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To:	Niagara Region
From:	Dana Anderson and Graham Hendren
Date:	February 24, 2019
File:	1593C
Subject:	Assessment and Opinion on Niagara Escarpment Plan Policies, Regulations and Niagara Escarpment Commission Implementation of Controls Related to Wineries in Niagara Region

EXECUTIVE SUMMARY

We understand the Region is preparing a submission to the Province of Ontario to identify the issues related to how the Niagara Escarpment Plan (NEP) policies and the Niagara Escarpment Commission (NEC) processes address agricultural-related uses, on-farm diversified uses and wineries in the Region. The intent of the report is to identify any issues with respect to the policies and processes of the NEC in relation to agriculture-related uses and on-farm diversified uses including wineries based on research and analysis of the policies and regulations currently in place and how those policies are implemented.

In order to assist the Region, this memorandum provides an independent and objective planning opinion on the NEP policies and NEC processes related to agricultural-related uses, on-farm diversified uses and wineries in Niagara Region. In order to formulate our planning opinion, a comprehensive review and analysis was undertaken which included:

- (i) An assessment of Provincial, Regional and local planning policies related to agricultural-related uses, on-farm diversified uses and wineries;
- (ii) An assessment of the history of the NEP and changes to the agricultural policies within the broader context of emerging provincial policies;
- (iii) An interjurisdictional scan of land use policies and regulations related to wineries in other wine-producing regions including Prince Edward County, Napa Valley County (California) and the Okanagan Valley (British Columbia);
- (iv) A case study comparison of land use regulations applied to wineries within and outside of the NEP area throughout Niagara Region;
- (v) An assessment of the development controls imposed by the NEC through conditions of development permits; and,
- (vi) An assessment of the legislative authority under the Niagara Escarpment Planning and Development Act.

The key findings from our review and analysis are as follows:

- Agricultural-related uses, on-farm diversified uses and wineries are governed by a complex planning policy framework in Ontario. In Niagara Region such uses, depending on their geographic location, may also subject the Niagara Escarpment Plan. While certain policies related to agricultural-related uses, on-farm diversified uses and wineries have evolved over time, and have become slightly less restrictive, there still exist land use controls which are more restrictive than the Province's Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. Additionally, there is a misalignment and inconsistency in how wineries are defined within agricultural-related uses and on-farm diversified uses, as defined by the Provincial Policy Statement (PPS).
- Inconsistencies place landowners in the NEP area at a disadvantage, with smaller maximum building sizes permitted, as well as additional restrictions on building and site uses (e.g. limits on retail sales, limits on restaurant sizes) implemented through permits.
- Unlike other provincial policy documents, the NEP does not provide definitions to classify wineries as either agricultural-related uses or on-farm diversified uses. Further, wineries exist within a different policy framework that places additional land use restrictions on them that are not applied to other agricultural uses.
- A review of land use regulations in selected wine producing regions across North America illustrates the ability to maintain and protect agricultural areas without the placement of overly restrictive regulations that limit winery operations and growth of the agri-food sector. Even within jurisdictions that contain environmental preservation areas, land use policies for wineries within these areas are clearly defined and more adaptable to the physical and economic context.
- Comparing land use policies applied to wineries within the NEP area to those located outside the NEP area within Niagara Region itself, demonstrates the impacts of over regulation and the inequity of the NEP policies. The comparison demonstrates the inequities between policies, given that soil classification, landscape, drainage and other physical and contextual factors are identical on both sites.
- A review of the additional permitting conditions for wineries identifies the unreasonable and unjustified application of conditions that restrict how an operation is undertaken. Such conditions are, in our opinion, not reasonable and extend beyond land use policy authority and implementation.

We understand the Region is updating its Official Plan as part of its Municipal Comprehensive Review. Section 5 which addresses rural and agriculture land uses is being updated as part of this process. This memorandum provides recommendations for the Region to extend to the Province to ensure a more appropriate and equitable policy and regulatory framework is provided within the Region for those properties located within the NEP area. While the focus of the recommendations relates to wineries, it is equally applicable to other alcohol production facilities associated with agricultural lands.

The recommendations from our review and analysis include:

- Harmonizing the definitions and regulations of agricultural-related uses and on-farm diversified uses within the NEP with those of the PPS and the Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas;
- Removing the winery definition and/or modify the definition to remove limits on building types (e.g. implement building used to house farm machinery) within the NEP;
- Remove winery specific regulations from the NEP. We understand the Province has requested the NEC review its Development Control process to reduce red tape and delay. If consideration is given to urban and recreational areas being removed, perhaps the removal of wineries from the added process should also be considered;

- Remove limitations on the size of accessory uses on wineries from the NEP. Ultimately, the size and placement of buildings, additional buildings and activities should be at the discretion of the local municipality; and,
- Limit conditions on NEC permits to those which address land use and not detailed operational matters.

1. BACKGROUND

This memorandum has been prepared to assess the current policy framework related to agriculture-related uses and on-farm diversified uses including wineries within the Region of Niagara with a focus on the NEP policies and NEC processes related to agricultural-related uses, on-farm diversified uses and wineries in Niagara Region. In undertaking this review, it was also important to understand the economic and physical context related to the wine industry in Niagara Region, in addition to the legislative and policy context.

Economic and Physical Context

The Canadian wine and grape industry is a significant contributor to the Canadian economy generating employment and significant business revenue in many regions across the country. Ontario is the largest producer of wine grapes and wine in Canada with the most vineyards (90%) being located in the Niagara Peninsula¹. Tourism related to the wine industry is also a significant factor in revenue generation and economic prosperity for the Region. With the known importance of the employment and economic benefits provided by the wine industry, the land use policy and regulatory framework which controls and guides agricultural land uses and activities related to wineries should provide for a changing industry.

Niagara Region has an expanding agri-food sector which generates an estimated \$3 billion annually and employs approximately 18,000 associated jobs.² The Region plays a leading role both provincially and nationally as a key wine producing region. Grape growing and processing in Niagara Region is estimated at 65,000 tonnes per year, representing 93% of Ontario's and 65-75% of Canada's total grape production. Wine-related tourism attracts 3.7 million visitors each year, generating \$1.5 billion in tourism revenue³.

There are approximately 96 wineries within Niagara Region, 29 of which are located within the NEP area **(Figure 1)**. Encouraging the continued growth of the wine producing sector in Niagara Region is an important economic objective. The value of winemaking, and agri-food in general, to the regional and provincial economy, its contribution to the viability of local agriculture and sustainability of agricultural lands needs to be understood by all decision makers in relation to development associated with the industry.

