

June 16, 2005

STAFF REPORT

RE: DECISION OF CONSOLIDATED JOINT BOARD

**PROPOSED NIAGARA ESCARPMENT PLAN AMENDMENT 135 AND
DEVELOPMENT PERMIT APPLICATION H/E/00-01/314,**

And,

**APPLICATIONS TO AMEND THE HALTON REGIONAL OFFICIAL PLAN
(AMENDMENT NO. 18); THE TOWN OF HALTON HILLS OFFICIAL PLAN
(AMENDMENT NO. 103); THE TOWN OF MILTON OFFICIAL PLAN
(AMENDMENT NO. 16); THE TOWN OF MILTON ZONING BY-LAW (ZONING
BY-LAW 98-203); AND, FOR A CATEGORY 2, CLASS "A" (QUARRY
BELOW WATER TABLE) LICENCE PURSUANT TO THE
*AGGREGATE RESOURCES ACT***

**(DUFFERIN AGGREGATES – Milton Quarry Extension)
Pt. Lots 13 & 14, Concession 1 (Town of Halton Hills), and
Pt. Lots 12, 13 & 14, Concession 7 (Town of Milton)**

PROPOSAL: To license for mineral extraction purposes approximately 82.54 ha (205 acres) of a total 242 ha (598 acres) land holding. Of the total area to be licensed, 35.5 ha (87.7 acres) is in the Town of Milton and 47.17 ha (116.56 acres) lie in the Town of Halton Hills.

Of the total area to be licensed, approximately 68.6 ha (169.5 acres) correspond to lands within the Niagara Escarpment Plan (NEP) Area. Amendment 135 proposes to amend the NEP designation from "*Escarpment Rural Area*" to "*Mineral Resource Extraction Area*" to facilitate the aggregate resource extraction

DATE OF JOINT BOARD DECISION: June 8, 2005

LAST DATE FOR FILING AN APPEAL: Pursuant to the *Consolidated Hearings Act*, twenty-eight days from date of decision (i.e., to **July 6, 2005**)

SUMMARY OF JOINT BOARD DECISION: ***Conditional approval of all various amendment applications, development permit and licence applications, plus additional conditions and directions.***

SUMMARY RECOMMENDATION:

- 1. Receive decision and take no action at this time.***
- 2. Reserve right to comment on any petition to Cabinet.***
- 3. Ask for clarification on a number of conditions.***

DECISION HIGHLIGHTS RELATING TO NEP:

1. The Board found that the quarry expansion did not conflict with the NEP or the *NEPDA*.
2. The Board found that the quarry over time with the eventual transfer of lands to public agencies, rehabilitation and conditions of approval could satisfy the NEP's and *NEPDA*'s requirements to maintain a "substantially continuous natural environment."
3. The Board found that the quarry expansion satisfied the Provincial Policy Statement (PPS). A balance of interests (e.g., mining versus protection).
4. The Board was satisfied that the quarry was "needed" in the context of the requirements of the NEP, *NEPDA*, and PPS. The Board accepted the advice of the Ministry of Natural Resources that need had been established and it was not in the public interest to require that lands outside the NEP be evaluated as possible alternate aggregate source.
5. The Board found that NEC staff agreed that the quarry expansion complied with the NEP and *NEPDA* in the context of the NEC having already accepted the alternative recommendation (i.e., approval) in the Staff Report.
6. The Board found that the World Biosphere Designation did not prevent the quarry expansion.
7. The Board found that the engineering and technical aspects of the proposal were acceptable.
8. The Board with some additional conditions found that the agreements on quarry operations and future financial obligations were satisfactory.
9. The Board did not directly comment or make a finding on the practicality of the perpetual management of the site after the quarry is complete, in relation to the acceptability of managing an environment for possibly 100's or 1000's of years.
10. The second Board member concurred, but he also passed on a number of comments that the Board received about the overall scope and nature of the hearing. The application should not become the template for future aggregate extraction on the Escarpment and in this respect the entire issue of the continuation of mining on the Escarpment should be clarified by the Government. The public has the misconception the Niagara Escarpment is, in fact, protected from aggregate mining.

COMMENT:

The Joint Board Decision, which is before the members, is 77 pages in length, of which the first 42 pages are the Reasons For Decision". Pages 43 is the Board's order. Page 44 and 45 are the additional points included by the second Board member. Pages 46 – 69, described as Appendices A through to F constitute the revised amendments, maps and keys to the NEP (Appendix A); Halton Regional OP (Appendix B); Town of Halton Hills OP (Appendix C); Town of Milton OP (Appendix D); Town of Milton Zoning By-law (Appendix E), and Revised Conditions of Approval to be applied to both the Class "A" Licence and the NEC Development Permit Application (Appendix F). Pages 70 – 77, as Appendix G, contain the List of Exhibits filed at the 82 day long hearing (312 Exhibits in total).

For comparison purposes, appended to the back of this staff report (as **Attachment 1**) is the Amendment 135 to the NEP as endorsed by the NEC at its meeting on November 28, 2003, and also the conditions of the Development Permit Application revised to January 6, 2004. A colour NEP map (Schedule "A" Revised) is also attached though a black & white version is contained on page 49 of the Joint Board decision (Appendix A). The amendment, conditions of Development Permit approval and the colour map were contained in a document book produced by the NEC for the Joint Board hearing that commenced on January 12, 2004.

From the standpoint of the NEC, the Commission supported all applications (including NEP Amendment 135 and the Development Permit Application). The Commission was represented at the Joint Board hearing by Legal Counsel and staff presented the NEP Amendment and the conditions of approval on the development permit application for the consideration of the hearing panel. The author of the 2002 NEC Report was under subpoena.

