



Canadian Environmental Law Association  
L'Association canadienne du droit de l'environnement

517 College Street, Suite 401, Toronto, Ontario M6G 4A2  
Telephone (416) 960-2284  
Fax (416) 960-9392

SUBMISSIONS OF THE CANADIAN ENVIRONMENTAL LAW ASSOCIATION  
TO THE MINISTRY OF NATURAL RESOURCES RESPECTING THE DRAFT  
OAK RIDGES MORAINES AREA STRATEGY FOR THE GREATER TORONTO AREA

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Prepared by:

Richard D. Lindgren  
Counsel

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LINDGREN, RICHARD D.  
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By

Richard D. Lindgren, Counsel

Canadian Environmental Law Association

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PART I - INTRODUCTION

The Canadian Environmental Law Association (CELA) is a non-profit public interest group founded in 1970 for the purposes of improving and enforcing environmental law. Funded as a legal aid clinic, CELA also provides a free legal advisory service to the public on matters of environmental law. In addition, CELA lawyers represent citizens and citizens' groups in the courts and before statutory tribunals on a wide variety of environmental matters.

In recent years, CELA lawyers have represented or assisted individuals and citizens' groups in various land use planning cases before the Ontario Municipal Board. Most of these cases focused on the protection of significant natural heritage, including woodlands, wetlands, coldwater streams, wildlife corridors, and other important ecological features or functions, including those found in the Oak Ridges Moraine area. CELA has also participated extensively in the consultation process held by the Commission on Planning and Development Reform for Ontario, and more recently by the Ministry of Municipal Affairs, with respect to proposed land use planning reforms. Finally, CELA has been active in matters concerning the Niagara Escarpment, and CELA counsel participated in the original hearings on the Niagara Escarpment Plan as well as the more recent Five Year Review hearings.

CELA's land use planning casework and law reform activities have led us to the conclusion that significant natural heritage cannot

be adequately protected through unenforceable policies, guidelines, objectives, or strategies. In our view, carefully crafted statutory protection is the most effective way to ensure the long-term maintenance and sustainability of natural heritage features and functions which are at risk from land use and development. Accordingly, if the Ontario government is truly committed to the protection of the ecological values of the Oak Ridges Moraine, then the government should enact special Moraine-specific legislation to provide the underpinning for a Land Use Plan which firmly restricts land use and development in the Oak Ridges Moraine area<sup>1</sup>. As described below, other proposed implementation measures -- a policy statement under s.3 of the Planning Act, or a provincial plan under the Ontario Planning and Development Act -- would likely be ineffective or inappropriate for long-term protection.

CELA's major recommendations respecting the draft Oak Ridges Moraine strategy are as follows:

1. Section 1.0 of the strategy should be amended to clearly state that the overall objective of the strategy is to ensure the long-term maintenance and protection of the ecological integrity and connectivity of the Oak Ridges Moraine.
2. Section 1.2.2 of the strategy should be deleted, and the contextual information contained therein should be reflected in a supplementary background study.
3. As a general principle, the Oak Ridges Moraine planning area should include not only morainal features, but also include ecologically significant areas which are functionally related to the Oak Ridges Moraine.
4. Section 4.0 of the strategy should be amended to delete extraneous socio-economic statements, and to emphasize the paramountcy of ensuring the environmental sustainability of the Oak Ridges Moraine.
5. Section 4.1.2(a) of the strategy should be amended to specify that the minimum size criterion for identifying Natural Core Areas is 10 hectares.
6. Section 4.1.4 of the strategy should be amended to state that aggregate extraction, forestry operations, and other commercial extractive activities shall not be permitted within Natural Core/Corridor Areas.

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<sup>1</sup>Land use and development in the Oak Ridges Moraine area can be restricted without triggering the remedy of compensation for affected landowners: see Lindgren and Clark, Property Rights vs. Land Use Regulation: Debunking the Myth of "Expropriation without Compensation" (CELA, 1994).

