



REGION OF WATERLOO

PLANNING, HOUSING AND COMMUNITY SERVICES Community Planning

TO: Chair Jim Wideman and Members of the Planning and Works Committee

DATE: February 15, 2011

FILE CODE: D01-01

SUBJECT: APPEALS TO THE NEW REGIONAL OFFICIAL PLAN

RECOMMENDATION:

THAT the Regional Municipality of Waterloo approve the following actions, as described in Report P-11-013, dated February 15, 2011 with respect to the new Regional Official Plan:

- a) Ratify the Notice of Appeal dated January 21, 2011 filed by the Regional Commissioner of Planning, Housing and Community Services at the direction of Regional Council with respect to the Notice of Decision of the Minister of Municipal Affairs and Housing dated December 22, 2010;
- b) Request the Ontario Municipal Board to move immediately toward a pre-hearing to identify the parties and participants of the hearing, and clarify and/or reduce the number of issues under appeal; and
- c) Authorize Regional staff to participate and take any necessary steps in the Ontario Municipal Board process, including the negotiation and resolution of appeals, and direct the Regional Solicitor to retain such experts and legal counsel, all as deemed necessary and appropriate, by the Regional Solicitor and the Commissioner of Planning, Housing and Community Services to protect the Regional interest in this matter, as expressed by Regional Council through the adoption of the new Regional Official Plan on June 16, 2009 and in subsequent submissions to the Province.

SUMMARY:

This report provides a summary of the appeals that have been filed with respect to the new Regional Official Plan (ROP). A total of 21 appeals have been submitted on a wide range of planning policy and land use matters. Most of the appeals were submitted by individuals and corporations with development interests across the Region. Some recurring issues include the Regional Land Budget, the application of the reurbanization and density targets, and the desire to designate additional land for development.

In an effort to keep the public informed of the ongoing approval process, information letters were sent by the Region on January 5, 2011 to all the stakeholders on the ROP mailing list. The letter informed stakeholders about the Minister's approval of the new ROP, where to view a copy of the Notice of Decision, and the steps and deadlines involved in filing an appeal to the OMB. The letter was distributed to approximately 1,020 groups, individuals or corporations. A copy of the letter was hand delivered to the three landowners in the southwest area of the City of Kitchener who appeared before Regional Council in June 2009 and indicated they did not receive copies of the Region's previous public notifications regarding the new ROP. A copy of the letter and the Minister's Notice of Decision was also posted on the Region's website. This notification is over and above the statutory notification requirements, which are the sole responsibility of the Province.

Of the 21 appeals submitted, one was filed by the Regional Commissioner of Planning, Housing and Community Services at the direction of the Regional Council, and another was filed by the Township of Woolwich. Both appeals pertain to the decision by the Minister of Municipal Affairs and Housing to modify several ROP policies related to source water protection and mineral aggregate extraction, and pertain to the same policies.

To confirm the Region's appeal, this report seeks Regional Council's ratification of the Notice of Appeal filed by the Regional Commissioner. It also requests authorization for Regional staff to participate and take any necessary steps in the Ontario Municipal Board process, including the negotiation and resolution of appeals, and direct the Regional Solicitor to retain such experts and legal counsel, all as deemed necessary and appropriate, by the Regional Solicitor and the Commissioner of Planning, Housing and Community Services to protect the Regional interest in this matter, as expressed by Regional Council through the adoption of the new Regional Official Plan on June 16, 2009 and in subsequent submissions to the Province.

One of the main reasons for the Region's appeal is to protect the Region's groundwater resources. The Region of Waterloo is the largest municipality in Canada primarily dependent on groundwater sources for its municipal water supply. Approximately 75 per cent of the Region's water supply comes from groundwater sources. Extracting mineral aggregates close to, or below, the water table has the potential to impact the quantity and quality of water, including both vulnerable and sensitive groundwater resources. Such impacts could potentially result in the need for more expensive water treatment measures and/or the closure of municipal wells.

It is important to emphasize that the Region's appeal affects only a small number of policies in the Council adopted ROP. On the whole, the Province continues to support the new ROP and how it implements the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe and other Provincial policies and legislation.

Regional staff has met with the Area Municipalities to review the appeals and explain the next steps in the process. Each of the Area Municipalities is currently in various stages of updating their Official Plans to conform to the new ROP. To avoid delays, Regional staff has advised the Area Municipalities to continue working on their Official Plans during the appeal process.

Regional staff will report back to Regional Council from time-to-time, as appropriate, to keep Council informed and to seek further direction from Regional Council with respect to the appeals.

REPORT:

After nearly 18 months of review and negotiation, the Minister of Municipal Affairs and Housing approved the new Regional Official Plan (ROP), with modifications, on December 22, 2010. The Minister's approval was released in a Notice of Decision dated January 4, 2011, and was subject to a 20 day appeal period under the *Planning Act*.

In an effort to keep the public informed of the ongoing approval process, information letters were sent by the Region on January 5, 2011 to all the stakeholders on the ROP mailing list. The letter informed stakeholders about the Minister's approval of the new ROP, where to view a copy of the Notice of Decision, and the steps and deadlines involved in filing an appeal to the OMB. The letter was distributed to approximately 1,020 groups, individuals or corporations. A copy of the letter was hand delivered to the three landowners in the southwest area of the City of Kitchener who appeared before Regional Council in June 2009 and indicated they did not receive copies of the Region's previous public notifications regarding the new ROP. A copy of the letter and the Minister's Notice of Decision was also posted on the Region's website. This notification is over and above the statutory notification requirements, which are the sole responsibility of the Province.

Most of the parties who filed an appeal have development interests in various land holdings across the Region, including the southwest corner of the City of Kitchener and other parts of the Region. Some appellants are challenging the methodology and results of the Regional Land Budget in seeking the designation of additional land for urban development. Other key policies under appeal pertain to the Countryside Line, and the new Protected Countryside and Regional Recharge Area designations. Some of the appeals also relate to smaller, site-specific matters.

Due to the scope of the appeals, the entire ROP is now before the Board and, as a result, has yet to come into force and effect. Subject to Regional Council's authorization, Regional staff will request the OMB to move immediately to a pre-hearing to identify the parties and participants of the hearing, and to clarify and/or scope the matters under appeal. A brief summary of each appeal is given below.

