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**Re: Proposed Amendments to the Aggregate Resources Act (ERO #019- 0556)
and Bill 132 – (Schedule 12) – the proposed Better for People, Smarter for Business Act,
2019 (ERO #019-0774)**

Thank you for the opportunity to comment on the proposed amendments to the *Aggregate Resources Act* (the Act) and the proposed regulatory changes under the Act. This response letter contains comments provided by Regional of Peel staff for consideration by the Ministry of Natural Resources and Forestry (MNR). Regional staff has provided comments on the proposed amendments and additional technical comments related to fees, site rehabilitation, excess soil and aggregate recycling. Please be advised that Regional Council endorsement of these comments is pending. Following endorsement by Regional Council a copy of the Regional Council Resolution will be sent to you for further consideration.

Region of Peel Staff Comments on Proposed Aggregate Resources Act Changes

- 1. Bill 132 revisions to Section 12 of the Act proposing to remove the ability of the Minister or the Local Planning Appeal Tribunal (LPAT) to have regard to road degradation that may result from proposed truck traffic to and from the site.**

Where circumstances warrant, it would be appropriate that licence conditions include a requirement that the adequacy and safety of the haul route and site access be confirmed prior to the commencement of operations that remove aggregate from a site, including requirements that road improvements be implemented prior to operations. Currently municipalities have the ability to enter into agreements with aggregate operators to ensure the adequacy of proposed haul routes and site access and other conditions related to the municipal road right of way.

The proposed changes to Section 12 should be removed from the Bill or clarified to enable the Minister or LPAT to have regard for the adequacy and safety of haul routes and site access and impose appropriate licence and site plan conditions to require improvements where circumstances warrant if this is not the intent of the proposed changes. The ability to include conditions on site plans referencing agreements should be maintained in the legislation and implementing licencing framework. Further clarification regarding the intent of the proposed change is needed.

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Recommendations:

- That Section 12, Clause (1) (h) of the Act be retained to enable the Minister and LPAT to have regard to the proposed haul route and impact of truck traffic to and from the site.
- That the proposed exception to Clause (1) (h) as proposed be removed from the Bill or revised to clarify that the limitation of the Minister and LPAT regarding degradation of the roadway does not include consideration of the adequacy or safety of the haul route or site access.
- That the legislation continues to allow municipalities to enter into agreements with aggregate producers regarding cost sharing of required road improvements when circumstances warrant.

2. Bill 132 revisions to add Section 12.1 to the Act restricting zoning by-laws from regulating the depth of extraction.

Regional staff acknowledge the need for clarification of municipal zoning authority with respect to the ARA to regulate below water table extraction and has no objection to the regulation of a specified depth of extraction below water table under the ARA. However, Regional staff does not support limiting municipal land use planning and zoning authority to regulate whether licenced operations may extract above or below water table.

Established policies in the Town of Caledon Official Plan allow new operations or expansions to existing operations to be designated either Extractive Industrial A Area for above water table extraction or Extractive Industrial B Area for below water table extraction. Policies require an official plan and zoning by-law amendment to change an extractive operation from Extractive Industrial A Area to Extractive Industrial B Area. The ability to require a *Planning Act* approval enables municipalities to request and review appropriate studies, determine whether impacts to water resources are acceptable and approve or refuse an application to extract below water table if impacts are deemed unacceptable. This authority should be maintained and not be limited by the proposed changes to the ARA.

Recommendation:

- That proposed Section 12.1 making zoning by-laws that regulate the depth of extraction inoperative be removed from Bill 132 or that the provision be clarified to enable municipalities to continue to permit or prohibit above or below water table extraction through municipal official plans and limit the restrictions on zoning by-laws in the ARA to the regulation of a specified depth of extraction only.

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- 3. Bill 132 revision to add Section 13.1 to the Act setting out the enabling provisions and process for existing licences to be amended to allow extraction below the water table including the ability to request the Minister to refer applications to the LPAT.**

The ability to request the Minister to refer amendments to existing licences requesting extensions below water table to the LPAT is an important addition to the legislation.

Implementing regulations should prescribe appropriate requirements to notify adjacent landowners, municipalities and agencies when requests to amend existing licences and site plans are submitted to the MNRF and prior to the Ministry's decision on the application.

The proposed changes to the Act should be further strengthened through corresponding revisions to the ARA policy framework standards, policies and procedures to update required hydrogeological study requirements for extraction below water table. Improvements to study standards are needed to ensure that impacts to water resources are understood and that water resources are protected. Recommended study terms of reference should include requirements for cumulative impact assessment where cumulative impacts to water resources are a relevant consideration (e.g. in areas where aggregate operations are concentrated or in subwatersheds where water budget studies indicate stressed water resource conditions). Application requirements, in addition to process improvements, should be required to meet rigorous study standards.

This proposed change addresses the Region's previous recommendation to eliminate the permissions to allow applicants to seek approval to extract below water table through the current site plan amendment process. The proposed changes enhance process accountability, transparency and integrity of the ARA's licence amendment process.

