

**Ontario Land Tribunal**  
Tribunal ontarien de l'aménagement  
du territoire



**ISSUE DATE:** February 21, 2024

**CASE NO(S):** OLT-22-003789

**PROCEEDING COMMENCED UNDER** subsection 34(11) of the *Planning Act*, R.S.O. 1990, c. P.13, as amended

|                      |                                                                                                                                                                                         |
|----------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applicant/Appellant: | Jackson Harvest Farms Ltd.                                                                                                                                                              |
| Subject:             | Application to amend the Zoning By-law –<br>Refusal of application                                                                                                                      |
| Description:         | A Zoning By-law Amendment application that<br>proposes to rezone approximately 52 ha of the<br>subject property to Zone 14 (Extractive<br>Industrial) to permit a gravel pit operation. |
| Reference Number:    | ZCA-11-19                                                                                                                                                                               |
| Property Address:    | 1894-1922 Witmer Road                                                                                                                                                                   |
| Municipality/UT:     | Wilmot/Waterloo                                                                                                                                                                         |
| OLT Case No.:        | OLT-22-003789                                                                                                                                                                           |
| OLT Lead Case No:    | OLT-22-003789                                                                                                                                                                           |
| OLT Case Name:       | Jackson Harvest Farms Ltd. v. Wilmot<br>(Township)                                                                                                                                      |

**PROCEEDING COMMENCED UNDER** subsection 11(5) of the *Aggregate Resources Act*, R.S.O. 1990, c. A.10

|                   |                                                     |
|-------------------|-----------------------------------------------------|
| Applicant:        | Jackson Harvest Farms Ltd.                          |
| Objector:         | Alexandre Falagitis and Susan Kneller-<br>Falagitis |
| Objector:         | Alyssa, Anne and Kevin Gosse                        |
| Objector:         | Angela Baden and others                             |
| Reference Number: | ARA #626443                                         |
| Property Address: | Part Lot 10, Concession South of Bleams<br>Road     |
| Municipality/UT:  | Wilmot/Waterloo                                     |
| OLT Case No.:     | OLT-22-004379                                       |
| OLT Lead Case No: | OLT-22-003789                                       |

**Heard:** October 30 to November 7, 2023 by Video Hearing

**APPEARANCES:**

**Parties**

**Counsel**

Jackson Harvest Farms Ltd.

A. Burton  
K. Zielinski

The Corporation of the Township  
of Wilmot

E. Davis

The Regional Municipality of  
Waterloo

F. McCrea

Citizens for Safe Groundwater  
Inc.

R. Northey  
G. Reeder

**DECISION DELIVERED BY ERIC S. CROWE AND INTERIM ORDER OF THE  
TRIBUNAL**

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**INTRODUCTION**

[1] The Tribunal held a seven-day hearing regarding appeal proceedings brought initially by Jackson Harvest Farms Ltd. (“Applicant”/“Appellant”) under the *Planning Act* for the refusal by the Township of Wilmot (“Township”) to permit a Zoning By-law Amendment (“ZBA”) application. Citizens for Safe Groundwater Inc. (“CSGW”) were previously granted Party Status to this appeal. Also before the Tribunal was an appeal by the Appellant under the *Aggregate Resources Act* (“ARA”) to grant a Class A (Category 3) Licence to permit the operation of an above water table pit. The appeals all relate to the properties located on Part Lot 10, Concession South of Bleams Road, municipally known as 1894 – 1922 Witmer Road (“Subject Lands”).

[2] In order for extraction to occur on the Subject Lands, the following approvals are required: the ZBA to the Township's Zoning By-law No. 83-83 ("ZBL 83-83"), under the *Planning Act*, to;

- i. rezone 57.3 hectares ("ha") of the lands from Zone Z.1 (Agriculture) to Zone Z.14 (Extractive Industrial);
- ii. extension of the Z.14 permitted uses for the importation of concrete and asphalt for recycling; and.
- iii. rezone 4.3 hectares of the lands from Zone Z.1 (Agriculture) to Zone Z.11 (Open Space).

[3] On April 11, 2022, Council of the Township made a decision to refuse the ZBA application even though the Planning Report recommended approval.

[4] On May 3, 2022, the Applicant filed their appeal.

[5] On February 23, 2023, the Applicant had entered into Minutes of Settlement ("MOS") with the Township and the Regional Municipality of Waterloo ("Region"). The CSGW were not a party to the MOS and continued their appeal against these applications.

[6] Through the Procedural Order and during this Hearing, the main issues are related to the following:

1. Air Quality and Health
2. Noise
3. Transportation
4. Consistency with Provincial Policy Statement and the Growth Plan for Greater Golden Horseshoe

[7] For the following reasons, the Tribunal accepts the MOS and in accordance with the MOS, grants the appeals in part, pursuant to s. 34(26)(b) of the *Planning Act*, amends the Zoning by-law and directs the Minister of the Ministry of the Natural Resources and Forestry (“MNRF”) under s. 11(8)1 of the ARA to issue a Class A, category 3 license.

## **BRIEF CHRONOLOGY OF THE APPLICATIONS**

[8] The first Case Management Conference (“CMC”) in this matter was held on September 23, 2022. Draft Issues Lists were provided on behalf of the Township and CSGW. The Region advised that it had no issues at that time but wanted to be advised of any changes to the Applications.

[9] In the second CMC on March 1, 2023, the Minister of the MNRF withdrew itself as a Party to the proceedings and referred the licence application and a list of Objectors to the Tribunal, pursuant to s. 11(5) of the ARA. On the referral of an ARA application to the Tribunal, the Objectors to the ARA application are Parties in the Tribunal proceeding(s). The Tribunal formally consolidated the ARA license application referral matter with the ZBA appeal.

[10] During the second CMC, the Applicant/Appellant indicated that it had entered into MOS with the Township and the Region. At that time, the Tribunal decided to consider the MOS at the next CMC to ensure procedural fairness issues to all the Parties.

[11] At the third CMC held on April 25, 2023, three Parties (the Applicant, the Township and the Region) advised that they have agreed to a comprehensive resolution of the Appeals pursuant to terms of the MOS dated February 23, 2023. The Tribunal subsequently allowed factual information to be heard during this CMC without making any determinative decision on the merits of the case. CSGW were not a party to the MOS, CSGW requested and were granted to present their case as previously scheduled for this Hearing presently.

[12] During the third CMC, a final total of 38 Participants were granted Participant Status. At least ten of these Participants are members of the CSGW. The majority of Participant Statements related to the same issues of Air Quality and Health, Noise, and Transportation and opposed the gravel pit.

### **Subject Lands and the Surrounding Area**

[13] The Subject Lands are located in the southeastern portion of the Township and have frontage onto the north side of Witmer Road as well as a farm-lane frontage onto Bleams Road.

[14] North of the Subject Lands is the Shingletown Rural Settlement Area, which consists of residential homes along Bleams Road.

[15] East of the Subject Lands is predominantly farmland for annual row crops. There are several non-farm residences along the Witmer Road frontage.

[16] South of the Subject Lands is the site that is near seven other operational and non-operational licensed pits (see diagram on the following page).

[17] Southwest of the Subject Lands are additional agricultural lands which include a poultry operation.

[18] West of the Subject Lands is an additional farmland which extends to Sandhills Road.

The map displays the Hallman Pit site and surrounding areas. The site is outlined in black and labeled 'SITE HALLMAN PIT'. A red arrow indicates the 'Predominant Wind Direction'. The map shows several other pits, each with a unique color and hatching pattern, and their status is indicated in the legend.

**Pits and License Numbers:**

- SPRING VALLEY PIT #608502
- BARNES PIT #5725
- SIEBERT PIT #5553
- TOWNSHIP PIT #5557
- POLL PIT #5550
- DINO PIT #5728
- CATTLELAND PIT #10600

**Legend:**

- Predominant Wind Direction:** Red arrow
- ARA License No. #5725:** ARA License No.
- Status:**
  - Closed/Rehabilitation: Orange hatching
  - Never opened for extraction: Red hatching
  - No extraction for many years: Green hatching
  - No/minimal extraction. Asphalt plant operation: Blue hatching
  - Open: Light blue hatching
  - Open – Minimal annual activity: Purple hatching
  - Site: Black outline

**Map Details:**

- Scale:** 0 to 900 Meters
- Map Projection:** Transverse Mercator
- Horizontal Datum:** North American 1983
- Grid:** NAD 1983 UTM Zone 17N
- Inset Map:** Shows the location of the site within the Township of Wilmet.

**Project Information:**

- Project No.:** 11202973
- Revision No.:** -
- Date:** Jul 28, 2021

**Map Title:** HALLMAN PIT  
1984 WITMER ROAD  
WILMOT, ONTARIO

**NEARBY PIT OPERATIONS**

**FIGURE 1**

## LEGISLATIVE TEST

[19] In making a decision with respect to a ZBA appeal, filed pursuant to s. 34 of the *Planning Act*, the Tribunal must have regard to matters of provincial interest as set out in s. 2 of the *Planning Act*, which requires that decisions of the Tribunal affecting planning matters be consistent with the Provincial Policy Statement, 2020 (“PPS”). This provincial document sets out detailed policies that address matters such as land use compatibility.

[20] In consideration of the statutory requirements set out above, the Tribunal is directed to render a decision that has, pursuant to s. 2.1(1) of the *Planning Act*, regard to the decision made by Council, and to any information and materials that Council considered in making its decision. Lastly, the Tribunal must be satisfied that the proposed ZBA and ARA application represent good planning and is in the public interest.

