



**Meeting
Environmental Advisory Committee
December 9, 2020, 6:00 p.m.**

The following were in attendance:

Staff: Darlene Suddard
Janice Peyton

Public Members: George McKibbon
Jack Hellinga
Ryan Waines
Steven Rivers
Clayton Nadeau
Norbert Gieger
Kerry Royer

As a COVID-19 precaution, city staff and the chair met in person at the Engineering and Operations Centre. The rest of the committee joined on Microsoft Teams.

1. Call to Order

George called the meeting to order at 6:05 p.m.

2. Adoption of the Agenda

Moved by Norbert Gieger
Seconded by Jack Hellinga

That the agenda dated December 9, 2020 be accepted as circulated.
CARRIED.

3. Disclosures of Interest

Nil.

4. Approval / Review of Previous Meeting Minutes

Moved by Ryan Waines
Seconded by Steven Rivers

That the minutes of October 14, 2020 be accepted as written.
CARRIED.

5. Guests: Niagara Peninsula Conservation Authority Representatives

NPCA CAO Chandra Sharma, Senior Manager of Water Resources Steve Miller, and Community Coordinator (EAC Member) Kerry Royer were in attendance to provide a presentation on actions that could be taken to address coastal and infrastructure concerns and actions that could be taken better protect the ground water aquifers. Mr. Miller gave the presentation. A copy of his powerpoint presentation and notes on his presentation written by George and confirmed by Mr. Miller by email are attached.

6. Items Arising from Previous Minutes

a) Additional Vale CBRA Recommendations

George provided a brief history of the Vale Community Based Risk Assessment. A copy is attached to the minutes. Norbert, Jack, Harry, Trent and George met and decided on the following additional recommendations:

1. That the City of Port Colborne add a map schedule or appendix to the City of Port Colborne Official Plan setting out the Nickel Concentrations throughout Port Colborne (Map #4 of the City Community Based Risk Assessment) and together with a statement setting out the requirements to undertake remediation and/or risk assessment where a land use change to a more sensitive use is proposed and nickel concentrations exceed Ontario Regulation 153/04 standards:
2. That the City of Port Colborne request from MECP a statement as to which aspects of a the CBRA risk assessment are agreed to by MECP and can be used in the preparation of a risk assessment when a land use change is proposed to a more sensitive use; and
3. That the City of Port Colborne set aside some of the community monies Vale proposes for the purpose of funding remediation/risk assessment within areas planned for urban growth which overlap the areas affected by Nickel Contamination (Map 4 above).

Moved by Norbert Gieger
Seconded by Jack Hellinga

That the Vale CBRA recommendations be provided to Council.
CARRIED.

In future, the committee will consider the suggestion of incorporating some of Map 4 into the Zoning by-law.

b) Provincial Policy Statement 2020 Follow-up

Jungbunzlauer representatives will speak to this item at the next committee meeting. Ryan will coordinate this.

c) Community Gardens Update and Review

Clayton and Trent have been working on this item. Further discussion will take place at the next meeting.

d) Development Charges and Parkland Dedication

Steven provided a review of Parkland Dedication, Development Charges and the New Community Benefits Charges. A copy is attached to the minutes. This information will be included in the committee's response to the community gardens request.

7. New/Other Business

Nil.

8. Next Meeting/Adjourn

With no further business to discuss, the meeting be adjourned at 7:30 p.m.

The next EAC meeting will be on February 10, 2021 at 6:00 pm.

Item 5



NIAGARA PENINSULA
CONSERVATION
AUTHORITY

Port Colborne Environmental Advisory Committee

Dec 9th, 2020



Conservation
ONTARIO

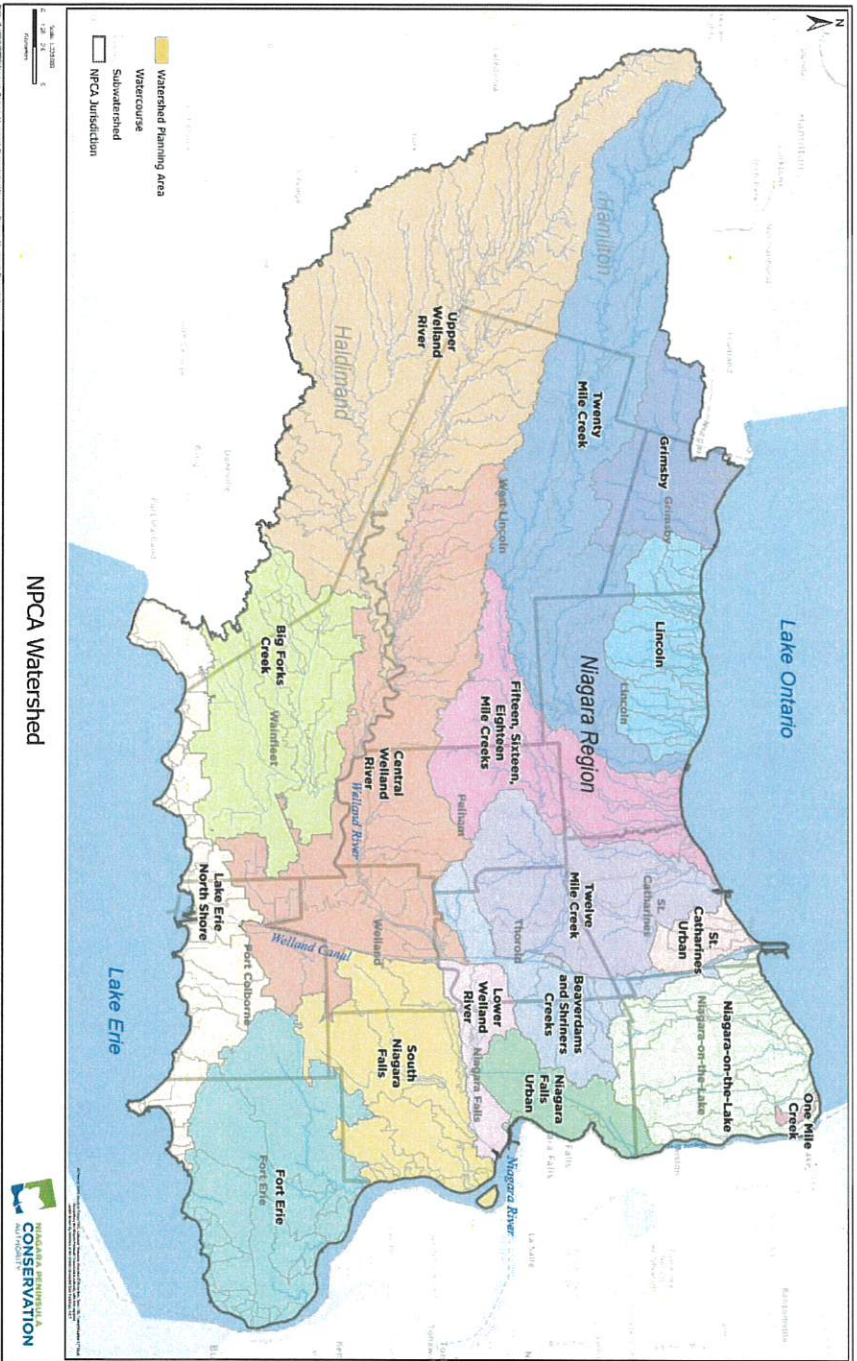


NIAGARA PENINSULA
CONSERVATION
AUTHORITY

Presentation Outline

-
- Jurisdiction and Context
 - Watershed Management
 - Floodplain Management
 - Flood Forecasting and Warning
 - Aquifer Protection – Potential Courses of Action
 - NPCA Resources and Support
 - Going Forward

