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BY E-MAIL

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RE: City of Burlington's Comments on Ontario's Proposed Amendments to Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*, ERO Number 019-1303

I am writing on behalf of the City of Burlington ("**City**"), where I am the Acting Director of the Department of Community Planning. This letter provides the City's comments on the proposed amendments described above, under the Environmental Registry of Ontario posting number of 019-1303.

The City of Burlington considered the Province's proposed amendments in the document entitled "Proposals to amend Ontario Regulation 244/97 and the Aggregate Resources of Ontario Provincial Standards under the *Aggregate Resources Act*" ("**Proposal**"). This letter does not address all of the proposed amendments set out in the Proposal. Rather, it is directed to those proposals most relevant to the City.

Overview

The City appreciates the opportunity to work with the Province on matters of public importance respecting aggregate resources, including not only the *Aggregate Resources Act* ("**ARA**"), but also matters within the City's jurisdiction.

In considering the proposed amendments, the City has very much sought to consider how such amendments will address basic public objectives such as the protection of human health and the protection of water and natural heritage resources. The City has thus sought to ensure that where amendments seek to address other important objectives such as streamlined application processes, these objectives do not compromise the greater importance of protection objectives.

Similarly, the City supports greater notice to municipalities on all ARA matters. The City believes greater notice has public importance in improving transparency and is consistent with improved protection of public resources.

Recognizing that the Proposal does not include the proposed language of the Regulation or Standards, the City hereby requests an opportunity to review and provide comments on the actual language of the draft Regulation and Standards, before they are made final.

Comments Specific to Individual Proposed Amendments

1. Proposed Amendment 1.1.1: Water Report - Proposed Changes To How The Water Table Is Established

Proposed Amendment: “The following changes would apply to all new applications, regardless of whether the proposal is to extract below water or not:

- **Require that the water table be established using the maximum predicted elevation of the water table. The water table (to be referenced as the “maximum predicted water table”) would be assessed by monitoring the ground water table at the site for a minimum of one year to account for seasonal variations and influences due to precipitation. If information sources already exist on or adjacent to the site (e.g., previous hydrogeological study, existing well data) a determination of the maximum predicted water table elevation could be made by a qualified person with the submission of supporting data.**
- **For sites proposing to extract in Precambrian shield where it is difficult to determine the elevation of the water table, a qualified person would need to drill to the depth of the proposed extraction plus 2.5 metres to determine if the water table will be encountered. The number of drill holes and seasonal timing would be determined by the qualified person and based on site conditions.**
- **Require that the maximum predicted water table must be determined for all proposed pits and quarries on Crown land that are proposing excavation below the water table, even those in remote or isolated areas.”**

The City supports amendments aimed at ensuring that the water table is accurately characterized. To that end, the City believes that having applicants establish the maximum predicted elevation of the water table is a positive change. We suggest that these proposed amendments can be improved by rendering them more robust and detailed.

The proposed amendment further suggests that the water table would be assessed by monitoring the ground water table at the site for a minimum of one year. The City agrees with undertaking an assessment over this period of time to account for fluctuations in water tables that occur throughout the year. To further protect water resources, the reform should clarify that monitoring not only cover a full year of natural variability, but also reflect the variability of ground water levels around the site.

The proposed amendment also allows that if information such as well data and previous hydrogeological study already exists with respect to an adjacent site, a qualified person could use this information to determine the maximum water table elevation. The City has no concern with considering additional information to assist with the determination of the water table, but seeks to ensure that the minimum 1-year monitoring occurs in all cases.

Finally, the City supports the amendment’s distinction with respect to the Precambrian shield. This amendment better protects water resources by recognizing that bedrock is a distinct setting with distinct challenges for establishing the maximum groundwater elevation.

2. Proposed Amendment 1.1.1: Water Report - Proposed Changes To The Content Of A Water Report

Proposed Amendment: “The ministry is proposing to clarify some of the current requirements for the assessment of impacts to water in order to determine the significance and potential of impacts and the feasibility of mitigation. For example:

- **Water wells, including private and municipal wells.**
- **Surface water courses and water bodies, including sensitive ground water dependent features (e.g., wetlands, water courses).**

Also, a water budget, determining the relationship between input and output of water through the site with consideration of precipitation and potential evapotranspiration of the supply of water and the natural demand for water may be required.

Clarification would also be made to better describe what qualifications are required in order to prepare a water report. Specifically, this person must be a registered Professional Geoscientist or exempted Professional Engineer as set out in the Professional Geoscientists Act, 2000 who has appropriate ground water experience and expertise.

