



October 15, 2021

Delivery via E-mail

Paul Neals, B.Sc., Agr., P.Ag
Orion Environmental Solutions, Inc.
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Dear Mr. Neals:

Re: NVCA ID # 31857 - Response to Orion Environmental Solutions, Inc. Letter dated August 25, 2021 – Romanin Property OPA 02/21, ABA 01/21 and PS01/21 Town of Wasaga Beach

Nottawasaga Valley Conservation Authority (NVCA) staff appreciates the opportunity to continue to provide comments on the above noted applications.

NVCA staff have reviewed the following submissions in support of an application for Plan of Condominium, Official Plan Amendment and Zoning By-law Amendment with the Town of Wasaga Beach:

- Proposed subdivision at Part of Lot 34 Conc 3 (Beachwood Road – Romanin Property) Wasaga Beach, Environmental Impact Study” by Cunningham Environmental Associates dated January 7, 2021.
- Letter “Response to NVCA Ecology Comments - Romanin Property OPA 02/21, ABA 01/21 and PS01/21 Town of Wasaga Beach - NVCA ID # 31857” by Orion Environmental Solutions dated August 25, 2021.
- “Hydrogeological Assessment Report - Shore Lane Development, Wasaga Beach, Ontario” by Cambium Inc. dated 2020-09-11.

Based on our review of the above noted materials we offer the following comments:

General Comments:

Based on this review, NVCA staff maintain that the application has not demonstrated consistency with the *Provincial Policy Statement* (PPS) section 2.1.5. In addition, the field program within the Environmental Impact Study (EIS) reported a species Federally and Provincially listed as Special Concern (Common Nighthawk S4B) and a Provincially Imperilled (S2) vegetation type (MAMM4-1), which call for additional consideration of the

subject site of development as Significant Wildlife Habitat for the site's status hosting a rare vegetation community and habitat of species of conservation concern. Further, the application proposes to remove the entirety of the coastal wetland feature, based on an assumption that future drainage works undertaken by the Town of Wasaga Beach will effectively degrade the wetland features by impacting the surrounding hydrology and changing the existing drainage patterns.

NVCA staff have reviewed studies submitted by the applicant and the Town which indicate that the wetland feature is maintained by surficial drainage, not groundwater, and that the drainage channel infrastructure will not negatively impact the hydrologic function of the wetland because the infrastructure will be sufficiently elevated to be isolated from groundwater levels. This is demonstrated by the measured depth of groundwater on the subject site throughout the growing season and shallow depth of the drainage channel. This conclusion is based on monitoring well BH107-19 data which measured the static groundwater elevation at the site to be between 1.34m-3.71m below the ground surface; whereas the proposed drainage channel depth as depicted in the Town infrastructure submission is to not exceed 1m below the ground surface.

There are also unevaluated wetlands documented on the site which warrant additional consideration: Green Ash Mineral Deciduous Swamp Type (SWDM2-2), White Cedar-Hardwood Mineral Mixed Swamp Type (SWMM1-1) and Graminoid Coastal Meadow Marsh Type (MAMM4-1) as depicted in Figure 5 of the EIS. The applicant has not adequately demonstrated that:

1. These features are applicable for removal and offsetting in accordance with NVCA's board-approved wetland offsetting policy, and;
2. Satisfactory compensation for the proposed removal of these non-coastal wetland features.

The development proposed seeks to remove these features, and has not demonstrated that the application will result in no net loss of wetland to the NVCA watershed.

Ecology Responses to Orion letter dated August 25, 2021:

1. NVCA Comment June 14, 2021:

The EIS documents the presence of approximately 3.1ha of wetland on the subject property, all of which are classified as 'coastal' wetland based on the close proximity to the Georgian Bay shoreline and other site-specific characteristics. Coastal wetland features represent a constraint to development under Section 2.1.5 of the Provincial Policy Statement (PPS). While provincial and local land-use planning policies may permit development within or adjacent to coastal wetlands, this can only be accomplished if it can be demonstrated that such development would not result in a negative impact to the viability of the feature. It is the opinion of NVCA staff that outright removal of all coastal wetland communities from the subject property would clearly represent a negative impact to the viability of such. Therefore, it's the opinion

of NVCA staff that the proposed development is not consistent with Section 2.1.5 of the PPS.

