

ISSUE DATE:

**Dec. 16, 2011**



PL101197

Ontario  
Ontario Municipal Board  
Commission des affaires municipales de l'Ontario

Jennison Construction Ltd. has appealed to the Ontario Municipal Board under subsection 22(7) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to the Official Plan for the Township of Ashfield-Colborne-Wawanosh to redesignate land at 80897 Sharpes Road Creek Line from Agricultural and Natural Environment to Extractive Resources to permit the extraction of aggregates.

OMB Case No. : PL101197

OMB File No.: PL101197

Jennison Construction Ltd. has appealed to the Ontario Municipal Board under subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended, from Council's refusal to enact a proposed amendment to Zoning By-law 32-2008 of the Township of Ashfield-Colborne-Wawanosh to rezone lands respecting 80897 Sharpes Road Creek Line from Agricultural and Natural Environment to Extractive Resources to permit the extraction of aggregates.

OMB Case No.: PL101197

OMB File No.: PL101198

IN THE MATTER OF subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.8, as amended

Referred by: Ministry of Natural Resources  
Objector: Maitland Valley Conservation Authority  
Objector: Ministry of Natural Resources  
Applicant: Jennison Construction Ltd.  
Subject: Application for a Class A licence for the removal of Aggregate

Property Address/Description : Part Lot 16 & 17, Maitland Concession

Municipality: Ashfield-Colborne-Wawanosh

OMB Case No.: PL101197

OMB File No.: MM110024

**APPEARANCES:**

**Parties**

Jennison Construction Ltd.

Township of Ashfield-Colborne-Wawanosh  
& Maitland Valley Conservation Authority

**Counsel**

Alan R. Patton

Stephen Watt

**DECISION DELIVERED BY J.P. ATCHESON AND PARITAL ORDER OF THE BOARD**

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This was a hearing in the matter of appeals by Jennison Construction Ltd. (Proponent) from the Council of the Township of Ashfield-Colborne-Wawanosh's refusal to approve its applications for Official Plan Amendment (OPA #5) and a Zoning By-law Amendment to Zoning By-law 32-2008 on part of its 27 hectare (66 acre) property located at 80897 Sharpes Road Creek Line to permit the extraction of aggregates. The Appellant/Proponent proposes to add a special policies in the OPA to provide for the gravel pit use, the monitoring of spills and the revitalization of the pit when extraction is completed to a woodland area as set out in the *Aggregate Resources Act* (ARA), revised Site Plans and Site Plan Notes (Exhibit 5). The Zoning By-law Amendment would sanction the gravel pit operation as set out in the revised Site Plans and Site Plan Notes (Exhibit 5) as subsequently amended by the Proponent during the course of this hearing.

Concurrent with these appeals the Minister of Natural Resources has referred to the Board Jennison's ARA application for a Category 3 Class "A" Pit Above the Water Table licence to extract aggregate from a 22.2 hectare site located in Part of Lots 16 and 17, Maitland Concession, in the Township of Ashfield-Colborne-Wawanosh. The annual tonnage condition applied for in the licence application is for 300,000 tonnes.

The appeals were consolidated with the consent of the parties.

The Board was advised at the commencement of the hearing that some new evidence would be forthcoming in the form of a letter and testimony from the Ministry of Natural Resources (MNR) indicating that they no longer have any concerns about the revised ARA application.

The Board, being cognizant of Section 2 and Subsections 17(43) and 34(24.3) of the *Planning Act*, inquired whether this new information and the revisions to the ARA application were of a nature that would have affected the decision of the Municipal Council and as such should this material be referred back to the Municipal Council for its consideration. Counsel for the parties on consent confirmed that they were of the view that this material would not have affected Council's decision and that the material did not need to be referred back. The Board after reviewing the material concurred.

## **OVERVIEW OF THE PROPOSAL**

The proposed site is within a rural area, on lands primarily comprised of an agricultural field and woodlands. The site consists of 27 hectares of land owned by the Proponent in Part of Lots 16 and 17, Maitland Concession, in the Township of Ashfield-Colborne-Wawanosh. Within that area an ARA licence has been requested to cover 22.2 hectares with extraction proposed on 18.5 hectares as set out at Exhibit 5 (The Revised Site Plans).

The proposed licenced area is bounded on the south by an Ontario Hydro transmission corridor, on the east by Sharpes Creek Line, (Huron County Road 31) and on the north by existing licenced gravel pit (Falleen Holdings, Huron Concrete). The western limit of the subject property generally follows the top of bank of the Maitland River Valley. The ARA licence Site Plans indicate that the extraction area is to be setback some 30 metres from the top of bank (Exhibit 5). Between the river and the subject property is a group of some 40 to 50 cottages and trailers known locally as the Fernhurst Glen Cottages. This development by all accounts occurred many years ago and is generally below the escarpment brow within the valleylands of the Maitland River in what is known as Forest Patch 38. This development is serviced by a private road and private sewage and water systems. Some of the structures within the Fernhurst Glen Cottages area are within the floodplain of Maitland River and are governed by the regulations of the Maitland Valley Conservation Authority. Some of these cottage and trailer facilities obtain their domestic water from private collections systems that utilize seeps and springs emanating from the escarpment (Exhibit 17), and as shown in a series of photographs found at Exhibit 18.

Immediately across County Road 31 from the subject lands are farm fields, to the south east is a farm residence with associated chicken barns. The John Neutel Construction Ltd. licenced gravel pit is to the northeast opposite the Falleen Holdings gravel pit on the east side of County Road 31.

The Proponent owns lands to the immediate south of the proposed licenced area which was formerly a County of Huron borrow pit that has been randomly replanted with coniferous trees. The Proponent also owns some small field areas, as shown on an aerial photograph (Exhibit 4, Tab 4), in the same general area of the former borrow pit

that it intends to reforest as part of the Rehabilitation and Restoration Plans associated with and forming part of the conditions of the ARA Licence.

The southern portion of the proposed licence area consists of an agricultural field some 2.0 hectares in size. The remainder of the site is upland maple forest (FODM5-1) which forms part of the larger contiguous forest identified as Forest Patch 38 by the Maitland Valley Conservation Authority. Forest Patch 38 is some 65.3 hectares in size and due to its size and other natural heritage features is considered significant. This determination is not in dispute.

The portion of Forest Patch 38 located on the Jennison property is approximately 19.3 hectares in size. The area of this forest that would be removed if the gravel pit application was to go forward in the manner proposed is about 14.9 hectares. The removal of the forest area would be done in four phases with the second phase being further subdivided into phases 2A and 2B, as set out at Exhibit 22. Associated with this sequential tree removal is a progressive Woodlot Rehabilitation and Restoration Plan which has been incorporated into the ARA Site Plans and Site Plan Notes at Page 5 of 5, Exhibit 5, as further revised by Exhibit 52. Among other things, these plans show a reforestation and planting plans to progressively restore the forest loss to extraction plan.

The agricultural field on the subject property is designated "Agricultural" and the forest area is designated "Natural Environment" by the Township of Ashfield-Colborne-Wawanosh Official Plan.

The County of Huron Official Plan is a high level policy document which provides direction to the community and lower tier municipalities. It provides no land use designations but instead leaves those determinations to the local municipal Official Plans.

Jennison intends to remove approximately 4.4 million tonnes of gravel from the extraction area. The extraction depth is to remain 1.5 metres above the observed water table. The uncontradicted evidence is that the site contains an exceptional deposit of gravel which will allow for the production of high value aggregate products such as Granular "A", coarse asphalt aggregate and other blended products such as Granular "B", blending sand, and winter sand with minimum screening.

The proposal involves four phases of extraction. The first phase is located primarily in the agricultural field at the south end of the property adjacent to County Road. 31. The second phase is north of phase 1. This second phase is further subdivided into two sub phases (2A and 2B) with the subsequent phases moving northward, as shown on Exhibit 5 (the revised site plans).

Extraction is generally proposed to take place in a sequential pattern gradually progressing from south to north. Within each phase the direction of extraction would be from east to west followed by progressive restoration and rehabilitation of each phase. The proposed licence would sanction a limit of 300,000 tonnes annually being removed, although it is expected that 250,000 tonnes will be removed in a typical year. Using an annual extraction rate of 250,000 tonnes, the proposed gravel pit will operate for about twenty years.

Mitigation of potential impacts and monitoring of various features and parameters is proposed, and is to be regulated through the conditions of approval and the ARA Site Plans and Site Plan Notes (Exhibit 5), as amended by Exhibits 51 and 52.

## **SUMMARY OF THE ISSUES**

The Board during the course of this almost four week hearing heard from 15 witnesses who were qualified by the Board in their respective fields of knowledge, as set out in Appendix "A". The Board also heard from eight participants who spoke against the project. The list of participants who testified is set out in Appendix "C". The Board also received additional written participants' statements as set out at Exhibit 8. The issues agreed to by the parties are set out in the Procedural Order filed with the Board on June 19, 2011.

The Board will provide a summary of the salient concerns or positions put forward by the participants and the parties to provide a more human face to the technical list of issues found in the Procedural Order.

Those participants and parties that opposed the gravel pit applications suggested that:

1. The gravel pit land use at this location is not consistent or compatible with the objectives of the Huron County or the Township of Ashfield-Colborne-Wawanosh's Official Plans.
2. The proposal is not consistent with the applicable sections of the 2005 PPS and in particular those sections dealing with ground water and the Natural Heritage Features found on and adjacent to the site and their ecological functions.
3. The proposed gravel pit will adversely impact the quantity and quality of the water supply to some properties in what is known as the Fernhurst Glen Cottages to the west of the proposed quarry site.
4. The removal of the Woodland on the site will impact the habitat of endangered species (e.g. the Butternut tree).
5. The proposal will result in negative noise impact to those residing at Fernhurst Glen Cottages.
6. The noise from gravel trucks using the haul route was unacceptable.
7. There are suitable unconstrained gravel deposits in the immediate area according to the Huron County Aggregate Strategy and this site is not needed.
8. The proposed gravel pit does not represent sustainable or compatible development within the Maitland River Valley watershed and will negatively impact this area.
9. Concerns that the Woodlot Rehabilitation and Restoration Plans may be avoided or delayed by the Proponent and further that the science associated with the Woodlot Rehabilitation and Restoration Plans is not well understood and will result in negative impacts to the significant woodland and its ecological features and functions.
10. The impact of the proposed gravel pit on surface and ground water features are not well understood.

11. There is a potential for spills from gasoline or lubricants and the storage of recycled asphalt to contaminate the groundwater that has not been properly addressed.
12. The Natural Environment level one and level two reports and the environmental impact statement required by the municipality were not appropriately undertaken.
13. The proposed gravel pit use is not in the public interest and is not compatible with the surrounding uses.

The Proponent takes the position that all of the applicable requirements of the 2005 PPS, the County of Huron Official Plan, the Township of Ashfield-Colborne-Wawanosh Official Plan and the ARA have been met by the revised ARA Site Plans and Site Plan Notes, and that the Township Official Plan Amendment and Zoning By-law Amendment as well as the ARA licence and Site Plans and Site Plan Notes as amended by Jennison during the course of this hearing should be approved.

The Board in the first instance wishes to thank all of those individuals who participated in this long and complicated hearing. Their patience and testimony is appreciated by the Board.

### **ONUS AND THE STATUTORY AND POLICY TESTS**

As is the case with any appeal, the evidence presented to the Board must be viewed through the lens of the relevant statutory and planning policy tests in place which govern this site and the proposed use. The evidence and documents filed with this appeal (Appendix "B") are voluminous and too extensive to be completely reflected in this Decision.

The essential decision for the Board is to determine if the Proponent has fulfilled its obligations in complying with the statutory and policy tests set out in provincial policy, provincial legislation, and its regulations, as well as the governing local planning documents. While the Board has carefully considered all of the evidence and submissions provided in this appeal, the critical evidence necessary to determine whether these tests have been met is the focus of this Decision.

It is clear to the Board that the tests as to whether the applications should be approved or not falls in the first instance to the policy directions of the 2005 Provincial Policy Statement followed by the policies found in the County of Huron Official Plan, the Township of Ashfield-Colborne-Wawanosh Official Plan and then the criteria set out in Sections 2 and 12 of the ARA and its regulations.

It is clear to the Board from the evidence that the local planning documents (the County and Township Official Plans) are intended to be complementary and consistent with the policy directions of the 2005 Provincial Policy Statement and where they differ the changes in wording are minor and impose a somewhat different planning test but are not in conflict with the overall directions of the 2005 PPS. It is also clear from the testimony of the planning witnesses that the 2005 PPS should be considered the premier planning document in this case.

The onus and policy tests are discussed further below in relation to the required approvals and the issues raised by the parties and the participants.

## **THE EVIDENCE AND FINDINGS**

The Board's findings, for the purpose of clarity, have been arranged by topics to assist the reader in understanding the Decision as opposed to the numerical recitals of clause numbers found in the Issues List, and while all issues may not be mentioned specifically, they are considered within the context of the topics discussed below.