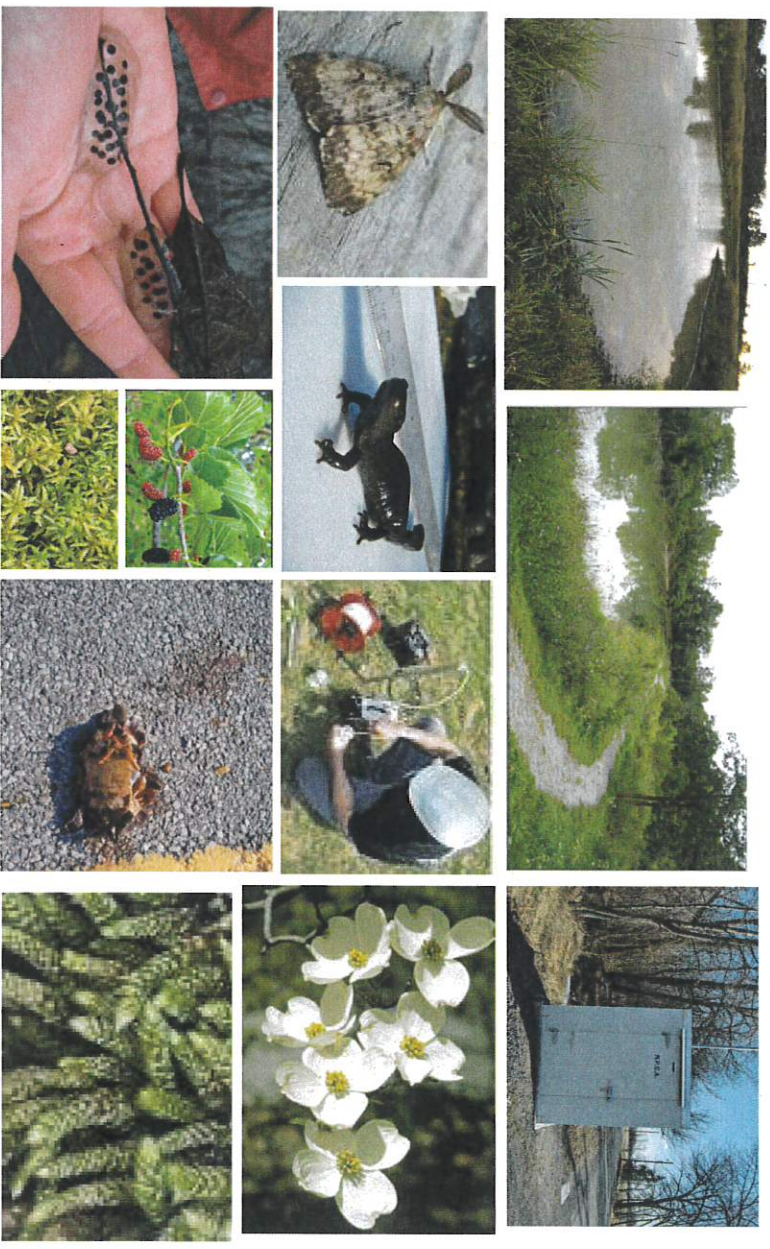
Jurisdiction



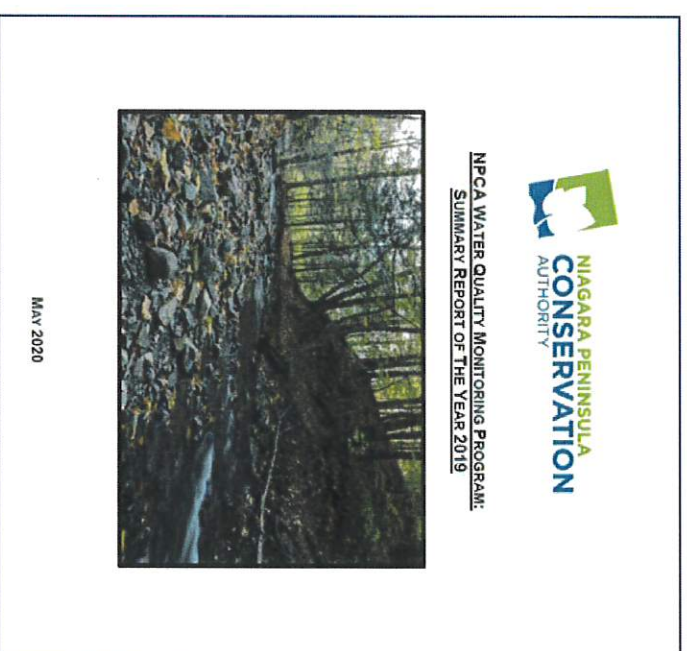
520,000 Residents
 242,900 ha Watershed Jurisdiction
 41 Conservation Areas
 2,853 ha NPCA Owned Land
 138 Local Waterways
 2 Great Lakes
 15 Municipal Partners

Integrated Watershed Management & Science

- Ecosystem Monitoring
- Watershed Planning
- Water Quality Monitoring
- Source Water Protection
- Ecosystem Restoration

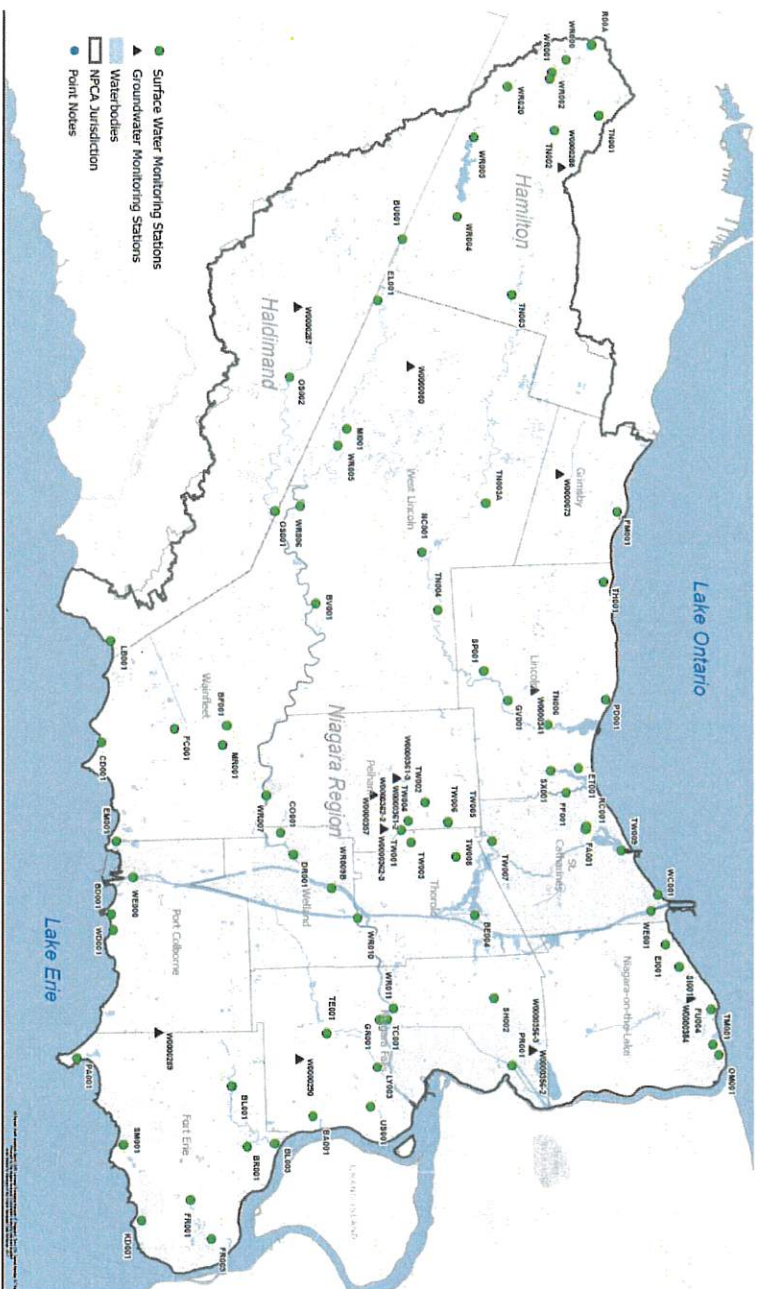


Water Quality Monitoring – Port Colborne



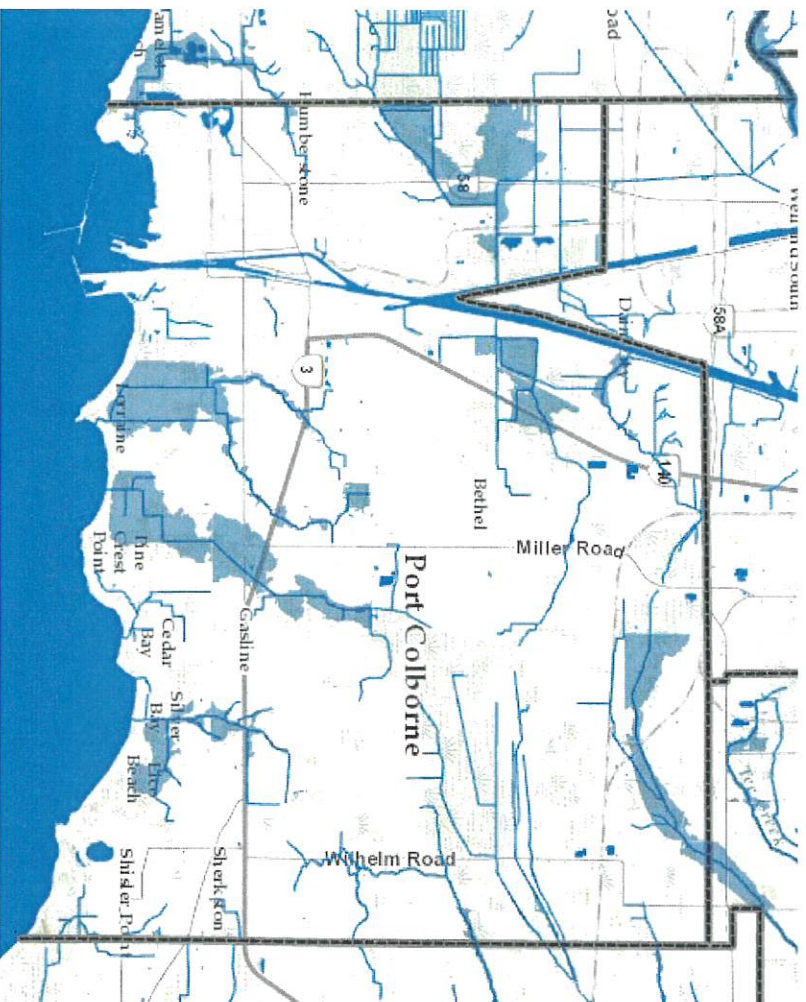
Over the last 20 years, the NPCA has monitored the quality of water at 4 surface water stations and 1 groundwater station in the City of Port Colborne. The results are posted to the NPCA's website.

Water Quality Monitoring - Watershed



In total, the NPCA monitors the quality of water at 80 surface water stations and 13 groundwater stations within our jurisdiction. The results are posted to the NPCA's website.

