F O R C E

Friends of Rural Communities
and the Environment

FRIENDS OF RURAL COMMUNITIES & THE ENVIRONMENT (FORCE)

FINAL SUBMISSION TO THE MINISTRY OF MUNICIPAL AFFAIRS RE: PLANNING REFORM DISCUSSION PAPERS #1-3

AUGUST 31, 2004

FORCE SUBMISSION TO THE MINISTRY OF MUNICIPAL AFFAIRS PUBLIC CONSULTATION ON PLANNING REFORM – AUGUST 31, 2004

INTRODUCTION

Friends of Rural Communities and the Environment (FORCE) thanks the Ministry of Municipal Affairs for the opportunity to input to the key discussion papers regarding planning reform. This submission builds on the presentation made by the FORCE chair, Graham Flint, at the Ministry open house in Oakville on July 13, 2004.

Friends of Rural Communities and the Environment (FORCE) is a federally registered not for profit corporation. It is a citizen-based advocacy group with hundreds of supporters in Campbellville, Kilbride, Mountsberg, Freelton, and Carlisle. FORCE was formed in June 2004 to protect our natural and built environments in the face of a proposed large-scale, below the established groundwater table, aggregate development. We note upfront that our organization is neither anti-aggregate nor anti-road; indeed, our area is home to some of Ontario and Canada's largest aggregate operations. We do, however, have significant issues with the pending application in its proposed location for substantive reasons. We also believe that our organization has a responsibility to promote good government in the area and in the provincial arena and ergo, we have a responsibility to input to the broader planning reform processes which bear upon the approvals process for development proposals such as the one before our communities. Further, FORCE is a member of the Ontario Greenbelt Alliance and supports its principles for establishment of the long term Greenbelt strategy along with its science-based approach.

LOCAL ISSUE IS A MICROCOSM OF LARGER PROVINCIAL INTERESTS

The approval process for the proposed aggregate development by Lowndes Holdings and its concomitant issues and implications are a microcosm of the larger provincial interests which need to be reconciled. The initiative is also the first Greenfield aggregate proposal with the Greenbelt and subject to the new planning regime being established by this government. Specifically:

- The affected communities fall within the Golden Horseshoe Greenbelt Study area
- Groundwater quantity and quality are already significant issues in our communities
- Our aquifers exist in a fractured & solid shale environment as opposed to a moraine environment

- A number of significant natural features face development pressures on the site and adjacent properties, including Provincially significant wetlands, Bronte Creek and tributaries, significant woodlots/environmentally sensitive areas, and habitat to the threatened Jefferson salamander
- Residential subdivisions abut the proposed development and schools and community centres operate as close as one concession away
- An active and viable agricultural economy exists on the concession and for many kilometres around
- Upper and lower tier Official Plans designate and Zoning By-laws zone the land for agriculture and conservation management and note the incompatibility of the area with future aggregate development
- Appendices to the Official Plans identified sand and gravel mineral potential as opposed to hard rock quarry
- Pending proposal is for a below the established groundwater table aggregate development
- There are conflicting provincial and local interests and incompatible land use issues.

FORCE feels a responsibility to input to broader provincial policy development not only to address our local issue but to establish a better approach for development approvals processes in the future.

TWO OVERRIDING PRINCIPLES SHOULD BE KEY TO LAND USE PLANNING

As a contextual framework, FORCE believes that two overriding principles should be key to land use planning. These are 1. 'Conservation First' and 2. 'Certainty'.

1. Conservation First

'Conservation First' is the espousal of the precautionary principle in a land use planning context, not dissimilar from the precautionary principle in an environmental protection context. Especially in Southern Ontario, the remaining primary resources like groundwater and natural features like wetlands are under significant development threat.

FORCE recommends that the Ministry and related ministries consider the World Wildlife Fund (WWF) approach to 'Conservation First' for work with communities and the private sector. In essence, no new or expanded development uses are permitted until a network of protected areas is reserved which adequately protects primary resources and represents the natural regions affected by the development. Then, sensitive development can proceed outside of the protected

areas using the latest technology and approaches to minimize adverse impacts on wildlife, ecosystem function, and local cultures and to enhance the natural environment, where possible. This kind of an approach speaks to "carving up the map" through exercises like the Greenbelt study, to strong land use planning policies which clearly delineate the interests to be protected, and to improved stakeholder involvement processes in order to provide certainty and consistent land use planning decisions.

