

**Proposed Official Plan Amendments and Zoning By-law Amendments:
Flanagan Pit (#OPA 11 or C5/12) and Peyton Pit (#OPA 13 or C15-12)**

Location of Subject Land(s)

- Legal description: Lot 1 and Part of Lot 2, Concession 16 (geographic Township of Egremont) in the Township of Southgate.
- Site Name and File Number: Flanagan Pit, #OPA 11 or C5/12

AND

- Legal description: Lot 3 and 4, Concession 15 and 16 (geographic Township of Egremont) in the Township of Southgate with access to Grey Road 9.
- Site Name and File Number: Peyton Pit, #OPA 13 or C15-12.

AND

- future applications in this vicinity.
-

Purpose of this Written Submission:

As Southgate Council has authority over matters pertaining to the municipal Official Plan, township roads, and municipal by-laws, i.e., noise, the purpose of this written submission is to express concern over the cumulative effects of these pit applications. To our knowledge, Council has yet to produce evidence, demonstrating consideration of cumulative effects, and by extension, has not been able to mitigate these effects. From the standpoint of the OMB, this constitutes an unresolved and outstanding issue. Subsumed by the concept *cumulative effect* are the following environmental, economic, and social effects:

A. Cumulative environmental effects:

1. Water, soil, and air quality, i.e., Beatty-Sageen river and trout habitat
2. Ecological effects on habitat flora and fauna

B. Cumulative economic effects:

1. land use: 10-20 year displacement of agricultural land by aggregate land.
2. infrastructure wear and tear: roads, bridges, etc.
3. nominal levees and fees: cost recovery nature of
4. employment: job creation, displacement, termination

5. tourism
6. property devaluation
7. municipal tax revenues: cost/benefit analysis
8. litigation costs: environmental liabilities

C. Cumulative social effects:

1. social cohesion/tension
2. quality of rural and village lifestyle
3. public safety: transportation corridors, environmental hazards
4. corporatization of agriculture
5. industrial ghettoizing of community

Rationale

Given the concentration of new or expanded gravel pit activity under application at this time, i.e., *Flanagan Pit* and *Peyton Pit* (and possibly others) there is, “a responsibility, and in many respects, a requirement for consideration of the combined environmental, social, and economic [sic] effects of all operations” (Bell, 1993, p. 21). Given the close proximity of the *Flanagan* and *Peyton Pits*, combined environmental, social, and economic effects, require further attention by considering their *cumulative effects*. There is another level of cumulative effect that requires consideration when one moves west and south-west along the moraine where the Beatty-Saugeen flows, for example, the *Aitken Pits*, *Lewis Pits*, and most recently the *Orchard Pit*. For the purposes of this submission, we focus on the *Flanagan* and *Peyton Pits*.

Information from the *Flanagan* and *Peyton Pits* could be integrated and additional studies could be undertaken to analyze cumulative effects regarding hydrogeology, hydrology, the natural environment, noise, air quality, traffic, and social and economic matters. Given their close proximity to hazard lands, i.e., Beatty Saugeen River, and various wetlands and swamps; and Country Road 9, this seems reasonable.

The request for studies and consideration of cumulative effects has traction from several sources. The first source rests responsibility in the hands of municipalities, while the second source cites the Environmental Bill of Rights (EBR) as having authority over ministries, and how their Statements of Environmental Values (SEV) are to be considered when making land use planning decisions of an environmentally sensitive nature. We examine each of the sources below.

Through the expressed concerns of the public, *the municipal Council* [emphasis ours] and from the pit operators and their advisors, a May 1990 OMB decision recommended refusal of a license application, until traffic safety, environmental impact, disruption to rural residents’ rural lifestyle, and the full range of expected and maximum level of pit operations of the combined pits was undertaken. There is

OMB tribunal precedence for municipal Councils to consider cumulative effects of pits operating in close proximity.

Furthermore, through Section 11 of the EBR all ministries, i.e., MNR, are required to articulate a Statement of Environmental Values (SEV) when making an environmentally sensitive decision. Since 1996, within its Annual Report the Environmental Commissioner of Ontario (ECO) has recommended that the MNR's existing commitment to consider its SEV and cumulative effects during instrument decisions should *also* apply to instruments, i.e., permits to extract aggregate, issued under the *Aggregate Resources Act* (ARA).

Moreover, through the Ontario Divisional Court Ruling on Lafarge Canada Inc. v. Ontario Environmental Review Tribunal et. al. of June 18, 2008 (leave to appeal to the Ontario Court of Appeal Denied), ministries should be considering their SEVs-- including such concepts as cumulative effects, for site-specific approval on instruments such as permits to extract aggregate within the ARA.

