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June 21, 2018

INITIAL STAFF REPORT

RE: NIAGARA ESCARPMENT PLAN AMENDMENT PP 213 18 DEVELOPMENT PERMIT APPLICATION P/E 2017-2018/408 17736 Heart Lake Road Part of Lot 12, Concession 2 EHS Town of Caledon, Region of Peel

DATE RECEIVED: April 28, 2017 (Supporting documentation received February 6, 2018)

- **APPLICANT:** Blueland Farms Ltd.
- AGENT: Melanie Horton, Harrington McAvan Ltd.
- **PROPOSAL:** To amend the Niagara Escarpment Plan (NEP) designation of Escarpment Rural Area to Mineral Resource Extraction Area to permit mineral aggregate resource extraction both above and below the water table within a 26-hectare area on a 40.5-hectare property located at Part Lot 12, Concession 2 East of Hurontario Street, Town of Caledon, Region of Peel.

REPORT PURPOSE:

The purpose of this report is for the Niagara Escarpment Commission (NEC) to determine whether the application for amendment to the Niagara Escarpment Plan (NEP) should be initiated and circulated under Sections 7 and 10 of the Niagara Escarpment Planning and Development Act (NEPDA), or, whether the NEC should recommend to the Minister that the application be considered frivolous, vexatious, or not in the public interest under Section 6.1(3) of the NEPDA.

SUMMARY RECOMMENDATION:

Initiate proposed Amendment PP 213 17 (Blueland Farms Ltd.) for circulation and notification pursuant to Sections 7 and 10 of the NEPDA.

A. BACKGROUND/OVERVIEW

The proposed pit (McCormick Pit) is located at 17736 Heart Lake Road in the Town of Caledon, approximately 1.5 km east of Caledon Village. It is adjacent to an existing

gravel pit operation (Caledon Sand and Gravel Pit) fronting on to Kennedy Road. (See Map 1). The subject property currently contains a dwelling, shed and metal-clad barn used for storage, as well as several hay fields. The remains of an old barn's stone foundation are also present on the property. Photos of the property are contained in Appendix 3.

On the northern portion of the property and on the property to the northeast, agriculture is occurring (field crops), and the subject property is identified as being a Candidate Area within the Greater Golden Horseshoe Agricultural System. The property is also surrounded on three sides by the Star Provincially Significant Wetland Complex. There are two small pockets of wetland associated with this complex on the subject property; however, they are outside of the area proposed for re-designation and extraction (see Map 2).

The proposed licensed area is 25.97 hectares, with approximately 20.75 hectares designated for extraction. The proposed gravel pit will extract material from both above and below the groundwater table. The maximum annual tonnage limit is proposed to be 750,000 tonnes. The intent is that the proposed be operated as an extension of the Caledon Sand and Gravel operation so that the material will be processed as part of the existing operation, and shipped to market via the established access directly on to Highway 10.

C. PLANNING CONSIDERATIONS

1. *Niagara Escarpment Planning and Development Act* (NEPDA)

Sections 6.1(2) of the NEPDA identifies that any person or public body may make application to amend the NEP. Sections 6.1(2.1) of the NEPDA requires that amendments to the NEP be justified. The applicant has provided a planning justification report along with several technical studies to assist in assessing the proposal against the Purpose and Objectives of the NEPDA and NEP. Therefore, this amendment application is consistent with the requirements of the NEPDA respecting justification of amendments, and the NEC can proceed with considering the planning merits of this application under Section 6.1 of the NEPDA.

2. Niagara Escarpment Plan

The application to amend the NEP and the application for a Development Permit will be evaluated against the overall Objectives of the NEP (2017) and NEPDA as well as the policies in Part 1.2.2 (Amendments for Mineral Resource Extraction Areas) and Part 2.9 (Mineral Aggregate Resources) and all other relevant policy requirements of the NEP.

The following NEP policies will require consideration in evaluating the proposed amendment:

Part 1: Land Use Policies

Part 1.2.1 sets out provisions relating to all applications to amendment the NEP.

