

8

**FOREST CONSERVATION BY-LAW
SUMMIT GOLF AND COUNTRY CLUB
TOWN OF RICHMOND HILL**

The Transportation and Works Committee recommends the following:

- 1. The presentation by Ian Buchanan, Manager of Natural Heritage and Forestry, Transportation and Works Department, be received;**
- 2. The following communications be received:**
 - (a) David Richardson, resident, Richmond Hill, dated December 11, 2006;**
 - (b) Natalie Helferty, Past President, Richmond Hill Naturalists, dated June 12, 2007;**
 - (c) Marianne Yake, President, Richmond Hill Naturalists, dated June 12, 2007;**
- 3. The following deputations be received:**
 - (a) Lorraine Madigan Farro, President, Summit Golf and Country Club;**
 - (b) Brian Henshaw, Environmental Consultant, Beacon Environmental;**
 - (c) Debbe Day Crandall, Save the Oak Ridges Moraine Coalition (STORM);**
 - (d) David Burnett, Manager, Provincial and Regional Policy, Toronto and Region Conservation Authority;**
 - (e) David Richardson, resident, Richmond Hill;**
 - (f) Carrie Hoffelner, resident, Richmond Hill;**
 - (g) Bill Counter, member, Summit Golf and Country Club;**
 - (h) Marie Thomson, Richmond Hill Naturalists;**
- 4. The recommendations contained in the following report, May 31, 2007, from the General Manager, Roads and Commissioner of Planning and Development Services, be adopted.**

1. RECOMMENDATIONS

It is recommended that:

1. The Special Permit application pursuant to the Regional Forest Conservation By-law submitted by the Summit Golf and Country Club for the removal of 2.6 hectares of forest, Lot 58 Conc.1 Richmond Hill, be denied.
2. The Regional Solicitor and Regional staff be authorized to appear before the Ontario Municipal Board or the courts as necessary, to defend the Region's interests, and to retain any external consultants required to support the Region's position.

2. EXECUTIVE SUMMARY

- The Summit Golf and Country Club (Summit) has applied under the Forest Conservation By-law to remove 2.6 ha of forest to redesign parts of a golf course which has been in existence since 1912.
- The area of forest to be clear cut is: a Key Natural Heritage Feature in a Core Area of the Oak Ridges Moraine, in the Jefferson Forest Life Science Area of Natural and Scientific Interest (ANSI), in the Jefferson Forest Environmentally Significant Area (ESA), is part of the Regional Greenlands System, and is a Significant Woodland.
- An Environmental Impact Study (EIS), addendum EIS report, and a Hydrological Impact Assessment were submitted by Summit, and shared for review and comment with agencies including the Ministry of Municipal Affairs and Housing (MAH), Ministry of Natural Resources (MNR), Toronto Region Conservation Authority (TRCA) and the Town of Richmond Hill.
- The Summit proposes to provide mitigation and compensation (including 6 ha of reforestation) to offset the impact.
- Restrictive policies are in place which favours the protection of significant natural features, particularly in sensitive natural areas on the Oak Ridges Moraine. The policy and legislative framework for review includes giving consideration to screening under the Forest Conservation By-law, policies of the Regional Official Plan, and implications of the Oak Ridges Moraine Conservation Act and Oak Ridges Moraine Conservation Plan.
- After careful consideration of all the information, staff is recommending that the application be denied.

3. PURPOSE

The purpose of this report is to provide an evaluation of the Special Permit application, dated November 23, 2005, under the Forest Conservation By-law, submitted by Summit, in the Town of Richmond Hill to remove 2.6 hectares of forest for golf course changes. Regional staff has evaluated the application giving consideration to the By-law screening

process, Regional Official Plan policies, the Oak Ridges Moraine Conservation Act (ORMCA) 2001, and Oak Ridges Moraine Conservation Plan (ORMCP).

