

ONTARIO LAND TRIBUNAL

Tribunal Ontarien de L'aménagement du Territoire

PROCEEDING COMMENCED UNDER section 11(5) of the Aggregate Resources Act,
R.S.O.1990, c. A.13.

Referred by:	Katie O'Connell
Objector:	See Schedule A
Subject:	Application for a Class "A" license
Description:	To permit the operation of a quarry above the groundwater level
Reference Number:	Licence No. 626565
Property Address:	Part of Lot 10 & 11, Concession 9, Ferris Township
Municipality/UT:	East Ferris/Nipissing
OLT Case No.:	OLT-23-000712
OLT Lead Case No.:	OLT-23-000712
OLT Case Name:	Amyotte v. East Ferris (Municipality)

MINUTES OF SETTLEMENT

B E T W E E N:

1851477 ONTARIO INC.

(the “**Applicant**”)

-and-

THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS

(the “**Municipality**”)

RECITALS:

WHEREAS the Applicant is the owner of the land described as Part of Lot 10 & 11, Concession 9, Ferris Township, in the Municipality (collectively, the “**Subject Lands**”).

AND WHEREAS the Applicant has applied to the Ministry of Natural Resources and Forestry for a Class “A” licence to operate a quarry (the “**Application**”) above the groundwater table on the Applicant’s Lands, pursuant to the *Aggregate Resources Act* (the “**Act**”).

AND WHEREAS the Municipality filed an objection (the “**Objection**”) to the Application and to date, has not withdrawn the Objection.

AND WHEREAS the Ministry of Natural Resources and Forestry referred the Application to the Ontario Land Tribunal (the “**Tribunal**”).

AND WHEREAS the Parties have agreed on the terms of a Quarry Haul Route Agreement, which is attached as Schedule “A” to these Minutes (the “**Haul Route Agreement**”), a Complaint Protocol which is attached as Schedule “B” to these Minutes (the “**Complaint Protocol**”) and a Communications Protocol (the “**Communications Protocol**”) which is attached as Schedule “C” to these Minutes.

AND WHEREAS the Applicant and the Municipality (individually a “**Party**”, collectively, the “**Parties**”) have resolved between them all issues, which agreement is reflected in these Minutes of Settlement (the “**Minutes**”).

NOW THEREFORE THE PARTIES AGREE AS FOLLOWS:

1. The Parties agree that the issues raised in the Objection will be resolved by implementation of the Haul Route Agreement, the Complaint Protocol and the Communications Protocol.
2. The Parties agree to execute the Haul Route Agreement forthwith upon execution of these Minutes of Settlement and to register the Haul Route Agreement on title to the Subject Lands within 30 days of execution.
3. The Applicant agrees to include the Complaint Protocol and the Communications Protocol as conditions on the site plans which it will be asking the Tribunal to approve in this proceeding. The Applicant further agrees to carry out the Complaint Protocol and the Communications Protocol in good faith.
4. It is acknowledged that the Ministry of Natural Resources and Forestry (the “**MNR**”) will determine if the Complaint Protocol and the Communications Protocol are appropriate conditions for the Site Plan. Should the MNR deny the inclusion of the Protocols on the site plan, the Parties will, in good faith, discuss alternative options to implement said Protocols.
5. The Parties agree that these Minutes, along with the executed Haul Route Agreement, shall be filed with the Tribunal in respect of OLT-23-000712. It is acknowledged that the Tribunal will determine whether these Minutes and/or the Haul Route Agreement will be marked as an exhibit.

HEARING AND DECISION OF THE TRIBUNAL

6. Upon execution of these Minutes, the Parties shall advise the Tribunal and all other parties of this settlement. These Minutes shall be provided at that time to the Tribunal and the other parties.
7. The Parties agree that the Municipality may, at its sole option, withdraw from participation in this proceeding.
8. If hearing dates are set by the Tribunal at the January 12, 2024, secondary Case Management Conference, and a hearing commences:
 - a) The Municipality shall not call any evidence concerning the Planning Documents, except as requested by the Tribunal.
 - b) The Parties shall call no evidence or make no submissions at the Hearing which are inconsistent in letter or spirit with these Minutes and the Haul Route Agreement, the Complaint Protocol or the Communications Protocol.

