Canadian Environmental Law Association
EQUITY. JUSTICE. HEALTH.

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Re: Survey: 'A Place to Grow' policies on aggregate resources

The Canadian Environmental Law Association ("CELA") strongly disagrees with the premise underlying the Survey: 'A Place to Grow' policies on aggregate resources, which suggests that there is "red tape" regarding aggregate extraction that should be removed. Laws and policies to protect the environment and the public are not "red tape". The current legislative and policy framework for aggregate extraction in Ontario inappropriately favours aggregate resource extraction over all other land uses.

The nature of the problems posed by aggregate extraction

Aggregate extraction can pose environmental, social and economic problems. Depending on the geographic circumstances, these problems may include, but are not limited to, the following:

- Removal of prime agricultural land from production
- Harm to the quality and quantity of surface water and groundwater;
- Detrimental effects on fish spawning in water bodies;
- Interference with threatened or endangered species or their habitat otherwise meant to be protected under federal or provincial laws;
- Disruption of the continuous natural environment linkages certain areas of the province enjoy under the Niagara Escarpment Plan (a UNESCO World Biosphere Reserve), or the Oak Ridges Moraine Conservation Plan or, in certain circumstances, both;
- Creation of road congestion, safety concerns, and increases in greenhouse gas emissions due to truck traffic on local and regional road systems;
- Undermining of tourism in certain areas with resulting adverse impacts on the local and regional economy, jobs, recreation, and culture;
- Creation of excessive levels of noise, dust, and nuisance in otherwise quiet rural environments;
- Physical damage to local roads; and
- Diminution in property values.

The experience in Ontario clearly indicates that aggregate extraction is an environmentally intrusive activity that has the potential to cause long-term adverse impacts on a wide range of

publicly important resources. In this regard, a 2011 report prepared by the Canadian Institute for Environmental Law and Policy documents in detail many of the landscape, agricultural land loss, water quality and water quantity, social, economic, health, and cumulative environmental impacts of aggregate activity.[1]

The Ministry of Natural Resources and Forestry must enhance its capacity to enforce the *Aggregate Resources Act*

The Ministry of Natural Resources and Forestry (MNRF) has not adequately responded to the numerous calls to increase its ability to inspect and enforce the regulations under the *Aggregate Resources Act* ("*ARA*"). The Environmental Commissioner of Ontario highlighted self-reported concerns regarding MNRF staff capacity to adequately inspect aggregate production sites and ensure compliance in a special report to the Legislative Assembly.[2] The wide-ranging impacts of the insufficient funding of MNRF are also summarized in the Environmental Commissioner of Ontario's 2012-2013 annual report, which cautions against the long-term effects of the shrinking of budgets for environmental protection.[3]

Subsection 12(2) of the *ARA* should be removed, which bars consideration of contraventions of the *ARA* or its regulations if an applicant reveals the contravention as part of its compliance report before it has been discovered by an inspector.

Aggregate proponents should be required to show a need for the mineral aggregate resource

Policy 2.5.2.1 of the Provincial Policy Statement, 2014 excludes any requirement to demonstrate a need for mineral aggregate resources, including any type of supply and demand analysis, or the availability, designation or licencing for extraction of mineral aggregate resources locally or elsewhere.[4] That policy unfairly favours aggregate extraction over all other provincial interests and should be removed. Since aggregate pits raise serious environmental and social issues, aggregate extraction should not be allowed in locations where there is no need for it.

To assist with an analysis of need, the MNRF should update its 2010 Aggregate Resource Study and maintain a publicly available assessment of current aggregate demand/supply and

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[1] Canadian Institute for Environmental Law and Policy, "Aggregate Extraction in Ontario: A Strategy for the Future" (Toronto: CIELAP, March 2011) at 9-18. Online: <http://cielap.org/pdf/AggregatesStrategyOntario.pdf>

[2] Environmental Commissioner of Ontario, "Doing Less with Less: How Shortfalls in Budget, Staffing and In-House Expertise are Hampering the Effectiveness of MOE and MNR" in Special Report to the Legislative Assembly of Ontario (Toronto: ECO, 2007), p 14, 18, 45-49. Online: <http://docs.assets.eco.on.ca/reports/special-reports/2007/2007-Less-with-Less.pdf>

