

### Summary Report:

## Dysart et al's Empty Nest - An Analysis of Environmental Protection Zoning By-Laws in The Land Between Region (Cottage Country)

### What are EP Zones?

Environmental Protection Zones are designated areas of land where “Every use of land and every erection, location or use of any building or structure” is prohibited. (Planning Act, ONTARIO REGULATION 465/09).

These areas are locations of environmental importance and often include: wetlands, flood plains, fish habitat, significant wildlife habitat and Species at Risk habitat.

Due to the habitat and ecosystem services that they provide, the health of EP Zones is integral to animal, plant and *human* life.

Environmental Protection Zones (EP Zones) cover many areas and features that are not covered by the province. Therefore, EP Zones are designated and mapped by municipalities using the Planning Act and with guidance from the province in the form of Provincial Policy Statements. These provincial guidelines specify that “no site alteration” should occur within EP zones. Municipalities then craft Official Plans which honour the provincial guidelines, and enact zoning bylaws that put their plans into action.

EP Zones are fundamental ways which municipalities can safeguard the essential ecosystem services that the region provides.

Ep Zoning by-laws can also be supported by other by-laws such as Fill by-laws which stipulate when property owners are allowed to remove or add fill to their property or alter the grade of land.

Strong Comprehensive Zoning By-Laws and Official Plans include clear, meaningful and enforced prohibitions on activities that can take place in EP Zones, as well as the development that can occur in lands adjacent to them.

### What is The Land Between?

The Land Between is recognized Nationally as a **Priority Place**. It is a significant landscape across Canada, and it encompasses most of Cottage Country in Ontario. It is a region of extremely special habitats which form a globally unique ecotone that is caused by the meeting of Canadian Shield and the St. Lawrence lowlands. This region, which stretches from Parry Sound in the northwest, Bancroft and Algonquin Park in the north, down to Northumberland in

the South, and to Renfrew in the northeast, provides incredible water supply and filtration services that support a major portion of southern Ontario, is a haven for 57 Species at Risk, and is a last reserve for essential ecosystem services that support southern Ontario as well as species of loons, kingfishers, osprey, moose, black bear, lake trout and more. The Land Between is essentially the only intact landscape in southern Ontario. Therefore, the preservation of connected and intact ecosystems in the region is vital to keep our waters, wildlife and people healthy.

### **Zoning Bylaw Review Across The Land Between**

Within The Land Between, there are both municipalities that have strong comprehensive EP Zoning by-laws and those with weaker bylaws, however after researching 50 municipalities, it is clear that Dysart et al has no meaningful prescribed protective provisions for these zones.

Other conclusions:

- Municipalities with the strongest EP Zoning by-law explicitly state what is and is not permitted within EP Zones and begin with a sentence like this “No person shall use any land or erect, alter or use any building or structure in the Environmental Protection (EP) Zone except in accordance with the following provisions...”
- These statements are then backed by definitions that are very clear and leave nothing to interpretation. After the above statement the prohibited uses are explicitly listed.

◆ For example:

DEVELOP/USE/ERECT – is defined as:

- i) A means to set-up, build, construct, reconstruct and relocate and, without limiting the generality of the word, also includes:
- ii) Any preliminary physical operation, such as excavating, filling or draining;
- iii) Any alteration to grade;
- iv) Altering any existing building or structure by an addition, enlargement, extension movement or other structural change; and
- v) Any work which requires a building permit under the Building Code Act and regulations passed thereunder and/or the building By-law of the Corporation

◆ Example of permitted uses:

- a use that was in existence on or before the date of passage of the Official Plan,
- a building or structure required by a public authority for flood or erosion control or for conservation or wildlife management purposes,
- hunting, but not hunt camps,

- fishing
- Under “Zone provisions” municipalities with the strongest EP Zoning by-laws also have setback guidelines that compliment them. These setbacks are guidelines stipulate how far back various actions can take place on *adjacent* properties (on properties that border the EP zone)
  - ◆ For example:
    - no structure shall be erected within 30 meters of an EP zone
    - The appropriate setback from wetland shall be 30 meters
- Many municipalities incorporate filling regulations into the EP zoning directly by defining “filling” as an act counted under the definitions for “develop/use/erect”. However, some municipalities go further and have created separate fill by-laws which prohibit all filling, removing of fill or changing of slope without a permit on *any property*. Fill by-law allows for greater protection of wetlands and flood lands, because they explicitly prohibit their filling. In addition, they also protect the property owner from unforeseen flooding that can come from changing the grade of their property.

### **The Issues With Dysart et al.’s EP Laws - and the Actions That Occurred at Grace’s Wetland.**

Dysart et al. is a township located in Haliburton, Ontario, and is where The Land Between charity (and Turtle Guardian’s program) head office is located. The charity has led research into Species at Risk including turtle and bird populations, and into lake health and fisheries, as well as climate change solutions.

The site in question was being filled in over the past +10 years, but it was only this winter of 2021/2022 that the owner began to fill in the open water portion of the wetland basin on his property. This activity would interfere with and likely entomb hibernating turtles, would destroy fish and other aquatic species habitat and would remove the majority of the reservoir that regulates flooding across Gelert Road. Previous to this year’s filling, it was assumed that Dysart et al had proper zoning bylaws in place and that the owner had a permit from the municipality which would certainly have outlined but also constrained the areas being filled- in order that the owner not interfere with the deep-open water areas (as according to Dysart et al’s own Official Plan this action should have been prohibited (section 13.1.1)).

