

COMMENT RESPONSE MATRIX – MINISTRY OF NATURAL RESOURCES AND FORESTRY (APRIL 3, 2023 COMMENTS)

UPPER'S QUARRY

DATE: August 25, 2023

	Comment	Responder	Applicant Response
Natural Environment			
Fish Habitat			
1.	As noted in the NETR and EIS, Beaverdams Creek Wetland Complex and associated watercourse, a known warmwater fishery with specialized northern pike spawning/rearing habitat, flows through the middle of the proposed site and is intended to be relocated/realigned with a natural channel design. Twenty-five (25) headwater drainage features associated with the wetland complex and creek also flow throughout the entire site and serve as indirect fish habitat, providing allochthonous inputs and flow to the river. As noted, we acknowledge that the applicant is seeking a Request for Review and subsequent Application for Authorization under the Fisheries Act with the Department of Fisheries and Oceans Canada (DFO). Once received, please provide documentation from DFO confirming that all Fisheries Act obligations have been met. If the licence is approved, it will be the licensee's responsibility to implement the measures described in the letter and to remain in compliance with the Fisheries Act. The following note should be added to the site plan: "An authorization under the Fisheries Act shall be obtained where required to conduct operations at the quarry."	Walker / MHBC / Stantec	While we agree with the intent of this requirement, Walker, MHBC and Stantec would like an opportunity to speak with MNRF Staff further on our discussions to date with DFO relative to the proposed realignment and the specific wording of the requested note provided by MNRF and the timing of this authorization so it aligns with DFO's standard of practice. MHBC will be in contact with MNRF to schedule a call on this matter specifically.
2.	As stated in the NETR and EIS, "once the realigned watercourse channel has been constructed in Phases 1B and 2B and adequate vegetation has been established (as confirmed by an ecologist), water from the existing watercourse will be diverted to the realigned watercourse in consultation with regulatory authorities." Please also include wording that a fish rescue will be carried out. A Licence to Collect Fish for Scientific Purposes is required to permit the fish rescue.	Stantec / MHBC	The following has been added to the EIS recommendations and the ARA Site Plans (Drawing 5, Natural Heritage Notes) to address this comment: i) Added text to Section 12.1: "A fish rescue will be undertaken prior to dewatering and channel relocation. A Licence to Collect Fish for Scientific Purposes will be obtained for the fish rescue".
Habitat of Endangered and Threatened Species			
3.	As per ARA Technical Reports and Information Standards, Section 2.2 (e), endangered and threatened species and their habitat need to be assessed for negative impacts, including inventory, habitat assessments and any proposed preventative, mitigative or remedial measures must be identified. As endangered and threatened species and their habitat are regulated by the Ministry of Environment, Conservation and Parks (MECP), we acknowledge that the applicant has circulated the MECP to ensure that the proposed development, including the proposed rehabilitation, is in accordance with the Endangered Species Act.	Stantec / MHBC	Please see Sections 2.3, 4.3, 5.0, 6.5, 8.3 and 12.0 of the EIS which includes a detailed assessment of potential negative impacts, including inventory, habitat assessment and, where proposed impacts are anticipated, the EIS has proposed preventative, mitigative or remedial measures accordingly through the EIS recommendations. The recommendations of the EIS have been incorporated onto the Site Plans.
Significant Wildlife Habitat			

