

NORTHERN PLANNING

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To : Lakehead Rural Planning Board
3250 Highway 130
Rosslyn, ON P7K 0B1

Sent by Email to: planning@oliverpaipoonge.on.ca

Attention: Kerri Reid, Manager of Planning

**Re: Proposed Amendment to the Gorham Township Zoning By-law 002-2014
Lempiala Sand and Gravel Limited – Highway 591 Property Near Trout Lake**

Please forward the attached Zoning By-Law Amendment Report to the members of the LRPB, for their consideration prior to the Public Meeting of February 3, 2022.

Thank you,



Stefan Huzan

cc. *Silvio DiGregorio*

Zoning By-Law Amendment Report

Background

1. Subject Property:

The subject property is located a short distance south of Trout Lake, in the Township of Gorham (unorganized) adjacent and north of the City of Thunder Bay. The subject property is identified as LRO Pin No 62323-0025, with the following legal description: Parcel 8755, Section TBF, Part Broken Lot 18, Concession 7, Township of Gorham.

The subject property consists of approximately 30 hectares of land located at the southeast corner of Highway 591 and Trout Lake Road. The site is irregularly shaped, and generally bounded by Highway 591 to the west, Trout Lake Road to the north, the McIntyre River and wetland complex to the east, and predominantly vacant land to the south. The wetland complex also extends to the south of the subject property.

The lands are currently vacant and covered with natural vegetation. The surrounding land uses include permanent and seasonal residences along Trout Lake Road to the north of the subject property that front onto Trout Lake. The property to the south contains a single residence near Highway 591.

Existing land use within the larger area includes agriculture, commercial industrial, institutional, residential (permanent and seasonal) and resource-based aggregate and forestry activities.

2. Official Plan:

The governing Official Plan is the OFFICIAL PLAN FOR THE TOWNSHIPS OF GORHAM, WARE, AND THE DAWSON ROAD LOTS, LOTS 1-20 CONCESSION A AND B, EAST OF THE KAMINISTIQUIA RIVER (“Gorham Official Plan”).

Schedule A-1 of the Official Plan designates the subject lands as ‘Rural’. The dwellings along the shoreline of Trout Lake are in an area designated “Lakeshore Residential”.

Schedule B-1 of the Official Plan designates approximately half of the subject property, mostly its south east part as Aggregate Resource Area. There is a strip of about 40 metres width along the west bank of the McIntyre River identified as Use Limitation.

3. Current Zoning By-Law:

The applicable zoning by-law is the ZONING BY-LAW FOR THE GEOGRAPHIC TOWNSHIPS OF GORHAM AND WARE AND A PORTION OF THE DAWSON ROAD LOTS (“Gorham Zoning By-Law” No 002-2014), adopted by the Lakehead Rural Planning Board, and came into effect in 2017.

The Township of Gorham Zoning Schedule map designates the subject property as RU-Rural Zone. A portion of the subject property lands, along the McIntyre River is in the UL-Use Limitation Zone.

4. Proposed Zoning By-law No. 004-2018:

In December 2016, Lempiala applied to rezone the subject lands from RU-Rural to M2-Extractive Industrial. The implementing by-law No 004-2018 was approved on July 5, 2018, and subsequently appealed to the OLT. On April 29, 2020 the OLT upheld the appeal, repealed 004-2018 and ordered that the Lakehead Rural Planning Board make a New Decision in the application for an extractive operation on the subject lands.

5. Proposed Zoning By-law Amendment:

On December 18, 2021, Lempiala requested the LRPB consider a revised amendment to the zoning by-law that would permit an extractive operation on the subject lands, as per the OLT Order (PL-180754).

The purpose of the proposed amendment is to rezone the subject lands from the RU-Rural Zone to the M2-Aggregate Industrial Zone, to include a perimeter M2-Buffer Zone being from 30m to +120m in width; also to define Limited Pit, add Limited Pit as a permitted use and to establish additional use regulations for this site only.

The effect of the proposed amendment would be to allow a restricted aggregate extraction operation as a use on the subject property, and to require this use be separated and buffered from adjacent and surrounding lands.

