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Re: Proposed Oak Ridges Moraine Conservation Plan (2016), (part of the Coordinated Land Use Planning Review), EBR Registry Number: 0127197; Proposed Growth Plan for the Greater Golden Horseshoe, 2016 (part of the Coordinated Land Use Planning Review), EBR Registry Number: 0127194; Proposed Greenbelt Plan (2016), (part of the Coordinated Land Use Planning Review), EBR Registry Number: 0127195;

Proposed amendment to the Greenbelt Area boundary regulation (part of the Coordinated Land Use Planning Review), EBR Registry Number: 0127198; and Amended Niagara Escarpment Plan, 2016 (part of the Co-ordinated Land Use Planning Review), EBR Registry Number: 012-7228

SUBMISSIONS ON AGGREGATE PROVISIONS AND SPECIES AND RISK PROVISIONS OF THE FOUR PLAN REVIEW

CELA has earlier provided detailed submissions to the Four Plan Review by way of submissions dated October 31, 2016 regarding human-made hazards and population growth. We have also separately endorsed the broader submission led by Green Communities Canada dated October 31, 2016 dealing with natural heritage and water protection issues among others. We provide this additional submission to deal more specifically with two issues: Species at Risk and habitat protection; and Aggregate policies and their interaction with natural heritage and prime agriculture.

1. Species at Risk and Biodiversity

CELA has had the opportunity to review the analysis conducted by Ontario Nature in respect of the species at risk and habitat provisions of the proposed Four Plans. We concur with their analysis and their concern that as proposed, the Plans will weaken current provisions with respect to protection of species and risk and their habitat. We therefore provide the following recommendations:

A. Greenbelt Plan

Recommendation: Restore the protection from development and site alteration currently afforded to key natural heritage features within the Natural Heritage system; in particular for habitats of threatened and endangered species as well as habitats of special concern species.

B. Oak Ridges Moraine Conservation Plan

Recommendation: Restore the protection of habitat of threatened and endangered species in Countryside Areas and Settlement Areas along with the minimum vegetation protection zones and requirement for Natural Heritage Evaluation, along with protection currently afforded to rare species and their habitat.

C. Niagara Escarpment Plan

We applaud the provisions in the proposed NEP which retain protection for habitat of threatened or endangered species within Escarpment Natural Areas and Escarpment Protection Areas along with the provision that where multiple standards or policies apply, the most restrictive (i.e. protective) applies.

Recommendation: However, we recommend that the province restore protection of the habitat of threatened and endangered species within Escarpment Rural Areas, Mineral Resource Extraction Areas, Urban Areas and others. The NEP should also continue to include the habitat of special concern or rare species as a key natural heritage feature an explicit objective of the plan should include protection of that habitat. Similarly, habitat of endangered, threatened, special concern and rare species should be considered when evaluation applications to re-designate Escarpment Rural Areas to Mineral Resource Extraction Areas.

2. **Amendments affecting Aggregate operations vis a vis natural habitat and related values**

We noted above in the earlier Niagara Escarpment Plan comments regarding habitat of threatened and endangered species within Mineral Resource Extraction Areas, that their protection should be retained. The following are additional detailed comments regarding aggregate policies in the four plans.

A. **Growth Plan for the Greater Golden Horseshoe**

1. A proposed change to Section 4.2.3 is to stipulate that mineral aggregate operations and wayside pits and quarries are permitted in key hydrologic features and key natural heritage features. This change should be reversed.
2. Section 4.2.8 Mineral Aggregate Resources is completely new and provides new policies for “mineral aggregate resources” within the “natural heritage system” similar to those for the Protected Countryside in the current *Greenbelt Plan*.

Most notably, this section states that within the natural heritage system mineral aggregate operations and wayside pits and quarries will not be permitted in key natural heritage features and key hydrologic features such as significant wetlands, habitat of endangered species and threatened species, significant woodlands. The section goes on to state that Mineral Aggregate Resources and new wayside pits and quarries may only be permitted in key natural heritage features and key hydrologic features and any vegetation protection zone where the application demonstrates how the water resources system will be protected or enhanced and that various proposed rehabilitation policies have been addressed and met by the operation. Any application for a new mineral aggregate application will be required to demonstrate how the connectivity between key hydrologic features and key natural heritage features will be maintained; how the operator could immediately replace any lost habitat; and how the water resource system will be protected or enhanced. An application to expand an existing mineral aggregate operation may be

approved in the natural heritage system only if it is consistent with the Provincial Policy Statement 2014 and satisfies its rehabilitation requirements.

Part 4 of the proposed Section 4.2.8 goes on to state that in prime agricultural areas, applications for new mineral aggregate operations will be supported by an agricultural impact assessment and will seek to maintain or improve connectivity of the agricultural systems. Part 5 of this section provides strict rehabilitation requirements, such as restoring the ecological integrity, maintaining the health, diversity and size of key hydrologic features and key natural heritage features, restoring aquatic areas, and restoring prime agricultural areas back to an agricultural condition; and imposing stricter rehabilitation requirements for the rehabilitation for new mineral aggregate operations in the natural heritage system such as the rehabilitation of forest cover.