¹ A. Frank, Rimerman + Co. LLP Report, March 2017. Retrieved from: <http://www.canadianvintners.com/wp-content/uploads/2017/06/Canada-Economic-Impact-Report-2015.pdf>.

² Ibid.

³ Ibid.

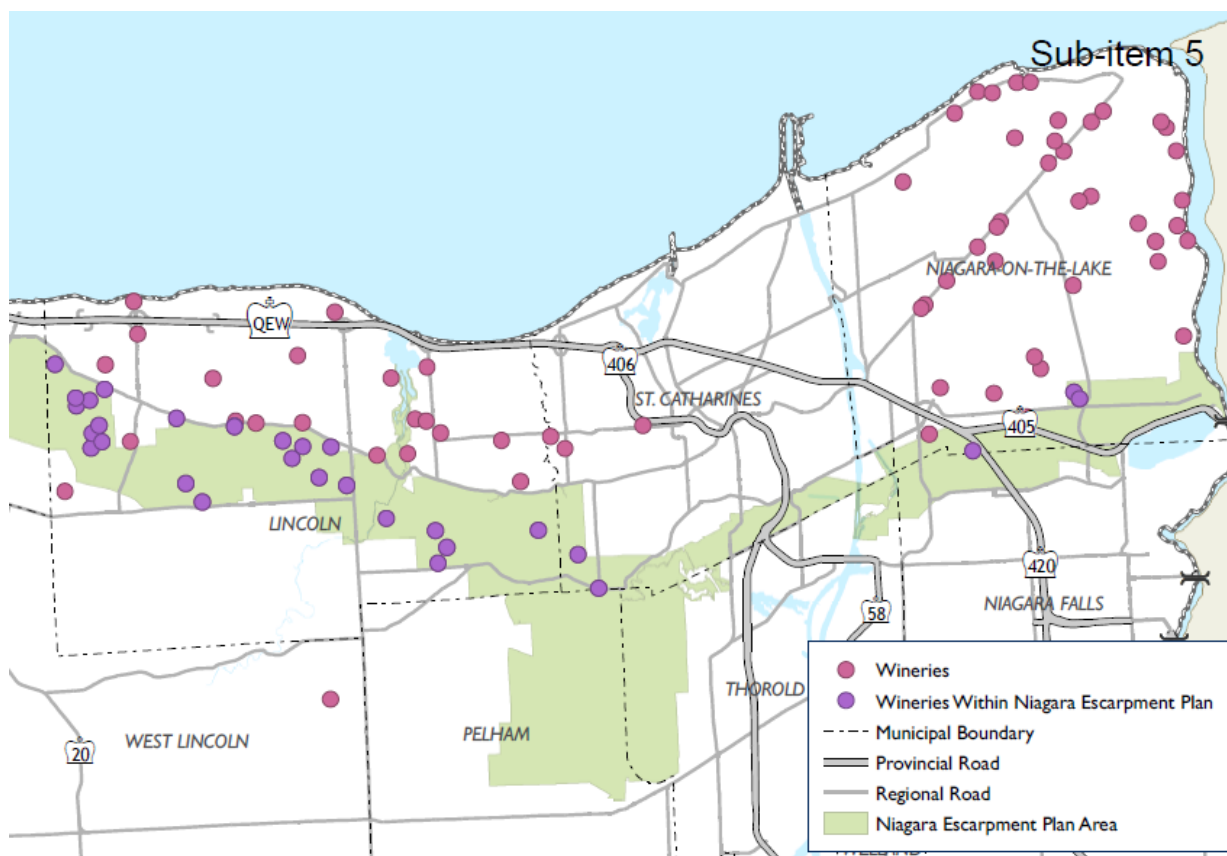


Figure 1: Map of Niagara Region wineries within and outside of the Niagara Escarpment Plan area.

Legislative and Policy Context

Current agricultural uses and activities including wineries in the Niagara Region are regulated within a complex, policy led planning framework which includes the Greenbelt Plan, NEP, Growth Plan for the Greater Golden Horseshoe (Growth Plan), PPS and the Planning Act. All of this legislation and provincial policy is further implemented by the Region of Niagara Official Plan and local Official Plans and Zoning By-laws. The Ontario Ministry of Agriculture, Food and Rural Affairs also has guidelines on Agriculture Uses.

In order to formulate our planning opinion, a comprehensive review and analysis was undertaken which includes:

- (i) An assessment of Provincial, Regional and local planning policies related to agricultural-related uses, on-farm diversified uses and wineries;
- (ii) An assessment of the history of the NEP and changes to the agricultural policies within the broader context of emerging provincial policies;
- (iii) An interjurisdictional scan of land use policies and regulations related to wineries in other wine-producing regions including Prince Edward County, Napa Valley County (California) and the Okanagan Valley (British Columbia);
- (iv) A case study comparison of land use regulations applied to wineries within and outside of the NEP area throughout Niagara Region;

- (v) An assessment of the development controls imposed by the NEC through conditions of development permits; and,
- (vi) An assessment of the legislative authority under the Niagara Escarpment Planning and Development Act.

The memorandum provides a summary of each assessment as well as a series of recommendations for consideration by the Region in its preparation of its report to the Province on how to address the implementation of agricultural policies.

2. LEGISLATIVE AND PLANNING POLICY FRAMEWORK

The Planning Act

The Planning Act establishes the broad policy framework for land use planning in Ontario and sets out land use control measures and who may control them. Matters of provincial interests are identified in Section 2 of the Act, and include, among others, the protection of ecological systems, areas, features and functions, the protection of agricultural resources, and the appropriate location of growth and development. There is no implied order of importance or priorities in how provincial interests are listed and applied.

Provincial Policy Statement (2014)

The Provincial Policy Statement (PPS) is the guiding policy document for land use planning in Ontario. Policies in the PPS are intended to be read together, and it is expected that land use decisions will vary from location to location and in different situation. It is the responsibility of local land use planning authorities to use all available information to make a decision that best respects all provincial interests under the PPS.

The majority of lands within Niagara Region within the NEP area are considered by the PPS as 'rural areas', and more specifically, prime agricultural areas. Rural areas are a system of lands that include rural settlement areas, rural lands, prime agricultural areas, natural heritage areas, and other resource areas. The PPS establishes the broad policy direction to leverage rural assets and amenities and protect the environment as a foundation for a sustainable economy.

Section 1.1.4.1 of the PPS sets out the policy directive supporting healthy, integrated and viable rural areas, as follows:

- a) building upon rural character, and leveraging rural amenities and assets;
- b) promoting regeneration, including the redevelopment of brownfield sites;
- c) accommodating an appropriate range and mix of housing in rural settlement areas;
- d) encouraging the conservation and redevelopment of existing rural housing stock on rural lands;
- e) using rural infrastructure and public service facilities efficiently;
- f) promoting diversification of the economic base and employment opportunities through goods and services, including value-added products and the sustainable management or use of resources;
- g) providing opportunities for sustainable and diversified tourism, including leveraging historical, cultural, and natural assets;
- h) conserving biodiversity and considering the ecological benefits provided by nature; and
- i) providing opportunities for economic activities in prime agricultural areas.

