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STANDING COMMITTEE ON PUBLIC ACCOUNTS

VALUE-FOR-MONEY AUDIT: CONSERVING THE NIAGARA ESCARPMENT

(2022 ANNUAL REPORT OF THE OFFICE OF THE AUDITOR GENERAL OF
ONTARIO)

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The Honourable Ted Arnott, MPP
Speaker of the Legislative Assembly

Sir,

Your Standing Committee on Public Accounts has the honour to present its Report and commends it to the House.

A handwritten signature in cursive script that reads "Tom Rakocevic".

Tom Rakocevic, MPP
Chair of the Committee

Queen's Park
February 2024

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1st Session, 43rd Parliament

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* TODD J. MCCARTHY was no longer a member of the Committee from
September 26, 2023.

JENNIFER (JENNIE) STEVENS regularly served as a substitute member
of the Committee.

TANZIMA KHAN
Clerk of the Committee

ERICA SIMMONS
Research Officer

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INTRODUCTION

On June 5, 2023, the Standing Committee on Public Accounts held public hearings on the “Value-for-Money Audit: Conserving the Niagara Escarpment” (2022 Annual Report of the Auditor General of Ontario), overseen by the Ministry of Natural Resources and Forestry, and the Niagara Escarpment Commission.

The Committee welcomes the Auditor’s 2022 findings and recommendations and now presents its own findings, views, and recommendations in this report. The Committee requests that the Ministry provide the Clerk of the Committee with written responses to the recommendations within 120 calendar days of the tabling of this report with the Speaker of the Legislative Assembly, unless otherwise specified.

ACKNOWLEDGEMENTS

The Committee extends its appreciation to officials from the Ministry of Natural Resources and Forestry, and the Niagara Escarpment Commission. The Committee also acknowledges the assistance provided by the Office of the Auditor General, the Clerk of the Committee, and Legislative Research.

BACKGROUND

The Niagara Escarpment is a prominent, forested ridge that extends (with breaks) more than 1,000 kilometres (km) through Wisconsin, Michigan, Ontario, and New York State. In Ontario, this geologic feature stretches some 725 km from the Niagara River to Tobermory and Manitoulin Island. It includes the largest stretch of continuous forest in southern Ontario and is also a source of agricultural land. It has several globally rare types of habitats along with eastern North America’s oldest forests, with some trees over 1,500 years old. The United Nations has designated the Escarpment as a World Biosphere for its ecological significance. The Escarpment also includes the traditional and ancestral territories of many First Nations and Métis communities.

Located next to the most densely populated area of Ontario, the Escarpment faces ongoing development and population pressures that strain its resources and infrastructure. The Auditor notes that these pressures, along with the high demand for recreation and tourism, are putting the Escarpment’s natural environment “under threat.” The World Economic Forum “ranks biodiversity loss as one of the top three most severe risks globally over the next decade.”

Oversight and Funding

The *Niagara Escarpment Planning and Development Act* (Act) was enacted in 1973 “to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment.” (Development includes any change in the use of land, buildings or structures.) The Ministry of Natural Resources and Forestry (Ministry) is responsible for administering the Act.

The Act established the Niagara Escarpment Plan (Plan) to guide land-use planning within the Plan area, with environmental protection as its primary objective; and the Niagara Escarpment Commission (Commission) as a regulatory agency with a mandate to implement the Plan. The Commission reports to the Minister of Natural Resources and Forestry—it is solely funded by the Ministry, and the Minister approves its budget and staffing levels.

The Niagara Escarpment Parks and Open Space System, a 44,017-hectare network of 163 parks and open spaces for conservation and recreation purposes, is provincially coordinated under the Plan. The Plan also directs that a permanent route be secured for the Bruce Trail along the Escarpment. Under the Plan and the Act, development activities in the Plan Area are regulated by the Commission, which issues permits with conditions on how development is to proceed or processes exemptions for proposed development.

Under the Act, the Minister of Natural Resources and Forestry “is to cause a review of the Plan at the same time the scheduled review of the Greenbelt Plan is carried out under the *Greenbelt Act, 2005*, which is to be every 10 years.” (The next scheduled review of the Niagara Escarpment Plan will begin in 2025.)

Under the Act, the objectives of the Plan are to:

- protect unique ecologic and historic areas;
- maintain and enhance the quality and character of natural streams and water supplies;
- provide adequate opportunities for outdoor recreation;
- maintain and enhance the open landscape character of the Escarpment;
- ensure that all new development is compatible with the purpose of the Plan;
- provide for adequate public access to the Escarpment; and
- support municipalities in planning.