Appeal Submitted by the Region of Waterloo

The Minister's Notice of Decision included several modifications to the maps and policies the ROP. The vast majority of the modifications are minor in nature and include additional changes recommended by Region Council after the ROP was adopted. These additional changes were recommended by Regional Council in a resolution passed on June 30, 2010 (see Report No. P-10-056 dated June 22, 2010). Taken as a whole, the Province continues to be very supportive of the new ROP and the manner in which it implements the Provincial Policy Statement, the Growth Plan for the Greater Golden Horseshoe and other Provincial policies and legislation.

Notwithstanding the Province's support, the Minister has made some significant modifications to the ROP that are inconsistent with the policy direction as adopted by Regional Council. It is Regional staff's opinion that these modifications also do not represent good land use planning, and are not consistent with or do not comply with various Provincial statutes, regulations or policies. The main reasons for the Region's appeal are summarized below. A copy of the Region's Notice of Appeal is provided in Appendix A.

Source Water Protection

The Region of Waterloo is the largest municipality in Canada primarily dependent on groundwater sources for its municipal water supply. These resources supply approximately 75 per cent of the Region's total water supply. The extraction of mineral aggregates close to, or below, the water table has the potential to impact the quantity and quality of water, including both vulnerable and sensitive groundwater resources. These impacts could potentially result in the need for more expensive water treatment measures and/or the closure of municipal wells. For these reasons, the Council adopted ROP includes policies to prohibit certain high risk land uses, including mineral aggregate extraction, within the two-year time of travel capture zone around a municipal drinking-water supply well. The Minister revised these policies such that they will remain in effect only until the ROP has been amended to incorporate the Source Protection Plans currently being developed by the Province. Regional staff does not support these modifications as they could potential result in a lower level of source water protection than is provided in policies of the Council adopted ROP.

Vertical Zoning/Depth of Aggregate Extraction

The adopted ROP includes several provisions related to the vertical zoning of mineral aggregate operations. The Minister has deleted these provisions and removed the requirement for the Region's Area Municipalities to set the vertical limits (i.e., depth of extraction) of aggregate extraction in a zoning by-law passed under the *Planning Act*. Regional staff does not support these modifications because they fail to recognize the authority Area Municipalities have under the *Planning Act* to restrict the use of land, including mineral aggregate extraction. This authority includes the right to set both the horizontal and vertical limits of any given land use in Area Municipal zoning by-laws.

Aggregate Extraction Below the Water Table

The Council adopted ROP contains policies that require a ROP amendment prior to allowing the extraction of mineral aggregates below the water table within Prime Agricultural Areas. The Minister's modifications deleted these specific provisions. Regional staff does not support these modifications because they do not appropriately address the potential long-term planning implications of aggregate extraction below the water table on Prime Agricultural Lands.

Subwatershed Scale Hydrogeological Studies

Policies in the adopted ROP require the completion of a subwatershed-scale hydrogeological study prior to allowing an application for aggregate extraction below the water table. This policy is needed to assess the potential cumulative impacts of extraction below the water table at the subwatershed level. The Minister has modified this policy to require instead "a hydrogeological cumulative impacts assessment in accordance with best practice guidelines established by the Grand River Conservation Authority, Ontario Stone Sand and Gravel Association, and Ministry of Natural Resources". Compliance with these "best practice guidelines" as currently written is voluntary, thereby effectively eliminating any mandatory compliance. Regional staff does not support this modification because it would potentially establish a lower standard of groundwater protection.

Aggregate Extraction within Environmentally Sensitive Policy Areas

Environmentally Sensitive Policy Areas (ESPAs) have been the cornerstone of the Region's environmental planning policies since 1976. Given their significance, policies of the adopted ROP prohibit outright any aggregate extraction within those portions of Core Environmental Features meeting the criteria of ESPAs. The Minister has modified these policies to permit aggregate extraction within ESPAs under certain conditions. Regional staff does not support these modifications. The Minister's modifications fail to recognize the ecological significance of ESPAs, many of which are as significant, if not more significant than some ecological communities located within areas identified as Provincially Significant Wetlands (PSWs) by the Ministry of Natural Resources. The Minister's modification would weaken the Region's long standing policy to protect ESPAs.

Clerical Errors Included in the Minister's Decision

The Minister's decision includes several clerical errors that affect various policies and a portion of Map 7. The version of Map 7 appended to the Minister's Notice of Decision does not designate the southwest corner of the City of Kitchener as Protected Countryside, as specifically recommended by Regional Council in a resolution passed on June 30, 2010. In discussions with Regional staff, the Ministry of Municipal Affairs and Housing confirmed that an incorrect copy of Map 7 had been included in the Notice of Decision, and that the Ministry had no objection to the modification as recommended by Regional Council. The Ministry advised the Region to appeal the affected policies and mapping so that they may be corrected by the Board. In a follow-up letter dated February 2, 2011, the Ministry confirmed that it is prepared to work with the Region in placing an appropriate Map 7 before the Board. A copy of this letter is provided in Appendix B.

Appeal Submitted by the Township of Woolwich

The Township of Woolwich has also filed an appeal with respect to the Minister's decision to modify several of the ROP's aggregate policies. The Township has appealed the same policies as the Region.

Appeals Submitted by Other Parties

1. An appeal, received from Dryden Smith & Head, on behalf of Myles Schmidt Property - City of Kitchener - 845026 Ontario Limited, on January 17, 2011 regarding the "Core Environmental" designation on their lands.
2. An appeal, received from Peter Pickfield Partner, on behalf of Lea Silvestri Investments Ltd. and 1541179 Ontario Ltd, on January 20, 2011 regarding the inclusion of their lands within the Protected Countryside in the Township of North Dumfries.
3. An appeal, received from Goodmans LLP, on behalf of Activa Holdings Inc., 2140065 Ontario Inc., 159805 Ontario Inc. and Stonefield Properties Corp., on January 21, 2011 regarding:
 - (a) the methodology used by the Region to prepare the Regional Land Budget exercise;
 - (b) the growth management policies respecting the Countyside, Countyside Line, Protected Countyside and associated mapping;
 - (c) Regional Recharge Area designation and policies and the delineation of the wellhead protection area;
 - (d) Greenlands Network policies and mapping; and
 - (e) any other policies impeding the development of their lands.
4. An appeal, received from Brenda and Rusty Brissette, on January 21, 2011 regarding the Protected Countryside designation on their lands.
5. An appeal, received from Springbank Investments Inc, on behalf of Kirtaff Holdings Inc., Edmund Patrick Taylor, Linda Margaret Taylor, Mary Alma Corbett, John Kostas, on January 21, 2011 regarding policies, maps and section which impede the development of their lands.
6. An appeal, received from MHBC Planning, on behalf of William Gies, on January 24, 2011 regarding Protected Countryside designation on a portion of his lands in the Township of Woolwich.
7. An appeal, received from Bratty and Partners, LLP, on behalf of Madison Homes Inc, on January 24, 2011 regarding the exclusion of their lands from the Urban Area designation.
8. An appeal, received from Ontario Stone, Sand & Gravel Association, on January 24, 2011 regarding various mineral resource policies and study requirements.
9. An appeal, received from Connie and Robert Bogusat, on January 24, 2011 regarding the inclusion of their lands within the Protected Countryside in the City of Kitchener.
10. An appeal, received from White, Duncan, Linton LLP, on behalf of Plains Westmount Farms Limited, on January 24, 2011 regarding specific sections and maps on the basis that proper studies have not been conducted to justify the Protected Countryside and Regional Recharge Areas designations.
11. An appeal, received from Hardy Bromberg, on January 24, 2011 regarding the Protected Countryside designation and Environmentally Sensitive Landscape and Core Environmental Features designation on his property in the Township of North Dumfries.
12. An appeal, received from Townsend and Associates, on behalf of Mattamy Development Corporation, on January 24, 2011 regarding the Region's land budget methodology and development restrictions.