Floodplain Management

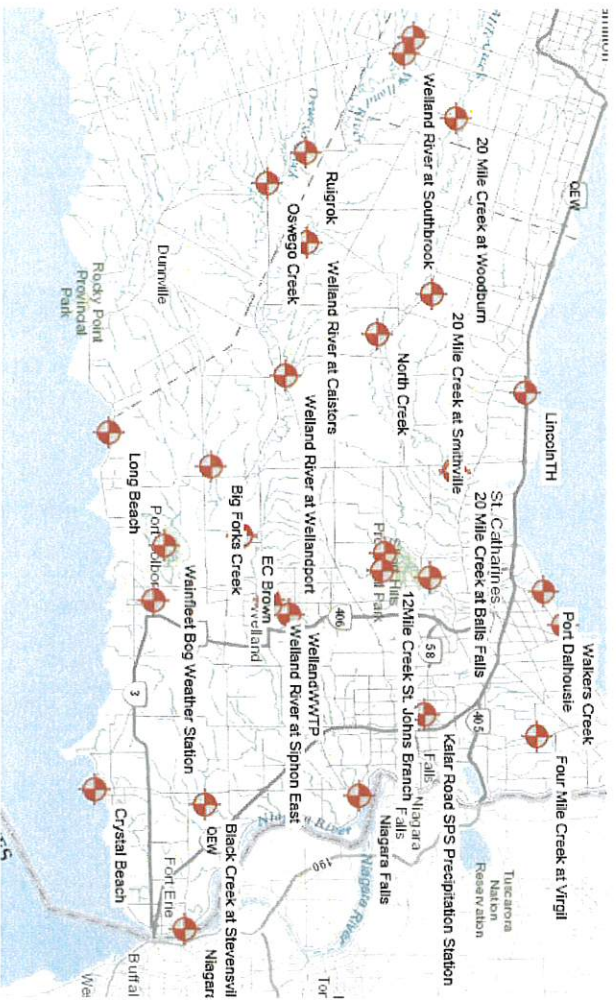


Eagle Marsh Drain flood gate.



The NPCA has mapped the floodplain of approximately 32km of watercourses in the City of Port Colborne.

Flood Forecasting & Warning



POWERED BY
ALERTABLE

The NPCA maintains 10 climate stations and 21 water level stations. Flood bulletins issued via email, social media, and mobile app 'Alertable'.

Lake Erie Storm of November 15, 2020...



H.H. Knoll Park



Sherkston Shores

Aquifer Protection – Potential Courses of Action

Designating the Vulnerable Aquifer identified in Schedule B of the Official Plan as a Source Water for Rural Residents of Port Colborne

- Model Official Plan Policies after those of the Source Water Protection Plan
- Understand Aquifer Monitoring and Data Needs
- Establish an Aquifer Monitoring Program with clear parameters and thresholds
- Implement Protection Mechanisms and Enhancement Strategies
 - NPCA Water Well Decommissioning Program

Source Water Protection Program Limitations

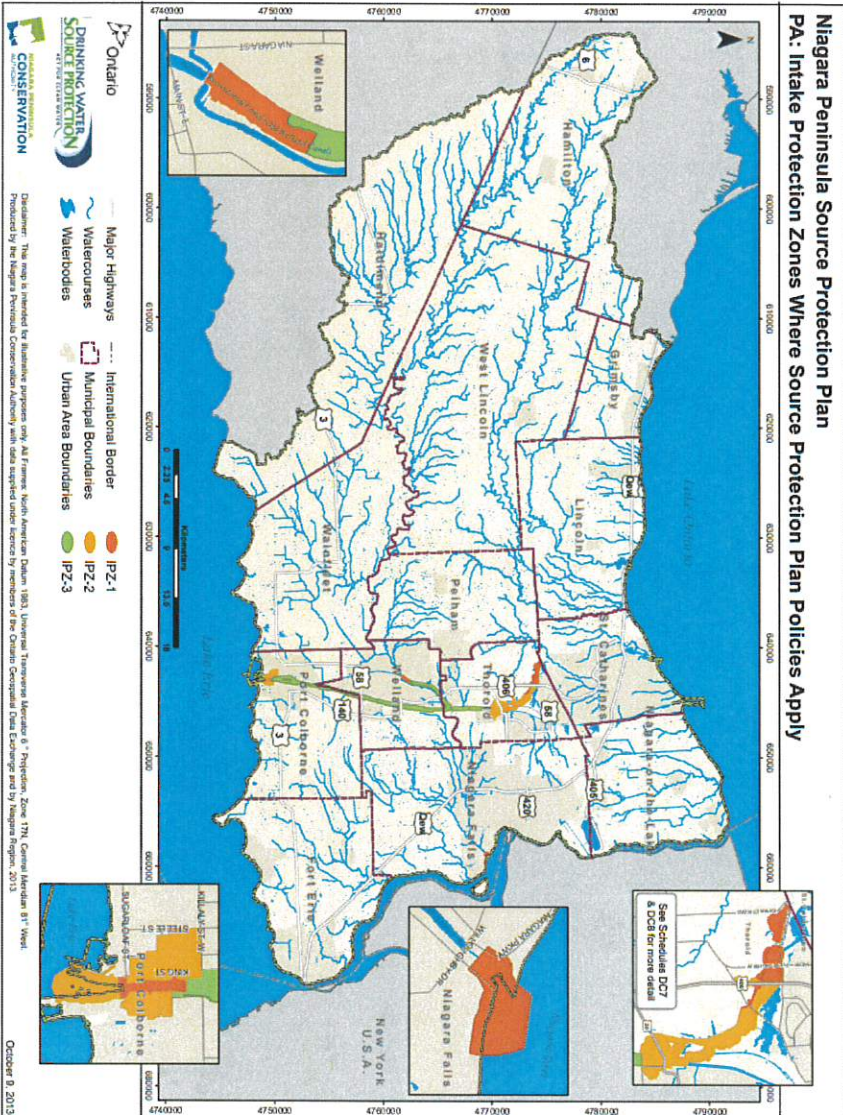
- The Clean Water Act has focused the mandate of the Source Water Protection Program to protect municipal drinking water supplies.
- There is presently no legislative or regulatory mechanism under this program to afford private rural drinking water wells the same protection as municipal drinking water supplies.

DRINKING WATER SOURCE PROTECTION

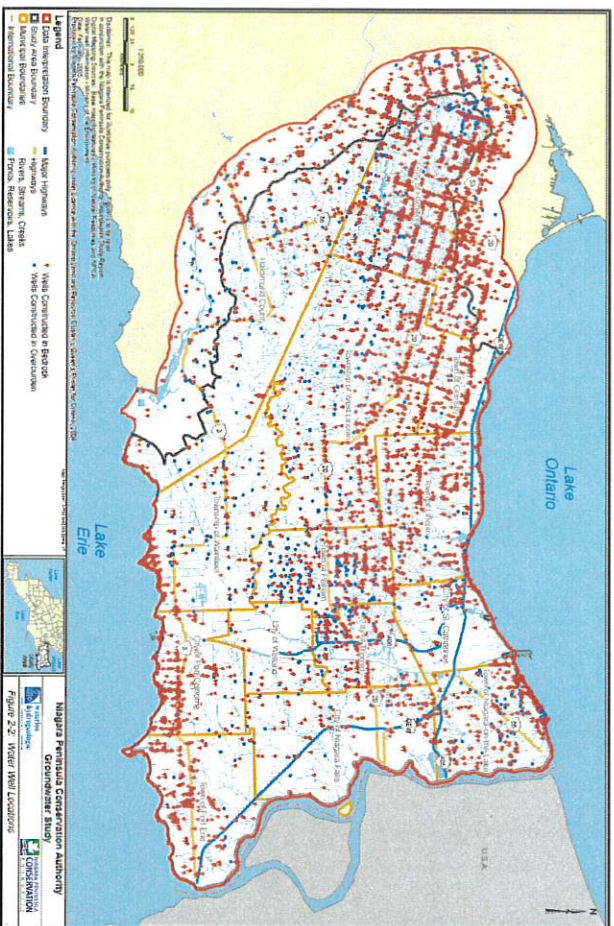
Niagara Peninsula Source Protection Area



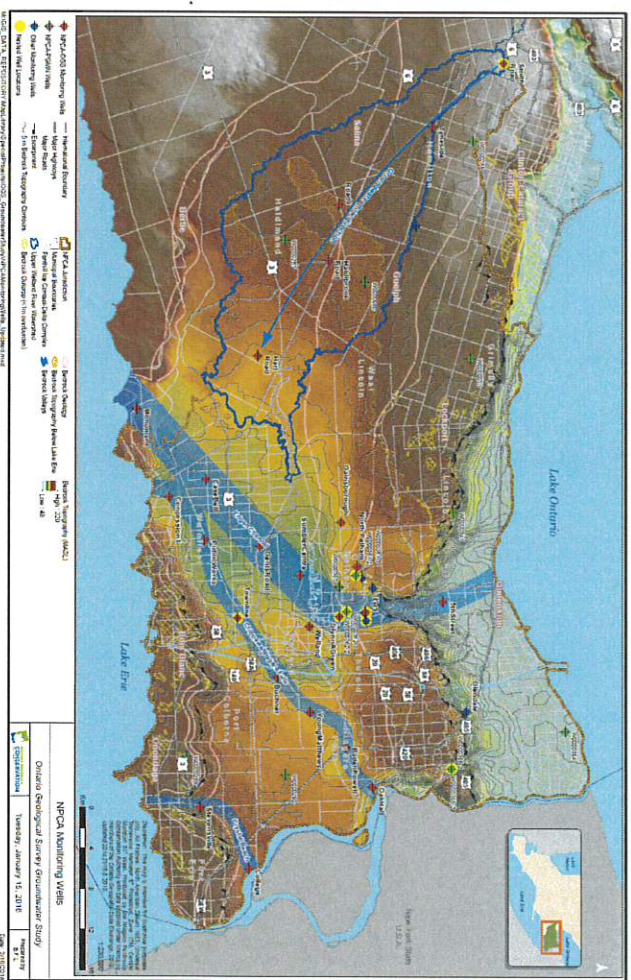
Niagara Peninsula Source Protection Plan
PA: Intake Protection Zones Where Source Protection Plan Policies Apply