## **THE HAUL ROUTE AND TRUCK NOISE**

The uncontradicted traffic evidence is that Sharpes Creek Line, Huron County Road 31, can act as the haul route with no significant impacts on the level of service (LOS) at the intersections of Huron Road 31 with the Londesboro Road (County Road 15) to the north or at its intersection with former Highway 8 to the south. County Road 31 is currently used as a haul route for several gravel pit operations as set out at Exhibit 4, Tab 3. Similarly, the uncontradicted traffic evidence is that the proposed pit entrance has appropriate site line distances along Huron County Road 31 and poses no traffic safety issues. The County traffic department express no concerns with the entrance location nor did they express any concerns with the reduction in the ARA prescribed setback along the County Road 31 from 30 to 10 metres as proposed by the Proponent.



The 30 metre setback is a prescribed regulation of the ARA and is intended to ensure that gravel pit operations are appropriately screened from public view along public road allowances. The Board heard no compelling testimony as to why this prescribed regulation should be reduced in this case. Furthermore, it would appear from the aerial photograph (Exhibit 4, Tab 4) that the Falleen Holdings, Huron Concrete pit, to the immediate north has a 30 metre setback.

The Board will direct that the Site Plans be amended to show the prescribed 30 meter setback along County Road 31 to the limit of extraction, and that the Zoning By-law Amendment also be amended to require a 30 metre setback from County Road 31 to the limit of extraction and not the 10 metre setback being proposed.

Some of the residents expressed concern about truck noise along County Road 31 and the use of Jake brakes. By all accounts Jake Brakes are a safety device whose use must reside with the individual truck driver depending on individual road conditions and circumstances. The Board finds that the use of such safety systems would apply to any trucks using the County Road and is not an impact exclusive to the Jennison proposal. The Board heard no compelling testimony that the Jennison proposal would alter the existing noise conditions on County Road 31, and accordingly will not impose any Site Plan condition to limit the use of Jake Brakes by trucks using the proposed Jennison gravel pit. This is a traffic safety matter best left to individual drivers.

## **ENVIRONMENTAL NOISE AND THE PROPOSED GRAVEL PIT OPERATIONS**

The uncontradicted evidence of Mr. Gastmeier resulting from his Environmental Noise studies was that the Jennison pit could be operated in compliance with Ministry of the Environment (MOE) noise criteria as set out Ministry Guidelines NPC-205 and NPC-232. His determination was conditional on the pit operation following the conditions set out in the operational Site Plan Notes at Section 1.2.27 "Technical Recommendations", being notes 1.2.27 i) through to iv). He confirmed that these Site Plan Notes were consistent with the mitigation measures he proposed in his Environmental Noise Feasibility Report dated March 31, 2010. The substance of these mitigation measures is to ensure that the equipment used meet the sound emission standards set out in the Site Plan Notes, and that a 10 meter high U shaped stockpile berm be employed to

screen crusher operations until such time as the crusher could be located on the pit floor.

Mr. Gastmeier under cross examination freely admitted and agreed that the word “should” found in clauses 1.2.27 i), 1.2.27 ii) and 1.2.27 iii) should be replaced with the word “shall ” and that this would provide a more consistent direction to mitigate noise from the crushing operation. He confirmed on questioning from the Board that the crusher would normally be used to create the stockpile berms and would have to comply with MOE Guideline NPC-115 “Sound Levels due to Construction Equipment”, and that this work should be done before any crushed material was taken or sold from the site. Mr. Parkin in his testimony concurred with the recommendations of Mr. Gastmeier and further recommended that for consistency purposes that site plan note 1.2.11 also be amended such that the last sentence beginning with the words “if crushing operations” be deleted.

The Board would note that with respect to the issue of noise, silence is not the test. Instead, acceptable noise guidelines have been developed by the MOE. The Board accepts the uncontradicted testimony of Mr. Gastmeier that this pit can be operated within MOE guideless for noise, and further finds that for the purpose of clarity Site Plan Notes 1.2.27 i), 1.2.27 ii), and 1.2.27 iii) should be amended to replace the word “should” with the word “shall” and further that the following sentence be added to clause 1.2.27 ii):

“No crushed material shall be removed from the site until the stock pile berms have been constructed or the crushing equipment is situated a minimum of 8 metres below the western limit grade”.

The Board also accepts the technical amendment put forward by Mr. Parkin, as set out at Exhibit 23, namely that the last sentence of Site Plan Note 1.2.11 beginning with the words “if crushing operations” be deleted.

In conclusion, the Board finds that the issues associated with noise generated by the gravel pit have been appropriately addressed subject to the above noted changes and will result in no adverse impacts to the surrounding environment and the Fernhurst Glen Cottages and on this basis would be consistent with both the provincial and local planning policy directions.

## **HYDROGEOLOGY**

The Hydrogeologists are generally in agreement that work undertaken by the Proponent was well done and that the issues with respect to groundwater are well understood for the site. They agree that the upper level groundwater generally flows from east to west and exits at seeps and springs along the scarp of the Maitland River at the elevation of the observed clay till seam found underneath the gravel deposit. They further agree that the deep bedrock aquifer would not be impacted by the proposed gravel pit. The consensus of the expert Hydrogeologists is reflected in the agreed statement of facts (Exhibit 3, Tab 33, Page 263). The outstanding issue was whether sufficient information had been provided to ensure that any remaining water quality issues to the springs and seeps resulting from potential spills of fuel or lubricants and the storage of recycled asphalt on the gravel pit has been undertaken to sufficiently mitigate these potential impacts.

The experts agree that maintaining the pit floor 1.5 metres above the observed ground water elevations and the monitoring proposed four times a year at the five well locations and at the identified seeps by the Applicant, as contained in the Site Plan Notes at notes 1.2.27 Technical Recommendations "C" Hydrogeology i) and ii), are appropriate.

The hydrogeology experts for the Proponent noted that the Proponent was preparing and had a draft "Spills Contingency Plans" for both large and small spills, and that these Spills Contingency Plans were required as a prescribed regulation by the Ministry of Natural Resources (MNR). This condition is found in Site Plan Note 1.2.27 Technical Recommendations "C" Hydrogeology ii). The issue with respect to fuel storage and equipment refuelling is set out at Site Plan Note 1.2.13 and is in accordance with prescribed provincial regulations. The Hydrogeologist for the Conservation Authority accepts that these measures are satisfactory, but expressed ongoing concerns about the potential impacts from leaks from operating equipment in the pit floor. He also expressed concern that recycled asphalt being stored on the pit floor might leach into the groundwater.

He freely admitted under cross-examination that he was not aware of any fuel leaks or ground water contamination from recycled asphalt being recorded in licenced gravel.

Jennison's experts testified that groundwater condition in this area was classified by the MOE as having a "High" Intrinsic Susceptibility Index (ISI) due to the permeability of the soils and the associated gravel deposit. This ranking would not change as a result of the gravel extraction. It was their opinion that the possibility of a petroleum spill was low and that the Spills Contingency Plans required by the MNR regulations were appropriate mitigation techniques. They noted that Jennison was an experienced operator and had never experienced a spill at any of its other pit operations.

They also confirm their opinion that there would be no loss of any groundwater to the seeps and springs west of the gravel pit property resulting from the gravel pits operations, nor would there be any change in the temperature of the groundwater coming from the seeps as a result from the proposed pit operation. These facts are not in dispute. In fact the Proponent's modeling suggests a modest increase in volume of flow to the seeps could occur due to the bowl effect of the extracted pit which would contain surface runoff in closer proximity to the clay till the layer that underlines the gravel pit area.

During the reply evidence phase of the hearing the Board was advised that the hydrogeology experts for the parties had met and were satisfied that the final issues with respect to water quality would be resolved through the addition of conditions found at Exhibit 51, namely that the Site Plan Notes be further amended as follows:

**Additional Fuel Storage Notes - Add the following to note 1.2.13**

Fuel tanks on all mobile equipment remain less than 455L.

Parking of all mobile equipment on the pit floor during non operational hours should be on an impervious containment pad. This pad shall be designed to:

- i) fully contain a 455L spill if covered, or
- ii) fully contain a 455L spill plus a 10-year rainfall event if uncovered.

All other tanks associated with non-mobile equipment should have secondary containment.

In order to remediate any small volume spill, all mobile equipment should be equipped with a spills kit containing absorbent material and/or medium.

Operators should be properly trained to contain any spill.

**Additional Water Monitoring Requirement - Add the following to note 1.2.27**

**c)**

iii) Groundwater quality monitoring shall include two (2) wells located on the pit floor at the southern and western boundaries of the properties which include a screen which straddles the presented water table. These wells should be sampled and analysed for hydrocarbons at least four times per year.

The Board after considering the evidence is satisfied that the hydrogeology of the site is well understood and that appropriate mitigation techniques subject to the changes set out in this decision are in place to ensure that no negative impacts will occur to the groundwater and adjacent seeps and springs to the west. Nor did the Board hear any compelling testimony that the gravel pit in this location will negatively impact the hydrogeology of the Maitland River. Nor was there any testimony that the existing adjacent gravel pits have had any negative impact on the Maitland River Valley.

We do not live in a risk free world. The Board accepts the uncontradicted testimony that the “High” Intrinsic Susceptibility Index (ISI) for the groundwater water directly below the gravel pit floor would remain unchanged as a result of the gravel pit extraction and that the mitigation measures required to protect the groundwater from petroleum spills and equipment spills are appropriate. However, the Board heard no compelling testimony that the storage of recycled asphalt on the pit floor had been properly addressed. Accordingly, the Board, out of an abundance of caution bearing in mind the “High” Intrinsic Susceptibility Index (ISI) will direct that Site Plan Note 1.2.11 be amended such that the second sentence reads as follows:

“Recyclable materials but not including asphalt may be brought to the site for accessory recycling and blending with on site materials.”

The Board finds that the ARA application subject to the changes directed and set out in this decision to be consistent with the policy directions set out in Section 2.2 of the PPS, and the applicable sections of the County of Huron and the Township of Ashfield-Colborne-Wawanosh Official Plans dealing with the protection of groundwater matters and that the Site Plan Notes, as amended by Exhibit 51 and further amended by this Board, are satisfactory and require “Spills Contingency Plans” to be in place as a condition of the ARA licence. The Board is satisfied in this case that these prescribed Spills Contingency Plans are appropriate mitigation measures to protect the quality of the groundwater found in the area and are consistent with the Policy directions found in the 2005 PPS and the County and Township Official Plans and the ARA subject to the changes directed above.

## **NATURAL HERITAGE FEATURES**

The Proponent has undertaken Natural Environment Level 1 and 2 Reports for the proposed Jennison pit as required by the ARA regulations and in accordance with the Environmental Impact Statement terms of reference requirements of Township of Ashfield-Colborne-Wawanosh (Exhibit 1, Tab 1, Page 45). The Proponent’s witness, Mr. Deschamps testified that these reports followed accepted protocols and appropriately identified the natural heritage features and functions found on the site and on adjacent lands within 120 metres of the application. Dr. Bowles, the ecologist retained by the Maitland Valley Conservation Authority, opined in no uncertain terms that the ARA Natural Environment level 1 and 2 studies were not up to industry standards, that the inventories particularly with respect to plant species in the FODM5-1 upland maple forest were incomplete and should not be relied upon. She noted that the inventory sheets identified only 86 plant species while she in a one day survey identified 139 plant species in the same upland forest community. She also opined that the characterization of the forest soils was incomplete. However, there is no evidence that she shared directly her findings with the experts for the Proponent to confirm her findings or to reconcile the variations in their respective inventories and opinions. Nor does she believe that the ecological land classifications were properly done or understood by the Proponent’s experts for the adjacent areas. In this regard, she believes that the former borrow pit lands have not been properly classified. She believes as well that the wildlife habitat (seeps), the wildlife corridors, the size of the Forest Patch 38 and the significances of the Jennison forest component within Forest Patch 38 have not been

properly evaluated with respect to the negative impacts that would result from the sequential removal of the portion of this upland maple forest even with the progressive Rehabilitation and Restoration Plans to reforest the site being put forward by the Proponent. To put it in her own words “The EIS report is a master piece of misdirection and misrepresentation” and the performance measure found in the Rehabilitation and Restoration Plan “are nothing short of laughable (I actually did laugh when I read them)”. Dr. Bowles, in her testimony, opined that the Jennison forest is much more than the trees found within it and that, in her opinion, it would be impossible to replicate the current forest conditions once they have been removed and this, in her opinion, would be an unacceptable negative impact.

Dr. Bowles in her testimony opined that the Rehabilitation and Restoration Plans put forward by the Proponent, was not recognized science, was not scientifically feasible but was instead an experiment without proper goals or objectives and monitoring controls and that she had no confidence that one would be able to judge the performance or success of the Rehabilitation and Restoration Plans within the time frames set out by the Proponent. Mr. Ursic, an ecologist retained by the Conservation Authority to comment on the Woodlot Rehabilitation and Restoration Plans, while not as demonstrative in his testimony adopts many of the positions put forward by Dr. Bowles. Mr. Ursic freely admitted under cross examination that in informing his opinion he had never been on the site and had undertaken only one drive by site inspection of the property.