GENERAL

9. The Parties agree that nothing herein is intended to operate, nor shall have the effect of operating in any way to fetter the Municipality in the exercise of any of its discretionary powers. Without limiting the generality of the foregoing, such discretionary powers include the power to pass, amend or repeal by-laws and to approve or withhold approval to permit any demolition, relocation, construction, alteration, re-modeling or any other things or act which may materially affect any building, structure or part thereof.
10. Nothing in these Minutes shall have the intent or effect of fettering the legislative discretion of Municipal Council in a manner contrary to law.
11. Time shall be of the essence with respect to the performance by the Parties of their respective obligations under these Minutes.
12. Each Party shall bear its own costs pertaining to all matters related to the Appeals. The Parties will bear their own costs in respect of the matters set out in these Minutes and neither Party will seek an Order from the Tribunal for costs against the other Party.
13. The terms and obligations set forth in these Minutes shall be binding on the Parties, their respective heirs, beneficiaries, affiliates, successors and assigns and they shall survive the completion of the Tribunal hearing in respect of Case No. OLT-23-000712.
14. The Parties agree to execute any and all other documents and do all other things as may be reasonably required to implement the Minutes.
15. These Minutes including the schedules attached hereto constitute the entire agreement between the Parties as to the hearing in respect of Case No OLT-23-000712, and supersede all prior agreements, negotiations and understandings with respect thereto.
16. Any amendment to or waiver of any provision of these Minutes must be in writing and signed by both Parties.
17. These Minutes may be executed in counterparts, each of which shall be deemed to be an original and all of which taken together shall be deemed to constitute one and the same instrument.

18. These Minutes may be delivered by email in PDF format and such delivery shall constitute a duly executed original.
19. These Minutes shall be governed by and construed in accordance with the laws of Ontario.

1851477 ONTARIO INC.

Per: _____
Name:
Title:

I have authority to bind the Corporation

**THE CORPORATION OF THE
MUNICIPALITY OF EAST FERRIS**

Per: _____
Name:
Title:

I have authority to bind the Corporation

Per: _____
Name:
Title:

I have authority to bind the Corporation

SCHEDULE “A”

QUARRY HAUL ROUTE AGREEMENT

THIS AGREEMENT MADE THIS day of , 2023

BETWEEN:

THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS
(hereinafter referred to as “the Municipality”)

OF THE FIRST PART

- and –

1851477 ONTARIO INC.
(hereinafter referred to as “the Owner”)

OF THE SECOND PART

WHEREAS the Owner is the owner of certain lands (hereinafter referred to as the “Owner’s Lands”) being more particularly described in paragraph 1 of Schedule “A” attached hereto;

AND WHEREAS the Owner’s Lands have been used for the extraction of mineral aggregates on a small scale in the past;

AND WHEREAS the Owner has applied to the Ministry of Natural Resources and Forestry for a Class “A” licence to operate a quarry (the “Proposed Quarry”) above the groundwater table on the Owner’s Lands;

AND WHEREAS the Owner proposes to use Lavigne Road to Corbeil Road, being public highways under the jurisdiction of the Municipality, as the haul route for traffic to and from the Owner’s Lands and the proposed quarry thereon;

NOW THEREFORE THIS AGREEMENT witnesseth that in consideration of the premises contained herein and other good and valuable consideration (the receipt and sufficiency of which is acknowledged by the parties hereto) the parties covenant and agree as follows:

DEFINITIONS

1. In this Agreement the following words and phrases shall have the following meaning:
 - a. “Act” or “ARA” shall mean the *Aggregate Resources Act*, R.S.O. 1990, C.A.8, as amended;
 - b. “Aggregate” shall mean gravel, sand, clay, earth, shale, stone, limestone, dolostone, sandstone, marble, granite or other material;
 - c. “Haul Route” means the opened and assumed roads under the Jurisdiction of the Municipality known as Lavigne Road and Corbeil Road;
 - d. “Licence/Site Plan” shall mean any licence and site plans for the Proposed Quarry which may be approved by the Ministry of Natural Resources and Forestry pursuant to the Act;
 - e. “Local Delivery” shall mean a delivery to a property on Ouellette Road or Lavigne Road;
 - f. “Municipality” shall mean the Corporation of the Municipality of East Ferris;
 - g. “Owner” shall mean the party of the Second Part;
 - h. “Owner’s Lands” shall mean the lands described in paragraph 1, Schedule “A” of this agreement;
 - i. “Proposed Quarry” shall mean the proposed quarry to be licensed under the Act and located on the Owner’s Lands;
 - j. “Quarry Traffic” shall mean all trucks, vehicles and other equipment traveling to or from the Proposed Quarry.

