Aggregate Pits and Quarries:

Adverse Effects and Negative Impacts on Human Health and the Environment

Gravel Watch Ontario

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Forward:

The licensing and operation of aggregate pits and quarries within Ontario's neighbourhoods and communities have caused, and have the potential to cause, "**adverse effects** " and "**negative impacts**" on citizens, properties, the natural environment and the environment.

This guide provides a review of applicable legislation and contains information on how citizens can protect their health, safety, quality of life and well-being, their properties, the natural environment and the environment from the adverse effects and negative impacts of pits and quarries. Citizens are strongly advised to use the terms "**adverse effects**" and "**negative impacts**" when expressing their concerns, questions and objections about a proposed pit or quarry application (official plan, zoning by-law and/or licence) or a pit or quarry currently in operation.

Legislation requires that the operation of a pit or a quarry shall not cause any "**adverse effects**" or "**negative impacts**" on the health, safety, quality of life and well-being of citizens, properties, the natural environment and the environment. It is the legal obligation of government ministries, boards, agencies and municipalities, in reviewing pit and quarry applications and making decisions, to require and ensure that there will be no "**adverse effects**" and "**negative impacts**" on the health, safety, quality of life and well-being of citizens, properties, the natural environment and the environment.

The Gravel Watch Ontario guide "***Aggregate Pits and Quarries: Adverse Effects and Negative Impacts on Human Health and the Environment***" document is for general purposes only. The comments and suggestions provided are made in the public interest without prejudice or malice and do not, in any way, constitute legal advice or expert opinion.

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A. Introduction:

The Thomson-Gale Environmental Encyclopedia (2003) defines our environment as "*the physical, chemical, and biological world that envelops us, as well as the complex of social and cultural conditions affecting an individual or community*."

The licensing and operation of aggregate pits and quarries within Ontario's neighbourhoods and communities have caused, and have the potential to cause, **"adverse effects"** and **"negative impacts"on** the natural environment, the environment, properties and the health, safety, quality of life and well-being of citizens.

Legislative statutes (laws), regulations and policies are in place to protect the health, safety, quality of life and well-being of citizens, properties, the natural environment and the environment. In Ontario law, "**natural environment**" means "*air, land and water, or any combination thereof, of the Province of Ontario*" and "**environment**" means "*the air, land, water, plant life, animal life and ecological systems of Ontario*."

A review of Ontario's legislative statutes, regulations and policies indicates that provisions that apply to the environmental protection of citizens, properties, the natural environment and the environment use the language of **"adverse effects"** and/or **"negative impacts."**

" Adverse Effect"

The definition of **"adverse effect"** is found in the Environmental Protection Act (EPA) and the Provincial Policy Statement (PPS) issued under Section 3 on the Planning Act. The definition of "**adverse effect**" is significant and far-reaching in its language, intent and the protection it provides for citizens, properties, the natural environment and the environment.

- **Environmental Protection Act (EPA): Section 1. Interpretation Provincial Policy Statement (PPS): Section 6.0 Definitions**
  "adverse effect" means one or more of,
  (a) impairment of the quality of the natural environment for any use that can be made of it;
  (b) injury or damage to property or to plant or animal life;
  (c) harm or material discomfort to any person;
  (d) an adverse effect on the health of any person;
  (e) impairment of the safety of any person;
  (f) rendering any property or plant or animal life unfit for human use;
  (g) loss of enjoyment of normal use of property;
  (h) interference with the normal conduct of business.

The Environmental Protection Act also refers to an "**adverse effect**" in the definition of a contaminant. The definition specifically identifies contaminants that when discharged into the natural environment can cause, or may cause, an adverse effect on the health, safety, quality of life and well-being of citizens, properties, plant life, animal life, etc.

- **Environmental Protection Act (EPA):**
  Section 1. Interpretation
  "contaminant" means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;

The Health Protection and Promotion Act refers to an "**adverse effect**" on human health in the definition of a health hazard.

- **Health Protection and Promotion Act**:
  Section 1: Interpretation:
  "health hazard" means,
  (a) a condition of a premises,
  (b) a substance, thing, plant, or animal other than man, or
  (c) a solid, liquid, gas or combination of any of them,
  that has or that is likely to have an adverse effect on the health of any person;

"Negative Impacts"

The definition of **"negative impacts"** is found in the Provincial Policy Statement (PPS) issued under Section 3 on the Planning Act . It specifically refers to the degradation of surface water and ground water and negative impacts on fish habitat and natural heritage features and areas.

- **Provincial Policy Statement (PPS)**
  Section 6.0 Definitions
  "Negative Impacts" means
  (a) in regard to Policy 2.2 Water, 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.

Aggregate Pits and Quarries: “Adverse Effects and ” Negative Impacts” on Citizens, Properties, the Natural Environment and the Environment

Aggregate pits and quarries licensed by the Province and currently operating in Ontario can adversely affect and negatively impact the natural environment (air, land and water), the environment (air, land, water, plant life, animal life, ecological systems), properties and the health, safety, quality of life and well-being of the people who live and work in the surrounding areas.

Water resources in communities, so vital to human life and living things, have been adversely affected and negatively impacted by pit and quarry operations, resulting in irrevocable changes to water systems and flows and degradation to the quality and quantity of water.

The features and functions of natural heritage resources are particularly susceptible to aggregate extraction activities. Wetlands, watercourses, woodlands, vegetation, geological formations, moraines, fish and wildlife species and wildlife habitat have been destroyed and/or degraded. The boundaries of previously designated Environmentally Sensitive Areas (ESAs) and Provincially, Regionally and Locally Significant Areas of Natural and Scientific Interest (ANSIs) have been changed to accommodate pit and quarry operations.

Prime agricultural lands and prime agricultural areas have been taken out of food production permanently. Extractive lands which have been rehabilitated often do not retain the same soil and subsoil quality, drainage conditions and agricultural potential as was present prior to extraction.

Citizens have been negligently exposed to harmful contaminates discharged to the environment, such as loud noise and vibration, airborne particulate matter (e.g. silica, mica), and toxic diesel emissions from equipment and vehicles which can adversely affect human health and well-being. There has not as yet been any government study and assessment of the cumulative effects on air quality caused by pit and quarry operations.

Neighbourhoods and communities have been adversely affected and negatively impacted by truck traffic, accidents, noise and poor air quality. Families and homeowners have lost the enjoyment and normal use of their own properties.

It is essential that citizens use the terms “**adverse effects**” and “**negative impacts**” when expressing their concerns, questions and objections about a proposed aggregate pit or quarry application (official plan, zoning by-law and/or licence) or a pit or quarry currently in operation.

B. ENVIRONMENTAL PROTECTION AND THE LAW

Ontario’s planning and environmental laws contain provisions that not only protect the natural environment and the environment, but also specifically protect the health, safety, quality of life and well-being of citizens and their properties. Ontario laws and their regulations can be accessed at www.e-laws.gov.on.ca

Every citizen in Ontario is entitled by law to breathe clean air, not to be exposed to loud noise and excessive vibration, to have access to clean and plentiful water, and to have the enjoyment and normal use of their property without harm and/or material discomfort. These fundamental legal entitlements cannot be ignored, compromised or denied by elected officials, staff and/or representatives of provincial and local municipal government bodies, agencies and or boards.

1. The Environmental Bill of Rights Act

The Environmental Bill of Rights Act was passed in 1993. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

The Act established the Office of the Environmental Commissioner of Ontario at www.eco.on.ca and the Environmental Registry, a website that provides information to the public about the environment www.ebr.gov.ca .

The Environmental Bill of Rights Act provides the means by which the citizens of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario; increased accountability of the Government of Ontario for its environmental decision-making; access to the courts by citizens of Ontario for the protection of the environment; and enhanced protection for employees who take action in respect of environmental harm.

The Ontario Environmental Bill of Rights (EBR) was proclaimed in February, 1994. The founding principles of the EBR are stated in the preamble of the Environmental Bill of Rights Act:

- *The people of Ontario recognize the inherent value of the natural environment.*
- *The people of Ontario have a right to a healthful environment.*
- *The people of Ontario have as a common goal, the protection, conservation and restoration of the natural environment for the benefit of the present and future generations.*
  While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.
  Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows: ….

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

It is advised that citizens refer to specific sections of the Environmental Bill of Rights and use the language of the Act when expressing their concerns, questions and objections about a proposed aggregate pit or quarry or a pit or quarry currently in operation.

- **Environmental Bill of Rights Act**
  Section 2. Purposes of Act
  (1) The purposes of this Act are,
  (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
  (b) to provide sustainability of the environment by the means provided in this Act; and
  (c) to protect the right to a healthful environment by the means provided in this Act.
  (2) The purposes set out in subsection (1) include the following:
  1.The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
  2. The protection and conservation of biological, ecological and genetic diversity.
  3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.
  4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
  5. The identification, protection and conservation of ecologically sensitive areas or processes.
  (3) In order to fulfill the purposes set out in subsections(1) and (2), this Act provides,
  (a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
  (b) increased accountability of the Government of Ontario for its environmental decision-making;
  (c) increased access to the courts by residents of Ontario for the protection of the environment; and
  (d) enhanced protection for employees who take action in respect of environmental harm.

Part II of the Environmental Bill of Rights Act applies to ministries as prescribed and sets out minimum levels of public participation that must be made before the Government of Ontario makes decisions on certain kinds of environmentally significant proposals for policies, Acts, regulations and instruments. An instrument is any document of legal effect issued under an Act and includes a permit, licence, approval, authorization, direction or order issued under an Act. A pit or quarry licence application is considered an instrument and must be posted on the EBR Registry by the Ministry of Natural Resources for public notice.

Approval by the Minister of Municipal Affairs and Housing of an Official Plan Amendment application under Section 21 of the Planning Act is considered a Class I proposal for an instrument as established under Section 10.2 of Ontario Regulation 681/94 issued under the Environmental Bill of Rights Act. It appears that some municipal government bodies are not routinely posting official plan amendment applications on the EBR Registry for public notice.

2. The Environmental Protection Act (EPA)

The Environmental Protection Act (EPA) deals, in part, with the discharge of contaminates into the natural environment (air, land and water) and which causes, or may cause, an “adverse effect” on the natural environment, the environment, and/or the health, safety, quality of life and well-being of citizens and their properties. The Act can be accessed at www.e-laws.gov.on.ca

Aggregate pits and quarries discharge contaminates such as dust and particulate matter, noise, vibration, and toxic gas emissions from diesel equipment and trucks into the natural environment. It is advised that citizens refer to specific sections of the Environmental Protection Act and use the language of the Act when expressing their concerns, questions and objections about a proposed aggregate pit or quarry or a pit or quarry currently in operation. The following sections of the Act are particularly applicable and should be referenced directly to ensure that protection of the natural environment and environmental health are priority issues when an aggregate pit or quarry operation is being considered.

- **Environmental Protection Act:**
  Section 1: Interpretation
  “natural environment” means the air, land and water, or any combination or part thereof, of the Province of Ontario;
- **Environmental Protection Act**:
  Section 1: Interpretation
  “contaminant” means any solid, liquid, gas, odour, heat, sound, vibration, radiation or combination of any of them resulting directly or indirectly from human activities that causes or may cause an adverse effect;
- **Environmental Protection Act:**
  Section 1: Interpretation
  “adverse effect” means one or more of,
  (a) impairment of the quality of the natural environment for any use that can be made of it;
  (b) injury or damage to property or to plant or animal life;
  (c) harm or material discomfort to any person;
  (d) an adverse effect on the health of any person;
  (e) impairment of the safety of any person;
  (f) rendering any property or plant or animal life unfit for human use;
  (g) loss of enjoyment of normal use of property; and
  (h) interference with the normal conduct of business.
- **Environmental Protection Act:**
  Section 1: Interpretation
  “person” includes a municipality as defined in this subsection;
- **Environmental Protection Act:**
  Section 1: Interpretation
  “municipality” means a local board, as defined in the Municipal Act, and a board, commission or other local authority exercising any power with respect to municipal affairs or purposes, including school purposes, in an unorganized township or surveyed territory.

AGGREGATE PITS AND QUARRIES: “ADVERSE EFFECTS” & “NEGATIVE IMPACTS”

- **Environmental Protection Act:**
  Section 1: Interpretation
  “*Minister*” means the Minister of the Environment;
- **Environmental Protection Act:**
  Section 1:Interpretation
  “person responsible” means the owner, or the person in occupation or having the charge, management or control of a source of contaminant;
- **Environmental Protection Act:**
  Section 3.1: Purpose of the Act
  The purpose of this Act is to provide for the protection of the natural environment.
- **Environmental Protection Act:**
  Section 6.(1) Prohibition, Contamination Generally
  No person shall discharge into the natural environment any contaminant, and no person responsible for a source of a contaminant shall permit the discharge into the natural environment, of any contaminate from the source of the contaminant, in an amount, concentration or level in excess of that prescribed by the regulations.
- **Environmental Protection Act:**
  Section 14.(1) Prohibition, Discharge of Contaminant
  Subject to subsection (2) but despite any other provision of this Act or the regulations, a person shall not discharge a contaminant or cause or permit the discharge of a contaminant into the natural environment, if the discharge causes or may cause an adverse effect.
- **Environmental Protection Act:**
  Section 179.(1) Conflict With Other Legislation
  Where a conflict appears between any provision of this Act or the regulations and any other Act or regulation in a matter related to the natural environment or a matter specifically dealt with in this Act or the regulations, the provision of this Act or the regulations shall prevail.

At present time, it falls on citizens to report contaminant discharges to the MOE and the MNR after pits and quarries have been licensed; however, in most cases, little, if any, investigation is done or effective action taken by the Province (e.g. MNR, MOE, MMAH), government agencies (e.g. OMB, conservation authorities) and municipalities.

Contaminant discharges into the natural environment and the environment are often not regularly monitored or measured. The requirements of monitoring programs for pits and quarries are usually so minimal that they fail to state how adverse effects and negative impacts caused by these discharges to the natural environment and the environment will be reported and appropriately addressed. There are no specific guidelines in place to monitor contaminants discharged from pits and quarries and to assess the adverse effects and negative impacts on the health, safety, quality of life and well-being of citizens and their properties.

Using the sections of the Environmental Protection Act listed above, citizens have to ask the Province of Ontario (e.g. Ministry of Natural Resources, Ministry of Municipal Affairs and Housing, Ministry of the Environment) and their local

municipalities how and when discharges of contaminants from proposed pits and quarries are to be measured and how it will be determined if the discharges have actually caused adverse effects or may cause adverse effects on the natural environment, the environment and the health, safety, quality of life and well-being of citizens and their properties.

Citizens must also be informed as to what action(s) will be taken to address the discharge of contaminates. There has to be a plan to determine the short and the long term adverse effects and negative impacts on the environment and human health. Penalties, compensation and enforcement must be mandatory. Citizens have to be assured that actions will be taken when contaminates are discharged.

3. The Planning Act and the Provincial Policy Statement (PPS)

The Planning Act and the Provincial Policy Statement (PPS) issued under Section 3 of the Act establish a land use planning system for the development of lands and growth of communities in Ontario. Specific sections of the Act and the PPS refer directly or indirectly to the protection of the natural environment, the environment, and/or the health, safety, quality of life and well-being of citizens and their properties. The Planning Act and its Regulations can be accessed at www.e-laws.gov.on.ca
The Provincial Policy Statement can be accessed at www.mah.gov.on.ca

The making, establishment or operation of a pit or quarry is considered a use of land under the Planning Act. It is advised that citizens refer to specific sections of the Planning Act and the Provincial Policy Statement (PPS) and use the language of the Act and the PPS when expressing their concerns, questions and objections about a proposed aggregate pit or quarry application (official plan, zoning by-law and/or licence) or a pit or quarry currently in operation.

3.1 Planning Act: Purposes of the Act and Matters of Provincial Interest:

Government ministries, agencies, boards and municipalities must demonstrate compliance with the purposes of the Planning Act (Section 1.1) and "*matters of provincial interest*" (Section 2) when considering changes in land use (e.g. official plan amendment, zoning by-law amendment) to establish a pit or quarry.

The purposes of the Planning Act and matters of provincial interest are often overlooked and not given the attention they deserve. Citizens are advised to reference the purposes and matters of provincial interest and to remind planning authorities that there is a legal expectation and obligation that planning practices must demonstrate compliance with environmental, health and safety provisions in Section 1.1 and Section 2 of the Planning Act.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

- **Planning Act:**
  Section 1.(1) Interpretation
  In this Act,
  "Minister" means the Minister of Municipal Affairs and Housing;
- **Planning Act:**
  Section 1.(1) Interpretation
  In this Act,
  "Municipal Board" means the Ontario Municipal Board;
- **Planning Act:**
  Section 1.1 Purposes
  The purposes of this Act are,
  (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
  (b) to provide for a land use planning system led by provincial policy (PPS);
  (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
  (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
  (e) to encourage co-operation and co-ordination among various interests;
  (f) to recognize the decision-making authority and accountability of municipal councils in planning.
- **Planning Act:**
  Section 2. Provincial Interest
  The minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,
  (a) the protection of ecological systems, including natural areas, features and functions;
  (b) the protection of agricultural resources of the Province;
  (c) the conservation and management of natural resources of the Province;
  (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
  (e) the supply, efficient use and conservation of energy and water;
  (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
  (g) the minimization of waste;
  (h) the orderly development of safe and healthy communities;
  (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
  (i) the adequate provision and distribution of educational, health, social cultural and recreational facilities;
  (j) the adequate provision of a full range of housing;
  (k) the adequate provision of employment opportunities;
  (l) the protection of financial and economic well-being of the Province and its municipalities;
  (m) the co-ordination of planning activities of public bodies;
  (n) the resolution of planning conflicts involving public and private interests;
  (o) the protection of public health and safety
  (p) the appropriate location of growth and development;
  (q) the promotion of development that is designed to be sustainable, to support public transit and to be orientated to pedestrians.

3.2 Planning Act: Official Plans and Amendments to the Official Plan

Most municipalities have an Official Plan approved by the Minister of Municipal Affairs and Housing for planning and development purposes in their jurisdictions as required under Section 16 of the Planning Act and Ontario Regulation 543/06 "*Official Plans and Plan Amendments*" issued under the Planning Act. The Regulation can be accessed at www.e-laws.gov.on.ca by using the circle/cross icon preceding the Planning Act.

