ONTARIO MUNICIPAL BOARD

IN THE MATTER OF Subsection 11(5) Aggregate Resources Act, R.S.O., 1990, c.A.8, as amended

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| Referred by: | Ministry of Natural Resources |
| Objector: | Clear Lake Cottagers' Association of Field |
| Applicant | Denmar Construction & Renovations Ltd |
| | Application for Class A licence for removal of aggregate |
| Property | N ½ OF Lot 11, Conc. 5 |
| | Municipality of West Nipissing |
| OMB Case No. | MM120034 |
| OMB File No. | MM120034 |

# FINAL ARGUMENT
# CLEAR LAKE COTTAGERS' ASSOCIATION OF FIELD

2 February 2014

Clear Lake Cottagers' Association
Post Office Box 98
Field, ON
P0H1M0

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ORDER REQUESTED

1. Based on these submissions and evidence presented at the hearing, Clear Lake Cottagers' Association of Field is respectfully asking the Ontario Municipal Board (**Board**) to direct the Minister to refuse to issue the Category 2-Class a licence in accordance with Subsection 11(8)2 Aggregate Resources Act, (**ARA**).

PROPOSED SITE

2. Denmar Construction and Renovations Ltd has an existing Category 1 Pit Licence authorizing the extraction of unconsolidated material (sand and gravel).

3. The site is located in a wooded area; with wetlands locate to the Northwest and South.

4. The area is rural, with full time and seasonal residences in the area.

5. The pit exists onto Clear Lake Rd (Lac Clair Rd), the present haulage route for trucks that runs from Hwy 17 to Hwy 64.

6. Denmar Construction has now submitted an application for a category 2 Class A licence (ARA) to facilitate extraction of consolidated material.

7. In accordance with Subsection 11(5) ARA, the Minister has referred this application and the objections to the Board for a hearing.

THE LAW

8. The Aggregate Resources Act directs the Board to have regard to 11 matters outlined in Section 12(1).

*12(1). In considering whether a licence should be issued or refused, the Minister or the Board, as the case may be, shall have regard to,*

*(a) the effect of the operation of the pit or quarry on the environment;*

*(b) the effect of the operation of the pit or quarry on nearby communities;*

*(c) any comments provided by a municipality in which the site is located;*

*(d) the suitability of the progressive rehabilitation and final rehabilitation plans for the site;*

*(e) any possible effects on ground and surface water resources;*

*(f) any possible effects of the operation of the pit or quarry on agricultural resources;*

*(g) any planning and land use considerations;*

*(h) the main routes and proposed truck traffic to and from the site;*

*(i) the quality and quantity of the aggregate on the site;*

*(j) the applicant's history of compliance with this Act and the regulations, if a licence or permit has previously been issued to the applicant under this Act or a predecessor of this Act; and*

*(j) such other matters as are considered appropriate.*

9. The Provincial Standards developed from the Aggregate Resources Act demand the following be placed on the site plans;

*1.1.15 the topography of the site illustrated by a one or two metre contour interval, expressed as metres above mean sea level;*

*1.2.7 any proposed water diversion and points of discharge to surface water;*

10. The Provincial Standards developed from the Aggregate Resources Act demand that the following standards be met for supporting technical documents.

*2.2 Technical Reports accompanying an application for a licence must provide information on the following:*

*2.2.1 Hydrogeological Level 1: Preliminary hydrogeologic evaluation to determine the final extraction elevation relative to the established groundwater table(s) in both unconsolidated surficial materials (if present) and the consolidated bedrock strata, and the potential for adverse effects to groundwater and surface water resources and their uses(e.g. waterwells, groundwater aquifers, surface water courses and bodies, discharge areas, etc.);*

*NB: A Permit to Take Water may be required if any part of the operation utilizes, ponds by flow restriction, or diverts ground and/or surface water on, or from the site.*