RELIANCE UPON REPRESENTATIONS AND RECITALS

2. The Owner acknowledges that:
 - a. it has made representations to the Municipality that it will complete all works required herein;
 - b. the Municipality has entered into this Agreement in reliance upon these representations; and
 - c. the recitals set out herein are true and accurate in all respects.

SCHEDULES

3. The parties hereto agree that the following Schedules which are attached hereto shall form part of this Agreement as if fully recited herein, namely:

Schedule "A" – Legal Description

Schedule "B" – Traffic Impact Study

Schedule "C" – Cash Deposit and Security

THE OWNER'S OBLIGATIONS

4. The Owner hereby covenants and agrees with the Municipality:
- a. that all Quarry Traffic shall travel to and from the Proposed Quarry via the Haul Route and shall not use any other road in the vicinity of the Proposed Quarry except for the purpose of carrying out a Local Delivery;
 - b. that there shall be no use of the Haul Route by any Quarry Traffic until such time as the owner has cleared all brush from the areas indicated on Exhibit 3.2 of the Traffic Impact Study attached hereto as Schedule "B", to the satisfaction of the Municipality's Engineer;
 - c. there shall be no use of the Haul Route by any Quarry Traffic or any portion thereof except in accordance with the License/Site Plan and the terms of this Agreement; and
 - d. that the Owner shall provide the Municipality with up to 4,000 tonnes of granular "A" gravel for application by the Municipality to the Haul Route. The said gravel shall be delivered by the Owner to such locations on the Haul Route at such time as may be directed by the Municipal Engineer, provided that such request from Municipality and subsequent delivery shall be made within 3 years of the execution of this agreement. It is specifically agreed that the said gravel may be provided in either one or two lifts, as directed by the Municipal Engineer. It is further agreed that the Municipality shall be responsible for the spreading and shaping of the said gravel once it has been delivered by the Owner.
5. Upon execution of this agreement, the Owner shall submit the cash deposits and security as set out in Schedule "C" herein to the Municipality in order to secure the foregoing obligations.

INSURANCE

6. Prior to undertaking work in accordance with section 4 of this agreement, the Owner shall provide to the Municipality confirmation of insurance coverage. Such comprehensive general liability policy shall carry limits of liability in the amount to be specified by the Municipality, but in no event shall it be less than \$5,000,000.00 inclusive and such policy shall:
 - a. contain a cross-liability clause;
 - b. contain product/completed operation coverage;
 - c. include the following name as Insureds: THE CORPORATION OF THE MUNICIPALITY OF EAST FERRIS;
 - d. contain a provision that the insurance company agrees to notify the Municipality 30 days prior to any cancellation or expiry of the said insurance policy.

APPLICATION OF SECURITY

7. Any security filed with the Municipality may be used as security for any item or any other matter which under the terms of this Agreement is the responsibility of the Owner.

DEFAULT – REALIZATION OF SECURITY OR DEPOSITS

Default

8. If, in the event of default of the Owner under any of the provisions of this Agreement, it becomes necessary for the Municipality to realize on its security or deposits, then the Municipality (its servants, agents or sub-contractors) shall, if the Municipality so elects, have the right and privilege at all times to repair or complete any work or services required to be completed by the Owner under this Agreement.

Exceeding Cost Estimates

9. If the costs of completing such work or service exceeds the amount of security held by the Municipality, such excess shall be paid by the Owner to the Municipality 30 days after invoicing by the Municipality. All overdue accounts shall bear interest at the rate of 12% per annum.

Notice to Owner

10. The Municipality covenants and agrees that, if in the event of default of the Owner under any of the provisions of this Agreement, it becomes necessary for the Municipality to realize upon its security of deposits, the Municipality shall give the Owner thirty (30) days prior notice in writing of its intention to realize upon the security or deposits. In the event that the Owner fails to cure any default within the said thirty (30) day notice period, the Municipality shall be entitled to realize upon its security or deposits without further notice to the Owner in accordance with the provisions of this Agreement.