2. Certainty

Certainty is achieved through consistent land use planning decisions at a local level and is important for all stakeholders – communities, residents, non-governmental organizations, private sector developers, and appellate tribunals.

BILL 26 – STRONG COMMUNITIES ACT

FORCE supports the policy direction of Bill 26, the Strong Communities Act, and Discussion Paper #1, and specifically:

- Requiring planning decisions to "be consistent with" the Provincial Policy Statement
- Increasing timelines for municipalities to review applications for Official Plan amendments and Zoning By-laws before proponents can appeal to the Ontario Municipal Board
- Increasing the information required for a "complete application"
- Maintaining the application of the Act retroactive to December 15, 2003, especially within the Golden Horseshoe Greenbelt Zone
- Ensuring the most up-to-date policies apply to an application
- Adding performance monitoring and measurement requirements to Official Plans
- Having provincial ability to declare a provincial interest to the OMB and to resolve the decision at the Provincial Cabinet level.

FORCE believes there is need for a clear Provincial Policy Statement with greater guidance on provincial priorities, especially when the sub-policy statements conflict.

FORCE supports the need for improvement of and/or development of corollary policies and tools to assist municipalities to implement the Provincial Policy Statement, such as:

- Optimizing demand/utilization of existing licensed aggregate resources through Ministry of Natural Resources
- Providing updated resource mapping which explicitly considers incompatible uses and establishes context appropriate extraction and rehabilitation objectives rather than uncoordinated licence-specific solutions to proposed Greenfield aggregate operations
- Use of best practices guides and reference materials for directions like watershed based source protection

If a clear legislative framework and companion policy tools are put in place, municipalities should be able to make local decisions in a consistent fashion where provincial interests are concerned with fewer appeals to the tribunal level.

DRAFT PROVINCIAL POLICY STATEMENT

The Draft Provincial Policy Statement, especially the Natural Heritage and Water subsections, reflect real improvements over the 1996 (amended in 1997) version. Key concerns are that the aggregates subsection remains outdated and missing from the overall framework are the 2 key overriding principles, especially in the Wise Management of Resources section:

1. a conservation first/precautionary principle approach
    - there needs to be a clear recognition that there are primary resources, like water, that are fundamental to human health and ecosystem function
    - we can no longer take the risk to “test” a proposed mitigation method
2. clear direction is needed when the sub-policy statements conflict in order provide certainty
    - municipalities, the public, the private sector, and appellate tribunals need to know that primary resource uses, like water, take priority and “trump” other uses based on the conservation first principle
    - the competing provincial interests need to be better prioritized, again premised on a conservation first principle.

Natural Heritage Features

FORCE notes that he content in this subsection is improved, particularly the upfront reference in section 2.1.1 recognizing the diversity and connectivity of natural features and the linkages between these features, surface and groundwater. This better reflects that wetland protection is an important link to protection of groundwater recharge and quality. This subsection could be further strengthened. Drawing from the recently released recommendations paper from the Greenbelt Task Force (August 20, 2004), specifically,

-add in sentence to incorporate points from latest greenbelt taskforce report

Two other areas require attention in FORCE's view:

- Stronger Provincial direction and priority setting is still needed for conflicts between provincially significant wetlands and aggregates development, especially in Southern Ontario. References to 'development will be restricted' and 'mitigation' still point to development occurring in these sensitive areas as opposed to being prevented.
- Stronger protection for the habitat of endangered, threatened and vulnerable species is critical in order to preclude their risk status from worsening.

Water

Again, FORCE notes that the content in this subsection is much improved, particularly with the emphasis on watershed-based planning consistent with the draft legislation on source water protection. FORCE believes, however, that greater provincial direction is still required through this section and specifically that water should be identified as a primary resource which takes clear priority over other resource uses.

