ISSUE DATE:

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PL040025

Ontario
Ontario Municipal Board
Commission des affaires municipales de l'Ontario

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(MMAH File No. 57-OP-0067-004)
OMB Case No. PL040025
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OMB File No. MM080052

APPEARANCES:

Parties	**Counsel**
Municipality of Wawa	M. Bull
Superior Aggregates Company	G. S. Watt
Ministry of Municipal Affairs and Housing and Ministry of Natural Resources	J. R. Boxma
Citizens Concerned for Michipicoten Bay	D. Hodgson

AMENDING DECISION DELIVERED BY J. E. SNIEZEK AND ORDER OF THE BOARD

The Board's Decision issued on July 15, 2009, is hereby amended to correct a number of stylistic errors in the body of the Decision.

For ease of reference the Decision in its entirety, as amended, is attached as "Schedule A".

SCHEDULE A

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DECISION DELIVERED BY J. E. SNIEZEK AND ORDER OF THE BOARD

The Citizens Concerned for Michipicoten Bay (CCMB) appealed the Minister of Municipal Affairs approval of Official Plan Amendment No. 4 (OPA 4). OPA 4 redesignates the subject lands from "Rural" and "Industrial" to Michipicoten Harbour Special Policy Area that permits the quarrying of aggregate in addition to the uses permitted in the Rural and Industrial designations.

The CCMB also appealed the Municipality of Wawa's (Municipality) approval of Zoning Amendment By-law 1616-03 that amends Zoning By-law 385-85 by rezoning the subject lands from Restricted Industrial (M2) and Rural (RU) to Restricted Industrial (M2) Exception Zone to permit the M2 uses, a quarry, and the uses normally permitted in the Rural Zone – forestry, railway facilities, marinas, water storage facilities and accessory uses.

The Minister of Natural Resources (the MNR) referred the approval of a Class A license to remove aggregate from below the water table to the Ontario Municipal Board. The hearing commenced on April 06, 2009 and continued for sixteen days. The Board heard evidence from Robert Lehman, planning consultant for the Municipality, Anthony Usher, planning consultant for the CCMB, and Brent Clarkson, planning consultant for SAC. John Coulter and William Gastmeier, noise consultants for CCMB and SAC respectively testified on noise impacts. David de Geus, a Registered Professional Forester (RPF), provided evidence on behalf of the MNR. The Board heard the testimony of twelve (12) participants: Valerie Palmer, Marny Chauvin, Joel Cooper, Peter Burtch, Joan Skelton, Dr. Willard Carmean, Phil Weir, Shane Mills, Helene Gousseau, David Wells, Torfinn Hansen and Mary Jo Cullen. Fourteen (14) citizens from the Municipality, Thunder Bay, Wakefield, (Quebec) and Goulais River, (Ontario) provided oral and written submissions at the Board's evening session held Tuesday April 14, 2009. The Board had a view of the site on the first day of the hearing accompanied by Counsel for the parties, and Messrs. Usher, Lehman, Clarkson and Bruce Staines of SAC who directed the tour of the site and its surroundings.

Background

The history of the Michipicoten Harbour is rooted in resource extraction activities based primarily on mining. The Harbour and the railway linked the iron ore deposits of the Helen Mine to the steel mills located 200 kilometres to the south in Sault Ste. Marie. The shipping activities in Michipicoten Harbour predate the mining activity in that the Harbour was used as a logistical supply base for the construction of the transcontinental railway in the late 1800's. The historical record of Michipicoten Harbour involved a series of docks and wharfs that moved ore from the shore to lake freighters. The shipping activities also involved coal, limestone and pulpwood. The dock fell into disuse and the rail services were removed in 2000; this occurred after the iron mines were closed in 1998. In the last five years, renovations have been made to the wharf to make it usable by ships and barges.

The SAC owns 385.5 hectares of land that is legally described as Part of Parcels 371 Mich. and 372 Mich. and Part of Parcels 305 Mich. and 1865 AWS being Water Lot Locations C.K. 167 and B.Y.12 in the Geographic Township of Lendrum, within the former Township of Michipicoten, now the Municipality of Wawa, in the District of Algoma. The lands are located approximately 5 kilometres from the Wawa town site and west of Highway 17 (the Trans Canada Highway). The SAC wishes to develop a quarry on 35 hectares. The licensed area consists of 31.1 hectares and the proposed extraction area comprises 11.7 hectares. The SAC estimates that the subject lands contain 5 million tonnes of material that may have a reserve life of 10 years, depending upon market conditions. The existing wharf is approximately 90 metres wide and 460 metres long. Inside the licensed area an aggregate processing facility would be built where the rock is crushed, sorted and screened. The material would then be stockpiled outside of the licensed area along the dock face for shipment on freighters or barges to ports along the Great Lakes.

The Issues List

Three Prehearing Conferences produced the following issues list:

Issue 1:

Would approval of these applications at this particular site on the Lake Superior Coast represent good planning?

Issue 2:

Do the proposed official plan and zoning by-law amendments have regard for the 1997 Provincial Policy Statement (1997 PPS) including policies 1.1.3(g), 2.2.3.5, 2.3.1(a), 2.3.1(b), 2.3.2 and 2.3.3?

In regard 2.3.2, the issue with respect to fish habitat is whether the recommendations made by N.A.R. Environmental Consultants have been properly implemented in the instruments before the Board?

In regard to 2.3.1(a), 2.3.1(b), and 2.3.2 with the exception of fish habitat in 2(a), above, the issues are restricted to woodland caribou habitat.

Issue 3:

Is the proposed quarry license consistent with the 2005 Provincial Policy Statement (2005 PPS) including policies 1.1.4.1(g), 1.5.1(d), 1.7.1(e), 1.7.1(f), 2.1.2, 2.1.3(a), 2.1.4(d), 2.1.6, 2.5.2.2, and 2.5.3.1?

In regard to 2.1.6, the issues are limited to the following:

a) fish habitat – whether the recommendations made by N.A.R. Environmental Consultants have been properly implemented in the instruments before the Board;

   wood land caribou habitat.

b) In regard to 2.1.3(a) and 2.1.4(d) the issues are restricted to woodland caribou habitat.

Issue 4:

Does Policy 2.2.3.1 of the 1997 PPS apply in support of the proposed official plan and zoning amendments, given the applicant's expressed intentions to market most or all of the aggregate produced by the quarry outside of Ontario?

Issue 5:

Does the proposed official plan amendment meet the relevant requirements of, and does the proposed zoning by-law conform with the Municipality of Wawa's Official Plan?

The CCMB is concerned with the following Official Plan sections:

Re: OPA 4: section 4.4, 4.12, 9.1, 12.1, 12.2.1, 13, 14.1.1, 14.2.2, and 15.2.6;

Re: zoning by-law: the preceding and section 14.2.4

Issue 6:

Does the proposed zoning by-law conform with, and fully and effectively implement, the proposed official plan amendment, and is it compatible with the parent Comprehensive Zoning By-law?

Issue 7:

Are the proposed site plan, and the proposed official plan and zoning by-law amendments mutually consistent?

Issue 8:

Is the proposed rehabilitation plan for the site adequate and consistent with current policies / standards/ practices?

Issue 9:

Would approval of the applications be premature, or represent good planning, given that the applicant has not provided any analysis of visual impacts on nearby residents and on Lake Superior recreational users?

Issue 10:

Has the applicant demonstrated that noise will not exceed applicable Ministry of Environment criteria for the predictable worst case at nearby receptors, taking into account:

1. the equipment most likely to be required for this particular operation and where and how that equipment is most likely to used,

2. the sound barrier measures shown on the site plan,

3. site topography and vegetation,

4. inversion conditions over water?

Issue 11:

Are the proposed license conditions regarding hours of operation reasonable and appropriate?

Issue 12:

Has the applicant otherwise demonstrated land use compatibility with affected:

- residential uses and communities,

- recreationally used offshore waters?

Issue 13:

Do the applications make adequate provision for monitoring noise impacts during and after operations, and for contingency planning should adverse effects be detected? Has the baseline information needed to provide an effective foundation for monitoring being obtained?

Evidence of CCMB's Planner

Mr. Usher, the planning consultant retained by the CCMB, divided his evidence into two parts – comments on Mr. Lehman's background information and his planning

opinion on the applications. Mr. Usher clarified some of the background information including the following: Property and Site Character, History of the Application, History of the Port, Residential Properties in the area and Uses currently permitted.

Property and Site Character

Mr. Usher explained the fact that the Michipicoten Harbour area was originally part of the Gros Cap Reserve that was surrendered in portions - one in 1855 and the other in 1899 - 1900. Mr. Usher pointed to the distinction between IR49 and IR49A that are reserve lands and the MFN lands that were purchased by the band and are not part of the reserve.

Mr. Usher testified that the boundaries for the zoning and official plan designations are not the same.

The total site is 37 ha of that area. 22 ha are zoned RU (Rural) and 15 ha are zoned M2 (Restricted Manufacturing). The licensed area consists of 31 ha; of that 22 ha are zoned RU and 9 ha zoned M2. The extraction component is divided between the 10 ha zoned RU and the 1.5 ha zoned M2. The site contains 12 ha of disturbed area and 25 ha of undisturbed area. The extraction area remains in an undisturbed natural state.

History of the Port

Mr. Usher stated the fact that the port activity had experienced decline over the last 50 years while tourism activities have increased.

Residences on the Bay

Mr. Usher used data collected by the CCMB to illustrate that there are 51 dwellings on the Bay and 50 properties (one property has two residences). Of these 28 are permanent or year round and 23 are seasonal. There are nine leases on the MFN property and four licenses for residential occupancy on the SAC lands.

Uses Permitted

Mr. Usher stated that the uses in the M2 zone include major mining, refining and processing of ore, manufacturing and processing, oil and gas trucking terminals and storage, tailings and waste rock disposal areas. The port use was not recognized in the zoning by-law but this defect should be corrected. It may be a non-conforming use according to Mr. Usher. The Rural zone permits accessory dwelling, forestry, hunting, fishing and trapping, mining and quarrying, recreation and park uses, tailings waste rock disposal: and previous existing dwellings.

Mr. Usher noted mining is not the removal of mineral aggregate.

Mr. Usher testified that the M3 zone permits aggregate extraction; that the Official Plan permits mineral exploration and mining; and that the rural zone does not permit shipping and storage.

Mr. Usher's Planning Opinion

Mr. Usher's planning opinion compared and contrasted the planning elements with the 1997 Provincial Policy Statement (1997 PPS), the Township of Michipicoten Official Plan (the MOP) and Michipicoten Zoning By-law (the MZB). The 2005 Provincial Policy Statement (2005 PPS) affects the aggregate license issued under the *Aggregate Resources Act* (the ARA).

Mr. Usher's opinion was that sensitive land uses meant "buildings, amenity area or outdoor spaces. It was his opinion that the recreational use surface of the lake was an amenity area or outdoor space and the odour, noise and other contaminants would create an adverse impact. These impacts would include lighting and blasting impacts. It was Mr. Usher's opinion that the D-1 land use compatibility guidelines did apply to the quarry. Mr. Usher was in agreement with Mr. Clarkson that the D-6 Guideline does not apply.

The tourism policies of the 2005 PPS would be unduly undermined by the development of a quarry on the site that would impact tourism in a negative way. Mr. Usher noted that there was a provincial park 4.8 km from the site and a protected area at the mouth of the South Michipicoten River 6.5 km from the site.

Mr. Usher stated that the prime market for the aggregate would be in the United States. The 1997 PPS, states "As much of the mineral aggregate resources as is realistically possible will be made available to supply mineral resource needs, as close to markets as possible" (Ex 20A Tab 7, pg. 153). In the Mineral Aggregate Policy Statement, the predecessor of the 1997 PPS, the words used are "to supply local, regional and provincial needs" and "As parts of Ontario processing mineral aggregate resources share the responsibility for meeting future provincial demand. In the Comprehensive Set of Policy Statements the terms used are "local, regional and provincial needs"

The 1997 PPS and 2005 PPS set out policies that govern the rehabilitation of pits and quarries. Mr. Usher made reference to the following policies:

Policy 2.5.2.2 (2005) Extraction shall be undertaken in a manner, which minimizes social and environmental impacts. (Ex 20A tab. 8 pg. 193)

Policy 2.2.3.5 (1997) Progressive rehabilitation to accommodate subsequent land uses will be required. (Ex. 20A Tab. 7 pg. 154)

Policy 2.5.3.1 Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, and to recognize the interim nature of extraction. Final rehabilitation shall take surrounding land uses and approved land uses into consideration.

Mr. Usher testified that the rehabilitation plan met the minimum requirements and did not, in his opinion, consider sensitive land uses nearby. It was Mr. Usher's opinion that this was the first phase of development and this should be considered. Mr. Usher noted that up to one metre of water might be found on the finished pit floor and that restricted its future use as port storage facility.

Mr. Usher made reference to the cold water stream that runs through the subject lands and the setback from that stream. Mr. Usher stated that the proposed setback was 30 m. The biologist retained by SAC referred to 50 m. Mr. Usher referred to the Timber Management Guidelines of the MNR as a source of support for this 50 m setback that would protect the "Quarry Creek".

The Woodland Caribou were classified by the Committee on the Status of Endangered Wildlife in Canada (COSIWIC) as a "threatened species in 2003. The Woodland Caribou are an indicator species and are valued by Ontario. The Environmental Commissioners Report urged the province to do more. The *Endangered Species Act* provides for a "Recovery Strategy". Mr. Usher admitted that the Woodland Caribou in the Wawa area were outside of (south) their historic range. There are isolated populations of this species from Sibley Point (in the west) to Montreal River (in the east) and sporadic migrations between these coastal populations. This zone is illustrated as the Lake Superior Coast Zone that runs from Nipigon to Lake Superior Provincial Park (LSPP). It was Mr. Usher's opinion that SAC and the MNR never considered the rare or threatened species habitat.

Mr. Usher opined that notwithstanding the fact that the subject lands may not be significant wildlife habitat as defined in the PPS, it was not thoroughly investigated and it might be considered such because of the corridor along the shore of Lake Superior is required to protect the caribou's migration route. It may be the quarry could be considered "adjacent lands" within the meaning of the 2005 PPS.

Mr. Usher concluded that OPA 4 fails to protect the heritage and natural resources of Michipicoten Bay, the caribou habitat, fish habitat and recreational and tourism objectives.

It was Mr. Usher's opinion that the SAC proposal does not satisfy the aggregate objectives that relate to local needs. The proposed quarry will cause more than a "minimal disturbance".

Mr. Usher pointed to the fact that "conservation uses" were not defined in the by-law. He stated that the quarry use was an additional permitted use. Mr. Usher expressed concerns that some of the activities of the quarry would occur outside the licensed area.

Considering the former rail bed had been purchased by the MFN and considering the port is under the ownership of SAC, the benefits of reopening the wharf for the shipping of goods other than aggregate may be a questionable proposition. The use of the harbour was also constrained by the condition of the road.