There are three regulations under the Act:

- Regulation 826 establishes the parts of the Plan Area that are included in the Area of Development Control (where a development permit issued by the Commission is required for certain types of development).
- Regulation 828 exempts certain development classes from requiring a development permit issued under the Act.
- O. Regulation 235/10 specifies lands added to the Niagara Escarpment Planning Area and subject to the Act.

The conservation of the Escarpment is a shared responsibility of the Ministry of Natural Resources and Forestry, the Niagara Escarpment Commission, and other entities, with conservation partners such as the non-profit Bruce Trail Conservancy also playing a role.

AUDIT OBJECTIVE AND SCOPE

The audit objective was to assess whether the Niagara Escarpment Commission (Commission) and the Ministry of Natural Resources and Forestry (Ministry) have effective systems and processes in place to:

- maintain the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, in order to meet the purpose and objectives of the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan;
- ensure only such development on the Escarpment as is compatible with that natural environment, in order to meet the purpose and objectives of the Act and the Plan; and
- measure and publicly report on progress toward maintaining the Escarpment, ensuring only compatible development, and meeting the objectives of the Plan.

The audit was conducted between January and July 2022.

AUDIT CONCLUSIONS

The Auditor's overall conclusion was that, among other things:

The Commission no longer has a long-term strategic plan to fulfill the legislative mandate to conserve the Escarpment, nor are there sufficient performance measures and targets to evaluate whether the objectives of the Act and Plan are being achieved.

There is no environmental monitoring because there are no staff, resources or programs to assess the state of the Escarpment.

The Ministry of Natural Resources and Forestry and the Niagara Escarpment Commission are failing to fully provide the necessary leadership, resources, and actions to maintain the Escarpment and adjacent lands as a continuous natural environment, and to ensure that all development is compatible with that environment.

ISSUES RAISED IN THE AUDIT AND BEFORE THE COMMITTEE

The Committee heard that the Ministry has oversight of legislation and policies as well as of the Niagara Escarpment Commission. The Commission collaborates with the Ministry in reviewing and recommending Niagara Escarpment Plan policy amendments to the Minister as well as drafting annual reports and business plans for Ministerial approval. The Ministry explained that the Plan is a large-scale environmental land use plan that establishes land designations and development criteria and related permitted uses within the Plan area.

A coordinated Plan review is conducted every 10 years. During the 2017 Plan review, a panel was appointed to develop recommendations on how to amend and improve the Plan and held stakeholder meetings and engagement sessions to seek public comments.

The Ministry explained that work on the 2027 Plan review will start in 2025. As occurred during the previous Plan review, the Commission will prepare a series of evidence-based research papers on issues of concern and make recommendations based on that research. The Commission explained that the upcoming Plan review will be an opportunity to consider the Auditor's recommendations, and to do a critical evaluation of the Plan to ensure that it is future-focused while recognizing the importance and history of the Escarpment.

Niagara Escarpment Plan Weaknesses

The Auditor reported that, among other things, the Act "directs that the Niagara Escarpment and land in its vicinity are to be maintained as a continuous natural environment. However, the Niagara Escarpment Plan Area does not cover the entire Escarpment," so not all of it is protected from incompatible development.

The Auditor also noted that during the 2017 Plan review, the Commission raised concerns about the potential negative impacts of extracting aggregates below the water table and recommended that new aggregate operations be prohibited within the Plan Area.

The Committee asked about the Auditor's finding that changes to the Plan in 2017 meant allowing "new and expanded aggregate operations on the Niagara Escarpment despite environmental impacts" such as harm to endangered species and their habitats (among other things). The Ministry of Natural Resources and Forestry noted that as part of the next Plan review, it will be looking at the language of the *Endangered Species Act, 2007*, as it relates to the Niagara Escarpment Plan.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

1. As part of the 2027 Niagara Escarpment Plan review, the Ministry of Natural Resources and Forestry should work with the relevant agencies, including where applicable, the Niagara Escarpment Commission and the Ministry of the Environment, Conservation and Parks to:
 - a) update the criteria for development compatible with the *Niagara Escarpment Planning and Development Act*;
 - b) assess the completeness of the Niagara Escarpment Plan Area in including the entire Niagara Escarpment and sufficient adjacent lands, including natural heritage features;
 - c) assess the environmental impacts of aggregate extraction on the Niagara Escarpment, and the Commission's recommendation to prohibit all new and expanded aggregate operations on the Escarpment; and

- d) assess the Niagara Escarpment Plan's sufficiency in protecting endangered species and their habitats on the Escarpment.

