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About OHBA

The Ontario Home Builders' Association (OHBA) is the voice of the residential construction industry in Ontario. OHBA represents over 4,000 member companies, organized through 30 local associations across the Province. Our membership is made up of all disciplines involved in residential construction including builders, land developers, renovators, trade contractors, manufacturers, suppliers, planners, architects, engineers and lawyers. The residential construction industry employed over 325,000 people and contributed over \$42 billion to the province's economy in 2012.

Introduction

On behalf of our members, the Ontario Home Builders' Association appreciates the opportunity to provide comments on the *Significant Wildlife Habitat Eco-regional Criteria Schedules* released in spring 2012. OHBA has expressed concern to the Ministry of Natural Resources with respect to the lack of notice and consultation with industry stakeholders during the public consultation period in the spring. While the Ministry of Natural Resources may have considered the eco-regional criteria schedules to primarily be a gap-filling exercise through the consolidation and repackaging of existing materials, it remains important for stakeholders to have the opportunity to review and comment on proposed policy changes. OHBA appreciates the opportunity to comment and provide input. Furthermore OHBA appreciates the dialogue, discussion and opportunity to meet directly with MNR staff regarding the eco-regional criteria schedules.

OHBA has identified a number of concerns with the *Significant Wildlife Habitat Eco-Regional Criteria Schedules* in this submission. While the overall intent of the new schedules may have been to consolidate previous policy documents, we believe there are some substantive issues that the Ministry should consider and these eco-regional criteria contain details that will affect the building and land development industries. The extent of potential affect will vary by location and area/site characteristics.

Context

The Province through the Provincial Policy Statement (PPS) and through the *Natural Heritage Reference Manual* (NHRM) provide context for the determination of significant wildlife habitat (SWH). The MNR *SWH Technical Guide* (2000) and an associated *Decision Support System* provide some guidance in terms of general criteria to be applied. The interpretation of SWH is then left to municipalities. The Province's latest initiative, the release of "Identification of Significant Wildlife Habitat" for 4 eco-regions, adds substantial detail to allow for the more precise definition of SWH

(EBR 011-5740). OHBA appreciates that MNR is attempting to provide all stakeholders with better information and clarity specific to geographic areas of the province.

The ecoregional criteria are very important to considerations for land and infrastructure development given that, development and site alteration shall not be permitted in significant wildlife habitat unless it is demonstrated that there will be no negative impacts on the natural features or their ecological functions.

The term *Significant*, in this case is defined as ecologically important in terms of features, functions representation or amount, and, contributing to the quality and diversity of an identifiable geographic area or natural heritage system. The ecoregional criteria will be used to more precisely define what areas and functions are captured by that broad definition. The MNR's recently released document, *Taking a Broader Landscape Approach*, provides clear support for applying approaches, processes and criteria at Ecozone, Ecoregion and Ecodistrict scales, avoiding the need for parallel municipal approaches.

Once deemed to meet the criteria for Significant Wildlife Habitat, the test then becomes, can development or site alteration occur without threatening the health and integrity of the features? More specifically, negative impacts are defined as degradation that threatens the health and integrity of the natural features or ecological functions for which an area is identified.

Broad Implications

The eco-regional criteria provide specific information about what is required in terms of species, individual occurrences, habitat characteristics to achieve a designation of SWH. These criteria are applied across eco-regions rather than across other jurisdictional limits, which is a reasonable approach. From a general perspective, these criteria provide meaningful guidance to those tasked with defining SWH on a landscape level or at site-specific stages. The majority of the criteria seem to be reflective of the best available science and a reasonable prediction of significance.

OHBA is however concerned that the *Significant Wildlife Habitat Eco-Regional Criteria Schedules* contain new details that will affect the building and land development industries. The extent of potential affect will vary by location and area/site characteristics. Furthermore, OHBA is concerned by potential increases in the amount of fieldwork and surveying that may be required to determine SWH. Additional fieldwork could have implications for both timelines and costs which are ultimately passed onto the consumer.

One of the challenges with the identification and understanding of SWH is the complex array of associated documents. The PPS and NHRM provide important context. The now somewhat older references, *The Significant Wildlife Habitat Technical Guide* (SWHTG, 2000) and the associated *Decision Support System* (DSS) provide general approaches and criteria while the newly proposed eco-regional criteria are then provided to define specific measures for SWH.

