OSSGA
ONTARIO STONE, SAND
& GRAVEL ASSOCIATION

November 4, 2019

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

Dear Mr. MacDonald:

RE: Proposed Amendments to the Aggregate Resources Act (ARA) (ERO #019-0556)

The Ontario Stone, Sand & Gravel Association (OSSGA) is pleased to provide comments on the proposed amendments to the *Aggregate Resources Act*.

OSSGA is a not-for-profit association representing over 280 sand, gravel and stone producers and suppliers of products and services that serve the industry. Collectively, our members supply the majority of the 164 million tonnes of aggregate used, on average, each year in the Province to build and maintain Ontario's infrastructure needs. OSSGA works in partnership with governments, agencies and members of the public to promote a safe and competitive aggregate industry, contributing to the creation of strong communities in the Province.

The proposed changes to the ARA are important to reducing red tape, promoting environmental stewardship and supporting economic growth within the aggregate industry. Based on the ERO posting we offer the following comments for your consideration:

Proposed Amendments to the *Aggregate Resources Act*

1. *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.*

The existing application process for a pit or quarry to go from above water to below water requires a major Site Plan Amendment (SPA). This includes requirements for a public information session, public and agency consultation, and preparation and review of the supporting technical report (i.e. Hydrogeology) and a new Site Plan. Currently, decisions on these applications are made by MNRF staff and are not subject to any appeal. The proposed change would introduce an appeal mechanism, similar to license applications, which can be referred to the Local Planning Appeal Tribunal (LPAT) for adjudication.

OSSGA members understand the impetus to move to a process that provides an appeal mechanism; however, there is a concern that this could result in appeals moving forward without scientific basis, and further increase the length of time for major amendments to receive approval.

Recommendations:

OSSGA would support the proposed change, provided that:

- **a)** The amendment application be focused on addressing hydrogeology and respect the aspects of existing approvals that have already been approved.
- **b)** Process timelines for below water amendments be implemented, so that decisions can be expected in a timely manner.
- **c)** Proposed appeal mechanism be available to an applicant in the event that approval of an amendment application is denied.
- **d)** MNRF be empowered to determine if an objection is frivolous or vexatious and use this tool to prevent unnecessary LPAT Hearings from going forward.
- **e)** The transition provisions ensure that current applicants are not disadvantaged and have to start over.
- **f)** MNRF carry through with their proposed limitation on vertical zoning (see Item 2 below).

In addition to the appeal mechanism, we suggest that the Ministry take this opportunity to address some flaws in the current system which could be instrumental in reducing red tape. These amendments can take an extraordinary amount of time to be processed, and in some cases longer than an ARA application for a new license. We are aware of examples where an application for an amendment to go below water took over nine years to process. This kind of delay and uncertainty creates tremendous pressure and risk for aggregate operators in Ontario.

2. *Clarify that depth of extraction of pits and quarries is managed under the Aggregate Resources Act and that duplicative municipal zoning by-laws relating to the depth of aggregate extraction would not apply.*

OSSGA notes that this proposed change goes hand in hand with the proposed change to the Provincial Policy Statement that clarifies that extraction depth is controlled through the ARA and not through municipal “vertical” zoning. (PPS 2014, draft Policy 2.5.2.4).

Recommendations:

- **a)** OSSGA supports this proposed change. In particular, we support the clarity provided that the ARA takes precedent over municipal zoning, on this issue.
- **b)** MNRF should consider this opportunity to expand this clause to include more operational issues and establish that mineral aggregate operations are designed, operated and regulated in accordance with provincial legislation and standards.

3. *Clarify the application of municipal zoning on Crown Land does not apply to aggregate extraction.*

This is an emerging issue that has caused uncertainty and delay for some applicants, in certain areas of the province. It is good to see MNRF addressing this before it becomes a more significant, widespread problem.

Recommendation:

a) OSSGA supports this proposed change.

