Ontario

Applications to amend licences, permits, and site plans under the *Aggregate Resources Act*

1.0 Purpose

Amendments are changes to existing authorizations under the *Aggregate Resource Act*, and can include changes to:

- site plans;
- conditions of a licence, aggregate permit, or wayside permit; or,
- any other information normally included on licences, aggregate permits, or wayside permits (e.g., name of operator, address, etc.).

Amendments vary in type and complexity, ranging from administrative changes to significant changes to operations and rehabilitation. When proposed amendments would result in significant changes to operations or rehabilitation at an aggregate site, notification and consultation may be required.

The purpose of this policy is to:

- provide direction on applying for an amendment;
- guide Ministry of Natural Resources and Forestry (ministry) decision-making for reviewing an amendment application (including what constitutes a significant amendment); and
- provide direction on notification and consultation requirements for significant amendments.

2.0 Applying for amendments

Licensees and permittees may apply to the ministry to make an amendment to their licence or permit, to a condition of their licence or permit, or to their site plan.

2.1 Documentation and required information

Amendment applications and any additional information should be submitted online using the Natural Resources Information Portal. If web access is unavailable, the form and additional information may be submitted by mail to the ministry.

Applications for amendments must be submitted using the Amendment Form required by regulation.

The Amendment Form must include:

- a description of the proposed amendment(s); and,
- the reasons for the amendment(s).

A sketch or draft site plan showing the proposed changes must also be provided. The ministry will review the Amendment Form and accompanying documents and determine if additional information is needed to assess the application.

The information provided with an amendment application should clearly describe the proposed changes and identify any potential impacts resulting from the proposed changes. Measures to address impacts should be recommended where potential impacts are identified.

Additional information or reports may be requested by the ministry if the information provided does not clearly identify and address potential impacts. Applications will not be processed further until the requested information is received.

The types of information that may be requested by the ministry will fall into the same general categories as for new licence and permit applications but will be tailored to the proposed amendments and the specific areas where potential impacts are of concern. The scope of information requested will ultimately depend on the size and complexity of the proposed amendments. Complex applications may require technical reports or information similar to what is required for new licences and permits.

If an operator is unsure of what additional information may be needed, they can enquire with the ministry prior to submitting their application.

2.2 Amendments under section 13.1 and section 13.2

The *Aggregate Resources Act* and its regulation and standards include specific application requirements for two types of amendments:

i. going from above water table extraction to below water table extraction in a part of a site not approved to do so (s.13.1 and s.37.2); and

ii. expanding the boundary of a licence into an adjacent road allowance (s.13.2).

Applications for these amendments must include certain information and technical reports specified in the Aggregate Resources of Ontario Amendment Standards and must complete the notification and consultations requirements in Ontario Regulation 244/97 and the Aggregate Resources of Ontario Circulation Standards.

2.3 Amendments that do not require approval

Many amendments require ministry approval, however there are some small or routine types of site plan changes that can be made without ministry approval, provided specific conditions are met. These are called self-filed amendments.

Amendments that are eligible for self-filing and the requirements for self-filing are set out in sections 7.2 through 7.6 of Ontario Regulation 244/97.

As part of self-filing, the amended site plan must be provided to the ministry.

2.4 Amendments that require a new licence/permit application

Some changes cannot be processed by amending an existing licence, permit, or site plan. Instead, they require a new licence or permit application.

A new licence or permit application is required to:

- change a Class B licence to a Class A licence;
- expand a licence or permit boundary (except a licence expansion into a road allowance under s.13.2 of the Act); and
- change from a pit to a pit and quarry.

3.0 Ministry review of applications

Once the ministry receives an Amendment Form and supporting documents, it will review the application to determine if additional information or reports are required to assess the application.

3.1 Significant changes to operations or rehabilitation

Significant changes to operations or rehabilitation are changes that fundamentally alter operations at an aggregate site or how the aggregate site is to be rehabilitated. When proposed

amendments would result in significant changes to operations or rehabilitation at an aggregate site, notification and consultation may be required.

The ministry will determine if an amendment application proposes significant changes to operations or rehabilitation and will advise the applicant of any parties that must be notified of the application.

A key consideration for significance will be the magnitude of change to potential impacts that could result from the proposed amendments. Amendments that substantially increase impacts or potential impacts will in most cases be considered significant changes.