Other Remedies for Default

11. The rights of the Municipality pursuant to paragraphs 8-10 are in addition to any other rights which the Municipality may have at law for default by the Owner under this agreement.

SECURITY-SURPLUS FUNDS

12. In the event that the Municipality cashes a Letter of Credit, or such other security approved by the Municipality to complete any of the matters required to be undertaken by the Owner hereunder, any surplus monies that remain after this work is completed, shall be returned to the issuing financial institution for transmission to that party that took out the original Letters of Credit or such other approved security.

APPLICATION FOR REDUCTION OF SECURITY – UPON COMPLETION OF WORK

13. On completion of the matters required pursuant to paragraph 4 of this agreement, the Owner shall take the following procedures before any reduction is made in the Letter of Credit:
 - a. Letter of Application – the Applicant shall file a letter of application with the Municipality's Treasurer.
 - b. Engineer Certificate – accompanying the letter of application shall be a letter from the Municipal Engineer confirming that the work required under this agreement has been completed and/or partially completed and to what percentage.
 - c. Declaration as to Accounts – there shall be filed with the Municipality a Statutory Declaration that all accounts for labour, equipment, materials,

and plant payable in connection with the construction, installation and maintenance of the said services, have been paid in full.

14. Provided the requirements of paragraph 13 of this agreement have been satisfied, the amount of security shall be reduced within 15 days, except with respect to the amount required for the Warranty Security as set out in Schedule "C".

EXPENSES TO BE PAID BY THE OWNER

15. Every provision of this agreement by which the Owner is obligated in any way shall be deemed to include the words "at the expense of the Owner" unless context otherwise requires.
16. The Owner specifically agrees to be responsible for any costs, expenses and obligations arising from any permits or approvals which the Owner is required to obtain.
17. The Owner shall pay such fees as may be invoiced to the Municipality by its solicitor or engineer in connection with all work to be performed as a result of the provisions of this agreement.
18. All expenses for which demand for payment has been made by the Municipality shall bear interest at the rate of 12% per annum commencing 30 days after demand is made.
19. In the event that the expenses of the Municipality exceed the amount of the cash deposits or security set out in Schedule "C" attached, the Owner shall pay such excess charges within 30 days after demand by the Municipality.

GENERAL PROVISIONS

20. The Owner hereby covenants and agrees to indemnify and save harmless the Municipality from and against all actions, causes of actions, losses, liens, damages, suits, judgements, orders, awards, claims and demands whatsoever whether the same be with or without merit and from all cost to which the Municipality may be put in defending or settling any such action, causes of action, suits, claims or demands which may arise either directly or indirectly by reason of or as a consequence of, or in any way related to:
 - a. any act, omission or work performed by or on behalf of the Owner in connection with the Proposed Quarry or the Haul Route; and

- b. any provisions, permissions, entitlements, rights or obligations in this agreement.
- 21. The Owner shall not call into question, directly or indirectly, in any proceeding whatsoever in law or in equity or before any administrative tribunals, the right of the Municipality to enter into this agreement and to enforce each and every term, covenant and conditions herein contained, and this clause may be pleaded as an estoppel against the Owner in any such proceedings.
- 22. The Owner shall not assign this agreement or any of its obligations hereunder without the prior written consent of the Municipality, which consent shall be granted provided that:
 - a. the assignee is the Owner of the Owner's Lands described in Schedule "A" paragraph 1 and holds an ARA license for the Proposed Quarry thereon; and
 - b. the assignee and Owner execute an assignment agreement satisfactory to the Municipality.
- 23. The Owner hereby warrants that it is the sole and absolute owner of the Owner's Lands free from all encumbrances save and except those listed below, and for which a postponement in favour of this agreement has been provided to the Municipality for registration. The Owner consents to the registration of this agreement and any amending agreement on title to the Owner's Lands.
- 24. The parties hereto, and each of them, covenant and agree that each of them shall and will, upon reasonable request of the other party, make do, execute or cause to be made, done or executed, all such further and other lawful acts, deeds, things, devices and assurances whatsoever for the better or more perfect and absolute performance of the terms and conditions of this agreement.
- 25. This agreement shall enure to the benefit of and be binding upon each of the parties hereto, their respective successors, successors in title and permitted assigns.