The rehabilitation of the quarry was incomplete according to Mr. Usher because the quarry floor was to be left untreated and there was no after use. The lack of rehabilitation details lacks sufficient regard to the ARA requirement to consider adjacent lands.

Mr. Usher indicated that he was also concerned with the possibility that the quarry could be a 24-hour operation. The noise and light impacts were the major items of concern with respect to the night-time operation of the quarry.

Mr. Usher was of the opinion that the OPA and ZBLA did not have appropriate regard for 1997 PPS policies 1.1. 3 (g), 2.2.3.5, and 2.3.2 (fish habitat). It may not have appropriate regard for 2.3.1(a), 2.3.1 (b), 2.3.2 (caribou) and 2.3.3. In addition, the license application is not consistent with the policies of the PPS (2005) 1.7.1(e), 1.1.1.4 (g), 1.7.1(f), 2.5.2.2, 2.5.3.1 and 2.1.6 (fish habitat). The license application may not be consistent with policies 1.1.1(d), 2.1.3 (a), 2.1.4(d), 2.1.6 (caribou) and 2.1.2.

The Participants

Valerie Palmer is an accomplished artist who has lived on and painted Michipicoten Bay since 1980. She paints out of doors most times of the year. She has used locations on the Bay such as the lighthouse as a backdrop for her paintings. She is not the only artist on the Bay and she pointed to other artists, past (Paul Kane and A. Y. Jackson) and present, who have painted and have been inspired by the beauty of the Bay.

She is concerned about the changes the development of a quarry will bring to her work environment. More specifically the noise, light and dust impacts and the physical scar the quarry will leave on the landscape. She has been active in her opposition to the proposed quarry since she first heard about the proposal in April 2002 from a tenant on SAC's lands. Ms Palmer is a director of CCMB. (Exhibits 35A and 35B)

Marny Chauvin is a former high school teacher who lives on Michipicoten Bay with her husband, a local dentist. She has lived in Wawa for 27 years. She is concerned that the blasting from the quarry will be accentuated as the sound travels over the water. She is a kayaker and noted that the use of motorized watercraft on the

Bay is the exception rather than the rule. Ms Chauvin is the secretary of the CCMB. (Exhibit 37)

Joel Cooper is a resident of the Bay and a director of CCMB. He is a former MNR employee involved in parks planning. He lives in the Bay next door to A. Y. Jackson's former cottage. Mr. Cooper has had extensive experience travelling the lakes and rivers of the area in motorized and non-motorized watercraft. He is familiar with the flora and fauna of the area, specifically bird life. He stated that the noise from the quarry would be bothersome to him because he only hears natural sounds now. Mr. Cooper indicated how he had taken temperature measurements on the Bay in order to substantiate the claim of CCMB's noise expert, Mr. Coulter, that temperature inversions were a factor that should be considered when measuring sound impact. Mr. Cooper noted that Michipicoten Bay was used as a staging point for wilderness trips by canoe or kayak north to Pukaskwa Park or south to Lake Superior Park. Mr. Cooper believes that there should be a long term vision to protect the Lake Superior Coast.

Peter Burtch, a retired MNR employee, expressed his concerns with the proposed quarry as it impacts the coast of Lake Superior. Mr. Burtch worked on "Ontario's Living Legacy" "Lands for Life" and the "Great Lakes Heritage Coast"(GLHC) while employed by MNR. The shoreline of Superior is worthy of protection according to Mr. Burtch and protection can have positive natural and economic benefits. Mr. Burtch admitted under cross-examination that the GLHC was not regulated or legislated and that it was "a project".

Joan Skelton represented "Interested Women of Thunder Bay (IW)", a public interest group that has provided submissions and educational programs on a broad array of subjects. Ms Skelton is an author and playwright. IW expressed concerns about the requirements of the public participation process both before this Board and the requirements of the ARA. The IW position is that the area needs protection as a legacy for future generations; that an American company should not be permitted to scar our land; the results of the quarry development would negatively impact tourism a benign and beneficial industry; no amount of taxes would be worth the desecration and finally the Pukaskwa to Agawa area should be designated a World Heritage Site by the United Nations Educational Scientific Cultural Organization (UNESCO) (Exhibit 42)

Dr. Willard Carmean, a representative of the Thunder Bay Field Naturalists, appeared as a participant in the hearing and pointed to the lack of an environmental assessment, impacts of the restoration of the wharf on fish, the impact of noise from the quarry and its impact upon wildlife, the invasive species involved with shipping activity related to the quarry, storm water management issues, incomplete analysis of the traprock and missing baseline information (Exhibit 43). In response to questions from counsel for the Municipality, Dr. Carmean admitted that he had not read the storm water management report or the spills contingency report.

David Wells is the owner of Naturally Superior Adventures and the Rock Island Lodge an ecotourism business that he established in 1994 after purchasing the former Great Lakes Power corporate camp. Mr. Wells has a business that provides courses for canoeists and kayakers, guided adventure tours along the Superior coastline, support for self guided tours of the white water rivers and the coast and limited tourist accommodations. Mr. Wells rents canoes and kayaks and provides a thirty-six foot voyageur freighter canoe for some of his guided trips. Mr. Wells employs 10-12 full time employees (May – September) and 17 – 23 employees on a casual basis (1 -10 days).

Mr. Wells is concerned about the impact of the quarry on the lodging business and his short-term trip business that uses the Bay as its prime location. Mr. Wells stated that he had planned to expand his business but put those plans on hold pending the decision about the quarry. Mr. Wells' business is located outside the boundary of Wawa in an unorganized township. Mr. Wells testified that he was concerned that his customers would have a negative reaction to the quarry. His business was built upon repeat business and some of his customers had expressed concerns. Mr. Wells was of the opinion that the ecotourism business is a fragile one and it is not easy to build a successful enterprise.

Mr. Wells is trained as a forester and economic development officer and based some of his conclusions on his training and business experience. Mr. Wells urged the Board to refuse the application or in the alternative restrict the operation in such a way as to protect his business and Lake Superior.

Phil Weir, a canoeist, travelled from Ottawa to speak out against the proposed quarry. Mr. Weir reviewed his paddling experiences with his family along the Lake

Superior shore. He alluded to the spiritual nature of the lake and his paddling adventures along it. He stated that if the quarry were developed the view of the shore from the lake would never be the same again. This is especially true as far as the noise impacts are concerned because sound travels further over water. He stated that the SAC proposal was not sustainable and was not good planning.

Shane Mills appeared as a participant on his own behalf and that of his father. The Mills family own two cottages (camps) on leased land approximately 700 m from the proposed quarry site (Exhibit 24E). Mr. Mills was concerned about the noise from the quarry and suggested that the quarry be relocated to another location on the SAC property away from the shore. Mr. Mills stated that a balanced approach could meet everyone's needs.

Helene Gousseau, a physician from Quebec and canoeist, expressed concerns about the impacts of the proposed quarry on the Lake Superior Coast, the fact that the proposed plan only covers a small portion of SAC's holdings and the cumulative long term impacts cannot be accounted for. Dr. Gousseau has paddled along the coast and has returned to the area a number of times since first discovering the area some ten years ago.

Torfinn Hansen and Mary Jo Cullen own a home on Michipicoten Bay and have canoed the waters of Lake Superior and other rivers in the area. Their cottage is 4.5 km from the proposed quarry. Mr. Hansen pointed to the fact that there were no internal haul roads shown on the site plan. Mr. Hansen was concerned about the overland flow of water out of the quarry and into the lake. Mr. Hansen also expressed concern about ballast water impacts and the movement of invasive species from other lakes in the seaway system. Mr. Hansen also questioned as to whether the use of water transport with its use of bunker "C" fuel was as environmentally friendly as claimed. Ms Cullen spoke about the "spirituality of the place" and the fact that the lakes were a fresh water reservoir, a global treasure, great blessing and great responsibility.

Evening Session

The Board convened an evening session for members of the public who were unable to attend the hearing during the day. Fourteen citizens made presentations to the Board. The Board heard a diversity of views concerning the proposed quarry.

Members of the public from Thunder Bay, Wakefield (Quebec), Goulais River (Ontario) and local citizens of Wawa presented arguments in favour of and in opposition to the proposed quarry. A total of 47 citizens requested copies of the Board's decision on the matter. A significant number of presenters urged the Board to protect the Lake Superior shoreline from what they consider to be an intrusive and unacceptable use of the property. The citizenry included a former mayor, the former mine manager, a former federal judge, two authors of books about the Lake and its stunning beauty and majesty, and citizens who were concerned about the Lake on one hand and about the difficult economic circumstances faced by the Town on the other.

The Noise Experts

John Coulter, a qualified noise expert, peer reviewed the work of SAC's Noise Consultant Mr. Gastmeier. He had concerns about how the noise calculations over water were done given inversion conditions that are prevalent in the early spring and fall when there is a large differential between the temperature of the water and the land and could last from early evening to mid-morning. He had experienced such conditions at the Gulf Oil refinery on Lake Ontario and the Docks Restaurant/night club in Toronto harbour. He indicated that he was of the opinion that the noise could be 8 to 10 decibels higher during temperature inversions. Mr. Coulter testified that the paper presented at Acoustics 08 Paris "Sound propagation in areas with complex meteorology: a meteorological-acoustical model" by F. Van Der Eerden and F. Van Den Berg identified such a phenomenon (Exhibit 39). Mr. Coulter testified that the impact of these changes would result in noise levels at the Mills residence exceeding the MOE standard.

The noise levels that exist in the area now are similar to what you would find in a park. Mr. Coulter indicated that the Mills residence would experience the greatest impact and that the noise generated from the loading of the boats and the night operation of the quarry would have the greatest impact. He also made the point that the eco tourist lodge where camping is permitted would also be impacted. He also stated that without the impacts of the temperature inversion you would not hear the sound at Lake Superior Adventures.

Mr. Coulter listed a series of deficiencies with the site plan:

1. The noise levels for the equipment were not specified.

2. The Certificate of Approval (C of A) for the quarry does not apply to mobile equipment.

3. Lower noise equipment could be specified although such equipment would be more costly and may be difficult to acquire because most quarries lease their equipment rather than purchasing it.

4. The site plan notes indicate that the drilling and blasting will take place in a single lift where possible. Mr. Coulter was concerned about the term "where possible".

5. The berms on the wharf to mitigate sound are not shown on the drawings.

Mr. Coulter was concerned about the audit provisions in that it could be eighteen months after the quarry-commenced operations that additional mitigation measures could be required. Mr. Coulter expressed reservations about how the sound screening around the drill would work and about lack of the noise control during the construction period.

William Gastmeier is a qualified noise expert who conducted studies of the expected noise levels from the proposed quarry. Mr. Gastmeier was retained in late 2002, visited the site, reviewed details of the quarry operations and the location of the sensitive receptors. Mr. Gastmeier noted that the Michipicoten First Nation settlement was well shielded by topographic features from the noise of the proposed quarry. The location of the processing facility was discussed. The proposed site plan was first reviewed on January 13, 2003. Mr. Gastmeier used ISO 9613 to calculate the noise impacts of the proposed quarry. The results of his analysis were finalized February 10, 2003 (Exhibit 51, Tab 5). A revised noise assessment was done on October 6, 2003 (Exhibit 51, Tab 6) and an addendum prepared on October 22, 2004 (Exhibit 51, Tab7).

Mr. Gastmeier noted that if there had been no sensitive receptors within 500 m a noise study would not have been required. In 2005 Mr. Gastmeier provided additional details about the on site receptors approximately 330 m from the crusher and sent this

information to the MOE. The MOE responded December 18, 2006 and attached a number of conditions including a Certificate of Approval (Air) and a noise audit three months after the quarry had been in operation. There were operational changes with respect to the processing area. The floor of the processing area was lowered two metres. The primary crusher was made permanent. The exit from the processing area was offset to reduce the view of the equipment and reduce the noise. Additional berms were placed around the processing area. The loading of the boats at night could be problematic according to Mr. Gastmeier. Loading of a boat could take up to twelve hours.

Mr. Gastmeier stated that the blasting of the rock face would take place using 25 m lifts. The rock would be blasted into the quarry and a payloader will load the rock onto two 40 tonne rock trucks that will take the rock to the primary crusher that will be located off an elevated ramp along the west side of the processing area. The rock will enter the primary jaw crusher and then be processed further by a cone crusher. The screened, washed and sorted rock will be stockpiled in crescent shaped piles along the wharf. An additional loader may be used to load the aggregate onto the waiting boats or barges. The rock drill would not be shielded in exposed areas; however, portable barriers could be used. The hours of operation 7 a.m. to 7 p.m. Monday to Friday were appropriate. The area is classified as a category 3 (Rural Area) with a daytime noise limit of 45 db and a nighttime noise limit of 40 db. Mr. Gastmeier stated that the noise limit criteria strikes a balance and it is not a guarantee of zero audibility. The quarry walls will provide a noise barrier for a significant amount of the noise. The C of A process for the quarry and the noise audit provides a level of comfort that will ensure that MOE guidelines will be met.

Mr. Gastmeier reviewed Mr. Coulter's temperature inversion data and talked to Ms Giusti, a Noise Consultant, who was familiar with the Docks Restaurant in Toronto where temperature inversions and increased noise levels had been experienced, It was agreed that the occurrence at the Docks Restaurant was interesting and may be the subject for a paper; however, it was not significant enough to change the ISO standard. The paper referred to by Mr. Coulter was not from a refereed journal and concluded that further work would be required. Mr. Gastmeier indicated that the ISO 9613 standard used the "predictable worst case" with all the equipment running at the same time and the winds blowing in all directions with the lake being used as a reflective surface. The

MOE had accepted the results of the model and were prepared to issue a conditional certificate that must be verified with two weeks of on site monitoring at the Mills residence and annual sound audits would be undertaken (see note 11 on Sheet 5 of the site plan Exhibit 21 as amended by Exhibit 79). Mr. Gastmeier noted that the two week period exceeded the MOE standard that is generally "only a couple of days".

Mr. Gastmeier did not consider a canoeist or kayaker on the waters of Lake Superior to be a sensitive receptor. A boat at a marina with sleeping accommodations might be considered to be a sensitive receptor.

Mr. Gastmeier disagreed with the conclusions of Mr. Coulter that the C of A did not apply to mobile equipment. Mr. Gastmeier was of the opinion that the C of A applied to all the operations of the quarry including the rock trucks and payloaders.

Provincial Witness

David de Geus testified for the MNR. Mr. de Geus is a registered professional forester stationed in the Wawa District who was the acting supervisor when the applications by SAC were processed.

Mr. de Geus indicated that he had reviewed the issue of caribou habitat with the resident biologist, Mr. Easson, and confirmed that there was no significant caribou habitat in the area of the proposed quarry. The setback from the water, the sloping of the quarry walls and fencing restrictions were sufficient measures to accommodate the movement of caribou through the area. It was noted that a caribou had not been sighted in the area since the early 1990's.

Mr. de Geus had contacted a number of Ministry personnel and had concluded from those discussions that the GLHC and the "Charting the Course" were not official Ministry or government policies that would impact the proposed quarry.