ORION Response August 25, 2021:

The PPS 2020 Section 6.0 Definitions, defines a coastal wetland as the following: Coastal wetland: means

- a) any wetland that is located on one of the Great Lakes or their connecting channels (Lake St. Clair, St. Marys, St. Clair, Detroit, Niagara and St. Lawrence Rivers); or
- b) any other wetland that is on a tributary to any of the above-specified water bodies and lies, either wholly or in part, downstream of a line located 2 kilometres upstream of the 1:100-year floodline (plus wave run-up) of the large water body to which the tributary is connected.

As the NVCA staff are aware the wetland is not located on Georgian Bay or any connecting channel, nor is it on a tributary of the Great Lakes. There is nothing in the PPS that defines a coastal wetland based on close proximity to the Great Lakes. Coastal wetlands clearly require a direct permanent water connection. There are no watercourses through the subject property only intermittent drainage swales that accept storm water drainage from the culverts conveying flow under Beachwood Road. There is no question based on the PPS definition the wetland on the property is not a coastal wetland and this is further reinforced by the existence of residential development that isolates it from Georgian Bay.

NVCA response October 15, 2021: Regulatory comment

NVCA mapping (based on Ministry of Natural Resources and Forestry (MNR) hydro network) illustrates a watercourse feature which directly connects the subject site to Georgian Bay. The EIS submitted states: "Intermittent drainage swales currently flow along the western and eastern portion of the property discharging into Georgian Bay." In addition to the noted MAMM4-1 ecosite characteristics detailed in the report, the wetland is classified as a coastal wetland due to its hydrologic connection to a watercourse within 2km of the Great Lakes shoreline (Georgian Bay). NVCA staff maintain our position that MAMM4-1 wetland feature on the subject site is accurately classified by the EIS as a coastal wetland.

2. NVCA Comment June 14, 2021:

As per the vegetation community classification process undertaken through the EIS, portions of the wetland area on the property are representative of *provincially-rare* coastal wetland vegetation community types. As per provincial criteria outlined in the Significant Wildlife Habitat Schedules for Ecoregion 6E (MNR 2015), provincially-rare vegetation communities qualify as a form of Significant Wildlife Habitat (SWH). While provincial and local land-use planning policies may permit development within or adjacent to SWH, this can only be accomplished if it can be demonstrated that the development would not result in a negative impact to the viability of the feature/habitat. It is the opinion of NVCA staff that outright removal of these communities would clearly represent a negative impact to the viability of such. Therefore, it's the opinion of NVCA staff that the proposed development is not

consistent with Section 2.1.5 of the PPS or Section 13.4.10.3 of the Town of Wasaga Beach's Official Plan.

ORION Response August 25, 2021:

The EIS documented the only species of special concern that could indicate the subject property could be a candidate significant wildlife habitat was an observed fly over by a Common Nighthawk. No breeding evidence was found on the property. A species of concern flying over a property does not warrant its designation as significant wildlife habitat. Neither the PPS or Section 13.4.10.3 of the Town's OP state an incidental observation with no evidence of habitat use warrants the significant wildlife habitat designation. The Town OP requires an EIS to provide a reliable assessment of ecological features and functions. An EIS was completed using provincially accepted standards for natural heritage assessment and it confirmed there was no evidence of Common Nighthawk use of the property.

The Graminoid Coastal Meadow Marsh (MAMM4-1) vegetative community was assessed by Cunningham & Associates and it was their conclusion the marginal Coastal Wetland features do not contain sufficient numbers and diversity of coastal wetland plant species and other wetland affinities required to designate it of significance. The MAMM4-1 units, based on the vegetative species composition, are drying out as discussed in the EIS. The NVCA review does not provide any ecological justification for their comment on the significance of the Graminoid Coastal Meadow Marsh based on their knowledge of other comparable features in their watershed or the data provided by Cunningham & Associates.

