

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

Response requested by **March 3, 2023**

Ministry	Ministry of Environment, Conservation and Parks (MECP)
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1. In general terms, please confirm and describe your ministry's role (if applicable) in the Project.

The Ministry of the Environment Conservation and Parks (MECP) sets policy related to waste management. Excess soil, being soil excavated as a result of various projects (e.g., development or infrastructure construction) that is not reused in the project and must be reused or disposed of at other sites, is subject to Ontario Regulation 406/19 – On-Site and Excess Soil Management (“Excess Soil Regulation”) under the *Environmental Protection Act*, which sets rules and requirements related to the reuse of excess soil. If specified requirements in the Excess Soil Regulation are not met, excess soil would be a waste and subject to waste-related legislation and regulations and the site receiving the excess soil would be considered a waste disposal site and would require the MECP's environmental approval. Soil reused in accordance with the rules specified in the Excess Soil Regulation is not a waste and can be reused without requiring waste-related approvals. Amongst other criteria, it is important that a reuse site receiving excess soil use that soil for a beneficial purpose and ensure that the soil is of appropriate quality for the beneficial purpose reuse to protect public health and the environment. While MECP sets criteria for reuse of soil, MECP does not pre-approve soil movements to a site and does not approve an undertaking that may use the soil. MECP looks to other agencies that are associated with approval of the land use and undertaking to verify the appropriateness and feasibility of the undertaking, consider broader social impacts and ensure procedures are in place to avoid deposit of waste excess soil and potential environmental impacts at the site of the undertaking (the reuse site).

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).

MECP's [local district office](#) (York-Durham District Office) is the lead for compliance oversight associated with the Excess Soil Regulation.

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 Regulation 406/19: On-Site and Excess Soil Management). 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).

[O. Reg. 406/19 – On-Site and Excess Soil Management](#) (“Excess Soil Regulation”), and the document adopted by reference in the regulation, [Rules for Soil Management and Excess Soil Quality Standards](#) (“Rules Document”), collectively provide a rules-based framework for management and reuse of excess soil in the province.

The proposed aerodrome would likely be asserting that they are, primarily, a reuse site under the Excess Soil Regulation. In relation to reuse sites the Excess Soil Regulation and Rules Document include:

- criteria for reuse of excess soil which, if met, mean the excess soil is not designated a waste and not subject to waste approvals
- risk-based excess soil quality standards for reuse of excess soil that are protective of human health and the environment
- a requirement for reuse sites accepting a large amount of excess soil to file a notice in the Excess Soil Registry.
- Requirement for the local municipal authorization to permit the proposed quantity and quality of excess soil to be received.

Excess Soil Reuse Criteria

A reuse site accepting excess soil must ensure certain criteria are met to avoid the deposited soil being considered a waste. These criteria include that:

- the reuse site must consent in writing to the deposit of the excess soil;
- there must be an identified beneficial purpose in connection with the undertaking for which the excess soil is to be used, and not just stockpiled or disposed of at the site;
- the quantity and quality of excess soil must align with and be appropriate for the site and the beneficial use and undertaking; and
- if the excess soil is liquid (a slurry), its deposit must be permitted by a legal instrument.

Beneficial Reuse

If excess soil is not being beneficially reused then it is considered a waste, the site is considered a waste disposal site, and waste soil cannot be deposited at a site without obtaining applicable waste-related approvals prior to the receipt of excess soil at the site. The Excess Soil Regulation does not provide any authority for MECP to assess prior to an undertaking commencing whether an undertaking is in the public interest, is an appropriate land use, may have environmental risks or is feasible. This input is provided by relevant agencies for this upfront assessment prior to the undertaking commencing. If an agency has issued an approval for an undertaking, it may be viewed as an indication of the validity of the undertaking and could enable that site to receive very large amounts of soil towards that undertaking.

Excess Soil Quality

As stated above, the quality of excess soil received at a reuse site must align with the beneficial use of that soil. The Excess Soil Regulation includes Excess Soil Quality Standards as a means of determining whether the quality of the soil is appropriate for the proposed reuse site. These standards are risk-based and relate to general land use categories, e.g., agricultural, residential or industrial property uses (agricultural being more stringent). If the site is governed by a legal instrument, such as a municipal by-law permit, that speaks to the acceptable quality of soil to be received at the site, the Excess Soil

Regulation would defer to the instrument. If the site is not governed by a legal instrument, the Excess Soil Quality Standards apply. It's up to a reuse site operator to have procedures in place to verify the quality of the soil being received.

Often for large sites, a fill management plan is developed to detail the soil needs, procedures to be used to verify the quality of soil received and measures to be taken if the soil received is of inappropriate quality, procedures to tracking placement of soil and on-site monitoring to help confirm that ground or surface water is not being impacted, as well as other soil management details such as run-off and erosions control, as well as truck management procedures. An assessment of a fill management plan for a large site may help to verify its ability to manage its soil appropriately. A proper fill management plan, overseen by qualified people, can also help to ensure impacts to local drinking water are avoided. MECP does not review such plans.

As mentioned, the Excess Soil Quality Standards in the regulation are risk-based and depositing of large amounts of soil for a less sensitive use (e.g., industrial or commercial uses) can affect the ability of that site to be used in the future for other more sensitive uses (e.g., agriculture or residences). While not addressed by the Excess Soil Regulation, a project managed in the public interest should ensure a viable and appropriate alternate future use if the aerodrome is not completed.