6. Supporting Studies:

In addition to this report, the following studies were provided in support of the zoning application:

- TBT Engineering Consulting Group (“TBTE”), Summary Statement - dated March 31, 2021
- TBTE, Environmental Site Assessment – dated December 21, 2021
- TBTE, Natural Environment Level 1 Assessment - March 16, 2021
- TBTE, Pit Plans – August 3, 2020
- TBTE, Groundwater Summary Statement - December 20, 2017
- RWDI Consulting Engineers and Scientists (“RWDI”), Air Quality Assessment - March 17, 2021
- RWDI Noise Assessment - October 10, 2017
- WSP Canada Inc., Stage 1 Archaeological Assessment - March 11, 2021.

7. Aggregate Resources Act:

In March 2021, an application for a Class A, Category 3 aggregate extraction license, under the Aggregate resources Act, for the subject property, was submitted by the owner to ARA Approvals, a division of the Ministry of Natural Resources and Forestry (“MNR”).

Planning Policy Analysis

8. Statutory Acts:

The Zoning By-law amendment application is being processed in accordance with the Planning Act, as amended to December 2, 2021. An application for an associated Aggregate Extraction License was made for the same lands under the Aggregate Resources Act.

Specifically, Section 34(2) of the Planning Act declares that, the making, establishment or operation of a pit or quarry shall be deemed a use of land for the purposes of subsection 34(1) [passing of zoning by-laws]. Accordingly the application to amend the zoning by-law to permit a pit was made.

Specifically, sub-section 12.1(1) of the Aggregate Resources Act, as amended to June 1, 2021 states, no license shall be issued for a pit or quarry if a zoning by-law prohibits the making, establishment or operation of a pits or quarries.

In the implementing Ontario Regulation 244-97, in paragraph 13 of Schedule 4, Gorham and Ware townships were added as subject to this Act, effective Jan 2016.

Accordingly the application for an aggregate resources extraction permit was made.

Under the Planning Act, Zoning with conditions, is not available, as the Gorham Official Plan does not contain the empowering polices required by 34(16). Nor is Site Plan Control available, as Gorham is an unorganized area, and not a municipality, as required by subsection 41(2).

Most significantly, subsection 66(1) of the Aggregate Resources Act is very specific with regard to land use planning matters, and reads as follows:

Act overrides municipal by-laws, etc.

66 (1) This Act, the regulations and the provisions of licenses and permits and site plans apply despite any municipal by-law, official plan or development agreement and, to the extent that a municipal by-law, official plan or development agreement deals with the same subject-matter as this Act, the regulations or the provisions of a license or permit or a site plan, the by-law, official plan or development agreement is inoperative. 1999, c. 12, Sched. N, s. 1 (4); 2019, c. 14, Sched. 15, s. 17.

Generally, the regulations and provisions under a License under the Aggregates Act override any and all land use planning documents where they address the same subject matter as the license.

The subject matter addressed by the Aggregates Act license includes the following:

- Location of excavations and character of excavation lifts
- Tree removal season and stump disposal
- Operation of topsoil and overburden striping and stockpiling
- On site equipment
- Hours of operation
- Location of processing areas, entrances and internal haul routes
- Location of stockpiles, fuel storage and scrap
- Spill contingency program
- Drainage control measures
- Excavation setback
- Location, character and maintenance of berms
- Maintenance of tree screening
- Dust mitigation
- Location of excavation & rehabilitation stages
- Character of rehabilitated areas, slope, topsoil and vegetation,

Based on the above it is concluded that Ontario statutes require a local planning approval authority to consider pits and quarries as a land use. When considering a zoning amendment application the approval authority must, as a minimum, determine if the pit use is to be permitted, permitted to a specified geographic extent or not permitted by the zoning by-law. When establishing any other additional zoning regulations, the Aggregates Act specifically requires that the implementing zoning by-law shall not interfere with any of these land use matters which can be regulated in a license issued under the Aggregates Act.

It is further concluded that although a zoning by-law to regulate a pit may include setback distances, berms and screening mitigation measures, such regulations would be null and void if the same matter is addressed in the License issued under the Aggregates Act (as per section 1(1.) of this act definition of zoning by-law “means a bylaw passed under section 34 or 38 of the Planning Act”).