Niagara Escarpment Plan Not Sufficiently Monitored

The Auditor reported that, among other things, the Commission and the Ministry do not have sufficient performance measures and targets to evaluate whether the purposes and objectives of the Act and Plan are being achieved.

The Commission explained that the next Plan review provides an opportunity "to evaluate the effectiveness of the [Niagara Escarpment Plan] policies in achieving the purpose and objectives of the plan, as well as addressing any gaps in past performance indicators that would be beneficial for further reporting."

The Committee heard that the Ministry, in consultation with the Commission, municipalities, stakeholders and other committed partners of the plan, is continuing to address environmental monitoring as a key component of the upcoming Plan review. The Commission explained that the purpose of environmental monitoring is to regularly monitor and report on outcomes related to the effectiveness of the Plan and policies to inform further updates.

The Committee asked whether the Commission has begun to evaluate the cumulative effects of development permit approvals on the Escarpment's natural environment and factor that into the permit approval process. The Commission explained that Plan reviews are an opportunity to look back and summarize trends and address concerns that may be appearing in those trends.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

2. The Niagara Escarpment Commission should:
 - a) work with the Ministry of Natural Resources and Forestry to establish, and collect data on, performance measures and targets to enable evaluation of whether the purposes and objectives of the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan are being achieved; and
 - b) evaluate the cumulative effects of development permit approvals on the Escarpment's natural environment and factor that into the permit approval process.

Insufficient Conservation Efforts

The Committee asked about the Auditor's finding that the Commission has not developed a new strategic plan since the 2012-2016 plan expired and does not have a long-term strategic plan to achieve the legislative mandate to conserve the Escarpment.

The Commission explained that it is legislatively required to develop a business plan with a three-year horizon that must be revised annually. The Commission considers the business plan to be strategic because it includes operational performance targets. The Committee heard that the Commission has committed to determining whether there are any opportunities for enhancements or improvements that can be incorporated into the business plan and publicly reported on.

The Committee also asked about the Auditor's finding that the Ministry does not have a plan or program to assist in financing the completion of the Niagara Escarpment Parks and Open Space System and to secure a permanent route for the Bruce Trail. The Ministry explained that funding has been allocated for this purpose, focused on bringing partners together, including those with private land acquisitions as well as provincial, municipal and conservation authority funding to enhance the Bruce Trail.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

3. The Niagara Escarpment Commission develop a long-term strategic plan that sets out, among other things, how the Ministry of Natural Resources and Forestry, the Commission, and conservation authorities will work together:
 - a) to achieve the legislative mandate to conserve the Niagara Escarpment;
 - b) to complete the Niagara Escarpment Parks and Open Space System and to secure a permanent route for the Bruce Trail; and
 - c) to alleviate the housing crisis.

Deficiencies in Plan Administration

The Auditor reported that, among other things, the Commission unnecessarily reviews applications that do not require a development permit, contributing to a backlog of permits to be processed. The Auditor also found that Plan amendments can languish for years.

Other findings included that the Commission lacks a modern information management system to efficiently implement the Plan and help reduce the development application backlog. Also, the Ministry provides insufficient financial and staffing resources to the Commission to ensure the Plan and Act are implemented effectively.

The Committee heard that the Commission is in the process of developing and implementing a modernized information management system to enable electronic submissions and help to streamline the Commission's permit-authorizing processes. The Commission has also been recommending legislative and regulatory improvements to further modernize processes.

The Committee expressed concern about what can be a frustrating permit approvals process for applicants. The Committee raised the possibility of reducing duplication of oversight and suggested that a truly “one-window approach” would enable applicants to submit a single application that would be reviewed in a coordinated way by the Commission, conservation authorities, and municipalities.

The Committee asked what measures are being taken to ensure that development applications are thoroughly reviewed for their compliance with environmental regulations before being approved and whether the Commission had made any enhancements to its compliance program. The Commission noted that compliance is a core function of the agency’s legislative and regulatory responsibilities, and is a responsibility shared with the Ministry of Natural Resources and Forestry.

The Committee heard that a significant increase in the number of complaints of possible violations has put a strain on the Commission’s resources, and this trend is expected to continue. The Commission has taken a number of steps, including hiring additional staff, adding a seasonal compliance specialist position for the busiest times, and hiring a former Ontario Public Service compliance professional who carries out compliance inspections as well as advises and mentors staff.