A new requirement would be added to the water report that summarizes how local source water protection plans and policies are addressed. Specifically, in this new section, applicants would be required to identify:

- **If the proposed operation is within a Wellhead Protection Area A or B (WHPA-A or B).**
- **If activities (e.g., fuel or salt storage) proposed at the site have the potential to cause a significant threat to local source water. This assessment would include referencing local existing source water protection plans or policies approved under the Clean Water Act.**
- **If proposed aggregate extraction at the site has the potential for changes to the ‘vulnerability’ within a Wellhead Protection Area (A or B). Note: The vulnerability score determines how other proposed on-site activities would be managed under the source water protection plan.**
- **If the proposed site is in a Wellhead Protection Area for Quantity (WHPA-Q), the potential for impacts to the sustainability of a municipal water taking. Note: a WHPA-Q is the area around a municipal well associated with the potential for water quantity threats.”**

The City supports amendments that help ensure enhanced protection of the province’s water resources. In particular, the City supports the above-proposed amendment’s new requirement that a water report summarize how local source water protection plans and policies are addressed. In addition, the clarification of the qualifications of the persons permitted to prepare a water report is valuable.

The City suggests the following modifications to further support the province’s objective of clarifying the details of the water report and reinforcing water resource protection:

- The water assessment should include not only private and municipal wells, but also approved and requested water takings.
- A water budget should be made an automatic requirement, not simply one that “may” be required.
- Finally, the protection of water resources mandates coherence and consistency between the *Aggregate Resources Act* and the *Clean Water Act*. The City recommends that the reform should expressly recognize the paramountcy of the *Clean Water Act* and source water

protection plans and policies. As such, the proposed requirements must not only identify the matters to be considered, but also meet a test of consistency.

3. Proposed Amendment 1.1.3: Natural Environment Report

Proposed Amendment: “The ministry is proposing to update the requirements in the natural environment report to align with the current natural heritage policies in the Provincial Policy Statement (PPS) and the four Provincial Plans (Oak Ridges Moraine Conservation Plan, the Greenbelt Plan, A Place to Grow: Growth Plan for the Greater Golden Horseshoe, and the Niagara Escarpment Plan). Requirements for a natural environment report were developed in 1997. Since that time, the PPS and Provincial Plans have been updated and they now include policies related to, for example, coastal wetlands (in ecoregions 5E, 6E and 7E), and natural heritage systems (in Ecoregions 6E and 7E). Changes would ensure that the requirements for the natural environment report align with the PPS and Provincial Plans, as amended from time to time.”

This proposed change would apply to all *Aggregate Resources Act* applications that require a Natural Environment report. The City supports this proposed amendment.

4. Proposed Amendment 1.1.5: Blast Design Report

Proposed Amendment: “To better align application requirements on Crown land with those on private land, the ministry is proposing to require blast design reports for new quarries on Crown land that propose to remove more than 20,000 tonnes per year and that have a sensitive receptor within 500 metres of the limit of extraction.”

This proposed reform is consistent with better protection of human health and is supported by the City.

5. Proposed Amendment 1.1.7: Application Requirements for Extraction from Land under Water

Proposed Amendment: “The ministry is proposing to review the requirements relating to the excavation of aggregate materials from the bed of a lake or river. Since the consideration of impacts related to these types of applications are specific to the location, the ministry is proposing that the technical reports, information and notification and consultation requirements be customized for each site. As such, the applicant would submit a proposed custom plan to the ministry for approval. The custom plan would set out the technical reports, information and consultation approach necessary to ensure potential impacts resulting from the proposed activities are minimized.”

The City supports the special consideration of aggregate extraction for land under water. To better protect water resources, the City requests that any applicant seeking to carry out such extraction within an area of municipal government should be required to provide early notification to the municipality and seek municipal input on the required reports and information.

6. Proposed Amendment 1.3.4: Circulating New Applications to Agencies

Proposed Amendment: “The list of agencies that are circulated new applications would be updated to reflect current government organization and responsibilities. Agencies would not be asked to review aspects of applications that are beyond their mandate. For example, applicants would be required to circulate the application to Conservation Authorities (where one exists) to determine whether the proposed site is within an area regulated by the Conservation Authority, and if it is, whether the application has the potential to impact the control of flooding, erosion or other natural hazards.

In addition, agency circulation requirements for private land would be aligned with those on Crown land. The ministry is also proposing to require the applicant to circulate the application to Fisheries and Oceans Canada if the natural environment impact assessment (level 2) identifies negative impacts to fish habitat. The ministry will continue to explore with other ministries and our municipal partners how applications can be reviewed to reduce duplication during the review and improve efficiency.”