13. An appeal, received from Ricketts, Harris LLP, on behalf of Elaine Fratton and Howard Lemieux, on January 24, 2011 regarding the affordable housing policies which deal with the conversion of rental affordable housing to condominium ownership.
14. An appeal, received from Glen Schnarr & Associates Inc., on behalf of 2163846 Ontario Inc., (Arden Semper) on January 24, 2011 regarding the exclusion of their lands in the City of Kitchener from the urban area designation and applicable policies.
15. An appeal, received from Gowlings Lafleur Henderson, LLP, on behalf of Alfred and Rita Cutaja, Lisa and Willi Kellner, on January 24, 2011 regarding the Greenlands Network, Core Environmental Features and Regional Recharge Area designation on their lands in the City of Kitchener.
16. An appeal, received from Weir Foulds LLP, on behalf of Select Sand and Gravel, Robert Kieswetter in Trust, B&B Kieswetter Excavating, Kieswetter Holdings Limited & STAMM Investments, on January 24, 2011 regarding various sections of the ROP and the glossary of terms as it relates to their interest to develop their land.
17. An appeal, received from Weir Foulds LLP, on behalf of The INCC Corp, on January 24, 2011 regarding various sections of the ROP and the glossary of terms as it relates to their interest to develop a large parcel of land for commercial purposes in the City of Waterloo and the City of Kitchener.
18. An appeal, received from Goodmans LLP, on behalf of Northgate Land Corp. and 2115881 Ontario Limited, on January 24, 2011, regarding:
 - (a) the 'Core Environmental Features' designation on their lands in the City of Waterloo;
 - (b) the methodology used by the Region to prepare the Regional Land Budget Exercise;
 - (c) the Greenland Network policy requirements; and
 - (d) Source Water Protection.
19. An appeal, received from Goodmans LLP, on behalf of Hallman Construction Limited and Gatestone Development Corp., on January 24, 2011, regarding:
 - (a) the methodology used by the Region to prepare the Regional Land Budget exercise;
 - (b) the growth management policies;
 - (c) any other policies which appear to predetermine the location for growth.

Next Steps

Subject to Regional Council's authorization, Regional staff will request the OMB to move immediately towards a pre-hearing to identify the parties and participants of the hearing, and clarify and/or reduce the number of issues under appeal. In addition, staff will continue to communicate and consult with the Area Municipalities to avoid any planning delays during the appeal process. Regional staff will report back to Regional Council from time-to-time, as appropriate, to keep Council apprised and to seek further direction from Council with respect to the appeals.

Area Municipal Consultation/Coordination

Regional staff met with Area Municipal planning staff representatives on February 10, 2011 to review the appeals to the ROP and the next steps in the approval process. Each of the Area Municipalities is currently in various stages of updating their Official Plans to conform to the new ROP. Regional staff advised the Area Municipalities to continue working on their Official Plans while the appeals to the ROP are being addressed. In addition, as noted above, the Township of

Woolwich has also decided to file an appeal with the OMB. The Township's appeal pertains to the same policies that were appealed by the Region.

CORPORATE STRATEGIC PLAN:

The recommendations of this report directly support the Region's priorities with respect to implementing Focus Areas 1 and 5 of the Corporate Strategic Plan.

FINANCIAL IMPLICATIONS:

The Legal Services Division has retained outside legal counsel with specialized expertise to provide assistance to Regional staff in preparing for the OMB hearings as required. Due to the complexity of the issues, Regional staff anticipates that the hearing could last for six to eight weeks, depending on the final number of participants and issues under appeal. As a result, the OMB hearing will require significant staff and financial resources, including representation by outside legal counsel, to appropriately represent the Region's interests noted in this Report.

Funding to support Regional participation in the OMB process to the end of 2011 would be available through funding currently provided for within the proposed 2011 budget (\$100,000). A request for additional funding for 2012 (\$200,000) is also contained in the budget package currently being considered by Regional Council. Depending on the outcome of the pre-hearing processes, additional funds may be required. Any requests for additional funding will be brought to Regional Council for consideration after the final scope of the hearing is better understood.

OTHER DEPARTMENT CONSULTATIONS/CONCURRENCE:

Legal Services and Water Services have been directly involved in the preparation of the Region's appeal to the OMB and concur with the recommendations of this report.

ATTACHMENTS:

Appendix A: Notice of Appeal filed by the Region of Waterloo dated January 21, 2011.
Appendix B: Letter from the Ministry of Municipal Affairs and Housing dated February 2, 2011.

PREPARED BY: *Kevin Eby*, Director, Community Planning
John Lubczynski, Principal Planner

APPROVED BY: *Rob Horne*, Commissioner of Planning, Housing and Community Services

APPENDIX A

Region of Waterloo

January 21, 2011

**PLANNING, HOUSING AND
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The Hon. Rick Bartolucci, Minister of Municipal Affairs and Housing
c/o Ministry of Municipal Affairs and Housing
Municipal Services Office – Western
Ministry of Municipal Affairs and Housing
659 Exeter Road, 2nd Floor
London, ON N6E 1L3

Dear Minister:

RE: Notice of Appeal**RE: New Official Plan for the Regional Municipality of Waterloo****RE: Appeal of Decision of Ministry of Municipal Affairs and Housing dated
December 22, 2010****RE: File No. 30-OP-0030-08006****RE: EBR Registry No. 010-236**

The Regional Municipality of Waterloo hereby appeals the decision of the Minister of Municipal Affairs and Housing (the Minister) dated December 22, 2010 with respect to the new Regional Official Plan (ROP) adopted by the Regional Municipality of Waterloo (the Region) on June 16, 2009.