### ***Aggregate Resources Act (“ARA”)***

[21] Through the MNRF and under the ARA, a licence is required to extract and remove aggregate from a site located within lands designated under the ARA, and specifically:

- (a) Class A Licence, which is defined as any licence having an annual extraction limit > 20,000 tonnes. The subject application is for 750,000 tonnes.
- (b) Category 3, which is the licence category defined as a pit above water requiring a minimum buffer of 1.5 metres between the final pit floor elevation and the water table.

## ORDER OF EVIDENCE AND WITNESSES

[22] It was agreed that the following Order of Evidence and Witnesses would govern the Hearing:

1. Matthew Griffen, Air Quality Engineering (Applicant)
2. Dr. Glenn Ferguson, Human Health Risk and Toxicology (Applicant)
3. Mandy Chan, Acoustical Engineering (Applicant)
4. James Mallett, Transportation Engineering (Applicant)
5. David Sisco, Land Use Planning (Applicant)
6. Scott Manser, Air Quality Engineering (CSGW)
7. Dr. George Thurston, Health Effects of Air Pollution (CSGW)
8. Brendon Colaco, Noise Engineering (CSGW)
9. Russell Brownlee, Transportation Engineering with an expertise on Road Safety (CSGW)
10. Stefan Szczerbak, Land Use Planning (CSGW)

[23] Evidence in support of the application was provided by the above noted Applicant's and CSGW experts. All experts were duly qualified on consent to provide expert opinion evidence in their above noted field.

## **EVIDENCE**

### **AIR QUALITY AND HEALTH**

**Should the proposed pit be permitted, taking into account all proposed pit operations that generate PM10 and PM2.5 and the pyramid of adverse health effects that results from human exposure to any levels of these contaminants in the ambient air?**

[24] It was agreed by the Parties that there will be no vibration (blasting) and the hydrogeological issues have been resolved, which is reflected on the ARA Site Plan. A combination of the Hydrogeological Assessment and the Natural Environment Report were

considered in concluding that the proposed pit operations would have no impact on the wetland. An Agricultural Impact Assessment was undertaken and based on the analyses, the report does not anticipate any impacts to the surrounding area's agricultural resource potential. The Environmental Impact Study revealed, based on the Level 1 site analyses, and the implementation of the Level 2 recommendations being incorporated into the Site Plans, any potential natural heritage impacts will be mitigated. Archaeological Assessments revealed, based on the undertaking of the Stage 1 and 2 Assessments, followed by a Stage 3 assessment (Sites 1, 2, and 3) and a Stage 4 assessment (Site 1), that all sites have been recommended to have no Cultural Heritage Value or Interest.

[25] The Tribunal heard evidence through the Applicant that the prescribed condition 3.1 of the ARA requires all Category 3 Licenses must ensure "Dust will be mitigated on-site". As such, the Applicant/Appellant is mandated to ensure no visible fugitive dust occurs and this shall be accomplished through the use of the application of water and/or an approved dust suppressant as required and as necessary.

[26] Concerns have been raised as to whether dust emissions have been appropriately assessed to protect the health of nearby residents. GHD Limited ("GHD") was retained by the Applicant to undertake an assessment in support of the applications, to evaluate potential dust emissions and air quality associated with the proposed pit, and the potential implications for any risk to human health.

[27] As part of the air quality assessment, Intrinsik Corp. was retained by Thomson, Rogers, on behalf of the Applicant, to assess the potential human health implications in the local area of the proposed pit associated with the predicted air emissions provided by GHD. In addition, based on information provided by GHD, Intrinsik Corp. evaluated the estimated cumulative air emissions in the area from both the proposed pit and existing sources (both regional background and other local operating pits).

[28] Mr. Griffen, air quality engineer of GHD, advised he drafted the Best Management Practices Plan (see below) for the Hallman Pit and subsequently, did air dispersion

modelling to demonstrate that the Proposed Pit would meet the regulatory standards under Ontario Regulation No. 419/05 (“O.Reg 419/05”) and also did cumulative air assessment to meet the Region’s Operational Policy. The purpose of the assessment was to determine the cumulative impact of the multiple pits operating simultaneously.

**Table 3 Description of Preventative Procedures and Control Measures for Potential Fugitive Dust Emissions at the Site**

| Preventative Procedure/Control Measure                                       | Description                                                                                                                                                                                                                                                                                                                                                                  | Frequency                                                                                                                                                                    |
|------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Applying water suppressant                                                   | Water suppressant will be sprayed on the roads. Applying water to the road surfaces will reduce the potential for dust to be picked up by winds.                                                                                                                                                                                                                             | Water will be applied to the roads on a daily basis based on climatic conditions (e.g., windy dry day vs. a precipitation day).                                              |
| Grizzly screen system                                                        | Prior to exiting the Site, all heavy vehicles will need to pass over a grizzly screen system where dirt on the tires will be knocked off. This will help minimize dirt track-out.                                                                                                                                                                                            | All heavy vehicles will need to pass over grizzly screen prior to leaving site.                                                                                              |
| Road sweeping                                                                | The paved road areas will need to be maintained to mitigate the accumulation of dirt on the road surface. By sweeping the paved roads, the potential for dust emissions and dirt track-out will be minimized.                                                                                                                                                                | The paved roads should be assessed on a daily basis and swept, as needed.                                                                                                    |
| Optimized truck routes                                                       | The truck routes will be optimized for each transport activity occurring on Site to minimize the distances travelled. The optimized truck routes for on-Site traffic provide the most appropriate traffic flow for the activities occurring at the Site. This is an effective best management practice as it reduces the amount of dust kick up by minimizing trip distance. | The truck route optimization will be subject to change as the Site develops.                                                                                                 |
| Maximum speed limit                                                          | A maximum speed limit of 20 kilometres per hour will be required throughout the Site to minimize emissions of fugitive dust from vehicular traffic.                                                                                                                                                                                                                          | This speed limit will be required for all vehicles travelling on-Site at all times.                                                                                          |
| Maintaining the stockpile sizes, appropriate drop heights, and material type | The size of each stockpile is to be maintained relatively consistent. The piles are to be kept as intended and not have any fines added.<br>Materials are dropped onto the stockpiles by loader, conveyor, or truck. Efforts will be made to minimize the drop height wherever possible.                                                                                     | Stockpile size, location, material type, and material drop heights to be monitored and maintained daily.                                                                     |
| Berms                                                                        | The Site will have various earthen berms around the property line based on the phase of the operational plan.                                                                                                                                                                                                                                                                | Berms will be constructed prior to operational activities begin on-Site. Maintenance of the berms and pit slopes on-Site will be carried out throughout the life of the pit. |

[29] Mr. Griffen testified that the primary air contaminants were assessed from pit processes, which showed total suspended particulate matter (“TSP”), particulate matter

("PM") is less than 10 microns in diameter ("PM10"), particulate matter less than 2.5 microns in diameter ("PM2.5"), and silica. Mr. Griffen testified the assessment was completed assuming that all pits were fully operational. In Mr. Griffen's opinion, all PM are below 50% of their applicable air quality criteria at the most impacted location of the Subject Property.

[30] Mr. Griffen also extracted five-years of hourly modelled information from the Meteorological data acquired from the Kitchener/Waterloo Municipal Airport through Environment Canada's historical climate data portal review from 2014-2018, which was converted into a Wind Rose Plot supported file format.

[31] The Wind Rose Plot demonstrates that the predominant wind directions are blowing to the east (and southeast and northeast) and that approximately 54 percent of the winds have a speed of 4.5 metres per second ("m/s") or less. A review of the area has identified that there are a few residences located along Witmer Road, in addition to residences located in Shingletown immediately north of the Site. In the opinion of Mr. Griffen, the planned control measures will effectively minimize the impact that residences along Witmer Road may encounter from westerly winds. The residences in the Shingletown area would be subject to minimal fugitive dust impact without implementing the best management practices presented herein, as there are infrequent winds coming from the south and the majority of them are of low wind speed.

[32] Scott Manser, an Air Quality Engineer testified on behalf of CSGW, and questioned the emission estimates since the on-site operations of the various equipment was not known and that not all air emissions sources were accounted for. He testified 90% dust control road length is a conservative estimate and that the assessment did not take into account unpaved surfaces within the Pit, underestimation of loaders and other vehicles, which may be diesel and the concrete recycling was downplayed and was not even included in the ZBA.

[33] CSGW outlined other modelling issues from the Tables studied and according to Mr. Manser all of these issues underestimated the emissions set out in the Cumulative Effects Assessment relied on by the Region and the Applicant's Human Health Risk and Toxicology witness, Dr. Ferguson.

[34] Submissions from CSGW argue that different approaches affect the opinions of each expert. Dr. Ferguson relied entirely on the evidence of Mr. Griffen as concerns with Hallman Pit emissions and concerns with aspects of the cumulative impacts assessment that used the Hallman Pit information as the basis to estimate other pit emissions. As such, Mr. Griffin's analysis directly affect Dr. Ferguson's inputs and undermine his results.

[35] Although Mr. Manser pointed out questions that the SLR peer review had on the assessment conducted, the methodology was approved by the Region's peer reviewer (SLR) including the results. The Tribunal heard evidence that the current human health risk assessment was conducted according to widely accepted risk assessment methodologies and guidance published and endorsed by regulatory agencies including the Ontario Ministry of the Environment, Conservation and Parks ("MECP"), Health Canada, the Canadian Council of the Ministers of the Environment ("CCME"), and the United States Environmental Protection Agency ("USEPA").