The City supports the streamlining and clarification of the consultation process, and involvement of relevant agencies when their interests may be impacted by a proposed aggregate application. We encourage any amendment to be appropriately inclusive of the need for an agency’s review. The City requests that, regardless of the type of application or amendment, municipalities should be included in all agency circulations.

We note that the language used here to identify the instances where Fisheries and Oceans Canada would be circulated a proposed application is when a natural environment impact assessment identifies “negative impacts” to fish habitat. The City recommends that this term be defined to include harm to both fish and fish habitat.

The City further recommends that the application be circulated to Fisheries and Oceans Canada where the proposal may have one or more of the above impacts on fish or fish habitat, *without regard to mitigation*, since Fisheries and Oceans Canada should have the opportunity to assess the effectiveness of mitigation.

7. Proposed Amendments 1.2.4 and 3.1.2: Prescribed Licence and Permit Conditions (New Sites) and Operating Requirements for All Sites (New and Existing) – Dust

Proposed Amendment (1.2.4 Extract): “The ministry is proposing that some conditions, which are currently only applied to new sites, also be applied to existing pits and quarries (unless an existing site plan already addresses these activities). This change would involve ‘prescribed conditions’ related to:

- requiring dust to be mitigated on site,
- requiring a dust suppressant to be applied to internal haul roads and processing areas,
...”

Proposed Amendment (3.1.2 Extract): “The ministry is proposing to require all licence and aggregate permit holders to mitigate dust to prevent it from leaving the site. Licence holders would need to mitigate dust regardless of their proximity to a sensitive receptor. Aggregate permit holders would only need to mitigate dust if a sensitive receptor is located within 1000 metres of the boundary of the site.

In addition, it is proposed that all licence and aggregate permit holders with a sensitive receptor located within 1000 metres of the boundary of the site be required to apply water or another provincially approved dust suppressant to internal haul roads and processing areas as needed to control dust.

It is also proposed that all licence and permit holders be required to prepare and follow a Best Management Practices Plan (BMPP) for fugitive dust control. This new requirement would apply to all licences and permits if a sensitive receptor was located within 1000 metres of the boundary of the site. The BMPP could be prepared by the site operator using provincial best management practices (e.g. Management approaches for industrial fugitive dust sources). Operators that already have a BMPP as part of an Environmental Compliance Approval (ECA) may follow that plan to meet this requirement.

...”

The City generally supports these proposed changes as the protection of human health requires these reforms to mitigate dust from leaving aggregate sites. These proposed changes require all sites – both new and existing – to engage in dust mitigation.

The proposed reform to require new and existing licence and permit holders to apply water/dust suppressant to haul roads and processing areas is consistent with protecting human health. On the other hand, the proposal to limit this reform to existing operations that have sensitive receptors within 1km does not improve protection of human health and is not consistent with provincial law or policy regarding the prevention of adverse effects to human health. We recommend that the 1km-limit be removed.

In addition, the reform to reference a Best Management Practices Plan (“**BMPP**”) is supportive of protecting human health only if compliance with such plans is made a new prescribed condition. The City recommends that language to this effect be added to the proposed amendment.

8. Proposed Amendment 3.1.4: Recycling

Proposed Amendment (Extract): “The ministry is proposing to require that, where aggregate recycling activities are already approved to occur on a site, the site would need to be operated in accordance with the following requirements:

- **Recyclable asphalt may not be stored within 30 metres of a water body or within two metres of the established ground water table and may not be co-mingled with scrap material(s).**

...”

The City supports all three of the proposed amendments which introduce new recycling considerations under the *Aggregate Resources Act*. These are important and welcome changes.

9. Proposed Amendment 3.3.1: Site Plan Amendment Process

Proposed Amendment (Extract): “To improve consistency of information being submitted the ministry is proposing to clarify in regulation that the following information must be submitted using a standard form in order to request a change to a site plan:

- name, address, geographic location and licence/permit number,
- a description of the proposed amendment(s),
- a description of how the proposed amendment(s) will change the operation, and
- the reason for the request(s).

Depending on the nature and significance of the change being requested, additional information may also be required (e.g. new or updated studies to assess potential impacts). Circulation of the proposed amendment(s) to municipalities, other agencies and interested parties for comment may also be required.

...

The ministry would continue to forward copies of the revised site plans to local municipalities where the pit or quarry is located.”

