
MEMORANDUM

PDS-C 23-2021

Subject: Referred Niagara River Ramsar Designation Endorsement Motion for Consideration

Date: March 10, 2021

To: Planning and Economic Development Committee

From: Ann-Marie Norio, Regional Clerk

At its meeting held on February 25, 2021, Regional Council referred consideration of a motion to endorse the Ramsar designation to the Planning and Economic Development Committee (PEDC) meeting being held on March 10, 2021.

An overview of the Ramsar designation for the Niagara River was first brought before Planning and Development Committee (PDC) in September 2014 by way of Report PDS 39- 2014 (attached as Appendix I) which was received for information.

At its meeting held on September 2, 2015, Planning and Development Committee considered Report PDS 36-2015 (attached as Appendix II) which recommended that Regional Council endorse the designation of the Niagara River as a Ramsar site of international importance. PDC deferred the endorsement, requesting that staff return with a report after the Town of Fort Erie and the Town of Niagara-on-the-Lake each provide endorsement for the Ramsar project. While the Town of Fort Erie and City of Niagara Falls both endorsed the Ramsar designation, the Town of Niagara-on-the-Lake did not.

In June of 2020, the Niagara River Ramsar Designation Bi-national Steering Committee reached out to Regional staff to indicate they were interested in revisiting the request for Regional endorsement. The Ramsar Steering Committee presented to PEDC at its meeting held on September 9, 2020 and the Planning and Economic Development Committee recommended endorsement of the designation.

At the September 17, 2020 meeting of Regional Council, the endorsement of the Ramsar designation was referred to staff to engage outside legal counsel to research the implications of a Ramsar designation on the Niagara River in so much as such a designation could affect the agricultural properties throughout the Region. The Planning

and Economic Development Committee was provided with the external legal opinion at its meeting held on February 17, 2021 (attached as Appendix III).

The Niagara River Ramsar Designation Bi-national Steering Committee has submitted correspondence dated March 4, 2021, requesting support for the Ramsar designation. This correspondence has been included on the agenda for the March 10 PEDC meeting as PDS-C 24-2021, Agenda Item 7.11.

As the motion to endorse the designation was referred to the Planning and Economic Development Committee, the following motion is before Committee for consideration:

That the Regional Municipality of Niagara ENDORSE the nomination of the Niagara River as a Wetland of International Importance (Ramsar Site).

Respectfully submitted and signed by

Ann-Mario Norio
Regional Clerk

Appendices:

Appendix I PDS 39-2014

Appendix II PDS 36-2015

Appendix III CWCD 2021-60

Niagara Region

REPORT TO: Planning and Development Committee

SUBJECT: Canadian/American Partnership Approach to Promote the
Niagara River Corridor as a 'Wetland' of International
Importance

RECOMMENDATIONS

1. That this report **BE RECEIVED** for information.
2. That this report **BE CIRCULATED** to local area municipalities and the Niagara Peninsula Conservation Authority.

PURPOSE

The purpose of this report is to provide Regional Council with an overview of a partnership project between Canadian and American agencies to designate the Niagara River Corridor as a Ramsar Site and the region-wide benefits of this designation. Ramsar sites are wetlands of international importance, designated under the Ramsar Convention.

This report on the Niagara River Corridor as a Ramsar Site aligns with Council Business Plan Theme 1: Responsive Region and Theme 4: Environmentally Responsible.

BUSINESS IMPLICATIONS

There are no direct financial or regulatory implications related with this report. The Niagara Parks Commission is the lead 'nominating' agency on the Canadian side. As the majority of the ground-work is being done by the SUNY Buffalo Law team at the University at Buffalo, there are no financial requirements at this time aside from staff time, which is within current budgets. At this time, Niagara Region's staff commitments are only required for Working Group meetings and documentation review.

Ramsar is voluntary, non-regulatory, and non-binding and therefore there are no legal or legislative implications associated with this designation. Wetland protection legislation is and will continue to be under the jurisdiction of the Ontario Ministries of Natural Resources and Environment and the Department of Fisheries and Oceans Canada.

As this designation is non-regulatory, there would be no additional enforcement requirements or development limitations; just a commitment from landowners to follow sustainable practices. While the designation would encompass the entire Niagara River, each landowner/stakeholder is only responsible for its own property.

REPORT

Background

The Ramsar Convention is a voluntary intergovernmental treaty that is committed to encouraging education and sustainable development as a means of protecting global wetlands. The Convention uses a broad definition of the type of wetlands covered in its mission, including lakes and rivers, swamps and marshes, wet grasslands and peatlands, oases, estuaries, deltas and tidal flats, near-shore marine areas, mangroves and coral reefs, and human-made sites such as fish ponds, rice paddies, reservoirs, and salt pans. The purpose of this treaty signed in Ramsar, Iran, in 1971, is to promote conservation and wise use of wetland areas through local, national, and international sustainable development practices. These sustainable practices are a framework for maintaining ecological, hydrological, social as well as economic characteristics and functions of Ramsar sites. The criteria for obtaining Ramsar designation is provided in Appendix I. Sites must meet one of nine criteria.

Opportunity to Designate the Niagara River Corridor

The Niagara River Corridor Ramsar Working Group has been working collectively with representatives from both Canada and the United States to determine the feasibility of designating the Niagara River Corridor as a Ramsar wetland site. Canadian representatives include The Niagara Parks Commission, Niagara Region, Ontario Ministry of Natural Resources, Niagara Peninsula Conservation Authority and Brock University. American Representatives include Niagara River Greenway Commissions, New York State Department of Environmental Conservation, US Fish and Wildlife Service, SUNY Buffalo, and Buffalo Niagara Riverkeepers. Canada currently has 37 Ramsar designated sites, including Long Point and Point Pelee. If the Niagara River Corridor is designated as a Ramsar site, it will mark the first trans-boundary site in North America.

The Niagara Parks Commission has elected to be the lead 'nominating' agency on the Canadian side because they currently own and manage a significant portion of the Niagara River (Canadian side) up to the Canada/U.S border. The Niagara River consists of characteristics that satisfy several of the convention's criteria, making it eligible for ecological, hydrological, social and economic protection under Ramsar wetland designation.

To date, a wide variety of agencies have been included and consulted with on this initiative as noted above. It is anticipated that public consultation will be done in the

near future, and private residents living along the Niagara River will need to be consulted.

Regional Benefits

This designation will allow for Niagara Region to further foster cooperation and partnership between the United States and Canada to ensure conservation both within and around the Niagara River Corridor. Such a partnership will allow Niagara Parks Commission and more broadly the Niagara region to showcase their image as an international leader in environmental and ecological sustainability.

The Ramsar designation of the Niagara River Corridor will promote increased public awareness of the River's importance through research and development. More specifically, the Niagara Parks Commission and its partners will have the potential to lead research and development programs alongside United States representatives to improve understanding of the River and preserve its ecological importance.

As a Ramsar site, the Niagara River Corridor will also open up greater opportunities for expanding tourism programming both along the river and throughout the region. This process will also provide opportunities for members of the public to participate in consultation processes and discussions pertaining to the significance of environmental and ecological conservation of the region.

Approved by:



Mary Lou Tanner, MCIP, RPP
Acting Commissioner
Planning and Development Services



Harry Schlange
Chief Administrative Officer

This report was prepared by Pegah Tootoonchian, Policy Planning Student and reviewed by Katelyn Vaughan, Project Manager, Community and Long Range Planning; Curt Benson, MCIP, RPP, Acting Director, Community and Long Range Planning; and Bob Seguin, Director of Economic Development.

APPENDICES

Appendix I Ramsar Designation Criteria and Niagara River Corridor
Criteria Alignment

Appendix I: Ramsar Designation Criteria and Niagara River Corridor Criteria Alignment

| Ramsar Criteria | Ramsar Criteria Description |
|------------------------|---|
| 1 | Site is representative, rare or unique. |
| 2 | Site supports vulnerable or endangered species, or threatened ecological communities.* |
| 3 | Site supports keystone or endemic species.* |
| 4 | Site supports species at a critical stage in their life cycles (migration, breeding, and nesting).* |
| 5 | Site supports 20,000 or more water birds.* |
| 6 | Site supports 1% of the individuals in a population of one species of water bird. |
| 7 | Site supports 1% of individuals in a population of one species or subspecies of wetland-dependent non-avian animal species. |
| 8 | Site supports a significant proportion of indigenous fish species. |
| 9 | Site is an important source of food, spawning ground, and nursery and/or migration path for fish.* |

* *Niagara River Corridor characteristics that align with Ramsar Criteria*

REPORT TO: Planning and Development Committee

MEETING DATE: Wednesday, September 02, 2015

SUBJECT: Proposed Niagara River Ramsar Designation

RECOMMENDATIONS

1. That this report be **RECEIVED** for information;
2. That Regional Council **ENDORSE** the designation of the Niagara River as a Ramsar site of international importance;
3. That the Town of Niagara-on-the-Lake, the City of Niagara Falls, the Town of Fort Erie, the Niagara Peninsula Conservation Authority (NPCA) and the Niagara Parks Commission (NPC) **BE ADVISED** of Regional Council's endorsement; and,
4. That this report **BE CIRCULATED** to the Town of Niagara-on-the-Lake, the City of Niagara Falls, the Town of Fort Erie, the Niagara Peninsula Conservation Authority (NPCA) and the Niagara Parks Commission (NPC).

KEY FACTS

- Regional Council received an information report regarding the Ramsar designation on October 2, 2014 and requested that the report be circulated to the International Niagara Board of Control.
- A designation for the Niagara River to become a Ramsar site of international importance is being sought by U.S. and Canadian agencies in order to recognize the importance of the Niagara River's contribution to the natural environment.
- The Ramsar Convention is a voluntary intergovernmental treaty that is committed to encouraging education and sustainable development as a means of protecting global wetlands. The Convention uses a broad definition of the type of wetlands covered in its mission, including lakes and rivers.
- The designation will not impose any additional regulations on property owners along the Niagara River Corridor.

- The designation will open up greater opportunities for expanding tourism programming, promote increased public awareness of the River's importance through research and development, and allow for Niagara region to further foster cooperation and partnership between the United States and Canada to ensure conservation both within and around the Niagara River Corridor.

CONSIDERATIONS

Financial

There are no financial considerations associated with this report.

Corporate

A staff member from Planning and Development Services is a member of the Niagara River Corridor Ramsar Working Group. In addition to the Working Group, there is a Ramsar Steering Committee, which Niagara Region is not involved in. The Steering Committee is comprised of key organizations that are leading the Ramsar designation process. Local representatives from the Niagara Parks Commission, the Niagara Peninsula Conservation Authority, the Environmental Sustainability Research Unit (Brock University) and Niagara College are part of the Steering Committee.

Governmental Partners

The Niagara River Corridor Ramsar Working Group has been working collectively with representatives from both Canada and the United States to determine the feasibility of designating the Niagara River Corridor as a Ramsar wetland site. Canadian representatives include The Niagara Parks Commission, Niagara Region, Ontario Ministry of Natural Resources, Niagara Peninsula Conservation Authority and Brock University. American Representatives include Niagara River Greenway Commissions, New York State Department of Environmental Conservation, US Fish and Wildlife Service, SUNY Buffalo, and Buffalo Niagara Riverkeepers. The Council's of the Town of Niagara-on-the-Lake, the City of Niagara Falls and the Town of Fort Erie have all received a presentation on the Ramsar designation. To date, Niagara Falls has endorsed the designation. Niagara-on-the-Lake and Fort Erie Council's have asked their staff to provide a staff report before they determine whether or not to endorse the Ramsar designation.

Public and/or Service Users

This designation will allow for Niagara Region to foster cooperation and partnership between the United States and Canada to ensure conservation both within and around the Niagara River Corridor. Such a partnership will allow the Niagara Parks Commission

and more broadly the Niagara region to showcase their image as an international leader in environmental and ecological sustainability.

The Ramsar designation of the Niagara River Corridor will promote increased public awareness of the River's importance through research and development.

More specifically, the Niagara Parks Commission and its partners will have the potential to lead research and development programs alongside United States representatives to improve understanding of the River and preserve its ecological importance.

As a Ramsar site, the Niagara River Corridor will also open up greater opportunities for expanding tourism programming both along the river and throughout the region.

This will also provide opportunities for members of the public to participate in consultation processes and discussions pertaining to the significance of environmental and ecological conservation of the region.

ANALYSIS

The Niagara River was deemed by the International Joint Commission (IJC) in the early part of the 19th century as the most degraded place in North America. By the 1970's there were over 700 chemical industries, steel mills, oil refineries, etc. discharging over 950 million litres of wastewater into the Niagara River each day. In response to environmental degradation around the Great Lakes, the Great Lakes Water Quality Agreement (GLWQA) was first signed in 1972 between Canada and the U.S. The goal of the agreement is to work in collaboration to restore and maintain the overall integrity of the Great Lakes Basin ecosystem. Significant progress has been made to address nutrients and toxic chemicals in the basin, however; localized concentrated effort was determined to be needed. In 1987, an amendment to the GLWQA identified 43 Areas of Concern ("hot spots") around the Great Lakes. The Niagara River was designated as one of the 43 Areas of Concerns (AOCs), resulting in the development of a Remedial Action Plan (RAP).

To date, major accomplishments have been made in the Niagara River including the establishment of modern regulatory frameworks and abatement programs, resulting in over 99% reduction of point source discharges. Significant reductions in toxic chemicals have been achieved including numerous contaminated sediment remediation projects. Removing the Niagara River from the "List" of degraded places in the Great Lakes is a priority identified in the 2012 amended GLWQA and the 2014 renewed Canada Ontario Agreement (COA). The goal is to "de-list" the river as an AOC by March 2020.

Through the cooperation of all government agencies, stakeholders and the active involvement of the public, the Niagara River has been successfully remediated from one of the most degraded places in North America to one of the most ecologically healthy and diverse areas in the world. In order to acknowledge this achievement and change

the narrative of the river, a Steering Committee has been established of key advisors and agency representatives from Canada and the US who have in-depth knowledge of the river and the region.

The Steering Committee includes representatives from The Niagara Parks Commission, the Niagara Peninsula Conservation Authority, Buffalo Niagara Riverkeeper, the Regional Institute (SUNY Buffalo), the Environmental Sustainability Research Unit (Brock University), Niagara College, members at large: Kerry Mitchel (formerly with the Canadian Consulate). The Steering Committee is recommending the pursuit of a Ramsar designation for the river in order to acknowledge its global contributions to ecological significance, rich biodiversity and healthy, resilient communities.

The Ramsar Convention is a voluntary intergovernmental treaty, committed to encouraging education and sustainable development as a means of acknowledging global wetlands. The Convention uses a broad definition of wetlands, it is defined as any substrate that is at least occasionally wet, including lakes and rivers. The purpose of this treaty signed in Ramsar, Iran, in 1971, is to promote the conservation and wise use of water-based ecosystems through local, national, and international sustainable practices.

What Ramsar Is:

- An honorary endorsement of ecological significance (an affirmation through designation of the global ecological importance the Niagara River already has).
- A voluntary, non-regulatory Convention treaty, signed by 168 countries including Canada and the United States. Canada signed in 1981 and currently has 37 Ramsar sites.
- A mechanism to encourage ecological sustainability through increased public awareness of the rivers global contribution to biodiversity and ecological goods and services. (i.e. increased tourism and recreation).
- A mechanism to encourage higher international engagement and cooperation.

What Ramsar Is Not:

- A wetland designation.

Ontario has a very specific understanding of the word “wetland” and its meaning. The Niagara River is not a wetland under the Ontario Wetland Evaluation System (i.e., from a regulatory perspective, a Ramsar designation would in no way implicate the Niagara River as a Provincially Significant Wetland). The Convention uses the term in its widest application to apply to any water related feature (land that is wet). As a result, the term translates across many languages and cultures at its broadest definition to define water-based ecosystems globally.

- The Convention is not policy or law, with no regulatory obligations imposed.

The designation will not impact, restrict or limit any user's ability to use the river whether for recreation, business or commerce. A Ramsar designation will not impose regulatory obligations or take away anyone's rights and ability to enjoy their properties.

To qualify for Ramsar designation, the site must meet at least one of the following nine criteria:

1. Is representative, rare, or unique.
2. Supports vulnerable, endangered or threatened species.
3. Supports keystone or endemic species.
4. Supports species at a critical stage in their life cycles (migration, breeding).
5. Supports 20,000 or more waterbirds.
6. Supports 1% of the individuals in a population of one species of waterbird.
7. Supports a significant proportion of indigenous fish species.
8. An important food source, spawning area, nursery or migration path for fish.
9. Supports 1% of the individuals in a population of one species or subspecies of wetland-dependent non-avian animal species.

The Ramsar Steering Committee has confirmed the Niagara River meets all nine criteria. There are 2,200 Ramsar sites globally; only 35 (1%) of these sites meet all nine criteria. The Niagara River would be the first bi-national Ramsar site in North and South America (the America's).

The Process for Designation:

- i. Selection of a site nominator. A site nominator is the appropriate administrative authority (the parties holding title to the land or water). The Canadian bed of the Niagara River is owned by the Province of Ontario (Crown). The Niagara Parks Commission (NPC) holds a lease from the "Crown" for the river bed and therefore could be an appropriate site nominator. The NPC is currently reviewing the requirements associated with being a nominator. The proposed nominator on the U.S. side is the Greenway Commission.
- ii. Completion of a nomination package which includes:
 - A completed Ramsar Information Sheet (RIS) which verifies the site (i.e. meets at least one of the nine criteria necessary for designation). The RIS has been completed for both countries; the river meets all nine criteria.
 - Written endorsement from the province of Ontario represented by the Ministry of Natural Resources and Forestry (MNRF).
 - Concurrence from the landowner (The Niagara Parks Commission).
 - Proof of engagement with stakeholders (local municipalities, users of the river, etc.)

Next Steps for Designation:

Once an appropriate nominator is chosen, written endorsements (support) must be obtained for the proposed designation from each agency that has an interest in the river. These agencies would include local municipal and regional governments, local conservation clubs, businesses, aboriginal community, etc. Written endorsement has been received from Ontario Power Generation (OPG), the Niagara Peninsula Conservation Authority, and the City of Niagara Falls, ON.

Nomination submission:

The Ramsar Steering Committee will submit the completed nomination package to the Director General, Canadian Wildlife Service, Ottawa. The Service will coordinate and facilitate the review of the nomination (approximately six months) with appropriate organizations. Once reviewed and deemed to be complete, the nomination package will be submitted to the Ramsar Convention Bureau for review in Switzerland. The Director General of the Canadian Wildlife Service will forward the nomination to the Bureau through the office of the Minister of Environment for Canada. Acceptance or rejection of nominated sites (approximately six month review) is the responsibility of the Ramsar Bureau.