7. Section 4.1.4 of the strategy should be amended to prohibit pre-approval site alteration, including grading, placing or removal of fill, dumping, or peat or vegetation removal, in Potential Core or Enhancement Areas.
8. Section 4.1.4 of the strategy should be amended to clearly specify that the approval body may reject or approve the proposed land or resource use, and may impose such terms and conditions on its approval as may be reasonably necessary to protect or enhance natural features or functions.
9. Section 4.2.4 of the strategy should be amended to establish minimum 120 metre vegetated buffers for streams, lakes, wetlands, and top-of-bank of well-defined valley systems.
10. Sections 4.2.4(e) and (f) of the strategy should be retained to ensure that the cumulative impacts of development on water quality and quantity are evaluated in a comprehensive, holistic manner.
11. Section 4.4 of the strategy should be amended to ensure that the public is consulted on proposed revisions to the strategy.
12. Section 4.4 of the strategy should be amended to establish a open public process for adding, deleting and re-designating lands within the Oak Ridges Moraine planning area.
13. Section 6.1(d) of the strategy should be amended to specify that an Environmental Impact Study shall contain a monitoring plan to measure potential impacts on the environment.
14. Section 6.1(d) of the strategy should be amended to require an Environmental Impact Study for land or resource use proposals that require applications under the Environmental Protection Act, Ontario Water Resources Act, Public Lands Act, or that are otherwise environmentally significant.
15. Section 6.1(e) of the strategy should be deleted and the list of land or resource use proposals therein should be incorporated into Section 6.1(d) and require an Environmental Impact Study.
16. Section 6.1(h) of the strategy should be deleted.
17. Section 6.2.4 of the strategy should be amended to prohibit new or expanded waste disposal sites within the Oak Ridges Moraine planning area.
18. Section 6.3.2(e) of the strategy should be amended to prohibit new or expanded aggregate extraction operations within the Natural Core/Corridor Areas, and to establish a process for the quick, effective and equitable phase-out of existing

aggregate operations within these Areas.

19. Section 6.6 of the strategy should be amended to prohibit new or expanded public utilities in Natural Core/Corridor Areas.
20. The Ontario government should develop a provincial plan under new legislation as the primary means of implementing the strategy. As an interim measure, consideration should be given to developing a provincial plan under the Ontario Planning and Development Act.
21. Section 9.3.1(c) of the strategy should be deleted.

The rationale for each of these recommendations is provided below. Part II of this brief outlines some of CELA's general concerns and comments about the draft strategy. Part III of this brief provides CELA's comments on implementation issues, and Part IV offers some concluding remarks about the future of the Oak Ridges Moraine area.

#### PART II - GENERAL COMMENTS ABOUT THE OAK RIDGES MORAINÉ STRATEGY

The ecological significance and sensitivity of the Oak Ridges Moraine has been well-documented and does not have to be reviewed in detail in this brief.<sup>2</sup> There is clearly a provincial interest in safeguarding the ecological integrity of the Oak Ridges Moraine, and CELA supports the strategic planning exercise that the Ontario government has undertaken with respect to the Moraine. In particular, CELA supports the government's decision to create the multi-stakeholder Technical Working Committee and Citizens' Advisory Committee. In our view, the protection of the Oak Ridges Moraine is a matter which affects Ontarians living inside and outside the Moraine area, and it is commendable that the Ontario government is consulting broadly on this matter.

CELA recognizes that the members of both Committees spent considerable time and effort in developing a draft strategy which enjoys consensus support from the participants. Accordingly, the following comments are not intended to be critical of the Committee members, nor are the comments intended to diminish the importance of this strategic planning exercise. Rather, our comments are intended to provide constructive advice on how to strengthen and improve the draft strategy, especially with respect to implementation.

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<sup>2</sup> See, for example, Section 1.2 of the draft strategy. See also Ministry of Natural Resources et al., Implementation Guidelines: Provincial Interest in the Oak Ridges Moraine (1991), pp.3-4, and the various Background Studies prepared in conjunction with the Oak Ridges Moraine Area planning exercise.

(a) Section 1.0 of the Draft Strategy

In CELA's view, the draft strategy would benefit from a clearer statement of purpose and vision, with a greater emphasis upon the overall objective of protecting the ecological integrity of the Oak Ridges Moraine. As drafted, s.1.1 and s.1.3 leave the reader somewhat unclear as to the paramount purpose of the strategy: is it to ensure environmental protection? Permit further growth and development? Establish trail systems? All of the above? In our submission, the primacy of protecting the ecological integrity of the Oak Ridges Moraine must be expressly reflected in a clear and unambiguous statement of purpose. While compatible land use and development may be permissible in certain areas of the Oak Ridges Moraine, the strategy must be clear that such activities are subordinate to the overall goal of ensuring the sustainability of the Moraine's ecological features and functions.

**RECOMMENDATION #1:** Section 1.0 of the strategy should be amended to clearly state that the overall objective of the strategy is to ensure the long-term maintenance and protection of the ecological integrity and connectivity of the Oak Ridges Moraine.