4. *Clarify how haul routes are considered under the Aggregate Resources Act so that the Local Planning Appeal Tribunal and the Minister, when making a decision about issuing or refusing a license, cannot impose conditions requiring agreements between municipalities and aggregate producers regarding aggregate haulage. This change is proposed to apply to all applications in progress where a decision by the Local Planning Appeal Tribunal or the Minister has not yet been made. Municipalities and aggregate producers may continue to enter into agreements on a voluntary basis.*

It is OSSGA's interpretation that the proposed change would prevent the requirement for haul route agreements that require financial contributions for 'wear and tear', or routine maintenance on haul roads. This would apply to both host and "drive through" municipalities.

OSSGA is aware of the increasing trend for municipal haul route agreements to be requested as part of new license applications. We note that while certain road improvements funded by the applicant may be appropriate to address safe and efficient access for a new aggregate operation, such as an entrance improvement or a turning lane, the expectation to contribute to on-going road maintenance may add a significant, and potentially cost prohibitive burden for an operator. This also creates an uneven playing field for business, since other road users, including possibly other aggregate operations which may have been approved several years ago, are not subject to the same financial requirements.

Municipalities already receive a financial contribution through the annual TOARC levy, based on production. The levy was increased in 2018 and we understand that there may be further increases considered in the future.

Recommendation:

a) OSSGA supports this proposed change.

5. *Improve access to aggregates in adjacent municipal road allowances through a simpler application process (i.e. amendment vs a new application) for an existing license holder, if supported by the municipality.*

OSSGA is fully supportive of a consistent, and simplified process to deal with access to aggregate in road allowances adjacent to a licence or permit, where there is a mutual interest to extract the material within the road allowance. There are numerous examples of "ridges" of high-quality aggregate resource between licensed areas that have been left in place.

These are excellent opportunities for wise resource management with mutual benefits to the licensee and the municipality, as well as a better opportunity for final rehabilitation. Consistency, and simplified processes are always welcomed as progressive changes.

Recommendation:

a) OSSGA supports this proposed change, particularly since it clarifies a new application will not be required.

6. *Provide more flexibility for regulations to permit self-filing of routine site plan amendments, as long as regulatory conditions are met.*

There is a wide variation in processing times for both major and minor amendments, depending on the area of the province, and the staff compliment at the District offices. We note that aggregate program staff in the District offices have a large workload which may involve numerous license applications. The site plan amendments are lower priority, and can take months, or even years to process, even if they are very straightforward.

The ability to self-file routine amendments would be a positive change in reducing red tape and would allow Ministry field staff more time to focus on priority matters including enforcement and rehabilitation.

Recommendation:

a) OSSGA supports this proposed change with the provision that the amendments that would qualify for self-filing are extensive, fair and reasonable. The policy list of minor site plan amendments would be a good starting point.

Regulatory Changes under Consideration

1. *Enhanced reporting on rehabilitation by requiring more context and detail on where, when and how rehabilitation is or has been undertaken.*

While we are generally supportive of the concept of better information on rehabilitation, we want to ensure the "enhanced reporting" is manageable and does not become overly onerous for site operators. The Ministry should look carefully at what information would be collected and how it will be managed.

Recommendations:

- **a)** OSSGA supports this proposed change; however, we strongly recommend that the information collected actually be used (i.e. collected, analyzed and results made publicly available).
- **b)** The rehabilitation information should be able to be collected and reported by company staff without the requirement to hire outside professionals as this potentially adds significant costs.
- **c)** In terms of collecting data, adding a form to the Compliance Assessment Report (CAR) could be a starting point for consideration.

2. *Allowing operators to self-file changes to existing site plans for some routine activities, subject to conditions set out in regulation. For example, relocation of some structures or fencing, as long as setbacks are respected.*

Site plans amendments are taking too long to process, often two years or more. The process (detailed in the Policy and Procedures Manual) lacks rigour and defined timelines. The proposal for self-filing for minor changes may help reduce the workload so that staff resources can be focused on more significant amendment proposals.

Recommendation:

- **a)** OSSGA supports this proposed change and recommends that the list of activities that would qualify for self-filing be scoped to ensure that the change is meaningful and not restricted to a small subset of activities.

3. *Allowing some low-risk activities to occur without a licence if conditions specified in regulation are followed. For example, extraction of small amounts of aggregate if material is for personal use and does not leave the property.*

This proposal requires further explanation for us to understand the potential implications. It does raise the concern that it may open the door for illegal operations. Furthermore, it was our understanding that the example of 'small amounts of aggregate not leaving the property' does not currently require a licence.

