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August 16, 2019

Sent via email to

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Minister Jeff Yurek
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Director, Environmental Assessment and
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Ministry of the Environment, Conservation
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135 St. Clair Avenue West, 1st Floor

Jeff Schosser, Aggregate
Officer, MNRF
1350 High Falls Road
Bracebridge, ON P1L 1W9

Dear Honourable Jeff Yurek,

**Re: Request for Part II Order, Individual Environmental Assessment
John Bacher Construction Limited Aggregate Permit Application
Geographic Township of McClintock, Part of Lots 11 & 12, Concession 2,
Township of Algonquin Highlands**

We represent a concerned group of residents comprising the Harvey Lake Area Residents (“HLAR”) to formally request a PART II Order, Individual Environmental Assessment (a “Bump Up”), of the John Bacher Construction Ltd (the “Applicant”) Aggregate Permit Application in Township of Algonquin Highlands, Ontario.

There are five primary reasons for this request: 1. Locating a new quarry on Crown Land in this vicinity is a poor use of land that is contrary to the Township of Algonquin Highlands Official Plan and threatens the natural environment and use and enjoyment of land, requiring a higher standard of review absent an appeal to the Local Planning Appeal Tribunal (“LPAT”); 2. A new quarry on public land should receive the highest order of public engagement and scrutiny, however, in Ontario Crown Land aggregate extraction is exempt from the *Ontario Planning Act* and do not permit a public hearing – only a Bump Up permits this level of public review; 3. The licence application is for 60 years and likely involves an amalgamation with an existing pit – opening an enormous, unwelcome industrial landscape; 4. The mitigation measures proposed by the proponent do not address serious issues regarding the proposed site, including hydrogeology, species at risk, noise, dust and numerous other impacts; and 5. A qualified engineer hydrogeologist has submitted an opinion attached to this submission critical of the proposal and the completeness of the assessment to date. Critically, it is this expert’s opinion that the proposed quarry will permit extraction below the water table and thus cannot be approved for a Category 9 or 11 application under the *Aggregate Resources Act*.

HLAR and numerous residents registered their comments previously with respect to the above-referenced aggregate permit application (Category 9 and 11) (the “Permit Application”) by the Applicant in the Township of Algonquin Highlands (“Township”) per MNR policy pursuant to the *Aggregate Resources Act* and applicable Class Environmental Assessment.

Granting this Bump Up is consistent with past Ministerial decisions regarding intrusive quarry applications and is in keeping with this government’s recently announced commitment to lake health.

1. Incompatibility for the recreational use area due to size, high tonnage extraction, and location

1.1 HLAR commends to the Ministry of the Environment Conservation and Parks (“MOECP”) the recognition that the adjacent land uses to the quarry site are incompatible with proposed extraction. For decades, the area has been recreational and residential in nature. The Applicant’s own consultant concedes in its acoustic study that the surrounding waterfront community is “dominated by the sounds of nature.”¹ This operation would have a deleterious

¹ *Noise Impact Analysis, Bacher Construction Limited McClintock Quarry/Pit*, (2017) Timber Craft Consultation at page 3.

impact on the families of Harvey Lake and Otter Lake, as well as surrounding homes on the haulage route..

Additionally, it is clear that this is a new quarry (versus pit) and only 400 metres away from a waterfront designation (Harvey Lake) under the Township of Algonquin Highlands Official Plan. Many communities in Ontario have Official Plan waterfront designations that prohibit certain quarrying activities within 2,000 metres of the waterfront, for obvious reasons. Residents do not feel the Permit Application has received an adequate level of scrutiny, particularly in light of the fact the undertaking would automatically be subject to a hearing by the Local Planning Appeal Tribunal (“LPAT”) under the *Planning Act* and *Aggregate Resources Act* if the quarry was proposed on private lands a few kilometres down the road.

1.2 The area has predominantly recreational use properties majority of which are enjoyed in the summer months, and holidays. The applicant is unwilling to limit crushing to the spring or fall months due to the costs of crushing equipment during those times, thereby making the operation incompatible with the recreational, and tourism based local culture and economies with crushing during the key summer months.

1.3 Following amendments to the Permit Application, the proposed Extractive Area is 16.10 ha, with an extraction limit of 14.80 (not the 13.5 ha in the draft HLAR has received). This is an extremely large extraction footprint for this area, dominated by lakes and recreational properties..

1.4 A significant increase in tonnage would impact local residents through noise, dust, traffic and the reasonable enjoyment of Harvey Lake, Otter Lake and area properties. The permitted extraction amount should be based on a review of asserted local need, and not “what if” scenarios. At present, there has been no demonstration of the need for more aggregate locally.

Should the need for local demand change, the Applicant has the option of seeking a site plan amendment with justification. Therefore, a significant purpose of the Bump Up would be to examine an annual tonnage limit, which should be limited to 10,000 tonnes, as publicly stated is required by the applicant. The Applicant publicly indicated at the public meeting held at the Dorset Recreation Centre on July 27, 2017 that the current annual requirements are approximately 10,000 Tpa, yet the application is for 75,000 Tpa. Additionally, as quoted in the July 27, 2017 edition of *The Highlander* newspaper: “The current site extracts approximately 5-6000 tonnes annually. He doesn’t expect that number to increase much if the proposal goes through.” To extract aggregate on public land, conveying an enormous benefit on the Permit Applicant, should only be done with the greatest of care and with a clear demonstration of need. A Bump Up request would introduce a much need discussion of the rationale for extending this generous benefit to one company.

1.4.1 Among arguments for the higher extraction limit are possible future municipal contracts for local projects. In its proper context, however, Algonquin Highlands is a very small municipality, historically projects have been of a modest scale and it is unlikely in the current fiscal climate at the municipality that large contracts would be issued in the area any time soon. Other potential municipal aggregate uses in the south end of the Township, Dysart and Lake of Bays would involve utilizing haulage routes which would not be competitive (or efficient i.e. wear and tear).