*2.2.2 Hydrogeological Level 2: Where the results of Level 1 have identified a potential for adverse effects of the operation on ground water and surface water resources and their uses, an impact assessment is required to determine the significance of the effect and feasibility of mitigation. The assessment should address the potential effects of the operation on the following features if located within the zone of influence for extraction below the established groundwater table, where applicable; A technical report must be prepared by a person with appropriate training and/or experience in hydrogeology to include the following items;*

*(a) water wells;*
*(b) springs;*
*(c) groundwater aquifers;*
*(d) surface water courses and bodies;*
*(e) discharge to surface water;*
*(f) proposed water diversion, storage and drainage facilities on site;*
*(g) methodology;*
*(h) description of the physical setting including local geology, hydrogeology, and surface water systems;*
*(i) water budget;*
*(j) impact assessment;*
*(k) mitigation measures including trigger mechanisms;*
*(l) contingency plan;*
*(m) monitoring plan; and*
*(n) Technical support data in the form of tables, graphs and figures, usually appended to the report.*

11. In making a determination of whether or not a license should be issued, the Fisheries Act directs the OMB to have regard to Section 35 of the Act:

*35.(1) No person shall carry on any work, undertaking or activity that results in serious harm to fish that are part of a commercial, recreational or Aboriginal fishery, or to fish that support such a fishery.*

NATURE OF OBJECTION

Protection of the Environment

12. The Aggregate Resources Act requires that the decision to issue a license shall have regard to *"any possible effect on groundwater and surface water resources"* and requires the Minister and Board to have regard to the eleven items outlined in Section 12(1) ARA.

13. The applicant Denmar Construction and Renovations Ltd has failed to conduct the level and type of testing required to provide the information that the Board requires to consider issuance of a licence as outlined in Section 12(1) ARA.

14. Evidence introduced at the hearing has identified not only possible effects on groundwater and surface water resources but a potential for adverse affects from the operation on ground water and surface water resources and their uses.

15. Once a potential for adverse affects of from the operation on ground water and surface water has been identified, Provincial Standards under the ARA (Hydrogeological Level 2) require the applicant to conduct an impact assessment to determine the significance of the effect and feasibility of mitigation. The applicant has failed to conduct such assessment.

16. Provincial Standards under the ARA in relation to Hydrological Level 2 technical reports list fourteen items that must be addressed in the reports submitted by the applicant. The reports submitted on behalf of Denmar Construction and Renovation do not address the items listed and do not provide the Minister or Board with the information upon which to consider issuance of a licence under the ARA.

Protection of Public Safety

17. Evidence presented at the hearing identified issues with the main route and proposed truck traffic that substantiate concerns over public safety. A full Traffic Study should be undertaken and produced to the Board for consideration before any licence is issued under the ARA. Specific concerns will be addressed later in the "Evidence – Protection of Public Safety" portion of this argument.

GENERAL COMMENTS (3) WITH DENMAR FINAL ARGUMENT (20 January 2014)

18. First, it is the view of this Association that the Final Argument document submitted on behalf of the applicant misrepresents evidence that was presented by Mr. Denhoed and provides unwarranted and unjustified comments in relation to his professional credibility. Specific concerns will be addressed later this Argument under "Evidence – Protection of the Environment".

19. Secondly, it is also our submission that the important aspects of four previous cases referred to in Denmar's Final Argument (20 January 2014) have been overlooked. We submit that Mr. Estrela's interpretation and some of his comments do not clearly reflect some of the facts of those cases. Our Association raises these concerns as the cases in question are being inappropriately used to justify a lack of scientific testing at the proposed site. Specifics will be addressed in the "Case law" portion of this argument.

20. And finally, the "amendments" outlined in pages 2-6 of the Denmar Final Argument, in our submission could be more accurately described as an attempt to address identified deficiencies in the applicant's case than any type of concession to the objectors as Mr. Estrela has suggested.