The Region hereby appeals several policies and maps, or parts thereof, as approved by the Minister. The policies and maps that are the subject matter of this appeal do not represent good land use planning and are not consistent with or do not comply with various Provincial statutes, regulations or policies.

A summary of the approved policies that are being appealed and the reasons for this appeal are more fully described below.

Policies 8.A.12 (a), 8.A.14 (a) and 8.A.16 (a)

Policies 8.A.12 (a), 8.A.14 (a) and 8.A.16 (a) are the subject of Minister's Modification No. 43. These policies were established by the Region to prohibit certain high risk land uses, including mineral aggregate extraction, within the two-year time of travel capture zone around a municipal drinking-water supply well. The Minister's modification revised these policies such that they will remain in

effect only for an interim period of time. Specifically, the policies will remain in effect only until such time as the ROP has been amended to incorporate the Source Protection Plans currently being developed under the *Clean Water Act*. The Region appeals the Minister's decision with respect to these policies for the following reasons:

- The Region of Waterloo is the owner of a municipal drinking water system where approximately 75 per cent of the water supply comes from groundwater sources. This makes the Region the largest municipality in Canada primarily dependent on groundwater sources for its municipal water supply.
- In recognition of the importance of groundwater to the Region and its area municipalities, the Region employs eight hydrogeologists within its Hydrology and Source Water Division. This Division is responsible for the planning for and implementation of water resource protection programs.
- As the owner of a municipal drinking-water system, the Region is legally obligated under the *Safe Drinking Water Act* to ensure that "all water provided by the system to the point where the system is connected to a user's plumbing system meets the requirements of the prescribed drinking-water quality standards."
- Under Section 3(5) of the *Planning Act*, any planning decisions made by the Region must be consistent with the Provincial Policy Statement (PPS). Section 2.2.1 d) of the PPS requires municipalities to protect all municipal drinking water supplies and designated vulnerable areas by implementing necessary restrictions on development and site alteration. Within the PPS, the term "site alteration" is defined as grading and excavation activities that would include aggregate extraction.
- Extracting mineral aggregate resources within the two-year time of travel capture zone around a municipal drinking-water supply well has the potential to increase the risk of groundwater contamination through spills caused during the extraction of mineral aggregates (e.g., fuel spills), or through contamination related to post-extractive land uses or activities (e.g., road salt, fuel spills, agricultural pesticides or nutrients).
- The area actually impacted by the policies restricting aggregate extraction within the two-year time of travel capture zone as proposed by the Region is less than 1.3 percent of the total Mineral Aggregate Resource Area.
- Any contamination within the Region's two-year time of travel capture zones could result in the need for more expensive water treatment measures and/or the closure of municipal wells. These problems could significantly impede the

Region's ability to meet its legal obligations under the *Safe Drinking Water Act*.

- Under the PPS, the Region is required to develop source water protection policies independent of the process to develop Source Protection Plans. The Region's policies as adopted by Regional Council can coexist with the future Source Protection Plan policies. The Region's policies are prudent, supportable and should not be viewed as having a temporary or interim status.
- Under Sections 38 and 39 of the *Clean Water Act*, the Region is obligated to implement any policies set out in the approved Source Protection Plan. However, if there is a conflict between a policy set out in the Source Protection Plan and a policy of the PPS as implemented through the ROP, the policy that provides the greatest protection to the quality and quantity of any water that is or may be used as a source of drinking water prevails.
- The policies as approved are not consistent in the context of the other source water protection policies in the ROP. In particular, the requirement to incorporate the policies of approved Source Protection Plans into the ROP only apply to three of the eight Wellhead Protection Sensitivity Areas (WSPA) designated in the ROP (i.e., they apply to WSPAs 2, 4, and 6 but not WSPAs 1, 3, 5, 7 and 8. From a source water protection perspective, this approach is inconsistent and unreasonable because it potentially reduces the level of protection relating to Category 'A' uses within the more sensitive WSPAs 2, 4, and 6 by making the restriction of such uses temporary, while leaving permanent the same restriction in less sensitive areas designated WSPA 3, 5, 7 and 8.

Policies 9.B.2, 9.C.1, 9.C.3, 9.C.9 and 9.D.2

Policies 9.B.2, 9.C.1, 9.C.3, 9.C.9 and 9.D.2 are the subject of Minister's Modification Nos. 45, 46, 52 and 59. The policies contain provisions related to the vertical zoning of mineral aggregate operations. The Minister's modifications deleted these provisions and thereby removed the requirement for the Region's area municipalities to set the vertical limits of aggregate extraction in a zoning by-law passed under the *Planning Act*. The Region appeals the Minister's decision with respect to these policies for the following reasons:

- Under Section 34(1) of the *Planning Act*, municipalities have the jurisdiction to pass zoning by-laws to restrict the use of land.
- Section 34(2) of the *Planning Act* explicitly states that pits and quarries are deemed to be a use of land.

- A municipality's authority under the *Planning Act* to restrict the use of land includes the right to set both the horizontal and vertical boundaries of the permitted use. Therefore, municipalities have the legal authority to set the vertical limits of mineral aggregate extraction in a zoning by-law adopted under Section 34(1) of the *Planning Act*.
- Section 2.2.1 d) 2 of the PPS requires municipalities to protect, improve or restore vulnerable and sensitive groundwater resources. Extraction of aggregates close to, or below, the water table has the potential to impact the quantity and quality of water, including both vulnerable and sensitive groundwater resources. Therefore, the Region and its area municipalities have the legal authority and responsibility to set the vertical limits of aggregate extraction within a zoning by-law passed under the *Planning Act*. Vertical limits restricting aggregate extraction are required until such time as it has been appropriately demonstrated that extraction below the water table will not negatively impact the quality or quantity of groundwater resources and, if applicable, that the criteria for evaluating applications for aggregate extraction below the water table in prime agricultural areas have been met consistent with the policies of the PPS as implemented through the ROP.