An Environmental Impact Statement (EIS) was not required because the actions of SAC were sufficient to accommodate caribou movement.

SAC's Planning Witness

Brent Clarkson was retained in 2008 and visited the site in November of 2008. SAC retained Mr. Clarkson after the rezoning and official plan amendments and site plans had been finalized.

The subject lands, according to Mr. Clarkson, have been used for material storage, and as a base for research vessels. At one time there was a hotel on the site. The site slopes from north to south and drains into Lake Superior. The site has an irregular topography, thin soil and exposed rock at the surface. The Quarry Creek traverses the site; a portion of the creek is contained in a box culvert that crosses the wharf, supports fish habitat, limits the expansion of the quarry to the north and a thirty metre setback from the creek ensures that. Mr. Clarkson testified that the subject site is relatively remote. There are no wetlands on the site and the tree cover consists of a mixture of white spruce, balsam fir, aspen and mountain ash.

Mr. Clarkson noted that SAC owns 385.5 ha and the area covered by the subject application involves 31.1 ha and the extraction is 11.7 ha. The quarry will remove and process trap rock – a hard stone used in making of roads (asphalt) and other construction projects (e.g. concrete). The reserve life of the lands to be quarried is ten years or five million tonnes. The material will be blasted, crushed, screened and stockpiled for shipping, primarily by boat, to ports on the Great Lakes. The quarry will be operational from May to November. The trap rock will be removed in 25 metres lifts and the deepest part of the quarry will be 39 metres. The quarry is ideally situated because it is close to the wharf and the rock handling and transporting distances are minimized.

The expansion of the quarry will require the relocation of a hydro line and the Anderson Fishery road. These relocations will occur in the second and third phases of quarry development. The south boundary of the quarry is the 190 metres contour. The water table is 6 m below the existing grade and dewatering may be required with the approval of the MOE. The processing area is below grade with an elevation of 184 m above sea level. The quarry floor is at 185.2 m a half metre below the elevation of the entrance (185.7 m).

Mr. Clarkson stated that the blasting activity will occur two to four times per month. During blasting a boat will warn watercraft in the area of blasting activity and the charges will be detonated only when there is no safety hazard to watercraft. In the limited blast zone abutting the Quarry Creek to the north, blasting will occur more often because charges will be reduced in order to protect the fish. The hours of operation are 7 a.m. to 7p.m. Monday to Saturday with crushing activity limited to 7 a.m. to 1 p.m. on Saturday. Blasting activity is limited to 8 a.m. to 6 p.m. Monday to Friday.

SAC does not contemplate moving to a 24 hour operation in the first year of operation. Mr. Clarkson concluded that the hours of operation and seasonal nature of the operation were reasonable. Mr. Clarkson stated that a move to 24 hour operation would require an amendment to the site plan and that the request would be posted on the Environmental Bill of Rights (EBR) web site and that the request for an amendment would be followed by a 30 day comment period.

Mr. Clarkson spoke about the fact that most of the product would be shipped to market by boat and this avoided most of the negative impacts surrounding quarry operations relating to truck traffic and the associated noise and dust generated by such activities. The ship sizes range from 1000 footers the largest, 750 feet seagoing boats and barges the smallest. Mr. Clarkson calculated that the equivalent number of trucks required to move an equal amount of aggregate would be 1328 trucks for a 1000 foot ship and 285 trucks for a barge. This is a significant amount of heavy truck traffic removed from Ontario's Highway system.

Mr. Clarkson reviewed the history of control of pits and quarries in Ontario. He noted that 60% of all aggregates mined in Ontario are used by the public sector. Aggregates are used in such diverse industries as glass making, toothpaste and cosmetics manufacture.

Mr. Clarkson stated that the introduction of the quarry would kick start the refurbishment of the wharf and that this would provide a catalyst for development including a storage and staging area for non aggregate materials.

The plans prepared by DST include Existing Features (Sheet 1) Operations Plan (Sheet 2) Progressive and Final Rehabilitation Plan (Sheet 3) Cross-sections (Sheet 4)

and Plan Notes (Sheet 5) (Exhibit 21). The Plans in Exhibit 21 meet the requirements of the category "2" license (mining aggregate below the water table) (Exhibit 20A, Tab 3).

Mr. Clarkson enumerated the studies supporting the proposed quarry that included the following:

1. Stage 1 and 2 Archaeological report prepared by Scarlett Janusas Archaeological & Heritage Consulting and Education (Exhibit 20C, Tab 17).

2. Grid Geology prepared by W. Wirowatz (Exhibit 20C, Tab 18).

3. Natural Environment Level 1 and Level 2 report prepared by DST Consulting Engineers (Exhibit 20C, Tab 19).

4. Ornithological Survey prepared by C. Blomme (Exhibit 20C, Tab 19D).

5. DFO Guidelines and Setbacks Report prepared by RayTech Engineering (Exhibit 20C, Tab 19E).

6. Fisheries Assessment authored by N.A.R. Environmental Consultants Inc. (Exhibit 20C, Tab 19F).

7. Floristic Survey completed by Daniel Campbell and Keith Winterhalder (Exhibit 20C, Tab 19I).

8. Contingency Plan: Re Acid Mine Drainage prepared by Bruce Staines (Exhibit 20C, Tab 20).

9. Storm Water Management Plan prepared by DST Consulting Engineers (Exhibit 20C, Tab 21).

10. Hydrogeological Assessment Level 1 (Exhibit 20C Tab 22) and Monitoring Plan (Exhibit 20C, Tab 23) prepared by DST Consulting Engineers.

11. Contingency Plan – Accidental Spills/Release prepared by Bruce Staines (Exhibit 20C, Tab 24).

12. Blast Impact Analysis prepared by DST Consulting Engineers (Exhibit 20C,Tab 25).

13. Environmental Noise Assessment (September 15, 2006) prepared by HGC Engineering (Exhibit 51, Tab 3).

14. Noise Analysis – On-Site Receptors prepared by HGC Engineering (Exhibit 51, Tab 4).

15. Condition Survey Report for the existing Wharf/Dock prepared by DST Consulting Engineers (not an exhibit).

16. Economic Impact Analysis prepared by Superior East Community Futures Development Corporation (not an exhibit).

Mr. Clarkson reviewed the comments and reports prepared by the ministries and other public agencies to the reports that had been circulated.

Mr. Clarkson explained that the licensing process under the ARA is proponent driven. The applicant prepares the necessary background reports and studies. The public is given 45 days notice. There is a statutory open house (that was held November 14, 2006). There was an opportunity for the applicant to resolve objections to the proposal. The correspondence relating to the objections to the license totalled some 680 pages. A number of objections were resolved. DST sent the summary of the Notification and Consultation results to the MNR July 31, 2008 and 21 objections remained. The MNR referred the license application to this Board. All the concerns brought forward by provincial ministries or other agencies had been resolved. Mr. Clarkson noted that SAC must file an annual compliance report with the MNR in accordance with Section 12(2) of the ARA (Exhibit 20A, Tab1, pg 10).

The 1997 PPS is applicable to the to the SAC planning instruments (i.e. OPA 4 and Zoning By-law 1616-03). Section 1.1.1 (b) of the 1997 PPS reads as follows: "Rural Areas will generally be the focus of resource activity; resource based recreational activity and other rural land uses". Mr. Clarkson concluded, "The proposed Superior quarry is located within a rural area as defined in the 1997 PPS and constitutes a resource activity, and is consistent with Policy 1.1.1(b)". (Exhibit 67, Tab A, pg. 19)

Policy 1.1.3 (c) promotes the use of a cost effective, efficient, multi-modal transportation system. Mr. Clarkson concludes that the use of water based transportation to move the aggregates to market is a rather unique means to shipping aggregates to market where the primary means of product transfer is usually land based (i.e. trucks). This more efficient means of transportation is encouraged by the 1997 PPS and the SAC proposal is consistent with that policy objective.

Policy 1.1.3 (g) "intends that aggregate operations be appropriately designed, buffered and separated from sensitive land uses." (Exhibit 67, Tab A, Pg. 19, Paragraph 94) Mr. Clarkson concluded that the aggregate activities are located in a relatively remote area and that impacts from the operations met the MOE guidelines. Mr. Clarkson noted that there would be no impact upon private wells and the shipping of the aggregate by water would minimize impacts normally associated with a quarry.

Policy 1.3.2.1 promotes the use of transportation systems that are "safe, environmentally sensitive and energy efficient" Mr, Clarkson testified that the water based transportation of aggregate and the Michipicoten Harbour provide for the safe shipping of natural resource products in keeping with over 100 years of use.

Policy 2.2.3.1 provides that aggregate resources close to the markets should be exploited. Mr. Clarkson was of the opinion that because the SAC proposal could transport aggregate by water at a lower cost to major metropolitan markets such as Toronto the intent of the policy was maintained. Parenthetically, Mr. Clarkson observed that some of SAC's aggregate products may supply limited local demands and this would also satisfy the policy direction of Policy 2.2.3.1.

Policy 2.2.3.5 requires the quarry to be rehabilitated for future uses. Mr. Clarkson indicted that the future use of the quarry is a staging and storage area for the wharf. This would provide screened storage of bulk materials. The side slopes of the quarry will be stabilized. These planned activities satisfy the requirement for progressive and final rehabilitation.

The Natural Heritage Section 2.3 of the 1995 PPS deals with the need to protect the habitat of endangered or threatened species. Natural Environment Level 1 and Level 2 report prepared by DST Consulting Engineers (Exhibit 20C, Tab 19) was found acceptable to the MNR and no habitat of rare or threatened species was found.

Policy 2.3.1 (b) states that site alteration may be permitted in fish habitat, significant wetlands, significant wildlife habitat, and significant areas of natural and scientific interest (ANSI) if it can be demonstrated that there are no negative impacts upon the natural features or their ecological functions. Mr. Clarkson testified that the Natural Environment Report Level 1 and 2 prepared by DST identified no wetlands, no significant wildlife habitat and no ANSI's. The DST report gave adequate attention to the fish habitat along the Quarry Creek and the fish habitat in Lake Superior and "determined there will be no negative impact on them or their ecological function." (Exhibit 67, pg. 21, paragraph 105).

Policy 2.3.3 promotes the diversity of natural features and the connections between them. Mr. Clarkson indicated that the Floristic Survey completed by Daniel Campbell and Keith Winterhalder (Exhibit 20C, Tab 19I) indicated that the woodland area was dominated by white spruce, balsam fir, mountain ash and trembling aspen and the removal of a 11.7 ha area would not impair the diversity of natural features or the connections between them and that this conclusion was endorsed by the MNR.

It was Mr Clarkson's conclusion that the SAC applications "have appropriate regard to the Natural Heritage Policies of the 1997 PPS" (Exhibit 67, pg. 21, paragraph 108).

Policy 2.4 of the 1997 PPS deals with water quality and quantity. Neither the Hydrogeology Level 1 (Exhibit 20C, Tab 23) nor the Storm Water Management Plan (Exhibit 20C, Tab 21) prepared by DST identified issues that were not satisfactorily dealt with and that was the conclusion reached by the MOE.

Policy 2.5 addresses cultural heritage and archaeological resources. Mr. Clarkson expressed the opinion that Stage 1 and 2 Archaeological Report prepared by Scarlett Janusas Archaeological & Heritage Consulting and Education (Exhibit 20C, Tab 17) only identified the pilings from the old dock that will be subject to Stage 3 documentation and the Ministry of Culture agreed to that recommendation.

The overall conclusion of Mr. Clarkson was that the SAC proposed applications under the *Planning Act* have had appropriate regard to the 1997 PPS.

With respect to the 2005 PPS, it applies to the license application filed under the ARA. Mr. Clarkson pointed out the major difference between the 2005 and 1995 PPS is the higher "be consistent with" standard in the 2005 PPS compared with the lower "have regard for" standard of the 1995 PPS. Both statements are to be read as a whole and the applicable policies are intended to be applied with balance.

Mr. Clarkson pointed to the Part IV policies in the 2005 PPS that call for the wise use and management of natural heritage resources that protects the ecological processes and public health and safety as well as minimizing environmental and social impacts. Mr. Clarkson finds "the Superior Applications are consistent with the Vision Policy set out above. The aggregate resource will assist the Province in meeting its long term needs. As demonstrated in the supporting studies, environmental and social impacts are minimized. The NEL (Natural Environment Report Level 1 and 2)* demonstrates that there will be acceptable impacts on ecological processes. MNR agrees." (* added by the Board) (Exhibit 67, Tab A, pg. 23, Paragraph 115).

Policy 1.1.1.4 relates to permitted uses in rural areas including activities that relate to the management and use of resources, resource based recreational uses, other rural uses and limited residential development. Mr. Clarkson affirmed that the SAC quarry is a resource use appropriately located in a rural area. (Exhibit 67, Tab A, pg. 23, Paragraph 117).

Mr. Clarkson referred to Policy 1.1.4.1 (f) that refers to uses "that require separation from other uses" and was of the opinion that the proposed SAC quarry "allows for separation from sensitive land uses" and is consistent with the aforementioned policy. (Exhibit 67, Tab A, pg 23, Paragraph 119)

Mr. Clarkson declared that Policy 1.1.4.1 (g) promotes tourism and other economic opportunities in rural areas and the refurbishment of the wharf and development of the quarry fulfills that policy objective and adds to the municipal employment and tax base. (Exhibit 67, Tab A, pg 23, Paragraph 120)

Policy 1.3 (Employment Areas) encourages economic development. Mr. Clarkson stated that the SAC proposal is consistent with the current Official Plan designation(s)* ("Industrial" and "Rural") and current zoning categories (Rural and M-2)

that allow employment uses. (Exhibit 67, Tab A, pg 24, Paragraph 121) (*"s" added by the Board)

Policy 1.5.1 (d) protects provincial parks and conservation reserves and areas. Mr. Clarkson calculated the distance between the subject lands and Pukaskwa National Park (75 km to the west), Michipicoten Post Provincial Park (5 km to the east) Lake Superior Provincial Park (10 km to the south-east, Obatanga Provincial Park (43 km to the north) and Michipicoten Island Provincial Park (56 km to the south) and found that "the proposed quarry will not negatively impact park operations." (Exhibit 67, Tab A, pg 24, Paragraph 124)

Policy 1.6.5 deals with Transportation Systems that are safe, energy efficient and facilitate the movement of goods and people. Mr. Clarkson established the support for this policy considering the use of the wharf and improvements to it that will support other economic activity and provided an energy efficient means of shipping aggregate material. (Exhibit 67, Tab A, pg 24, Paragraph 127)

Long Term Economic Prosperity (Policy 1.7) seeks to optimize the long term availability of the aggregate resource and infrastructure (1.7.1 (a)), prevents adverse impacts and posses no threat to public health and safety (1.7.1 (e)) and SAC has received enquiries from tourism interests about the use of the wharf and is prepared to allow that and for that reason the development may provide for "opportunities for sustainable tourism development" (1.7.1(f)) according to the evidence of Mr. Clarkson.

