

**Report to Ministry of Municipal Affairs and Housing**

**Comments for Co-ordinated Land Use Planning Review of the  
Greenbelt**

**May 27, 2015**

# **Excess Soils and the Greenbelt**



**Lakeridge Citizens for Clean Water**

**Port Perry, Ontario**

**<http://lakeridgecitizens.ca>**

**info@lakeridgecitizens.ca**

In 2010 citizens were surprised to see a works trailer set up in a field of rolling hills and wetlands in a Natural Linkage Area immediately adjacent to the Natural Core Area of the Oak Ridges Moraine and hundreds of trucks roll in and dump their loads of soil - which turned out to be contaminated. The neighbours had thought, from what they knew of applying for permits for minor property improvements in the Oak Ridges Moraine, that such a thing should not be allowed. After public meetings attended by 200 people, many print and TV media stories, the involvement of all three levels of government, and finally, court decisions, the dumping was halted. However, throughout that process the Oak Ridges Moraine Conservation Act was irrelevant. The land now sits vacant, abandoned, and contaminated.



Those citizens have continued as the Lakeridge Citizens for Clean Water (LCCW) for the past 5 years to educate the public and government officials, to monitor soil dumping activities, and to fight against commercial fill operations and the dumping of contaminated soil on and off the Moraine and the Greenbelt. Individuals in LCCW have devoted thousands of hours to researching the issue, have taken professional level training in soil contamination, and have been officially acknowledged in the Mayor's New Year's Honour Roll and by an award from the Durham Environmental Advisory Committee for co-operative efforts to enhance the natural environment.

Commercial fill operations deposit excess soil onto a property in exchange for compensation in the neighbourhood of \$50 per load. Any particular receiving site would have hundreds of trucks a day dump their loads and it may take many years to fill a property. The excess soil comes from excavations for condo towers, transit projects, and other projects such as the Pan-Am Games facilities. Excess soil also comes from cleaning up old industrial lands. The Ontario Brownfield Regulations classify the soil of old industrial lands by the degree of contamination and if the soil is too contaminated for the proposed use of the land, it is dug up and shipped away. With a cost of several thousand dollars to properly deal with a truck load of contaminated soil, there is a very strong incentive to just dump in on a rural field or in an old gravel pit. The Oak Ridges Moraine and the Greenbelt have many rural fields and gravel pits and they are an easy drive from the urban centres.

Our comments are limited to the impact of commercial fill operations and soil dumping but this is an activity that is completely against the spirit of the Greenbelt Acts as they are industrial operations severely affecting the landforms and waters of the Greenbelt, Moraine, and Escarpment. The Acts and Regulations are completely silent on the issue. This must not continue. The following pages will provide very specific recommendations.



Carmela Marshall

carmela\_marshall@yahoo.ca

For

Lakeridge Citizens for Clean Water

Port Perry, Ontario

<http://lakeridgecitizens.ca>

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*Please for any referenced documents, please visit <http://www.lakeridgecitizens.ca>*

*You may also click on the blue highlighted documents for a direct link to the information contained on the LCCW website.*

## 1. Regarding the ORMCP and Site-Alteration

Commercial fill operation has been defined in various municipal site-alteration by-laws as: “the placing or dumping of fill involving remuneration paid, or any other form of consideration provided, to the owner or occupier of the land, whether or not the remuneration or consideration provided to the owner is the sole reason for the placing or dumping of the fill.” (definition from municipal by-laws such as those in in Uxbridge and Scugog).

The ORMCP does not consider commercial fill operations or large fill sites as development. Therefore, large fill sites could potentially be approved in areas of the moraine that would otherwise not permit that degree of development, such as in the Natural Core and Natural Linkage areas. [\(See Sections 11 and 12 of Oak Ridges Moraine Conservation Plan\)](#) As well, landform conservation requirements on the moraine [\(ORMCP Technical Paper 4 – Landform Conservation\)](#) may not be given appropriate consideration as large site alterations with no development are not treated the same as large site-alterations with development.