For OHBA members and other stakeholders, it is not a simple task to wade through these complex and diverse materials to draw clear and coherent conclusions. In the preamble to the EBR posting of the Eco-regional criteria schedules, the Province notes,

To be identified as SWH, the wildlife habitat must be described in the SWHTG and meet the significance criteria. Therefore only the best, most representative and rarest wildlife habitats are considered significant.

Given the low thresholds established for some criteria and the broad and inclusive nature of some buffers, this statement in the EBR preamble may, in some cases represent an exaggerated declaration. OHBA is concerned by some of the SWH definitions and associated buffers and the potential impacts on the land-use planning process.

OHBA Concerns

As with wetlands, woodlands and SAR in Ontario, some of the criteria presented by the Province are more conservative and will result in more and larger areas of habitat being defined as SWH. There are large buffers set for some criteria and a general tendency towards the identification of the entire *Ecological Landscape Classification* (ELC) community including the SWH; this may extend significant distances and increase area capture versus a definition of the SWH alone. The PPS requirement that there be no negative impact on natural features and functions associated with proposed development will be difficult to demonstrate, especially given the broad nature of some criteria (addressed further in the following).

OHBA is concerned by the lack of acknowledgement of other economic and social provincial planning priorities in the *Significant Wildlife Habitation Eco-Regional Criteria Schedules*. The schedules are an important tool for municipalities to establish SWH when development applications are received. There are however other planning documents, regulations and guidelines beyond the PPS that set the planning context and framework for applications received such as the *Growth Plan for the Greater Golden Horseshoe*. OHBA recommends that both the *Northern Growth Plan* and the *Growth Plan for the Greater Golden Horseshoe* be referenced in the newly proposed eco-regional criteria schedules as key provincial plans that set the context for land-use planning decisions in those geographic areas.

Issues that require clarification

OHBA understands that MNR will not require additional fieldwork or survey's to determine if a site has SWH if the site is located within a settlement area of a municipal Official Plan. This is a critical issue for MNR to clarify within the *Significant Wildlife Habitat Eco-Regional Criteria Schedules* to provide greater certainty for land owners and project proponents. OHBA strongly recommends clear and concise language within the new MNR document that the eco-regional criteria schedules and NHRM are not required, nor is new SWH identification required for applications occurring within a settlement area as defined by the PPS.

Given the potential for large buffers and connecting amphibian and deer movement corridors (i.e., suggested to be > 200m), how will development proceed in a manner that will efficiently deliver on other important provincial initiatives (e.g., Places to Grow target of 50 persons / jobs per hectare, Infrastructure Corridors)?

Many of the criteria seem to require much more intensive and comprehensive biological field studies than has been the accepted norm or standard in the past. How will MNR work with industry to ensure the correct amount of study is implemented in a consistent and measured fashion?

A great deal of industry's ability to work with these ecoregional criteria and to achieve important growth objectives will depend upon an ability to impact SWH or portions thereof (e.g., portions of some buffer areas). What information can the MNR provide to industry to ensure a clear understanding of the intentions of the Province with regard to SWH and how it will be practically implemented in association with meeting PPS requirements?

OHBA – Specific Comments Regarding Ecoregional Criteria

Table 1.1 – Seasonal Concentration Areas of Animals

Waterfowl Stopover and Staging - terrestrial (5E, 6E, 7E)

- Area of flooded fields used by a modest 100 individuals waterfowl of any species
- The need for a 100m to 300m radius buffer from flooded field ecosites could present significant localized issues in terms of constraint
- Threshold has the potential to affect farm fields in GGH

Waterfowl Stopover and Staging - aquatic (5E, 6E, 7E)

- Open water areas with > 700 waterfowl use days (aggregations over 7 days)
- Increases the biological field surveys required; increased effort and costs for multiple survey dates
- Includes wetland area and shorelines associated with sites identified within the SWHTG (this could result in a 100m buffer from shoreline or wetland edges to the congregation areas; this is a much larger buffer than might have been typical in past situations)

Raptor Wintering Area (5E, 6E, 7E)

- A number of components of SHW, including raptor wintering will cause an increase in level of effort associated with studies associated with various approvals processes (e.g., additional periods of survey and multiple years of survey). This is evidenced in: *“To be significant a site must be used regularly (3 in 5 years) for a minimum of 20 days by the above number of birds”*.

