Greenspace Alliance of Canada's Capital
Alliance pour les espaces verts de la capitale du Canada

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15 December 2015

To: Katie Rosa,
Aggregate Resources Officer,
Ministry of Natural Resources and Forestry, Policy Division
Natural Resources Conservation Policy Branch, Resource Development Section
300 Water Street
Peterborough Ontario
K9J 8M5

By Email: ARAReview@ontario.ca

Re: A Blueprint for Change: A Proposal to modernize and strengthen the *Aggregate Resources Act* policy framework (EBR No. 012-5444)

Dear Ms. Rosa,

Since 1997, the Greenspace Alliance has worked with community organizations and individuals to preserve and enhance natural areas in the National Capital area, including public and private green spaces, wetlands and waterways. We believe that urban greenness is essential for a community's quality of life, contributing to our personal, social, economic, cultural and spiritual well-being. It also connects us with the natural and cultural history of our region.

Be aware that in November 2012 we commented on a draft revision of the Provincial Policy Statement. Regarding aggregates we expressed strong opposition to the continuing privileged position awarded to the mineral aggregates sector. We noted that in this regard the PPS is based on a number of false premises including the alleged scarcity of aggregates in Ontario. We also noted that no other jurisdiction in the world adopts an "as close to market as possible" principle.

While the PPS was not changed to our satisfaction in this regard, we are pleased to see that one of the themes of this Discussion Paper is Environmental Accountability. We applaud proposal "a" (p8) for enhanced requirements for natural environment studies that address identified natural heritage systems and the requirements of the *Endangered Species* and *Ontario Heritage Acts.* We similarly applaud proposal "f" (p10) that would see a requirement of plain language descriptions of a proposed operation as well as executive summaries of technical studies in plain language.

Also under "a" (p9-middle) the paper states that extraction proposals in the vicinity of a municipal drinking water supply will continue to be entertained but would require enhanced water impact studies. It is difficult to imagine how negative impacts can be mitigated, particularly when they continue long

after the operator has surrendered the license. When a preferred route of travel for contaminants has been established it is there forever. The better solution is to simply prohibit extraction that is within designated source water protection areas.

Similarly, item "b" (p9) proposes new study requirements for extraction on agricultural lands. It is an illusion to think that soil that has taken decades or centuries to be formed can be restored to its previous productivity after having been removed to extract the aggregate below. Again, the better -- and only -- way to avoid loss of agricultural land is to prohibit aggregate extraction on them. In both this case and for water supply protection, the need is not for more studies by applicants but for better policy by government.

More generally, we see in the proposed changes for new site applications virtually no reference to the potential impact on residents. There are no proposals to strengthen the criteria; only the comment period would be longer than it is currently. We also suggest that a notice of application should go to the Clerk of the relevant municipality who should be required to provide notice to the community in accord with a prescribed protocol.

Regarding proposal "g" (p11) we offer three comments: 1- tonnage should not be the sole criterion for deciding what level of consultation and type of study requirements are appropriate. Potential environmental or social impact should be another criterion; 2- the requirement to establish a web site should begin for applications of 100K tonnes or more, given that the majority of applications are in the 100-500K range and setting up a web site is not a significant burden; 3- we support the enhanced list of agencies that would have to be notified of any application.

With respect to proposal "h" (p12) we suggest that it should not be left to the Ministry's discretion to decide whether adequate consultation with Aboriginal communities has taken place. Instead, such determination should be made in accord with a prescribed protocol.

In proposal "i" (p12) we especially support the requirement that paper copies have to be made available on request. The digital divide is a reality and even digitally savvy stakeholders are commonly unable to print out maps and voluminous material. Paper and electronic versions of documentation are complementary products.

We most strongly agree that extension of an operation below the water table should trigger a new application process, including a 45-day consultation period (proposal "j" - p13). We understand that there is an in-between "1.5 regulation" practice -- operations at the margin of the water table. These should not be allowed. Operations should be category I or category II, not something in between. A proposed expansion below the water table should also trigger a new zoning application under the *Planning Act*.

We have some concern about proposal "n" (p14): How will the Minister be held accountable for the exemptions from regulations granted to an individual or company? We would like to see the criteria for exemptions and a reporting protocol spelled out. A similar issue arises with proposal "al" (p29) regarding the Minister's ability to waive fees.

Regarding section 2.0 of the paper, we understand that *Aggregate Resources Act* inspectors have no authority to enforce the law, actually can be sued for executing their duty, and have to rely on enforcement officers of the Ministry of Natural Resources to issue a citation. We believe this is is inefficient and should change.

We strongly support proposal "u" (p19) which would give the Ministry the authority to require additional studies and updated site plans of existing sites. More broadly, licenses should have to be renewed at prescribed intervals. In considering new or renewed applications, both *AR Act* and *Planning Act* requirements (such as zoning implications or Official Plan policies) should be considered. It is an anomaly that aggregate operations, which most clearly are a land use, are not subject to the *Planning Act*.

Reporting requirements should be tightened up, not loosened as item "aa" (p22) proposes. Annual reporting requirements should include an up-to-date site map, volumes and types of materials extracted, quantities of water pumped out, and responses to complaints received directly or through the municipality. There should be an established feedback mechanism from complaints to the operator and the annual compliance report.

Further to proposal "ab" (p22), we suggest that adding a concrete batch or asphalt plant to a site should be considered a significant amendment that triggers prescribed notification requirements.

Item "ae" (p24) proposes to clarify in the *AR Act* that providing false information is an offence. That is welcomed. However, we see nothing in the paper that would result in better enforcement and effective penalties for non-compliance. We noted already that inspectors should have more power and be made immune from lawsuits. As well, we suggested that a feedback mechanism for complaints be established. Both would assist in the Ministry's ability to take effective enforcement action. The Ministry must combat the impression that it is the industry's best friend, i.e., is a captured regulator. Swift enforcement and significant penalties would go a long way to counter that impression.

More generally, we call upon Ministry staff to more actively engage in the substance of the application process as well as increase its presence on site, overseeing aggregate operations. A more engaged regulator would benefit all stakeholders. Undoubtedly, this will require more funding.

Therefore, regarding fees and royalties, we suggest that the Ministry expand its proposals to include increased fees now. Increased revenue will give the Ministry the resources to better enforce the law. Fees should be set so as to cover the cost of oversight, enforcement and administration. Perhaps fees could also cover contributions to a fund earmarked for the public cost of land restoration. We note that fees are and will undoubtedly remain a very minor part of the value of the product, even if they were increased substantially.

Specifically regarding proposal "aj" (p28), once an appropriate level has been found, we suggest that, to keep fees current, Statistics Canada's Construction Price Index would be a more relevant escalator than the Consumer Price Index.

Finally, proposal "as" (p33) includes a weakened requirement for the Minister to be a party to an OMB hearing. We suggest that, even if the Minister has no outstanding concerns with an application, if other parties have concerns the Minister should be required to participate and provide evidence.

Thank you for the opportunity to comment. Please keep us informed about further stages in this review.

Regards,

Erwin Dreessen
Erwin Dreessen
Co-chair