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Ministry of the Environment and Climate Change
Integrated Environmental Policy Division
Land and Water Policy Branch
135 St. Clair Avenue West, Floor 6
Toronto Ontario, M4V 1P5

March 24, 2016

Dear Mr. Durrani:

Re: Excess Soil Management Policy Framework (EBR# 012-6065)

Thank you for the opportunity to comment on the Excess Soil Management Policy Framework (EBR# 012-6065). Conservation Ontario (CO) represents Ontario's 36 Conservation Authorities (CAs), which are local watershed management agencies, whose mandate includes a variety of responsibilities and functions in the land use planning and development process.

CO is pleased to see the Province is moving forward to develop new policy tools aimed at strengthening the management and oversight of excess soil movement related activities. Overall, CO believes the document is well written and is supportive of the policy framework that has been proposed. In reviewing the Framework, it is readily apparent that the Province has given our collective input (including the letter forwarded by CO to the Ministry of the Environment and Climate Change (MOECC) in February of 2013) serious consideration. CO is pleased that many of our comments and suggestions have been incorporated into the draft document.

The following comments are submitted for your consideration based upon a review by CAs. These comments are not intended to limit consideration of comments shared individually by CAs.

1. Does the proposed policy framework include adequate policy tools and actions to improve the management of excess soil in Ontario? If not, what additional tools or actions would you suggest?

CO strongly supports a coordinated effort between all agencies in implementing an effective soil management strategy. It is in all parties' best interest to deal with soil management on a proactive basis, and we feel this Framework is moving in a positive direction to achieve this goal. Furthermore, CO is pleased that the Framework proposes to fill gaps in legislation and technical guidance in order to ensure accountability from source site to the receiving site, placing a greater responsibility on the source sites. A proposed new regulation under the *Environmental Protection Act* (EPA) for source sites is welcomed by CO.

CO offers the following additional comments:

Comment 1: Ongoing Provincial Commitment is Required

It is noted through a review of the proposed actions that much of the work to be undertaken by ministries focuses on producing guidance materials for others to implement on an operational basis. It is important to recognize that the production of guidance material needs to be an on-going commitment, otherwise the guidance can become stale and out of date should the ministries move on to other policy priorities.

Furthermore, it is recommended that, as part of the guidance materials to be developed (action #4, pg.18), consideration be given to the development of/requirement for training and certification to assist in the management and monitoring of fill operations.

Comment 2: Scope of Framework Should be Broad Enough to Encompass Excess Fill Material, Not Only Excess Soil

CO suggests that any new policy tools developed to manage source sites should also adequately address other materials that may not meet the definition of 'excess soil' or 'soil', but which may nevertheless be generated/moved from a source site. For example, it has been our experience that fill material often includes construction waste and by-products such as asphalt, concrete, composts, recycled aggregate products, shingles, and ashes.

A general definition for 'fill' is included in the glossary, and "inert fill" is referenced on pages 8 and 9 and referred to in the discussion on receiving sites. As indicated above, the MOECC must ensure the full scope of the Framework includes all fill material. A better definition of "inert fill" to distinguish it from "excess soil" is needed for the purpose of administering a provincial policy approach regarding "excess fill".

It should be noted that CAs regulate the dumping of excess soils and inert fill as these materials are defined as development under the definition contained in the *Conservation Authorities Act*. Furthermore, Local Source Protection Committees (SPCs), established per the *Clean Water Act*, recognize the potential impacts of the import and disposal of fill on sources of drinking water. Some SPCs developed policies in their local Source Protection Plans (SPPs) to increase awareness of the same.

Although the approach towards seamless regulation is strongly supported, the proposed policy framework falls short by not including other fill materials besides excess soil. The proposed policy framework also does not address the lack of consistency in definitions for "fill" in various existing legislation. In order to achieve true seamless regulation of fill, it is necessary that existing legislation be amended for consistent definitions related to fill.

Comment 3: The Interface between Municipal Site Alteration or Fill By-laws and CA Regulations Must be Carefully Considered to Enhance Collaboration and Avoid Unintended Consequences

CO strongly supports the removal of current restrictions under the *Municipal Act* in order to extend municipal powers in CA regulated areas, such that municipal controls of certain activities complement the regulation activities and purview of the CAs. Extension of municipal powers in regulated areas could - and should - encompass social and nuisance elements of fill activities such as hours of operation, odor, dust and noise suppression, and road access and haulage routes. In making this amendment, the Province must be careful to ensure there is no perceived overlap or duplication of powers, and to fully retain CA regulatory powers for filling in regulated areas. In particular, the Province must control impacts on wetlands, watercourses, floodplains, other hazard areas and shorelines. CO welcomes the opportunity to participate in further discussions with the Province with regard to implementation of this proposed action.

Comment 4: Collaborative Compliance and Increased Enforcement Efforts

It is recommended that prosecution efforts associated with fill violations be made on a collaborative basis with an integrated multi-agency enforcement and compliance partnership between the MOECC, Ministry of Natural Resources and Forestry (MNR), municipalities and CAs. Additionally, it is recommended that MOECC consider collaborating with the Ministry of Transportation-Ontario (MTO) weigh-scale staff so that inspections of tracking logs and receiving site locations can be verified as safety inspections are being completed. The role of MOECC should be as an operational and enforcement/compliance partner, not just “policy maker, facilitator or guider.”