Although the MNR's SEV does not make reference to the ministry considering its SEV for instruments, such as approvals under the ARA, and they do not explicitly acknowledge the need to consider cumulative effects, it does state:

An ecosystem approach to managing our natural resources enables a holistic perspective of social, economic, and ecological aspects and provides the context for integrated resource management (ECO, 2009, p. 30).

Furthermore, in a decision notice on the Environmental Registry for new SEVs there is a statement by the MNR and the Ministry of the Environment (MoE) to the effect they are "working to develop the long-term tools, including science, policies, and guidelines to support the application of an ecosystem approach, including consideration of cumulative effects, to environmentally significant decision making" (ECO, 2009, p. 31).

What's more, in a public letter dated January 2009, the Minister of Natural Resources announced, "When making environmentally-significant decisions at the instrument level (i.e., permit to extract aggregate within the ARA), the MNR intends to consider its Statement of Environmental Values (SEV) *and* cumulative effects (ECO, 2009, p. 32).

Summarizing, the ECO has confidence that the MNR and MoE will adhere to the EBR, respect the Divisional Court ruling, and consider their SEVs when making decisions on instruments such as permits to extract aggregate, as defined with the ARA, where the environment might be affected. Furthermore, there is a commitment on behalf of the ECO to "closely monitor how the MNR and MoE [will] consider cumulative effects in their decision making and will review this issue in future Annual Reports" (ECO, 2009, p. 32).

While this second source rests responsibility for consideration of cumulative effects in the hands of the MNR--its acts, policies and instruments—a provincial jurisdiction, the Environmental Bill of Rights guarantees legal rights and formal procedures for participating in environmental matters for all citizens, *politicians*, policy-makers, lawyers, business people, and activists. In other words, our municipal Council has the legal right and responsibility as custodian of the public, to “comment, appeal a decision, apply for a review, apply for an investigation, and sue” (EBR, 2009), if cumulative effects have not been taken into consideration when an applicant applies for a permit to extract aggregate, as an instrument, within the ARA.

Impact of the Proposal on:

See attached community petition: <http://www.ipetitions.com/petition/southgate-township-gravel-pits-moratorium-on/signatures>

Recommendations to Council

It is our understanding the OMB considers *what* information Council has reviewed when making its decision and *how* Council mitigates effects previously summarized in an effort to resolve outstanding issues. Toward this end, we would like Council, prior to approval of amendments to the Official Plan and amendments to Zoning By-laws, to consider the following actions in relation to the pit applications in question:

1. A resolution calling for: A moratorium on all aggregate-related Official Plan amendments and Zoning By-law amendments currently under consideration and in the future in the immediate vicinity of these pit applications, until a study of the cumulative effects of these two pits (and/or others) is undertaken by the various stakeholders, concrete efforts toward mitigation are offered, and any outstanding issues have been resolved.
2. Striking a Community Task Force, with terms of reference to include a variety of stakeholders, i.e., community members, pit operators, Council members, Ministry officials, etc., to initiate, coordinate, and report back to Council the results of cumulative effects studies.
3. While it may be too late to launch an appeal to leave the MNR decision to approve the Flanagan application, and irrelevant to consider doing so because at the time the status of the *Peyton Pit* application was unknown, that Council consider carefully the right to appeal leave of any future MNR decision to approve the Murray Group *Peyton Pit* application on grounds cumulative effects and mitigating measures have not been considered.

It is our understanding, from the perspective of the OMB, these recommendations would begin to satisfy *what* and *how* Council might demonstrate to the OMB

consideration and mitigation of possible cumulative effects outlined previously, and how outstanding issues might be resolved.

References

- Bell, G. (1990, November). Cumulative effects studies for aggregate development. *Canadian Aggregates*.
- Chambers, C. & Sandberg, L. A. (2007). Pits, peripheralization, and the politics of scale: Struggles over locating extractive industries in the Town of Caledon, Ontario, Canada. *Regional Studies*, 41(3).
- Environmental Bill of Rights. (EBR). (1993). S.O. 1993, CHAPTER 28. Retrieved March 5, 2013 from:
<http://www.eco.on.ca/uploads/EBR%20Documents/The%20EBR%20and%20Y ou.pdf>
- Environmental Commissioner of Ontario. (2009). "The Swiss Cheese Syndrome: Pits and Quarries Come in Clusters." *Building Resilience, ECO Annual Report, 2008-09*. Toronto, ON: Environmental Commissioner of Ontario. 29-32.
- Ontario Municipal Board Reports (1970-1992). Aurora, Ontario: Canada Law Book Ltd.



March 24, 2013

(Date)



March 24, 2013

(Name)

(Date)