If the proposed amendments are related to activities that are already approved and will not substantially change the impacts that are already occurring or the risk of potential impacts that could occur, it is unlikely to be a significant change.

3.2 Examples of significant changes

Examples below are of changes to operations or rehabilitation that could be significant. Whether changes are significant will ultimately depend on the scale and magnitude of the changes, in particular changes to impacts.

In general, significant changes to the operations and rehabilitation will include those that substantially:

- increase the amount of material coming to or leaving the site
- increase the limits of extraction, including depth of extraction
- change or delay progressive or final rehabilitation, including final land use
- reduce protective setbacks or buffers (e.g., excavation within the distances specified in section 10.3(2) of O. Reg. 681/94 (Environmental Bill of Rights Act)
- change phasing of extraction or increase the amount of disturbed area at a site
- increase hours of operation
- increase the impacts or potential impacts to:
    - ground or surface water resources
    - natural heritage features
    - agricultural resources
    - cultural heritage resources

- increase amounts of noise or vibration generated
- increase the amount of dust generated
- increase impacts to nearby communities

3.3 Examples: changes that are not significant

The following examples would normally be considered as non-significant changes to operations or rehabilitation under the circumstances specified, provided no other concerns have been identified. There may be circumstances in which amendments in this list are determined by the ministry to be a significant change to operations or rehabilitation. This list of examples is provided as a guide and is not intended to be exhaustive or determinative.

Table: Rehabilitation changes

Amendment	Circumstances
Surrender of rehabilitated areas	Areas to be surrendered satisfy requirements of the rehabilitation plan.
Surrender of unextracted and undisturbed areas	Areas to be surrendered have not been extracted or disturbed.
Changes to final slopes or grading	Changes will use material that originated onsite (e.g., overburden/ unmarketable material)
Changes to a final rehabilitation plan to align with a final land use that is approved or will be approved by a planning authority (e.g., municipality, Niagara Escarpment Commission)	The applicant can demonstrate that the new final land use has or will be approved by the relevant land use planning authority. An example of this type of amendment is where the municipality has approved a plan of subdivision for an area that includes the pit/quarry.
Changes to vegetation cover or tree species	Provided that: • Vegetation/tree species is compatible with proposed final land use • Vegetation/tree species were not originally chosen to address concerns raised during a prior application process

Table: Operational changes

Amendment	Circumstances
Administrative changes to information on licences or permits	Administrative changes described in policy A.R. 2.02.02.
Removing common setbacks between existing operations	Operators (and landowners, if different) have consented in writing.
Excavation within setbacks/buffers	Excavation will not be within the distances to certain features/hazards specified in 10.3(2) of O.Reg. 681/94 (*Environmental Bill of Rights*)
Excavation within 30 m of a road or highway	Provided the applicant can demonstrate that the relevant road authority supports the change.
Increase to maximum annual tonnage of up to 5% of the original tonnage	Provided the maximum annual tonnage has not increased in the last 5 years. Note that for Class B licences the maximum tonnage cannot exceed 20,000 tonnes annually under any circumstance.
Temporary increase to maximum annual tonnage	The increase is not more than 10% of maximum annual tonnage for the site, or 100,000 tonnes, whichever is less. Duration - Where the increased tonnage will supply a contract for a municipal or provincial road project, the increase will be effective for the duration of the contract. Otherwise, the increase will be effective for a period of one year. Applicants making repeated requests for temporary increases may be directed by the ministry to apply for a permanent tonnage increase. Note - for Class B licences, the maximum tonnage cannot exceed 20,000 tonnes annually under any circumstance.
Importation of aggregate for blending or resale	Amount of imported material is not more than 20,000 tonnes or 20% of maximum annual tonnage for the site, whichever is less.
Importation of excess soil for required slope or grading	Provided it can be demonstrated that there is insufficient material available onsite. Where final slopes/grades