[36] Mr. Manser's evidence tried to highlight specific details of the methodology used in the assessments that was either absent or omitted, however, based on the evidence of Mr. Griffen, this information was never requested from the initial consultations with the Town or Region or wasn't available or known.

[37] In one instance on cross-examination, Mr. Manser's experience with sand and gravel pits versus quarries was questioned. On the issue of distinguishing limestone vs sand and gravel, Mr. Manser confirmed that the USEPA emission factors he referred to in his testimony on crushed limestone and various limestone products are different than sand and gravel, which is being proposed and the characteristics are different.

[38] In Mr. Griffen's opinion, based on the external peer review of SLR, the air quality impacts from the proposed pit operations will demonstrate compliance with applicable Ontario and Canada air quality standards. The ambient air quality criteria is based on a level which adverse health effects could occur from short-term or long-term exposure to the containment in air. In his opinion, as the modelled concentration are significantly below the criteria, there will be a minimal risk to human health from an air quality standpoint resulting from the proposed sand and gravel pit operations.

[39] Dr. Ferguson reviewed the cumulative air assessment report prepared by GHD and opined that it was a significant overestimation of the particulate load to the surrounding community since it was based on all pits that were operating at full tonnage extraction capacity, which currently is not the case.

[40] Dr. Ferguson testified, a human health risk assessment ("HHRA") is a scientific study that evaluates the potential for the occurrence of adverse health effects from exposures of people (receptors) to contaminants of concern ("COC") present in surrounding environmental media (e.g., air, soil, sediment, surface water, groundwater, food and biota, etc.), under existing or predicted exposure conditions.

[41] Dr. Ferguson testified, all chemicals (anthropogenic and natural) have the potential to cause environmental effects in people and the ecosystem. However, it is the chemical concentration, the route of exposure, and the inherent toxicity of the chemical that determines the level of environmental effect and potential for unacceptable risk to the exposed receptor. As illustrated in the diagram below, if all three components are present (i.e., where the three circles intersect, see below diagram), the possibility of adverse risk exists.



[42] Dr. Ferguson explained that to assess potential risks related to the estimated Project emissions, impacts to local air quality were evaluated at discrete locations in the surrounding community. As such, ground-level air concentrations were predicted at eight (8) nearby off-site residential or agricultural locations spaced around the footprint of the proposed Project: SR1 through SR8 (see diagram below).

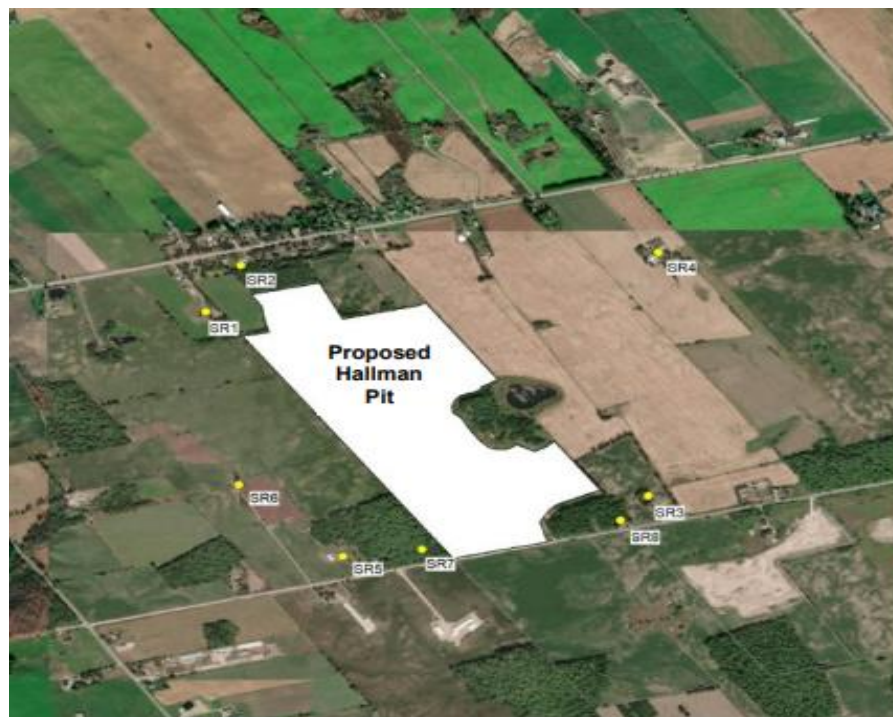


**Figure 3-2 Assessed Nearby Sensitive Receptor Locations**

[43] Dr. Ferguson testified estimates of the potential impacts on air quality related to activities associated with the proposed Hallman Pit operations were based on predicted ground level air concentrations for each of the COC. Air dispersion modelling considered not only particulate-based emissions from the pit, but also re-entrainment of particulate from access roads surrounding the pit. Ground level air concentrations were estimated by the air quality assessment team at each of the six sensitive receptor locations, for each of the COC using the US EPA AERMOD dispersion model. Five years of hourly predictions were modelled (1996 through 2000) based on meteorological data applicable for the site and surrounding area as provided by the MECP.

[44] Dr. Ferguson testified, with regard to wind direction for the Shingletown community based on the receptor locations, some wind blows North and Northeast however, the predominate winds blow away from the community (south east) and does not expose the Shingletown community to any dust during the vast majority of time.

[45] In Dr. Ferguson's opinion, no unacceptable health risks related to emissions from the proposed Hallman Pit Project would be expected. Estimated emissions from the proposed Project typically represent a minimal to negligible component of the overall cumulative exposures for each of the chemicals of concern predicted for the residential locations around the proposed Project site. Furthermore, results of the assessment also indicate that cumulative exposures to the evaluated contaminants are not expected to result in unacceptable health risks in the surrounding community given the degree of conservatism built into the assessment assumptions and scenarios.

[46] Dr. Thurston, testified on behalf of CSGW and was qualified as an expert on the Health effects of Air Pollution. He testified that, based on the information on air quality that he has reviewed, in his opinion, the Pit will result in discernable increases in the ambient level of fine particulate matter in the local air. He stated, there is no safe level of these pollutants in the ambient air. Thus, any increase in ambient levels will increase harm to human health.

[47] Dr. Thurston questioned benchmarks for PM10 and PM2.5 from both the CCME standards and the World Health Organization (“WHO”) air quality guidelines set in 2021 and was concerned that the GHD predicted levels of fine PM in the ambient air are not conservative and did not take into account diesel emissions.

[48] On cross-examination, Dr. Thurston confirmed he did not conduct any risk analysis and only reviewed the completed assessments. In Dr. Thurston’s opinion, there is no safe level of PM10 and PM2.5 that exists in the air and the WHO guidelines are aspirational however, there is no guarantee of safety.

[49] Even though CSGW argued Dr. Ferguson described his approach to the Project’s air emissions as a “black box” that he did not examine or question, Dr. Ferguson under cross-examination stood firm on his position that the various criteria and standards are reasonable.

### **Findings on Air Quality and Health Risk**

[50] The Tribunal finds that the Best Management Practices Plan (management plan to suppress the escape of dust from the proposed Hallman Pit) and the air dispersion modelling meets the regulatory standards under O. Reg 419/05 and the cumulative air assessment meets the Regional Official Plan (“Region OP”) policy.

[51] Although Mr. Manser was forthright in his testimony and found minor discrepancies in the methodology on air assessments and different perspectives including some issues with the Site Plan, along with highlighting questions from peer reviews, the Tribunal finds these are minor and are not detrimental to the overall assessments or application itself.

[52] The Tribunal finds questions from the peer reviews were answered as fully as possible by the witnesses and that some information was just not available. The methodology was peer reviewed and again these assessments were based upon a worst-

case scenario with all pits operating at the same time at the maximum rate, which is currently not occurring since not all pits are operational.

[53] The Tribunal is persuaded by the evidence of the wind plot direction, which predominantly blows in a southeast direction, away from the residences in Shingletown.

[54] The Tribunal is satisfied that Mr. Griffen's cumulative air impact assessments and methodology used, which were peer reviewed by the Region's independent air quality consultant ("SLR Consulting"), that the air quality impacts from the Pit operations will be in compliance with the applicable Ontario ambient air quality criteria (O.Reg. 419/05) and Canadian Ambient air quality standard and CCME air quality standards. The proposed pit will not have a negative impact on the surrounding area.

[55] Therefore, considering all of the evidence, the Tribunal prefers Mr. Griffen's evidence on the cumulative air assessment and finds that the Applicant/Appellant can operate in compliance with the applicable air quality requirements under the proposed operating conditions and satisfies the Township's OP Policy 7.2.4.1a.

[56] The Tribunal agrees with parts of the argument from CSGW that the significant disagreement was over the use of a "reference value" to determine a threshold for health effects. Dr. Ferguson sought to rely on criteria or concentration levels set by various governance bodies, such that if concentrations were below that level, there was no "unacceptable" health risk. Dr. Thurston disagreed with using this approach for "no threshold" pollutants such as PM10 and PM2.5. According to Dr. Thurston, regardless of level, there would be serious health effects on people below the identified reference level. However, in Dr. Ferguson's opinion, no unacceptable health risks related to emissions from the proposed Hallman Pit Project would be expected.

