Sent via email to: andrew.c.macdonald@ontario.ca and aggregates@ontario.ca

Federation of Ontario Cottagers' Associations

November 4, 2019

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

Re: Response to the proposed changes to the Aggregate Resources Act ERO 019-0556

The Federation of Ontario Cottagers' Associations is a member-based association of over 500 waterfront landowner groups located across the Province, whose members represent over 50,000 families. Waterfront property owners collectively own and steward private lands that cover more than 50,000 hectares of shore lands along 15,000 kms of shoreline property. As significant stakeholders in rural Ontario, we are interested and vested parties in the responsible use of our lands and resources.

FOCA generally rejects the notion that provisions in the current ARA are "red tape" and rather, we feel that a strong regulatory regime for managing our aggregate resources benefits Ontarians in the long term. We are specifically concerned that the changes proposed in ERO 019-0556 are not likely to provide the "strong" environmental protection suggested in the preamble, and will not adequately address environmental and community impacts. Further we are concerned about the simultaneous introduction of Bill 132 (ERO 019-0774) during the consultation phase of the ERO. These proposed bills both amend the Aggregate Resources Act, yet reference to Bill 132 was only added to the ARA proposal on or around October 28, 2019, near the very end of the 45-day posting period. Without presupposing what amendments will be made under ERO 019-0556, it will be impossible to determine the relative merits of proposed revisions under ERO 019-0774. It is inappropriate to have two bills simultaneously amending the same piece of legislation. And we recommend the ARA amendments be withdrawn or reposted as one comprehensive bill.

We do note that Schedule 16 of Bill 132 provides some perspective on how the Ontario government intends to amend and implement the ARA:

Schedule 16 purports to remove municipalities' authority to protect groundwater resources through zoning by-law restrictions on the depth of extraction. FOCA believes that making zoning by-laws inoperative in this manner weakens – not strengthens – 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. Moreover, we are unaware of any compelling jurisdictional, legal or technical reasons why the ARA

amendments should strip away the existing municipal right to utilize zoning restrictions that safeguard groundwater, especially in the numerous communities across Ontario that are wholly dependent on aquifers for drinking water supply purposes.

New subsection 13.1(4) in Schedule 16 specifies that municipalities or members of the public may file objections to new below-water table extraction at existing sites, and the Minister may, in his/her discretion, refer such objections (or just certain issues) to the LPAT for a hearing. In FOCA's view, the onus of protecting groundwater should not fall by default to municipalities or concerned citizens, who must expend time, money and effort in appealing matters to the LPAT. Instead, FOCA submits that it is the primary responsibility of Ontario government at first instance to set and enforce clear, comprehensive and effective standards for protecting groundwater resources from extraction-related impacts.

Schedule 16 stipulates that zoning by-laws are "inoperative" if they include prohibitions against the establishment of pits and quarries on Crown land, yet no rationale has been provided for ousting municipal by-laws in this manner under the ARA, or justification for why third parties operating on Crown land shouldn't be subject to applicable zoning by-laws.

Due to the considerable nuisance, safety concerns, and property tax implications from road damage, FOCA objects to the new provision in Schedule 16 which would prohibit the Minister or the LPAT from taking into account "the main haulage routes and proposed truck traffic to and from the site", and from considering "road degradation that may result from proposed truck traffic to and from the site." If enacted, this prohibition would apply to all pending and future licence applications, and FOCA cannot support this provision, since road damage and wear-and-tear from high-volume truck traffic is an important consideration, particularly for residents living along haul routes and smaller municipalities with numerous aggregate operations and limited funds for road repair and maintenance.

FOCA is pleased to see explicit acknowledgement that (under Schedule 16 of Bill 132) an ARA licensee is not entitled to an LPAT hearing if the Minister adds or varies licence conditions in order to implement source protection plans approved under the Clean Water Act (CWA), in accordance with the mandatory CWA requirement that prescribed instruments – such as ARA licences for pits and quarries – must be amended to conform to policies in source protection plans that address significant drinking water threats.

