Niagara Escarpment Commission's (NEC's) position that the minimum lot size be 8 ha (20 ac) and, instead, supports the view of some members of the grape and wine industry that wineries be permitted on smaller parcels. CONE's proposed minimum lot size is 4 ha (10 ac), with fewer accessory uses at wineries on lots smaller than 8 ha (20 ac) -- i.e., only retail sales, wine-tasting and picnics -- and a strong preference that only grapes grown on that

particular farm be allowed to be used in the wine-making at these smaller wineries. We believe that the Plan objective of maintaining the open landscape character of the Niagara Escarpment can be properly maintained under these conditions.

CONE does not think that a minimum lot size of 4 ha (10 ac) would lead to the creation of many new farm parcels. Rather, it is likely to be more often a case of existing owners of smaller farms with 10-20 acres in vines deciding to enter the wine-making business and therefore adding some accessory uses to their farm businesses. Such wineries would be processing a relatively small volume of wine, and these vintners would need to be able to retail their wine on-site as they would not have the volume required to enter the LCBO marketing system. The small family farm is part of the cultural heritage landscape of the Escarpment that the Niagara Escarpment Plan seeks to maintain.

In response to CONE's written question about the fact that the Ontario Grape Growers Marketing Board had stated that 47% of the farms in the Town of Lincoln are smaller than 20 acres, the grape growers noted that "small acreages (relative to the types of farming elsewhere in the Province) are common in the production of grapes and other tender fruit. If the NEC minimum acreage of 20 acres is utilized, clearly this would eliminate the ability of more than 50% of farms [in Lincoln plus in other Niagara municipalities] from supporting themselves through value-added processing."

2.2 New Winery Policies for Niagara Region Only

Although the NEC's proposals are meant to apply to all farms throughout the Plan Area that produce fruit-based alcoholic beverages, the policies do not "transfer" well to types of farming other than grape farms. Very little, if any, interest has been shown in this Plan Review by fruit farmers outside Niagara Region. For example, we believe there have been no submissions from Beaver Valley apple growers.

We question why provisions would be made for the rest of the Plan Area at this time when the Niagara Region wine industry is clearly a special case in so many ways. As the Ontario Professional Planners Institute noted in their written submission, the proposed winery policies should be seen as "a unique response to the needs of a unique, limited industry [i.e., the Niagara Region wine industry]."

CONE is not satisfied with the NEC's response to CONE's written question about the numerous concerns raised by the Town of Caledon (Peel Region) about the winery policies covering the entire Plan Area. The NEC stated that "the Niagara Escarpment Plan requires that municipal requirements be met for any proposed application. If a municipality has more restrictive policies, the more restrictive policies of the official plan would prevail. For example, the proposed minimum lot size of 8 ha (20 acres) for the establishment of a winery may not be acceptable to a municipality...." CONE takes the view that the Niagara Escarpment Plan must set a

high standard in its policies, rather than having to count on municipalities such as the Town of Caledon to set the high standard, such as a larger minimum lot size.

Therefore, since the NEC evidently has not yet done the research and analysis to establish appropriate policies for alcoholic-beverage-related accessory uses on non-grape fruit farms, the winery policies must be restricted to the Niagara Region portion of the Plan Area.

2.3 Scale of Winery Buildings

It must be emphasized that the debate here is what a reasonable size is to permit "as of right" through the NEC development permit process after this Plan Review *versus* where the requirement for a Niagara Escarpment Plan Amendment -- which may or may not be approved by Cabinet -- for larger square footages kicks in. Recent amendments to the *Niagara Escarpment Planning and Development Act* under the government's "red tape reduction" initiative have streamlined the Plan Amendment process; therefore, taking the Plan Amendment route should not be viewed as excessively onerous.

CONE bases its "upset limit" of 15,000 square feet for Niagara Region wineries on what is already existing "on the ground" in the Plan Area, with the majority of the 12 Escarpment wineries being under 15,000 square feet each. Beyond 15,000 square feet, a Plan Amendment should be required. We believe that the NEC's proposal of 25,000 square feet is over the top, and the Wine Council of Ontario's proposal for 100,000 square feet before needing a Plan Amendment (not backed up with research and analysis to justify it) is way over the top.

CONE brought to the attention of the oral hearing the analogy of small-scale rural institutional uses in the Plan Area that are required to adhere strictly to an informal NEC guideline --- *not* a policy in the Plan -- of 5,000 square feet. We referenced a recent decision of the Joint Board, Case No. 00-021. The proponent is Wat Lao Veluwanaram, a Buddhist religious organization which owns a property in the Plan Area in the Town of Caledon and wishes to build a temple there.