CASE LAW

Drain Brothers Excavating Ltd v Havelock-Belmont-Methuen

21. In the final Argument (20 January 2014) submitted on behalf of the applicant (Article 16, Pg 11), Mr. Estrela suggests a great similarity between the case before this Board and the Board in the Drain Bros. matter. He clarifies that it is the applicant's onus to demonstrate that the impacts of the aggregate proposal are minimized, but failed to note the major difference in the two cases.

The hydrogeological expert in the Drain Bros matter completed a hydro geological and geological investigation. This investigation enabled the expert to introduce evidence confirming the geology of the site. Evidence before that Board indicated that the formations found on the site were good quality limestone for aggregate purposes. Evidence indicated that tests confirmed the presence of limited ground water and impervious bedrock. This enabled the hydro geologist to inform the MOE and subsequently the Board that the wetland adjacent to the first phase of excavating would not be affected.

On that basis, the MOE recommended that further testing could be delayed until a second lift was conducted. The Board was then able to find that the proposed quarry could operate in a safe and non-intrusive manner because adverse affects were minimized.

In our respectful submission, the circumstances in the Denmar case are therefore not as similar as Mr. Estrela suggests. The applicant in this case, Denmar Construction and witnesses for the applicant have failed to do any extensive testing.

Mr. Rasoul is presently unable to confirm the nature of the ground water or soil. Without this information how can he possibly identify possible adverse affects and plan measures to minimize the affects to the satisfaction of the Board?

Mr. Rasoul is making recommendations based on conjecture or reference to other literature rather than actual testing at the site in question. Mr. Rasoul has not presented any evidence that would substantiate his contention that phase one of the Denmar project could proceed without any adverse affects and his contention that further hydro geological testing could be safely deferred until a later stage is presented without supporting evidence.

In Article 16, pg. 11, Mr. Estrela has suggested that objectors have an onus of bringing forward evidence to support concerns, not just apprehensions.

In our submission, the evidence presented by Mr. Denhoed provides ample evidence to support the concerns that more hydro geological testing is warranted before any consideration be given to issuing a quarry licence.

In this article, Mr. Estrela has also made reference comments from McLoughlin and Lee in the City of Toronto vs. East Beach Community Association decision clarifying *"the Board is entitled to examine the reasons stated to see whether they constitute genuine, legitimate and authentic planning reasons".* In our submission, the evidence presented by Mr. Rasoul on behalf of the applicant does not meet this test.

Mr. Rasoul's recommendations and the monitoring processes he has suggested are not based on field testing results. The applicant has therefore not provided sufficient evidence to enable the Board to determine whether his reasons for recommending monitoring, are genuine or legitimate.

In our submission, the monitoring processes suggested by Mr. Rasoul are not legitimate. We submit these measures are based on a "wait and see" approach devised as a cost saving measure vs. proper hydro geological testing.

The evidence presented on behalf of the applicant in the Denmar case therefore cannot possibly carry the weight of the evidence upon which the Board in the Drain Bros. case based its' decision. The circumstance in this case are not as similar as Mr. Estrela suggests.

<u>Hillway Equipment Led, Oro-Medonte</u>

In the final Argument (20 January 2014) submitted on behalf of the applicant (Article 21,Pg 12), Mr. Estrela suggests the Board in that matter noted that it was satisfied that the requirement to obtain a Certificate of Approval for the equipment would ensure noise was appropriately managed. It is our submission that this interpretation is misleading.

In the Hillway case, N.C. Jackson stated: "*The Board is satisfied with evidence that a Certificate of Approval for crushing is required and is noted on the site plans as a condition precedent to crushing taking place. The application has been filed with the Ministry of the Environment who await the Board decision as to whether the License is to issue"*

This Association would submit that the wording by Mr. Jackson should be interpreted to indicate that before issuing its' ruling, that Board was already aware that the MOE was prepared to issue a Certificate of Approval.