High Aquifer Vulnerability (HAV) areas (See Section 29 of the ORMCP) on the Moraine are in need of protection from large fill operations where underlying aquifers are vulnerable to risky fill activities on land. The Moraine Can’t Wait campaign put dirty dirt on the top of the list of threats to the moraine. Currently, specific land uses listed in the ORMCP, such as waste sites and snow dumps, are prohibited in HAV areas. However, considering current definitions of waste and the non-inert nature of much of the fill that is being deposited, it could be argued that Moraine lands are being used as waste stations contrary to HAV Area prohibitions and contrary to the EPA and MOE’s waste regulation, O. REG. 347. [\(The case for Prohibiting Commercial Fill Operation from an Area of High Aquifer Vulnerability in the ORM by LCCW\)](#)

Please see **Annex 3** for further information on the above LCCW report.

Large scale commercial fill operations are not considered a “use of land” in the municipal zoning and permitting processes, despite the industrial scale of the noise, dust, and traffic. Also there is the fact that commercial fill dumping is a business with significant profits to be made at the source (with money saved in tipping fees at legitimate landfills for non-hazardous waste) and at the receiving end of the fill with fill brokers and receiving site owners making anywhere from 20 to 100 dollars or more per truckload to accept the fill materials. The provincial Planning Act specifically defines extraction from a pit or quarry as a use of land but is silent on the equally significant but reverse process of a large scale dumping operation.

**Action Required regarding Site Alteration:**

1. Consideration for the 2015 MMAH review of the ORMCP :
  - a) Large fill projects should be considered as development and should be prohibited in those land use areas of the Moraine that prohibit similar large scale disturbances to lands. (We note that many individuals, citizens groups and environmental NGOs believe that because of the sensitive and unique nature of the ORM, commercial fill dump sites should be prohibited outright on these lands.)
  - b) High Aquifer Vulnerability Areas, Well - Head Protection Areas and Significant Groundwater Recharge Areas on the Moraine should be protected from large commercial fill operations and the unacceptable threat they pose to precious groundwater resources.
2. The Planning Act should be amended to define a commercial fill operation as a “use of land”.

## 2. Regarding the ORMCP and Conservation Authorities

For site-alterations with no development attached, the landform conservation category requirements of the ORMCP may be undermined if commercial fill applications only fall within Conservation Authority (CA) regulated areas. While municipalities can incorporate ORMCP requirements and compliance within their site-alteration by-laws and building or development applications, CAs cannot include certain ORMCP requirements, with confidence, unless they specifically impact on the “five tests” of CA regulations.

It is only recently that some conservation authorities have incorporated large scale fill policies into their watershed management plans. However these plans are not consistent from one CA to the next and many are still left without any plans at all. It is readily apparent that many are not prepared and do not have the technical expertise to deal with these large scale fill applications, as was the case for the Ganaraska Region Conservation Authority permit issued for the Morgan’s large scale fill site and the Conservation Halton permit issued for the Reid property in Puslinch. These permits had a few thin conditions, did not address MOECC Best Management Practices, and did not include provisions or fees in to do necessary compliance monitoring which is greatly concerning considering the reality of the fill industry with many sites being overfilled or turning up contaminated after independent testing was done (Please see **Annex 4** for a short list of site with compliance issues or concerns).

Please see **Annex 1** for further information regarding large scale fill and conservation authorities.

### 3. Regarding the ORMCP and Fill in Surrendered Aggregate pits

As well, landform conservation category requirements are not being considered in any kind of consistent manner, or at all in some cases, for large fill applications on lands for which an Aggregate licence has been **surrendered** and lands **rehabilitated**. Municipalities on the Moraine have either not yet incorporated ORMCP requirements into their site-alteration by-laws or have not adopted site-alteration by-laws at all. For example, after the exemplary rehabilitation of an aggregate pit and surrender of the licence for a site in Scugog, the Township issued a site-alteration permit to the landowner that permitted the filling and leveling of the entire property which also happens to be in a Landform Conservation Area Category 2 of the Moraine. In 2010, the Township of Whitchurch - Stouffville issued a permit for a commercial fill operation which resulted in the complete filling of property located in a Landform Conservation Category 2 Area. The site also happens to be situated within the two year time of travel for a Well-head protection Area in the Township. This particular site was also overfilled by an estimated 25,000 truckloads of fill as detailed in the following Order [\*\*\(February 2013 5511 Bloomington RD. Consultant Letter Re Overfilling\)\*\*](#) issued by the Township. Hence the concern that the financial incentive for receiving sites to import vast quantities of fill can undermine quality rehabilitation practices as indicated in Annex 2.

Please see **Annex 2** for further information regarding fill issues and Aggregate pits.