NPCA's Existing Resources

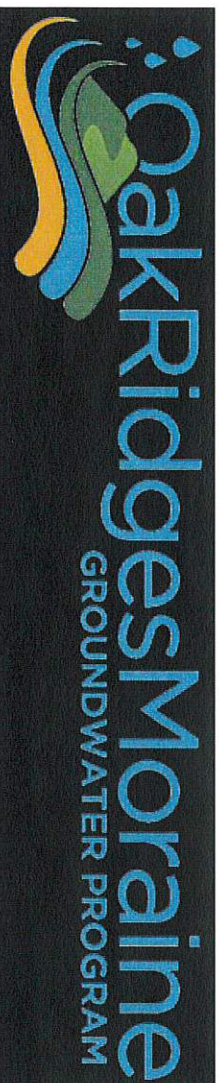


NPCA Groundwater Study, 2005



NPCA Regional Aquifer Study, 2019

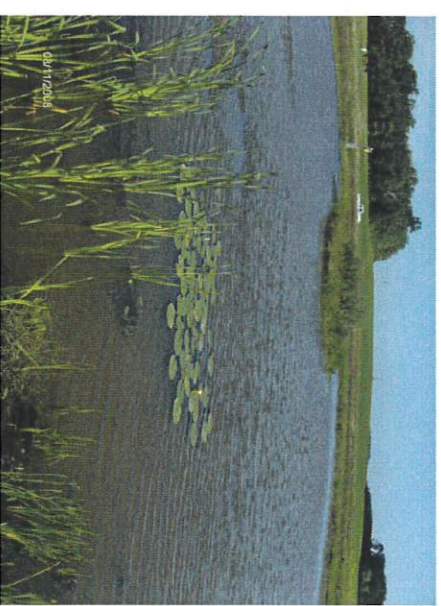
Additional Resource



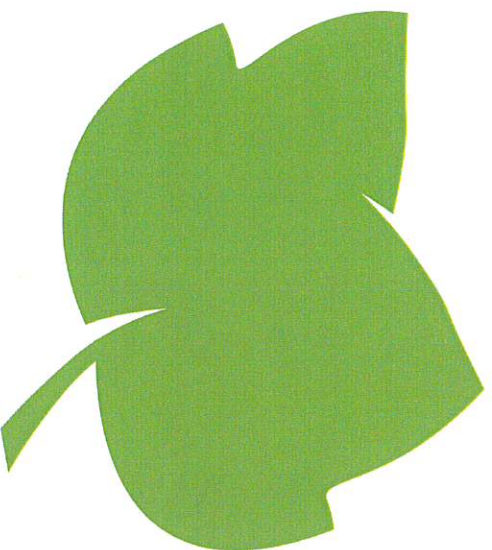
- Monitoring Network
 - Data Management
 - Data Interpretation
 - Decision Support
- <https://www.oakridgeswater.ca/>

Future NPPCA Support ...

- Expanded Restoration Strategy
- Expanded Private Land Stewardship Program
- Shoreline Resilience Strategy



Going Forward ... Opportunities and Challenges



➤ Strategic Plan (Climate Change Considerations)

➤ Bill 229 CA Act

Minute of Steve Miller's presentation

The NPCA's CAO, Ms. Chandra Sharma introduced herself and Niagara Peninsula Conservation Authority's Steve Miller (Senior Manager of Water Resources) and Kerry Royer (Community Coordinator) to Committee members. The Authority presentation to the Committee was made by Steve. Following the presentation, time was provided for questions and concerns to be raised and for the Committee to consider how the Authority and Committee might collaborate further.

Steve's Powerpoint presentation covering the following topics is attached to these minutes:

- Jurisdiction and context;
- Watershed management;
- Floodplain management;
- Flood forecasting and warning;
- Aquifer protection – potential courses of action;
- Niagara Peninsula Conservation Authority resources and support; and
- Going forward.

Steve described the Authority *jurisdiction*, watershed and member municipalities. The Authority is a science warehouse of useful information which municipalities and citizens can use. The Authority's purpose is to advance the conservation of environmental resources.

There are over 500,000 residents; over 240,000 hectares of land; and 41 Conservation Areas comprising over 2800 hectares in the watershed. There are also 138 local waterways bounded by two Great Lakes and 15 municipal partners including the Niagara Region, Haldimand County and the City of Hamilton.

He described *watershed* information resources available to Port Colborne. These include data and analysis from 4 surface water quality monitors and 1 ground water monitor. This information is analyzed each year and has been for the last 20 years. It is available on the Authority web site. In addition, there is information from 80 surface water quality monitors and 13 groundwater monitors throughout the NPCA watershed. All these results are amalgamated and included on reports available on the Authority website. He set out some trends the Authority is looking for in the screen share at the end of this presentation.

Then briefly Steve discussed *floodplain management*. Port Colborne overlaps three watersheds: Central Welland River; Lake Erie Northshore; and Fort Erie. He observed Port Colborne is the only municipality operating floodgates to limit inland flooding resulting for high Lake Erie water levels. The Authority also operates 21 water level stations as well as monitoring weather forecasts. This information is used to issue flood advisories and warnings. About 32 km of watercourses in Port Colborne have floodplain mapping based upon the 100 year storm.

On November 15 of this year, during a Lake Erie storm surge, water levels were 10 feet above normal with 6-8 foot waves. Both flood surge advisories and warnings were issued. Port Colborne experienced significant damage along Lake Erie shorelines and, in particular, Northland Manor was threatened at one point. He encouraged members of the committee to use a cell phone application 'Alertable' that the Authority had implemented to alert the public of *flood advisories and warnings*. The Alertable app can be freely downloaded from the Google Play Store and Apple itunes. For more information, please go to the following link:

<https://npca.ca/flood-status>

On *aquifer protection* and potential courses of action, Steve observed that the Authority has received the City correspondence on aquifer protection. The Authority Board will address it at its next meeting on December 17, 2020. It may be directed to the Source Water Committee for comment.

Port Colborne is looking for ways to better protect its sensitive aquifer. He suggested one potential course of action could be to model the aquifer protection policies in the Official Plan on the Source Water Protection Plan. The Source Water Protection Plan offers a template of actions from which to choose. However, we need to temper that understanding with what is in the Source Water Plan, what its strategies do and what data exists and doesn't exist.

A monitoring program is needed to track the effectiveness of proposed measures. Clear parameters and thresholds are needed in order to calibrate the monitoring standards. We also need to inventory what protection measures exist and what doesn't exist and how those which exist operate and can be made available. For example, a Conservation Authority funding program for the decommissioning of abandoned water wells exists. Unfortunately, there is no similar program for the decommissioning of abandoned gas wells.

He observed the Source Water Protection Program (under the Clean Water Act) addresses municipal drinking water supplies only. Nothing exists by way of policy to address private wells.

Two Conservation Authority reports are available and can assist Port Colborne: a 2005 Groundwater Study and a 2019 Regional Aquifer Study. These studies show groundwater flows through the watershed from west to east and there are major underground rivers through which water flows northwards from Lake Erie to Lake Ontario. These reports can be used to build up our *technical knowledge base*.

Steve also suggested we consult the work being done on the Oak Ridges Moraine. They have developed a monitoring system, that manages the data produced for the purposes of analysis and interpretation for decision making.

Future Conservation Authority support will include expanded *restoration strategies*; an expanded private land stewardship program and a shoreline resilience strategy. He briefly

explained the challenges shoreline resilience strategies face where the majority of the shoreline is in private ownership.

Chandra briefly described the Authority's Climate Change portion of the NPCA's Strategic Plan which began last July. A community engagement plan is underway. The Authority is working closely with Niagara Region. The Authority's restoration program will be an important component of this effort. However, like most activities, COVID-19 has prevented the advancement of some components of this effort.

Chandra ended the Authority presentation by thanking the City for supporting Authorities where the revisions of the Conservation Authorities Act are concerned. While amendments to the legislation were made before passing, key changes remain to Authority permitting procedures where hazard lands are concerned.

The floor was opened for questions.

Steven Rivers asked about the application of the two zone flood concept and whether the concept is available for use locally? Steve Miller described how the two zone concept takes a single zone and divides it into two based on flow and volume characteristics. The provision of this alternative was made available in 2018. Usually it is applied in the Province in urban settings where the build environment already exists in the floodplain. The procedure involves a petition by a municipality to the Ministry of Natural Resources and Forestry which is the approval agency. To date, no municipality in Niagara Region has sought this approval.

Norbert Geiger asked what are the implications of using the two zone concept where we are also concerned about climate warming effects on more extreme weather variability and associated storms? By comparison, Steve said the 100 year storm can be thought of as generating a rainfall of 4 inches in 12 hours. Other southern Ontario watersheds use Hurricane Hazel as their design storm. That translates into 11 inches of rain in 12 hours. Before 1989, we used Hurricane Hazel as our design storm. As a result of a petition the design storm was reduced to the 100 year flooding standard. It is reasonable to expect with climate warming, flooding will be more severe. This impact will be one of the topics considered in the Authority's Strategic Plan.

George observed that the Provincial Policy Statement 2020 includes text in the hazard land policies that the Province will discuss with Authorities how to address changing weather patterns in hazard land policy. Have those discussions begun? No, Steve answered he is unaware of any discussions to date.

George observed that the Clean Water Act and its regulations do make provision for private water supplies in designated settlement areas in the rural area. Can these provisions be considered? Steve answered be careful what you wish for. These policies are very stringent and their imposition may create unintended effects that create other difficulties. Other alternatives should be considered first.

Table 8: Summary of NPCA water quality data for Lake Erie tributaries (2015-2019).