Policy 9.C.13 (b)

Policy 9.C.13 (b) is the subject of Minister's Modification No. 54. This policy contains provisions relating to use of zoning regulations and development agreements to ensure that all appropriate municipal requirements resulting from the review of an application for aggregate extraction can be imposed and enforced by the municipality. The term "zoning regulations" in this policy would include regulations regarding the vertical limit of aggregate extraction on specific properties (i.e., vertical zoning). The Minister's modification deleted these provisions from the policy. The Region appeals the Minister's decision with respect to this policy for the following reasons:

- Under the *Planning Act*, municipalities have the legal authority to pass zoning regulations to facilitate good land use planning.
- The *Planning Act* also provides, subject to the issuance of a future regulation, the legal authority for municipalities to establish zoning with conditions under the provisions of Section 34(16). Section 34 (16.2) permits a municipality to require an owner of land to enter into a development agreement registered on title relating to the conditions.
- The applicability of Policy 9.C.13 (b) to any given mineral aggregate application is qualified through the words "all appropriate requirements" and "as may be applicable." This language is intended to limit the use of zoning

regulations and development agreements by a municipality to those areas legally permitted under the provisions of the *Planning Act*.

- Therefore, it is inappropriate to preclude the use of these planning tools by municipalities with respect to the review of applications for mineral aggregate extraction.

Policy 9.C.2 and the Preamble to Policy 9.D.1

Policy 9.C.2 and the preamble to Policy 9.D.1 are the subject of Minister's Modification Nos. 47 and 56. These policies contain provisions requiring a ROP amendment prior to allowing the extraction of mineral aggregates below the water table within prime agricultural areas. The Minister's modifications deleted these specific provisions. The Region appeals the Minister's decision with respect to Policy 9.C.2 and the preamble to Policy 9.D.1 for the following reasons:

- Consistent with the PPS, policies within the ROP permit aggregate extraction within prime agricultural areas provided that the site is rehabilitated back to an acceptable agricultural condition. This provision recognizes the interim nature of aggregate extraction and does not generally result in the permanent removal of prime agricultural land.
- Where an aggregate extraction operation would result in the permanent removal of prime agricultural land through the extraction of aggregates below the water table, the ROP sets out a planning test for evaluating the proposed operation against a series of criteria. These criteria, which are consistent with the provisions of Section 2.5.4 of the PPS, must be evaluated to establish the principle of aggregate extraction below the water table within prime agricultural areas.
- Therefore, it is appropriate and necessary to require a ROP amendment as part of the planning process for evaluating applications for below the water table extraction within prime agricultural areas.

Policies 9.D.1 (b) and 9.D.2

Policies 9.D.1 (b) and 9.D.2 are the subject of Minister's Modification Nos. 58 and 59. These policies as originally adopted by Regional Council contain provisions requiring the completion of a subwatershed-scale hydrogeological study prior to allowing an application for aggregate extraction below the water table. This requirement is necessary to evaluate the potential cumulative impacts of extraction below the water table at the subwatershed level. The Minister's modifications reduced the scope and magnitude of, and mandatory compliance

with, this requirement by instead requiring "a hydrogeological cumulative impacts assessment in accordance with best practice guidelines established by the Grand River Conservation Authority, Ontario Stone Sand and Gravel Association, and Ministry of Natural Resources". The Region appeals the Minister's decision with respect to these policies for the following reasons:

- The Region of Waterloo's current Regional Official Policies Plan, as approved by the Minister of Municipal Affairs in Housing in 1995, contains provisions requiring the completion of a subwatershed-scale hydrogeological study prior to allowing extraction below the water table anywhere in the Region of Waterloo. Consequently, the proposed modification would potentially establish a lower standard of groundwater protection in the new ROP than was previously accepted and approved by the Minister in the 1995 Regional Official Policies Plan.
- In practice, applications for aggregate extraction are reviewed individually on a site-by-site basis. This approach is narrowly focused and does not give adequate consideration to the potential cumulative impacts of below the water table extraction, particularly where a new aggregate operation is proposed in a landscape already altered by other existing and former aggregate operations and with the potential for additional pits in the future.
- Successive individual decisions on aggregation extraction over a span of decades may not discern landscape level groundwater recharge, discharge and flow patterns.
- Extensive mineral aggregate extraction below the water table could also adversely impact the ability of the groundwater aquifers to continue to discharge water into the Grand River watershed in the quantity and quality necessary to ensure both the long-term health of the watershed and provide an adequate drinking water supply for communities located downstream of the Region of Waterloo.
- Requiring subwatershed-scale hydrogeological studies that address the potential cumulative impacts of below the water table extraction represents a prudent and comprehensive approach to protecting and managing the Region's natural heritage and water resources over the long-term. This approach is also consistent with Section 2.2.1 a) of the PPS, which obliges municipalities to use the watershed as the meaningful scale for planning.
- The policy as approved (Policy 9.D.2 was simply deleted) would obligate the Region to review applications for below the water table extraction in accordance with best practice guidelines established by the Grand River Conservation Authority, the Ministry of Natural Resources and the Ontario Stone Sand and Gravel Association.

- It is unclear exactly what "best practice guidelines" are being referred to in the policy as approved by the Minister and the Region is left to conclude that the document being referred to is the "Cumulative Effects Assessment (Water Quality and Quantity) Best Practices Paper for Below-Water Sand and Gravel Extraction Operations in Priority Subwatersheds in the Grand River Watershed" dated September 2010, that was referred to by the Grand River Conservation Authority in a resolution of the Authority's Board on November 12, 2010, as "Version 1".
- This paper was developed without the direct involvement of the Region and its area municipalities, involved limited consultation with the public and has not been subject to any natural justice process.
- Under the ROP, the Region may adopt Regional Implementation Guidelines to detail the manner in which certain policies will be implemented. The content and scope of these guidelines are to be determined by the Region, in consultation with its area municipalities and the Grand River Conservation Authority. In addition, the ROP requires public and agency notification of any proposed new or revised Regional Implementation Guidelines, and to provide an opportunity for the public to make representations before Regional Council. This process was designed to be open and transparent, and to ensure that, as stated in Policy 10.B.10, Regional Implementation Guidelines do not "introduce new policy provisions that could be the basis for denying development applications under the *Planning Act*, or for interfering with the natural justice rights of landowners and the public".
- The best practice guidelines referenced in Policy 9.D.1 (b) (assumed to be Version 1 of the best practices paper as noted above) was prepared without proper public and agency consultation, and has the potential to be the instrument for introducing new policy without meeting the natural justice provisions of the *Planning Act*. As written, the policy as modified by the Minister does not specify a specific version of the best practice guidelines and as such, the requirement established by the policy can conceivably be changed at any time by the two agencies and the Ontario Stone Sand and Gravel Association without any additional public notice or due process.
- Version 1 of the best practices paper sets out a general process for evaluating the potential cumulative impacts of aggregate extraction below the water table. As currently written, the paper encourages, but does not require, applicants to comply with the best practices described therein.
- The preamble to Policy 9.D.1 states that "mineral aggregate extraction below the water table will only be permitted (emphasis added) where" among other things, compliance is established with the referenced best practice guidelines. However, as noted above, Version 1 of the best practices paper, which is assumed to be the guidelines referenced in Policy 9.D.1, only encourages

and does not require the participation of applicants. The effect of the modification by the Minister has been to eliminate the requirement for a comprehensive (subwatershed scale) hydrogeological cumulative impact review, which has been a policy of the Region of Waterloo since 1995, and replace it with a best practices paper that applicants are simply encouraged to follow.

