

JUL 27 2009



CORPORATION OF THE

township of mulmur

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COPY

July 23, 2009

Ms. Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
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Ms. Sue Jones, Technical Officer
Ministry of Natural Resources
Natural Resources Management Division
Lands and Waters Branch
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PETERBOROUGH, ON
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Subject: **Proposed Regulations to Implement the Green Energy Act, 2009
EBR Registry No. 010-6516 (MOE) and No. 010-6708 (MNR)**

Council of the Corporation of the Township of Mulmur has received and accepted a report from its planner, a copy of which is attached as Attachment No. 1, outlining a number of recommendations relating to the proposed regulations which are intended to implement provisions of the Green Energy and Green Economy Act.

A resolution, endorsed by Council on July 7, 2009 is attached as Attachment No. 2.

It was intended that the recommendations and comments contained in the report would be forwarded to you as the Township's input on the proposed regulations under each of the above referenced EBR Registration Numbers.

Since that time, copies of two excellent submissions have been forwarded to the Township, as follows:

1. N. Jane Pepino on behalf of CORE (a ratepayers group within the Township of Mulmur), with a July 22, 2009 addendum and;
2. Don Scott, Chair of the Niagara Escarpment Commission.

These reports are attached as Attachments 3 and 4 respectively.

Council has reviewed these submissions and endorsed their comments, and wishes to provide the full support of the Township for the excellent insights and suggestions each provides.

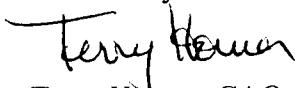
In addition, Council, in further considering the potential visual impacts of wind turbines/wind energy farms and solar arrays/solar energy farms on and in the vicinity of the Niagara Escarpment, would propose that the Niagara Escarpment Commission and the Township be consulted on all such projects within, at a minimum, 2.5 km. of the boundaries of the Niagara Escarpment Plan Area.

The proponents of wind turbines/wind energy farms and solar arrays/solar energy farms should be required to evaluate and address, through a comprehensive and detailed visual impact assessment, the visual impacts of all such projects within the NE Plan Area and, at a minimum, within 2.5 km. of the boundaries of the NE Plan Area, not only from the perspective of looking outward from significant vantage points and vistas within the NE Plan Area into adjacent areas, but also from the perspective of looking toward the Niagara Escarpment from beyond.

Council supports, at a minimum, a one kilometer buffer adjacent to and beyond the boundaries of the NE Plan area where the visual impacts are considered significant and/or cannot be appropriately and adequately mitigated.

A copy of the comprehensive resolution adopted by Council on July 22, 2009 is also attached, as Attachment 5.

Yours truly



Terry Hörner, CAO and Clerk
Township of Mulmur

- c.c. The Hon. Donna Cansfield, Minister of Natural Resources
The Hon. John Gerretson, Minister of the Environment
Sylvia Jones, MPP Dufferin/Caledon
Don Scott, Chair, Niagara Escarpment Commission
Ken Whitbread, Manager, Niagara Escarpment Commission
N. Jane Pepino, Chair, CORE ✓

ATTACHMENTS (5)

REPORT TO COUNCIL

Subject: Green Energy Act Regulations and Approvals

Date: June 17, 2009

Purpose of Report

To inform Council, and seek direction pertaining to recommended comments on the proposed regulations and the approvals process for renewable energy generation projects.

Background

The Green Energy and Green Economy Act has been passed. The Ministries of Natural Resources and the Environment have now jointly released proposed regulations for renewable energy generation projects (DRAFT Renewable Energy Approval Regulation – 24 pages) and the details of a ‘one window’ approvals process, based on the concept of a ‘complete submission’ (DRAFT Approval and Permitting Requirements for Renewable Energy Projects – 65 pages).

I have a copy of both of these documents should any member of Council wish to see them. Both can also be viewed on the Environmental Registry website, under EBR Registry Number: 010-6708.

The deadline for submitting comments on the proposed regulations, and the approval and permitting requirements, is July 24, 2009.

Planning Comments

The proposed regulations, and approval and permitting requirements apply to wind, solar, hydro, biogas, biomass and biofuels projects. Many of the new regulatory requirements build on existing environmental and health protection components of current legislation, policies and regulations.

Synopsis of Proposed Regulations

Significant among the requirements is a set of standardized set-backs for wind turbines from dwellings and from environmental features.

Generally, the greater the sound power level, and the greater the number of turbines involved, the greater will be the minimum required set-back distances from dwellings. In all cases, the minimum set-back will be 550 m. It is not clear whether any distinction is intended to be made between participating vs. non-participating dwellings, but it would be both logical and prudent to afford all people equal protection from potential health and safety impacts.

The following chart, taken from the EBR website material, shows the proposed set-backs.

Number of Wind Turbines	Setback in metres (m) from closest Point of Reception corresponding to wind turbine Sound Power Levels in decibels (dBA)				
	102 dBA	103 - 104 dBA	105 dBA	106 - 107 dBA	> 107 dBA
1 - 5 turbines	550 m	600 m	850 m	950 m	Noise study required
6 - 10 turbines	650 m	700 m	1000 m	1200 m	
11 - 25 turbines	750 m	850 m	1250 m	1500 m	
26+ turbines	Noise study required				

It should be realized that the only set-back that cannot be varied is the minimum 550 m. set-back from the nearest dwelling. All other set-backs in the above table can be reduced if it can be demonstrated that the requirements of the October 2008 Noise Guidelines for Wind Farms can be met.

The methodologies for calculating minimum set-backs have been simplified, resulting in a more conservative approach (and greater separation distances) than were previously required.

The cumulative effects of all planned or proposed wind turbines within three km. radius of the point of reception must be factored into the calculation of minimum set-backs. Set-backs for transformer sub-stations are required to be a minimum of 500 m. from the nearest point of reception for facilities with acoustical barriers and 1,000 m for facilities without acoustical barriers.

Small scale turbines with a rating of 3 kW or more, but with a sound power level rating of less than 102 dBA, (such as that which we have recently received a request for municipal approval of a building permit) will be required to submit information, including the distance to nearby receptors, so that the MOE can evaluate the impacts. Although it is not specifically indicated, it is presumed that the issuance of a Certificate of Approval would be the mechanism for approving such projects.