It is clear to the Board, after considering the testimony of the experts in forestry and ecology and reviewing the evidence and materials filed, that the application and the Natural Environment reports followed an iterative planning process with the Proponent’s experts responding to concerns or issues raised by the various commenting and approval agencies when they were made aware of them. The Board heard no compelling testimony that the natural heritage inventories conducted by the Proponent were not fulsome and complete in order to properly understand the Natural Heritage Features and their functions that make up this area. The Board has no way of reconciling the plant inventory discrepancies as the experts never took the opportunity to discuss or review these differences in any meaningful professional way. That being said, the Board accepts the testimony of the Proponent’s witnesses and the testimony of the Ministry planner that the Natural Environment reports are sufficient to understand

the Natural Heritage Features found on the site together with their ecological features and functions.

The Board has carefully reviewed the Natural Environment reports (Exhibit 1, Tab 2) and concludes that the Natural Heritage Features on the site and within the adjacent 120 metres to the site have been identified, and the impacts that might result from the gravel pit operation have been assessed, as set out in section 2 of the report (Exhibit 1, Tab 2). The issue the Board must decide is whether the tests set out in the PPS and the local planning documents can be met in this case with respect to the natural heritage features found on and in proximity to the site.

The Board would note that in response to some of the concern raised by Dr. Bowles and Mr. Ursic, the Proponent proposed modifications to the Woodlot Rehabilitation and Restoration Plans. They are set out at Exhibit 52.

The substances of the proposed changes are as follows:

1. To add to the indicators of success in Tables 1a to 1d, soils indicators.
2. To add a coefficient of conservatism to Tables 1a to 1d for shade intolerant species.
3. To remove the following non native species from the planting list - St John's Wort and Red Pine.
4. The requirement to have a detailed restoration prescription and planting plans prepared in advance for the approval of the Ministry of Natural Resources.
5. To include a requirement to monitor edge effects and develop planting buffers along the western edge of the extraction limit to mitigate these potential negative effects.
6. A condition to require that all reporting set out in the plans must be completed by a registered forester or ecologist with experience in ecological restoration.



The Board questioned the planner for the MNR as to whether the changes being proposed to the Woodlot Rehabilitation and Restoration Plan (Exhibit 52) were acceptable to the Ministry and consistent with the plans that the Ministry had already endorsed. He opined that the revised Plans (Exhibit 52) merely clarified and strengthened the plans but did not fundamentally change the Woodlot Rehabilitation and Restoration Plans approved by the Ministry.

The Board will deal with these Natural Heritages Features within the context of the tests established in the PPS and the local planning documents where they differ.

### **ENDANGERED SPECIES- THE BUTTERNUT TREE**

The only threatened or endangered species inventoried were three non retainable Butternut trees located within the extraction buffer area. Dr. Bowles in her surveys identified two additional locations where Butternut saplings were found.

By all accounts the three non retainable Butternut trees are located at the northern end of the property outside of the extraction area. The Butternut tree is protected under the *Endangered Species Act 2007* (ESA) and the policies of Section 2.1.3.a of the 2005 PPS.

An evaluation of these trees undertaken by a qualified Butternut Health Assessor determined that the three mature trees were not retainable. The Ministry of Natural Resources planner confirmed for the Board that, under Ontario Regulation 294/11 pursuant to the ESA, the report of the qualified Butternut Health Assessor filed with the Ministry was sufficient to permit the removal of these diseased non retainable trees without the Minister issuing a permit pursuant to subsection 17(2) (c) of the ESA.

Dr. Bowles testified that on a site visit dated August 11, 2010 she found two Butternut saplings about 60 centimetres in height and at a second location one sapling of similar character. She provided her Global Positioning System (GPS) co-ordinates of these findings only on request, to the MNR on November 1, 2010 (Exhibit 42). The Board concludes that these healthy Butternut trees are within the proposed buffer area based upon Dr. Bowles GPS track Map (Exhibit 7, Tab 4, Page 38) and heard no compelling evidence to the contrary. Nor did the Board hear any compelling testimony that these trees would not be protected in accordance with the ESA and its regulations.

The Board does not ascribe to the very narrow interpretation proffered by Ms Walker-Bolton of the 2005 PPS that no change in land use can be considered when one is considering the habitat on an endangered species. The test set out in Section 2.1.3 is:

“Development and site alteration shall not be permitted in significant habitat of endangered species and threatened species” and development is defined as:

**Development:**

means the creation of a new lot, a change in land use, or the construction of buildings and structures, requiring approval under the *Planning Act*.

In the case of the Butternut’s habitat on this site, no new lot is being created, nor are any buildings or structures being proposed for this part of the site. By all accounts the trees are located in the prescribed buffer area. The mere changing of a land use designation does not, in the Board’s finding, constitute a change in the specific use found on the lands upon which the habitat of the endangered Butternut trees currently exist. It will still be a forested area regardless of the land use designation in the Township Official Plan.

It is the Board’s finding that the current use of the land where Dr. Bowles discovered Butternut saplings would not change with this proposal. Nor did the Board hear any compelling evidence that the posed gravel pit would negatively impact the habitat of the Butternut saplings found by Dr. Bowles.

The protection of this endangered species habitat under the ESA *and* Ontario Regulation 294/11 vests with the Minister of Natural Resources regardless of any local land use designation. It is the Board’s finding in this case that appropriate regard has been given to the habitat protection of this occurrence of Butternut trees that is consistent with the directions of Section 2.1.3 a of the PPS and the ESA and would not offend the policies of the local municipal Official Plans.

## THE 2005 PPS AND SIGNIFICANT NATURAL HERITAGE FEATURES

The Board in considering Forest Patch 38 as a significant Natural Heritage Features must consider Section 2.1.4 of the 2005 PPS and in this particular case subsections 2.1.4 b, c, d, which states that:

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

- a. significant wetlands in the Canadian Shield north of Ecoregions 5E, 6E and 7E1;
- b. significant woodlands south and east of the Canadian Shield<sup>2</sup>;
- c. significant valleylands south and east of the Canadian Shield<sup>2</sup>;
- d. significant wildlife habitat; and
- e. significant areas of natural and scientific interest

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

The Board would note that there are no significant wetlands identified in this area. Furthermore while the Maitland River Valley ANSI includes this property, it is considered a regionally significant ANSI and not provincially significant and as such would not qualify by the PPS definition as a significant area of natural and scientific interest under section 2.1.4 e of the PPS.

The Board also finds that the assistance provided by the definition of negative impact found in the 2005 PPS and the Natural Heritage Reference Manual should be considered in determining the phrase “no negative Impacts” as set out in Section 2.1.4.

The 2005 PPS definition of negative impacts states:

Negative impacts:  
means

- a. in regard to policy 2.2, degradation to the quality and quantity of water, sensitive surface water features and sensitive ground water features, and their related hydrologic

functions, due to single, multiple or successive development or site alteration activities;

- b. in regard to fish habitat, the harmful alteration, disruption or destruction of fish habitat, except where, in conjunction with the appropriate authorities, it has been authorized under the Fisheries Act, using the guiding principle of no net loss of productive capacity; and
- c. 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. (Emphasis added)

The Natural Heritage Reference Manual at Section 13.2 regarding no negative impact states:

13.2 The PPS definition for “negative impacts” does not state that all impacts are negative, nor does it preclude the use of mitigation to prevent, modify or alleviate the impacts to the significant natural heritage feature or area. For example, demonstration of no negative impacts on significant woodland through mitigation measures maybe contemplated, provided that factors such as the successional status and replaceability of the woodland components and functions within a reasonable time frame (e.g., 20 years) are considered.

The Natural Heritage Reference Manual provides a useful definition when considering the term “mitigation” and actions one might take to mitigate negative impacts under the 2005 PPS when it states:

mitigation: the prevention, modification or alleviation of impacts on the natural environment, and – specifically in the context of policies 2.1.4 and 2.1.6 and the definitions in the PPS – the prevention of negative impacts. Mitigation also includes any action intended to enhance beneficial effects. (Emphasis added)

### 2.3.3 Mineral Aggregate Resources

As stated earlier, the entire PPS needs to be applied when making land use decisions. The following approach can help to achieve the desired outcomes of the PPS: rehabilitation of mineral aggregate operations, implemented under the Aggregate Resources Act, may be taken into consideration for the demonstration of no negative impacts (see PPS policies 2.1.4 and 2.1.6) where rehabilitation of ecological functions is scientifically

feasible and is conducted consistent with policy 2.5.3.1 and other government standards.

The Board determines that the references found in The Natural Heritage Reference Manual and the definitions set out in the 2005 PPS should be considered to assist in determining the meaning of the phrase “no negative impacts” and what constitutes acceptable mitigation under the 2005 PPS to ensure that the health and integrity of the natural features and their ecological functions for which an area is identified are not degraded. In this case Forest Patch 38 and its ecological features that make it significant.

It is the Board’s finding that the proper interpretation to be given the 2005 PPS definition of “negative impacts” for Significant Natural Heritage Features should take into consideration the directions found in the Natural Heritage Reference Manual with respect to “no negative impacts” as they may relate to the significant woodlands, their associated wildlife habitats, and the other identified Significant Natural Heritage Features found on the site.

It is the Board’s finding that a proper reading of 2005 PPS Policies 2.1.4.b and c is that mitigation may include replacement of the woodland components and wildlife habitat, and that such actions are appropriate tools to alleviate negative impacts resulting from the interim loss of a portion of significant woodland. These approaches must be considered within the context of the larger significant woodland area affected, Forest Patch 38 and its surroundings, and be considered against the long term results and benefits that can result from such replanting plans (e.g. improved species diversity, better connectivity improved long term habitat for endangered species, improved interior forest etc) and that any residual impacts, if any, should be evaluated against any immediate loss.

It is also informative to note that the term “scientifically feasible” used in the Natural Heritage Reference Manual is not defined, and is at the heart of the differing opinions presented to the Board by the ecologists and foresters for the parties in this hearing. Clearly, Dr. Bowles and Mr. Ursic do not believe that the Woodlot Rehabilitation and Restoration Plan presented at this hearing is “scientifically feasible” while the experts for the Proponent and the Ministry take a contrary point of view. The Board, after considering the testimony of these experts and the material filed with

respect to the Woodlot Rehabilitation and Restoration Plan, would note that the science of forestry and ecology have come a long way in understanding the working of various forest ecologies but that this science, as in most scientific endeavours, is constantly evolving with new methodologies and approaches to forest restoration being advanced. The Board is satisfied that the Woodlot Rehabilitation and Restoration Plans being put forward by the Proponent represents the state of the science and is further designed to incorporate modifications and design changes as this science evolves. These plans, in the Board's finding, represent a dynamic approach, and not a static plan fixed at one point in time, as has occurred in the past. It is the Board's finding that the Woodlot Rehabilitation and Restoration Plans being proposed are an appropriate methodology sanctioned by a full reading of the PPS and the Natural Heritage Reference Manual when dealing with dynamic and living environments such as this forest area and its ecological functions.

### **SIGNIFICANT VALLEYLANDS SOUTH AND EAST OF THE CANADIAN SHIELD**

Dr. Bowles opined that the proposed 30 meter buffer from the top of banks was insufficient to protect the Maitland River Valley from negative edge effects resulting from the progressive removal of a portion of the Jennison forest. Both the Proponent and the MNR experts opined that the setback distance is sufficient to protect the valleylands from negative impacts. The Proponent in reply agreed to monitor and provide additional plantings to mitigate any observed edge effects. The Board heard no compelling evidence regarding the nature of the alleged impacts to the valleylands and concludes that the increased setbacks are appropriate to maintain the ecological features and functions of the Maitland River Valley. If anything, the Fernhurst Glen Cottages pose a greater threat to negatively impact to the Maitland River Valley in this area than the proposed gravel pit.

### **SIGNIFICANT WILDLIFE HABITAT**

In defining Forest Patch 38 as a significant woodland a number of wildlife habitats were identified by the Proponent. They are summarized in Natural Environment reports (Exhibit 1, Tab 2, Table 7). The Board heard no compelling testimony that this list of features was not fulsome and complete. However, the experts disagree on the impacts and the efficacy of the mitigations measures being proposed.

The seeps are considered by the Natural Heritage Reference Manual to be wildlife habitat that might be impacted according to Dr. Bowles. It is the Board's determination resulting from the hydrogeological testimony discussed elsewhere in this decision that there will be no negative hydrogeological impacts that cannot be mitigated with respect to quality and quantity of flows to the seeps. It is also clear to the Board from the photographs found at Exhibit 18 that the seeps and springs as a water source for wildlife have been seriously degraded by the water collection activities of the Fernhurst Glen Cottages.

The Board is satisfied that no negative impacts to this wildlife feature beyond what exists today will result from the proposed gravel pit.

It is agreed by all parties that the Maitland River Valley and Forest Patch 38 provided a generally north south wildlife corridor. Those opposed to the application do not believe that the 30 meter buffer beyond the top of bank is sufficient to maintain this feature. The Board heard no compelling testimony that this wildlife corridor would be bifurcated to be impeded or prohibit the north south movement of wildlife. This corridor would continue to exist from 30 meters beyond the top of banks down to the river itself. The Board is satisfied that this wildlife habitat feature and its ecological function would not be negatively impacted by the proposed gravel pit.