- Incorporating policy into the ROP that requires compliance with what is a non-regulatory (encourage only) best practices paper in place of requiring completion of a subwatershed scale hydrogeological study as has been the practice in the Region of Waterloo for over 15 years is inappropriate, does not provide adequate due process and does not represent good land use planning.

Policy 9.C.6

Policy 9.C.6 is the subject of Minister's Modification Nos. 50 and 51. Policy 9.C.6 provides exceptions to the outright prohibition of aggregate extraction in Core Environmental Features established in Policy 7.C.8. As adopted, Policy 9.C.6 contained no provisions that would permit aggregate extraction within those portions of Core Environmental Features designated by the Region on the basis that they meet the criteria of Environmentally Sensitive Policy Areas (ESPAs). The Minister's modifications to Policy 9.C.6 would have the effect of permitting aggregate extraction within ESPAs subject to certain conditions. The Region appeals the Minister's decision with respect to this policy for the following reasons:

- ESPAs consist of high quality natural areas that meet exacting criteria established within the ROP. These natural areas, which were among the first municipally protected environmental areas in Canada, have been the cornerstone of the Region's environmental planning policies since 1976.
- ESPAs contain a range of valuable habitats such as bogs, marshes, swamps, woodlands and floodplains, along with comparatively rare ecosystems such as Carolinian forest, tallgrass prairie, marl meadows, oak savannahs, coldwater streams and alvars. From an ecological perspective, these natural areas are as significant, if not more significant than some ecological communities located within areas identified as Provincially Significant Wetlands (PSWs) by the Ministry of Natural Resources. This is clearly demonstrated by the fact that some of the lands in the Region of Waterloo identified as PSW by the Province do not meet the criteria detailed in the ROP for ESPAs.
- The Region's current Regional Official Policies Plan, as approved by the Minister in 1995, prohibits outright any and all types of aggregate extraction

within ESPAs. The Minister's approval of the new ROP would weaken this long standing policy and establish a lower standard of protection than was previously accepted and approved by the Minister in the 1995 Regional Official Policies Plan.

- The areas of ESPAs proposed to be protected by the new ROP as adopted by Council that would now be subject to extraction under the policies as approved by the Minister represent less than 0.75 percent of the total Mineral Aggregate Resource Area.
- Establishing a lower standard of environmental protection in the new ROP is not consistent with the intent of Sections 2.1 and 4.6 of the PPS.
- Policy 9.C.6 as adopted by Regional Council refers to term "Regionally Significant Woodlands." This term should be revised to read "Significant Woodlands" consistent with the Minister's modifications to Policy 7.C.6.

Policy 7.C.5 (a)

The Region appeals the Minister's decision with respect to Policy 7.C.5 (a) for the following reasons:

- When the Region updated the criteria for ESPAs in 1995, Provincially significant Life Science Areas of Natural and Scientific Interest (ANSIs) were listed as one of the key categories of natural heritage resources protected by the Comprehensive Set of Policy Statements (1995) and subsequently the 1996 PPS. However, during the Province's review of the adopted ROP last year, staff of the Ministry of Natural Resource (MNR) expressed a concern with the use of this criterion due to what they considered to be the limitations of the MNR's ANSI datasets.
- The Ministry's concern was raised in the context the ROP policies prohibiting aggregate extraction within ESPAs. As noted during the Region's discussions with the Province, this concern was one of the primary reasons given by MNR staff to justify the need for the Minister's decision to permit aggregate extraction within portions of ESPAs.
- Therefore, the Region is appealing Policy 7.C.5 (a) to provide the Board an opportunity to revise this specific criterion as part of what may be an eventual resolution to the Region's appeal of Policy 9.C.6 as noted above.

Policy 9.C.8

The Region appeals the Minister's decision with respect to Policy 9.C.8 for the following reasons:

- During the review of the aggregate policies as approved by the Minister, Regional staff noted an inconsistency in the wording associated with the review of development and site alteration proposals contiguous to Core Environmental Features as adopted by Regional Council and approved by the Minister. Policy 7.C.9 states that development or site alteration (which includes aggregate extraction) that is contiguous to Core Environmental Features will only be permitted where such development or site alteration "... would not result in adverse environmental impacts on the features and ecological functions ..." This contrasts with Policy 9.C.8, which applies specifically to aggregate extraction proposed contiguous to Core Environmental Features. The test as established through Policy 9.C.8 is "... that there will be no significant adverse environmental impacts to their features or ecological functions ...".
- The definition of adverse environmental impacts in the ROP includes a series of qualifiers regarding the significance of any potential development or site alteration impacts on land contiguous to a Core Environmental Feature. As a result, the adjective "significant" as used in Policy 9.C.8 should be deleted. The same would also apply to any future resolution of the wording of Policy 9.C.6.
- There is a need to correct an inconsistency in the policies within the ROP relating to the test associated with determining the acceptability of aggregate extraction contiguous to Core Environmental Features.

Portions of Map 4

Policy 9.C.6 of the ROP as adopted by Regional Council provides the opportunity to consider aggregate extraction within those portions of Core Environmental Features identified by the Region as Regionally Significant Woodlands and Environmentally Significant Valley Land Features.

During the review of the ROP as approved by the Minister, the Region identified the need to correct an issue in respect to the application of the version of Policy 9.C.6 as adopted by Regional Council. In order to apply Policy 9.C.6 (modified to refer to Significant Woodlands rather than Regionally Significant Woodlands consistent with the Minister's modification to Policy 7.C.6), changes are required to Map 4 to identify which natural areas have been designated as Core Environmental Features solely on the basis that they meet the test of Significant Woodlands (see Schedule 'A'). As approved, Map 4 does not identify or

separate out Significant Woodlands from the other natural areas within the Core Environmental Feature designation and as a result, it is unclear as to which lands Policy 9.C.6 applies.

There is no need to address Environmentally Significant Valley Features (ESVFs) at this time as there are no Core Environmental Features meeting the criteria of ESVFs identified in the ROP at this time. The Region will be establishing ESVFs through a future amendment to the ROP following the completion of the Significant Valleylands Study.