## 4. Regarding the Niagara Escarpment Plan and Greenbelt Plan

The same issues that affect the ORMCP are affecting lands in the protected countryside of the Greenbelt Plan area and the Niagara Escarpment.

There numerous court cases and tribunal cases, at considerable costs to municipalities and other approval, involving, presenting arguments trying to defend against using “protected” lands as commercial fill dump sites.

See **Annex 5** for links to various court cases regarding large scale fill operations in the Greenbelt.

We need a consistent and comprehensive approach that addresses excess soil concerns and that recognizes the environmental and social concerns associated with large scale fill receiving sites especially in uniquely protected areas of Ontario.

The same issues around appropriate land use and large fill sites on the Moraine also extend to the Greenbelt and Niagara Escarpment. The Niagara Escarpment Commission (NEC) has indicated that commercial fill operations are not consistent normal agricultural practices and that different rules are necessary for lands that are designated as a world biosphere area. However, the NEC are still forced to rigorously defend their position at Hearings when the NEC rejects applications to bring in significant quantities of fill onto agricultural lands.

As with the ORMCP, the Greenbelt Plan is enforced and interpreted by municipalities across the province and there are still municipalities that have not incorporated Greenbelt or ORMCP requirements in their site-alteration by-laws if site-alteration by-laws exist at all. Even when they site alteration by-laws exist and indicate alterations shall be consistent with the Greenbelt Plan, the Plan, like the ORMCP, does not recognize large scale filling as a use of land. Therefore, these operations can technically happen anywhere in the Greenbelt whereas similar types of industrial operations would otherwise be prohibited. We need a level playing field and we need the Greenbelt Plans to recognize and address large scale filling (commercial fill operations) accordingly.

As incredible quantities of fill are being proposed for active farmland as well, these plans need to address what is acceptable and what is not in terms of fill importation with regards to volume, location and soil quality. Prime agricultural lands should not be used as repositories for excess construction fill and municipalities should not have to spend thousands of dollars in provincial court or at the Normal Farm Practices Protection board to protect agricultural lands and the rural character of their communities.

## **Annex 1. Fill Issues and Conservation Authorities**

A [2010 CLOCA Report](#) indicated the following, “there has been an apparent increase in demand for large fill sites within and adjacent to the Greater Toronto Area”, and “given the competitiveness of the trucking industry, haulers are being pressured to transport fill of any nature”. Conservation Ontario recognized soil management as an important issue effecting Conservation Authorities and documented this in the [2012 Conservation Ontario Discussion Paper](#).

By virtue of the [Municipal Act, Section 142](#), site alteration by-laws can only be enforced by municipal staff in areas which are not subject to regulations made under Clause 28(1) of the Conservation Authorities Act.

CA’s issue “Development, Interference with Wetland, Alterations to Shoreline”, permits. They do not currently issue “fill permits” the way a municipality could with all the various considerations.

The CA may grant permission for “development”, which includes fill placement within Regulated Areas provided it has been determined that there will not be an adverse effect on the following five tests:

- Control of flooding;
- Erosion;
- Dynamic beaches;
- Pollution; or
- Conservation of land.

It can be argued that only two of these tests really allow for conditions of any consequence to be put on the CA permit that approves a large fill site-namely “pollution and conservation of land”.

There are concerns with some of the current definitions in CA regulations and how they are interpreted by various conservation authorities. Some CAs, like Ganaraska Region Conservation Authority, have indicated that they may only be able to impose permit conditions regarding “pollution” and “conservation of land” that effect the specific feature- ie. the wetland and not the land around the wetland-hence not the groundwater if the groundwater does not directly affect the wetland ([Ganaraska Conservation Authority Report 2011 – Morgan’s Rd. Application](#)). This is a serious concern.

Another serious issue is that landform conservation requirements addressed in Section 30 of the ORMCP do not translate to “conservation of land” requirements in the CA regulations as indicated by CLOCAs amended to their large sale fill policy where they once prohibited large scale fill in landform conservation areas of the moraine and have now

removed that prohibition stating that they could not “defend” it. However, LSRCA has recently added it to its large scale fill policy however they were not able to confirm that it was defensible or rationalize why they left it in while CLOCA took it out.

**Action Required regarding Conservation Authorities:**

1. Conservation Authorities need to exercise their own due diligence and ensure the placement of fill within their regulated areas will not have an adverse impact on the environment.