In effect, where a license is applicable, the zoning can only effectively establish whether a pit is permitted on a site, or on a portion of the site.

9. Provincial Growth Plans:

Decisions of the planning approval authority, the Lakehead Rural Planning Board (“LRPB”) on the proposed zoning by-law amendment must not conflict with the applicable Provincial Growth Plan, which is the Growth Plan for Northern Ontario (“GPNO”) that came into effect on March 3, 2011. This plan applies to most lands north of Highway 60 between Parry Sound and Ottawa. The preamble of the plan suggests success in the global economy requires an economic development plan and actions.

Re: Purposes and Priorities

According to Section 1.2 Purpose, under paragraph a), the GPNO states that the first purpose of this Plan is “to enable decisions about growth to be made in ways that sustain a robust economy, build strong communities and promote a healthy environment and promote a culture of conservation.”

Decisions about economic growth must have regard for communities, environment and conservation.

According to Section 1.2 Purpose, under paragraph b), the GPNO states that the first purpose of this Plan is “to promote a rational and balanced approach to decisions about growth that builds on community priorities, strengths and opportunities and makes efficient use of infrastructure”.

Considering communities has regard for objectives, conditions and resources including infrastructure.

Further in the same Purpose Section, in paragraph c), the GPNO states that one purpose of this Plan is “to enable planning for growth in a manner that reflects a broad geographic perspective and is integrated across natural and municipal boundaries;”.

The good of the region should extend beyond the boundaries of local restrictions.

Most notably, in this regard, the GPNO requires that consideration of the approval for extraction of limited gravel resources in Gorham Township should have regard for the economic development, growth needs and supply and demand in the whole Thunder Bay area. The evidence is clear that supply is scarce and needed. Therefore, every effort should be made to facilitate supply.

Such efforts must still have appropriate regard for communities, environment and conservation, however to impede the availability of scarce and needed gravel supply, for purely local reasons could conflict with the GPNO.

Re: Aggregate Resources

Section 2.2 An Economic Action Plan for Northern Ontario, identifies Existing and Emerging Priority Economic Sectors, and one of these is the Minerals Sector and Mining Supply and Services. Mining is defined as the extraction of minerals or other material out of the earth. Strategies for these sectors include attracting investment, and growing and retaining existing competitive businesses, addressing barriers to investment and co-ordinating inter-jurisdictional issues. Specifically for the Minerals sector, in Section 2.3.8.1 the GPNO seeks to grow and diversify this industry by enabling new mining opportunities, and improving timeliness and clarity in the regulatory process, supported by a one window, co-ordinated process for approvals.

Any restrictions that discourage investment, shrink existing businesses, decrease new opportunities or expand and delay the regulatory review process could conflict with the GPNO.

10. Provincial Policy Statement:

As required by the Planning Act, decisions of the planning approval authority, the Lakehead Rural Planning Board (“LRPB”) on the proposed zoning by-law amendment must be consistent with the Provincial Policy Statement (“PPS-2020”).

Re: GPNO

With regard to Provincial Plans, on p.3 the PPS-2020 acknowledges that where policies address the same, related or over-lapping matters, the more specific policies of the provincial plan take precedence.

In this regard, zoning considerations which could excessively restrict pit operation and aggregate extraction for the Thunder Bay area would be in conflict with the GPNO, given the cross-boundary objective of GPNO Policy 1.2 c), and the economic development objectives of GPNO Policy 2.3.8.1.

Re: Northern Ontario

In Part IV – Vision for Ontario’s Land Use Planning System, the PPS-2020 acknowledges as follows: rural and northern communities [which] may face different challenges related to diversity in population, economic activity, pace of growth and physical and natural conditions.

Figure 1 of PPS-2020 delineates the northern limit of Natural Heritage Ecosystems 5E, 6E and 7E, extending east-west near the north shore of Lake Huron. This line creates a separate north-south distinction, which is very similar to the map showing northern lands subject to the GPNO.

With regard to official plans, in the Part 1 Preamble the PPS-2020 states “Official Plans shall provide clear, reasonable and attainable policies to protect provincial interests and direct development to suitable areas.”