The Region is appealing Map 4 only insofar as it fails to specifically identify which of the Core Environmental Features were designated solely on the basis that they meet the test of a Significant Woodland. The Region appeals the Minister's decision with respect to portions of Map 4 for the following reasons:

- In the absence of the specific identification of which Core Environmental Features on Map 4 are designated solely because they meet the criteria of Provincially Significant Woodlots, Policy 9.C.6 as adopted by Regional Council (modified to correct reference to Significant Woodlands as noted above) cannot be applied since the lands to which the policy applies are not identified.
- The appeal of the identified portions of Map 4 will permit the Board to correct this deficiency in the ROP.

Portions of Policies 7.C.8 (e), 6.C.10 (d), 9.C.14 and Portion of Map 7

The Minister's decision includes several clerical errors. These errors affect portions of Policies 7.C.8 (e), 6.C.10 (d), and 9.C.14, and a portion of Map 7. The Ministry has confirmed that Map 7 was replaced inadvertently in the Notice of Decision by an out-of-date map. The Ministry has advised the Region to appeal the affected policies and mapping affected by these clerical errors so that they may be corrected by the Board.

The Region's appeal of Policies 7.C.8 (e), 6.C.10 (d) and 9.C.14 applies only insofar as it relates to the spelling error and incorrect italics as identified in attached Schedule 'B'.

The Region's appeal of Map 7 applies only insofar as the map relates to the southwest corner of the City of Kitchener as identified on attached Schedule 'C'. The appeal relates to the Ministry's failure to modify Map 7 to designate the lands subject to the appeal as Protected Countryside as per the resolution of Regional Council dated June 30, 2010.

The Region also relies upon such further grounds as may be required or advised for the hearing of this appeal.

Please find enclosed a completed copy of Appellant Form (A1) together with a certified cheque for \$125 payable to the Ontario Municipal Board.

Should you have any questions or require additional information, please do not hesitate to contact Mr. Kevin Eby, Director Community Planning by telephone at (519) 575-4531, or by email at keby@regionofwaterloo.ca.

Please confirm that our appeal request has been forwarded to the Ontario Municipal Board.

In accordance with Section 47 of the Environmental Bill of Rights, the Region has also delivered a copy of this Notice of Appeal to the Environmental Commissioner of Ontario.

Yours truly,

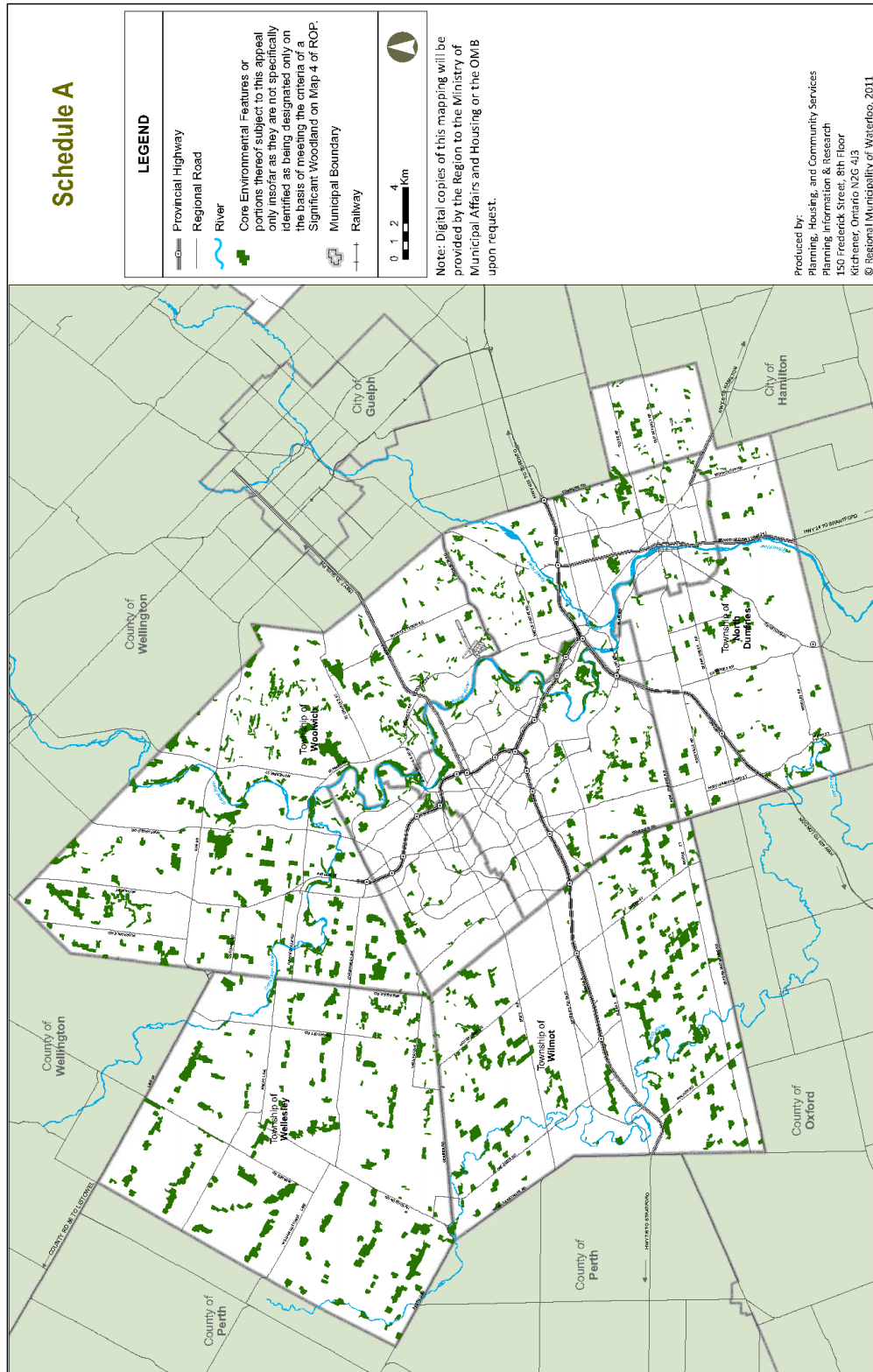
THE REGIONAL MUNICIPALITY OF WATERLOO

Per: 

Rob Horne, MA, MCIP, RPP
Commissioner
Planning, Housing and Community Services

Encl.
RH:ds

cc. Vincent Fabilli, Assistant Deputy Minister, MAH
Dwayne Evans, MAH
Gord Miller, Environmental Commissioner of Ontario
Mike Murray, CAO, Regional Municipality of Waterloo