[3] Environmental Commissioner of Ontario, "The Role of Government as Environmental Steward" in Serving the Public: Annual Report 2012/2013 (Toronto: ECO, 2013) at pp. 45-54, 57-60. Online: <http://docs.assets.eco.on.ca/reports/environmental-protection/2012-2013/2012-13-AR.pdf>

[4] Ministry of Municipal Affairs and Housing, *Provincial Policy Statement, 2014*, s 2.5.2.1

projections of future need, including analysis of opportunities for conservation, recycling and reduction of the demand for aggregates.[5]

Disallow licences that rely on the pumping of water in perpetuity

The *ARA* lacks a clear prohibition of extraction below the water table that necessitates pumping of water in perpetuity. These types of aggregate operations cause undue strain on groundwater, and increase the risk of contamination of significant sources of drinking water. As noted in the Crombie report *Planning for Health, Prosperity and Growth in the Greater Golden Horseshoe: 2015 – 2041*, pumping in perpetuity "has long-term implications for water supplies and ecosystem integrity."[6] CELA recommends that a full environmental assessment of the potential impacts on the hydrological system be conducted for applications to extract aggregates below the water table, and that there be a clear prohibition on extraction that necessitates pumping of water in perpetuity.

Improve and clarify supporting studies for aggregate operations

The Provincial Standards of Ontario requirements on ARA licence applicants should be updated to require an air quality assessment which would measure both baseline air quality and ongoing impacts on air quality from the proposed operation.

Issue licences on a fixed term basis

In the *Provincial Policy Statement, 2014*, aggregate resource extraction is referred to as an "interim" land use[7], a term which downplays the negative impacts of extraction and misleadingly implies that the land will be returned to its former use. In fact, pits are seldom returned to their former state, and quarries result in permanent and significant changes to hydrological and natural systems.

Under the existing *ARA*, an operator can keep a site open indefinitely before moving to final rehabilitation and closure of the operation. Communities, municipalities and other stakeholders want greater clarity and certainty about the length of time a particular operation may be in existence. It is essential to know when a site will undergo final rehabilitation in order to plan for its use after a licence is surrendered. For example, a site may be destined to become an important future element of a municipality's natural heritage system or may be tied to future economic development as a recreation feature. Demand for aggregate and type of material are key factors that determine how quickly or sporadically a site is mined, making the current open-ended nature

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[5] Ministry of Natural Resources and Forestry, *State of the Aggregate Resource in Ontario Study: Consolidated Report*, February 2010. Online <https://files.ontario.ca/environment-and-energy/aggregates/aggregate-resource-in-ontario-study/286996.pdf>

[6] Crombie, David, *Planning for Health, Prosperity and Growth in the Greater Golden Horseshoe: 2015 – 2041*, Ministry of Municipal Affairs and Housing, online: <http://www.mah.gov.on.ca/Asset11110.aspx?method=1>, p. 113.

[7] *Provincial Policy Statement, 2014*, s 2.5.3.1, 2.5.4.1

of licences unacceptable. Licences should be for a fixed term, and should automatically include a requirement to establish a schedule for rehabilitation of abandoned pits and quarries.

Allow the Minister to add conditions to existing sites to implement a source protection plan under the *Clean Water Act*

The *ARA* should be amended to allow the Minister to add conditions to existing sites, without tribunal hearings, to implement a source protection plan under the *Clean Water Act*. Approved source protection plans take priority under the conflict provisions of the *Clean Water Act*. O.Reg. 287/07 under the *Clean Water Act* lists section 37 ARA permits as prescribed instruments. Subsection 38(7) of the *Clean Water Act* requires prescribed instruments to conform to significant threat policies and Great Lakes policies in approved plans. Similarly, section 43 of the *Clean Water Act* requires existing instruments to be amended to conform with such policies. Accordingly, where they are applicable, there should be no impediment to the Ministerial power to impose conditions that implement a Source Protection Plan.