In our submission, Mr. Estrela's interpretation of N.C. Jackson's ruling goes too far and is misleading. It is not the "requirement to obtain a licence" upon which the Board accepted that noise would be appropriately managed. It was the knowledge that the MOE had reviewed the circumstances and were already prepared to issue the licence that

satisfied the Board and N.C. Jackson that the applicant had met the test to show that noise would be minimized.

In our submission, Denmar Construction has a responsibility to provide this Board with evidence to enable the Board to determine whether adverse affects of noise have been minimized by the plan proposed by the applicant and that the plan was genuine, legitimate and authentic. (Hillway Equipment decision).

We would submit that simple notations on a site plan do not provide the Board with sufficient evidence to meet its' mandate.

McCarthy Decision

In the final Argument (20 January 2014) submitted on behalf of the applicant (Article 22, Pg 13), Mr. Estrela suggests that the Board in that matter noted that the requirement for noise and dust to be controlled consistent with the Ministry of Environment requirements appropriately addressed the concern about noise and dust ( and hence impacts were minimized).

The McCarthy case was a three part hearing held in May and then July 2003 and completed January 2012.

Subsequent to the first hearing, that Board ruled that they would not order the approval of a quarry licence until the applicant had received a permit to take water and the necessary Allowance Certificates from the MOE.

In his final ruling, J. P. Atcheson ruled that the site plans should outline a requirement that the applicant must meet standard MOE dust control requirements.

The case clearly indicates that prior to issuing his ruling, Mr. Atcheson was aware that the applicant had already met the Board requirements by acquiring the required permits from the MOE. The Board was satisfied that the applicant had satisfied the licence issuing body that affects would be minimized.

Mr. Jackson therefore did not suggest that plan notes were sufficient as Mr. Estrela suggests. The notes were added to the plan for clarity purposes only.

Pals Decision

In the final Argument (20 January 2014) Mr. Estrela, in referring to the Pals Decision, (Article 201, Pg44) confirms that Mr. Denhoed was qualified by the board to give expert testimony.

In doing so, Mr. Denhoed acknowledge his duty to give evidence that was fair, objective and non-partisan, only provide opinions within his area of expertise, and provide additional assistance as required by the Board. At that time, Mr. Denhoed acknowledged that those duties prevailed over any obligation which he owed to any party or anyone on whose behalf he was engaged.

The Pals decision relates to a professor who was attempting to give expert testimony on behalf of an advocacy group of which he had been a member for six years. The Board in that matter ruled *" A witness cannot at one and the same time, be qualified as an expert to give opinion evidence while that same member is a member of the advocacy group that is an appellant or party at the proceedings. "*

This Board is aware that Mr. Denhoed has testified at many OMB hearings in the past. There has been no suggestion or evidence presented at this hearing that would indicate that Mr. Denhoed's evidence had any basis other than science. Evidence is clear that he is a professional that has been engaged by a party. He is not a member of any group or party to this hearing. Mr. Estrela's suggestion that the Pals principle is applicable to Mr. Denhoed's testimony is misleading. There is a great difference between being "engaged" by a group and being a member of a group.

EVIDENCE - Protection of the Environment

22. Mr. Estrela's comments (Article 71, pg 22) relating to a fundamental misunderstanding regarding the amount of water entering the site, its management, and the timing of discharge is inaccurate. Mr. Denhoed has provided testimony that conclusions in regard to these issues can only be reached through sound scientific testing. Mr. Rasoul's reluctance to conduct such testing and his testimony that it is not necessary could be construed as a disagreement. Throughout the process Mr. Denhoed has demonstrated a clear understanding of the water issues.

23. Mr. Estrela's suggestion that Mr. Denhoed's evidence carry little light is ludicrous. Mr. Denhoed during testimony demonstrated that he is well qualified both academically and experience wise to provide credible testimony in relation to the hyrogeological issues at the site. See Pals Decision above.