Section 2.3 of the PPS speaks directly to how agricultural lands should be planned for throughout the province. Prime agricultural areas shall be protected for long-term agricultural use. Recognizing the importance of expanding the economic vitality of agricultural areas, the PPS permits agricultural-related uses and on-farm diversification uses in addition to agricultural uses within prime agricultural areas. Definitions of these uses are provided below:

Agriculture-related uses: means those farm-related commercial and farm-related industrial uses that are directly related to farm operations in the area, support agriculture, benefit from being in close

proximity to farm operations, and provide direct products and/or services to farm operations as a primary activity.

On-farm diversified uses: *means uses that are secondary to the principal agricultural use of the property, and are limited in area. On-farm diversified uses include, but are not limited to, home occupations, home industries, agri-tourism uses, and uses that produce value-added agricultural products.*

Proposed agricultural-related uses and on-farm diversified uses shall be compatible with, and not hinder, surrounding agricultural operations. The PPS provides that criteria for these uses based on guidelines developed by the Province or municipal approaches, as set out in municipal planning documents, which achieve similar objectives.

Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas

In 2016, OMAFRA released guidelines on permitted uses in Ontario's Prime Agricultural Areas to help municipalities, decision-makers and farmers interpret PPS policies on permitted uses. These guidelines are intended to support the implementation of the PPS agricultural policies while explaining the intent behind specific policies. While considering these guidelines, it is important to remain aware of the precedence of the NEP policies, which may supersede broad-based provincial agricultural policies and guidelines. When compared to the NEP policies, the OMAFRA guidelines provide some restrictions on associated land uses but these are balanced with the other objectives including diversified tourism and economic activities (Table 1).

Table 1: Comparison of winery-related policies between OMAFRA Permitted Use Guidelines and Niagara Escarpment Plan

	Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas	Niagara Escarpment Plan
Agriculture-related Use Size Limits	No limits on size.	Maximum 3200 sq. m gross floor area limited.
On-Farm Diversified Use Size Limits	2% up to 10,000 sq. m. total site area	2% up to 10,000 sq. m.
	20% up to 2000 sq. m. (of 2%) of total floor area.	20% up to 2000 sq. m. (of 2%) of total floor area.
	50% discount on footprint for existing building (built prior to 2014).	No discount for existing buildings.
Winery Use Type	Winery is considered agriculture-related when using grapes from the local area. This use includes tasting rooms and retail space (no size limits).	No clear criteria to determine if a winery is considered agriculture-related use or on-farm diversified use (but there are different size limits on these uses)
	Winery is considered on-farm diversified use when using either local or imported grapes. All winery uses (production and retail) are limited in size.	n/a

Growth Plan for the Greater Golden Horseshoe (2017)

The Growth Plan provides a long term framework for growth in the Greater Golden Horseshoe by setting targets for both population and employment growth. The Growth Plan also provides objectives and policies to promote economic growth, reduce congestion, provide residents easy access to businesses and services, and build communities that maximize infrastructure investments while balancing local needs.

The Growth Plan includes guiding principles that include the support and enhancement for the long-term viability and productivity of agriculture by protecting prime agricultural areas and the agri-food network. The Growth Plan policies encourage municipalities to implement regional agri-food strategies and approaches to sustain and enhance the Agricultural System. It also includes policies to protect the long-term economic prosperity and viability of the agri-food sector, including the maintenance and improvement of the network by providing opportunities to support and promote the sustainability of agricultural, agri-food and agri-product businesses while protecting agricultural resources and minimizing land use conflicts.

The Growth Plan utilizes the same definitions for agri-food and diversified on-farm land uses as the PPS.

Greenbelt Plan (2017)

The Greenbelt Plan identifies prime agricultural areas and specialty crop areas. The majority of the Protected Countryside in Niagara Region is designated as Niagara Peninsula Tender Fruit and Grape Area. In both prime agricultural areas and specialty crop areas, all types, sizes and intensities of agricultural uses and normal farm practices are promoted and protected. Agricultural uses, agriculture-related uses and on-farm diversified uses are permitted based on the provincial Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas.

Section 3.1.2 of the Greenbelt Plan sets out policies related to specialty crop areas. All types, sizes and intensities of agricultural uses and normal farm practices shall be promoted and protected and a full range of agricultural uses, agriculture-related uses and on-farm diversified uses are permitted based on the provincial Guidelines on Permitted Uses in Ontario's prime agricultural areas. Wineries are permitted as agriculture-related uses or on-farm diversified uses, and are not defined as a specific agricultural land use within the Greenbelt Plan.

Niagara Escarpment Plan (2017)

The NEP was updated in 2017 following the Province's Co-ordinated Land Use Planning Review. The objective of the NEP is to encourage agricultural uses in agricultural areas, especially in prime agricultural areas, to permit uses that are compatible with farming and to encourage accessory uses that directly support continued agricultural uses. Prime agricultural areas shall be protected for long-term agricultural use.

The objectives of the NEP are:

- To protect unique ecologic and historic areas;
- To maintain and enhance the quality and character of natural streams and water supplies;
- To provide adequate opportunities for outdoor recreation;
- To maintain and enhance the open landscape character of the Niagara Escarpment in so far as possible, by such means as compatible farming or forestry and by preserving the natural scenery;
- To ensure that new development is compatible with the purpose of this Act;
- To provide for adequate public access to the Niagara Escarpment; and

- To support municipalities within the Niagara Escarpment Planning Area in their exercise of the planning functions conferred upon them by the Planning Act

The NEP sets out specific policies regarding agriculture-related uses, on-farm diversified uses and wineries. These policies are summarized below in **Table 2**.