Although the Niagara River Ramsar Site Steering Committee is pursuing **the first transboundary Ramsar site designation in the America's**, both Canada and the United States must submit a separate application, as each country has different procedural requirements. The transboundary designation occurs at the end of the process once each country has met the procedural requirements for designation. It is possible to designate only one side of the river. Dual designation is required for transboundary status.

In Ontario, the opportunity to endorse the Ramsar designation is being presented to the Town of Niagara-on-the-Lake, the City of Niagara Falls, the Town of Fort Erie, the Niagara Peninsula Conservation Authority, Ontario Power Generation (the largest consumer of water along the Niagara River) and the Niagara Parks Commission. To date, the Niagara Peninsula Conservation Authority, Ontario Power Generation and the City of Niagara Falls have endorsed the Ramsar designation.

ALTERNATIVES REVIEWED

Staff recommend that Regional Council endorse the proposed Ramsar designation because of the benefits that it will create for tourism, research and public awareness and the fact that there are no regulatory requirements associated with the designation.

Regional Council may choose not to endorse the Ramsar designation or may choose to defer the endorsement until such time as Niagara-on-the-Lake and Fort Erie Councils

have endorsed the Ramsar designation (these Council's have deferred their endorsements until they have received a staff report).

ORIGIN OF REPORT

This report is being brought forward by staff at the request of the Ramsar Steering Committee, who will be delivering a presentation to Planning and Development Committee on behalf of the Ramsar Steering Committee.

OTHER PERTINENT REPORTS

- PDS 39-2014, Canadian/American Partnership Approach to Promote the Niagara River Corridor as a 'Wetland' of International Importance; October 2, 2014

SUBMITTED & SIGNED BY:

Rino Mostacci, MCIP, RPP
Commissioner
Planning and Development Services

APPROVED & SIGNED BY:

Harry Schlange
Chief Administrative Officer

This report was prepared by Katelyn Vaughan, Senior Planner, Community and Long Range Planning and reviewed by Mary Lou Tanner, MCIP, RPP, Chief Planner and Director, Community and Long Range Planning

MEMORANDUM

CWCD 2021-60

Subject: Release of Confidential Report PDS 2-2021 - Implications of a Ramsar Designation on the Niagara River

Date: February 26, 2021

To: Regional Council

From: Ann-Marie Norio, Regional Clerk

At its meeting held on Thursday, February 25, 2021, Regional Council approved the following recommendation of its Planning and Economic Development Committee:

That Confidential Report PDS 2-2021, dated February 17, 2021, respecting A Matter of Advice that is Subject to Solicitor-Client privilege under s. 239(2) of the Municipal Act, 2001 - Implications of a Ramsar Designation on the Niagara River, **BE RECEIVED**; and

That the Planning and Economic Development Committee **RECOMMEND** that Confidential Report PDS 2-2021 including Appendix 1 authored by Willms & Shier dated January 18, 2021, respecting Implications of a Ramsar Designation on the Niagara River, be released publicly subject to Council approval.

Confidential Report PDS 2-2021, including Appendix 1 in accordance with the above recommendation, is attached to this memo.

Respectfully submitted and signed by

Ann-Marie Norio
Regional Clerk

Subject: A Matter of Advice that is Subject to Solicitor-Client privilege under s. 239(2) of the Municipal Act, 2001 - Implications of a Ramsar Designation on the Niagara River

Confidential Report to: Planning and Economic Development Committee

Report date: Wednesday, February 17, 2021

Recommendations

1. That the legal opinion of Willms & Shier dated January 18, 2021 regarding the implications of a Ramsar designation on the Niagara River **BE RECEIVED** for information.

Key Facts

- The purpose of this report is to provide the opinion of external legal counsel regarding the implications of a Ramsar designation on the Niagara River as directed by Regional Council.
- External legal counsel Jacquelyn E. Stevens, a certified Environmental law Specialist of the law firm Willms & Shier Environmental Lawyers LLP, was retained accordingly and has provided a legal opinion attached as **Appendix 1**.
- The Ramsar Convention is a voluntary global treaty that promotes the conservation and wise use of wetlands. It is not a regulatory instrument and has no punitive sanctions for violations.
- Designating the Niagara River as a Wetland of International Importance under the Ramsar Convention will not, on its own, change the regulatory regime currently in place for the Niagara River or its surrounding area. It is possible that a Ramsar designation could serve as an impetus for future changes to the status of the Niagara River.
- The area proposed to be designated includes only the water on the Canadian side of the Niagara River, from Lake Ontario to Lake Erie. The proposed site excludes privately-owned lands along the shoreline, private holdings that extend into the Niagara River and private railroad bridges that cross the Niagara River. The area to be designated also excludes any tributaries or their estuaries flowing into the river.
- Designating a site as a Wetland of International Importance under the Ramsar Convention offers no legal protection for the site, but the site will continue to be subject to existing mechanisms for protection and legal requirements.

- Support for the designation would represent a commitment to the conservation and wise use of the Niagara River.

Confidential Matter

This Report provides Council with legal advice that is subject to solicitor-client privilege and as such meets the requirements of section 239(2)(f) of the *Municipal Act, 2001* for consideration at a closed meeting.

Financial Considerations

There are no financial implications arising from consideration of this report.

Analysis

The Ramsar Bi-National Committee made a presentation to the Planning and Economic Development Committee on September 9, 2020 seeking the endorsement of the Region for the proposed nomination of the Niagara River as a Wetland of International Importance pursuant to the Ramsar Convention. As a result, the following resolution was approved by Regional Council on September 17, 2020;

*That the endorsement of the Ramsar designation **BE REFERRED** to staff to engage outside legal counsel to research the implications of a Ramsar designation on the Niagara River in so much as such a designation could affect the agricultural properties throughout the Region; and*

*That the research **INCLUDE** but not be limited to assessment of potential sites, their limitations and how any such designation would work with other provincial and federal agencies and policy documents and provides the Ramsar status of other agencies and organizations and municipalities in the Region of Niagara.*

In accordance with Council direction, external legal counsel Jacquelyn E. Stevens, a certified Environmental law Specialist of the law firm Willms & Shier Environmental Lawyers LLP, was retained and has provided a legal opinion attached to this report as **Appendix 1**. External legal will be in attendance at the Planning and Economic Development Committee on February 17, 2021 to answer any questions.

As indicated in the attached memo, the Ramsar Convention is a voluntary global treaty that promotes the conservation and wise use of wetlands. It is not a regulatory instrument and has no punitive sanctions for violations.

Designating the Niagara River as a Wetland of International Importance under the Ramsar Convention will not, on its own, change the regulatory regime currently in place for the Niagara River or its surrounding area.

Since the withdrawal of The Niagara Parks Commission, there is currently no lead Nominator of the site which is required to advance the designation. Based on the requirements for nomination, a site nominator is the party holding title to the subject land or water, meaning that either the NPC or the Province would likely need to agree to be the nominator for the designation to proceed, based on the proposed area to be designated. The Ramsar Steering Committee has been in communication with the Province about the designation and determining a nominator.

The specific area currently proposed to be designated includes only the water on the Canadian side of the Niagara River, from Lake Ontario to Lake Erie. The proposed site excludes privately-owned lands along the shoreline, private holdings that extend into the Niagara River and private railroad bridges that cross the Niagara River. The area to be designated also excludes any tributaries or their estuaries flowing into the River.

The designation of a site requires the implementation of various management activities in alignment with existing legislative and policy requirements (as Federal and Provincial legislation, regulations and policies continue to apply to sites designation under the Ramsar Convention as they had prior to designation); however designation does not restrict activities that are legally permitted under current regulations and there are no additional enforcement mechanisms.

In Canada, designating a site as a Wetland of International Importance under the Ramsar Convention, offers no legal protection for the site but the site will continue to be subject to existing mechanisms for protection and legal requirements.

Support for the Ramsar designation of the Niagara River would signal a commitment on the part of Niagara Region to the preservation and enhancement of the Niagara River as a wetland of international importance. The designation could be a driver for future changes to the status of the Niagara River.

Alternatives Reviewed

N/A; this report provides an external legal opinion for information purposes at the direction of Regional Council.

Relationship to Council Strategic Priorities

This report relates most closely to Objective 3.2 of the 2019-2022 Council Strategic Plan, “Environmental Sustainability and Stewardship”, reproduced below:

- A holistic and flexible approach to environmental stewardship and consideration of the natural environment, such as in infrastructure, planning and development, aligned with a renewed Official Plan;
- Drive environmental protection and addressing climate change such as through increasing waste diversion rates and reducing our carbon footprint.

Other Pertinent Reports

- PDS 39-2014
- PDS 36-2016
- CL-C 99-2020
- PDS-C 11-2020

Prepared by:

Donna Gibbs
Director Legal and Court Services
Corporate Services

Recommended by:

Doug Giles
Commissioner Planning and
Development Services

Submitted by:

Ron Tripp, P.Eng.
Acting Chief Administrative Officer

This report was reviewed by Doug Giles, Acting Commissioner, Planning & Development Services.

Appendices

Appendix 1 Memorandum from Willms & Shier Environmental Lawyers LLP dated
January 18, 2021

CONFIDENTIAL



Environment
Indigenous
Energy Law

Memorandum Privileged and Confidential

To: Niagara Region
Attn: Donna Gibbs, Director, Legal and Court Services

From: Jacquelyn Stevens and Lauren Wortsman, Willms & Shier Environmental Lawyers LLP

Date: January 18, 2021

File: 10078

Re: Designation of the Niagara River as a Wetland of International Importance under the Ramsar Convention

cc:

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1 BACKGROUND AND PURPOSE

The Convention on Wetlands of International Importance especially as Waterfowl Habitat (the “Ramsar Convention”) is an intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetlands and their resources.¹ The Ramsar Convention was adopted on February 2, 1971 in Ramsar, Iran.² It entered into force in 1975.³

Canada joined the Ramsar Convention on May 15, 1981.⁴

In 2013, the Niagara Corridor Ramsar Site Steering Committee (“Ramsar Steering Committee”) was established to oversee and provide assistance in applying to designate Niagara River as a Wetland of International Importance under the Ramsar Convention.

On September 17, 2020, the Regional Council for the Niagara Region passed the following resolution:

That the endorsement of the Ramsar designation **BE REFERRED** to staff to engage outside legal counsel to research the implications of a Ramsar designation on the Niagara River in so much as such a designation could affect the agricultural properties throughout the Region; and

That the research **INCLUDE** but not be limited to assessment of potential sites, their limitations and how any such designation would work with other provincial and federal agencies and policy documents and provides the Ramsar status of other agencies and organizations and municipalities in the Region of Niagara.

Niagara Region retained Willms & Shier Environmental Lawyers LLP to address the questions posed by this resolution.

As such, this memorandum addresses the following three questions:

- 1 What are the implications of designating the Niagara River as a Wetland of International Importance under the Ramsar Convention and how will designation affect the agricultural properties in the Niagara Region?
- 2 How will the designation of the Niagara River under the Ramsar Convention work with other provincial and federal legislation and policies?
- 3 What is the status of support for or opposition to designation of the Niagara River under the Ramsar Convention by other municipalities, agencies, and organizations in the Niagara region?

¹ Ramsar, <https://www.ramsar.org/>.

² Ramsar Handbook 1, *An Introduction to the Convention on Wetlands*, 5th ed (2016) at 8, https://www.ramsar.org/sites/default/files/documents/library/handbook1_5ed_introductiontoconvention_e.pdf [Ramsar Handbook 1”].

³ *Ibid.*

⁴ Ramsar, “Canada”, <https://www.ramsar.org/wetland/canada>.



Environment
 Indigenous
 Energy Law

2 CONCLUSIONS

- ◆ The mission of the Ramsar Convention is to promote “the conservation and wise use of all wetlands through local, regional and national actions and international cooperating, as a contribution towards achieving sustainable development throughout the world.”
- ◆ Designating the Niagara River as a Wetland of International Importance under the Ramsar Convention will not, on its own, change the regulatory regime currently in place for the Niagara River, or the area around the Niagara River.
- ◆ The Ramsar Convention is a voluntary treaty. It is not a regulatory instrument and it has no punitive sanctions for violations of or defaulting upon its commitments.
- ◆ The area proposed to be designated includes only the water on the Canadian side of the Niagara River, from Lake Ontario in the north to Lake Erie in the South. The site excludes privately-owned land along the shoreline, private holdings that extend into the Niagara River, and private railroad bridges that cross the Niagara River. The area to be designated also excludes any tributaries or their estuaries flowing into the Niagara River.
- ◆ The Niagara Peninsula Conservation Authority (“NPCA”) passed a motion on November 20, 2019 to endorse and support the proposed nomination of the Niagara River as a Ramsar site. The NPCA confirmed in 2018 that it will continue to only use the existing Land Use Planning and regulatory frameworks when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage policies are satisfied.
- ◆ The Niagara Parks Commission (“NPC”) initially supported the designation and was to be the lead nominator during the designation process. However, on September 10, 2020, NPC Board members voted against acting as the lead nominator for the designation and to step down from participating in the Ramsar Steering Committee.
- ◆ A Ramsar designation could be the driver for future changes to the Niagara River’s status, such as a change from designation as a Coastal Wetland to a Significant Coastal Wetland under Ontario’s Provincial Policy Statement.
- ◆ While Ramsar designation does not restrict the activities that municipalities are legally entitled to engage in under current legislation and regulations, Ramsar designation may require additional management activities. Determining exactly what future management, legislative and policy requirements Ramsar designation may impose on municipalities is beyond the scope of this memorandum.
- ◆ A Ramsar designation would serve to confirm Niagara Region’s commitment to environmental stewardship and healthy living policies both currently in place and being developed as part of the New Niagara Region Official Plan review.



2.1 QUESTION 1: IMPLICATIONS OF DESIGNATING THE NIAGARA RIVER AS A WETLAND OF INTERNATIONAL IMPORTANCE

- ◆ Designating the Niagara River as a Wetland of International Importance under the Ramsar Convention will not, on its own, change the regulatory regime currently in place for the Niagara River, or the area around the Niagara River.
- ◆ The mission of the Ramsar Convention is to promote “the conservation and wise use of all wetlands through local, regional and national actions and international cooperating, as a contribution towards achieving sustainable development throughout the world.”⁵
- ◆ The Ramsar Convention is a voluntary treaty. It is not a regulatory instrument and it has no punitive sanctions for violations of or defaulting upon its commitments.⁶
- ◆ In Canada, designating a site as a Wetland of International Importance under the Ramsar Convention offers no legal protection for the site.⁷
- ◆ The Government of Canada and the Government of Ontario confirmed that designating the Niagara River as a Wetland of International Importance under the Ramsar Convention carries no regulatory implications.⁸ The Government of Canada confirmed this opinion as recently as June 2020. As far as we are aware, the Government of Ontario has not confirmed this opinion since September 2015. Given changes in political leadership and changes to the *Conservation Authorities Act*,⁹ it is recommended that an updated opinion be sought from the Government of Ontario. We understand that the Ramsar Steering Committee has been in communication with the Government of Ontario about the designation and determining a Nominator.¹⁰

⁵ Ramsar Handbook 1, *supra* note 2 at 2.

⁶ *Ibid* at 14.

⁷ Government of Canada, “Management of Canadian Ramsar Sites” (1996) at 3, <http://nawcc.wetlandnetwork.ca/Management%20of%20Can%20Ramar.pdf> [Canada, “Management of Ramsar Sites”].

⁸ Letter from Environment Canada to Community & Development Services, Town of Niagara-on-the-Lake dated September 10, 2015 in the NPCA Full Authority Meeting Agenda (26 March 2018) at 35, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf; Letter from Environment and Climate Change Canada to NPCA dated November 8, 2019 in the NPCA Full Authority Meeting Agenda (20 November 2019) at 6, https://npca.ca/images/uploads/board_files/F.A._AGENDA_20191120_.pdf; Letter from Jacey Scott to Jim Bradley dated June 10, 2020 in the Niagara Region Planning and Development Services’ Report CWCD 248-2020 to Regional Council (11 September 2020) at 34, <https://www.niagararegion.ca/council/Council%20Documents/2020/council-correspondence-sep-11-2020.pdf>; Letter from Ontario Ministry of Natural Resources and Forestry to Community & Development Services, Town of Niagara-on-the-Lake dated September 16, 2015 in the NPCA Full Authority Meeting Agenda (26 March 2018) at 37, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf; Niagara Corridor Ramsar Site Steering Committee, “Niagara River Proposed Ramsar Designation: Frequently Asked Questions” in the Town of Niagara-on-the-Lake’s “Information Report to Council” (24 March 2016) at 38, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf) [“Ramsar Steering Committee FAQ”];

⁹ RSO 1990, c C27.

¹⁰ Telephone call between Jocelyn Baker and Lauren Wortsman on January 15, 2021.



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- ◆ While the area proposed to be designated under the Ramsar Convention initially included some protected greenspaces and riparian areas along the Niagara River,¹¹ these areas have since been excluded from designation. The area proposed to be designated includes only the water on the Canadian side of the Niagara River, from Lake Ontario in the north to Lake Erie in the South.¹² The site excludes privately-owned land along the shoreline, private holdings that extend into the Niagara River, and private railroad bridges that cross the Niagara River.¹³ The area to be designated also excludes any tributaries or their estuaries flowing into the Niagara River.¹⁴
- ◆ Guidance documents on implementing the Ramsar Convention set out various management activities for Ramsar sites. Existing federal and provincial legislation and policies may already require governments and management bodies to carry out these activities. To the extent that municipalities are compliant with existing wetlands legislation and policies, there may be no net new requirements with which to comply. Where municipalities have not implemented strategies for compliance with existing wetlands legislation and policies, designation may create a need for enhanced wetland management given that designation signals a higher level of commitment to preservation of the wetland. However, Ramsar designation itself would not create additional enforcement mechanisms for failure to implement wetland management.
- ◆ While a Ramsar designation does not restrict the activities that municipalities are legally entitled to engage in under current regulations, Ramsar designation may require additional management responsibilities. Determining exactly what future management activities and legislative and policy requirements a Ramsar designation may impose on municipalities is beyond the scope of this memorandum.

2.2 QUESTION 2: HOW DESIGNATION WORKS WITH FEDERAL AND PROVINCIAL LEGISLATION AND POLICIES

- ◆ Both the Federal Policy on Wetland Conservation and Ontario’s Wetland Conservation Strategy for Ontario 2017-2030 contain commitments promoting the Ramsar Convention.¹⁵

¹¹ NPCA Report No 32-18, “Designation of the Niagara River as a RAMSAR Site” dated March 26, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018), at 32, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

¹² Jocelyn Baker, Jajean Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11, <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>. Telephone call between Jocelyn Baker and Lauren Wertsman on January 15, 2021.

¹³ Jocelyn Baker, Jajean Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11 <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>.

¹⁴ Email from Jocelyn Baker to Lauren Wertsman dated January 15, 2021 re Niagara River Ramsar – Presentation.

