

**Enclosure 2 – Federal Authority Advice Record – Designation Request under the IAA –
Baldwin East Aerodrome Project**

Response due by March 3, 2023

Department/Agency	Transport Canada
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- 1. Has your department or agency considered whether it has an interest in the Project; exercised a power or performed a duty or function under any Act of Parliament in relation to the Project; or taken any course of action (including provision of financial assistance) that would allow the Project to proceed in whole or in part? Specify as appropriate.**

Most new land aerodromes in Canada, such as the aerodrome in question, are required to consult interested parties per the *Canadian Aviation Regulations* Part III, Subpart VII (307). As part of this process, the Proponent of the Baldwin East Aerodrome Project submitted its Summary Report to Transport Canada (TC) Civil Aviation in May 2022, which conducted a review and determined the Proponent's summary report to be in compliance with the regulatory requirements on July 4, 2022. The Proponent was notified by email on July 6, 2022 that no further information was required by Transport Canada at that time, as TC determined compliance with the applicable consultation requirements.

It should be noted that the finding by TC of regulatory compliance with the CAR 307 regime does not constitute an "approval", as aerodrome development is a permissive regime. Should construction proceed, the aerodrome would then be subject to basic aerodrome safety requirements as outlined in CAR Part III, Subpart 1 (301).

Please see information below which discusses a request from MP Davidson to exercise Ministerial discretion under s. 4.32 of the *Aeronautics Act* to prohibit the construction of the proposed aerodrome.

- 2. Is it probable that your department or agency may be required to exercise a power or perform a duty or function related to the Project to enable it to proceed?**

If yes, please specify that power, duty or function and its legislative source.

The Minister of Transport has received a letter dated February 16, 2023, co-signed by Member of Parliament, Scot Davidson, Member of Provincial Parliament and Ontario Minister of Transportation, Caroline Mulroney, Mayor of the Town of Georgina, Margaret Quirk, Chief of the Chippewas of the Georgina Island First Nation, Donna Big Canoe, and Advocacy Chair for the Pefferlaw Area Ratepayers Association, Karen Wolfe. They are

formally requesting that the Minister use his authority under section 4.32 of the *Aeronautics Act* (AA) to prohibit the construction of the aerodrome as, in their view, it is not in the public interest.

With this formal request, the Minister is seized with making a decision independent of the Designation Request. Coordination between IAAC and TC on this matter will be important as the Agency's determination could, for instance, be a relevant consideration for TC to consider prior to making a decision about the use of the Minister of Transport's authority at section 4.32 of the AA.

3. If your department or agency will exercise a power or perform a duty or function (including financial assistance) under any Act of Parliament in relation to the Project, will it involve public and Indigenous consultation?

If yes, please specify when and how public and Indigenous consultation would be undertaken.

With respect to the request to prohibit the aerodrome development pursuant to section 4.32 of the *Aeronautics Act*, the consultation conducted by the Proponent under the CAR 307 can be used to make the decision; however, this does not prevent TC from undertaking further consultation or requesting additional information that may be warranted to make a reasonable decision under 4.32. In this case, it is expected that the Minister will require more information about the environmental-related bylaws, policies, etc. that the municipality or province can or has used related to this aerodrome.

As the Minister has been formally requested to use his authority under section 4.32 of the *Aeronautics Act* to prohibit the construction of the aerodrome, a decision about the use of the section 4.32 authority may require consultation with Indigenous communities, should it be determined that this decision may have an adverse impact on any Indigenous community's section 35 Aboriginal and/or Treaty rights. Transport Canada's Indigenous Relations Unit will review the file to determine whether Indigenous consultation is required, and if so, the Department will consult with potentially impacted Indigenous communities.

4. Is your department or agency in possession of specialist or expert information or knowledge that may be relevant to any potential adverse effects in area of federal jurisdiction, including direct or incidental effects, stemming from the Project, as defined in the section 2 of the IAA?

Specify as appropriate.