Natural Heritage Policy (2.1.2): the analysis of this policy is similar to the analysis of the 1997 PPS in Mr. Clarkson's opinion. The removal of 11 ha of woodland within a large area of undeveloped forest land will not impact the diversity or connectivity of the natural features in the area. The Natural Environment Level 1 supports this conclusion and Level 2 report prepared by DST Consulting Engineers (Exhibit 20C, Tab 19) and reviewed by the MOE, MNR and DFO subject to the notes contained on the site plan (Exhibit 65, Tab A, pg. 25, paragraph 132).

The 2005 PPS Policy 2.1.3(a) does not permit development and site alteration within significant habitat of endangered and threatened species. The woodland removed is not the habitat of endangered or threatened species and does not contain significant or coastal wetlands according to Mr. Clarkson.

According to policy 2.1.4, development and site alteration is not permitted in significant wetlands, significant woodlands and valleylands south and east of the Canadian Shield, significant wildlife habitat and in an ANSI. The subject lands are not located south and east of the Canadian Shield and do not constitute a significant wetland, wildlife habitat or an ANSI in Mr. Clarkson's professional opinion.

The lands in question do not meet the criteria for adjacent lands and do not impair the adjacent fish habitat in Lake Superior or Quarry Creek in the view of Mr. Clarkson.

Mr. Clarkson concluded that the SAC proposal is consistent with the Natural Heritage policies set out in Section 2.1 of the 2005 PPS.

It was Mr. Clarkson's evidence to the Board that the Level 1 Hydrogeology Report (Exhibit 20C, Tab 22) that was reviewed by MOE, DFO and MNR assuaged the concerns of the commenting Ministries and determined that the licence can be issued in accordance with Provincial Policy.

Mr. Clarkson was of the opinion that the SAC property was not significant habitat of a threatened species (Woodland Caribou) as defined by either the 1997 or 2005 PPS. Mr. Clarkson pointed to Mr. Usher's report that stated that the Wawa area was outside its traditional range and caribou only "range sporadically along the Lake Superior Coast" (Exhibit 67, Tab B, pg. 7, Paragraph 40).

Mr. Clarkson comes to a similar conclusion as far as significant wildlife habitat is concerned (Exhibit 67, Tab B, pg. 7 Paragraphs 43 & 44).

Mr. Clarkson does not agree with Mr. Usher that the SAC proposal will constrain future "sustainable tourism" developments in that the SAC proposal is a reasonable use that minimizes visual impacts because of the setback and a small entrance way into the quarry. Mr. Clarkson finds that the SAC lands have 800 m of shoreline while the Great Lakes Heritage Coast has 4200 km of coastline.

Mr. Clarkson reviewed the Mineral Aggregate Policies of the 2005 PPS in some detail and concluded that the SAC proposal "will be undertaken in a manner that minimizes social and environmental impacts". Mr. Clarkson made specific references to

the NEL Report (Exhibit 20C, Tab19), the Floristic Survey (Exhibit 20C, Tab 19I), the Fisheries Assessment (Exhibit 20C, Tab 19F), Ray-Teck Report (Exhibit 20C, Tab 19E), the Ornithological Survey (Exhibit 20C, Tab 19D), the HCG Noise Assessment (Exhibit 51, Tab3) and the site plans (Exhibit 21, Sheets 1 to 5).

Under section 12 of the ARA Mr Clarkson concluded the following:

> There is minimal impact upon the environment based upon the previously referenced reports and studies.

The impact upon the Michipicoten First Nation (MFN) is .9 km distant, Peterson cottage 150 m, Sandy and Long Beach Cottage/Residential communities 3 to 4 km, the village 10 km, and Mills cottage 600 m and the MOE noise limits can be met. Since most of the aggregate will be transported by water, little traffic impact is expected on surrounding communities.

The Municipality of Wawa and its planning consultant prepared reports and by-laws in support of the SAC proposal.

The progressive rehabilitation plans on Exhibit 21 sheet 3 provide for back sloping and re-vegetation of the sides of the quarry and a suitable intended use – the storage and staging area for the wharf.

The Level 1 Hydrology Study (Exhibit 20C, Tab22) and Stormwater Management Report (Exhibit 20C, Tab21) provide support for the conclusion that there will be no adverse effects on the ground and surface water. Notwithstanding this conclusion both ground and surface waters will be monitored to ensure unpredicted impacts can be addressed.

There are no potential agricultural resources and as a result no undesirable impacts are expected.

The site is relatively remote and the prescribed conditions MOE standards and the need for economic development combined with the history of industrial uses of the site provide a policy and contextual framework that supports the development.

The use of the harbour and water transport as the main means of shipping limits the impacts of the haulage routes and truck traffic.

The Wirowatz Geological report (Exhibit 20C, Tab17) supports the quality of the rock can be used to create a wide variety of materials for the construction industry.

The Superior Aggregates Company has never held a license under the ARA.

The SAC will generate employment where a long history of employment of similar nature has been present. The results of the development will be expanded employment as well as upgrading of the wharf.

The Township of Michipicoten Official Plan (MOP) was adopted and approved in 1984. The Township changed its name to the Municipality of Wawa in 2007. The plan balances economic and ecological forces on the natural resource base of the community in a way that manages and minimizes conflicts.

Mr. Clarkson pointed to the Industrial and Rural designations on the property. The "Industrial" designation includes "manufacturing, processing, servicing, storage of goods and raw materials, warehousing and uses for similar and relates purposes." The "Rural" designation includes such uses as "forest management, mineral exploration and mining, commercial fur harvesting, seasonal residential development, hydro electric power facilities, existing permanent residential uses, agriculture, limited tourist uses, cemeteries and accessory uses"

The MOP maps the fish spawning areas on Schedule D. The fish spawning area south of the wharf is not shown on the schedule but will receive adequate protection.

The Tourism policies of the MOP are contained in Section 12 of the Plan. The tourism base is focused on its location on the Trans Canada Highway and a wide variety of natural features. Mr. Clarkson indicated that Mr. Well's business "Naturally Superior Adventures" is located 4.5 km to the east of the proposed quarry. Mr. Clarkson testified that the quarry edge is approximately 7 m above the elevation of Lake Superior and it is setback from the lake 57 m to 157 m. The floor of the quarry will be screened by rock walls and the processing area will be screened by berms. The ship traffic will amount from two to four ships per month.

Mr. Clarkson concluded that the quarry operation "should not interfere with lake based tourist activities" (Exhibit 67, Tab A, pgs 36-37, Paragraphs 170 to 172).

The MOP deals with Heritage Resources in Section 13 of the Plan and identifies the Michipicoten Harbour as a significant heritage resource and that resource has been addressed in previous evidence given by Mr. Clarkson.

Mineral Aggregate Resources are addressed in Section 14 of the MOP and focus upon local and regional aggregate needs and ensure that those needs are accommodated with minimal disturbance to the social and natural environment. Those needs must also minimize impacts upon adjacent uses and the physical environment. The MOP envisages municipal control of pits and quarries because the ARA was not in place at the time the plan was adopted and had only recently been applied to the Wawa area. The Plan also identifies a separate zoning category for pits and quarries and the use of a holding provision.

The Transportation Policies of Section 15 of the MOP provide for a broad range of transportation modes to serve the movement of people and goods and to foster economic development.

Mr. Clarkson's overall conclusion regarding the MOP is as follows: "Despite the fact that an amendment to the Plan is required, it is concluded that the Superior Applications are in keeping with the general plan policy. The Plan already designates the site for mining or heavy industrial use. The Plan encourages new industry. The Plan encourages all modes of transportation. The Plan encourages use of Michipicoten Harbour to strengthen the economic development of the community." (Exhibit 67, Tab A, pg. 38, paragraph 181).

The Township of Michipicoten Zoning By-law 385-85 (MZB) zones the subject lands M2 (Restricted Industrial) and RU (Rural). The M2 zone permits the following uses:

1. An accessory dwelling unit;

2. Aircraft Landing Strips and Terminal Buildings including storage aircraft fuel;

3. Industrial Lagoons or Ponds;

4. Major mining, refining and processing of ore including storage and loading facilities;

5. Manufacturing and Processing Uses;

6. Municipal Sewage Lagoons;

7. Oil and GAS Trucking Terminals and Storage;

8. Retail or Service Stores as accessory uses to a permitted Industrial Use on the same lot;

9. Tailings and Waste Rock Disposal Areas

The RU zone permits a wide range of uses including the following:

1. Forestry activities and the processing of forest products;

2. Marinas for watercraft;

3. Mining and Quarrying;

4. Sanitary Landfill operations;

5. Tailings and Waste Rock Disposal Area

Mr. Clarkson asserted that heavy industrial and mining uses are permitted on the subject lands and that these uses are similar to the proposed use; there is no need for a zoning amendment to establish a quarry on the property zoned RU and that the proposed uses are subject to the requirements of the ARA and *Environmental Protection Act.*

Mr. Clarkson reviewed OPA 4 that redesignates the subject land from "Industrial" and "Rural" to "Michipicoten Harbour Special Policy Area" and the MMAH modifications that retained the "Rural" and "Industrial" designations and applied the "Michipicoten Harbour Special Policy Overlay". Mr. Clarkson's conclusion was that OPA 4 was appropriate for the proposed use.

Mr. Clarkson testified that amending Zoning By-law 1616-03 was approved prior to the Municipality being designated under the ARA. By-law 1616-03 amends the existing zoning (RU and M2) to Restricted Industrial Exception Holding (M2* 12) (H) Zone and the Environmental Protection (EP) Zone. The by-law permits the M2 uses enumerated previously and in addition quarry uses, forestry uses, railway facilities, water storage, marinas and accessory uses.

Mr. Clarkson supported the revised zoning by-law (Exhibit 90) that reflects the editorial changes suggested by Mr. Usher in Exhibit 31.

Mr. Clarkson supports the SAC proposal as "good planning" and recommends that the Board approve OPA 4 (Exhibit 76A), Zoning By-law Amendment 1616-03 as modified (Exhibit 90), and that the MNR issue a Category 1 and 2 Class A Licence subject to a condition that a site Certificate of Approval (Air) under Section 9 of the *Environmental Protection Act* be obtained prior to operations commencing at the Superior Quarry based upon the plans submitted (Exhibit 21 amended by Exhibit 79A).

The Municipality's Planning Witness

Robert Lehman is the planning consultant retained by the Municipality and author of the in force official plan. Mr. Lehman has extensive experience in Northern Ontario including Kenora, Terrace Bay, Schreiber, Wawa, Searchmont, Bruce Mines, Chapleau, and Sturgeon Falls. Mr. Lehman reviewed the nature of his retainer on the file that went back to 2003 when he first visited the site and prepared the first planning report. Both an OPA and ZBA were required in order to permit the development. Mr. Lehman assisted Chris Jones, the planner for Meridian, and prepared an affidavit for the Municipality as part of the motion to consolidate this matter with OPA 6 proposed by the CCMB. Mr. Lehman did not actively participate in the ARA process but agreed that the designation of the Municipality under the ARA made the implementation simpler.

Mr. Lehman summarized the applications before the Board, as follows:

- The application received scrutiny and technical evaluation at a very high level.
- The application conforms to and is consistent with the MOP.

- The MOP promotes resource development
- The application is consistent with the community and economic base.
- Resource use close to transportation infrastructure is not a usual situation.
- The Location is ideal and is located in the most developed and active area along the coastline.
- This is not a new concept or new use within the harbour.
- The visual impact if the application is approved will be imperceptible from a majority of the homes in the area.
- The proposal meets the requirements of the MOE, MNR and DFO.

On balance, the SAC quarry is consistent with the policy frame work of the 1997 PPS that should be read as a whole. Conflicts between policy elements are inevitable. The economic and environmental objectives must be weighed and seen in terms of the historical and economic development of the community of Wawa and the site context that includes a long history of industrial and mining development. Mr. Lehman noted that the PPS (1997) and (2005) treats aggregate resources differently because aggregate resources are fixed in place and cannot be moved about.

The 2005 PPS policy 1.2.1 on coordination encourages an integrated approach to growth and development and fosters cooperation amongst governments. This policy is not particularly relevant in this case.

Mr. Lehman opined on the contention of CCMB that the activities on Lake Superior are to be considered "sensitive land uses" within the meaning of Policy 1.7.1 (e). The use is appropriately buffered and sensitive land uses are uses that occur at reasonably times and places. The concept of a water use being a sensitive land use is further complicated according to Mr. Lehman by the fact that municipalities generally cannot regulate the uses of surface waters that is the jurisdiction of the federal government under the *Navigable Waters Act*. Mr. Lehman indicated that sensitive is defined on page 209 of Exhibit 20A. Surface water feature is defined on page 211 and source water protection is dealt with in Section 2.2 of the 2005 PPS. If the 2005 PPS

had meant to deal with the sensitive use of recreation the Province would have done so more directly in Mr. Lehman's opinion. The 2005 PPS section on Natural features and areas is modified by the policies that follow. Mr. Lehman concluded that the use of Policy 2.1.1 was not meant to have omnibus application to impact this proposal.

As the author of the Michipicoten/Wawa Official Plan (MOP) Mr. Lehman testified that its concept and structure reflects the history of the North, the economy and the settlement history based upon resource extraction, trees and minerals. The demand for these primary resources change in accordance with world wide forces that impact the supply and demand for such products. The MOP was written to reflect the potential of the Wawa Greenstone formation - an area of high mineral potential. The MOP, from Mr. Lehman's point of view, addressed economic potential, community development and growth management was not a concern – the maintenance of the population and stability of the community were on going issues. The MOP Tourism policies were unique at the time (only the second plan in Ontario to contain tourism policies) and reflected the focus on the economic base of the community.

The MOP contains policies that accept that things won't change much (Section 4.2), the description of the economic base (Section 4.3), Natural Resources (Section 4.4), New Industrial Uses (Section 4.11). The policies include the industrial designation of the Harbour and a policy that impacts will be minimized (Section 4.12).

Mr. Lehman stated that a portion of the subject lands was designated "Industrial" and that employment opportunities (Section 7.11) and the Industrial Base (Section 7.12) included the movement of goods out of the Harbour.

The "Rural" designation according to Mr. Lehman was the largest in terms of the area covered and the objectives of the designation that cover a broad range of uses including recreation, forestry, mining and agriculture (Section 9.11). The section includes policies that minimize impact (Section 9.12), directs recreational uses (Section 9.13) provides for compatibility (Section 9.14) and for a broad range of uses (Section 9.2.1).

Mr. Lehman indicated that the tourism industry in Wawa is focused on travellers who pass through the area on Highway # 17. According to Mr. Lehman fishing, hunting and snowmobiling are not major components of the tourism market. The objectives in

the MOP focus on increasing activity. The tourism strategy is to get those passing through the area to stop and stay overnight. The strategy concentrates on adding attractions and facilities. The potential for using the wharf for tour ships is an additional benefit of the SAC proposal. Some of the aspects of the SAC proposal are less desirable from a tourism point of view but Mr. Lehman concluded that the impacts on tourism activities would not be significant.

The Heritage Resources policies on page 247 identify the Harbour as a heritage resource and the development of the Wharf does not negatively impact heritage resources.