Table 2: Comparison of Accessory Agricultural Designations within the Niagara Escarpment Plan

Agricultural-related Uses	On-farm Diversified Uses	Wineries
<ul style="list-style-type: none"> • Shall be compatible with and not shall not hinder surrounding agricultural operations and other land uses • Appropriate to available rural services • Existing buildings, structures and facilities on the property, that are no longer needed to support agricultural uses, should be used where possible • All buildings shall be designed and located to be compatible with the Escarpment's open landscape character • The gross floor area of any building used for agriculture-related uses shall not exceed 3,200 square metres, unless it can be demonstrated that a larger size is compatible with the site and surrounding landscape 	<ul style="list-style-type: none"> • Located on a farm that is actively in agricultural use • Use is secondary to the principal agricultural uses of the farm • Use shall be compatible with and shall not hinder surrounding agriculture operations and other land uses • Use is appropriate to available rural services and <i>infrastructure</i> • Maintains agricultural/rural character of the area • Impact of multiple uses in prime agricultural areas is limited and does not undermine agricultural nature of the area • Impact of multiple uses in prime agricultural areas is limited • Use is limited to up to 2% of a farm lot to a max. of 10,000 square metres • GFA is limited to 20% of the maximum area allowed for on-farm diversified use as set out above • Existing buildings to be used where possible • All buildings, structures and facilities including parking areas associated with the use shall be designed and located to have minimal impact on agricultural uses • The land supporting the use shall not be severed from the farm lot exclusively for the on-farm diversified use 	<ul style="list-style-type: none"> • May be agriculture-related use or on-farm diversified use • A single, accessory facility to sell wine with limited food service may be permitted at a winery, provided the following criteria are met: <ul style="list-style-type: none"> ○ Accessory facility is located within the winery building and/or decks/patios attached to the winery building or utilizes an existing building or structure ○ No new or expansions to parking facilities or vehicle access infrastructure will be permitted unless justified to the satisfaction of the implementing authority • Uses that may be permitted as accessory to winery include: <ul style="list-style-type: none"> ○ Retail sales and tasting area within the winery building ○ The sale of gift and promotional products within the retail sales and tasting area related to the wine and grape industry, or other local agricultural products

Legislative Authority within Land Use Planning

The NEP derives its authority from the Niagara Escarpment Planning and Development Act. The purpose of the Act is to provide for the maintenance of the Niagara Escarpment and land in its vicinity substantially as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment. The NEC is established as an advisory committee and the approval authority for the Development Permit applications where staff approval is not delegated. The NEC members are appointed by the Minister, consisting of stakeholders of the NEP Area. The NEC advises and makes recommendations to the Minister in respect of the amendment and implementation of the NEP.

The purpose of the Act is to provide for the maintenance of the natural heritage system of the Niagara Escarpment as a continuous natural environment, and to ensure only such development occurs as is compatible with that natural environment. It should also be noted that the NEP's main goal is to protect the escarpment. Agriculture is a compatible use within the escarpment's environment.

The Act permits the NEP to contain policies for the economic, social and physical development of the NEP Area with respect to the management of land and land uses. It may also include policies to co-ordinate planning and development among municipalities within the NEP area and policies designed to ensure compatibility of development. Development is defined under the Act as "a change in the use of any land, building or structure".

There is a clear difference between regulating land use and development under the Act versus regulating how the use of land is specifically operated once developed. The policies enabled by the Act draw a distinction between government oversight and control over private operations. Imposing conditions on how a business operates through conditions (e.g. what it can include on its restaurant menu) is not, in our opinion, within the purview of the Act and is not within the defined purpose. By extending policy implementation beyond development and into business operations, an inequity between business interests and economic opportunity, based on geographic location is created.

Rationale from the Provincial Perspective

A major principle of the Ontario government's approach to land use regulation has always been equity among businesses, subject to a broader regulatory framework – taxation, assessment, operational requirements, corporate reporting. Within the regulatory framework the principles of equity, certainty and competitiveness are to be upheld:

- **Equity** – businesses should be subject to the same government regulation and tax regimes so they can compete equally;
- **Certainty** – enables investment in people, property and machinery, and relates directly to the land use planning system; and,
- **Competitiveness** – ensure Ontario regulatory framework maintains competitiveness with other Canadian and foreign business sectors to foster investment and contribute to job creation.

The NEP is the only provincial plan through which local decision making is removed. The Commission oversees land use regulations that are otherwise dealt with by local municipalities. Other provincial plans that address landform features and protection, the Greenbelt Plan and the Oak Ridges Moraine Conservation Plan, require local municipalities to conform to their policies through local implementation.

Local implementation allows for consideration of the local context and local objectives of municipalities. It also provides for equity within the process.

Ninety-six wineries are located in Niagara Region. Sixty seven are subject to local municipal zoning and business regulations. Twenty-nine are located within the NEP area (**Figure 1**) and subject to significantly different, and more restrictive, land use controls and operational requirements. It should be a priority of the government to foster economic development of agricultural resources in Ontario in the most equitable manner. This could be done by amending the Act to ensure the wine and other like industries can compete on a global basis by investing in agricultural and related uses. The confusing mix of provincial and local regulations should be simplified to ensure the wine industry can invest with certainty and compete on an equitable basis.

Evolution of Niagara Escarpment Plan Agriculture and Wineries Policies

Niagara Escarpment Plan, 1985

When first introduced in 1985, the Niagara Escarpment Plan contained two policies related to agriculture, one which dealt with lot creation and the second which dealt with second dwellings for farm help. The objective of the Plan at the time was “to protect land with high agricultural capability”.

Niagara Escarpment Plan, 1994

For the first time, the Niagara Escarpment Plan, 1994 introduced an agricultural policy subset related to “small-scale commercial uses accessory to agriculture”. Small-scale commercial accessory uses were permitted provided they were subordinate, incidental and exclusively devoted to the principal agricultural uses carried out on the farm property by the owner. No size restrictions were introduced at this time.

Further, the NEP, 1994 contained policies related to retail sales and limited the sale of produce grown on the property or produced on the property from the produce grown on the property. Incidental uses associated with the accessory uses were permitted provided that it did not result in an intensification of the use.

Niagara Escarpment Plan, 2005

Beginning with the update of the Niagara Escarpment Plan in 2005, and up until 2014, several policies specific to wineries, winery incidental uses, visual landscape development at wineries and winery events were introduced into the Plan. All previous policy sections were also retained. Wineries were identified as a permitted use separate from other accessory small-scale commercial uses, provided the winery farm parcel upon which the winery was proposed was a minimum of 4 hectares.

Policies related to wineries in the NEP, 2005 are the most expansive to-date. A maximum size for wineries of 1.5% of the farm parcel (up to 2,323 square metres) was established along with maximum size for retail and tasting areas of 25% of the total size of the winery above ground. Additionally, the maximum size for sale of gift, promotional and non-local produce was limited to 20% of the retail sales and tasting areas.

Policies related to winery incidental facilities limited restaurant operations—limited food service that does not exceed light meals—to a maximum of 50 patrons and counts towards the maximum permitted size of the winery and retail sales and tasting areas, including outdoor seating. Additionally, policies related to winery events were introduced to ensure that event use does not result in the loss of agricultural land and create land use conflicts.

A policy comparison chart of Niagara Escarpment Plan policies is attached in **Table 3**.