24. Mr. Estrela's comments (Article72, Pg 22) that Mr.Denhoed, an experienced hydrogeologist only became aware that it would take years if not decades for phase 1A extraction to be complete as a result of speaking with Mr. Villard defies logic. With years of experience in this field, and having dealt with several site plans, Mr.Denhoed would be aware of that reality long before he spoke with Mr. Villard.

25. The supporting documentation that Mr. Rasoul presented on behalf of the applicant is entitled "A Preliminary Hydrogeological Evaluation, Class 'A' Category 2 Aggregate Permit Application (Exhibit 1, Tab 11).

26. Mr. Remi Labreche, MNR Aggregate Specialist testified that no documents entitled Hydrogeological Level 1 or Hydrogeological Level ll were received by the MNR in support of the application for licence.

27. Mr. Denhoed has testified that the survey elevations (Exhibit 2, Table 1) obtained by Mr. Danny Benson using a centimetre accuracy Global Positioning System (GPS) are as much as 9.4 metres different than those shown on the site plans submitted as required

under the Aggregate Resources Act. Assuming that the GPS is correct and showing elevations with respect to metres above mean sea level, this 9.4 metre difference shows that the site plans are not submitted with topography presented with respect to metres above mean sea level as required by the Provincial Standards.

28. Hydrogeologists on staff with the Ministry of Natural Resources reviewed the Preliminary Hydrogeology Report submitted by Mr. Rasoul and commented (Exhibit 1, Tab 18) requesting additional information in regards to the reference to "groundwater discharge". MNR reviewers call the reference to "groundwater discharge" significant and ask the following questions and statement. (1) Is it a spring? (2) Where is it? And (3) Much more detail is required. The response from Mr. Rasoul confuses the word spring, related to the up welling of groundwater, with the word Spring, related to the season. In doing so, Mr. Rasoul does not answer the important questions asked by the MNR. When asked to give evidence of this matter before the OMB, Mr. Rasoul continued to confuse both groundwater discharge with quarry water discharge and spring(the up welling of groundwater) with the season.

29. Mr. Rasoul gave testimony admitting that no testing was conducted to determine either the thickness of the peat underlying any of the wetlands or the thickness of the sand and gravel at the proposed site.

30. Mr.Rasoul gave testimony admitting that he did not know the hydrogeological characteristics of the peat, sand and gravel or bedrock at the site.

31. Mr. Estrela's comments (Article 140, g, i, Pg 33) that Mr. Rasoul gave evidence that he identified no areas on the site or the nearby features where ground water was discharging is contrary to the information that was provided in the preliminary report to the Ministry of Natural Resources yet evidence would indicate that no further testing was conducted after the initial inquiries from the MNR.

32. Mr. Estrela's comments (Article73, Pg 22) that Mr. Rasoul recognized that there was no need for off –site water management and only when an off-site discharge system was required, would MOE approval and an impact assessment be required substantiates the "wait and see" approach that has formed the basis of Mr. Rasoul's recommendations. In our submission, the applicant should be compelled to identify and address potential adverse affects and plan steps to minimize the affect before a licence is issued. There is no provision, enabling the applicant to defer such responsibility to a later date.

33. Mr. Denhoed testified that the potential environmental impact of a Class A, Category 2 (quarry) licence is greater than a Class A, Category 1 License because it allows for extraction of consolidated material to an elevation of 230 m AMSL. Bedrock prevents extraction to this depth under the authority of a Category 1 licence. This evidence was not contradicted.

34. Mr. Denhoed provided evidence that the added extraction authorized under a Category 2 licence would necessitate dewatering which will create an area of influence around the

quarry in which groundwater is captured and drawn towards the quarry. This evidence was not contradicted.

35. Exhibit 2, reveals that the area of influence created by dewatering will include the adjacent wetlands and fish habitat south of the quarry.

36. The possible effect on groundwater and surface water identified by Mr. Denhoed's testimony was not considered in Mr. Rasoul's Preliminary Hydrogeology Report and therefore not conveyed to either the MNR reviewers or the DFO reviewers.