	requirements specified on the site plan are not specific (e.g., "minimum of"), sloping of 3:1 for pits and 2:1 for quarries will be assumed.
Lowering or removing berms	If the berm(s) are no longer needed for their intended purpose (e.g., noise attenuation or other impacts)
Raising or creating new berms	If required to attenuate noise or other impacts and does not require importation of material for their construction.
Removal of excess topsoil	Provided the applicant can demonstrate the topsoil is not required for site rehabilitation.
Changes to gates/fencing	Changes conform with minimum fencing/gate requirements in O.Reg. 244/97 (Aggregate Resources Act)
Shrinking or reducing limits of extraction, including raising final extraction elevation	Provided the total extraction area decreases, no new extraction areas are added to the extraction limits and the rehabilitation plan is not substantially changed.
Reducing hours of operation	Provided the new operating hours do not start earlier or end later in the day than the current operating hours.
Increasing hours of operation, within limits established by municipal noise bylaw	The applicant demonstrates that the changes comply with the local municipal noise bylaws.
Installing portable asphalt or concrete plants or portable processing equipment	Provided that: • Equipment is for the beneficiation of onsite material • Environmental Compliance Approvals, if required, have been obtained • Permitted by municipal zoning for site (e.g., as an accessory use) • Use of portable equipment will cease if substantial amount of material has not been extracted in the last 5 years

3.4 Changes to licence, permit, or site plan conditions

Conditions on licences and permits and notes or conditions on site plans can reflect the culmination of considerable review and discussion between applicants and other parties during the licensing and permitting process. Certain conditions may have been included on the licence or permit to address:

i. Concerns raised by the public, Indigenous communities, municipalities, or provincial or federal agencies;

ii. Recommendations from technical reports that supported an earlier application.

All implications of making changes to such conditions will need to be carefully considered and appropriate consultation with the original parties involved may be required.

3.4.1 Tribunal and Joint Board conditions

Conditions of a licence or site plan may have been added by a decision of the Ontario Land Tribunal or its predecessors, or by a decision of a Joint Board, to address issues heard by Tribunal or Joint Board as part of the hearings process. Requests to change any of these types of conditions will be considered only in exceptional cases and where other means of addressing an issue are not feasible.

Other conditions on the licence or site plan may relate to issues heard at the Tribunal or Joint Board, but the conditions were not specifically required by the Tribunal or Joint Board. All implications of making changes to such conditions will need to be carefully considered and appropriate consultation with the original parties involved may be required.

3.4.2 “Prescribed Conditions”

Between June 1997 and April 2021, all new licences and permits were subject to a mandatory set of conditions, known as “Prescribed Conditions”. These conditions were set out in the Aggregate Resources of Ontario: Provincial Standards, Version 1.0, and were attached as a schedule to the licence or permit when the licence or permit was issued. Subsequently, they were included in the Regulation and apply to all licence and permits issued after April 1, 2021. In general, the ministry will not consider changes to these mandatory conditions. Licensees or permittees facing extraordinary situations related to these conditions should contact the ministry to discuss possible solutions.

3.5 Site inspection

The ministry may, at its discretion, conduct a site inspection at any time during the amendment application process.

4.0 Notification and Consultation Process

When proposed amendments would result in significant changes to operations or rehabilitation at an aggregate site, notification and consultation may be required. Notification and consultation provide an opportunity for the notified parties to explain how their interests may be impacted by the proposal, and to suggest ways to mitigate the impacts from the proposed changes.

Notification and consultation under the *Aggregate Resources Act* is a proponent-led process. The applicant (i.e., proponent) is responsible for notifying parties to be consulted and responding to concerns or issues that they may have. The ministry will identify the agencies to be notified and, if applicable, will inform the applicant that landowners must also be notified. It will be the applicant's responsibility to determine the names and addresses to send the notices.

Posting applications for significant amendments on the Environmental Registry for public comment may also be required. Regulations under the *Environmental Bill of Rights*, 1993 determine when applications must be posted to the registry.

4.1 Notification package

If notification and consultation are required, the ministry will advise applicants in writing of the parties to be notified. Regulations require that the applicant serve notice to the parties identified by the ministry using registered mail, courier, or personal service.

The applicant will provide notified parties with the final version of the Amendment Form. Any other documents supporting the application, such as the sketch or draft site plan or reports, do not need to be circulated with the Amendment Form, however notified parties must be made aware that these additional documents are available at their request.

4.2 Notified parties

Parties to be notified may include government ministries, agencies or municipalities that have a direct interest in the proposal on account of their mandate or subject matter expertise (see Table below).