Evolution of Winery Policies and the Coordinated Land Use Planning Review

When changes were introduced to the PPS, 2014, to allow for more permitted uses on prime agricultural land, these new policies were integrated into the Greenbelt Plan, Oak Ridges Moraine Conservation Plan, and the Niagara Escarpment Plan as a result of the Co-ordinated Land Use Planning Review.

Submissions received by the NEC from the Wine Council of Ontario (WCO) recommending greater flexibility for winemakers operating in the NEP area, including more flexibility in size for winery buildings, and a greater range of permitted uses to enhance tourism-related opportunities in the NEP area. The NEC responded to these comments by increasing the gross floor area of any one building for an agriculture-related use, with the potential for multiple buildings dedicated to such uses. In addition, policies requiring a minimum vineyard lot size were removed from the NEP.

While several policies related to wineries in the NEP were removed, the remaining policies continue to limit wineries. To align with the PPS, 2014, the NEP, 2017 introduced policies related to agriculture-related uses and on-farm diversified uses. However, unlike the PPS, 2014 and other provincial plans, wineries are subject to additional regulations. Specifically, restaurants on wineries continue to be constrained to a single facility with “limited food service”.

For agriculture-related uses, the gross floor area of any building shall not exceed 3,200 square metres. On-farm diversified uses may occupy two percent of the farm lot, to a maximum of 10,000 square metres; the gross floor area of buildings may not exceed 20 percent of this area. It is unclear how different wineries may fit the criteria of agriculture-related uses or on-farm diversified uses. Additionally, area calculations in the NEP, 2017 continue to be more restrictive than those contained in the Guidelines on Permitted Uses in Ontario’s Prime Agricultural Areas. In the Guidelines, existing buildings or structures, built prior to April 30, 2014, occupied by on-farm diversified uses are discounted (50%). No such discounting applies to existing buildings under the NEP, 2017, which further restricts wineries.

The policies contained in the NEP, 2017 are not fully aligned with the PPS, 2014 and continue to hold wineries to a different standard. Even when incorporating policies related to agriculture-related uses and on-farm diversified uses, the NEP 2017 does not provide adequate guidance on how wineries fit into either of the definitions.

We understand the Province has requested the NEC to further review its Development Control process to reduce red tape and delay. If consideration is given to urban and recreational areas being removed from this process, perhaps the removal of wineries should also be considered.

Table 3: Evolution of Niagara Escarpment Plan agricultural policies

	Agricultural Uses	Small scale commercial uses accessory to agriculture	Small scale commercial and industrial dev. Servicing agriculture	Wineries and cideries	Winery incidental facilities	Winery events	On-farm diversified uses	Agriculture-related uses
1985 NEP	Permitted No size restrictions	n/a	n/a	n/a	n/a	n/a	n/a	n/a
1994 NEP	Permitted No size restrictions	Permitted No size restrictions	n/a	n/a	n/a	n/a	n/a	n/a
2005 NEP	Permitted No size restrictions	Limited to 465 m ²	Limited to 465 m ²	Limited to a total of 2,323 m ² (above grade) Minimum 4 ha parcel size	Single facility to sell wine with limited food service (light meals) Limited to 50 people Limited to 25% of the above-grade floor area Can only operate when the winery is open for public tours or events	Indoor and outdoor events, subject to the approval of an application	n/a	n/a
2017 NEP	Permitted No size restrictions	n/a	n/a	Any building limited to 3,200 m ² No minimum parcel size	Retail sales and tasting area within the winery building The sale of gift and promotional products within the retail sales and tasting area, related to wine and grape industry, or other local agricultural products	Policies addressing winery events were removed	Limited to 2% of a lot area, to a maximum of 10,000 m ² Buildings limited to 20% of the 2%	Any one building limited to 3,200 m ²

3. INTERJURISDICTIONAL POLICY REVIEW

A comparative review of agricultural policies related to wineries from selected jurisdictions was undertaken to understand how they compare to policies contained within the NEP. The selected jurisdictions are: Prince Edward County, Ontario; Napa Valley, California; and Okanagan Valley, British Columbia.

The policies examined are examples of jurisdictions that have successfully coupled protection of agriculture areas while also supporting the economic vitality of the agri-food sector including wine production. While it is important to remain aware of the unique political contexts and scales at which these policies are implemented, they provide a useful overview of alternative policy approaches. A comparison of policies is displayed in **Table 4**.

Prince Edward County, Ontario

Prince Edward County is a rural, island-like municipality in eastern Ontario, approximately 200 kilometres east of Toronto. With over 40 wineries, Prince Edward County is an emerging wine producing region within Ontario. In addition to the PPS, wineries in Prince Edward County are regulated by the County's Official Plan and Zoning By-law. Prince Edward County's Official Plan permits farm and estate wineries in Rural and Prime Agricultural designated areas. The following are definitions of wineries within the Official Plan:

Farm Winery (Agricultural Use) means a building or structure or part thereof, associated with agricultural use(s) on the same farm lot, where wines are produced and may include storage, display, processing, wine tasting, a tied-house licensed by the Alcohol and Gaming Commission of Ontario, and retail, administrative facilities and outdoor patio area, but shall not include a restaurant, banquet facility, or on-site commercial kitchen. Wine tasting and the offering or sale of locally-grown product samples is considered part of the farm winery activity.

Estate Winery (Agricultural-Related Use) means a building or structure or part thereof, where wines are produced and may include storage, display, processing, wine tasting, storage, hospitality room, administrative facilities, outdoor patio area, an onsite restaurant, dining facility, commercial kitchen, banquet hall, retail facility or other commonly commercially-zoned amenity.

Legally existing and operating wineries as of June 17, 2009, continue to be permitted under the same conditions of approval granted by the County of Prince Edward, and winery license(s) issued by the Province of Ontario, as of June 17, 2009. If these existing wineries wish to expand the scope and/or scale of their operations to include uses which require additional municipal planning approvals or Provincial licenses, they will become subject to the County policy and by-law requirements in effect at that time.

Official Plan policies related to wineries are as follows:

Farm Winery Regulations:

- Farm wineries are permitted as part of the farm operation
- A minimum 2 hectares (5 acres) must be planted with a minimum of 4,000 vines on-site.
- Minimum lot sizes referred to in this section of the Plan apply to existing lots and not to the creation of a new lot
- The fruit used in the annual production of wine at a Farm Winery shall consist predominately of fruit grown in the County of Prince Edward by that Farm Winery Operation. This may be reduced in any on year due to crop failure or damage resulting from causes beyond the control of the winery, such as climate and precipitation abnormalities, with the balance being from Ontario fruit.
- The retail sale of wine produced on-site shall be permitted. Provided that it does not conflict with any minimum floor area requirement for licensing approval, on-site tasting room and retail floor

space shall not exceed the lesser of 75 square metres or 25 percent of the total winery floor area (excluding any below ground floor area). The on-site retail floor space for non-agricultural and/or non-Prince Edward County agricultural products, shall not exceed 5% of the total retail floor space.

