November 4, 2019 **BY EMAIL**

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

Dear Mr. MacDonald,

RE: ERO NOTICE #019-0556 – PROPOSED CHANGES TO THE *AGGREGATE RESOURCES ACT* AND ONTARIO REGULATION 244/97

I am writing to provide comments to the Ministry of Natural Resources and Forestry (MNRF) in relation to the proposed changes to the *Aggregate Resources Act* (*ARA*) and the general regulation under the *ARA* (O.Reg.244/97).

In the Environmental Registry notice1 for these wide-ranging proposals, the MNRF states that the changes to the current *ARA* regime are being proposed in order to "reduce burdens for business while maintaining strong protection for the environment and managing impacts to communities."
1 See https://ero.ontario.ca/notice/019-0556.

However, it seems the proposed *ARA* changes reveals that this initiative is unlikely to maintain "strong" environmental protection or result in appropriate management of community impacts. Also, I fundamentally, object to the erroneous characterization of current *ARA* requirements as burdensome "red tape" that should be cut in order to benefit aggregate producers across Ontario.

Accordingly, for the reasons outlined below, I recommend that the key *ARA* proposals should not proceed in their current form, and they should instead be withdrawn, deleted or substantially re-written.

As far as I am aware, aggregate operations (e.g. pits and quarries) cannot be characterized as small-scale, temporary or environmentally benign land uses. To the contrary, the extraction, processing and transportation of aggregate materials (and other on-site ancillary activities such as dewatering, fuel storage or asphalt production) are significant, long-term and physically intrusive operations that can result in serious environmental and nuisance impacts (e.g. noise, dust, increased truck traffic, and adverse effects upon water resources, wildlife habitat, watersheds, infiltration and agricultural lands). Aggregates also are not renewable resources and once they are gone these cannot be replaced.

Similar views have been expressed by the former Environmental Commissioner of Ontario (ECO) in her annual reports to the Ontario Legislature. For example, in her 2017 environmental protection report, the independent ECO found that: The process of both siting and approving the operation of pits (sand and gravel) and quarries (solid bedrock material such as limestone and granite) is often highly controversial and divisive for many local communities. Few people want to live beside an aggregate operation or its haul roads as they typically generate dust and noise and increase truck traffic. Aggregate operations can also impact local water systems, wildlife, natural habitats, and farmland. In addition, as pits and quarries often cluster together in groups – where nature deposited the most desirable types of rock – cumulative environmental effects arise.

This ECO report noted that there are over 6,000 approved pits and quarries across the province, most of which are concentrated on private lands in southern Ontario where the most aggregate is consumed and where land use development pressures are the greatest. The ECO's analysis also confirmed that even when public objections have resulted in MNRF referrals of licence applications to public hearings under the *ARA*, "approvals are rarely denied completely."

More importantly, despite the MNRF's revisions to the *ARA* regime in 2017, the ECO identified the need to undertake further measures to "lighten the environmental footprint of aggregates in Ontario."

Unfortunately, the *ARA* changes now being proposed by the Ontario government are not aimed at addressing the ECO's well-founded concerns and sound recommendations for long overdue reform. Instead, the current *ARA* proposals are moving in the opposite direction of the ECO recommendations by proposing to modify (or remove) key components of the current provincial and municipal framework that attempt to prevent, minimize or mitigate the adverse effects and environmental risks associated with aggregate production.

Contrary to industry or governmental claims, these existing safeguards are not "red tape" nor do they impose an undue burden to the aggregate industry by wholly preventing or unreasonably constraining aggregate extraction. In fact, the record amply demonstrated that new or expanded aggregate operations are readily approvable in Ontario, particularly since they receive preferential treatment in the Provincial Policy Statement issued under the *Planning Act*.

The 2017 ECO report identified serious shortcomings in the existing ARA regime and offered recommendations for long overdue reform.

Unfortunately, Ontario's proposed ARA revisions do not implement the ECO's recommendations, and instead outline a number of questionable changes, such as:

- revising the application process for aggregate operations that propose to excavate below the water table;
- ousting the application of municipal zoning by-laws relating to the depth of aggregate extraction;
- specifying that municipal zoning on Crown land does not apply to aggregate extraction;
- restricting the ability to impose ARA conditions that require agreements between municipalities and aggregate producers regarding haulage routes;
- streamlining compliance reporting by aggregate operators;
- allowing aggregate operators to "self-file" changes to site plans for unspecified "routine activities"; and
- enabling unspecified "low risk" activities to occur without an ARA licence if regulatory conditions are followed.

In summary, the Ontario government appears poised to revise key provisions in the PPS and the ARA that have traditionally helped to protect communities and the environment. However, the province has not provided any compelling evidence-based justification for these changes.

RECOMMENDATIONS 1:

The provincial government should immediately develop and consult Ontarians on appropriate *ARA* changes that decrease aggregate demand, strengthen MNRF powers to protect the environment, and improve rehabilitation rates through better enforcement, as described in the 2017 ECO report.

RECOMMENDATION 2: Environmental Registry notice #019-0556 should be re-posted to establish a further 45 day public comment period, and should be amended to expressly indicate that Schedule 16 of Bill 132 contains the specific text of the *ARA* amendments proposed by the provincial government.

RECOMMENDATION 3: The proposed *ARA* amendments in sections 2, 3, 11 and 18(2) of Schedule 16 in Bill 132 should not be enacted by the provincial government.

RECOMMENDATION 4: Before the provincial government proceeds with any of its proposed regulatory changes, the draft text of the actual regulatory amendments must be posted on the Environmental Registry for public review and comment in accordance with Part II of the *EBR*.

CONCLUSIONS

For above reasons, it seems that the Ontario government's proposed changes to the *ARA* and O.Reg.244/97 fail to address long-standing concerns about the adverse environmental, public health and socio-economic impacts of aggregate extraction. Instead, the proposed changes are clearly aimed at making it easier to establish or expand pits and quarries across Ontario.

Further, in my opinion, the Ontario government has not substantiated the alleged need for its proposals by providing credible, objective and evidence-based justification for these controversial legislative and regulatory changes.

These changes do not constitute sound environmental or land use planning policy, and they virtually guarantee the continuation – if not intensification – of intractable land use disputes over new or expanded aggregate operations and their attendant impacts, particularly in relation to water resources and entire ecosystems.

Yours sincerely

cc. Mr. Jerry DeMarco, Commissioner of the Environment