Bat hibernacula (5E, 6E, 7E)

- SWH includes all hibernacula and 1000 m radius around the entrance; this may be more problematic in the Milton vicinity (i.e., proximity to escarpment)
- May also be problematic in association with some larger, old woodland stands (7E)
- Bat studies have not typically been expected in GTA development applications - this will require additional investments of time and resources in the approvals process

Turtle Wintering Areas (5E, 6E, 7E)

- The threshold of 5 overwintering midland painted turtles seems to be very conservative
- This species is the most common turtle in Ontario
- One snapping turtle meets this criterion as well; we are familiar with urban wetland and pond features that host this species

- ELC unit and basking areas referred to but no guidance regarding buffers
- Confirming the presence of overwintering will require increased effort in terms of ecological surveys
- “Sites with the highest number of individuals are most significant”

Reptile Hibernaculum (5E, 6E, 7E)

- Special concern snake species triggers SWH (includes eastern ribbon snake and milksnake; skink in 5E)
- Low threshold in terms of 5 individual snakes or 2 different species
- Not a requirement to confirm hibernaculum; test is lowered to observations of snake congregations (5+ individuals) near potential hibernacula
- Doesn't seem to be an exclusion for created features (e.g., old foundations, stone fences, temporary aggregate stockpiles)
- Will require increased biological field effort to confirm this criterion
- “Sites with the highest number of individuals are most significant”

Colonially-Nesting Bird Breeding Habitat (Bank and Cliff) (5E, 6E, 7E)

- 1 or more sites with 8 or more cliff swallow pairs or 50 bank swallows and rough-winged swallow pairs seems like a low threshold. Exclusion of created features is reasonable.

Colonially-Nesting Bird Breeding habitat (Trees/Shrubs) (6E, 7E)

- Presence of 1 or more active nests of the list species (i.e., Green Heron); this species is not always colonial in nature and can be located in single nests. This could result in an “over-designation” of SWH for this species.

Migratory Butterfly Stopover areas (6E, 7E)

- Monarch user days (MUD) of 5000 will require increased and ongoing surveys (i.e., not the normal few visits during the active season)

Landbird Migratory Stopover areas (6E, 7E)

- The test set up (i.e., >200 birds/day...etc.,) will require an increased level of survey effort
- The modest threshold can be met relatively easily in many GGH areas; it may also skew importance towards smaller patches in a relatively deforested near urban landscape.

Deer Yarding (5E) and Winter Congregation Areas (6E, 7E)

- Requires the consideration of movement corridors (addressed in final point below)

Table 1.2.1 – Rare Vegetation Communities (5E, 6E, 7E)

Introductory text to table;

Other Rare Vegetation Communities

- This criterion makes reference to a broader and dated list of potential rare vegetation communities (i.e., Appendix M, SWHTG, 2000)
- Clarity is required regarding the Province's position regarding whether S3S4 blended ranks are considered to be provincially rare

Table 1.2.2 – Specialized Habitats of Wildlife Considered SWH

Waterfowl Nesting Area (6E)

- thresholds defined are modest and will be easily met in some near urban (and some urban) areas
- May require greater or less than a 120m buffer; extensive upland habitat adjacent to open water are known to be nest habitat - a larger than typical buffer can be expected

Woodland Raptor Nesting Habitat (5E, 6E, 7E)

- Combination of a low threshold and large buffers may affect some urban and near urban areas; red-shouldered hawk is relatively commonly occurring in portions of the GGH; a 400m radius around a nest is required for this species; smaller nest radii for other species

Turtle Nesting Areas (5E & lizard, 6E, 7E)

- Nesting areas require relatively large buffers (30m to 100m) and there is a requirement to include the conservation of travel routes from wetlands to nesting areas

Seeps and Springs (6E, 7E)

- Presence of 2 or more seeps/springs needs a finer assessment of magnitude to avoid the over-capture of seasonal and/or ephemeral minor seepage areas which are relatively frequent in the GGH; there should be some flexibility in determining the extent of seeps as the protection area required may be more or less than the ELC polygons

Amphibian Breeding Habitats - woodland & wetland (5E, 6E, 7E)

- Relatively low thresholds in terms of numbers of species and individuals and the need to address travel corridors between woodland and wetland (6E, 7E)
- Movement corridor comments are also addressed under Table 1.4
- In wetlands, the threshold seems especially low given the inclusion of toads and Northern Leopard Frogs (criteria would be met by many created SWM facilities)

Table 1.3 – Habitats of Species of Conservation Considered SWH

Shrub/Early Successional Bird Breeding Habitat (5E, 6E, 7E)

- Relatively low thresholds (i.e., 1 indicator species and 2+ common species, 6E, 7E) and need to designate entire ecosite, field/thicket area
- No buffers indicated/discussed

Terrestrial Crayfish (6E, 7E)

- The chimneys made by this species are frequently encountered in seasonally wet fields that are cropped through (i.e., not in natural areas)
- Clarity is required regarding the Province's position where these occurrences are in active fields; merit exclusion for active farming and/or class 1/2 farmland and lands subjected to farming in the last 5 years (including row-cropping, haying, pasturing)

Special Concern and Rare Species (6E, 7E)

- Clarity is required regarding the Province’s position regarding whether S3S4 blended ranks are considered to be captured by the provincially rare label for purposes of the interpretation of SWH.

