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SUBMISSION TO THE STANDING COMMITTEE

ON

RESOURCE DEVELOPMENT

CONCERNING

BILL 127

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I BACKGROUND

Since its formation as an independant non-profit organization in 1976, the Foundation for Aggregate Studies (FAS) has come to represent the concerns of more than 25,000 citizens and municipal officials from across the province in the growing controversy over the management of Ontario's mineral aggregate resources. Examples of the impact of this industry are clearly demonstrated, when one looks at the facts:

* There are at least 20,000 acres of abandoned pits and quarries in Southern Ontario.
* There are 54,500 acres already licenced in Central Ontario region.
* Increased truck traffic.
* Safety.
* Dust, noise and water pollution.
* No environmental safeguards.
* Destruction of Class I - IV agricultural land.
* Destruction of scenic areas, e.g. Niagara Escarpment.
* Erosion of local decision-making powers.

Based on extensive research into all aspects of aggregate production and its in-house expertise FAS has effectively participated by advancing proposals to resolve this debate. FAS publishes a quarterly review of the aggregate scene, a bi-monthly digest of legal actions, and maintains the only public information resource centre of its kind in Canada. A Municipal Advisory Service has also been developed in response to specific requests from local governments and citizens groups. Most recently, FAS has been awarded a federal research contract for a major study of data on the conflict between agriculture and aggregate extraction.

In carrying out this programme, FAS has catalogued the deficiencies of existing provincial legislation and regulations along with the social and environmental abuses they have allowed over the past decade. This inventory has been widely circulated within the government and opposition parties in our report Summary of Studies and Recommendations.

Our experience to date has confirmed time after time the need to circumscribe provincial aggregate production with new provincial legislation and supporting policies which embody the following objectives:

(a) to safeguard prime foodland and other sensitive environments and heritage resources;

(b) to insure that existing and abandoned pits and quarries are rehabilitated to their former land use or to uses of comparable quality;

(c) to guarantee Ontario communities reasonable control over mineral aggregate extraction, and on-going participation in all stages of related provincial policy development;

(d) to provide strong incentives for the aggregate industry to efficiently exploit the aggregate reserves in less environmentally and socially sensitive areas of the Province; and

(e) to insure that the aggregate industry is held responsible for paying the full social and environmental costs of its operations.

It is with this need in view that the Foundation and many other organizations from which you will hear have pressed long and hard for the replacement of the Pits and Quarries Control Act of 1971 and have followed with great interest the development of Bill 127, the proposed Aggregates Act. We are pleased to have the opportunity to set out our views on the Bill at this critical stage in its review. We also trust that the concerns expressed on behalf of our broad constituency will receive serious consideration throughout the Committee's deliberations.

II GENERAL COMMENTARY: BILL 127

We have addressed our remarks to the broader, philosophical aspects of the proposed Aggregates Act, and will be presenting this Committee with our proposed amendments in the form of a joint submission with Canadian Environmental Law Association (CELA) on February 5, 1980. This joint submission will include specific amendments to clauses of Bill 127 which will serve to implement our broad recommendations herein.

From our very first reading of Bill 127, it was clear that little ground has been gained since passage of the Pits and Quarries Control Act, 1971. In fact, a lot of ground has literally been lost. Despite an unending series of local conflicts over the location and impact of aggregate extraction and growing consensus on the need for new provincial legislation which conforms with the general criteria we have just outlined, the government has failed to squarely face the issue.

Taken at face value the Bill represents a typical example of permissive legislation. While it cites some motherhood objectives and details some formal procedures, its primary effects are: to confer on the Minister of Natural Resources the authority to make policy with respect to aggregate production in Southern Ontario; to reduce the minimal level of environmental protection in the existing Pits and Quarries Control Act; and grant to the Minister powers which can have drastic effects on local planning authority. Containing no firm principles, the Bill remains a mere skeleton to be fleshed out by regulations not subject to public input.

