March 17, 2022

# C2: STAFF REPORT

### Re: Proposed regulatory changes for the beneficial reuse of excess soil at pits and quarries in Ontario (Environmental Registry Posting 019-4801)

### BACKGROUND:

The Ministry of Northern Development, Mining, Natural Resources and Forestry (MNDMNRF) is proposing regulatory changes that will enable the depositing of excess soil to facilitate rehabilitation at authorized pits and quarries under the Aggregate Resources Act (ARA)

As a pit or quarry undergoes extraction or has completed extraction, operators are required to rehabilitate sites. Current policy statements issued under the ARA are limiting in terms of the amount of material that can be brought from off-site to facilitate rehabilitation. The expectation is that aggregate site operators will strip back overburden, retain it on site (e.g., in the form of berms), and then redistribute it over extracted areas as the main means of rehabilitation.

New rules and regulations under theEnvironmental Protection Acthave recently come into effect that encourage the re-use of excess soil where appropriate, thereby treating it as a resource rather than a waste product (unless it is contaminated). As such, pits and quarries are commonly identified as an opportunity to re-use excess soil as part of the rehabilitation process, often as a means of achieving a more intensive restoration of the extracted landscape than what could be achieved using only the overburden retained on site.

### PROPOSED REGULATION:

The full text of the proposed regulation(s) is not yet available, however, a posting on the Environmental Registry provides a summary of what is proposed. The Environmental Registry description does not include mention of the Niagara Escarpment Plan (NEP) or Niagara Escarpment Planning and Development Act (NEPDA); therefore, there is some certainty that the proposed regulation will not affect the policies and processes that the NEC uses to assess NEP amendments and development permit applications related to pits and quarries. Regardless, staff has prepared the attached comments to ensure MNDMNRF staff is aware of the provisions in the NEP and NEPDA and how they may relate to the proposed ARA regulatory changes.

Essentially, the existing provisions in the NEPDA and NEP ensure that a proposal to import excess soil into a pit or quarry in the NEP Area could not be done without the review and approval of the NEC. This would include any attempt to refill a depleted pit or quarry back to its original elevation (fill-to-grade). NEC staff has significant concerns about such operations, not only from a NEP perspective, but also from a more generalized environmental risk and precautionary principle perspective. However, the existing policies in the NEP would prevent such fill-to-grade proposals from being considered, unless the NEP amendment process is invoked.

The Environmental Registry posting can be viewed at <https://ero.ontario.ca/notice/019-4801> and the draft letter with NEC comments is attached.

### RECOMMENDATION:

That the Commission endorse the attached draft letter to be sent to the Ministry of Northern Development, Mines, Natural Resources and Forestry.

## Prepared by:

Original signed by:

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Kim Peters, MCIP, RPP

Manager

## Approved by:

Original signed by:

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Debbie Ramsay, MCIP, RPP

Director

Appendix 1 – Draft letter to NDMNRF

# APPENDIX 1

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| Niagara Escarpment Commission232 Guelph St. Georgetown, ON L7G 4B1Tel: 905-877-5191www.escarpment.org | Commission de l’escarpement du Niagara232, rue GuelphGeorgetown ON L7G 4B1No de tel. 905-877-5191www.escarpment.org |

March 17, 2022

Ministry of Northern Development, Mines, Natural Resources and Forestry

RPDPB - Resources Development Section

300 Water Street, 2nd Floor, South Tower

Peterborough, ON

K9J 3C7

**Re: Proposed regulatory changes for the beneficial reuse of excess soil at pits and quarries in Ontario (Environmental Registry Posting 019-4801)**

Staff of the Niagara Escarpment Commission (NEC) has reviewed the above-noted regulatory proposal posted on the Environmental Registry and offers the following comments in relation to implications of the proposal on the Niagara Escarpment Plan (NEP) and Niagara Escarpment Planning and Development Act (NEPDA).

The NEC would like to ensure the Ministry is aware that there are policies in Part 2.9 of the NEP that allow for limited use of off-site materials (e.g., excess soil) as part of rehabilitation when on-site materials are not sufficient. Off-site materials are only permitted for use in stabilizing and revegetating disturbed areas. Off-site material are not to be used for any major regrading toward a planned after use. (Refer to policies Part 2.9.7, 2.9.8 and 2.9.9). This any proposal to import excess soil into a licensed pit or quarry in the NEP Area for any other purpose (including commercial filling) would not be supportable under current NEP policies.

In reviewing the regulatory proposal, the NEC is of the opinion that nothing in the proposal suggest that pits and quarries operators can circumvent the NEC’s development permit application process (or NEP amendment process) if they intend to accept off-site excess soil beyond what was initially authorized through an approved rehabilitation plan. Although the proposal includes new rules that would enable operators to make changes to their site plans without the need for Ministry review under the Aggregate Resources Act (ARA), the NEPDA would still require that an approval from the NEC be obtained. 1/2

The reference to allowing operators to fill pits and quarries “to grade” with excess soil is of some concern to the NEC, given the community impacts of extended operations at these sites, as well as the significant environmental risk to groundwater where such filling occurs below the water table. With regard to filling in pits and quarries in the NEP Area, Ministry staff should be aware of a decision from the Environmental Review Tribunal (Niagara Escarpment Hearing Office) that refused a NEC permit application that proposed to fill the Cheltenham Quarry to grade. Essentially, the Hearing Officer found that the proposal constituted a commercial/industrial land use that was not permitted in the NEP Area. In the time since that decision was made, the NEP was amended through the Coordinated Land Use Planning Review to include the policies in Part 2.9 of the NEP noted above, making it clear that filling-to-grade is not permitted. While it is recognized within the NEP that aggregate extraction on the Escarpment is in the public interest due to the high quality of the resource and the proximity to market, a similar argument cannot be made about the Escarpment and disposal of excess soil. It cannot be said that the Escarpment is the only place to dispose of excess soil.

The NEC is aware of efforts by some public agencies (e.g., conservation authorities) to engage in some filling using excess soil to achieve ecological enhancements after ARA licences have been surrendered. The NEP does not have specific policies that permit this, however, the reuse of retired aggregate sites to meet the increasing demand for recreational spaces within southern Ontario is not without merit since one of the objectives of the NEP is to provide opportunities for outdoor recreation. The NEC does find it appropriate that such proposals be subject to rigorous review (e.g., the NEP amendment process, official plan amendments) and continue to be brought forward by public agencies like conservation authorities, where the end result can be demonstrated to provide a public benefit, and where oversight of the operation is being carried out by a public body acting in the public interest.

For additional information or clarification, please contact the undersigned at kim.peters@ontario.ca, or 647-539-8788.

Sincerely,

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