Table 1.4 – Animal Movement Corridors (6E, 7E)

Introductory text to Table 1.4:

The text explains how challenging it is to identify animal movement corridors. It seems to suggest that corridors should be naturally vegetated but goes on to indicate sparsely vegetated lands and agricultural areas may also facilitate movement.

This lack of clarity is challenging, especially in settlement areas where the establishment or maintenance of movement corridors is affected by various development and infrastructure barriers. This aspect of SWH requires more careful and precise crafting to avoid encountering situations where various parties want to create corridors where they will not be functional or where no significant corridor function currently exists. For purposes of defining SWH, animal movement corridors would appropriately be restricted to existing (mostly wooded) corridors of predominantly natural vegetation. Only the largest, most intact and relatively more important corridors would deserve the SWH designation.

Amphibian Movement Corridors (6E, 7E)

- Substantial corridors are suggested (e.g., at least 200 m wide)
- No guidance is provided regarding movement corridors for reptiles (e.g., snapping turtles)

Deer Movement Corridors (6E)

- Substantial corridors are suggested (e.g., at least 200 m wide)
- Indicates corridors should be “...unbroken by roads and residential areas.”

OHBA Recommendations

OHBA is very concerned by the increasing level of complexity of legislation, regulations, policies and guidelines under the MNR mandate. OHBA is concerned that MNR lacks the staff resources to adequately manage the portfolio of responsibilities and is concerned with respect to maintaining service levels for business and consumers through the planning process. OHBA strongly recommends a broader review of policies including the *Significant Wildlife Habitat Eco-Regional Criteria Schedules* with the objective to streamline and reduce regulatory policies that may not be meeting MNR core objectives. OHBA strongly recommends a “pragmatic and reasoned” approach to the implementation of the *Significant Wildlife Habitat Eco-Regional Criteria Schedules* in areas designated and targeted for future urban growth.

OHBA Support for MNR Transformation

OHBA was supportive of *Schedule 19* of the Budget Bill that was ultimately removed during Standing Committee hearings to ensure safe passage of the Bill in the Legislative Assembly. OHBA was disappointed that steps were not taken to enable MNR to transform the stewardship and conservation of Ontario's natural resources in a more fiscally responsible way by transforming key parts of the legislation, regulation, policies and guidelines with a view to streamlining and automate permitting processes and requirements.

OHBA strongly encourages the government to re-introduce the proposed amendments to the *Endangered Species Act* that maintain the government's commitment to protecting species at risk (SAR) while streamlining approvals and permitting. OHBA recommends the new legislation also consider other opportunities to streamline permitting and approval functions of the MNR (i.e. online permitting and automated approvals). OHBA is very concerned by the lack of MNR staff capacity to adequately provide service to the business community regarding various legislative and regulatory responsibilities ranging from permitting to providing direction and advice to project proponents. It is important that the MNR modernize and streamline services to consumers and business to ensure greater value for money and improved public service.

OHBA recommends the MNR review opportunities that promote self-regulation in which proponents are responsible for the implementation of permit conditions without oversight with the MNR role being spot surveys to ensure compliance. Furthermore, OHBA questions the value of EBR postings for public comment on all SAR overall benefit permit applications. OHBA expects that few, if any applications posted receive comments, therefore OHBA recommends the EBR postings on permit applications be made for information purposes only. OHBA also suggests that there should be standardized approvals with less involvement from MNR district staff and great dependence upon accepted industry practices and standards.

Conclusion

In closing, OHBA appreciates the Ministry of Natural Resources offering an extended opportunity to provide comments. We also appreciated the opportunity to meet directly with staff from the Ministry and for the additional materials to provide greater clarity with respect to specific changes contained within a very complex and technical document. OHBA looks forward to continuing constructive dialogue with the province and other stakeholders in the future.

Submitting on behalf of the Ontario Home Builders Association by:
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