- **Planning Act:**
  Section 16.(1) Contents of Official Plans
  An official plan
  (a) shall contain goals, objectives and policies established primarily to manage and direct physical change and the effects on the social, economic and natural environment of the municipality or part of it, or an area that is without municipal organization; and
  (b) such other matters as may be prescribed.
- **Planning Act:**
  Section 21.(1) Amendment or Repeal of Plan
  Except as hereinafter provided, the provisions of this Act, with respect to an official plan apply, with necessary modifications, to amendments thereto or the repeal thereof, and the council of a municipality that is within a planning area may initiate an amendment to or the repeal of any official plan that applies to the municipality, and section 17 applies to any such amendment or repeal.
- **Planning Act:**
  Ontario Regulation 543/06: Official Plans and Plan Amendments
  Section 10: Information and Material - Request for Amendment to Official Plan
  The information and material to be provided by an applicant under subsection 22(4) of the Act are set out Schedule 1.
- **Planning Act:**
  Ontario Regulation 543/06: Official Plans and Plan Amendments
  Official Plans and Plan Amendments
  Schedule 1: Information and Material To Be Provided With A Request Under Subsection 22 (4) of the Planning Act
  24. Whether the requested amendment is consistent with the policy statements issued under subsection 3(1) of the Act.

The making, establishment and operation of a pit or quarry usually requires an amendment to the Official Plan. Citizens are advised to review the Official Plan (OP) for their local municipality (available at the local municipal township office, county office, regional office or online) to identify provisions that are in place to protect the natural environment, the environment, and the health, safety and quality of life of citizens and their properties.

Some municipalities use the designation "*Mineral Aggregate Overlay*" in their official plans to identify large areas of land that have potential aggregate resources. It must be understood that extraction of aggregate on these lands is not a given as various factors (e.g. environmental sensitivity, residential land use,

prime agricultural lands and areas) may prohibit the removal of aggregate.

Citizens are advised to find out if the request for the amendment submitted to the municipality contains a statement that the requested amendment is consistent with **all policy statements** issued under Section 3 of the Planning Act and required under Schedule 1- Section 24 of Ontario Regulation 543/06 "*Official Plans and Plan Amendments*" issued under the Planning Act.

Section 3. (5) of the Planning Act requires that a decision in respect to an official plan amendment must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(5) Policy Statements and Provincial Plans
  A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Section 3. (6) of the Planning Act requires that any comments, submissions or advice affecting a planning matter must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(6) Policy Statements and Provincial Plans
  Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister of ministry, board, commission or agency of the government,
  (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  (b) shall conform with provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Citizens are advised to request and review all comments, submissions or advice that have been provided by municipal planning staff, planning boards, ministry staff and other government agencies for an official plan amendment application and insist that those involved in the decision-making process have demonstrated compliance with Sections 3.(5) and 3.(6) of the Planning Act.

Citizens should refer to specific sections of the Official Plan and use the language of the Official Plan when expressing their concerns, questions and objections about an official plan amendment application for a proposed aggregate pit or quarry or a pit or quarry currently in operation.

3.3 Planning Act: Zoning By-laws and Zoning by-law Amendments

Municipal councils pass zoning by-laws for planning and development purposes in their jurisdictions as identified under Section 34 of the Planning Act and Ontario Regulation 545/06 "*Zoning By-laws, Holding By-laws, And Interim Control By-laws*" issued under the Planning Act. The Regulation can be accessed at www.e-laws.gov.on.ca by using the circle/cross icon preceding the Planning Act.

Zoning by-laws identify the uses that can be made of specific lands in a municipality. The making, establishment and operation of a pit or quarry will require an amendment to the local municipality's zoning-bylaw for the subject lands.

- **Planning Act:**
  Section 34. (1) Zoning By-laws
  Zoning by-laws may be passed by the councils of local municipalities:
  Subsection 3.1: Contaminated Lands or Sensitive Areas
  For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures on land that is contaminated, that is a sensitive ground water recharge area or head-water area or on land that contains a sensitive aquifer.
- **Planning Act:**
  Section 34. (1) Zoning By-laws
  Zoning by-laws may be passed by the councils of local municipalities:
  Subsection *3.2: Natural Features and Areas*
  For prohibiting any use of land and the erecting, locating or using of any class or classes of buildings or structures within any defined area or areas, i. that is a significant wildlife habitat, wetland, woodland, ravine, valley or area of natural and scientific interest,
  ii. that is a significant corridor or shoreline of a lake, river or stream, or
  iii. that is a significant natural corridor, feature or area.
- **Planning Act:**
  Section 34. (2) Pits and Quarries
  The making, establishment or operation of a pit or quarry shall be deemed to be a use of land for the purposes of paragraph 1 of subsection (1).
- **Planning Act**:
  Section 27. (1) Amendments to Conform to Official Plan
  The council of a lower-tier municipality shall amend every official plan and every by-law passed under Section 34, or a predecessor of it, to conform with a plan that comes into effect as the official plan of the upper-tier municipality.
- **Planning Act**
  Ontario Regulation 545/06: Zoning By-laws, Holding By-laws and Interim Control By-laws
  Section 2: Information and Material—Application to Amend Zoning By-law
  The information and material to be provided by an applicant under subsection 34 (10.1) of the Act are set out in Schedule 1.

- **Planning Act**
  Ontario Regulation 545/06: Zoning By-laws, Holding By-laws and Interim Control By-laws
  Schedule 1: Information and Material To Be Provided In An Application Under Subsection 34 (10.1) of the Planning Act
  29. Whether the application for the amendment to the zoning by-law is consistent with the policy statements issued under subsection 3(1) of the Act.

Citizens are advised to find out if the application for the amendment to the zoning by-law for the subject lands contains a statement that the requested amendment is consistent with **all policy statements** issued under Section 3 of the Planning Act and required under Schedule 1- Section 29 of Ontario Regulation 545/06 “*Zoning By-laws, Holding By-laws, And Interim Control By-laws*” issued under the Planning Act.

Section 3. (5) of the Planning Act requires that a decision in respect to a zoning by-law amendment must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(5) Policy Statements and Provincial Plans
  A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Section 3. (6) of the Planning Act requires that any comments, submissions or advice affecting a planning matter must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(6) Policy Statements and Provincial Plans
  Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister of ministry, board, commission or agency of the government,
  (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  (b) shall conform with provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Citizens are advised to contact their local municipal offices to inquire as to the current zoning for the subject lands and surrounding lands. Inquiries should be made to determine what zoning by-laws are in place to protect the natural environment, the environment, and the health, safety, quality of life and well-being of citizens and their properties within the entire municipality.

Citizens are also advised to request and review all comments, submissions or advice that have been provided by municipal planning staff, planning boards, ministry staff and other government agencies for a zoning by-law amendment application and insist that those involved in the decision-making process have demonstrated compliance with Sections 3.(5) and 3.(6) of the Planning Act.

Citizens should refer to specific zoning by-laws and use the language of the zoning by-laws when expressing their concerns, questions and objections about a zoning by-law amendment application for a proposed aggregate pit or quarry or a pit or quarry currently in operation.

3.4 Precedence of the Planning Act Over the Aggregate Resources Act:

It is important to note that Section 6.(2) of the Planning Act requires that the Ministry of Natural Resources must consult with the municipality and have regard for established planning policies of the municipality when processing and before issuing a licence or permit for an aggregate pit or quarry operation.

- **Planning Act**:
  Section 6.(1) Consultation
  In this section, "ministry" means any ministry or secretariat of the Government of Ontario and includes a board, commission or agency of the Government.
  Section 6.(2) Planning Policies
  *A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality, shall consult with, and **have regard for**, the established planning policies of the municipality*

When expressing concerns, questions and objections about a proposed aggregate pit or quarry or a pit or quarry currently in operation, citizens are advised to insist that the MNR "*have regard for*" provisions in municipal official plans and zoning by-laws that protect the natural environment, the environment, and the health, safety, quality of life and well-being of citizens and properties.

It would appear that the Aggregate Resources Act and its Regulations and Provincial Standards do not take precedence over provisions in the Planning Act and the Provincial Policy Statement.

- **Planning Act:**
  Section 71 Conflict
  In the event of conflict between the provisions of this and any other general or special Act, the provisions of this Act prevail.

It must be noted that Section 66. (1) of the Aggregate Resources Act has been used by the Ministry of Natural Resources to try to override municipal by-laws

and official plan policies established under the Planning Act and the Provincial Policy Statement; however, there is a limiting clause in Section 66. (1) that curtails the extent to which the ARA applies in overriding municipal by-laws and official plan policies. Further discussion and explanation is provided later in this guide. See Table of Contents and the section on the Aggregate Resources Act.

3.5 Planning Act: Provincial Policy Statement

Under Section 3 of the Planning Act, the Province of Ontario can issue "*policy statements"* on matters related to municipal planning that are considered of provincial interest. The current Provincial Policy Statement (PPS) contains policies that came into effect on March 1, 2005 and legally requires that decisions affecting planning matters "*shall be consistent with the policy statements*" and "*shall conform with provincial plans*."

- **Planning Act:**
  Section 3. (1) Policy Statements
  The Minister, or the Minister together with any other minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant governor in council on matters relating to municipal planning that in the opinion of the minister are of provincial interest.
- **Planning Act**:
  Section 3.(5) Policy Statements and Provincial Plans
  A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter,
  (a) ***shall be consistent with the policy statements*** *issued under subsection (1) that are in effect on the date of the decision; and*
  (b) ***shall conform with the provincial plans*** *that are in effect on that date, or* ***shall not conflict with them****, as the case may be.*
- **Planning Act**:
  Section 3.(6) Policy Statements and Provincial Plans
  Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister of ministry, board, commission or agency of the government,
  (a) ***shall be consistent with the policy statements*** *issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and*
  (b) ***shall conform with provincial plans*** *that are in effect on that date, or* ***shall not conflict with them****, as the case may be.*

The Provincial Policy Statement is an extremely important planning document established by law that contains clear and far-reaching provisions required of ministries, municipalities, government agencies and boards to protect the natural environment, the environment, the health, safety and quality of life of citizens and their properties

AGGREGATE PITS AND QUARRIES: “ADVERSE EFFECTS” & “NEGATIVE IMPACTS”

The Provincial Policy Statement (PPS) provides policy direction and regulation on matters of provincial interest related to land use planning and development. As stated in its Preamble, the PPS supports the provincial goal to enhance the quality of life for the citizens of Ontario.

Section 6 of the PPS contains an excellent list of definitions that should be used for reference purposes. The following are just some of the sections in the PPS that relate to the natural environment, the environment, and the health, safety, quality of life and well-being of citizens and their properties.

- **Provincial Policy Statement:**
  Section 1.1.1 Managing and Direction Land Use to Achieve Efficient Development and Land Use Patterns
  Healthy, liveable and safe communities are sustained by:
  (c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;
- **Provincial Policy Statement:**
  Section 1.2.1 Coordination
  A coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities, or which cross lower, single and/or upper-tier municipal boundaries, including:
  (a) managing and/or promoting growth and development;
  (b) managing natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources;
  (*d) ecosystem, shoreline and watershed related issues;*
  (e) natural and human-made hazards; and…
- **Provincial Policy Statement:**
  Section 2.1.1 Natural Heritage
  Natural features and areas shall be protected for the long term.
- **Provincial Policy Statement:**
  Section 2.1.2 Natural Heritage Resources
  The diversity and connectivity of natural features in an area, and the long- term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.
- **Provincial Policy Statement:**
  Section 2.1.3 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant habitat of endangered species and threatened species;
  (b) significant wetlands in Ecoregions 5E, 6E and 7E-1; and
  (c) significant coastal wetlands.
- **Provincial Policy Statement:**
  Section 1.7.1 Long-Term Economic Prosperity
  Long-term prosperity should be supported by:
  (e) planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities)
  (Continued)

- **Provincial Policy Statement:**
  Section 1.7.1 Long-Term Economic Prosperity (Continued)
  and sensitive land uses are appropriately designed, buffered and/or separated from each other ***to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety;***
  (g) providing the sustainability of the agri-food sector by protecting agricultural resources and minimizing land use conflicts;
- **Provincial Policy Statement:**
  Section 2.1.1 Natural Heritage Resources
  Natural features and areas shall be protected for the long term.
- **Provincial Policy Statement:**
  Section 2.1.2 Natural Heritage Resources
  The diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.
- **Provincial Policy Statement:**
  Section 2.1.3 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant habitat of endangered species and threatened species;
  (b) significant wetlands in Ecoregions 5E, 6E and 7E1; and
  (c) significant coastal wetlands.
- **Provincial Policy Statement:**
  Section 2.1.4 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant wetlands in the Canadian shield north of Ecoregions 5E, 6E and 7E-1;
  (b) significant woodlands south and east of the Canadian Shield-2;
  (c) significant valleylands south and east of the Canadian Shield-2;
  (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.
- **Provincial Policy Statement:**
  Section 2.1.5 Natural Heritage Resources
  Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements.
- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.
- **Provincial Policy Statement:**
  Section 2.2.1 Water Resources
  Planning authorities shall protect, improve or restore the quality and quantity of water by:
  (a) using the watershed as the ecologically meaningful scale for planning;
  (b) minimizing potential negative impacts, including cross-jurisdictional and cross-watershed impacts;
  (c) identifying surface water features, ground water features, hydrologic functions and natural heritage features and areas which are necessary for the ecological and
  (Continued)

- **Provincial Policy Statement:**
  Section 2.2.1 Water Resources (Continued)
  hydrological integrity of the watershed;
  (d) implementing necessary restrictions on development and site alteration to:
  1. protect all municipal drinking water supplies and designated vulnerable areas; and
  2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;
  (e) maintaining linkages and related functions among surface water features, ground water features, hydrologic functions and natural heritage features and areas;
  (f) promoting efficient and sustainable use of water resources, including practices for water conservation and sustaining water quality; and
  (g) ensuring stormwater management practices minimize stormwater volumes and contaminant loads, and maintain or increase the extent of vegetative and pervious surfaces.
- **Provincial Policy Statement:**
  Section 2.2.2 Water Resources
  Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.
  Mitigative measures and/or alternative development approaches may be required in order to protect, improve or restore sensitive water features, sensitive ground water features, and their hydrological functions.
- **Provincial Policy Statement:**
  Section 2.3.1 Agriculture Resources
  Prime agricultural areas shall be protected for long-term use for agriculture.
  Prime agricultural areas are areas where prime agricultural lands predominate. Specialty crop areas shall be given the highest priority for protection, followed by Classes 1, 2, and 3 soils, in this order of priority.
- **Provincial Policy Statement:**
  Section 2.5.2.2 Mineral Aggregate Resources
  Extraction shall be undertaken in a manner which minimizes social and environmental impacts.
- **Provincial Policy Statement:**
  Section 2.5.3.1 Mineral Aggregate Resources
  Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, and to recognize the interim nature of extraction. Final rehabilitation shall take surrounding land use and approved land use designations into consideration.
- **Provincial Policy Statement:**
  Section 2.5.4.1 Mineral Aggregate Resources
  ***In prime agricultural areas**, on **prime agricultural land**, extraction of mineral aggregate resources is permitted, as an **interim use** provided that rehabilitation of the site will be carried out so that substantially the same areas and same average soil; quality for agriculture are restored.*
  On these prime agricultural lands, complete agricultural rehabilitation is not required if:
  (a) there is a substantial quantity of mineral aggregate resources below the water table warranting extraction, or the depth of planned extraction in a quarry makes restoration of pre-extraction agricultural capability unfeasible;
  (b) other alternatives have been considered by the applicant and found unsuitable. The consideration of other alternatives shall include resources in areas of Canada Land Inventory Class 4 to 7 soils, resources on lands identified as designated growth areas,

- **Provincial Policy Statement:**
  Section 2.5.4.1 Mineral Aggregate Resources (Continued)
  and resources on prime agricultural lands where rehabilitation is feasible. Where no other alternatives are found, prime agricultural lands shall be protected in this order of priority: specialty crop areas, Canada Land Inventory Classes 1, 2 and 3; and
  (c) agricultural rehabilitation in remaining areas is maximized.
- **Provincial Policy Statement:**
  Section 2.5.5.1 Mineral Aggregate Resources
  Wayside pits and quarries, portable asphalt plants and portable concrete plants used on public authority contracts shall be permitted, without the need for an official plan amendment, rezoning, or development permit under the Planning Act in all areas, except those areas of existing development or particular environmental sensitivity which have been determined to be incompatible with extraction and associated activities.
- **Provincial Policy Statement:**
  Section 4.7 Implementation and Interpretation
  A wide range of legislation and regulations may apply to decisions with respect to Planning Act applications. In some cases, a Planning Act proposal may also require approval under other legislation or regulation.
- **Provincial Policy Statement:**
  Section 4.10 Implementation and Interpretation
  The Province, in consultation with municipalities, other public bodies and stakeholders shall identify performance indicators for measuring the effectiveness of some or all of the policies. The Province shall monitor their implementation, including reviewing performance indicators concurrent with any review of this Provincial Policy Statement.
- **Provincial Policy Statement:**
  Section 4.11 Implementation and Interpretation
  Municipalities are encouraged to establish performance indicators to monitor the implementation of the policies in their official plans.

The need for “*performance indicators*” as set out in Section 4.10 and Section 4.11 of the Provincial Policy Statement (see above) for measuring, monitoring and reviewing the effectiveness of the policies that apply to the making, establishment and operation of a pit or quarry is crucial and their implementation is long overdue.

Citizens are advised to insist that the Ministry of Natural Resources, the Ministry of the Environment, the Ministry of Municipal Affairs and Housing and their local municipalities identify tangible and measurable performance indicators for a proposed aggregate pit or quarry or for a pit or quarry currently in operation that shall be put in place to protect the health, safety, quality of life and well-being of citizens and their properties (e.g. noise, dust, particulate matter, gas, vibration, and other contaminant discharges).

Performance indicators must also be identified for natural heritage resources to ensure that sensitive features and functions will not be adversely affected or negatively impacted by the making, establishment and operation of a pit or quarry. Performance indicators must be required for progressive and final

rehabilitation of pits and quarries with particular attention to the quality of topsoil and subsoils, acreage, drainage, movement of contaminants (e.g. fertilizers, pesticides) into the water table and productivity of rehabilitated agricultural lands.

Section 6 of the Provincial Policy Statement contains an extensive list of definitions that should be used for information and reference purposes. It is important to note that the PPS includes definitions for both "***adverse effects***" and "***negative impacts***." Citizens are advised to familiarize themselves with all definitions in the PPS, some of which are provided below, as they directly or indirectly relate to the making, establishment and operation of a pit or quarry.