## **SIGNIFICANT WOODLANDS SOUTH AND EAST OF THE CANADIAN SHIELD**

By all accounts Forest Patch 38, as identified by the Maitland Valley Conservation Authority (Exhibit 37), is considered to be significant woodland. This forest patch is some 65.3 hectares in size with some 19.3 hectares being located on Jennison property. If the gravel pit application was to go forward, about 14.9 hectares of the Jennison component of this woodland would be sequentially removed and replaced in accordance with the phasing plans and the summary of areas of forest to be removed by phase set out at Exhibit 23. The Proponent as part of a mitigation strategy proposes a sequential reforestation, rehabilitation and restoration program which would totally replant the area of extraction, as well as an area of some 1.8 hectares to the immediate south of the proposed licenced area with a mixture of hardwood trees in accordance with the Woodlot Rehabilitation and Restoration and planting plans set out in the revised Site Plan Notes (Exhibit 52). The replanting of the enhancement area is to commence

before the extraction of Phase 1, and with progressive reforestation and rehabilitation occurring in Phase 1 as the extraction operation moves northward. No extraction of the Phase 2A area can commence until it has been demonstrated to the satisfaction of the Ministry of Natural Resources that the Woodlot Rehabilitation and Restoration Plan is progressing as advertised. The same test applies to the subsequent phases of gravel extraction. The end result after the completion of the gravel pit and the final reforestation and rehabilitation according to the Proponent's forester would be an increase in the total forest cover of Forest Patch 38 of some 10.3 percent which he proffers would be an enhancement to the size and forest cover of this contiguous forest patch.

Those opposed to the application contend that the science of the proposed reforestation is not well understood and that it has not been demonstrated that the existing deciduous forest can be replicated or replaced as proposed by the Proponent. The forester and environmental planner for the Proponent freely admitted that the replacement forest would not be exactly the same as the forest on the property today. However, they maintained throughout their testimony that the end result would be an improved forest area, that the forest cover of Forest Patch 38 would be increased with a better mix of trees that would improve wildlife habitat, their corridors and the relationship of this forest area with the Maitland Valley area.

The planner for the Ministry of Natural Resources testifying under summons opined that that Ministry was satisfied that the Woodlot Rehabilitation and Restoration Plans were appropriate and would meet the tests on no negative impacts set out in the PPS. He noted that Ministry approval would be required for each phase of the gravel pit extraction and was based upon the success of the progressive Woodlot Rehabilitation and Restoration Plan. Failure to meet the prescribed success parameters would stop further gravel extraction. He confirmed that the monitoring and reporting was the responsibility of the Proponent and would have to be undertaken by a qualified forester or ecologist and that the Ministry had the resources and the expertise to properly evaluate these reports and monitor the gravel pit operations. Dr. Bowles and Mr. Ursic contend that the Ministry has neither the resources, the manpower nor the expertise to monitor and evaluate the required reports set out in the Site Plan Notes. Mr. Ursic, in support of his position, referred to a 2007 report of the Environment Commissioner. There is no evidence before the Board that the various Ministries have not been fully



engaged in the review process or that they would not be engaged in subsequent monitoring of the Site Plans, Site Plan Notes, and the evaluation as to whether further phases of the licence should be approved. Mr. Stone, the Ministry planner, testified that in this area of the Province the Ministry has the staff and resources to monitor this gravel pit operation in accordance with the Ministry's legislated mandate.

The ongoing funding levels of Provincial Ministries is not a matter within the jurisdiction of this Board, and is best left to the Environment Commissioner, the responsible Minister, and the Government of the day. This is not, in the Board findings, a determinative matter in this case.

Counsel for the Municipality and the Conservation Authority submit that the Board should not defer further approval to the Ministry but instead should follow the maxim *delegatus non potest delegare* set out by Vice Chair Campbell in *James Dick Construction Ltd v. Caledon (Town) O.M.B.R.263* where she reiterates the findings in *Ron Forbes Ent. Ltd v Bruce (County), O.M.B.D. No.1328* which states:

The Board makes a manifest error of law or fact if it approves planning instruments but in effect put off the burdensome task of properly considering issues of compatibility and impact to some further date.

Clearly in that case, Vice Chair Campbell was not satisfied that the Proponent had met their obligations under the policy regimes in place and was not prepared to defer the consideration of issues of compatibility and impacts to some further date through an Adaptive Management Plan (AMP) beyond the Board's jurisdiction and control in the first instance. In other words, the Proponent in the Board's judgement in *James Dick Construction Ltd v. Caledon (Town) O.M.B.R.263* had not met their onus to justify the change in land use and as such the Board should not defer these basic policy tests to a later date and different jurisdiction.

In this case, the Board is satisfied for the reasons set out in this decision that the impacts associated with the gravel pit application have been properly addressed within the context of provincial and local planning policy regimes.

It is not uncommon with planning approval documents that there be a conditional approval of the land use change or project subject to entering into contractual

agreements (e.g. draft plans of subdivision agreements, site plan agreements, agreements subject to provisional consents and development permits). In the case of the ARA licence conditions this is no different and runs parallel to the long term responsibilities of the Ministry of Natural Resources and other agencies to ensure that the conditions of the ARA licence and their specific regulations that sanctioned the land use in the first place are being followed. Sequential further approval based upon performance as opposed to a blanket approval in the Board's finding is a prudent and a sound planning tool once the appropriateness of the land use change has been determined. This is particularly important when one is dealing with a living, dynamic and changing Natural Heritage Feature such as a woodland over an extended period of time.

Prudence in such circumstances would demand that the success of the Woodlot Rehabilitation and Restoration Plans be monitored over time as opposed to a blanket approval.

Those opposed to the proposal opine that the loss of any part the FODM5-1 upland maple forest as proposed with its interior forest habitat for area sensitive birds, for any period of time, cannot be mitigated in accordance with the directions and tests set out in the PPS. It was their opinion that the status quo was the only way this ecological feature and its functions in this significant woodland could be maintained.

The more compelling evidence presented to the Board is that the Lower Maitland Watershed (LMW) area has about 2700 hectares of interior forest with an average interior polygon size of 6.7 hectares and according to the Ministry, this area:

has some of the highest forest cover in the Maitland Valley Watershed. Upland maple forest is among the most common forest type in the (LMW) at 24%. The onsite woodland is large, but young relative to other upland maple stands in the (LMW) (Exhibit 3, Tab 35).

All of the experts freely admitted that the ecological features and functions associated with the woodland (interior forest) are dynamic forces that are constantly changing. All parties agree that in the past this natural forest was degraded and was managed under a Woodlot Improvement Agreement between 1972-87 which included

an improvement cut in 1973 and smaller firewood cuts at various times. This clearly is not a unique old growth forest that has never been impacted by man.

After considering the Woodlot Rehabilitation and Restoration Plan it is the conclusion of the Board that the progressive loss and replacement of the interior forest, as set out in these plans on this site, does not constitute a negative impact (Sections 2.14.b. and d. of the PPS) as contemplated by a full reading of the PPS and the Natural Heritage Reference Manual definitions and directions. In this regard, the Board prefers the testimony of the Ministry planner, Mr. Deschamps, Mr. Robertson and Mr. Parkin, that the Woodlot Rehabilitation and Restoration Plan will enhance and have beneficial effects to Forest Patch 38, as contemplated by the Natural Heritage Reference Manual.

The Board does not adopt the very narrow perspective of the meaning of “no negative impacts” proffered by Mr. Ursic and Dr. Bowles and endorsed by Ms Walker-Bolton as it would apply to significant woodlands found on the property, as set out in the Section 2.1.4.b of the 2005 PPS. They proffered that none of the woodland could be removed and that replanting or reforestation was not an acceptable mitigation measure permitted by the 2005 PPS or the Township’s Official Plan. They opined that the only meaningful mitigation was the maintenance of the status quo, and that no loss of any portion of the significant woodlands found on the site for any period of time should be permitted. It is clear to the Board that reforestation in and of itself is permitted by a full reading of the 2005 PPS and the Natural Heritage Reference Manual as a mitigation technique.

There is a wide body of case law and decisions dating back to (*Bele Himmell Investments vs. Mississauga* (1983, 13, OMBR 17) that confirm that policy documents such as the 2005 PPS and Official Plans should be given a broad and not narrow interpretation. The Board has some difficulty with the vary narrow interpretation proffered by Mr. Ursic, Dr. Bowles and Ms Walker-Bolton regarding the policy regime set out in the 2005 PPS, and the Municipal Official Plans. The Board prefers the constructions proffered by Mr. Parkin. Mr. Deschamps, Mr. Stone and Mr. Robertson as being reasonable and applying the appropriate weight to a full and fair understanding of the application of these policy documents particularly when one considers the explanation of no negative impacts found in the 2005 PPS and the explanation of

mitigation found in the Natural Heritage Reference Manual which states that “Mitigation also includes any action intended to enhance beneficial effects”. (Emphasis added)

The Natural Heritage Reference Manual also states that mitigation may include “replaceability of the woodland components and functions within a reasonable time frame (e.g. 20 years) are considered”. It is the Joint Board’s finding that the Woodlot Rehabilitation and Restoration Plan being proposed can be considered as an appropriate mitigation technique satisfying the requirements of the 2005 PPS provided that these actions result in beneficial effects to any habitat or features that might be lost on an interim basis, and do not, as the PPS states, result in a:

“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.”

It is the Board’s finding that mitigative measures including replacement and enhancement are contemplated by the 2005 PPS and the Municipal Official Plans, and may be considered when dealing with the loss of a portion of significant woodland, its interior forest, its wildlife habitat, and water features, as set out at Section 2 of the 2005 PPS.

Whether the mitigation measure is called reforestation, restoration or rehabilitation is not important. The 2005 PPS test is whether the mitigation activity being proposed has the ability to remove or ameliorate any negative impacts that “threatens the health and integrity of the natural features or ecological functions for which an area is identified” and whether the mitigation measures will result in enhanced beneficial effects which might result from the loss of a portion of the significant woodland, Forest Patch 38.

When one is dealing with dynamic and changing conditions it is critical that short and deliberate steps are taken and that reforestation and rehabilitation mitigation measures are closely monitored. These are matters that can only be determined over time and as such the sequential approval of additional phases is critical to determining that the goal of no negative impacts is being achieved.

The status quo is but one choice albeit very important that must be considered in evaluating the meaning of “no negative impacts” with respect to these Natural Heritage Features and Functions and their ecological systems found on the site. This choice must be evaluated within the context of a full reading of the entire 2005 PPS and its often conflicting policy directions with respect to Natural Heritage matters and the competing need for aggregate resources in proximity to their market. Similarly it is clear to the Board that the Township Official Plan in Section 6.4.5 contemplated at least the consideration of a gravel pit subject to appropriate environmental studies and that the Huron County Aggregate Study was aware of the quality of the resources and that a portion of the site might be developed with limited constraints.

Section 6.4.5 of the Township Official Plan and the directions found in the PPS and its supporting documents are not exclusionary propositions or policies. Instead, they in the Board’s findings, require a careful balancing of competing objectives. All must be considered as they relate to the good planning and the public interest within the municipality.

It is the Board’s conclusion after a full reading of these documents and consideration of the expert’s testimony that the Woodlot Rehabilitation and Restoration Plan, as set out by the Proponent at Exhibit 52, would constitute an acceptable mitigation approach to ensure that the health and integrity of the natural heritage features found in Forest Patch 38 and in the Maitland River Valley and that these features would not be negatively impacted by the gravel extraction use in the manner being proposed.

The Board would note that this Woodlot Rehabilitation and Restoration Plan requires annual, then three and five year evaluations of the success of the reforestation and the demonstration of success is a precondition to moving to the next phase of extraction. The Board further notes that the first phase on this licence deals with a 2.0 hectare field and does not in any way impact the existing upland forest. The upland forest is proposed to be properly managed and only removed in phases after the success of the Woodlot Rehabilitation and Restoration Plans have been demonstrated to meet the indicators of success set out in the plan to the satisfaction of the Ministry of Natural Resources. In the Board’s findings due to the dynamic nature of these natural

heritage features this is a prudent planning tool consistent with the policy directions of the PPS and the Natural Heritage Reference Manual.

The Board accepts the testimony of the Ministry planner that the Ministry has the resources and the expertise to monitor and evaluate the reports filed by the Proponent regarding the success of the Woodlot Rehabilitation and Restoration Plans and that the revised Site Plan Notes clearly set out the targets to be met in determining the success of these Plans. The Site Plan Notes are not as clear as to the expertise required to undertake these reports.

It is the determination of the Board that the Site Plan Notes should be amended by the addition of the following:

“That the determination of the success of the Reforestation and Rehabilitation Plans shall be undertaken at the expense of the Proponent by a qualified Forester or Ecologist with expertise in ecological restoration approved by the Ministry of Natural Resources and in accordance with the determinants of success as set out in the Woodlot Rehabilitation and Restoration Plan dated November 2011 (Exhibit 52)”.

It is the Board’s determination that with the changes noted in this decision the Natural Heritage Features found on the site and on the adjacent areas have been properly addressed and that the phased approval of the gravel pit licence is consistent with the applicable policy directions of the PPS, the local Official Plans and the considerations required by the ARA.