[57] The cumulative air assessment results concluded air quality impacts were in compliance of CCME standards. In Dr. Ferguson's opinion, there is "minimal to negligible"

component of the overall cumulative exposures for each of the chemicals of concern predicted for the residential locations around the proposed Project site.

[58] The Tribunal does not question Dr. Thurston's extensive experience as an expert on Health effects of Air Pollution or his extensive academic background. However, in this case, Dr. Thurston did not conduct any risk analysis of his own and testified there is no safe level of these pollutants in the ambient air. Even though Dr. Thurston was forthright in his testimony, the Tribunal cannot agree with his evidence.

[59] Dr. Thurston testified there is no regulatory standard set by government that will fully protect human health. There will be serious health effects where PM<sub>2.5</sub> exists in the ambient air, even below every regulatory standard. Dr. Thurston explains that compliance with a regulatory standard for PM<sub>2.5</sub> in the ambient air does not ensure that human or public health is protected and compares it to driving within the government speed limit, which does not eliminate risk of a traffic collision: there still remains a risk of an adverse event, and adding more pollution increases that risk.

[60] The Tribunal has difficulty with understanding Dr. Thurston's reasoning and explanation in regard to there being serious health effects even if PM<sub>2.5</sub> are below every regulatory standard including short-term exposure to fine PM will cause increased disease and death. The Tribunal has heard evidence from two expert witnesses that there may be risk, however, these risks are mitigated to the point where there will be minimal to negligible risk to human health and not disease and death.

[61] As noted in the closing submission of CSGW, this is why the Tribunal directly inquired with Dr. Thurston where to draw the line to make decisions on the air pollutants, PM<sub>10</sub> and PM<sub>2.5</sub>, which he testified there is no threshold for adverse health effects. The Tribunal also had concerns regarding proximity since many residences would not be directly affected due to the wind direction. In Dr. Thurston's reasoning, there could be no

benchmark to reach a qualitative risk. There also could be no qualitative number applied to risk to approve an application.

[62] Therefore, the Tribunal prefers the evidence of Mr. Griffen and Dr. Ferguson who both have extensive experience and who both testified a cumulative air assessment was completed and particulate concentrations emitted from Hallman Pit sources alone are predicted to be significantly less than both short- and long-term health-based benchmarks, even under worst-case conditions. Dr. Ferguson testified, when evaluating fine particulate levels in the nearby residential community, cumulative particulate concentrations (i.e., regional background + the proposed Hallman Pit contribution) were not predicted to exceed the Canadian Ambient Air Quality Standard. Both experts testified there would be minimal to negligible risk to human health as a result of the Hallman Pit if approved.

[63] Even though Dr. Thurston testified the WHO guidelines were aspirational, the Tribunal is satisfied that Canada and Ontario have set guidelines or standards for air quality which have been met. Average cumulative PM10 concentrations are consistently below the WHO acute air quality guideline; however, as one considers the worst-case cumulative PM10 concentrations, these levels can approach and marginally exceed the WHO guidelines. In any event, the Tribunal agrees with the two Applicant's experts and is satisfied there would be minimal or negligible risk to human health especially considering the wind plot direction, which predominantly blows in a southeast direction, away from the residences in Shingletown.

[64] Counsel for the CSGW adequately addressed in its submissions, specific Participant and CSGW members' specific health issues and concerns. In addition, submissions arguing there is no safe threshold that has been established for human health effects resulting from exposure to particulate matter (PM2.5, PM10) and that non-lethal effects of particulate matter and diesel particulate matter can include cardiovascular and respiratory disease and that any increase in ambient particulate matter is associated with a statistical increase in mortality and hospitalization rates.

[65] However, the Tribunal is satisfied based on the evidence presented through various expert witnesses that the Participants' concerns relating to human health risk will be minimal or negligible from the operation of the Hallman Pit. The Tribunal also notes the witness statements from CSGW based their conclusions of the worst-case, 24-hour predicted concentrations, which inherently assumes individuals are exposed to this worst-case air concentration all the time, which has been shown through the evidence is not currently the case.

[66] In summary, based on the various reports and cumulative air assessments and through expert witness testimony, the Tribunal finds the potential for adverse effects resulting from cumulative impacts is expected to be minimal or negligible and can operate the Hallman Pit in compliance with the applicable air quality requirements under the proposed operating conditions and satisfies the Region's and Township's OP policies.

## **NOISE**

**Do the sound emissions from all proposed pit operations, including when combined with nearby pit operations, avoid adverse effects on residents?**

[67] Ms. Chan, an expert in acoustical engineering, testified that a Noise Study was completed by HGC Engineering Inc. to demonstrate compliance with applicable MECP Guidelines and to ensure there are no adverse effects to surrounding sensitive uses. The assessment was based on a scenario representing the worst-case operations located closest to the receptors. Potential impacts from extraction, processing and transportation sources were considered. In order to conduct their assessment, sound levels were measured of equipment that is proposed to be used in the pit.

[68] The Township Official Plan ("Township OP") requires that new aggregate pit operations prepare "noise, dust, and vibration studies demonstrating that the proposed operation is appropriately designed, buffered and/or separated from any surrounding

sensitive land uses to prevent any adverse effects”, as per Section 7.2.4.1a). The Noise Report provides an assessment of potential noise levels from the Pit operation, compared against the applicable MECP Publication NPC-300 noise guideline limits. Provided the NPC-300 guidelines are met, the noise requirements of the Township OP will also be met.

[69] Ms. Chan testified she has conducted numerous noise assessments, including approximately 50 aggregate sites. She advised the Noise Study was peer reviewed by the Region and accepted. Ms. Chan advised the Noise Study demonstrated that Hallman Pit would operate in compliance with MECP’s NPC-300 Noise Guidelines. She also indicated that specific sound attenuation measures (berms) are incorporated on site plans attached to MOS.

[70] Ms. Chan advised her Noise study included nine (9) residents in close proximity and surrounding the site, which were determined as representative sensitive points of reception (see below diagram).

### **Aerial Photo Showing Receptor Locations**



[71] According to Ms. Chan, the results of the analysis indicate that the sound levels produced by the operations in the pit under the worst-case operational scenario are expected to comply with MECP's Guideline limits and the Township OP with the implementation of noise control measures. These Noise Control Requirements have been provided on the Site Plans.

[72] Mr. Colaco, a noise engineer on behalf of CSGW, advised that noise audits should be conducted in every phase of the proposed operation to check sound levels of equipment. The Parties highlighted concerns of confidential information such as equipment used in pit operations, which would be part of the information contained in an audit.

[73] Mr. Colaco also testified that alternative noise mitigation such as tonal back-up beepers could be used at the site. In cross-examination, Mr. Colaco agreed that requiring third party dump trucks to have alternative back-up beepers is not a requirement and may be cost prohibitive even for the permanent equipment on site.

[74] Additional public comments expressed that further noise analysis should occur along the haul route. The Region's peer reviewer provided a response to those concerns explaining that there is no requirement under the applicable MECP's or MNRF's noise guidelines to investigate noise from pit and quarry truck traffic while those vehicles are operating on public roads. In considering those draft guidelines, the Hallman Pit haul route is proposed to be along Witmer Road, away from Shingletown affecting the fewest number of residences. The peer reviewer concludes that the haul route selection requirements of MECP's draft landfill guideline are met (Witmer Road is the haul route with the least potential for noise impacts), and that further assessment is not warranted.

## **Findings on Noise**

[75] The Tribunal finds that through the evidence provided, it has been sufficiently demonstrated that cumulative noise levels from the proposed Hallman Pit operations will meet the MECP's sound level limit guidelines within the noise mitigation measures.

[76] The cumulative impact review recommended additional testing at future phases and when neighbouring pits are operational and sets out that operation plans be adjusted at that time, if any part of the operation is found to not comply with MECP's requirements. The Tribunal is satisfied that the MNRF, Township and Region authorities will decide whether additional noise testing will be required at future phases of the operation.

[77] In regard to back up beepers, Ms. Chan testified beepers are a safety measure that the Ministry of Labour regulates and requires with no exceptions.

[78] Counsel, in closing submissions, noted that noise was not a contested issue in these proceedings however, the Tribunal found it necessary to review the noise study for the benefit of the many participants who had specific concerns on noise.

## **TRANSPORTATION**

### **Has the road identified as the haul route for the proposed pit been adequately assessed and designed to provide safety to all users?**

[79] The Parties' transportation experts provided an Agreed Statement of Facts ("ASF") on eight issues. In particular, the sightlines and geometry at the development access were reviewed against industry standards and the assessment was accepted by the Township and Region. The Transportation Impact Study ("TIS") and associated reports submitted did not include an explicit safety review of the road identified as the haul route for the proposed pit (Witmer Road) and they were unable to comment on the safety performance

of the agreed upon Witmer Road reconstruction, as the details of the design have not been established and/or provided to the transportation experts.

[80] Mr. Mallett, a Transportation Engineer, on behalf of the Applicant, testified a Transportation Impact Assessment ("TIA") was completed by Paradigm Transportation Solutions Limited ("Paradigm") and reviewed by both the Region and Township. Based on the analyses undertaken in this study, it concluded that:

- a) Witmer Road and Queen Street is forecasted to operate at acceptable levels of service during the AM and PM peak hours under the Existing (2018), Background, and Total Traffic Conditions; and,
- b) The proposed access on Witmer Road is also forecasted to operate at acceptable levels of service and will not require auxiliary turn lanes on Witmer Road.