1.4.2 A Bump Up is necessary to resolve a serious technical issue raised by the Permit Applicant that moving crushed aggregate to the adjacent existing pit for storage would count against the annual production quota. This issue should be examined openly, in full public view and should not be resolved by an amalgamation of the two sites without an environmental assessment and Official Plan Amendment. Creating a new “super quarry” has never been discussed. Furthermore, amalgamation should not even be possible given that the existing pit is owned, and the potential new quarry would be a freehold.

1.4.3. Notwithstanding the true size and legacy of the quarry has never been thoroughly presented to the public, necessitating this Bump Up request, elsewhere in the Proponent’s Project Evaluation Package (Page 39, Quarries in Area) the Permit Applicant’s consultant makes the argument is made that “The new permit will not be a large operation.”

Both the spatial and temporal nature of the extraction operation are extensive:

- i. The Permit Applicant has directly contradicted his own consultant regarding the matter of scale of the operation. What is being proposed is a 60 year licence. The Permit Application principal Mr. Eric Doetsch was quoted in the July 27, 2017 edition of *The Highlander*: “The current site extracts approximately 5-6000 tonnes annually. He doesn’t expect that number to increase much if the proposal goes through.” making the following statement that, “I want this pit to be used by my son and grandchildren. The restrictions around these proposals are getting so tough, so it helps us in the long run.” This appears to a clear case of oversizing to avoid likely future standards to protect public land e.g. conformity with local Official Plans, and as the impacts of Climate Change and changing local conditions become evident.
- ii. We would urge the MECP Minister to review the annual limits to quantities which are more suitable to the tranquil recreational nature of the surrounding areas.

1.5 Additionally, over the past year, HLAR has had to obtain answers to the following questions regarding tonnage and use: *Please clarify (1) if the Applicant and Permit Application propose to transfer additional material to this proposed site for crushing, and if yes, the impact on truck traffic volumes; (2) the expected volume of crushed aggregate hauled off-site for storage elsewhere and the impact on truck traffic volumes; and (3) the processing capacity and location for the proposed on-site crusher.*

1.6 Per Ministry of Natural Resources and Forests (“MNR”) Statement of Environmental Values (“SEV”) Policy requires social and economic impacts of aggregate operations be considered and addressed. In the present unusual circumstance of a large quarry operation proposed on public land and exempted from the *Planning Act*, an environmental assessment Bump Up to an Individual Assessment is the only way to ensure this policy is adhered to meaningfully. Studies have shown that Property Tax Assessment/ Land values can drop by as much as 30% in the vicinity of a pit or quarry, beginning as soon as the application for a permit is announced. One way this can occur is through Full Cost Accounting and Financial Assurance Agreements. If the Permit Application fails this test, the public know and be given the opportunity to respond.

2. Adverse impacts on sensitive habitats and hydrogeology

The proposed Permit Application for aggregate development includes stripping, extraction, blasting and crushing within 30 metres of wetlands that flow directly into Harvey Lake,

which then drains into Fletcher Bay on Lake Kawagama. In other words, the quarry has the potential to impact the largest lake in Haliburton County. This should be a significant concern to the municipality and local Member of Provincial Parliament. Airborne particles and contaminants are a concern of residents and have been the subject of extensive consideration by the Ontario Municipal Board (“OMB”), the predecessor to LPAT.

Residents near the proposed quarry and whose drinking water is lake water have not had their issues addressed and are very concerned about protection of lakes down the entire watershed. The question of how has the Permit Applicant considered and factored in potential impacts from airborne particulate matter has not been adequately addressed by the current environmental assessment. This matter would be addressed through an LPAT hearing regarding an Official Plan Amendment or Individual EA (Bump Up).

HLAR retained Dr. Reinhard Zapata Blosa P.Geo., Ph.D., Senior Hydrogeologist of EXP to review the technical assessments regarding protection of water resources.

Dr. Zapata Blosa has reviewed the documents comprising the technical review of the proposed quarry and its impacts on water.

Among other findings, he established that here are numerous data gaps that significantly undermine the prediction that the quarry poses no threat to nearby lakes, wetlands and water users. These gaps include:

1. Characterization of groundwater surface and recharge/discharge areas;
2. Continuous monitoring of surface and groundwater water levels;
3. Characterization of overburden and bedrock (overburden thickness bedrock, bedrock surface elevation, hydraulic conductivity and specific yield);
4. Surveyed elevations of surface water features (Lake Harvey, creeks, springs and wetlands);
5. Locations of private groundwater wells (cottages);
6. Site-specific water balance for pre-quarrying and during quarrying conditions;
7. Surface flow measurements in surrounding creeks;
8. Floodplain delineation;
9. Groundwater and surface water chemistry baseline;
10. Quarry/pit floor elevations of Phases 1, 1a, 1b, 2 (north), 2 (south) and 3;
11. Comparison of quarry/pit floor elevations with creek bottom elevations;
12. Estimation of soil/rock volumes to be mined in Phases 1, 1a, 1b, 2 (north), 2 (south) and 3;
13. Erosion and sediment control plan; and
14. Additional site information by Timber Craft Consultation Inc., as quoted in Section 2.1 in Waters (2016).

In fact, Dr Zapata Blosa is clear the technical review is no more than a Summary, and cannot be relied upon as a definitive engineering opinion.

Most critically, HLAR now has confirmation the quarry cannot be considered a “below water table”, as is required. According to Dr Zapata Blosa:

EXP has the opinion that the proposed Site Plan by Timber Craft Consultation Inc. (2019) does not conform to the description “as above groundwater extraction of pit or

quarry operation”, and consequently, cannot be approved for a Category 9 or 11 application under the Aggregate Resources Act.²

This is a significant finding. This conclusion is a stand alone, compelling reason to Bump Up this environmental assessment to an Individual EA, and to refer the matter to LPAT for a hearing, either under the EAA, or by MNR/F requiring conformity with the Official Plan, by way of Planning Act Application.

This has significant bearing on the decision to grant the Bump Up. Dr. Zapata Blosa is warning decision makers against approving the quarry without more careful, detailed assessment.

2.1 Harvey Lake is a small lake (only approximately 57 ha in size) and already has a municipal septage site near the lake. The septage is currently under review for expansion – the risks of having both the quarry and the septage combined as potential sources of contamination on the lake must be undertaken in a comprehensive review under the *Environmental Assessment Act*, necessitating this Bump Up request.

