November 4, 2019

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

Dear Mr. MacDonald,

Re. ERO number 019-0556: Proposed amendments to the Aggregate Resources Act

On behalf of Ontario Nature and Environmental Defence, we submit the following comments and recommendations regarding proposed amendments to the Aggregate Resources Act (ARA) as described in ERO posting 019-0556 and Schedule 16 of Bill 132. Overall, the proposed changes fail to address long-standing concerns about the adverse environmental impacts of aggregate extraction and indeed are likely to exacerbate them.

Ontario Nature is a charitable conservation organization representing more than 30,000 members and supporters and over 150 member groups across Ontario. Since 1931, Ontario Nature has been protecting wild species and wild spaces through conservation, education and public engagement.

Environmental Defence Canada (EDC) is a leading environmental charitable organization that works with government, industry and individuals to defend clean water, a safe climate and healthy communities. Established in 1984, EDC has over 250,000 supporters across Canada who engage with our work to protect the environment.

Both Ontario Nature and EDC were founding members of the Cornerstone Standards Council (CSC) an organization jointly established by the aggregate industry, civil society and ENGOs to advance progressive aggregate operations. As a result of this work we have deep understanding of the environmental impacts of aggregate operations and a long history of working cooperatively with companies willing to demonstrate responsible practices.

1. Inadequate consultation and misuse of the Environmental Registry

Aggregate extraction is a major and intense land use primarily concentrated in southern and eastern Ontario and also increasingly moving into central and northern parts of the province. While considered merely an “interim” land use by the province and industry, it creates significant long-term environmental and ecological disturbance, including destruction of natural habitats and farmland through removal of vegetation and soil, alteration of hydrological regimes and drainage patterns,

changes to the slope of the land and fragmentation of natural and aquatic systems that support wildlife and agriculture and yield essential ecological goods and service. These significant long-term impacts must be recognized and addressed accordingly in law and policy.

In its communications about the ARA amendments, the Ministry of Natural Resources and Forestry (MNRF) makes reference to its Aggregates Summit, held in March 2019, as an example of public consultation that supports the proposed changes. However, with regard to the organizations and individuals invited to attend, the Summit was extremely biased towards the industry perspective. Out of approximately 100 invitees, only two were ENGOs and only one was a conservation authority. Neither Ontario Nature nor Environmental Defence was invited to attend, despite the ample evidence of our interest in these issues. For example, we actively participated in the previous public consultations on ARA reform, from 2012 – 2017, including two submissions to the relevant Standing Committees of the Legislature and two detailed submissions through the Environmental Registry (#012-5444 and #012-8443). We also spent years working with industry in developing the Cornerstone Standards Council certification program mentioned above.

We also note that no agricultural organizations were invited to the Summit, despite the impact on farmland that changes to aggregate rules may cause. We agree with the Canadian Environmental Law Association (CELA - ERO #019-0556 submission) that "the ARA proposals that flow from the Summit can only be viewed as one-sided attempts to satisfy the aggregate industry, and they do not constitute fair, balanced and effective measures that safeguard all public and private interests that may be affected by aggregate operations."

Further, on October 28, one week prior to the conclusion of the ERO public comment period ending November 4, 2019, the Government of Ontario introduced omnibus Bill 132 in the Legislature. Schedule 16 of Bill 132 sets out amendments to the ARA, calling into question the legitimacy of the still ongoing public consultation. Of what use are public comments on ERO #019-0556, given that the government has already tabled legislation? Proceeding in such a fashion makes a mockery of the public participation provisions under Part II of the Environmental Bill of Rights and may be illegal.

Overall, the government is failing to address public concern about the environmental and social impacts of aggregate extraction. It is ignoring the advice of the Environmental Commissioner of Ontario who, in 2017, identified the need to undertake further measures to "lighten the environmental footprint of aggregates in Ontario" (*2017 Annual Report: Good Choices, Bad Choices*, p. 175). We agree with CELA that "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."

With respect to public consultation, we support the following CELA recommendations:

> **Recommendation 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.

2. Reducing municipal oversight and decision-making power

We agree with Gravel Watch Ontario (ERO #019-0556 submission) that land use planning and safe drinking water are key responsibilities of municipalities in Ontario. We therefore oppose the proposed amendment to the ARA that would remove the ability of municipalities to manage, through zoning bylaws, where and how aggregate extraction occurs within the groundwater table. Specifically, we oppose the addition of the following subsection to section 12.1 of the ARA:

> Exception
> (1.1) If a zoning by-law prohibits a site in a part of Ontario designated under subsection 5 (2) from being used for the making, establishment or operation of pits and quarries, any restriction contained in the zoning by-law with respect to the depth of extraction at the site is inoperative.

