

February 29, 2008

Niagara Escarpment Plan Amendment Application PG 167 07
Harold Sutherland Construction Ltd.
Lot 25, 26, 27 and part Lot 28, Concession 10
Township of Georgian Bluffs (Former Township of Keppel)
Grey County
EBR Registry Number 010-2335

The Coalition on the Niagara Escarpment (CONE) is pleased to provide comments on the above-noted proposed Niagara Escarpment Plan Amendment to re-designate 68 hectares of a 124.45-hectare property as Mineral Resource Extraction Area to permit a quarry extracting below the water table; and to permit a Redi-Mix concrete plant and an asphalt plant, both of which are not permitted uses in the Mineral Resource Extraction Area designation.

I Introduction

CONE, founded in 1978, now has 26 member organizations – both province-wide environmental organizations and local community groups along the Escarpment. We have worked consistently for the protection of the Escarpment from inappropriate development. We support the Niagara Escarpment Plan. We have had a long history of involvement in Escarpment aggregate matters. Most recently, jointly with our member group Protect Our Water and Environmental Resources (POWER), we were a party at the Joint Board hearing regarding proposed Niagara Escarpment Plan Amendment 135 to expand Dufferin Aggregates' Milton Quarry – the only party at the hearing that opposed the amendment.

One of the very few policies in the Niagara Escarpment Plan (NEP) that CONE does not support is the provision, through Plan Amendment, for the possibility of new or expanded aggregate operations in the Escarpment Rural Area designation. CONE has a long-held policy position that the NEP Area should not be considered as a long-term source of aggregate supply and for that reason, that new or expanded aggregate licenses should not be approved. CONE takes this position because, in our view, new or expanded aggregate licenses offend the purpose and objectives of *the Niagara Escarpment Planning and Development Act (NEPDA)* and the NEP.

II Summary of CONE's Position

While CONE opposes new or expanded aggregate licenses in the NEP Area, we do agree that Amendment 167 *could* continue to be processed under the provisions of the NEPDA, subject to one very important condition (#2 below). CONE does recognize that the NEP

contemplates the possibility of expansions to aggregate licenses in the Escarpment Rural Area designation, where the new Sutherland quarry would be located.

In summary, CONE's position is as follows:

(1) Based on our policy position on aggregates noted above, CONE opposes proposed Amendment 167 in its entirety. The proposed quarry is not in the public interest pursuant to section 6.1(3) of the NEPDA.

(2) In keeping with CONE's Aboriginal Policy, further processing of Amendment 167 should be put on hold until the rights and claims of the Saugeen Ojibway Nation (the Chippewas of Nawash Unceded First Nation and the Saugeen First Nation) are fully resolved pursuant to the duty of the Government of Ontario to consult the First Nations on matters that might affect their rights and claims. It is our understanding that this project infringes directly on Saugeen Ojibway Nation rights and claims.

III Rationale for Opposition to Proposed NEP Amendment 167

A number of issues are covered in the November 15, 2007 Initial Staff Report and additional issues identified by CONE that cumulatively contribute to CONE's position of opposition to the proposed Amendment and re-confirm our position on aggregate extraction in the NEP Area noted above.

a) First Nations and land ownership issues:

The Saugeen Ojibway Nation has a claim on its traditional territories in Bruce and Grey Counties which includes a portion of the subject property. In addition, more specifically, the First Nations have a claim on the original road allowances in the Township of Georgian Bluffs, which is named in the First Nations' Statement of Claim. Finally, the First Nations have raised concerns about the environmental and cultural impacts of the proposed quarry. For example, there is a traditional trail that passes between Owen Sound and Colpoy's Bay close to the subject property. In addition, the Saugeen Ojibway Nation maintains rights to hunt, fish and gather throughout its traditional territories, including the area affected by the proposed quarry expansion.