2.2 Referencing page 21 of the Applicant’s Project Evaluation Package under blasting indicates, “There is a potential for these contaminants to reach groundwater”. Elsewhere in the proponent’s materials, this statement is contradicted by the suggestion there is no risk - as long as the floor of the quarry remains above the water table. On Page 14 under Water Quality or Quantity, The October 2016 Groundwater Summary Statement prepared by Waters Environmental is quoted as: “It is our interpretation that the proposed aggregate pit and quarry development, which is proposed to remain above the water table, will have no impact on the underlying groundwater flow system or potential nearby groundwater users.” This contradiction confirms the validity of the HLAR position that the Hydrogeological Summary Statement demonstrates confusion regarding the potential for negative impacts. This confusion needs to be resolved to the satisfaction of the public, being the front-line lake stewards in this region.

2.3 The sparse treed bog (approximately 110 m **west** of the proposed site boundary” is considered to be significant habitat as it is a rare ecosystem in Ecoregion 5E. The meadow marsh (marsh north-east of the proposed boundary limits) is also considered to be significant wildlife habitat, as it serves as a significant amphibian breeding habitat, with confirmed breeding of spotted salamanders on site.¹⁵ A Part II Environmental Assessment Bump Up would ensure the due diligence to ensure dust, particulate deposition and sediment run-off will not adversely affect his sensitive ecosystem and habitat. Most significantly, HLAR has had difficulty accessing critical reports regarding species at risk. In particular, the lead project consultant has refused to make available key documents, including an Environmental Impact Statement for Blanding’s Turtle, an endangered species known to be present on the site. Although a member of HLAR was allowed to view the report, the Applicant declined to make a physical or electronic copy available for peer review, thus we have no professional basis upon which to judge the adequacy of the proposed measures and impact on the breeding cycles of this Threatened Species.

² Zapata Blosa, Reinhard. *Groundwater Summary Statement, Bacher Construction Pit and Quarry, Township of Algonquin Highlands (Former McClintock TWP.) Haliburton County, Ontario*, (2019) at page 2.

2.4 The proposed quarry site only allows for a 30 metre buffer beside the creek that feeds Harvey Lake. We argue this is insufficient and request the MECP further evaluates the risk to the creek and subsequently Harvey Lake, which then feeds into Kawagama Lake (the largest lake in Haliburton County) Exposing the lake to possible contamination in the absence of a more comprehensive review is extremely prejudicial to local residents and the public that value Ontario's northern lakes so highly.

2.5 HLAR has been on record previously regarding its concerns regarding the Permit Application non-compliance with MNR Policy Cultural Heritage. File notes obtained by HLAR indicate First Nations were circulated at the time of the original application and site plan. The Horizon Archaeology Inc. report indicated High Potential Area(s) outside of Environmentally Sensitive Area protection zones, where a Stage 2 Archaeological Assessment is required. Subsequently, a decision has been made to design the quarry so that the High Potential Areas are now within Stage 2 of operations. However, no assessment appears has been made as to whether vibration and flying rock from Stage 1 operations will impact such sites, especially if they are subsequently revealed to be burial sites. The First Nations consultation should be re-initiated indicating these changes and risks and a stage 2 evaluation should be conducted to determine the exact nature of the High Potential Areas. HLAR remains concerned that consultation with First Nations has not met the constitutional standard required by law, and that subsequent changes to the extraction footprint and operations could significantly affect First Nations (see further section on First Nations consultation requirements).

3 Noise, Vibration and Noise Impact Analyses on Class 3 area “existing acoustical environment dominated by the sounds of nature”.

HLAR supporters live in proximity to the proposed aggregate operation, with one residence within 400 metres of the proposed permit area. The proposed site is a Class 3 Area per the MECP Environmental Noise Guideline NPC-300 (“NPC-300”). Residents describe Harvey Lake as a serene, tranquil lake, with a small nestled community along its peaceful shores, dominated by the sounds of nature, with next to no motorboat activity. The loudest residents are loons.

3.1 The noise impact analysis concludes Harvey Lake residents would be “at” or just below the “acceptable limits”, thereby significantly changing the environment, which is presently dominated by the sounds of nature.

3.2 HLAR has been advised that the *Noise Impact Analysis, Bacher Construction Limited, McClintock Quarry/Pit*, Project 116-0419 (4 April 2017), prepared by Valcoustics Canada Ltd. (Keni Mallinen, B.A. Sc., CRM, and John Emeljanow, B. Eng., P.Eng.) (the “Noise Report”) assessment and proposed shielding is insufficient. HLAR consulted two professionals with expertise in aggregate operations, including an experienced quarry operator and acoustical engineer. The Noise Report relies on numerous flawed assumptions and should not be relied upon by the Minister. It is the intention of HLAR to introduce a peer review of this document as part of the Individual Assessment.

3.1.2 The Blast Impact Analysis, McClintock Quarry, Part Lot 11 and 12, Concession 2, MNR District of Bracebridge, County of Haliburton (27 July 2017), by Explotech Engineering Ltd. (“Blast Impact Analysis”), makes predictions based on drill performance in limestone and not gneiss, the rock on the proposed site, which is twice as hard as limestone. This is a critical

oversight. The noise modeling must rely on the worst- case scenario, being when the drill first penetrates the gneiss rock. Further, the noise modeling calculations use limestone (softer rock) and not gneiss. As the Noise Report does not consider these operational conditions, it is faulty, inadequate and should not be relied upon by the Minister.

3.1.3 Noise models have limits of accuracy; however none were provided and as such HLAR has no way of determining if, in this case, the maximum limits of accuracy were applied in order to show a reduction of sounds levels that were barely able to comply with the maximum levels allowed. Regardless, since only the maximum levels allowed were closely reached, in a simulated situation, it stands to reason there is a very high probability that in real life the mitigation measures identified will not be as successful as modelled and there will be continuous noise violations. This matter would normally be addressed by the municipality under the general and specific policies of the Official Plan pertaining to compatibility. Again, if the Permit Application was located on private land, this matter would be studied carefully to the satisfaction of residents and their elected representatives on Council.