Schedule 'B'**List of Policies Containing Clerical Errors
Requiring Correction by the Board****1. Portion of Policy 7.C.8 (e)**

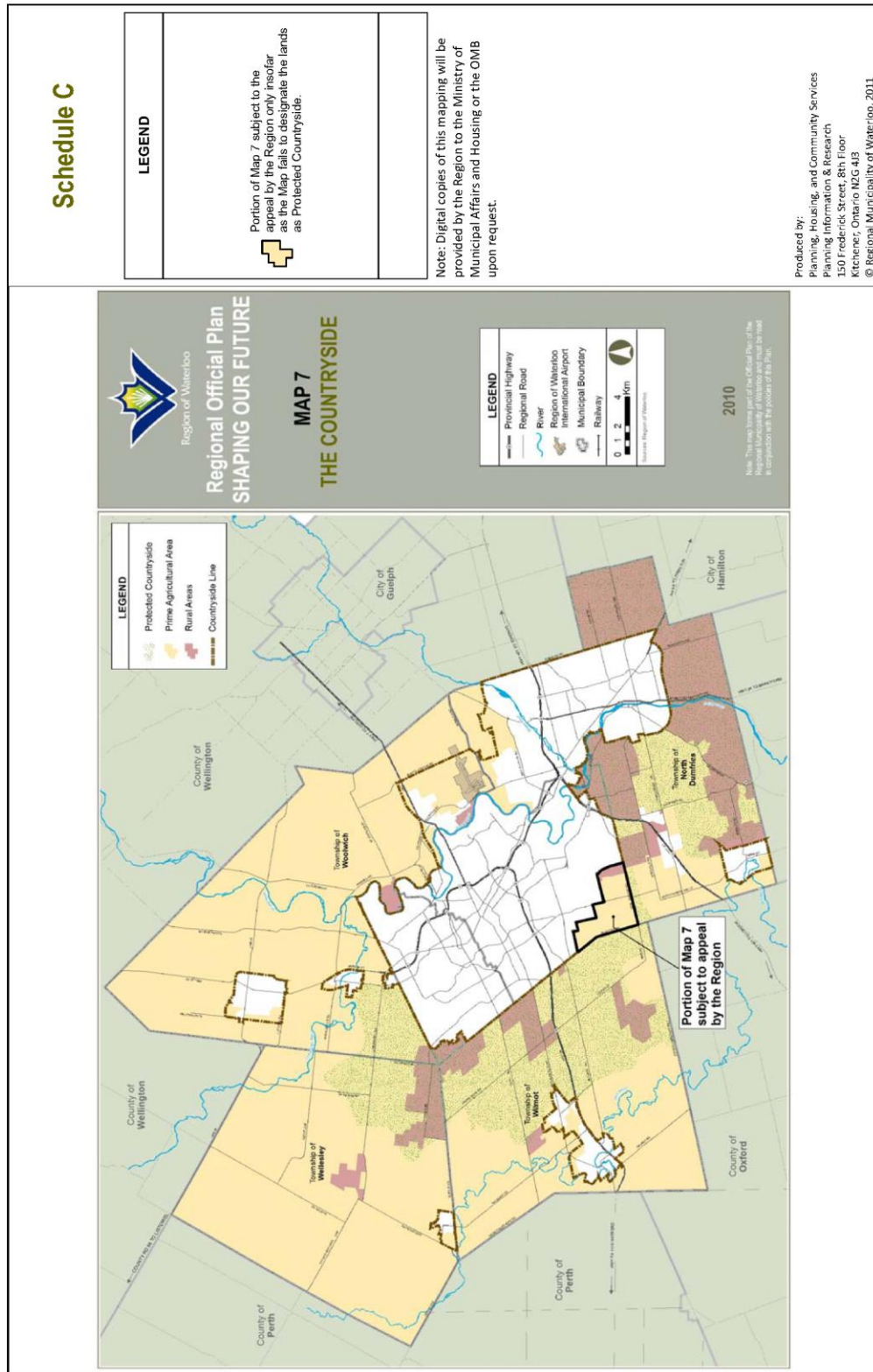
The term "mineral aggregate operations" in subsection (e) is defined in the Glossary of the ROP and should be italicized.

2. Portion of Policy 6.C.10 (d)

The term "comply community" in subsection (d) is incorrect and should be revised to read "complete community." Further, the term "*complete community*" is defined in the Glossary of the ROP and should be italicized.

3. Portion of 9.C.14

The term "*quarry operation*" is not defined within the Glossary of the ROP. As a result, this term should be corrected so that it is not italicized. The Region will develop an appropriate definition for quarry operations through a future ROP amendment.



APPENDIX B

**Ministry of
Municipal Affairs
and Housing**Municipal Services Office -
Western2nd Floor
659 Exeter Road
London ON N6E 1L3
Tel: 519 873-4020
Toll Free: 1 800-265-4736
Fax: 519 873-4018**Ministère des
Affaires municipales
et du Logement**Bureau des services aux municipalités -
région de l'Ouest2^e étage
659 Exeter Road
London ON N6E 1L3
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Sans frais : 1 800 265-4736
Télec. : 519 873-4018

February 2, 2011

Mr. Rob Horne
Commissioner of Planning, Housing and Community Services
Region of Waterloo
150 Frederick Street, 8th Floor
Kitchener, ON N2G 4J3

Dear Mr. Horne:

Re: Region of Waterloo New Official Plan - Map 7
Council Proposed Modification to Countryside Designation – Southwest Kitchener

This correspondence is further to discussions with you and your staff, and as requested by you. Our Ministry's decision on December 22, 2010, to approve the Region of Waterloo Official Plan contained modification # 67, which deleted Map 7 and replaced it with a new Map 7 (dated 2010), as provided by the Region of Waterloo on May 11, 2010.

It now apparent that modification # 67 does not include Council's position of June 30, 2010, to revise Map 7 in relation to a Protected Countryside designation in the southwest area of the City of Kitchener.

We are aware that the Region has appealed the Ministry's decision with respect to Map 7 (among other matters), in order to seek the Ontario Municipal Board's approval to implement Council's position of June 30, 2010, to place the Protected Countryside designation on the lands in question. The Ministry is prepared to work with the Region in placing an appropriate Map 7 before the Board.

Yours truly,

Bruce Curtis,
Manager, Community Planning and Development

cc: Irvin Shachter, Senior Counsel, Legal Services Branch, MMAH