4. BACKGROUND

The Regional Forest Conservation By-law (No. TR-0004-2005-036) prohibits or regulates the destruction of trees in the Regional Municipality of York. Regional Council may approve or deny Special Permits which consider 'major' forest removal. Any proposed clearing of more than 0.2 hectares of forest requires Regional Council to consider the matter in accordance with the intent of the By-law, while giving consideration to appropriate legislation and policies.

The Summit Golf and Country Club owns and operates an 18 hole golf course at the south west corner of Stouffville Road and Bayview Avenue, Lot 58, Conc. 1 in the Town of Richmond Hill (*Attachment 1*). An 18 hole golf course has existed on the property since 1912. The entire 107 ha property is situated on the Oak Ridges Moraine (ORM) and includes 65 ha of forest. Since its inception the Club has demonstrated environmental stewardship of the property and has been responsible for the management, protection and maintenance of the existing forests. In addition, it is recognized that Summit has planted many trees on the property over the years.

In order to provide for golf course improvements, Summit applied to the Region to remove trees to permit the redesign of several golf course holes. To facilitate this redesign, the application proposes the removal of 2.6 hectares of forest, resulting in the need for a Special Permit under the Region's Forest Conservation By-law.

4.1 Purpose of Application

The application states that the permit is required to allow for golf course alterations. Furthermore, the specific cause of the proposed alterations is to:

"mitigate potential liability of both the Summit and to the Region of York directly related to alterations to, and proposed alterations to, roadways adjacent to golf course boundaries."

This 'potential liability' has been referenced in earlier correspondence to the Region relating to vehicle/golf ball collisions. The adjacent roads have been widened through some intersection improvements as a result of the construction of Bayview Avenue north of Stouffville Road. No additional lands were required to implement these works.

The Region's Legal Services Branch has reviewed the issue of the Region's potential liability associated with vehicle/golf ball collisions with respect to the Summit and other golf courses adjacent to Regional Roads. Staff has concluded that the widening of Regional Roads where additional lands are not required, will not result in any additional liability to the Region.

In addition to the liability matter, the Summit has identified that changes are required for the course to remain attractive to members (existing and future), and for the business to keep pace with market expectations.

4.2 Chronology of Events

In 2003 York Region, the Province and the Toronto and Region Conservation Authority were contacted by a number of Summit members concerned with the possibility of tree cutting on the subject property. At that time, the Region contacted Summit and identified the necessary process to submit an application for Regional Council to consider tree removal under the 1991 Tree By-law. All agencies identified the ORMCP and its policy framework as a significant issue.

Regional staff attended a number of meetings with the Summit and other agencies to scope their application and discuss its implications. The following represents the recent chronology for this application:

- November 23, 2005 – Region receives a Special Permit application including a preliminary Environmental Impact Study (EIS) (Beacon Environmental).
- June 30, 2006 – Region receives an EIS addendum (Beacon Environmental), and a Hydrological Impact Assessment (Burnside and Assoc.), to complete their application.
- September 1, 2006 – Region distributes the application and supporting materials to agencies for review and comments, including; Ministry of Municipal Affairs and Housing (MAH), Ministry of Natural Resources (MNR), Toronto and Region Conservation Authority (TRCA) and the Town of Richmond Hill.
- September 15 and Oct.19, 2006 – Region convenes meetings with agencies and the Summit to facilitate discussion, scope issues and expedite comments.
- October – December, 2006 – agencies provide comments on application. Correspondence is forwarded to the Summit for comment.
- April 23, 2007 – the Summit provides a response, including correspondence from both the MAH (April 20/07) and Beacon Environmental (February 3/07).

4.3 Legislation and Policy Framework

The Forest Conservation By-law prohibits or regulates the destruction of trees. The review of the Forest Conservation by-law Special permit application is required to take into consideration impacts to significant natural features, policies of the Regional Official Plan (ROP), and the implications of the Oak Ridges Moraine Conservation Act, 2001 (ORMCA) and Oak Ridges Moraine Conservation Plan (ORMCP).