In reviewing the decision, the Joint Board hearing panel considered matters of provincial interest as set out in Section 2 of the *Planning Act* and had regard to the principles of the Provincial Policy Statement (PPS). It accepted the evidence of Dufferin's consultants on land use planning (i.e. various planning policies that applied to the properties, including NEP) and on various other matters of issue and concern, including engineering, and operations (dust, noise).

The Joint Board also described it as "*crucial to this decision*" that the additional lands currently outside the NEP Area be re-designated (i.e., added to the NEP Area and designated) as this was one of the essential and positive factors considered in the Board's approval of the applications. It (the re-designations) will ensure "*a continuous natural corridor*" (Page 40 of decision). Also, the Board applied a condition that the water recharge system must be installed and operational prior to extraction. This was considered to remove some of the risk regarding its success (also page 40).

Condition Nos. 36, 37, 38 and 39 on page 69 of the decision were said to be submitted by the NEC and were included by the Board with another five conditions noted on the page. These conditions are unclear and in part appear to relate to the NEP Amendment endorsed by the Board already. Condition 38 cannot be made a condition of approval

since additions to the Niagara Escarpment Planning Area require the approval of the Legislature. On this point, the applicant, in the form of an undertaking, had agreed to the inclusion of the lands north of the proposed quarry expansion to the NEP Area and, upon the inclusion of these lands into the NE Planning Area through Legislature approval of an amendment to Ontario Regulation 118/74, committed to filing an amendment to the NEP for their inclusion to provide the natural landscape corridor and linkage to adjacent lands. This had been presented to the NEC as a revision in November, 2003 and was subsequently supported.

The other Conditions 40 – 44 on page 69 of the Board decision also appear to be conditions in support of the NEP Amendment that the NEC endorsed in October, 2002 and November, 2002. Through these conditions, the NEP Amendment is to be tied to the various other agreement and application approvals by the Joint Board and the issuance of the licence by the MNR. On a specific point, Condition 44, however, appears to be a recommendation rather than a condition.

The NEC should ask for clarification of Conditions 36 through 44 to ensure that the decision (if eventually approved), can be implemented.

Staff has reviewed the Board decision on the revised NEP Amendment and Schedule A with that submitted by the NEC and can advise that there are no differences.

In reviewing the conditions of approval imposed by the Board on the Development Permit Application, the wording in conditions 20 – 35 is as was endorsed by the NEC. The following statement has been added to Condition Nos. 24 and 27:

“or as amended pursuant to Joint Board Case No. 03-086”

This is to reflect the fact that the Operational Plans (Condition No. 24) and the Revised NEP Amendment (Condition No. 27) could also be revised by the Joint Board in the final decision.

Condition No. 11, as recommended by the NEC, is not expressed in the Board decision. However; staff does not consider this to be an omission per sé since it is very clear by the decision on the planning document amendment applications that the operational plans will exclude the wetland features and a buffer in the East Extension. This was satisfactory to all parties, including the NEC.

On page 66, as a condition of the MNR licence, Condition No. 17 was added by the Board to require the applicant to submit to the NEC a detailed plan, including a time frame, for the filling in and the screening of the Escarpment cut, or “gap”, at the main entrance within one year of the issuance of this decision. The Board indicated that this process should be designed to welcome input from interested members of the public and interested organisations.

The filling of the “gap” will probably occur well into the future, likely sometime after extraction has been completed.

NEXT STEPS:

It is almost assured that there will be a petition coming forward from the Coalition On The Niagara Escarpment (C.O.N.E.), who were a party to the hearing and were in opposition. Other opposed participants may also petition. At this time, it is not expected that the Region, Conservation Halton or, the proponent, will petition. The Region and Conservation Halton were conditionally in favour of the applications, as were local Municipalities and other consulted public Ministries or Agencies.

The process of petitioning a decision by the Joint Board is set out as follows:

The Joint Board (“JB”) decision relating to the Dufferin Aggregates quarry expansion was issued on June 8, 2005. That decision is made under the *Consolidated Hearing Act* (“CHA”). The CHA section 13 authorizes a petition to the Lieutenant Governor in Council. The petition may be made by any person entitled to be heard or to take part in proceedings before the Board and must be filed by 28 days after the day the decision is issued. In this case, July 6, 2005.

Under section 13 CHA, the Cabinet’s jurisdiction on a petition is to:

- Confirm, vary or rescind all or part of the JB decision; or
- Substitute its decision for that of the JB; or
- Send all or part of the matter back to the JB for a new hearing.

The CHA does not set any process for a petition. The Cabinet Office processes petitions with assistance from Crown Law Office (“CLOC”). A summary is:

- Petitioner sends the petition to the Cabinet Office by the limitation date;
- The process is all in writing and there are no set timelines;
- It is referred to CLOC for review and carriage;
- CLOC will contact those who appear at the hearing, send them a copy of the petition, and give them an opportunity to file a response;
- After responses received, the petitioner is given the opportunity to file a reply;
- After reply and responses received, CLOC summarizes all the materials and forwards the summary to the Cabinet Office;
- The petition materials will be considered by a Cabinet Committee and the Cabinet;
- OIC of the Cabinet’s decision will be sent out by the Cabinet Office.

Therefore, the Cabinet may, in future and in response to any petition, request that the NEC review the petition and provide a comment. Therefore, the NEC at that time can review the petition(s) and determine what position to take based on the information.

RECOMMENDATION:

- 1. That the Niagara Escarpment Commission receive the decision of the Joint Board on the Dufferin Aggregates Application(s) and take no action at this time.**
- 2. That if there is a petition to the Cabinet, the NEC will at that time decide whether and how to respond to it, when given the opportunity to do so.**
- 3. That the NEC through its Legal Counsel, contact the Joint Board to request clarification of conditions 36 through to 44 on Page 69 of the decision.**

Prepared by:

Approved by:

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