Estate Winery Regulations:

- A minimum 8 hectares (20 acres) must be planted with a minimum of 16,000 vines on-site.
- Minimum lot sizes referred to in this section of the Plan apply to existing lots and not to the creation of a new lot.
- All Estate Wineries shall be subject to a site-specific zoning by-law amendment.
- The retail sale of wine and wine related products, and a hospitality room where food and wine is prepared and served, will be permitted when such uses are accessory to and complement the Estate Winery.
- The maximum total floor area for retail and hospitality uses shall be 400 square metres so as not to detract from the main use of the land and not adversely affect other uses permitted in the area.
 - f) Estate Wineries shall be required to locate with direct access and frontage onto an improved public roadway maintained year round with sufficient capacity to accommodate the anticipated traffic.
 - g) Estate Wineries shall be subject to Site Plan and Site Plan Agreement Approval by the municipality. The following matters must be addressed to the satisfaction of the municipality.

Land use policies for wineries in Prince Edward County are implemented by Comprehensive Zoning By-law 1816-2006. Under the Zoning By-law, a range of uses are permitted on wineries. In addition to wine production, designated uses on Estate Wineries may include storage, display, processing, wine tasting, storage, hospitality room, administrative facilities, outdoor patio area, an on-site restaurant, dining facility, commercial kitchen, banquet hall, retail facility or other commonly commercially-zoned amenity. Apart from the PPS, 2014 and the County's Official Plan, zoning is the primary tool regulating land use on wineries.

Napa Valley, California

Napa County is located north of the Bay Area in California, and contains Napa Valley, one of the California's premier wine-producing regions. Vineyards make up 9% of Napa County's land base, totally approximately 45,000 acres. Regional land use patterns in Napa County include dense urban centres along highway corridors to open space, natural resources, and agricultural activities with vineyard development as one of the most visually prominent activity. In California, there are strong economic incentives to clear undeveloped land for new vineyards and few regulations to protect native plant and animal communities. There is no state agency that oversees or regulates vineyards or other agricultural land conversion in California.⁴

California Government Code Section 65300 et seq. establishes the obligation of cities and counties to adopt and implement general plans. The general plan—comparable to an official plan—is a comprehensive, long-term, and general document that describes plans for the physical development of a city/county and of any land outside its boundaries that, in the city's/county's judgement, impacts its planning. The Farmland Mapping and Monitoring Program (FMMP) of the California Resources Agency designates portions of the state landscape as "prime farmland", "unique farmland", "farmland of statewide

⁴ University of California, Berkeley. Retrieved from: <https://clas.berkeley.edu/research/chile-and-california-wine-land>.

importance", or "other land." The significant portions of wine producing areas are designated as prime farmland.⁵

The Napa County General Plan "protects agriculture and agricultural watershed and open space lands by maintaining 40- and 160-acre minimum parcel sizes, limiting uses allowed in agricultural areas, and designated agriculture as a primary land use." In 1990, Napa County adopted a Winery Definition Ordinance ("WDO") which imposed a minimum parcel size of 10 acres for a winery (except for wineries that pre-dated the WDO, which have a one-acre minimum). This ordinance also requires that wines produced in Napa County use at least 75% Napa grown grapes, allows the County to set production limits and limits marketing activities. Legally existing wineries prior to the introduction of the WDO are exempt from these regulations.

Title 18 of the Napa County Code contains three agricultural zoning designations: Agricultural Watershed (AW), Agricultural Preserve (AP), and the Agricultural Commination (:A) district. The majority of the Napa Valley is zoned Agricultural Preserve (AP)⁶. The Agricultural Preserve is a protective land use zone first introduced in 1968 to preserve agricultural land in perpetuity. Covering 37,100 acres of land, the Agricultural Preserve bears several similarities to the Niagara Escarpment Plan area. The Agricultural Preserve does not limit gross floor area of buildings or specific commercial uses occurring on wineries. The Agricultural Preserve is considered one of the most successful agricultural preservation areas in the world, and it has achieved this recognition while supporting, not hindering, key contributors of the region's agri-food sector.

Okanagan Valley, British Columbia

The Provincial Agricultural Land Commission (ALC) is an independent administrative tribunal dedicated to preserving land and encouraging farming in British Columbia. The ALC is responsible for regulating provincially-significant agricultural lands and has specific permitted uses and exceptions for most agricultural sectors. Specifically, wineries and ancillary uses are designated as farm uses under the Agriculture Land Commission Act.

Within the Agriculture Land Reserve, a variety of winery-related uses are permitted, including agri-tourism⁷. An alcohol production facility, and ancillary uses are permitted as a designated farm use if at least 50% of the primary farm product used to make the alcohol product produced each year is grown on the farm on which the alcohol production facility is located. The farm on which the alcohol production facility is located on is also required to be more than two hectares in area and at least 50% of the primary farm product used to make the alcohol produced each year is required to be grown on the farm, or both on the farm and on another farm located in British Columbia that provides that primary farm product to the alcohol production facility under a contract having a term of at least three years.

Under the Agriculture Land Commission Act, a variety of non-farm uses are permitted, including accommodation for agri-tourism on a farm. A maximum of 10 sleeping units is permitted on a short term and seasonal basis. The total area used for agri-tourism accommodation must not be greater than five percent of the total area of the parcel on which the accommodation is located.

⁵ Napa County Important Farm Land. Retrieved from: <ftp://ftp.consrv.ca.gov/pub/dlrp/FMMP/pdf/2016/nap16.pdf>.

⁶ Napa County Zoning Map. Retrieved from: <https://www.countyofnapa.org/DocumentCenter/View/8436/Napa-County-Zoning-Map?bidId=>.

⁷ ALC Act. Retrieved from: http://www.bclaws.ca/civix/document/id/complete/statreg/171_2002.

While different in their legislative context, the following chart shows the comparative policies respecting the land use controls related to wineries.