Mineral Aggregates

Section 2.5 on mineral aggregates is the most disappointing section of the document. It has not been amended in any material way and does not appear to reflect the environmental protection orientation of this government nor a sustainable approach to resource development for the long term. FORCE has significant concerns with this section – we are not an anti-aggregate nor anti-road organization but believe that the planning, approvals and regulatory monitoring processes for mineral aggregate operations is flawed.

At a minimum, a prioritization of the provincial interests using the conservation first/precautionary principle is required to address this section and its relation to water, wetlands, areas of natural and scientific interest, and viable agricultural uses on prime agricultural land. The August 20, 2004 Greenbelt Task Force recommendations regarding ensuring hydrological and ecological integrity are also a minimum amendment. Further, we note that concerns about the extraction of aggregate resources below the established water table raised during the 5 year consultation period have not been addressed, whether on prime agricultural lands or not. Appropriate assessment of impacts, cumulative impacts, and the risk of approving untested mitigative measures remain issues. This type of extraction is especially problematic in a fractured and/or solid shale environment.

For unbiased, independent third-party validation of FORCE's concerns, we refer Ministry staff to the Ontario Environmental Commissioner's report released in October 2003. It documents analysis regarding matters such as Ministry of Transportation (MTO) specs driving higher aggregate quality and quarry operations, poor optimization of the existing licensed resource, failure of the aggregates industry to progressively rehabilitate, failure of the MNR to inspect the required 20% of operations, and outdated resource mapping with a reliance on single license application approaches. These individually and collectively serve as rationale for the need to change the approach to aggregate planning and approvals.

The focus of the section is on mineral aggregate protection with a strong implicit presumption of development. The focus should be on mineral aggregate potential identification and protection for long term supply and context appropriate land use planning for actual development. As such, upfront greater emphasis on conservation of mineral aggregate resources is required beyond making provision for aggregate recovery, where feasible. As with energy consumption and material consumption (leading to waste management), the provincial government should be providing leadership with a conservation orientation. Ontario usage per capita is much greater than other jurisdictions in the United States and the U.K, even accounting for population density factors. This may require a task group to research contributing factors and recommend consumption reduction strategies along with reuse/recycling strategies to increase the recovery of aggregate materials.

FORCE also believes that demonstration of need should be required given existing licensed capacity and that it should include demand/supply analysis, identification of resource potential, designated resource potential and licensed resource capacity. This is not as onerous as it might appear and if MNR was tasked with optimizing the existing resource, the ministry and/or aggregate producer industry could maintain much of the database.

Access to the aggregate resource close to markets is a laudable goal in the context of Kyoto implementation and air quality concerns. It should not be the principal driver, however, given the reality of 400 series highway congestion. This means that the province should also be looking to the relative socio-economic and environmental cost/benefit analysis of shipment by water, as an example from areas like Manitoulin Island.

From a back-end perspective, greater emphasis needs to be placed on progressive full rehabilitation with exemptions as compared to the exception being the rule.

Improved notice and consultation requirements as well as provision for local municipal council decision- making should be specified for wayside pits and quarries. FORCE refers the Ministry to the inadequate consultation in North Flamborough for a Dufferin Aggregates wayside pit that was authorized by the Ministry of Transportation kitty-corner to 2 schools without any input from the schools, school boards, and municipal council, among others. Further, the ability of municipalities to determine areas of existing development which are incompatible with extraction activities and to preclude wayside pits from same is a policy/practice that should be extended to municipalities for more significant aggregate operations.

A number of corollary policy and implementation measures would improve the wise use of resources section. These include:

- Tasking a group to develop consumption reduction strategies and aggregate recovery improvements
- Tasking MNR with optimizing the existing licensed resource
- Tasking MNR with updated resource mapping, including explicit reference to incompatible approved uses
- Tasking MNR with increasing its inspection of current aggregate operations to 20% at a minimum
- Tasking MNR and the aggregate producers to develop an action plan for completion of outstanding progressive and final rehabilitation.

FORCE also believes that a corollary significant reform of the Aggregates Resources Act under the jurisdiction of the Ministry of Natural Resources is required for aggregate operations as well as for wayside pits and quarries, portable asphalt plants and concrete plants.