The purpose of an EIS is to provide the data required to evaluate significance based on species composition and ecological functions. The NVCA provides no scientific justification for their position based on the findings of the EIS or other data sources. It is incumbent on the approval authorities to review the technical data and provide their assessment based on the information. In our opinion, based on our assessment of the ecological features and functions the subject property does not warrant designation as significant wildlife habitat.

NVCA response October 15, 2021: *Regulatory comments*

Through the review process, it was determined through technical studies that the MAMM4-1 coastal wetland feature will not be affected (i.e. "dried out") by the installation of the drainage swale infrastructure required by the Town of Wasaga Beach. Notwithstanding, NVCA staff do not accept the rationale that the coastal wetland feature should be authorized to be removed on the basis of a future potential hydrologic impact. NVCA's position on removal of the coastal wetland is policy-based, where Provincial and NVCA policy prohibit the outright removal of the feature.

NVCA staff review development proposals based on our mandate and Provincial policies on a site-specific basis, not on our knowledge of comparable features within the watershed nor developments which were approved in the past under different policy regimes. NVCA staff assess development proposals based on the applicant's demonstration of consistency and conformity with the relevant policies, and must

demonstrate this through technical assessments. NVCA staff in this role have determined that the wetland feature is a coastal wetland and the proposal for complete removal of this feature is not consistent with Provincial policy or in conformity with NVCA policy.

On the matter of the scientific justification for the MAMM4-1, NVCA staff refer to the EIS submitted by the applicant which states that the feature is a coastal wetland. The report provides ample technical justification for the classification of this feature based on soil and vegetation characteristics. The delineation of this feature has not been in question as NVCA staff have previously accepted the submitted Ecological Land Classification ecosite delineation. Staff refer to the PPS policy on coastal wetlands in this regard, which states (2.1.5) as noted in the response:

"Development and site alteration shall not be permitted in: ...f) coastal wetlands in Ecoregions 5E, 6E and 7E1 that are not subject to policy 2.1.4(b) unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions."

NVCA staff assert that complete removal of the coastal wetland feature will constitute a negative impact, and for this reason NVCA staff do not support the development as proposed. NVCA staff recommend the applicant revise the development proposal to preserve wetland community MAMM4-1.

NVCA response October 15, 2021: Advisory comments

Breeding evidence for Common Nighthawk was not studied, therefore absence of the species from the subject site can not be confirmed. The EIS states "To minimize the disturbance to these sensitive species, there were no attempts to confirm the presence of, or locate a potential nest." Through the author's note that searching for nests would disturb the species, there is an indication that the species are present breeders on the site. The report noted one incidental presence of the species (30 May 2018) during the breeding season, and does not provide sufficient data to conclude absence of breeding on the site. Also, in the EIS report submitted, Common Nighthawk is "identified as "Possible Breeders" within The Plan area". The documented presence of Common Nighthawk warrant consideration of the site as Significant Wildlife Habitat.

Though Common Nighthawks were not detected during the nocturnal bird survey conducted on June 25, 2018, it should be noted that this survey wouldn't necessarily detect breeding presence for the species, which could be confirmed by a nest survey, which was not undertaken as noted above. The report notes "it is unknown whether this species is utilizing the subject property for breeding or if the first detection was the result of an incidental occurrence in potential habitat, without breeding evidence". Again breeding evidence was not studied for this species, so this cannot be concluded by the field program undertaken to date.

The report further notes that “the northern polygon of MAMM4-1 may possibly be considered part of Candidate Significant Wildlife Habitat (SWH) because this area has coastal wetland affinities, and it is considered to be Provincially Imperilled (S2) by NHIC (2020).” The lack of local designation of SWH is of no consequence, as the criteria are clearly for SWH are specified in the NHRM, independent of local planning zones and designations.