The review process, including the significant policy and legislative implications, are the most critical issue in consideration of this application. It is recognized that the ORMCP has extremely restrictive policies in place when considering direct and indirect impacts to Key Natural Heritage Features (KNHF). The review of the Forest Conservation By-law

Special Permit application is required to take into consideration impacts to significant natural features, policies of the Regional Official Plan (ROP), and the implications of the Oak Ridges Moraine Conservation Act (ORMCA) and Oak Ridges Moraine Conservation Plan (ORMCP). The lands contain a number of natural features, including the forests, which have been designated as significant by many jurisdictions. The property is also designated as a Natural Core Area and the majority of forests on the property are identified as being Key Natural Heritage Features within the Regional Official Plan and the ORMCP. In addition, it is recognized that Summit as a golf course is an 'existing use' under the ORMCP.

4.3.1 Oak Ridges Moraine Conservation Act (2001) and Plan

In April, 2002 the Province released the Oak Ridges Moraine Conservation Plan (ORMCP). The Plan was prepared under the authority of the Oak Ridges Moraine Conservation Act, 2001, and issued under Regulation 140/02. This means that the ORMCP has the force of law.

With respect to this application, there are two related ORMCP policy issues:

1. Site alteration prohibitions within Key Natural Heritage Features (KNHF), and
2. Existing Use provisions.

4.3.1.1 ORMCP Site Alteration

The lands are designated as a Natural Core Area within the ORMCP. The purpose of Natural Core Areas is to maintain, and where possible to improve or restore, the ecological integrity of the area. Within the ORMCP, golf courses are specifically identified as a 'major' recreational use, which is not a permitted use within a Natural Core Area land use designation.

Within the land use designation, all the woodlands on the property are identified as Key Natural Heritage Features (KNHF). Section 22 of the ORMCP defines KNHF and the policies and tests that must be applied to them. Section 22(2) indicates that all *development* and *site alteration* is prohibited in KNHF and associated vegetation protection zones except in four specific instances, none of which involve golf course development.

Site alteration, within the definition of the ORMCP means "activities such as filling, grading and excavation that would change the landform and natural vegetative characteristics of land". Such activities are clearly contemplated as part of the Summit proposal, and in this regard fail the test of this provision of the ORMCP.

4.3.1.2 ORMCP Existing Use Provisions

It is recognized that the Summit Golf Course is an existing use of land that predates the ORMCP. The Summit has provided a legal opinion that it is compliant with the provisions of the ORMCP in that clause 6(1)(a) of the ORMCP provides:

*6(1) Nothing in this Plan applies to prevent,
(a) The use of any land building or structure for a purpose prohibited by this Plan, if the land, building or structure was lawfully used for that purpose on November 15, 2001 and continues to be used for that purpose*

The Summit interpretation is that, all of the lands owned by the Summit are a golf course, and have been used for golf course purposes since long before November 15, 2001. As such, nothing in the ORMCP applies to prevent the development or site alteration (grading, tree removal etc.) by the Summit. The Ministry of Municipal Affairs and Housing (MAH) has indicated that a position suggesting that all activities, over the entire property, would fall under an Existing Use exclusion, would not be consistent with the policy. However, in correspondence to the Summit (April 20/07) MAH has also accepted that:

- An existing golf course comprised more than fairways, tee blocks, greens and other manicured areas,
- At a general level treed areas along and between fairways can comprise integral parts of a golf course
- Golf courses are not intended to be static and that redesigns are not uncommon
- The determination of the scope of what constitutes 'existing use' is best determined at the local level between the owner and the municipal government.

4.3.2 Region of York Official Plan

The forest area has been part of the Regional Greenlands System since the Plan was approved in 1994. Similarly, the Plan designates parts of the subject property as an Environmental Policy Area and Significant Forested lands.

In 2004, in accordance with the requirements of the ORMCA, 2001, Regional Official Plan Amendment 41, the Oak Ridges Moraine Conformity Amendment, was approved by the Province and mirrors the provisions of the ORMCP. The Regional Official Plan therefore identifies the forested lands, the ANSI and the ESA on the subject lands as Key Natural Heritage Features. The policy framework of the ROP follows that as prescribed in the provincial legislation. As such, the issues relating to opinions and interpretations of the provincial legislation and policies take precedent, but are consistent with ROP policy.

