



November 1, 2019

Andrew MacDonald
Ministry of Natural Resources and Forestry
Natural Resources Conservation Policy Branch
300 Water Street
Peterborough, ON
K9J 8M5

Re: Conservation Ontario's comments on "Proposed amendments to the *Aggregate Resources Act*" (ERO#019-0556) and Schedule 16 of Bill 132, *Better for People, Smarter for Business Act*, 2019

Thank you for the opportunity to provide comments on the "*Proposed amendments to the Aggregate Resources Act*" as well as the proposed legislative changes outlined in Schedule 16 of Bill 132, *Better for People, Smarter for Business Act*, 2019. Conservation Ontario is the network of Ontario's 36 conservation authorities (CAs). These comments are not intended to limit consideration of comments shared individually by CAs through the *Aggregate Resources Act* review and consultation process.

Conservation authorities are involved with land use planning in Ontario in the following ways: as a regulator under Section 28 of the *Conservation Authorities Act*; as a public body under the *Planning Act*; as source protection authorities under the *Clean Water Act* supporting policy implementation; as resource management agencies operating on a local watershed basis; as a body with delegated authority in plan review to represent the provincial interest for natural hazards; and as the province's second largest landowners who may become involved in the planning and development process, either as an adjacent landowner or a proponent. In these roles, CAs endeavour to provide the best guidance to their municipal partners regarding how to balance multiple provincial and watershed priorities in a timely and cost-effective manner.

Under Section 28(11) of the current *Conservation Authorities Act* (Section 28(2) of the unproclaimed sections of the Act), areas licensed for aggregate extraction under the *Aggregate Resources Act* are exempt from CA permitting activities. However, there are other means through which CAs may bring local environmental and watershed knowledge into the application review process. CAs may review and provide comments on applications submitted under the *Aggregate Resources Act*, either directly to the Ministry or through their participating municipalities. Additionally, CAs may review applications for proposed new or expanded aggregate operations submitted pursuant to the *Planning Act*, and comment in an advisory capacity to municipalities making decisions on *Planning Act* applications. CAs may also provide comments in an advisory capacity on *Clean Water Act* considerations. Further, upon notification from municipalities, source protection authorities may assess whether certain activities such as aggregate extractions are considered transport pathways under the *Clean Water Act* and advise the applicant of policies that apply. Conservation authorities bring an important lens to the review of applications and amendments to existing licenses. As watershed resource management agencies, CAs have scientific information on local environmental conditions and can assess the potential for

environmental effects of an application. CA comments generally focus on natural hazards (floodplains, river valley slopes and wetlands) and comments are provided to ensure that public health and safety is not compromised by the creation of new hazards.

Proposed Amendments to the Aggregate Resources Act

The following comments are provided in response to the proposed amendments to the *Aggregate Resources Act* (ERO# 019-0556) and Schedule 16 of Bill 132, *Better for People, Smarter for Business Act*, 2019. Generally, Conservation Ontario is supportive of the Province's goals to: maintain high standards for aggregate extraction in Ontario, reduce burdens on business while ensuring the environment is protected, and maintaining and increasing opportunities for public engagement on applications which may impact water resources for Ontarians.

I. Strengthen protection of water resources by creating a more robust application process for existing operators that want to expand to extract aggregate within the water table, allowing for increased public engagement on applications that may impact water resources.

Conservation Ontario is supportive of strengthened protections for water resources, particularly when expansions and extraction requests within the water table are proposed; however, it is recommended that aggregate extraction below the water table be discouraged and should only be permitted where necessary. The proposal to create a more robust application process for existing operators is welcomed, as is the increased potential for public engagement through Ministerial referral of an application to the Local Planning Appeals Tribunal (LPAT). At a minimum, it is recommended that existing applications which seek to expand below the water table should be treated with all of the necessary review and consultation that is required for new applications. It is further recommended that any application for extraction below the water table should only be approved with an established adaptive management program that would cease ongoing extraction if negative environmental impacts occur.

It is also recommended that this enhanced process require applications to be supported by cumulative effects assessments, particularly in areas where there are a concentration of existing licenses or new applications for licenses below the water table or in drinking water vulnerable areas under the *Clean Water Act*. This would allow for consideration of potential significant impacts to local drinking water sources and water resource systems from multiple operations that may not be deemed significant when considered independently. At a minimum, hydrogeological assessments should be conducted for any existing license that applies to expand within the water table to ensure the proposal would not adversely impact local drinking water sources. Additional considerations should be given to downstream environmental effects as they relate to flooding and erosion in wetlands and watercourses to prevent downstream and/or seasonal flooding.

It should be noted that a provincial framework for cumulative effects assessments has not been established at this time and would be recommended should applications be required to be supported by such assessments. The Province may consider reviewing the 2010 *Cumulative Effects Assessment (Water Quality and Quantity) Best Practices Paper for Below-Water Sand and Gravel Extraction Operations in Priority Subwatersheds in the Grand River Watershed* completed by the Grand River Conservation Authority (GRCA), Ministry of Natural Resources and Forestry (MNRF) and the Ontario Stone Sand & Gravel Association. The paper provides best practices, outlining a reasonable, consistent and scientifically-defensible approach to assessing potential cumulative

effects of below-water sand and gravel extraction as part of MNRF's review and approval process under the ARA. Many of the best practices found in the paper could be considered in the development of a provincial framework for cumulative effects assessments. Copies of the paper are available through the GRCA.