Re: Aggregates

On p. 5 the PPS-2020 generally notes “ The Province must ensure that its resources are managed in a sustainable way to conserve biodiversity, protect essential ecological processes and public health and safety, provide for the production of food and fibre, minimize environmental and social impacts, provide for recreational opportunities (e.g. fishing, hunting and hiking) and meets its long-term needs.”

In Section 2.5 Mineral Aggregate Resources, the PPS-2020 Policy 2.5.2.1 specifically states:

“As much of the mineral aggregate resources as is realistically possible shall be made available as close to markets as possible.”

To be consistent with this PPS policy, the Trout Lake Pit rezoning is required to make as much of the aggregate resource available as realistically possible, to serve the Thunder Bay and area market.

In Section 2.5 Mineral Aggregate Resources, the PPS-2020 Policy 2.5.2.2 further states:

“Extraction shall be undertaken in a manner which minimizes social, economic and environmental impacts.”

Given that the GPNO overrides similar PPS policies, the balance between these two PPS policies which require facilitating extraction and mitigating impacts, must be considered within the context of the GPNO.

Re: Simple and Realistic Zoning

Specifically, PPS policy 2.3.2.1 acknowledges that aggregate extraction impacts shall occur, the preamble acknowledges the reality of extra challenges in planning in Northern Ontario, and it requires planning policies to be both reasonable and attainable. Firstly, this position support an approach which considers and requires a minimum mitigation level bases on the standard identified, available, accepted and reasonable measures of impact measures, and disallows measures based predominantly on self-perceived effects and concerns. Mitigation against impacts of noise, dust and view can be clearly established. Mitigation against vague and subjective considerations like social impacts, cannot and based on GPNO policies, such matters are not appropriate in establishing zoning by-law provisions, in the case of northern communities, particularly ones such as Gorham, which are unorganized, and does not have appropriate enforcement tools. The Gorham Official Plan does not contain policies for Site Plan Control, nor for conditional zoning, and generally Gorham has no mechanism for the enforcement of the building code or other legislation. Secondly, the policies of the GPNO strongly direct that implementation be reasonable and realistic and therefore the nature and determination of zoning must be based of the simplest and clearest data available, and the abilities of the community to control development.

Re: Appropriateness of a Pit Use at this Location

Schedule B of the Gorham Official Plan identifies that a large portion of the subject property is located within the Aggregate Resource Area. According to the general policies of Gorham Official Plan (1.3.6) aggregate resources are important and according to policy the Aggregate Resource Section, policies (2.18.1 to 2.18.6) 2.18.1 identified aggregate resources should be developed as much as possible. In addition, according to the Gorham Official Plan, Rural Area policy (3.2.3) aggregate extraction uses are permitted and encouraged. Therefore the map schedules and policies of the Gorham Official Plan identify that the subject lands in the Rural Area land use designation on Schedule A-1 Land Uses, and in the Aggregate Resources Area on Schedule B-1 are both appropriate and desirable for an aggregate extraction use.

In terms of implementing Zoning, it would be simple and reasonable to rezone the subject property to the M2-Extractive Industrial Zone to permit desired aggregate extraction on the subject property.

Re: Requirement for Compatibility

All policy documents, being the GPNO, the PPS-2020 and the Gorham Official Plan contain policies which require that any extractive industrial use, have appropriate regard for the natural environment and also be compatible with existing development, in this case, being any nearby Rural Area residential and the nearby Shoreline Residential Area dwellings.

In terms of implementing Zoning, it would be simplest and reasonable to require a buffer strip along the perimeter of the subject lands. This buffer area would limit the location of permitted extraction activity, and be of sufficient width and character, to ensure sufficient separation measures can be provided to adequately mitigate both the natural environments, and sensitive residential uses from the expected impacts of aggregate extraction activity. OP policy

Re: Required Separation from Areas of Natural Heritage

Regarding Natural Heritage, in Section 2.1 of the PPS-2020, policy 2.1.5 forbids development within significant areas of wild life habitat or within significant areas of natural and scientific interest, policy 2.1.6 forbids development within areas of fish habitat, and policy 2.1.7 forbids development within the habitat of endangered or threatened species. In addition, policy 2.1.8 disallows development or site alteration on lands adjacent to the natural heritage features protected by policies 2.1.5, 2.1.6 and 2.1.7. Thunder Bay Engineering and Testing Group (“TBTE”) prepared a Level 1 Natural Environment Assessment (March 11, 2021) of the subject lands, and adjacent surrounding lands within 120 metres. This report investigated the following natural heritage matters; fish habitat, wetlands, habitat of endangered or threatened species, significant wildlife habitat and areas of natural and scientific interest. The report made recommendations for the protection of all identified natural heritage features.