ONTARIO MUNICIPAL BOARD REFORM

Discussion Paper #3 raises a number of important issues. FORCE input will be restricted to those issues which are most germane to citizen-based organizations such as ourselves. In particular, we note the need to improve accessibility to the Board and to assist citizen-based groups financially in making their representations through a vehicle such as intervenor funding.

Mandate/Scope

There definitely needs to be a route of appeal as a means of justice. FORCE believes that an administrative tribunal is a better mechanism than the courts in terms of access, cost and timing. It is our organization's hope that a statutory requirement for decisions under the Planning Act to be consistent with Provincial Policy Statements, clear Provincial Policy Statements, and corollary policies/tools

should lead to fewer appeals and to better decisions by the OMB when appeals occur.

FORCE favours the proposed provincial direction to support the decisions of municipal councils and to limit appeals by developers to the OMB in cases regarding urban settlement boundaries. Consideration should be given to other appropriate circumstances supporting the decisions of municipal councils – such as where a municipality may determine that existing approved development and environmentally sensitive areas are incompatible with aggregate extraction activities and where the municipality designates or de-designates an area accordingly.

Onus or Nature of the Appeal

The focus of the OMB should be decisions on planning grounds, its area of expertise, informed by scientific expertise in related fields. More attention should be given by the Board to smart growth planning, which requires integration of community planning with infrastructure planning, and fiscal innovations. We hope this direction will be directed by the planning reform noted and by related government initiatives such as the Greenbelt Task Force and Public Infrastructure Renewal. The Board's decisions should also be better informed by expertise in several fields, most notably, including biological and water sciences.

The discussion paper offers polar choices in terms of de novo (new hearing) and appellate standard (i.e. errors in law). The OMB's current modus operandi is de novo. Consideration should be given to truer hybrid models such as those used in BC. In general, FORCE believes that the OMB appeals should be true appeals where the Board is asked to assess the information that was before the municipal council and new information may only be allowed with leave of the Board – this makes the democratic process paramount and limits the ability of developers to put little effort before the local council and save their agenda for the OMB. Some cases will be significant in terms of provincial and public interest. In these cases, the Board should have the ability to examine the case and evidence and determine whether a new hearing is warranted.

Member Qualifications/Tenure/Accountability

FORCE's view is that appointments should be based on the merit principle. The OMB should be and be seen to be free of political interference and not biased in any way (i.e. pro-development). Hearing expertise should be obtained from a variety of disciplines (i.e. planning, legal, scientific, and technical, among others) and the Board, as a whole, should include skills to address matters outside hearings such as negotiation and dispute resolution. The Board as a whole

should also be comprised of expertise in evidentiary hearings and writing decisions. Criteria should be developed for member qualifications and experience and this should be reflected in the panels set for any given hearing. This direction can be fostered by requiring appellants and all parties to identify the technical and scientific issues associated with the appeal. More open search recruitment and notice/availability of vacancies should also be adopted.

Reasonable terms of office are required for both independence and hearing expertise. Appropriate security of tenure is also important to attract quality personnel mid-career; albeit, this should not preclude more part-time appointments to obtain requisite scientific and other expertise for certain hearings. Consideration should be given to feedback from forums like the Canadian Council of Administrative Tribunals and movement by other provinces towards 5-7 year initial terms with opportunity for renewal (capped at a maximum). Compensation reform is required such that the salary levels are reasonable enough to attract quality (recognizing the reality of differing pay scales for different professions/disciplines) and should be part of a general reform of boards/tribunals. Adequate training should be provided with an emphasis on the skills necessary to run hearings and write decisions in an expeditious fashion. Performance management agreements should exist between the Chair and members with the focus on quality decisions delivered in a timely manner.

Accessibility

The municipal planning process and the OMB have become increasingly inaccessible to the public in terms of complexity, time, and cost. The OMB has itself, on occasion, displayed a hostile attitude to public participation and the limited resources of many public interest groups before it.