There are also minimum setbacks from property lines, roads and railways (equal to the height of the turbine hub plus the blade length).

There will also be on-going requirements to monitor and address low frequency noise and vibrations.

Setbacks from natural features must be 120 m. unless it can be demonstrated in a study that negative impacts can be mitigated.

A decommissioning plan that would address, among other matters, procedures for equipment/buildings, dismantling and demolition, site restoration and final residue disposal is required. Municipal consultation on the decommissioning plan is not required, but this can be raised as an issue of concern, by the host municipality. Of particular

concern is the requirement to post securities sufficient to guarantee performance of decommissioning work.

It is proposed that shut-down criteria for wind turbines can be addressed through conditions of approval. No details are provided as to what the criteria might be.

Standards for other types of energy generation projects of varying generating capacity and related biomass storage areas, gas engines, flares and farm-based and non-farm based anaerobic digesters and thermal treatment of mixed biomass facilities are also provided.

Requirements for landfill gas facilities and hydro electric facilities are also proposed. Small hydro facilities with a head of less than 2.0 metres and hydro kinetic power generation are exempt from the requirement to obtain a Renewable Energy Approval. All others up to 200 MW require a Renewable Energy Approval (with a relatively short list of requirements, but also apparently including approval under the Lakes and Rivers Improvement Act). Those over 200 MW require an individual Environmental Assessment.

Solar photovoltaic facilities of 10 kW or less, whether ground, wall or rooftop mounted, do not require a Renewable Energy Approval or a Certificate of Approval. Larger systems will require a Renewable Energy Approval and a noise assessment.

It is noteworthy that the proponents of such larger systems are not only required to submit a decommissioning plan, but also to provide financial assurance for future clean-up and remediation of the site. It is not clear why such requirements do not also apply to wind farms and other types of facilities.

There are no provisions that would necessarily prevent such facilities from being located within the Niagara Escarpment Plan area and no set-back requirements from the boundaries of the NE Plan area for wind turbines/wind farms. Such facilities would, however, appear to be subject to the provisions of the Niagara Escarpment Plan and the applicable designation(s) of the site upon which such facilities are proposed.

Synopsis of the Approvals Process

The introductory material posted on the Environmental Registry indicates that:

“A key element of the proposed regulations is a streamlined approval process for renewable energy projects, based on the concept of a complete submission. The complete submission is intended to integrate into a coordinated process all provincial government requirements for the review and decision making on proposed renewable energy facilities. While this approach provides for transparency and coordination, it retains the existing legislative requirements set out by various Ministries.”

The information provided does not acknowledge that municipal approvals are no longer required. The complete submission requirements do, however, include a detailed summary of municipal consultation, including what concerns were raised and how they

were dealt with and, where projects are proposed within the Niagara Escarpment Area, how the NE Plan (and the Greenbelt Plan) apply to the facility. Documentation must be provided that the development is permitted. This means that the proponent must have applied for and met the requirements for a development permit.

Other requirements include a description of the project, a construction plan, a site plan, a stormwater management plan, an operation and emergency response plan, cultural, natural heritage and water resource assessments and technology specific requirements. Although it is not clear how municipal concerns such as impacts on roads, decommissioning, and the costs of reviewing such proposals will be addressed, the construction plan is to include “mitigation of impacts related to the construction and installation of the project” and the definition of renewable energy generation facility includes “associated or ancillary equipment, systems and technologies”. Presumably, although it is not clear, this would not only include such things as transmission lines and transformers, but it would (logically) also include roads and other transportation infrastructure needed to build the project. The costs to the host municipality are, however, not directly addressed.

In terms of the process, a proponent is required to provide public notice to all within 1.5 km. of the proposed facility, and in local newspapers “at a preliminary stage of project planning” and to hold a community consultation meeting – before the proponent carries out required studies and detailed project design work. Once ready to submit the application, the proponent is to hold at least one additional community consultation meeting – providing copies of the required studies and design information at least 30 days in advance of the meeting or if there is more than one meeting, before the final meeting prior to submission to the Province. The proponent will be required to document all community consultation efforts and explain how it attempted to address issues raised.

The formal review process begins when an application is deemed to be complete. Notice of the proposal is then posted on the Environmental Registry. Following a 45 day public consultation period, the Ministry will begin to review the proposal, in consultation with the Federal government where applicable.

In exceptional circumstances, where new information is discovered after a complete submission is accepted that may affect the ability of the Ministry to give authorizations, the Ministry may require the proponent to fulfill additional requirements or may deny project approvals.

Once a decision is made, notice would be posted on the Environmental Registry. If the decision is to issue an approval, this would allow the project to proceed, subject to any other legal requirements.

Should a project be approved, notice of the decision will be given to the host municipality. Notice of the decision would also be advertised in local newspapers. A third party would have 15 days to appeal a Notice of decision posted on the Environmental Registry, to the Environmental Review Tribunal (ERT). The ERT will have 9 months to make a decision, failing which, the Director’s decision will be deemed to be confirmed.

Building permits are still required for all such developments that are subject to the Ontario Building Code Act.

Consultation with the host municipality will be by the proponent of the project and will be guided by a template to be developed by the MOE. It does not appear that the Province intends to consult directly with the host municipality.

It is peculiar that the MNR Draft Approval and Permitting Requirements Document for Renewable Energy Projects does not specifically deal with municipal consultation. The proposed MOE regulations do, however, provide that municipal consultation will include:

- Proposed project area and property boundaries
- Proposed road access locations
- Location and type of municipal service connections (if any)
- Traffic management plans during construction and operation
- Construction plans related to temporary disturbance areas and any municipal infrastructure that may be damaged during construction
- Emergency management procedures/safety protocols, and
- Proposed site landscaping

Some types of facilities that require a renewable energy approval are exempt from the requirement of community consultation meetings and municipal consultation, as follows:

- Wind power with a nameplate capacity greater than 3 kW but with a sound power level of less than 102 dBA
- Wall or roof mounted solar with a name plate capacity greater than 10 kW, and
- Farm-based biomass and biogas combustion facilities.

Based on the premise that all requirements may not need to be fulfilled for all projects based on project type or anticipated site-specific effects, the Ministry of Natural Resources may reduce the scope of the requirements for submissions of proposals. However, this would appear to apply only to small-scale projects where it has been determined that the project will not have an effect on natural features or human health and safety.