37. In our submission when the Board requested Ms. Geauvreau and Mr. Rasoul, to provide a worst case scenario, neither specialist recognized that the worst case scenario occurs when the quarry is being dewatered to its greatest depth resulting in the drawing in of groundwater and the potential impacts thereby created.

38. Mr. Rasoul testified that the fish habitat south of the site is not dominated by surface water and that the degree of groundwater surface water interaction in the vicinity of the proposed quarry is moderate to high. (Exhibit 1, Tab 18).

39. During the hearing, Mr. Denhoed gave expert testimony indicating that dewatering the quarry to an elevation of 230 m AMSL will result in an alteration of groundwater flow and if the fish habitat relies on groundwater discharge, the habitat will change as a result of the dewatering ( see Exhibit 2).

40. Ms. Rebecca Geauvreau, the author of the Level I and Level II Natural Heritage Study gave evidence that she relied on Mr. Rasoul for issues related to hydrogeology. In our submission, any sign-off obtained from the Department of Fisheries and Oceans was therefore based on inaccurate findings that did not meet ARA requirements.

41. Mr. Estrela's comments (Article74, Pg 22) relating to Mr. Rasoul's evidence that volume of water discharged and the quantity of that discharged would be regulated by further MOE approvals pre supposes that the Board would approve an application on the basis of the applicant's agreement to meet MOE requirements at a later date. As stated above, it is our submission that the applicant has yet to address existing issues therefore the Board should require that all identified issues be addressed prior to issuance of any licence.

42. Mr. Estrela's comments (Article 89, Pg 25) that MOE approvals must be renewed and be subject of re-evaluation to protect against adverse affect on the environment, is another example of the wait and see approach proposed to defer required testing and proper impact assessments. In our submission, all potential adverse affects must be addressed in mitigation planning before licensing or commencement of the operation if adverse affects are to be effectively minimized.

43. Mr. Estrela's comment (Article 92, Pg 25) that the fundamental hydrogeology issue is below water extraction is accurate. In our opinion, the evidence presented by Mr.

Denhoed puts Mr. Rasoul's evidence in question. In totality, the evidence does not support Mr. Rasoul's conclusion that bedrock extraction will not have adverse affects. Mr. Denhoed has identified the need for further testing and submitted expert evidence supporting his assertion that such testing is required to address this fundamental issue.

44. Mr. Estrela's comments (Article 98, Pg 26) raising the issue that an employer / client relationship between experts and their employers somehow taints their evidence is foolish. The Board will recognize that Mr. Rasoul and the other witnesses testifying on behalf of the applicant and Mr. Estrela himself are financially compensated for their services. Mr. Denhoed acknowledged his duties as an expert witness, and the determination of credibility ultimately lies with the Board. Mr.Estrela's comments only substantiate his concern that the facts raised by Mr. Denhoed are injurious to the applicant's case. In our submission, the Pals Decision does not refer to similar circumstances as Mr. Estrela has suggested.

45. Mr. Estrela's comments (Article 103, Pg 27) tend to play down the marked difference between a Pit and a Quarry. It is our submission that the period of production and potential adverse affects are much greater when extracting consolidated material vs. sand and gravel. The comments that the existing Pit licence already authorizes below water extraction must be tempered with the understanding that the pit life will be exhausted and extraction will have to cease once all of the unconsolidated material has been removed. A quarry licence extends production life and the potential for adverse affects. The suggestion that the Board should consider that no adverse affects have been identified to date is without merit.