5. ANALYSIS AND OPTIONS

The following section provides a description of the subject lands, the findings of the EIS reports, and a summary of the proposed undertaking. The significant legislative and policy implications relevant to this application are presented and discussed. This review considers the screening under the Forest Conservation By-law, the ORMCA and ORMCP, and implications of the Regional Official Plan.

5.1 Site Description

The Summit property is located entirely on the Oak Ridges Moraine (ORM) and is approximately 107 ha in size, with 65 ha of the area being forested. The topography is complex, with rolling sand hills and soils including silts, sands and some clay, typical of the ORM.

The property is designated as “Natural Core Area” under the ORMCP and in the Regional Official Plan. In addition, the site is within the regionally significant Jefferson Forest Life Science Area of Natural and Scientific Interest (ANSI) and as such is designated as a Key Natural Heritage Feature under the ORMCP and the Regional Official Plan. All of the potentially impacted woodlands on the property are identified as “significant” under the ORMCP and are also designated Key Natural Heritage Features under the Regional Official Plan. The woodlands are also identified as part of the Regional Greenlands System. The Province further identifies portions of the lands as High Aquifer Vulnerability (Category 1) and as a Landform Conservation Area (Category 1).

Part of the Rouge River Headwaters Wetland Complex (Provincially Significant Wetland) is on the property, although this is located outside of the proposed tree removal area. A portion of the property is also identified as the Jefferson Forest Environmentally Significant Area (ESA) by the Toronto and Region Conservation Authority. Both the wetlands and ESA are identified as Key Natural Heritage Features in the Regional Official Plan (through ROPA 41).

5.2 Study Findings

5.2.1 Environmental Impact Studies

The Environmental Impact Study (EIS) presents a compilation of existing information, and provides the results of field investigations conducted on October 6th and November 13th, 2005. The EIS was prepared to:

- Inventory and confirm the on site environmental features.
- Address the environmental sensitivity.
- Propose mitigative and compensation measures.

The EIS addendum included data collected from site visits on June 7th and June 29th, 2006. The addendum also offered an opinion on compliance with legislation and policies, which is discussed under the legislation and policy section of this report.

The forest communities in and around the areas to be cut consist of three communities:

- A small cultural plantation of white pine, Scotch pine and Norway spruce.
- Red oak native deciduous forest.
- White pine – oak native mixed forest.

The presence of American Witch-hazel, a Carolinian forest species is a distinguishing feature of the forests on the property. The natural forest communities are defined as being mid aged which includes trees from 40-70 years in age.

The floral inventory of the proposed cleared areas conducted during the fall 2005, found three species considered rare in York Region (Round-lobed Hepatica, Common Pipsissewa and Black maple), and two species that are considered uncommon (American Witch-hazel and Hisbid Greenbrier). The spring floral survey identified 18 additional species of plants, but found no additional rare species.

The fall assessment of breeding bird habitat, and presence of reptiles and amphibians documented in the EIS provided some background information and preliminary findings. The EIS addendum noted field observations of 20 species of breeding birds including 5 pairs of area sensitive Ovenbirds. The report concludes that the proposed alterations may result in the loss of one or two pairs of this sensitive species, which is scarce or absent from urban areas. The spring field work did not record any amphibians at or near the proposed field site.

5.2.2 Hydrological Impact Assessment

For Summit R.J. Burnside and Associates conducted a hydrological background review, assessment of the site and a review of relevant policy and legislative implications. This assessment included consideration of the test well data from testing conducted in 1995 as part of the Summit Permit To Take Water (PTTW) application submitted to the Ministry of the Environment. Giving consideration of impacts to groundwater interception, infiltration and the impact of irrigation on surrounding water uses they conclude:

- That the proposed alteration to the golf course should result in minimal change of impact on the existing environment.
- Given that the course has been in operation since 1912, with wells in production since 1995, that offsite impacts are likely already occurring and would not necessarily be linked to the alterations proposed.
- The proposed alterations are not expected to result in a net change in infiltration patterns to the Aquifer systems of the Oak Ridges Moraine that underlie the site.