- **Provincial Policy Statement**:
  Section 6.0 Definitions
  "Adverse effects" as defined in the Environmental Protection Act, means one or more of,
  (a) impairment of the quality of the natural environment for any use that can be made of it;
  (b) injury or damage to property or to plant or animal life;
  (c) harm or material discomfort to any person;
  (d) an adverse effect on the health of any person;
  (e) impairment of the safety of any person;
  (f) rendering any property or plant or animal life unfit for human use;
  (g) loss of enjoyment of normal use of property; and
  (h) interference with the normal conduct of business.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Negative Impacts" means
  (a) in regard to Policy 2.2 Water ,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;
  (c) and 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.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Adjacent Lands" means
  (a) for the purposes of policy 2.1, those lands contiguous to a specific natural heritage feature or area where it is likely that development or site alteration would have a negative impact on the feature or area. The extent of the adjacent lands may be recommended by the Province or based on municipal approaches which achieve the same objectives;
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Areas of Natural and Scientific Interest (ANSI)" means
  areas of land and water containing natural landscapes or features that have been identified as having life science or earth science values related to protection, scientific study or education.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Ecological function" means
  the natural processes, products or services that living and non-living environments provide or perform within or between species, ecosystems and landscapes. These may include biological, physical and socio-economic interactions.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Endangered species" means
  a species that is listed or categorized as an "Endangered Species" on the Ontario Ministry of Natural Resources" official species at risk list, as updated and amended from time to time.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  " Fish" means
  fish, which as defined in S.2 of the Fisheries Act, as amended, includes fish, shellfish, crustaceans, and marine animals, at all stages of their life cycles.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  "Fish habitat" as defined in the Fisheries Act, means
  spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly, or indirectly in order to carry out their life processes.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  "*Flood plain" means*
  for river stream, and small inland lake systems, means the area, usually low lands adjoining a watercourse, which has been or may be subject to flooding hazards.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Ground Water Feature"
  refers to water-related features in the earth's subsurface, including recharge/discharge areas, water tables, aquifers, unsaturated zones that can be defined by surface and subsurface hydrogeologic investigations.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Hydrologic Function" means
  the functions of the hydrological cycle that include the occurrence, circulation, distribution and chemical and physical properties of water on the surface of the land, in the soil and underlying rocks, and in the atmosphere, and water's interaction with the environment including its relation to living things.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Mineral Aggregate Operation" means
  (a) lands under license or permit, other than for wayside pits and quarries, issued in accordance with the Aggregate Resources Act, or successors thereto;
  (b) for lands not designated under the Aggregate Resources Act, established pits and quarries that are not in contravention of municipal zoning by-laws and including adjacent land under agreement with or owned by the operator, to permit continuation of the operation; and
  (c) associated facilities used in extraction, transport, benefication, processing or recycling of mineral aggregate resources and derived products such as asphalt and concrete, or the production of secondary related products.

AGGREGATE PITS AND QUARRIES: “ADVERSE EFFECTS” & “NEGATIVE IMPACTS”

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Mineral Aggregate Resources” means
  gravel, sand, clay, earth, shale, stone, limestone, dolstone, sandstone, marble, granite, rock or other material prescribed under the Aggregtae Resources Act suitable for construction, industrial, manufacturing and maintenance purposes but does not include metallic ores, asbestos, graphite, kyanite, mica, nepheline, syenite, salt, talc, wollastonite, mine tailings or other material prescribed under the Mining Act.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Natural heritage features and areas” means
  features and areas, including significant wetlands, significant coastal wetlands, fish habitat, significant woodlands south and east of the Canadian shield, significant valleylands south and east of the Canadian Shield, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Prime agricultural land” means
  land that includes specialty crop areas and/or Canada Land Inventory Classes 1, 2 and 3 soils, in this order of priority for protection.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Sensitive” in regard to surface water features and ground water features, means areas that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  “Sensitive land uses” means
  buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  “Prime Agricultural Area” means
  areas where prime agricultural lands predominate. This includes: areas of prime agricultural lands and associated Canada Land Inventory Class 4-7 soils; and additional areas where there is a local concentration of farms which exhibit characteristics of on-going agriculture. Prime agricultural areas may be identified by the Ontario ministry of agriculture and Food using evaluation procedures established by the Province as amended from time to time, or may also be identified through an alternative agricultural land evaluation system approved by the Province.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  “Prime Agricultural Land” means
  land that includes specialty crop areas and/or Canada Land Inventory Classes 1, 2, and 3 soils, in this order of priority for protection.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Quality and Quantity of Water" is measured by indicators such as minimum base flow, depth to water table, aquifer pressure, oxygen levels, suspended solids, temperature, bacteria, nutrients and hazardous contaminants and hydrologic regime.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "River, Stream and Small Inland Lake Systems" means
  all watercourses, rivers, streams and small inland lakes or waterbodies that have a measurable or predictable response to a single runoff event.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Sensitive" in regard to surface water features and ground water features, means areas that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals , and additions of pollutants.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Sensitive Land Uses" means
  buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be apart of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Surface water feature" refers to water-related features on the earth's surface, including headwaters, rivers, stream channels, inland lakes, seepage areas, recharge/discharge areas, springs, wetlands, and associated riparian lands that can be defined by their soil moisture, soil type, vegetation or topographic characteristics.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Significant" means
  (a) in regard to wetlands, coastal wetlands and areas of natural and scientific interest, an area identified as provincially significant by the Ontario Ministry of Natural Resources using evaluation procedures established by the Province, as amended from time to time;
  (b) in regard to the habitat of endangered species and threatened species, means the habitat, as approved by the Ontario Ministry of Natural Resources, that is necessary for the maintenance, survival, and/or the recovery of naturally occurring or reintroduced populations of endangered species or threatened species, and where those areas of occurrence are occupied or habitually occupied by the species during all or any part(s) of its life cycle;
  (c) in regard to woodlands, an area which is ecologically important in terms of features such as species composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or due to the amount of forest cover in the planning area; or economically important due to site quality, species composition, or past management history;
  (d) in regard to other features and areas in policy 2.1, ecologically important in terms of features, functions, representation or amount, and contributing to the quality and diversity of an identifiable geographic area or natural heritage system;
  (g) in regard to cultural heritage and archaeology, resources that are valued for the important contribution they make to our understanding of the history of a place, an event or a people. (Continued)

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  *"Significant" means (*Continued)
  Criteria for determining significance for the resources identified in sections (c) to (g) are recommended by the Province, but municipal approaches that achieve or exceed the same objective may also be used.
  While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Threatened Species" means
  a species that is listed or categorized as a "Threatened Species" on the Ontario Ministry of Natural Resources" official species at risk list, as updated and amended from time to time.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Valleylands" means a natural area that occurs in a valley or other landform depression that has water flowing through or standing for some period of the year.*
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Vulnerable" means
  surface and groundwater that can be easily changed or impacted by activities or events, either by virtue of their vicinity to such activities or events or by permissive pathways between such activities and the surface and/or groundwater.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Wetlands" means*
  lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Watershed" means an area that is drained by a river and its tributaries.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Wildlife Habitat" means areas where plants, animals and other organisms live, and find adequate amounts of food, water, shelter and space needed to sustain their populations. Specific wildlife habitats of concern may include areas where species concentrate at a vulnerable point in their annual or life cycle; and areas which are important to migratory or non-migratory species.*
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Woodlands" means
  treed areas that provide environmental and economic benefits to both the private landowner and the general public, such as erosion prevention, hydrological and nutrient cycling, provision of clean air and the long-term storage of carbon, provision of wildlife habitat, outdoor recreational opportunities, and the sustainable harvest of a wide range of woodland products. Woodlands include treed areas, woodlots or forested areas and vary in their significance at the local, regional and provincial levels.

4. Health Protection and Promotion Act

Aggregate pits and quarries licensed by the Province and currently operating in Ontario discharge contaminates into the natural environment that can cause, or may cause, adverse effects and negative impacts on the health, safety, quality of life and well-being of citizens. Contaminants include airborne dust and particulate matter (e.g. silica, mica), noise, vibration, toxic gas emissions from diesel equipment and trucks and other disease-producing pathogens.

It is a major concern that government ministries, agencies and municipalities have failed to undertake scientific studies of contaminates associated with aggregate pit and quarry operations and to consider the adverse effects and negative impacts on the health, safety, quality of life and well-being of citizens who are exposed to contaminate discharges.

4.1 Airborne Dust, Particulate Matter and Toxic Gas Emission:

The cumulative impacts of exposure to contaminate discharges into the air can cause or aggravate asthma, bronchitis, cardiac disease and other diseases of the respiratory and circulatory systems.

On January 28, 2008, a top cardiac researcher Robert Brook reported at a news conference for the Canadian Heart and Stroke Foundation that there is growing evidence that chronic exposure to the harmful effects of air pollution may be causing heart disease in Ontario. Fine particulate matter that is 2.5 micrometres in diameter (about one fiftieth the diameter of a human hair), or smaller, can enter the lungs and bloodstream where their inflammatory effect on arterial walls may be responsible for aggravating or causing heart conditions. Further information is available on the Canadian Heart and Stroke Foundation website. A news article "*Taking Air Quality to Heart*" is available at the Toronto Star website (date Tuesday, January 29, 2008).

Under Section 12: (1) *Matters to Be Considered By the Minister* of the Aggregate Resources Act, the Minister of Natural Resources or the Ontario Municipal Board in considering whether to issue or refuse a licence, must have regard to the effect of the operation of the pit on the environment and nearby communities and any planning and land use considerations.

The Provincial Standards for the Aggregate Resources Act does not require an air quality technical report to be submitted in support of the licence application. Some limited prescribed licence conditions in the Provincial Standards apply to dust mitigation on a pit or quarry site.

- **Aggregate Resources Act: Provincial Standards**
  Section 3.1: *Dust will be mitigated on site.*
  Section 3.2. *Water or another provincially approved dust suppressant will be applied to internal haul roads and processing areas as often as required to mitigate dust.*
  Section 3.3: *Processing equipment will be equipped with dust suppressing or collection devices, where the equipment creates dust and is being operated within 300 metres of a sensitive receptor.*

No quantitative limits for dust emissions are provided and the level of mitigation required on a pit or quarry site is not identified. Dust is almost impossible to contain within a pit or a quarry site. Airborne dust discharged from construction, extraction, processing, transportation and storage activities has been reported on many occasions by residents living near pits and quarries and others.

A dust management report prepared in support of an official plan amendment , zoning by-law and/or licence application usually offers some simple and general dust control techniques that often prove to be ineffective if/when used.

Diesel emissions from trucks are particularly dangerous as they release a number of toxic contaminants and CO2 to the atmosphere. Accelerating trucks release even more pollutants at the entrances to pits and quarries and along haul roads and haul routes. Hot, hazy days cause pollutants and odour to linger in the air. Breathing will be laboured, especially for young children playing outdoors and citizens who already have respiratory and/or circulatory system diseases (e.g. asthma, bronchitis, cardiac disease).

4.2 Excessive Noise and Vibration:

Noise is an annoying and disruptive contaminant that medical research has shown can have an adverse effect and negative impact on human health. Noise emissions are a major concern for citizens living in close proximity to licensed pits and along haul roads. Noise can be carried for long distances depending on wind direction, speed and other conditions.

Under Section 1.2.8 of the Provincial Standards for the Aggregate Resources Act, a noise assessment technical report is required only if extraction and/or processing facilities are within 150 metres of a sensitive receptor (e.g. a home). The only other requirement is to determine if provincial guidelines for noise discharged at the extraction and/or processing facilities can be satisfied. Unfortunately, there is no requirement under the ARA Provincial Standards for a technical assessment of noise discharged by trucks using pit and quarry entrances, on-site haul roads and haul routes off-site.

4.3 Jurisdictional Responsibility: Adverse Effects and Negative Impacts Caused by the Discharge of Contaminates

The Minister of the Environment and not the Minister of Natural Resources has the legal jurisdiction and the authority to administer the Environmental Protection Act (EPA) and control the discharge of contaminants to the natural environment. It is essential that the Ministry of the Environment review and comment on any noise assessment technical report submitted in support of an application (official plan, zoning, licence) and investigate and comment on citizen concerns about air quality. The Ministry of Natural Resources has no staff who have the professional expertise to review and comment on noise technical reports submitted in support of an application and citizen concerns about air quality.

The Aggregate Resources Act, its Regulation and Provincial Standards do not address the "**environmental health,**" safety, quality of life and well-being of citizens who live or may be forced to live in close proximity to pits and quarries.

The Minister of Health and Long-Term Care administers the Health Protection and Promotion Act. Citizens are advised to use the language of the Health Protection and Promotion Act when expressing their concerns, questions and objections about a proposed aggregate pit or quarry application (official plan, zoning by-law, licence) or a pit or quarry currently in operation. The Health Protection and Promotion Act can be accessed at www.e-laws.gov.on.ca

- **Health Protection and Promotion Act**:
  Section 1: Interpretation:
  *"**health hazard**" means,*
  (a) a condition of a premises,
  (b) a substance, thing, plant, or animal other than man, or
  (c) a solid, liquid, gas or combination of any of them,
  that has or that is likely to have an adverse effect on the health of any person.
- **Health Protection and Promotion Act**:
  Section 1: Interpretation:
  "health unit" means
  an area that, by or under any Act, is the area of jurisdiction of a board of health.
- **Health Protection and Promotion Act**:
  Section 2: Purpose:
  The purpose of this Act is to provide for the organization and delivery of public health programs and services, the prevention of the spread of disease and the promotion and protection of the health of the people of Ontario.
- **Health Protection and Promotion Act**:
  Section 10.(1) Duty to Inspect
  Every medical officer of health shall inspect or cause the inspection of the health unit served by him or her for the purpose of preventing, eliminating and decreasing the effects of health hazards in the health unit.

- **Health Protection and Promotion Act**:
  Section 11.(1) Complaint re Health Hazard Related to Occupational or Environmental Health
  *Where a complaint is made to a board of health or a medical officer of health that a health hazard related to occupational or **environmental health** exists in the health unit served by the board of health or the medical officer of health, the medical officer of health shall notify the ministry of the Government of Ontario that has primary responsibility in the matter and, in consultation with the ministry, the medical officer of health shall investigate the complaint to determine whether the health hazard exists or does not exist.*

Under Section 11(1) of the Act, it appears that the Minister of Health and Long-Term Care has the jurisdictional responsibility and authority to notify the Minister of Natural Resources if a citizen complains of a “**health hazard**” caused by activities at a pit or quarry and/or trucks transporting aggregate material.

The Minister of Natural Resources is obligated to consult with the Minister of Health and Long-Term Care during the Minister’s investigation of the complaint to determine if a health hazard exists.

Sections of the Planning Act and the Provincial Policy Statement also refer to the protection of the environmental health, safety, quality of life and well-being of citizens when new development is proposed.

- **Planning Act:**
  Section 1.1. Purposes
  The purpose of the Act are,
  (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act; (b) to provide for a land use planning system led by provincial policy….
- **Planning Act:**
  Section 2: Provincial Interest
  The minister, the Council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,
  (h) the orderly development of safe and healthy communities;
  (o) the protection of public health and safety;
  (p) the appropriate location of growth and development;…
- **Provincial Policy Statement:**
  Section 1.1.1 Managing and Directing Land Use To Achieve Efficient Development and Land Use Patterns
  Healthy, liveable and safe communities are sustained by:
  (c) avoiding development and land use patterns which may cause environmental or public health and safety concerns;…
- **Provincial Policy Statement:**
  Section 1.7.1 Long-Term Economic Prosperity
  Long-term prosperity should be supported by:
  (e) planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste

- **Provincial Policy Statement:**
  Section 1.7.1 Long-Term Economic Prosperity (Continued)
  management systems, oil and gas pipelines, industries and resource extraction activities) and sensitive land uses are appropriately designed, buffered and/or separated from each other ***to prevent adverse effects from odour, noise and other contaminants, and minimize risk to public health and safety;***

Section 3. (5) of the Planning Act requires that a decision in respect to an official plan amendment must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(5) Policy Statements and Provincial Plans
  A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Section 3. (6) of the Planning Act requires that any comments, submissions or advice affecting a planning matter must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(6) Policy Statements and Provincial Plans
  Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister of ministry, board, commission or agency of the government,
  (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  (b) shall conform with provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Citizens are advised to request and review all comments, submissions or advice that have been provided by municipal planning staff, planning boards, ministry staff and other government agencies for an official plan amendment application, zoning by-law amendment application and a licence application for a proposed pit or quarry. Citizens must insist that those involved in the decision-making process have demonstrated compliance with Sections 3.(5) and 3.(6) of the Planning Act in respect to provisions in Provincial Policy Statements that are in place to protect the environmental health, safety, quality of life and well-being of citizens.

Municipal official plans and zoning by-laws contain references to the environmental health, safety, quality of life and well-being of citizens. Citizens can review official plans and by-laws at local municipal offices and/or online at municipal websites.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

Citizens are advised to contact the Ministry of Health and Long-Term Care and the local Health Unit to request information, assistance and direction and/or to lodge a complaint when environmental health is an issue in respect to a proposed pit or quarry application (official plan, zoning, licence) or a pit or quarry currently in operation. Government ministers, ministries, agencies and municipalities have an ethical duty and legal obligation to control contaminate discharges and to protect the environmental health, safety, quality of life and well-being of citizens and their properties.

If it is determined that a citizen has been exposed to a health hazard and an adverse effect and negative impact from a pit or quarry operation and the transportation of aggregate material, it may be possible that liability, penalties, fines and financial compensation may be assigned.

A recent and far-reaching decision of the Supreme Court of Canada may be helpful to citizens seeking protection from contaminates discharged into the natural environment from a pit or quarry operation. On November 20, 2008, the Supreme Court of Canada upheld the right of citizens to launch environmental class action lawsuits for "abnormal or excessive environmental annoyances" to a neigbourhood. The citizens who launched the class action and were successful in gaining financial compensation complained that a cement plant spewed excessive amounts of residue on their homes and caused odours and noise that de-valued properties.

The implications of the Supreme Court decision will have relevance in all provinces and will undoubtedly apply to the discharge of contaminates from pits and quarries in Ontario.

Additional information about this case can be accessed at the Ecojustice website at www.ecojustice.ca as well as the Quebec Environmental Law Centre and Friends of the Earth Canada.

At this time, the "***adverse effects***" and "***negative impacts***" caused by exposure to pit and quarry operation contaminants discharged to the air appears not to have been assessed, evaluated and studied. It would be helpful to know if citizens living or working adjacent to pits and quarries or in surrounding areas have a higher instance of heart disease, asthma and other respiratory illnesses.

5. Ontario Water Resources Act

Pits and quarries disturb vulnerable water flow systems and use massive quantities of ground water and/or surface water during construction, extraction and the processing of aggregate materials (e.g. diversion, de-watering, digging silt and settling ponds, water-taking, aggregate washing).

There are documented cases where extractive operations have caused "adverse effects" and "negative impacts" on surface water and ground water flow systems in Ontario. Natural springs and wetlands have been destroyed, artesian/deep water free-flowing wells have been struck, recharge and discharge functions have been degraded, flows in creeks have been reversed, changes in water temperature have occurred, rural wells have been drained and large open-water lakes have been created resulting in high rates of evaporation and permanent changes to the hydrologic cycle.

Silt spills and asphalt and concrete batching plants have the potential to contaminate surface water and/or ground water. The processing and storage of recycled materials (e.g. asphalt, concrete) in a pit or quarry and the importation of poor quality "inert" fill and contaminated soils for rehabilitation purposes can adversely affect and negatively impact water resources and flow systems.