¹⁵ Government of Canada, “The Federal Policy on Wetland Conservation” (1991) at 11, <http://nawcc.wetlandnetwork.ca/Federal%20Policy%20on%20Wetland%20Conservation.pdf>; Government of Ontario, “A Wetland Conservation Strategy for Ontario 2017–2030 Framework” at 35, https://files.ontario.ca/mnr_17-075_wetlandstrategy_final_en-accessible.pdf.



- ◆ Ramsar sites in Canada continue to be subject to existing mechanisms for protection, including a site’s existing status within areas such as national or provincial parks, national wildlife areas, and federal or provincial/territorial bird sanctuaries.¹⁶ For example,
 - Point Pelee in Ontario was designated as a Ramsar site on May 27, 1987.¹⁷ Point Pelee is administered as a National Park under the *Canada National Parks Act*.¹⁸ Restrictions on land use in Point Pelee result from its designation as a National Park, rather than its designation under the Ramsar Convention.
 - Long Point in Ontario was designated as a Ramsar site on May 24, 1982. Lands administered by the Canadian Wildlife Service have been designated as National Wildlife Areas under the *Canada Wildlife Act*¹⁹ since 1973. Lands administered by the Ontario Ministry of Natural Resources and Forestry (“MNR”) are designated either as provincial park or controlled through the *Public Lands Act*.²⁰ The Long Point Region Conservation Authority owns and administers its property under the *Conservation Authorities Act*. The wetlands of Long Point are also zoned as Environmental Protection Areas under the official plan for the Regional Municipality of Haldimand-Norfolk.²¹
 - The Fraser River Delta in British Columbia was first designated under the Ramsar Convention in 1982. The designation was expanded in 2012 to cover additional wetland areas. The site comprises of 70% cultivated farmland.²² The site is protected as a National Wildlife Area under the *Canada Wildlife Act* and as a Migratory Bird Sanctuary under the *Migratory Birds Convention Act*.²³ A portion of the Delta falls within the framework of the multilateral/intergovernmental Fraser River Estuary Management Program, which is aimed at sustaining the Delta’s natural productivity.²⁴ Non-wetland areas within the site continue to provide products and services of long-term interest to local communities.²⁵ For example, hay crops are harvested on agricultural land within the boundaries of the Alaksen National Wildlife Area in the Delta.²⁶ Such regulated land uses are part of the site’s applicable land use management planning process.²⁷

¹⁶ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 3.

¹⁷ Ramsar Sites Information Service, Point Pelee, <https://rsis Ramsar.org/ris/368>.

¹⁸ SC 2000, c 32; Ramsar, *Information Sheet on Ramsar Wetlands*, “Canada 26: Point Pelee National Park” at page 2, <https://rsis Ramsar.org/RISapp/files/RISrep/CA368RIS.pdf>.

¹⁹ RSC, 1985, c W-9.

²⁰ RSO 1990, c P43.

²¹ Ramsar Information Sheet, “Canada 2: Long Point National Wildlife Ontario” at page 5, <https://rsis Ramsar.org/RISapp/files/RISrep/CA237RIS.pdf>.

²² Ramsar Information Sheet, “Canada 9: Alaksen, British Columbia”, at page 1, https://rsis Ramsar.org/RISapp/files/RISrep/CA243RISformer2001_EN.pdf.

²³ SC 1994, c 22; *Ibid*.

²⁴ Ramsar Information Sheet, “Canada 9: Alaksen, British Columbia”, at page 1, https://rsis Ramsar.org/RISapp/files/RISrep/CA243RISformer2001_EN.pdf.

²⁵ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 3.

²⁶ *Ibid*.

²⁷ *Ibid*.



- ◆ Designation of the Niagara River as a Ramsar site will not directly cause changes to the management of the Niagara River under federal, provincial and municipal wetlands legislation or policy.
- ◆ The Niagara River is currently designated as a Coastal Wetland under Ontario’s Provincial Policy Statement, 2020.²⁸ Designation of the Niagara River as a Wetland of International Importance under the Ramsar Convention could be the driver for the Province to designate the Niagara River as a Significant Coastal Wetland.²⁹ Such a change in policy designation could create additional restrictions for the Niagara River. In this way, designation of the Niagara River under the Ramsar Convention could result, albeit not directly, in changes to the regulation of the Niagara River and surrounding area.

2.3 QUESTION 3: STATUS OF SUPPORT FOR DESIGNATION BY MUNICIPALITIES, AGENCIES, AND ORGANIZATIONS

- ◆ The NPCA passed a motion on November 20, 2019 to endorse and support the proposed nomination of the Niagara River as a Ramsar site.³⁰ The NPCA confirmed in 2018 that it will continue to only use the existing Land Use Planning and regulatory frameworks when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage policies are satisfied.³¹
- ◆ Bill 229 was approved by the Government of Ontario on December 8, 2020. Bill 229 makes changes to various legislation, including the *Conservation Authorities Act*. These changes do not directly impact the definition of “wetlands” or NPCA’s Land Use Planning and regulatory frameworks for reviewing development applications.
- ◆ The NPC initially supported the designation and was to be the lead nominator during the designation process. However, on September 10, 2020, NPC Board members voted against acting as the lead nominator for the designation and to step down from participating in the Ramsar Steering Committee.³²

²⁸ Government of Ontario, “Provincial Policy Statement, 2020 under the *Planning Act*” (1 May 2020).

²⁹ Memorandum from Callum Shedden to John Henricks re Opinion – Potential Impacts of RAMSAR Wetland Designation for Niagara River (21 March 2016) at 47, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf).

³⁰ NPCA Full Authority Meeting Minutes (20 November 2019), at 3, https://npca.ca/images/uploads/board_files/FAMinutes_11202019.pdf.

³¹ Letter from Niagara Peninsula Conservation Authority to the Director of Community & Development Services, Town of Fort Erie (8 October 2015) at 1, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf); NPCA Report No 32-18, “Designation of the Niagara River as a RAMSAR Site” dated March 26, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018), at 31, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

³² Allan Benner, “Niagara Parks slammed for lack of support for Ramsar designation”, St. Catherines Standard (22 September 2020), <https://www.stcatharinesstandard.ca/news/niagara-region/2020/09/21/niagara-parks-slammed-for-lack-of-support-for-ramsar-designation.html>.



- If the Niagara River is to be designated under the Ramsar Convention, a new nominator will need to be identified. Based on the requirements for nomination (see section 3.1.2.3 of this memorandum, below), a site nominator is the party holding title to land or water. Accordingly either the Province of Ontario would need to be the nominator, or the NPC would need to change its position and be the nominator. We understand that the Ramsar Steering Committee has communicated with the Government of Ontario concerning the appropriate nominator.³³
- ♦ The Town of Fort Erie has supported the designation of the Niagara River since 2015.³⁴
- ♦ The City of Niagara Falls supported the designation of the Niagara River in 2015.³⁵ The current position of the City of Niagara Falls and the outcome of a closed meeting held on October 6, 2020 relating to Ramsar designation is unknown.³⁶
- ♦ The Town of Niagara-on-the-Lake's Council initially supported the designation in principle in July 2015.³⁷ However, the Agricultural Advisory Committee recommended that Council not support the designation on February 3, 2016.³⁸
- ♦ Niagara Region's current Official Plan contains commitments to environmental stewardship and healthy living policies.³⁹ A Natural Environment Background Study conducted in the development of a new Official Plan states that the Region's policies related to meeting objectives for a healthy landscape should be updated to reflect current Provincial Policy, including by reviewing targets for wetland cover.⁴⁰

³³ Telephone call between Jocelyn Baker and Lauren Wortsman on January 15, 2021.

³⁴ The Municipal Corporation of the Town of Fort Erie, Council-in-Committee Meeting Minutes (2 November 2015) at 10, [http://www.forterrie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/\\$File/Nov2c-minutes.pdf](http://www.forterrie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/$File/Nov2c-minutes.pdf).

³⁵ Niagara Falls, Regular Council Meeting Minutes (28 July 2015) at 3, <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=753625&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

³⁶ City of Niagara Falls, Resolution (6 October 2020), <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=1024773&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

³⁷ Niagara-on-the-Lake, Community and Development Advisory Committee Minutes (27 July 2015), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/BF5BF13826D2CAA28525783E006E878E/E8498B83D495908385257E8F004DDAB2>.

³⁸ Niagara-on-the-Lake, Agricultural Advisory Committee Minutes (3 February 2016) at 3, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcfb6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/\\$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203,%202016.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcfb6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203,%202016.pdf).

³⁹ Niagara Region, Official Plan (2014), Chapter 7: Natural Environment at 7-6, <https://www.niagararegion.ca/living/icp/pdf/2015/Chapter-7-Natural-Environment.pdf>.

⁴⁰ North-South Environmental Inc, "New Niagara Official Plan, Natural Environment Work Program: Natural Environment Background Study" (26 September 2019), at 171, <https://www.niagararegion.ca/projects/rural-and-natural-systems/pdf/natural-environment-work-program-study.pdf>.



3 DISCUSSION

3.1 THE RAMSAR CONVENTION

3.1.1 PURPOSE AND KEY COMPONENTS

The mission of the Ramsar Convention is to promote “the conservation and wise use of all wetlands through local, regional and national actions and international cooperating, as a contribution towards achieving sustainable development throughout the world.”⁴¹ Governments that join the Ramsar Convention (called “Contracting Parties”) are expressing their willingness to make a commitment to reversing the history of wetland loss and degradation.⁴²

The Ramsar Convention defines “wetlands” as “areas of marsh, fen, peatland or water, whether natural or artificial, permanent or temporary, with water that is static or flowing, fresh, brackish or salt, including areas of marine water the depth of which at low tide does not exceed six metres”.⁴³

States that join the Ramsar Convention accept four main commitments:⁴⁴

- 1 Designate at least one wetland at the time of accession for inclusion in the List of Wetlands of International Importance (the “List”) and promote its conservation⁴⁵
- 2 Include wetland conservation considerations in national planning (e.g. land-use planning, water-resource management planning, or development planning)⁴⁶
- 3 Establish nature reserves in wetlands, whether or not they are considered to be internationally important and included in the List, and promote training in the fields of wetland research and wetland management,⁴⁷ and
- 4 Consult with other Contracting Parties about implementation of the Convention, especially in regard to trans-boundary wetlands, shared water systems, and shared species.⁴⁸

⁴¹ Ramsar Handbook 1, *supra* note 2 at 2.

⁴² *Ibid* at 12.

⁴³ Convention on Wetlands of International Importance especially as Waterfowl Habitat, Ramsar, Iran, 2.2.1971, as amended by the Protocol of 3.12.1982, and the Amendments of 28.5.1987, Paris, 13 July 1994, Director, Office of International Standards and Legal Affairs, United Nations Educational, Scientific and Cultural Organization (UNESCO), at Article 1.1, https://www.ramsar.org/sites/default/files/documents/library/current_convention_text_e.pdf [“Ramsar Convention”].

⁴⁴ Ramsar Handbooks, *supra* note 2 at 14.

⁴⁵ Ramsar Convention, *supra* note 43, art 2.4.

⁴⁶ *Ibid*, art 3.1.

⁴⁷ *Ibid*, art 4.1.

⁴⁸ *Ibid*, art 5.



3.1.2 IMPLEMENTATION OF THE RAMSAR CONVENTION

3.1.2.1 The Area Proposed to be Designated

The area of the Niagara River proposed to be designated under the Ramsar Convention includes only the water on the Canadian side of the Niagara River, from Lake Ontario in the north to Lake Erie in the South.⁴⁹ The site excludes privately-owned land along the shoreline, private holdings that extend into the Niagara River, and private railroad bridges that cross the Niagara River.⁵⁰ The area to be designated also excludes any tributaries or their estuaries flowing into the Niagara River.⁵¹

In the past, the area proposed to be designated included some protected greenspaces and riparian areas along the Niagara River.⁵² Those areas have since been removed from the area proposed to be designated. Designation now only covers water in the Niagara River.⁵³

3.1.2.2 Appropriate Administrative Authority

The head of state or government of each Contracting Party designates a national agency to act as the implementing agency of the Convention in that country.⁵⁴ Canada’s implementation authorities are Stewardship and Regional Operations/Canadian Wildlife Service/Environment and Climate Change Canada (“ECCC”).⁵⁵

The Government of Canada’s Nomination and Listing of Wetlands of International Importance in Canada: Procedures Manual (“Procedures Manual”) provides guidelines for the nomination of sites in Canada to the List. The Procedures Manual states that nominations can be made only by the appropriate administrative authority or authorities for a site.⁵⁶ For the purpose of nominating sites, the appropriate

⁴⁹ Jocelyn Baker, Jajeon Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11, <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>. Telephone call between Jocelyn Baker and Lauren Wortsman on January 15, 2021.

⁵⁰ Jocelyn Baker, Jajeon Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11 <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>.

⁵¹ Email from Jocelyn Baker to Lauren Wortsman dated January 15, 2021 re Niagara River Ramsar – Presentation.

⁵² NPCA Report No 32-18, “Designation of the Niagara River as a RAMSAR Site” dated March 26, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018), at 32, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

⁵³ Jocelyn Baker, Jajeon Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11, <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>; Email from Jocelyn Baker to Lauren Wortsman dated January 15, 2021 re Niagara River Ramsar – Presentation.

⁵⁴ Ramsar Handbook 1, *supra* note 2 at 31.

⁵⁵ Canada, “National Report to COP13”, at 1, https://www.ramsar.org/sites/default/files/documents/importftp/COP13NR_Canada_e.pdf.

⁵⁶ Government of Canada, Nomination and Listing of Wetlands of International Importance in Canada: Procedures Manual (updated 1999) at 3, <http://nawcc.wetlandnetwork.ca/Nomination%20and%20Listing%201994.pdf>.



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administrative authority is defined as the party holding title to the land or water area.⁵⁷ This may include federal, provincial, territorial, private, corporate, or other non-government authorities.⁵⁸

Nominations must have the endorsement and/or concurrence from the government of the province or territory in which the site is located.⁵⁹ The Procedures Manual affirms the Canadian Wildlife Service’s policy to promote the nomination of proposed sites only if there is concurrence from the province or territory in which the site is located.⁶⁰

3.1.2.3 Process for Designating a Site under the Ramsar Convention

The process for designating a Ramsar site is as follows:

- 1 Selection of a site nominator⁶¹
 - a) A site nominator is the appropriate administrative authority (i.e., the party holding title to land or water).⁶² The Canadian bed of the Niagara River is owned by the Province of Ontario, and the NPC holds a lease from the Province of Ontario for several parts of the river bed.⁶³ Thus, the Province or the NPC would be an appropriate site nominator.
- 2 Completion of Canadian nomination package requirements⁶⁴
 - a) The following elements are required:
 - i. A completed Ramsar Information Sheet (“RIS”), verifying the site meets the criteria for designation.⁶⁵ The Ramsar Steering Committee indicates that a RIS verifying the Niagara River meets the criteria has been completed.⁶⁶
 - ii. Written endorsement from the Province of Ontario, represented by the MNRF.⁶⁷ As of June 18, 2020, written endorsement from the MNRF was pending.⁶⁸

⁵⁷ *Ibid.*

⁵⁸ *Ibid.*

⁵⁹ *Ibid.*

⁶⁰ *Ibid* at 2.

⁶¹ Niagara River Remedial Action Plan, “Ramsar FAQ”, <https://ourniagarariver.ca/ramsar/ramsar-faq/> [“Remedial Action Plan FAQ”]; Ramsar Steering Committee FAQ, *supra* note 8 at 40.

⁶² *Ibid.*

⁶³ Ramsar Steering Committee, *supra* note 8 at 40; Kim Diana Connoly, Professor and Vice Dean, SUNY Buffalo Law School, Report to John Hennicks, Director of Community & Development Services, Town of Niagara-on-the-Lake re the Ramsar Designation and the Niagara River (1 September 2015) at 4, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/8f2cb5f9f347ebd785257e92006d27ff/\\$FILE/AppendixB_Letter%20from%20SUNY%20Buffalo%20re%20Ramsar%20to%20Niagara-on-the-Lake%20Sept%202015.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/8f2cb5f9f347ebd785257e92006d27ff/$FILE/AppendixB_Letter%20from%20SUNY%20Buffalo%20re%20Ramsar%20to%20Niagara-on-the-Lake%20Sept%202015.pdf) [“Connoly Report”].

⁶⁴ Remedial Action Plan FAQ, *supra* note 61; Ramsar Steering Committee FAQ, *supra* note 8 at 40.

⁶⁵ *Ibid.*

⁶⁶ Ramsar Site Steering Committee FAQ, *supra* note 8 at 40; Connoly Report, *supra* note 63 at 4.

⁶⁷ Remedial Action Plan FAQ, *supra* note 61; Ramsar Steering Committee FAQ, *supra* note 8 at 40.



iii. Agreement from the landowner (NPC and the Province of Ontario).⁶⁹

b) The following elements are preferred:

i. Letters of support from stakeholders (e.g. federal, provincial, regional municipalities, Indigenous communities, river users, etc.) would strengthen the nomination.⁷⁰

3.1.2.4 Niagara River Corridor Ramsar Steering Committee

The Ramsar Steering Committee was established in the fall of 2013 to oversee and provide technical advice and assistance with the Ramsar designation application for the Niagara River. The Ramsar Steering Committee includes members from the Western New York Land Conservancy, the NPC, the NPCA, the Regional Institute (SUNY Buffalo), the Environmental Sustainability Research Unit (Brock University), Niagara College, Buffalo Niagara Riverkeeper, and member at large Kerry Mitchell (formerly with the Canadian Consulate).⁷¹

The Ramsar Steering Committee will submit the completed nomination package to the Canadian Wildlife Service.⁷² The Canadian Wildlife Service will then coordinate the review of the nomination with appropriate organizations. Once deemed to be complete, the nomination package will be submitted to the Ramsar Secretariat by ECCC.⁷³ Acceptance or rejection of nominated sites is the responsibility of the Ramsar Secretariat.⁷⁴ If approved, the Niagara River would be added to the Ramsar List.⁷⁵

This process can take between 2-6 months.⁷⁶ All past Canadian nominations submitted to the Secretariat have been approved as Ramsar sites.⁷⁷

3.1.3 MANAGEMENT OF RAMSAR SITES

Article 3.1 of the Convention requires contracting parties to “formulate and implement their planning so as to promote the conservation of the wetlands included in the List, and as far as possible the wise use of wetlands in their territory.”⁷⁸ Often Ramsar sites in Canada are managed by the Nominator and various provincial, municipal and third party interested stakeholders.

⁶⁸ Report from Niagara River Ramsar Designation Binational Steering Committee to Office of the Regional Chair, Jim Bradley (18 June 2020) at 4, <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11170>.