Recommendation:

- That the Province strengthen and update hydrogeological study requirements contained in the implementing Provincial Standards, Policies and Procedures for Aggregate Resources governing the regulation of existing and new extraction operations to ensure rigorous study standards are implemented in the review of licence amendments proposing below water table extraction.**

- 4. Bill 132 revision to Section 34 of the Act to clarify that municipal zoning authority does not extend onto Crown Lands.**

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Regional staff is not opposed to MNRF's proposed clarification that municipal zoning authority does not extend onto Crown land. This is consistent with section 71 of the *Legislation Act* which provides that the Crown is not bound by an Act unless expressly stated. However, subsection 6(2) of the *Planning Act* requires a ministry to consult with and have regard for the established planning policies of the municipality before carrying out or authorizing any undertaking that the ministry considers may directly affect the municipality. Regional staff recommend that this *Planning Act* provision be respected and reflected in the aggregates policy framework.

Recommendation:

- **The Act should be amended, as proposed, to clarify municipal zoning authority on Crown lands.**

5. **Bill 132 revisions to add a new Section 13.2 to the Act which requires licensees to apply for a new licence when expanding the boundary of an operation, except when the expansion is wholly within a road allowance directly adjacent to the boundary of the subject area.**

Regional staff supports the proposed changes to the Act to require an applicant to apply for a new licence when expanding the boundary of an operation. The Ministry is encouraged to provide the same level of rigor in the review and consultation of applications for an expansion, as is required with licence applications for a new site. This ensures an opportunity for municipal participation in the licencing process for expansions to existing operations.

Regarding access to resources located within an adjacent road right of way, staff do not object to a streamlined application process to permit expansions through a licence and site plan amendment process. Regional staff recommend that the prescribed conditions through which applications will be considered have regard to official plan policies and zoning designations.

Recommendation:

- **That the ARA policy framework's standards, policy and procedures considering applications for extraction within adjacent road rights of way be clarified to ensure that municipal official plan policies and zoning is in place.**
6. **Bill 132 revision to add Subsection 13 (3.2) to the Act providing flexibility to permit self-filing of routine site plan amendments without the need for the Minister's approval.**

It is unclear what types of operations would be considered "routine site plan amendments". Previously through Bill 39 – *The Aggregate Resources and Mining Modernization Act* (Bill 39), the Province proposed a permit by rule approach to

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exempt low risk activities from the licencing process if certain conditions were met. At that time, the Region requested clarification of the conditions and circumstances under which self-filing would be permitted, the limiting of self-filing to only minor amendments, and to be consulted on the scope of amendments to be permitted through self-filing. Further consultations on the criteria for allowing self-filing of routine site plan amendments is requested.

Recommendation:

- **That municipalities be consulted on the criteria and scope of site plan amendments that may be permitted through self-filing.**

Regional Staff Comments on Proposed Regulatory Changes

1. Enhanced Reporting on Rehabilitation

Regional staff supports detailed reporting on rehabilitation in both the compliance and inspection process. Enhanced reporting through the annual compliance report process would encourage greater efforts to complete rehabilitation works. Through the Bill 39 process, the Region recommended inspection reports include details on rehabilitation compliance. This would allow the findings of an inspectors report to be used as a tool to communicate actions or measures that could be taken to remedy site plan contraventions related to rehabilitation.

Recent changes to the Provincial Policy Statement and Greenbelt Plan encourage comprehensive rehabilitation planning to ensure rehabilitation on adjacent sites are coordinated and complementary. The MNRF is encouraged to require operators to report on efforts to support comprehensive rehabilitation planning where the municipality has approved a Comprehensive Rehabilitation Master Plan.

2. Self-filing for Changes to Existing Site Plans for Routine Activities

The MNRF should specify under what circumstances self-filing would be permitted and provide an opportunity for municipal engagement during the process to develop regulations prescribing the amendments to site plans that may be registered through this process.

3. Management of Low-risk Activities

In principle, streamlined permissions and approval requirements for low-risk activities are supported. Regional staff encourages the Province to undertake further consultations on the criteria for allowing low risk operations to proceed without a licence and clarify the requirements for when a pit or quarry operation will be allowed without a licence.

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4. Compliance Reporting Requirements

Regional staff is supportive of streamlining compliance reporting requirements provided that reporting details continue to include information necessary to document compliance with site plan conditions. The Region currently receives and referenced these reports to monitor operations, in particular, the progress of rehabilitation at sites. However, compliance reporting is one component of monitoring and should not be a substitute for aggregate operation inspections. The Province should address the need for more MNRF aggregate operations inspectors and the need for more frequent inspections and reporting on inspections.

5. Reviewing Application Requirements for New Sites, Including Notification and Consultation Requirements

Regional staff supports the review and updating of application requirements for new sites and recommends that revisions ensure that regulations enable appropriate study standards and requirements to be prescribed and required in the licencing process. Notification and consultation requirements should ensure there is clear communication and notification to municipalities and the public with sufficient timelines for review and comment on application proposals.

This process should also review and comprehensively update the study requirements prescribed in the ARA policy framework's standards, policies and procedures to include current best practices, including updating water and air quality impact assessment requirements.