Table 4: Comparison of winery-related policies from wine producing regions

	Prince Edward County	Napa County	Okanagan Valley	Niagara Region (within the NEP)
Governing documents	PPS, 2014 PEC Official Plan PEC Zoning By-law	Napa County Code and General Plan Napa Agricultural Preserve Winery Definition Ordinance	 Agricultural Land Commission Act	PPS, 2014 Growth Plan, 2017 Niagara Escarpment Plan
Minimum parcel size	8 hectares (Estate) 2 hectares (Farm)	4 hectares	2 hectares	2 hectares ⁸
Required use of local agricultural product	n/a	75% local grapes	75% local grapes	Agriculture-related and on-farm diversified winery must use local grapes (NEP)
Maximum GFA for retail and tastings	Lesser of 75m ² or 25 % of the total winery floor area (Farm) 400 m ² (Estate)	No regulations	5% of total parcel area	0.004% of total parcel area (NEP)
Food service facilities	No regulations	No regulations	No regulations	Limited food service facilities only (NEP)
Development of new buildings	No regulations	No regulations	No regulations	Existing buildings should be used where possible (NEP)

⁸ Alcohol and Gaming Commission of Ontario requirement. OMAFRA, 2016. Retrieved from: <http://www.omafra.gov.on.ca/english/busdev/facts/startingawinery.pdf>

4. COMPARISON OF WINERIES WITHIN NIAGARA REGION IN AND OUT OF THE NEP AREA

To demonstrate the impacts of the policies set forth in the current NEP on the same land use, a comparative review of land use policies applied to wineries within and outside of the NEP area was conducted. Here, the land use regulations that apply to two wineries located in the Town of Lincoln are examined. In this particular case, the two wineries are located across the street from one another, separated by less than 100 metres. Both properties are similar in size and contain similar soil types and major hydrogeological features.

Winery 1 – Redstone Winery, 4245 King Street, Beamsville ON – outside the Niagara Escarpment Plan (within the Greenbelt).

Winery 2 – Malivoire Wine Company, 4260 King Street, Beamsville ON – within the Niagara Escarpment Plan (Escarpment Protection Area).

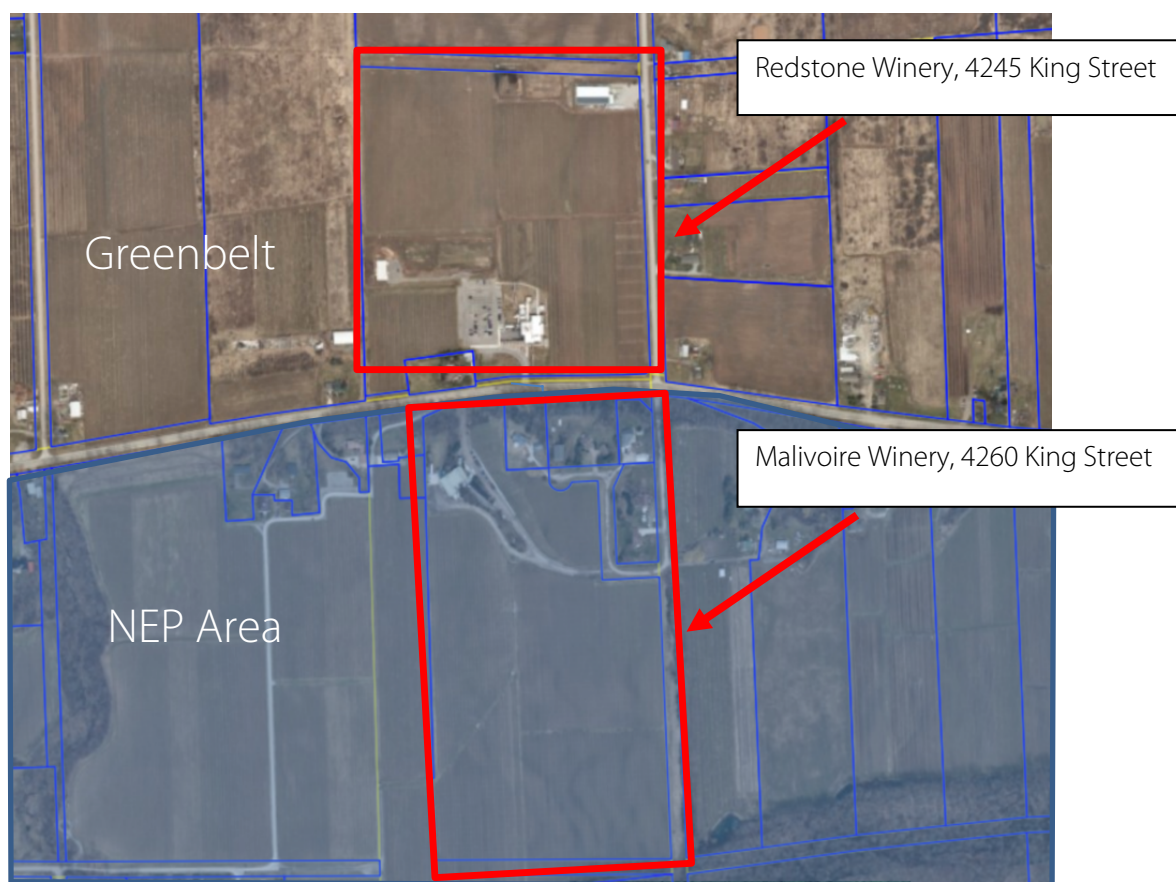


Figure 2: Aerial map of Malivoire and Redstone wineries, Town of Lincoln

A comparison of land use regulations that apply to the aforementioned wineries is displayed in **Table 5**.

Table 5: Comparison of Estate Winery Zoning Provisions, Town of Lincoln

	Winery 1 (outside NEP)	Winery 2 (within NEP)
Lot area	147,590 m ²	153,415 m ²
Maximum Gross Floor Building Area	1,498 m ²	645 m ² (assuming winery is defined as an on-farm diversified use)
Maximum Floor Area for retail and hospitality uses	413 m ²	129 m ² (based on 20% of total floor area)
Permitted uses	<ul style="list-style-type: none"> • Agriculture • Agricultural conservation use • Agriculture produce processing accessory to an agricultural use • Agricultural produce stand accessory to an agricultural use • Agricultural produce warehouse and/or shipping accessory to a greenhouse • Agricultural research accessory to an agricultural use • Conservation use, save and except any buildings • Equestrian facility • Farm winery accessory to an agricultural use • Estate winery • Accessory amphitheater • Greenhouse • Hobby farm • Kennel accessory to an agricultural use or residential use • Large animal veterinary clinic • Private grain storage and drying facility accessory to an agricultural use 	<ul style="list-style-type: none"> • Agricultural uses. • Agriculture-related uses and on-farm diversified uses, in prime agricultural areas. • Existing uses. • Single dwellings. • Mobile or portable dwelling unit(s) accessory to agriculture. • Forest, wildlife and fisheries management. • Licensed archaeological fieldwork. • Infrastructure. • Accessory uses (e.g., a garage, swimming pool, tennis court, ponds or signs). • Home occupations and home industries. • Recycling depots for paper, glass and cans etc., serving the local community. • Bed and breakfast. • Nature preserves owned and managed by an approved conservation organization.