⁶⁹ Remedial Action Plan FAQ, *supra* note 61; Ramsar Steering Committee, *supra* note 8 at 40.

⁷⁰ *Ibid.*

⁷¹ Connolly Report, *supra* note 63 at 2.

⁷² Remedial Action Plan FAQ, *supra* note 61.

⁷³ *Ibid.*

⁷⁴ *Ibid.*

⁷⁵ *Ibid.*

⁷⁶ *Ibid.*

⁷⁷ *Ibid.*

⁷⁸ Ramsar Convention, *supra* note 43, art 3.1.



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The Ramsar Handbooks provide guidance on the various steps that contracting parties are recommended to take to implement the Ramsar Convention. For example, management of a Ramsar site includes:

- 1 Describing the site at the time of designation
 - a) using the RIS, a detailed site map, and the ecological character of the site
- 2 Development of a management plan for the site
 - a) implement a monitoring regime for regular review of the management plan
 - b) set out management actions and monitoring regime for maintenance of ecological character
 - c) develop in consultation with stakeholders, leading to the establishment of a cross-sectoral management committee
- 3 Management actions
 - a) regular monitoring
 - b) design restoration or rehabilitation plans, as appropriate
 - c) advise the Conference of the Contracting Parties of the changes in ecological character of the site and report on revised management plans
- 4 Monitoring and impact assessments
 - a) a Wetlands Risk Assessment and impact assessment may be required.⁷⁹

3.2 QUESTION 1: IMPLICATIONS OF DESIGNATING THE NIAGARA RIVER AS A WETLAND OF INTERNATIONAL IMPORTANCE

3.2.1 DESIGNATION CARRIES NO REGULATORY IMPLICATIONS

The Ramsar Convention is a voluntary treaty. It is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments.⁸⁰ In Canada, designating a site as a Wetland of International Importance under the Ramsar Convention offers no legal protection for the site.⁸¹

Article 2.3 of the Convention states that “The inclusion of a wetland in the List does not prejudice the exclusive sovereign rights of the Contracting Party in whose territory the wetland is situated.”⁸²

⁷⁹ Ramsar Handbook 18, “Managing Wetlands”, 4th ed (2010) at 10, <https://www.ramsar.org/sites/default/files/documents/pdf/lib/hbk4-18.pdf> [“Ramsar Handbook 18”].

⁸⁰ Ramsar Handbook 1 *supra* note 2 at 14.

⁸¹ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 3.



Both the federal government and the Government of Ontario have confirmed that designating the Niagara River as a Wetland of International Importance carries no regulatory implications.

On September 10, 2015, Grant Hogg, Director, Habitat Conservation Management at (then) Environment Canada wrote to the Director of Community & Development Services at the Town of Niagara-on-the-Lake to clarify the regulatory implications of Ramsar designation in Canada. The letter states:

- ♦ “designation as a Ramsar site in and of itself offers no legal protection”⁸³
- ♦ “Ramsar designation is voluntary and carries with it no financial support or regulatory implications”⁸⁴
- ♦ Ramsar designation “affects neither the management regime for these areas nor resource use within them, nor for lands adjacent to the Ramsar site”,⁸⁵ and
- ♦ “At Canadian Ramsar sites, typical activities that occur include recreational activities such as boating, bird watching, consumptive activities such as hunting and fishing, and agriculture.”⁸⁶

ECCC affirmed this position in a November 8, 2018 letter from Grant Hogg to the Chair and Board Members of the NPCA⁸⁷ and a June 10, 2020 letter from Jacey Scott to Jim Bradley, Regional Chair of the Niagara Region.⁸⁸

On September 16, 2015, Joad Durst, Resource Management Supervisor at the Guelph District of the MNR wrote a letter to the Director of Community & Development Services at the Town of Fort Erie stating:

- ♦ “A Ramsar designation will not impose any regulatory measures or legally enforceable restrictions on landowners or affect sovereignty rights under the treaty”⁸⁹

⁸² Ramsar Convention, *supra* note 43, art 2.3.

⁸³ Letter from Environment Canada to Community & Development Services, Town of Niagara-on-the-Lake dated September 10, 2015 in the NPCA Full Authority Meeting Agenda (26 March 2018) at 35, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

⁸⁴ *Ibid.*

⁸⁵ *Ibid.*

⁸⁶ *Ibid.*

⁸⁷ Letter from Environment and Climate Change Canada to NPCA dated November 8, 2019 in the NPCA Full Authority Meeting Agenda (20 November 2019) at 6, https://npca.ca/images/uploads/board_files/F.A . AGENDA 20191120 .pdf.

⁸⁸ Letter from Jacey Scott to Jim Bradley dated June 10, 2020 in the Niagara Region Planning and Development Services’ Report CWCD 248-2020 to Regional Council (11 September 2020) at 34, <https://www.niagararegion.ca/council/Council%20Documents/2020/council-correspondence-sep-11-2020.pdf>

⁸⁹ Letter from Ontario Ministry of Natural Resources and Forestry to Community & Development Services, Town of Niagara-on-the-Lake dated September 16, 2015 in the NPCA Full Authority Meeting Agenda (26 March 2018) at 37, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.



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- ◆ “The treaty is clear; the Ramsar Convention is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments”⁹⁰
- ◆ “A Ramsar wetland designation is not the same as a wetland designated by the MNRF and therefore cannot be used as part of natural heritage feature regulation, or as criteria to protect natural systems”⁹¹
- ◆ “The designation of a Ramsar site in and of itself offers no legal protection”,⁹² and
- ◆ “the Ramsar designation of wetland is voluntary and carries no regulatory implications.”⁹³

Wetlands remain part of MNRF’s mandate and the Ramsar Steering Committee has communicated with the Province about the designation of the Niagara River.⁹⁴

The NPCA wrote letters to the Town of Fort Erie and the Town of Niagara-on-the-Lake on October 8, 2015 and November 30, 2015, respectively, confirming that the NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage policies are satisfied.⁹⁵

The NPCA confirmed this opinion in a report to its Board of Directors dated March 26, 2018.⁹⁶

The letters and reports from ECCC, the MNRF, and the NPCA are attached to this memorandum in **Appendix A.**

The Ramsar Steering Committee stated that a Ramsar designation:

- ◆ will not impose any regulatory measures or legally enforceable restrictions on landowners⁹⁷
- ◆ will not impact, restrict or limit the use of the Niagara River for recreation, business or commerce,⁹⁸ and

⁹⁰ *Ibid.*

⁹¹ *Ibid* at 38.

⁹² *Ibid.*

⁹³ *Ibid.*

⁹⁴ Government of Ontario, “Wetlands Conservation”, <https://www.ontario.ca/page/wetland-conservation>; Telephone call between Jocelyn Baker and Lauren Wortsman on January 15, 2021.

⁹⁵ Letter from Niagara Peninsula Conservation Authority to the Director of Community & Development Services, Town of Fort Erie (8 October 2015) at 1, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf); Letter from Niagara Peninsula Conservation Authority to the Agricultural Committee, Town of Niagara-on-the-Lake dated November 30, 2015 in the NPCA Full Authority Meeting Agenda, at 39, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

⁹⁶ NPCA Report No 32-18, “Designation of the Niagara River as a RAMSAR Site” dated March 26, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018), at 31, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.

⁹⁷ Ramsar Steering Committee FAQ, *supra* note 8 at 38.



- ♦ will not take away anyone’s rights and ability to enjoy their properties.⁹⁹

Designation under the Ramsar Convention does not preclude development at Ramsar sites. For example, the Oak Hammock Marsh was designated as a Ramsar site in 1987. In 1991, a development was proposed for the building of an interpretive centre. Ramsar’s Secretary General provided a letter in support of the project, stating that “Development is not precluded at Ramsar sites, but contracting parties are obliged to promote the conservation of these areas and to provide information to the Ramsar Bureau if the ecological character of such a site has changed, is changing, or is likely to change as a result of technological developments, pollution or other human interference.”¹⁰⁰

Additionally, a site nominator can withdraw a site from the List at any point without penalty.¹⁰¹ Support or endorsement of a Ramsar site can also be withdrawn at any time, even after designation.¹⁰²

3.2.2 MANAGEMENT ACTIVITIES OF RAMSAR SITES REQUIRED IN EXISTING REGULATION

As discussed in section 3.1.1 of this memorandum, the designation of a site under the Ramsar Convention requires the implementation of various management activities, such as the creation of a management plan and ongoing monitoring. While the creation, implementation, and maintenance of management activities may require time and resources, many of these management activities are required in existing legislation and policies. For example, the following legislation and policies support wetland conservation and may contain requirements that apply to wetlands regardless of designation under the Ramsar Convention:

- ♦ Federal Policy on Wetland Conservation
- ♦ Federal Water Policy
- ♦ Federal Policy on Land Use
- ♦ Fisheries and Oceans Canada Policy for the Management of Fish Habitat
- ♦ Federal Environmental Quality Policy Framework
- ♦ *Great Lakes Protection Act, 2015*¹⁰³

⁹⁸ *Ibid.*

⁹⁹ *Ibid.*

¹⁰⁰ Jocelyn Baker, Jajean Rose-Burney and Kerry Mitchell, “Niagara River Ramsar Presentation” at slide 11, <https://pub-niagararegion.escribemeetings.com/filestream.ashx?DocumentId=11169>; Legislative Assembly of Manitoba, Standing Committee on Public Utilities and Natural Resources, 2nd Sess, 35th legislature (21 June 1991) at 1330, https://www.gov.mb.ca/legislature/hansard/35th_2nd/hansardpdf/punr8.pdf.

¹⁰¹ Ramsar Binational Steering Committee, “Niagara River Ramsar Designation Information Sheet” (January 2021) at 2.

¹⁰² *Ibid.*

¹⁰³ SO 2015, c 24.



- ♦ *Conservation Land Act*¹⁰⁴
- ♦ *Planning Act*¹⁰⁵
- ♦ *Greenbelt Act, 2005*¹⁰⁶
- ♦ Ontario's Provincial Policy Statement Ontario's Wetland Conservation Strategy for Ontario 2017-2030.¹⁰⁷

There are also several policies applicable specifically to agriculture that contain requirements for wetland protection and conservation, such as:

- ♦ Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas¹⁰⁸
- ♦ A Place to Grow: Growth plan for the Greater Golden Horseshoe¹⁰⁹
- ♦ Greenbelt Plan (2017)¹¹⁰
- ♦ Drainage Act and Conservation Authorities Act Protocol.¹¹¹

3.3 QUESTION 2: HOW DESIGNATION WORKS WITH FEDERAL AND PROVINCIAL LEGISLATION AND POLICIES

3.3.1 FEDERAL AND PROVINCIAL POLICIES SUPPORT CANADA'S COMMITMENT TO THE RAMSAR CONVENTION

Federal and provincial wetlands policies contribute to the delivery of Canada's commitments to the Ramsar Convention.¹¹²

¹⁰⁴ RSO 1990, c C28.

¹⁰⁵ RSO 1990, c P13.

¹⁰⁶ SO 2005, c 1.

¹⁰⁷ Canada, "Ramsar National Report to COP13" (2018) at 7, https://www.ramsar.org/sites/default/files/documents/importftp/COP13NR_Canada_e.pdf.

¹⁰⁸ Ontario Ministry of Agriculture, Food and Rural Affairs, "Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas" (2016), <http://www.omafra.gov.on.ca/english/landuse/facts/permitteduseguide.pdf>.

¹⁰⁹ Ontario, "A Place to Grow: Growth plan for the Greater Golden Horseshoe" (August 2020), <https://files.ontario.ca/mmah-place-to-grow-office-consolidation-en-2020-08-28.pdf>.

¹¹⁰ Ontario, "Greenbelt Plan (2017)", <https://files.ontario.ca/greenbelt-plan-2017-en.pdf>.

¹¹¹ Ontario, "Drainage Act and Conservation Authorities Act Protocol", <https://docs.ontario.ca/documents/1970/drainage-act-and-conservation-authorities-act.pdf>.

¹¹² Government of Canada, "Strategic Overview of the Canadian Ramsar Program" (1996) at 7, <http://nawcc.wetlandnetwork.ca/Ramsar%20Strategic%20Overview%201996.pdf>.



3.3.1.1 Federal Policies

Canada achieves the objectives of the Ramsar Convention through its North American Waterfowl Management Plan and The Federal Policy on Wetland Conservation.¹¹³

The Federal Policy on Wetland Conservation contains a commitment to promoting international actions. The Policy states that the federal government will promote conservation and sustainable use of wetlands internationally and encourage the involvement of other nations and international organizations in wetland conservation efforts.¹¹⁴ The Policy commits to promoting wetland conservation through continued strong commitments to the Ramsar Convention.¹¹⁵

A non-exhaustive list of legislation and policies have been identified in section 3.2.2 of this memorandum, above.

3.3.1.2 Provincial Policies

Ontario has implemented several policies that impact wetland management. For example, Ontario's Provincial Policy Statement, 2020 issued under the *Planning Act* provides policy direction on matters of provincial interest related to land use planning and development.¹¹⁶ Ontario's Wetland Conservation Strategy for Ontario 2017-2030 provides a framework to "guide the future of wetland conservation across the province."¹¹⁷ The Strategy makes note of the Ramsar Convention and lists as one of its action items for meeting its conservation goals the identification of additional candidate wetlands for designation under the Ramsar Convention.¹¹⁸

A non-exhaustive list of legislation and policies have been identified in section 3.2.2 of this memorandum, above.

3.3.2 DESIGNATED SITES ARE MANAGED UNDER EXISTING LEGISLATION AND POLICIES

Although a designation under the Ramsar Convention does not impose regulations on a site, Ramsar sites in Canada continue to be subject to existing mechanisms for protection such as the site's existing status within areas such as national or provincial parks, national wildlife areas, and federal or provincial/territorial bird sanctuaries.¹¹⁹ Federal and provincial legislation, regulations, and policies continue to apply to sites designated under the Ramsar Convention as they had prior to designation.

¹¹³ Remedial Action Plan FAQ, *supra* note 61.

¹¹⁴ Government of Canada, "The Federal Policy on Wetland Conservation" (1991) at 10, <http://nawcc.wetlandnetwork.ca/Federal%20Policy%20on%20Wetland%20Conservation.pdf>.

¹¹⁵ *Ibid* at 11.

¹¹⁶ Government of Ontario, "Provincial Policy Statement, 2020 under the *Planning Act*" (1 May 2020).

¹¹⁷ Government of Ontario, "A Wetland Conservation Strategy for Ontario 2017-2030" (2017) at iii.

¹¹⁸ Government of Ontario, "A Wetland Conservation Strategy for Ontario 2017-2030 Framework" at 35, https://files.ontario.ca/mnr_17-075_wetlandstrategy_final_en-accessible.pdf.

¹¹⁹ Canada, "Management of Canadian Ramsar Sites", *supra* note 7 at 3.



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For example, the *Conservation Authorities Act* regulates the conservation, restoration, development and management of Ontario’s wetlands. The definition of “wetlands” in the Ramsar Convention is a much broader definition than the definition of wetlands that comes from s. 28 of the *Conservation Authorities Act*.¹²⁰ Despite this, the NPCA, which implements the *Conservation Authorities Act*, cannot use the definition of “wetlands” in the Ramsar Convention to expand its regulatory authority.¹²¹ The designation of the Niagara River cannot be used as part of the NPCA review or screening process when implementing the NPCA’s regulations or as criteria to protect natural systems within its watershed.¹²²

The NPCA has confirmed that it will continue to only use the existing Land Use Planning and regulatory frameworks when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage policies are satisfied.¹²³ Bill 229 was approved by the Government of Ontario on December 8, 2020. Bill 229 makes changes to various legislation, including the *Conservation Authorities Act*. These changes do not directly impact the definition of “wetlands” or NPCA’s Land Use Planning and regulatory frameworks for reviewing development applications.

Most Canadian sites designated under the Ramsar Convention lie on federal lands and are managed by federal agencies such as the Canadian Wildlife Service and Parks Canada.¹²⁴ Restrictions on land use and other protections for these sites are not due to their designation under the Ramsar Convention, but rather the application of existing legislation and policies. For example:

- ♦ Point Pelee in Ontario was designated as a Ramsar site on May 27, 1987.¹²⁵ Point Pelee is administered as a National Park under the *Canada National Parks Act*.¹²⁶ Restrictions on land use in Point Pelee result from its designation as a National Park, rather than its designation under the Ramsar Convention.
- ♦ Long Point in Ontario was designated as a Ramsar site on May 24, 1982. Lands administered by the Canadian Wildlife Service have been designated as National Wildlife Areas under the *Canada Wildlife Act* since 1973. Lands administered by the MNRF are designated either as provincial park or controlled through the *Public Lands Act*. The Long Point Region Conservation Authority owns

¹²⁰ “Wetland” is defined in s. 28(1) of the *Conservation Authorities Act* as “land that, (a) is seasonally or permanently covered by shallow water or has a water table close to or at its surface, (b) directly contributes to the hydrological function of a watershed through connection with a surface watercourse, (c) has hydric soils, the formation of which has been caused by the presence of abundant water, and (d) has vegetation dominated by hydrophytic plants or water tolerant plants, the dominance of which has been favoured by the presence of abundant water, but does not include periodically soaked or wet land that is used for agricultural purposes and no longer exhibits a wetland characteristic referred to in clause (c) or (d).”

¹²¹ Letter from Niagara Peninsula Conservation Authority to the Director of Community & Development Services, Town of Fort Erie (8 October 2015) at 1, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Appendix%20D%20-%20NPCA%20Correspondence.pdf).

¹²² *Ibid.*

¹²³ *Ibid.*

¹²⁴ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 4.

¹²⁵ Ramsar Sites Information Service, Point Pelee, <https://rsis Ramsar.org/ris/368>.