STATION WATERSHED	WQI RATING ↔ Stable ↓ Declining ↑ Improving	HILSENHOFF FAMILY BIOTIC INDEX RATING	FACTORS AFFECTING WATER QUALITY (%)= PERCENTAGE OF SAMPLES EXCEEDING GUIDELINES THIS IS ONLY REPORTED WHEN >50% OF SAMPLES EXCEED GUIDELINE	TREND GREEN- DECREASING BLACK- NO TREND RED- INCREASING
BD001 Beaver Dam Drain	Poor ↔	Very Poor	<ul style="list-style-type: none"> Exceedances in chloride, copper (51%), <i>E. coli</i> (59%), nickel, nitrate, total phosphorus (97%), total suspended solids and zinc Potential stressors include: historic industrial pollution, agricultural and rural run-off 	<ul style="list-style-type: none"> Decreasing total suspended solids concentrations Stable chloride, <i>E. coli</i>, and total phosphorus concentrations
CD001 Casey Drain	Poor ↔	Very Poor	<ul style="list-style-type: none"> Exceedances in chloride, copper, <i>E. coli</i> (59%), nitrate, total phosphorus (97%), total suspended solids and zinc Potential stressors include: agricultural and rural run-off 	<ul style="list-style-type: none"> Decreasing chloride and total suspended solids concentrations Stable <i>E. coli</i> and total phosphorus concentrations
EM001 Eagle Marsh Drain	Marginal ↔	Very Poor	<ul style="list-style-type: none"> Exceedances in chloride (59%), <i>E. coli</i> (65%), total phosphorus (82%), total suspended solids and zinc. Potential stressors include: quarry dewatering, agricultural and rural run-off 	<ul style="list-style-type: none"> Decreasing chloride and total suspended solids concentrations Stable <i>E. coli</i>, and total phosphorus concentrations
KD001 Krafts Drain	Poor ↔	Very Poor	<ul style="list-style-type: none"> Exceedances in chloride, <i>E. coli</i> (76%), nitrate, total phosphorus (89%), total suspended solids and zinc Potential stressors include: rural and urban run-off Algae observed during summer months 	<ul style="list-style-type: none"> Decreasing total suspended solids concentrations Stable chloride and <i>E. coli</i>, concentrations Increasing total phosphorus concentrations
LB001 Low Banks Drain	Marginal ↔	Poor	<ul style="list-style-type: none"> Exceedances in copper, <i>E. coli</i>, nitrate, total phosphorus (95%), total suspended solids and zinc Potential stressors include: agricultural and rural run-off Severe algae growth observed during summer months 	<ul style="list-style-type: none"> Stable chloride, <i>E. coli</i>, total phosphorus and total suspended solid concentrations
PA001 Point Abino Drain	Fair	Poor	<ul style="list-style-type: none"> Exceedances in copper, <i>E. coli</i>, and total phosphorus (74%). 	<ul style="list-style-type: none"> Decreasing <i>E. coli</i> and total suspended solids concentrations

Source:

[https://npca.ca/images/uploads/common/NPCA Water Quality Monitoring Program Summary Report of the Year 2019.pdf](https://npca.ca/images/uploads/common/NPCA_Water_Quality_Monitoring_Program_Summary_Report_of_the_Year_2019.pdf)

Community Based Risk Assessment (CBRA)

Brief History

In 2000, based on historic emissions (1914-1984) from INCO (now Vale), and at the request of the Ministry of Environment, Conservation and Parks (MECP), INCO and the City agreed to a CBRA process based on the Site Specific Risk Assessment Process described in the MOE's "Guidelines for Use at Contaminated Sites in Ontario." On October 1, 2004, the Guideline was replaced by Ontario Regulation 153/04 (Records of Site Condition).

The MECP identifying that an adverse environmental affect occurred due to the release of Chemicals of Concern (CoC) from INCO's operations. There were four CoC identified above the Ministries Generic Guideline levels directly associated to Nickel, Copper, Cobalt and Arsenic.

Since 2010, three major studies were completed as part of the CBRA by Vale, namely: a Human Health Risk Assessment (HHRA) at 20,000 parts per million (ppm), Ecological Risk Assessments (ERA) for Crops at 750-2300 ppm and the Natural Environment at 3000-3500 ppm. Other studies included a Community Health Monitoring Study (CHAP). A Technical Subcommittee (TSC) undertook the task to review technical matters to the Public Liaison Committee (PLC) and experts (ECA) from the University of Toronto were involved in reviewing components of the CHAP study. An Integration Report was also completed by Vale to conclude Phase 1 of the CBRA and to address how remediation (Phase 2) would occur on a site by site basis. The Independent Consultant provided the PLC with technical review of Vale's reports. The PLC concluded Independent Consultant (Watters Environmental) prepared reports of their review and were forwarded to the MOE by the City. The PLC submitted it final report to the MECP in July 2010. All reports are located in the City's Library at 322 King Street.

Status

On June 10, 2019, Vale released their Community Based Action Plan to address the findings of the scientific risk assessment, both for human health and for the health of the ecosystem.

Vale's Action Plan includes the following key actions:

- Remediation activities at a handful of residential properties in close proximity to Vale's Port Colborne Refinery, such as sodding, ground cover and/or soil replacement. There are no unacceptable health risks to these residents and these actions are being taken on a precautionary basis. All residential property owners have already been contacted by Vale;
- Scoping studies to be conducted on the woodlot and municipal drains just east of the refinery to assess potential remediation activities. Results will be shared with the community when the studies are complete;
- Creation of a Community Improvement Fund to deliver both environmental and social benefit to Port Colborne, and to recognize more than 100 years of operations in the community. The Fund, still in development, is envisioned to be in place for the next four years providing support for priority improvement or development projects in the community. Vale will work collaboratively with the City of Port Colborne to prioritize and select local projects and initiatives, with specific consideration afforded to projects with environmental or sustainability themes;
- Work with a small number of local farmers to address crop yields.

To access the CBRA Action Plan please visit: <http://www.vale.com/canada/EN/aboutvale/communities/port-colborne/Documents/Community-Based%20Action%20Plan.pdf>

The MECP agrees in concept with the proposed Community-Based Action Plan and has asked Vale to proceed with City and stakeholder consultation including the development community to obtain feedback for consideration, along with ministry comments, as they finalize their Community Based Action Plan.

What this means for Development

Ontario Regulation 153/04 lays out the requirements for obtaining a Record of Site Condition (RSC). Any land use change to a more sensitive land use in the province of Ontario requires that a RSC be filed with the ministry. If nickel concentrations in soil are found at concentrations above O. Reg. 153/04 standards, then an overall site remediation can be completed using the soil standards found in O. Reg 153/04 or a risk assessment may be conducted. The MECP supports a Qualified Professional relying on MECP accepted components of the CBRA to evaluate potential risks from nickel and other metals in soil on the specific property that requires an RSC.

The following rules apply in determining which type of property use is the most sensitive type of property use:

1. An agricultural or other use is the most sensitive of any type of property use.

2. A residential use, parkland use or institutional use is more sensitive than an industrial use, commercial use or community use. O. Reg. 153/04, s. 3 (2).

A rezoning application to change the use of the property to any of the above uses will require a RSC as part of the approval process.

Maps

The attached MECP maps were produced from the surface soil chemistry data (0-5cm depth) for Nickel, Copper and Cobalt and will illustrate where historic emissions from INCO ended up being deposited.

Contact Information

City of Port Colborne:

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danaquilina@portcolborne.ca

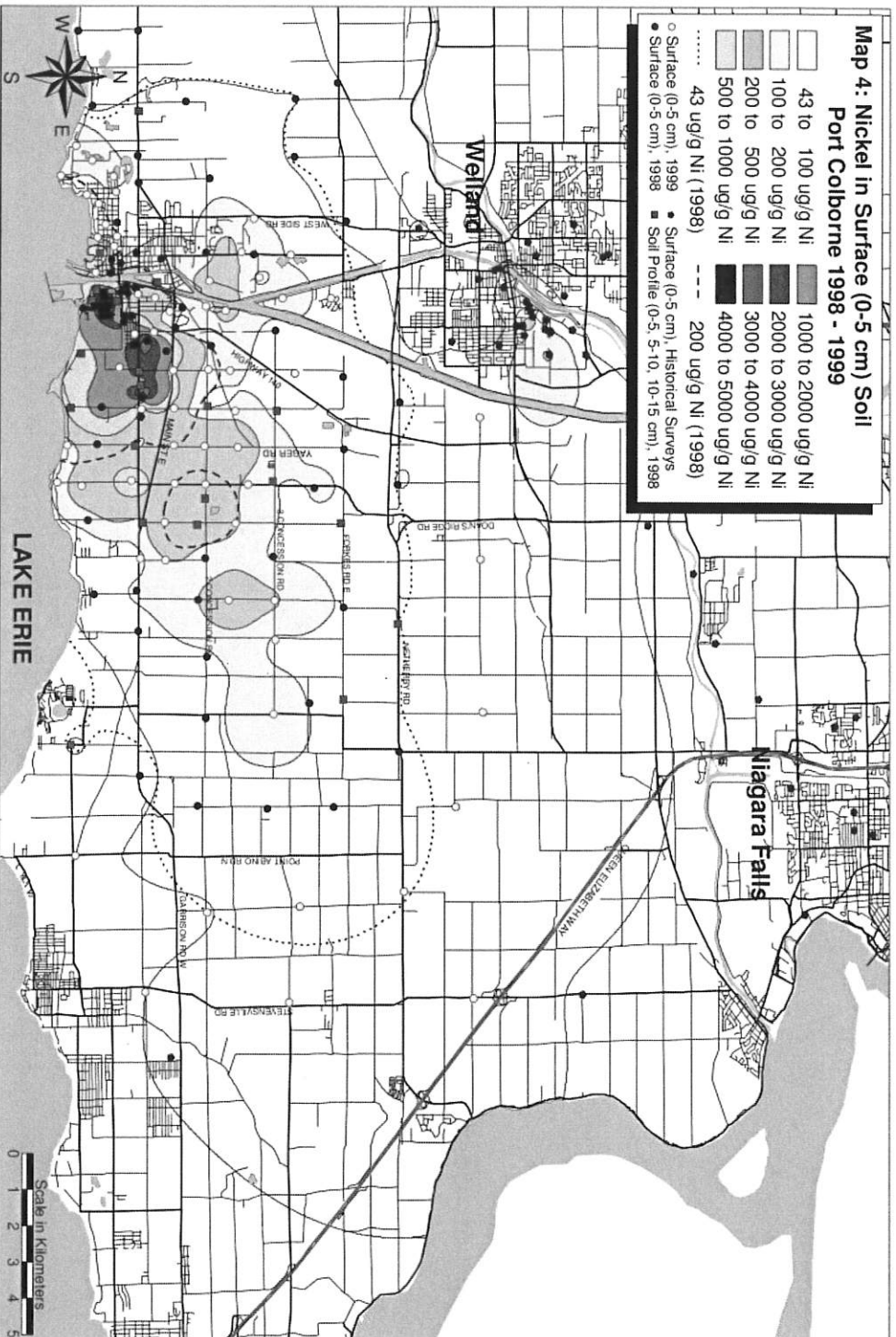
Ministry of Environment, Conservation and Parks:

