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July 13, 2023

Jamie Prentice
Ministry of Natural Resources and Forestry
300 Water Street, 2nd Floor
Peterborough, Ontario K9J 3C7

SENT VIA ERO POSTING

RE: ERO Posting 019-6767 – Proposed Changes to the Aggregate Resources Act, Ontario Regulation 244/97

Attached, please find City of Hamilton Staff Comments in response to ERO 019-6767 – Proposed changes to the Aggregate Resources Act, Ontario Regulation 244/97 to expand self-filing activities and a new policy regarding amendments to existing aggregate approvals.

Should you have questions or comments, please contact Charlie Toman, Program Lead – Policy Planning and Municipal Comprehensive Review, at 905-546-2424 Ext. 5863 or via email at Charlie.Toman@hamilton.ca.

Regards,

Christine Newbold
Manager, Sustainable Communities Section
Planning and Economic Development Department
City of Hamilton

CN:
Attachment

cc:
S. Robichaud, Chief Planner, Planning Division
C. Vanderperk, Director, Watershed Management
B. Hollingworth, Director of Transportation Planning and Parking

Environmental Registry of Ontario Posting 019-6767

Explanation of changes:

Under Ontario Regulation 244/97, extraction operations are eligible to self-file for prescribed changes to existing site plans for certain routine activities without requiring approval from the Ministry, subject to the conditions set out in the regulation. The Province is proposing to expand the list of routine activities eligible for self-filing under O.Reg 244/97.

The Province is also proposing a new policy with the requirements for applications to amend licenses, permits, and site plans under the *Aggregate Resources Act*. The new policy includes direction on the required submission materials for amendment applications, what amendments are considered significant changes versus changes that are not significant, implications of proposed amendment on existing license, permit or site plan conditions, the notification and consultation process and considerations for approving or refusing an application for amendment.

City of Hamilton staff comments on the proposed changes under the Aggregate Resources Act are outlined below.

Proposed Amendment to O/Reg 244/97 under the *Aggregate Resources Act*:

The proposed amendment to Ontario Regulation 244/97 aims to expand the list of eligible site plan changes that can be made without Ministry approval under specific conditions.

Importation of Recyclable Material:

The importation of recyclable aggregate material for licenses (private land only) is an activity proposed to be eligible for self filing. One of the criteria for self-filing is the municipal zoning specifically allows the recycling of aggregate materials or the zoning by-law allows for accessory uses such as recycling to occur on the site. The City requests clarification on the process for verifying this information with the municipality.

Another criterion is to add various requirements to the site plan with limitations on the activity including restrictions on the amount of recycled material that may be stored on site based on annual production. The City is supportive of including restrictions to ensure the importation of recyclable material is not misused but request clarification on any monitoring processes in place to ensure these requirements are complied with.

The City recommends the criteria that states asphalt shall not be stored not within 30 metres of a waterbody or within 2 metres of the established ground water table be revised to include reference to the location reported to the floodplain.

Entrances / Exits:

The relocation of an entrance or exit to the site is an activity proposed to be eligible for self-filing provided it does not conflict with any natural/cultural heritage features or buffers established in the approved Plan. The City of Hamilton requests clarification on the process for reviewing if this requirement has been met and recommend permission from the municipality or conservation authority be required.

The City has concerns with this proposal as there is no opportunity for the City to review and provide comments on the proposed relocation before the Amendment is accepted and approved to ensure the safe operation of the revised access point with adequate turning and acceleration lanes provided and there may be negative impacts to adjacent lands, planned municipal roadway projects in the area.

There is particular concern relating to the relocation of any entrances and exits on roadways identified for reduced load and / or roadways not identified as part of the truck route system which may not been engineered to sustain heavy loads thus posing a risk to the community. If road upgrades are required, these shall be at the cost of the proponent to facilitate the safe movement of goods.

Monitoring frameworks and community communication protocols shall be included as a requirement for the relocation of an entrance or exit, including adherence to applicable City by-laws. This framework shall identify the stringent enforcement actions through which concerns raised by the community or Applicant will be addressed, for example, working with a customer to evaluate whether the driver operational performance is deemed sufficient. More details on actions / procedures to resolve the issues should be established and shared with the City.

Portable Processing Equipment / Portable Concrete or Asphalt Plants:

The addition, removal or relocation of portable processing equipment necessary for crushing, screening and processing aggregates and of portable concrete or portable asphalt plants for public authority projects are activities proposed to be eligible for self-filing. One of the criteria is that the equipment or plant is not located within 30 metres of the boundary of the site or within 90 metres of any part of the boundary of the site that abuts land in use for residential purposes. The City requests clarification on the basis for requiring a distance separation of 90 metres between abutting residential uses. The City also requests clarity on what assurances are provided to ensure that any portable equipment will comply with the applicable D series land use compatibility guidelines.

For on-site processing practices, it is essential to address the handling of Dense Non-Aqueous Phase Liquids (DNAPLs) and ensure appropriate measures are in place to mitigate any potential risks associated with their use or storage.

Above-ground Fuel Storage:

The adding, removing or relocation of an above ground fuel storage tank is an activity proposed to be eligible for self-filing. The City recommends the criteria that states fuel tanks are not within 30 metres of a waterbody and not within 2 metres of the established ground water table be revised to include reference to the location reported to the floodplain.

Proposed new policy for amendment applications under the *Aggregate Resources Act*:

The proposed new policy provides clarity regarding the ministry decision-making process for amendment applications. The proposed policy enhances overall transparency by clearly defining what constitutes significant and non-significant amendments and providing guidance on notification and consultation requirements for specific amendments.

The policy states that amendments which substantially increase impacts or potential impacts will be considered significant changes in most cases. As there may be conflicting opinions on whether the proposed change results in an increased impact, the City recommends the Ministry provide clear direction on what materials are required to make this determination.

The policy also states that there may be circumstances where amendments in the list of changes that are not significant are determined by the ministry to be a significant change to operations or rehabilitation. The City requests clarification on the types of circumstances considered by the ministry for this determination.

The City does not have major concerns with the list of non-significant amendments but request clarification on the process for reviewing the listed circumstances for each type of amendment. For example, it is unclear who will review a proposed change in vegetation cover or tree species to confirm it is compatible with the proposed land use.

It is understood that amendment applications respecting changes to operations or the opening of a new area would be considered a significant change and therefore the applicant would have notification and consultation requirements. It is essential to notify the municipalities, particularly when there is an increase in actual water takings even if within the allowable Permit to Take Water (PTTW) limits. Often, PTTWs are approved many years in advance, and the actual water takings may be significantly less than initially granted. Therefore, even if the takings are within the PTTW limits if the actual takings change, the residents may be impacted.

Additionally, quarry extraction activities (i.e opening of a new area or face) are often planned several years ahead taking into account market demand. It is important to provide notification to stakeholders regarding the implementation timeline for such activities.

The City concurs with Section 5.3 of the proposed new policy that requires when changes are proposed to a site located within a Source Protection Area under the *Clean*

Water Act, 2006, the applicant must provide specific details on how the applicable source water protection policies will be adhered to including details for implementation of associated mitigation measures to ensure the protection and preservation of the source water.

The City recommends that Section 6 of the proposed policy be amended to include requirements for circulation of the amended final site plan once approved by the Ministry. It is recommended the final site plan be circulated to all relevant stakeholders and parties involved including the municipality for both significant and non-significant changes for record keeping purposes. Additionally, while it is understood landowners within 120 metres of a site will be notified and consulted on a significant change, it is recommended the landowners within the radius be provided with the final site plan for significant and non-significant changes.