Part 1.2.2 of the NEP requires an amendment to the NEP in order to re-designate NEP lands from Escarpment Rural Area to Mineral Resource Extraction Area. Such an amendment is required for all licensed pits and quarries producing more than 20,000 tonnes of aggregate resource annually. The NEP does not allow for the re-designation of Escarpment Protection or Natural Area for the purpose of mineral aggregate extraction. In accordance with these policies, the applicant is applying to re-designate a portion of the Escarpment Rural Area on the subject property. Escarpment Natural Area is also found on the property; it has been excluded from the area proposed for re-designation and licensing.

Part 1.9.1 of the NEP lists the objectives of the Mineral Resource Extraction Area (MREA) designation:

- 1) To designate Mineral Resource Extraction Areas where licensed mineral aggregate operations are permitted.
- 2) To minimize the impact of mineral aggregate operations on the Escarpment environment.
- 3) To encourage progressive rehabilitation of mineral aggregate operations.
- 4) To encourage rehabilitated mineral aggregate operations to be restored to a state that is of equal or greater ecological or agricultural value than the original characteristics of the site.
- 5) To ensure that, after a licence is surrendered, the land is re-designated to a land use designation that is compatible with the rehabilitation of the site, the designation criteria of adjacent lands, the surrounding Escarpment environment and existing land uses in the area.
- 6) To encourage, where possible, the integration of rehabilitated lands into the Niagara Escarpment Parks and Open Space System.

In reviewing the technical studies, site plans and comments received, NEC staff will evaluate the application against each of these objectives.

Part 2: Development Criteria

Part 2.6.3 and 2.7.6: If development is proposed within 120 metres of a key natural heritage or hydrologic feature, and it could have a negative impact on the feature and/or its functions, natural heritage and hydrologic evaluations will be required. The applicant has provided a natural environmental technical report and a hydrogeology assessment in order to assess the Development Criteria.

Part 2.7.8(b): directs that development within the habitat of an endangered or threatened species is not permitted in MREAs unless it is compliant with the *Endangered Species Act* (ESA). The Natural Heritage Information Centre does identify several threatened, endangered and special concern species within the vicinity of the proposed gravel pit. NEC staff will assess the natural environment technical report provided with the application. MNRF will also provide comments on requirements under the ESA.

Part 2.9.1 of the NEP prohibits mineral resource extraction operations (and accessory uses) in wetlands and significant woodlands. NEC staff will review the applicant's submissions to ensure that no extraction is proposed in a wetland or significant woodland. NEC staff will assess the natural environment technical report provided with the application and attend a site visit to verify the accuracy of the information. The Region of Peel and the Town of Caledon also have policies regarding significant woodlands, and will evaluate the proposal against their policies.

Part 2.9.2 of the NEP permits mineral aggregate extraction in the habitat of endangered or threatened species, provided that it complies with requirements under the ESA. As noted under Part 2.7.8(b) above, NEC staff will assess the natural environment technical report provided with the application. MNRF will also provide comments on requirements under the ESA.

Part 2.9.3(f) directs that an agricultural impact assessment must be undertaken in prime agricultural areas to determine how to avoid, minimize and mitigate impacts on agricultural lands and operations. However, the subject lands are identified by the province in the Agricultural System for the Greater Golden Horseshoe as being within a Candidate Area for the Agricultural Land Base. Since the municipality has not yet undertaken a review to determine if the subject lands should be added to the prime agricultural area, Part 2.9.3(f) does not apply to this application.

Parts 2.9.7 through 11 includes policies for the progressive rehabilitation of pits and quarries. These policies include requirements that discourage the use of off-site materials for rehabilitation, the restoration or enhancement of natural heritage and hydrologic features and functions, compatibility with the Escarpment's open landscape character and scenic resources, and avoid the need for perpetual water management following extraction. Staff will review the proposed site and rehabilitation plans and technical studies for compliance with these policies.

Part 2.10.1 prohibits development on lands containing archaeological resources unless significant archaeological resources are concerned. There is a known archaeological site adjacent to Heart Lake Road. The proposed extraction site plan avoids this area.