The assessment suggests that the potential for impact is offset by the site mitigation including proposed reforestation, and that there will not be any change in the level of irrigation used on site. However, the report does not appear to contemplate water requirements during the establishment period for the new greens, fairways and tees, or to support the reforestation proposal. Overall the report concludes that the alteration should not result in a negative impact to the environment.

5.2.3 Proposed Undertaking and Mitigation

The proposed golf course alterations associated with the creation of new holes and realignment of tees and greens, would result the removal of 2.6 ha of existing forest (*Attachment 2*). This includes 0.3 ha from a plantation woodland community and 2.3 ha of mixed wood forests including red oak, white pine and red maple communities. In addition, the EIS identifies the direct loss of forest interior habitat as 0.15 ha associated with the proposal. The EIS suggests the relocation of certain rare plant species as part of the mitigation. This type of rare species relocation and salvage is often not successful. As such, the forest removal will likely result in the loss of rare species, and will also result in the loss or displacement of existing wildlife habitat.

The Phase I EIS also proposes mitigative measures to minimize the impact and compensate for the loss of forests and habitat. These measures include:

1. Reforestation of a minimum of 6 ha of trees or forests.
2. Planting to buffer an existing headwater discharge feature.
3. Transplanting of rare plants to suitable locations on the property.
4. Clean up of forest block on the property.
5. Tree harvesting be undertaken by a reputable hardwood forester and supervised by a Registered Professional Forester.
6. The application of silt fencing to isolate the construction area.
7. Tree clearing will be restricted to occur outside the breeding bird period, generally mid April to late July.

A key consideration is the proposal to compensate for the 2.6 ha loss of forest with a 6 ha tree planting effort. The study identifies that there will be an immediate loss of mature trees, forest habitat and their associated functions, which will take more than 50 years to recover.

The EIS concludes that the proposed undertaking will create a minimum disturbance to the existing functions and attributes of the subject property. The EIS proposes that the removal of 2.6 ha of forest will be an immediate loss that, over a period of 50 years or so, will be compensated for by the 6 ha reforestation. In summary, the EIS suggests that the impacts are minor in nature and, through the implementation of the reforestation, the impacts will be fully compensated over time.

5.2.4 Response to the EIS

Staff has completed a review of the EIS in consultation with the MNR and TRCA. In considering the proposed impacts to the woodlands and the functions they provide, associated with the initial loss of forest cover, temporal (timing) factors are a critical issue. The conclusion of staff is that the loss of 2.6 ha of forest, or 4% of the forest on the subject property, does not constitute a minor impact or create a minimum disturbance. The initial loss of 2.6 ha of a 40 – 70 year old forest community on the property, and the loss of the associated functions that the forest currently provides, is a negative impact.

In terms of the proposed compensation, staff agrees that tree planting and reforestation of 6 ha on the property has the ability to provide an environmental benefit over time. Much of the proposed planting areas are small and narrow configurations of trees, as opposed to the large forest blocks proposed to be cut. The challenge in considering this type of compensation, is attempting to balance the loss of the existing dynamic functions and benefits of the mid-aged forest ecosystem when compared to the different, or future, environmental benefits of newly planted trees, in the context of the existing restrictive legislation. There are inherent risks with the policy implications of balancing losses today with the proposed benefits of future forests. All parties recognize that from an ecological perspective, the newly planted areas will take decades to contribute the same (or better) broad range of ecosystem functions and benefits, and as such have significant concerns with this approach (*Attachment 3 – TRCA Oct 25/06, and Attachment 4 - MNR Dec 4/06 correspondence*).

Both the TRCA and MNR raise concerns with technical matters relating to the study which include:

- Missing existing inventory data, e.g. TRCA, MNR, Richmond Hill Naturalists.
- Lack of comprehensive assessment for the Jefferson salamander a nationally and provincially significant and threatened species, which is also protected under the federal Species at Risk Act.