The purpose of the Ontario Water Resources Act applies to the making, establishment and operation of a pit or quarry.

- **Ontario Water Resources Act**:
  Section 0.1 Purpose
  The purpose of this Act is to provide for the conservation protection and management of Ontario's waters and for their efficient and sustainable use, in order to promote Ontario's long term environmental, social and economic well-being.

Section 29 of the Ontario Water Resources Act establishes the legal jurisdiction and authority of the Minister of the Environment in matters that relate to ground water and surface water resources in the Province of Ontario.

- **Ontario Water Resources Act:**
  Section 29. (1) Supervision of Waters
  For the purposes of this Act, the minister has the supervision of all surface waters and ground waters in Ontario.

It follows that the Minister of Municipal Affairs and Housing, the Minister of Natural Resources, and local municipal governments and government agencies must defer to the jurisdiction and authority of the Minister of the Environment when considering and approving land use changes and the licensing of pits and quarries.

Planning reports and technical and summary reports submitted in support of proposed pit and quarry applications (official plan, zoning, and/or licence) must demonstrate compliance with the Ontario Water Resources Act and other Acts (e.g. Environmental Protection Act, Clean Water Act) to ensure that water resources and flow systems will not be adversely affected or negatively impacted.

Citizens are advised to contact the Minister of the Environment and the local district office of the Ministry of the Environment early on and express concerns about the potential for adverse effects or negative impacts on surface waters, ground waters, watercourses and wells that may be adversely affected or negatively impacted by a proposed pit or quarry operation.

It is wise to send a letter of concern to the MOE and the local municipality to ensure that there is a written record on file for future reference and to determine responsibility, liability and compensation for well interference, a decrease in ground water and surface water levels, water quality problems, etc.

5.1 “One -Window Planning Approach”

The Ministry of Natural Resources is not obligated to consult with the Ministry of the Environment in respect to a pit or quarry licence application. Under the Provincial Standards for the Aggregate Resources Act, Ministry staff is no longer responsible for facilitating and guiding licence applicants through the notification and consultation process. A licence applicant is required to circulate a licence application package to the Ministry of the Environment only if a “*Hydrogeological Level 2 Technical Report”* is required. It appears that the MOE has discretion as to whether it provides comments to the applicant on the licence application.

The Ministry of Municipal Affairs and Housing introduced the “*One-Window Approach to Planning*” in the late 1990’s as a means to remove purported red tape, duplication and delays in planning for development and obtaining land use approvals and licenses.

Unfortunately, under the “*One-Window Planning Approach*” which is still in use today, the Ministry of the Environment appears to only review and comment on pit and quarry land use planning reports (official plan, zoning) when requested to do so by the Ministry of Municipal Affairs and Housing.

This has created a huge disconnect in that the MOE is usually left uniformed and uninvolved in the land use planning and licensing process for pits and quarries. Ground water and surface water resources are threatened when proposed pits

and quarries are subject to a *One-Window Planning Approach* and there is minimal or no involvement by the MOE.

Section 1.2.1 of the Provincial Policy Statement issued under Section 3 of the Planning Act indicates that a coordinated, integrated and comprehensive approach should be used when dealing with planning matters that include natural heritage, water and mineral resources and ecosystem, shoreline and watershed related issues:

- **Provincial Policy Statement:**
  Section 1.2.1 Coordination
  A coordinated, integrated and comprehensive approach should be used when dealing with planning matters within municipalities, or which cross lower, single and/or upper tier municipal boundaries, including:
  (a) managing and promoting growth and development;
  (b) managing natural heritage, water, agricultural, mineral and cultural heritage and archaeological resources;
  (d) ecosystem, shoreline and watershed related issues;…..

Citizens must insist that municipalities, the Ministry of Municipal Affairs and the MNR request that the Ministry of the Environment comprehensively review and comment on all technical reports (e.g. hydrogeological, noise, air quality, natural heritage resources) prepared in support of pit and quarry applications. Under Section 29. (1) of the Ontario Water Resources Act, the Minister of the Environment does have the legal obligation to supervise all surface waters and ground waters in Ontario. The MOE must once again assume review and comment responsibilities for all pit and quarry land use and license applications.

5.2 Permits To Take Water

A "*Permit to Take Water"* is commonly required to operate a pit or quarry. Permits are issued under Section 34 of the Ontario Water Resources Act by the Minister of the Environment. Pit and quarry operators use massive volumes of water for a variety of purposes (e.g. diversion, de-watering, construction of silt and settling ponds, water-taking, aggregate washing).

Example:

On July 23, 2007, the Environmental Registry posted an MOE notice of a decision for a Permit To Take Water (EBR Registry #: 010-0243, Ministry Reference #: 3347-6ZSJ4A) to allow an aggregate company to take **23,567,040 litres/day, 16,366 litres/minute for 365 days per year over the next 10 years from a pit lake for the purposes of aggregate washing.**

On December 10, 2008, the MOE issued a Permit to Take Water (EBR Registry Number: 010-5064) for the full amount requested in a ten year period. As a result of public consultation on the proposal, the Ministry received a total of 15 comments in writing. The comments received were considered in the decision of issuing the Permit but the MOE considered the comments to be beyond the scope of Ontario Regulation 387/04 and the enforcement issues raised were considered to be beyond the scope of Ontario Regulation 387/07.

Permits to Take Water are usually issued after a pit or quarry has been licensed. Citizens are advised to check the EBR Registry regularly for postings of proposals and decisions on Permits to Take Water. The EBR Registry can be accessed at www.ebr.gov.on.ca

Information provided on the EBR Registry for the Permit to Take Water may be limited. Citizens are advised to call the MOE Technical Support Section in Hamilton (1-905-521-7674) and request a copy of the actual Permit to Take Water application.

Be sure to submit written comments for the Permit to Take Water proposal to the MOE contact person within the public consultation 30-day period.

5.3 Wise Use and Management of Water Resources: Using the Watershed and Subwatershed as the Ecologically Meaningful Scale for Planning

Section 2.2 *Water Resources* of the Provincial Statement issued under Section 3 of the Planning Act contains a number of provisions to protect, improve or restore the quality and quantity of water.

- **Provincial Policy Statement:**
  Section 2.2.1 Water Resources
  Planning authorities shall protect, improve or restore the quality and quantity of water by:
  (a) ***using the watershed as the ecologically meaningful scale for planning;***
  (b) minimizing potential negative impacts, including cross-jurisdictional and cross-watershed impacts;
  (c) identifying surface water features, ground water features, hydrologic functions and natural heritage features and areas which are necessary for the ecological and hydrological integrity of the watershed;
  (d) implementing necessary restrictions on development and site alteration to:
  1. protect all municipal drinking water supplies and designated vulnerable areas; and
  2. protect, improve or restore vulnerable surface and ground water, sensitive surface water features and sensitive ground water features, and their hydrologic functions;
  (e) maintaining linkages and related functions among surface water features, ground water features, hydrologic functions and natural heritage features and areas;
  (f) promoting efficient and sustainable use of water resources, including practices for water conservation and sustaining water quality; and

- **Provincial Policy Statement:**
  Section 2.2.1 Water Resources (Continued)
  (g) ensuring stormwater management practices minimize stormwater volumes and contaminant loads, and maintain or increase the extent of vegetative and pervious surfaces.
- **Provincial Policy Statement:**
  Section 2.2.2 Water Resources
  Development and site alteration shall be restricted in or near sensitive surface water features and sensitive ground water features such that these features and their related hydrologic functions will be protected, improved or restored.
  Mitigative measures and/or alternative development approaches may be required in order to protect, improve or restore sensitive water features, sensitive ground water features, and their hydrological functions.

The Provincial Policy Statement requires that planning authorities use the “**watershed**” as the ecologically meaningful scale for planning. A watershed is an area that is drained by a river and its tributaries.

In the early 1990’s, the Ministry of the Environment provided funding to a number of municipalities and conservation authorities to conduct watershed and subwatershed studies and to develop plans to protect specific watersheds and subwatersheds. A Watershed or Subwatershed Plan usually contains recommendations for implementation of the Plan; however, some municipalities have been reluctant to implement the recommendations for any one of a number of reasons (e.g. monetary reasons, lack of interest, unwillingness to interfere with growth and development).

Citizens are advised to review the watershed and subwatershed plans that have been completed for the area in which the site of a proposed pit or quarry is to be located. Watershed and subwatershed plans can be accessed at the local municipal office and the office of the conservation authority. It is advised to refer to specific sections of the watershed and subwatershed plans when expressing concerns, questions and objections about a proposed pit or quarry or a pit or quarry currently in operation.

5.4 Protection of Wetlands, Wetland Complexes, Streams, Ponds, Etc.

The Ministry of Natural Resources, conservation authorities, local municipalities and the Ontario Municipal Board, when considering pit and quarry applications, frequently allow aggregate extraction within 30 metres or less of wetland boundaries, streams, etc. This has the potential to cause adverse effects and negative impacts on vulnerable surface water and ground water resources.

Section 29.(1) of the Ontario Water Resources Act states that the Minister of the Environment has supervision of all surface waters and ground waters in Ontario.

It follows that the Minister and Ministry of Natural Resources, municipal governments and government boards and agencies, including conservation authorities, must defer to the jurisdiction and authority of the Minister of the Environment in matters related to the protection of wetlands, wetland complexes and other surface courses and water bodies.

- **Ontario Water Resources Act:**
  Section 29. (1) Supervision of Waters
  For the purposes of this Act, the minister has the supervision of all surface waters and ground waters in Ontario.

Surface water features are defined in the Provincial Policy Statement issued under Section 3 of the Planning Act:

- **Provincial Policy Statement**:
  Section 6.0 Definitions
  "Surface water feature" refers to water –related features on the earth's surface, including headwaters, rivers, stream channels, inland lakes, seepage areas, recharge/discharge areas, springs, wetlands, and associated riparian lands that can be defined by their soil moisture, soil type, vegetation or topographic characteristics.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "River, stream and small inland lake systems" means all watercourses, rivers, stream and small inland lakes or waterbodies that have a measurable or predictable response to a single runoff event.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Wetlands" means lands that are seasonally or permanently covered by shallow water, as well as lands where the water table is close to or at the surface. In either case the presence of abundant water has caused the formation of hydric soils and has favoured the dominance of either hydrophytic plants or water tolerant plants. The four major types of wetlands are swamps, marshes, bogs and fens.*
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Sensitive" in regard to surface water features and ground water features, means areas that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Significant*" *means*
  (a) in regard to wetlands, coastal wetlands and areas of scientific and natural interest, an area identified as provincially significant by the Ontario Ministry of Natural Resources using evaluation procedures established by the Province, as amended from time to time;…
  While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Natural Heritage Features and Areas" means
  features and areas, including significant wetlands, significant coastal wetlands, fish habitat, significant woodlands south and east of the Canadian shield, significant valleylands south and east of the Canadian shield, significant habitat of endangered species and threatened species, significant wildlife habitat, and significant areas of natural and scientific interest, which are important for their environmental and social values as a legacy of the natural landscapes of an area.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Vulnerable" means
  surface and groundwater that can be easily changed or impacted by activities or events, either by virtue of their vicinity to such activities or events or by permissive pathways between such activities and the surface and/or groundwater.

Many wetlands and wetland complexes in Ontario remain unevaluated because of Ministry of Natural Resources staff shortages and cost. Citizens are advised to call the local district office of the MNR and establish the status of all wetlands on the subject site and on adjacent lands as either "evaluated" or "unevaluated." Request a written response for reference purposes and authenticity.

The Environmental Commissioner of Ontario has recommended that the Ministry of Natural Resources undertake identification and evaluation of wetlands in Ontario in a timely manner and ensure that Provincially Significant Wetlands are incorporated into municipal official plans for protection purposes.

- **Environmental Commissioner of Ontario Annual Report 2006 – 2007 Reconciling Our Priorities**
  Recommendation 1:
  The ECO recommends that MNR significantly speed up the process of wetland identification and evaluation and ensure that Provincially Significant Wetlands are incorporated into municipal official plans.

If no formal evaluation has been done, citizens must insist that a comprehensive wetlands evaluation be completed by qualified MNR staff on the subject site and adjacent lands using the current *Ontario Wetland Evaluation System: Southern Manual, 3rd Edition* or an updated version to determine the significance of the wetland or wetland complex. Consultants working for a pit or quarry applicant or having formerly worked for the aggregate industry should not be given the task of evaluating a wetland or a wetland complex using the MNR's Manual or by any other program or means.

If a wetland and/or wetland complex on the subject site and adjacent lands has been evaluated by the MNR, citizens are advised to ask for copies of all wetland evaluations, past and current, conducted for the wetland and/or wetland complex.

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Request that all actual field notes and investigations be provided. Some “updated” wetland evaluations are of questionable merit as they are simply desk-top reviews with no current and actual field investigations carried out. Also request precipitation and climate graphs for the area for the past ten year period and seasonal high water table elevation measurements for the subject lands and surrounding areas that have been recorded over the past five-year (minimal) monitoring period.

Sections 2.1.1, 2.1.2, 2.1.3 and 2.1.6 of the Provincial Policy Statement issued under the Planning Act offer some protection for “Provincially Significant Wetlands” and “Provincially Significant Wetland Complexes.” It is important to note that development is not permitted in Provincially Significant Wetlands but may be permitted on adjacent lands.

- **Provincial Policy Statement:**
  Section 2.1.1 Natural Heritage Resources
  Natural features and areas shall be protected for the long term.
- **Provincial Policy Statement:**
  Section 2.1.2 Natural Heritage Resources
  The diversity and connectivity of natural features in an area, and the long- term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.
- **Provincial Policy Statement:**
  Section 2.1.3 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant habitat of endangered species and threatened species;
  (b) significant wetlands in Ecoregions 5E, 6E and 7E-1; and
  (c) significant coastal wetlands.
- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

For information and comment purposes, citizens are advised to access the MNR’s “*Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement*” on the Ministry’s website under the publications icon. The following excerpts appear in Section 2.2 “Significant Wetlands” of the reference manual.

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement** Section 2.2.(c) Significant Wetlands: Adjacent Lands
  “*Adjacent lands” are the lands within which impacts must be considered and within which the compatibility of a development proposal must be addressed. The extent of adjacent lands may vary depending on such factors as topography, soil types,*

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement** Section 2.2.(c) Significant Wetlands: Adjacent Lands (Continued)
  hydrological connectivity, adjacent land uses and other features…..
  The Province recommends that adjacent lands are those lands within 120 metres of individual significant wetlands or, in the case of wetland complexes, within 120 metres of individual wetlands comprising the complex (see Figure 2.2).
  This recommended adjacent land width was chosen because it is known that developments within 120 metres of wetlands have a reasonable probability of affecting the ecological functions of the wetlands which they surround, and because wetland species are often dependent on adjacent lands for activities such as nesting, resting, feeding or shelter…

Citizens are advised to report any "*sanitizing*" activities that have occurred or are occurring on lands that are proposed for a pit or quarry. Some pit applicants and property owners have been known to re-channel or divert watercourses, tile and drain wetlands and wet areas, remove trees and vegetation, etc. before applying for official plan and zoning by-law amendments and licence applications.

Conservation Authorities have jurisdiction in matters that relate to flood control, floodplains and monitoring flow systems under the Conservation Authorities Act. Under Section 4.1.3.4 of the Provincial Standards issued under the Aggregate Resources Act, an applicant is required to circulate a complete licence application package including site plans, summary report and technical reports to the local Conservation Authority for review and comment purposes.

Conservation Authorities can grant permission for development in or near wetlands and other water bodies if the control of flooding, erosion, dynamic beaches, pollution or the conservation of land will not be affected by the development. Unfortunately, there is no assurance that a local conservation authority will advise against the development of a pit or quarry within or adjacent to a wetland or a wetland complex, a shoreline, etc. Some conservation authorities use a questionable standard 30-metre setback to a wetland or even less distance for an aggregate extraction operation.

Citizens are advised to access the Regulation that applies to the local conservation authority in their community (e.g. Regulation 150/06 Grand River Conservation Authority) if there are concerns about development within or adjacent to wetland boundaries, shorelines, etc. Regulations can be accessed at www.e-laws.gov.on.ca by locating the Conservation Authorities Act and then choosing the circle/cross icon that precedes the title of the Act.

Example:

- **Conservation Authorities Act**:
  Ontario Regulation 97/04: Content of Conservation Authority Regulations Under Subsection 28 (1) of the Act: Development, Interference with Wetlands and Alterations to Shorelines and Watercourses.

- **Conservation Authorities Act**:
  (Example) **Ontario Regulation 150/06:** Grand River Conservation Authority: Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

Citizens are advised to inquire if the conservation authority has a "wetlands policy" and request a copy of the policy. Citizens must insist that the conservation authority be consistent with its wetlands policy and its Ontario Regulation when reviewing and commenting on land use applications (official plan, zoning) and license applications for a proposed aggregate pit or quarry.

On June 20, 2008, the *Ontario Stone, Sand and Gravel Association*, a registered lobbyist with the Ontario Government, listed conservation and the environment as two of its areas of concern. The focus of its lobbying activities includes "*significant wetlands/woodlands/natural heritage*" and the *"Endangered Species Act/Species at Risk*". More information about this registered lobbyist association can be accessed at http://lobbyist.oico.on.ca/LRO/RegistrationPublic.nsf/vwByRegNum/OL0186-2001110717

6. Clean Water Act (2006)

The purpose of the Clean Water Act is to protect existing and future sources of drinking water in the Province of Ontario. The identification of source water protection areas in Ontario and the creation of source water protection plans are key provisions in the Act. The Clean Water Act can be accessed at www.e-laws.gov.on.ca

- **Clean Water Act:**
  Section 1. Purpose
  The purpose of this Act is to protect existing and future sources of drinking water.
- **Clean Water Act:**
  Section 105. (1) Conflict
  If there is a conflict between a provision of this Act and a provision of another Act or a regulation or instrument made, issued or otherwise created under another Act with respect to a matter that affects or has the potential to affect the quality and quantity of any water that is or may be used as a source of drinking water, the provision that provides the greatest protection of the quality and quantity of the water prevails.

As the Clean Water Act is new, few or no source water protection areas have been identified in most municipalities, and it is likely that no regional source water protection plans have been created under the new Act. It remains to be seen if aggregate resources will be extracted in designated source water protection areas or in areas which have not yet been evaluated and designated as source water protection areas. Aggregate extraction on adjacent lands to a source

water protection area has the potential to cause adverse effects and negative impacts on water resources.

Section 105 of the Clean Water Act establishes the prevalence of the Act and its regulations. The Aggregate Resources Act, its regulations and Provincial Standards do not directly apply to the protection of source water protection areas and clean drinking water; however, Section 12 of the Aggregate Resources Act requires that the Minister of Natural Resources and the Ontario Municipal Board, when considering whether a licence shall be issued or refused, must have regard to the effect of the operation of the pit or quarry on the environment and any possible effects on ground water and surface water resources and such other matters that are considered appropriate. It follows that the Minister of Natural Resources and the Ontario Municipal Board must have regard to source water protection areas and source water protection plans.

