

December 17, 2008

MEMORANDUM TO:

Niagara Escarpment Commission  
232 Guelph Street  
Georgetown, ON L7G 4B1

Attention: Kathy Pounder

Subject: Duntroon Quarry Expansion  
Pt Lot 25, Concession 11, Lot 25 and Pt Lot 26, Concession 12  
Township of Clearview

Further to this Ministry's letter dated November 17, 2006 regarding the Niagara Escarpment Amendment Application and your request for agency comments at the agency meeting/AMP workshop on November 24, 2008 we provide the following update on the outstanding issues that fall within this Ministry's mandate with respect to the natural features and ecological functions on site:

Provincially Significant Wetland/ANSI

The amended licence boundary currently excludes the provincially significant wetland and the regionally significant ANSI and provides a 30 metre buffer from these features within the licenced area. Stantec has submitted a literature review which includes scientific rationale to support the proposed 30 metre wetland buffer. However, the review of additional hydrogeological and karst information from peer reviews is ongoing and potential impacts to the wetlands cannot be determined until this assessment is complete.

Endangered Species Protection under the PPS and ESA

Jefferson Salamander

The additional information requested for amphibian egg mass surveys has been previously submitted and provides the necessary clarification. Therefore we concur that the site does not contain Jefferson Salamander.

Butternut

Retainable butternut trees are protected from killing or harm under Section 9 of the Endangered Species Act (ESA) which came into effect June 30, 2008. Butternut

requires assessment by a qualified MNR evaluator to determine if trees are retainable. Trees that do not meet the retention criteria can be removed.

Midhurst staff received a butternut health assessment from the proponent in the summer of 2008 with revised information subsequently provided December 1, 2008. MNR staff will assess tree health and retainability as soon as reasonably possible in 2009 when there is leaf out. If butternut trees are found to be retainable, it is the position of the District that a protective buffer of 25m to 30m surrounding the trees is recommended based on site characteristics in order to meet the requirements of the PPS and the ESA .

The proponent has indicated an interest in pursuing an ESA Permit Application to allow for the removal of retainable butternut. Such a permit may be applied for if it can be demonstrated that an overall benefit to the species will be achieved within a reasonable time, reasonable alternatives that would not affect the species have been considered, and steps have been taken to minimize adverse effects on the individual members of the species. Until such time as the assessment is carried out discussion related to the issuance of a permit under the ESA is premature.

#### Significant Wildlife Habitat and Significant Woodlands

MNR has provided technical advice to the approval authorities being the NEC and Township of Clearview that the woodland and wildlife habitat (Hart's Tongue Fern) on site appear to meet the criteria as significant features as defined by the PPS. The responsibility for the determination of the significance of the woodland and wildlife habitat on site is that of the approval authorities.

Hart's Tongue Fern is a species of special concern and is not protected under the Endangered Species Act. MNR staff have offered technical advice regarding Hart's Tongue Fern and have consistently advised the proponent and the NEC that MNR does not support transplantation as an acceptable mitigation measure. Further, District staff have advised that transplantation is not consistent with the direction in the Provincial Policy Statement (PPS) 2005 as the PPS speaks to no negative impacts and not to 'net gain' or 'compensation'.

Following discussions at the MNR/Walker Aggregates meeting on September 29, 2008 related to significant wildlife habitat and significant woodlands concerns the proponent provided a 'without prejudice' map to MNR showing potential revisions. The map excludes Hart's Tongue Fern colony 1 and provides a 50 metre setback from the extraction limit to address these concerns. As the decision whether the woodland and wildlife habitat are significant and whether the tests of the PPS have been met are that of the NEC and Township, MNR recommends that the mapping be shared with the NEC and the municipality for a decision as to the merits of this revision.

Draft Adaptive Management Plan (AMP)

Discussion at the meeting was limited to the Category 2 component of the AMP. We continue to consider the AMP to be premature and have no further comments on the AMP at this time.

Should you require any further clarification regarding these comments please call.



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