Recommendation:

- **a)** MNRF should provide more information on this proposed change to the Regulations before OSSGA is able to provide recommendations.

4. Clarifying requirements for site plan amendment applications.

The proposed changes should carefully look at ways to speed up the review and approval of site plan amendments. The aggregate industry needs predictability. With some exceptions, the process is generally becoming far too lengthy.

Recommendations:

- **a)** Provincial Standards should be revised to introduce target dates for approvals.
- **b)** If there is a need for an ERO posting, it should be done concurrently with review of the application for a site plan amendment, not after the fact.
- **c)** The Policy Manual needs to be updated, with assurance it will be uniformly implemented across the province.

5. Streamlining compliance assessment reporting, while maintaining the annual requirements.

OSSGA applauds the government for this initiative to explore streamlining compliance reports. We believe this is consistent with the Ministry's approach to enforcement (i.e. risk-based, educational, generally collaborative).

Recommendations:

- **a)** OSSGA notes that submitting an annual compliance report for unopened or inactive sites has limited value. For those sites, we suggest that the Ministry could consider a less detailed form.
- **b)** The current CAR forms have a number of items that are very similar and could be consolidated (e.g. C9 Stripping (overburden), C10 Overburden Seeded, C17 Topsoil (location/seeded)).
- **c)** We would support the option for electronic filing.
- **d)** We recommend that the timelines for inspecting low risk, non-operational items (e.g. fencing) be assessed at any time within 12 months prior to the report filing date.
- **e)** Require notice by the Inspector if a CAR has not been received and the licence will be suspended. We have heard of experiences where the CARs have been submitted, but not made it to the Inspectors desk, and the operator never knew of the suspension.

6. Reviewing application requirements for new sites, including notification and consultation requirements.

Any proposed change should examine opportunities for harmonization between ARA and Planning Act process timelines. We support a notification and consultation process where all stakeholders are given full opportunity to review, comment and participate. At the same time there needs to be clear timelines and limits so that the process has a reasonable prospect of a conclusion.

Overall the ARA license application process has changed dramatically over time. The costs and timing for a new application have significantly increased. We also suggest that, over the past 10 years, agencies have increasingly stepped outside of their jurisdiction and broadened their role in commenting and ultimately "approving" reports, applications and Site Plans as part of ARA and The Planning Act application review processes. This has caused overlap, and in some cases duplication of review, thereby increasing the time and cost for review and instilling an unclear leadership role. This duplication adds

exponentially to the length of time for an application to proceed through due process as well as the cost of an application.

Recommendations:

- **a)** The objective should be quality agency review to support good decision making, not quantity review which does not add to the decision-making process.
- **b)** Consideration should be given to identifying a single agency responsible for the application process and eliminate multi-agency review and comment on the same reports and Site Plans.
- **c)** To ensure consistency across Districts, applications could be reviewed through a central Provincial group of Ministry staff.
- **d)** Better performance standards and process timelines be regulated in order to support greater certainty for aggregate businesses in Ontario.

Conclusion

OSSGA appreciates the opportunity to be engaged with the ongoing consultation of the proposed changes. We are happy to provide specific examples from our members to illustrate and support the comments we have provided.

It is stated in the ERO posting that "*While no changes to aggregates fees are being proposed at this time, the Ministry is also interested in hearing your feedback on this matter*." We continue to be interested and available to discuss options and implications around a change in fee structure and would welcome any opportunity to meet on this topic.

We are also interested in further dialogue with the province as the details of the amendments to the ARA are developed, and following, development of Regulations and Policy. We stress the need for the development of Regulations and Policy to follow closely after any legislative changes have been enacted in order to fully see their benefits.

Please feel free to contact me with any questions or concerns.

Yours truly,

Norm Cheesman

c.c. Ala Boyd, Ministry of Natural Resources & Forestry

Ontario Stone Sand & Gravel Association
5720 Timberlea Blvd., Ste. 103
Mississauga, ON L4W 4W2
647 727 8774
ncheesman@ossga.com
GravelFacts.ca