

## 4.0 NATURAL HERITAGE POLICY REVIEW / ASSESSMENT

Relevant planning legislation and policy pertinent to this study are summarized briefly in the following section.

### 4.1 FEDERAL

#### 4.1.1 FISHERIES ACT (1985)

##### 4.1.1.1 OVERVIEW OF KEY POLICIES

The Canadian Fisheries Act provides provisions for the protection of fish and fish habitat. Section 35 (1) of the Fisheries Act states:

“No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.”

The Act interprets ‘serious harm to fish’ as “the death of fish or any permanent alteration to, or destruction of, fish habitat”.

Proponents that plan to undertake activities in or near water have potential to negatively affect fisheries, as such, are responsible for avoiding, mitigating, and offsetting ‘serious harm to fish’. Avoidance is achieved by undertaking measures which completely prevent serious harm to fish. These measures include project design considerations, location of activity, and timing of works. Mitigation is implemented by following best practices such as those described in the ‘*measures to avoid harm*’ to fish and fish habitat’. Any residual impacts are then required to be addressed by offsetting. An offsetting measure is one that counterbalances serious harm to fish resulting from a project, where serious harm remains after all feasible mitigation measures have been applied.

##### 4.1.1.2 APPLICABILITY / APPLICATION

Future land development may include one or more of the following:

- The installation of stormwater management (SWM) facilities
- Stream realignment
- Stream crossings of linear transportation corridors and linear infrastructure

The requirement for review by the Federal Department of Fisheries and Oceans (DFO) and potential for authorization under the Fisheries Act will be determined at the detailed design phase of the project when the details of the undertakings are known.

Some activities undertaken as part of future development may meet the requirements for self-assessment under the Fisheries Act. Specifically, SWM facilities may not require DFO review if they meet the conditions for self-assessment. Key self-assessment criteria applicable to the installation of a SWM facility outlet include:

- No temporary or permanent increase in existing footprint below the High Water Mark
- No new temporary or permanent fill placed below the High Water Mark
- Detailed review of the DFO self-assessment criteria and potential for *Serious Harm to Fish or Fish Habitat* is required at the time of design to determine if a Request for Review is required.

### 4.1.2 MIGRATORY BIRDS CONVENTION ACT

#### 4.1.2.1 OVERVIEW OF KEY POLICIES

The Migratory Birds Convention Act, MBCA (1994) and Migratory Birds Regulations, MBR (2014) protect most species of migratory birds and their nests and eggs anywhere they are found in Canada, including surrounding ocean waters, regardless of ownership. General prohibitions under the MBCA and MBR protect migratory birds, their nests and eggs and prohibit the deposit of harmful substances in waters / areas frequented by them.

The MBR includes an additional prohibition against incidental take, defined by Environmental Canada as:

“The inadvertent harming, killing, disturbance or destruction of migratory birds, nests and eggs.”

Environment Canada implements policies and guidelines to protect migratory birds, their eggs and their nests. There is guidance on the Environment Canada website to minimize the risk of incidental take effects to migratory birds, to achieve compliance with the law and to maintain sustainable populations of migratory birds.

Compliance with the MBCA and MBR is best achieved through a due diligence approach, which identifies potential risk, based on a site specific analysis in consideration of the Avoidance Guidelines and Best Management Practices information on the Environment Canada website.

#### 4.1.2.2 APPLICATION / APPLICABILITY

Works with potential MBCA implications will occur during the construction phase of development when the developable portion of the properties are cleared and grubbed of vegetation and/or vegetation is pruned or selectively removed, potentially removing nests of migratory birds.

The majority of breeding bird species, recorded in the PSA are subject to the MBCA and MBR. Compliance with the MBCA will be achieved using the following due diligence approach:

- Proponent awareness of the MBCA, potential for nesting in the area and potential for impacts to migratory birds, nests and eggs
- Implementation of the following avoidance and mitigation measures (to be determined at detailed design), considering for example:
  - Avoiding works (i.e., vegetation / potential nesting habitat removal) within the “regional nesting period” for this area.
  - Avoiding works in key sensitive locations.
  - Minimizing the potential zone of impact by minimizing encroachment into vegetated areas.
  - Recommended Best Management Practices (BMPs) during construction to minimize potential indirect impacts to vegetation / potential nesting habitat outside of the direct footprint.
- It should be noted that the “regional nesting period” (~May 7 to July 20<sup>th</sup>) provides general guidance on the window within which the majority of protected species nest. Nesting period should be assessed based on habitat type, species and climatic conditions (warm / cool season) at the time of detailed planning to determine an accurate window for the site and proposed works.