Kim Groombridge
District Manager
Niagara District Office
905-704-3914
Kim.Groombridge@ontario.ca

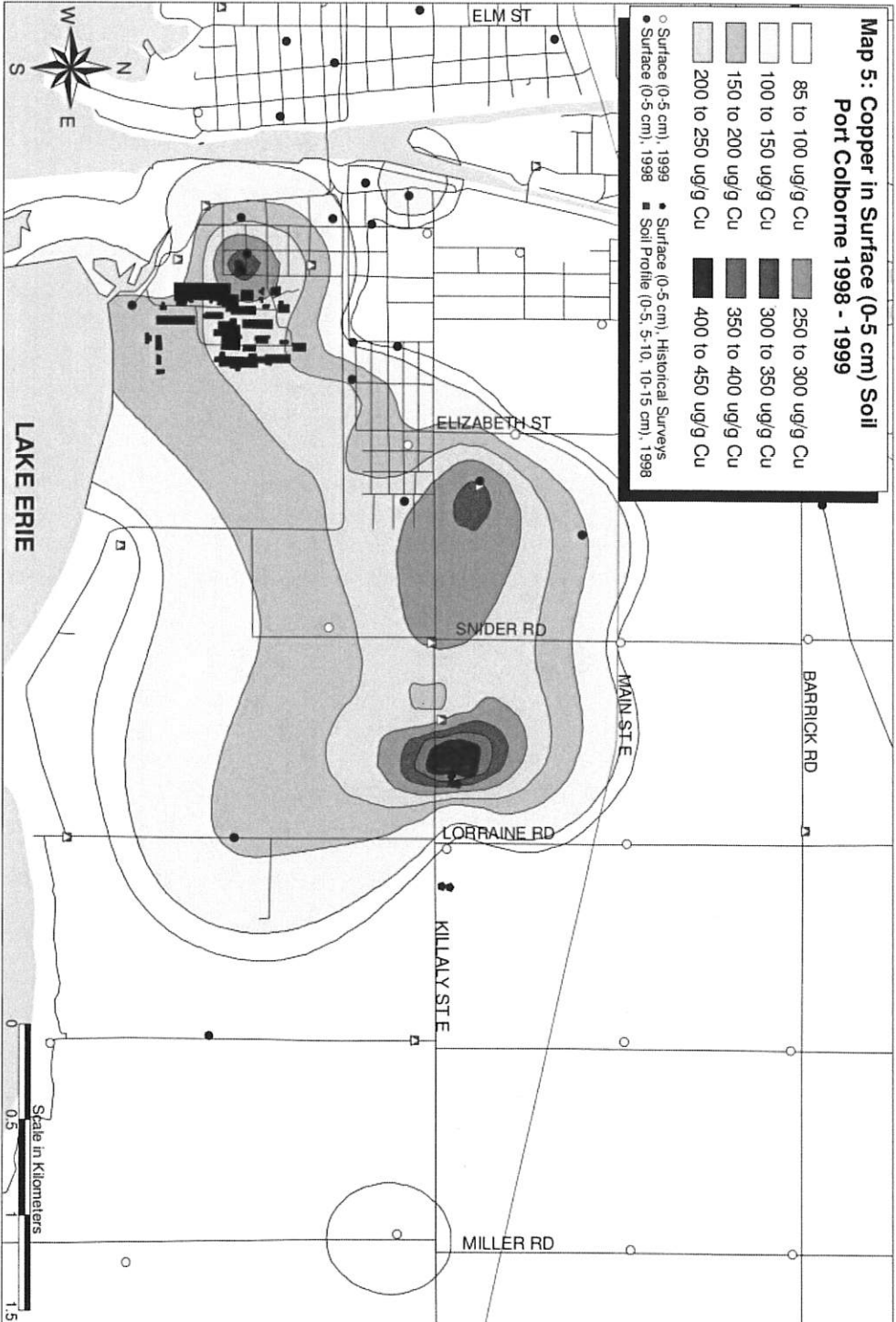
VALE

Eric Azzopardi
Community Based Action Plan Project Manager
905-835-6379 eric.azzopardi@vale.com

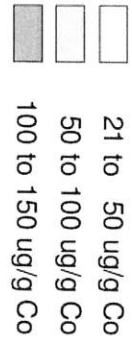
**Concentrations of Nickel, Copper, Cobalt in soil (0-5cm) collected in November 1999 – INCO Port Colborne
Ontario Ministry of the Environment**



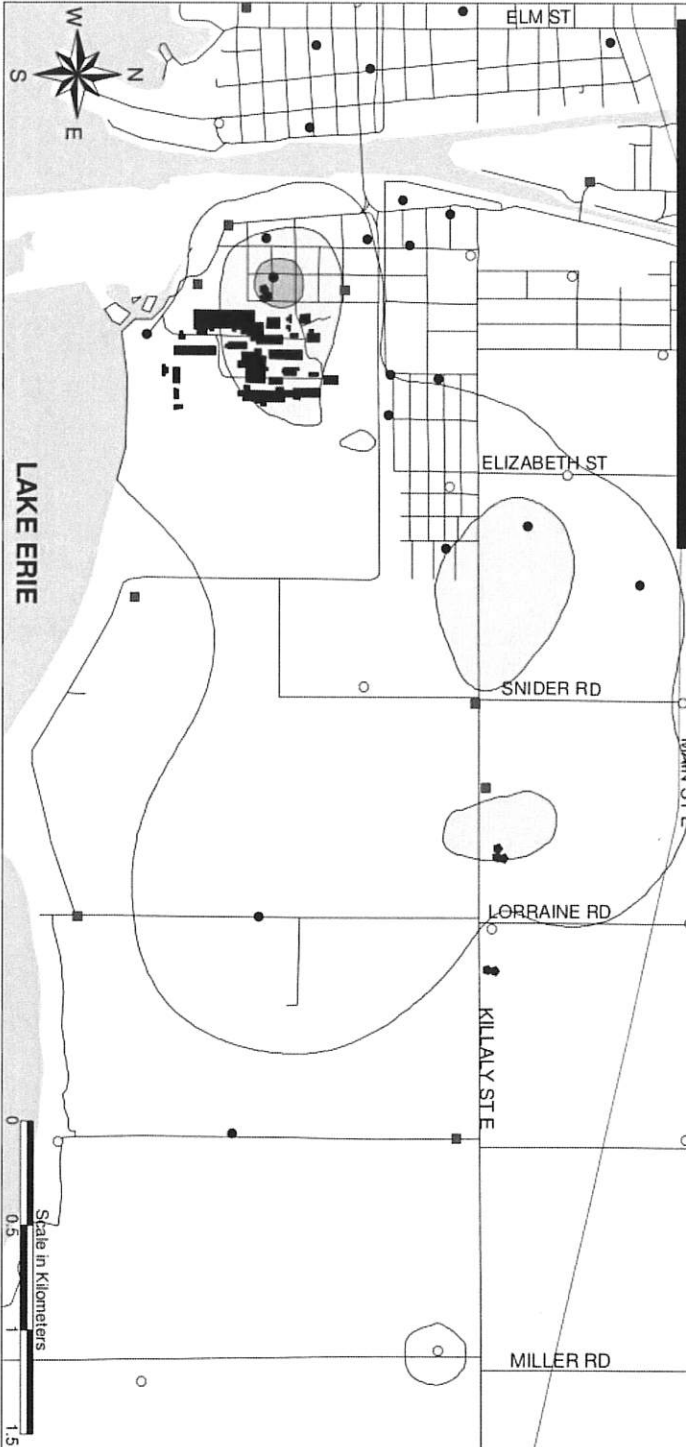
**Map 5: Copper in Surface (0-5 cm) Soil
Port Colborne 1998 - 1999**