¹²⁶ Ramsar, Information Sheet on Ramsar Wetlands, “Canada 26: Point Pelee National Park” at page 2, <https://rsis Ramsar.org/RISapp/files/RISrep/CA368RIS.pdf>.



and administers its property under the *Conservation Authorities Act*. The wetlands of Long Point are also zoned as Environmental Protection Areas under the official plan for the Regional Municipality of Haldimand-Norfolk.¹²⁷

- ◆ St. Clair, Ontario is designated as a National Wildlife Area and protected under the *Canada Wildlife Act*.¹²⁸ The adjacent upland area is among the most productive farmland in Canada and is extensively cash-cropped, primarily for corn and soybeans.
- ◆ Cap Tourmente in Quebec is designated under the Ramsar Convention and is managed in part as a migratory bird sanctuary and in part as a National Wildlife Area. Under federal regulations, a limited number of permits are sold each year for fall hunting of waterfowl and other birds.¹²⁹ The site has a wide range of habitats and is comprised of tidal marsh, coastal meadow, forest, and 700 hectares of agricultural land.¹³⁰ The area surrounding the site is primarily agricultural land use.¹³¹
- ◆ The Fraser River Delta in British Columbia was first designated under the Ramsar Convention in 1982. The designation was expanded in 2012 to cover additional wetland areas. The site comprises of 70% cultivated farmland.¹³² The site is protected as a National Wildlife Area under the *Canada Wildlife Act* and as a Migratory Bird Sanctuary under the *Migratory Birds Convention Act*. A portion of the Delta falls within the framework of the multilateral/intergovernmental Fraser River Estuary Management Program, which is aimed at sustaining the Delta’s natural productivity.¹³³ Non-wetland areas within the site continue to provide products and services of long-term interest to local communities.¹³⁴ For example, hay crops are harvested on agricultural land within the boundaries of the Alaksen National Wildlife Area in the Delta.¹³⁵ Such regulated land uses are part of the site’s applicable land use management planning process.¹³⁶
- ◆ In Lac Saint-Pierre, Quebec, the main human activities are extensive agriculture and recreation.¹³⁷ The surrounding land is privately owned and much of it is used for agriculture.¹³⁸ Parts of the site

¹²⁷ Ramsar Information Sheet, “Canada 2: Long Point National Wildlife Ontario” at page 5, <https://rsis.ramsar.org/RISapp/files/RISrep/CA237RIS.pdf>.

¹²⁸ Ramsar Information Sheet, “Canada 16: St. Clair National Wildlife Area, Ontario” at 2.

¹²⁹ Government of Canada, “Management of Canadian Ramsar Sites” (1996) at page 3, <http://nawcc.wetlandnetwork.ca/Management%20of%20Can%20Ramar.pdf>.

¹³⁰ Ramsar Information Sheet, “Canada 1: Cap Tourmente National Wildlife Area, Quebec, at 1, <https://rsis.ramsar.org/RISapp/files/RISrep/CA214RIS.pdf>.

¹³¹ *Ibid* at 2.

¹³² Ramsar Information Sheet, “Canada 9: Alaksen, British Columbia”, at page 1, https://rsis.ramsar.org/RISapp/files/RISrep/CA243RISformer2001_EN.pdf.

¹³³ *Ibid*.

¹³⁴ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 3.

¹³⁵ *Ibid*.

¹³⁶ *Ibid*.

¹³⁷ Ramsar Sites Information Service, “Lac Saint-Pierre”, <https://rsis.ramsar.org/ris/949>.

¹³⁸ *Ibid*.



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are designated as wildlife sanctuaries and a migratory bird sanctuaries.¹³⁹ Certain areas are reserved strictly for the purpose of conservation, while others are enhanced through wildlife management and wildlife-agricultural management.¹⁴⁰

- ◆ Lac Saint-Francois in Quebec is designated as a National Wildlife Area under the *Canada Wildlife Act*.¹⁴¹ The site consists of mostly freshwater marsh and flooded shoreline swamp. The surrounding area is mainly used for agriculture.¹⁴² Only activities compatible with National Wildlife Area objectives are permitted; all other land use is rigorously controlled.¹⁴³

Increasingly, co-management arrangements with provincial and non-government agencies are being implemented for particular sites.¹⁴⁴ For example, the Creston Valley Wildlife Management Area in British Columbia lies on provincial land but is managed by a three-party management board representing federal, provincial and non-government interests in this important area.¹⁴⁵

3.3.3 DESIGNATION COULD BE THE DRIVER FOR A CHANGE IN REGULATION

Designation of the Niagara River as a Ramsar site alone will not directly cause changes to the management of the Niagara River under federal or provincial wetlands legislation or policy. However, designation under the Ramsar Convention could be the driver for such a change.¹⁴⁶

The Delta Marsh in Manitoba is an example where regulatory change occurred following Ramsar designation. The Delta Marsh was designated under the Ramsar Convention in 1982. Following designation, a large portion of the marsh was purchased from private property owners and became a protected wildlife management area.¹⁴⁷ The marsh is now a National Heritage Marsh, and while the restrictions associated with designation as a National Heritage Marsh are not Ramsar restrictions,¹⁴⁸ designation as a Ramsar site may have been the impetus for the subsequent protection of the Delta. The Delta Marsh has also been characterized as an International Union for Conservation of Nature protected

¹³⁹ Ramsar Information Sheet, “Canada 36: Lac Saint-Pierre”, at 3, https://rsis.ramsar.org/RISapp/files/RISrep/CA949RISformer1997_EN.pdf.

¹⁴⁰ *Ibid.*

¹⁴¹ Ramsar Information Sheet, “Canada 19: Lac Saint-Francois National Wildlife Area, Quebec”, at 2, <https://rsis.ramsar.org/RISapp/files/RISrep/CA361RIS.pdf>.

¹⁴² *Ibid.*

¹⁴³ *Ibid.*

¹⁴⁴ Canada, “Management of Canadian Ramsar Sites”, *supra* note 7 at 4.

¹⁴⁵ *Ibid.*

¹⁴⁶ Memorandum from Callum Shedden to John Henricks re Opinion – Potential Impacts of RAMSAR Wetland Designation for Niagara River (21 March 2016) at 47, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf).

¹⁴⁷ Niagara-on-the-Lake, Report CDS-16-013 to Community and Development Advisory Committee re Agricultural Advisory Committee Minutes – February 3, 2016 (27 January 2016), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/93E557A63EC663AA85257F47005A7FA0>.

¹⁴⁸ Remedial Action Plan FAQ, *supra* note 61.



area management category IV managed mainly for conservation of habitat and species through management intervention.¹⁴⁹

The Niagara River is currently designated as a Coastal Wetland under Ontario’s Provincial Policy Statement, 2020.¹⁵⁰ Designation of the Niagara River as a Wetland of International Importance under the Ramsar Convention could be the driver for the Province to consider a change in designation for the Niagara River to a Significant Coastal Wetland.¹⁵¹ Such a change in policy designation could create additional future restrictions for the Niagara River. In this way, designation of the Niagara River under the Ramsar Convention could result, albeit not directly, in future changes to the regulation of the Niagara River and surrounding area.

3.4 QUESTION 3: STATUS OF SUPPORT FOR DESIGNATION BY MUNICIPALITIES, AGENCIES, AND ORGANIZATIONS

This section considers the status of support for or against the designation of the Niagara River under the Ramsar Convention by the three municipalities located along the Canadian side of the Niagara River: Fort Erie, Niagara Falls, and Niagara-on-the-Lake. It also considers the position of the NPC and the NPCA on designation of the Niagara River.

Details of the resolutions passed by the Council and Boards of these municipalities and authorities can be found in **Appendix B**.

This section also reviews Niagara Region’s commitment to a healthy natural environment as set out in the Region’s Official Plan.

3.4.1 NIAGARA PENINSULA CONSERVATION AUTHORITY

The NPCA passed a motion on November 20, 2019 to endorse and support the proposed designation of the Niagara River under the Ramsar Convention.¹⁵²

3.4.2 NIAGARA PARKS COMMISSION

In 2015, the NPC’s Board of Directors approved the NPC playing the role of site nominator in principle pending an acceptable legal review.¹⁵³

¹⁴⁹ Niagara-on-the-Lake, Report CDS-16-013 to Community and Development Advisory Committee re Agricultural Advisory Committee Minutes – February 3, 2016 (27 January 2016), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/93E557A63EC663AA85257F47005A7FA0>.

¹⁵⁰ Government of Ontario, “Provincial Policy Statement, 2020 under the *Planning Act*” (1 May 2020).

¹⁵¹ Memorandum from Callum Shedden to John Henricks re Opinion – Potential Impacts of RAMSAR Wetland Designation for Niagara River (21 March 2016) at 47, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf).

¹⁵² NPCA Full Authority Meeting Minutes (20 November 2019), at 3, https://npca.ca/images/uploads/board_files/FAMinutes_11202019.pdf.



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On September 10, 2020, the NPC’s Board of Directors voted against the NPC acting as the lead nominator for the designation and to step down from participating in the steering committee.¹⁵⁴ We understand from Fort Erie’s Regular Council Meeting Minutes on April 9, 2018 that the NPC will not support designation unless all municipalities supported the designation.¹⁵⁵

We do not know if the lack of support from all municipalities is the only reason NPC has withdrawn support or if there were other reasons behind NPC’s decision.

3.4.3 FORT ERIE

The Town of Fort Erie has supported the designation of the Niagara River as a Ramsar site since November 2015.¹⁵⁶

3.4.4 NIAGARA FALLS

The City of Niagara Falls’ City Council unanimously carried a motion to support the Ramsar designation of the Niagara River in July 2015.¹⁵⁷

On October 6, 2020, Council held a closed meeting to discuss Ramsar designation.¹⁵⁸ We do not know the status or outcome of this meeting and whether it had any impact on Niagara Falls’ support for designation.

3.4.5 NIAGARA-ON-THE-LAKE

The Town of Niagara-on-the-Lake’s Town Council initially supported the designation in principle and sought additional information on the implications of designation in July 2015.¹⁵⁹ The Community & Development Advisory Committee issued a report in July 2015 supporting the designation in

¹⁵³ Report from Niagara River Ramsar Designation Binational Steering Committee to Office of the Regional Chair, Jim Bradley (18 June 2020) at 4.

¹⁵⁴ <https://www.stcatharinesstandard.ca/news/niagara-region/2020/09/21/niagara-parks-slammed-for-lack-of-support-for-ramsar-designation.html>.

¹⁵⁵ The Municipal Corporation of the Town of Fort Erie, Regular Council Meeting Minutes (9 April 2018) at 12 of 122, <https://www.forterrie.ca/WebSite/minutes.nsf/0/91ADD24203C1143585258274006F2282/%24File/Regular%20Council%20-%202023%20Apr%202018%20-%20Agenda%20-%20Pdf.pdf>.

¹⁵⁶ The Municipal Corporation of the Town of Fort Erie, Council-in-Committee Meeting Minutes (2 November 2015) at 10, [http://www.forterrie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/\\$File/Nov2c-minutes.pdf](http://www.forterrie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/$File/Nov2c-minutes.pdf).

¹⁵⁷ Niagara Falls, Regular Council Meeting Minutes (28 July 2015) at 3, <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=753625&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

¹⁵⁸ City of Niagara Falls, Resolution (6 October 2020), <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=1024773&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

¹⁵⁹ Niagara-on-the-Lake, Community and Development Advisory Committee Minutes (27 July 2015), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/BF5BF13826D2CAA28525783E006E878E/E8498B83D495908385257E8F004DDAB2>.



principle.¹⁶⁰ The issue of designation was then referred to the Agricultural Advisory Committee, which recommended that Council not support the designation on February 3, 2016.¹⁶¹

Town Council has not provided its support for the designation following the Agricultural Advisory Committee’s recommendation.

3.4.6 NIAGARA REGION

Niagara Region’s current Official Plan contains commitments that align with the goals of the Ramsar Convention. For example, Chapter 7: Natural Environment of the Official Plan contains the following objectives:

- ♦ To maintain a healthy natural environment for present and future generations
- ♦ To conserve Niagara’s distinctive natural character
- ♦ To apply an ecosystem-based approach to planning and decision-making
- ♦ To foster and promote cooperation among public agencies, private landowners and community groups, and
- ♦ To support and encourage environmental stewardship and restoration.¹⁶²

Niagara Region is developing a new Official Plan.¹⁶³ A Natural Environment Background Study conducted in the development process states that the Region’s policies related to meeting objectives for a healthy landscape should be updated to reflect current Provincial Policy, including by reviewing targets for wetland cover.¹⁶⁴

¹⁶⁰ Niagara-on-the-Lake, Report CDS-15-065 to Community and Development Advisory Committee re Ramsar – Niagara Peninsula Conservation Authority Request for Support of Ramsar Designation of the Niagara River (Convention on Wetlands of International Importance Especially as Waterfowl Habitat) (July 30, 2015), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/8F2CB5F9F347EBD785257E92006D27FF>.

¹⁶¹ Niagara-on-the-Lake, Agricultural Advisory Committee Minutes (3 February 2016) at 3, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/\\$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203,%202016.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203,%202016.pdf).

¹⁶² Niagara Region, Official Plan (2014), Chapter 7: Natural Environment at 7-6, <https://www.niagararegion.ca/living/icp/pdf/2015/Chapter-7-Natural-Environment.pdf>.

¹⁶³ Niagara Region, “Creating a New Niagara Official Plan”, <https://www.niagararegion.ca/official-plan/default.aspx>.

¹⁶⁴ North-South Environmental Inc, “New Niagara Official Plan, Natural Environment Work Program: Natural Environment Background Study” (26 September 2019), at 171, <https://www.niagararegion.ca/projects/rural-and-natural-systems/pdf/natural-environment-work-program-study.pdf>.



APPENDIX A – KEY DOCUMENTS

This Appendix contains copies of the following documents:

- 1 Letter from Environment and Climate Change Canada to the Town of Niagara-on-the-Lake dated September 10, 2015
- 2 Letter from Environment and Climate Change Canada to the Niagara Peninsula Conservation Authority dated November 8, 2019
- 3 Letter from Environment and Climate Change Canada to the Niagara Region dated June 10, 2020
- 4 Letter from the Ontario Ministry of Natural Resources and Forestry to the Town of Fort Erie dated September 16, 2015
- 5 Letter from the Niagara Peninsula Conservation Authority to the Town of Fort Erie dated October 8, 2015
- 6 Letter from the Niagara Peninsula Conservation Authority to the Town of Niagara-on-the-Lake dated November 30, 2015
- 7 Niagara Peninsula Conservation Authority's Report 32-18 to the Board of Directors re Designation of the Niagara River as a RAMSAR Site dated March 26, 2018



APPENDIX B – DETAILS OF MUNICIPALITIES’ AND AGENCIES’ POSITION ON RAMSAR DESIGNATION OF THE NIAGARA RIVER

FORT ERIE

At a Regular Council meeting on August 17, 2015, members of the Niagara Peninsula Conservation Authority presented a proposal for Ramsar designation of the Niagara River. The meeting minutes state that Deanna Lindblad, Project Lead Restoration:

outlined the opportunity for a Ramsar designation and that Ramsar is the name of a place in Iran. Its significance is that a treaty was signed there in 1971 looking at wetlands of international importance with the idea to advance the conservation and wide use of water based ecosystems. The treaty uses a very broad definition of wetland because it’s a global treaty compared to the wetland designation that we are used to. It is not a policy or law, regulatory, or restricted in any way. There are 168 countries in the world that have already voluntarily signed onto the treaty with over 2,200 sites identified. She outlined consideration of the Niagara River to become a Ramsar site. There are nine criteria and only one of them needs to be met for a site to be designated as a Ramsar site. Niagara River is unique with Niagara Falls and having over 90 species in the Niagara River area. Ontario Power Generation is the largest user of the River and has stated they have no objection to the designation. Ms. Lindblad provided examples of the advantages resulting from the San Francisco Bay area designation including increased funding opportunities, increase in tourism and recreation with extended stays, heightened global environmental importance, and increased attention by the scientific community. On both sides of the Niagara River, we have academic institutions that are doing research on the River. Further advantages include improved management through collaboration; stronger, healthier and more resilient communities. The Niagara River would be North America’s first binational Ramsar site. Additional advantages in designating the Niagara River would be the protection of ecological gains made thus far and providing a global legacy.¹⁶⁵

Following this proposal, Councillor Passero recommended directing staff to prepare a resolution of support for the Ramsar designation as requested by the Niagara Peninsula Conservation Authority for the next regular Council meeting.¹⁶⁶ Mayor Redekop suggested putting forward a motion at present.¹⁶⁷

¹⁶⁵ The Municipal Corporation of the Town of Fort Erie, Regular Council Meeting Minutes (17 August 2015) at 4–5, <https://www.forterie.ca/WebSite/minutes.nsf/Doc/OpenDoc.html?OpenFrameset&ID=D3D0A0BDAB661F9B85257EA000768A5B&File=August+17r-minutes.pdf&Title=COUNCIL%20MINUTES&Document=>,

¹⁶⁶ *Ibid* at 8.

¹⁶⁷ *Ibid*.



Environment
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Energy Law

Mr. Brady (Town staff) requested some time to review the request and advise the Environmental Advisory Committee to allow for a staff report to come to Council at the September 8, 2015 meeting.¹⁶⁸

At a Council-in-Committee meeting on November 2, 2015, the Council supported the Ramsar designation of the Niagara River.¹⁶⁹ Council agreed to direct staff to forward a copy of Report No. CDS-79-2015 to the NPCA, Town of Niagara-on-the-Lake, City of Niagara Falls, Regional Municipality of Niagara, the NPC, and the Fort Erie Environmental Advisory Committee.¹⁷⁰

At a Regular Council meeting on April 9, 2018, Regional Councillor Annunziata reported on matters at the Region. The meeting minutes state:

Councillor Passero stated in November 2015 this Council unanimously supported the RAMSAR designation for the Niagara River and some publicity came out over the weekend about some road blocks the Bi-National organization has hit in regards to the NPCA, to the point where they have withdrawn their letter of support. He questioned where does that designation stand and what are the timelines of the NPCA. RC Annunziata advised the NPCA endorsed the RAMSAR designation and part of that was a motion to have its members sit and liaise with the RAMSAR Steering Committee, a BiNational Committee made up of American and Canadian board members. Over the last couple of years there have been questions that have come forward from partners in Niagara-on-the-Lake, Niagara Falls and the NPC. They have approached the NPCA to try to fill in the gaps and tried to engage their partners at RAMSAR but unfortunately they have not been able to get the information they need to make a formal and thoughtful decision. The road block is not at the NPCA and they were fully supportive of the designation. Since then, RAMSAR has sent a letter to the NPCA advising that they no longer need the consent or approval of the NPCA and they are still waiting for any information with respect to that designation. It is to be a unanimous decision. Partners in Niagara-on-the-Lake have considerable concerns and they have never ratified it. The Mayor added that Niagara-on-the-Lake does not support it and the NPC is taking the position that unless all 3 municipalities support it, they will withhold support.¹⁷¹

¹⁶⁸ *Ibid.*

¹⁶⁹ The Municipal Corporation of the Town of Fort Erie, Council-in-Committee Meeting Minutes (2 November 2015) at 10, [http://www.forterie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/\\$File/Nov2c-minutes.pdf](http://www.forterie.ca/WebSite/minutes.nsf/0/9EF2173A2E59A06E85257EEC006A61F0/$File/Nov2c-minutes.pdf).

¹⁷⁰ *Ibid.*

¹⁷¹ The Municipal Corporation of the Town of Fort Erie, Regular Council Meeting Minutes (9 April 2018) at 12 of 122, <https://www.forterie.ca/WebSite/minutes.nsf/0/91ADD24203C1143585258274006F2282/%24File/Regular%20Council%20-%202023%20Apr%202018%20-%20Agenda%20-%20Pdf.pdf>.