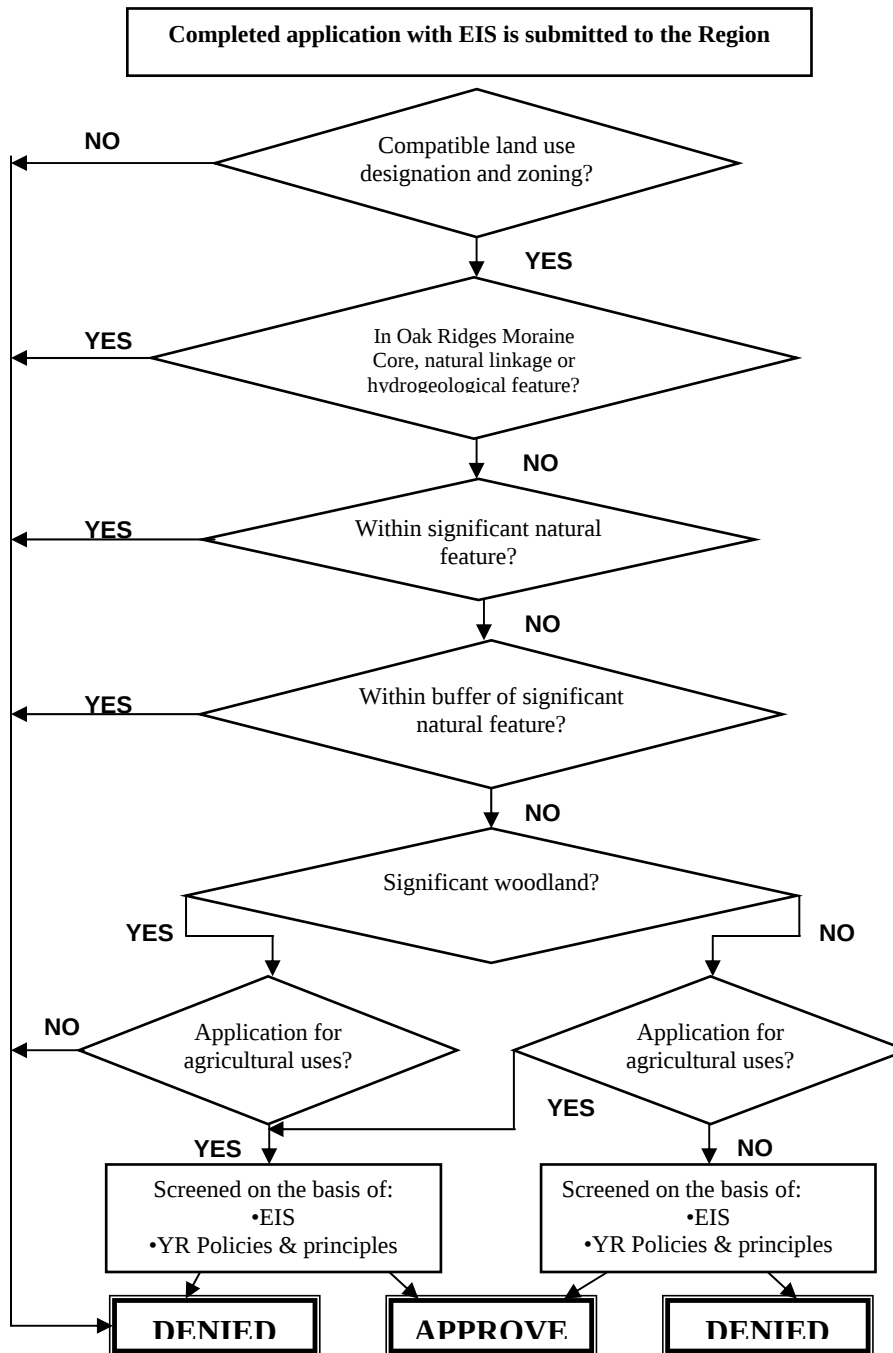
The Summit forwarded comments on the agency concerns (April 23/07) in a response prepared by Beacon Environmental (Feb 3/07).