Citizens are advised to seek information about designated source water protection areas in their communities and source water protection plans that may be already in effect. Submit concerns in writing to local source water protection committees, the Ministry of the Environment, local municipal governments, the MNR and the Ministry of Municipal Affairs and Housing if there is a potential for an aggregate pit or quarry or a pit or quarry currently in operation to adversely affect and negatively impact designated or expected-to-be designated source water protection areas or surrounding areas.

On June 20, 2008, the *Ontario Stone, Sand and Gravel Association*, a registered lobbyist with the Ontario Government, listed conservation and the environment as two of its areas of concern. The focus of its lobbying activities includes the "*Clean Water Act and its Regulations*" and "*Drinking Water Source Protection*." More information about this registered lobbyist association can be accessed at http://lobbyist.oico.on.ca/LRO/RegistrationPublic.nsf/vwByRegNum/OL0186-2001110717

Lake Ontario Waterkeeper provides a wide range of information to citizens in respect to water issues. The "*Clean Water Primer # 1*"and the "*Clean Water Primer # 2*" are useful documents. The primers and other information can be accessed at www.waterkeeper.ca

7. Fisheries Act

The Federal Government and the Department of Fisheries and Oceans (DFO) have legal jurisdiction and authority under the Fisheries Act to protect fish populations, fish habitat and hydrogeological surface water and ground water flow systems. The Fisheries Act can be accessed online at laws.justice.gc.c/

- **Fisheries Act:**
  Section *2*
  "Fish" mean fish, shellfish, crustaceans and marine animals, at all stages of their life cycle.
  "Fish Habitat" means spawning grounds and nursery, rearing, food supply and migration areas on which fish depend directly or indirectly in order to carry out their life processes.
- **Fisheries Act:**
  Section 32 Destruction of Fish
  No person shall destroy fish by any means other than fishing, except as authorized by the minister or under regulations made by the Governor in council under the Act.
- **Fisheries Act:**
  Section 35 (1) Harmful Alteration, Disruption or Destruction of Fish Habitat (HADD)
  No person shall carry on any work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat.

Streams, creeks and their tributaries as well as wetlands provide fish habitat for cold water and warm water fish species. Aggregate operations within and adjacent to these watercourses and waterbodies can cause and have the potential to create a HADD, causing adverse effects and negative impacts on fish species and fish habitat. Headwater tributaries are particularly sensitive as they contribute to the downstream flow system and help to maintain fish habitat throughout the system.

Cold water streams located on proposed pit and quarry sites or on adjacent and surrounding lands appear to have some added protection under the Fisheries Act. The presence of native cold water species such as Speckled Trout, Brook Trout, etc. implies that the fish habitat would be very sensitive and adversely affected by any changes in flows, water levels and temperature caused by the making, establishment and operation of a pit or quarry.

In 2006, the Ministry of Natural Resources took the position that under Section 3.5 of the "*Fish Habitat Referral Process*" in the DFO's Ontario Manual, the MNR is not responsible for conducting fish habitat review for the purpose of determining whether fish habitat is likely to be harmfully altered by aggregate extraction. Conservation Authorities when reviewing land use planning applications (official plan amendment, zoning by-law amendment) and licence

applications for a pit or quarry may not be prepared to determine whether fish habitat is likely to be harmfully altered by aggregate extraction.

Citizens who have concerns about aggregate extraction and the potential for adverse effects and negative impacts on water flows, fish populations and fish habitat are advised to contact the Department of Fisheries and Oceans located in Burlington, Ontario and request to speak with staff that have responsibility for hydrology and hydrogeology, fish habitat and fish populations and species.

Some conservation authorities have agreements with the Department of Fisheries and Oceans to review and comment on development proposals. If this is the case, citizens are advised to ensure that the Conservation Authority has thoroughly reviewed planning, summary and technical reports submitted in support of proposed pit or quarry land use planning and licence applications and that the Conservation authority has consulted with the DFO. If this has not been done, contact and write the Department of Fisheries and Oceans in Burlington, Ontario to register concerns.

Citizens must monitor and insist that the Ministry of Natural Resources, the Department of Fisheries and Oceans and the local conservation authority work cooperatively and conduct a thorough review and assessment of hydrological and hydrogeological conditions, fish habitat and fish species and populations associated with the subject lands and the surrounding area.

The Provincial Policy Statement issued under section 3 of the Planning Act contains references to fish and fish habitat and the jurisdiction of the federal government under the Fisheries Act . Please note that development and site alteration is not permitted in fish habitat but may be permitted on adjacent lands.

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Fish" means
  fish, which as defined in S.2 of the Fisheries Act, c. F-14, as amended, includes fish, shellfish, crustaceans, and marine animals, at all stages of their life cycles.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  "Fish habitat" as defined in the Fisheries Act. C. F-14, means
  spawning grounds and nursery, rearing, food supply, and migration areas on which fish depend directly or indirectly in order to carry out their life processes.
- **Provincial Policy Statement:**
  Section 2.1.5 Natural Heritage
  Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

Section 2.4 of the MNR's "*Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement*, 1999" contains substantial and pertinent information on fish species, fish habitat, hydrological and hydrogeological conditions. The Manual can be accessed at the Ministry's website www.mn..gov.on.ca under the publications icon.

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement**
  Section 2.4 (c) Fish Habitat
  Adjacent lands are the lands within which impacts must be considered and within which the compatibility of a development proposal must be addressed. The extent of adjacent lands on which development or site alteration may affect fish habitat depends on numerous factors including the nature of development or site alterations, the sensitivity of fish habitat potentially affected and local site conditions (e.g. vegetative cover, slope, soils)…
  Adjacent lands should generally be measured from the seasonal high water mark. In some situations, fish habitat is located on land that may be dry for mush of the year…
  Since fish habitat may depend on groundwater recharge areas, these areas should be included within adjacent lands, particularly where they occur near lakes and streams…
  Some intermittent streams are used by fish at certain times of the year while others are not. Some streams that are not used directly by fish may nevertheless contribute to fish productivity downstream. They provide water to downstream areas and may be sources of food and nutrients….

Official plans for some municipalities include references to the Fisheries Act. Citizens are advised to use the references to ensure that municipal planners consult with the Department of Fisheries and Oceans when reviewing and commenting on land use planning and licence applications.

The Ministry of Natural Resources has fish biologists on staff who may be involved in review of licence applications; however, it appears that during licence application reviews, the might of MNR staff administering aggregate resources may hold sway over the opinions and concerns of fish biologists.

Currently, it remains unclear as to the relationship that the Ministry of Natural Resources has with the Department of Fisheries and Oceans and the degree of responsibility and the extent to which the MNR has in respect to reviewing and commenting on the potential for adverse effects and negative impacts on fish species and populations, fish habitat and hydrological and hydrogeological conditions.

It would appear that it would be unwise for the Minister of Natural Resources to issue a pit or quarry licence when it is known that there is the potential that aggregate extraction would create a “*Harmful Alteration, Disruption or Destruction of Fish Habitat”* (HADD) on the site or on adjacent lands. Charges laid under the Fisheries Act can be extremely costly.

8. Endangered Species Act (2007)

The Endangered Species Act was passed in May, 2007. Citizens are advised to refer to specific sections of the Act and use the language of the Act when expressing concerns, questions and objections about a proposed aggregate pit or quarry or a pit or quarry currently in operation. The Act can be accessed at www.e-laws.gov.on.ca

- **Endangered Species Act:**
  Section 1. Purposes
  The purposes of the Act are:
  1. to identify species at risk based on the best available scientific information, including in formation obtained from community knowledge and aboriginal traditional knowledge. 2.
  2. to protect species that are at risk and their habitats, and to promote the recovery of species that are at risk.
  3. to promote stewardship activities to assist in the protection and recovery of species that are at risk.
- **Endangered Species Act**:
  Section 2. Definitions
  “habitat” means,
  (a) with respect to a species of animal, plant or other organism for which a regulation made under clause 55 (1) (a) is in force, the area prescribed by that regulation as the habitat of the species, or
  (b) with respect to any other species of animal, plant or other organism, an area on which the species depends, directly or indirectly, to carry on its life processes, including life processes such as reproduction, rearing, hibernation, migration or feeding.

The Minister of Natural Resources administers the Endangered Species Act. The MNR has extensive information and files on endangered species and habitats in Ontario. Some information may be classified to protect endangered and threatened species and their habitat from human disturbance. Information about *Species At Risk in Ontario* and a current SARO List for Ontario can be accessed at www.mnr.gov.on.ca Additional information can be accessed at www.on.ec.gc.ca

Citizens are advised to contact the local office of the MNR and request information about any endangered and threatened species that are known to have inhabited or been associated with the subject lands and surrounding lands. Information should also be requested for any designated Environmentally

Sensitive Areas (ESAs), all provincially significant wetlands, woodlands, wildlife habitat, valleylands, and areas of natural and scientific interest (ANSIs) located within the subject site and on adjacent lands. Endangered and threatened species are often associated with designated provincially significant areas (e.g. significant woodlands, significant wetlands, significant wildlife habitat, significant valleylands, significant areas of natural and scientific interest ANSIs).

Section 2.1.3 of the Provincial Policy Statement issued under Section 3 of the Planning Act provides protection for the significant habitat of endangered and threatened species:

- **Provincial Policy Statement:**
  Section 2.1.3 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant habitat of endangered species and threatened species;
  (b) significant wetlands in Ecoregions 5E, 6E and 7E-1; and
  (c) significant coastal wetlands.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Significant” means
  (b) in regard to the habitat of endangered species and threatened species, means the habitat, as approved by the Ontario Ministry of Natural Resources, that is necessary for the maintenance, survival, and/or the recovery of naturally occurring or reintroduced populations of endangered species or threatened species, and where those areas of occurrence are occupied or habitually occupied by the species during all or any part(s) of its life cycle;

Please note that development and site alteration are not permitted in provincially significant habitat of endangered species and threatened species but under Section 2.1.6 of the Provincial Policy Statement, development and site alteration may be permitted on adjacent lands.

- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

Plant and animal species other than endangered and threatened species may be designated as provincially significant (e.g. Red-Shouldered Hawk, Southern Flying Squirrel), provincially rare or regionally significant. Information about endangered and threatened species and **provincially significant, provincially rare and regionally significant wildlife species** is available in the MNR records of “evaluated” Provincially Significant Wetlands and Wetland Complexes.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

Citizens are advised to request all records on file that pertain to wetland and wetland complexes that were evaluated under the MNR's "*Ontario Wetland Evaluation System: Southern Manual, 3rd Edition"* and any former or updated versions.

Additional information pertaining to endangered and threatened species and **provincially significant, provincially rare and regionally significant wildlife species** may be available in MNR records for "evaluated" Provincially Significant Woodlands, Provincially Significant Wildlife Habitat, Provincially Significant Valleylands and Provincially Significant Areas of Natural and Scientific Interest (ANSIs).

Endangered, threatened, provincially significant, provincially rare and regionally significant plant and animal species are often associated with areas designated Provincially Significant Wetlands, Provincially Significant Wildlife Habitat, Provincially Significant Woodlands, Provincially Significant Valleylands, and Provincially Significant Areas of Natural and Scientific Interest (ANSIs), The habitat of plant and animal species is provided some protection under Sections 2.1.1, 2.1.2, 2.1.3, 2.1.4, 2.1.5 and 2.1.6 of the Provincial Policy Statement issued under Section 3 of the Planning Act.

- **Provincial Policy Statement:**
  Section 2.1.1 Natural Heritage Resources
  Natural features and areas shall be protected for the long term.
- **Provincial Policy Statement:**
  Section 2.1.2 Natural Heritage Resources
  The diversity and connectivity of natural features in an area, and the long- term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.
- **Provincial Policy Statement:**
  Section 2.1.3 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant habitat of endangered species and threatened species;
  (b) significant wetlands in Ecoregions 5E, 6E and 7E1; and
  (c) significant coastal wetlands.
- **Provincial Policy Statement:**
  Section 2.1.4 Natural Heritage Resources
  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 shield2;
  (c) significant valleylands south and east of the Canadian Shield2;
  (d) significant wildlife habitat; and
  (e) significant areas of natural and scientific interest (ANSIs) unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

- **Provincial Policy Statement:**
  Section 2.1.5 Natural Heritage Resources
  Development and site alteration shall not be permitted in fish habitat except in accordance with provincial and federal requirements.
- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "Significant" means
  (a) in regard to wetlands, coastal wetlands and areas of natural and scientific interest, an area identified as provincially significant by the Ontario Ministry of Natural Resources using evaluation procedures established by the Province, as amended from time to time.;
  (b) in regard to the habitat of endangered species and threatened species, means the habitat, as approved by the Ontario Ministry of Natural Resources, that is necessary for the maintenance, survival, and/or the recovery of naturally occurring or reintroduced populations of endangered species or threatened species, and where those areas of occurrence are occupied or habitually occupied by the species during all or any part(s) of its life cycle;
  (c) in regard to woodlands, an area which is ecologically important in terms of features such as species composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or due to the amount of forest cover in the planning area; or economically important due to site quality, species composition, or past management history;
  (d) in regard to other features and areas in policy 2.1, ecologically important in terms of features, functions, representation or amount, and contributing to the quality and diversity of an identifiable geographic area or natural heritage system…..
  …..While some significant resources may already be identified and inventoried by official sources, the significance of others can only be determined after evaluation.
- **Provincial Policy Statement:**
  Section 6.0 Definitions
  "*Wildlife Habitat" means*
  areas where plants, animals and other organisms live, and find adequate amounts of food, water, shelter and space needed to sustain their populations. Specific wildlife habitats of concern may include areas where species concentrate at a vulnerable point in their annual or life cycle; and areas which are important to migratory or non-migratory species.

Section 2.3 "*Significant Portions of the Habitat of Endangered and Threatened Species."* of the MNR's "*Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement, 1999*" contains substantial and pertinent information. The Manual can be accessed at the Ministry's website www.mnr.gov.on.ca under the publications icon.

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement**
  Section 2.3 Significant Portions of the Habitat of Endangered and Threatened Species.
  The protection of endangered and threatened species and their habitats is necessary in order to slow or prevent the extirpation (loss) of species from the province, and, in some cases, to help prevent their extinction on a global basis….
  Adjacent lands are the lands within which impacts must be considered and within which the compatibility of a development proposal must be addressed. Development on lands adjacent to significant portions of the habitat of endangered and threatened species may impact the natural features or ecological functions for which the area is identified, specifically the habitat requirements of the identified species…..
  *The Province recommends that adjacent lands are those lands within **50 metres** of the significant portions of the habitat of endangered or threatened species. The recommended adjacent land width is intended to ensure that those developments that are reasonably likely to impact the habitat of a threatened or endangered species are flagged during the development process….*

An official plan and zoning by-laws may contain information about endangered and threatened species. Citizens are advised to contact local municipal office(s) and request information about any designated Environmentally Sensitive Areas (ESAs), all **provincially significant, provincially rare and regionally significant** plant and animal species, wetlands, woodlands, wildlife habitat, valleylands, areas of natural and scientific interest (ANSIs), and any endangered or threatened species associated with the subject lands and the surrounding areas.

Citizens can contact the local Field Naturalists organization and staff at local universities to investigate the presence of any endangered, threatened provincially significant, provincially rare and regionally significant plant and animal species on the subject lands and in the surrounding area.

On June 20, 2008, the *Ontario Stone, Sand and Gravel Association*, a registered lobbyist with the Ontario Government, listed conservation and the environment as two of its areas of concern. The focus of its lobbying activities includes "*significant wetlands/woodlands/natural heritage*" and the *"Endangered Species Act/Species at Risk*". More information about this registered lobbyist association can be accessed at
http://lobbyist.oico.on.ca/LRO/RegistrationPublic.nsf/vwByRegNum/OL0186-2001110717

Unfortunately, on July 2, 2008, the government of Ontario approved more than two dozen exemptions to the Endangered Species Act for the forestry, aggregate, hydro and development industries. The Regulation for exemptions can be accessed at www.e-laws.gov.on.ca by locating the Act and then using the circle/cross icon located in front of the Act. Ontario Nature, the Federation of Ontario Naturalists, can provide further information about the exemptions at www.ontarionature.org

9. Municipal Act

Citizens are advised to review the Municipal Act to identify sections which may apply to official plan and zoning by-law amendment applications and licence applications. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

The purposes of the Municipal Act make reference to the environmental well-being of the municipality which implies that the natural environment and the environment are to be protected from “*adverse effects*” and “*negative impacts,*” including the health, safety, quality of life and well-being of citizens and their properties.

- **Municipal Act**:
  Section 2: Purposes
  Municipalities are created by the Province of Ontario to be responsible and accountable governments in respect to matters within their jurisdiction and each municipality is given powers and duties under this Act and many other Acts for purposes which include,
  (a) providing the services and other things that the municipality considers are necessary or desirable for the municipality;
  (b) managing and preserving the public assets of the municipality;
  (c) fostering the current and future economic, social and environmental well-being of the municipality; and
  (d) delivering and participating in provincial programs and initiatives.

As of January 1, 2008, the Municipal Act requires that all meetings of municipal councils, boards and committees to be held in public, with a few exceptions. If a meeting was held “*In Camera*” or behind closed doors, a citizen can lodge a formal complaint with the Ombudsman of Ontario or an investigator appointed by the municipality. The Ombudsman handles complaints in all municipalities except those that have appointed their own investigators. The office of the Ombudsman can be accessed at www.ombudsman.on.ca

10. Environmental Assessment Act, Environmental Review Tribunal Act, Consolidated Hearings Act, and Statutory Powers and Procedures Act

The Environmental Assessment Act, the Environmental Review Tribunal Act, the Consolidated Hearings Act and the Statutory Powers and Procedures Act and their Regulations can be accessed at www.e-laws.gov.on.ca . Provisions in these Acts may apply to planning applications (e.g. official plan amendment, zoning by-law amendment) and licence applications for a proposed pit or quarry, particularly if there is the potential for an adverse effect or negative impact.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

The Environmental Assessment Act applies to approvals for undertakings for major commercial or business enterprises or activities or proposals, plans or programs. The Act may apply to a proposed aggregate operation that has the potential to cause, an "adverse effect" on the natural environment, the environment, and/or the health, safety, quality of life and well-being of citizens and their properties. A proponent must submit a proposed "*Terms of Reference*" to the Ministry of the Environment governing the preparation of the environmental assessment for the undertaking.