Further, we oppose the addition to section 34 of the ARA which, as amended, specifies that municipal zoning by-laws are "inoperative" if they include prohibitions against the establishment of pits and quarries on Crown land:

> Inoperative by-law
> (9) If a zoning by-law includes a prohibition against a site being used for the making, establishment or operation of pits and quarries, the prohibition is inoperative where the surface rights are the property of the Crown.

We agree with CELA that making zoning by-laws inoperative in this manner "weakens groundwater protection, and unduly interferes with the municipalities' duty to identify and protect water resources in accordance with the Provincial Policy Statement issued under the Planning Act." We question the government's rationale for stripping away the right of municipalities to use zoning restrictions to safeguard groundwater.

Recommendation 2: The provincial government should not proceed with amendments to sections 12.1 and 34 of the ARA that would limit the power of municipalities to protect groundwater and manage aggregate extraction through zoning by-laws.

3. Questionable claims about strengthening protection of water resources

In its description of proposed amendments to the ARA, the government claims that it intends to

> "strengthen protection of water resources by creating a more robust application process for existing operators that want to expand to extract aggregate within the water table, allowing for increased public engagement on applications that may impact water resources. This would allow municipalities and others to officially object to an application and provide the opportunity to have their concerns heard by the Local Planning Appeal Tribunal." (ERO posting #019-0556)

However, according to CELA, new subsection 13.1(4) in Schedule 16, which allows municipalities or members of the public to file objections to aggregate extraction below the water table, is merely a refinement of existing objection rights under the ARA. Moreover, as CELA argues, the onus should not be on municipalities or the public to file objections and engage in costly legal appeals; rather, it is the responsibility of the government, in the first instance "to set and enforce clear, comprehensive and effective standards for protecting groundwater resources from extraction-related impacts."

If the government is genuine in its desire to strengthen the protection of water resources from the impacts of aggregate extraction, it should amend the ARA to 1) require a full environmental assessment of potential impacts on the hydrological system for applications to extract aggregates below the water table; and 2) clearly prohibit extraction below the water table that necessitates the pumping of water in perpetuity. Pumping in perpetuity is a burden for which an operator cannot be properly accountable and ultimately rests on the shoulders of society. It causes undue strain on groundwater and increases 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."

Recommendation 3: Prohibit aggregate extraction below the water table without a full environmental assessment of the potential impacts on the hydrological system.

Recommendation 4: Prohibit extraction where depletion of ground and surface waters can only be mitigated through pumping in perpetuity.

4. Lack of clarity about self-filing, permit-by-rule and streamlining compliance reporting requirements. The government is proposing amendments to the ARA that would allow operators "to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation," and that would allow "some low-risk activities to occur without a licence if conditions specified in regulation are followed" (i.e., permit-by-rule). However, the full range of activities that would be allowed, the criteria that would be used to determine whether an activity is "routine" or "low-risk," and the regulatory conditions that would need to be met are not specified. Nor do the amendments address the issue of ensuring adequate public notice and consultation.

Similarly, the government is proposing to streamline compliance reporting requirements, but provides no details about which reporting duties would be altered, reduced or removed. We agree with CELA that these questionable proposals should not proceed any further.

Recommendation 5: The government should not proceed with proposals to enable proponents to "self-file" changes to approved site plans for so-called "routine activities" or to allow unspecified "low-risk" activities to occur without a licence under the ARA. It should maintain the current compliance reporting requirements.

5. Aggregates fees

To ensure adequate resourcing of inspection and enforcement of the ARA, and to better fund the rehabilitation of abandoned pits and quarries, aggregates fees should be increased so that they reflect the cost of Ontario's administration of the ARA regime as well as past decades of underfunding.

> **Recommendation 5: The government should increase aggregates fees to better reflect the costs of administration, inspection and enforcement of the ARA and to better fund the rehabilitation of abandoned pits and quarries. The fees should be reviewed every two years to determine whether the Ontario aggregate regime is adequately funded.**

Concluding remarks

We agree with CELA that the proposed 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."

We are especially concerned with these proposed changes in light of other proposed changes to the Provincial Policy Statement (ERO # 019-0279) which, if approved, would permit aggregates extraction (outside the Greenbelt) in all significant natural features currently protected under the PPS (i.e., provincially significant wetlands (except in southern Ontario), provincially significant woodlands, valleylands and wildlife habitat, significant Areas of Natural and Scientific Interest, fish habitat and the habitat of threatened and endangered species). Weakening environmental protections even further, through changes to the ARA, is not in the public interest.

Thank you for your attention. We trust that our comments and recommendations will be taken into consideration.

Yours truly,

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Director of Conservation and Education
Ontario Nature

Tim Gray
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