

Provincial Policy Statement 2014

(pdf accessed from <http://www.mah.gov.on.ca/Page10679.aspx>)

Section 2.1

2.1.1 Natural features and areas shall be protected for the long term.

2.1.5 *Development* and *site alteration* shall not be permitted in:

...

d) *significant wildlife habitat*,

e) *significant areas of natural and scientific interest*; and

...

unless it has been demonstrated that there will be no *negative impacts* on the natural features or their *ecological functions*.

2.1.6 *Development* and *site alteration* shall not be permitted in *fish habitat* except in accordance with *provincial and federal requirements*.

2.1.7 *Development* and *site alteration* shall not be permitted in *habitat of endangered species and threatened species*, except in accordance with *provincial and federal requirements*.

2.1.8 *Development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.4, 2.1.5, and 2.1.6 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*.

Italicised words are defined in section 6 of the policy statement.

Adjacent lands: means

...

b) for the purposes of policy 2.1.8, those lands contiguous to a specific *natural heritage feature or area* where it is likely that *development* or *site alteration* would have a *negative impact* on the feature or area. The extent of the *adjacent lands* may be recommended by the Province or based on municipal approaches which achieve the same objectives; ...

Areas of natural and scientific interest (ANSI): means areas of land and water containing natural landscapes or features that have been identified as having life science or earth science values related to protection, scientific study or education.

Ecological function: means the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.

Endangered species: means a species that is listed or categorized as an “Endangered Species” on the Ontario Ministry of Natural Resources’ official Species at Risk list, as updated and amended from time to time.

Fish: means fish, which as defined in the *Fisheries Act*, includes fish, shellfish, crustaceans, and marine animals, at all stages of their life cycles.

Fish habitat: as defined in the *Fisheries Act*, means spawning grounds and any other areas, including nursery, rearing, food supply, and migration areas on which *fish* depend directly or indirectly in order to carry out their life processes.

Habitat of endangered species and threatened species: means

- a) with respect to a species listed on the Species at Risk in Ontario List as an endangered or threatened species for which a regulation made under clause 55(1)(a) of the *Endangered Species Act, 2007* is in force, the area prescribed by that regulation as the habitat of the species; or
- b) with respect to any other species listed on the Species at Risk in Ontario List as an endangered or threatened species, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding, as approved by the Ontario Ministry of Natural Resources; and

places in the areas described in clause (a) or (b), whichever is applicable, that are used by members of the species as dens, nests, hibernacula or other residences.

Negative impacts: means

...

c) in regard to *fish habitat*, any permanent alteration to, or destruction of *fish habitat*, except where, in conjunction with the appropriate authorities, it has been authorized under the *Fisheries Act*; and

d) in regard to other *natural heritage features and areas*, degradation that threatens the health and integrity of the natural features or *ecological functions* for which an area is identified due to single, multiple or successive *development* or *site alteration* activities.

Significant: means

a) in regard to *wetlands, coastal wetlands* and *areas of natural and scientific interest*, an area identified as provincially significant by the Ontario Ministry of Natural Resources

using evaluation procedures established by the Province, as amended from time to time;

...

c) in regard to other features and areas in policy 2.1, ecologically important in terms of features, functions, representation or amount, and contributing to the quality and diversity of an identifiable geographic area or *natural heritage system*;

...

Criteria for determining significance for the resources identified in sections (c)-(e) are recommended by the Province, but municipal approaches that achieve or exceed the same objective may also be used.

Site alteration: means activities, such as grading, excavation and the placement of fill that would change the landform and natural vegetative characteristics of a site.

Threatened species: means a species that is listed or categorized as a “Threatened Species” on the Ontario Ministry of Natural Resources’ official Species at Risk list, as updated and amended from time to time.

Wildlife habitat: means areas where plants, animals and other organisms live, and find adequate amounts of food, water, shelter and space needed to sustain their populations. Specific wildlife habitats of concern may include areas where species concentrate at a vulnerable point in their annual or life cycle; and areas which are important to migratory or non-migratory species.

Part III: How to Read the Provincial Policy Statement

Consider Specific Policy Language

When applying the Provincial Policy Statement it is important to consider the specific language of the policies. Each policy provides direction on how it is to be implemented, how it is situated within the broader Provincial Policy Statement, and how it relates to other policies.

Some policies set out positive directives, such as “settlement areas shall be the focus of growth and development.” Other policies set out limitations and prohibitions, such as “development and site alteration shall not be permitted.” Other policies use enabling or supportive language, such as “should,” “promote” and “encourage.”

The choice of language is intended to distinguish between the types of policies and the nature of implementation. There is some discretion when applying a policy with enabling or supportive language in contrast to a policy with a directive, limitation or prohibition.

Comments

Note the province uses “shall” and “shall not” in policies to protect the natural heritage. The Provincial Policy Statement 2014 came into effect April 30, 2014. There are no “grandfather” provisions. The predecessor policies of 2005 are very similar.

City of Toronto Official Plan

Pdf can be accessed from:

<http://www1.toronto.ca/wps/portal/contentonly?vgnextoid=fcb60621f3161410VgnVCM1000071d60f89RCRD&vgnnextchannel=8e6552cc66061410VgnVCM1000071d60f89RCRD>

Policies to protect the natural heritage are found in Section 3.4. They largely reflect the PPS, and are being considered in the Official Plan Review, which should bring them even more in line with the new PPS. For example, 3.4.14 (current numbering) addresses provincially significant natural heritage features.