**Map 6: Cobalt in Surface (0-5 cm) Soil
Port Colborne 1998 - 1999**



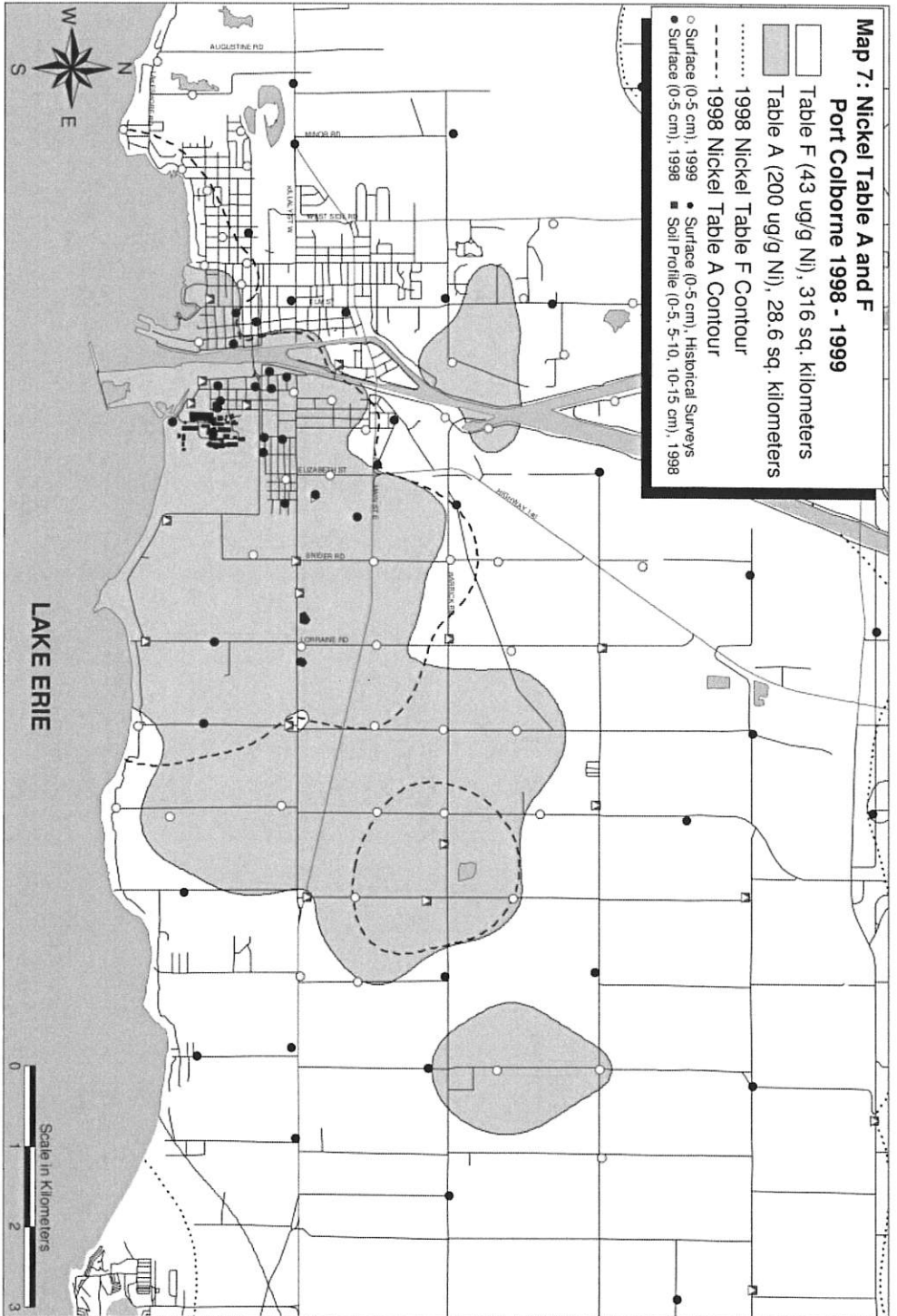
- Surface (0-5 cm), 1999
- Surface (0-5 cm), 1998
- Soil Profile (0-5, 5-10, 10-15 cm), 1998



Map 7: Nickel Table A and F

Port Colborne 1998 - 1999

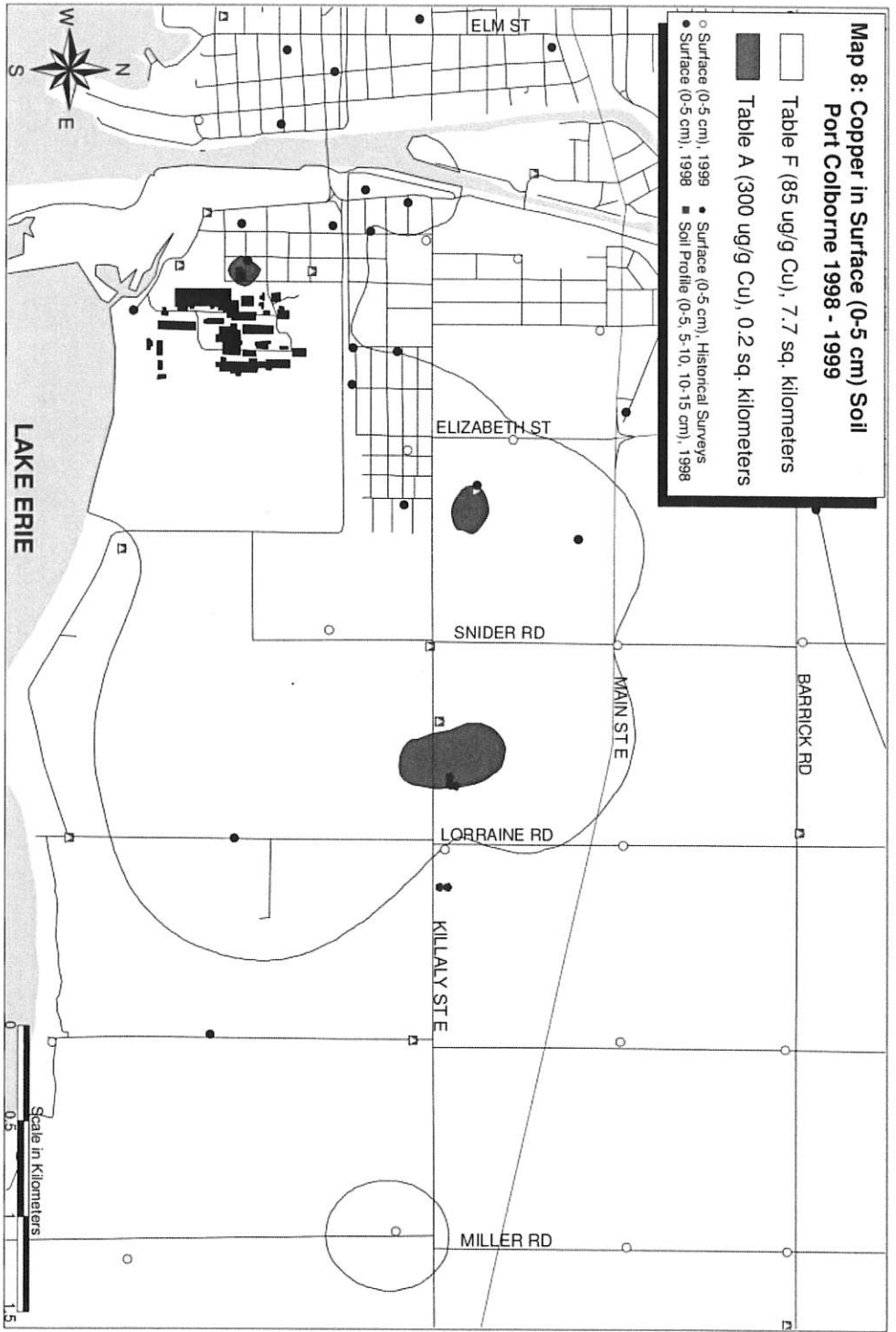
- Table F (43 ug/g Ni), 316 sq. kilometers
- Table A (200 ug/g Ni), 28.6 sq. kilometers
- 1998 Nickel Table F Contour
- 1998 Nickel Table A Contour
- Surface (0-5 cm), 1999
- Surface (0-5 cm), Historical Surveys
- Soil Profile (0-5, 5-10, 10-15 cm), 1998



**Map 8: Copper in Surface (0-5 cm) Soil
Port Colborne 1998 - 1999**

Table F (85 ug/g Cu), 7.7 sq. kilometers
 Table A (300 ug/g Cu), 0.2 sq. kilometers

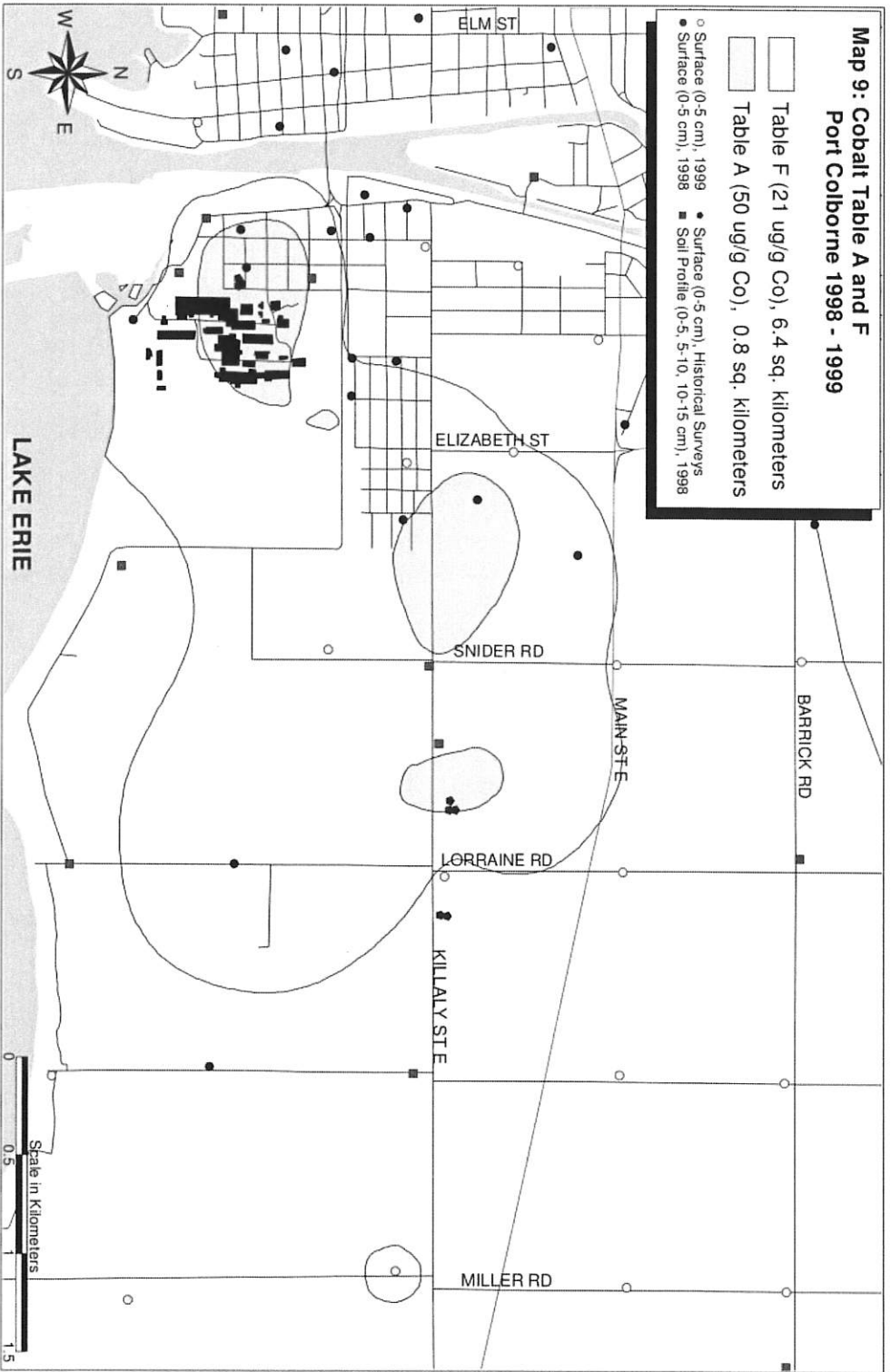
- Surface (0-5 cm), 1999
- Surface (0-5 cm), Historical Surveys
- Surface (0-5 cm), 1998
- Soil Profile (0-5, 5-10, 10-15 cm), 1998