CELA has no comments on s.1.2.1 of the strategy, except to say that this section provides a useful rationale for the strategy. However, we find that much of s.1.2.2 is unnecessary and should be largely deleted. CELA recognizes that in developing the strategy, it is important to be cognizant of the larger context of the Greater Toronto Area (GTA). Presumably, the drafters of the strategy had this context in mind as the strategy was developed, and it seems redundant to re-state the context in the strategy itself (as opposed to a background study). Moreover, we are concerned that some of the s.1.2.2 comments about GTA demographics and economics have been included to provide an excuse or pretext for diluting some of the protective policies found elsewhere in the strategy.

**RECOMMENDATION #2:** Section 1.2.2 of the strategy should be deleted, and the contextual information contained therein should be reflected in a supplementary background study.

(b) Section 2.0 of the Draft Strategy

CELA has reviewed Section 2.0 as well as the Ministry of Natural Resource's report on the definition and boundaries of the Oak

Ridges Moraine.<sup>3</sup> As a general principle, CELA submits that the planning area should include not only morainal features, but also ecologically significant areas (i.e. headwater areas) which may be off the Moraine but which are functionally related to the Oak Ridges Moraine's ecological values. We also support the use of straight-line boundaries (i.e. along existing roads or municipal boundaries) in order to ease the administration of the Oak Ridges Moraine planning area. However, CELA is not in a position to comment on the appropriateness of the proposed boundaries or on the proposed additions and deletions to the planning area. Accordingly, on the issue of boundary definition, we would defer to the views of the members of Save the Oak Ridges Moraine (STORM), who have greater local knowledge of the appropriate boundary location.

**RECOMMENDATION #3:** As a general principle, the Oak Ridges Moraine planning area should include not only morainal features, but also include ecologically significant areas which are functionally related to the Oak Ridges Moraine.

(c) Section 3.0 of the Draft Strategy

This section primarily serves as a guide to the format, direction and content of the remainder of the draft strategy. We find that the conceptualization of three interconnected natural systems -- natural heritage, water resources, and landform -- is an interesting and useful approach to identifying and protecting the ecological values of the Oak Ridges Moraine. Otherwise, CELA has no comments or concerns about Section 3.0.

(d) Section 4.0 of the Draft Strategy

This section is entitled "An Ecological Framework for the Oak Ridges Moraine". However, the reader immediately encounters sweeping generalizations on the "socio-economic fabric", the need to "provide employment and housing", and the requirement to "balance" social needs with ecological needs. These do not strike us as ecological matters, and they should be deleted or relocated to Section 6.0 of the strategy. Similarly, Figure 5 is out of place in this section and should also be deleted. Moreover, the comment that social needs should be "balanced" with ecological needs reinforces our previous submission that the strategy does not clearly recognize the paramountcy of environmental sustainability. The ecological sustainability of the Oak Ridges Moraine should not

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<sup>3</sup> Ministry of Natural Resources, Definition and Boundaries of the Oak Ridges Moraine Area within the Greater Toronto Area: A Discussion (1994).



be "balanced" or "traded-off" against short-term economic growth and development. Instead, the Moraine's ecological sustainability must be the paramount goal of the strategy, and all other needs, objectives or activities are of secondary importance.

**RECOMMENDATION #4:** Section 4.0 of the strategy should be amended to delete extraneous socio-economic statements, and to emphasize the paramountcy of ensuring the environmental sustainability of the Oak Ridges Moraine.

With respect to the Natural Heritage System described in Section 4.1, we are particularly supportive of the identification of Natural Core/Corridor Areas as essential elements requiring special protection. It is our submission that the minimum size for such areas should be 10 ha (25 acres) rather than the 30 ha (75 acres) suggested by the Geomatics consultants. In our view, the proposed 30 ha minimum ignores the significant ecological values of small forested lands, particularly for forest interior species and other species in areas where wildlife habitat/corridors are already degraded or fragmented. We also note that small woodlands may also provide habitat for rare, uncommon or significant species of flora and fauna<sup>4</sup>. It goes without saying that we do not share the unduly optimistic view of some Committee members that forests less than 30 ha will be protected through planning controls at the local level. Our experience under the Planning Act has been to the contrary, and we note that municipalities are not obliged to enact or enforce tree-cutting by-laws under the Trees Act.