[81] Mr. Mallett advised the scope of the study included a determination and assessment of the current traffic conditions in the vicinity of the existing site, the additional traffic that will be generated by the proposed development, analyses of the impact that this traffic may have on the adjacent street system, and the identification of potential remedial measures that may be required to mitigate the site generated traffic impacts in a satisfactory manner.

[82] Mr. Mallet testified the scope of the TIS was discussed with the Region and Township and was approved with no specific focus on road safety being requested. The pit access has been provided in a satisfactory location to provide appropriate sight distances. There were no additional turning lanes or other measures required in order for the pit to operate safely. However, Witmer Road has been identified from a geotechnical perspective to require upgrades for future pit traffic which is included in paragraph 6 of the MOS and the Applicant/Appellant is required to pay for reconstruction of Witmer Road from west of the pit, to the intersection of Queen Street, to the satisfaction of Township.

[83] Mr. Brownlee, Transportation Engineering with an expertise in Road Safety on behalf of CSGW, testified that there is no adequate information on transportation and road safety to conclude that the proposed ZBA would avoid or minimize risks to public safety. In his opinion, there appeared to be some existing deficiencies in Queen/Witmer intersection. However, on cross-examination, Mr. Brownlee conceded that the Township has a Transportation Department and would expect the Township to obtain any professional services it may require in order to design Witmer Road in a safe manner.

[84] CSGW retained True North Safety Group (“TNS”) to complete a safety review of the proposed haul route along Witmer Road to Queen Street. In closing submissions, CSGW argued that in spite of a requirement to undertake a Traffic Safety Review in the Region’s TIS Guidelines, no such safety review has been completed. Mr. Mallett conceded, on cross-examination, that the inputs for his calculations in his traffic modeling underestimated truck traffic from the recycling operations and did not consider truck traffic related to road watering. The absence of accurate truck numbers undermines the Appellant’s traffic analysis.

[85] CSGW submitted that Witmer Road has a seven-metre pavement width and up to one metre of gravel shoulder width. The width of Witmer Road is appropriate for a rural local road; however, individual lane widths would not be sufficient to accommodate simultaneous users in the same lane. Insufficient width is available for a shared roadway with trucks, cyclists and pedestrians based on current guidance in Ontario Traffic Manual Book 18 or the Transportation Association of Canada guide. In some instances, larger vehicles will be required to cross the centreline to provide sufficient clearance to cyclists and pedestrians travelling along the paved portion of the roadway. At some locations, little or no traversable shoulder is available for pedestrians or cyclists to leave the travelled portion of the roadway to give way to larger vehicles.

[86] Based on both the TIS and the Geotechnical assessment, no physical geometric improvements are required to Witmer Road to accommodate the increase in truck traffic,

however, the Geotechnical Report provides recommendations to eliminate seasonal (spring) ½ load restrictions along the haul road.

[87] Public comments were received regarding visibility at the intersection of Witmer Road and Queen Street. After further review of public comments and the CSGW commissioned peer review of the TIS, the Region concluded that while visibility for eastbound motorists at this intersection met TACT guidelines, the stop bar at this location was moved closer to the intersection (while in compliance with the Ontario Traffic Manual), thereby further improving visibility.

[88] Mr. Mallet testified the study and the findings of the peer review on the TIS concluded there were inconsistencies in the existing roadway subgrade, base, subbase, and subgrade quality from the proposed pit entrance to Queen Street. As a result, Witmer Road will be required to be reconstructed from the proposed pit entrance to Queen Street. The peer review concluded that the road was to incorporate a Granular Base Equivalency (“GBE”) of 680 millimetres. As identified in the recommendations contained within this report, the Applicant will be required to enter into an agreement with the Township to secure the completion of these road improvements, at no cost to the Township.

[89] The details of the Site Plan show that prior to commencement of shipping activities, the pit entrance shall be paved from the limit of asphalt on Witmer Road to, at a minimum, the weigh scale and that the weigh scale shall include a grizzly screen at its approach. Pit traffic will not be permitted west of the entrance on Witmer Road, save and except for delivery to Witmer Road. The farm-type gated access from Bleams Road (Shingletown) shall be limited to farm access only with access for pit operations prohibited save and except for access by motor vehicles with a vehicle registration weight of less than 4,500 kilograms (“kg”) entering the site for the sole purpose of monitoring, engineering activities, and data collection required as part of the licence. Hours of operation were also listed in relation to noise for Site Preparation, Excavation/Processing and Shipping hours.

## **Findings on Transportation**

[90] The Tribunal finds that through the evidence provided, based on the analyses undertaken in this TIS, it is concluded that Witmer Road and Queen Street is forecasted to operate at acceptable levels of service during the AM and PM peak hours under the Existing and Total Traffic Conditions and will not require auxiliary turn lanes on Witmer Road. The Tribunal is satisfied that TIS has been reviewed and approved by the Region and by the Township's peer review consultant, Aecom, and that all comments from the peer review were adequately addressed by the Applicant.

[91] The Tribunal acknowledges the concerns raised relating to an incomplete safety review regarding available sight distance to and from the Pit site access and requirements for auxiliary turn lanes at the site access intersection. The Tribunal finds that despite the absence of a specific focus on road safety being requested by either the Township or Region, there were recommendations with regard to site distance and mitigation efforts completed with the movement of the stop bar at the intersection of Witmer Road and Queen Street.

[92] The Tribunal is satisfied that a condition in the MOS will satisfy the findings of the peer review outlined above. The Applicant and the Township have a Witmer Road Reconstruction Agreement, requiring the Appellant to reconstruct Witmer Road from Queen Street to just west of the proposed pit entrance, to the satisfaction of the Township, at no cost to the Township, prior to the commencement of operations.

[93] In response to the omission of the number of water trucks in the TIS, the Tribunal finds this would be a small number of trucks and is not determinative to the overall TIS and does not significantly change the results.

Mr. Brownlee testified that larger vehicles will be required to cross the centreline to provide sufficient clearance to cyclists and pedestrians travelling along the paved portion of the roadway, and that details of the reconstruction have not been established and/or provided

to the transportation experts therefore, it cannot be determined if the proposed road improvement will be designed to provide safety to all users of Witmer Road. The Tribunal finds that the provision of reconstruction of Witmer Road provides sufficient assurances of adequate improvements and is satisfied that the Applicant and Township will improve a safe road including the improvement to widening the pavement width to 7.2 m.

[94] The Tribunal prefers the evidence of Mr. Mallett and agrees with the Applicant that subject to the agreed upon upgrades to Witmer Road from the proposed Hallman Pit entrance/exit to Regional Road 12 (Queen Street) and taking into consideration traffic loads from the existing Voisin Pit, there will be no negative impacts on Regional road infrastructure as a result of this application.

## **LAND USE PLANNING**

**Based on s. 3(5) of the *Planning Act*;**

- a. Is the proposed ZBA application consistent with the PPS, particularly, sections 1.1.1(c), 1.1.5.1, 1.2.1 (c), 1.2.6.1, 2.1, 2.2, 2.3.6.1, 2.5.4.1, 3.2.1 and 3.2.2 of the PPS, 2020?**

### **Growth Plan**

- b. Does the proposed ZBA application conform with the Growth Plan, 2020, particularly, sections 4.2.1, 4.2.4.1 to 4.2.4.3 and 4.2.8?**

### **Provincial Policy Statement (2020) (“PPS”) and Growth Plan for the Greater Golden Horseshoe (2020) (“Growth Plan”)**

[95] Stefan Szczerbak, a land use planner on behalf of CSGW, testified that s. 3(5) of the *Planning Act* requires consistency with provincial policy. Provincial policy provides not one, but two, avoidance policies that apply to this proposal: s. 1.1.1(c) and s. 1.2.6.

According to Mr. Szczerbak, these PPS policies require that decision makers avoid approving new major facilities beside existing sensitive residential land uses as such facilities cause adverse effects and public health concerns. He advised this proposed pit will emit toxic pollutants into the ambient air at levels that will impair the ambient air for kilometres (“km”) around the site. There is no safe level for these pollutants. Through the PPS, the *Planning Act* requires that this situation be avoided.

[96] PPS policy 1.1.1 (c) states;

Healthy, liveable and safety communities are sustained by:

c) avoiding development and land use patterns which may cause environmental or public health and safety concerns.

[97] Mr. Szczerbak testified that, in his view, the fundamental issue before the Tribunal in this appeal is “compatibility between the proposed new use and the surrounding community”. Mr. Szczerbak defines compatibility as a land use that is capable of coexisting in harmony. The ability to coexist in harmony is a question of impact, potential unacceptable adverse impacts and recommended mitigation measures from the proposed new use to the existing surrounding land uses.

[98] In the PPS, Policy 1.2.6.1 Land Use Compatibility specifically addresses this by stating:

Major facilities and sensitive land uses shall be planned and developed to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects from odour, noise and other contaminants, minimize risk to public health and safety, and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.

[99] The language of the two PPS avoidance policies provide guidance that sets out a low threshold for applying them. Policy 1.1.1c) speaks to avoiding development and land use patterns which may cause environmental or public health and safety concerns. Policy 1.2.6.1 speaks to planning and development “to avoid, or if avoidance is not possible, minimize and mitigate any potential adverse effects.”