**Map 9: Cobalt Table A and F
Port Colborne 1998 - 1999**

- ◻ Table F (21 ug/g Co), 6.4 sq. kilometers
- ◻ Table A (50 ug/g Co), 0.8 sq. kilometers

- Surface (0-5 cm), 1999
- Surface (0-5 cm), Historical Surveys
- ◻ Surface (0-5 cm), 1998
- Soil Profile (0-5, 5-10, 10-15 cm), 1998



Further Vale Community Based Risk Assessment Recommendations

These are the further recommendations discussed by Norbert Geiger, Jack Hellinga, Harry Wells, Trent Doan and George McKibbon.

1. That the City of Port Colborne add a map schedule or appendix to the City of Port Colborne Official Plan setting out the Nickel Concentrations throughout Port Colborne (Map #4 of the City Community Based Risk Assessment) and together with a statement setting out the requirements to undertake remediation and/or risk assessment where a land use change to a more sensitive use is proposed and nickel concentrations exceed Ontario Regulation 153/04 standards:
2. That the City of Port Colborne request from MECP a statement as to which aspects of a the CBRA risk assessment are agreed to by MECP and can be used in the preparation of a risk assessment when a land use change is proposed to a more sensitive use; and
3. That the City of Port Colborne set aside some of the community monies Vale proposes for the purpose of funding remediation/risk assessment within areas planned for urban growth which overlap the areas affected by Nickel Contamination (Map 4 above).

Parkland Dedication, Development Charges and the New Community Benefits Charges

On July 8, 2020, a little over a year after proposing sweeping changes to the planning regime in Ontario through Bill 108, the provincial government introduced new legislation in July scaling back the proposed changes. The new legislation, known as Bill 197, would narrow the scope of the previously-proposed Community Benefits Charge (CBC) authority, and make related changes to Parkland Dedication and soft service Development Charges. The provincial government proposes changes as part of the government's efforts to stimulate the economy. The government clearly sees the development and construction industry as key to its economic recovery strategy.

The changes revisit the issue of the costs associated with development. The government had proposed sweeping changes to the Development Charges and Parkland Dedication regime but had not brought those changes into force. Many of the changes now proposed to be rolled back.

Parkland Dedication

The original amendments heavily curtailed municipalities' ability to require the conveyance of parkland, and instead provided for parkland acquisition to be funded through the CBC. The new proposal unwinds these amendments.

The now proposed changes effectively restore the municipalities' right to require development proponents to dedicate parkland at the base rates of:

- 2% of the area of land developed for commercial / industrial lands, and
- 5% of the area of land developed for all other uses, or,
- for residential development, the alternative rate of 1 hectare per 300 dwelling units for land conveyances, and
- 1 hectare per 500 units for cash-in-lieu.

An important new feature introduced through the now proposed changes is landowners' ability to appeal the Parkland Dedication by-law providing for the use of the alternative Parkland Dedication or cash-in-lieu rates, to the Local Planning Appeal Tribunal (LPAT). On appeal, the LPAT can order an amendment to the use of the alternative rates set out in the by-law.

Although existing Parkland Dedication by-laws cannot be appealed, the now proposed changes provide that any existing Parkland Dedication by-law providing for the use of the alternative rates expires two years after the statutory provisions come into effect, unless repealed earlier. This will force municipalities to pass a new Parkland Dedication by-law if they wish to use the alternative rate, thereby giving landowners the opportunity to appeal the by-law to the LPAT. In the meantime, existing parkland by-laws remain in effect until they are replaced within the two year period noted above.

The now proposed changes continue to allow municipalities to impose a requirement to convey parkland or pay cash-in-lieu as a condition of approval of a draft plan of subdivision, consent, or condominium. Such a condition may require dedication or payment of cash-in-lieu of parkland at the alternative rates, although such conditions are subject to LPAT appeal.

Development Charges (DCs)

The provincial government originally proposed to remove soft services from Development Charges and have them funded through CBCs, The now proposed changes propose to revert the funding of most soft service categories back into the Development Charge.

The provincial government originally proposed to restrict the imposition of Development Charges to the following relatively narrow list, focussing on hard services:

- water supply services, including distribution and treatment services;
- waste water services, including sewers and treatment services;
- storm water drainage and control services;
- services related to a highway;
- electrical power services;
- policing services;
- ambulance services;
- fire protection services;
- transit services;
- waste diversion services; and
- other services as prescribed.

The intention of the initially proposed changes was that municipalities would instead fund soft services through their CBC. The now proposed changes propose to expand the above list of services to include most of the soft services municipalities typically fund through Development Charges. The following additional services are proposed to be funded through Development Charges:

- services provided by a public library board;

- services related to long-term care;
- parks and recreation services, except for the acquisition of parkland;
- services related to public health;
- child care and early years programs and services;
- housing services;
- services related to provincial offence proceedings, including by-law enforcement services and municipally administered court services;
- services related to emergency preparedness;
- for the Regional Municipality of Waterloo, services related to airports; and
- other services prescribed by regulation.

The now proposed changes propose to move the funding of most soft service categories back to Development Charges, it does not propose to reinstate the requirement that the capital cost of these services be reduced by 10%, which was removed by the provincial government's original proposal. Accordingly, Development Charges for these services will generally increase by 10%.

Other changes to the *Development Charge Act* introduced through provincial government's original proposal, including a freeze on development charge rates as of the date of site plan or rezoning application, and provisions for the phased payment of Development Charges for rental housing, institutional and non-profit development, are already in force and would not be impacted by the now proposed changes.

Community Benefit Charges (CBCs)

Services Funded through CBCs

The now proposed changes narrow the scope of what may be funded by a CBC.

Parkland Dedication and soft service Development Charges are no longer funded through CBCs, the CBC authority effectively replaces the contributions for height and / or density increases previously secured through section 37 of the Planning Act.

The now proposed changes provide a CBC can only be imposed to pay for the capital costs of facilities, services and matters required because of development or redevelopment. Before a by-law imposing a CBC is enacted, the municipality must undertake a strategy that assesses the services and costs to be funded by the CBC, but the same rules and restrictions that apply to the calculation of Development Charges do not apply. A CBC by-law is subject to appeal to the LPAT.

The now proposed changes provide a CBC can be imposed to fund services eligible for funding in a Development Charge, however the actual capital costs intended to be funded by a CBC cannot overlap with the capital costs intended to be funded by a Development Charge. Likewise, the legislation provides a CBC can be imposed with respect to land for park or other public recreational purposes, provided that the capital costs for parkland intended to be funded by the CBC do not overlap with the capital costs intended to be funded through the municipality's cash-in-lieu of parkland account. Given a municipality has fairly broad power to use the money in its cash-in-lieu of parkland account to acquire land for park or other public recreational purposes, the limitations on funding parkland acquisition through CBCs remain unclear.

The now proposed changes continue to provide the CBC payable is to be capped based on a percentage of land value that will be prescribed by regulation. When the scope of the CBC was much broader, the province proposed a land value cap of 15% (split 10% to the lower-tier municipality and 5% to the upper-tier municipality in areas subject to two-tier municipal government). The province has not indicated what land value cap is now proposed in light of the narrower scope of the CBC. The now proposed changes continue to provide a mechanism for disputes over land value to be resolved through an appraisal process.

Exemptions for Small-Scale Development

The now proposed changes propose to impose some important new restrictions on the use of CBCs. First, only single- and lower-tier municipalities may impose a CBC, but not upper-tier municipalities. Second, municipalities may not impose a CBC on developments with fewer than five storeys or 10 residential units and other types of development or redevelopment to be set out in regulations.

Accordingly, ground-related housing (singles, semis, townhouses, etc.), and other smaller-scale forms of housing, cannot be subject to the payment of CBCs.

Transition

During a transition period that ends on the earlier of two years after the legislation comes into effect and the date a municipality passes its first CBC by-law, the existing section 37 provisions of the *Planning Act* regarding density and height bonusing remain in effect. The provincial government originally proposed existing zoning by-laws requiring section 37 contributions would continue to apply even after a CBC by-law is enacted, and the lands to which those existing by-laws relate would not be subject to the payment of a CBC.