



March 4th 2008

Attention: The Honourable Jim Watson
Ministry of Municipal Affairs and Housing
777 Bay Street, 17th floor
Toronto, Ontario
M5G 2E5
Fax: 416-585-6470

Dear Minister Jim Watson,

The County of Northumberland has initiated a Master Planning process for the long term planning and management of the Northumberland County Forest. The County Forest comprises a series of forested land holdings that are 2,164 hectares in size and constitute the second largest County Forest complex in Ontario. It occupies the majority of the easternmost Natural Core Area identified in the Oak Ridges Moraine Conservation Plan.

This Master Plan, once completed, will provide strategic direction on how the forest will be used for a variety of outdoor recreational and natural resources purposes while ensuring that important ecosystems are preserved and/or enhanced. We have established a Forest Advisory Committee of interested stakeholders to provide recommendations to the County in the development of this Plan. For more information, reports and related documents visit our websites at www.northumberlandcounty.ca (Services/Northumberland County Forest) and <http://northumberlandcfac.cenet.ca> or contact us at 1-800-354-7050 ext 2261.

A major guiding principle in the development of the Northumberland County Forest Master Plan is that ecological and hydrological features and functions will be maintained or enhanced and that any uses or activities approved for the County Forest comply to the applicable requirements of the Oak Ridges Moraine Conservation Plan (ORMCP) as required under Section 6 of the Oak Ridges Moraine Act.

One of the major issues that is a serious point of controversy among many of the stakeholders on our Forest Advisory Committee is whether motorized vehicle trail use is a permitted use under the Oak Ridges Moraine Conservation Plan. Most of the County Forest is located within the Natural Core Area designation where recreational activity is limited to "low intensity recreational uses as described in Section 37 of the ORMCP". Section 37 of the ORMCP states:

“(1) Low-intensity recreational uses are recreational uses that have minimal impact on the natural environment, and require very little terrain or vegetation modification and few, if any, buildings or structures, including but not limited to the following:

- 1. Non-motorized trail uses.*
- 2. Natural heritage appreciation.*
- 3. Unserviced camping on public and institutional land.*
- 4. Accessory uses.*

(2) Small-scale structures accessory to low-intensity recreational uses, such as trails, boardwalks, foot bridges, fences, docks and picnic facilities, are permitted only if the applicant demonstrates that the adverse effects on the ecological integrity of the Plan Area will be kept to a minimum by,

(a) keeping disturbed areas to a minimum; and

(b) avoiding the most sensitive portions of the site , such as steep slopes, organic soils and significant portions of the habitat of endangered, rare or threatened species.

Knowing that motorized vehicle use would be a critical point of controversy in our study the County's first step was to obtain two opinions on this issue. The first opinion was an independent and neutral legal interpretation of the ORMCP legislation. The County wanted to know if motorized vehicles are permitted, and if so, under what conditions. Further, because the language in the ORMCP is not black and white and it is likely that any legal opinion would be challenged, the County felt it was important to also understand the intent of the legislation, if possible. To this end the County retained the services of a retired, former senior Provincial administrator who was deeply involved in the drafting of the legislation. I want to stress that the County was not seeking opinions, or individuals, who could justify a pre-conceived position with respect to motorized vehicles. We simply wanted to be sure that all of our planning and any decisions we might make would be in full compliance with all legal requirements.

For the legal opinion the County retained the services of Mr. Paul J. Petersen. Briefly, it is his opinion that the list of permitted uses cited in section 37 provides guidance only and is not limiting. He does not feel that this list of uses prevents the County from considering certain motorized uses provided the County satisfied itself that the use in question could meet the tests of minimal impact specified in that section and other parts of the ORMCP. To date the County has chosen not to release Mr. Petersen's full legal opinion as more than one individual has advised us that they intend to take the County to court if our final plans included a place for motorized vehicles. We would however be willing to make Mr. Petersen available for discussions with Ministry staff if you think this would be helpful.

Fred Johnson, a planner who worked on the development of the ORMCP, was also asked to provide planning advice on the compliance issue. Mr. Johnson did not wish to comment on the legal interpretation provided by the solicitor but did believe that regardless of the interpretation taken from section 37, the County could consider the continuance of existing motorized trail use as a legally existing use under the provisions of section 6 of the ORMCP.

Incidentally it was noted that the defined recreational trail system for the ORM referred to in Section 39 of the ORMCP specifically prohibited motorized vehicle use on that trail except for motorized wheelchairs in subsection (4). This seems to infer that motorized trail use can be considered on any other trail; otherwise such a prohibition clause would be redundant.

In summary both the solicitor and the planner suggested that the County is better off to consider the merits of permitting the continuance of motorized trail use based on the ability of the trail users to meet or exceed the tests. They further advised that the most important consideration is the ability of the Forest and the Forest trail system to satisfactorily preserve the integrity of the Forest environment and to comply to all relevant requirements of the ORMCP. They both stressed that while the ORMCP did not direct the County to prohibit motorized use of trails, it likewise did not prevent the County, as landowners, from prohibiting such uses if the County felt the impacts associated with these uses are too great.

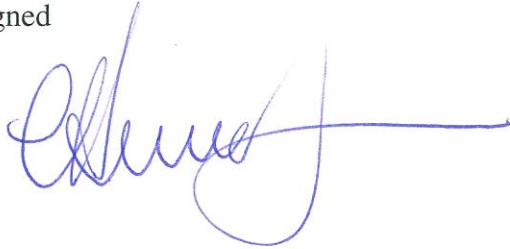
Some opponents to motorized vehicle trail use have interpreted this Section of the plan to mean that such uses are prohibited since they are not explicitly mentioned in the sample list of uses in section 37 and because they maintain that the inherent characteristics and associated impacts of such uses cannot meet the test of minimal impact specified in section 37.

We have encouraged the stakeholders to focus on fundamental planning, design and management issues in order to accommodate the needs of all potential forest users and reduce conflicts to the greatest extent possible. However we are afraid that some parties may wish to push the matter to court for a legal determination. The County has limited financial resources to devote to the development of a County Forest Master Plan and would hope not to expend these resources on an expensive legal challenge.

The uncertainty surrounding the use of motorized vehicles is threatening to derail our entire planning process. If we carry on as planned we are running the risk of having to redo the entire planning process at considerable expense to the County's taxpayers. Any insight that the Province could provide to us on how the Province viewed motorized vehicle trail use in Natural Core Areas in the context of the writing of both Sections 6 and 37 of the ORMCP would be most appreciated. A clear statement of what the Province intended will allow municipalities to plan for the future with a clear understanding that we are meeting provincial policy regulations.

If you require further information or background in preparing a response, you can contact Judy Snider, Risk Manager, at 905-372-3329 Ext. 2261.

Signed



Christine Herrington
Warden for Northumberland County Council

Cc: Lou Rinaldi
Alnwick-Haldimand Township (Northumberland County)
Hamilton Township (Northumberland County)
Northumberland County Council
Northumberland County Forest Advisory Committee
Ogilvie, Ogilvie and Company
Rice Lake Plains Joint Initiative Partners (Nature Conservancy of Canada, Ontario Parks,
Alderville First Nations, Northumberland Land Trust, Lower Trent Conservation
Authority, Ganaraska Conservation Authority, Northumberland County)
Paul J. Petersen
S.T.O.R.M. Coalition
Ontario Nature
Oak Ridges Moraine Foundation