The previous act simply contained section 4.2.3 entitled Mineral Aggregate Resources stipulating that the Ministers of Infrastructure and Natural Resources will work with municipalities, producers of mineral aggregate resources and other stakeholders to develop a long-term strategy for ensuring the wise use, conservation, availability and management of mineral aggregate resources and for identifying rehabilitation approaches.

To the extent that the revisions improve protection of key natural heritage features, key hydrologic features, and agricultural lands, we are supportive.

B. Greenbelt Plan

1. The proposed *Greenbelt Plan* (2016) contains many references to mineral aggregate resources, unlike the current Plan that does not refer to mineral aggregate resources.
2. New policies are proposed to be added to Section 4.3 of the *Greenbelt Plan*. The first of these policies introduces a requirement for an “agricultural impact assessment” where new mineral aggregate operations are proposed in prime agricultural areas in order to determine how adverse impacts on the Agricultural System are to be avoided. The second policy introduces refinements to the mineral aggregate rehabilitation policies to clarify requirements.

Recommendation: We submit that new mineral aggregate operations should not be proposed in prime agricultural areas within the Greenbelt.

The Act proposes Section 4.3.2 Non-Renewable Resource Policies that contains several provisions specifically addressing mineral aggregate resources and operations for land within the protected countryside.

Parts 3 and 4 of Section 4.3.2 are the same as those contained in sections 3-4 of Section 4.2.8 of the proposed *Growth Plan for the Greater Horseshoe (GGH)*, stipulating restrictions for mineral aggregate operations in natural heritage features and prime agricultural areas.

Part 5 of Section 4.3.2 is an addition not proposed in the *GGH*. This addition imposes rehabilitation requirements on mineral aggregate operations within the Protected Countryside. It states that new and existing mineral aggregate operations and wayside pits and quarries shall ensure that the rehabilitated area will be maximized and disturbed area minimized; that any excess disturbed area will be rehabilitated; and that the applicant will demonstrate that the quantity and quality of groundwater and surface water will be maintained as per Provincial

Standards under the *Aggregate Resources Act*. The proposed rehabilitation additions seen in the *GGH* are again repeated in Sections 6 and 7 of the *Greenbelt Plan*.

Section 8-11 of Section 4.3.2 are proposed additions not proposed in the *GGH*. Section 8 provides that operators are encouraged to consider and provide for public access to former aggregate sites upon final rehabilitation. Section 9 states that within identified specialty crop areas mineral aggregate operations and wayside pits and quarries are subject to additional requirements, such as additional rehabilitation requirements. Section 10 states that where a municipality has undertaken a comprehensive aggregate resource management study and implemented the results into its official plan prior to December 16, 2004, such policies shall be deemed to conform to the plan. Section 11 states that municipalities should ensure that all land use activities related to the post extraction rehabilitation of mineral aggregate operations are consistent with any relevant approved source protection plan and relevant watershed or sub watershed plan.

3. The proposed Section 5.3 states that official plans and zoning bylaws shall not contain provisions that are more restrictive than the policies of section 4.3.2 as it applies to mineral aggregate resources. A definition for Mineral Aggregate Operation is further provided.

C. Oak Ridges Moraine Conservation Plan

1. In the *Oak Ridges Moraine Conservation Plan* under the title Natural Linkages Areas and Countryside Areas, there is an additional emphasis on rehabilitation requirements for new aggregate resource operations.

Proposed changes to Part IV (Specific Land Use Policies) would include aligning policy on the rehabilitation of mineral aggregate operations in prime agricultural areas with the Provincial Policy Statement, 2014 definition of “agricultural condition” and updating policy on mineral aggregate operations in Natural Linkage Areas to clarify that the 1.25 km area of undisturbed land aggregate operations are currently required to maintain in Natural Linkage Areas could also contain adjacent portions of Natural Core Areas.

These aforementioned changes are specifically seen in additions made to Section 35, Mineral Aggregate Operations and Wayside Pits. Section 35(1)(b)(i) has been revised to so that instead of simply stating that prime agricultural must be rehabilitated to a state where it can be used for agriculture, to the requirement that the land must be returned to a condition in which the soil capacity for agriculture is on average the same as it was before the mineral aggregate operation of wayside pit began operating. Section 35(3)(a) has been revised to add that to maintain connectivity not only must the excluded area be at least 1.25 kilometers in total width, it now states that such distance can be measured either entirely within the Natural Linkage Area or including areas within the Natural Core Area that is adjacent to the excluded area. Section 35(4)(a) has been revised to limit the approval of mineral aggregate operations or wayside pits with respect to land in a key natural heritage feature to natural heritage features that are also significant woodland.