Transition Provisions

In terms of transition requirements, projects that have all required approvals will not require a “Renewable Energy Approval” and can proceed.

All projects that do not have approval under the Environmental Assessment Act (eg. Completion of an Environmental Screening process for a wind farm) or applications for approval currently before the Ministry of the Environment (eg. for a Certificates of Approval – Air (noise)) that have not been approved are to be returned to the proponent, and the proponent will be required to re-submit under the new process.

This means that there are no projects in the Township that are exempt from the new requirements, including not only the process requirements but the set-back and other technology-specific requirements. It also means, however, that all such projects undertaken in the Township are now exempt from the requirements of municipal Planning Act approvals, and that the proponent will simply consult with us, make an effort to resolve the issues and concerns we raise, then report to the Province on the results.

Other Considerations

Official Plan Amendment No. 12, containing policies and requirements for energy conversion systems, will not now be approved by the Ministry of Municipal Affairs. However, I am proposing that the information should still be incorporated into the new Official Plan, or, at the very least, referenced in the new official Plan, with the intention that this information, along with the various other proposed guidelines and regulations developed by the Township, be used as guidelines for the Township in evaluating and commenting on such proposals.

Recommendations:

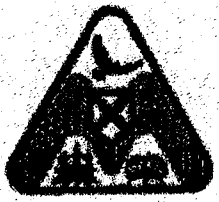
That the following be submitted by the Township as our comments on the proposed regulations and process:

1. That provisions are incorporated to enable municipalities to recover costs relating to consultation, and to subsequent project construction, operation, servicing and decommissioning;
2. That provisions paralleling those proposed by the MOE for municipal consultation be incorporated into the MNR Approval and Permitting Requirements Document for Renewable Energy Projects;
3. That provisions similar to those outlined for providing financial assurances for the decommissioning of solar projects be incorporated for all types of facilities;
4. The Ministries should clarify that all residents of dwelling, whether participating or non-participating, will be afforded the same protection from potential health and safety impacts of wind turbines.

Respectfully submitted



Ron Mills, Planner



Corporation of the Township of MULMUR

Moved by: Snider

Date: July 7, 2009

Seconded by: Campbell Moon

That Council receive and approve the report of Ron Mills, Planner dated June 17th on the Green Energy Act Regulations and Approvals and submit the following as comments;

- 1) that provisions are incorporated to enable municipalities to recover costs relating to consultation, and to subsequent project construction, operation, servicing and decommissioning
- 2) that provisions paralleling those proposed by the MOE for municipal consultation be incorporated into the MNR approval and permitting requirements document for renewable energy projects
- 3) that provisions similar to those outlined for providing financial assurances for the decommissioning of solar projects be incorporated for all types of facilities
- 4) the Ministries should clarify that all residents of dwelling, whether participating or non-participating, will be afforded the same protection from potential health and safety impacts of wind turbines.

- with additional comments to follow concerning any other reports forthcoming.

Carried ...Gordon Montgomery.....MAYOR

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VIA Email: Marcia.Wallace2@ontario.ca

June 29, 2009

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
7 Floor - 55 St. Clair Avenue West
Toronto, ON M4V 2Y7

Dear Ms. Wallace

EBR Registry Number 010-6518
Regulation Proposal Notice: Proposed Ministry of the Environment
to Implement the *Green Energy and Green Economy Act, 2009*

I am making this submission on behalf of CORE, a ratepayer group within the Township of Mulmur, County of Dufferin, with respect to the *Green Energy Act*. We thank you for the opportunity to provide these comments.

Draft Regulations must be Available:

Notwithstanding that the "Proposed Content" for the Regulation is of general assistance, given the importance of the draft Regulations themselves, they must be available for public comment. We therefore request that, once drafted, the Regulations themselves be posted for a further 45 day public comment, on the EBR. As you will see from comments following, cross-references to documents beyond these Regulations are contradictory; definitions are left unclear or unknown; standards are not spelled out and, generally, it cannot be ascertained whether the Government's intentions, as expressed, have or can be captured in the drafting of Regulations.

Part I – Definitions:

Definitions to be used for the purposes of Regulations under the various *Acts* should be included in the Regulations, rather than simply referenced in other documents. For example, under Part IV, pg. 14, "setback" is referenced as referring "to the distance in metres separating the centre of structure, referred to as a Point of Reception, in the Ministry of the Environment's *Noise Guidelines for Wind Farms (October, 2008)*". Yet, when one goes to the definition of Point of

Reception in those Guidelines (page 4), Point of Reception “means any point on the premises of a person within 30 metres of a dwelling or camping area, where sound or vibration originating from other those premises is received” (underlining added). The definition goes on to include vacant properties zoned for future use premises. Additionally, sections 6.3.1 and 6.3.2 of the Guidelines set out definitions of a Point of Reception which includes protection for a 30 metre amenity zone around dwellings, so as to recognize that persons are protected from noise impact when enjoying modest amenity space surrounding their dwelling.

Finally, the definition must ensure that the 40 decibel sound noise level at the Point of Reception is deemed an external point: as potentially drafted, the Regulations may inadvertently permit a reduction in decibel levels due to mitigation of transfer of external to internal locations, as a result of a reference to “the centre of the structure”.

Recommended Regulation:

“Point of Reception” means any point on the premises of a person within 30 metres of a dwelling or camping area, where sound or vibration originating from other than those premises is received.

For the purposes of approval of new sources, the Point of Reception may be located on any of the following existing or zoned for future-use premises: permanent or seasonal residences, hotels/motels, nursing/retirement homes, rental residences, hospitals, camp grounds, and noise sensitive buildings such as schools and places of worship.

Points of Reception include vacant lots that have been zoned by the local municipality to permit residential or similar noise sensitive uses described above. The receptor location, if unknown at the time of assessment, shall be based on a one hectare (10,000m²) building envelope within the vacant lot property that reasonably can be expected to contain the use, and that conforms with the municipal zoning by-laws in effect. The specific receptor location for assessment purposes should be assumed to be 4.5 metres above grade and at the centre of the 1 hectare building envelope.