Please confirm whether the occurrence of Common Nighthawk on the site reported to the local MECP district office or the NHIC. Please also confirm whether targeted nightjar studies been completed since the EIS was submitted in accordance with Provincial direction. NVCA staff recommend the applicant consult on this finding with the Ministry of Environment, Conservation and Parks (MECP) – Species at Risk Branch and the Federal SARA Registry (SARAregistry@ec.gc.ca) to determine whether the incidental observation constitutes significant wildlife habitat or whether additional study is warranted to confirm or deny candidacy as SWH.

3. NVCA Comment June 14, 2021:

All wetlands on the property are regulated by the NVCA. In general, the NVCA does not permit development within wetlands or within 30m of a wetland. Given the negative impact that complete removal of wetlands on the property would pose to inherent ecological and hydrologic functions, NVCA staff will not be in a position to support the residential development concept, as proposed.

ORION Response August 25, 2021:

The EIS provided evidence based on the vegetation communities that the wetland units are in transition to a non-wetland community and lack the wetland functions to be considered significant wetlands. The NVCA provides no scientific evidence to support their conclusion that given the significance of the wetlands their removal would be a negative impact. The recent public consultation for this project identified concerns from the Shore Lane residents that have experienced flooding due to uncontrolled runoff from the property. This would indicate the wetlands currently provide minimal flood attenuation. Development of the public works yard upgradient of the subject property will convey storm water around the subject property directly to Georgian Bay which will change the water regime of the wetlands.

In 20 years of obtaining approvals from the NVCA I can confirm they have permitted development in wetlands subject to confirmation they lack significant ecological wetland functions. The current NVCA Policy Guidelines for Achieving Ecological Net Gains (June 8, 2021) states regarding development in wetlands a CA my grant permission for development is such areas if, in its opinion, the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. Based on the ecological and engineering studies completed for this project and the current residential designation and zoning for the property established by the Town, we comply with all the aforementioned.

NVCA response October 15, 2021: Regulatory Comments

NVCA staff do not issue permission to remove wetlands based on a perceived trajectory towards transition to upland features, as the NVCA Regulation requires the

site to be assessed in its current condition, which has been demonstrated to be wetland. The wetland is protected by the NVCA and the application is required to demonstrate that the development proposal will have no negative impact to the feature. It is the position of the NVCA that complete removal of the feature is a negative impact.

The EIS reports that the drainage channel infrastructure proposed to be installed by the Town of Wasaga Beach will hasten the “transition” of the wetland to non-wetland community. There is an assumption made that this “transition” is already occurring, while the wetland remains intact with active hydrologic input from drainage incoming from the surrounding area. As previously mentioned, it was determined through technical study (EIS) that the MAMM4-1 coastal wetland feature will not be affected (i.e. “dried out”) by the installation of the drainage swale infrastructure required by the Town of Wasaga Beach, which formed the basis for NVCA support for the project. Further, the EIS reports that “As the water level rises some of the trees and shrubs in the swamp communities are dying or are dead and some of the swamp areas are transitioning into marsh vegetation communities, specifically the SWDM2-2/MAMM4-1 vegetation community”, which contradicts other portions of the EIS which suggest the feature is naturally transitioning to non-wetland ecosite characteristics.

The NVCA’s board-approved Achieving Net Gains through Ecological Offsetting Guidelines articulates strict applicability criteria for wetland removal and offsetting, to which NVCA staff highlight section 2.2, which states: “In determining eligibility for offsetting, a project must be strictly consistent with the *Provincial Policy Statement* (PPS).” It is the position of NVCA staff that the development as proposed is not consistent with the PPS due to the proposed complete removal of a coastal wetland feature (MAMM4-1) having a negative impact.

The Net Gains Guidelines also state: “In support of PPS policies, negatively impacting wetlands which are significant and/or which host significant features/functions will not be permitted, regardless of a plan to conduct offsetting.” The EIS submitted identifies a Provincially Imperiled (S2) vegetation type (MAMM4-1) based on NHIC (2020) data, which demonstrates that the wetland hosts significant, rare features and functions. The application proposes to remove this feature. It is the opinion of NVCA staff that the complete removal of this feature is not eligible for ecological offsetting due to the occurrence of rare vegetation and the unlikelihood of comparably re-creating this rare feature elsewhere through wetland creation.