The Mineral Aggregate Section of the MOP contains the objective that ensures local and regional needs are met with minimal disturbance to the social and natural environment. The MOP contains Schedule C that illustrates 30 pit permits provided by the MNR. The MOP lists the permitted uses (Mineral aggregate extraction and associated uses) the operations are to be conducted in a manner that "minimizes impacts upon the physical environment and adjacent uses" and contains a section on regulation made redundant by the imposition of the ARA.

Mr. Lehman stated that the site was previously used for industrial purposes and is now designated for industrial uses. There are policies that mitigate impacts. Had the site not been used for industrial purposes the situation might have been different but that was not the case. The MOP was a plan that reflected a resource based community that assumes resources are to be extracted and shipped. One must review the impact from a planning perspective. The CCMB opponents have no right to a view of the bay/harbour, no right to the maintenance of the status quo – things change – the MOP manages these changes – and that is the purpose of a policy led planning system, according to Mr. Lehman.

Mr. Lehman testified that the "expectations of the public" is not a planning principle. The principle is to manage change and to provide some degree of certainty about the nature and degree of change. The MOP and history of the site must be considered.

Mr. Lehman empathetically understood the CCMB and those recreating in the area having expectations of much less activity in the area that reflects the decline of the

local iron mine in recent years but that is in stark contrast to the municipal policy regime for the wharf and the adjacent industrial lands and there is nothing before the Board that will change that.

Mr. Lehman noted that noise levels in the area will be altered but he is satisfied that the noise impacts have been minimized and that they are reasonable. The MOE noise guidelines can be met and in this case noise levels will be monitored and further mitigation measures can be tailored to suit the circumstances.

As far as the visual impact of the SAC proposal, Mr Lehman did not think that people would notice the proposed quarry from five kilometres away. In the areas closer to the proposed quarry the visual impact would be noticeable. The quarry, once exhausted, would merge in the background and would not be noticeable. In the case of the Mills cottage there would be changes to the rock face but the circumstances would not change. The reintroduction of the lake freighters to the area would not be a significant land use consideration in Mr. Lehman's mind.

With respect to lighting, Mr. Lehman adopted Mr. Clarkson's view that the impact of lights would be mitigated given the nature and location of the lighting and if operations were shifted to a 24 hour basis at some future time lighting impacts would be minimized.

Mr. Lehman's view of the impacts upon wildlife habitat more specifically the fisheries and Woodland Caribou were that MNR and DFO were satisfied that there was no significant impact. The CCMB's request for an Environmental Impact Statement (EIS) was not necessary given the decisions by MNR and DFO, in Mr Lehman's opinion.

Mr. Lehman's position was that the quarry impacts had been studied and reviewed and the impacts were reasonable in the circumstances.

Mr. Lehman commented upon the cultural component of the MOP and it was his opinion that sections 11.1.6 and 11.1.7 were not to be interpreted to limit other uses and that the section's primary purpose was to deal with the provision of parkland. The historical nature of the historic wharf is protected and the policy intention to provide recreational opportunities abutting Lake Wawa has been fulfilled.

In paragraphs 95 and 96 of his Witness Statement (Exhibits 23A and 23B) indicate that the SAC proposal and OPA # 4 conform to the MOP.

Mr. Lehman's planning opinion is that the SAC proposal is part of the gateway into Wawa and provides an energy efficient way of moving goods. The quarry as proposed is a reasonable and appropriate resource based activity. The preservation of the Lake Superior shoreline and the proposed transportation and aggregate facility must be balanced upon the historic industrial use of the lands, scarcity of similar facilities on the lake (the only deep water port between Sault Ste, Marie and Thunder Bay) and the length of undisturbed shoreline along the lake.

It was Mr. Lehman's belief that the *Planning Act* applications and the ARA application represent good planning. The OPA # 4 as modified represents good planning, has regard for the 1997 PPS and should be approved.

The implementing zoning by-law as amended (Exhibit 90) providing for changes to the use permissions, the means of implementing the setback for fish habitat and as suggested by Mr. Usher, should be approved.

Review of the Issues and Findings and Conclusions

Issue 1:

Would approval of these applications at this particular site on the Lake Superior Coast represent good planning?

CCMB through its planning witness, Mr. Usher, points to what his client perceives as flaws; the proposed plan only meets the minimum standards; no visual analysis was prepared, a major quarry close to water is not good practice.

Mr. Usher in his Witness Statement (Exhibit 26, Tab 1, p. 4) makes the following assertion.

> The subject lands are at the centre of a 250 km sweep of largely undeveloped Lake Superior shoreline, from Marathon to Montreal River (over 300 km if Michipicoten Island is included). ... Most of the shoreline has been protected for decades, in Pukaskwa National Park and Lake Superior and Michipicoten Island Provincial Parks (a small area is also protected in Michipicoten Post Provincial Park a short distance east of the subject lands). As a result of the

> Ontario Living Legacy Land Use Strategy, most of the remaining shoreline is now protected in one new provincial park (Nimoosh) and two new conservation reserves (one regulated and one not yet so).

The addition of the National Marine Conservation Area further west protects over one million hectares of water surface. Mr. Usher also notes in his Witness Statement that this is the world's largest freshwater protected area.

Mr. Usher, CCMB's Planning Consultant, and Mr. Burtch, a retired MNR employee, point to the Great Lakes Heritage Coast as another element of their assertion that the SAC proposal is not "good planning".

The CCMB through its planner and other witnesses point to alternative locations for the proposed quarry further in land away from the shoreline. This alternative location scenario was repeated a number of times throughout the hearing.

The Board finds that the Province and the federal government have both provided extensive protected areas along the shoreline of Lake Superior. The senior levels of government have not expanded these protected classifications to include private lands. The GLHC is not government policy. It is "a project"; a plan in a drawer so to speak. Ms Robertson, in her letter of March 22, 2004, makes the following pronouncement:

> For your information, the Great Lakes Heritage Coast project was launched in January, 2000. The Great Lakes Heritage Coast has been identified as one of nine Crown land signature sites through Ontario's Living Legacy. The Great Lakes Heritage Coast includes Crown Lands on the Canadian side of the Lake Superior Shoreline and St. Mary's River. As a result of the Great Lakes Heritage coast project, a document entitled "Charting the Course" was issued by the Ministry of Natural Resources in 2001.
>
> The "Charting the Course" document is not a policy statement issued by the Minister of Municipal Affairs and Housing under Section 3 of the *Planning Act*, and is not a statement of provincial interest relating to municipal planning. Section 3(1) of the *Planning Act* indicates that the Minister, or together with another Minister of the Crown, may from time to time issue policy statements that have been approved by the Lieutenant Governor in Council on matters relating to municipal planning that in the opinion of the Minister are of provincial interest. At this time, the only document that is applicable and in effect under Section 3 of the *Planning Act* is the Provincial Policy Statement. For these reasons, the "Charting the Course" document has not been considered by this office during the Provincial review of OPA # 4, and will not

> be considered by this office when making a planning decision for private lands that are under the jurisdiction of the *Planning Act.* (Exhibit 20C, Tab 45, pg. 860).

Mr. de Geus, the acting District Forester for the Wawa District when the SAC applications were processed, confirmed that the MNR did not consider the GLHC a policy document of the Ministry.

The law and the line of Board cases are quite clear, the Ministry and the Crown speaks for itself and when it speaks the Board must listen carefully to what it says. The Board would be proceeding into uncharted waters if it were to take what amounts to a project and give it the status of a policy. The GLHC has within it laudable goals and objectives that maintain the municipal role in regulating the use of private lands and recognizes the resource extraction industries that are the basis for economic development in the region (Exhibit 20E, Tab 163). The Board does not agree that the GLHC can be applied as Provincial Policy notwithstanding that it is far from clear that if applied to the SAC proposal it would result in the conclusion that it is "bad planning".

The alternative site argument put forward by the CCMB applies an "environmental assessment" approach that is not required under the *Planning Act.* The analogy that I will use is a property owner applies to develop a service station on a corner of an intersection, the municipality would not tell the applicant to go across the street and locate on another corner. The municipality should evaluate the proposal and make a determination of whether or not it met the policy framework. This is what the municipality did here and you will see from the findings the Board makes on the other issues that follow that the Board concurs with the Municipality and SAC that the applications represent "good planning" in the context of the historical uses of the harbour and the policy framework. The Board in making this judgement does not make this application perfect but that is not the objective. The objective is only "good" and only within the context of the historic use of the harbour and the current policy framework. To deny SAC a permit to extract trap rock from a quarry that will not be seen from the lake to a large extent and will meet the MOE, MNR and DFO guidelines would be unreasonable and unfair in the circumstances (the permit requires that the planning instruments – the zoning by-law and official plan are in compliance and require appropriate amendments).

Issue 2:

Do the proposed official plan and zoning by-law amendments have regard for the 1997 Provincial Policy Statement (PPS) including policies 1.1.3(g), 2.2.3.5, 2.3.1(a), 2.3.1(b), 2.3.2 and 2.3.3?

In regard to 2.3.2, the issue with respect to fish habitat is whether the recommendations made by N. A. R. Environmental Consultants have been properly implemented in the instruments before the Board.

In regard to 2.3.1(a), 2.3.1(b), and 2.3.2 with the exception of fish habitat in 2(a), above, the issues are restricted to Woodland Caribou habitat.

Policy 1.1.3 (g) - Planning so that major facilities (such as airports, transportation corridors, sewage treatment facilities, waste management systems, industries and aggregate activities) and sensitive land uses are appropriately designed, buffered and/or separated from each other to prevent adverse effects from odour, noise and other contaminants.

Policy 2.2.3.5 - Progressive rehabilitation to accommodate subsequent land uses will be required.

Policy 2.3.2 - Development and site alteration may be permitted on adjacent lands to a) and b) if it has been demonstrated that there will be no negative impacts on the natural features or on the ecological functions for which the area is identified.

Policy 2.3.3 - The diversity of natural features in an area, and the natural connections between them should be maintained, and improved where possible.

Policy 2.3.1 - Natural heritage features and areas will be protected from incompatible development.

Development and site alteration will not be permitted in:

a) significant wetlands south and east of the Canadian Shield; and

b) significant portions of the habitat of endangered and threatened species.

Mr. Usher was of the opinion that the rehabilitation to a storage area for future port activity is the "bare bones or minimum". Mr. Usher points to sensitive uses nearby. He assumes that the use of the water as a recreational use is a sensitive use. Messrs. Lehman and Gastmeier point out that sensitive land uses are those that can be reasonably expected such as a residence or a campground or a houseboat parked at a marina but not a mobile use. Mr Lehman points to the fact that the regulation of uses in the water is within the purview of the federal government under the *Navigable Waters Act* and it was pointed out that the boundary of the Municipality of Wawa ends at the shoreline and does not include any of the islands in the lake.

With respect to the Fisheries issue the witnesses for SAC point to the fact that the DFO and the MNR have signed off on the 30 m setback from the Quarry Creek.

The Board repeats the comments on Fisheries with respect to Woodland Caribou. Mr. de Geus stated that the MNR does not consider the lands in question to be the habitat of the Woodland Caribou and Mr. Usher admitted that "the continuous range now lies well northward of the subject lands". Mr de Geus testified that the fencing restriction and sloping of the pit sides in rehabilitation would provide a means for caribou to cross the site but given the developed nature of the shoreline that was unlikely.

In terms of Issue 2 and the 1997 PPS the Board makes the following findings:

With respect to the issue of the setback from Quarry Creek, the Board must be mindful of a line of cases that include *Banerjee v. Guelph* (City) where Member Campbell stated "While he raised apprehensions about, for example, the impact of the proposal on water quality, he led no evidence to support his apprehensions". The Board has the opinion of experts from the MNR and DFO that the fisheries issue and setback from Quarry Creek is adequate. The Board finds that the setback from Quarry Creek and protection measures with respect to blasting near the creek are sufficient to protect fish habitat.

The Board finds that with respect to Woodland Caribou the MNR, the Ministry responsible for the development and implementation of a recovery strategy, has expressed no concerns with respect to the habitat of the Woodland Caribou, a species

with a wide range and whose continuous range is significantly north of the subject lands.

The Board finds that the term "sensitive use" should not be applied to the recreational use of the lake because the use of the lake is under federal jurisdiction, because the Municipality's land use control and border does not extend into the lake and does not even include near shore islands and because the sensitive receptor should not be mobile and should have a sense of permanence. To use an analogy, it would be the same as applying noise standards to pedestrians along a busy highway.

Issue 3:

Is the proposed quarry license consistent with the 2005 PPS including policies 1.1.4.1(g), 1.5.1(d), 1.7.1(e), 1.7.1(f), 2.1.2, 2.1.3(a), 2.1.4(d), 2.1.6, 2.5.2.2, and 2.5.3.1?

1.1.4.1 In *rural areas* located in municipalities:

(g) recreational, tourism and other economic opportunities should be promoted.

1.5.1 Healthy, active communities should be promoted by:

(d) considering the impacts of planning decisions on provincial parks, conservation reserves and conservation areas.

1.7.1 Long-term economic prosperity should be supported by:

(e) planning so that major facilities (such as airports, transportation/transit/rail infrastructure and corridors, intermodal facilities, sewage treatment facilities, waste management systems, oil and gas pipelines, industries and resource extraction activities) and *sensitive land uses* are appropriately designed, buffered and/or separated from each other to prevent *adverse effects* from odour, noise and other contaminants, and minimize risk to public health and safety;

(f) providing opportunities for sustainable tourism development;

Policy 2.1.2 - The diversity and connectivity of natural features in an area, and the long-term *ecological function* and biodiversity of *natural heritage systems*, should be maintained, restored or, where possible, improved, recognizing linkages between and among *natural heritage features* and *areas*, *surface water features* and *ground water features*.

Policy 2.1.3 - *Development* and *site alteration* shall not be permitted in:

(a) significant habitat of endangered species and threatened species;

Policy 2.1.4 - *Development* and *site alteration* shall not be permitted in:

(d) significant wildlife habitat;

Policy 2.1.6 - *Development* and *site alteration* shall not be permitted on *adjacent lands* to the *natural heritage features and areas* identified in policies 2.1.3, 2.1.4 and 2.1.5 unless the *ecological function* of the *adjacent lands* has been evaluated and it has been demonstrated that there will be no *negative impacts* on the natural features or on their *ecological functions*.

Policy 2.5.2.2 - Extraction shall be undertaken in a manner that minimizes social and environmental impacts.

Policy 2.5.3.1 - Progressive and final rehabilitation shall be required to accommodate subsequent land uses, to promote land use compatibility, and to recognize the interim nature of extraction. Final rehabilitation shall take surrounding land use and approved land use designations into consideration.

The Board's findings on Issue 2 are the same but Mr. Lehman pointed out some definitions in the 2005 PPS that do not appear in the 1997 PPS with respect to sensitive land uses and Section 2.2 that deals with surface water feature.

In regard to surface water features and ground water features, this means areas that are particularly susceptible to impacts from activities or events including, but not limited to, water withdrawals, and additions of pollutants.