D. The Niagara Escarpment Plan

The proposed *Niagara Escarpment Plan* contains definitions for Mineral Aggregate Operations and Mineral Aggregate Resources, unlike in the current NEP where these terms aren't defined. It also contains a new, shorter definition for Progressive Rehabilitation.

1. Section 1.2.2 Amendments for Mineral Extraction is a new section that incorporates previous sections such as section 1.5 Development Policies for Mineral Extraction and Section 1.9 New Mineral Resource Extraction Areas. Some minor changes are proposed to these sections. For instance, in proposed Section 1.2.2 instead of referring to Protection of the Natural and Cultural Environment as a consideration in evaluating applications for amendments to the *Niagara Escarpment Plan* to redesignate Escarpment Rural Area to Mineral Resource Extraction Area, it now refers to the Protection of the Escarpment Environment as being a consideration. There is also a more comprehensive definition of what constitutes protection of the escarpment environment.
2. Minor changes have been made to the proposed section 1.9 Mineral Resource Extraction Area. Parts 4-7 of Section 1.9.1 have been added to address rehabilitation of mineral aggregate operations in greater detail. Some small changes have been made to section 1.9.3 such as instead of stating that agricultural operations are permitted, now stating that agricultural uses, agriculture-related use and on farm diversified uses may be permitted.

Part 21 of Section 1.9.3 is new, and sets out additional buffers where mineral extraction shall not occur within a certain area. Part 22 sets out some additional considerations regarding the recycling of imported asphalt and concrete within a certain area. Section 23 sets out some additional restrictions on process plants in a certain area.

Section 1.9.4 regarding New Lots is new, and begins with the statement that new lots are discouraged within Mineral Resource Extraction Areas. Section 1.9.5 involving After Uses has been revised to make a reference to the *Aggregate Resources Act* and has been simplified.

3. Changes have been made to section 2.9 Mineral Aggregate Resources. For instance, in the objective section there is an emphasis on rehabilitation and restoration of the Escarpment Environment. Parts 1 and 2 of section 2.9 are also new, and restrict mineral aggregate operations and wayside pits and quarries in wetlands and significant woodlands, and in key natural heritage features, natural features or key hydrologic features or any vegetation protection zone unless it has been demonstrated that there will be no negative impacts on the feature. The criteria listed in Part 3 as to the criteria for allowing extractive operations have become lengthier and add that a new or expanding mineral aggregate operation will undertake an Agricultural Impact Assessment to determine how to avoid impacts on agricultural lands. While the definition for rehabilitation has been removed, the requirements for rehabilitation in section 2.9 (11) have been lengthened.

CELA has endorsed the submission of Green Communities Canada dated October 31, 2016. In respect of aggregate policies that submissions states as follows:

“We are concerned that some land uses continue to have priority over protection of natural heritage, including infrastructure and aggregate extraction (see, for example, policy 3.2.5.1c, p26 of proposed Greenbelt Plan). Such exceptions to the protection of natural heritage should not be permitted or only permitted with justification that the proposed land use is necessary in the public interest and that there is no reasonable alternative.

Recommendation: Remove exceptions for infrastructure and aggregate extraction from the protection of natural heritage.”

CELA also endorses the submissions of Ontario Nature in respect of the aggregates policies of the four plans, specifically their Recommendations 17 and 18 of the submission dated October 31, 2016:

Recommendation: Limit the expansion of new aggregate operation or wayside pits into the region's important key natural and key hydrologic features, their functions, the natural heritage and water resources systems, Oak Ridges Moraine Linkage Areas and Niagara Escarpment Rural Areas. Revise the policies as indicated below:

- GP 4.3.2 (3) Notwithstanding the Natural System policies of section 3.2 of this Plan, within the Natural Heritage System, mineral aggregate operations and wayside pits and quarries are subject to the following:
 - a) No new mineral aggregate operation and no wayside pits and quarries, or any ancillary or accessory use thereto shall be permitted in all the following key natural heritage features and key hydrologic features.
- Growth Plan 4.2.8 (3) Notwithstanding the policies of subsections 4.2.2, 4.2.3 and 4.2.4, within the natural heritage system identified in accordance with policy 4.2.2.2, mineral aggregate operations and wayside pits and quarries are subject to the following:
 - a) no new mineral aggregate operation and no wayside pit and quarry, or any ancillary or accessory use thereto will be permitted in all the following key natural heritage features and key hydrologic features.
- Growth Plan 4.2.3.(1) Development or site alteration is not permitted in key hydrologic features or key natural heritage features, with the exception of: ...
 - d) ~~mineral aggregate operations and wayside pits and quarries;~~
- ORMP Part II 12. (3) The following uses are permitted with respect to land in Natural Linkage Areas, subject to Parts III and IV: ...
 - 11. ~~Mineral aggregate operations.~~

Recommendation: Amend all four policies to explicitly not permit new extraction of aggregate resources on prime agricultural land.

We trust these submissions are of assistance.

Yours very truly,



CANADIAN ENVIRONMENTAL LAW ASSOCIATION

Per

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