In its April 30, 2001 decision, the Joint Board noted, at page 32, that the 5,000-square-foot guideline "has been the subject of careful NEC study and is a reasonable constraint that this Board considers precisely applicable in the present case.... We agree with the view that the intent of the limit on scale is important; it is meant to place limits on the size, mass, bulk, appearance and impact of the building on the site, and so a careful accounting is necessary." The Joint Board went on to precisely limit Wat Lao's proposed temple size under the development permit process so that *all* areas accessible to the worshipping public are included in the space calculation limit of 5,000 square feet. CONE questions the seeming inconsistency in which very tight size restrictions are put on the Buddhist temple by an NEC guideline --- not even a policy enshrined in the Niagara Escarpment Plan

-- and its predecessor, the Serbian Orthodox church in the Plan Area in the Town of Milton (cited also at page 32), yet comparatively loose, expansive, Plan-policy-enshrined proposals are being advanced for building sizes for the wine industry.

CONE wishes to clarify an issue we raised at the oral hearing on July 27, 2001. In response to a written question from CONE, the Ontario Grape Growers Marketing Board noted that there are three "tiers" of wineries, depending on the year in which each winery is established. We were unclear about the marketing board's statement, as part of their written response, that "unlike Cave Springs, new wineries are not permitted to have the winery and retail store separate from their vineyards." We now understand, from an August 7, 2001 telephone conversation with the marketing board, that the LCBO/AGCO rule (effective January 1, 1994) requiring a winery with a retail outlet to be located on at least 5 acres of grape-producing land means that another Cave Springs would be illegal. In other words, the retail store must be at the winery which must be at the vineyard; Cave Spring's vineyard is in the rural Escarpment countryside, while its winery and retail outlet (established before 1994) and other accessory uses are in an urban area. The LCBO/AGCO rule is unfortunate, for it *requires* wineries and retail stores to be in rural areas by definition, since that is the location of vineyards. CONE believes that the requirement of the AGCO (formerly the purview of the LCBO) that a winery, even one producing and selling VQA wines, be at the vineyard, must be reviewed. The AGCO should be encouraging agri-tourism developments in villages and towns, not exclusively in the countryside.

That said, there are different models for making a Niagara Escarpment winery feasible at the medium scale of 15,000 square feet maximum proposed by CONE. For example, the winery itself and the retail store would be on-site at the vineyard, as is now required by the LCBO/AGCO, but an associated restaurant, overnight accommodation and bottle storage would be in a village or town. Having at least some of the winery-associated development in urban areas stimulates the urban economy, allowing tourism businesses to spin off each other and multiply their successes.

2.4 Restaurants

CONE will not repeat here our detailed text of June 1, 2001, which explains our opposition to rural winery restaurants at any seating capacity, with any type of sewer and water servicing (whether municipal or on-site).

CONE believes a prohibition on new restaurants is the only justifiable position. As several hearing participants have noted, the NEC's proposed 50-seat maximum is not economically feasible. Yet the 225-seat maximum which the Wine Council of Ontario claims is needed to make restaurants viable would not only have unacceptable impacts on the Escarpment environment but also does not address CONE's contention that winery restaurants are too far removed from truly being an

accessory agricultural use. Juggling seating capacities is not going to result in a workable solution to this issue. The only defensible policy is to prohibit rural-winery restaurants.

This leaves the matter of the two existing Plan Area winery restaurants that, however regrettably, were built without NEC development permits. It makes good practical sense to "regularize" these restaurants, by requiring "after-the-fact" permits with conditions that must be met. These restaurants should not, de facto, set a standard for future winery restaurant policy.

We encourage Escarpment vintners either to locate their own restaurants in the Niagara Peninsula's villages and towns, or to partner with other entrepreneurs who would establish such restaurants. The AGCO should be encouraged to allow the practice in the province of Quebec and in the state of California whereby wine can be purchased at one location and then be taken to a restaurant elsewhere to be enjoyed with a meal.

3. RURAL TOURISM

3.1 Equity

One of the strengths of the Niagara Escarpment Plan has been its consistency, with policies applying to all Escarpment landowners throughout the Plan Area. This consistency has made the Plan defensible.

The proposed amendments regarding restaurants in the Rural Tourism and Estate Wineries papers would represent a significant departure from the Plan's uniform policy approach. No longer would permitted uses be determined solely by the land-use designation of a property, but also based on *where on the Escarpment* that property is.