It is also noteworthy that in the Environmental Bill of Rights, the Ontario government viewed five ha as being an appropriate threshold for lawsuits to protect public resources against significant environmental harm.<sup>5</sup> If five ha of land are deemed worthy of protection under the Environmental Bill of Rights, then why are 10 ha of land not worthy of protection under the Oak Ridges Moraine strategy?

In any event, we note that there is only a 2.6% difference in the amount of land that the 10 and 30 ha scenarios would set aside in the Oak Ridges Moraine area. Given the lack of a substantial difference in the two scenarios, CELA submits that it would be reasonable and appropriate to apply the precautionary principle and select the 10 ha criteria until further study has been completed.

**RECOMMENDATION #5:** Section 4.1.2(a) of the strategy should be amended to specify that the minimum size

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<sup>4</sup>Riley and Mohr, The Natural Heritage of Southern Ontario's Settled Landscapes, (MNR, 1994), pp. 21-26.

<sup>5</sup> Environmental Bill of Rights, 1993, S.O. 1993, c.28, s.82.

**criterion for identifying Natural Core Areas  
is 10 hectares.**

Section 4.1.3 properly suggests that Natural Core/Corridor Areas be retained in "natural self-sustaining vegetation cover where natural forms, functions and features predominate" (p.26). Incredibly, this section goes on to state that "low impact activities", such as forestry use and aggregate extraction, may be permitted within Natural Core/Corridor Areas. We are astounded to see forestry and aggregate extraction described as "low impact activities", particularly since these uses can result in substantial, long-term, and undesirable impacts upon vegetative cover, terrain, water resources, fish and wildlife, and other ecological features and functions. As described below, CELA views these highly intrusive activities as fundamentally incompatible with the protection of Natural Core/Corridor Areas, and these activities should not be permitted in such Areas. Accordingly, Committee members should reject the rhetoric about "mitigation" or "rehabilitation" often espoused by proponents of such activities.

**RECOMMENDATION #6: Section 4.1.4 of the strategy should be amended to state that aggregate extraction, forestry operations, and other commercial extractive activities shall not be permitted within Natural Core/Corridor Areas.**

We have reviewed the various policies contained in Section 4.1.4, and we support the proposal that proponents of certain land or resource uses be required to demonstrate that their proposals maintain or enhance environmental features or functions. However, we remain concerned that this section is silent on the need to prevent such proponents from undertaking pre-approval site alteration. In our view, this silence may provide an indirect incentive to landowners to degrade their property so as to take it out of consideration as potential corridor areas.

**RECOMMENDATION #7: Section 4.1.4 of the strategy should be amended to prohibit pre-approval site alteration, including grading, placing or removal of fill, dumping, or peat or vegetation removal, in Potential Core or Enhancement Areas.**

As drafted, Section 4.1.4 appears to rely upon the goodwill of landowners to "adopt" planning, siting, design or construction practices which maintain or enhance natural features or functions. The Section also speaks of an "approval body", but it is unclear as to what the body is approving or issuing. Similarly, it is not clear that the approval body may attach terms and conditions to its approval of the landowner's proposal. While we acknowledge that the identity of the approval body will not be known until the implementation question has been resolved, it is our submission

that the strategy should clearly specify that the approval body may approve the land or resource use proposal, and that the approval may be subject to reasonable terms and conditions to protect natural features and functions. This comment also applies elsewhere in the strategy where proponents are required to prepare and submit documentation on proposed land or resource uses (i.e. Section 4.3.4).

**RECOMMENDATION #8:** Section 4.1.4 of the strategy should be amended to clearly specify that the approval body may reject or approve the proposed land or resource use, and may impose such terms and conditions on its approval as may be reasonably necessary to protect or enhance natural features or functions.

With respect to the Water Resource System described in Section 4.2, we support the basic objectives of the system outlined in Section 4.2.3. However, we remain concerned over the use in Section 4.2.4 of a standard 30 metre vegetated buffer or setback for streams, lakes and wetlands, and 10 metre top-of-bank setback for well-defined valley systems. In our view, the necessary buffer area in both instances should be at least 120 m or larger in order to maximize the protection intended by these provisions. We also note that in the forestry context, the Ministry of Natural Resources uses variable buffers in excess of 30 metres to protect aquatic ecosystems. We also note that in Escarpment Natural Areas in the Niagara Escarpment Plan, there is a 300 metre setback for forested lands from the brow of the Escarpment slope.

**RECOMMENDATION #9:** Section 4.2.4 of the strategy should be amended to establish minimum 120 metre vegetated buffers for streams, lakes, wetlands, and top-of-bank of well-defined valley systems.