### 4.1.3 SPECIES AT RISK ACT (2002)

#### 4.1.3.1 OVERVIEW OF KEY POLICIES

The federal Species at Risk Act (SARA) includes a number of prohibitions to protect individuals of listed Species at Risk, including:

- No person shall kill, harm, harass, capture or take an individual of a threatened, endangered or extirpated species.
- No person shall possess, collect, buy, sell or trade an individual of a threatened, endangered or extirpated species, or any part or derivative of such an individual.
- No person shall damage or destroy the residence of one or more individuals of a threatened or endangered species, or of an extirpated species if a recovery strategy has recommended the reintroduction of the species into the wild in Canada.

These prohibitions apply on private lands throughout Canada only to aquatic species and species of migratory birds protected by the MBCA listed as Endangered, Threatened, or Extirpated under Schedule 1 of SARA. For other listed wildlife species, these prohibitions apply only in federal lands. However, the Governor in Council may, by order, apply these prohibitions to non-federal lands if the Minister of the Environment is of the opinion that the laws of a province do not effectively protect a listed species or the residences of a listed species.

On the recommendation of the Minister of the Environment, the Minister of Fisheries and Oceans or the Minister of Canadian Heritage, the Governor in Council may also apply these

prohibitions on federal lands to species that are not listed by COSEWIC but are designated endangered or threatened by a provincial or territorial minister.

SARA also includes provisions to protect critical habitat; these are complex and vary according to the species in question and the location of the critical habitat. SARA's provisions also permit the Minister of the Environment, the Minister of Fisheries and Oceans and the Minister of Canadian Heritage broad discretionary powers to implement (or not) prohibitions to protect critical habitat. Generally, critical habitat protection applies to Threatened, Endangered and Extirpated species.

### 4.1.3.2 APPLICATION / APPLICABILITY

The proposed development is on non-federal (private) lands and there is no order by Governor in Council; hence SARA applies only to aquatic and migratory bird species / habitat.

A screening exercise was undertaken to identify applicable aquatic and migratory bird species / habitat that have a reasonable potential to be present. Results are discussed in Section 5.1.1.

## 4.2 PROVINCIAL

### 4.2.1 ENDANGERED SPECIES ACT (2007)

#### 4.2.1.1 OVERVIEW OF KEY POLICIES

Species designated as Threatened or Endangered by the Committee on the Status of Species at Risk (SAR) in Ontario (COSSARO), otherwise known as Species at Risk in Ontario (SARO), and their habitats (e.g., areas essential for breeding, rearing, feeding, hibernation and migration) are afforded legal protection under the Endangered Species Act (ESA) (Government of Ontario 2007). The ESA (Subsection 9(1)) states that:

“No person shall,

- (a) kill, harm, harass, capture or take a living member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species;
- (b) possess, transport, collect, buy, sell, lease, trade or offer to buy, sell, lease or trade;
  - i. a living or dead member of a species that is listed on the Species at Risk in Ontario List as an extirpated, endangered or threatened species,
  - ii. *any part of a living or dead member of a species referred to in subclause (i),*
  - iii. *anything derived from a living or dead member of a species referred to in subclause (i); or*

(c) *sell, lease, trade or offer to sell, lease or trade anything that the person represents to be a thing described in subclause (b) (i), (ii) or (iii).*

Clause 10(1)(a) of the ESA states that:

“No person shall damage or destroy the habitat of a species that is listed on the Species at Risk in Ontario list as an endangered or threatened species”

The ESA also calls for the development of species-specific Recovery Strategies and Habitat Regulations. Unlike the general habitat of a species, regulated habitat may include areas that are currently unoccupied by the species. These areas are commonly referred to as “recovery habitat.”

In order to balance social and economic considerations with protection and recovery goals, the ESA also enables the MNRF to issue permits or enter into agreements with proponents in order to authorize activities that would otherwise be prohibited by subsections 9(1) or 10(1) of the Act provided the legal requirements of the Act are met.

#### 4.2.1.2 APPLICATION / APPLICABILITY

A screening exercise was undertaken to identify which *Endangered* and *Threatened* SAR have reasonable potential to be present. The likelihood of potential impacts and habitats was also evaluated. SAR screening information is provided in **Appendix B** and discussed in Section 3.9 and 5.1.2.