Keeping in mind CONE's Aboriginal Policy (which is attached, also available on our website at www.niagarescarpment.org) and on the basis of the legal duty of both the federal and provincial governments to consult First Nations on development issues in areas under claim, CONE takes the position that it is at the very least inappropriate and at most, arguably illegal, for Ontario to further process Amendment 167 until the Saugeen Ojibway Nation signals that its concerns have been addressed and accommodated.

In the event that the First Nations issues are resolved in a manner that allows further processing of Amendment 167, CONE puts forward the following positions.

b) *Inconsistency with purpose and objectives of the NEPDA and the NEP:*

The proposed quarry application offends the purpose of the *NEPDA* and the NEP, to maintain the Niagara Escarpment and land in its vicinity "substantially as a continuous natural environment" and to allow development only if it is "compatible with that natural environment." CONE's position is that the proposed quarry does not meet these tests. The continuous natural environment of the Plan Area is already compromised by the existing quarry on the east side of Grey County Road 17. CONE sees no justification for further fragmenting the Escarpment's natural corridor by permitting the new quarry adjacent to the existing one.

The proposed Amendment, in CONE's view, also offends Objective 4 of the NEP (Objective 8d of the *NEPDA*) that seeks to "maintain and enhance the open landscape character of the Niagara Escarpment...." All the aggregate in the proposed quarry application would be mined below the water table and would involve quarrying for up to 48 years. Together, these two facts mean that natural habitats and farmlands – the "open landscape" of the Escarpment countryside – would be destroyed for a lengthy period of time and would be replaced by an unnatural, rehabilitated environment including an artificial lake. The natural corridor of the Escarpment would not be re-created through site rehabilitation after extraction.

c) *Quarry proposal is not an "interim" land use:*

It is often argued that aggregate extraction in the NEP Area is an "interim" land use. Yet the theoretical life of the proposed quarry, if mined at the rate of 600,000 tonnes per year (with a total estimated resource of 30.8 million tonnes) is 48 years. A quarry that involves almost half a century of mining and many additional decades of site rehabilitation is *not* an interim land use. The Canadian Oxford Dictionary defines "interim" as "temporary" or "provisional." No reasonable person can consider the removal of natural habitats for 48 years plus many years of rehabilitation to be "interim" destruction of the Niagara Escarpment's natural environment.

Furthermore, for the existing quarry across County Road 17, approved by Cabinet in 1988, the estimated life span was 25 years, yet after just 20 years in operation, there are virtually no reserves left, indicating that the applicant's ability to estimate the aggregate reserves is deficient and that the quarry could remain active either more or fewer years than the theoretical 48 years. "Interim" land use in this case is a myth, for CONE has every expectation that the applicant or his successors will continue to "come back for more" if permitted to do so. The applicant's record thus far is *not* impressive, since, as the staff report notes, "it appears that the present quarry operations have extended to lands beyond those included in the present licence. This raises concerns regarding the applicant's commitment to preserve the natural features, ANSI and wetland, on the proposed lands where it is inconvenient" (page 30).

This perspective on the notion of interim land use re-confirms CONE's position that the proposed Amendment offends the purpose and objectives of the *NEPDA* and the NEP.

- d) *Public need, lack of evaluation of alternative supply, and lack of evaluation of demand management:*

CONE takes the position that continued quarrying in the Plan Area is not in the public interest pursuant to s. 6.1(3) of the *NEPDA* because no public need is met by further approvals for aggregate extraction in the Plan Area.

Public need is always an important matter to be examined for all NEP amendments. CONE takes the position that it is impossible for public need to have been established as part of the justification for this Amendment because, as noted on page 27 of the Initial Staff Report, "there is no indication that the applicant has assessed any other available mineral resource areas outside the NEP Area and determined why these could not be used." The environmental principles of the *NEPDA* and the NEP suggest that the NEP Area should not be viewed as a mineral reserve in isolation from other areas having the same or very similar resources that, if utilized, would have far less impact on the continuous natural environment of the NEP Area.