5.3 Assessment of Application

The proposal was screened through the Regions Forest Conservation By-law review process (Figure 1). In addition, as the lands fall on the Oak Ridges Moraine the application must be evaluated against the policies, provisions, and interpretation of the ORMCA and ORMCP. In considering the application it was clear that the proposed works were within an ORM Core Area and further within a Key Natural Heritage Feature. As such, given the existing by-law review process, the application would normally not be supported by staff.

However, based on further review and discussions of the ORMCP policy implications, giving consideration to potential ambiguities in legal interpretations of the existing use provisions of the ORMCP, the review proceeded. This allowed for further consultation with the Provincial agencies, including discussion and clarification on the policy issues. Representatives from the Summit supported this course of action.

Figure 1. Forest Conservation By-law – Decision Tree



Based on the interpretation of the existing use provisions of the ORMCP, it appears that some level of loss within the woodlands is acceptable. As such the review of the application would then be assessed under whether or not the impact was within a designated significant natural feature. As confirmed by the EIS studies, including field verification, the proposed area of clear cutting falls within an area designated as a

significant natural feature by many agencies including MNR, TRCA and York Region. The By-law screening and review process recommends denial of clear cutting of trees from within significant natural features.

Based on the information provided, the application of the policies associated with the administration of the Forest Conservation By-law and implications of the ORMCP policies, the application fails. Areas of concern include:

- The significant environmental sensitivity of the site as supported by multiple layers of Provincial and other environmental designations, and site specific data confirmed by the EIS.
- The restrictive constraints of the ORMCA and ORMCP legislation and policies.
- Gaps in the field evaluation of the EIS and EIS addendum.

Should the application have fallen outside of the Oak Ridges Moraine, given the review process and the weight given to protecting the natural environment, the staff recommendation would have also been to deny the application.

The Region has worked with the applicant since 2003 to review and refine the application. This review has confirmed boundaries of the environmental features and assessed the environmental sensitivity of the site including assessing hydrogeological impacts, to determine whether or not the application could be supported. In the final analysis, following a review of all the materials and considering the impacts and risks, staff cannot support the application.

5.4 Relationship to Vision 2026

Vision 2026 includes a goal statement on Enhanced Environment, Heritage and Culture: “In 2026, York Region residents will continue to value and embrace the Region’s unique natural heritage (land, air and water) and cultural heritage (sites and buildings important to our history, faith and culture)”.

The recommendations of this report are consistent with the intent of the goal statement.

6. FINANCIAL IMPLICATIONS

At the current time, there are no financial implications associated with this report. If Regional Council denies the application, that decision can be appealed to the Ontario Municipal Board within 30 days by the applicant. If Regional Council approves this application, there is a potential for environmentalists to challenge that decision in court. Appearing at the OMB or the courts would have financial consequences to the Region.

7. LOCAL MUNICIPAL IMPACT

There are no direct local municipal impacts associated with this report. Should the application be approved, the Town of Richmond Hill has indicated that they will require a fill permit to be submitted under the Town's Fill Regulation.

8. CONCLUSION

Staff have reviewed the Forest Conservation By-law Special Permit application and supporting materials. The review has included extensive consultation with the applicant, the Province and other commenting agencies. The conclusion is that the implementation of the golf course re-design with the proposed removal of 2.6 ha of forest is not compatible with the policies of the Forest Conservation By-law including the review process and screening criteria, Regional Official Plan, and raises concerns with the policy implications of the ORMCA and ORMCP.

The recommendation is that the Special Permit application for Summit be denied, and that staff be authorized to appear before the OMB or the courts in the event Council's decision is challenged.

For more information on this report, contact Brian Harrison, Director, Operations, Roads Branch at extension 5205 in the Transportation and Works Department.

The Senior Management Group has reviewed this report.

(The attachments referred to in this clause are attached to this report.)