1. Fish Habitat

The McIntyre River, which outlines the eastern boundary of the subject property, was identified as a habitat for three sensitive fish species, as well as other fish species. In accordance with DFO and MNRF guidelines a minimum 60 m buffer from the edge of the wetland which I associated with the river, is recommended. The applicant is proposing a minimum 90m buffer from the river, which is concluded to be more than sufficient to protect the sensitive fish habitat.

2. Wetlands

At the time of study preparation, in addition to the riparian McIntyre River wetlands, a spruce wetland was identified to the south. The applicant is proposing a 60m buffer from the edge of the souther wetland, which is concluded to be more than sufficient according to DFO and MNRG guidelines, to protect the wetland habitat and function.

3. Significant Habitat of Endangered or Threatened Species

The study identified the McIntyre wetland as a potential habitat for endangered bats and swallows, and threatened grey fox species, and concluded that the proposed 60m buffer from the edge of the river wetland would be sufficient to protect these significant habitats.

4. Significant Wildlife Habitat

In the study no Special Concern species or critical habitat of Special Concern were identified. It was concluded that the removal of 28 hectares of mostly deciduous forest would likely have a minor impact on bird species that feed or nest within the forest, bees or butterflies that feed on forest flowers. To be precautionary, the applicant is proposing no forest clearing during the May to end of August period.

5. Areas of Natural and Scientific Interest

No ANSI area were identified on site, or on adjacent lands.

In summary, TBTE investigated the subject property and surrounding lands within 120 metres, and identified all existing areas of Natural Heritage as defined by the PPS. TBTE identified significant wetland and adjacent areas and proposed the applicant maintain a 120 buffer, separating aggregate extraction from these areas of identified and potential natural heritage.

Re: Required Size and Character of the Buffer Strips

Thunder Bay Engineering and Testing (“TBTE”) and the RWDI Group (“RWDI”) have undertaken studies of the property and surrounding land uses to identify characteristics of an appropriate buffer.

RWDI Air Inc. prepared a Trout Lake Pit Noise Assessment Report and a Trout Lake Pit Air Quality Assessment Report on March 17, 2021. These reports estimated the impact from the proposed pit, identified sensitive receptors and made recommendations respecting mitigation.

1. Noise

The Study evaluate predicted operation and construction noise generators, identified sensitive receptors, concluded expected noise levels and recommended mitigation measures, based on a pit not having any sources of vibration or blasting. Between the operating hours of 0700 to 1900h, the maximum predicted phase 1 daytime sound level contours at the property boundary, were 47 dBA to the north east and 63 dBA to the south. The maximum predicted phase 2 daytime sound level contours at the property boundary, were 70 dBA to the north east, and 48 dBA to the south. The proposed pit was found to be below the MOECC NPC 300 exclusion limits at all nearby noise sensitive receptors.

2. Air Quality

The study found maximum predicted concentrations from the proposed pit operation were below relevant criteria; and when the 90th percentile background concentration was added, the cumulative concentrations continued to be below relevant criteria. To ensure such quality the Study recommends the following; dust be mitigated on site, water or other approved suppressant be applied to internal haul routes as required, a max speed of 20 km/h be posted and applied, an earthen berm be installed along the north east property boundary and a 30m wide tree screen be maintained along this north east boundary.

a) Easterly McIntyre River Sensitive Environment:

The Gorham Official Plan Schedule B-1 identifies lands along the easter boundary of the subject property, delineated by the centre-line of the McIntyre Rive, as a Use Limitation Area (“UL”). Scaled measurement of this map Schedule suggests that the UL area covers the lands within 40 meters of the lot line. Further studies by TBTE for the applicant, have evaluated the site in detail, and determined that in accordance with various government standards, a 120m buffer area, from the identified edge of the Wetland should be provided and this proposed buffer area would be more than adequate to protect all elements of the identified sensitive natural environment.