3.1.4 The Blast Impact Analysis recommendations, included in the site plan conditions, advise a minimum 12-months of information gathering to develop site-specific attenuation. Given the close proximity of the proposed operation to points of reception (residents) and hardness of the rock, the Noise Report must determine with greater precision the predicted sound level from the equipment to be used on site. We note that Noise Report Recommendation #3 acknowledges this shortcoming in the Report's assessment. This is a critical issue given the close proximity to residences and must be resolved forthwith.

3.2 Contrary to Noise Report Recommendation #6, where the consultant proposes drilling only in the condition of leaves being on trees as a noise attenuation feature, the Permit Applicant proposes (in modifications presented July 29, 2017), to conduct drilling when there are no leaves on the trees.

3.2.1 Specifically, the Noise Report states, *"To maximize the acoustical screening provided by dense woods and minimize the sound exposures at the receptors, it is recommended that drilling not be done when there are no leaves on the trees."* Therefore, drilling in September/October is directly contrary to the Applicant's noise consultant's recommendation. Operating contrary to this recommendation will likely create greater noise impacts, particularly for Harvey Lake residents, as well as decrease the supposed tree screening used for dust mitigation. This is evidence of an inherent lack of overall connectivity and management of the proposal between the reports and proposed site plan notes. This is unacceptable to Harvey Lake recreational use landowners who use their residences year-round, thereby leaving a short drilling period in the month of May that would even slightly allow them to reasonably enjoy their properties. If drilling is done in the fall, noise limits would be above Provincial acceptable levels, as there will be far less noise reduction from foliage. This additional acoustical condition must therefore be modelled in a revised Noise Report to be completed as part of an Individual EA.

3.3 There are 2 mitigation strategies proposed based upon the results from the model – one involves a 20 meter (e.g. 6 story tall) wall / berm. Given the winds HLAR members are now experiencing under climate change – is this even safe let alone realistic? The other involves a 10 metre berm (approx. 3 story) and the use of higher end quieter rock drills with acoustic shields. Given fact the Applicant Mr. Doetsch outsources his drilling, it is reasonable to ask

how can he control the types of machines used by a contractor? The Applicant has stated previously his volumes are so low he is not able to attract the better qualified drillers so the probability of these high-end drills being used is also compromised.

3.4 The Site Plan does not require the use of alternatives to back up beepers, which are commonly used (e.g. hissing noise in place of a beep). The Province should take great care not to permit nuisance activities on public land, particularly so close to sensitive receptors such as cottagers trying to enjoy nature with their children and grandchildren. Requiring standard operation modifications as part of a re-zoning application is normally the responsibility of a municipality, under the *Planning Act*. The failure of the municipality to require basic mitigation measures is further proof of the need for an Individual EA.

HLAR is requesting testing during the Part II EA to ensure the Noise Report assumptions and results are based on condition as close as possible to those on the proposed site. We have requested MNR send the Noise Report for peer review to the MOECC.

4. Dust and emission dispersion modelling

4.1 No technical report on dust and air quality impact was required as part of the current EA. Therefore, the possible impacts are unknown. HLAR has previously requested an emission dispersion summary and modelling report for the fugitive sources of dust from haul roads, stockpiles, proposed recycling operation, and local sources due to drilling, blasting and crushing. This is commonly required by municipalities for aggregate operations. HLAR is extremely concerned about the health and well-being of residents, particularly children from air-borne contaminants from the operation, due in large part to the prevailing winds, proximity to properties, and lack of emission dispersion summary. Given the proximity of the Permit Application to HLAR residences, we request an ESDM report to ensure no adverse impacts as part of the Individual EA.

4.2 A Dust Impact Analysis will also provide necessary information to assess potential impacts of dust on natural heritage features and functions on and adjacent to the site. Dr. Sharon Cowling of the University of Toronto conducted a review of the Environmental Report, as noted in our submission of August 17, 2017, and recommended consideration of the impacts of dust on known and potential amphibian breeding habitat in the study area (wetland and woodland), turtle habitat and life cycle, and on water quality, and turbidity accumulation, water-level decline, etc. for all on-site and adjacent wetlands in the potentially impacted area, in particular the impact of dust accumulation on water turbidity and impact on breeding. For example, the dust release rates may have a negative impact on smaller wetlands with lower (or no) flushing rates, with deposition of quarry/pit sediment disrupting species breeding and nesting process, and the wetland feature itself. We have seen no additional information on these issues.

4.2.1 The proposed dust mitigation was not addressed in the Natural Environment Report, nor is it based on an ESDM. No reference is provided to support the Applicant's statement that amphibian breeding habitat will not be impacted. We also note that the Applicant submitted a "Blanding's Turtle Avoidance Effectiveness Report" prepared by Rod Bilz of FRICORP dated May, 2019. Although a member of HLAR was allowed to view the report, the Applicant declined to make a physical or electronic copy available for peer review, thus we have no professional basis upon which to judge the adequacy of the proposed measures and impact on

the breeding cycles of this Threatened Species.

An elevated category of Class EA would provide a stronger level of confidence and review of the proposed mitigation and avoidance effectiveness.

4.3 While primary and secondary dust collectors are proposed Site Plan Conditions, their efficacy is not addressed. We note that the Ontario Municipal Board (“OMB”) has denied aggregate applications for lack of consideration of worst case air quality impacts relying on the best data available to model possible impacts to air quality:

- (i) With regard to dust the Board finds possible discharges of fine particulate matter and crystalline silica in excess of MOE guidance documents (Ambient Air Quality Criteria) that will not be cured under the Capital Best Management Practices Plan. That Plan suggests awaiting for visual dust clouds to appear the size of one third of a commercial vehicle before watering takes place (no water taking at this site is proposed).
- (ii) With regard to dust the Board finds possible discharges of fine particulate matter and crystalline silica in excess of MOE guidance documents (Ambient Air Quality Criteria) that will not be cured under the Capital Best Management Practices Plan. That Plan suggests awaiting for visual dust clouds to appear the size of one third of a commercial vehicle before watering takes place.