	<ul style="list-style-type: none">• Single detached dwelling• Bed and breakfast establishment• Farm help house• Group home• Home occupation• Private home daycare	
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The above policy comparison demonstrates the inequities and discrepancies placed on landowners within and outside of the NEP area. In particular, the maximum gross floor area and maximum gross floor area for retail is significantly limited within the Niagara Escarpment Plan area, despite both properties being roughly equal in size. This case demonstrates the impact of overregulation stemming from blanket policies applied to diverse geographic areas. Without having regard for local conditions and providing flexibility to align policies with local municipalities, the policies related to wineries in the NEP can create unintended consequences. Having local municipalities regulate building size and retail uses on wineries contributes to sound planning outcomes that protects agricultural uses while also allowing the reasonable development of economic opportunities on wineries through value-added activities.

5. ASSESSMENT OF NEC DEVELOPMENT CONDITIONS

A review of development permits issued by the NEC was also undertaken to better understand site-specific regulations applied to wineries within the NEP Area. Upon review of development permits for wineries within Niagara Region, it is apparent that while certain winery-specific policies have been removed from the NEP, the policies are still being applied as conditions of development approval on wineries, and, as a result, place undue restrictions on the operation of these facilities.

The conditions of development involve a range of limitations in respect to the normal operation of wineries that in our opinion is outside the scope and mandate of the NEP. These conditions include limiting the licenses permitted by other organizations. For example, one condition of development states that no license issued by the Alcohol and Gaming Commission of Ontario shall permit the use of any outdoor premises of the subject property for any hospitality functions with the exception of winery related outdoor barbecue and picnic events. Policies related to winery events were removed from the NEP during the Co-Ordinated Land Use Plan Review, yet are still being applied to the operations upon wineries.

Other conditions impose limitations on wineries to only allow limited complimentary food services, and prohibit a restaurant as a permitted use. Again, policies related to food services on wineries were removed in the NEP yet continue to be applied through permit conditions. In this case, the conditions of development approval imposed by the NEC reach beyond the policies laid out in the Plan, and unnecessarily limit the economic opportunities and growth potential of wineries. This example demonstrates the need for local municipalities to be granted the authority to regulate specific uses and operations on wineries. Transferring this authority to local municipalities allows for sound planning outcomes that are more localized and responsive to the geographic diversity throughout the NEP Area where wineries operate.

6. SUMMARY OF KEY FINDINGS

The key findings from our review and analysis are as follows:

- Agricultural-related uses, on-farm diversified uses and wineries are governed by a complex planning policy framework in Ontario. In Niagara Region such uses, depending on their geographic location, may also subject the Niagara Escarpment Plan. While certain policies related to agricultural-related uses, on-farm diversified uses and wineries have evolved over time, and have become slightly less restrictive, there still exist land use controls which are more restrictive than the Province's Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas. Additionally, there is a misalignment and inconsistency in how wineries are defined within agricultural-related uses and on-farm diversified uses, as defined by the Provincial Policy Statement (PPS).

- Inconsistencies place landowners in the NEP area at a disadvantage, with smaller maximum building sizes permitted, as well as additional restrictions on building and site uses (e.g. limits on retail sales, limits on restaurant sizes) implemented through permits.
- Unlike other provincial policy documents, the NEP does not provide definitions to classify wineries as either agricultural-related uses or on-farm diversified uses. Further, wineries exist within a different policy framework that places additional land use restrictions on them that are not applied to other agricultural uses.
- A review of land use regulations in selected wine producing regions across North America illustrates the ability to maintain and protect agricultural areas without the placement of overly restrictive regulations that limit winery operations and growth of the agri-food sector. Even within jurisdictions that contain environmental preservation areas, land use policies for wineries within these areas are clearly defined and more adaptable to the physical and economic context.
- Comparing land use policies applied to wineries within the NEP area to those located outside the NEP area within Niagara Region itself, demonstrates the impacts of over regulation and the inequity of the NEP policies. The comparison demonstrates the inequities between policies, given that soil classification, landscape, drainage and other physical and contextual factors are identical on both sites.
- A review of the additional permitting conditions for wineries identifies the unreasonable and unjustified application of conditions that restrict how an operation is undertaken. Such conditions are, in our opinion, not reasonable and extend beyond land use policy authority and implementation.

7. RECOMMENDATIONS

In updating its Official Plan through the Municipal Comprehensive Review process, the Region of Niagara has reviewed its agricultural policies which address agricultural-related uses, on-farm diversification, and wineries. It is through this process that it has identified that the NEP policies are not aligned with other provincial policies that the Region is required to implement creating inconsistencies and an uneven application of regulation among wineries. We concur with this assessment and based on our research, analysis and findings, believe there is a need to revise the NEP to ensure agricultural-related uses, on-farm diversification, and wineries are treated equitably within the policy framework for the Region. The land use policy and implementation framework should not impede operations and opportunities for the wine industry with over regulation or inequitable barriers.

The following are recommendations for consideration by the Region to provide to the Province:

- The NEP should at a minimum harmonize its definitions of agricultural-related uses and on-farm diversified uses with the PPS, 2014. Many definitions in the NEP now reference the 2014 PPS, however, several definitions that are common across other provincial plans such as the Growth Plan and Greenbelt Plan remain out of alignment. Further, the NEP does not define terms important to land-use planning or the achievement of objectives and goals in the Growth Plan and Greenbelt Plan.
- All winery specific policies in the Niagara Escarpment Plan should be removed. Given that wineries may be considered either agricultural-related uses or on-farm diversified uses, having separate winery policies is not necessary. Placing wineries under a different policy framework does not align with the PPS and other provincial land-use planning documents which recognize wineries as an equal use to all other agriculture-related on-farm diversified uses.
- Policies regulating that size, scale and operation of accessory retail and restaurant uses on wineries should be removed. Area calculations for accessory uses on wineries should be aligned with the

Guidelines on Permitted Uses in Ontario's Prime Agricultural Areas, which discounts buildings existing prior to April 30, 2014 by 50%. These commercial uses are important value-added amenities that contribute to thriving agri-food and agri-tourism sectors. Furthermore, removing these limitations improves implementation as wineries within Niagara Region will not be held to two different standards depending on their location.

- Remove limitations on the size of all accessory uses on wineries from the NEP. Ultimately, the size and placement of buildings, additional buildings and activities should be at the discretion of the local municipality; and,
- Limit conditions on NEC permits to those which address land use and not operational matters outside the scope the NEC's jurisdiction.