FORCE quickly came face to face with the requirement and attendant implications, including cost (a minimum of $2500), of incorporation in order to even be a party to a hearing before the OMB. The costs of legal counsel, expert analysis and witnesses necessary to make one's case at municipal council are significant (in the order of $100,000 per year). The OMB hearing costs related to same for groups are even more staggering (in the order of $5000 per day).

The establishment of an "advisor" role is a reasonable idea in order to establish one central contact to assist the public regarding the OMB process. Increased/improved alternative dispute resolution and mediation services will also be appropriate in some cases. Despite these suggestions, FORCE believes that the fundamental reasons for inaccessibility have not been addressed. Although the paper states that the public can represent itself and does not require legal counsel nor expert witnesses, the reality is otherwise in terms of process and calibre of representation. Even so, citizen groups are only able to

address a few issues in any depth given their resources compared to those of the development proponent. FORCE believes that intervenor funding, or some similar vehicle, should be reconsidered in terms of OMB, Environmental Review Tribunal, and Joint Board hearings, at a minimum. The OMB could be given the authority to award intervenor funding with respect to a major hearing – i.e. Official Plan, Plan amendment, rezoning which in the opinion of the Board affects a significant segment of the public, and concerns public interests (provincial interests) not just private interests. Applications would not be considered until the Board has determined that a full hearing or mediation would take place.

CONCLUSION

FORCE believes that the initiatives noted above and the areas for suggested improvement are necessary to complete the reform the planning process. They are also necessary to support, rather than undermine, the government's important directions in terms of long term greenbelt protection, source water protection, viable agriculture and rural strategy, and smart growth.

FORCE reiterates that if a clear legislative framework and companion policy tools are put in place, municipalities should be able to make local decisions in a consistent fashion where provincial interests are concerned, with fewer appeals to the tribunal level. These should be the goals of all stakeholders.

THANK YOU

FORCE thanks the Ministry again for the opportunity to input and looks forward to reviewing the government's response to these important initiatives.

APPENDIX TO FORCE SUBMISSION

2.5 MINERAL AGGREGATES

2.5.1 *Mineral aggregate resources* will be identified and protected as part of the long term resource supply for potential long term use. (**Please note that this language merely softens the otherwise 100% presumption of development for all protected supply.)

2.5.2 Identification and Protection Of Long Term Resource Supply

2.5.2.1 The conservation of *mineral aggregates resources* will be a priority and will be promoted by consumption reduction strategies and requiring provision for the recovery of these resources, wherever feasible. (**Explanatory note: the reordering and slight rewording of this subsection places an emphasis on reduced consumption strategies along with reuse and recycling of existing aggregate materials, consistent with the government's approaches to other resources like energy and waste, before new development is contemplated. This represents a philosophical shift; its material impact will be limited for some time and depends on the effort placed against it.)

2.5.2.2 As much of the *mineral aggregate resource* as is realistically possible in the context of other land use planning objectives will be identified as close to markets as possible to supply local, regional and provincial needs. (**Explanatory note: proximity to market does not necessarily mean that the resource can be developed there at the least economic and environmental impact or cost – despite the assumption of same implicit in the current draft, previous policy statements and related government documents.)

Demonstration of need for *mineral aggregate resources*, including supply/demand analysis, will be required, including the availability, designation, or licensing for extraction, of *mineral aggregate resources* locally and elsewhere in order to optimize utilization of the existing licensed capacity first. (**Explanatory note: this requirement is less onerous than it might seem, should MNR undertake to better manage the resource and facilitate optimization of the resource. Data would be managed by the ministry with cooperation from the industry organization.

2.5.2.3 Notwithstanding the need for *mineral aggregate resources* identified in 2.5.2.2, approval will be subject to comprehensive review under the Aggregate Resources Act and permitted extraction will be undertaken in a manner which minimizes social and environmental impacts and costs. Specifically, and without limiting the generality of the foregoing, the ecological and hydrological integrity of identified sites and adjacent lands must be ensured.