Part 2.10.2 requires the applicant to prepare a heritage impact assessment when proposed development is likely to impact cultural heritage resources. The applicant has submitted a Built Heritage and Cultural Heritage Landscape Assessment, which concluded that the property is not part of a cultural heritage landscape, given that the original 19th century barn and dwelling are no longer part of the property.

Part 2.13.1 requires that development ensures the protection of the scenic resources of the Escarpment. In keeping with this policy and the requirements of Part 2.13, the applicant has submitted a visual impact assessment study, which proposes the construction of three-metre berms along Heart Lake Road and the northern property line to screen views to the pit. Staff will review the study and effectiveness of the proposed mitigation measures.

3. Provincial Policy Statement (2014)

The PPS (2014) is intended to provide direction on matters of provincial interest related to land use and planning. All agencies, including the NEC, must be consistent with the policies of the PPS; however, the PPS states that Provincial Plans take precedence over policies in the PPS to the extent of conflict. The NEP builds upon the policy foundation provided by the PPS and provides additional land use planning policies in support of the NEP's Purpose and Objectives.

Section 2.0 of the PPS identifies the Province's objectives respecting the long-term protection of natural heritage and water resources for their economic, environmental and social benefits. Section 2.1 requires that natural features and areas be protected for the long-term, and Section 2.1.2 seeks to maintain, restore or improve the diversity and connectivity of natural features in an area, and the long-term ecological function and biodiversity of natural heritage systems. Linkages between and among natural heritage features and areas, surface water features and ground water features should be recognized and protected.

Section 2.5 of the PPS directs planning authorities to protect mineral aggregate resources for long-term use. Section 2.5.2.1 requires that as much of the mineral aggregate resources as is realistically possible be made available as close to markets as possible. In addition, Section 2.5.2.2 directs that extraction shall be undertaken in a manner that minimizes social, economic and environmental impacts.

4. Greenbelt Plan (2017)

The Greenbelt Act authorized the preparation of the Greenbelt Plan, which was approved in February, 2005 and updated in 2017 through the 2015 Co-ordinated Land Use Plan Review. The Greenbelt Plan Area includes all of the NEP Area. The policies of the NEP are the policies of the Greenbelt Plan for the NEP Area with the exception of the Open Space and Trails Policies set out in Section 3.3 of the Greenbelt Plan. The planning, construction, and maintenance of parkland, open space, and trails in the NEP Area must also comply with the policies in Section 3.3 of the Greenbelt Plan.

5. Growth Plan for the Greater Golden Horseshoe

The Growth Plan applies to lands within the Greater Golden Horseshoe (GGH), which includes the Region of Peel, and provides direction on how to manage growth. Emphasis is placed on intensification and redevelopment in existing settlements and built-up areas rather than sprawl or haphazard expansion that requires new municipal services (e.g., sewers and water). The Growth Plan on its Map Schedules also identifies Urban Growth Centres within existing built-up areas.

The Growth Plan and Greenbelt Plan are intended to work together. Areas to be protected in the GGH were established first (in the Greenbelt Plan) and then areas where development could be considered were identified second (the Growth Plan). Both the Growth Plan (Section 1.4) and its enabling legislation (Places to Grow Act, 2005), indicate that in considering the Growth Plan in relation to other Provincial Plans and Policies (e.g., the NEP), the planning direction to be followed is the one that "provides more protection to the natural environment or human health". In considering the hierarchy of Provincial Plans and Policies governing this area and the provisions within those documents, the greatest protection to the natural environment and human health (particularly the natural environment), is accomplished most effectively through the policies and appropriate land use designations of the NEP.

6. Municipal Plans

The NEP Development Criteria are used as minimum standards for assessing the conformity of local official plans, secondary plans and, where applicable, zoning by-laws and for administering site-plan control approvals. If an official plan, secondary plan, zoning by-law or other planning approval is silent on one or more development criteria included in the NEP, the development criteria of the NEP still apply.