At a Regular Council meeting on September 21, 2020, Regional Councillor Insinna reported on matters at the Niagara Region. The meeting minutes state that Councillor Insinna “shares the view of the Mayor and supports the Ramsar Designation.”¹⁷²

NIAGARA FALLS

At a Niagara Falls Council meeting on July 28, 2015, the Regional Councillor, Chair, and members of the NPCA made a presentation on the proposed Ramsar designation of the Niagara River.¹⁷³ On the motion of Councillor Kerrio, seconded by Councillor Ioannoni, Council supported the Ramsar designation for the Niagara River.¹⁷⁴ The motion was carried unanimously.¹⁷⁵

On September 15, 2020, a motion of Councillor Chris Dabrowski, seconded by Councillor Mike Strange, that the staff bring back a report regarding the Ramsar designation for the Niagara River was carried unanimously.¹⁷⁶

On October 6, 2020, City Council passed a Resolution to hold a Closed Meeting on that day to discuss the potential designation of the Niagara River as a Ramsar site.¹⁷⁷ The Closed Meeting was permitted under s. 239(2)(f) of the *Municipal Act* which allows a meeting to be closed to the public if the subject matter being considered is “advice that is subject to solicitor-client privilege, including communications necessary for that purpose”.¹⁷⁸

NIAGARA-ON-THE-LAKE

At a July 27, 2015 Council meeting, a staff member from the Niagara Peninsula Conservation Authority made a presentation regarding designation of the Niagara River as a Ramsar site and asking for a letter of support from the Council.¹⁷⁹ A motion by Councillor Jim Collard, seconded by Councillor

¹⁷² The Municipal Corporation of the Town of Fort Erie, Regular Council Meeting Minutes (21 September 2020) at 12 of the pdf, <https://www.forterie.ca/WebSite/minutes.nsf/0/98F4FFE6F839EF2A85258602006AF0A8/%24File/October%2019%20-%20Regular%20Council.pdf>.

¹⁷³ Niagara Falls, Regular Council Meeting Minutes (28 July 2015) at 3, <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=753625&dbid=0&repo=nfalls-doc>.

¹⁷⁴ *Ibid.*

¹⁷⁵ *Ibid.*

¹⁷⁶ City of Niagara Falls, City Council Meeting Minutes (15 September 2020) at 23, <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=1024771&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

¹⁷⁷ City of Niagara Falls, Resolution (6 October 2020), <https://docs.niagarafalls.ca/WebLink/DocView.aspx?id=1024773&dbid=0&repo=nfalls-doc&searchid=6c34118a-b5f8-44f5-8a30-60fb418c4713>.

¹⁷⁸ *Ibid.*

¹⁷⁹ Niagara-on-the-Lake, Report CDS-15-065 to Community and Development Advisory Committee re Ramsar – Niagara Peninsula Conservation Authority Request for Support of Ramsar Designation of the Niagara River (Convention on Wetlands of International Importance Especially as Waterfowl Habitat) (July 30, 2015),



John Wiens, that the Town support the designation of the Niagara River in principle and forward the NPCA Ramsar information report to staff for further review to identify the potential legal and other costs to the Town and to report back in September was approved.¹⁸⁰

Report CDS-15-065 to the Community & Development Advisory Committee dated July 30, 2015 recommended that:

- 1 Council seek clarification regarding the possible impact of the Ramsar designation on privately owned lands adjacent to the Niagara River and confirm that the NPCA has contacted private landowners and received their comments regarding the designation, and
- 2 Council support, in principle, the designation of the Niagara River as a Ramsar site and that the Town provide a letter of support after the nominator (the NPC) is confirmed.¹⁸¹

Report CDS-15-065 concluded that Ramsar designation is voluntary and does not impose any new regulations on the local municipalities or property owners.¹⁸² However, further clarification is needed regarding communications with private landowners along the river.¹⁸³ The report states that wetland protection legislation will continue to be under the jurisdiction of the MNRF and the Department of Fisheries and Oceans Canada. Currently, there are no additional enforcement requirements or development limitations.¹⁸⁴ However, the report notes that there is a possibility that the Ramsar designation could be used by the NPC, the NPCA and the MNRF when reviewing development applications along the river which could subject these applications to more extensive and stringent analysis.¹⁸⁵ Further clarification is required with respect to how, and if, the designation will be used.¹⁸⁶

On September 1, 2015, Kim Diana Connoly, Professor and Vice Dean of SUNY Buffalo Law School, provided a report to the Town’s Director of Community & Development Services on Ramsar designation of the Niagara River. The report states that Ramsar designation is not an official wetland designation within the meaning of “wetland” in Ontario.¹⁸⁷ It also states that the Ramsar Convention

<https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/8F2CB5F9F347EBD785257E92006D27FF>.

¹⁸⁰ Niagara-on-the-Lake, Community and Development Advisory Committee Minutes (27 July 2015),

<https://domino.notl.com/sites/notl/NOTLCOTW.nsf/BF5BF13826D2CAA28525783E006E878E/E8498B83D495908385257E8F004DDAB2>.

¹⁸¹ Niagara-on-the-Lake, Report CDS-15-065 to Community and Development Advisory Committee re Ramsar – Niagara Peninsula Conservation Authority Request for Support of Ramsar Designation of the Niagara River (Convention on Wetlands of International Importance Especially as Waterfowl Habitat) (July 30, 2015),

<https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/8F2CB5F9F347EBD785257E92006D27FF>.

¹⁸² *Ibid.*

¹⁸³ *Ibid.*

¹⁸⁴ *Ibid.*

¹⁸⁵ *Ibid.*

¹⁸⁶ *Ibid.*

¹⁸⁷ Connoly Report, *surpa* note 63 at 3.



does not create or enhance regulatory obligations.¹⁸⁸ The report states that the Ramsar Convention is clear that its obligations cannot be legally enforced and therefore concludes that endorsing a Ramsar designation for the Niagara River will not impose any regulatory measures or legally enforceable restrictions on the landowners or affect sovereignty rights under the Ramsar Convention.¹⁸⁹

At a meeting of the Community and Development Advisory Committee on September 14, 2015, the Committee approved proposed amendments to the recommendations in Report CDS-15-065:

1.1.a) Adopt recommendation 1 of the Report, with the inclusion of all tenants using the proposed designated wetland area for business purposes or recreational facilities, and request the NPCA to confirm in writing to the Town that this has been done.

1.1.b) Refer the report to the NOTL Agricultural and Irrigation Committees for their comments on potential impacts of this Wetland Designation for members of the farm community who use the Niagara River.

1.1.c) Request staff to obtain written confirmation from the NPCA Board, the NPC Board, and the Niagara Regional Council that they or their staff will not, due to this Wetland Designation, require or support future regulatory requirements or future additional studies of the Niagara-on-the-Lake Irrigation Committee/ System or for the individual farmers who use the Niagara River.

1.1.d) Ask staff to get a legal opinion on any potential impacts of the RAMSAR Wetland designation after reviewing the articles, resolutions and by-laws that are part of a RAMSAR Wetland Designation, including the responsibilities of the management authorities of the site once designated.

1.1.e) Request the Committee of the Whole defer recommendation 2 of the Report to Committee of the Whole meeting at the time recommendation 1,2,3,4 are completed.¹⁹⁰

At an Agricultural Advisory Committee meeting on February 3, 2016, a motion that Town Council be asked to endorse the Agricultural Advisory Committee’s recommendation to not support the Ramsar designation for the Niagara River and that Town Council forward a letter to the NPCA stating that the Town is not supportive of the designation was approved.¹⁹¹ The meeting Minutes state that the intent of

¹⁸⁸ *Ibid.*

¹⁸⁹ *Ibid.*

¹⁹⁰ Niagara-on-the-Lake, Community & Development Advisory Committee Minutes (14 September 2015), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/BF5BF13826D2CAA28525783E006E878E/B2E66305F04DD97385257E69004A7291>.

¹⁹¹ Niagara-on-the-Lake, Agricultural Advisory Committee Minutes (3 February 2016) at 3, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/\\$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203.%202016.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74c6e02bcbf6fc1c8525783e00620d4e/93e557a63ec663aa85257f47005a7fa0/$FILE/Agricultural%20Advisory%20Minutes%20-%20February%203.%202016.pdf).



the Ramsar designation was not to be regulatory; it was just a designation or a recognition.¹⁹² However, information received recently indicates that other areas having the Ramsar designation are applying it on a regulatory basis for protection, conservation and management.¹⁹³ The Committee noted that there was not enough clarity and too many unanswered questions.¹⁹⁴ The Committee expressed concern for future implications, noting the potential for new regulations that could make it more difficult to farm.¹⁹⁵ As such, the Committee found that designation of the Niagara River is not supportable.¹⁹⁶

Report CDS-16-013 to the Community and Development Advisory Committee recommended that the February 3, 2016 Agricultural Committee minutes be received and that the following recommendation be forwarded to Council for approval:

that Town Council be asked to endorse the Agricultural Advisory Committee recommendation to not support the Ramsar designation for the Niagara River and that Town Council forward a letter to the Niagara Peninsula Conservation Authority stating the Town is not supportive of the designation.¹⁹⁷

Report CDS-16-013 states that the Agricultural Advisory Committee no longer supports the Ramsar designation of the Niagara River because of additional information that has recently come to light about Ramsar designation in two jurisdictions: Australia and Manitoba.¹⁹⁸ The Committee found that Ramsar designation in both jurisdictions appears to have placed additional legislative controls and protections on these sites.¹⁹⁹

Report CDS-16-013 states:

In Australia, the *Environment Protection and Biodiversity Conservation Act* is the main piece of federal legislation that relates to the protection, conservation and management of fish habitat. It provides the legal framework for the protection and management of nationally and internationally important flora, fauna, ecological communities and heritage places including wetlands of international importance (Ramsar wetlands). The Act, as of 2015, lists the principles required for meeting treaty obligations in respect to “wetlands of international importance” including environmental approvals, the approval process, strategic assessments, and the management approach. A set of general principles for

¹⁹² *Ibid* at 2.

¹⁹³ *Ibid*.

¹⁹⁴ *Ibid*.

¹⁹⁵ *Ibid*.

¹⁹⁶ *Ibid*.

¹⁹⁷ Niagara-on-the-Lake, Report CDS-16-013 to Community and Development Advisory Committee re Agricultural Advisory Committee Minutes – February 3, 2016 (27 January 2016), <https://domino.notl.com/sites/notl/NOTLCOTW.nsf/74C6E02BCBF6FC1C8525783E00620D4E/93E557A63EC663AA85257F47005A7FA0>.

¹⁹⁸ *Ibid*.

¹⁹⁹ *Ibid*.



management is described including the need for "public consultation," the involvement of parties with an interest and/or who may be affected by the management of wetland, as well as allowing for continuing community and technical input. Secondly, the requirements for the management plan to be prepared for each listed wetland are described. Thirdly, the requirements for the "environmental impact assessment and approval are described for parties wishing to undertake activities that are likely to have a significant impact on the ecological character of a Ramsar wetland. A review of the list of Australian Ramsar sites indicates that they are largely national parks, crown land, nature reserves and national forests. Virtually no private land has received a Ramsar designation.²⁰⁰

Report CDS-16-013 then discusses a Ramsar designation in Manitoba:

In Manitoba, the Delta Marsh was designated as a Ramsar site in 1982. Since that time a large portion of the marsh has become a protected wildlife management area, purchased from private property owners. It has been categorized as an International Union for Conservation of Nature protected area management category IV managed mainly for conservation of habitat and species through management intervention. However, existing hunting, trapping, fishing and agricultural uses have and will continue within the protected lands and existing Aboriginal and treaty rights are respected in protected areas of the marsh.²⁰¹

Report CDS-16-013 states that operations staff have indicated that there is a possibility that the Ramsar designation could result in an enhanced monitoring program with respect to the quality of the water coming from agricultural land and draining into the Niagara River.²⁰² Operations staff have also expressed concern regarding the expansion of the Dee Road pumping station which could be impacted if the Ramsar designation is approved.²⁰³

In an Information Report to Council dated March 24, 2016, the Community & Development Department stated that while there are arguably long term benefits to a Ramsar designation, timing for Council's consideration may be too early and it may be prudent to defer further consideration until after the Town's Official Plan is adopted and new environmental policies for the Town are in place.²⁰⁴

²⁰⁰ *Ibid.*

²⁰¹ *Ibid.*

²⁰² *Ibid.*

²⁰³ *Ibid.*

²⁰⁴ Niagara-on-the-Lake, Information Report to Council re Ramsar Update (24 March 2016) at 2, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf).



The Information Report to Council states:

The correspondence from the Ministry of Natural Resources and Forestry to the Town of Fort Erie dated September 16, 2015 confirms that the MNRF will use the wetland definition from the Ontario Wetland Evaluation System, and not the RAMSAR definition, in natural heritage feature regulation and as the criteria to protect natural systems.

The correspondence from the Niagara Peninsula Conservation Authority to the Town of Fort Erie dated October 8, 2015 confirms that the NPCA cannot use the RAMSAR wetland definition and must use the wetland definition from the Conservation Authorities Act as part of the NPCA review or screening process when implementing NPCA’s regulation or as criteria to protect natural systems within its watershed. The NPCA letter further indicates that there is no mechanism to establish a buffer around the RAMSAR designation.²⁰⁵

On April 1, 2016, the Mayor of the Town of Niagara-on-the-Lake wrote to the Niagara Parks Commission, the NPCA and the Region of Niagara asking them to confirm that they will not, due to Ramsar designation, require or support future regulatory requirements or future additional studies of the Niagara-on-the-Lake Irrigation System or individual farmers who use the Niagara River.²⁰⁶

The NPCA forwarded the Town of Niagara-on-the-Lake’s letter to the Ramsar Steering Committee for response. The Ramsar Steering Committee responded to the NPCA on June 2, 2016. The NPCA forwarded the Ramsar Steering Committee’s response to the Town of Niagara-on-the-Lake on June 3, 2016.²⁰⁷ The Ramsar Steering Committee’s letter dated June 2, 2016 states the following about Ramsar designation:

²⁰⁵ Memorandum from Callum Shedden to John Henricks re Opinion – Potential Impacts of RAMSAR Wetland Designation for Niagara River (21 March 2016) at 46, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/\\$FILE/Information%20Report%20Ramsar%20Update.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/bf5bf13826d2caa28525783e006e878e/074773803324b17e85257f6c004f1a9e/$FILE/Information%20Report%20Ramsar%20Update.pdf).

²⁰⁶ Letter from Pat Darte, Lord Mayor of the Town of Niagara-on-the-Lake to the Niagara Parks Commission (1 April 2016), [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/\(LUTOC\)/3EDB1608D5CE318885257F8E006B4750/\\$File/Staff%20CorrespondenceApr07.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/(LUTOC)/3EDB1608D5CE318885257F8E006B4750/$File/Staff%20CorrespondenceApr07.pdf); Letter from Pat Darte, Lord Mayor of the Town of Niagara-on-the-Lake to the Niagara Peninsula Conservation Authority (1 April 2016) at 6, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/\(LUTOC\)/3EDB1608D5CE318885257F8E006B4750/\\$File/Staff%20CorrespondenceApr07.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/(LUTOC)/3EDB1608D5CE318885257F8E006B4750/$File/Staff%20CorrespondenceApr07.pdf); Letter from Pat Darte, Lord Mayor of the Town of Niagara-on-the-Lake to the Region of Niagara (1 April 2016) at 7, [https://domino.notl.com/sites/notl/NOTLCOTW.nsf/\(LUTOC\)/3EDB1608D5CE318885257F8E006B4750/\\$File/Staff%20CorrespondenceApr07.pdf](https://domino.notl.com/sites/notl/NOTLCOTW.nsf/(LUTOC)/3EDB1608D5CE318885257F8E006B4750/$File/Staff%20CorrespondenceApr07.pdf).

²⁰⁷ Letter from the NPCA to the Town of Niagara-on-the-Lake dated June 3, 2016 in the NPCA Full Authority Meeting Agenda (15 June 2016) at 4, https://npc.ca/images/uploads/board_files/2016-06-15-Full-Authority-Agenda.pdf.



- ♦ “On September 1st, 2015, Ramsar Working Group member and Professor, Director of Clinical Legal Education, and Vice Dean for Legal Skills of the University of Buffalo Law School submitted to the Town of Niagara-on-the-Lake a letter verifying ‘a Ramsar designation is a voluntary, non-regulatory Convention Treaty’.”²⁰⁸
- ♦ “On September 10, 2015, Environment Canada submitted to the Town of Niagara-on-the-Lake, a letter verifying ‘a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries no regulatory implications’.”²⁰⁹
- ♦ “On September 16, 2015, the Province of Ontario through the Ministry of Natural Resources and Forestry submitted a letter to the Town verifying ‘a Ramsar designation will not impose any regulatory measures or legally enforceable restrictions on landowners or affect sovereignty rights under the treaty’.”²¹⁰
- ♦ “On November 30th, 2015, the NPCA submitted a letter verifying the NPCA’s wetland definition comes directly from section 28 of the *Conservation Authorities Act*. The Ramsar Convention uses a much broader definition of wetlands, defined as any substrate that is at least occasionally wet, including lakes and rivers. To be clear, this proposed designation cannot be used as part of the NPCA review or screening process when implementing NPCA’s regulation, or as criteria to protect natural systems within its watershed. The NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure adherence to existing NPCA and Region of Niagara Core Natural Heritage policies.”²¹¹

The Steering Committee’s letter goes on to state that “the Ramsar Convention and proposed designation cannot impose new or future regulatory requirements, including any irrigation works or network (including the Dee Road irrigation system). The Ramsar designation cannot impose any study requirements on the NOTL irrigation committee including future requirements of permits to take water and the user rights of landowners and/ or farmers who use the Niagara River.”²¹²

NIAGARA PARKS COMMISSION

A Report to the NPC states that at a NPC meeting on November 17, 2017, the NPC resolved to:

- 1 “Receive this report as information only as an update to the Ramsar designation of the Niagara River.

²⁰⁸ Letter from the Ramsar Steering Committee to the NPCA dated June 2, 2016 in the NPCA Full Authority Meeting Agenda (15 June 2016) at 5–6, https://npca.ca/images/uploads/board_files/2016-06-15-Full-Authority-Agenda.pdf.

²⁰⁹ *Ibid.*

²¹⁰ *Ibid.*

²¹¹ *Ibid.*

²¹² *Ibid* at 6.



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- 2 Direct Chair Thomson to follow-up with the Niagara Peninsula Conservation Authority (NPCA) Chair to request a response to NPC's correspondence regarding NPCA's updated position on this matter."²¹³

The Report to the NPC does not say what "this report" refers to.