Sensitive Land Uses:

Means buildings, amenity areas, or outdoor spaces where routine or normal activities occurring at reasonably expected times would experience one or more adverse effects from contaminant discharges generated by a nearby major facility. Sensitive land uses may be a part of the natural or built environment. Examples may include, but are not limited to: residences, day care centres, and educational and health facilities.

Surface Water Feature:

Refers to water-related features on the earth's surface, including headwaters, rivers, stream channels, inland lakes, seepage areas, recharge/discharge areas, springs, wetlands, and associated riparian lands that can be defined by their soil moisture, soil type, vegetation or topographic characteristics. (Exhibit 20A, Tab 8, paragraphs 209 & 211 and pg 190)

Given the above definitions and Section 2 the PPS 2005 does not deal with the use of the surface of water as a recreational or sensitive use. Mr. Lehman's conclusion is supported by the policy framework while the position of the CCMB's is not. The Board finds that the license is consistent with the policies contained within the 2005 PPS and the matters of rehabilitation, fisheries impact and impact upon a rare or threatened species or its habitat have been considered and adequately dealt with by the public authorities and agencies having jurisdiction.

Issue 4:

Does Policy 2.2.3.1 of the 1997 PPS apply in support of the proposed official plan and zoning amendments, given the applicant's expressed intentions to market most or all of the aggregate produced by the quarry outside of Ontario?

Policy 2.2.3.1 - As much of the mineral aggregate resources as is realistically possible will be made available to supply mineral resource needs, as close to markets as possible.

The position of Mr. Usher is that the 1997 PPS should be interpreted to restrict the supply and demand of mineral aggregate to the Province and because a

considerable amount of aggregate may be shipped to the United States. The policies of the PPS do not give the SAC proposal the benefit of these policies because the prime market is in the United States. Mr. Usher points to The Mineral Aggregate Resources Policy Statement (MARPS) that refers to "local, regional and provincial needs" and includes the principle that "all parts of Ontario possessing mineral aggregate resources share a responsibility for meeting future provincial demand". The problem with the assumption of Mr. Usher is that the words of the MARPS are not contained in the 1997 PPS and Mr. Lehman points out there is no mechanism for the Municipality to regulate the market for the sale of aggregate products.

Clearly the Province, if it had wished to restrict the sale of aggregate products to locations in Ontario would have expressly stated such intent. The PPS stands on its own. There is no statement or reference to previous policy statements and the interpretation developed by Mr. Usher has little foundation in terms of facts and law. The Board finds no suggestion in the 1997 PPS that the aggregate policies only apply to pits or quarries whose products are marketed solely within the boundaries of the Province.

Issue 5:

Does the proposed official plan amendment meet the relevant requirements of, and does the proposed zoning by-law conform with the Municipality of Wawa's Official Plan? (MOP)

CCMB is concerned with the following Official Plan sections:

Re: OPA 4: section 4.4, 4.12, 9.1, 12.1, 12.2.1, 13, 14.1.1, 14.2.2, and 15.2.6;

Re: zoning by-law: the preceding and section 14.2.4

Mr. Usher alleges that there is a paucity of protective measures for the Quarry Creek and protection has not been proven. Mr. Clarkson points out that Section 4.4 recognizes the importance of both mineral and ecological resources and prescribes that conflicts are to be minimized. Mr. Clarkson's conclusion is summarized as follows:

In my opinion, the Superior Quarry, if approved, would make a high quality aggregate resource available for market, by energy efficient and environmentally

sensitive transportation, while at the same time providing the necessary protection to the only nearby natural heritage feature, that being fish habitat. This is wise resource management. In supporting the Superior Applications, I believe MNR, DFO and MOE share this view. (Exhibit 67, Tab A, pgs. 44 & 45).

Section 4.12 of the MOP seeks to protect natural and heritage resources. Mr. Usher alleges that the natural resources of Michipicoten Bay have not been protected for residents and/or visitors. Mr. Clarkson points to the protection of fish habitat (Fisheries Assessment authored by N.A.R. Environmental Consultants Inc. Exhibit 20C, Tab19F) and the stage three historical assessment that protects the historical resources. Mr. Lehman states in his Witness Statement:

> In my opinion the proposed quarry and related use of the wharf will preserve the historic use of the harbour for resource-related shipping purposes. The intent of the Official Plan is not to return the harbour to a natural state but rather to foster the use of the harbour area. (Exhibit 23A pgs. 19 & 20)

It was Mr. Usher's opinion that the "rural objectives", which recognize and protect recreational potential (9.1.1), that provide for minimizing negative environmental impacts (9.1.2), that promote recreational land use (9.1.3) and that provide for the removal of aggregate in a manner compatible with adjacent uses and other public uses; these objectives have not been fulfilled with the SAC proposal. (Exhibit 26, Tab 1, p. 19). Mr. Clarkson points out that the rural designation provides for "limited tourist commercial uses" and it does not restrict mining uses that shall be permitted. Mr Clarkson supports his position with the agency approvals that the SAC proposal has received and concludes that the SAC proposal "can be developed in a manner compatible with surrounding uses" (Exhibit 67, Tab A, pg. 45, paragraph 225). Mr. Lehman concludes that the "Rural" designation covers a large geographic area and "a large variety of uses can be accommodated without conflict or loss of opportunity" (Exhibit 23A, pg. 20, paragraph 86).

Section 12.1 of the MOP lists policies for Tourism Development. Mr. Lehman testified that at the time of the plan's adoption this was a rather unique approach. The objectives of the plan, according to Mr. Usher, have been impugned by the SAC proposal and Mr. Usher points to the evidence of Mr. Wells. Mr. Clarkson's response is that the objectives are not requirements. Mr. Lehman testified that:

> In the context of the location and the nature of tourism (sic), the activity generated by the quarry in Michipicoten Harbour would not, in my opinion, significantly limit tourism opportunities for the Municipality as a whole. While there may be some impact on the use of the shoreline in the immediate area for recreational boating, the shoreline is extensive. The use of the wharf in this location may well become an attraction to some land or water based tourists. (Exhibit 23A, Tab 1, pg 20, paragraph 88).

Section 13 of the MOP identifies Michipicoten Harbour as a significant heritage resource. The contention of Mr. Usher is that "there is nothing in the proposed planning instruments or licence that shows any recognition of that designation or any compliance with Section 13." (Exhibit 26, Tab 1, p.20) Mr. Clarkson points to the only historic features of note which are the pilings of the old dock and that these pilings will be subject to stage three documentation and that the Ministry of Culture is satisfied with that. (Exhibit 20C, Tab 44)

Mr. Lehman indicates that the restoration of the wharf is the most significant artifact and conforms to the MOP.

Mr. Usher points to Policy 14.1.1 which refers to local and regional needs for mineral aggregate and because the aggregate will be shipped to markets in the United States and Canada along the St. Lawrence Seaway the proposed SAC quarry does not meet the intent of the MOP. Both Mr. Clarkson and Mr. Lehman express the opinion that the market for the SAC material will include both cities in Ontario and the United States and that the proposed SAC quarry conforms to the intent and purpose of the MOP.

Mr. Usher refers to Policy 14.1.2 and states:

> Based on my evidence and the evidence of others on various issues, the proposal will not be undertaken in a manner that minimizes impacts upon the physical environment and adjacent uses. (Exhibit 26, Tab A, p. 20)

Mr. Clarkson summated that "Based upon the technical studies completed, it is concluded the proposed quarry will have minimal disturbance to the social and natural environment." Exhibit 67, Tab A, pg 37, paragraph 174). Mr. Lehman reaches a similar conclusion when he states:

> It is my opinion that OPA # 4 as modified, the revised Zoning Amendment and the proposed ARA licence terms would meet the objectives and conform to the

policies of Section 14 of the Official Plan. (Exhibit 23A Tab 1 pg 22 paragraph 92)

As far as the transportation policies contained in Section 15.2.6, Mr. Usher alleges that the planning instruments do not support the use of the wharf for other purposes. Mr. Clarkson points to the fact that the use of the wharf once improved is not precluded in terms of the policies in the MOP that encourages "the use of the harbour for purposes that will broaden and strengthen the economic base". The support of the MFN, SAC and the Municipality in requesting infrastructure funds for the wharf (Exhibits 74 and 75) adds credence to Mr. Clarkson's submissions.

The Board finds that the Official Plan must be given a liberal interpretation (*Bele Himmel Investments Ltd. v. Mississauga* (City), [1982] O.J. No 1200) and that the plan contains a number of policies that must be balanced off against one another.

The Board finds the submissions of Mr. Clarkson and Mr. Lehman fair and provide a just interpretation of the MOP in terms of balancing the public interest, private interests, the economic interests and ecological interests. The views of Mr. Clarkson and Mr. Lehman are supported by a wealth of supportive documentation and the comments of all the circulated public agencies.

Issue 6:

Does the proposed zoning by-law conform with, and fully and effectively implement, the proposed official plan amendment, and is it compatible with the parent Comprehensive Zoning By-law?

Mr. Usher submits that M2 zoning of the licensed area is not appropriate because it is not a separate classification for pits and quarries as envisioned in the MOP. "Existing and new aggregate extraction operations shall be zoned in a separate classification in the implementing zoning by-law" (Exhibit 20A Tab 9, pg 250) Mr. Usher further submits that the EPZ, (Environmental Protection Zone) does not exist in the parent by-law and that conservation uses are not defined.

Mr. Lehman points to the revised by-law (Exhibit 90) and the revised OPA 4 (Exhibit 76B) and concludes that the revised by-law fully implements the Official Plan.

> ... As a result of the MMAH modifications to OPA # 4, and the ARA licensing process I have prepared a revised Zoning By-law Amendment which more closely implements OPA # 4 as modified. The revised zoning by-law Amendment(s) sic. amend the use permissions and the means of implementing the setback from fish habitat in accordance with the site plan for the ARA licence. (Exhibit 23A, Tab A, pg 23 paragraph 99).

The Board notes that the definition of "conservation uses" has been added. The combination of policy overlays and zoning restrictions is not as simple as it could have been but it serves the purpose of implementing OPA 4. The revised by-law accounts for the ARA that was not in place when the original by-law was passed. The Board finds that the by-law implements the provisions of OPA 4 as amended and there is ample evidence that this by-law represents good planning.

Issue 7:

Are the proposed site plan, the proposed official plan and zoning by-law amendments mutually consistent?

Mr. Usher points out that the lands zoned EP don't correspond to the lands required for setback in the site plan and the setback from the water is not specified in the site plan. Mr. Usher notes:

> Any evidence I provide on this matter will not suggest that the applications should be denied for these reasons, but rather, if the Board wishes to approve the applications, consistency among the instruments is desirable. (Exhibit 26, Tab A, pg. 22, paragraphs 9.2 and 9.3)

Mr. Clarkson states that if there are inconsistencies then they should be corrected. Mr. Lehman, on the other hand, expresses the opinion that the instruments are generally consistent.

The Board finds that for the most part the site plans, the official plan amendment and zoning by-law amendment are consistent with one another.

Issue 8:

Is the proposed rehabilitation plan for the site adequate and consistent with current policies/standards/practices?

The CCMB through its planning witness, Mr. Usher, alleges that the rehabilitation of the quarry for port related uses is inadequate given the quarry's location on the Lake Superior shoreline and that the rehabilitation should be to a similar standard for pits in the Niagara Escarpment, the Oak Ridges Moraine and the Greenbelt. The standard of rehabilitation is not rehabilitation to its former use or condition but to a standard that has regard for the adjacent lands.

Mr. Clarkson states that the intended use for the quarry is a staging area for uses related to the wharf. The slopes of the quarry will be stabilized and the MNR has approved the plans and is satisfied that the standards are met.

The witness for the CCMB provided no examples of a standard that should be met and only alleges that a lower standard is being accepted. The proposed rehabilitation plan meets the standards of the MNR and future use as a staging area for the wharf was not challenged as an unreasonable use. The Board finds that the rehabilitation plan is acceptable and that it meets the standards applied by the MNR throughout the Province.

Issue 9:

Would approval of the applications be premature, or represent good planning, given that the applicant has not provided any analysis of visual impacts on nearby residents and on Lake Superior recreational users?

Mr. Clarkson points to the visual analysis provided as part of Exhibit 70 that illustrate minimal visual impacts in terms of the quarry operation. There are occasions when the drill will be visible. Mr. Clarkson points to no policy basis for requiring a visual analysis. The quarry will be limited to the 190 metres elevation and the forested setback will ensure that there is no visual evidence of the quarry operation once the supply of aggregate is exhausted. The processing area will be depressed and bermed, which will provide visual shielding.

Mr. Lehman noted that there will be changes in terms of the view of the shoreline and that one will see things differently but the changes are minimal.

The Board accepts the analysis of Mr. Clarkson that the visual analysis illustrates minimal visual impact of the quarry and that impacts on surrounding uses will be within acceptable limits. The Board rejects the submission that recreational users of the lake deserve special consideration in that they are transient.

Issue 10:

Has the applicant demonstrated that noise will not exceed applicable Ministry of Environment criteria for the predictable worst case at nearby receptors, taking into account:

- *the equipment most likely to be required for this particular operation and where and how that equipment is most likely to be used,*
- *the sound barrier measures shown on the site plan,*
- *site topography and vegetation,*
- *inversion conditions over water?*

Mr. Gastmeier concludes that:

> My opinion regarding Issue 10 is that sufficient noise attenuation can be provided in the design to address the noise emissions from the aggregate extraction processing and loading operations and that the site has been appropriately designed as set out in the ARA site plans. (Exhibit 51, Tab1, p. 5)

Mr. Gastmeier opined that the noise monitoring program was sufficient to deal with the possibility of the effects of inversions over water. The MOE had approved the methodology employed to predict the worst case scenario and there were additional mitigation measures available to the proponent to mitigate noise impacts. In addition SAC has made alterations to the site plan to provide sound mitigation during construction and by providing portable barriers to be erected around the drill equipment (Exhibit 79, section 5, p.2).

The Board finds that the noise impacts have been appropriately dealt with. The Board considers the case of *Schell v. Kincardine* (Municipality), [2007] O. M. B. D. No

678 where the Board stated "that the Board has no jurisdiction to modify or change the guidelines or interpretations that the Ministry may wish to impose."

Issue 11:

Are the proposed license conditions re: hours of operation reasonable and appropriate?

The hours of operations proposed for the quarry are 7:00 a.m. to 7:00 p.m., six days per week. Crushing operations will not normally occur between 1:00 p.m. on Saturday and 7:00 p.m. on the following Monday or on a statutory holiday. No blasting will occur between the hours of 6:00 p.m. on any day and 8:00 a.m. on the following day or on weekends or statutory holidays. (Exhibit 79, Section 10, p. 3) SAC will explore the use of backup lights in lieu of beepers providing removal of an additional noise source.

Messrs. Gastmeier, Clarkson and Lehman have all concluded that the hours of operation are appropriate. The reduction from 24 hour operation appears to mollify the concerns of the CCMB significantly but not eliminate them.