To be sure, there are a few provisions which recognize longstanding recommendations of FAS and which we support pending our review of any regulations to follow. Over the past few years FAS has met with the Premier, various ministers and government officials and Bill 127 reflects some provisions of our input. These relate to funding for rehabilitation of abandoned pits and quarries; increased inspection; the application of site plan requirements to crown pits and quarries; substantial minimum fines for offences; and compensation for municipalities.

Yet, on the whole, we consider the Bill a very lame response to many of the issues we have identified. FAS suspects that as it now stands, Bill 127 will perpetuate the very problems it was supposed to overcome. For this reason we will not support it without a thorough reworking. The Mineral Aggregate Working Party's Report demonstrated that public opinion overwhelmingly supports our position, namely that the need for

mineral aggregate production must only be satisfied within the context of strict environmental protection standards and the recognition and protection of local interests.

III MINISTERIAL DISCRETION AND THE ROLE OF MNR

Typical of permissive legislation introduced by the provincial government, Bill 127 grants tremendous powers and discretion to the Ministry of Natural Resources, without imposing any corresponding obligations -- obligations in this case to insure that pits and quarries conform with any environmental standards other than may be contained in regulations under the Act. Nor is the Minister obliged to respond to evidence from the public of social disruption or the destruction of natural areas resulting from aggregate extraction. In fact, the Aggregates Act would even remove the Minister's duty under existing legislation to take into account "the preservation of the character of the environment" and the availability of "natural environment for the enjoyment of the public" when issuing a licence. It also gives him greater leeway in refusing to refer an objection regarding the issuance of a licence to the Ontario Municipal Board.

The only significant step forward is the new requirement to physically inspect all licenced operations once a year and even then the Minister is not bound to take any action based on the information so obtained. Moreover, the Minister would retain his sweeping power to relieve any licenced or permitted operation from complying with any provision of any regulations to accompany Bill 127.

In the event that municipal by-laws impinge on the Minister's powers or the operations of aggregate producers, the Minister can override them by making a regulation with weaker requirements. Of course the crowning touch is that no party is allowed to prosecute under the proposed Aggregates Act without the Minister's consent, thereby removing the traditional common law right to seek redress for inaction on the part of the government.

How will the Minister use these powers? This will depend on the nature of supporting policies and regulations, some of which the government has already developed without public input. An evaluation of the Bill must be based in part of the history of the MNR in overseeing aggregate production. The picture is not reassuring. Here we have a Ministry which was criticized by the Mineral Aggregate Working Party for being derelict in administering current legislation; which spends considerable energy and money in identifying areas of potential aggregate extraction but leaves the task of identifying environmentally sensitive areas largely to under-staffed and poorly funded local ratepayer and conservation groups; and a Ministry which sees no inherent contradiction in attempting to promote, manage and police resource extraction industries.

The question which faces us is whether or not the Ministry's record warrants passage of a Bill which in all essential respects will simply allow the Ministry to continue, even expand, its present

role. FAS says no.

For good reason, we have long recommended a role for the Ministry of the Environment in the assessment of pit and quarry locations and in the enforcement of regulations concerning environmental quality. We are convinced that without this role for the Ministry of the Environment, the Bill is not worthy of passage. It is surprising that one of the most environmentally destructive activities is free of independent environmental assessment. Worthy of note is that the Working Party, in recommending that the Environmental Assessment Act not apply to pits and quarries, assumed that equivalent environmental requirements would be incorporated in the new legislation. These have not materialized.

Finally, to allow the very Minister, whose performance has been inadequate, the right to restrict private prosecution and to unilaterally decide who can require a hearing before the Ontario Municipal Board, is simply unacceptable. The Minister's powers should be withdrawn.

IV AGGREGATE QUOTAS AND LOCAL CONTROL

The corollary of increasingly centralized decision-making as exemplified by Bill 127, is the erosion of local control. The full story, however, is not revealed in the Act itself. All we find is that the Minister may "advise" municipalities regarding the preparation of official plans, and that the Minister will no longer be bound by official plans or municipal

by-laws, only by zoning by-laws. There are, however, several other documents which contain some clues as to the government's intentions, and which we feel the Committee must consider in its deliberations on Bill 127.

