

NOTICE OF DECISION

Application for Review – Environmental Bill of Rights

File No. R2017023

BACKGROUND

On February 5, 2018, the Ministry of Natural Resources and Forestry (MNRF) received from the Environmental Commissioner of Ontario (ECO) an application for review (R2017023) under subsection 61(1) of the Environmental Bill of Rights (EBR).

This Notice of Decision has been prepared to fulfil the MNRF's obligations under the EBR. The EBR requires the MNRF to send a Notice of Decision containing a brief statement of the reasons for the decision to the applicants, the ECO and any other person who might be directly affected by the decision.

DESCRIPTION OF APPLICATION FOR REVIEW

The EBR applicants have requested that the MNRF review Licence No. 5500, an instrument issued under the Aggregate Resources Act (ARA), and the site plan conditions related to this licence.

The applicants' arguments in support of a review include the following:

- The planned expansion by Meridian Brick Canada Ltd. (Meridian Brick) in the East Cell will result in the loss of an estimated 9,000 trees and 10.8 hectares of natural habitat;
- Proximity to 407/403/QEW and its role as a connector in the Cootes to the Escarpment EcoPark System makes this forest particularly vital for protection;
- Significant loss of opportunity to further expand the Cootes to Escarpment EcoPark System;
- Allowing the quarry expansion to proceed is at direct odds with the Province's Climate Change Action Plan and the ECO's 2010 recommendations to the MNRF which calls for a coordinated afforestation strategy for southern Ontario;
- The environment has dramatically changed since the issuance of the licence more than 45 years ago;
- Current policies, planning and decision-making must recognize that social and economic activity must occur within and be respectful of ecological limits.

In response to this request and in accordance with Part IV, Section 67(1) of the EBR, the MNRF considered this application in a preliminary way to determine whether the public interest warrants a review of the matters raised in the application. The Ministry's

preliminary consideration has been limited to matters within the Ministry's mandated areas of responsibility, which relate to the ARA.

Section 70 of the EBR requires the Minister to give notice of the decision whether or not to conduct a review, together with a brief statement of the reasons for the decision. The MNRF's decision and the reasons in support of it are set out below.

DECISION

After considering the application in accordance with Part IV of the EBR, MNRF has determined that the public interest does not warrant a review in the Ministry of the matters raised in the application.

REASONS FOR DECISION

In accordance with the Environmental Bill of Rights, the application for review has been considered in light of the criteria described in the EBR. Subsection 67(2) of the EBR identifies matters that may be considered by the minister in determining whether the public interest warrants a review.

MNRF's reasons for this decision are:

1. Trees, Natural Habitat & Species at Risk:
 - Following extraction of the "East Quarry", final rehabilitation to 100% forest cover is required by the site plan.
 - It is a requirement that the site be operated in accordance with current laws and regulations, such as the Endangered Species Act (ESA).
2. Lawful Use:
 - Aggregate extraction is an approved municipal land use at this location.
 - The site was licenced under the "grandfathering" provisions of the former Pits and Quarries Control Act and later transitioned under the ARA. Extraction, including tree removal of the "East Quarry" was authorized at the time of original licence issuance and the licence remains in good standing.
 - Similar to most other ARA licences, there is no date specified on Licence No. 5500 or site plan conditions when extraction of the "East Quarry" would commence or be completed.
3. MNRF's Role in Climate Change:
 - Under Naturally Resilient – MNRF's Natural Resource Climate Adaptation Strategy (2017-2021), the ministry will continue to mainstream climate change adaptation into natural resource management policy, planning, programs and practices and build species, ecosystem and landscape-level resilience.
 - The Ministry will also continue to support efforts that manage or enhance the ability of the natural environment to sequester and store greenhouse gases,

in line with Ontario's Climate Change Strategy and Climate Change Action Plan.

- Specific to this site, the site plan conditions require the licensee to reforest the entire "East Quarry" as part of its overall rehabilitation maintaining forest cover in the urban landscape.

The Ministry is responsible for managing the province's natural resources, including forests, fish and wildlife, mineral aggregate resources and Crown lands and waters. As identified in its Statement of Environmental Values (SEV), the Ministry's long-term vision is for a healthy environment that is naturally diverse and supports a high quality of life for the people of Ontario through sustainable development. The SEV commits the Ministry to managing natural resources in a sustainable manner. The Ministry administers a variety of legislation and programs to carry out its diverse mandate, including the ARA.

In the context of the subject application, the Ministry has given consideration to its SEV in determining whether the public interest warrants a review of the subject licence and notes the following:

- The purpose of the ARA is to manage, control and regulate aggregate extraction in Ontario. There is also a requirement to rehabilitate extracted areas once depleted and to minimize adverse impact on the environment in respect of aggregate operations.
- The Ministry considers social, economic and environmental factors as part of an ecosystem approach to integrated natural resource management. A balanced consideration of environmental and socio-economic matters is particularly relevant to the Ministry's administration of the ARA and instruments under this Act.
- In 1992, a new site plan was approved, under the ARA. Further site plan amendments were introduced to include environmental monitoring and mitigation measures and the rehabilitation requirements of the Greenbelt Plan. In 2010, the current site plan was approved by the MNRF.
- Through Ontario's Provincial Policy Statement under the Planning Act, MNRF has a role related to the protection of mineral aggregate resources, operations and making these resources available close to markets. The licenced site is situated with an identified area of mineral aggregate resources as delineated in the Aggregate Resources Inventory (Paper 184) for the Regional Municipality of Halton (2009) and is designated and zoned for extractive use by the City of Burlington's official plan and zoning by-law.

- The Ministry is already in the process of conducting a separate scoped review of ARA Licence No. 5500 and related site plan for the licensed portion known as the “East Quarry” respecting:
 - Species regulated under the Endangered Species Act on the “East Quarry”; and
 - Mitigation measures identified in the 2015 Noise Study prepared by SS Wilson for Meridian Brick that may be relevant to the site plan for the “East Quarry”.

SUMMARY

For the reasons outlined above, MNRF has determined that the public interest does not warrant a review in the Ministry of the matters raised in the application.