5. Complexity of risk to the tributary, wetlands and Harvey Lake

5.1 The site’s natural water drainage occurs mainly towards the meadow marsh and unnamed tributary to Harvey Lake. However, no drainage plan is included but for vague consideration in Site Plan Condition 1.19. It is unclear, given the underlying rock formation, whether the water can percolate through the rock. Further, there is no assurance that pumped water will be directed to an area without negatively impacting on surrounding water bodies, if these areas are not selected by scientific study and further comprehensive assessment.

5.2 As stated by the Applicant, drainage from the undeveloped portions of the property will continue to discharge to the environment as they currently do. If storm water and spring melt water accumulates within the operating area it will be managed on site, pending testing and eventual discharge to the natural environment. In summary, pending further review by our HLAR, their experts and the Ministry, there is little confidence in the proposal and its protection scheme for drinking water.

5.3 Water flows east through the conifer swamp into the unnamed stream (only 30 metres away from the site), which flows south into Harvey Lake. Harvey Lake is the drinking water source for HLAR. HLAR residences are very close to the proposed aggregate operation, and within 200 metres of the proposed Permitted Area. There is no response from Pebble Beach Aggregate regarding potential contamination of the unnamed stream that flows into Harvey Lake. This issue must be addressed. As stated above, Harvey Lake then drains into Fletcher Bay on Lake Kawagama, with potential to impact the largest lake in Haliburton County.

5.4 The Groundwater Summary Statement, Bacher Construction Pit and Quarry, Township of Algonquin Highlands (Former McClintock TWP.), Haliburton County, Ontario (24 October 2016), by Waters Environmental Geoscience Ltd. (Peter A. Richards, M.Sc., P.Eng.), (the “Hydrogeological Summary Statement”) does not address impacts to surface water, and recommends additional study for proposed pit/quarry elevations near surface water features.

5.4.1 The report did caution is that in the immediate vicinity of a small creek tributary the proposed pit base elevation may require adjustment in order to maintain the required freeboard above the water table. This is an area of great concern. The area has had significant fluctuations in water levels. HLAR expects this pattern to continue into the future, due to climate change e.g. increased intensity of spring run-offs. Please describe the operational procedures for such monitoring and adjustments.

5.5 The Hydrogeological Summary Statement at page 5 cautions that “for the site to operate as an above water table operation, care must be taken to ensure the depth of excavation is limited in the vicinity of any nearby surface water feature.” This indicates a very delicate balancing act to ensure no damage to groundwater and surface water. The Hydrogeological Summary Statement continues, “[...]pit/quarry base elevations in the immediate vicinity of this surface water feature may require adjustment in order to maintain the required freeboard between the pit base and the local water table surface associated with these surface water features.” HLAR requests this be confirmed prior to consideration of the Application by the Minister.

5.5.1 Sections 1.19 and 1.36 of the assessment states “There will be no water diversions or points of discharge and if pumping is required it will directed to the area of the permit not to have any impacts on water bodies.” It is the respectful submission of HLAR and its experts that this is impossible, given the quarry is surrounded on three sides by water bodies and wetlands.

5.6 As acknowledged by MNR in applicable Policy 4.01.04, assessing hydrogeology and groundwater flow in this type of rock formation is very difficult. The Hydrogeological Summary Statement does not include the test pit and borehole data, making peer review by the MNR (or MECP) and others difficult. HLAR requests a full Hydrogeological Assessment, due to the proximity of the Creek. The impact on groundwater is also difficult to predict, as anticipated rock fractures from blasting (back break and breakage from sub drilling and blasting) may potentially cause new and numerous routes to both ground water and surface water. Such impacts have not been considered in the reports, including the Environmental Report.

5.6.1 The Applicant has not proposed any coherent site plan conditions, having cut and pasted only conclusions from the Hydrogeological Summary Statement, without reflecting the actual recommendations. No contingency plan is indicated in the Site Plan Conditions, including financial assurance, etc. Frequent, routine monitoring and reporting on the depth of excavation should be a site plan condition to ensure excavation does not extend below 1.5-2.0 metres above the water table.

5.6.2 HLAR would expect at least a preliminary monitoring plan in order to review it prior to approval. There is no contingency plan in the Site Plan notes, including financial assurance, etc. Frequent, routine monitoring and reporting on the depth of excavation should be a site plan condition to ensure excavation does not extend below 1.5-2.0 metres above the water table.

5.7 HLAR is not confident that the Hydrogeological Summary Statement demonstrates no negative impacts, as it is only a summary report that does not take into consideration potential fractures from blasting, which would have an undeniable impact, as the groundwater flows naturally to Harvey Lake.

5.8 The Permit Application proposes to retain the area of wetlands within the permitted area, but does not consider mitigation that may be required due to site operations (e.g. dust, blasting, drainage) or restoration after excavation. There is no description of the reciprocal relationship between the wetlands, ground and surface water features, nor of the relationship/connection between the various wetland types in the proposed Permit Area and adjacent lands.¹⁶

HLAR requests additional information regarding impacts to wetland and the broader landscape, and consideration of Ontario's Wetland Strategy for the Application.

6 Direct contravention of Township of Algonquin Highlands Official Plan

6.1 One of the chief weaknesses of the process to date has been the extremely limited engagement of the municipality and residents, contrary to the process employed to review quarry applications on private land. The proposed quarry is in direct and clear contravention of the Township of Algonquin Highlands Official Plan. Provisions of section of the Township of Algonquin Highlands Official Plan are further conditioned, as follows:

- (i) All extraction operations should be undertaken in a manner that minimizes impacts on the physical environment and adjacent land uses, after issues of public health, public safety and environmental impact have been addressed. (4.3.8.11)
- (ii) Local and regional needs for mineral aggregate should be met with minimal disturbance to the social and natural environment to ensure a balanced approach to extraction is employed. (4.3.8.3)

6.2 In addition, section 4.3.8.10 of the Official Plan states:

A new Aggregate Quarry requiring an Amendment to this Plan shall be limited to areas:

Farther than 1,000 metres from a residential or sensitive land use;
Farther than 1,000 metres from a boundary of a Settlement Area; and
Farther than 1,000 metres from the Waterfront designation.