Town of Caledon Official Plan:

The subject lands are designated as "Rural Area" within the Town of Caledon Official Plan. The function of the Rural Lands within the Town structure is to protect the open rural character and rural lifestyle of the countryside, protect existing agricultural uses and encourage appropriate new agricultural and appropriate rural economic development uses. Rural Lands generally coincide with lands that demonstrate lower capability for agriculture, contain extensive lot fragmentation, existing agricultural production and are where Caledon's High Potential Mineral Aggregate Resource Areas are identified. The subject lands are identified as being within Caledon's High Potential Mineral Aggregate Resource Area. The establishment of new licenced extractive industrial operations or extensions to existing licenced areas require an amendment to the Town of Caledon Official Plan. As noted, the applicant has filed an application for such with the Town.

Region of Peel Official Plan:

The subject lands are designated as part of the Rural System, and are identified by the Region of Peel as being within a High Potential Mineral Aggregate Resource Area. The Rural System includes all lands outside of the 2031 Regional Urban Boundary. New mineral aggregate extraction sites are permitted within the High Potential Mineral Aggregate Resource Area, provided that extraction is permitted in the local municipal official plan, and if it is in conformity with the NEP. An amendment to the Region of Peel Official Plan is not required.

7. Conservation Authority Regulation

Ontario Regulation 172/06 Regulation of Development, Interference with Wetlands and Alterations to Shorelines and Watercourses

Pursuant to Ontario Regulation 172/06, the Credit Valley Conservation Authority (CVC) regulates development and site alteration in or adjacent to river or stream valleys, watercourses, hazardous lands and wetlands. Where lands are under regulation, the conservation authority ensures that development proposals take into consideration natural features and hazards like floodplains, steep slopes, wetlands, rivers and lakes, through setback/buffer policies that help to maintain ecological and hydrological functions, and protect life and property from natural hazards. A portion of the subject lands is regulated by the CVC. The proposals on the subject lands will require assessment by the CVC, and may require a permit from CVC.

D. RELATED NIAGARA ESCARPMENT DEVELOPMENT PERMIT APPLICATION FILES

#2281/P/R/1983-1984/253: In April 1984, a permit was issued for the construction of a single detached dwelling, septic system and driveway.

P/E/2017-2018/408: An application has been received to permit the establishment of a new 26-hectare aggregate extraction operation (gravel pit) on a portion of a 40.5-hectare property located at Lot 12, Concession 2 (East of Hurontario Street) in the Town of Caledon (Region of Peel). Aggregate is to be extracted from above and below the water table to a maximum of 750,000 tonnes annually. This development permit application will be evaluated in tandem with the application to amend the NEP. It has not yet been circulated for comment.

E. ANALYSIS

INITIATING THE AMENDMENT

Section 6.1(3) of the NEPDA provides that: "Where, in the opinion of the Commission, an application for an amendment does not disclose a planning justification for the amendment, is not in the public interest, is without merit, is frivolous or vexatious or is made only for the purposes of delay, the Commission shall inform the Minister of its opinion and, where the Minister concurs in that opinion, the Minister shall inform the application in writing of his or her opinion and notify the application that unless the applicant makes written representations thereon to the Ministry within such time as the Minister specifies in the notice, not being less than 15 days from the time the notice is given, the provisions of this Act in respect of the considerations of the amendment shall not apply, and approval of the amendment shall be deemed to be refused."

AMENDMENT CONSIDERATIONS

Matters raised in this preliminary review of this application are noted in order to provide the commenting agencies and the public with an overview of the application. The issues identified are not a complete review of the final merits of the application either in terms of the NEP or any other relevant legislation or regulation. In reviewing the amendment there are several key issues that must be addressed, as outlined above. All amendments must be considered against the Purpose and Objectives of the NEPDA, the provisions of the NEP, and be consistent with other provincial policies.