	Comment	Responder	Applicant Response
4.	Process and conclusions regarding the presence or absence of some Significant Wildlife Habitats (SWH) within 120 m of the site is unclear and/or appears to be missing. In general, the report should provide sufficient information on the methods and findings to substantiate conclusions with respect to significant wildlife habitat. The ecosites identified and mapped for the proposed licence area suggest the following candidate Significant Wildlife Habitats may be present (at minimum) and have not been sufficiently demonstrated to prove absence: Specialized Habitat for Wildlife: Turtle Nesting Areas, Habitat for Species of Conservation Concern: Special Concern and Rare Wildlife Species, Terrestrial Crayfish. The Level 1 report should provide a conclusion (and rationale) regarding the presence or absence of each wildlife habitat described in the ecoregional criteria.	Stantec	Please see updated EIS prepared by Stantec (dated August 25, 2023) and, specifically, additions made to Sections 3.2, 5.5, 6.7 and Appendix B-2.
	Site Plans		
General			
5.	To facilitate a more efficient review, please consider updating the Site Plan Notes to reflect the current standards and numbering. The Aggregate Resources of Ontario: Site Plan Standards (2020) are available online at https://www.ontario.ca/page/aggregate-resources . Alternatively, where bullets without numbering are used, please change them to be alphanumeric (1. 2. 3. or a. b. c., etc.) so they can be easily referenced.	MHBC	Please find enclosed a matrix prepared by MHBC which cross-references the Site Plan notes with the ARO Site Plan Standards. The challenge with following the Standard number is that it does not follow a logical sequence and does not include everything included on the Plans. Therefore, this approach has been accepted by MNRF on other licence applications.
6.	Permit conditions must be concise and free from ambiguity. Permit conditions and site plan notes must apply exclusively to the permittee and must be practical and legally enforceable by MNRF.	MHBC	See updated Site Plans.
7.	There are some instances where the symbology used in the legend contradicts the symbology used on the drawings. Please ensure the legend is updated to reflect the current drawing. One example of this is on drawing 2, Dashed line shown on legend as additional lands owned, however this appears to be the separation between phases.	MHBC	See updated Site Plans. For example, Drawing 2 has been revised to change the symbology of "additional lands owned by licensee".
Existing Features			
8.	As per ARA Site Plan Standard #20, all significant natural features on and within 120 m of the site shall be depicted on the Existing Features page. Please include all significant natural features confirmed on Figure 3: Significant Natural Features of the NETR and EIS on the site plan.	MHBC / Stantec	The Existing Features (Drawing 1) has not been updated given the following explanation. Firstly, we want to clarify that Figure 3 illustrates "mapped features" but Figure 12 of the EIS illustrates all of the significant features on and within 120 metres based on the findings of the EIS, so we think it is appropriate to map the features identified on Figure 12. To MNRF's point, when we compare Figure 12 with the Existing Features Plan, we do note that the Existing Features Site Plan ("Key Natural Heritage Features Schematic" does not show: <ul style="list-style-type: none"> • Habitat of Threatened or Endangered Species <ul style="list-style-type: none"> • Barn Swallow Nesting Location(s) However, a registration under the ESA through the Barn Swallow exemption in Section 23.5 of O. Reg 242/08 was obtained in 2022, and the buildings identified as habitat were removed and a compensation structure erected in accordance with the registration conditions. Furthermore, Barn Swallow was delisted on January 25, 2023, and