46. Estrela's comments (Article 147,d,Pg 34) suggesting that creation of a berm and rehabilitation carry very little weight. Testimony would indicate that these projects may only be undertaken after decades of excavation. In addition, Mr. Denhoed has provided evidence to indicate that a berm would have minimal mitigation affect on movement of ground water

47. Mr. Estrela's comments (Article 115, Pg 29) that the additional impact of a quarry vs. the existing Pit would be minimal overlook the issues addressed by Mr. Denhoed's testimony

48. Mr. Estrela suggests (Article 115, Pg 29) that the only new activity will be rock drilling and blasting. In our submission, these are two very intrusive measures that are likely to have impact on the surrounding area. Provincial Standards for example require a 500 meter setback for quarries vs. a 150 meter setback for pits.(Provincial Standards, Sec 2.2 Technical Reports)

49. Mr. Estrela's comments (Article 140, j, Pg 33) suggesting that Mr. Denhoed's testimony should be given no weight is an unjustified comment and not based on the evidence before the Board. In our submission, Mr. Denhoed's evidence that more testing is required to make qualified decisions regarding the potential impact of a quarry is based on his experience as a qualified hydrogeologist and his recognition that recommendations

such as those proposed by Mr. Rasoul cannot be made without a better understanding of site-specific hydrogeological issues.

50. The evidence of Mr. Denhoed (Exhibit 1) is that the potential impacts of the quarry have not been explored in a Level II Hydrogeology report and are therefore poorly understood. It is Mr. Denhoed's opinion that identifying and addressing issues only as they arise through a monitoring program is fraught with risk to the natural environment

EVIDENCE – Protection of Public Safety – Haulage Route

51. Mr. Estrela's comments (Article 119, Pg 29) that Denmar's agreement to reduce production will ensure that truck traffic generated by the quarry will not exceed the Pit, does not make sense when Mr. Villard has testified that truck traffic will double ( Article 174, Pg40)

52. Mr.Estrela's comments (Article 121, Pg30) suggesting Denmar's agreement to complete entrance improvements as a concession to Mr. Stewart does not address the reality that the ARA licencing process requires that the applicant address the safety and construction of such entrances.

53. Mr. Estrela's comments (Article 126, Pg 30) that Ms. Ducharme, the city clerk offered no objections to the proposal after sitting through the hearings carry no weight. The Board's attention is drawn to the fact that Ms. Ducharme is an employee of the municipality of West Nipissing the recipient of any tonnage fees resulting from a Pit or Quarry.

54.Mr. Estrela's comments (Article 127, Pg 30) that Mr. Rifou representing the Municipality expressed no concerns regarding use of Clear Lake Rd for a haulage route. The Board's attention is drawn to the fact that Mr. Rifou is an employee of the municipality of West Nipissing the recipient of any tonnage fees resulting from a Pit or Quarry.

55. Mr. Estrela's comments (Article 180, Pg 40) indicate that Mr. Rifou testified that Lac Clair Rd (Clear Lake Rd) had been constructed to municipal standard.

56. Mr. Estrela's comments ( Article 182, Pg 41) indicate that the public authority have expressed no need for further study or improvement to Lac Clair Rd (Clear Lake Rd)

56. Mr. Estrela's comments (Article 186, Pg 42) recognize that Mr. Stewart's testimony and a series of supporting photographs identified five areas north of the site on Lac Clair Rd (Clear Lake Rd) that may be narrower than municipal Standard.

57. Mr. Estrela's comments (Article 186e, Pg 42) indicate that Mr. Rifou has now committed to look into the five areas brought to his attention by Mr. Stewart.

59. Mr. Estrela's comments (Article 187, Pg 42) that the five areas of concern do not render the road unsafe in light of the road authority's history of addressing concerns and the commitment to Mr. Stewart to look into concerns are not supported by the evidence.

60. Mr. Stewart's evidence indicated that complaints over road safety have not previously been addressed by the road authorities. Mr. Stewart gave evidence that indicated he was personally aware of the deficiencies because he had traveled and examined the roadway prior to providing testimony. This evidence was not disputed.

61. Mr, Rifou's evidence demonstrates that there has been no recognition to date by Municipal Officials that the road is substandard. There is no evidence that the Municipal Government's elected officials have indicated any willingness to address the road issues raised by the objectors or that any funding has been allocated to address necessary improvements regarding safety to commuters on Clear Lake Road.