In addition, a regulation should be drafted and made available to the public for comment with respect to protection of those farmers or others who have leased their lands to proposed Wind proponents. At the moment, no definition of

“Participating Receptor” is provided in the “Proposed Content” document and it is undisclosed as to what standard is intended to apply to them. Typically, Options to Lease are entered into which bind the signatory to entering into an eventual lease, with no recourse. The Option to Lease then permits the Wind developer to install testing facilities, and determine the extent, design and deployment of its eventual Wind facility. Some of those who have signed Options to Lease do not become “Participating Receptors”, since no portion of any access road or actual turbine ends up being located on their lands. However, others do become “Participating Receptors”. At the time of signing the Option to Lease, no owner can know that his or her land will be the host of either or both of a turbine or an access road. Given the only recently burgeoning concern and information with respect to the impact of wind turbines on health and amenity, it is impossible for those who have signed an Option to Lease, to know or understand at the time of doing so, the eventual impact on their residences and property.

This is particularly troubling in the present circumstance that the provisions of the *Planning Act* have been set aside, and leases can now be imposed upon those who have signed Options to Lease, for a period of 50 years, notwithstanding that at the time of signing such option, 20 years was the maximum permitted.

Whether 20 or 50 years, however, the host landowner, in our submission, should be protected by a regulated provision requiring the protection of adequate insurance for their lands from damages caused by turbines to them, or to others; appropriate and financially secured decommissioning provisions; and the same health protection as any other citizen of this Province. It is unconscionable to suggest that those who have leased their lands in the absence of full disclosure of impact on their properties, should now be burdened with accepting a lesser setback than the minimum provided by the Province to protect health and safety. In this regard, then, no “Participating Receptor” should be required to have a setback imposed upon it of less than 550 meters from a turbine.

Part II – Renewable Energy Approval Requirements:

Description of Project – The description of project should provide, in addition to that set out in the “Proposed Content” document, all of the information required in the Noise Guidelines, at Table 3, page 15, including manufacturers’ emission levels, make and model, height, wind shear coefficient, octave band sound power levels and manufacturers’ emissions levels. In addition, the description of proposal should include information required by the Noise Guidelines with respect to location coordinates of all wind turbine generators, transformer substations, Points of Reception and Participating Receptors.

The Description of Project should include information as to whether the manufacturers' data indicates that the wind turbine acoustic emissions are tonal, to conform to section 6.4.8 (page 13) of the Guidelines.

In addition to provision of information on land tenure, the Description of Project should include information as to location of all Participating and Non-participating points of reception within 3kms.

Construction Plan – The existing outline indicates the construction plan is to address “among other matters” certain things. What are those other matters? At a minimum, it is recommended they include information with respect to the design and other technical characteristics of the proposed turbines and transformers themselves, as well as the proposed location of those turbines, transformers and all access and distribution systems within the Study Area.

Site Plan – In addition to those matters outlined in the “Proposed Content” document the site plan should include information with respect to topographical features, including elevations and ground cover, to conform to the Noise Guidelines (page 8, paragraph g). Additionally, information called for under paragraph h) of the Guidelines, being available information regarding location and scope of other approved or proposed wind farms within 5k of any generators, should be provided.

Response Plan – The Regulation should stipulate which level of government, or agency is responsible for enforcing the response plan.

The response plan should include a plan for decommissioning, including sufficient securities posted in accordance with the provisions proposed to apply to facilities processing biomass (see page 19 of “Proposed Content” document).

We note that strict requirements for decommissioning of, for example, Biogas, Biomass and Solar Photovoltaic Facilities require the provision of a decommissioning plan that includes financial assurances: wind turbine facilities should not be permitted a lesser standard.

Given that wind turbines are significant industrial installations on leased lands, which can remain situate for up to 50 years, financial securities must be provided to ensure they are removed at the end of their useful life, or when an operating company goes bankrupt. Therefore, a Regulation is requested as follows:

Recommended Regulation:

All wind turbine projects granted a Renewable Energy Approval will, as part of that approval, provide a financial assurance estimate related to the removal and disposal of turbines from the site, and restoration of agricultural land. Financial assurance is required to ensure that sufficient funds are available for future cleanup and remediation of the site. Financial assurance must be calculated in accordance with the methodology in the Ministry of the Environment's Financial Assurance Guideline (Guideline F-15), and those securities provided to the Province [or municipality].

Application Process for Rural Areas:

It is insufficient to merely post a proposal notice on the Environmental Bill of Rights Registry. Citizens are unaware of the existence of the Registry, do not check it daily as is assumed by the proposed process, and cannot readily access the Registry in the absence of high-speed internet connection.

It is proposed, therefore, that to provide preliminary notice to the public to permit a meaningful public comment period, notice provisions akin to those of the *Planning Act* should be employed: signs should be posted on every property, under lease or Option to Lease, visible from the public right-of-way, giving all appropriate information; notice should be directly mailed to all participating and non-participating landowners within 3kms, and notice published for 3 consecutive weeks in a newspaper of general circulation in the area.

Third Party Appeal of Directors' Decision:

Again, reliance upon posting on the Environmental Registry, for projects located in rural areas does not constitute notice, for the reasons outlined above. As a result, again, provision of notice consistent with the *Planning Act* should be required, consisting of written notice to any member of the public who "participated" in the review by written or oral submissions through the process, together with the municipality, and Ministries and agencies consulted.

Additionally, a 15 day appeal period is exceedingly short, and should be extended to 30 days.

Also the proposal to set aside any input from the Environmental Review Tribunal should the decision not be rendered within 9 months of the date that a hearing is requested, is unconstitutional (it is effectively Askov, in reverse). The simple fact

that the hearing might be lengthy, delayed throughout by legal challenges, illness of tribunal members, or other unexpected challenges, or that the decision itself might be delayed by similarly acceptable and appropriate reasons, is no basis to set aside appeal rights and simply confirm the Director's decision.

More appropriate would be a time period of, for example, 6 months, from the date that a hearing is requested until the commencement of the hearing before the Environmental Review Tribunal, together with appropriate resources to the Environmental Review Tribunal to allow it to provide expeditious and fair hearings and timely decisions.