Notified parties may also include neighboring landowners (within 120 m of a site) or prior commentors or objectors, depending on the proposed changes. Consideration for whether notice

will be given to landowners will be based primarily on the potential for the landowners to experience significant change in impacts. In general, only landowners that may be directly impacted by the proposed changes will need to be notified.

If an applicant proposes significant changes to any aspect of a licence, permit or site plan that was originally established to satisfy the comments or objections of a person or agency, the ministry will consider and, where appropriate, require that the applicant attempt to notify and consult with the same parties.

When it is not practical or possible to give notice to a prior commenter or objector, alternatives may be considered. For example, where a neighboring landowner was originally notified but has since moved, the ministry may require that notice be sent to the current landowner.

Table: Examples of Ministry/Agency/Municipality Notification

Agency/Ministry	When notification may be required
Local and upper tier municipality where the site is located	Significant amendments that relate to municipal interests or jurisdiction, including but not limited to: • planning and land use • traffic and haul routes • natural heritage • source water protection • community impacts
Ministry of the Environment, Conservation and Parks	Significant amendments with potential impacts related to: • noise, dust, or vibration • surface or groundwater resources • endangered or threatened species Significant amendments at an aggregate site within 120m of a provincial park or conservation reserve.
Ministry of Transportation	Significant amendments that may have potential to impact provincial roads or highways.
Ministry of Tourism, Culture & Sport	Significant amendments that may have potential to impacts archaeological heritage, cultural heritage landscapes, or built heritage.

Ministry of Agriculture, Food & Rural Affairs	Significant amendments to a rehabilitation plan that currently requires the site to be rehabilitated to an agricultural land use, if: i. the proposed amendments would change the final agricultural land use to a non-agricultural land use; or ii. the proposed amendments would result in the site not being restored to the same average soil quality or agricultural capability.
Ministry of Mines	Significant amendments to aggregate permits that may have potential to impact rights holders under the *Mining Act*.
Conservation Authority with jurisdiction over the area	Significant amendments that may have potential to create negative impacts related to flooding, erosion, or other natural hazards.
Niagara Escarpment Commission	All amendments for sites within the Niagara Escarpment Planning Area, unless the Niagara Escarpment Commission has already approved the amendments.
Fisheries and Oceans Canada	Significant amendments with that may have potential to impact fish habitat.
Utility owners	Significant amendments that may have potential to impact a utility corridor on or within 120m of the site.
Other Crown land users or occupiers (aggregate permits only)	Significant amendments that may have potential to impact other uses/users or occupations/occupiers of Crown land.

4.4 Impacts considered under other regulatory processes

Amendments may require approvals under other legislation, in addition to their approval under the *Aggregate Resources Act*. To avoid duplication of processes under different regulatory frameworks, the ministry will consider the extent to which impacts or concerns with the changes have been considered and addressed through other approvals. Where other approvals processes provided opportunity for public input and have substantially addressed any impacts or concerns, additional notification and consultation under the *Aggregate Resources Act* may not be required.

4.5 30-day comment period

Under Ontario Regulation 244/97, notified parties are required to send comments to the applicant and the ministry within 30 days of receiving notice. Notice sent by registered mail or courier is deemed to be received 5 days after it is mailed or received by the courier for delivery. Comments are deemed to be sent once mailed or received by a courier for delivery. Comments that are not sent within the 30-day comment period may not be considered.

4.6 Addressing comments

Applicants are expected to make reasonable efforts to consider and, where feasible, address comments received from notified parties during the 30-day comment period. Following the comment period, the applicant will provide the ministry with a description of the steps taken to address the comments received. An explanation should be provided for comments that could not be addressed.

4.7 Environmental Registry

Regulations under the *Environmental Bill of Rights, 1993* require that the ministry post certain amendments to licences and licence site plans to the Environmental Registry for comment. Amendments to licences or licence site plans will typically be posted for 30 days. Ideally, the 30-day posting on the Environmental Registry will be same 30-day period given to notified parties. However, where this is not possible, the ministry will align the two 30-day periods as closely as possible. Comments submitted through the Environmental Registry process will be considered by the applicant.

5.0 Considerations

When deciding to approve or to refuse an amendment application related to a licence or licence site plan, the ministry will use matters outlined in section 12 of the *Aggregate Resources Act* as a guide, recognizing that not all considerations will be relevant in all circumstances. Other relevant considerations may also be identified by the ministry based on the specific details of an amendment application.