JUSTIFICATION FOR THE AMENDMENT

Section 6.1(2) of the NEPDA requires that the application for NEP amendments must include a statement of justification together with supporting material. Part 1.2.1 - Plan Amendments of the NEP set outs the following provisions that apply to all applications to amend the NEP:

- NEP policies and land use designations may be changed as long as the Purpose and Objectives of the *Niagara Escarpment Planning and Development Act* and the Niagara Escarpment Plan are met;
- justification for the proposed amendment is provided, including the rationale for the amendment, as well as reasons, arguments or evidence in support of the amendment;
- it must be demonstrated that the proposed amendment and the expected impacts resulting from the proposed amendment do not adversely affect the purpose and objectives of the *NEPDA* and NEP, and shall be consistent with other provincial policies; and
- Development Criteria set out in Part 2 of the NEP will be considered in the assessment of a proposed amendment.

The applicant has provided the following reports in support of the amendment application:

- Completed application forms to amend the Niagara Escarpment Plan and for a Development Permit;
- Planning Justification Report: Proposed McCormick Pit, November 2017 (MHBC Planning Ltd.);
- Aggregate Resources Act Summary Report, January 2018 (Harrington McAvan Ltd.);
- Natural Environment Technical Report, September 2017 (Savanta Inc.);
- Built Heritage and Cultural Heritage Landscape Assessments, February 2013, (Harrington McAvan Ltd.);
- Visual Impact Assessment Report, January 2018 (Harrington McAvan Ltd.);
- Hydrogeologic Assessment, October 2017, (Groundwater Science Corp.); and
- Site Plans, January 2018, (Harrington McAvan Ltd.).

Under Section 6.1(3) of the NEPDA, the NEC must determine whether the application is justified, is in the public interest, has merit, is frivolous or vexatious or made only for the purpose of delay. Staff is not aware of any frivolous or vexatious reason for the amendment. The Provincial Policy Statement (2014) supports making mineral aggregate resources available as close to markets as possible, therefore the application may be in the public interest. The re-designation of Escarpment Rural Area to Mineral

Resource Extraction Area, by amendment to the NEP, is permitted in the NEP. The technical reports and planning justification provided by the applicant meet the requirements under Section 6.1(2) of the NEPDA. For these reasons, staff finds that there is sufficient justification to proceed with full evaluation of the NEP amendment application, and it should be circulated for consultation.

CONCLUSION

In conclusion, staff finds that this application to amend the NEP is justified, and that it should be circulated for public, stakeholder, and agency comment. Staff will make a recommendation on the merits of this amendment based on the comments received, the planning justification and supporting documentation provided by the applicant, and consistency with the Purpose and Objectives of the NEPDA and NEP.

RECOMMENDATION

That the Niagara Escarpment Commission instruct staff to process the proposed Amendment PP 213 18 (Blueland Farms) for circulation and notification pursuant to Section 6.1(2) of the Niagara Escarpment Planning and Development (NEPDA).

Prepared by:

Approved by:

Original Signed by:

Original Signed by:

Kim Peters, RPP, MCIP Senior Strategic Advisor David Ayotte Director

Attachments:

- 1. Map 1: Property Location
- 2. Map 2: Natural Heritage Features
- 3. Photos: 17736 Heart Lake Road
- 4. Amendment Document
- 5. Circulation and Notice

ATTACHMENT 1



ATTACHMENT 2



Proposed NEP Amendment PP 213 18 Blueland Farms 17736 Heart Lake Road, Town of Caledon



Photo Locations



Photo 1: View to the south, from Heart Lake Road, dwelling and barn visible



Photo 2: Existing dwelling, view to southeast from Heart Lake Road



Photo 3: View to north east. Existing dwelling.



Photo 4: View to southwest, from Heart Lake Road



Photo 5: View to south. Note: forested area is outside of amendment area



Photo 6: View to Neighbouring property to southeast

PROPOSED NIAGARA ESCARPMENT PLAN

AMENDMENT PP 213 18

Blueland Farms (McCormick Pit)

June 21, 2018

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PART A – The Preamble

PURPOSE:

To amend the Niagara Escarpment Plan (NEP) designation of Escarpment Rural Area to Mineral Resource Extraction Area to permit mineral aggregate resource extraction both above and below the water table within a 26-hectare area on a 40.5-hectare property located at Part Lot 12, Concession 2 East of Hurontario Street, Town of Caledon, Region of Peel.