Part III – Explanation of General Requirements:

I. Public Notice and Community Consultation

1. Given that Points of Reception up to 3kms could be affected, the area to which public notice is provided should be no less than a 3kms radius of the proposed renewal energy generation facility at a preliminary stage of project planning. Again, the form of notice should follow those provided under the *Planning Act*, including signage on properties under lease or Option to Lease; notice in a local newspaper of general circulation, and written notice to all residents within 3kms.
2. The "Proposed Content" document is unclear as to how much in advance of any Renewal Energy Approval Application this meeting must be held, nor as to the nature of information anticipated to be provided. Again, consistent with the "Pre-consultation" provisions and practice under the *Planning Act*, it can be anticipated that draft reports, preliminary layouts, and technical information with respect to proposed equipment will be available to the proponent and therefore should be shared with the public and other interested parties, even at this stage.
3. Once "ready to submit the application for Ministry of the Environment review", the proponent is required to hold at least one additional community consultation meeting, and to have required studies available for public review 30 days prior to the date of that meeting or meetings. This documentation should include a report containing the base information required by sections 6.5 and 6.5.1 of the Noise Guidelines, notwithstanding that an entire noise study has not been done: this information is required to permit a general understanding of factors included in establishing setbacks in accordance with the Noise Setbacks required by the new Regulation.
4. It is proposed to exempt from the requirement of community consultation meetings certain types of projects (top of page 6 of "Proposed Content" document), yet notice is required. If notice is to be required, at least one

community consultation meeting should also be required, given potential impact of even these identified projects.

II. Municipal Consultation

5. Decommissioning and the appropriate funding thereof should be part of the municipal consultation, unless it is the Province which intends to require and hold securities for decommissioning: draft Regulations are required to be reviewed to clarify this matter.
6. Moreover, local municipalities may have particular issues not included in the list (for example, identification of archeological management areas and heritage districts is not identified on this list, but are otherwise relevant). As a result, the list should not be exhaustive, and should explicitly permit local municipalities to add information and comments that are germane to their particular locale, for the information of the Ministry.
7. Page 6 of the "Proposed Content" document indicates the Ministry of the Environment will provide a template for applications. Meaningful public comment requires that that template be available now, and that the Regulation be drafted to ensure it is required to be adhered to, and the information set out therein made part of any approval.

III. Cultural Heritage

1. The provision that, even when impacting individual buildings designated under Part IV of the *Ontario Heritage Act* or, districts designated under Part V, no heritage assessment is required, entirely contradicts and obviates the *Ontario Heritage Act*. Additionally, it offends the provisions of the Provincial Policy Statement and is an inherent contradiction with the terms and intent of the *Ontario Heritage Act*.
2. Additionally, requiring archaeological assessments only on properties which have already been identified as of archaeological concern is nonsensical. Unless archaeological assessments are done on previously undeveloped land, there is no certainty that existing archaeological resources can be identified. This provision would appear to be contrary to the spirit and language of the relevant legislation.

IV. Natural Heritage

1. Presumably, in addition to being satisfied that the Ministry of Natural Resources “reviewed the approach” used by a proponent, the Ministry of the Environment would want to also know that the Ministry of Natural Resources approved the approach.
2. In addition to providing a setback from Provincial Parks and Conservation Reserves, Lake Trout Lakes and other environmental features, it is recommended that, consistent with the existing policies of the Niagara Escarpment Commission, the request of the Association of Municipalities of Ontario, The Coalition on the Niagara Escarpment, affected municipalities and others, the policy of the Niagara Escarpment Commission to not permit turbines within 1km. of its boundaries should be preserved. In addition, to secure its policy of requiring visual impact studies of installations which could affect the visual and esthetic values intended to be protected by the Niagara Escarpment legislation, a visual impact study is required for those within 2.5kms. Therefore, the natural heritage chart should be amended by the addition of the following:

Feature	Setback Requirement	Setback Alternative
Niagara Escarpment	1km from the Niagara Escarpment boundary	The proponent would be required to undertake a visual impact study for any wind power facility within 2.5kms of the boundary of the Niagara Escarpment, demonstrating the ability to mitigate any negative impacts

V. Records Review and Site Investigation

Reliance on records review with an obligation to merely “confirm the presence, location and boundary of the feature” does not protect previously unidentified features which can be discovered on site, although not yet disclosed in a records review.

VI: Assessment

A regulation should be promulgated and made available for public comment setting out the “procedures and guidance established by the Ministry of Natural Resources” which are to guide preparation of an Environmental Impact Study.

In summary, Sections 5 and 6 of the "Proposed Content" document does not contain any general requirement to determine, on site, what is affected, its significance, and to demonstrate how impact is to be avoided or mitigated. As drafted, the "Proposed Content" document could, as an example, provide no archaeological protection for a previously unrecorded midden of First Nations, a previously unrecorded endangered species or the like. This does not meet the promise that the *Green Energy Act* would protect environment.

VII. Provincial Policy Plans

The "Proposed Content" Document indicates the regulation "will incorporate aspects" of the listed Provincial Policy Plan Areas – Regulations should be drafted to make it clear that, in those areas of Provincial Policy Plans, those plans are paramount so as to ensure the protection that those Plans afford the natural environment.

Niagara Escarpment – The "Proposed Content" document does not provide information to the public on what type of proposed development would be exempt under the regulations of the "*Niagara Escarpment Planning and Development Act*". Presumably, for the public to understand the impact of the *Green Energy Act* and its regulations on the Escarpment, this should be provided in one place. Moreover, as part of the review by the Niagara Escarpment Commission of a Development Permit it is necessary to stipulate that both in processing and on appeal of a Development Permit to the Environmental Review Tribunal under the *Niagara Escarpment Planning and Development Act*, the provisions of that *Act* shall prevail over the *Green Energy Act*. It is only in this fashion that the values of the Niagara Escarpment Commission and the constating legislation can be protected.

Part IV – Explanation of Technology – Specific Requirements:

A. Land – Based Wind Turbine Facilities

Noise Setbacks – The setbacks should be subject to the appropriate definition of Point Reception referenced on page 2 of this submission.

In addition, in order to ascertain the relevant setback requirements set out in the matrix, it is necessary to have available the information set out above under Description of Project (page 3 of this submission).

At page 14 of the "Proposed Content" document, it is suggested that the noise emission level of a wind turbine must be the "guaranteed values of the Sound

Power Level corresponding to 95% rated power output.” Why was 95% chosen, rather than 100%? No explanation has been provided in any of the material available to the public, and this is a puzzling standard.