Transport Canada Civil Aviation – Operations Specialties Group includes aerodrome inspectors whose role would be to provide regulatory information in regard to the Canadian Aviation Regulations under Part III.

Transport Canada Civil Aviation – Safety Policy and Intelligence can provide information on the request to the Minister to prohibit the aerodrome development per section 4.32 of the *Aeronautics Act*.

5. Has your department or agency had previous contact or involvement with the Proponent or other parties in relation to the Project?

Provide an overview of the information or advice exchanged.

Yes, Transport Canada's Civil Aviation branch has had previous contact with the Proponent, Sutton Airport Development Inc., and their representatives from March Law (Maurizio Marchioni) and Avia NG Airport Consultants (Bernhard Schropp). The Proponent conducted pre-consultation with Transport Canada in September 2021. Transport Canada Civil Aviation also conducted a review of the Proponent's Canadian Aviation Regulations, Part III, Subpart 7 submission on July 4th, 2022, and determined it to be in compliance with the regulatory consultation requirements.

Note: In an email dated May 3rd, 2022, Transport Canada Civil Aviation advised the Proponent of the following: “Transport Canada’s expectation is that the Proponent will continue to engage with interested parties, specifically municipal and provincial governments, as required and to ensure compliance with their applicable legislation, throughout the duration of the planned aerodrome project.”

On September 2021, the Proponent began work by conducting “pre-consultation” activities and informing Transport Canada, Nav Canada and the municipality of The Town of Georgina of the project. After undertaking the required consultation period, on March 29, 2022, the Proponent sent their “final” Summary Report to TC. During April and May 2022, TC officials asked for clarification on a few requirements and requested that additional information be included in the Summary Report, such as:

- the Aircraft Group Number information and runway width information,
- clarification on engagement with the local Conservation Authority,
- requested that the proponent undertake a risk assessment for the wildlife present on and around the aerodrome, and
- requested that the proponent identify what concerns were raised by First Nations located within the radius of 4000 metres from the location of the proposed aerodrome work and the actions/mitigations/measures taken to address them.

TC also emphasized the expectation that the Proponent continue to engage with interested parties, specifically municipal and provincial governments, as required, and to ensure compliance with their applicable legislation, throughout the duration of the planned aerodrome project.

Since spring 2022, Transport Canada has also received correspondence from politicians at all levels, as well as the Ratepayers’ Association and concerned citizens. The messaging is consistent with that specified in the Designation Request.

On June 1, 2022, TC officials, including Department of Justice counsel, met with representatives from the Town of Georgina to discuss the status of the aerodrome application, confirm the Town of Georgina’s objection to the application, and clarify the municipal jurisdiction and authority. At that meeting, TC reiterated that:

- its mandate and jurisdiction remains on aviation safety only, and in accordance with the *Aeronautics Act* and *Canadian Aviation Regulations*;
- communicated that there may be levels of jurisdictional overlap between the municipal and provincial levels;
- and further reiterated that many of the environmental questions and concerns would need to be addressed with the Ontario Ministry of Environment.

It was also noted that the CARs do not address bringing in fill, quality of fill, trucking operations or other matters related to fill.

On December 16, 2022, the Minister and TC officials met with MP Davidson, MPP Mulroney (also the Ontario Minister of Transportation) and Mayor Quirk of the Town of Georgina, indicating among other things, that there are co-jurisdictional issues and that the municipality and province have a role to play on the environmental concerns. With respect to concerns about the Proponent potentially dumping fill, it was noted that the provincial rules could be invoked.