6.3 As stated previously, the proposed new quarry will not conform to this policy in two significant ways. First, the quarry is located within 1,000 metres of a number of recreational properties and residents, considered very sensitive receptors per environmental quality. Second, the quarry is within 1,000 metres of the Waterfront designation, contrary to the Official Plan

6.4 The fact that the Permit Application violates the Township Official Plan is *prima facie* evidence a full public review is necessary. The Township clearly indicated its position that the necessary planning permissions be obtained by the Applicant.

6.5 A peculiarity of this case is the fact that because the Applicant is seeking to extract aggregate on public land, the public is effectively shut out of the normal planning and consultation process. This includes First Nations.

6.6 On June 21, 2018 Township of Algonquin Highlands Council voted to uphold the Official Plan and reinforced the zoning by-laws.

6.7 It is our understanding that no in-person meetings were held between the Township and the MNRF.

7 Inadequate public consultation program and lack of information

7.1 The *Planning Act* and *Environmental Assessment Act* are very different regarding the requirement for public engagement, with the Planning Act according significantly more opportunities for the public to respond to a Permit Application.

7.2 Only one public meeting was held with a very limited number of questions permitted. A second invite-only meeting was held, and the majority of concerns raised have not been addressed.

i. HLAR does not have access to the following technical documents/plans:

(i) Water monitoring plan

(ii) Storm water management plan

(iii) "Blanding's Turtle Avoidance Effectiveness Report for Category 9 and Category 11 Aggregate Permit in Part of Lot 11, Concession 2, McClintock Township Dated May, 2019 by Rod Bilz, FRIEnvironmental. Our expert is not proximate to the Bracebridge Office and the proponent declined sending the report electronically (see email attached).

7.3 As mentioned previously, this is a significant shortcoming that strikes at the promise of this government for open and transparent decision-making. How can HLAR represent the current process to its residents as fair, if documents are not being disclosed. Needless to say, these documents would be disclosed automatically under the LPAT and/or Individual EA processes.

7.4 HLAR wishes to make it clear that many submissions beyond their own have been made and/or attempted by residents of the area. HLAR requests that such submissions not be overlooked in case of any incompleteness or technical errors, as the form proved difficult to use.

8 Visual and physical impact analysis required

MNRF Policy 4.00.03 notes many of these concerns may be mitigated through prescribed conditions; however, the conditions must be specific to the proposed operation and surrounding site conditions. HLAR requests a Visual Impact Assessment be undertaken under the Part II EA to determine the potential impact on the community of the proposed noise mitigation berm.

8.1 Residents often walk along Harvey Lake Road and have been accustomed to doing so for over 60 years. The proposed Site Plan shows only a 10-20 metre hill between Harvey Lake Road and the quarry. This presents substantial safety concerns e.g. flyrock. As well, three cottages could potentially suffer the loss of pristine wilderness views. This is a significant concern.

8.2 HLAR remains concerned with fly rock stemming from comments by the Applicant. At

the public meeting, the Pebble Beach Aggregate representative advised that fly rock has left quarry sites and that the site notes only stated “fly rock will be kept from structure as much as possible.” What has given the confidence to change this statement, given the proximity of the proposed operation to residences, children and the road?

9 Entrance to the site for phase II not identified

9.1 HLAR has not seen a site plan that proposes the location of the entrance for the Phase 2 and on the site plan. This is a significant omission that should be rectified before approval, necessitating this Bump Up request.

10 Insufficient Environment Report

The Environmental Report is based on an erroneous premise, that the area of extraction will be limited to the northeastern limits of the permit boundary (see page 3). Please advise whether this will be corrected, as the operational plans clearly show extraction to the southernmost boundary, within 200 metres of residences. This has been credited to a “typo”:

10.1 In fact, a second statement by Pebble Beach Aggregate is identical to the typo: “the extension of the existing sand pit will be limited to the northeastern limits of the permit boundary and that the aggregate quarry will eventually extend to the southern limits of the permit boundary.” Page 25 of Pebble Beach Responses to HLAR letter dated October 16, 2017.

10.1.2 In addition, in a redlined statement the document reads: “the extension of the existing sand pit will be limited to the northeastern limits of the permit boundary and that the aggregate quarry will eventually extend to the southern limits of the permit boundary.”

10.1.3 A revised Natural Environment Report is requested to clarify the author’s scope of work, and whether the authors considered the proposed extraction only hundreds of metres from the lake and cottages, and that the Environmental Report includes all of the potential impacts when so close to residents and the lake. Additionally, The Environmental Report predates some and does not refer to the other technical reports prepared in support of the Permit Application. The Environmental Report should be comprehensive and is required to address potential impacts to natural heritage features and functions, which it does not. This reinforces the need for a Part II Environmental Assessment.

Part II Orders under the *Environmental Assessment Act*

What is an Environmental Assessment?

An Environmental Assessment (“EA”) is a planning process used to assess the potential impact of a project upon the environment.³ Upon the completion of an Individual EA, the EA results must be subject to public scrutiny before a decision is made about whether to proceed, or to cancel a project.⁴

³ *Environment On Trial* at page 188.

⁴ *Ibid* at page 189.

Ultimately, under section 9(1) of the EAA, the Minister of Environment, Conservation and Parks (the “Minister”) makes a decision whether or not to permit a project to proceed. Section 9(1) reads:

The Minister may decide an application and, with the approval of the Lieutenant Governor in Council or of such ministers of the Crown as the Lieutenant Governor in Council may designate, the Minister may,

- (a) give approval to proceed with the undertaking;
- (b) give approval to proceed with the undertaking subject to such conditions as the Minister considers necessary to carry out the purpose of this Act and in particular requiring or specifying,
 - (i) the methods and phasing of the carrying out of the undertaking,
 - (ii) the works or actions to prevent, mitigate or remedy effects of the undertaking on the environment,
 - (iii) such research, investigations, studies and monitoring programs related to the undertaking, and reports thereof, as the Minister considers necessary,
 - (iv) such changes in the undertaking as the Minister considers necessary,
 - (v) that the proponent enter into one or more agreements related to the undertaking with any person with respect to such matters as the Minister considers necessary,
 - (vi) that the proponent comply with all or any of the provisions of the environmental assessment that may be incorporated by reference in the approval,
 - (vii) the period of time during which the undertaking or any part thereof shall be commenced or carried out; or
- (c) refuse to give approval to proceed with the undertaking.