## **THE COUNTY OF HURON OFFICIAL PLAN**

This document provides for a high level policy framework for the consideration of aggregates and recognizes their importance and establishes directions that this resource must be protected. The Official Plan also provides a high level policy framework for the consideration and protection of the natural environment and strategies to promote the protection of aggregates and ensure that they are developed in a compatible manner with other land uses. The Board finds the directions found in the County Official Plan to be consistent with the policy directions and tests set out in the Provincial Policy Statement, that one must find the appropriate balance to the extraction

of the aggregate resources while at the same time protecting and minimizing negative impact to significant natural heritage features.

All parties agree that no amendment is required to the County of Huron Official Plan in this case.

Ms Walker-Bolton, in her testimony, opined that the application was not consistent with the County Official Plan. Ms Walker-Bolton cannot have both ways, either a County Official Plan Amendment is required and the Proponent should have been told that at the time his application was reviewed for completeness, or there are no conformity issues.

The Board after reviewing the County Official Plan is satisfied that this is a broad and high level policy document that leaves detailed land use determination to the local Official Plans.

The Board is satisfied that no amendment is required to the County of Huron Official Plan to sanction the Jennison ARA application.

## **THE TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH OFFICIAL PLAN**

The Township Official Plan designates the agricultural field on the property as “Agricultural” and the forest area of the site as “Natural Environment”. It is clear to the Board that section 5.4.1 of the Township’s Official Plan requires that “Mineral aggregate operations must be designated Extractive Resources in this Official Plan and must be zoned to an Extractive Resources Zone before licencing and extraction can occur”. The Board would also note that the Township’s Official Plan also discussed the issue of incompatible uses and the term compatibility with respect to aggregate extraction as follows:

### **5.4.5. Incompatible Uses**

Potential aggregate resource areas will be protected by directing incompatible uses away from the resource. Agriculture and natural environment are compatible uses which may locate on or near aggregate resources, not including buildings or structures.

### **5.4.6. Compatibility**

All mineral aggregate operations will minimize conflict and maximize compatibility with adjacent uses. The protection of

natural areas and existing development is a high priority. Mitigation measures may be required such as increased setbacks, berming, landscaping, road improvements and dust and noise control. These measures may be implemented by conditions of the licence or through a development agreement with the municipality under site plan control.

Clearly the Township Official Plan sees Extraction and Agricultural and Natural Environment designations as compatible uses subject to appropriate planning controls.

Ms Walker-Bolton opined that the Huron County Aggregates Strategy should be used as a planning tool to assist in the evaluation of this site. This was a home grown desk top study undertaken in 2005 that looked at aggregate resources in the County of Huron, and the constraints to the use or extraction of such resources. Ms Walker-Bolton freely admitted that this study has not found its way into local Official Plans as either policy or land use designations. However, she did note that section 5.4.3 of the Township Official Plan refers to the strategy as an aid that “will form the basis of an Aggregates Strategy to identify a priority sequence for aggregate extraction. The strategy will balance the demand for aggregates with social and environmental considerations.” She also testified that the strategy identified approximately 3 hectares of the Jennison property as having unconstrained high quality resources. While the Huron County Aggregates Strategy is informative it is not directive in how this matter should be determined, instead the Board must look to the PPS and the Township Official Plan for policy direction.

Furthermore, under cross examination, Ms Walker-Bolton could not explain the inconsistency between her No Constraint Aggregate Resources in the Huron County Map (Exhibit 21, Tab 1) with four sites presented to her in Exhibits 47 through 50. The Board must conclude, due to the inconsistencies in this evidence, that little weight should be given to the Huron County Aggregates Strategy and instead reliance must be given to the approved Official Plan policies, and its adopted Schedules.

It is also clear to the Board from the testimony of the planners that the Township’s Official Plan places an equal weight on the protection of the Natural Environment, which in this case is Forest Patch 38 and the Maitland River Valley ANSI.



However, this protection is not absolute as Section 6.4.5 of the Township Official Plan states in part that:

While it is the intent of this plan to protect natural areas and prohibit development, applications for change may arise from time to time. In the evaluation of these applications, the natural environment will be given priority. No change of use will be permitted in natural environment areas unless extensive environmental studies are completed which demonstrate that no negative impact will result on the natural features or ecological functions of the area.

This is similar to the tests prescribed by section 2.1.4 of the PPS and goes to the heart of the matter the Board must decide in this case.

The Board for the reason outlined earlier in this decision is satisfied that the environmental studies required by the Township Official Plan, and the tests of the 2005 PPS have been met and as such the policy tests of the Township's Official Plan for an amendment as proposed have been met as well.

## **THE ISSUE OF THE NEED FOR AGGREGATE**

One of the issues raised by the parties revolved around the question of need for the gravel pit particularly when two existing gravel pits exist in the immediate area. The Board would note that the PPS policy specifically prescribes that need is not to be a determining factor in the consideration of the approval of an ARA licence. Section 2.5.2.1 of the 2005 PPS is clear when it states that:

2.5.2.1 As much of the *mineral aggregate resources* as is realistically possible shall be made available as close to markets as possible.

Demonstration of need for *mineral aggregate resources*, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licencing for extraction of *mineral aggregate resources* locally or elsewhere.

The Board is satisfied that there is no need to establish the quantum of need in this case. The Board also accepts the uncontradicted evidence of Mr. Jennison and his expert, Mr. Helwig, that this is an excellent aggregate resource deposit.

## **THE ISSUE OF COMPATIBILITY**

The Board would note that a significant body of case law has developed with respect to the meaning of the word compatible which was expressed by A.J.L. Chapman in *Motisi v. Bernardi* (1987), 20 O.M.B.R. 129 at Page 136 when he stated that:

In other words, the new development must be compatible with the existing development. Being compatible with is not the same thing as being the same as. Being compatible with is not even the same thing as being similar to. Being similar to implies having a resemblance to another thing; they are like one another, but not completely identical. Being compatible with implies nothing more than being capable of existing together in harmony.

The Board would note that the Township Official Plan at Section 5.4.5 deems Extractive Use to be compatible with Agricultural and Natural Environment Uses subject to appropriate mitigation measures. The Board heard no compelling testimony that the setbacks proposed, the other mitigation measures for noise, water quality and quantity protection, together with the Woodlot Rehabilitation and Restoration Plans found in the ARA site plans subject to the Board's directions, as set out in the decision, will not meet the test of compatibility found in the Township Official Plan or as the term is commonly understood. The adjacent use to the north is a gravel pit, farm fields exist to the east and the Fernhurst Glen Cottages to the west are sufficiently removed from the extraction limit by both elevation and distance (105 metres).

The Fernhurst Glen Cottage residents will not be able to visually see the gravel pit operation and any noise that might emanate from the gravel pit operations will be within MOE guidelines. Nor is there any compelling testimony that there will be any adverse hydrogeology impacts to the Fernhurst Glen Cottages.

The Board concludes that the mitigation measures proposed and contained in the Site Plan Notes will result in no adverse impact from the proposed gravel pit to the Fernhurst Glen Cottages and finds the proposed gravel pit use to be compatible with the surrounding land uses.

## THE PUBLIC INTEREST

It is the Board's conclusion that after a full reading of the PPS that this document, as with the local planning policy documents, requires a balancing of competing public interest objectives. In this case the use of an aggregate resource in proximity to markets on an interim basis must be balanced with the protection of the natural heritage features and functions found in the area for the long term benefit of this area and society as a whole. This is the essence of the public interest test for this part of the municipality.

Counsel for the Municipality and the Conservation Authority submits that the Board should reject the applications on the basis that the Municipal Council did not approve the Official Plan Amendment and the Zoning By-law Amendment applications after holding the required public meeting prescribed by the *Planning Act* and that their decision reflects the public interest in this case.

The balancing of public and private interests is a fundamental requirement of the *Planning Act*. The determination of and the balancing of public and private interests originally vests with, and is the obligation of the Municipal Council and the other approval authorities and upon appeal, vests with this Board. It does not reside with private individuals, corporations, or local interest groups. The determination of public interest with respect to planning matters is not a popularity contest but must instead be based upon sound planning principals and approved planning policies at both the Provincial and local levels.

The Board finds that in considering the new directions of Section 2 of the *Planning Act* that Section 2.1 is fundamental when it states:

### **Decisions of councils and approval authorities**

2.1 When an approval authority or the Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

- (a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and
- (b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a). 2006, c.23, s. 4.

The Board in having regard to the decisions of the local Council, and the Provincial Ministries having jurisdiction over certain aspects of the appeals has carefully considered the varied positions put forward by these bodies and the testimony of those who oppose the proposal. The Board in doing so must consider the decision of the approving authorities but is also obligated to bring its own determination based upon the evidence presented at this hearing. At no time, as indicated earlier in this decision, did any party request that any material submitted at this hearing be referred back to the Municipal Council or that in doing so the new material might have altered their decision.

The Board adopts the position put forward by Ontario Municipal Board Member Stefanko in his decision *Keswick vs. Sutherland* where he states that:

This section, in my view, requires the Ontario Municipal Board to consider the decisions of council and to weigh those decisions against the evidence heard by the Board. To read this section as creating some type of obligation on the Board to be bound by and to implement such decisions would be placing far too narrow [sic] an interpretation on the section. Other provisions of the *Act* such as ss.17 (36), 17(50), 34(19) and 34(26) clearly allow for, and contemplate the possibility of parties appealing a decision of a municipal council and the Board overturning it. Therefore, notwithstanding a level of inherent deference contained in s. 2.1, the Board does, and should, for obvious reasons, retain its independent decision-making authority. When considering the decisions made by Town Council and Regional Council, it is incumbent upon me to scrutinize those decisions to the extent possible.

The Board for the reasons set out in this decision finds that allowing the change in land use, as set out in the proposed Official Plan Amendment together with the regulations set out in the proposed Zoning By-law Amendment and the conditions being directed to the ARA licence application, to be in the public interest and meets the competing public objectives of mining the aggregate resources in the interim and then sequentially returning this area to a natural state while ensuring that there is no negative impact to the natural features or their ecological functions over the long term.

The Board would note that the Proponent indicated in his Exhibit 2, Tab 2, Page 90, a willingness to dedicate the restored property to a local authority or conservation-oriented organization to manage the site for long term protection. The Board sees merit

in this suggestion that would bring this property into the public domain, and would commend its consideration to the local authorities.

### **THE OFFICIAL PLAN AMENDMENT**

The proposed Township Official Plan is set out at Exhibit 2, Tab 7, Page 394. The Board, after reviewing this document, is satisfied that it represents good planning and provides the necessary local planning policy framework to regulate the proposed gravel pit use.

### **THE ZONING BYLAW AMENDMENT**

The proposed Zoning By-law Amendment is set out at Exhibit 2, Tab 7, Page 402. The Board, after reviewing this document, will order consistent with the findings in this decision that the setback from County Road 31 to the limit of extraction shall be 30 metres and not the 10 metres proposed, and will order that the Zoning By-law Amendment be approved subject to Section 3 being further amended to require a 30 meter setback from the limit of extraction of the gravel pit along County Road 31.

The Board finds that with this change the Proposed Zoning By-law Amendment to be consistent with the 2005 PPS, the Proposed Official Plan Amendment, and the prescribed regulations of the ARA.

### **THE AGGREGATE RESOURCES ACT**

The licencing of the quarry is the responsibility of the Minister of Natural Resources and is governed by the requirements of the ARA.

The purposes of the ARA, as set out in Section 2, and are:

- (a) to provide for the management of the aggregate resources of Ontario;
- (b) to control and regulate aggregate operations on Crown and private lands;
- (c) to require the rehabilitation of land from which aggregate has been excavated; and

- (d) to minimize adverse impact on the environment in respect of aggregate operations. R.S.O. 1990, c. A.8, s. 2.

The test under Section 2 (d) of the ARA is “to minimize adverse impacts” on the environment as opposed to the test of no negative impacts set out in the PPS. It was Mr. Parkin’s testimony that the revised Site Plans and Site Plans Notes are designed to ensure that the purposes of the ARA are met. In this regard, he relies on the setbacks established from the top of bank, the protections in place for the Butternut trees found on the site, as set out in the ESA and Ontario Regulation 294/11. He also relies on the evidence of Mr. Deschamps and Mr. Robertson that no significant habitat for wildlife exists on the extraction lands or the buffer lands associated with the Jennison proposal and that gravel pit operations will not have any negative impacts on potential wildlife habitat in the immediate area. In all other respects, he believes that from a full reading of the revised applications one must conclude that the proposed gravel pit can be operated over its life with no negative impacts to the Natural Heritage features and functions found in the areas.

Section 12 of the ARA, sets out the matters that the Minister and this Board must have regard for when considering a licence application made under the Act.

Mr. Parkin provided the opinion that the applications now before the Board have had proper regard for the matters set out in Section 12 of the ARA and that a gravel pit licence should be given subject to the revised Site Plans (Exhibit 5) and revised Site Plan Notes (Exhibit 27), as further revised by Exhibit 51 Hydrogeology notes and Exhibit 52 Woodlot Rehabilitation and Restoration Plan dated November 2011.