While ERO 019-0556 proposes to "strengthen" groundwater protection through a more "robust" application process for aggregate extraction below the water table, it appears that there is little or nothing in Schedule 16 of Bill 132 that actually implements this commitment. For example, Schedule 16 proposes to expand the regulation-making authority under the ARA to enable the provincial Cabinet to define the term "below the water table," but no proposed definition has been offered. Moreover, while Schedule 16 adds or amends provisions regarding licence/permit applications, licence/permit conditions, and site plans, there seems to be no material change in the application process used to review and approve these items.

In Schedule 16 of Bill 132, there is a new proposed section under 13.1 in the ARA to address situations where an operator of an above-water table pit or quarry wants to extract aggregate

from below the water table. There are however no substantive safeguards in this new provision that expressly protect groundwater quantity or quantity. There should be effective and enforceable controls on below-water table extractions included through new regulatory standards under the ARA in order to deliver on the government's claim that the new application process will better protect groundwater.

Schedule 16 proposes to make it easier for licenced site boundaries to be expanded to include adjoining road allowances, provided that "prescribed conditions, if any, are satisfied." However, since the proposed regulatory conditions (or the proposed "simplified process") have not been disclosed by the provincial government to date, FOCA is unable to comment further on this provision, or whether it affords appropriate oversight or direction in this regard.

Schedule 16 proposes to expand the Cabinet's regulation-making authority under the ARA in relation to site plan amendments. Currently, this authority only permits regulations that address "minor" site plan amendments that can be made without the Minister's approval. However, Schedule 16 proposes to delete the word "minor," which potentially allows proponents to make even major changes without Ministerial approval, provided that the prescribed regulatory requirements are met. Since the Ontario government has not identified the types of "self-filed" site plan amendments that will be permissible, and has not released draft regulatory language on this matter, FOCA cannot support this ARA amendment.

For the foregoing reasons, FOCA recommends that the Ontario government should not proceed with the proposed ARA amendments pertaining to road degradation (section 2), exclusion of municipal zoning by-laws to aggregate extraction depths (section 3) or Crown land (section 11), and amendments to site plans without Ministerial approval (section 18(2)).

In summary:

When contemplating the community and environmental impacts of aggregate operations, FOCA contends that pits and quarries are significant, long-term and physically intrusive, and that their operation can result in serious environmental and nuisance impacts (e.g. noise, dust, increased truck traffic, and adverse effects upon water resources, wildlife habitat, and adjacent land uses).

We also note that the former Environmental Commissioner of Ontario (ECO) found in her 2017 annual report to the Ontario Legislature that:

> *The process of both siting and approving the operation of pits (sand and gravel) and quarries (solid bedrock material such as limestone and granite) is often highly controversial and divisive for many local communities. Few people want to live beside an aggregate operation or its haul roads as they typically generate dust and noise and increase truck traffic.*
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> *Aggregate operations can also impact local water systems, wildlife, natural habitats, and farmland. In addition, as pits and quarries often cluster together in groups – where nature deposited the most desirable types of rock – cumulative environmental effects can arise.*

Notwithstanding the ECO's recommendations to "lighten the environmental footprint of aggregates in Ontario" to address known and expected conflicts and impacts, the current ARA proposals seem 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.

FOCA concludes that the proposed changes to the *ARA* and O.Reg.244/97 do not address long-standing concerns about the adverse environmental, public health and socio-economic impacts of aggregate extraction.

FOCA believes that the Province has not substantiated the need for its proposals by providing credible, objective and evidence-based justification for these controversial legislative and regulatory changes.

From a public interest perspective, these 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.

Finally, the Province's lack of particulars about how the proposed *ARA* changes will be implemented by the Ministry of Natural Resources and Forestry makes it exceedingly difficult for stakeholders to provide feedback. Similarly, the Ontario government's apparent decision to proceed with the statutory changes (e.g. by introducing Schedule 16 in Bill 132 in the Ontario Legislature while the ARA public comment period is still underway) is contrary to the public participation rights under Part II of the *EBR*.

We hope that the above commentary is instructive and provides useful input to the planned revisions to the Aggregate Resources Act, and we look forward to continued dialogue in the months ahead.

Sincerely,

Terry Rees, Executive Director
On behalf of
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