One of the purposes of the Aggregate Resources Act is "to minimize adverse impacts on the environment in respect to aggregate operations". With respect to air quality, the Region encourages both the MNRF and the Ministry of the Environment, Conservation and Parks to assess and monitor the cumulative impacts of current and proposed aggregate facilities on the local airshed. MNRF should consider requiring all aggregate operations, regardless of the type of extraction, or annual tonnage of extraction, to submit an air quality study, including an assessment of cumulative impacts, as part of their licence application. The Region encourages the consideration of cumulative effects to be mandatory for all applicants.

The province should also consider requiring continuous on-site monitoring of air quality (at representative locations along the boundaries of the quarry and potentially on the immediate road(s) where trucks will enter and exit the quarry from) during the operation of the pit or quarry, similar to the water quality monitoring which is currently undertaken. This would allow the operator to immediately implement a mitigation plan.

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Previously through Bill 39 several clauses such as section 12.2, which require the licensee to serve a copy of the licence and a copy of the final site plan to the clerk of each municipality in which the site is located, were proposed to be repealed. The Region requests assurances that decisions, licence information and notices to municipalities will continue to be maintained and provided for transparency. If removed from the legislation, the Ministry should ensure that proper procedure guidance is contained with the Standards, Policies and Procedure Manual. MNRF should provide simpler access to licence and site plan documents electronically.

6. Clarifying Requirements for Site Plan Amendment Applications

The review and clarification of requirements for site plan amendments should ensure that regulations enable appropriate study standards and requirements to be prescribed and required in the site plan amendment process. Notification and consultation requirements should ensure there is clear communication and notification to municipalities and the public with sufficient timelines for review and comment on major site plan amendment proposals.

Regional Staff Comments on the Additional Considerations

1. While no changes to aggregates fees are being proposed at this time, the Province is also interested in hearing feedback on this matter.

Regional roads are often designed for goods movement and used as haul routes. The increasing costs associated with providing this infrastructure should be considered if the Ministry is intending to further review the fee structure. Municipal associations such as the Top Aggregate Producing Municipalities of Ontario (TAPMO) and the Association of Municipalities of Ontario (AMO) have advocated for a review of the current financial impacts of aggregates on municipal infrastructure and associated fee payments. The province should continue to undertake discussions with these organizations to determine if further review of licence fees should be undertaken and the recommended scope and process for the review.

Previously, the Region of Peel recommended a review of fees to fund the preparation and implementation of comprehensive master rehabilitation plans. It is also recommended that the province consider the ability to collect and apply new special purpose fees for this purpose.

Further Considerations

1. Rehabilitation

The Province should consider dedicating additional resources to improve enforcement of the ARA to encourage progressive rehabilitation. Although

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aggregates are considered an interim use, the duration of aggregate operations often extend over decades. There is a need for increased provincial oversight, inspection, review and enforcement of aggregate licences and site plans to ensure that an appropriate balance of progressive rehabilitation and extraction is achieved throughout the lifetime of a site from the commencement of the operation to the eventual surrender of the licence.

The Region encourages the Province to acknowledge the role and potential benefit of comprehensive rehabilitation planning in the ARA's regulatory framework, including a role for the Ministry to engage in and support comprehensive rehabilitation planning. Comprehensive rehabilitation planning will occur over a broad geographical area, and while the Provincial Policy Statement, 2014 applies to future licence applications within a comprehensive rehabilitation plan area, municipalities may wish to require participation from existing operators. Municipalities will require the support of the MNRF in order to allow existing rehabilitation provisions of licences to be amended in order to conform to a municipal comprehensive rehabilitation master plan.

2. Excess Soil

Rehabilitation of pits often involves importing clean fill. Regulation, oversight and enforcement by the Province for managing fill from construction projects is required. Further, complementary environmental regulation must be integrated with the ARA to ensure the proper management of fill. The Province is encouraged to ensure that there are no contradictory clauses between the definitions of aggregate, earth and topsoil versus soil under the proposed new On-Site and Excess Soil Management regulation.

3. Aggregate Recycling

The conservation of mineral aggregate resources, including through the use of accessory aggregate recycling facilities within operations, wherever feasible, is a requirement of the Provincial Policy Statement, 2014. While the Region supports aggregate recycling, the locating of accessory aggregate recycling facilities within licenced operations can have the unintended consequence of delaying the surrender of the licence for pits and quarries when extraction is complete, thereby delaying rehabilitation. There are also concerns that uncontrolled importation of materials can have unintended consequences including the potential to contaminate groundwater and sources of drinking water. The Province should ensure that aggregates recycling and rehabilitation policies address these concerns with provisions in licences and site plans to require appropriate siting and monitoring of recycled aggregate materials and provisions to require the phasing out of aggregate recycling operations and stockpiles when extraction is complete prior to the surrender of licences.

Conclusion

I would like to thank you for the opportunity to provide the Province with comments on the proposed amendments to the *Aggregate Resources Act*. The proposed amendments will strengthen the aggregate resources policy framework and have direct benefits to municipalities.

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Sincerely,



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