It is clear to the Board that if the application can meet the planning policy tests of the 2005 PPS and the local Official Plans that the tests of the ARA, as set out in Section 12, can be met as well. The Board for the reasons contained in this decision and subject to the changes being directed in this decision is satisfied that appropriate regard has been given to the matters set out in Section 12 of the ARA.

The Board is satisfied that the ARA provides sufficient sanctions, fines, and enforcement provisions to adequately regulate the project subject to the approval of the revised Site Plans and Site Plan Notes directed in this decision.

There is no evidence before the Board that Jennison has ever failed to meet its Rehabilitation Plan obligations at other gravel pit sites it owns. No evidence was presented that it has been ever cited for a failure to meet its obligations under an ARA licence or that they have ever had a licence suspended or revoked.

It is clear that Subsection 12(1)(j) of the ARA contemplates that in the consideration of whether a licence should be issued the history of the Proponent is a consideration. There is nothing before the Board that would suggest that the proposed licence should be rejected on the basis of Subsection 12(1)(j) of the ARA.

## **CONCLUSION AND DIRECTIONS**

The Board can find no significant flaws in Mr. Parkin's Planning Assessment of the Jennison proposal with respect to the policy directions of the 2005 PPS, the County of Huron, or the Township of Ashfield-Colborne-Wawanosh Official Plans other than those articulated by the Board in this decision. His review was comprehensive, fair, and compelling and in the Board's findings appropriately reflects the planning policy directions and respective weights one should ascribe to a full reading of the planning documents governing this case.

The Board, for the reasons contained in this decision, makes the following Partial Orders and directions:

1. **THE BOARD** respectfully and conditionally directs the Honourable Minister of Natural Resources to issue to Jennison Construction Ltd. a Category 3 Class "A" Pit Above the Water Table licence to extract aggregate from a 22.2 hectare site located in Part of Lots 16 and 17, Maitland Concession, in the Township of Ashfield-Colborne-Wawanosh in the manner set out in Site Plans (Exhibit 5) prepared by MHBC Planning, Urban Design & Landscape Architecture dated October 07, 2011 subject to the following changes:

That the ARA licence includes the following conditions:

1. That Site Plan Notes 1.2.27 i) and 1.2.27 ii) and 1.2.27 iii) be amended to replace the word "should" with the word "shall"
2. That the following sentence be added to clause 1.2.27 ii)

“No crushed material shall be removed from the site until the stock pile berms have been constructed or the crushing equipment is situated a minimum of 8 metres below the western limit grade”.

3. That the last sentence of Site Plan Note 1.2.11 beginning with the words “if crushing operations” be deleted.

4. That the following be added as a condition to the licence:

“That the determination of the success of the Rehabilitation and Restoration Plan shall be undertaken at the expense of the Proponent by a qualified Forester or Ecologist with expertise in ecological restoration approved by the Ministry of Natural Resources and in accordance with the determinants of success as set out in the Woodlot Rehabilitation and Restoration Plan dated November 2011 (Exhibit 52) and further that Exhibit 52 form part of the Site Plan Notes”.

5. That Site Plan Note 1.2.11 be amended to such that the second sentence reads as follows:

“Recyclable materials but not including asphalt may be brought to the site for accessory recycling and blending with on site materials”.

6. That the Site Plan Notes be further amended with the addition of the following clauses:

**Additional Fuel Storage Notes - Add the following to note 1.2.13**

Fuel tanks on all mobile equipment remain less than 455L.

Parking of all mobile equipment on the pit floor during non operational hours should be on an impervious containment pad. This pad shall be designed to:

- i) fully contain a 455L spill if covered, or
- ii) fully contain a 455L spill plus a 10-year rainfall event if uncovered.



All other tanks associated with non-mobile equipment should have secondary containment. In order to remediate any small volume spill, all mobile equipment should be equipped with a spills kit containing absorbent material and/or medium.

Operators should be properly trained to contain any spill.

**Additional Water Monitoring Requirement - Add the following to note 1.2.27 C)**

iii) Groundwater quality monitoring shall include two (2) wells located on the pit floor at the southern and western boundaries of the properties which include a screen which straddles the presented water table. These wells should be sampled and analyzed for hydrocarbons at least four times per year

7. That the ARA site plans be amended to show a 30 metre setback from limit of extraction of the gravel pit along County Road 31.

2. **THE BOARD ORDERS** that the appeal of Jennison Construction Ltd. is allowed in part and the Official Plan of the Township of Ashfield-Colborne-Wawanosh is amended as set out in Attachment "1" to this Order and as amended is approved.

3. **THE BOARD ORDERS** that the appeal against Zoning By-law 32-2008 of the Township of Ashfield-Colborne-Wawanosh is allowed in part, and the Board directs the Municipality to amend By-law 32-2008 as set out in Attachment "2" to this Order subject to Section 3 being further amended to require a 30 meter setback from the limit of extraction of the gravel pit along County Road 31. In all other respects, the Board Orders the appeal dismissed.

The Board will withhold its final Order and Direction to the Minister of Natural Resources for 90 days from the date that this decision issues to receive a final Zoning By-law Amendment in accordance with this decision and in a form satisfactory to the Municipality, and further that the licence conditions and changes to the Site Plans and Site Plan Notes as directed by this decision, be certified by an individual authorized to prepare and certify site plans under the *Aggregate Resources Act* and these revised

Site Plan and Site Plan Notes be forwarded to the Board before the Board issues its final direction to the Minister.

This is the Partial Order and Direction of the Board.

“J.P. Atcheson”

J.P. ATCHESON  
MEMBER

## Appendix "A"

### WITNESS LIST

1. Mr. James D. Parkin was qualified as a Land use Planner with expertise in the area of aggregate applications. Mr. Parkin is authorized to prepare and certify site plans under the *Aggregate Resources Act* by the Ministry of Natural Resources. Mr Parkin was retained in 2008 by Jennison to assist and provide leadership in support of their applications for the gravel pit licence.
2. Mr. Kenneth Chan, P. Eng. was qualified as professional engineer with specialization traffic (operations control). His firm was retained in May 2011 to do the traffic impact analysis of the impact of the proposed gravel pit on major intersections along County Road 31.
3. Mr. Robert Helwig, a Registered Professional Geoscientist, was qualified to give expert opinion evidence in the fields of geotechnical investigations and environmental assessments. He was retained in 1996 and again in 2009 to provide an opinion on the quantity and quality of the aggregate deposits on the site.
4. Mr. William Gastmeier, P. Eng. was qualified as professional engineer with specialization in the fields of noise, vibration and acoustic investigations. He was retained by Jennison in Oct of 2009 to undertake an Environmental Noise Study for the gravel pit, and to review the ARA operation plans for the gravel pit to determine compliance with the recommendations of his noise study.
5. Mr. William Bradshaw, P. Eng. was qualified as professional engineer. He was retained by Jennison to collect well water data at five well locations on the property.
6. Ms Patty Wong P. Geo, a Registered Professional Geoscientist, was qualified to give expert opinion evidence in the field of geology and hydrogeology based upon her work experience.
7. Mr. Stephen D. Davies, a Registered Professional Geoscientist, was qualified to give expert opinion evidence in the field of hydrogeology. He was retained in July of

2011 to review the previous hydrogeological reports prepared as part of the Jennison ARA application and to assist in matters now before the Board.

8. Mr Vincent J. Deschamps was qualified as an Environmental Planner with expertise in the area of ecology. He is also certified by the Ministry of Natural Resources to undertake Ecological Land classification systems for Southern Ontario. Mr. Deschamps' firms were retained to undertake Natural Environment Level 1 & 2 Report for the proposed Jennison pit in accordance with the ESI requirements of Township of Ashfield-Colborne-Wawanosh.

9. Mr. Paul Robertson was qualified as a Forester. Mr. Robertson is also certified by the Ministry of Natural Resources as a Provincial Managed Forest Plan Approver, a Provincially Certified Tree Marker, a Provincially Certified Butternut Tree Assessor, and a Provincially Certified Seed Collector. Mr. Robertson was retained in November of 2010 to assist in the Woodlot Rehabilitation and Restoration Plan.

10. Michael J. Stone, a District Planner with the Ministry of Natural Resources, Guelph District, was qualified as a Land Use Planner by education and experience to give evidence on the Ministry's ARA licencing planning review and approval process. Mr. Stone testified under summons.

11. Mr. William Jennison, the President of Jennison Construction Ltd. (Jennison), testified as to the activities of his company.

12. Dr. Brian Luinstra, a Registered Professional Geoscientist, was qualified to give expert opinion evidence in the field of hydrogeology. Dr. Luinstra is under a retainer from the Maitland Valley Conservation Authority to provide peer reviews comments on the Hydrogeology reports associated with planning approval applications.

13. Dr. Jane Bowles was qualified as an Ecologist. Dr. Bowles has a long history of working in the Huron County area. She was retained in February 2010 by the Maitland Valley Conservation Authority to provide a peer review and comments on the Natural Environment reports prepared by the Proponent.

14. Mr. Kenneth Ursic was qualified as an Ecologist to give opinion evidence in the areas of ecological impact assessments and ecological restoration plans. Mr. Ursic is

also a Provincially Certified Butternut Tree Assessor, Provincially Certified Ecological Land Classification systems for Southern Ontario Assessor, and a Provincially Certified Wetland Evaluation System Assessor for Southern Ontario.

15. Ms. Monica Walker-Bolton was qualified as a Land Use Planner. Ms Walker-Bolton is a planner employed by the County of Huron who provides planning services to the Township of Ashfield-Colborne-Wawanosh.

## **APPENDIX "B"**

### **LIST OF EXHIBITS**

1. Joint Document Book
2. Joint Document Book, Policies
3. Joint Document Book, Correspondence
4. Joint Document Book, reduced visual exhibits
5. Revised *Aggregate Resources Act* (ARA) Site Plans and Site Plan Notes, Plans 1 through 5 dated October 7, 2011
6. Applicant/Appellants Witness Statements Document Book
7. Township of Ashfield-Colborne-Wawanosh and the Maitland Conservation Authorities' Witness Statements Document Book
8. Book of the Participants Statements
9. James D. Parkin, Acknowledgement of Expert's Duty Form
10. Kenneth Chan, Acknowledgement of Expert's Duty Form
11. The C.V. of Mr. Kenneth Chan
12. Mr. Robert Helwig, Acknowledgement of Expert's Duty Form
13. Mr. William Gastmeier, Acknowledgement of Expert's Duty Form
14. Wendy Hoernig, Revised Participants Statement
15. William Bradshaw, Acknowledgement of Expert's Duty Form
16. Groundwater elevation data for five well locations on the subject property
17. Location map of seeps identified by Mr. Bradshaw
18. Photographs of the seeps and water collection systems
19. Ms Patty Wong, Acknowledgement of Expert's Duty Form
20. Mr. Stephen D. Davies, Acknowledgement of Expert's Duty Form
21. Township of Ashfield-Colborne-Wawanosh and the Maitland Conservation Authorities' Visual Exhibits
22. Summary of the Areas of Extraction and Forest Areas to be removed
23. ARA Site Plan Addendum, October 24, 2011
24. Membership Application for the Canadian Land Reclamation Association
25. Mr. Vincent J. Deschamps, Acknowledgement of Expert's Duty Form
26. Mr. Paul Robertson's Acknowledgement of Expert's Duty Form
27. Aggregate Resources Act Site Plan Notes Document, Jennison Construction Gravel Pit Township of Ashfield-Colborne-Wawanosh
28. Jennison Construction Gravel Pit Township of Ashfield-Colborne-Wawanosh Rehabilitation, Reforestation Cost projections, October 25, 2011
29. Michael J. Stone, Acknowledgement of Expert's Duty Form
30. The C.V. of Michael J. Stone.
31. Jennison Construction Ltd. Corporate Brochure Listing Various Gravel Pit Holdings
32. Dr. Brian Luinstra, Acknowledgement of Expert's Duty Form
33. Ontario Regulation 242/08 dated July 02, 2008

34. Ontario Regulation 294/11, dated June 28, 2011
35. Dr. Bowles, Acknowledgement of Expert's Duty Form
36. Dr. Bowles, map of the loss of Interior Forest Jennison Forest, September 2011
37. Aerial photograph Forest Patch 38 sub-basin 24
38. Map sub-basin 24 of the lower Maitland Watershed
39. Photographs of the Reforested County of Huron Borrow Pit
40. Extract Appendix G Significant Wildlife Technical Guide
41. Dr. Bowles, Chart of Forest and Shrub Species of Conservation Concern reported on the Jennison Property.
42. E-Mail chain between Dr. Bowles and Tara Lessard of the MNR dated November 01, 2010, re. location of Butternut saplings, Jennison property.
43. Red Line Revisions, Woodlot Rehabilitation and Restoration Plan Final Draft October 2011
44. Mr. Kenneth Ursic, Acknowledgement of Expert's Duty Form
45. Ms. Monica Walker-Bolton, Acknowledgement of Expert's Duty Form
46. Township Notice of Refusal of the Official Plan Amendment and the Zoning By-law Amendment dated October 8, 2010.
47. Aerial Photograph, Site, 1 Lot 10, Concession VIII, Ashfield Ward
48. Aerial Photograph, Site 2, Lots 26 & 27, Concession IV, Wawanosh Ward.
49. Aerial Photograph, Site 3 Lot 8, Concession 9, Colborne Ward
50. Aerial Photograph, Site 4, Lots 3 & 4, Concession 5, Colborne Ward.
51. Agreed Site plan note changes re. Spills and Monitoring Notes 1.2.13.and 1.2.27
52. Woodlot Rehabilitation and Restoration Plan, Final Draft November 2011.