On September 10, 2020, Niagara Parks Commission board members met and voted against acting as the lead nominator for the designation, and to step down from participating in the steering committee.²¹⁴

NIAGARA PENINSULA CONSERVATION AUTHORITY

On July 15, 2015, the NPCA Board resolved to receive a presentation by NPCA staff Jocelyn Baker and Deanna Lindblad regarding the Ramsar designation.²¹⁵ The NPCA Board also endorsed the proposed Niagara River Ramsar designation and resolved to have Board members S. Annunziata, P. Darte, B. Baty, J. Kaspersetz, and Tony Quirk volunteer to sit on the Ramsar Steering Committee pending approval of the Ramsar Steering Committee.²¹⁶

The NPCA's Agenda for the Full Authority Meeting on September 16, 2015 contains a Watershed Management Status Report that provides a table of various Ramsar presentations to the Niagara Region, Niagara Falls, Niagara-on-the-Lake, Fort Erie, the NPC and the NPCA from 2013-2015.²¹⁷

At a NPCA Full Authority Meeting, Chief Administrative Officer D'Angelo commented that "concerns were raised regarding the Ramsar designation and the perception that the Ramsar designation may be viewed as regulatory and thus there is a need for NPCA to refocus and restrategize."²¹⁸

At the NPCA's Full Authority Meeting on December 16, 2015, P. Darte commented that the "agricultural community needs to know that this RAMSAR designation will not impact their

²¹³ Niagara Parks Commission, Report to the Commission, <https://www.niagaraparks.com/search/ramsar> at 3.

²¹⁴ Allan Benner, "Niagara Parks slammed for lack of support for Ramsar designation" (22 September 2020), <https://www.stcatharinesstandard.ca/news/niagara-region/2020/09/21/niagara-parks-slammed-for-lack-of-support-for-ramsar-designation.html>.

²¹⁵ NPCA Full Authority Meeting Minutes (15 July 2015) at 3, https://npca.ca/images/uploads/board_files/2015-07-15-Full-Authority-Meeting-Minutes.pdf.

²¹⁶ *Ibid* at 7.

²¹⁷ NPCA Full Authority Meeting Agenda (16 September 2015), Watershed Management Status Report, at 46 of pdf, https://npca.ca/images/uploads/board_files/2015-09-16-Full-Authority-Agenda.pdf.

²¹⁸ NPCA Full Authority Meeting Minutes (16 September 2015) at 7, https://npca.ca/images/uploads/board_files/2015-09-16-Full-Authority-Meeting-Minutes.pdf.



farming.”²¹⁹ Member Baty suggested staff prepare a document for members to use that will explain how the Ramsar designation will be beneficial and that this designation is cause for celebration.²²⁰

The NPCA’s Watershed Management Status Report No. 13-16 dated February 15, 2016 states that “To date, endorsement has been received by Ontario Power Generation, the Niagara Peninsula Conservation Authority, the City of Niagara Falls, and the Town of Fort Erie. The Agricultural Committee of NOTL met on February 3rd and they did not endorse the Ramsar designation. Town of Niagara-on-the-Lake staff will be taking a report to Council on February 29th.”²²¹

At the NPCA’s Full Authority Meeting on June 28, 2017, Member Baty requested that the process of seeking Ramsar designation be renewed.²²² The NPCA Board directed staff to provide an information update to the Board regarding the status of the Ramsar designation.²²³

At the NPCA’s Full Authority Meeting on February 28, 2018, the Board resolved to reconsider its endorsement of the proposed Niagara River Ramsar designation and to have its Board Members sit on the Ramsar Steering Committee.²²⁴

On March 20, 2018, the Ramsar Steering Committee wrote to the NPCA to formally withdraw the Committee’s request for NPCA endorsement of the Ramsar designation for the Niagara River.²²⁵ The letter states that:

It was the volunteer Committee’s sincere hope that the NPCA would join the ever growing list of organizations on both sides of the border showing leadership through their support of this important recognition. Regrettably, despite the volunteer Committee having answered all reasonable questions from the NPCA, including having provided written assurance by Environment Canada that the Ramsar recognition would not prompt any regulatory oversight, the NPCA appears dissatisfied with the assurances given.

The volunteer Committee respects that the request of the NPCA to endorse the Ramsar designation causes apparent apprehension for the NPCA. In recognition of that, and in

²¹⁹ NPCA Full Authority Meeting Minutes (16 December 2015) at 6, https://npca.ca/images/uploads/board_files/2015-12-16-Full-Authority-Meeting-Minutes.pdf.

²²⁰ *Ibid.*

²²¹ NPCA Full Authority Meeting Agenda (17 February 2016), Watershed Management Status Report No. 13-16 dated February 5, 2016, at 16 of pdf, https://npca.ca/images/uploads/board_files/2016-02-17-Full-Authority-Agenda.pdf.

²²² NPCA Full Authority Meeting Minutes (28 June 2017) at 12, https://npca.ca/images/uploads/board_files/2017-06-28-Full-Authority-Meeting-Minutes.pdf.

²²³ *Ibid.*

²²⁴ NPCA Full Authority Meeting Minutes (28 February 2018) at 9, https://npca.ca/images/uploads/board_files/2018-02-28-Full-Authority-Meeting-Minutes.pdf.

²²⁵ Letter from Ramsar Steering Committee to NPCA dated March 20, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018) at 25, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf.



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order to relieve the NPCA Board of this apparent discomfort, we are hereby withdrawing our request for the NPCA’s endorsement and thank you for your consideration.²²⁶

The NPCA’s Report No. 32-18, Designation of the Niagara River as a RAMSAR Site, dated March 26, 2018 was submitted to the NPCA Board. The Report states that a Ramsar designation carries with it no financial support or legal protection.²²⁷ It also states that a Ramsar designation does not affect the management of the site or adjacent lands and it cannot be used as part of natural heritage feature regulation.²²⁸ The Report states that the “proposed RAMSAR designation cannot be used as part of the NPCA review or screening process when implementing NPCA’s regulation, or as criteria to protect natural systems within its watershed. The NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure adherence to existing NPCA and Regional of Niagara Core Natural Heritage policies.”²²⁹

On November 20, 2019, the NPCA Board passed a motion to endorse and support the proposed nomination of the Niagara River as a Ramsar site.²³⁰

Document #: 1876467

²²⁶ *Ibid.*

²²⁷ NPCA Report No 32-18, “Designation of the Niagara River as a RAMSAR Site” dated March 26, 2018 in the NPCA Full Authority Meeting Agenda (26 March 2018), at 30, https://npca.ca/images/uploads/board_files/2018-03-26-Full-Authority-Agenda.pdf

²²⁸ *Ibid.*

²²⁹ *Ibid* at 31.

²³⁰ NPCA Full Authority Meeting Minutes (20 November 2019) at 3, https://npca.ca/images/uploads/board_files/FAMinutes_11202019.pdf.



APPENDIX A – Key Documents

This Appendix contains copies of the following documents:

- 1 Letter from Environment and Climate Change Canada to the Town of Niagara-on-the-Lake dated September 10, 2015
- 2 Letter from Environment and Climate Change Canada to the Niagara Peninsula Conservation Authority dated November 8, 2019
- 3 Letter from Environment and Climate Change Canada to the Niagara Region dated June 10, 2020
- 4 Letter from the Ontario Ministry of Natural Resources and Forestry to the Town of Fort Erie dated September 16, 2015
- 5 Letter from the Niagara Peninsula Conservation Authority to the Town of Fort Erie dated October 8, 2015
- 6 Letter from the Niagara Peninsula Conservation Authority to the Town of Niagara-on-the-Lake dated November 30, 2015
- 7 Niagara Peninsula Conservation Authority's Report 32-18 to the Board of Directors re Designation of the Niagara River as a RAMSAR Site dated March 26, 2018

TAB 1
LETTER FROM ENVIRONMENT AND CLIMATE CHANGE CANADA TO THE
TOWN OF NIAGARA-ON-THE-LAKE DATED SEPTEMBER 10, 2015



Environment
Canada

Environnement
Canada

John Henricks, Director of Community & Development Services
Town of Niagara-on-the-Lake
1593 Four Mile Creek Road, PO Box 100
Virgil, ON L0S 1T0

September 10, 2015

Dear Mr. Henricks,

As requested by the Niagara River Ramsar Steering Committee, I am providing information that will clarify the regulatory implications of Ramsar site designation in Canada and the responsibilities of management authorities of those sites once designated.

Canada acceded to the Ramsar Convention in 1981. As part of its commitment to promote the wise use of wetlands, Canada implements the North American Waterfowl Management Plan and a number of federal and provincial policy initiatives, including the Federal Policy on Wetland Conservation.

The global network of Wetlands of International Importance (Ramsar sites) is one of the cornerstones of the Ramsar Convention. Canada currently has 37 Ramsar sites, the last of which was designated in 2005, covering over 13 million hectares and representing 8% of the total wetland area in Canada. Ramsar sites are located in all Provinces and Territories. Should the nomination of the Niagara River Ramsar Site be successful, it will be the first transboundary Ramsar site in North America.

As you may be aware, designation as a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries with it no financial support or regulatory implications. In fact, the designation of a site serves to highlight the values of the Site but affects neither the management regime for these areas nor resource use within them, nor for lands adjacent to the Ramsar site.

A Ramsar site designation is a "good faith" designation to maintain the ecological character of a site in the context of wise use. Ramsar defines wise use of Ramsar sites as "the maintenance of their ecological character, achieved through ecosystem approaches, within the context of sustainable development". At Canadian Ramsar sites, typical activities that occur include recreational activities such as boating, bird watching, consumptive activities such as hunting and fishing, and agriculture. The aim is not to prohibit activities, but rather to encourage activities in the framework of "wise use".

Site managers, those responsible for the management of the lands/waters within the boundaries of the Ramsar site and named on the Ramsar Information Sheet are required to assure the maintenance of the ecological, hydrological, and socioeconomic characteristics and



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functions of the Site and promote the wise use of resources on this wetland area. Site managers are also responsible for communicating any human-induced changes on the site that affect ecological character to the Administrative Authority (Environment Canada). Additional guidance material on the wise use of wetlands and management planning at Ramsar sites can be found on the Secretariat's website at www.ramsar.org.

I hope you find this information helpful. Ramsar is a co-operative endeavor and Canada's success in implementing the Convention is due in large part to partnerships. We thank you for your interest and dedication in this pursuit. If you have any further questions on the Ramsar Convention or the nomination of Ramsar sites in Ontario, please contact Nancy Patterson at Nancy.Patterson@ec.gc.ca or 416-739-5824.

Sincerely,



Grant Hogg
Director, Habitat Conservation Management
Ramsar Convention on Wetlands Canadian National Focal Point

cc. Niagara River Ramsar Steering Committee
Nancy Patterson, Environment Canada

TAB 2
LETTER FROM ENVIRONMENT AND CLIMATE CHANGE CANADA TO THE
NIAGARA PENINSULA CONSERVATION AUTHORITY DATED
NOVEMBER 8, 2019



Chair and Board Members
Niagara Peninsula Conservation Authority
 250 Thorold Road West; 3rd Floor
 Welland, ON L3C 3W2

November 8, 2019

Dear Chair and Board Members:

As requested by the Niagara River Ramsar Designation Steering Committee, I am writing to provide you with information that aims to clarify the regulatory implications of Ramsar site designation in Canada and the responsibilities of management authorities of those sites once designated.

The global network of Wetlands of International Importance (Ramsar sites) is one of the cornerstones of the Ramsar Convention. Canada currently has 37 Ramsar sites covering over 13 million hectares and representing 80% of the total wetland area in Canada. Ramsar sites are located in all Provinces and Territories. Should the nomination of the Niagara River Ramsar Site be successful, it will be the first transboundary Ramsar site in North America.

As you may be aware, designation as a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries with it no financial support or regulatory implications. In fact, the designation of a site serves to highlight the values of the Site but affects neither the management regime nor resource use for these areas or for lands adjacent to the Ramsar site.

A Ramsar site designation is a "good faith" designation to maintain the ecological character of a site in the context of wise use. Ramsar defines wise use of Ramsar sites as "the maintenance of their ecological character, achieved through ecosystem approaches, within the context of sustainable development". At Canadian Ramsar sites, typical activities that occur include recreational activities such as boating, bird watching, consumptive activities such as hunting and fishing, and agriculture. The aim is not to prohibit activities, but rather to encourage activities in the framework of "wise use".

Site managers, those responsible for the management of the lands/waters within the boundaries of the Ramsar site and named on the Ramsar Information Sheet are required to assure the maintenance of the ecological, hydrological, and socioeconomic characteristics and functions of the Site and promote the wise use of resources on this wetland area. Site managers are also responsible for communicating any human-induced changes on the site that affect ecological character to the Administrative Authority (Environment and Climate Change Canada). Additional guidance material on the wise use of wetlands and management planning for Ramsar sites can be found on the Secretariat's website at www.ramsar.org.

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I hope you find this information helpful. Ramsar is a co-operative endeavour and Canada's success in implementing the Convention is due in large part to partnerships. We thank you for your interest and dedication in this pursuit. If you have any further questions on the Ramsar Convention or the nomination of Ramsar sites in Ontario, please contact Graham Bryan at Graham.Bryan@canada.ca or 416-739-4918.

Sincerely,



Grant Hogg

Executive Director, Conservation Partnerships and Programs

Environment Climate Change Canada

Ramsar Convention on Wetlands Canadian Acting/Head of Administrative Authority and National Focal Point

Cc: Jocelyn Baker, Canadian Co-chair, Niagara River Ramsar Designation Steering Committee
Jajeen Rose-Burney, U.S. Co-chair, Niagara River Ramsar Designation Steering Committee

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TAB 3
LETTER FROM ENVIRONMENT AND CLIMATE CHANGE CANADA TO THE
NIAGARA REGION DATED JUNE 10, 2020



Government of Canada
Gouvernement du Canada

Canada

Jim Bradley, Regional Chair
Niagara Region
2201 St. David's Road, P.O. Box L042
Thorold, ON L2V 4T7

June 10, 2020

Dear Mr. Bradley:

As requested by the Niagara River Ramsar Designation Steering Committee, I am writing to provide you with information that aims to clarify the implications of Ramsar site designation in Canada and the responsibilities of management authorities of those sites once designated.

The global network of Wetlands of International Importance (Ramsar sites) is one of the cornerstones of the Ramsar Convention. Canada currently has 37 Ramsar sites covering over 13 million hectares and also has the distinction of being home to the second largest Ramsar site in the world, Queen Maud Gulf (6.3 million hectares). Ramsar sites are located in all Provinces and Territories. Should the nomination of the Niagara River Ramsar Site be successful, it will be the first transboundary Ramsar site in North America.

As you may be aware, designation as a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries with it no financial support. The designation of a site serves to highlight the values of the Site but affects neither the management regime nor resource use for these areas or for lands adjacent to the Ramsar site.

A Ramsar site designation is a "good faith" designation to maintain the ecological character of a site in the context of wise use. Ramsar defines wise use of Ramsar sites as "the maintenance of their ecological character, achieved through ecosystem approaches, within the context of sustainable development". At Canadian Ramsar sites, typical activities that occur include recreational activities such as boating, bird watching, consumptive activities such as hunting and fishing, and agriculture. The aim is not to prohibit activities, but rather to encourage activities in the framework of "wise use".

Site managers, those responsible for the management of the lands/waters within the boundaries of the Ramsar site and named on the Ramsar Information Sheet are required to assure the maintenance of the ecological, hydrological, and socioeconomic characteristics and functions of the Site and promote the wise use of resources on this wetland area. Site managers are also responsible for communicating any human-induced changes on the site that affect ecological character to the Administrative Authority (Environment and Climate

Change Canada), whom in return, have the obligation to report to the Ramsar Secretariat. Additional guidance material on the wise use of wetlands and management planning for Ramsar sites can be found on the Secretariat's website at www.ramsar.org.

I hope you find this information helpful. Ramsar is a co-operative endeavour and Canada's success in implementing the Convention is due in large part to partnerships. We thank you for your interest and dedication in this pursuit. If you have any further questions on the Ramsar Convention or the nomination of Ramsar sites in Ontario, please contact Graham Bryan at Graham.Bryan@canada.ca or 416-739-4918.

Sincerely,



Jacey Scott

Head Wetlands Office, Regional Operations Directorate
Environment and Climate Change Canada
Ramsar Convention on Wetlands Canadian National Focal Point

Cc: Rino Mostacci, Commissioner of Planning and Development Services

Jocelyn Baker, Canadian Co-chair, Niagara River Ramsar Designation Steering Committee

Jajean Rose-Burney, U.S. Co-chair, Niagara River Ramsar Designation Steering Committee

TAB 4
LETTER FROM THE ONTARIO MINISTRY OF NATURAL RESOURCES AND FORESTRY TO THE TOWN OF FORT ERIE DATED SEPTEMBER 16, 2015

**Ministry of Natural
 Resources and Forestry**

**Ministère des Richesses
 naturelles et des Forêts**

Guelph District
 Vineland Field Office
 4890 Victoria Ave North
 P.O. Box 5000
 Vineland Station, Ontario
 L0R 2E0

District de Guelph
 Bureau régional de Vineland
 4890 avenue Victoria Nord
 C.P. 5000
 Vineland Station, Ontario
 LOR 2E0

Telephone: (905) 562-4147
 Facsimile: (905) 562-1154

Téléphone: (905) 562-4147
 Télécopieur: (905) 562-1154



Guelph District

September 16, 2015

Mr. Richard F. Brady
 Director of Community & Development Services
 Town of Fort Erie
 1 Municipal Centre Drive
 Fort Erie, Ontario L2A 2S6

Dear Mr. Brady,

Re: Proposed Ramsar Designation of the Niagara River

I am writing to clarify our position on Provincially Significant Wetlands (PSW's) and wetlands as defined by the Ramsar Convention. The Ramsar Convention is a voluntary intergovernmental treaty, committed to encouraging education and sustainable development as a means of acknowledging global wetlands. The purpose of the treaty is to promote the conservation and wise use of water-based ecosystems (wet lands) through local, national, and international sustainable practices. A Ramsar designation will not impose any regulatory measures or legally enforceable restrictions on landowners or affect sovereignty rights under the treaty. The treaty is clear; the Ramsar Convention is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments.

It should be noted, the Convention uses a broad definition of wetlands; it is defined as any substrate that is at least occasionally wet, including lakes and rivers. The Ministry of Natural Resources and Forestry (MNR) designates wetland provincially using the Ontario Wetland Evaluation System (OWES). In this evaluation system wetlands are defined as:

"Lands that are seasonally or permanently flooded by shallow water as well as lands where the water table is close to the surface; in either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic or water tolerant plants".

To meet with our staff please be sure to call ahead and make an appointment.
 For general information visit: www.mnr.gov.on.ca or www.ontario.ca

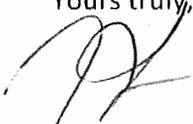
[2]

The term wetland is a general one and includes specific land types commonly called marshes, bogs, swamps and fens.