62. During the hearing Mr. Rifou did not elude to any deficiencies in his testimony, he indicating he was not aware of the deficiencies until Mr. Stewart testified. Mr. Rifou had therefore not examined the roadway at all before giving evidence. Mr. Rifou's testimony before the Board did not accurately reflect the present state of the proposed haulage route or potential risks to school children and other drivers using the roadway.(Article 180, 182, 186e) His comments regarding road safety cannot carry any weight.

63. Mr. Estrela's comments (Article 181, Pg 40) clarify that road safety and improvements are a matter of public interest that must be addressed by the public authority responsible for them. He refers to the Board Decision PL070640 (Atkins Decision) indicating members of the public cannot usurp the role from the public authority. He is suggesting that the Board need take no action in regard to the haulage route. We disagree.

64. Mr. Estrela's suggests that the areas of concern on the haulage route are north of the site, and over 95% of traffic from the pit proceeds south, to support his theory that the five identified areas of concern do not render the road unsafe. (Article 186b, Pg 42)

65. In our submission, Section 12(1)h ARA requires that the Board consider the evidence that has been provided by the opponents to this application when it relates specifically to the main haulage route Lac Clair Rd Clear Lake Rd) and proposed truck traffic to and from the site.

66. There is undisputed evidence before the Board to indicate Lac Clair Rd (Clear Lake Rd) does not meet municipal standards north of the site entrance. In light of the Atkins decision and Mr. Rifou's commitment to Mr. Stewart (Article 186,e, Pg42) the Board may decide to refer issues relating to the repair or upgrade of this roadway back to the Municipality of West Nipissing.

67. It is our submission that the Board still retains the ability to set reasonable conditions on licences. In light of the evidence before the Board, in the event that the Board considers

ordering issuance of a licence, we submit it would be reasonable to include a condition limiting the haulage route to that portion of Lac Clair Rd from the pit entrance south to Hwy 17. This would have limited impact on the applicant and address some public safety issues before the Board.

## CONCLUSION

68. Evidence would indicate the depth to which the Class A, Category 2 Quarry can mine is significantly greater than achievable by the Class A, Category 1 Pit and therefore the impact of dewatering to the greater depth should have been addressed in supporting documentation.

69. The application for a Class A, Category 2 Quarry below the water table license is not supported by the required Level I or Level II Hydrogeological Study. The Ministry of Natural Resources did not follow the Provincial Standards for the application of a Class A, Category 2 license and therefore the potential impacts of the quarry are not clearly understood nor properly conveyed to other agencies.

70. The poor accuracy with which fundamental parameters such as groundwater elevations and topography are presented to the agency reviewers affect the ability of the reviewers to make appropriate determinations of groundwater flow directions and depth of extraction relative to sensitive features.

71. The Preliminary Hydrogeology Report submitted with the application does not address the effects of dewatering the quarry to an elevation of 230m AMSL, some seventeen to twenty-one metres below the established water table. In failing to do so, the report does not address the fundamental question of possible effects of the quarry on groundwater and surface water.

72. The hydrogeologist Mr. Rasoul could not make himself understood with respect to fundamental hydrogeological issues such as groundwater discharge bringing into question his ability to convey an accurate message to agency reviewers.

73. The agency reviewers were not made aware of the magnitude of the dewatering of the site as is required in a Level II Hydrogeology report leading to the ultimate sign-off by the MNR and the DFO.

74. The Board has received evidence to indicate that the proposed haulage route no longer meets provincial standards and is considered by the residents of the area to be unsafe for heavy trucking.

75. For the above reasons, the OMB should deny the application for a Class A, Category 2 Quarry below the water table.

Respectfully submitted on behalf of Clear Lake Cottagers' Association of Field by:

_____

Derek Stewart

Date _____