NVCA comment October 15, 2021: *Advisory comment*

NVCA staff do not assert that the coastal wetland feature was by definition significant. The significance of wetlands is within the jurisdiction of the MNR, and to date has not been ascribed to the wetland features on the site. The applicant will need to consult with the MNR to confirm the coastal wetland’s candidacy as a Significant Coastal Wetland in order to determine which policy in the PPS applies (i.e. 2.1.4 or 2.1.5) to the MAMM4-1 feature on the subject site. Whether or not the wetland is found to be Significant will not change the position of the NVCA as the proposal is not consistent

with either PPS policy on natural heritage, since removal of the feature would constitute either development within a Significant Coastal Wetland or a negative impact to a Coastal Wetland.

4. NVCA Comment June 14, 2021:

Staff acknowledge a point presented in the EIS with respect to changing hydrologic regimes and dynamics within the above-mentioned wetland communities. The EIS asserts that wetlands on the property have been subject to changing hydrology due successive localized land-use changes. The implication of this point is that the wetlands are 'less wet' than they may have been historically. NVCA staff note that they are not in a position to make decisions based on theorized past hydrologic changes to the wetlands on the property. The communities, as described, represent wetlands, including the noted provincially-rare coastal wetland types. On this basis, they are subject to review under NVCA's regulation and relevant land-use planning policies as they exist under current conditions.

ORION Response August 25, 2021:

The assessment of the changing hydrologic regime is based on technical information taken from engineering and ecological studies done for the upgradient contributing watershed and the subject property. The conversion of the wetland communities to upland vegetation is based on field data not theory. The stormwater management for Highway 26 and its relationship to the subject property is taken from engineering studies completed and approved by the province for the construction of the highway. The stormwater management facilities within the Town, existing and proposed, that will affect the subject property is based on reports prepared by the Town and their consultants. The stormwater management proposed for the subject property was prepared by qualified engineers using the above data to assess potential storm water flows. It is unclear why the NVCA lacks the expertise to review this technical data and provide their opinion of the potential changes to the hydrologic regime from the upgradient development.

NVCA response October 15, 2021: Regulatory Comments

The hydrology of wetland units impacted directly by the proposed drainage infrastructure channel by the Town of Wasaga Beach is governed by surface water inputs derived locally. Groundwater investigations submitted by the applicant's geotechnical consultants confirm that the wetland is not sustained by groundwater input, which lead to the conclusion that the wetland could not be impacted hydrologically (beyond the actual footprint) from a reduction of groundwater input through the installation of the drainage channel.

5. NVCA Comment June 14, 2021:

The EIS further discusses forecasted impacts to wetland communities due to the installation of Township drainage infrastructure associated with the Town's 'West End Depot', which proposes to construct a portion of a drainage channel along the western boundary of the subject property. The implication of this point is that wetland will be subject to complete drainage following installation of the channel. NVCA staff note that the proposed Town drainage infrastructure is also subject to regulatory approvals,

which would include demonstration that all relevant mitigation measures are implemented in the design and construction of the channel. NVCA's regulation and associated policy guidelines provide certain allowances for permitting municipal infrastructure projects within wetland, under strict conditions. If the Township project can be decidedly approved, NVCA would require assurance that the channel would be hydrologically isolated from wetlands north of Beachwood Rd, and not receive or convey drainage from features outside of the Town's Depot property. Therefore, there is no expectation that wetlands on the subject property will be impacted in a manner that would result in a transition of these features to upland or otherwise non-wetland vegetation communities.

ORION Response August 25, 2021:

It is our understanding from Town staff the approval of the West End Depot and the associated drainage channel to the bay is imminent. Given the Shore Lane residents' complaints about flooding and high ground water table impacts on basements, we would expect the NVCA would see the benefits of the drainage channel to protect the existing approved development within the NVCA regulated area on Shore Lane.