The EAA first came into force in October of 1976. By 1980, the Act applied to undertakings by provincial and municipal government departments. Private ‘energy-from-waste’ undertakings became governed by the EAA in 1987.

In order to have a private project such as a quarry designated, a Regulation under section 39 of the EAA must be adopted:

The Lieutenant Governor in Council may make regulations...

(d) designating any major commercial or business enterprise or activity or class of major commercial or business enterprises or activities as an undertaking or class of undertakings to which this Act applies.

In other words, the Minister has the authority to determine whether or not a private activity requires an EA or not.

Importantly in the present case involving the proposed Harvie Lake quarry, the Minister also has the authority to decide upon a “bump up” an EA under section 16(1) of the EAA, which reads:

The Minister may by order require a proponent to comply with Part II before proceeding with a proposed undertaking to which a class environmental assessment would otherwise apply.

In other words, the Minister can require specific Individual Assessments, which are more rigorous than class EAs and allow for greater public participation.

In general terms, the individual EA process under the EAA currently consists of four sequential steps:

1. Preparation, review and approval of Terms of Reference (“TOR”), which effectively serves as the work plan for the conduct and content of the EA;
2. Preparation and submission of the EA documentation, consisting of studies, reports, and research carried out by the proponent in accordance with the approved TOR;
3. Government and public review of the EA documentation submitted by the proponent; and
4. Minister’s decision on the proposed undertaking (i.e., approval; rejection; referral to mediation; or referral to the ERT (or another tribunal) for public hearing and decision).⁵

Precedent - Melancthon Quarry

In Melancthon Township in 2006, Highland Companies began buying up farmland for the creation of what came to be known as the ‘Mega Quarry.’ The quarry was a private undertaking. The quarry anticipated there did not require an Environmental Assessment.

The outcry from the local residents and eventually the broader community resulted in a

⁵ *Environmental Assessment in Ontario: Rhetoric vs. Reality*, at page 283.

decision by the Ontario provincial government to require that Highland Companies undertake an EA prior to the issuing of a mining licence. The proposed quarry was thus declared a “major commercial or business enterprise or activity and...designated as an undertaking to which the Act applies.”⁶

The proponent eventually withdrew the application.

III. The Role of the Public in EA

Public participation is a key element of EA.

Any technical evidence a group can provide to the Ministry of Environment, Conservation and Parks (“MECP”) is a benefit to the technical experts at the Ministry.

In several significant cases, the role of public interest groups was essential to the successful outcome of EA i.e. stopping the project.

For example, a hazardous waste facility was proposed for the agriculture and tourism community in West Lincoln in Niagara. The facility was rejected because a peer review by a consultant for local citizens and the municipality proved the facility was unnecessary, given the amount of recycling and waste reduction predicted by the industry. According to Steve Rowe, RPP, the planner for local residents, he:

Peer reviewed the EA for a hazardous waste treatment and disposal facility proposed by the Ontario Waste Management Corporation (OWMC) in Niagara Region on behalf of municipal and public interest clients. Coordinated consultants and provided expert evidence to a major Joint Board hearing; the case presented was fundamental to the Board’s Decision (1992-93) [emphasis added].⁷

The Oakville Transmission Line would be another example of effective public intervention in the EA process.⁸

Conclusion

The Ministry should enact a Part II Order Environmental Assessment due to the below matters:

⁶ O. Reg. 444/11: Designation – Highland Companies (3191574 Nova Scotia Company Limited).

⁷ <http://www.stopthequarry.ca/documents/Steven%20Rowe%20Resume.pdf>

⁸ *Getting to K(no)w: Annual Report 2007-2008*, Environmental Commissioner of Ontario at page 31.

- (a) There is a significant potential for net negative effects, in particular on enjoyment of property (noise, dust, visual impacts), potential groundwater/drinking water impacts, and increased demands on infrastructure (Algonquin Highlands has requested a pavement study).
- (b) According to Dr. Zapata Blosa, there are significant data gaps that do not permit a decision-maker to conclude that the water resources on the site and in the wetlands, creeks and lakes nearby are protected. Critically, the proposal appears to permit extraction below the water table, and as a result cannot be approved for a Category 9 or 11 application under the *Aggregate Resources Act*.
- (c) There is uncertainty associated with the prediction of effects of the proposed aggregation operation, including noise, traffic patterns and traffic infrastructure, view and aesthetics, air quality, ecological integrity, terrestrial wildlife, terrestrial habitat linkages (fragmentation). These effects require mitigation techniques tailored to the project, that are peer reviewed by the Ministry (e.g. species at risk, such as additional protective measures for the Blanding's turtle) and other relevant agencies (e.g. MOECC for noise/air quality/hydrogeology, DFO for fish habitat). These effects will be of unknown duration and frequency, as extraction is dependent on market conditions. Therefore, the effects will be of greater significance as they will be more spread out over the longer term.
- (d) Additional evaluation and information is required to fully define the project (proposed end use for extracted aggregate) and required mitigation techniques, if approved (e.g. noise). For example, the level of detail provided for rehabilitation is very low (Condition 1.34) and has neither been considered nor reviewed by the Applicant's consultant Projects to Categories).
- (e) There is no detail provided on potential impacts on the environment from traffic or particulate matter (dust).
- (f) There appears to be potential for serious negative effects on species at risk and natural heritage features and functions, per gaps in the Environmental Report and Ministry knowledge of the area. As discussed in section (a), above, the aggregate operation would fragment diverse habitats from each other for an unknown but presumably lengthy period of time. The impacts of dust and noise (blasting) on species at risk, other wildlife and natural heritage features and functions has not been assessed.
- (g) The Permit Application contains a very high degree of vagueness and uncertainty in its assessments, predictions and proposed mitigation. This elevates the potential for negative net effects of the Permit Application. The Permit Application and its associated technical reports do not demonstrate a high degree of certainty for predicted effects. One example is the Hydrogeological Summary Statement, which does not consider the potential for rock fractures or their impact on groundwater and surface water. The Noise Report depends on incorrect assumptions, and mitigation measures not agreed to by the Applicant. There is no high degree of certainty that effects will be appropriately mitigated, due to the need for additional