We refer to three documents: (1) The White Paper on the Planning Act; (2) Proposed Policies: Co-ordinated Program Strategy for the MNR in Southern Ontario; and (3) MNR Mineral Aggregate Policy for Official Plans. Taken together the policies proposed in these documents will effectively implement the government's intentions that county, regional and municipal governments should incorporate within their official plans and by-laws, provision for meeting their so-called fair share of provincial aggregate production by designating resource extraction areas. Already the MNR is implementing its policies for aggregate extraction in the Region of Durham.

As we understand it, the process would be as follows. Based on demand projections and corresponding production targets (currently being established by the MNR), counties and regions will be asked (and if necessary, forced) to provide access to sufficient aggregate resources to satisfy a "fair share" of provincial demand for the foreseeable future. How should this so-called fair share be determined is not clear. Nevertheless it appears that through the powers of the Ministry of Housing to incorporate provincial policies into official plans under

the proposed Planning Act, and the power of the Ministry of Natural Resources to set provincial aggregate policy, the Province will be able to pre-empt other land uses to allow for aggregate extraction. There does not seem to be any likelihood for an appeal from the Ministry's decisions. This move is unparallelled. But it is consistent with the Ministry's preoccupation with insuring the industry unrestricted access to aggregate resources. There is no discussion of how other provincial policies, e.g. agricultural, environmental or heritage preservation may relate to aggregate extraction policies.

This policy direction undermines the existing planning powers of local governments which other provincial policies are committed to upholding. Local involvement will be effectively limited so that in many cases local governments merely decide the order in which extraction areas would be developed.

FAS submits that this approach will simply not be tolerated by the public and that, if implemented, will cause the government considerable regret. Strong resolutions have been endorsed by many municipalities condemning both the proposed policies and the government's failure to submit these policies to the scrutiny of the legislature by setting them out in Bill 127. We can only echo these sentiments.

There is a profound irony in this overall provincial policy direction which has not escaped the municipalities. In proposing to implement a quota system, the industry presumably shares the same objectives as the Ministry of Natural Resources which initially proposed such a policy. That objective is to create a completely unhampered economic environment for this most destructive industry including an assured supply of aggregate resources to satisfy foreseeable demand.

Clearly any by-law or other legislation which restricts this unimpeded operating environment is perceived as a threat to the Ministry's plans for managing aggregate resources in this fashion. Hence the provincial government wants to respond by using its superior powers to guarantee that aggregate extraction will pre-empt other land uses. The irony in all of this is that in order to sequester future reserves for the private industry, the Minister of Natural Resources seriously erodes local autonomy. That is, freedom for one section of the society is to be found by restricting the freedom of the rest. Nowhere is this action can we identify a legitimate "provincial interest" being met.

To counter the behind the scenes developments which indicate the governments true intentions regarding the proposed Aggregates Act, FAS urges the Committee to insure that no provisions of Bill 127 interfere with existing municipal power to reject open pit mining on lands within its territory.

FAS also recommends that no provision of the Bill override provisions of the Municipal Act which enable municipalities to impose equal or more stringent standards on pit and quarry operations than any regulations under the proposed Act. Finally, local municipalities should be granted the power to issue or refuse to issue all licences within their boundaries. No other body except the Ontario Municipal Board or the provincial cabinet should supercede this authority.

FAS feels these measures are essential if local decision-making is to be respected in Ontario. Onus must clearly be placed on the aggregate industry to conduct itself as do other industries, as a good corporate citizen, so that it will be welcomed within municipalities.

V SCARCITY AND CONSERVATION

In view of the government's great concern for insuring adequate resource supplies for the future, it is curious that Bill 127 and the documents cited earlier leave the serious subject of conservation up to the Minister's discretion. Nowhere, for example do they stimulate any exploration of alternatives to the present pattern of resource extraction, transportation and consumption currently found throughout southern Ontario.

Instead the government seems content to force this unwanted industry on citizens of the rural municipalities and count on leaving no sod

unturned in southern Ontario. Avoidance of these issues, though distressing, does not surprise us. We find the whole scarcity argument at best to be based on very sketchy data and at worst to be used as a tactic to obtain concessions on behalf of the industry.