A Ramsar wetland designation is not the same as a wetland designated by the MNRF and therefore cannot be used as part of natural heritage feature regulation, or as criteria to protect natural systems. The designation of a Ramsar site in and of itself offers no legal protection. As stated above, the Ramsar designation of wetland is voluntary and carries no regulatory implications.

I trust this clarifies our position on this. Should you have any questions on this, please do not hesitate to contact me directly.

Yours truly,



Joad Durst
Resource Management Supervisor
Guelph District

CC: Rino Mostacci, Niagara Region
John Henricks, Town of Niagara-on-the-Lake
Peter Graham, NPCA

To meet with our staff please be sure to call ahead and make an appointment.
For general information visit: www.mnr.gov.on.ca or www.ontario.ca

TAB 5
LETTER FROM THE NIAGARA PENINSULA CONSERVATION AUTHORITY
TO THE TOWN OF FORT ERIE DATED OCTOBER 8, 2015



Office of the Chair

250 Thorold Road West, 3rd Floor, Welland ON L3C 3W2
Telephone (905) 788-3135 x 251 | Facsimile (905) 788-1121

bruce.timms@niagararegion.ca | www.npca.ca

October 8, 2015

Director of Community & Development Services
Town of Fort Erie
1 Municipal Centre Drive
Fort Erie, Ontario L2A 2S6

Attention: Richard F. Brady, MA, MCIP, RPP

Dear Mr. Brady;

Re: Proposed Ramsar Designation of the Niagara River

On behalf of the Niagara Peninsula Conservation Authority (NPCA), thank you for the opportunity to clarify our position with respect to the proposed Ramsar designation for the Niagara River.

In response to the International Joint Commission (IJC) deeming the Niagara River the most degraded place in North America, the Great Lakes Water Quality Agreement was signed in 1972 between Canada and the U.S. Its goal was to work collaboratively to restore the ecosystem health of the Great Lakes, including the Niagara River. To date, major accomplishments have been made in the Niagara River including a 99% reduction of point source discharges along with significant reductions in toxic chemicals. In order to acknowledge this achievement of improved health and prosperity, a Ramsar designation for the river is being pursued. This effort is being led by the Ramsar Steering Committee consisting of agency representatives from Canada and the U.S., including representation from the NPCA. The NPCA Board of Directors passed a resolution at their June 15th, 2015 Board meeting, endorsing the proposed Ramsar designation for the Niagara River.

Recognizing that some regulatory and legal concerns have recently been raised regarding the Niagara River potentially becoming a Ramsar site of International Importance, we have consulted with our provincial and federal partners for site designation clarification. On September 10, 2015, Environment Canada submitted a letter verifying "a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries no regulatory implications. The designation serves to highlight the values of the site but affects neither the management regime for these areas nor resource use within them, nor for lands adjacent to the Ramsar site".

On September 16, 2015, the Province of Ontario through the Ministry of Natural Resources and Forestry submitted a letter verifying "a Ramsar designation will not impose any regulatory measures or legally enforceable restrictions on landowners or affect sovereignty rights under

the treaty. The treaty is clear: the Ramsar Convention is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments”.

Ramsar Steering Committee member and Vice Dean of the University of Buffalo Law School also submitted a letter dated September 1st, 2015 verifying from a legal perspective and as a Ramsar Treaty expert, “a Ramsar designation is a voluntary, non-regulatory Convention Treaty, signed by 168 countries including Canada and the United States. It is an honorary endorsement of the rivers ecological significance, affirming through designation, the rivers global importance. It is a mechanism to encourage increased tourism, recreation and fund raising opportunities through heightened international awareness of the rivers global contribution to biodiversity and its role in building stronger, healthier and more resilient communities”.

The Ramsar Convention is a voluntary intergovernmental treaty, committed to encouraging education and sustainable development as a means of acknowledging global wetlands. The purpose of this treaty is to promote the conservation and wise use of water-based ecosystems (wet lands) through local, national, and international engagement and collaboration.

It should be noted that the NPCA’s definition of wetland comes directly from section 28 of the Conservation Authorities Act and is not how the Ramsar Convention defines it. The Convention uses a broad definition of wetlands, defined as any substrate that is at least occasionally wet, including lakes and rivers (wet lands). As such, this proposed designation cannot be used as part of the NPCA review or screening process when implementing NPCA’s regulation, or as criteria to protect natural systems within its watershed. In addition, there is no mechanism of establishing a buffer around the Ramsar designation, which includes the wetted portion of the river from the inlet at Fort Erie to the outlet at Niagara-on-the-Lake. The NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage polices are satisfied.

The progress achieved over the last 45 years in restoring the health of the Niagara River would not have been possible without the cooperation of all government agencies, stakeholders and the active involvement of the general public.

We look forward to continuing to collaborate with our member municipalities on this important initiative. If you require any further information or clarification on the Niagara River restoration efforts or the proposed Ramsar designation, please do not hesitate to contact myself or NPCA staff.

Sincerely,



D. Bruce Timms, P.Eng.;
Chairman – NPCA

cc: Rino Mostacci, Commissioner of Planning & Development Services, Niagara Region
John Henricks, Director of Community & Development Services, Town of NOTL
John Lohuis, General Manager, The Niagara Parks Commission
Ramsar Steering Committee

TAB 6
LETTER FROM THE NIAGARA PENINSULA CONSERVATION AUTHORITY
TO THE TOWN OF NIAGARA-ON-THE-LAKE DATED NOVEMBER 30, 2015



Office of the Chair

250 Thorold Road West, 3rd Floor, Welland ON L3C 3W2
Telephone (905) 788-3135 x 251 | Facsimile (905) 788-1121
bruce.timms@niagararegion.ca | www.npca.ca

November 30, 2015

Agricultural Committee
Town of Niagara-on-the-Lake
1593 Four Mile Creek Road, PO Box 100
Virgil, ON LOS 1T0

Attention: Chairman Mr. Dennis Dick

Dear Mr. Dick;

Re: Proposed Ramsar Designation of the Niagara River

On behalf of the Niagara Peninsula Conservation Authority (NPCA), thank you for the opportunity to clarify our position with respect to the proposed Ramsar designation for the Niagara River.

In response to the International Joint Commission (IJC) deeming the Niagara River the most degraded place in North America, the Great Lakes Water Quality Agreement was signed in 1972 between Canada and the U.S. Its goal was to work collaboratively to restore the ecosystem health of the Great Lakes, including the Niagara River. To date, major accomplishments have been made in the Niagara River including a 99% reduction of point source discharges along with significant reductions in toxic chemicals. In order to acknowledge this achievement of improved health and prosperity, a Ramsar designation for the river is being pursued. This effort is being led by the Ramsar Steering Committee consisting of agency representatives from Canada and the U.S., including representation from the NPCA. The NPCA Board of Directors passed a resolution at their June 15th, 2015 Board meeting, endorsing the proposed Ramsar designation for the Niagara River.

Recognizing that some regulatory and legal concerns have recently been raised regarding the Niagara River potentially becoming a Ramsar site of International Importance, we have consulted with our provincial and federal partners for site designation clarification. On September 10, 2015, Environment Canada submitted a letter verifying "a Ramsar site in and of itself offers no legal protection. Ramsar designation is voluntary and carries no regulatory implications. The designation serves to highlight the values of the site but affects neither the management regime for these areas nor resource use within them, nor for lands adjacent to the Ramsar site".

On September 16, 2015, the Province of Ontario through the Ministry of Natural Resources and Forestry submitted a letter verifying "a Ramsar designation will not impose any regulatory measures or legally enforceable restrictions on landowners or affect sovereignty rights under the treaty. The treaty is clear: the Ramsar Convention is not a regulatory regime and has no punitive sanctions for violations of or defaulting upon treaty commitments".

Ramsar Steering Committee member and Vice Dean of the University of Buffalo Law School also submitted a letter dated September 1st, 2015 verifying from a legal perspective and as a Ramsar Treaty expert, "a Ramsar designation is a voluntary, non-regulatory Convention Treaty, signed by 168 countries including Canada and the United States. It is an honorary endorsement of the rivers ecological significance, affirming through designation, the rivers global importance. It is a mechanism to encourage increased tourism, recreation and fund raising opportunities through heightened international awareness of the rivers global contribution to biodiversity and its role in building stronger, healthier and more resilient communities".

The Ramsar Convention is a voluntary intergovernmental treaty, committed to encouraging education and sustainable development as a means of acknowledging global wetlands. The purpose of this treaty is to promote the conservation and wise use of water-based ecosystems (wet lands) through local, national, and international engagement and collaboration.

It should be noted that the NPCA's definition of wetland comes directly from section 28 of the Conservation Authorities Act and is not how the Ramsar Convention defines it. The Convention uses a broad definition of wetlands, defined as any substrate that is at least occasionally wet, including lakes and rivers (wet lands). As such, this proposed designation cannot be used as part of the NPCA review or screening process when implementing NPCA's regulation, or as criteria to protect natural systems within its watershed. In addition, there is no mechanism of establishing a buffer around the Ramsar designation, which includes the wetted portion of the river from the inlet at Fort Erie to the outlet at Niagara-on-the-Lake. The NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure that existing NPCA and Region of Niagara Core Natural Heritage polices are satisfied.

Further to the above, the Ramsar Convention and proposed designation cannot impose new or future regulatory requirements related to any irrigation works or network, including the Dee Road irrigation system. The Ramsar designation cannot impose additional study requirements on the NOTL irrigation committee including future requirements of permits to take water and the user rights of landowners and/ or farmers who use the Niagara River.

The progress achieved over the last 45 years in restoring the health of the Niagara River would not have been possible without the cooperation of all government agencies, stakeholders and the active involvement of the general public.

We look forward to continuing to collaborate with our member municipalities on this important initiative. If you require any further clarification on the Niagara River restoration efforts or the proposed Ramsar designation, please do not hesitate to contact myself or NPCA staff.

Sincerely,



D. Bruce Timms, P.Eng;
Chairman - NPCA

TAB 7
NIAGARA PENINSULA CONSERVATION AUTHORITY'S REPORT 32-18 TO
THE BOARD OF DIRECTORS RE DESIGNATION OF THE NIAGARA RIVER
AS A RAMSAR SITE DATED MARCH 26, 2018



Report To: Board of Directors
Subject: Designation of the Niagara River as a RAMSAR Site
Report No: 32-18
Date: March 26, 2018

RECOMMENDATION:

That Report No. 32-18 respecting the Designation of the Niagara River as a RAMSAR Site **BE RECEIVED** for information.

PURPOSE:

To provide information about the pursuit of the RAMSAR designation for the Niagara River.

BACKGROUND:

The Convention on Wetlands of International Importance, known as the RAMSAR Convention, is a voluntary, intergovernmental treaty that provides the framework for national action and international cooperation for the conservation and wise use of wetland and their resources (RAMSAR 2017). The RAMSAR Convention was signed on February 2, 1971 with Canada agreeing to the RAMSAR Convention on May 15, 1981. The RAMSAR designation is considered an honorary endorsement of the ecological importance of the site. The RAMSAR designation carries with it no financial support or legal protection (Appendix 1). A RAMSAR designation does not affect the management of the site or adjacent lands and it cannot be used as part of natural heritage feature regulation (Appendix 2). The province of Ontario already has laws, regulations, and policies that guide land use and protect wetlands (e.g., *Conservation Authorities Act*, *Provincial Policy Statement*) (OMNRF 2018). The Government of Canada has existing laws and policy that govern the management of boundary waters, fisheries, water quality, and navigation (ECCC 2018).

The Convention uses a broad definition of wetlands defined as any substrate that is at least occasionally wet, including lakes and rivers. In a letter from the NPCA Chairman of the Board, the NPCA's definition of a wetland (Section 28 of the *Conservation Authorities Act*) (Appendix 3). The proposed RAMSAR designation cannot be used as part of the NPCA review or screening process when implementing NPCA's regulation, or as criteria to protect natural systems within its watershed. The NPCA will continue to only use the existing Land Use Planning and regulatory framework when providing review of development applications to ensure adherence to existing NPCA and Region of Niagara Core Natural Heritage policies.

Canada became a Contracting Party to the RAMSAR Convention in 1981 (Canadian Wildlife Service & Secretariat 1999). The Convention promotes cooperation among countries to promote wetland conservation recognizing that waters can cross political boundaries and that animals are often migratory. In addition to wetland conservation considerations in national land use planning, Canada and the other Contracting Parties to the Convention undertake four main obligations:

- Designation of at least one wetland for inclusion in the *List of Wetlands of International Importance*;
- Promotion of the wise use of wetlands within their nation particularly through the implementation of wetland conservation and management policies;
- Consultation with other Contracting Parties about implementing the obligations arising under the Convention particularly for those wetlands shared between nations; and
- Establishment of protected wetland areas throughout their nation.

Currently, Canada has designated 37 sites as Wetlands of International Importance, with the most recent site being added to the list in 2005. Eight of those sites are located in the Province of Ontario (Appendix 4).

To meet the requirements of being listed as a RAMSAR Convention Wetland of International Importance, a site must fulfill at least one of these nine criteria:

1. Is representative, rare, or unique.
2. Supports vulnerable, endangered or threatened species.
3. Supports keystone or endemic species.
4. Supports species at a critical stage in their life cycles (migration, breeding).
5. Supports 20,000 or more waterbirds.
6. Supports 1% of the individuals in a population of one species of waterbird.
7. Supports a significant proportion of indigenous fish species.
8. An important food source, spawning area, nursery or migration path for fish.
9. Supports 1% of the individuals in a population of one species or subspecies of wetland-dependent non-avian animal species.

The Niagara River has been found to meet all nine criteria; therefore, a RAMSAR designation is being sought for the Niagara River corridor (Appendix 5). If the Niagara River's nomination is successful for U.S. and Canada, it will be the very first transboundary site in North America. Efforts towards the RAMSAR designation process is led by the Niagara River RAMSAR Steering Committee which was established in 2013 to provide expertise and guide the procedural nomination process (Appendix 6). Each country must nominate their own site but to coordinate a transboundary designation, the Steering Committee is Co-Chaired by a Canadian and American representative. An Advisory Group (formerly called the Working Group), made up of groups/organizations that have an interest in the Niagara River, continue to support ongoing efforts of stakeholder engagement and promotion of the RAMSAR designation process. Representatives from the NPCA as well as the Niagara River Remedial Action Plan are identified as members of the Advisory Group (Appendix 6).

The Niagara River is a 58-KM bi-national connecting channel linking Lake Erie to Lake Ontario. It provides many beneficial water uses for humans and wildlife alike. The Niagara River corridor is a vibrant ecosystem that supports birds, fish, reptiles, amphibians and provides us with a source of drinking water, electricity, recreation, and economic benefits as it's a big tourist destination. Approximately 54% of the NPCA's watershed area drains into the Niagara River. It is a natural boundary between Canada and the United States and its waters are shared and managed cooperatively through the Boundary Waters Treaty of 1909 (as well as other policies). In Ontario, there are three municipalities adjacent to the Niagara River: Town of Fort Erie, City of Niagara Falls, and Town of Niagara-on-the-Lake.

In 1987, the Niagara River was listed as a Great Lakes' Area of Concern (AOC) through the Canada-U.S. Great Lakes Water Quality Agreement (GLWQA) because of water pollution and habitat loss. The GLWQA commits both countries to working cooperatively to "restore and maintain the chemical physical and biological integrity of the waters of the Great Lakes". Since 1971, Canada and Ontario have worked together to fulfill Canada's obligations under the GLQWA (called the Canada-Ontario Agreement on Great Lakes Water Quality and Ecosystem Health or COA). A Niagara River Remedial Action Plan (RAP) partnership was established in 1989 as part of the requirements of the GLWQA and COA to restore and protect water quality and ecosystem health in the Niagara River. Since then, significant efforts of many RAP partners (including the NPCA) have improved the condition of the Niagara River through the reduction of pollution discharges, habitat improvements, and better water use/management. The Niagara River RAP initiative supports the pursuit of the RAMSAR designation as an opportunity to celebrate and highlight the achievements of the Niagara River's cleanup. Through involvement of the RAP Project Manager, the RAP initiative continues to provide support by participating on the RAMSAR Working Group to ensure the alignment of goals and messaging for both initiatives, while the RAP works to remove the Niagara River from the list of Great Lakes' Areas of Concern.

The proposed geographic scope of the RAMSAR designation is the waters of the Niagara River from Lake Erie to Lake Ontario and shore to shore (same as the Niagara River Area of Concern), as well as some existing protected greenspaces and riparian areas along the river

DISCUSSION:

In July 2015, the NPCA Board of Directors endorsed the proposed Niagara River RAMSAR designation (*Resolution No. FA - 134 -15*: Appendix 7 & 8). The NPCA is currently listed as a member of the Advisory Group (formerly called the Working Group), made up of groups/organizations that have an interest in the Niagara River, to continue to support ongoing efforts of stakeholder engagement and promotion of the RAMSAR designation process.

If successful, the RAMSAR designation would acknowledge the river's global contributions to ecological significance, rich biodiversity, and healthy communities. Canada currently has 37 RAMSAR sites but the Niagara River would be the first bi-national RAMSAR site in North and South America. Overall, this new title would shine a light on this significant natural resource, celebrate major ecological accomplishments through the RAP (Remedial Action Plan), help to change the public's perception of the Niagara River being a polluted area to one that supports a healthy and vibrant ecosystem that sustains humans and wildlife, and bring well-deserved recognition to the Niagara region.

FINANCIAL IMPLICATIONS:

There are no financial implications to the NPCA. The Niagara River RAP (Remedial Action Plan) Project Manager is identified as a member of the RAMSAR Advisory Group. Presently, the NPCA receives financial support from the Great Lakes Sustainability Fund (administered through Environment and Climate Change Canada) and the Ontario Ministry of the Environment and Climate Change for RAP Governance to support the coordination and administrative services provided by the Project Manager to implement the RAP initiative.

Supporting the RAMSAR designation is identified as one of the deliverables under the Provincial RAP Governance Agreement and is identified as an ongoing work plan priority to ensure the alignment of goals and messaging for both initiatives while the RAP Committee works to remove the Niagara River from the list of Great Lakes' Areas of Concern.

RELATED REPORTS AND APPENDICES:

- Appendix 1: Letter from Environment Canada
- Appendix 2: Letter from Ontario Ministry of Natural Resources and Forestry
- Appendix 3: Letter from NPCA Chairman NOTL Agriculture Committee
- Appendix 4: Details on RAMSAR Sites in Ontario
- Appendix 5: Niagara River RAMSAR Factsheet
- Appendix 6: Niagara River RAMSAR Designation Steering Committee Terms of Reference
- Appendix 7: Board Report No. 77-15
- Appendix 8: NPCA Full Authority Meeting Minutes – July 15, 2015

REFERENCES:

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Prepared by:



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Submitted by:



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