The Board finds that the hours of operation proposed are reasonable and appropriate given the location and the historical use of the wharf and the surrounding uses.

Issue 12:

Has the applicant otherwise demonstrated land use compatibility with affected:

a) residential uses and communities,

b) and recreationally used offshore waters?

Mr. Clarkson noted that the MOE blasting limits have been met and the visual impacts have been minimized. With respect to the recreational use of off shore waters Mr. Clarkson was of the opinion that there was no requirement to assess compatibility.

Mr. Lehman pointed to the definitions in the 2005 PPS for "Sensitive", "Sensitive Land Uses" and "Surface Water Feature" and the fact that navigable waters are

federally regulated and it is unlikely that their recreational use would trump their use as a means of transporting goods.

The Board finds no policy basis for the protection of recreationally used waters and considering the guideline that only land uses within 500 metres of a proposed quarry require noise impacts to be considered and considering the fact that the sensitive uses meet or exceed the MOE standards and that a monitoring program is prescribed to consider after use noise impacts. There are further noise mitigation measures available to SAC in the event that the noise levels predicted in the model are exceeded. Therefore, the Board finds that SAC has demonstrated land use compatibility based upon the policies and guidelines set out by provincial ministries and agencies. The Board agrees with the evidence of Messrs. Clarkson, Gastmeier and Lehman and finds no policy support for the recreational use of surface water being classified as a "sensitive use".

Issue 13:

Do the applications make adequate provision for monitoring noise impacts during and after operations, and for contingency planning should adverse effects be detected? Has the baseline information needed to provide an effective foundation for monitoring being obtained?

Mr. Gastmeier provided a comprehensive response to this question in his witness statement (Exhibit 51, Tab1). In it he makes the following points:

- The most stringent rural standards have been adopted;
- The quarry operations are limited to 7:00 a.m. to 7:00 p.m;
- The quarry is subject to a monitoring program that meets MOE standards; and
- An annual report of noise monitoring is required.

The Noise Report findings are acceptable to MOE and will be subject to the Certificate of Approval process (Air).

The Ministry has set out additional conditions for the Certificate of Approval (Air).

An Acoustical Assessment Report is required within three months of the Certificate of Approval.

If adverse affects are detected an abatement plan is required.

The recommendations of the Noise Report have been incorporated into the site plans under the ARA. (This was a recommendation of CCMB's consultant Mr. Coulter)

In addition to the above the monitoring program prescribed includes using specified sites ie. The Mills cottage and Superior North Adventures as sites to be monitored, and if the monitoring program is outside the season when temperature inversions are likely, a second monitoring program will be initiated.

The Board finds that the noise impacts pre and post operation have been adequately dealt with and that the post operation conditions are also adequately covered off with the Certificate of Approval, monitoring and abatement plans and procedures.

Concerns of the Participants and Citizens

Lake Superior

The participants and a number of citizens expressed a passionate belief in the fact that Lake Superior was named by the first non-natives to see this inland sea. It means "Upper" lake in French and has been translated to give its English meaning. Many mentioned the fact that Superior along with Lake Baikal in Russia are the two premier bodies of fresh water in the world. Baikal is the deepest and largest in terms of water volume and Superior is the largest in terms of surface area. The area of the lake is larger than the state of South Carolina.

The lake and its rugged coastline are a treasure and the number and extent of the provincial and national parks and nature reserves is a testament to how important the lake is to the citizens of Ontario and Canada. These facts do not in effect give the Board or anyone else the right to say to a private land owner: "You live on a beautiful lake; give up your right to development so that we may maintain what we consider a

pristine wilderness." Others might wish to apply the same standard to the existing cottage owners or the Superior Adventures Lodge. We wouldn't do that and we should not do that to SAC. The SAC proposal is hidden from the lake. The entrance to the quarry now reduced from 30 m to 20 m will be the only visual impact of the quarry on the lake. This intrusion, if you will, occurs along the disturbed face of the former wharf. There will be noise emanating from the quarry, which will be heard by the neighbouring property owners, but the noise levels will meet or exceed standards set out by the MOE. On balance, the SAC proposal will not negatively impact the lake. Michipicoten Bay is not a wilderness as evidenced by the number of cottages and the historical industrial activity of the port that goes back more than one hundred years. It should be noted that even the first peoples mined copper along the shores of Lake Superior so that mining activity has a long and significant history in Wawa and along the shores of Lake Superior. The SAC proposal will involve change but that change will be managed within the policy framework set out by the Province.

Environmental Impacts

The residents expressed concerns that the impacts from shipping and release of ballast waters might impact the Bay. This is an area of concern to every citizen. The release of invasive species into the Great Lakes is a matter of environmental concern. The jurisdiction for this matter is the purview of the federal government. The Board has no jurisdiction to regulate shipping activity on the Bay but the SAC should work with the ships that it hires to attempt to ensure ballast waters are appropriately handled.

The Board is satisfied that matters of noise, dust, lighting and blasting have been appropriately dealt with.

The C of A process notwithstanding the legislative authority appears to cover mobile equipment according to the MOE (Exhibit 66).

Decisions of Councils and Approval Authorities

The Board is required to have regard to the Municipality's decision in accordance with Section 2.1 of the *Planning Act.*

2.1 When an approval authority or the Ontario Municipal Board makes a decision under this Act that relates to a planning matter, it shall have regard to,

(a) any decision that is made under this Act by a municipal council or by an approval authority and relates to the same planning matter; and

(b) any supporting information and material that the municipal council or approval authority considered in making the decision described in clause (a). 2006, c. 23, s. 4.

In reviewing Council's decision and its treatment of the applications the Board finds two fundamental errors. In the first instance it forced CCMB to get a Freedom of Information request in order to get a copy of the by-law – a direct infringement of their rights as citizens to get copies of any legislative act of a municipal council. In the second instance, the Municipality refused to delay passage of the Official Plan Amendment 4 for the Ministry to provide comments thus forcing the MMAH to modify the Amendment. The MMAH request was reasonable given the circumstances and the behaviour of the Municipality was not. In this case the behaviour of Council did not impact upon the Board's decision but in a case where the policy framework is less clear cut it could impact the decision and the Municipality should be more circumspect in its behaviour in the future.

The Behaviour of the Parties

The Board wishes to express to the citizens and participants its appreciation for their respectful behaviour and their passionate and thoughtful presentations. There have been some modifications to the proposal that the Board believes will benefit all parties. These changes include the reduction in the entrance width from 30 m to 20 m, the removal of the request for 24 hour operations, the specifications for monitoring sites and the inclusion of inversion season in the monitoring of noise impacts.

The Board would like to express its appreciation to SAC who worked with the Municipality and CCMB in a spirit of openness and understanding. SAC exhibited patience and good will and attempted to resolve problems to the best of its ability. I am sure that with this attitude, future difficulties if they arise will be resolved amicably.

The Board prefers the testimony of Messrs Clarkson and Mr. Lehman over Mr. Usher because of the solid policy framework, historical context, background studies and supporting agency comments upon which it is based. The Board prefers the evidence of Mr. Gastmeier to Mr. Coulter because the evidence of Mr. Gastmeier is based upon the ISO standard that is supported by the MOE. Mr. Coulter's evidence is based upon an emerging theory that is not yet part of the ISO standard and is not supported by the MOE. The evidence of Mr. de Geus was uncontested in terms of his opinions on Woodland Caribou and the validity of the GLHC not being a policy of the MNR.

The Board Orders that the appeal against By-law 1606-03 of the Municipality of Wawa is allowed in part, and the By-law is amended in accordance with Attachment "1" (Exhibit 90) to this Order. In all other respects the appeal is dismissed.

And the Board Orders that the appeal is allowed in part and Amendment No.4 to the Official Plan for the Municipality of Wawa, formerly the Township of Michipicoten, is modified as set out in Attachment "2" (Exhibit 76A) to this Order and as modified is approved.

And the Board directs the Minister to issue the licence in accordance with the plans filed as Exhibit 21 being plans prepared by DST Consulting Engineers Inc., Sheets 1 to 5 with a Plan date of July 24, 2008, as amended by Attachment 3 (Exhibit 79A) and that the entrance way shown in Attachment 3 is reduced to 20 m in width.

So Orders the Board.

"J. E. Sniezek"

J. E. SNIEZEK
MEMBER

ATTACHMENT '1'

THE CORPORATION OF THE MUNICIPALITY OF WAWA

BY-LAW NO. 1616-03

Being a By-law to amend By-law No. 385-85 as amended, the Zoning By-law for the Municipality of Wawa with respect to lands located in Part of Parcels 371 Mich. & 372 Mich., and part of parcels 305 Mich. & 1865 A.W.S. being water lot locations C.K. 167 & B.Y. 12, Lendrum Township in the Corporation of the Municipality of Wawa.

WHEREAS the Council of the Corporation of the Municipality of Wawa is empowered to pass By-laws to regulate the use of land pursuant to Section 34 of the *Planning Act*, 1990.

AND WHEREAS the owners of the subject lands have filed an application with the Municipality of Wawa to amend By-law No. 385-85 as amended;

AND WHEREAS the Council of the Corporation of the Municipality of Wawa deems it advisable to amend By-Law 385-85 as amended;

NOW THEREFORE the Council of the Corporation of the Municipality of Wawa enacts as follows:

(a) Schedule 'A', to Zoning By-law No. 385-85 as amended, is hereby further amended by zoning lands located in Part of Parcels 371 Mich. & 372 Mich., and part of parcels 305 Mich. & 1865 A.W.S. being water lot locations C.K. 167 & B.Y. 12, Lendrum Township in Corporation of the Municipality of Wawa from the Restricted Industrial (M2) and Rural (RU) Zones to the Extractive Industrial (M3*38) Zone, the Extractive Industrial (M3*39) Zone and the Restricted Industrial (M2*40)(H) as shown on Schedule 'A-1' attached hereto and forming part of this By-law.

(b) Section 6 to Zoning By-law No. 385-85 as amended is hereby further amended by adding the following subsection after 6.37:

6.38 Notwithstanding any other provision of this By-law, on lands denoted with the symbol *38, in addition to all of the uses permitted in the M2 Zone and M3 Zone, the following uses shall also be permitted:

a) quarrying of mineral aggregate resources including drilling, blasting, crushing, screening, stockpiling or washing of sand, gravel, stone, ballast or any other mineral aggregate resources;

b) stockpiling, storage, loading, and shipping of mineral aggregate products, goods and materials;
c) accessory uses; and,
d) uses permitted in a), b) and c) of this subsection are subject to the following use restriction: For those lands described on Schedule 'A-1" as "subject to setback", no land use, development or site alteration is permitted with the exception of conservation uses and rehabilitation or enhancement projects, such as tree planting.
e) Section 6 to Zoning By-law No. 385-85 as amended is hereby further amended by adding the following subsection after 6.38:

6.39 Notwithstanding any other provision of this By-law, on lands denoted with the symbol *39, in addition to all of the uses permitted in the RU Zone and the M3 Zone, the following uses shall also be permitted:

a) quarrying of mineral aggregate resources including drilling, blasting, crushing, screening, stockpiling or washing of sand, gravel, stone, ballast or any other mineral aggregate resources;
b) stockpiling, storage, loading, and shipping of mineral aggregate products, goods and materials;
c) accessory uses; and,
d) uses permitted in a), b) and c) of this subsection are subject to the following use restriction: For those lands described on Schedule 'A-1" as "subject to setback", no land use, development or site alteration is permitted with the exception of conservation uses and rehabilitation or enhancement projects, such as tree planting. Notwithstanding the foregoing, a commercial fishery and related accessory uses, and two residential dwellings are permitted in this area.
e) Section 6 to Zoning By-law No. 385-85 as amended is hereby further amended by adding the following subsection after 6.39:

6.40 Notwithstanding any other provision of this By-law, on lands denoted with the symbol *40, in addition to all of the uses permitted in the M2 Zone, the following uses shall also be permitted:

a) transporting, stockpiling, storage, loading, and shipping of mineral aggregate and other products, goods and materials; and,
b) accessory uses.

5. Section 5 to Zoning By-law No. 385-85 as amended is hereby further amended by adding the following new definition after subsection 5.22:

5.22a CONSERVATION USE
The use of land for the purpose of maintaining or enhancing the natural environment.

6. The Holding provision attached to the Restricted Industrial (M2*40) Zone may be removed in whole or in part when the following have been completed or addressed to the satisfaction of the Municipality, for the lands subject to this By-law:

   a) a Stormwater Management Plan which shall include a surface water monitoring protocol for the adjacent creek and shoreline waters, if required;
   b) a Spills Contingency Plan which shall identify storage sites for fuels and lubricants, outline handling procedures and a protocol to contain and clean-up accidental spills, including spills of mineral aggregate material into Lake Superior, if required;
   c) that the owner and the Municipality have executed an agreement under Section 41 of the *Planning Act*; and,
   d) that the owner has posted all applicable securities related to the agreement(s) required under Section 41 of the *Planning Act* and specified in Item (d).

7. Until such time that the Holding Provision is removed the existing uses and the uses permitted in the M2 Zone shall be permitted on the lands zoned M2*40(H).