	Comment	Responder	Applicant Response
			ongoing monitoring as prescribed by the registration is no longer required per MECP direction. The compensation structure will not be removed.
Operations / Drawing 2 & 3			
9.	Drawing 2, Site Plan Note A.3: Recommend removing this condition as Ontario Regulation 244/97 outlines the requirements for amendment application to extract into adjacent road allowances.	MHBC	While we agree that O. Reg 244/97 sets out the requirements, it is our preference to leave the reference on the Site Plan to be clear on the expected process to operators when implementing the Site Plans. No change has been made. If MNRF continues to want this removed, we will abide by that direction.
10.	Drawing 2, Site Plan Note B.1: The hours of operation chart is missing the hours of operation for the Conveyor to the mobile crusher plants: Monday to Saturday 0700 – 1900h; as outlined in the Acoustic Assessment.	MHBC	This has been added.
11	Drawing 2, Site Plan Note B.1: Recommend removing the response to emergency condition as Ontario Regulation 244/97 outlines the requirements for operating in response to an emergency.	MHBC	See response to Comment 9 above. No change has been made. If MNRF continues to want this removed, we will abide by that direction.
12.	Drawing 2, Site Plan Note C1-3: For each extraction area please only identify the approved entrance/exit location.	MHBC	The Site Plans have been revised as requested.
13.	Drawing 2, Site Plan Note C.4: This section states that only one operational entrance/exit will be utilized at any one time. Will the unutilized entrance be decommissioned after use?	MHBC	<p>Upon further review, Drawing 2, Note C.4 has been deleted as there are too many instances where an entrance/exit may need to be used from time to time, including:</p> <ul style="list-style-type: none"> • required to access the asphalt plant operation • to access Phases 2A/2B, 3B and 4 which may be required to access overburden for rehabilitation In Phases 1A/1B or 2A/2B. <p>Upon final rehabilitation, all entrances/exits will be decommissioned in accordance with Drawing 5, Note G.2.</p>
14.	Drawing 2, Site Plan Note H.6 Recommend tying this section to section A. Acoustic Assessment on Drawing 4 of 6 for further operations constrictions for aggregate processing.	MHBC	No change has been made. Note H.6 intended to direct locational requirements for buildings / structures (to address standards) and does not relate to noise requirements.
15.	Drawing 2, Site Plan Note H.7: Please confirm if the office/scale house, weigh stations or maintenance shop/shed will be removed prior to site surrender.	MHBC	Note H.7 on Drawing 2 has been revised to note that all buildings / structures are to be removed prior to site surrender.
16.	Drawing 2, Site Plan Note I.3: Recommend linking this condition to A.3 on Drawing 4 of 6.	MHBC	Note I.3 on Drawing 2 has been revised to link this condition to A.3 on Drawing 4.
17.	Drawing 2 Site Plan Note 3: Please show the location of the processing plant, which contains the secondary and tertiary crushers, that are expected to remain close to the quarry entrance	MHBC	Added the location of the processing plant to the Extraction Sequence Schematic and added reference to Note I.3 on Drawing 2.
18.	Drawing 2, Site Plan Note I.8: Recommend removing this condition as Ontario Regulation 244/97 outlines the requirements to follow the Environmental Protection Act and Ontario Water Resources Act for processing equipment.	MHBC	While we think this note helps notify operators of these requirements, we have removed this condition as requested.
19.	Drawing 2, Site Plan Note M.4: Aggregate Policy 5.00.15 outlines that Approved recycling areas must be shown as a separate specific delineated area on the site plan. Please outlined the proposed aggregate recycling location(s).	MHBC/Walker	While Aggregate Policy 5.00.15 currently states this, we also understand that this Policy is being reviewed and that the more recent and updated ARA Standards do not require the location of recycling areas be identified on Site Plans.

	Comment	Responder	Applicant Response
			<p>Therefore, Note M.7 on Drawing 2 has been revised as follows to provide more specificity in terms of location:</p> <p>“5. Recyclable material shall be kept in close proximity to the main processing plant and shall stored separately on the quarry floor and within the extraction area limit”.</p> <p>Recyclable asphalt material is further restricted by Note M. 6.</p> <p>Walker prefers this approach to avoid the need for ongoing Site Plan Amendments if recyclable areas shift with the processing plant. However, if upon review, this is still necessary, we will identify specific areas to Drawing 2.</p>
20.	Drawing 2, Site Plan Note N.1: Please have the City of Niagara Falls confirm that they are in agreement with the proposed setback reductions, as the neighboring landowner.	MHBC	Comments released through JART as part of their review did not identify any concern with the proposed setback. However, if Agreement is not reached through the Planning Act application process, the Site Plan(s) will be revised accordingly.
21.	Drawing 2, Site Plan Note N.3: Aggregate Policy 2.00.02 outlines that in these circumstances, sufficient topsoil/overburden to complete the final rehabilitation must be stored on site and/or used in progressive rehabilitation before any topsoil/overburden is removed. The removal of topsoil/overburden from the site must be phased with the below-water extraction. Please verify that there is sufficient topsoil reserves on the site to facilitate the required rehabilitation and determine the amount of material that can be moved offsite.	MHBC/Walker	While there is sufficient topsoil reserves on the site to facilitate the required rehabilitation, Walker and MHBC would like an opportunity to meet with MNR Staff on this request in order to obtain further clarity from MNR. MHBC will be in contact with MNR to schedule a call on this matter specifically.
22.	<p>Excess soil: Importation of Soil, Topsoil or Fill Material – If the importation of excess soil is still required following Walker Aggregates Response to comment 19, the MNR has 6 standard site plan conditions for the importation of excess soil. Please remove the four conditions and replace with the following:</p> <p>a. Excess soil, as defined in Ontario Regulation 244/97 may be imported to this site to facilitate the following rehabilitation:</p> <ul style="list-style-type: none"> i. Creation of 3:1 slopes (or sloping ratio otherwise described on the final rehabilitation page) ii. Top dressing to establish vegetation <p>b. Liquid soil, as defined in Ontario Regulation 406/19 under the Environmental Protection Act, is not authorized for importation to the site.</p> <p>c. The quality of excess soil imported to the site for final placement must be equivalent to or more stringent than the applicable excess soil quality standards as determined in accordance with Ontario Regulation 244/97 as amended from time to time and must be consistent with the site conditions and the end use identified in the approved rehabilitation plan.</p> <p>d. Where a qualified person is retained or required to be retained in accordance with Ontario Regulation 244/97, the quality, storage, and final placement of excess soils shall be done according to the advice of the qualified person.</p> <p>e. Excess soil imported to facilitate rehabilitation as described on this site plan shall be undertaken in accordance with Ontario Regulation 244/97 under the Aggregate Resources Act, as amended from time to time.</p> <p>f. The cumulative total amount of excess soil that may be imported to this site for rehabilitation purposes is ___ m3</p>	MHBC/Walker	<p>The Excess soil notes have been revised to Drawing 5, Note C to reflect MNR's preferred wording.</p> <p>However, the cumulative total amount of excess soil that is expected to be needed for rehabilitation requires further clarification and discussion with MNR. MHBC will be in contact with MNR to schedule a call on this matter specifically.</p>