The draft strategy refers to the desirability of developing subwatershed strategies in appropriate cases (p.38). CELA supports the principle of watershed and subwatershed planning in order to assess cumulative impacts on water resources, and we note that there are recent Ontario examples where such planning has been successfully completed. As additional experience with subwatershed planning is gained by developers, municipalities and their consultants, the often-stated concerns about cost and delay should be substantially diminished. Accordingly, CELA submits that Section 4.2.4(e) and (f) should be retained in the strategy.

**RECOMMENDATION #10:** Sections 4.2.4(e) and (f) of the strategy should be retained to ensure that the cumulative impacts of development on water quality and quantity are evaluated in a comprehensive, holistic manner.

CELA supports the strategy's attempt to protect significant landforms and viewsheds, and we have no comments with respect to the Landform Conservation System described in Section 4.3.

With respect to Section 4.4, CELA supports the need for continuing research and monitoring to ensure that the strategy is current and comprehensive. If new information or management approaches require revisions to the policies of the strategy, then there should be opportunities for public notice and comment. To preclude a series of ad hoc revisions to the strategy, we support the suggestion that the strategy be reviewed after a fixed period of time (i.e. five years, as is done with the Niagara Escarpment Plan). Again, public notice-and-comment opportunities should be provided during such a review.

**RECOMMENDATION #11: Section 4.4 of the strategy should be amended to ensure that the public is consulted on proposed revisions to the strategy.**

If new information or management approaches require revisions to the defined boundaries of the strategy, CELA submits that the process should allow new land to be added relatively quickly to the planning area, provided that there is a reasonable planning or ecological basis for adding the land in question. Similarly, if there is a need to re-designate existing lands within the planning area to a more protective category (i.e. Natural Core/Corridor), then this should occur relatively quickly. On the other hand, there should be a strong presumption against deleting land from the planning area, or against re-designating lands to less restrictive categories. Moreover, the onus should be on the person proposing the deletion or downward re-designation to present clear and convincing evidence that the deletion or re-designation does not conflict with purpose, goals or policies of the strategy.

**RECOMMENDATION #12: Section 4.4 of the strategy should be amended to establish a open public process for adding, deleting and re-designating lands within the Oak Ridges Moraine planning area.**

**(e) Section 5.0 of the Draft Strategy**

CELA has no comments on this Section's description of the strategy's intent respecting land ownership and management. We would strongly encourage the establishment of the Oak Ridges Moraine Land Trust contemplated in paragraph (e).

**(f) Section 6.0 of the Draft Strategy**

In general, CELA supports the use of an "Environmental Impact Study" (EIS) for assessing the potential environmental impact of

land or resource use proposals. We also support the strategy's proposed EIS content requirements, but would suggest that the EIS should include a monitoring plan to measure potential impacts on the environment.

**RECOMMENDATION #13:** Section 6.1(d) of the strategy should be amended to specify that an Environmental Impact Study shall contain a monitoring plan to measure potential impacts on the environment.

We understand why an EIS should be required for proposals involving official plan amendments, plans of subdivisions, full or class environmental assessments<sup>6</sup>, or aggregate licence applications. However, we remain unclear as to why the EIS requirement has not been imposed upon other proposals which may impact upon the environment (i.e. activities requiring approvals under the Environmental Protection Act, Ontario Water Resources Act, or Public Lands Act). As drafted, the EIS requirement only applies to a relatively narrow list of proposals, and we are concerned that other environmentally significant land or resource use proposals may "slip through the cracks" and evade the EIS obligation.

**RECOMMENDATION #14:** Section 6.1(d) should be amended to require an Environmental Impact Study for land or resource use proposals that require applications under the Environmental Protection Act, Ontario Water Resources Act, Public Lands Act, or that are otherwise environmentally significant.

Section 6.1(e) of the strategy goes on to require a less rigorous "Environmental Impact Study" for certain land or resource use proposals that are perceived to be less environmentally significant. CELA submits that the attempted distinction between an "Environmental Impact Study" and "Environmental Impact Statement" has not been adequately justified and can lead to unnecessary duplication and confusion. For example, would the proponent of a subdivision which required a zoning by-law amendment have to prepare both documents for the same project? Moreover, it is our view that the various proposals listed in Section 6.1(e) can, individually or cumulatively, cause undesirable environmental impacts upon the Oak Ridges Moraine. Accordingly, we submit that Section 6.1(e) be deleted and that the list of land or resource use proposals therein be incorporated into Section 6.1(d).