IN WITNESS WHEREOF the parties hereto have executed this Agreement on the following dates:

**THE CORPORATION OF THE MUNICIPALITY
EAST FERRIS**

Mayor

Clerk

1851477 ONTARIO INC.

Per:

President

I have authority to bind the
corporation

QUARRY HAUL ROUTE AGREEMENT

Schedule A

Legal Description

Part of Lot 10 & 11, Concession 9, Ferris Township, in the Municipality of East Ferris.

QUARRY HAUL ROUTE AGREEMENT

Schedule B

Traffic Impact Study

QUARRY HAUL ROUTE AGREEMENT

Schedule C

Cash Deposit & Security

Security - \$70,000.00

Warranty Security - \$10,000.00

SCHEDULE “B”

DEGAGNE AGGREGATES (1851477 Ontario Inc.) LAVIGNE RD. QUARRY

Complaint Tracking and Resolution Protocol

Complaint Tracking

1. A sign posted at the quarry site entrance shall include a contact phone number for the Licensee for neighbours to call if they have concerns.
2. The Licensee shall request that the local MECP and MNRF office notify them immediately if they receive a complaint to allow for prompt response and follow-up.
3. The Licensee shall notify the East Ferris Municipal Office to direct all calls from complainants to the Licensee.
4. Complainants should be requested to provide as much detailed information as they can such as location of the incident, time of day, what was seen/heard, photos, truck identification such as plate or numbers (where applicable) and any other information that they feel is relevant.
5. The Licensee will maintain a record of any complaints received and actions taken to address them (registry). The record of complaint shall include the date, time, name and address of complainant, nature/reason for complaint, and actions taken to address complaint or why actions were not taken.
6. The Licensee will maintain the registry as a permanent record so long as the quarry is in operation and these records will be available to the MNRF or the MECP upon request.

Complaint Resolution

When a complaint is received, the Site Manager shall ensure the following steps are undertaken:

1. Inspect the site and surrounding area to identify possible sources that would contribute/be the source of the complaint.
2. Obtain weather data/observations for the time of the event.
3. Note all on-site activities at the time that the complaint was made.
4. If the information indicates that the facility is not the source of the complaint, the complainant shall be notified of this finding.
5. If it is determined that the complaint may, in fact, have been related to the quarry operations, the following response procedures shall be followed, in the order provided below:
 - a. Further investigate the potential causes of the complaint and develop solutions to reduce the impacts if created by the quarry operations.
 - b. Reduce the impact as much as and as soon as practically possible.
 - c. Investigate if the impacts are within permitted regulations, standards or by-laws or not (as required). Confirm all applicable mitigation requirements are in place.
 - d. Discuss the impacts and actions taken to reduce the impacts with the complainant. Attempt to resolve the concern to both parties' satisfaction.
 - e. Make a record of the steps and actions taken for both parties.

SCHEDULE “C”

DEGAGNE AGGREGATES (1851477 Ontario Inc.) LAVIGNE RD. QUARRY

Blasting Communication Protocol

Advance Notice Email Registry

The Licensee shall provide advanced notice to all landowners within 2 kilometres of the quarry property limit who have provided their email address, as well as all persons who register an interest in being notified, of all blasting activity to occur at the quarry. A letter shall be placed in the mailbox of all landowners within 2 kilometres of the quarry property limit requesting the email address for the property owner in order to receive advance notice of blasting activity.

Blasting Notice Process

1. One (1) **week** before the anticipated blast, an email will be sent to all persons who provided their email address to the Licensee to receive advance notice of a blast. The Licensee will indicate the date and approximate time of when the blast will occur subject to operational conditions. It should be noted that the time provided by the Licensee for the blast is not exact as other factors come into play when blasting (such as weather).
2. One (1) **day** before the anticipated blast, an email will be sent to all persons who provided their email address to the Licensee to receive advance notice of a blast. The Licensee will indicate the date and approximate time of when the blast will occur subject to operational conditions. It should be noted that the time provided by the Licensee for the blast is not exact as other factors come into play when blasting (such as weather).
3. The Licensee shall place the same notices identified in sections 1 and 2 above on their Facebook page and website.
4. The Licensee shall place the same notices identified in sections 1 and 2 above on the sign posted at the quarry site entrance.