Further, should a facility meet the requirements for a noise study, or should a proponent undertake the option of completing a site-specific noise study, will the regulations require the proponent to undertake the same consultation process and make this noise study available for public comment and the like?

Transformer Substation Noise Setbacks - At the moment, noise from transformers is treated as cumulative to that of wind turbines:

Any regulation for setbacks should ensure that these two noise sources are considered on a cumulative basis.

Setbacks from Roads, Railways and Property Lines – The regulation should be drafted so as to include reference to not only roads, but also road allowances and rights-of-way. Again, this is one small example of why it is necessary to have the regulations available for public comment.

Decommissioning Plan – Please see the recommended regulation set out at page 5 of this submission.

Conditions of Approval – Please provide regulations setting out the process by which proponents would be required to monitor and address perceptible infrasound or low frequency noise, and who would be responsible for enforcing such monitoring and action.

Additionally, please advise as to what will be considered “appropriate circumstances” to trigger shutdown conditions for land-based facilities.

Shadow – Flicker Studies - A glaring omission from the Standards is that for any shadow / flicker studies, or other standard required to protect human health and avoid impact.

Recommended Regulation:

All wind turbine projects must establish that they meet a standard of no greater than 30 minutes per day and 30 hours per year, calculated on worst case conditions, of shadow – flicker impact.

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
June 29, 2009
Page 11

We look forward to advice that the proposed Regulations themselves will be available for public comment, and remain available to meet with you to discuss these concerns and suggestions further.

Yours very truly,

A handwritten signature in black ink, appearing to read "N. Jane Pepino". The signature is written in a cursive style with a large initial "N".

N. Jane Pepino, C.M., Q.C., LL.D.
Chair, CORE

NJP/sh

c.c. Sylvia Jones, MPP, Dufferin / Caledon
Ron Mills, Planner, Township of Mulmur
CORE Executive

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Email: jpepino@airdberlis.com

VIA Email: Marcia.Wallace2@ontario.ca

July 22, 2009

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
7 Floor - 55 St. Clair Avenue West
Toronto, ON M4V 2Y7

Dear Ms. Wallace

**EBR Registry Number 010-6516
Regulation Proposal Notice: Proposed Ministry of the Environment
to Implement the *Green Energy and Green Economy Act, 2009***

Further to our submission dated June 29, 2009, three additional matters are addressed:

1. Given the expectation that the technology of wind turbines will continue to evolve, resulting in turbines which are not only much taller, but which produce significantly greater nameplate capacity than those being erected today, what adjustments will be made to the minimum 550 metre setback? Of particular concern is the visual impact on areas such as the Bruce Trail and the Niagara Escarpment, which carry both economic/tourism and legislatively protected policy values, based on visual amenity. Significantly taller turbines have a concomitantly greater potential for impact on those values, from even greater distances.
2. No setback is provided in the Proposed Content Document from the existing and planned boundaries of Settlement Areas, Hamlets and Rural Clusters. Although the Proposed Content Document provides that a 40dBA noise level limit will be met at Points of Reception "regardless of wind speed", these setbacks, based on health, do not address all remaining planning policy issues encapsulated in the typical setbacks from Settlement Areas, Hamlets and Rural Clusters previously provided in municipal official plans and by-laws.
3. Reliance on the 40dBA contour to establish setbacks from a Point of Reception, and the ability to establish the location of a 40dBA setback from existing and planned boundaries of settlement areas, hamlets and rural cluster, requires establishment of the 40dBA contour location. In

Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
Re: EBR Registry Number 010-6516
July 22, 2009
Page 2

addition, establishment of this 40dBA contour is necessary to permit identification of reasonable building envelopes on affected but vacant lots. It therefore appears necessary that a noise study be done in all circumstances, delineating, at a minimum, the 40dBA contour "at all wind speeds".

In closing, we look forward to receipt of the actual regulations themselves, together with an appropriate time period for public comment.

Yours very truly,

A handwritten signature in black ink, appearing to read "N. Jane Pepino". The signature is fluid and cursive, with a large initial "N" and "J".

N. Jane Pepino, C.M., Q.C., LL.D.
Chair, CORE

NJP/sh

c.c. Sylvia Jones, MPP, Dufferin / Caledon
Ron Mills, Planner, Township of Mulmur
CORE Executive / Wind Turbine Group

Niagara Escarpment Commission

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Commission de l'escarpment du Niagara

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Ontario



*Ontario's Niagara Escarpment
A World Biosphere Reserve*

July 17, 2009

Ms. Marcia Wallace, Manager
Ministry of the Environment
Environmental Programs Division
Program Planning and Implementation Branch
55 St. Clair Avenue West, 7th Floor
Toronto, ON M4V 2Y7

Dear Ms. Wallace:

RE: Proposed Regulations to Implement the Green Energy and Green Economy Act, 2009
EBR Registry Number 010-6516

The Niagara Escarpment Commission (NEC) considered the above-noted Regulation at its meeting of July 16, 2009, and is pleased to provide the following comments for the Province's consideration. The NEC is charged with administering the Province's Niagara Escarpment Plan (NEP) and the UNESCO World Biosphere Reserve associated with this internationally-recognized natural landscape.

The NEC wishes to emphasize the importance of not only being able to consider and comment on green energy projects within the NEP, but also those projects that lie within one kilometre of the NEP's boundary. Based on the NEC's 36 years' experience in administering the NEP, this buffer, in many areas, will be critical to protecting the unique natural heritage and landscape features that are core to the maintaining the "substantially continuous natural environment" that is sought under the NEP.

In addition to the above statement, the NEC's comments on the Proposed Regulation are:

The Future Regulation

1. The draft Regulations, once prepared, should be posted on the EBR for further public and agency comment. It is difficult to understand how the Regulation will apply without reviewing the legally drafted text.
2. It is likely that the Regulation will be complex, and therefore the additional review would benefit its future implementation.