**RECOMMENDATION #15:** Section 6.1(e) of the strategy should be deleted and the list of land or resource use

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<sup>6</sup> Although an EIS for an environmental assessment appears somewhat redundant.

proposals therein should be incorporated into Section 6.1(d) and require an Environmental Impact Study.

We are somewhat concerned about the language of Section 6.1(g) and we question the need to include this paragraph given that legal non-conforming uses are already protected under the Planning Act. However, we have no objection to the suggestion in this paragraph that landowners should be encouraged to bring legal non-conforming uses into compliance with the strategy.

A greater concern arises with respect to Section 6.1(h), which baldly states that "nothing in this strategy shall prevent a land or resource use that is permitted in an official plan or zoning by-law". Our concern is twofold: first, this section serves to substantially undermine the protective policies of the strategy, given that the strategy is apparently not intended to "trump" or override existing policies and designations in current official plans and zoning by-laws. If this is the case, then the template for future land use and development reflected in existing municipal planning instruments (which may have been approved years ago, and which municipalities may be reluctant to modify) has already been set, and one has to seriously question the utility of the Oak Ridges Moraine planning exercise.

Second, the public has been led to believe that the implementation of the strategy has yet to be determined. It is conceivable (and in our view, desirable) that a statutory land use plan, possibly with a development control system, could be developed for the Oak Ridges Moraine planning area. If so, then the operation of official plans and zoning by-laws would be suspended within the planning area in a manner analogous to the Niagara Escarpment Plan. In this case, the protective policies in the strategy and the land use plan would trump current municipal planning instruments. Accordingly, if implementation is truly an open question, then Section 6.1(h) is both inappropriate and premature, and should be deleted from the strategy. Leaving this section in the strategy lends further credence to the widely held view that the strategy is oriented towards the policy statement approach, and that the government has already decided the implementation question.

**RECOMMENDATION #16: Section 6.1(h) of the strategy should be deleted.**

We have reviewed the growth and settlement provisions contained in Section 6.2, and we have no major comments about most of the proposed policies. However, we are concerned that Section 6.2.4 may permit environmentally destructive activities, such as waste disposal sites, to be located within rural areas as "industrial" or commercial" uses. Given the ecological significance and sensitivity of the Oak Ridges Moraine, we submit that consideration should be given to prohibiting waste disposal sites from the

planning area. We note that the recently passed Bill 62 imposes a similar prohibition on most forms of waste disposal in the Niagara Escarpment area, and we submit that this is an important precedent which should be seriously considered for the Oak Ridges Moraine.

**RECOMMENDATION #17:** Section 6.2.4 of the strategy should be amended to prohibit new or expanded waste disposal sites within the Oak Ridges Moraine planning area.

With respect to non-renewable resource extraction, CELA finds it somewhat strange that the strategy frowns on "dubious" activities such as topsoil removal or peat extraction, but embraces aggregate extraction as a desirable activity, even within Natural Core/Corridor Areas. Based on our experience, we disagree with the overgeneralization that the aggregate industry is "carefully regulated to ensure that any potential impacts are identified, mitigated and monitored" (p.57). In addition, we submit that the Aggregate Resources Act is not an adequate vehicle for ensuring Moraine-specific protection of ecological features and functions. This is due, in part, to the deficiencies of the Act with respect to public notice, and in part to the Ministry of Natural Resource's general reluctance to enforce the Act in a timely or effective manner. In addition, the Aggregate Resources Act and other acts of general application (i.e. Environmental Protection Act) are not environmental planning statutes geared to the special circumstances of the Oak Ridges Moraine.

Even where rehabilitation is attempted, the environmental impacts resulting from aggregate extraction can be long-term or even permanent. These site-specific and cumulative impacts can include:

- physical removal of topsoil and vegetation cover;
- loss or degradation of wildlife habitat;
- increased off-site truck traffic;
- permanent alteration of the physical and natural environment;
- loss of landscape diversity and scenic value;
- noise and dust from blasting, drilling, crushing and related activities;
- degradation of surface water resources and permanent stream diversions;
- erosion and sedimentation of watercourses;
- groundwater interference and depletion; and
- alteration of watershed boundaries.

Accordingly, CELA submits that aggregate operations cannot be viewed as innocuous "interim" uses. Instead, aggregate operations must be regarded as highly intensive and destructive activities with profound, long-term impacts on the physical, natural and visual environment of the Oak Ridges Moraine. Accordingly, it is our submission that new or expanded aggregate extraction operations should not be permitted within Natural Core/Corridor Areas, and

further, that existing operations should be phased out as quickly, efficiently and equitably as possible.