Endangered species

The Growth Plan, 2019 should prohibit any new mineral aggregate operations in the habitat of endangered species and threatened species.

We note that Schedule 5 of Bill 108 proposes significant amendments to the *Endangered Species Act* ("*ESA*") regime. The amendments undermine the core purpose and value of the *ESA* and should immediately be abandoned. It will delay the classification of species not currently listed on the Species At Risk in Ontario List and their automatic protection upon being listed; broaden Ministerial decision-making powers absent a requirement to seek expert advice; and continue to limit the transparency of agreements made under the *ESA.* CELA opposes Schedule 5's proposed establishment of a new agency to oversee a Conservation Fund and introduce a Landscape Agreement, which would allow otherwise prohibited activities to occur within a defined geographic area.

CELA makes the following recommendations with respect to Schedule 5 of Bill 108:

> RECOMMENDATION NO. 1: Maintain the cornerstones of the *ESA*: science-based listings, automatic protections, and mandatory timelines. This aligns with endangered species' protection best practices, which necessitates the identification of species at risk and their habitat, prohibitions on their killing and harming, and investment in their recovery.
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> RECOMMENDATION NO. 2: Maintain the strict timelines set out in the *ESA*. Any changes to the *ESA* which lengthen the timeline for species assessment and listing are unwarranted for the express reason that it may cause further declines to their population and threaten their survival or recovery.

RECOMMENDATION NO. 3: Retain the requirement for the government to consult with an expert prior to entering into agreements with a person or proponent to permit otherwise prohibited activities.

RECOMMENDATION NO. 4: Apply binding standards and prohibitions against harming or killing at-risk species and their habitat broadly and consistently, instead of on a sector-by-sector or activity basis. Codes of practice, standards and guidelines regarding listed species should not be the primary means of protecting species and their habitat.

RECOMMENDATION NO. 5: We do not support the Bill's proposal for landscape agreements. If the government chooses to go ahead with landscape agreements, and before any such agreement is approved, we request the government disclose upon what basis it will designate 'benefiting' and 'impacted' species, and develop clear and consistent policies outlining how a decision will be made respecting their jeopardy.

RECOMMENDATION NO. 6: Ensure that authorizations remain the exception, not the norm. Authorizations which allow persons to engage in otherwise prohibited activities undermine the purpose of the *ESA* and are contrary to endangered species protection best practices. Increasing the number of ways in which an authorization can be sought should not be permitted because it is contrary to the Act's purposes of species recovery and protection.

RECOMMENDATION NO. 7: Maintain mandatory conditions to be met, such as the 'overall benefit' requirements. Establishing a fund to protect species in lieu of conditions on permits, which is resourced by activities that directly harm species and their habitat, is contrary to the intent of the *ESA* and should not be advanced. Any action which provides a 'get out of jail free card' – in that proponents can pay a fee to act contrary to the *ESA* – should not be permitted.

RECOMMENDATION NO. 8: Set out the criteria upon which the Minister will base its decision to designate a species as a 'conservation fund species' and upon what basis their classification as such may change in the *ESA*. The *ESA* should not rely on non-binding guidelines to set out the activities and species eligible to receive funding.

RECOMMENDATION NO. 9: Keep *ESA*-related notice postings on the Environmental Bill of Rights registry. The government should not substitute the requirement that publications be posted on the "environmental registry established under the Environmental Bill of Rights, 1993," with "a website maintained by the Government of Ontario." Ensuring the public's right to know increases the transparency and accountability of decision-makers and, by requiring the disclosure of information, increases its accessibility. The Environmental Registry is an already well-established portal for achieving this purpose.

RECOMMENDATION NO. 10: Require proponents engaging in harmful activities to publicly provide mitigation plans and monitoring reports, to enhance transparency, accountability, and the public's right to know.

CELA's full submission on the *ESA* is available on our website at:
https://www.cela.ca/sites/cela.ca/files/Schedule5Bill108-EBRNo013-5033.pdf

Yours Truly,

CANADIAN ENVIRONMENTAL LAW ASSOCIATION

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