The Committee also asked about cost recovery given the Auditor’s finding that the Commission does not charge fees for development applications or other services to finance program delivery. The Commission responded that it will be looking into a cost-recovery option as the Auditor recommended.

Committee Recommendation

The Standing Committee on Public Accounts recommends that:

4. The Niagara Escarpment Commission should:
 - a) work with municipalities, conservation authorities and other relevant agencies to explore opportunities for a true streamlined “one-window” process for permit approvals so that applicants may submit a single application that is circulated in an expedited and coordinated way to relevant partner agencies; and
 - b) work with the Ministry of Natural Resources and Forestry to charge fees, on a cost-recovery basis for development applications and/or other services to finance program delivery.

Enhancing Processes for Commissioners

The Committee asked whether the Commission is addressing the need for orientation and ongoing training for Commissioners, as recommended by the Auditor. The Committee also noted the Auditor’s finding that the appointments of public-at-large Commissioners do not provide a balanced representation of regions and interests.

The Commission explained that it is updating the training package for Commissioners and updating the website with a portal that will contain all the training materials. It is also ensuring that Commissioners receive appropriate training on all of their legislative and regulatory requirements, including conflict of interest and integrity.

The Committee asked about the Auditor's finding that the Commission lacks its own conflict of interest policy. The Commission currently employs the general conflict of interest guidance under the *Public Service of Ontario Act, 2006*. The Committee heard that the Commission has committed to a deadline of December 2023 to have more guidance and procedures in place to assist the Chair and Commissioners with conflict of interest, as recommended by the Auditor.

Committee Recommendations

The Standing Committee on Public Accounts recommends that:

5. The Niagara Escarpment Commission develop its own Conflict of Interest Policy and procedures specific to the role of the Commissioners and require Commissioners to complete an annual Conflict of Interest Declaration Form.
6. The Ministry of Natural Resources and Forestry work with the Niagara Escarpment Commission to ensure that, when making Commissioner appointments, they seek a more balanced representation of public-at-large Commissioners including of regions and interests.

CONSOLIDATED LIST OF COMMITTEE RECOMMENDATIONS

The Standing Committee on Public Accounts recommends that:

1. As part of the 2027 Niagara Escarpment Plan review, the Ministry of Natural Resources and Forestry should work with the relevant agencies, including where applicable, the Niagara Escarpment Commission and the Ministry of the Environment, Conservation and Parks to:
 - a) update the criteria for development compatible with the *Niagara Escarpment Planning and Development Act*;
 - b) assess the completeness of the Niagara Escarpment Plan Area in including the entire Niagara Escarpment and sufficient adjacent lands, including natural heritage features;
 - c) assess the environmental impacts of aggregate extraction on the Niagara Escarpment, and the Commission's recommendation to prohibit all new and expanded aggregate operations on the Escarpment; and
 - d) assess the Niagara Escarpment Plan's sufficiency in protecting endangered species and their habitats on the Escarpment.
2. The Niagara Escarpment Commission should:
 - a) work with the Ministry of Natural Resources and Forestry to establish, and collect data on, performance measures and targets to enable evaluation of whether the purposes and objectives of the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan are being achieved; and
 - b) evaluate the cumulative effects of development permit approvals on the Escarpment's natural environment and factor that into the permit approval process.
3. The Niagara Escarpment Commission develop a long-term strategic plan that sets out, among other things, how the Ministry of Natural Resources and Forestry, the Commission, and conservation authorities will work together:
 - a) to achieve the legislative mandate to conserve the Niagara Escarpment;
 - b) to complete the Niagara Escarpment Parks and Open Space System and to secure a permanent route for the Bruce Trail; and
 - c) to alleviate the housing crisis.

4. The Niagara Escarpment Commission should:
 - a) work with municipalities, conservation authorities and other relevant agencies to explore opportunities for a true streamlined “one-window” process for permit approvals so that applicants may submit a single application that is circulated in an expedited and coordinated way to relevant partner agencies; and
 - b) work with the Ministry of Natural Resources and Forestry to charge fees, on a cost-recovery basis for development applications and/or other services to finance program delivery.
5. The Niagara Escarpment Commission develop its own Conflict of Interest Policy and procedures specific to the role of the Commissioners and require Commissioners to complete an annual Conflict of Interest Declaration Form.
6. The Ministry of Natural Resources and Forestry work with the Niagara Escarpment Commission to ensure that, when making Commissioner appointments, they seek a more balanced representation of public-at-large Commissioners including of regions and interests.