If a vintner is permitted a restaurant, why not a dairy farmer, cattle rancher, or maple syrup producer? All farmers can argue the need to augment farm income by catering to tourists.

It may not be long before farmers who do not grow grapes or other fruit come before the NEC demanding equal treatment, and the NEC would be hard-pressed to explain why they cannot have restaurants.

It is CONE's position, for the above reason and others cited earlier, that restaurants should not be allowed as an accessory use to *any* farm operation.

Also, if the Rural Tourism policy is to have credibility, all the other accessory uses proposed for wineries should be restricted to Niagara Region. The Plan should make it clear that these winery policies are a unique response to the needs of a

unique industry and that they have no precedential value elsewhere in the Plan Area.

4. INTENSIVE RECREATIONAL DEVELOPMENT IN PARKS

4.1 Appendix 2 - Intensive Recreation in NEPOSS Parks

The Plan does not currently provide adequate direction on intensive commercial and recreational development in Escarpment parks. Instead, there has been a reliance on the park management planning process, operating in a policy vacuum that sets no parameters for potential park uses. This creates uncertainty for park managers, users and neighbours as to what the future may hold for some of the Escarpment's most significant natural areas. To rely only on the broad objectives of the Plan, and to make decisions on a park-by-park basis, defeats the purpose of having a provincial land-use plan applying to all Escarpment parks.

The only opposition to the NEC's proposed amendments to Part 3.1.4 has come from the Conservation Authorities (CAs).

The CAs have stated that they find the proposed new restrictions too inclusive and too vague, and that they do not take into account the scale of developments.

CONE does not believe the proposed restrictions are too inclusive. Even the CAs themselves have objected, not to the specific activities that would be prohibited, but to the fact that development limits are being proposed at all. They have consistently stated it is not their intention to build golf courses, hotels, and similar uses, and yet they oppose the NEC's proposal to prohibit these uses. Their position is confusing.

CONE does not believe the proposed restrictions are too vague. It is true that the statement "and similar forms of commercial development" is vague, but it is necessarily so. The Plan cannot list every conceivable type of development that would be prohibited. The CAs' position would seem to be that, if you cannot list everything that is prohibited, you should list nothing. CONE disagrees, and believes that some direction must be given to park planners, Conservation Authorities boards, park neighbours, and citizens. The proposed amendment does this in a very reasonable way.

As for the NEC not discussing scale, CONE believes that golf courses, hotels and restaurants are not acceptable in Escarpment parks at any scale.

CONE believes that appropriate recreational uses for Escarpment parks include low-impact developments servicing park users and providing educational and recreational benefits directly related to the Escarpment's natural environment. These could include small auditoriums, small craft and gift shops, interpretive centres, camping facilities, etc.

At the root of the CAs' objections to the NEC's proposals is that they want the freedom to pursue revenue-generating opportunities to fulfill their responsibility to achieve NEPOSS objectives. CONE sympathizes with the CAs' situation. But we cannot support allowing intensive developments in Escarpment parks simply because the CAs need revenue, and because they will do good work elsewhere with that revenue. It would be absurd to intensively develop some parks so that we can protect others. CONE accepts that this restriction could force CAs to cut back programming and/or land acquisition. Obviously, we hope this does not happen. But if it does, it would be preferable to blanketing our parks with golf courses or resorts. The Niagara Escarpment Plan Review is not the appropriate forum to discuss CA funding.

Conservation Authorities have argued that they need to be able to compete with private recreation-providers. CONE believes very strongly that public bodies such as the CAs should be held to a higher standard than privately owned recreational businesses. They are still public agencies, operating in the public interest, and managing public lands. That said, in most cases, the restrictions being proposed for NEPOSS parks would be the same as those that would apply if a private landowner owned the same parcel. The underlying land use designations for most NEPOSS parks are either Escarpment Protection Area or Escarpment Natural Area. Golf courses, restaurants, hotels etc. are prohibited in these areas regardless of ownership. It would be ironic if conservation groups had to oppose the acquisition of Escarpment lands by CAs out of concern that it would result in a lower level of protection for those lands!

If a CA wishes to pursue such an intensive recreational development, it could go through the Plan amendment process. In CONE's opinion, to set the bar so low that a Plan amendment is *never* necessary represents poor planning policy.

4.2 Existing Uses

CONE does not support the Commission's recommendation to insert a clause regarding the maintenance of existing uses in the second paragraph of Part 3.1.4. Our primary reason is redundancy. Provision for existing uses is already clearly made in Part 2.3 of the Plan. CONE suggests that reference be made to Part 2.3 rather than re-writing the clause as a whole in Part 3.1.4.