Section 3.4.13 addresses environmentally significant areas:

Areas of land or water within the natural heritage system with any of the following characteristics are particularly sensitive and require additional protection to preserve their environmentally significant qualities:

- a) habitats for vulnerable, rare, threatened or endangered plant and/or animal species and communities that are vulnerable, threatened or endangered within the City or the Greater Toronto Area; or
- b) ...
- c) habitats and communities of flora and fauna that are of a large size or have an unusually high diversity of otherwise commonly encountered biological communities and associated plants and animals; or
- d) areas where an ecological function contributes appreciably to the healthy maintenance of a natural ecosystem beyond its boundaries, such as serving as a wildlife migratory stopover or concentration point, or serving as a water storage or recharge area.

Development will not occur on lands within the natural heritage system that exhibit any of these characteristics. **Activities will be limited to those that are compatible with the preservation of the natural features and ecological functions attributed to the areas....Known** (emphasis added) areas exhibiting these environmentally significant characteristics will be shown...

Section 5.6.15

Use of the word “will” is prescriptive, to be interpreted as equivalent to “shall” unless the context clearly indicates otherwise.

Parks By-law Chapter 608

§ 608-6. Injury and damage.

No person shall in a park:

...

B. Break, injure, deface, destroy, move or remove the whole or any part of a flower, plant material, fungus, tree or other vegetation or a building, structure, equipment or other property of the City; ...

§ 608-34. Dogs.

A. While in a park, no person as owner or person having control of a dog shall:

[Amended 2007-07-19 by By-law No. 790-2007; 2009-10-27 by By-law No. 1093-2009]

...

(2) Excluding blind persons reliant upon a guide dog, and a working dog providing a service to the City, allow the dog to enter a prohibited area; ...

PROHIBITED AREAS: [Added 2007-07-19 by By-law No. 790-200711]

A. Natural or environmentally sensitive areas (including designated ravines, wooded or savannah areas, sites of natural or scientific interest, areas which have undergone significant habitat restoration, wetlands or their buffer zones).

B. Playgrounds, splash pads or wading pools.

C. Horticultural display areas or ornamental gardens.

D. Skateboard bowls, tennis courts and other sports pads.

E. Sports fields and stadiums.

F. Artificial or natural ice rinks or toboggan hills.

G. Animal display areas.

H. Campgrounds. **[Amended 2009-10-27 by By-law No. 1093-200912]**

I. Areas posted to prohibit dogs from entering.

§ 608-36. Protection of wildlife.

While in a park, no person shall:

A. Subject to the provisions of § 608-37, kill, attempt to kill, maim, injure, trap or disturb wildlife without a permit;

B. Touch, injure or remove a nest or egg without a permit;

C. Feed or attempt to feed or deposit food for consumption by wildlife; or

D. Release into a park pets, animals or domesticated species.

Ravine and Natural Feature By-law Chapter 658

All of High Park is covered by the ravine and natural features by-law.

Natural Heritage Reference Manual

<http://docs.files.ontario.ca/documents/3270/natural-heritage-reference-manual-for-natural.pdf>

The current, second edition of Natural Heritage Reference Manual (NHRM) was published in 2010.

“The manual represents the Province’s recommended technical criteria and approaches for being consistent with the PPS in protecting natural heritage features and areas and natural heritage systems in Ontario. While the manual provides information and approaches to assist in implementing PPS policy, it does not add to or detract from the policy. Additional ways to achieve the desired outcomes required by the PPS may exist, but if approaches other than those recommended in this manual are used, the onus is on the proponent of those approaches to demonstrate that they are consistent with the PPS.” (Section 1.1)

Note: The OMB uses the NHRM in its decisions. The City’s defense would be using an additional way to achieve the same outcome as the NHRM.

“Within the manual, the Province has provided updated recommendations and guidance for the PPS (ie the 2005 version of the PPS) natural heritage policies (based on new policy direction in the PPS and latest scientific information).” (Section 1.2)

Adjacent land width: The adjacent land width within which site alteration will not occur unless a study shows no negative impact is 120 metres for a life ANSI (section 10.4). The High Park ANSI is a life ANSI.

Negative Impact

Negative impacts include “trampling of vegetation and soil compaction; increased erosion...,” “disturbance of wildlife, especially during critical periods,” “...increased predation on wildlife by pets;” and “chasing of wildlife by off-leash dogs.” (Appendix 2) Mitigation includes “develop trails for walking and bicycling that direct people away from sensitive habitats; provide forum for people to keep watch on natural areas and report on improper use; enforce proper trail use; provide suitable off-leash areas for dogs and enforce leash laws in sensitive areas.” (Appendix 2)

The natural feature should be protected by a buffer. The buffer should be at least 30m from the drip line of trees, to allow for tree fall, thus satisfying the twin requirements of protecting both the natural heritage and public safety. (Table 13-1) In an urban setting a fence at the outside edge of the buffer directs the public away from the natural feature. (Section 13.5.4.6)

“Public education... about the value of natural amenities and how some seemingly harmless everyday practices can lead to negative impacts...is helpful in reducing such impacts. As part of public education, an environmental features handbook and/or a site-specific pamphlet can be distributed to homeowners in development areas containing or adjacent to natural features.” (Section 3.5.4.7) (Note that in the case of High Park, signage at the entrance and more details on the Featured Park web page would reach more people.)