[100] Mr. Szczerbak highlights PPS Policy 1.1.1c) which states, a healthy, livable and safe community, which, in his view, also falls under the umbrella of land use compatibility. According to Mr. Szczerbak, this policy direction requires the avoidance of land use patterns that may cause concerns related to the environment, public safety and health.

[101] Mr. Sisco, a land use planner on behalf of the Applicant, testified the proposal highlights the estimated aggregate reserves available within the proposed licensed property have been calculated to be +/-13.8 million tonnes and based on a maximum annual extraction limit of 750,000 tonnes, the Hallman Pit will have a minimum life span of 19 years. The progressive and final rehabilitation of the lands will be to an agricultural use, which is consistent with the applicable Regional policies.

[102] Mr. Sisco highlighted the applicable policies within the PPS specifically, 2.3 Agriculture;

2.3.6.1: Planning authorities may only permit non-agricultural uses in prime agricultural areas for:

a) extraction of minerals, petroleum resources and mineral aggregate resources, in accordance with policies 2.4 and 2.5; ...

[103] Mr. Sisco testified that the Region OP and the Township OP have designated the Subject Lands as being within a 'prime agricultural area'. PPS Policy 2.3.6.1 explicitly permits mineral aggregate resource extraction within this designation subject to meeting the policies of 2.4 (Mineral and petroleum resources) and 2.5 (Mineral Aggregate Resources), of which the applicable policies are noted below.

[104] 2.4 Mineral and Petroleum Resources 2.4.2.1;

Mineral mining operations and petroleum resource operations shall be identified and protected from development and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact.

2.4.2.2: Known mineral deposits, known petroleum resources and significant areas of mineral potential shall be identified and development and activities in these resources or on adjacent lands which would preclude or hinder the establishment of new operations or access to the resources shall only be permitted if:

- a) resource use would not be feasible; or
- b) the proposed land use or development serves a greater long-term public interest; and
- c) issues of public health, public safety and environmental impact are addressed.

[105] Mr. Sisco testified that the resource is located where it is and requires sufficient quantity and quality of aggregate in order to invest significant capital and needs to be close to a local market and has to have a willing host, which in his opinion, all have been met.

[106] Mr. Sisco advised that in conformity with the Township OP, the applicable studies where cumulative impacts should be considered, did include background information from the neighbouring licensed pits including:

- Traffic Impact Study
- Haul Road Evaluation Report
- Hydrogeological Report
- Agricultural Impact Assessment
- Noise Study

[107] In regard to the issue surrounding setbacks, Mr. Sisco advised the ARA required extraction and processing operations to be a minimum of 30 metres ("m") and 90 m away respectively from a neighbouring residential property. Mr. Sisco advised the proposed gravel pit exceeds these setbacks from all surrounding residences.

[108] PPS Policy 2.3.6.1 explicitly permits mineral aggregate resource extraction within this designation subject to meeting the policies of 2.4 (Mineral and petroleum resources)

and 2.5 (Mineral Aggregate Resources). The Tribunal agrees with the Applicant that Mr. Szczerbak's interpretation of the policy that the only alternative is to go elsewhere and find another pit, is not giving the full effect to this policy.

[109] The Tribunal finds that the application is consistent with the PPS and relies on s.1.2.6.1 Land Use Compatibility specifically the highlighted words;

**Major facilities** and sensitive land uses shall be planned and developed to avoid, **or if avoidance is not possible, minimize and mitigate any potential adverse effects** from odour, noise and other contaminants, minimize risk to public health and safety, **and to ensure the long-term operational and economic viability of major facilities in accordance with provincial guidelines, standards and procedures.**

[110] In Mr. Sisco's opinion, which the Tribunal agrees, the standards and guidelines of the PPS, Growth Plan, Township OP and Region OP had been met with the submission of the various technical studies.

## **Rehabilitation**

[111] PPS Policy 2.5.4.1 states: "In prime agricultural areas, on prime agricultural land, extraction of mineral aggregate resources is permitted as an interim use provided that the site will be rehabilitated back to an agricultural condition."

[112] Mr. Szczerbak advised there is no fulfillment of the policy because in his opinion, it was not demonstrated that the proposed site will be rehabilitated back to agricultural condition.

[113] Mr. Sisco advised the site plans require that the lands be rehabilitated back to agriculture within five years of final extraction. Mr. Sisco highlighted PPS s. 2.4.3.1: "Rehabilitation to accommodate subsequent land uses shall be required after extraction and other related activities have ceased. Progressive rehabilitation should be undertaken wherever feasible." In addition, he referred to s. 2.4.4.1 "Extraction of minerals and

petroleum resources is permitted in prime agricultural areas provided that the site will be rehabilitated.”

[114] Mr. Sisco testified the Site Plans provide for the progressive rehabilitation of the site and for the final rehabilitation to a final agricultural land use. Furthermore, the Subject Lands are within a prime agricultural area and they will be rehabilitated to an agricultural use.

[115] Mr. Sisco addresses s. 2.5.4.1 of the PPS, advising that the proposed Hallman Pit is not part of a specialty crop area. Agricultural condition means a condition in which substantially the same areas and same average soil capability for agriculture are restored. He advised the Region OP requires a detailed Phasing and Progressive Rehabilitation Plan, which has been provided as part of the Site Plans to ensure that extracted areas are rehabilitated while extraction continues in other parts of the site. As such, four phases are proposed, starting in the south-central portion and moving northwards then completing the extraction at the southern limit near Witmer Road. As extraction progresses, material that is stripped from one phase will be used to initiate rehabilitation of side slopes and the pit floor in the previous extracted phases.

[116] According to Mr. Sisco, the progressive and final rehabilitation of the lands will return the lands to agriculture including specific restrictions within the north portion of the site as outlined in the Risk Management Plan with the Region. He advised in order to ensure the lands are returned to a viable agricultural use, once the topsoil is replaced, a crop soils specialist will assess the soils and make recommendations to augment the soil nutrient levels as necessary (i.e., planting alfalfa and that once grown, being ploughed under over a series of crop cycles to help increase the natural nutrient levels of the soil).

[117] In Mr. Sisco’s opinion, in which the Tribunal agrees, there will be no cumulative impacts related to life span or rehabilitation and the site plans regarding rehabilitation are enforceable by the MNRF.

[118] Growth Plan Policy 4.2.8 provides additional language on the management of aggregate extraction activities including mitigation impacts and protection of natural heritage. Policy 4.2.8.5 requires that a minimum of 35% of the disturbed area that is within a Natural Heritage System be rehabilitated to forest cover. According to Mr. Sisco, MNRF mapping confirms that the Subject Lands are not within the Natural Heritage System overlay and therefore, the Application and specifically, the proposed rehabilitation (to agriculture) of the Hallman Pit is in conformity with the requirements of the Growth Plan.

[119] Mr. Sisco advised that progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, to recognize the interim nature of extraction, and to mitigate negative impacts to the extent possible. Final rehabilitation shall take surrounding land use and the approved land use designations into consideration.

[120] Based on the above, in the opinion of Mr. Sisco, which the Tribunal agrees, the Application conforms with and is not in conflict with the PPS and Growth Plan.

### **Findings on Land Use Planning**

[121] The Tribunal accepts the evidence of Mr. Sisco who was tasked with preparing the justification report, and that the proposed development is consistent with the PPS. It has been satisfactorily demonstrated that the proposal conforms to the Growth Plan regarding compatibility and will comply with applicable regulatory and guideline limits through methods to mitigate and minimize adverse effects between a major facility and land uses.

[122] The Tribunal finds that the Grand River Conservation Authority ("GRCA") comments have been addressed and have no concerns with the Application. The Tribunal is satisfied the detailed technical reports and peer reviews that the application conforms to the requirements of the Township OP and Region OP.

[123] The Tribunal has determined that the applicable Provincial, Region and Township planning policies have demonstrated that the proposed Hallman Pit is a compatible land use, and that potential impacts related to dust, odour, noise and traffic can be minimized and mitigated in accordance with Provincial and Municipal requirements, and best management practices.

### ***Planning Act***

[124] The Tribunal is required to address s. 2.1 of the *Planning Act*, which was an issue in these proceedings and requires regard to the decisions of municipal councils. Evidence has been provided that the CSGW attended before Township Council in April 2022 with their air quality expert, planner, and legal counsel to provide evidence on the avoidance policies of the PPS, the zone of off-site air impacts, and the no-threshold nature of adverse health effects.

[125] CSGW contends neither the Applicant nor Township staff addressed the PPS avoidance policies, the mapping of off-site air emissions, or the presence and significance of no threshold air pollutants. CSGW asserts that the April 2022 decision of the Township Council was consistent with the PPS and voted unanimously to dismiss the appeal. CSGW contends this was the right decision and there is no planning or technical evidence before this Tribunal that Council's decision was not consistent with the PPS.

[126] Mr. Sisco testified that nothing changed to the applications since April 2022, the same information that was before Council in April 2022 is the same information that was before Council in 2023 when it decided to accept and approve the application..

[127] The Tribunal agrees with the Applicant's submissions, that this Tribunal hearing is not limited to the information before Council at the time of the Decision. The Tribunal's process gives Parties a full hearing with the opportunity to present fresh and expanded evidence, including expert evidence, that was not before Council at the time of the

Decision. The Tribunal has considered the expert evidence presented during this Hearing, which has outlined additional concerns regarding the extent of the impacts, the adequacy of the measures proposed to reduce those impacts, and, as CSGW contends, the failure of the Applicant to address all relevant and applicable Provincial policies.