CA’s need to adopt Large Fill Policies as KRCA ([Kawartha Region Conservation Authority: Large Fill Procedural Guideline](#)) and CLOCA ([Central Lake Ontario Conservation Authority: Large Fill Policy](#)) have done.

The fill policy should include necessary conditions, including those requirements listed below:

- Table 1 soils only on lands with no previous point source contamination-consistent with current KRCA and CLOCA policies
- Frequent testing of incoming fill at the receiving site following MOE’s protocol for soils coming into an RSC property, i.e. 1 sample for every 160 cubic metres of incoming fill ([MOE Fact Sheet: Bringing Soil to an RSC Property, April, 2011](#))
- Proponent paid audit tests of incoming fill by CA staff or a CA hired consultant
- Mandatory QP (qualified person as defined by O. Reg. 153) reviewing and signing off on source site soil reports at the receiving site
- Proponent paid CA consultant peer review of incoming soil reports
- Mandatory securities obtained reflecting the size of the fill operation
- Incorporate recommendations from MOECC BMP

2. The MNR needs to develop regulations that allow conservation authorities to go beyond the constraints of meeting the “five tests” so that social and various environmental issues such as groundwater contamination concerns can be purposely considered when permits are issued by conservation authorities. Various key definitions in CA regulations are also lacking and need significant attention if CA’s are going to be able to apply their regulations in a consistent manner across the province.

## **Annex 2. Fill and Aggregate Sites**

A [2006 Golder and Blackport Study](#) regarding water quality issues and aggregate sites indicates that it is usually not the extraction process itself, but the post extraction land use applications that has the potential to impact groundwater quality.

LCCW has gathered some important evidence to consider regarding fill quality concerns and the use of former aggregate sites for large fill operations. The Earthworx Site in Scugog, previously showcased on the MNR website as a model rehabilitation before it was surrendered and filled, provides one example among several that illustrates the fact that large fill sites can result in the deposition of contaminated fill.

The concern is that more aggregate sites may end up being used as dumping grounds for vast quantities of questionable fill, thereby posing an unacceptable risk to groundwater quality ([Work Plan Remedial Soil Excavation Plan – Earthworx Site](#)). The contaminated soil results of a surrendered aggregate pit in the City of Kawartha Lakes legitimize this concern ([MOE Letter to the City of Kawartha Lakes re Contamination Issues at fill site -2012](#)).

We also feel there is the potential for the business of commercial fill operations to undermine various meaningful and innovative rehabilitation opportunities for some aggregate sites, opportunities such as those researched in [The Ontario Aggregate Resources Corporation, Best Practices Guideline for Aggregate Rehabilitation Projects](#).

A surrendered aggregate site in East Gwillimbury, operating under a municipal fill permit negotiated on the premise that the fill was needed to rehabilitate the land back to farmland, involved operators filling beyond the areas permitted by their site-plan resulting in a 3 story high mountain of fill being deposited on adjacent farmland. ([Neighbour objects to gigantic dirt pile in field – Globe and Mail, 2012](#))

Additionally, there is an MNR policy regarding salt impacted soils ([MNR policy statement – Importation of Inert Fill for the Purpose of Rehabilitation](#)) whereby salt impacted soils testing high in SAR readings can be deposited 1.5 metres below grade so as not to adversely impact plant growth. This policy is currently being adopted by some large fill sites however, the impact of this policy on groundwater, at MNR aggregate sites as well as large fill sites, has not yet been determined ([E-mail discussion with MNR on impact of salty soils on groundwater](#)). Similarly, the stratified categories in the MOE Tables are for impact on plant growth but do not consider the impact on ground water.

**Action Required regarding Aggregate Sites:**

A cursory list is provided here:

1. MNR Review of Aggregate Resources Act to consider fill impacts for soil quality, landform conservation and rehabilitation practices

- Link to relevant MOE regulations and best practices regarding soil management for rehabilitation
- Undertake bioregional landscape planning and rehabilitation
- Mechanisms such as conservation easements for long term protection
- Uncertainties regarding MOE Table usage, especially concerning importation of salt-impacted soils for rehabilitation purposes, to be addressed

### **Annex 3. Fill Operations and High Aquifer Vulnerability**

#### **(The Case for Prohibiting Commercial Fill Operations from an HAV area on the ORM).**

There are considerable gaps in legislation and science with regards to soil management in Ontario. An understanding of these gaps provides good reasoning for prohibiting commercial fill operations in HAV areas and Well Head Protection Areas of the Moraine. The significant omission in the Brownfield regulation regarding testing of excavated materials (redevelopment of Brownfields generates significant quantities of excess soil in southern Ontario), and the fact that there are no standards for soil quality **outside** of the Brownfield Regulation are serious concerns and result in unacceptable threats to clean groundwater when sensitive lands are used as dumping grounds for large amounts of excess fill.