NVCA response October 15, 2021: Regulatory Comments

NVCA staff note the drainage channel infrastructure proposed to be constructed to alleviate surface water issues in the surrounding area. NVCA staff have indicated support for the proposed infrastructure on the basis that it will not impact the wetlands on the subject site, and that the development is required municipal infrastructure.

6. NVCA Comment June 14, 2021:

Other identified natural heritage-related constraints include the potential presence of species of conservation concern associated with the property, including the following:

- The EIS identifies the tree species, Black Ash, as being present in limited quantities within wetlands on the property. Section 3.6.2.1 discusses potential constraints related to this species; however, there is no review of potential constraints related to the species' sub-national conservation rank (S3), and potential subsequent implications for provincial and local policy conformity.
- Table 2 in the EIS lists observed vascular plant species on the subject lands. The species, Sand Cherry (*Prunus pumila*), is identified as present. Staff note that the provincially-rare (S3) variety of this species, known as Great Lakes Sand Cherry (*Prunus pumila* var. *pumila*), is known to occur regularly in near-shore natural areas within the Town. Was further assessment given to the variety of Sand Cherry present on the property?

ORION Response August 25, 2021:

Review of the Ministry of Natural Resources and Forestry Natural Heritage Information Centre data base did not identify Black ash or Sand cherry as species of conservation concern or species being tracked by the province. Black Ash is currently subject to mortality from the Emerald Ash Borer and are being removed by municipalities in an

attempt to control the spread of the borer. Based on this information these species are not natural heritage constraints to development.

NVCA response October 15, 2021: Advisory comment

The COSEWIC assessment of the status of Black Ash (*Fraxinus nigra*) as a species of conservation concern (S3) can be found here: <https://www.canada.ca/en/environment-climate-change/services/species-risk-public-registry/cosewic-assessments-status-reports/black-ash-2018.html>

Summary

NVCA staff are not in a position to support the proposed development from a regulatory perspective. In its advisory capacity to the Town, staff further advise that the proposed development faces major constraints associated with provincial planning policies, and is generally inconsistent with the *Provincial Policy Statement*. Based on the technical data collected and presented through the EIS, an alternative concept should be explored that does not include removal of the wetland communities from the subject lands.

From a natural hazard perspective, development is currently proposed upon lands that are regulated for Flooding and erosion hazards which is inconsistent with the natural hazard policies (Section 3.1) of the *Provincial Policy Statement*. As noted above, a hazard study should be completed in order to refine the extents of the flooding and erosion hazards on the site. The concept plan may need to be revised based on the conclusions of the hazard study.

In order to accurately determine the appropriate limits to development, NVCA staff request that a *scaleable* drawing be provided which illustrates the following items (as applicable):

- i. The wetland boundaries;
- ii. The width of all wetland buffers (minimum 30 metres);
- iii. The floodplain limit plus the 6 metre access allowance;
- iv. The erosion hazard limit plus the 6 metre access allowance;
- v. The proposed lot fabric.

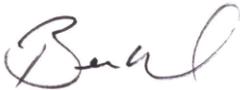
This information should be accompanied by an appropriate and complete legend. Constraint lines, access allowances, and buffer setbacks should be labelled. Please confirm that all works are within the limits of development. (i.e. all natural hazards, access allowances, natural heritage features and associated buffers and setbacks). The limits to development will be determined by the furthest extent of the hazard plus the required access allowance or the natural heritage feature and appropriate buffer; whichever is the greatest constraint.

Next Steps

Please ensure that a comments matrix is included with the next submission which clearly outlines how each of the above noted comments have been addressed including the page number and/or drawing number where the revisions can be found. In addition, the matrix should the other (natural hazards, stormwater, etc.) matters identified in NVCA's June 14, 2021 letter.

Please feel free to contact the undersigned should you wish to discuss these comments further.

Sincerely,



Ben Krul | Manager, Planning Services

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