	Comment	Responder	Applicant Response
23.	Drawing 3, Site Plan Note A.3 Please include clear and measurable triggers that would clearly define when approval would be required for deviating from the phasing (i.e., Please quantify what a minor deviation would be).	MHBC	Note A.3 on Drawing 3 has been revised to add the following sentence at the end of the Note: "The maximum combined disturbed area which includes the processing plant, berms, stockpiles, silt pond, active extraction area and area being stripped for the next area of extraction within the licence boundary identified on this Drawing but excludes the area of Phase 1A needed for the continued operation of the asphalt plant for the life of the quarry. Concurrent extraction of phases is permitted for blending purposes provided the overall maximum combined disturbed area does not exceed 40 hectares to ensure progressive rehabilitation of the site is being undertaken as required by the Site Plans."
24.	Drawing 3, Site Plan Note E.2: Please add a sentence that requires copies of the DFO approval to be shared with the MNRF.	MHBC	Note E.2 on Drawing 3 has been revised to add wording: "Once obtained, a copy of the Fisheries Act Authorization shall be provided to MNRF".
Report Recommendations / Drawing 4			
25.	Site Plan Note A.3: This section states that the primary crusher shall stay within 30 meters of the working face. Please link this site plan condition to site plan condition A.4 outlining additional considerations. Could add "Except for when extraction is in the South Extraction Area as per point A.4"	MHBC	A.3 of Drawing 4 has been revised as suggested.
26.	Site Plan Note B.1-3: Recommend removing these 3 conditions as they are duplicated from Ontario Regulation 244/97.	MHBC	See response to Comment 9 above. No change has been made. If MNRF continues to want this removed, we will abide by that direction.
27.	Site Plan Note F.1: ARA Section 12(1.1) states that "Despite clause (1) (h), the Minister or the Tribunal shall not have regard to ongoing maintenance and repairs to address road degradation that may result from proposed truck traffic to and from the site". As such, the Ministry requests that this condition be removed from the site plan, along with the schematics related to road maintenance.	MHBC	Note F.1 of Drawing 4 relates to road improvements required to the intersection of Upper's Lane and Thorold Townline Road to allow for haulage. This Note does not relate to road maintenance and repair. Schematics of intersection / entrance requires turning lanes, etc. and are typically included on Site Plans. If MNRF continues to want this removed, we will abide by that direction.
28.	Site Plan Note C. Archeology: MNRF request that the "Archeological Site- Protection Areas Requiring Further Archeological Assessment" areas as shown on the Report Recommendations drawing be shown as unextracted throughout all pages of the site plan. Approval through MNRF will also be required, prior to those areas being disturbed.	MHBC	We respectfully do not agree with the approach proposed by MNRF. The proposed Notes are enforceable and clear. With that said, we have revised Notes C.2(c) and C.3 of Drawing 4 to better address a clear trigger to ensure these areas remain protected and a clear trigger when extraction will be permitted.
Progressive and Final Rehabilitation / Drawing 5			
29.	Site Plan Note B.2: Please include clear and measurable triggers that would clearly define when an amendment would be required for deviating from the phasing (i.e., Please quantify what a minor deviation would be)	MHBC	See response to Comment 23 above. In addition, we have revised Note B.2 of Drawing 5 by adding wording that "Any major deviations from the operations sequence shall require approval from the MNRF" (similar to Drawing 3, General Note 3 revisions).
30.	Site Plan Note F.1: Please add the Trigger Mechanism and Contingency Plan to the Drawings to ensure enforceability during site operations.	MHBC	Note F.1 of Drawing 5 has been revised as requested to add the Trigger Mechanism and Contingency Plan from WSP's Level 1 and 2 Water Study. .
31.	B. Phasing: Progressive Rehabilitation was not clearly identified. Please add progressive rehabilitation including clear and measurable triggers for progressive and final rehabilitation. For example, the use of a maximum disturbed area for this site (alternatively a combined maximum disturbed area for this and the adjacent permit) or the use of operational phases	MHBC	See response to Comment 23 above.