As noted earlier, on February 16, 2023, the Minister of Transport was sent a letter co-signed by Member of Parliament, Scot Davidson, Member of Provincial Parliament and Ontario Minister of Transportation, Caroline Mulroney, Mayor of the Town of Georgina, Margaret Quirk, Chief of the Chippewas of the Georgina Island First Nation, Donna Big Canoe, and Advocacy Chair for the Pefferlaw Area Ratepayers Association, Karen Wolfe. They are formally requesting that the Minister use his authority under section 4.32(1) of the *Aeronautics Act* to prohibit the construction of the aerodrome, as it is not in the public interest, and have provided their rationale for the request. Note that the Chippewas of the Georgina Island First Nation has raised specific concerns within the letter as well, though TC has not received any direct correspondence on this matter from the First Nation to date aside from this letter.

6. From the perspective of the mandate and area(s) of expertise of your department or agency, does the Project have the potential to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA?
- Could any of those effects be managed through legislative or regulatory mechanisms, or programs administered by your department or agency?
 - If a licence, permit, authorization or approval may be issued, could it include conditions in relation to those effects?

Transport Canada's mandate and areas expertise in relation to aerodromes are focused on aviation safety, pursuant to the *Aeronautics Act* and Canadian Aviation Regulations. The Department does not have knowledge of any potential for the Project to cause adverse effects within federal jurisdiction or adverse direct or incidental effects as described in section 2 of the IAA.

With respect to TC's legislative and regulatory mechanisms, it should be noted that the Department does not issue any licence, permit, authorization or approval for any uncertified aerodrome undergoing construction/development in Canada. However, as previously stated, while the Minister does not approve aerodrome development, under section 4.32 of the *Aeronautics Act*, the Minister may make an order prohibiting the development or expansion of a given aerodrome or any change to the operation of a given aerodrome, if, in the Minister's opinion, the proposed development, expansion or change is likely to adversely affect aviation safety or is not in the public interest. This can be a full prohibition, or it can be made with conditions to be met by the Proponent (e.g. to undertake additional consultations or take some certain action). This would typically be considered as a last resort, as it has implications from a national perspective. The decision of whether or not to prohibit the development would be subject to judicial review by the Federal Court.

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- Based on the information provided by the Proponent, are the proposed mitigation measures appropriate to address the potential adverse effects?
 - Are there norms that the Proponent would be reasonably expected to follow to manage effects (such as standard design features and mitigation, and existing guidance documents)?
 - If you have a permit, license or authorization that is applicable to the Project, indicate how the Duty to Consult, as set out in section 35 of the *Constitution Act, 1982*, would be implemented.

[When responding to these questions, please keep in mind the relevant factors listed in the Operational Guide: [Designating a Project under the Impact Assessment Act – Canada.ca](#)]

Now that the Minister is seized with the decision to prohibit the development or not, per the formal request made, a decision about the use of the section 4.32 authority may require consultation with Indigenous communities, should it be determined that this decision may have an adverse impact on section 35 Aboriginal and/or Treaty rights. Transport Canada's Indigenous Relations Unit will review the file to determine whether Indigenous consultation is required, and if so, the Department will consult with potentially impacted Indigenous communities.

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7. Does your department or agency have an oversight mechanism, policy, guidance, program or additional authority (or know of any) that may be relevant and could serve as a means to address the concerns expressed about the Project?

In particular, consider ways to address any of the following issues that have been raised by the requestor, that fall within your mandate:

- Potential impacts to fish and fish habitat (e.g., surface water contamination from runoff into Lake Simcoe via the Burnie Creek);
- Potential impacts to species at risk and/or their habitat (e.g., from changes to, or loss of, critical habitat);
- Potential impacts to migratory birds and/or their habitat (e.g., from changes to, or loss of, habitat);
- Potential impacts to wetlands and wetland function;
- Potential impacts to surface water and/or groundwater quality, including drinking water;
- Potential impacts from the use of contaminated soil fill, including on human health;
- Potential impacts on air quality, including on human health; and
- Potential impacts on Indigenous peoples on the following:
 - health, social or economic conditions;
 - current use of lands and resources for traditional purposes (e.g. hunting, fishing, trapping, gathering); and
 - any structure, site or thing that is of historical, archaeological, paleontological or architectural significance.