- **Environmental Assessment Act:**
  Section 2: Purposes of the Act
  The purpose of this Act is the betterment of the people of the whole or any part of Ontario by providing for the protection, conservation and wise management in Ontario of the environment.
- **Environmental Assessment Act:**
  Section 6.1: Preparation of Environmental Assessment
  (1) The proponent shall prepare an environmental assessment for an undertaking in accordance with the approved terms of reference.
  (2) Subject to subsection (3), the environmental assessment must consist of,
  (a) a description of the purpose of the undertaking;
  (b) a description of and a statement of the rationale for,
  (i) the undertaking,
  (ii) the alternative methods of carrying out the undertaking, and
  (iii) the alternatives to the undertaking;
  (c) a description of,
  (i) the environment that will be affected or that might reasonably be expected to be affected, directly or indirectly,
  (ii) the effects that will be caused or that may reasonably be expected to be caused to the environment, and
  (iii) the actions necessary or that may be reasonably be expected to be necessary to prevent, change, mitigate or remedy the effects upon or the effects that might reasonably be expected upon the environment,
  by the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking;
  (d) an evaluation of the advantages and disadvantages to the environment of the undertaking, the alternative methods of carrying out the undertaking and the alternatives to the undertaking; and
  (e) a description of any consultation about the undertaking by the proponent and the results of the consultation.

Under Section 9.1 of the Environmental Assessment Act, the Minister of the Environment may refer an application to the Environmental Tribunal for a decision.

Under the Consolidated Hearings Act, an undertaking may require that more than one hearing by more than one tribunal be held. A matter can be referred to the Environmental Review Tribunal for a joint consolidated hearing with the Ontario Municipal Board.

- **Consolidated Hearings Act:**
  Section 2: Applications of Act
  This Act applies in respect of an undertaking in relation to which more than one hearing is required or may be required or held by more than one tribunal under one or more of the Acts set out in the Schedule or prescribed by the regulations.

The Environmental Review Tribunal conducts hearings into matters involving protection of the environment and decisions must be consistent with governing legislation. The Tribunal functions as a quasi-judicial body, subject to the rules of natural justice and the requirements of the Statutory Powers and Procedures Act. The Tribunal's primary role is adjudicating applications and appeals under various environmental and planning statutes (e.g. Clean Water Act, Environmental Protection Act, Ontario Water Resources Act). More information about the Environmental Tribunal can be accessed at www.ert.gov.ca

In a case where there is the potential for a proposed pit or quarry operation to cause cumulative environmental effects or irreparable harm to the natural environment and the environment, citizens should contact the Minister of the Environment and the Minister of Municipal Affairs and Housing and inquire as to the possibility for a joint consolidated hearing. A hearing by the Environmental Review Tribunal for a pit or quarry licence application under the Aggregate Resources Act may be held jointly with an Ontario Municipal Board Hearing for the planning applications under the Planning Act.

11. Greenbelt Act (2005)

The Greenbelt Act is administered by the Minister of Municipal Affairs and Housing. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

Citizens living in a designated Greenbelt Area are advised to contact the Ministry of Municipal Affairs and Housing and the municipality and request information about the established Greenbelt Plan for the area. The Act does not specifically prohibit extraction of aggregate within a Greenbelt Area.

Section 5 of the Greenbelt Act sets out the objectives of the Greenbelt Plan. Some of the objectives relate directly to the natural environment, the environment, the health, safety, quality of life and well-being of citizens and properties.

- **Greenbelt Act:**
  Section 5. Objectives
  The objectives of the Greenbelt plan are,
  (a) to establish a network of countryside and open space areas which supports the Oak Ridges Moraine and the Niagara Escarpment;

- **Greenbelt Act:**
  Section 5. Objectives (Continued)
  (b) to sustain the countryside, rural and small towns and contribute to the economic viability of farming communities;
  (c) to preserve agricultural land as a continuing commercial source of food and employment;
  (d) to recognize the critical importance of the agriculture sector to the regional economy;
  (e) to provide protection to the land base needed to maintain, restore and improve the ecological and hydrological functions of the Greenbelt Area;
  (f) to promote connections between lakes and the Oak Ridges Moraine and Niagara Escarpment;
  (g) to provide open space and recreational, tourism and cultural heritage opportunities to support the social needs of a rapidly expanding and increasingly urbanized population;
  (h) to promote linkages between ecosystems and provincial parks or public lands;
  (i) to control urbanization of the lands to which the Greenbelt plan applies;
  (j) to ensure that the development of transportation and infrastructure proceeds in an environmentally sensitive manner;
  (k) to promote sustainable resource use;
  (l) any other prescribed objectives.
- **Greenbelt Act:**
  Section 7.
  (1) A decision that is made under the Ontario Planning and Development Act, 1994, the Planning Act or the Condominium Act, 1998 or in relation to a prescribed matter by a municipal council, local board, municipal planning authority, minister of the Crown or ministry board, commission or agency of the Government of Ontario, including the Ontario Municipal Board, shall conform with the Greenbelt Plan.
  (2) Subsection (1) does not apply to a policy statement issued under Section 3 of the Planning Act.

It would appear that planning approvals for new or expanded aggregate extraction operations would be contrary to the objectives of the Greenbelt Act. It is not known if the Minister of Natural Resources has or will issue pit or quarry licences to permit aggregate extraction in Greenbelt Areas.

12. Aggregate Resources Act (ARA), Its Regulations and Provincial Standards

The Minister of Natural Resources administers the Aggregate Resources Act (ARA), its Regulation and Provincial Standards. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca The Provincial Standards issued under the Aggregate Resources Act can be accessed on the Ministry of Natural Resources’ website by typing “*Provincial Standards*” in the search window.

Citizens have observed and experienced the “*adverse effects*” and “*negative impacts*” caused by aggregate operations in their communities and neighbourhoods. Citizens in increasing numbers and with mounting frustration have expressed their concerns with the content and administration of the

Aggregate Resources Act (ARA), its Regulation and the ARA’s Provincial Standards.

The purposes of the Aggregate Resources Act refer to managing aggregate resources, controlling and regulating aggregate operations, and “minimizing” “adverse impacts” to the environment. The Act itself does not define the term “minimize” and there are no criteria to identify “*adverse impact*” and the extent to which “*minimize*” applies.

- **Aggregate Resources Act:**
  Section 2. Purposes of the Act
  The purposes of this Act 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 extracted; and
  (d) to minimize adverse impact on the environment in respect of aggregate operations.

No performance indicators in respect to Section 2. (d) of the ARA have been identified by the MNR for measuring the effectiveness of the *Mineral Aggregate Resources Policy* (Section 2.5, PPS) as required in Section 4.10 of the Provincial Policy Statement issued under Section 3 of the Planning Act.

12.1 Public Notification and Consultation: Licence Application

One of the major criticisms of the Aggregate Resources Act and the Provincial Standards is the public notification and consultation process. Limited performance criteria have been set for the notification and consultation process under the Aggregate Resources Act and Section 4.0 “*Notification and Consultation Standards”* of the ARA’s Provincial Standards. The public is often left confused, outwitted, and in some cases, eliminated from expressing genuine “objections” and concerns to a proposed pit or quarry licence application.

Citizens are advised to carefully review *Section 4: Notification and Consultation Standards* for the appropriate licence or quarry licence category (e.g. Category 1- Class A Pit Below Water, Category 3 - Class A Pit Above Water). Access the Ministry of Natural Resources’ website and type “*Provincial Standards*” in the search window. Citizens can also call the MNR District Office and request a full explanation of the notification and consultation process.

The licence applicant is required to hold a presentation to the public (e.g. information session, open house, community meeting) during the 45-day notification period outlining all details of the proposed licence application. The presentation may be a “come-and-go” event where the public can view site plans, etc. and speak with consultants on an individual basis. This type of event is not

particularly informative as the public as a whole have no opportunity to hear a formal presentation, ask questions from the floor or hear the questions and concerns expressed by other citizens. Public meetings for an official plan amendment and a zoning by-law amendment held by a local municipality under the Planning Act usually have a formal presentation followed by questions from the floor.

Citizens objecting to a licence application must submit "**a letter of objection"** stating the "**reasons for the objection**" within the 45-day time period to both the Ministry of Natural Resources and the licence applicant. It is most important to include the word "**objection**" in the text of the letter as the licence applicant and/or the MNR may determine that the letter is not a letter of objection to the pit or quarry licence application.

The applicant is required to try to address the objections and then send a letter to the objector providing information in response to the reasons for the objection to the licence application. If the objector is not satisfied, any continuing objection to the licence application with recommendations that may resolve the objections must be submitted to the MNR and the licence applicant within 20 days of receiving the applicant's information to resolve the objections.

A licence application for a proposed pit or quarry must also be posted by the MNR on the EBR Registry as a "*proposal*." When the Minister makes a decision whether a licence is to be issued or not issued, notice of the decision is posted on the EBR Registry. The EBR Registry can be accessed at www.ebr.gov.on.ca

Currently, there are two different notification and consultation processes for a pit or quarry licence application, one under the Aggregate Resources Act and one under the Environmental Bill of Rights Registry. This has caused considerable confusion because commenting periods are often different and the MNR uses a disclaimer on the EBR Registry stating that comments received through the EBR Registry should not be construed as an objection to a licence application under the Aggregate Resources Act in accordance with Section 4.0 *Notification and Consultation Standards* of the ARA Provincial Standards.

Citizens are required to submit "***objections*"** to the licence application to the licence applicant and the Ministry of Natural Resources as required under the Aggregate Resources Act within the 45-day notification period. Citizens are also advised to submit "*comments*" through the EBR Registry and within the notification period posted on the EBR Registry. When commenting on a proposal through the EBR Registry, the EBR Registry Number and the Ministry Reference Number should be identified in comments submitted to the MNR (written or electronic).

Comments submitted through the EBR Registry must be considered by the MNR as part of the decision-making process. The level of consideration that the MNR gives to the comments received through the EBR Registry when making a decision is unknown; however, provisions in the Environmental Bill of Rights Act apply to the EBR notification and consultation process and the review and decision-making process for a pit or quarry licence application. Furthermore, the Ministry of Natural Resources when making a decision to issue or refuse a licence application has some obligation to make decisions that are consistent with its “*Statement of Environmental Values*” established under the Environmental Bill of Rights Act.

Under Section 11 of the Aggregate Resources Act, the Minister of Natural Resources may refer unresolved issues to the Ontario Municipal Board for a hearing. An “objector” to a licence application becomes a designated “party” or “participant” at such a hearing and may be placed in a very precarious position in having to defend his/her reasons for objection to a licence application. The objector can be subject to hefty costs if an OMB member so decides. The possibility of such a financial burden can be a major deterrent to public participation.

Citizens are advised to access the Ontario Municipal Board website at www.omb.gov.on.ca and review the “*Costs*” component in the Rules of Practice and Procedure and the Information Sheet entitled “*Recovering Your Hearing Costs*.”

12.2 Interpretation and Implementation of the Aggregate Resources Act, Its Regulations and the Provincial Standards:

Some sections in the Aggregate Resources Act, its Regulations and Provincial Standards are problematic as they are poorly-worded and contribute to faulty interpretation and implementation on the part of the Ministry of Natural Resources, the Ministry of Municipal Affairs and Housing, municipalities, the Ontario Municipal Board and the aggregate industry.

It is important to identify some of the major limitations of the Aggregate Resources Act, its Regulation and Provincial Standards. The ARA does not provide the Minister of Natural Resources or the Ministry with the legal jurisdiction and responsibility for addressing “*adverse effects*” and “*negative impacts*” on the natural environment, the environment, and the health, safety and quality of life of citizens and their properties. The Act does not deal with the discharge of contaminates (e.g. noise, dust and particulate emissions, vibration, odour) and the adverse effects and negative impacts on the natural environment, the environment and the health, safety, quality of life and well-being of citizens and their properties.

Section 66 of the Aggregate Resources Act is particularly troublesome as it has been used erroneously to try to prevent municipalities from using official plan policies, municipal by-laws and development agreements to control the location and operation of pits and quarries and to protect the natural environment, the environment and the health, safety and quality of life of citizens and their properties.

The use of the word "*Overrides*" which appears in the subtitle for Section 66. (1) of the ARA but not in the actual text is in itself misleading as it appears to claim all-encompassing precedence or superiority of the Aggregate Resources Act in overriding municipal by-laws, etc.

- **Aggregate Resources Act:**
  Section 66. (1) Act Overrides Municipal By-laws, Etc.
  This Act, the regulations and the provisions of licences and site plans apply despite any municipal by-law, official plan, or development agreement and, to the extent that a municipal by-law, official plan or development agreement deals with the same subject-matter as this Act, the regulations or the provisions of a licence or site plan, the by-law, official plan or development agreement is inoperative.

The context of Section 66 of the ARA provides a limiting clause that curtails the extent to which the Aggregate Resources Act applies in "*overriding*" municipal by-laws, official plans and development agreements. The primary consideration is that the Aggregate Resources Act does not "*deal with the same subject-matter*" as the subject matter and provisions contained in other acts such as the Environmental Protection Act, the Ontario Water Resources Act, the Municipal Act, the Planning Act , and the Clean Water Act. It follows that these Acts and other Acts do indeed contain legislative provisions with which the Aggregate Resources Act, its regulations, Provincial Standards, conditions of licences and site plans cannot legally override or take precedence.

It appears that the limitation clause in Section 66 of the Aggregate Resources Act is not correctly and fully understood by some consultants who prepare summary, planning and technical reports and site plans in support of pit and quarry applications and by some municipal planners, government agencies and ministries who review and comment on applications. Section 66 is only one example where certain provisions in the Aggregate Resources Act, its Regulations and Provincial Standards have been seriously misinterpreted by some consultants, municipal planners, government agencies and ministries.

12. 3 Precedence of the Planning Act Over the Aggregate Resources Act:

It is important to note that Section 6. (2) of the Planning Act requires that the Ministry of Natural Resources must consult with the municipality and have regard

for established planning policies of the municipality when processing and before issuing a licence or permit for an aggregate pit or quarry operation. It appears that this section of the Planning Act has been overlooked or given little attention when land use planning and licence applications are prepared, reviewed and decisions made.

- **Planning Act**:
  Section 6.(2) Planning Policies
  A ministry, before carrying out or authorizing any undertaking that the ministry considers will directly affect any municipality, shall consult with, and have regard for, the established planning policies of the municipality.

When expressing concerns, questions and objections about a proposed aggregate pit or quarry or a pit or quarry currently in operation, citizens are advised to insist that the MNR “*have regard for*” provisions in municipal official plans and zoning by-laws that protect the natural environment, the environment, properties, and the health, safety, quality of life and well-being of citizen.

Section 71 of the Planning Act indicates that the Aggregate Resources Act and its Regulations and Provincial Standards do not take precedence over provisions in the Planning Act and the Provincial Policy Statement.

- **Planning Act:**
  Section 71: Conflict
  In the event of conflict between the provisions of this and any other general or special Act, the provisions of this Act prevail.

12.4 “Recommended References” for Preparing Licence Applications

The “Provincial Standards” document issued under Regulation 244/97 of the Aggregate Resources Act contains a list of “*Recommended References*” in its introductory section. The recommendations state that applicants and consultants, in searching and /or preparing reports to accompany a licence application, should make reference to specified documents and agencies consulted. The documents and agencies list include the Environmental Protection Act, the Ontario Water Resources Act and the Fisheries Act.

It has been observed and reported that some consultants working on pit and quarry projects have been very selective and/or cursory in what information they include in summary, planning and technical reports, site plans, etc. Reference to provisions in the Environmental Protection Act or other environmental, planning, health-related or transportation acts, regulations and policies are seldom included. By omitting discussion on provisions in these acts, regulations and policies, the consultants avoid having to acknowledge or address the potential for

“*adverse effects*” and “*negative impacts*” on the natural environment, the environment, properties and the health, safety, quality of life and well-being of life of citizens and their properties. Thus, there is no written record and no commitment by consultants and licence applicants to uphold provisions in the various acts, regulations and policies. There is usually no statement for the public record and for liability and compensation purposes that ”*adverse effects*” and “*negative impacts*” will not occur.

Citizens are advised to insist that the MNR, municipal planners, government agencies and ministries and the Ontario Municipal Board require applicants and consultants to use and specifically identify the applicable “*Recommended References*” as listed in the ARA Provincial Standards document when preparing and submitting technical, planning and summary reports, site plans, etc. The ARA Provincial Standards document can be accessed at the MNR’s website under the “*Publications*” icon or at the MNR District Office. Other acts and regulations (e.g. Clean Water Act, Greenbelt Act) not listed in the Provincial Standards “*Recommended References*” may be applicable, as well.

It is also necessary that the MNR not accept and process licence applications unless all reports, site plans etc. contain references to applicable environmental laws, regulations and policies as well as to other laws such as the Planning Act, the Municipal Act and the Public Transportation and Highway Improvement Act.

12.5 Academic Qualifications and Professional Expertise of Consultants:

Section 2.2.9 “*Report Standards*” of the Provincial Standards issued under the Aggregate Resources Act requires that the Summary Report and technical reports prepared in support of a licence application must state the qualifications and experience of the individual(s) that have prepared the reports.

The ARA Provincial Standards indicate that a hydrogeological technical report must be prepared by a person with appropriate training and/or experience in hydrogeology. There is no requirement that a hydrogeological consultant be a qualified Professional Engineer and a member of the Professional Engineers of Ontario.

Citizens are advised to investigate the academic credentials, professional expertise and professional associations provided by consultants to ensure that information is accurate and that consultants are adequately qualified in their fields of stated expertise.

12.6 Matters to Be Considered By The Minister of Natural Resources and the Ontario Municipal Board When Issuing Or Refusing A Licence Application:

Section 12 of the Aggregate Resources Act identifies certain jurisdictional obligations required of the Minister of Natural Resources and the Ontario Municipal Board when considering whether a licence should be issued or refused.

- **Aggregate Resources Act:**
  Section 12. (1) Matters To Be Considered By the Minister
  In considering whether a licence should be issued or refused, the Minister or the Board, as the case may be, shall have regard to,
  (a) the effect of the operation of the pit or quarry on the environment;
  (b) the effect of the operation of the pit or quarry on nearby communities;
  (c) any comments provided by a municipality in which the site is located;
  (d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;
  (e) any possible affects on ground and surface water resources;
  (f) any possible effects of the operation of the pit or quarry on agricultural resources;
  (g) and planning and land use considerations;
  (h) the main haulage routes and proposed truck traffic to and from the site;
  (i) the quality and quantity of the aggregate on the site;
  (j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has been previously been issued to the applicant under this Act or a predecessor of this Act; and
  (k) such other matters as are considered appropriate.

In discussing "*adverse effects*" and "*negative impacts*" as they relate to the protection of the natural environment, the environment, properties, and the health, safety, quality of life and well-being of citizens, particular attention must be given to subsections (a), (b), (c), (d), (e), (f), (g), (h) and (j) of Section 12 of the ARA. Such matters are of major importance and must be addressed by the Minister and the Ontario Municipal Board and/or an Environmental Review Tribunal.