Third Party Appeal

3. It is unclear whether or not appeals of an MOE Director's Decision on a green energy project will automatically be referred to the Environmental Review Tribunal (ERT). If appeals are not automatic, the criteria for considering whether or not appeals will be sent to the ERT should be set out in the Regulation.
4. The NEC prefers that all appeals be referred to the ERT and the ERT determine whether or not there is grounds for an appeal to proceed, rather than the Director determining the threshold for an appeal. Arguments on the merits of an appeal should be made to an independent hearing body, not to the decision-maker himself/herself. The scope of the ERT's power in accepting or dismissing an appeal could be set out in the Regulation.

Consultation

5. The proposed Regulation will require municipal and Aboriginal community consultation. Given the proposed status of the NEP under the Regulation, consultation with the NEC should be prescribed for:
 - lands within the NEP;
 - lands which are subject to Niagara Escarpment Development Control; and
 - lands adjacent to the Niagara Escarpment Plan Area.

Other Significant Matters

6. Where lands are located in the Niagara Escarpment Plan (NEP) and such lands are subject to Development Control (DC) pursuant to the *Niagara Escarpment Planning and Development Act* (NEPDA), the *Green Energy Act* (GEA) Regulation should make it clear that the proponent must demonstrate through appropriate studies, reports and materials that the project meets the provisions of the NEP and in this respect a Development Permit has been issued for the project in accordance with the NEP and NEPDA prior to the consideration of any other *Green Energy Act*/Renewable Energy Approval for the project. Additionally, where a Development Permit has been issued, any subsequent approval(s) under the GEA (and its associated Regulations) shall be consistent with the terms and conditions of the Development Permit issued under the NEPDA; the Development Permit (and its associated conditions) may not be changed by any decision or appeal under the subsequent GEA approval process.
7. Where lands are in the NEP and such lands are NOT subject to Development Control (DC) pursuant to the NEPDA, the Regulation should require that the proponent demonstrate through appropriate studies, reports and materials, that the project meets the provisions of the NEP and that this justification be submitted to the NEC for comment prior to the application being considered "complete" under the Renewable Energy Approval Regulation process. In this way, the NEC would be able to fully participate at the front end of the process and NEC comments on compliance with the NEP would be a key factor in decision making. The intent here remains that projects must consider and comply with the Provincial Plan.
8. The Regulations should, in the area of the NEP, require that the benchmarks set for the protection of natural heritage features proposed under the GEA Regulation be automatically applied in the NEP as part of the material filed by a proponent for a green energy project. Although the NEC may require additional studies and apply additional

tests (e.g., visual impact assessment) to satisfy the NEP, the setbacks etc., for natural heritage features would serve as the starting point for submissions needed to satisfy the NEC.

9. Where lands are in DC, but NOT subject to the NEP, the Regulation should require that Development Permits be obtained pursuant to the NEPDA and such studies be filed in accordance with the requirements for a complete application. Such a Development Permit must be issued prior to any decision or appeal determination under the GEA approval process. (This is consistent with Section 24(3) of the NEPDA which states that no other land use approvals may be given without first obtaining a Development Permit in an area of Development Control). *(Note: Although these orphan areas exist and are generally few and far between, the situation still should be addressed to avoid confusion.)*
10. As highlighted at the beginning of this letter, the NEC should be directly and formally consulted on projects involving lands abutting the NEP and that this be made a Regulation requirement for a complete application submission. The NEC remains concerned about the potential for impacts inside the NEP on natural values (primarily landscape). Some visual impacts can be greater from areas adjacent to the NEP than on areas in the NEP itself depending on the nature of the landscape involved. Although there is still debate amongst experts (on a buffer distance of from 1 to 2.5 kilometres) the NEC asks for consultation within 1 kilometre of the NEP and in this regard, the proponent must demonstrate through appropriate studies, reports and materials that the project will not have a detrimental effect on the provisions of the NEP.

The NEC comment, based on the studies received, must be obtained before the application is deemed complete under the Regulation. One of the studies that the NEC may request is a visual assessment/impact study, as it would in the NEP. It should also be noted that because of the location of the NEP, some shoreline areas may be involved (e.g., Georgian Bay in Grey and Bruce Counties.)

11. As a point of clarification, which may be relevant to the drafting of the Regulations, the revised definition of "utility" introduced into the NEP through the GEA still excludes new waste disposal sites, expansion or alterations to an existing waste disposal site, incineration facilities (including energy from waste) and large-scale packer plants and recycling facilities (or similar uses). Waste and waste disposal sites are also defined in the NEP, but the GEA did not change these. The NEP does not allow new waste disposal sites to be established in any Designation. This may need to be made explicit in the Regulation to avoid any confusion on the issue.
12. Existing "in-the-mill" applications that have not received final approvals should meet all the tests for a complete application under the new Regulation. In this regard, it is unclear what constitutes "all required approvals," as discussed in the proposed Regulation.

Other Concerns

Other questions or matters of concern to the NEC requiring either clarification or direction in the Regulation include:

13. How will the smaller green energy facilities be administered where such facilities are not governed by the Regulation? Since municipal official plans and zoning standards will not apply, there will be a void in standards which will apply to the location of such facilities in

municipalities and land use conflict may result. In the Niagara Escarpment Plan, most Urban Areas, Minor Urban Centres and Escarpment Recreation Areas are not covered by Development Control. Even if the NEC's concern for such areas is addressed, as set out earlier in Point 7, this will only deal with the larger green energy projects. There will be no locational standards for smaller projects. Some default standards are required.

14. There appears to be no standards which will apply to wellhead protection areas, unless these are intended to be included in "seepage and spring" features. If this is the intent, it should be clarified. If not, then this constraint should be identified. Additionally, the Regulation should define seepages and springs, to minimize confusion over the interpretation of the terms.
15. There appears to be no definition for the term "lake." The definition is obvious for a "Great Lake," but may not be as clear for other lakes that dot the rural landscape. Some lakes are natural, others are man-made and others are the remains of a development like a pit or quarry. For clarity, the Regulation should provide guidance. How would a rural pond be classified, if it is below the threshold set for a lake?
16. There appears to be no guidance respecting the consideration of airports/landing strips or telecommunication facilities, both of which are for the most part, Federally regulated. Will the Regulation be setting standards or providing direction?
17. The Natural Heritage policies require a setback of 120 metres from a Provincial Park or Conservation Reserve. Given this, should there not also be a similar setback from lands held by a conservation authority or other public agencies operating a park or open space area? How will a public trail like the Bruce Trail or Trans Canada Trail be dealt with? The Regulation should require an assessment of impacts for other types of parks, conservation reserves and hiking trails.