8. In all other respects the provisions of By-law 385-85 shall apply.

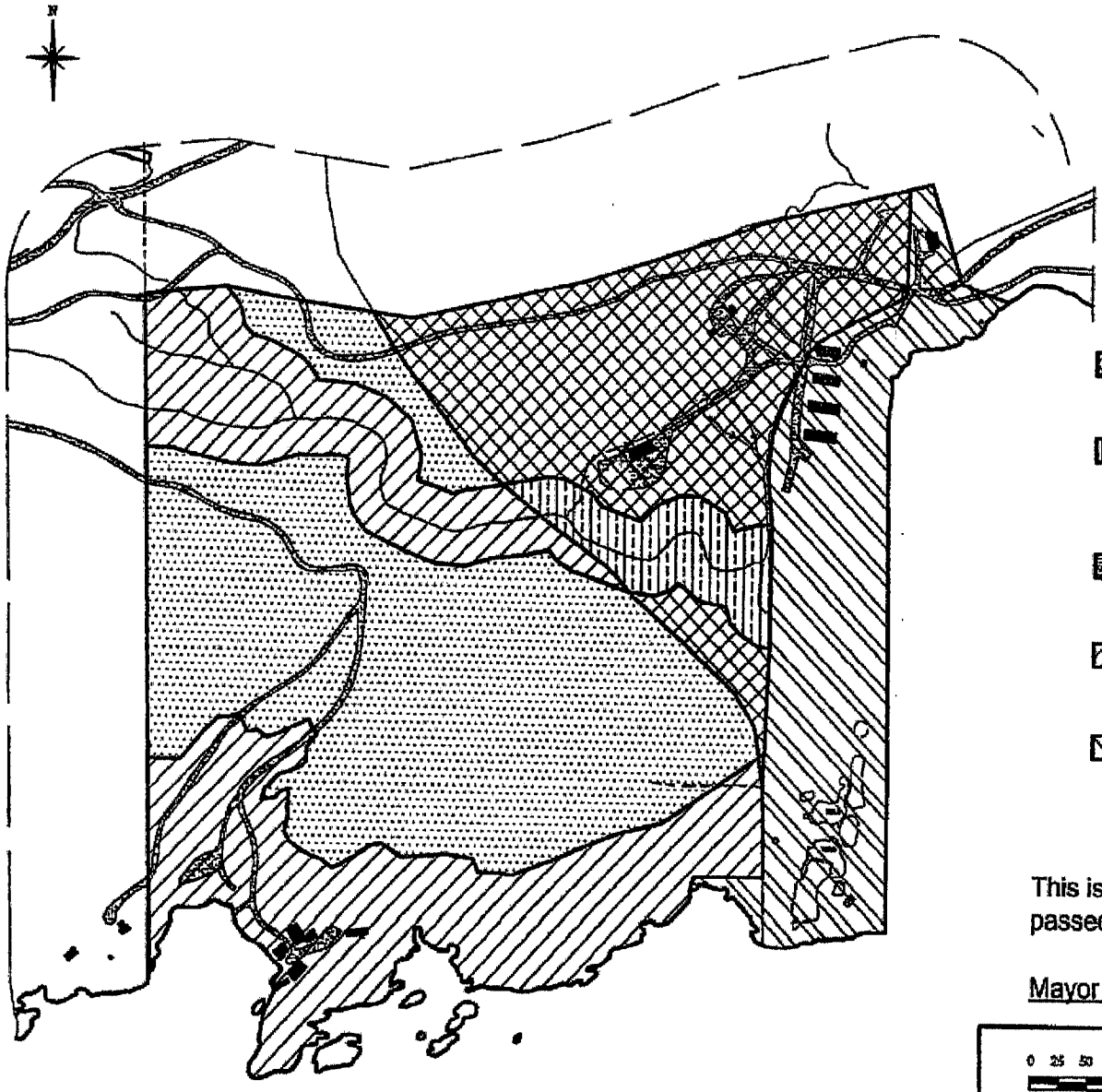
This By-law shall come into effect upon the date of passage hereof, subject to the provisions of Section 34 (30) and (31) of the *Planning Act* (Ontario).

READ A FIRST AND SECOND TIME on the _____ day of _____ 2009.

READ A THIRD TIME and finally passed this _____ day of _____2009.

_____ _____

Mayor Clerk



Schedule 'A-1'
to By-Law 1616-03

Municipality of Wawa

Part of parcels 371 & 372 Mich.,
and part of parcels 305 Mich. & 1865 A.W.S.
being water lot locations C.K. 167 & B.Y. 12
Lendrum Township

- Lands Rezoned from the Restricted Industrial (M2) Zone to the Extractive Industrial (M3*38) Zone
- Lands Rezoned from the Restricted Industrial (M2) Zone to the Extractive Industrial (M3*38) Zone "Subject to Setback"
- Lands Rezoned from the Rural (RU) Zone to the Extractive Industrial (M3*39) Zone
- Lands Rezoned from the Rural (RU) Zone to the Extractive Industrial (M3*39) Zone "Subject to Setback"
- Lands Rezoned from the Restricted Industrial (M2) Zone to the Restricted Industrial (M2*40)(H) Zone

This is Schedule 'A-1' to By-Law _____
passed this ____ day of _____, 2009.

Mayor _____ Clerk _____

0 25 50 100 200 m
Scale

MERIDIAN
August 17, 2009

ATTACHMENT '2'

CONSTITUTIONAL STATEMENT

The following Amendment to the Official Plan of the Township of Michipicoten consists of three parts.

Part A - The Preamble, consisting of the purpose, location and basis of the Amendment, does not constitute part of this Amendment.

Part B - The Amendment consisting of the noted text and mapping constitutes Amendment No. 4 to the Official Plan for the Township of Michipicoten.

Part C - The Appendices, consisting of the background data and planning considerations associated with this Amendment, do not constitute part of this Amendment.

PART A - THE PREAMBLE

PURPOSE

The purpose of this Amendment is to add an overlay designation to the Official Plan as it applies to approximately 35 hectares (86 acres) of land in Part of Parcels 371 Mich. & 372 Mich., and Part of Parcels 305 Mich. & 1865 A.W.S being Water Lot Locations C.K. 167 & B.Y. 12, Lendrum Township in Corporation of the Township of Michipicoten. At the time the application was submitted, the subject lands were designated Rural and Industrial by the Township of Michipicoten Official Plan.

LOCATION

The Amendment affects approximately 35 hectares of land in the Michipicoten Harbour as shown on Schedule 'A-1'.

BASIS

The proposal to establish a quarry in Michipicoten Harbour has been submitted in accordance with Section 14 of the Township of Michipicoten Official Plan. This Section establishes policies, which are specific to the Mineral Aggregate designation in the Municipality, and requires that mineral aggregate operations be placed in a Mineral Aggregate Designation.

In adopting this Official Plan Amendment, Council relies on the following basis which are the conclusions of the planning report prepared in response to the application:

1. The policies of the Official Plan and the Provincial Policy Statement, taken as a whole, strongly support the use of the lands under application for the proposed quarry. Michipicoten is a resource-based community and the site offers a unique opportunity to provide relatively inexpensive access to major markets on the Great Lakes. Regardless of the specific use proposed in this area, the Township should ensure that future industrial use of the area continues to be permitted as an opportunity.
2. The subject site, with its previous history of industrial use and existing infrastructure lies in a relatively remote area with few uses that would be affected by the operation. A small community of seasonal homes lies approximately three to four kilometers distant across the harbour.
3. The majority of the environmental issues and concerns expressed by the public have either been addressed by the applicant, or are matters properly administered or implemented by senior government agencies. The significant expressions of provincial government policy and statements affecting the area, the *Provincial Policy Statement* and *Ontario's Living Legacy Land Use Strategy,* both support the proposed economic development opportunities created by the quarry. *Fisheries Act* requirements of the federal government have been addressed. Off-site impacts of noise, dust, fly rock and potential spills are common concerns with respect to many resource and industrial operations. The operation will be regulated by the *Aggregate Resources Act* as well as by municipal controls and agreements covering operational aspects of the quarry. No off-site impact has been identified that would be of a significant enough concern to alter or remove the existing Official Plan and zoning permissions that have governed the use of the site for twenty years.

4. Concerns regarding the use of the shoreline areas as a caribou migratory corridor or as a fish habitat appear to have been addressed satisfactorily, but should be confirmed by correspondence from the appropriate Ministry.
5. The majority of the site is designated and zoned for industrial uses that would allow a variety of heavy industrial operations including the "major mining, refining and processing of ore including storage and loading facilities". The quarry use is effectively identical to that proposed by the applicants in terms of the potential impacts on surrounding uses. Other uses permitted by the current zoning include "manufacturing and processing uses, oil and gas trucking terminals and storage, tailings and waste rock disposal areas."
6. The existing planning permissions on the portion of the site that is designated and zoned for rural uses would allow "mining and quarrying, tailings and waste rock disposal areas". The use proposed for this portion of the site consists of a significant portion of the quarry.
7. The Official Plan establishes a specific designation for mineral aggregate extraction and requires, as a development control mechanism, that such uses be zoned in a separate category in the implementing by-law. The Plan also allows the use of holding zones for any areas over which the Municipality may wish to exert specific controls.
8. The proposed use is the extraction of mineral aggregate based on the definition of such uses in the Provincial Policy Statement. As such, despite the permission for quarrying in the Rural zone, and the permission for major mining and processing of ore in the Industrial zone and designation, it is appropriate to require an Official Plan Amendment and zoning change to clarify the planning permissions and to allow proper site plan and/or Municipal Act agreements to be prepared.
9. The Official Plan is over twenty years old and the structure of Provincial planning policies have changed significantly during that time. As such, from a land use perspective the Official Plan Amendment and zoning change can be considered to some degree as a technical amendment rather than as significant changes to the current use permissions.
10. The use of the lands as a quarry conforms to the policies of the Township's Plan, is consistent with the overall objectives of the Provincial Policy Statement and represents an appropriate balance of land use objectives and impacts.

PART B - THE AMENDMENT

This part of the document is entitled Part B - The Amendment. It consists of the following text and Schedule 'A-1' which constitutes Amendment No. 4 to the Official Plan of the Township of Michipicoten.

DETAILS OF THE AMENDMENT

The Official Plan of the Township of Michipicoten is amended as follows:

1. By adding the following policies to Section 14 of the Official Plan:

14.3 Michipicoten Harbour Special Policy Overlay Area

Despite Section 14.2.1 of this Plan, the Michipicoten Harbour Special Policy Area has been established to identify an area where the quarrying of mineral aggregate resources is a primary permitted use as well as related accessory uses such as crushing, drilling, blasting, screening, washing, stockpiling and loading of mineral aggregate resources and products. The Michipicoten Harbour Special Policy Overlay Area is depicted on Schedule "A-1" to this amendment. The development of a quarry and related accessory uses in this area is subject to the policies for the Michipicoten Harbour Special Policy Overlay Area.

Given the historical industrial use of the harbour, the Michipicoten Harbour Special Policy Overlay Area complements the existing Industrial and Rural land use designations and related policies and permitted uses contained in the Township of Michipicoten Official Plan.

The Michipicoten Harbour Special Policy Overlay Area also includes environmental buffers and linkage areas as determined. These areas are intended to be preserved and will be zoned to reflect their location and function. Existing uses located within identified buffer and linkage areas will be permitted to continue.

14.3.1 Development Policies

Development in the Michipicoten Harbour Special Policy Overlay Area will be implemented through a rezoning amendment and through the use of Site Plan Control. Studies may be required by Council to ensure compatibility and to minimize environmental impacts. The following studies are required for any quarry operation.

14.3.1.1 Water Quality and Quantity

In order to prevent impacts to water quality or quantity upon groundwater or surface water the following policies shall apply:

a) **Groundwater Monitoring**
All lands subject to extraction shall undergo a water monitoring program in accordance with the licensing requirements of the *Aggregate Resources Act.*

The monitoring program shall confirm water table elevations for the extraction area and be reflected in the Design Reports for any quarry. In addition, subsequent to extraction commencing, a water monitoring program shall be required which will consist of measuring and documenting the level of the water table on a weekly basis.

b) **Sulphur Bearing Rocks**
The proponent shall prepare a Contingency Plan which establishes an ongoing monitoring program, the purpose of which is to identify sulphur bearing rocks and a protocol to follow in the event such a deposit is encountered.

Such a plan shall be prepared to the satisfaction of the Municipality and shall be enforced under the provisions of the *Aggregate Resources Act* license.

c) **Stormwater Management**
Prior to extraction occurring on site, a Stormwater Management Plan shall be prepared to the satisfaction of the Municipality. Such a plan shall be prepared by a qualified professional and shall include a surface water monitoring protocol for the adjacent creek and shoreline waters.

d) **Spills Contingency**
In conjunction with the Stormwater Management Plan mentioned above, the proponent shall also prepare a Spill Contingency Plan. Such a plan will be prepared to the satisfaction of the Municipality and will identify storage sites for fuels and lubricants, outline handling procedures and a protocol to contain and clean-up accidental spills, including spills of mineral aggregate material into Lake Superior.

14.3.1.2 Waste Disposal
All waste material generated by any facility shall be disposed of at an approved waste receiving facility and/or in accordance with Ministry of Environment regulations.

14.3.1.3 Progressive Rehabilitation
Council places a high priority on the progressive rehabilitation of the lands subject to extraction. Rehabilitation will occur as prescribed by the license issued by the Ministry of Natural Resources under the *Aggregate Resources Act* and such rehabilitation shall be accommodating to subsequent land uses.

14.3.2 Implementation and Regulatory Policies

14.3.2.1 Zoning

Lands located in the Michipicoten Harbour Special Policy Overlay Area shall be placed in appropriate zone categories.

In order to mitigate adverse impacts upon fish habitat a minimum 30 metre setback for all permitted uses from the top-of-bank of cold water streams and the high water mark of the Lake Superior shoreline shall be established in the Implementing Zoning By-law.

14.3.2.2 *Aggregate Resources Act*

The quarrying and extraction of mineral aggregate resources in the Michipicoten Harbour Special Policy Overlay Area is subject to the requirements and regulations of the *Aggregate Resources Act of* Ontario.

14.3.2.3 Development Agreements

Council may require the proponent of any mineral aggregate operation or other land use developed in the Michipicoten Harbour Special Policy Overlay Area designation to enter into one or more agreements to ensure operational aspects are adhered to by the owner and subsequent owners.

14.3.2.4 Site Plan Control

Council shall pass a Site Plan Control By-law in accordance with the *Planning Act* to regulate development and land use that is appropriately governed by Site Plan Control. All lands depicted as being subject to the Michipicoten Harbour Special Policy Overlay Area on Schedule "A-1" are subject to Site Plan Control. Notwithstanding this policy, any use authorized or licensed under the *Aggregate Resources Act* shall not be subject to Site Plan Control.

14.3.2.5 Holding Provisions

Uses permitted in the Michipicoten Harbour Special Policy Overlay Area shall be subject to Holding provisions as per Section 36 of the *Planning Act* to ensure policy matters are dealt with to the satisfaction of the Municipality and all applicable Provincial agencies, with the exception that uses authorized or licensed under the *Aggregate Resources Act* shall not be subject to Holding Provisions.

The Holding symbol will be removed by Council when:

A) the Stormwater Management Plan and Spill Contingency Plan required under Section 14.3.1.1 have been completed to the satisfaction of the Township; and,

B) all applicable agreements with the Municipality and/or securities have been executed or posted.

2. By amending Schedule 'C' of the Official Plan as follows:

Schedule 'C' of the Official Plan of the Township of Michipicoten is hereby amended by adding the Michipicoten Harbour Special Policy Overlay Area to the existing Industrial and Rural land use designations located in Part of Parcels 371 Mich. & 372 Mich., and Part of Parcels 305 Mich. & 1865 A.W.S. being Water Lot Locations C.K. 167 & B.Y. 12, Lendrum Township in the Corporation of the Township of Michipicoten as shown on Schedule "A-1" attached to this Amendment.

PART C - THE APPENDICES

Appendix 1 - Natural Environment Level 1 and Level 2 Reports

Appendix 2 - Blast Impact Analysis

Appendix 3 - Dock Report

Appendix 4 - Environmental Noise Study

Appendix 5 - Site Plans (Existing Features, Operations Plan and Final Rehabilitation Plan)

Appendix 6 - Economic Impact Analysis

Appendix 7 – Archaeological Assessment

Appendix 8 – Ornithological Assessment

Appendix 9 - Planning report dated October, 2003 prepared by Meridian Planning Consultants

Township of Michipicoten
Part of parcels 371 & 372 Mich., and part of parcels 305 Mich. & 1865 A.W.S. being water lot locations C.K.167 & B.Y.12 Landrum Township
Schedule 'A-1' to OPA 4
ATTACHMENT '3'
Lands subject to the Michipicoten Harbour Special Policy Area Overlay Designation
Rural
Industrial
MERIDIAN
November, 2004
Scale