The City supports clarity in the site plan amendment process. We also support the involvement of municipalities, agencies and other interested parties in the process in order to ensure that adequate information and perspectives are considered. The current amendment, as proposed, provides that local municipalities would receive a copy of the revised site plan of an aggregate site in their jurisdiction once the site plan revision is complete. However, earlier on in the process when an application for a site plan amendment is being considered, the involvement of the local municipality is conditional as the proposal states that “[c]irculation of the proposed amendment(s) to municipalities... parties for comment **may** also be required” (emphasis added).

Instead, the City recommends that the local municipality automatically receive notice of all site plan amendment at the earliest stage of agency circulation. This will ensure that municipalities are kept informed of changes within their jurisdiction in a timely manner, and able to provide meaningful input on applications.

In addition, we recommend the use of categories to distinguish among (1) amendments that have no physical effects; (2) amendments that may have physical effects that are limited to the site; and (3) amendments that may have off-site physical effects and/or any biological effects. This categorization can guide the information to be circulated such that the information will increase as needed to address all possible effects.

10. Proposed Amendment 3.3.2: Amendment to Expand into a Road Allowance

Proposed Amendment (Extract): “The ministry is proposing to require the following information and notification as part of an amendment application to expand into a road allowance that is directly adjacent to an existing pit or quarry on private land.

The applicant would be required to submit:

- a) Documentation to confirm that the municipality with jurisdiction over the road allowance supports the application or that the landowner does (i.e., if the road allowance had been closed and sold).**

...

e) Technical information to ensure impacts to the environment are addressed and rehabilitation planning has been done. The required technical report requirements may differ from what is required for a new application. The applicant would be required to submit information describing potential impacts that could be anticipated to the natural environment, cultural heritage, surrounding land uses or surface and ground water resources (e.g., hydrogeological information prepared by a qualified professional) as a result of excavation operations in the adjacent road allowance. Information would focus on determining the potential for any new or incremental impacts that might result from excavation into the road allowance area, and on providing mitigation measures.

Applicants would be required to circulate the amendment application to landowners within 120 metres of the boundary of the road allowance area proposed to be added to the existing pit or quarry. The application would also need to be circulated to any agencies identified by the ministry. A notice would be required to be posted to make the public aware of the proposed expansion (e.g., a print or electronic newspaper notice) and a sign would be required to be posted. Landowners, the public, and agencies would be given 60 days to comment on the proposed expansion and the applicant would work to resolve any comments before submitting a final application to the ministry for approval.

The City supports the requirement that an applicant must submit documentation to confirm that the municipality with jurisdiction over the road allowance supports the application.

The City also recommends that, in case of any hearing over a proposal before there is any municipal consent, the process should include the requirement that the municipality receive all relevant information on the proposal that is provided to any agency.

The City also recommends that technical information to be submitted under paragraph (e) above be detailed enough to enable the municipality to assess any potential negative impacts of the expansion.

11. Proposed Amendment 3.3.3: Amendment to Expand an Existing Site Below the Water Table

Proposed Amendment (Extract): “The ministry is proposing to require the following information and notification as part of an amendment application to expand an existing pit or quarry on private land below the water table.

a) Applicants would be required to prepare and submit a hydrogeological (“water”) report, prepared by a qualified person, requiring all of the same information that an application for a new pit or quarry to extract below the water table would need to prepare (see section 1.1.1 for proposed changes to what is currently required).

- **Note:** it is recognized that some existing pits and quarries, which are already approved to extract below the water table in specified areas of their site, may need to apply for approval to widen their existing below water extraction area. If such sites had previously prepared a hydrogeological report, only a supplemental report would be required to determine if the proposed amendment would result in the potential for any new impacts and necessary mitigation measures.

b) If no new surface area would be disturbed as a result of the amendment, the applicant would usually not need to prepare a new natural environment report, a new cultural heritage report, a new noise assessment or a new blast design report. However, the ministry may ask for additional

information from the applicant to help assess potential impacts of the proposal (this would be determined on a case-by-case basis).

...

d) Information would be required describing how the proposed amendment aligns with any relevant Provincial Policy Statement or Provincial Plan policies (e.g. some policies may prohibit extraction below the water table or may require site rehabilitation back to an agricultural condition). Note: This would not be required from pits and quarries that are already approved to extract below water but who wish to widen their existing below water extraction area.

...”

The City largely supports these proposed amendments, which add further details to the 2019 amendment providing greater analysis and oversight of applications to expand an existing site into the water table. In particular, the City supports treating expansions of an existing site below the water table with the same rigour as applications for a new pit or quarry.