However, it was discovered that the landowner did not have permits or approval from the township because the township does not have comprehensive or even functional EP bylaws. In fact he did not have any approvals from any other authority. Had the township had a functional bylaw, this would have led to proper permit applications and reviews at all scales (including those from MNRF, MECP or DFO).

Therefore, if it wasn't for the presence of wildlife protected by the Endangered Species Act within the wetland boundary and the alerting of this fact by The Land Between charity/Turtle Guardians to the provincial authorities, the filling would not have been stopped.

***Excerpts from Dysart et al's Official Plan:***

- ***“Environmental Protection Areas consist of the following lands outside Algonquin Provincial Park: - all wetlands, which are not provincially significant wetlands”.***
- ***“No site alteration shall occur in Environmental Protection Zones”.***

Again, should EP zoning bylaws have been in place in Dysart et al, the landowner would have been required to apply for a permit to fill the wetland, which would normally require him to conduct an assessment or which would trigger a review under the approval process. It is this application of zoning bylaws and reviews that would then ensure not only flood zones, and significant wildlife are protected, but also other fish and species at risk would be flagged for other jurisdictions as well.

However, unlike most other municipalities in the Land Between region, Dysart et al. lacks clear EP guidelines in their comprehensive zoning by-laws.

Specifically, their EP law initial statement says “in an Environmental Zone, no person shall use any lot or construct or use any structure for any purpose except for a use shown by...” This statement is missing a definition of “construct” and/or “use” and these definitions are standard in these bylaws, and typically include limitations of “filling” or “alterations to grade”.

Dysart et al. also does not appear to have setbacks guidelines for lands adjacent to EP zones (other than 150 meters from Provincially Significant Wetlands) despite their reference to protection of all wetlands in their Official Plan statements and EP definitions. This means that development can occur right at the wetland boundary affecting wetland habitat. Again, this aspect is contrary to what many municipalities in the Land Between region are doing, some of which have set back guidelines up to 150 meters from many different features that occur within an EP Zone such as: non provincially significant wetlands, fish habitat, and endangered species habitat.

Note that there is a distinction between EP zone bylaws and shoreline bylaws unless shorelines have already been included in EP zone mapping. For shoreline bylaws to encompass wetlands is fine, however this does not alleviate or negate the need for comprehensive EP zoning bylaws.

Finally, in Dysart et al, key aspects contained within the Official Plan which guide bylaws, are not featured in the by-law itself, and therefore are not actionable, such as prohibiting site alterations in EP zones.

**The inadequacy of Dysart's EP Zoning By-laws makes it amongst the weakest in the Land Between/Cottage Country - even when compared to some municipalities within the same County.**

Municipalities have a duty to do what is best for both the environment and humans. We as a species, are unable to thrive and live healthy lives without also having healthy and preserved natural spaces and natural services to support us. EP Zoning by-laws are meant to protect these natural spaces and functions so that we can continue to prosper and future generations can inherit this vital health. When municipalities do not do their due diligence in creating and enforcing EP by-laws, they are jeopardizing the health of their citizens and all of the non-human kin whom humans rely on. The land was here long before we were, and has been home to plants and animals for time immemorial. When we destroy essential habitats and ecosystems, we are killing entire lineages and eliminating all future generations that would have followed.

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**Attachment:** Excel sheet of EP zoning controls in Ontario and The Land Between.

**Upcoming Release:** Saving Grace Case Study- What Went Wrong in Dysart et al.

**Research and Summary:** Fallon Hayes, Civics Researcher and Digital Media Lead, The Land Between charity

**Media contact:** Leora Berman, COO The Land Between charity, [coo@thelandbetween.ca](mailto:coo@thelandbetween.ca)

**Key facts:**

- Turtles take about 60 years to replace themselves in nature
- Turtle populations have declined by more than 50% in Ontario
- More than 70% of wetlands have been lost through draining or filling in southern Ontario
- Turtles are keystone species that support all aquatic ecosystems and therefore which support 70% of Ontario's fish and wildlife. Without turtles in our ecosystems, our fish, wildlife, and water will be in jeopardy
- Turtles cannot be relocated- they follow spatial memories that are made when they are young, and which memories cannot be remade as they grow older. They occupy their home territories for their entire lives, which can be over 200 years.
- Hibernations sites are the most critical areas for turtle survival within their territory, as these typically small wetlands have precise conditions to allow them to overwinter successfully.
- Hibernation is a vulnerable state – during this time turtles cannot readily escape harm either physically or physiologically (their immune systems are severely suppressed and they cannot move quickly).



**The Land Between**  
Cottage Country's Conservation Organization



**Turtle Guardians**

- Adult turtles are essential for stable populations due to the lack of natural predators and as they remain sexually reproductive and continue to lay eggs/reproduce
- Land conversion and road mortality are major threats to turtle populations, and therefore are threats to our aquatic ecosystem health - including to the functions and services that the aquatic habitats and wildlife provide.