Excess Soil Registry

Larger reuse sites, those accepting greater than 10,000 m³ of excess soil for an undertaking, are required to file a notice in an online, public Excess Soil Registry (Registry). This Registry provides public and ministry awareness of an undertaking to assist with compliance. These sites are also required to develop and apply procedures to account for every load of excess soil to be deposited at the reuse site for an undertaking and to ensure that the storage of excess soil for final placement in respect of an undertaking does not cause an adverse effect. MECP does not approve these procedures. The Registry is developed and maintained by the Resource Productivity and Recovery Authority (RPRA), and more information can be found on their webpage: <https://rp.ra.ca/programs/excess-soil-registry/>

Compliance

The Excess Soil Regulation is generally rules-based, not approvals-based. Most excess soil reuse and management does not require that MECP issue an approval, although waste disposal sites such as landfills, and processing or storage facilities typically require a waste environmental compliance approval from the ministry. It is up to the proponent to ensure they are aware of the relevant rules that would apply to their project and complete any applicable notifications or registrations that are required. As stated above, larger reuse sites are also encouraged to develop fill management plans. These plans are often completed and implemented by a qualified person and incorporate the regulatory requirements from the Excess Soil Regulation, as well as other best practices, mitigation methods such as auditing procedures, dust/erosion control plans, and groundwater monitoring plans, contingency plan for a viable alternate future reuse of soils at the site in the event the project requires alteration or cannot proceed as planned.

If excess soil is not managed according to the appropriate rules or is illegally dumped at a site, MECP would take compliance actions under the authority of the *Environmental Protection Act* (EPA), including ordering removal of soil from a site.

In general, while the Excess Soil Regulation provides a framework for soil reuse and reactive compliance in relation to waste excess soil, proactive planning for management of excess soil to avoid environmental and social impacts is the responsibility of the project proponent together with agencies approving undertakings receiving excess soil for reuse.

Guidance on the Excess Soil Regulation and Rules Document, including plain-language fact sheets, can be found on MECP's 'Handling Excess Soil' webpage: <https://www.ontario.ca/page/handling-excess-soil>

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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):
- Expected impacts to fish and fish habitat (e.g., from runoff into Lake Simcoe via the Burnie Creek);

- Expected impacts to species at risk and/or their habitat (e.g., from changes to, or loss of, critical habitat);
- Expected impacts to migratory birds and/or their habitat (e.g., from changes to, or loss of, habitat);
- Expected impacts to wetlands and wetland function, or other areas of such as the Ontario Greenbelt;
- Expected impacts to surface water and/or groundwater quality, including drinking water;
- Expected impacts from the use of contaminated soil fill, including on human health;
- Expected impacts on air quality, including potential impacts on human health; and
- Expected 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.

The Excess Soil Regulation and Rules Document includes some rules or requirements relevant to these matters:

- The Excess Soil Quality Standards are intended to be protective of human health and the environment, if followed. Some rules related to the final placement of soil at a reuse site require use of certain standards in specified circumstances, e.g., near waterbodies, on land to be used for agriculture. The Excess Soil Regulation does not ensure that robust procedures are planned and in place to verify soil quality. Compliance by MECP is reactive to issues that may be found. An assessment of a planned project could consider whether procedures related to soil quality are robust, whether there is independent verification or oversight, and assess the need for ongoing groundwater and/or surface water monitoring.
- Rules for soil storage on reuse sites apply, although these are mostly outcome-based, e.g., prevent any adverse effects, including management of dust, leachate, run-off and erosion. An assessment of this proposal could consider the procedures that are planned to ensure these outcomes.

Municipal Site Alteration By-Law

Many municipalities in Ontario have municipal site alteration by-laws under the *Municipal Act*, and issue permits in accordance with that by-law. These by-laws may include some operational requirements and address some potential environmental or social concerns that the provincial regulation does not address. As described above, on soil quality and quantity, the provincial regulation defers to any requirements in the permit. It is MECP's understanding that the local municipality does have a site alteration (fill) by-law in place. If they have not been, the municipality should be contacted for a better understanding of their by-law and the extent to which it is applicable to an aerodrome. An assessment of potential impacts should verify that the proponent intends to get and operate in accordance with a municipal site alteration permit.

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.

No comments related to soil management for this project have been received by MECP to date. A project of this type is likely to generate a large amount of comments or concerns as similar projects for proposed aerodromes in the past have generated concerns related to the receipt of very large amounts of excess soil and related impacts. Concerns have related to impacts on ground water, noise, dust, truck traffic and safety. Concerns related to these types of projects have also related to whether the proponent intends to complete these projects or simply take in large amounts of excess soil at a very large profit, and then stop. As described above, MECP may respond reactively if the matter is within MECP's mandate of assessing potential adverse impacts or deposit of waste. For other aerodrome projects MECP has heard that these may not be in the public interest, but MECP does not assess the social or economic costs and benefits of these projects, nor whether procedures or safeguards are in place to prevent or limit impacts, or whether the approach would enable the site to be used for other land uses if the project is not completed.

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.

No comments related to soil management for this project have been received by MECP to date, however concerns from Indigenous communities are expected

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.

No

Chris Lompart

Name of responder

Manager – Land Use Policy

Title of responder

March 15, 2023

Date