Whatever the government's motivation, it has presented no evidence of impending Province-wide aggregate shortages sufficient to justify the policy direction being taken. In the absence of any firm knowledge of reserves outside southern Ontario, all it can really claim is that some supplies in some areas of southern Ontario are dwindling or difficult to access. The sensible conclusion to draw from this information is surely that future production will prove more expensive. This trend is not surprising since resource industries have traditionally exploited the most accessible and profitable supplies available based on a least cost philosophy. There is little doubt that we will have to pay a vast price for this practice.

FAS is not interested in debating with the Ministry on the extent to which known reserves are adequate to meet demand, at least until the Ministry can supply accurate figures for the Province as a whole. We are however, prepared to argue that the least cost philosophy is not a sufficient basis from which to make sound decisions concerning the location of pits and quarries. The important question at the

moment is not "do we have enough aggregate", but rather, what costs is the public prepared to accept in utilizing what resources we have available.

Unfortunately the manner in which government policy is being developed and the very limited scope of public involvement envisioned by the authors of the Bill before us, are not conducive to answering this question. Nevertheless, we believe that the expression of public opinion to date indicates a broad concensus on one point. It is that the people of Ontario are no longer willing to tolerate the continued expansion of aggregate production in their most sensitive environments, and favour its progressive relocation to less sensitive areas of the Province as determined on the basis of environmental assessments.

This is an ambitious project but we fail to see any other responsible or long-term solution to the existing conflict. The proposed Aggregates Act, since it is to serve quite different ends, will need to accommodate the following recommendations over and above those already covered, if it is to secure our support.

First it should include as a fundamental purpose the protection of the environment of Ontario, and the right of relief from decisions and activities that do not protect the environment or ensure rehabilitation of areas affected by pits and quarries. Second, the Act should provide that it applies to the whole of Ontario. Third, the Act should provide for greater transport of aggregate resources by rail and boat. Finally,

the Act should provide for the Minister to undertake studies into the possibilities for conserving aggregate resources through more efficient consumption and the substitution of alternative materials.

VI REHABILITATION

Our last and perhaps most important point is directed to purpose #3 of the Act, "To require the rehabilitation of land from which aggregate or crown aggregate has been excavated". In short the provisions of the Bill will not provide for adequate rehabilitation plans, or adequate monies deposited by the producers to ensure for adequate rehabilitation.

The Minister has indicated his intention to establish the rehabilitation deposit at 8¢ per tonne extracted for materials mined after the passage of the Aggregates Act. It is the view of FAS that this sum will not nearly cover the cost of returning the land to its former productive capability. But an even graver concern is over the fact that the new Bill does nothing to address the problem of disturbed lands mined prior to its passage. The government's own Working Party pointed out that the deposit of 2¢ per ton collected under the existing Pits and Quarries Control Act, 1971 was treated merely as a tax or royalty, but certainly not treated seriously by operators resulting in totally inadequate reclamation.

As we have already pointed out, there are at least 54,000 acres of pits and quarries in the central Ontario Region. To put this in context, an area the size of Metropolitan Toronto, will require rehabilitation. The government's own Working Party identified that the problem stems from "the failure of the present Act to define rehabilitation adequately". They even went so far as to suggest that "As a minimum requirement the land should be brought back to the level of production before the extraction started".

Careful scrutiny of the rehabilitation sections in the Bill reveal that the Minister has powers to determine what is a suitable after-use; that the lands do not have to be returned to their former use or condition; and there are no firm guarantees that this Act will be enforced, any more so that the existing Pits and Quarries Control Act, 1971.

VII CONCLUSION

The Bill as it stands will not meet our objectives or substantially improve on the Pits and Quarries Control Act, 1971. It needs to be thoroughly reworked. We are particularly concerned about the wide powers of the Minister, the clear intention of the government to pre-empt other land uses to insure the industry has an adequate aggregate supply close to its market, and the lack of environmental safeguards or incentives for the industry to implement conservation techniques, such as

recycling or use of alternate materials. Our specific proposals for amending the Bill will be presented in a joint submission by the Canadian Environmental Law Association.

Thank you.