b) East of McIntyre River Sensitive Uses:

The TBTE report identified two existing Rural Area residential dwellings located approximately 100 m. east of the subject property, and east of the McIntyre River. TBTE and RWDI analysis concluded that given the proposed natural environment buffer of 120m, and the further separation distance, these two dwellings are sufficiently separated from any areas of aggregate extraction that the buffer mitigates all projected noise and emission negative impacts to an acceptable level below industry standards.

c) South Wetland and Sensitive Use and Environments:

The Gorham Official Plan Schedule B-1 does not identify any environmentally sensitive lands to the south of the subject property. However, in accordance with studies by TBTE for the applicant, the lands to the south are an identified wetland. TBTE analysis has identified that a 120m buffer strip from the identified edge of the Wetland should be provided and this proposed buffer area would be more than adequate to protect the ecological functions of the identified wetland.

The TBTE report also identified an existing Rural Area residential dwelling located on a property at on Highway 591, and being approximately 230 meters south of the southern limit of the subject property. TBTE and RWDI analysis concluded that given the proposed natural environment buffer of 120m, and the further separation distance, this dwelling use is sufficiently separated from any areas of aggregate extraction the buffer mitigates all projected negative impacts to acceptable industry standards.

d) Westerly Boundary along Highway 591

TBTE research identified no sensitive uses to the west of the subject property, and notes that the lands across Highway 591 to the west, are uses as a waste disposal site. Accordingly, a minimum separation buffer distance of 30 metres is recommended, to retain a visual screen from the traveling public.

e) Northerly Trout Lake Shoreline Residential Sensitive Uses:

The TBTE report identified that fourteen (14) recreational dwellings are located to the north of the subject property, within the Shoreline Residential Area, and range in distance from 20m to 140m north of the north boundary of the subject property.

The size, nature and maintenance of this separation buffer is most important in establishing appropriate emissions mitigation, between the proposed aggregate extraction activity and these sensitive uses.

In regard to the nature of the northerly separation buffer, based on technical studies, TBTE and RWDI have made the following recommendations, which the applicant is proposing:

i.) Permit Only Aggregate Extraction Use With Lowest Possible Noise Emission Characteristics:

Both the PPS and the Gorham Official Plan call for the use and extraction of as much aggregate resource as practically possible. The applicant proposes that the absolute minimum level of activity occur on this site, and yet still be sufficient to extract the aggregate resource.

Typically, the Gorham Zoning by-law allows a “Pit and/or Quarry” and “Aggregate Processing Facility”, and these uses would typically include the following activities: blasting, crushing, screening, sorting, washing, stockpiling, weighing, open and enclosed storage and offices, and as other activities normally associated with a pit, such as refueling and equipment maintenance, repair and storage.

Blasting, crushing, screening and sorting are by far, the greatest noise generators – and the applicant has proposed these be excluded, and extraction activities be mainly limited to excavation and loading.

For the purposes of establishing appropriate buffering and mitigation measures, RWDI has evaluated the projected noise level impact from such a “limited pit operation” and has also evaluated noise generation created by associated on-site land preparation/rehabilitation, aggregate loading and hauling.

ii.) Limit Hours of Pit Operation to Between 7am and 7pm and on Weekdays Only.

Both the PPS and Gorham Official Plan call for compatibility between conflicting land uses, and in this situation the applicant acknowledges that typical 24 hour operation of a pit may not be desirable in closer proximity to recreational uses, and has therefore proposed to disallow overnight pit operation, and to exclude peak recreation time weekends from pit operation.

The applicant notes that this time trade off works both ways. On one hand, the aggregate resources on-site are limited, and if round-the-clock operation was permitted then total available resource extraction would be completed within several years. On the other hand, reduced hours of activity extend the number of years of pit operation until when the site is rehabilitated to a natural state. Reduced hours strikes a reasonable balance; providing sensitive uses with a preferred level of noise at the peak times of public and private activity.

iii.) Provide a 60 m Setback and Maintain a 3m High Vegetated Berm

The existing character of the site which rises approximately 6 m in elevation to the northeast, also currently naturally blocks and deflects any sound emanating to the northeast from the centre of the site. The applicant is proposing to provide a 60m natural wooded setback, and construct an additional 3.0 m high vegetated earthen berm along the northeast property line for a distance of approximately 400 m.