A similar approach (using section 12) will be taken when deciding to approve or to refuse to approve an amendment application for an aggregate permit or aggregate permit site plan. In addition, the ministry may refuse to approve changes to an aggregate permit or aggregate permit site plan if doing so would be considered by the ministry to be contrary to the public interest.

When deciding to approve or refuse an amendment to a wayside permit or a wayside permit site plan, the matters in section 26 of the *Aggregate Resources Act* will serve a guide.

5.1 Planning and land use

Ministry decisions to amend existing approvals under the *Aggregate Resources Act* are not prescribed under PPS and provincial plans. However, when processing amendments under the Act, MNRF will have regard to the PPS and/or policies contained in the relevant provincial plans.

5.2 Sites in the Niagara Escarpment Planning Area

If a site is located in the Niagara Escarpment Planning Area, the applicant should inquire with the Niagara Escarpment Commission (NEC) to determine whether a development permit is required. The ministry will not approve an amendment in the Niagara Escarpment Planning Area without either a permit from the NEC or confirmation that a permit is not required.

5.3 Source water protection

If the proposed site is in a Source Protection Area under the *Clean Water Act*, *2006*, and the applicant is proposing changes that are subject to mandatory policies in the applicable source protection plans, the applicant must provide details on how relevant source water protection policies will be followed and how associated mitigation measures will be implemented.

5.4 Comments received

The ministry will consider the nature and scope of the comments received by the applicant and whether they are reasonable and/or constructive. The ministry will also consider if the applicant was reasonable in their efforts to consider and, where feasible, address the comments. Comments that are unrelated to the proposed amendments or that do not specifically address the proposed amendments may be excluded from consideration. Similarly, comments that appear not to be made in good faith, are frivolous or vexatious, or are for the purpose of delaying the application process, may not be considered.

5.5 Duty to consult

Under section 3.1 of the *Aggregate Resources Act*, the ministry is required to consider whether adequate consultation with Indigenous communities has been carried out before exercising any power under the Act that has the potential to adversely affect Aboriginal or treaty rights. The ministry may delegate aspects of consultation with Indigenous communities to applicants to understand any potential adverse impacts on asserted or established Aboriginal and treaty rights.

The ministry will assess the adequacy of consultation efforts and determine whether additional consultation is required or whether any accommodation measures should be implemented to avoid, minimize or mitigate potential adverse impacts.

The notification and consultation requirements described in this policy are separate and distinct from the Crown's constitutional obligation to consult with Indigenous peoples. The ministry will continue to assess whether proposed amendments have the potential to adversely impact Aboriginal or treaty rights and will consult with Indigenous communities where required. Consultation with Indigenous communities may be required in addition to any public notification or consultation that are required by this policy and may be required in circumstances where public notification or consultation are not.

5.6 Refusing an amendment application

If the ministry refuses an amendment application, reasons for the refusal will be provided to the applicant. The resubmission of an application that was previously refused by the ministry will be treated as a new application unless stated otherwise by the ministry.

Decisions of the ministry are final. However, if the ministry refers an application under section 13.1 of the Act (lowering depth of extraction below the water table) to the Ontario Land Tribunal, the applicant is entitled to a hearing. The Tribunal will then determine the issues specified in the referral.

6.0 Submission of the final site plan

If the ministry approves an amendment application that requires only simple changes to a site plan, the changes may be made by hand on the site plan and signed by the ministry approver.

If the changes are not simple, the applicant must reproduce the site plan reflecting the approved changes and submit the final version to the ministry. The applicant cannot implement the approved changes until the final site plan has been accepted by the ministry.

Parts of the site plan that must be redrawn are required to be redrawn to the applicable site plan standards. If the site plan is for a Class A licence or an aggregate permit that would authorize more than 20,000 tonnes annually, the final site plan must be certified by a professional that meets the criteria set out in 0.2(3) of O.Reg. 244/97.

7.0 Future changes to this policy

Changes or clarifications to this policy may be approved as an addendum to this document or be issued as a separate 'policy bulletin', the content of which may be incorporated into this policy document at a later date. Changes may undergo public consultation, depending on their nature and extent.