The application of provisions in other applicable Acts, regulations and policies which address and measure "*adverse effects*" and "*negative impacts*" and the protection of the natural environment, the environment, properties and the health, safety, quality of life and well-being of citizens and their properties may have to be addressed under Section 12. (1) (k) in the context of "*such as other matters as are considered to be appropriate*." The Minister of Natural Resources and the Ontario Municipal Board are required to make decisions based on compliance with all applicable legislation and the law.

AGGREGATE PITS AND QUARRIES: "ADVERSE EFFECTS" & "NEGATIVE IMPACTS"

Citizens are advised to insist that the Minister of Natural Resources and members of the Ontario Municipal Board fulfill their duties and responsibilities under Section 12 of the Aggregate Resources Act in a comprehensive and thorough manner when considering the issuance or refusal of a licence for a proposed pit or quarry. The stated purposes and provincial interest of the Planning Act must be considered in concert with Section 12 of the Aggregate Resources Act.

- **Planning Act:**
  Section 1.1 Purposes
  The purposes of this Act are,
  (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
  (b) to provide for a land use planning system led by provincial policy (PPS);
  (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
  (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
  (e) to encourage co-operation and co-ordination among various interests;
  (f) to recognize the decision-making authority and accountability of municipal councils in planning.
- **Planning Act:**
  Section 2. Provincial Interest
  The minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,
  (a) the protection of ecological systems, including natural areas, features and functions;
  (b) the protection of agricultural resources of the Province;
  (c) the conservation and management of natural resources of the Province;
  (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
  (e) the supply, efficient use and conservation of energy and water;
  (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
  (g) the minimization of waste;
  (h) the orderly development of safe and healthy communities;
  (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
  (i) the adequate provision and distribution of educational, health, social cultural and recreational facilities;
  (j) the adequate provision of a full range of housing;
  (k) the adequate provision of employment opportunities;
  (l) the protection of financial and economic well-being of the Province and its municipalities;
  (m) the co-ordination of planning activities of public bodies;
  (n) the resolution of planning conflicts involving public and private interests;
  (o) the protection of public health and safety
  (p) the appropriate location of growth and development;
  (q) the promotion of development that is designed to be sustainable, to support public transit and to be orientated to pedestrians.

Citizens are advised to also insist that the Minister of Natural Resources and members of the Ontario Municipal Board fulfill their duties and responsibilities under Section 12 of the Aggregate Resources Act in concert with the stated preamble and purposes of the Environmental Bill of Rights Act. Concerns of the public must be addressed in "*an effective, timely, open and fair manner manner*."

- **Environmental Bill of Rights**
  Preamble
  The people of Ontario recognize the inherent value of the natural environment.
  The people of Ontario have a right to a healthful environment.
  The people of Ontario have as a common goal, the protection, conservation and restoration of the natural environment for the benefit of the present and future generations.
  While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.
  Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows: ….
  Environmental Bill of Rights Act
  Section 2. Purposes of Act
  ***(1) The purposes of this Act are*,**
  (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
  (b) to provide sustainability of the environment by the means provided in this Act; and
  (c) to protect the right to a healthful environment by the means provided in this Act.
  (2) The purposes set out in subsection (1) include the following:
  1. The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
  2. The protection and conservation of biological, ecological and genetic diversity.
  3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.
  4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
  5. The identification, protection and conservation of ecologically sensitive areas or processes.
  (3) In order to fulfill the purposes set out in subsections(1) and (2), this Act provides,
  (a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
  (b) increased accountability of the Government of Ontario for its environmental decision-making;
  (c) increased access to the courts by residents of Ontario for the protection of the environment; and
  (d) enhanced protection for employees who take action in respect of environmental harm.

13. Fish and Wildlife Conservation Act

The Fish and Wildlife Conservation Act is administered by the Minister of Natural Resources. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

While the Act deals with hunting, trapping, fishing and related activities, it does make provisions for the protection of "*specially protected*" amphibians, birds, invertebrate, mammals, raptors and reptiles.

Lists of "*specially protected*" animals can be found in the Schedules Section of the Act. Specially protected animals include the Red-Shouldered Hawk, Cooper's Hawk, Blue-spotted Salamanders, Spotted Turtles, Northern and Southern Flying Squirrels and many other animal species

It may be possible to make the case that if hunters and fishermen are not permitted to harm "*specially protected*" animals, than these animals and their habitat should be protected from the adverse effects and negative impacts of aggregate activities on a pit or quarry site and on adjacent lands.

14. Freedom of Information and Protection of Privacy Act

The Freedom of Information and Protection of Privacy Act is administered by the Information and Privacy Commissioner who is appointed as an officer of the Ontario Legislature and is independent of the government. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

The Act applies to Ontario's provincial ministries and most provincial agencies, boards and commissions. The Act gives individuals the right to request access to government information such as records, reports, communications including e-mail messages and other documents.

- **Freedom of Information and Protection of Privacy Act:**
  Section 1 Purposes
  The purposes of this Act are,
  (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  (i) information should be available to the public,
  (ii) necessary exemptions from the right of access should be limited and specific, and
  (iii) decisions on the disclosure of government information should be reviewed independently of government; and
  (b) to protect the privacy of individuals with respect to personal information about themselves held by institutions and to provide individuals with a right of access to that information.

- **Freedom of Information and Protection of Privacy Act:**
  Section 10. (1) Right of Access
  Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
  (a) the record or the part of the record falls within one of the exemptions under Sections 12 to 22; or
  (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.
- **Freedom of Information and Protection of Privacy Act:**
  Section 11. (1) Obligation to Disclose
  *Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals **a grave environmental, health or safety hazard to the public.***

If a citizen feels that information and any record about an official plan amendment application, a zoning by-law amendment application and/or a licence application for a pit or quarry or a pit or quarry currently in operation is being withheld, a citizen is advised to contact the Ministry of Natural Resources, the Ministry of the Environment, the Ministry of Municipal Affairs and Housing, the conservation authority or other agency that has the information being sought. If access is denied, a citizen can make a written request under the Act.

FOI forms are available at the government office where information is being requested. A $5 application fee, payable to "The Minister of Finance," must accompany the request. Citizens should be aware that the government office will charge for copies of records and that the cost can be somewhat exorbitant if records are extensive and staff time in preparation is considerable.

Within 30 days of receipt of a request, the government office must make the records available, deny access, or site extraordinary circumstances resulting in delay. If a request is denied, the government office must give a written reason for denial of access.

If a citizen is denied access to information, a citizen has the right to appeal to the Information and Privacy Commissioner of Ontario within 30 days of receiving the government's response. Appeal fees are $10 for requests related to access to general records. For more information, citizens should access the Office of the Information and Privacy Commissioner's Office at www.ipc.on.ca

15. Municipal Freedom of Information and Protection of Privacy Act

The Municipal Freedom of Information and Protection of Privacy Act is administered by the Information and Privacy Commissioner who is appointed as an officer of the Ontario Legislature and is independent of the government. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

The Act applies to local government organizations, including municipalities, conservation authorities, boards of health and others. The Act gives individuals the right to request access to municipal government information, including most general records and records containing their own personal information.

- **Municipal Freedom of Information and Protection of Privacy Act:**
  Section 1: Purposes
  The purposes of this Act are,
  (a) to provide a right of access to information under the control of institutions in accordance with the principles that,
  (i) information should be available to the public,
  (ii) necessary exemptions from the right of access should be limited and specific, and
  (iii) decisions on the disclosure of information should be reviewed independently of the institution controlling the information; and
  (b) to protect the privacy of individuals with respect top personal information about themselves held by institutions and to provide individuals with a right of access to that information.
- **Municipal Freedom of Information and Protection of Privacy Act:**
  Section 4: Right of Access
  (1) Every person has a right of access to a record or a part of a record in the custody or under the control of an institution unless,
  (a) the record or the part of the record falls within one of the exemptions under sections 6 to 15; or
  (b) the head is of the opinion on reasonable grounds that the request for access is frivolous or vexatious.
- **Municipal Freedom of Information and Protection of Privacy Act:**
  Section 5: Obligation to Disclose
  (1) Despite any other provision of this Act, a head shall, as soon as practicable, disclose any record to the public or persons affected if the head has reasonable and probable grounds to believe that it is in the public interest to do so and that the record reveals ***a grave environmental, health or safety hazard to the public.***

If a citizen feels that information and any record about an official plan amendment application, a zoning by-law amendment application and/or a licence application for a pit or quarry or a pit or quarry currently in operation is being withheld, a citizen is advised to contact the municipal office and/or the conservation authority or other government organization that has the information being sought.

If access is denied, a citizen can make a written request under the Municipal Freedom of Information and Protection of Privacy Act.

FOI forms are available at the office of the government organization where information is being requested. A $5 application fee, payable to the government organization must accompany the request. Citizens should be aware that the government organization will charge for copies of records and that the cost can be somewhat exorbitant if records are extensive.

Within 30 days of receipt of a request, the government organization must make the records available, deny access, or notify the requester of any delay because of a need to obtain representations from affected person or because of extraordinary circumstances. If a request is denied, the government organization must give a written reason for denial of access.

If a citizen is denied access to information, a citizen has the right to appeal to the Information and Privacy Commissioner of Ontario within 30 days of receiving the government organization's response. Appeal fees are $10 for requests related to access to general records. For more information, citizens should access the Office of the Environmental Commissioner's Office at www.ipc.on.ca

16. Regulatory Modernization Act, 2007

The Regulatory Modernization Act allows for information sharing about regulated organizations to improve efficiency in the administration and enforcement of regulatory legislation and to make consequential amendments to other acts. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca

The Act is intended to strengthen public protection by introducing innovative improvements to the way the government inspects, investigates and enforces Acts and Regulations across the Province. Provisions in the Act enforce the laws that protect workers, the environment, fish and wildlife and the public.

The sharing of information between ministries (e.g. public complaints, inspection and audit information, compliance histories) allows staff in one Ministry to notify other ministries of issues that are likely to be relevant to Statutes administered or enforced by the other ministries.

It is not known if the Regulatory Modernization Act will bring about more cooperation between the Ministry of Natural Resources, the Ministry of Municipal Affairs and Housing and the Ministry of the Environment when licence

applications are under review and when non-compliance issues (e.g. Permit to Take Water, unacceptable noise levels, poor air quality) related to pit and quarry operations are investigated. The Ministry of Natural Resources should consult with the Ministry of Food and Agriculture when extraction of prime agricultural lands and areas is proposed and to ensure that the rehabilitation of extracted lands to agricultural use is appropriately carried out.

- **Regulatory Modernization Act, 2007:**
  Section 1(1) Interpretation: Meaning of "Minister Responsible"
  (4) In this Act, a reference to a "Minister responsible" for an Act or for a regulation means,
  (a) in the case of an Act or part of an Act, the Minister responsible for the administration of the Act or part 0f the Act, as the case may be;
  (b) in the case of a regulation, the Minister responsible for the administration of the provision of the Act under which the regulation is made.
- **Regulatory Modernization Act, 2007:**
  Section 4: Types of Information
  The following types of information may be collected, use and disclosed in accordance with an authorization made under Section 7 or 14.
  5. *Statistical information about an organization and the sector or industry in which the organization operates.*
  6. With respect to a licence, permit, certificate or other similar approval that an organization may or is required to obtain under designated legislation, information about its issuance or renewal, a refusal to issue or renew it or its suspension, revocation or cancellation.
  7. Information about complaints filed in respect of an organization where the complaint is regarding conduct that may be in contravention of designated legislation.
  9. Information related to an organization's compliance with designated legislation, including but not limited to information about convictions and penalties imposed on conviction and information regarding orders or notices issued under the designated legislation.

It appears that citizens who have concerns about the processing of a planning application (official plan, zoning by-law), a licence application or the issuance of a licence for a proposed pit or quarry may have some recourse to seek government and ministry review of the process under provisions in the Regulatory Modernization Act.

17. Ombudsman Act

Under the Ombudsman Act, the Ombudsman investigates complaints about services provided by the government of Ontario and its organizations. The Act and its Regulations can be accessed at www.e-laws.gov.on.ca
Information is also available on the Ombudsman's website at www.ombudsman.on.ca

When the Ombudsman identifies a problem in how the government has treated an individual, he/she can report on it and make recommendations to correct the problem for the person. The Ombudsman can make recommendations to change government policies and practices to prevent similar problems from occurring in the future and to improve the system for others.

As of January 1, 2008, the Municipal Act requires that all meetings of municipal councils, boards and committees to be held in public, with a few exceptions. A citizen can lodge a formal complaint if a meeting was held behind closed doors. The Ombudsman will handle complaints in all municipalities except those that have appointed their own investigators.

C. Ministries Subject to the Environmental Bill of Rights: Statement of Environmental Values (SEV)

Each of the Ministries subject to the *Environmental Bill of Rights* *(EBR)* has a “Statement of Environmental Values (SEV).” Statements of Environmnetal Values for the provincial ministries can be accessed at www.ebr.gov.on.ca

The Statement of Environmental Values is a specific ministry statement that guides the ministry when it makes decisions that might affect the environment. The ministry must consider its SEV when it makes an environmentally significant decision. The minister must also consider the SEV when deciding to conduct a Review or Investigation under the EBR.

The website of the Environmental Commissioner of Ontario states what each SEV should explain:

1. *How the ministry will consider the environment when it makes environmentally significant decisions.*
2. *How the ministry will apply the purposes of the EBR when it makes environmentally significant decisions.*
3. *How the ministry will integrate its environmental values with social, economic and scientific considerations when it makes environmentally significant decisions.*

The following are the goal and objectives of the SEV for the Ministry of Natural Resources. It is advised to review the entire SEV on the Ministry’s website for further information and when commenting on planning applications (official plan amendment, zoning by-law amendment) and licensing applications for a proposed pit or quarry.

- ***Goal:***
  To contribute to the environmental, social and economic well-being of Ontario through the sustainable development of natural resources.

- *Objectives:*
  * *to ensure the long-term health of ecosystems by protecting and conserving our valuable soil, aquatic resources, forest and wildlife resources as well as their biological foundations;*
  * *to ensure the continuing availability of natural resources for the long-term benefit of the people of Ontario; that is, to leave future generations a legacy of the natural wealth that we still enjoy today;*
  * *to protect natural heritage and biological features of provincial significance;*
  * *to protect human life, the resource base and physical property from the threats of forest fires, floods and erosion.*

Citizens are advised to refer to specific sections of a Statement of Environmental Values and use the language of the SEV when expressing concerns, questions and objections about a proposed aggregate pit or quarry of a pit or quarry currently in operation. Citizens must also insist that each ministry meet its legal environmental obligations and responsibilities for its Statement of Environmental Values as required out under the Environmental Bill of Rights.

D. Areas of Natural and Scientific Interest (ANSIs)

In 1977, the Ministry of Natural Resources initiated a provincial survey of natural areas and geological sites. The survey included two areas for provincial protection, scientific study or education.

1. Earth Science:
   Identification of geological sites representative of Ontario’s earth science diversity.
2. Life Science:
   Identification of ecological areas that comprise the spectrum of natural landscapes, environments and biotic communities in Ontario.

The Provincial Policy Statement issued under Section 3 of the Planning Act provides some protection for Significant Areas of Natural and Scientific Interest (ANSIs). A municipal official plan and zoning by-laws may contain references to “**Provincially Significant” and “Regionally Significant” ANSIs** and protection of these areas.

- **Provincial Policy Statement:**
  Section 6.0 Definitions
  “Areas of Natural and Scientific Interest (ANSI)” means
  areas of land and water containing natural landscapes or features that have been identified as having life science or earth science values related to protection, scientific study or education.
- **Provincial Policy Statement**:
  Section 6.0 Definitions
  “Significant” means
  (d) in regard to other features and areas in policy 2.1, ecologically important in terms of features, functions, representation or amount, and contributing to the quality and diversity of an identifiable geographic area or natural heritage system;

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- **Provincial Policy Statement:**
  Section 2.1.1 Natural Heritage
  Natural features and areas shall be protected for the long term.
- **Provincial Policy Statement:**
  Section 2.1.2 Natural Heritage Resources
  The diversity and connectivity of natural features in an area, and the long- term ecological function and biodiversity of natural heritage systems, should be maintained, restored or, where possible, improved, recognizing linkages between and among natural heritage features and areas, surface water features and ground water features.
- **Provincial Policy Statement:**
  Section 2.1.4 Natural Heritage Resources
  Development and site alteration shall not be permitted in:
  (a) significant wetlands in the Canadian shield north of Ecoregions 5E, 6E and 7E-1;
  (b) significant woodlands south and east of the Canadian Shield-2;
  (c) significant valleylands south and east of the Canadian Shield-2;
  (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.
- **Provincial Policy Statement:**
  Section 2.1.6 Natural Heritage Resources
  Development and site alteration shall not be permitted on adjacent lands to the natural heritage features and areas identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the ecological function of the adjacent lands has been evaluated and it has been demonstrated that there will be no negative impacts on the natural features or on their ecological functions.

Citizens are advised to contact the district office of the Ministry of Natural Resources in their area to determine if any **Provincially Significant and Regionally Significant** Areas of Scientific and Natural Interest have been designated on the subject lands or in the surrounding area. Citizens can access information about specific ANSIs on the Ministry of Natural Resources website at www.mnr.gov.on.ca by clicking the "*Natural Heritage Information Centre*."

Section 2.8 of the MNR's "*Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement, 1999*" sets the following guidelines for determining adverse effects and negative impacts on Provincially Significant Areas of Natural and Scientific interest (ANSIs). The Manual can be accessed at the Ministry's website www.mnr.gov.on.ca under the publications icon.

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement**
  Section 2.8 Significant Areas of Natural and Scientific Interest (c) Adjacent Lands
  Adjacent lands are the lands within which impacts must be considered and within which the compatibility of a development proposal must be addressed. The extent of adjacent lands may vary depending on such facts as hydrology, topography, soil conditions, potential disruption of wildlife movement patterns, adjacent land uses and other features…..
  The Province recommends that adjacent lands are those lands within 50 metres of an

- **Natural Heritage Reference Manual for Policy 2.3 of the Provincial Policy Statement**
  Section 2.8 Significant Areas of Natural and Scientific Interest (c) Adjacent Lands (Continued)
  ANSI. This width is recommended based on considerations related to, among other things, protecting typical woodland edges, riparian vegetation and wildlife habitats, as well as unusual and distinctive vegetation communities and geological formations for which the ANSI may be identified…

Unfortunately, in recent years, the Ministry of Natural Resources and some municipalities have changed the original bounderies of ANSIs in order to allow development, including aggregate extraction. It is not recommended that ANSI lands be included inside a pit or quarry licence boundary as operators have been known to destroy or degrade unique features (e.g. the end of the Galt Moraine ANSI in the Township of Puslinch, County of Wellington).