The NEP is made up of over 130 parks managed by a number of public agencies. Many of these parks are linked by the Bruce Trail or other recreational trails. Identified in the NEP as the Niagara Escarpment Parks and Open Space System (NEPOSS), these lands constitute some of the most protected natural environments and publicly accessible recreation areas in the Plan. These Escarpment Parks are subject to special planning policies in the NEP. Given the profile of the NEPOSS, the Regulation should also specify the 120 metre setback from the lands which form part of this System within the NEP.

18. Throughout Ontario, many municipalities and tourist areas have designated scenic features, roads and highways. Will setbacks be required from such a feature or road, or how will consultation occur, if aesthetics and design of green energy projects is not a study that is specified?
19. It is unclear how complaints and dispute resolution will take place either during the building of or after a green energy project is proposed. Will this be a Provincial responsibility, and if so, will the Regulation set out standards for obtaining arbitration and resolving issues? If it is not a Provincial role, who will be responsible for dealing with complaints (e.g., excessive noise, landscaping, property security and maintenance, lighting)?

20. It is unclear who will be reviewing monitoring reports and other conditions of approval related to a site once it is up and running. Is it intended that the operators will be self-regulating and expected to deal with a mitigation matter if monitoring reports over time show impacts (to the natural environment or nearby residents)?
21. The proposals are unclear with respect to who will hold financial securities to ensure compliance with the green energy project approval, including its development, municipal costs including road upgrades and damages, abandonment of the project or bankruptcy.
22. The NEC has concerns about who will be responsible for the future decommissioning of green energy sites. In this regard, the Province may wish to consider applying a levy to a percentage of the monies received from approved projects. These monies could be placed in a fund similar to the "aggregate rehabilitation fund" used to rehabilitate abandoned pit and quarry lands under the *Aggregate Resources Act* throughout the Province. If this can form part of the Regulation, then it should be prescribed.
23. It is assumed that in terms of cost, a proponent should be responsible for all of the costs associated with public notice and meetings which will be required under the Regulation, but this should be made explicit in the Regulation.
24. The submissions for a green energy project should deal with matters related to mitigation. For example, the public and municipalities have, in the past, asked for details on wind farms including:
 - i) the colour and finish on the tower and blades;
 - ii) landscaping on the property and around substations;
 - iii) all cabling to be routed underground to the greatest extent possible;
 - iv) where overhead cabling is necessary, it not occur on collector or higher order roads;
 - v) the use of existing hydro towers and lines;
 - vi) tower navigation lighting be avoided if possible, but if required be synchronized not only with other towers in the project, but also with other nearby towers in other projects;
 - vii) shielding of the essential tower lighting from nearby residences.
 - viii) Fencing, signage and access controls.

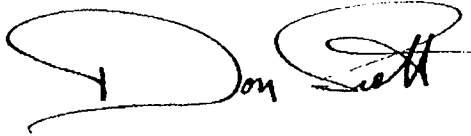
Similar design and mitigation considerations should apply, as applicable, to other green energy projects (e.g., solar farms).

25. The Regulation should allow for the use of protocols between the proponent and the municipality or other agencies to govern some of the matters set out under the issues raised as Other Concerns.

A copy of the Staff Report reviewed by the NEC at its July 16, 2009 meeting, is attached as background.

Should there be any questions, please contact Ken Whitbread, Manager of the NEC, at (905) 877-4026 or by email at ken.whitbread@ontario.ca.

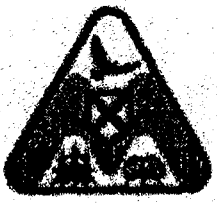
Yours truly,

A handwritten signature in black ink that reads "Don Scott". The signature is stylized with large, sweeping loops for the letters "D" and "S".

Don Scott
Chair

- c. The Honourable Donna Cansfield, Minister of MNR
- The Honourable John Gerretsen, Minister of MOE
- Valerie Stankiewicz, MNR
- Escarpment Municipalities (Clerks)

Enclosure



Corporation of the Township of MULMUR

Moved by: Snider

Date: July 22, 2009

Seconded by: Hawkins

THAT WHEREAS Council has received and accepted a report from its planner, outlining a number of recommendations relating to the proposed regulations which are intended to implement provisions of the Green Energy and Green Economy Act;

AND WHEREAS it was intended that the recommendations and comments contained in the report would be forwarded to the Ministries of Natural Resources and Environment as the Township's input on the proposed regulations now posted on the Environmental Registry;

AND WHEREAS, since that time, copies of two excellent submissions have been forwarded to the Township, from N. Jane Pepino, on behalf of CORE (a ratepayers group within the Township of Mulmur) (including a July 22, 2009 addendum), and from Don Scott, Chair of the Niagara Escarpment Commission;

AND WHEREAS Council has reviewed and endorses their comments, and wishes to provide the full support of the Township for the many excellent insights and suggestions each provides;

AND WHEREAS Council, in further considering the potential visual impacts of wind turbines and solar arrays on and in the vicinity of the Niagara Escarpment, would propose that the Niagara Escarpment Commission and the Township be consulted on all such projects within, at a minimum, 2.5 km. of the boundaries of the Niagara Escarpment Plan Area;

NOW THEREFORE BE IT RESOLVED THAT, in addition to the earlier staff report, the comments provided by both CORE (including the July 22, 2009 addendum) and the Niagara Escarpment Commission be endorsed and fully supported by the Township;

AND THAT the proponents of wind turbines/wind energy farms and solar arrays/solar energy farms should be required to evaluate and address, through a comprehensive and detailed visual impact assessment, the visual impacts of all such projects within the NE Plan Area and, at a minimum, within 2.5 km. of the boundaries of the NE Plan Area, not only from the perspective of looking outward from significant vantage points and vistas within the NE Plan Area into adjacent areas, but also from the perspective of looking toward the Niagara Escarpment from beyond;

AND THAT Council supports, at a minimum, a one kilometer buffer adjacent to the boundaries of the NE Plan area where the impacts are considered significant and/or cannot be appropriately and adequately mitigated.

Carried ...Gordon Montgomery.....MAYOR