**APPENDIX "C"**

**LIST OF PARTICIPANTS**

1. Melody Bezaire
2. Ann Potter
3. Douglas Wagenaar
4. Sharon O'Sullivan
5. Wendy Hoernig
6. John Hazlitt
7. Mark Verhoef
8. Gina McDonnell



BY-LAW NO. of 2010

A BY-LAW OF THE MUNICIPAL CORPORATION OF THE TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH TO AMEND AN OFFICIAL PLAN.

The Council of the Township of Ashfield-Colborne-Wawanosh, in accordance with the provisions of the Planning Act, RSO 1990, hereby enacts as follows:

1. Amendment No. 5 to the Official Plan of the Township of Ashfield-Colborne-Wawanosh is hereby adopted:
2. The Clerk is hereby authorized and directed to give Notice of Adoption of Amendment No. 5 and to make application to the Council of the Corporation of the County of Huron for the approval of Amendment No. 5 to the Official Plan of the Township of Ashfield-Colborne-Wawanosh.
3. This By-law shall come into force and take effect on the day of final passing thereof.

Read a first time	2010
Read a second time	2010
Read a third time and passed	2010

Ben Van Diepenbeek, Reeve

Mark Becker, Clerk-Treasurer

**AMENDMENT NO. 5**

**TO THE OFFICIAL PLAN**  
**FOR THE**  
**TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH**

**AMENDMENT NO. 5**  
**TO THE OFFICIAL PLAN**  
**FOR THE**  
**TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH**

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Statement of Components

PART "A" is the preamble to Amendment No. 5 to the Official Plan for the Township of Ashfield-Colborne-Wawanosh and does not constitute part of this amendment. It provides general introductory information on the purpose, location and basis of the amendment.

PART "B" consisting of the following text constitutes Amendment No. 5 to the Official Plan for the Township of Ashfield-Colborne-Wawanosh.

PART "C" is the appendix and does not constitute part of this statement. The appendices contain the background data, planning considerations and public participation associated with this amendment. Although the attached appendices do not constitute part of the formal amendment, they do provide explanatory material. In cases where a more detailed interpretation of the amendment is required, such an interpretation will be obtained from the appendices.

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Part "A"  
The Preamble

AMENDMENT NO. 5  
TO THE OFFICIAL PLAN  
FOR THE  
TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH

**1. PURPOSE**

The purpose of this application is to allow the development of an aggregate operation on 22.2 hectares (54.9 acres) of the 27 hectare (66.7 acres) parcel of land at 80897 Sharpes Creek Line. The subject property is described as Lot 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh and is currently designated Agriculture and Natural Environment in the Ashfield-Colborne-Wawanosh Official Plan. This application changes the land use designation from Agriculture and Natural Environment to Extractive Resources.

This By-law amends the Township of Ashfield-Colborne-Wawanosh Official Plan. Key Maps showing the location of the lands to which this by-law applies are shown on the following pages.

**2. LOCATION**

This Official Plan amendment affects a property legally described as Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh. The subject property is 27 hectares (66.7 acres) in size, with 22.2 hectares (54.9 acres) being affected by this amendment. The location of the affected area is illustrated on the attached schedules.

**3. BASIS**

This change is to permit the subject property (Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh) to be developed for extractive resources uses.

**Part "B"**

**AMENDMENT NO. 5  
TO THE OFFICIAL PLAN  
FOR THE  
TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH**

**1. INTRODUCTION**

All of this part of the document entitled Part "B", consisting of the following text, constitutes Amendment No. 5 to the Official Plan for the Township of Ashfield-Colborne-Wawanosh.

**2. DETAILS OF THE AMENDMENT**

The Official Plan for the Township of Ashfield-Colborne-Wawanosh is hereby amended as follows:

- 2.1. Schedule B (Township of Ashfield-Colborne-Wawanosh Land Use Plan) is hereby amended by changing the land use designation on part of the subject property (Lot 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh) from Agriculture and Natural Environment to Extractive Resources, as shown on the attached maps.
- 2.2. Section 5.4 (Extractive Resources) is hereby amended to add the following special policy to the subject property (Lot 16 & 17, Maitland Concession, Colborne, Ward, Township of Ashfield-Colborne-Wawanosh):
  14. The following special policies apply additional requirements related to the mineral aggregate operation at Lot 16 & 17, Maitland Concession, Colborne, Ward, Township of Ashfield-Colborne-Wawanosh:
    1. Notwithstanding any policy of this plan to the contrary, the licensed pit at Lot 16 & 17, Maitland Concession, Colborne, Ward, Township of Ashfield-Colborne-Wawanosh will be required to be progressively rehabilitated to a woodlot. The Township will seek conditions under the Aggregate Resources Act to ensure the licensee is required to monitor rehabilitation results and demonstrate that woodland areas are being successfully rehabilitated before subsequent stages of woodland removal are permitted to proceed.
    2. The licensee will seek input from the Township of Ashfield-Colborne-Wawanosh and the Maitland Valley Conservation Authority in the development of a spills contingency plan. The Township of Ashfield-Colborne-Wawanosh will ensure extra care is employed in the spills contingency plan developed in accordance with the Aggregate Resources Act prescribed conditions. The Township will require that the spills contingency plan be developed in consultation with the Township and Maitland Valley Conservation Authority.

**PART "C"**  
**APPENDICES**

The appendices do not form part of Amendment No. 5, but are for information purposes only.

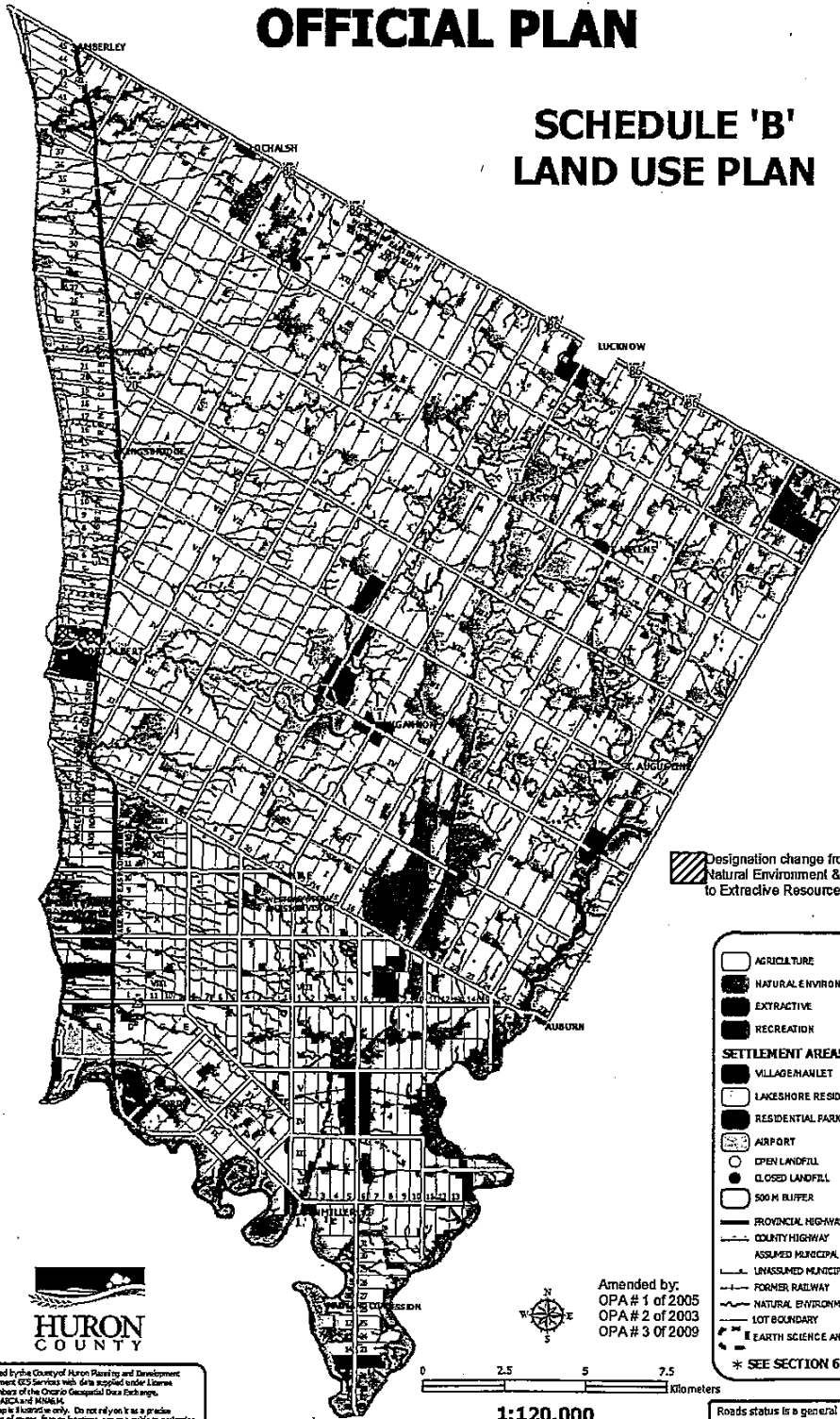
**1. Background**


The purpose of Official Plan Amendment #5 to the Township of Ashfield-Colborne-Wawanosh Official Plan is to allow the development of an aggregate operation on 22.2 hectares (54.9 acres) of the 27 hectare (66.7 acres) parcel of land at 80897 Sharpes Creek Line. The subject property is described as Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh and is currently designated Agriculture and Natural Environment in the Ashfield-Colborne-Wawanosh Official Plan. This application changes the land use designation from Agriculture and Natural Environment to Extractive Resources.




















This Official Plan Amendment would have the effect of permitting the subject property (Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh) to be developed for extractive resources.

# ASHFIELD-COLBORNE-WAWANOSH OFFICIAL PLAN

## SCHEDULE 'B' LAND USE PLAN



 Designation change from Natural Environment & Agriculture to Extractive Resources

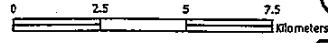
-  AGRICULTURE
-  NATURAL ENVIRONMENT
-  EXTRACTIVE
-  RECREATION
- SETTLEMENT AREAS**
-  VILLAGE HAMLET
-  LAKESHORE RESIDENTIAL
-  RESIDENTIAL PARK
-  AIRPORT
-  OPEN LANDFILL
-  CLOSED LANDFILL
-  500 M BUFFER
-  PROVINCIAL HIGHWAY
-  COUNTY HIGHWAY
-  ASSUMED MUNICIPAL ROAD
-  UNASSUMED MUNICIPAL ROAD
-  FORMER RAILWAY
-  NATURAL ENVIRONMENT (RIVER, CREEK)
-  LOT BOUNDARY
-  EARTH SCIENCE ANSI
- \* SEE SECTION 6.4.11



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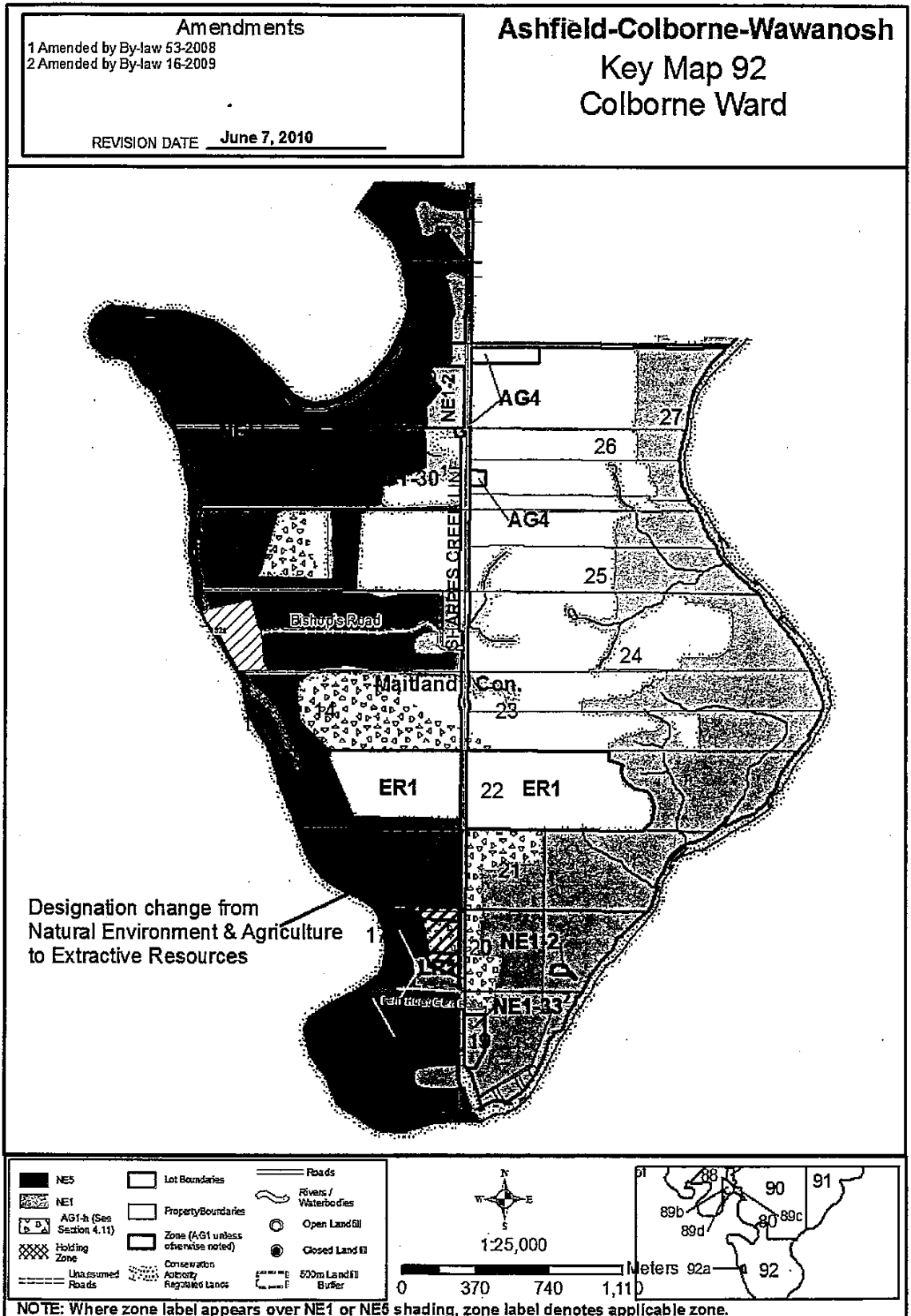


Amended by:  
OPA # 1 of 2005  
OPA # 2 of 2003  
OPA # 3 of 2009



1:120,000

Roads status is a general indication only. The status of individual roads must be verified by the municipality.