The proposed reforms could be amended to better address the objectives of protecting water and natural heritage resources. These objectives should be expressly stated to assist decisions on required reports. In particular:

- a) The requirement for and scope of a hydrogeological report should be tied to (a) the date and scope of any existing hydrogeological report, and (b) the type and geographic extent of possible changes to water resources, as compared to the changes previously assessed;
- b) Similar requirements should apply to the need for other reports, such as a natural environment report. The extent of disturbance to new surface areas does not determine whether new below water extraction will affect natural heritage features that rely on groundwater; and
- c) Information on consistency with the Provincial Policy Statement and conformity with provincial plans is broadly applicable. The City therefore requests that the note in paragraph d) be deleted.

12. Proposed Amendment 3.3.4: Self-Filing of Site Plan Amendments

Proposed Amendment: “The ministry is proposing to allow existing operators to make changes to site plans for certain small and routine amendments without the need for ministry review and approval (e.g. self-filing). In order to be eligible for self-filing, the operator will need to comply with all requirements set out in regulation.

Eligibility:

In general, site plan amendments proposed for self-filing have been selected because they are typically routine changes that reflect normal operation of pits and quarries. The proposed list of amendments are either small and routine or are subject to an approval by another agency.

To ensure that self-filing will only occur for routine site plan amendments, the holder of a licence or aggregate permit will need to confirm (e.g., self-attest) that the amendment will not:

- change an existing condition that explicitly prohibits the activity (e.g., cannot self-file to add a scrap storage area to the site if the existing site plan already specifies that no scrap will be stored on site);

- alter the approved rehabilitation plan for the site (e.g., phasing, methods, slopes, vegetation, elevation, drainage, etc.);
- change or impact a condition put in place to resolve objections or concerns at the time of application (e.g., conditions put in place to address public or agency concerns);
- be used to correct a non-compliance action or activity; or
- alter a change to the site plan that was required by the Ministry (e.g., a ‘forced amendment’).

In addition, holders of a licence or aggregate permit will only be eligible for self-filing a site plan amendment if they are up to date on payments of annual fees and royalties and have filed all required annual compliance and production reports.

Holders of a licence or aggregate permit who cannot confirm or are uncertain about the above would need to apply for a site plan amendment through the regular application process.

Process for Self- Filing a Site Plan Amendment:

Proposed site plan amendments that would be eligible for self-filing are described in Table 2 below (the categories are: administrative name changes; buildings and structures; portable processing equipment; scrap storage areas; portable concrete or asphalt plants; stockpiles; internal haul road; entrances and exits; gates; fencing; importation of aggregates for blending; and recycling) .

The holder of a licence or aggregate permit must submit a form that includes the following information:

- the licence or permit number,
- a description of the change to the site plan, including reasons for the change, and
- confirmation that the amendment meets all eligibility criteria.

At the time of submitting the form, the revised site plan must also be submitted. This may include a submission of the entire site plan with replacement pages reflecting the self-filed amendment or a high-resolution scan of the site plan clearly showing the amendment. The revised site plan must include a record of the date of the self-filing with a description of the amendments made to the site plan at that time.

In addition to submitting the revised site plan to the ministry, the licence or permit holder must also provide a copy to the local municipality and the county/region in which the site is located. Ministry staff may audit the self-filled amendment to ensure compliance with the regulation. A copy of the MNRF confirmation of receipt of the self-filed amendment and any information documenting any required external approvals that may be necessary in order to be eligible for self-filing must be kept and provided to the ministry for inspection upon request. Any operator who provides incomplete, false or misleading information on a form or self-filed site plan or, who does not meet the eligibility requirements set in regulation, will be considered to be out of compliance and may be subject to enforcement actions.

It will be the operator’s responsibility to ensure that they have obtained and are in compliance with any other approvals or policies that may be applicable.”

The City supports simplifying processes where they would otherwise cause unnecessary burden. However, the City’s concern with the above-proposed amendment is enforcement: Who will ensure that an applicant meets the three tests for eligibility for self-filing? It is recommended that guidance in the proposed amendment confirm that a municipality receiving a copy of the amended site plan may, within a prescribed time, formally object to the Ministry that the amendment does not meet any one of

the three-part tests. This should trigger the requirement that the Ministry formally confirm or deny the eligibility of the amendment.

13. When Changes are Proposed to Come into Effect

The City notes that the Ministry has requested feedback on when the proposed changes should come into effect. The City does not support the “phased” approach proposed. Given the important protective purpose of many of these proposed changes, the City recommends that the regulation be adopted and applied on the earliest possible schedule.

Thank you for your consideration of our comments. The City looks forward to continuing to work with the Province on matters under the *Aggregate Resources Act*.

Sincerely,

Jamie Tellier, Acting Director
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City of Burlington