We note that there are alternative sources of aggregate resources, including the high-quality Lockport/Amabel formation, which exist outside of the Oak Ridges Moraine.<sup>7</sup> Even after applying various constraints (i.e. overburden, land use, etc.), it appears that there are significant aggregate resources outside the Oak Ridges Moraine area. We recognize that the use of non-Moraine sources of aggregate may result in an increase in the delivered cost of aggregate within the GTA. However, we submit that this is a reasonable and necessary cost for Ontarians to bear in the public interest in order to maintain and protect Natural Core/Corridor Areas within the Oak Ridges Moraine.

**RECOMMENDATION #18:** Section 6.3.2(e) of the strategy should be amended to prohibit new or expanded aggregate extraction operations within the Natural Core/Corridor Areas, and to establish a process for the quick, effective and equitable phase-out of existing aggregate operations within these Areas.

With respect to renewable resource use, our primary concern is with respect to the forestry policies described in Section 6.4.2.<sup>8</sup> In particular, it is our submission that forestry uses be prohibited within Natural Core/Corridor Areas, as described above in Recommendation #6. We have no objection to minor tending operations that may be necessary for the long-term management of such areas; however, commercial extraction (i.e. normal or modified operations) are not consistent with the objective of keeping such areas in a healthy, diverse natural state.

For similar reasons, we submit that no new or expanded public utilities be permitted within Natural Core/Corridor Areas. We have reviewed Section 6.6.2(c), which attempts to regulate public utilities in such areas, but it is our view that this policy is too vague and open-ended to provide any meaningful long-term protection. Proponents of public utilities will undoubtedly attempt to use this section by gathering reams of reports which purport to demonstrate the compatibility of the proposed utility. Rather than engage in protracted discussions over compatibility, it would be preferable, in our view, to have the strategy enunciate a clear "no means no" prohibition of public utilities within Natural

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<sup>7</sup> These resources also exist outside the Niagara Escarpment Plan Area.

<sup>8</sup> We are also concerned about the government's willingness or ability to monitor the site-specific and cumulative impacts of the water-taking permits contemplated in Section 6.4.3.



Core/Corridor Areas.

RECOMMENDATION #19: Section 6.6 of the strategy should be amended to prohibit new or expanded public utilities in Natural Core/Corridor Areas.

(g) Section 7.0 of the Draft Strategy

We have no comments with respect to the Section 7.0 policies on protecting cultural heritage resources.

(h) Section 8.0 of the Draft Strategy

We have no comments on the proposed trail system described in Section 8.0.

(i) Section 9.0 of the Draft Strategy

CELA's detailed comments on implementation issues are found below in Part III of this brief. In summary, CELA submits that Option #3 (A Provincial Plan under New Legislation) is the preferable means of implementing the draft strategy.

(j) Recommendations for Future Action

We have reviewed the eight Recommendations made by the Technical Working Committee contained in Section 11.0, and we generally agree with and support these recommendations.

PART III - IMPLEMENTATION OF THE OAK RIDGES MORaine STRATEGY

In our view, one of the most important issues is how the strategy will be implemented. CELA supports the measures described in Sections 9.1.1 and 9.1.2 as interim steps which must be undertaken immediately. With respect to the implementation options discussed in Section 9.1.3, it is CELA's submission that Option #3 -- a provincial plan under new legislation -- is the most appropriate and effective vehicle for implementing the strategy.

In our view, a provincial policy statement under section 3 of the Planning Act is the least desirable or effective implementation option. We base this conclusion on the following considerations:

- policy statements are intended to provide broad policy direction for planning authorities, and they do not provide the detailed level of planning which will be necessary in the Oak Ridges Moraine situation to translate the strategy into

on-the-ground prescriptions. Unenforceable implementation guidelines which may accompany policy statements do not resolve this fundamental shortcoming;