## 4.2.2 PROVINCIAL POLICY STATEMENT (2014)

### 4.2.2.1 OVERVIEW OF KEY POLICIES

The Ontario Provincial Policy Statement (PPS 2014) was issued under Section 3 of the Ontario Planning Act. Section 3 of the Planning Act requires that decisions affecting planning matters “shall be consistent with” policy statements issued under the Act (OMMAH 1990). The PPS provides policy direction on land use planning and development matters that are of provincial interest which protect the natural environment as well as public health and safety. Key natural heritage policies are discussed below with an evaluation in Section 5.0.

Per Section 2.1.4 of the PPS, development and site alteration shall not be permitted in:

- *significant wetlands* in Ecoregions 5E, 6E and 7E1
- significant coastal wetlands.

Per Section 2.1.5 of the PPS, development and site alteration shall not be permitted in:

- *significant wetlands* in the Canadian Shield north of Ecoregions 5E, 6E and 7E1

- *significant woodlands* in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)
- *significant valleylands* in Ecoregions 6E and 7E (excluding islands in Lake Huron and the St. Marys River)
- significant wildlife habitat
- significant areas of natural and scientific interest
- *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.

Per Section 2.1.6 of the PPS, “Development and site alteration shall not be permitted in **fish habitat** except in accordance with provincial and federal requirements.”

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

Per Section 2.1.8 of the PPS, “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.”

#### 4.2.2.2 APPLICATION / APPLICABILITY

The current study identified the presence of fish habitat, significant wildlife habitat (SWH), significant woodlands (regionally significant), significant valleylands, habitat of Endangered and Threatened species, and provincially significant wetlands (PSWs) in the PSA.

An assessment of existing and potential for new feature designations per the PPS and associated policies was undertaken as part of the current study and is presented in Section 5.2.

### 4.3 GRAND RIVER CONSERVATION AUTHORITY (GRCA)

#### 4.3.1 OVERVIEW OF KEY POLICIES

The Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses (Ontario Regulation 150/06), is a regulation under the Conservation Authorities Act, R.S.O. 1990. Through this, GRCA has the responsibility to regulate activities in natural and hazardous areas (e.g., areas in and near rivers, streams, floodplains, wetlands, slopes and shorelines).

Permitting under Reg. 150/06 is required for any development within regulated areas, interference with wetlands or alterations to watercourses. Of particular note for the Subwatershed Study, development proposed within areas of interference with a wetland may require the completion of an EIS to evaluate and demonstrate that there will be no negative impacts on the identified natural feature or on its ecological functions. For further information on GRCA policies to administer Ontario Regulation 150/06, please visit the GRCA website at [www.grandriver.ca](http://www.grandriver.ca).

The GRCA also has a Wetland Policy (2003) which promotes the development of comprehensive plans, such as a subwatershed study, to assess wetlands at a landscape scale. A comprehensive plan will:

- Identify wetland form and functions, benefits and significance
- Identify associated surface and groundwater regimes and the hydrological and hydrogeological conditions upon which they depend
- Identify and prioritize protection/restoration needs and creation / enhancement opportunities
- Identify potential linkages to other natural heritage features and habitats
- Prescribe guidelines for determining buffers and setbacks
- Develop management recommendations to ensure the long-term sustainability of the wetland

### 4.3.2 APPLICATION / APPLICABILITY

Portions of the study area are located within GRCA regulated lands (i.e., wetlands, Breslau and Randall Drains, floodplain, slopes and adjacent lands).

An assessment of GRCA wetland policy application for unevaluated wetlands determined to be non-PSW through the Complexing assessment was undertaken and is presented in Section 5.2.1.4.

Floodplain mapping was also undertaken and discussed in Section 3.6.

## 4.4 REGIONAL / MUNICIPAL

### 4.4.1 WATERLOO REGIONAL OFFICIAL PLAN (ROP) (2015)

#### 4.4.1.1 OVERVIEW OF KEY POLICIES

The Regional Official Plan (ROP) was adopted by council in June 2009, approved by the province, with modification, in 2010, appealed to the Ontario Municipal Board (OMB) in January 2011 and approved by an OMB decision on June 18, 2015. The ROP identifies a 'Greenlands Network' of environmental features and linkages among them. Policies of the Plan have the

goal of maintaining, enhancing, or where feasible restoring the Greenlands Network. The Greenlands Network is comprised of Landscape Level Systems (including Environmentally Significant Landscapes), Core Environmental Features (CEF), Fish Habitat, Supporting Environmental Features, and the linkages between them. These features are shown on Map 4 - Greenlands Network within the Regional Official Plan.