Analysis by RWDI concluded that this vegetated berm would sufficiently separate and mitigate all projected negative noise impacts due to aggregate extraction, to acceptable levels that are below industry standards, and provide compatibility between the pit and the existing recreation dwellings.

11. Official Plan Conformity:

The decision of the LRPB on the proposed zoning by-law amendment must conform with the policies of the applicable Gorham Official Plan.

The previous sections of this report have identified the guiding policies of the Gorham Official Plan, that would support an aggregate extraction use by a rezoning on the subject property, and also the policies and other additional matters which have been considered, to arrive at the conclusion that supporting the proposed amendment to the Gorham Zoning By-law is consistent with the policies of the Gorham Official Plan.

The subject lands are in the Rural Area designation, and have the southwest portion identified as a High Aggregate Potential area, therefore a pit use is one of the uses intended in this area and it should be allowed.

Both the Rural area policies, and other policies of the Gorham Official plan require that both the existing dwellings within the nearby Shoreline Residential area along Trout lake be considered, and the natural area along the McIntyre River forming the eastern boundary of the site be considered, as both areas have sensitive features that might potentially be adversely affected by the proposed pit.

Three land use policy matters determine how much of the subject property use ought to be allowed to have aggregate extraction.

Re: Natural Area Setback

The applicant has proposed to have all pit extraction activity occur outside of the 120 metre distance from the boundary of the adjacent provincially significant wetland ("PSW") related to the McIntyre River, thereby separating that sensitive environmental area, and associated fish habitat from any significant pit impacts.

- Accordingly, as a minimum, all site lands located outside the PSW would be appropriate to be zoned M2 – Extractive Industrial.

Re: A Restricted Aggregate Use

The applicant has proposed a pit use without several operations that generate negative impacts. No blasting. No on-site crushing. No on-site processing, sorting or washing plant. The net result is that the technical studies suggest acceptable levels of noise and dust between the pit and all existing residential uses can be achieved. Such levels would be achieved through certain mitigation features, being dust control, a vegetated wind and elevated berm, topographic elevation, distance separation buffer and reduced hours of operation.

- Accordingly, a separation buffer area can and should be used to achieve separation requirements.

Re: Expected Rural Area Character

The Official Plan seeks a balance between adjacent use areas. Such a policy requires that the objectives for both areas be considered, but this does not mean these areas are equal. Both the Official Plan and PPS-2020 are clear that aggregate resources shall be protected for extraction, from the negative effects of residential use expansions.

Conversely, the Official plan qualifies the degree of compatibility with existing residential uses that is required. Section 2.7.1 states “As much as possible, land use conflicts should be avoided.” Should, is not as prescriptive as shall. This section goes on to say “Buffering and separation distances in accordance with MOEC guidelines shall be incorporated between sensitive and industrial uses to minimize potential adverse effects such as noise, odour, vibration, particulates and other contaminants.” Minimize, recognizes that no matter what, some levels of adverse impact will be perceived, however seeking total zero impact would disallows any, and every change. The MOEC guidelines are effectively prescribed within the specific technical thresholds.

Although all possibly perceived effects would not be eliminated, all negative impacts would be reduced to a level that is not considered significant, according to Ministry and industry standards.

- Accordingly, the intent of these Official Plan policies would be maintained, by allowing the pit use, provided that the mitigation measures identified and recommended in technical studies are maintained.

In summary, rezoning the subject property to M2-Extractive Industrial would conform with the policies of the Gorham Official Plan, provided that a buffer area separates aggregate extraction and provided that recommended mitigation measures in accordance with technical reports are maintained.

Conclusions:

The Proposed Zoning By-law Amendment to the Gorham Township Zoning By-Law (2017), would conform with the Policies of the Gorham Official Plan (2011), would be consistent with the Provincial Policy Statement (2020) and would not conflict with the Growth Plan for Northern Ontario (2011), and therefore would constitute good planning and should be approved.