(see above reordering)

2.5.2.4 Existing *Mineral aggregate operations* will be protected from *development* and activities that would preclude or hinder their expansion or continued use or which would be incompatible for reasons of public health, public safety or environmental impact. Existing *mineral aggregate operations* will be permitted to continue without the need for official plan amendment, rezoning or development permit under the Planning Act. When a license for extraction or operation ceases to exist, policy 2.5.2.5 will apply

2.5.2.5 In areas adjacent to or in known *deposits of mineral aggregate resources, new development* and activities which would preclude or hinder the establishment of new operations or access to the resources will only be permitted if:

a) resource use would not be feasible and/or the resource is not accessible; or
b) the proposed new land uses or development serves a greater long term public interest; and
c) issues of public health, public safety and environmental impact are addressed.

2.5.2.6 New Mineral aggregate operations may be permitted, subject to Official Plan amendment and/or rezoning or development permit under the Planning Act, in all areas, except those areas of existing development or particular environmental sensitivity which have been determined by the local municipality to be incompatible with extraction and associated activities. (**Explanatory note: this new section replicates the provision already permitted with respect to wayside pits below).

2.5.3 Rehabilitation

2.5.3.1 Progressive and final rehabilitation will be required to accommodate subsequent land uses, and to promote land use compatibility and the interim nature of extraction. Final rehabilitation will be consistent with surrounding land use and approved land use designations..

2.5.3.2 In parts of the Province not designated under the Aggregate Resources Act, rehabilitation standards that are consistent with those under the Act should be adopted for extraction operations on private lands.

2.5.4 Extraction In Prime Agricultural Areas

2.5.4.1 In *prime agricultural areas*, on *prime agricultural land*, extraction of *mineral aggregate resources may be* permitted as an interim use provided that rehabilitation of the site will be carried out whereby substantially the same areas and the same average soil quality for agriculture are restored.

On these *prime agricultural lands*, complete agricultural rehabilitation is required except in cases where:

a) there is a substantial quantity of *mineral aggregate resources* below the water table warranting extraction, or the depth of planned extraction in a quarry makes restoration of pre-extraction agricultural capability unfeasible. As per 2.5.2.3, the hydrological and ecological integrity of the identified site and adjacent lands must be ensured with the onus of proof falling upon the applicant;

b) other alternatives including resources in areas of classes 4 to 7 agricultural lands, resources on lands committed to future urban areas, and resources on prime agricultural lands where rehabilitation is feasible have been considered by the applicant and found suitable. Where no other alternatives are found, *prime agricultural land* will be protected in this order of priority: *specialty crop areas*, Canada Land Inventory classes 1, 2 and 3; and

c) agricultural rehabilitation in remaining areas will be maximized.

2.5.5 Wayside Pits And Quarries, Portable Asphalt Plants, And Concrete Plants

2.5.5.1 *Wayside pits and quarries, portable asphalt plants*, and *portable concrete plants* used on public authority contracts will be permitted, without the need for official plan amendment, rezoning, or development permit under the Planning Act in all areas, except those areas of existing development or particular environmental sensitivity which have been determined by the municipality in its Official Plan and Zoning By-law to be incompatible with extraction and associated activities.

COROLLARY POLICY CHANGES RECOMMENDED (**Explanatory note: many of these initiatives are the subject of the 2003 Environment Commissioner of Ontario's report and/or the 2004 Final Report of the Greenbelt Task Force)

- Establishment of task group to review ON aggregate consumption levels per capita compared to other jurisdictions and rationale, recommend consumption reduction strategies, and examine means to reuse/recycle recovered aggregate material and to promote same
- Optimization of existing licensed capacity by MNR
- Updated resource mapping by MNR which explicitly considers incompatible uses
- Establishment of detailed context-appropriate operational and rehabilitation objectives by MNR for aggregate development approvals rather than uncoordinated license-specific solutions
- Implementation of comprehensive review under Aggregates Resources Act to ensure aggregate application, once filed, complies with all requirements
- Review of aggregate license process by MNR to ensure both ecological and hydrological integrity of sites
- Increased inspection by MNR of existing operations and those being rehabilitated
- Action plan for completion of outstanding progressive and final rehabilitation plans by aggregate producers and MNR
- Public protocol, including improved public consultation, for use by MTO for approvals of wayside pits and quarries, portable asphalt plants and concrete plants
- Review and reform of the Aggregate Resources Act