II. Clarify that depth of extraction of pits and quarries is managed under the Aggregate Resources Act and that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply

Conservation Ontario supports providing additional clarification to operators and municipal staff regarding activities managed under the *Aggregate Resources Act*. Schedule 16 of Bill 132, *Better for People, Smarter for Business Act, 2019*, includes proposed amendments which clarify that restrictions contained in a zoning by-law with respect to the depth of extraction are inoperative in areas licensed under the ARA. It is recommended that the Act continue to require the Minister to circulate notices of proposed undertakings to municipalities and conservation authorities for review and comment, as well as final copies of any licenses granted and final site plans. CAs generally review these applications with regard to natural hazards (floodplains, river valley slopes and wetlands) which may not be captured in the municipal review. As previously stated, upon notification by a municipality, a source protection authority must assess whether a potential transport pathway increases the vulnerability of a drinking water source. If so, the source protection authority will let the applicant know of applicable source protection plan policies.

It is further noted that many municipalities currently have policies and zoning (i.e. vertical zoning) in place to ensure that subwatershed-level impacts of applications below the water table are prevented. In the absence of a requirement for cumulative impact assessments, applications for activities below the water table may present a threat to local drinking water sources and water resource systems.

III. Clarify how haul routes are considered under the Aggregate Resources Act so that the Local Planning Appeal Tribunal and the Minister, when making a decision about issuing or refusing a license, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage.

Conservation Ontario supports clarifying how haulage routes are considered under the ARA. As stated in Schedule 16 of Bill 132, the Province is proposing to clarify that the Minister or the LPAT shall not have regard to road degradation that may result from proposed truck traffic to and from site when considering whether to issue a license. It is supported that the proposed legislative changes do not remove the requirement for the Minister or LPAT to have regard to other aspects of haulage routes and truck traffic when considering an application. Aside from the proposed legislative amendments, it is recommended that the Province prepare additional guidance to address concerns related to new haulage routes which may impact natural hazards or features located outside of the license area.

IV. Improve access to aggregates in adjacent municipal road allowances through a simpler application process

Conservation Ontario is supportive of developing a simplified application process to improve access to aggregates within the municipal road allowance. However, through the current legislation, any

expansion to an existing licensed area is applied for as a new license. A simplified application process may be appropriate in this context; however, it is recommended that requirements for notification and consultation remain for any process changes. It is understood that these expansions would still be required to adhere to the regulations under the *ARA*.

V. *Provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.*

Conservation Ontario requests that the Province provide detailed clarification on what would constitute “routine site plan amendments”, as well as provide information on what the added flexibilities would be for operators. Of particular interest for CAs is additional detail on the proposed self-filing approach for operators. With some quarry sites located within CA regulated areas and within drinking water vulnerable areas under the *Clean Water Act*, further information is required on how regulatory agencies such as CAs would receive notice of these routine activities taking place through a self-filing approach. Schedule 16 of Bill 132 notes that these routine site plan amendments may be completed without the approval of the Minister, provided that amendments are prepared and submitted to the Minister in accordance with the regulations. Conservation Ontario looks forward to reviewing the regulatory amendments and providing additional comments on this approach through consultations at a later date.

Potential Regulatory Changes under the *Aggregate Resources Act*

The following comments are provided in response to the listed regulatory changes under the *Aggregate Resources Act* being considered by the Province through this consultation. Conservation Ontario notes that the Province has committed to consulting further on more specific details related to the regulatory proposals. We look forward to reviewing these specifics and providing additional comments at a later date.

I. *Enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.*

Conservation Ontario is supportive of enhancing reporting on rehabilitation. It is recommended that the enhanced reporting include requirements related to planning successfully phased restoration projects, further accompanied by enhanced compliance and/or enforcement for rehabilitation works. As many CAs have been involved with aggregate site rehabilitation projects, they can provide valuable insight as the Province provides more details on this proposed regulatory change.

II. *Allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation.*

Further to comments provided in Section V above, Conservation Ontario requests additional clarification on what would constitute “routine site plan amendments”, as well as information on what the added flexibilities would be for operators. We look forward to reviewing the regulatory amendments and providing additional comments on this approach through consultations at a later date.

III. *Allowing some low-risk activities to occur without a license if conditions specified in regulation are followed.*

Similar to points raised above, Conservation Ontario requests that the Province provide additional clarification on what would constitute “low risk activities”. A distinction between what constitutes a “routine activity” and a “low risk activity” should be made clear in the regulation. Further, it is recommended that the conditions for approval of a “low risk activity” to occur without a license should include consideration for existing site characteristics and other nearby aggregate activities which may increase the potential for negative environmental effects and/or cumulative impacts. The Ministry may consider making screening tools such as mapping available to operators to view current and past activities which may create the potential for cumulative environmental impacts.

Additionally, throughout Ontario some quarry sites are located within CA regulated areas and drinking water vulnerable areas under the *Clean Water Act*. It is recommended that these low-risk activities, when proposed to take place within CA regulated areas or drinking water vulnerable areas, be identified as high risk situations and would be required to obtain a license under the *ARA*.

Should the Province proceed with the amendment as written, further information is required on how regulatory agencies such as CAs would receive notice of these routine activities taking place through a non-licensing approach.

IV. *Reviewing application requirements for new sites, including notification and consultation requirements*

Conservation Ontario requests that the Province provide additional information on changes made to application requirements for new sites, as CAs would have an interest in these requirements for sites in regulated areas. Notification and consultation, particularly, pre-consultation, with both municipalities and agencies such as CAs should be a priority. Emphasizing pre-consultation with these agencies would ensure that applications include the required technical information prior to municipal and agency review, ultimately allowing for a more timely and efficient review.

Thank you for the opportunity to review and provide comments on the “*Proposed amendments to the Aggregate Resources Act*” as well as the proposed legislative changes outlined in Schedule 16 of Bill 132, *Better for People, Smarter for Business Act*, 2019. Should you have any questions about this letter please feel free to contact myself at extension 229.

Sincerely,



Nicholas Fischer
Policy and Planning Officer

c.c. All CA CAOs/GMs