[128] The Tribunal finds that in 2023, Council had all the information that it had in 2022, including submissions made by CSGW. Council merely reached a different decision as evidenced with new Council members. The Tribunal is not required to any decisions made by Council and must base its decision on the evidence heard, in this case, over the course of seven days, which it has.

#### **Zoning By-law Amendment (“ZBA”) Omission on Recycling Plant**

[129] During the course of these proceedings, it was discovered that the filed ZBA from the staff report omitted the concrete and asphalt recycling operation. Counsel for CSGW, contend that the ZBA attached to the staff report omitted the recycling asphalt and concrete and was not before the Township Council.

[130] In closing submissions, Counsel for the Applicant advised that this was merely an omission and mistake, and provided the Tribunal with an updated ZBA. The Applicant submitted that throughout the application, peer review information and documentation were considered in regard to the permitted use to allow for the importation of concrete and asphalt recycling.

[131] During the testimony of Mr. Sisco, he advised that the Applicant/Appellant requested the inclusion of an ancillary use being the recycling of concrete and asphalt. He testified all the applicable background studies including the staff report, in support of the application were prepared based on the inclusion of recycling, (i.e. traffic, noise, hydrogeology).

[132] Counsel for the Applicant advised the ZBA is the same as referenced in the MOS and that it was merely an error, which was an oversight that the recycling aspect was not included in the ZBA in the staff report.

[133] The Tribunal finds that the omission of the concrete and asphalt recycling in the ZBA was simply an administrative oversight and was unintentional since all previous reports and peer reviews included the recycling plant throughout this Application.

### **MINUTES OF SETTLEMENT (“MOS”)**

#### **FACTUAL INFORMATION OF THE MOS**

[134] During the third CMC on April 25, 2023, three Parties (Applicant, Township and Region) advised that they have agreed to a comprehensive resolution of the Appeals pursuant to the terms of MOS dated February 23, 2023. The Tribunal subsequently allowed factual information to be heard during this CMC without making any determinative decision on the merits of the case.

[135] During the third CMC, the Tribunal heard from Mr. Sisco who advised on February 20, 2018, he was retained by the Applicant to assist with the rezoning and ARA Applications to permit a gravel pit operation (“Hallman Pit”), including the recycling of concrete and asphalt. In support of the applications, he prepared a Planning Justification Report to provide government review agencies with the necessary information for evaluation and approval, and to the public to provide an overall understanding of the Applications.

[136] Mr. Sisco advised the GRCA requested additional ecological protection of the Schindelsteddle South Wetland Complex (“SSWC”), which is located centrally on the eastern limit of the Subject Lands. Accordingly, the Applicant has requested that 4.3 ha of

the Subject Lands, which lie within the SSWC, be rezoned from Z1 (Agriculture) to Z11 (Open Space).

[137] As required by Township Official Plan Policy 7.2.4.2, a pre-submission consultation meeting was held on November 29, 2018, which included staff from the Region, GRCA, Township, Applicant and consultants retained by the Applicant.

[138] Mr. Sisco detailed the studies completed which were namely, Agricultural Impact Assessment; Archaeological Assessment; Hydrogeological Assessment; Environmental Impact Statement/Natural Environment Report; Noise Impact Assessment; Traffic Impact Assessment; and Geotechnical Assessment of the Haul Route.

[139] Mr. Sisco advised all of the studies were completed, appended to the PJR dated October 11, 2019, and submitted to the Township in support of the rezoning application. These studies were also submitted concurrently to the MNRF in support of the ARA license application.

[140] Mr. Sisco explained, to address the Region OP policy 9.C.4 with respect to potential cumulative impacts due to the existence of seven pits within the vicinity of the proposed Hallman Pit, he prepared the PJR Addendum dated October 21, 2020 and submitted it to the Region in further support of the rezoning application.

[141] According to Mr. Sisco after completing its review of the Applications, the Region provided its comments to the Township and MNRF. The Region stated it has no objection to either application.

[142] On April 4, 2022, Township staff prepared a report to Council recommending approval of the rezoning application, together with a draft amending zoning by-law.

[143] Despite recommendation to Council by Township staff, Township Council declined the rezoning application. The Applicant appealed the rezoning application to the Tribunal on May 3, 2022.

[144] Mr. Sisco advised that recommendations from the Region and Township were addressed including one recommendation from a CSGW consultant on a geotechnical peer review concerning clay in the ground.

[145] Mr. Sisco advised that the Appellant and the Township also have a Witmer Road Reconstruction Agreement. The Appellant has entered into a written agreement with the Township requiring the Appellant to reconstruct Witmer Road from Queen Street to just west of the proposed pit entrance, to the satisfaction of the Township, and at no cost to the Township, prior to the commencement of aggregate extraction operations (save and except for extraction activities required to source materials solely for use in the reconstruction of Witmer Road), subject to the approval of the MNRF, if required.

[146] On February 23, 2023, the Applicant, the Township and the Region entered into MOS with respect to the Applications.

## **CONCLUSION**

[147] The Tribunal would describe these proceedings as “unorthodox” for a number of reasons including conducting three CMCs, with factual information being presented during one of the CMCs and further, deciding on the merits of the contested settlement during a seven-day hearing.

[148] However, the Tribunal is satisfied that procedural fairness was maintained for each Party and finds that through the comprehensive public and agency consultation, the Applicant has met the planning process obligations under the *Planning Act*.

[149] The Tribunal took into consideration the written submissions from the numerous Participants who asked, as counsel for CSGW put it, this Tribunal to draw its line here using the basic terms of land use planning and compatibility.

[150] The primary themes of concerns presented within the Participant statements were: impacts on water quality and quantity, environmental issues, loss of prime agricultural land, traffic and road safety, loss of property values, impacts on quality of life, cost to tax payers for maintenance of road, noise and dust, air quality as a result of dust and diesel fumes, hours of operation, and impacts on an existing community.

[151] Although some concerns fall outside the jurisdiction of the Tribunal and some are not relevant within a land use planning context, the Tribunal weighed all Participants' statements accordingly in the findings on this matter and is satisfied that from a land use planning perspective these concerns and issues have been adequately addressed not only by the Applicant but also by the peer reviewers of this Application.

[152] The Tribunal heard competing evidence over whether the approval of the proposed application would give rise to land use conflicts that would not be compatible with the surrounding area. The Tribunal finds that it has been sufficiently demonstrated that the proposed Application is a compatible land use with other nearby aggregate and residential uses and that potential impacts related to dust, odour, noise and traffic can be minimized and mitigated in accordance with Provincial and Municipal requirements, and through the site plan and operational plan controls which are enforceable through the various Provincial agencies.

[153] Based on the evidence, findings and reasons summarized, and after due consideration for all of the arguments set forth in the opening and closing statements of the Parties, the Tribunal finds that the Applicant has demonstrated that the requested ZBA is consistent with the PPS and conforms to the Growth Plan and the Official Plans for the Township and the Region.

[154] Counsel for CSGW, submit that saying no to the Application is a matter of common sense. Counsel contend that no major gravel pit should be right beside an existing, recognized rural residential community. The community of Shingletown was here first and this location should be avoided.

[155] Conversely, the evidence has consistently shown, and as agreed upon among the Applicant, the Township and the Region, it does make sense to locate a gravel pit where it is permitted in both the Region and the Township OPs and in an area calculated to provide extraction resources of +/-13.8 million tonnes and based on a maximum annual extraction limit of 750,000 tonnes, alongside six other established gravel pits. The fact a small community is located there first does not withstand the interpretations of the various PPS and Growth Plan policies.

[156] The Tribunal agrees with Counsel for the Applicant in regard for a need for another gravel pit. The existence of other pits where extraction has not started, been completed, or restored, does not influence the potential to zone and license additional extractive operations. The PPS specifically prohibits municipalities from requiring a demonstration of need or making a decision on the basis of the availability, designation or licensing locally or elsewhere. Policy 2.5.2.1 states that “demonstration of need for mineral aggregate resources, including any type of supply/demand analysis, shall not be required, notwithstanding the availability, designation or licensing for extraction of mineral aggregate resources locally or elsewhere”.

[157] The Tribunal has considered the Book of Authorities from opposing counsel and finds the cases are not similar based on facts.

**BILL 150**

[158] Since the conclusion of the merit hearing held by the Tribunal, and prior to the issuance of this Decision, the Tribunal has reached out to the Parties to seek input if the passing of Bill 150, *Planning Statute Law Amendment Act, 2023*, which enacts the *Official Plan Adjustments Act, 2023* (“OPAA”), which received Royal Assent on December 6, 2023, had any impacts on the potential outcome of this matter. All of the Parties (including the Applicant/Appellant, the Corporation of the Township of Wilmot and the Regional Municipality of Waterloo) have provided responses to state that Bill 150 does not impact the matter that was heard.

**INTERIM ORDER**

[159] **The Tribunal Orders** that the appeals are allowed in part and:

- a) directs the Township of Wilmot to amend By-law 83-38 as set out in Attachment 1 to this Order. The Tribunal authorizes the municipal clerk of the Township of Wilmot to assign a number to this by-law for record keeping purposes.

[160] **The Tribunal Directs** that the Minister of the Ministry of Natural Resources and Forestry under s. 11(8)1 of the *Aggregate Resources Act* (“ARA”) to issue the Class A Licence, Category 3 with an annual maximum extraction tonnage of 750,000 tonnes.