E. The Environmental Commissioner of Ontario: Annual Reports and Recommendations on Aggregate Resources

As legislated under the Environmental Bill of Rights, the Environmental Commissioner of Ontario (ECO) reviews provincial acts, policies, regulations and instruments, conducts investigations about alleged harm to the environment and reports to the Ontario Legislature on a yearly basis.

The ECO's annual reports contain a significant number of recommendations in respect to land use, aggregate resources, aggregate operations, rehabilitation and "*adverse effects*" and *"negative* impacts" on the natural environment and the environment. The ECO's Annual Reports can be accessed at www.eco.on.ca

- **Environmental Commissioner's Annual Report: 2006-2007**
  Protecting Wetlands, Or Draining for Development?
  Recommendation 1:
  The ECO recommends that MNR significantly speed up the process of wetland identification and evaluation and ensure that Provincially Significant Wetlands are incorporated into municipal official plans.
- **Environmental Commissioner's Annual Report: 2006-2007**
  Preserving Natural Areas, OR Extracting Aggregates Wherever They Lie?
  Recommendation 3:
  The ECO recommends that the provincial government reconcile its conflicting priorities between aggregate extraction and environmental protection. Specifically, the province should develop a new mechanism within the ARA approvals process that screens out, at an early stage, proposal conflicting with identified natural heritage or source water protection values.

- **Environmental Commissioner's Annual Report: 2006-2007**
  Our Cratered Landscape: Can Pits and Quarries Be Evaluated?
  Recommendation 8:
  The ECO recommends that MNR improve the rehabilitation rates of Ontario pits and quarries by introducing stronger legislation with targets and timelines; by applying up-to-date rules to grandfathered licences, and by further strengthening the ministry's own field capacity for inspections.
- **Environmental Commissioner's Annual Report: 2007-2008**
  Biodiversity in Crisis
  Recommendation 6:
  The ECO recommends that all prescribed ministries develop action plans that specify the measures to conserve biodiversity that they will undertake.

When preparing for public meetings and writing letters of objection to an official plan amendment application, a zoning- by-law amendment application and a licence application for a pit or quarry proposal, citizens are advised to review the Environmental Commissioner's concerns and recommendations. Any concerns and recommendations expressed by the ECO that may apply to a proposed pit or quarry should be brought forward at public meetings and referenced in letters of objection submitted under the Aggregate Resources Act and comments submitted through the EBR Registry.

Citizens are advised to keep abreast of what the Environmental Commissioner of Ontario is reporting and to support the efforts and recommendations of the ECO in protecting the natural environment, the environment and citizens' rights.

F. Ontario Municipal Board Hearings, Citizen Participation and Costs

An official plan amendment application and a zoning by-law amendment application for a proposed pit or quarry approved by a municipal government can be appealed by citizens to the Ontario Municipal Board for a hearing under the Planning Act. An applicant can file an appeal to the Ontario Municipal Board if a municipality fails to make a decision on an official plan amendment and/or zoning by-law amendment in a specific time period.

A licence application can be referred to the Ontario Municipal Board by the Minister of Natural Resources for a hearing under the Aggregate Resources Act if the licence applicant is not successful in resolving public objections and municipal and agency objections to a proposed pit or quarry licence application.

A recent case before the Ontario Municipal Board has raised concerns among citizens who are considering party or participant status at an OMB Hearing. In December 2007, a developer asked the Ontario Municipal Board to order

ratepayers opposing the development project, and their lawyers, to pay $3.6 million in legal fees and consulting costs for an OMB Hearing that lasted four months. The claim is believed to be the highest in the Board's history. The public has called for the government of Ontario to intervene because the unprecedented amount sought by the developer will scare off citizens from opposing development proposals.

The Toronto Star's article written by Sandro Contenta and dated Sunday, Februray 10, 2008 "*Developer's Cost Claims Raise Fears of Legal Chill: Potential OMB Decision Could Make Community Groups Wary of Opposing Development Plans*" and "*Local Groups Fear Being Silenced*" is available on the Star's website and provides information about the case. A follow-up article "*Democracy Suffers Under Barrage of Strategic Lawsuit*" written by Rick Smith, executive director of Envjronmental Defence and Devon Page, acting executive director of Ecojustice Canada, appeared in the Toronto Star on February 26, 2008.

A citizen who requests to be a "*party*" or a "*participan*t" at an OMB Hearing and who has raised genuine concerns about a proposed pit or quarry and the potential for "*adverse effects*" and "*negative impacts*" on the natural environment, the environment, the health, safety, and quality of life of his or her family and property should not be considered frivolous or vexatious in bringing forward their sincerely held concerns and opinions at an OMB pre-hearing or hearing.

As required under the Planning Act and Section 12 of the Aggregate Resources Act, members appointed to the Ontario Municipal Board must thoroughly review planning applications and licence applications and ensure that any decision and order to approve the applications reflect "good planning." Good planning has to include the assessment of the potential for "*adverse effects*" and "*negative impacts*" on the natural environment, the environment, properties and the health, safety, quality of life and well-being of citizens.

The Ontario Municipal Board, in hearing a case, has an obligation to acknowledge and address the potential that a proposed aggregate operation may cause "*adverse effects*" and "*negative impacts*" on the natural environment, the environment, properties, and the health, safety, quality of life and well-being of citizens and their properties. The Board is bound to act in accordance with the stated purposes and matters of provincial interest in the Planning Act.

- **Planning Act:**
  Section 1.(1) Interpretation
  In this Act,
  "Municipal Board" means the Ontario Municipal Board;

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- **Planning Act:**
  Section 1.1 Purposes
  The purposes of this Act are,
  (a) to promote sustainable economic development in a healthy natural environment within the policy and by the means provided under this Act;
  (b) to provide for a land use planning system led by provincial policy (PPS);
  (c) to integrate matters of provincial interest in provincial and municipal planning decisions;
  (d) to provide for planning processes that are fair by making them open, accessible, timely and efficient;
  (e) to encourage co-operation and co-ordination among various interests;
  (f) to recognize the decision-making authority and accountability of municipal councils in planning.
- **Planning Act:**
  Section 2. Provincial Interest
  The minister, the council of a municipality, a local board, a planning board and the Municipal Board, in carrying out their responsibilities under this Act, shall have regard to, among other matters, matters of provincial interest such as,
  (a) the protection of ecological systems, including natural areas, features and functions;
  (b) the protection of agricultural resources of the Province;
  (c) the conservation and management of natural resources of the Province;
  (d) the conservation of features of significant architectural, cultural, historical, archaeological or scientific interest;
  (e) the supply, efficient use and conservation of energy and water;
  (f) the adequate provision and efficient use of communication, transportation, sewage and water services and waste management systems;
  (g) the minimization of waste;
  (h) the orderly development of safe and healthy communities;
  (h.1) the accessibility for persons with disabilities to all facilities, services and matters to which this Act applies;
  (i) the adequate provision and distribution of educational, health, social cultural and recreational facilities;
  (j) the adequate provision of a full range of housing;
  (k) the adequate provision of employment opportunities;
  (l) the protection of financial and economic well-being of the Province and its municipalities;
  (m) the co-ordination of planning activities of public bodies;
  (n) the resolution of planning conflicts involving public and private interests;
  (o) the protection of public health and safety
  (p) the appropriate location of growth and development;
  (q) the promotion of development that is designed to be sustainable, to support public transit and to be orientated to pedestrians.

Under Section 1.1 (d) and Section 2 (n) of the Planning Act, a citizen and or group of citizens that have requested "*party*" or "*participant*" status at an OMB Hearing have the legal entitlement to be treated fairly and to freely present information that relates to the potential for a proposed pit or quarry to cause "*adverse effects*" and "*negative impacts*" on the natural environment, the environment, the health, safety and quality of life of citizens and their properties.

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The OMB member has a duty to hear the information in a courteous and helpful manner and to evaluate, assess and report accurately on the potential for "adverse effects" and "negative impacts" on the natural environment, the environment, properties, and the health, safety, quality of life and well-being of citizens and their properties.

Section 3. (5) of the Planning Act requires that the decision of the Ontario Municipal Board in respect to an official plan amendment and a zoning by-law amendment application must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(5) Policy Statements and Provincial Plans
  A decision of the council of a municipality, a local board, a planning board, a minister of the Crown and a ministry, board, commission or agency of the government, including the municipal board, in respect of the exercise of any authority that affects a planning matter, (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date of the decision; and (b) shall conform with the provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

Section 3. (6) of the Planning Act requires that any comments, submissions or advice provided by the Ontario Municipal Board affecting a planning matter must be consistent with Provincial Policy Statements.

- **Planning Act**:
  Section 3.(6) Policy Statements and Provincial Plans
  Comments, submissions or advice affecting a planning matter that are provided by the council of a municipality, a local board, a planning board, a minister of ministry, board, commission or agency of the government,
  (a) shall be consistent with the policy statements issued under subsection (1) that are in effect on the date the comments, submissions or advice are provided; and
  (b) shall conform with provincial plans that are in effect on that date, or shall not conflict with them, as the case may be.

It is important to note that a citizen or a citizen's group named as a "*party*" at an OMB Hearing can represent themselves and appear without legal counsel; however, observations and the text of decisions in more recent years indicate that citizens can be financially vulnerable and may be publicly chastised in how they represent themselves and their position at an OMB Hearing.

Lawyers and consultants representing pit and quarry applicants can make claims that the public, parties and participants are "*delaying*" the approval process for applications. Citizens are advised to monitor all communications and immediately respond in writing to any reference of allegations of "*delay*" in a courteous but strongly-worded response. Do not let allegations of "delay" or other allegations of a frivolous or vexatious nature go unchallenged as they may be used at a later date by the applicant in a request to the OMB for costs.

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The Environmental Bill of Rights Act establishes the public's right and means to participate in the making of environmentally significant decisions by the Government of Ontario and the protection of the environment. The Ontario Municipal Board appointed by the Government of Ontario is subject to the Environmental Bill of Rights and must provide the public during a hearing with the means to ensure that concerns about the environment are addressed in an effective, timely, open and fair manner.

- **Environmental Bill of Rights**
  Preamble
  The people of Ontario recognize the inherent value of the natural environment.
  The people of Ontario have a right to a healthful environment.
  The people of Ontario have as a common goal, the protection, conservation and restoration of the natural environment for the benefit of the present and future generations.
  While the government has the primary responsibility for achieving this goal, the people should have means to ensure that it is achieved in an effective, timely, open and fair manner.
  Therefore, Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows: ….
  Environmental Bill of Rights Act
  Section 2. Purposes of Act
  ***(1) The purposes of this Act are*,**
  (a) to protect, conserve and, where reasonable, restore the integrity of the environment by the means provided in this Act;
  (b) to provide sustainability of the environment by the means provided in this Act; and
  (c) to protect the right to a healthful environment by the means provided in this Act.
  (2) The purposes set out in subsection (1) include the following:
  1. The prevention, reduction and elimination of the use, generation and release of pollutants that are an unreasonable threat to the integrity of the environment.
  2. The protection and conservation of biological, ecological and genetic diversity.
  3. The protection and conservation of natural resources, including plant life, animal life and ecological systems.
  4. The encouragement of the wise management of our natural resources, including plant life, animal life and ecological systems.
  5. The identification, protection and conservation of ecologically sensitive areas or processes.
  (3) In order to fulfill the purposes set out in subsections(1) and (2), this Act provides,
  (a) means by which residents of Ontario may participate in the making of environmentally significant decisions by the Government of Ontario;
  (b) increased accountability of the Government of Ontario for its environmental decision-making;
  (c) increased access to the courts by residents of Ontario for the protection of the environment; and
  (d) enhanced protection for employees who take action in respect of environmental harm.

The public who have expressed genuine concerns about the potential for a proposed pit or quarry to cause “*adverse effects*” and “*negative impacts*” on the natural environment, the environment, the health, safety and quality of life of citizens and their properties should be offered some protection under Section 2 of the Environmental Bill of Rights Act and not be subject to any order for costs issued by the Ontario Municipal Board. It is not known if there is any existing case law that applies to the use of the Environmental Bill of Rights to protect the public’s right to participate in the making of environmentally significant decisions by the Government of Ontario without financial penalty.

G. Emerging “Adverse Effects” and “Negative Impacts” of Pit and Quarry Operations on Air Quality

Pit and quarry operations contribute to poor air quality in Ontario. Contaminants such as silica dust, particulate matter and toxic vehicle/equipment emissions are discharged to the natural environment and the environment.

Under the Environmental Protection Act, the Health Protection and Promotion Act and other Acts, the citizens of Ontario have the legal entitlement to breathe clean air and to live in a healthy and safe natural environment and environment and the right to enjoy the normal use of their homes and properties. Citizens must consistently and more frequently talk about their needs and expectations about air quality in an environmental context with reference to the Environmental Protection Act, the Health Protection and Promotion Act and other laws.

Citizens must insist that the legal entitlement to clean air to breathe shall be achieved and accept nothing less when a pit or quarry operation is proposed or currently in operation. Politicians, municipal and ministry staff, government agencies, the Ontario Municipal Board, consultants and applicants cannot deprive a citizen of this legal entitlement to clean air to breathe.

On January 29, 2008, the Toronto Star published an excellent article written by Joseph Hall titled “*Taking Air Quality to Heart*.” A cardiac researcher has reported that there is growing evidence that chronic exposure to the harmful effects of air pollution in Ontario may be causing heart disease in otherwise healthy people.

A recent and far-reaching decision of the Supreme Court of Canada may be helpful to citizens seeking protection from contaminates discharged into the natural environment from a pit or quarry operation. On November 20, 2008, the Supreme Court of Canada upheld the right of citizens to launch environmental class action lawsuits for “abnormal or excessive environmental annoyances” to a

neigbourhood. The citizens who launched the class action and were successful in gaining financial compensation complained that a cement plant spewed excessive amounts of residue on their homes and caused odours and noise that de-valued properties.

The implications of the Supreme Court decision will have relevance in all provinces and will undoubtedly apply to the discharge of contaminates from pits and quarries in Ontario. Additional information about this case can be accessed at the Ecojustice website at www.ecojustice.ca as well as the Quebec Environmental Law Centre and Friends of the Earth Canada.

At this time, the "***adverse effects***" and "***negative impacts***" caused by exposure to pit and quarry operation contaminants discharged to the air appears not to have been assessed, evaluated and studied. It would be helpful to know if citizens living or working adjacent to pits and quarries or in surrounding areas have a higher instance of heart disease, asthma and other respiratory illnesses.

H. Significance and Implications of a Precedent-Setting Ontario Divisional Court Decision, June 18, 2008

In a precedent-setting decision that will impact air, water and waste decisions throughout the Province of Ontario, the Ontario Divisional Court ruled on June 18, 2008 that a citizen-led appeal of a Company to burn tires, plastics, bone meal and other waste at a cement kiln in Bath, Ontario will proceed. The Court rejected an effort by the Ministry of the Environment and the Company to shut down an Environmental Review Tribunal hearing.

The Environmental Commissioner of Ontario intervened in the case as there was a concern that there would be long-lasting impacts on future environmental decision-making in the Province. Additional information about this case can be accessed at the Lake Ontario Waterkeeper website at www.waterkeeper.ca The Court's decision can be accessed at the Ecojustice website at www.ecojustice.ca A news release about the case issued by the Environmental Commissioner dated November 7, 2007 can be accessed at www.eco.on.ca

The significance of this Court decision is that citizens who have concerns about a proposed undertaking have the right to be heard in the decision-making process. The implications of this Court decision is that citizens who have concerns about the "adverse effects" and "negative impacts" of a proposed pit or quarry operation on the natural environment, the environment, properties and the health, safety,

quality of life and well-being of the public may have a stronger voice when participating in a land use planning process (e.g. official plan amendment application, zoning by-law amendment application) and responding to a licence application.

I. Environmental Certificates of Approval

Any facility that releases emissions to the atmosphere, discharges contaminates to ground or surface water, or stores waste must have a "*Certificate of Approval*" before it can operate lawfully. It is the responsibility of owners and operators of pits and quarries to apply and obtain certain Certificates of Approval.

Citizens are advised to inquire as to certificates of approval that will be required to operate a proposed pit or quarry. If a pit or quarry is already in operation, citizens can request that the Ministry of the Environment provide copies of the Certificates of Approval that have been issued by the MOE. Citizens should also request copies of audits that have been conducted in respect to the Certificates of Approval. It may be that some pit and quarry operators have not obtained the required Certificates of Approval. The *Environmental Assessment and Approvals Branch* of the Ministry of the Environment can be reached at 1-800-461-6290 or by e-mail at EAABGen@ene.gov.on.ca.

J. Reporting a Discharge of Contaminants: MOE Spills Action Centre (SAC)

Provincial law requires that all pollutants spilled into the natural environment must be reported forthwith to the Ministry of the Environment. This requirement applies to the person who causes or permits a spill and the person who has control of the pollutant immediately before the discharge. A member of a public agency (e.g. conservation authority) must report a spill even if they have reason to believe that the spill has not already been reported to the MOE.

The Spills Action Centre (SAC) provides a province-wide toll-free-number at 1-800-268-6060 which is answered by environmental officers 24 hours a day, seven days a week.

According to the MOE "*2007 Spills Summary Report*," the primary role of SAC is to receive reports of spills and other environmental matters. When spills happen, the consequences can be serious, threatening or potentially threatening to the health and safety of people, as well as the environment. All reports of spills and

any other reported events are assessed by SAC's environmental officers who then determine what, if any, further response should be taken by the Ministry.

Gases and particulates, including smoke, dust/particulates, nitrous oxide, natural gas are listed as one group of spills. Citizens are advised to report to the SAC, spills of airborne particulates, toxic gases etc. emitted from a pit or quarry operation.

Citizens should request a copy of the spills report from the MOE and file the reports for future reference. As well citizens are advised to report the spill to the Ministry of Natural Resources. In the past, MNR staff have suggested that citizens report the spill to the pit or quarry operator. Annual compliance reports submitted by aggregate operators to the MNR, should contain reference to reported spills and the dates on which they occurred.

If a pit or quarry operation is causing excessive noise and/or vibration, citizens are advised to report the contaminate discharge to the District Office of the Ministry of the Environment and to the Ministry of Natural Resources. Citizens are advised to keep a record of all calls to the MOE for future reference. Annual compliance reports submitted by aggregate operators to the MNR, should contain reference to noise and/or vibration events reported and the dates on which they occurred.

K. Ontario's Fairness Campaign: Building a Strong Ontario For A Strong Canada

The government of Ontario launched a campaign of fairness asking that Members of Parliament who represent the citizens of Ontario work to ensure fairness in health care funding, infrastructure investments, support for the Ontario Economy and Employment Insurance at the federal government level. More information about this provincial initiative can be accessed at www.fairness.ca

It would be wise for the Province of Ontario to add a fifth priority to the "*Fairness Campaign*" that would focus on the protection of the natural environment, the environment, and the health, safety, quality of life and well-being of citizens and properties.