

Enclosure 2 – Provincial Regulator Advice Record – Designation Request under the IAA – Baldwin East Aerodrome Project

Response requested by **March 31, 2023**

Ministry	Environment, Conservation and Parks
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Alternate Ministry Contact	Nicole Tuyten – Permissions Coordinator – Nicole.Tuyten2@ontario.ca

1. In general terms, please confirm and describe your ministry's role (if applicable) in the Project.

The Species at Risk Branch is responsible for the administration of the Endangered Species Act, 2007 (ESA) and its regulations. Ontario is committed to conserving and protecting species at risk and their habitats and ensuring that the legislation provides stringent protections for species at risk, while continuing to work with stakeholders and Indigenous peoples to improve the effectiveness of the program.

The branch's permissions team:

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- responds to inquiries regarding ESA authorizations
 - undertakes technical reviews of permit applications and makes recommendations about decisions to the Minister
 - works with proponents to navigate the application process (i.e., information gathering, authorization application, authorization drafting, approvals, and implementation).
 - provides technical input into other government approvals to ensure the Endangered Species Act and species at risk are considered and protected (e.g. environmental assessments, land use planning, aggregate licences)
 - provides program support for compliance activities including subject matter expertise
 - builds and maintains relationships with key regulated communities (e.g. municipalities, other ministries, commercial/industrial sectors, indigenous communities) and builds on ESA implementation experiences, as well as provide input to policies related to species at risk protection and recovery
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2. Please provide the contact information of the person or persons responsible for managing your ministry's oversight of the Project (if different from lead contact above).

Jeff Andersen – Management Biologist – Jeff.Andersen@ontario.ca

3. Describe the provincial policy, legislative or regulatory process or approvals administered by your ministry that may assess or manage the potential adverse effects of the Project (e.g., Ontario's *Endangered Species Act, 2007*). For each mechanism or approval, please provide information regarding the following:
- Name of the process or authorization (e.g., certificate, license, permit or approval) and the associated policy or legislative framework;
 - Whether (for each) the authorization would set conditions and if yes, what issues would those conditions address;
 - Whether (for each) the authorization would require public and/or Indigenous consultation¹ and if yes, provide information on the approach to be taken; and
 - Whether (for each) your ministry has guidance material that would be helpful to the Proponent or the Agency (please provide these as attachments or hyperlinks in your response).
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Sections 9 and 10 of the *Endangered Species Act, 2007* (ESA) prohibit activities such as killing, harming, harassing and capturing threatened or endangered species (species at risk listed under the ESA) and damaging or destroying these species' habitat. It is the proponent's responsibility to determine if their planned activity(s) will have adverse impacts on species at risk and/or their habitat. If a proposed activity will impact an endangered or threatened species or its habitat (i.e., the activity may contravene subsection 9(1) or 10(1) of the ESA), an authorization would be required to proceed with their activity and be in compliance with the ESA. If impacts to protected species cannot be avoided, there are three types of authorization options available under the ESA: permits, agreements, and conditional exemptions.

Permits

The ESA contains provisions that allows the Minister to issue a permit to a person, company or organization carrying out an activity that will adversely impact species and/or their habitat. Permits may only be issued under certain circumstances and may contain conditions. The authorization provided by a permit only applies if the conditions included in the permit are followed. Conditions in a permit can include:

- taking measures to minimize the adverse effects of the activity on species at risk
- completing beneficial (helpful) actions for the species
- creating and following a mitigation plan
- monitoring and reporting on the effectiveness of mitigation measures

The following permits are provided for by the ESA:

- A Permit – Human Health or Safety (e.g. Removal of hazardous rock/cliff faces adjacent to public roads)
- B Permit – Protection or Recovery Permit (e.g. Studying a presence of a species to improve ability to plan and mitigate impacts)
- C Permit – Overall Benefit (e.g. Land development)
- D Permit – Significant/Social Economical Benefit to Ontario (e.g. Constructing a highway related to an International Bridge)
- Mitigation Plan (e.g. construct a new energy project that may affect SAR)
- Section 19 (e.g. issued to a band, tribal council or organization that represents a territorially based Aboriginal community)

Agreements

The ESA provides for authorizations to be issued by way of an agreement. Like permits, agreements may contain conditions. The authorization provided by an agreement only applies if the conditions included in the agreement are followed. Conditions in an agreement can include:

- taking measures to minimize the adverse effects of the activity on species at risk
- completing beneficial actions for the impacted species
- creating and following a mitigation plan
- monitoring and reporting on the effectiveness of mitigation measures

Exemptions

The ESA provides for exemptions for activities that would otherwise be prohibited under the general prohibitions against adversely effecting species (listed on the [Species at Risk in Ontario \(SARO\) list](#)).

These regulatory exemptions may include conditions. Regulatory exemptions only apply if these conditions are met. Conditions in a conditional exemption can include:

- undertaking measures to minimize the adverse effects of the activity on species at risk, and in some cases, to complete beneficial actions for the impacted species
- creating and following a mitigation plan
- monitoring and reporting on the effectiveness of mitigation measures

Regulations made under the *Endangered Species Act, 2007* that contain conditional exemptions set out specific eligibility requirements and conditions that must be met for the exemption to apply. Some conditional exemptions require you to register with the ministry as a condition of receiving the exemption

Please refer to this website to learn more about the Permit or Authorization process for SAR - [How to get an Endangered Species Act permit or authorization | ontario.ca](#)

Please refer to this website to learn more about the permit process and the duty to consult with Aboriginal communities during the submission for a permit (section 5) - [Endangered Species Act submission standards | ontario.ca](#)

Please refer to the [Endangered Species Act, 2007, S.O. 2007, c. 6 \(ontario.ca\)](#) to learn about the purpose of the Act as well as offenses and penalties, protection and recovery of species, etc to ensure you are in compliance with the ESA.

4. Confirm whether any authorization listed above would contemplate the following matters and if yes, discuss, in general, the benchmarks or standards to which a project of this nature may be held (be specific in relation to each point below that may be applicable to your ministry's mandate):
- Potential impacts to fish and fish habitat (e.g., 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, or other areas of such as the Ontario Greenbelt;
 - 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 potential impacts 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.

As noted above, it is the responsibility of the proponent to assess its project for potential impacts to SAR and their habitat. To date, MECP has not been engaged by the proponent for this project nor received any submission related to permissions under the ESA. At this point, therefore, the ministry cannot confirm whether an authorization will be required.

The bench marks or standards – commonly referred to by MECP as the “legal tests” of the ESA – depend on the type of permit or agreement or the conditional exemption, if applicable, that are sought by the proponent.

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5. Have you received public comments/concerns in relation to the Project? If yes, provide an overview of the key issues and the way in which (in general terms) your ministry intends to address (or has addressed). If no comments/concerns were received to date, provide an overview of how your ministry would manage any future public comments/concerns.

Proponents are encouraged to reach out to the SAROntario@ontario.ca email account regarding any concerns during the permitting process. To date, the MECP has not been engaged in this project.

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6. Have you received Indigenous community comments/concerns in relation to the Project? If yes, provide an overview of the key issues and the way in which (in general terms) your ministry intends to address (or has addressed). If no comments/concerns were received to date, provide an overview of how your ministry would manage any future comments/concerns.

[*Please see answer to question 5*](#)

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7. Do you have any other information about the Project in relation to potential adverse effects or impacts to the public, or Indigenous peoples and their rights as protected under section 35 of the *Constitution Act, 1982*? If yes, please specify.
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Paul Heeney

Name of responder

Manager, Permissions

Title of responder

March 31, 2023

Date