[161] The Tribunal withholds its final Order until such time the Township of Wilmot advises that the Witmer Road Reconstruction Agreement (haul route) has been entered with the Applicant. Member shall remain seized of this matter for the purpose of issuance of the final Order.

*“Eric S. Crowe”*

ERIC S. CROWE  
MEMBER

**Ontario Land Tribunal**

Website: [www.olt.gov.on.ca](http://www.olt.gov.on.ca) Telephone: 416-212-6349 Toll Free: 1-866-448-2248

The Conservation Review Board, the Environmental Review Tribunal, the Local Planning Appeal Tribunal and the Mining and Lands Tribunal are amalgamated and continued as the Ontario Land Tribunal (“Tribunal”). Any reference to the preceding tribunals or the former Ontario Municipal Board is deemed to be a reference to the Tribunal.

**ATTACHMENT 1****TOWNSHIP OF WILMOT****BY-LAW NO. \_\_\_\_\_****BY-LAW TO FURTHER AMEND BY-LAW NO. 83-38 OF THE TOWNSHIP OF WILMOT BEING A ZONING BY-LAW FOR THE SAID TOWNSHIP OF WILMOT.**

**WHEREAS** The Corporation of the Township of Wilmot deems it desirable to further amend By-law No. 83-38, being a Zoning By-law for the said Township of Wilmot.

**NOW THEREFORE THE MUNICIPAL COUNCIL OF THE CORPORATION OF THE TOWNSHIP OF WILMOT ENACTS AS FOLLOWS:**

1. Notwithstanding the provisions of By-law 83-38, as amended, the lands described on Schedule "A" and illustrated on Schedule "B" attached to and forming part of this By-law, are hereby removed from Zone 1 (Agricultural) and placed within Zone 1 (Agricultural), Zone 11 (Open Space) and Zone 14 (Extractive Industrial).
2. Notwithstanding the provisions of By-law 83-38, as amended, on the lands described on Schedule "A" and identified as Zone 14 on Schedule "B" attached to and forming part of this By-law, the following additional uses shall be permitted:
  - a) The importation of broken concrete and asphalt for recycling, subject to the following:
    - i) Keeping of materials associated with this use shall be limited to an area contained on the pit floor.
3. Notwithstanding the provisions of By-law 83-38, as amended, the lands described on Schedule "A" and identified as Zone 11 on Schedule "B" attached to and forming part of this By-law, may be used only for an Arboretum, Wildlife Sanctuary, and accessory uses.
4. Notwithstanding the provisions of By-law 83-38, as amended, on the lands described on Schedule "A" and identified as Zone 1 and Zone 14 on Schedule "B" attached to and forming part of this By-law, the following shall apply:
  - a) use of any portion of the land following progressive rehabilitation of a licensed aggregate operation shall comply with the terms of Risk Management Plan 00051 as approved and/or amended by the Region of Waterloo.

5. Notwithstanding the provisions of By-law 83-38, as amended, for the lands described on Schedule "A" and illustrated on Schedule "B" attached to and forming part of this By-law, the following shall be added as Section 22.\_\_\_\_:

Notwithstanding any other provisions of this By-law, the lands described as Part Lot 10, Concession South of Bleam's Road, being Part 1, Plan 58R-199816, and identified on the map forming paragraph 22.\_\_\_\_, shall be subject to the following regulations:

- a) Use of the lands zoned Zone 14 shall include the following additional uses:
    - i. The importation of broken concrete and asphalt for recycling, subject to the following:
      - a. Keeping of materials associated with this use shall be limited to an area contained on the pit floor.
  - b) use of lands zoned Zone 11 shall be restricted to an Arboretum, Wildlife Sanctuary, and accessory uses.
  - c) use of lands zoned Zone 1 and Zone 14 following progressive rehabilitation of a licensed aggregate operation shall comply with the terms of Risk Management Plan 00051 as approved and/or amended by the Region of Waterloo
3. Notwithstanding the provisions of By-law 83-38, as amended, a new map forming paragraph 22.\_\_\_\_ shall be added to By-law 83-38 to identify the lands described on Schedule 'A' and zoning boundaries illustrated on Schedule "B" attached to and forming part of this By-law.
4. Except as amended by the preceding regulations, the lands described on Schedule "A" attached to and forming part of this by-law and shown on Schedule "B" attached to and forming part of this by-law, shall be subject to all other applicable regulations as set down in By-law No. 83-38, as amended.
5. This by-law shall come into effect on the final passing thereof by the Council of The Corporation of the Township of Wilmot subject to compliance with the provisions of The Planning Act, R.S.O., 1990 and amendments thereto.

READ a first and second time on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

READ a third time and finally passed in Open Council on the \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_.

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

SCHEDULE "A"

**ALL AND SINGULAR** that certain parcel or tract of land and premises situate, lying and being in the Township of Wilmot, in the Regional Municipality of Waterloo and Province of Ontario being composed of Part Lot 10, Concession South of Blead's Road, being Part 1, Plan 58R-19981, in the said Township of Wilmot.

This is Schedule "A" to By-law No \_\_\_\_\_.

PASSED this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_

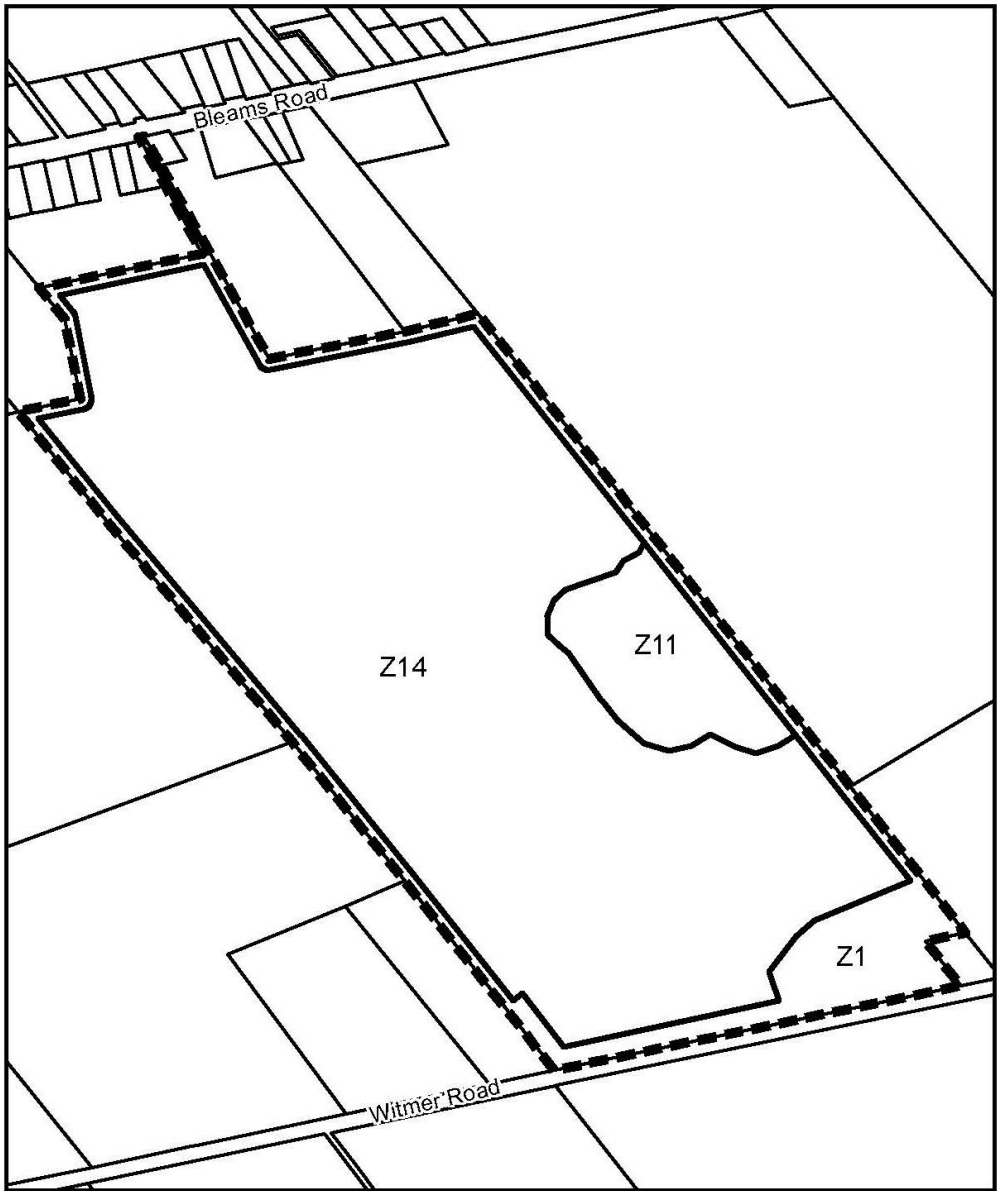
MAYOR

\_\_\_\_\_

CLERK

SCHEDULE "B"  
PART LOT 10, CONCESSION SOUTH OF BLEAM'S ROAD  
PART 1, PLAN 58R-19981  
TOWNSHIP OF WILMOT

SUBJECT LANDS OUTLINED THUS: - - - - -



THIS IS SCHEDULE "B" TO BY-LAW NO.

PASSED THIS                      DAY OF                      ,                      .

\_\_\_\_\_  
MAYOR

\_\_\_\_\_  
CLERK