Missing from the Initial Staff Report and, therefore, CONE surmises, from the applicant's supporting documents is any analysis of the potential for demand management for aggregates to reduce the need for virgin aggregates from the proposed Sutherland quarry through recycling of used aggregate and other means of managing demand. There is no indication of whether the applicant has reviewed the report titled *Rebalancing the Load: The Need for an Aggregates Conservation Strategy for Ontario* by the Pembina Institute (January 2005, www.pembina.org).

This study found that the Province lacks basic information on the current demand for and uses of aggregate, and that the Province does not have up-to-date projections regarding future demand. The study notes that "the lack of current, comprehensive, publicly available information makes it impossible to properly assess claims of a supply 'crisis' in the southern part of the province, or, more generally, to manage the resource in a sustainable manner. The study finds that, to date, the provincial government has done little to ensure the efficient use of the resource through such things as using secondary materials as substitutes, or implementing alternative approaches to urban design and infrastructure that would *reduce the overall need for aggregates ... [emphasis added]*." The study finds that other jurisdictions, including the United Kingdom, Denmark and Sweden, faced with similar conflicts between aggregate extraction and the protection of natural heritage, prime agricultural and source water lands have adopted a wide range of policy measures intended to promote the more efficient use of the resource."

The study concludes that "Ontario needs to develop and implement a comprehensive strategy for the management and conservation of the province's aggregate resources. Such a strategy should seek to *reduce overall demand for aggregate resources and*

maximize the substitution of secondary materials for newly extracted aggregate [emphasis added]." In addition, it should be noted that the Environmental Commissioner of Ontario, in his 2002-2003 annual report to the Legislature, recommended the development of a conservation strategy for aggregates.

It is CONE's position that proposed NEP Amendment 167 cannot be processed in isolation from the development of a comprehensive strategy for the management and conservation of aggregate resources in Ontario, as recommended by the Environmental Commissioner of Ontario and by the Pembina Institute.

e) *Protection of adjacent natural areas on the subject property:*

CONE has little confidence that the applicant can be relied upon to protect sensitive natural features – the Glen Management Area Provincially Significant Life Science Area of Natural and Scientific Interest (ANSI) and the Shouldice Provincially Significant Wetland – on the subject property beyond the licenced area given the NEC staff understanding that the applicant has extracted beyond the licenced areas of the existing quarry across the county road. Adding to CONE's concern is the proposal to mine below the groundwater table in an area so rich in water-dependent natural features – the ANSI and the wetland – and in an aggregate resource that has karst characteristics. It is clear that the applicant needs to better demonstrate that the adjacent natural features can be protected, especially given the complex hydrogeological characteristics of the area and the impact that the rehabilitation plan for an artificial lake may have on water quality and quantity in the ANSI and the wetland.

CONE fully concurs with the long-held NEC position that all setbacks and buffer areas must be located outside the licenced area and must remain designated Escarpment Rural Area so that there is no risk of reduction of setbacks to zero through licence amendments to expand the extraction area within the licenced area.

CONE takes strenuous objection to the proposal by the applicant to “relocate” some species of conservation concern from within the proposed licenced area to locations outside the extraction area, including such “signature” Escarpment species as the Hart's Tongue Fern. The proposed relocation flies in the face of the fact that many plant species have very specific and narrow habitat requirements that cannot be easily recreated. The fact that, for example, the Hart's Tongue Fern is so rare along the Escarpment and that most of the North American population of this species is found on Ontario's portion of the Niagara Escarpment point to its very specific habitat requirements. No extraction should be permitted of habitats of these species of conservation concern and lands required around them as buffers/setbacks.

CONE is particularly concerned for the future of the Glen Provincially Significant Life Science ANSI, since it supports an exceptional 501 species of vascular plants, 48 of them nationally, provincially, regionally or locally rare.

IV Conclusions

For the many reasons noted in Part III above, CONE opposes proposed Amendment 167. The two overarching issues relate to (1) the First Nations claim and the duty to consult; and (1) CONE's broad concern about this amendment and any other amendments related to new or expanded aggregate extraction in the NEP Area – that it is being proposed in a policy vacuum related to aggregate demand management and conservation in Ontario.