	Comment	Responder	Applicant Response
	which relate the progressive rehabilitation to the completion of operational sequences (for example, completion of 50% side sloping and planting of Phase 1 before starting Phase 2/3).		
32.	Site Plan Note C.4: Aggregate Policy 2.00.02 outlines the scenarios where variations to the final slopes will be accepted. Please outline which scenario(s) this variation is being requested under,	MHBC / Walker	<p>We think this comment is intended to reference C.1.b on Drawing 5 (i.e. leaving extraction faces vertical”).</p> <p>In this case, large portions of the cliff face will be completely under water. Also, the variety slopes will provide for a variety of habitat and visual appeal with the end use as a lake.</p> <p>With that said, the Rehabilitation Plan can be revised to reduce the amount of vertical faces proposed to provide a greater variety of habitat and final landscape. This change is labour-intensive to make and, therefore, Walker and MHBC would like an opportunity to meet with MNRF Staff to determine what extent of variation of vertical faces vs side slopes would be agreeable to MNRF. MHBC will be in contact with MNRF to schedule a call on this matter specifically.</p>
33.	Please include more details on the planting recommendations for rehabilitation and compensation as it is suitable for the site, including, but not limited to, species, stock, and planting density. Only native, non-invasive species suitable for the site should be planted and noted on the site plan.	MHBC / Stantec	Tables 1 to 5 have been revised to add more information relative to planting density.
34.	As per the recommendation from the Agriculture Report please include the following statement on the site plan: “Non-invasive plant species will be selected for use in berm plantings and other landscaped features surrounding the quarry operation.”	MHBC	Added wording to Note F.2 on Drawing 2 to address this request.
Hydrogeology			
35.	To understand the areal distribution of potential impacts to the near-by surface water features including springs due to dewatering, please provide maps showing radius of influence in the contact aquifer and bedrock aquifer.	WSP	Please see enclosed response prepared by WSP dated June 21, 2023.
Summary Statement			
36.	Written confirmation from the Niagara Regional, City of Niagara Falls, and City of Thorold for any necessary Official Plan and Zoning Amendments is required prior to issuance of a licence.	MHBC	It is understood that approval of Planning Act applications is required prior to the issuance of a licence by the MNRF.
37.	Please contact the Ministry of Agriculture, Food and Rural Affairs’ (OMAFRA) Rural Planner, Nancy Rutherford, at nancy.rutherford@ontario.ca, regarding the Agricultural Impact Assessment, and the lack of proposed mitigation for the prime agricultural areas. Please provide written confirmation.	Colville	Our agricultural expert, Colville Consulting Inc. has contacted OMAFRA’s Rural Planner, Nancy Rutherford directly to go over the Agricultural Impact Assessment with her directly and confirm its acceptance. See attached email correspondence from OMAFRA (Nancy Rutherford) confirming acceptance of the Agricultural Impact Assessment.