- policy statements generally provide planning authorities with some leeway in interpreting the requirements of the policy statements. Even the recently proposed amendment to section 3(5) of the Planning Act -- viz., that decisions "be consistent with" provincial policy -- does not remove municipal discretion in interpreting policy statements. For the Oak Ridges Moraine, this means that each of the numerous municipalities may enact different official plan amendments and zoning by-law amendments with varying consistency with the strategy. This is not conducive to the clarity, certainty and consistency required to protect the Oak Ridges Moraine. Again, unenforceable implementation guidelines will not necessarily resolve this problem;
- if a policy statement approach is undertaken, not only would the government, public interest groups and others participate in the drafting of the policy statement, but they would also be involved in overseeing the translation of policy into numerous municipal planning instruments (and appealing these official plan and zoning by-law amendments to the Ontario Municipal Board if necessary). This strikes us as a costly and duplicative effort which could be minimized by developing a single comprehensive provincial land use plan;
- the relationship between an Oak Ridges Moraine policy statement and the new Comprehensive Set of Policy Statements remains unclear and potentially confusing, particularly with respect to potential conflict or inconsistency between the two documents; and
- an Oak Ridges Moraine policy statement would likely be confined to planning matters under the Planning Act, although the strategy clearly contains policies which go beyond planning and involve resource management matters that are regulated under other legal and institutional arrangements.

We have considered the advantages and disadvantages of developing a provincial plan under the Ontario Planning and Development Act. In light of proposed amendments to this Act, we have concluded that this option may serve as an acceptable interim step in implementing the strategy; however, CELA prefers the development of a provincial land use plan under a new Moraine-specific statute. We note that the Ontario Planning and Development Act is not-Moraine specific and it generally lacks an environmental protection or resource conservation mandate and structure. Nevertheless, in light of the time required to draft new legislation, it may be appropriate to develop and implement an interim plan under the Act pending the

completion of new legislation.

Our preference for a provincial plan under new legislation is based on the following considerations:

- as the Niagara Escarpment experience has demonstrated, the strongest protection of natural heritage occurs where land use designations and policies are supported and directed by strong "green" legislation;
- a plan under new legislation would permit the Ontario government to take a lead role and provide provincial leadership on this matter of key provincial interest;
- a plan under new legislation would provide greater consistency and certainty across municipal and provincial jurisdictions respecting the Oak Ridges Moraine, and it would provide the necessary level of integration and operational detail to effectively implement the strategy;
- a plan under new legislation would negate the significant interpretive and administrative problems associated with the policy statement approach, as described above; and
- an open and public process for developing new legislation and accompanying plan would permit the government to carefully tailor the statute and plan to meet the special needs and circumstances of the Oak Ridges Moraine area.

At this point in the strategic planning exercise, we do not believe it is necessary to discuss in detail how the new legislation and plan should operate (i.e. should there be a new moraine agency, or should a single/joint Ministry arrangement be established?)<sup>9</sup>. If the Ontario government chooses option #3, then we would be pleased to offer our ideas and assistance in developing the appropriate institutional arrangements and development controls.

**RECOMMENDATION #20:** The Ontario government should develop a provincial plan under new legislation as the primary means of implementing the strategy. As an interim measure, consideration should be given to developing a provincial plan under the Ontario Planning and Development Act.

If a new plan under new legislation is developed along the lines of

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<sup>9</sup> If a single provincial agency is the preferred approach, then we would submit that the Ministry of Environment and Energy should be designated as the lead agency for the Oak Ridges Moraine, especially in light of the Ministry's experience with the Niagara Escarpment.

the Niagara Escarpment precedent, then we would not support any future delegation of development control functions to regional or local municipalities. While some municipalities are undoubtedly willing and able to implement some elements of the strategy, we remain concerned about the general lack of cohesion, consistency or long-term vision if planning responsibilities are delegated to municipalities. We note that the Minister of Environment and Energy has rejected calls for municipal delegation respecting the Niagara Escarpment Plan, and we submit that a similar approach is required on the Oak Ridges Moraine. In any event, it is premature to deal with the question of municipal delegation until the fundamental question of implementation has been resolved.

**RECOMMENDATION #21: Section 9.3.1(c) of the strategy should be deleted.**

We strongly support the need for continuing cumulative effects assessment, data collection and monitoring, compliance mechanisms, development guidelines, education, and periodic review of the strategy. Otherwise, we have no comments on Sections 9.4 to 9.11.

#### PART IV - CONCLUSIONS - THE FUTURE OF THE OAK RIDGES MORaine

The provincial significance of the Moraine's biological diversity and ecosystem integrity requires a strong, coherent strategy and implementation mechanism. Subject to the amendments recommended in this brief, we believe that the draft strategy offers a promising step in the right direction. Implementation of the revised strategy should occur through a new plan under new legislation. If this occurs, then Ontarians can be reasonably confident that the ecological integrity of the Oak Ridges Moraine will be protected for its own sake and for the benefit of present and future generations.

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