As per policies of the ROP, development and site alteration proposed adjacent to the above noted features requires the completion of an Environmental Impact Statement to evaluate potential impacts.

Development or site alteration will not be permitted within fish habitat, except in accordance with Provincial and Federal requirements to the satisfaction of the DFO.

#### 4.4.1.2 APPLICATION / APPLICABILITY

The Greenlands Network policies and Greenlands Network Implementation Guidelines (2016) are the primary guiding documents for the identification of the Natural Heritage System (Greenlands System) within the PSA and Stage 2 Lands.

Landscape Level Systems and Core Environmental Features are identified on Map 4 of the ROP and are further assessed within the PSA and Stage 2 Lands based on detailed field surveys and assessment undertaken as part of the current study. These assessments and recommendations for designation under associated ROP policies are presented in Section 5.3.

#### 4.4.2 CITY OF CAMBRIDGE OFFICIAL PLAN (APRIL 2014, UNDER APPEAL)

##### 4.4.2.1 OVERVIEW OF KEY POLICIES

The updated City of Cambridge Official Plan was approved by Council in November 2012, and was appealed to the OMB later that same year with some sections of the Plan still under appeal. Within the Official Plan, a Natural Heritage System consisting of Landscape Level Systems (LSLs), CEF's, Locally Significant Natural Areas (LSNAs), and Fish Habitat has been identified. The NHS and associated policies provide direction for the protection and enhancement of natural heritage features within the City.

The policies and definitions for features in the Plan are generally consistent with the Regional Official Plan for LSLs and CEFs (ROP 2015). LSNAs are specific to the City of Cambridge; criteria for the identification of LSNA's are provided in Section 3.A.4 of the Plan.

The LSNA designation under the City OP affords protection for features identified as playing an important role in maintaining the ecological functions provided by the Natural Heritage System but are not captured under the policies and designations of the Regional Official Plan. To qualify for recognition as a LSNA, a natural feature must be:

- A GRCA regulated wetland that does not qualify as a Core Environmental Feature under the ROP

- A wooded area identified by the MNRF but not identified as a Core Environmental Feature under the ROP
- Significant Wildlife Habitat, generally consisting of one of more of the following:
  - Seasonal concentration areas
  - Rare vegetation communities of specialized habitats for wildlife
  - Habitats of species of conservation concern, or
  - Wildlife movement corridors
- A perennial or intermittent watercourse(s)
- An Environmentally Significant Groundwater Discharge and Recharge Area

City policy in regards to infrastructure within and adjacent to these features generally aligns with the Region.

### 4.4.2.2 APPLICATION / APPLICABILITY

LSNAs apply to lands within the City of Cambridge and inform the Supporting Natural Features under the ROP. Identification of LSNAs is important as part of the SWS to inform the Greenlands Network and Natural Heritage Strategies.

LSNA's are not identified on OP mapping but the above criteria were reviewed as part of the current study and presented in Section 5.3.4.3.

### 4.4.3 TOWNSHIP OF WOOLWICH OFFICIAL PLAN (2007)

#### 4.4.3.1 OVERVIEW OF KEY POLICIES

The Township's Official Plan provides direction on the protection of natural heritage features and functions through Section 13 of the plan. Policies in this section of the plan provide direction to support the identification and protection of a Natural Habitat Network (NHN). The policies and definitions for most features that comprise the NHN in the Plan are generally consistent with the Regional Official Plan (ROP 2015). Features identified as having significant natural heritage value to the Township that are not captured under the policies and designations of the Regional Official Plan are designated as Locally Significant Natural Features (LSNF); criteria for identification as a LSNF are listed in section 13.9.4 of the Plan.

As noted in Policy 13.2.3, where development is proposed on or contiguous to lands that have not been adequately evaluated or classified to identify components of the NHN, a Natural Habitat Network Inventory, in accordance with the Regional Official Policies Plan Policy 4.1.12, will be required.

**4.4.3.2 APPLICATION / APPLICABILITY**

LSNFs apply to lands within the Township of Woolwich and inform the Supporting Natural Features under the ROP. Identification of LSNAs is important as part of the SWS to inform the Greenlands Network and Natural Heritage Strategies.

LSNFs are not identified on OP mapping, but were assessed as part of the current study and presented in Section 5.3.4.4.