ATTACHMENT "2"

PL101197

CORPORATION OF THE  
TOWNSHIP OF ASHFIELD-COLBORNE-WAWANOSH  
BY-LAW - 2010

WHEREAS the Municipal Council of the Corporation of the Township of Ashfield-Colborne-Wawanosh considers it advisable to amend ZONING BY-LAW 32-2008, as amended;

NOW, THEREFORE, the Council of the Corporation of the Township of Ashfield-Colborne-Wawanosh ENACTS as follows:

1. This by-law shall apply to part of Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh.
2. By-law 32-2008 is hereby amended by changing from NE1, NE5 and AG1-h to ER1-3 the zone symbol of the lands so designated on the attached Schedule A.
3. Section 10.5, Special Zones, in By-law 32-2008 is hereby amended by adding the following section:  
  
10.5.3 ER1-3  
Notwithstanding the provisions of section 10.4.2 to the contrary, the minimum limit of extraction from County Road 31 (Sharpes Creek Line) shall be 10 metres and no extraction is permitted within 105 metres of the residences located west of the property. All other provisions of this by-law shall apply.
4. Key Map 92 of By-law 32-2008 is hereby amended and replaced by the attached Key Map 92, which is declared to be part of this by-law.
5. This by-law shall come into force pursuant to section 34(21) of the Planning Act, RSO 1990.

READ A FIRST TIME  
READ A SECOND TIME  
READ A THIRD TIME AND PASSED

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Ben Van Diepenbeek, Reeve

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Mark Becker, Clerk-Treasurer

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**SCHEDULE 1**  
**BY-LAW - 2010**

**Purpose and Effect:**

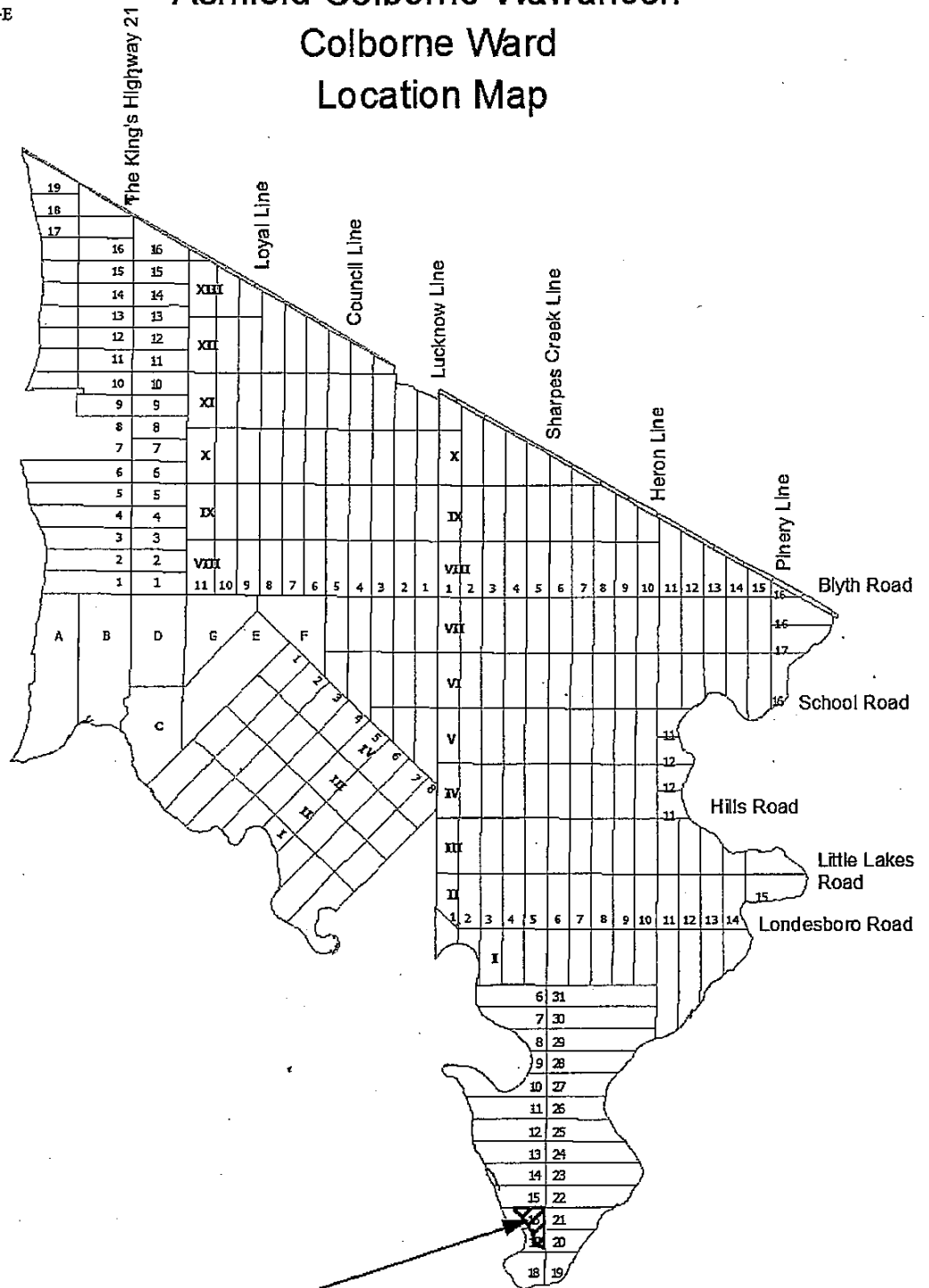
The purpose of this application is to allow the development of an aggregate operation on 22.2 hectares (54.9 acres) of the 27 hectare (66.7 acres) parcel of land at 80897 Sharpes Creek Line. The subject property is described as Lots 16 & 17, Maitland Concession, Colborne Ward, Township of Ashfield-Colborne-Wawanosh and is currently designated Agriculture and Natural Environment in the Ashfield-Colborne-Wawanosh Official Plan. This application changes the zoning on part of the subject property from General Agriculture-Holding (AG1-h), Natural Environment (NE1) and Natural Environment (NE5) to Extractive Resource Zone- Special Zones (ER1-3).

The special zone reduces the extraction setback from County Road 31 (Sharpes Creekline) from 30 metres to 10 metres and provides for a minimum setback for extraction of 105 metres from the residences to the west.

This By-law amends the Township of Ashfield-Colborne-Wawanosh Official Plan and Zoning By-law 32-2008. Key Maps showing the location of the lands to which this by-law applies are shown on the following pages.



# Ashfield-Colborne Wawanosh Colborne Ward Location Map




Area to which this By-law amendment applies



**Amendments**

1 Amended by By-law 53-2008

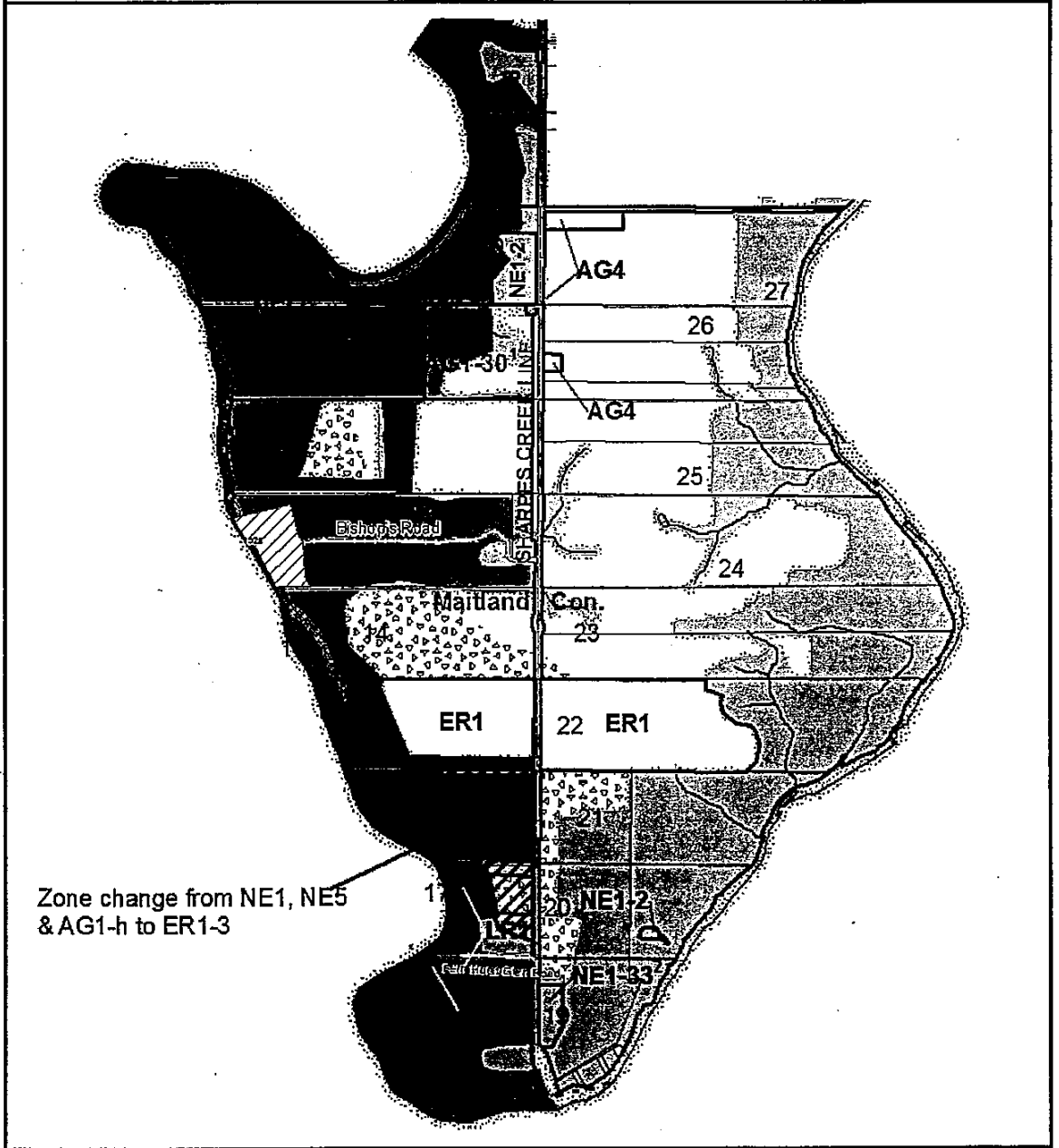
2 Amended by By-law 16-2009
















 Zone change from NE1(Natural Environment), NE5 (Natural Environment & AG1-h (General Agriculture-Holding to ER1-3 (Extractive Resources-Special Zones)


REVISION DATE June 7, 2010

**Ashfield-Colborne-Wawanosh**


**Key Map 92  
Colborne Ward**



 NE5	 Lot Boundaries	 Roads
 NE1	 Property Boundaries	 Rivers / Waterbodies
 AG1-h (See Section 4.11)	 Zone (AG1 unless otherwise noted)	 Open Land Fill
 Holding Zone	 Conservation Areas	 Closed Land Fill
 Unassumed Roads	 Regulated Lands	 500m Landfill Buffer



1:25,000



**NOTE:** Where zone label appears over NE1 or NE5 shading, zone label denotes applicable zone.