HLAR respectfully compels the MOECC to consider the Provincial Government's \$2 Million investment through the Northern Ontario Heritage Fund supporting Freshwater Research and

Education. The Government has demonstrated a commitment to protect and enjoy waterways and freshwater ecosystems. In supporting the investment, The Honourable John Yakabuski, Minister of Natural Resources and Forestry said: "Ontario is fortunate to be home to many lakes, rivers and streams that provide recreational and tourism opportunities, and significant contributions to our economy," and "That's why making investments in quality science and research that help us to protect these water systems is so important, and it's a pleasure to work with my colleague Greg Rickford on this initiative."

Please do not hesitate to contact me at 416-572-0464, or by email to david@donnellylaw.ca, [cc'ing alexandra@donnellylaw.ca](mailto:alexandra@donnellylaw.ca) and morgan@donnellylaw.ca should you have any questions or comments concerning this correspondence.

Yours truly,

A handwritten signature in blue ink, appearing to read "D. R. Donnelly", with a long horizontal flourish underneath.

David R. Donnelly

cc. Township of Algonquin Highlands
Williams Treaties First Nations
Algonquins of Ontario
The Hon. Laurie Scott, MPP

Referenced Footnotes

² E.g. refer to MNR data on aggregate operations in close proximity to the Permit Application: John Bacher Construction Limited, Pit Site ID 16023, 10,000t/a, licenced area of 2.96 ha; Township, Pit Site ID 10952, 20,000 t/a, licenced area of 1.64 ha; County of Haliburton, Pit Site ID 10951, 25,000t/a, licenced area of 2.12 ha; John Bacher Construction Limited, Quarry Site ID 15974, 1000 t/a, licenced area of 0.82 ha; Eric Doetsch/Henry Kurrone, Pit ID 10953, 2,000 t/a, licenced area of 0.5 ha; County of Haliburton, Pit Site ID 10955, 20,000 t/a, licenced area of 2.5 ha; B.O.R. Aggregate Company Incorporated, Pit Site ID 16667, 200 t/a, licenced area of 0.5 ha; Township of Lake of Bays, Pit Site ID 10825, 25,000 t/a, licenced area of 3.21 ha; Ministry of Transportation Northeastern Region, Pit/Quarry Site ID 401003, unlimited annual tonnage, licenced area of 11.9 ha; accessed online from MNR “Pits and Quarries Online” at <<https://www.ontario.ca/environment-and-energy/find-pits-and-quarries>>.

³ *Capital Paving v. Wellington (County)*, [2010] O.M.B.D. No. 9, at para. 36.

⁴ Explotech Engineering Ltd., Blast Impact Analysis, McClintock Quarry, Part Lot 11 and 12, Concession 2, MNR District of Bracebridge, County of Halliburton (27 July 2017) [“Blast Impact Report”] at p. 8; and comments by Mr. David Villard at the July 29, 2017 public meeting.

⁶ OMNR. 2000. Significant wildlife habitat technical guide. 151p.

⁷ OMNR. 2012. Significant wildlife habitat Ecoregion 5E Criterion Schedule. 46p.

⁸ Ontario Ministry of Natural Resources. March 2010. Natural Heritage Reference Manual for Natural Heritage Policies of the Provincial Policy Statement, 2005. Second edition. Toronto: Queen’s Printer for Ontario. 248pp.

⁹ MNR, Blanding’s Turtle General Habitat Description, accessed online at <https://www.ontario.ca/page/blandings-turtle-general-habitat-description>.

¹⁰ Explotech Engineering Ltd., Blast Impact Analysis, McClintock Quarry, Part Lot 11 and 12, Concession 2, MNR District of Bracebridge, County of Halliburton (27 July 2017) [“Blast Impact Report”] at p. 15.

¹¹ *Lafarge Canada Inc. v. Ontario (Environmental Review Tribunal)*, 2008 CanLii 30290 (Ont. Div. Ct.).

¹² See http://www.pitsense.ca/position_papers.html

¹² <http://www.lansinkappraisals.com/downloads/Lansink%27s%20Case%20Study%20Pit%20or%20Quarry%20Jan%202014.pdf>.

¹³ Ontario Ministry of Natural Resources and Forestry, A Wetland Conservation Strategy for Ontario 2017-2030 (Toronto, ON: Queen’s Printer for Ontario, 2017).

¹⁴ *Ibid* at p. 11.

¹⁵ *Ibid* at p. 25. Ontario Wetland Policy

On July 20, 2017, the Province released A Wetland Conservation Strategy for Ontario 2017-2030¹³ (“Ontario Wetland Strategy”) and identified wetland conservation as a critical Province-wide goal. The Ontario Wetland Strategy recognizes the MNR must consider wetlands when making decisions per the ARA.¹⁴ Wetlands are integral components of the natural heritage and hydrologic systems, and are to be conserved using a precautionary approach with the following hierarchy: protection, mitigation, and restoration.¹⁵

¹⁶ As required in the Wetland Conservation Strategy for Ontario, *ibid* at p. 31.

¹⁷ We also note the Site Plan Drawings indicate the extraction limit within the northeastern Stage 2 Area. This line is required to be further set back. The Site Plan should also note the potential requirement for additional Stage 2 Reports, should the proposed area set aside as Blanding’s habitat be changed.

Further, the Stage 1 Archaeological Report does not consider the concept of a “cultural heritage landscape”. The definition for “cultural heritage landscapes” in the 2014 PPS and the Township to consider the interests of conserving cultural heritage resources and archaeological resources. Policy 4.6 requires the PPS to be implemented in a manner that is consistent with section 35 of the Constitution Act, 1982.