If yes, please specify the oversight mechanism, policy, guidance, program or authority and how it could be applied to the Project.

The *Aeronautics Act* provides an additional authority that may be relevant in relation to this proposed aerodrome development. Under section 4.32 of the *Aeronautics Act*, the Minister may make an order prohibiting the development or expansion of a given aerodrome or any change to the operation of a given aerodrome, if, in the Minister's opinion, the proposed development, expansion or change is likely to adversely affect aviation safety or is not in the public interest. This can be a full prohibition, or it can be made with conditions to be met by the Proponent (e.g. to undertake additional consultations or take some certain action). This would typically be considered as a last resort, as it has implications from a national perspective.

Please see Annex I, for questions directed to your specific federal department.

8. **Does your department or agency have information knowledge of any applicable oversight mechanism, policy, guidance, or programs for this Project administered by any other levels of government?**

If yes, please specify.

No.

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9. **If your department has guidance material that would be helpful to the Proponent or the Agency, please include these as attachments or hyperlinks in your response.**

Canadian Aviation Regulations Part III, Subpart 1 - <https://laws-lois.justice.gc.ca/eng/regulations/sor-96-433/page-17.html#h-988738>

Canadian Aviation Regulations Part III, Subpart 7 - <https://laws-lois.justice.gc.ca/eng/regulations/sor-96-433/page-29.html#h-989999>

Transport Canada Advisory Circular 300-001 - <https://tc.canada.ca/en/aviation/reference-centre/advisory-circulars/advisory-circular-ac-no-300-001>

Transport Canada Advisory Circular 307-001 -
<https://tc.canada.ca/en/aviation/reference-centre/advisory-circulars/advisory-circular-ac-no-307-001>

David Zeit

Name of departmental / agency responder

Regional Senior Environmental Supervisor

Title of responder

March 7, 2023

Date

ANNEX I – ADDITIONAL FEDERAL AUTHORITY SPECIFIC QUESTIONS

Environment and Climate Change Canada:

- 1) The requester indicated (Enclosure 1) that there are federally listed species at risk. Please confirm the presence or absence of critical habitat for species at risk, and identify the specific species at risk of concern. Discuss the specific actions, or policies and guidance administered by your department, if any, pursuant to the *Species at Risk Act* to address any potential effects of the Project to federal species at risk.
- 2) The requester indicated (Enclosure 1) that there are federally listed migratory birds. Please confirm the presence or absence of migration routes and/or habitat for migratory birds, and identify the specific migratory birds of concern. Discuss the specific actions, or policies and guidance administered by your department, if any, pursuant to the *Migratory Birds Convention Act, 1994* or the *Migratory Bird Regulations, 2022* to address any potential effects of the Project to migratory birds.

Fisheries and Oceans Canada:

- 1) Based on the proponent's information¹, clarify any concerns with any potential impacts to fish and fish habitat in waterbodies on the Proponent's project site and surrounding water bodies.

Transport Canada:

- 1) **The Agency understands that the Proponent's revised summary report dated May 2022 (Version 3), underwent Transport Canada's regulatory review and the report was determined to be compliant with applicable requirements of the Canadian Aviation Regulations 307 on July 6, 2022. Please reconfirm this statement? Please indicate if there are any additional requirements under Transport Canada's mandate that the Proponent must follow?**

The Agency's understanding is correct. The proponent must continue to follow the applicable requirements in CAR 307, as well as the requirements of CAR 301 applicable to the aerodrome itself.

- 2) **Discuss any role that Transport Canada would have during the life of the Project, including in addressing any comments or concerns by members of the Public or Indigenous communities.**

Transport Canada Civil Aviation provides regulatory oversight of aerodromes in Canada to ensure compliance. Comments or concerns regarding the Canadian Aviation Regulations would be addressed by Transport Canada.

¹ Information regarding the Proponent's final summary report submitted to Transport Canada can be found at the following link: <https://www.newaerodromeontario2021.ca/>