It is important to understand that the ORCMP prohibits snow storage in HAV and Well Head Protection Areas (WHPA). Many different contaminants such as salt, PHC's and heavy metals can be present in snow when large amounts of it are removed from roads. (Please see the LAKE ERIE SOURCE PROTECTION REGION DISCUSSION PAPER 14- Drinking Water Threat: The Storage of Snow) Due to this fact, snow storage is not permitted in HAV and WHPAs of the Moraine listed above. Many of these same contaminants have been found to be present in soils at large fill sites when independent testing was done. As much of the fill is coming from Brownfields sites that may contain these contaminants and other more serious contaminates, it is recommended that large commercial fill operations be prohibited from these sensitive areas of the Moraine, in keeping with the prohibitions for the storage of snow.

## **Annex 4. Compliance Issues re: Large Scale Fill Receiving Sites**

LCCW has been compiling documents for several large fill site operations in the GTA. Below is an incomplete list of those sites as well as the compliance issues or main concerns regarding each site that have been documented as of January 2014.

**Please see the Case Studies page on the LCCW website for more detailed information regarding each site.**

**Earthworx Site, Township of Scugog – Concern – Contaminated Soil**

**Otonabee South – Monaghan Fill Site – Concern -Contaminated Soil**

**Morgans Road Site, Municipality of Clarington – Concern – Over filling and Contaminated Soil Issues**

**Mount Albert Pit Site, East Gwillimbury – Compliance Issue – Overfilling**

**Sideline 14 Site, City of Pickering – Concern – Contaminated Soil**

**Taylor’s Road Site, City of Kawartha Lakes – Concern -Contaminated Soil**

**Tottenham Airfield, Town of New Tecumseth – Concern – No permit – Township not enforcing by-law**

**5511 Bloomington Rd., Town of Whitchurch Stouffville – Compliance Issue – Overfilling**

**Pitway Site, Town of Whitchurch Stouffville – Compliance Issue - Overfilling**

**Burlington Airport, City of Burlington – Concern – Airport claiming Federal Immunity to City by-laws**

**Brock Aggregates Site, Town of Whitby – Concern – Overfilling**

**Greenbank Airways Site, Township of Scugog – Concern -Quality of imported soil- Contaminated Soil and Volume Discrepancies**

## **Annex 5. Court Cases Regarding Large Scale Fill Operations**

**[April 2015 Brampton Brick Works Decision April 2015 – Niagara Escarpment Hearing Office](#)**

**[March 2, 2015 -Court Bulletin Earthworx convicted and fined for dumping contaminated fill](#)**

**[February 2015 Town of Georgina v Marvin Blanchard – Smith Blvd. Site and \(briefly\) the Baldwin Site](#)**

**[February 23, 2015 Court Order Township of Amaranth and County of Dufferin vs. Marc Boisvenue and Manon Charette](#)**

**[Decision Normal Farm Practices Protection Board – Stull v Town of Halton Hills – Sept 24, 2014](#)**

**[September 18, 2014 Town of Georgina vs. Blanchard – Smith Blvd Property](#)**

**[June 11, 2014 Burlington Executive Airport owner loses appeal to dump dirt on property cbcnews.ca](#)**

**[Burlington Airpark Decision 2014.](#)**

**[February 2014 Township of Uxbridge vs. Talbot](#)**

**[Decision Nov 13, 2013 City of Burlington vs. Burlington Airpark regarding enforcement of City's Site-Alteration By-law](#)**

**[Niagara Escarpment Commission v. Livingston Decision August 2013](#)**

**[Decision June 2012 Uxbridge vs. Corbar Holdings Inc. regarding Normal Farm Practices](#)**

**[Decision May 18 2011 Earthworx vs. the Township of Scugog regarding application of Township's Site-Alteration By-law](#)**