LOCATION:

The property subject of this amendment is municipally addressed as 17736 Heart Lake Road in the Town of Caledon. The Legal Description is Part of Lot 12, Concession 2 East of Hurontario Street, Town of Caledon, Region of Peel.

APPLICANT:

Blueland Farms Ltd.

BASIS:

Under Section 6.1(2) of the *Niagara Escarpment Planning and Development Act,* an amendment to the Niagara Escarpment Plan "may be initiated by the Minister or the Commission, and application may be made to the Commission by any person or public body requesting an amendment to the Plan."

This amendment to the Niagara Escarpment Plan addresses the policies in Part 1.2.2 of the Niagara Escarpment Plan respecting the re-designation of lands within the NEP Area for the purpose of mineral aggregate resource extraction. It also addresses the policies set out in Part 1.2.1 relating to any amendment to the Niagara Escarpment Plan.

Section 6.1 (2.1) of the *Niagara Escarpment Planning and Development Act* requires that an application to amend the NEP be supported by a "statement of justification" and Section 8 sets out the objectives to be sought in consideration of an amendment to the NEP. The applicant has provided a Planning Justification Report which satisfies the threshold justification requirements of the *Niagara Escarpment Planning and Development Act*.

PART B – The Amendment

The Niagara Escarpment Plan is amended as follows:

1. Map 4 of the Niagara Escarpment Plan is amended as shown on Schedule A.



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Niagara Escarpment Commission An agency of the Government of Ontario

June 21, 2018

CIRCULATION AND NOTICE

RE: NIAGARA ESCARPMENT PLAN AMENDMENT PP 213 18 Blueland Farms Ltd. 17736 Heart Lake Road Part of Lot 12, Concession 2 EHS Town of Caledon, Region of Peel

BACKGROUND:

- Section 7 and 10 (1) of the Niagara Escarpment Planning and Development Act (NEPDA) require that the Niagara Escarpment Commission (NEC) furnish each affected ministry and municipality, within or partially within the Niagara Escarpment Planning Area, with a copy of the proposed amendment to the Niagara Escarpment Plan and invite the ministries and municipalities to make comments on the amendment to the Commission.
- 2. Section 10 (1) (b) of the NEPDA requires that notice of the proposed amendment be published in such newspapers having general circulation in the Niagara Escarpment Planning Area as the Commission considers appropriate.
- 3. The NEC is also required to post the amendment on the Environmental Registry for public notice and comment in accordance with the Environmental Bill of Rights.
- 4. Although not legislatively required, the NEC as a matter of practice also circulates other public agencies and stakeholders where the Commission believes there may be an interest (e.g., conservation authority).

The notice period under the NEPDA is not more than 60 days; however, the NEC may extend the time if in the Commission's opinion additional time for commenting becomes necessary.

PURPOSE:

The purpose of this report is for the Commission to approve the recommended circulation and notification list for the Niagara Escarpment Plan amendment PP 213 18.

RECOMMENDATION:

That the NEC instruct staff, pursuant to the NEPDA, to circulate the proposed amendment to ministries and municipalities, provide notice in newspapers and on the NEC web site and have the amendment posted on the Environmental Registry.

Staff will also circulate agencies and stakeholders that may have an interest or have indicated an interest in the amendment, including property owners or their agents. The specified comment period will be 60 days.

Recommended Notification and Circulation List:

1. Municipalities, Ministries and Agencies

Ministry of Natural Resources and Forestry Ontario Ministry of Agriculture, Food, and Rural Affairs Region of Peel Town of Caledon Credit Valley Conservation

2. Newspapers

The Caledon Enterprise

3. Others

Landowners within 120 metres of the amendment area Ontario Stone, Sand and Gravel Association Coalition on the Niagara Escarpment PitSense Gravel Watch Ontario Peel Federation of Agriculture

Prepared by:

Original Signed by:

Kim Peters, MCIP, RPP Senior Strategic Advisor

Approved by:

Original Signed by:

David Ayotte Director