Illegal dumping of excess soil or fill material in CA regulated areas constitutes a violation under the *Conservation Authorities Act*, and CAs can lay charges to seek remediation and penalties for the illegal activities. However, this is an expensive and time-consuming legal process. More funding to assist CAs to pursue violations should be considered so that the financial burden is not borne by the CA alone. As part of the collaborative enforcement basis noted above, it is suggested that the Province establish a litigation fund to support CAs and other agencies with legal fees to deal with major enforcement and legal costs, which could be supported by fines/penalties awarded against offenders. Currently, there is no coordinated prosecutorial service or support, whether financial or otherwise, from the Province.

To assist CAs with managing violations under our regulation related to illegal filling activities, it is recommended that amendments be made to the *Conservation Authorities Act* and, if necessary, the *Provincial Offences Act*, to enhance compliance and enforcement efforts. CO urges the province to provide additional tools to CAs to allow for:

- streamlined access to removal orders;
- increased fines that are commensurate with degree of environmental degradation or the perceived economic gain from an activity;
- stop work orders;
- officer orders; and
- the ability to hold securities specific to unauthorized placement of excess soil.

Comment 5: Integration

In general there needs to be seamless integration in implementation between the pieces of legislation that apply to this issue, and existing control mechanisms and new requirements. In our view, a Municipal and Provincial administrative framework should be established to clarify implementation and roles and responsibilities, especially surrounding the administration of the proposed new regulation. Furthermore, CO recommends that consideration be given to ensure appropriate coordination between the existing control mechanisms and the proposed new requirements. This will ensure duplication is avoided and that the processes are mutually supportive. CO would welcome the opportunity to be involved in discussions pertaining to an integrated administration framework.

Comment 6: Excess Soil Management Plans

It appears the current Framework proposes requirements for two separate plans: excess soil management plans for source sites (action #1, pg. 16/17) and fill management plans for receiving sites (pg.13 and 21). CO's preference is that excess soil/fill management planning, wherever possible, should be captured within one full life cycle plan. Two separate plans would not capture the excess soil/fill activity process in its entirety and may create logistical issues. For example, proposed excess soil management plans for source sites are required to include information on the receiving sites and proof that the receiving site has been authorized by municipal/regulatory agencies. As municipalities and CAs cannot issue 'approvals in principle', in order for the two plan process to work, both plans would essentially have to be completed at the same time (if not the fill

management plan first). CO does however acknowledge that there may be certain circumstances where two plans may be necessary (for example: a location receiving fill from multiple locations). For this reason, CO would like to participate in discussions with the Province on plan requirements, implementation challenges, and plan reviews and approvals.

Comment 7: Definitions Required

The proposed new regulation under the EPA would require the development and implementation of excess soil management plans for 'larger and/or riskier' sites (action #1, pg.16). While we agree that some consideration of thresholds for the application of any new regulation is appropriate, it will be important that terms such as 'larger' and 'riskier' be clearly defined. Extensive consultation will be needed to set these volume thresholds. Another trigger should consider risk assessment, given that even small sites which have previously supported contamination-producing activities may warrant regulatory controls at the source.

Comment 8: Linking the Framework to Planning Tools, Building Code, and the Environmental Assessment Process

CO supports linking the requirement of an excess soil management plan with the issuance of certain building permits, which could be done through amendments to the *Building Code Act*. This would require consideration for excess soil management early in the project design process. We also support the ministries linking planning for excess soil management under any new regulatory requirements (such as an excess soil management plans required as part of the building permit process) to applicable *Planning Act* approvals. However, this does trigger questions such as: who would require these plans, and who would clear/review them? CO suggests some form of multi-agency pre-consultation process should be considered to ensure all regulatory agencies are involved early in the review/approvals process.

In addition to linking the completion and/or approval of excess soil management plans to building permits and *Planning Act* approvals, it is suggested that linking excess soil management plans with *Environmental Assessment Act* (EAA) processes and approvals should also be addressed. Projects reviewed and approved through processes under the EAA (e.g. infrastructure projects under the Municipal Class EA, highway projects under MTO's Class EA, etc.) may be a significant source of excess soil generation. While this is addressed to some extent in section 5, Planning for Re-Use Opportunities, it is suggested that it would be appropriate to consider EAA requirements as part of the source site management actions/tools to be developed.

Lastly, larger scale infrastructure projects requiring an Environmental Compliance Approval (ECA) from the MOECC such as water treatment plants, reservoirs, wastewater treatment plants, sewage pumping stations, etc. should be required to provide proof of excess soil management plans before issuance of the ECA. Additionally, it is recommended that all infrastructure installed through tunneling and/or earth-boring should be required to prepare an excess soil management plan prior to approval.

Comment 9: Linking the Framework to the *Clean Water Act* and Source Protection Plans

In the proposed policy framework, there is a marked absence of the provincially legislated *Clean Water Act* (2006) and its associated source protection planning requirements and recommendations. The *Clean Water Act* is a significant piece of provincial legislation that strongly aligns with one of the main goals of the proposed Framework: the protection of human health and the environment. Under the *Clean Water Act*, Source Protection Plans (SPPs) were developed by local multi-stakeholder Source Protection Committees (SPCs). These SPPs contain policies to protect quality and quantity of sources of municipal drinking water.

Contaminants in fill can negatively impact the source water quality. Runoff caused by heavy rainfall could cause fill to reach a surface drinking water intake, and also infiltrate through soil to reach supply groundwater aquifers. Special consideration should be given to Issue Contributing Areas (ICAs) that are delineated per the

Clean Water Act (within vulnerable areas) and associated with known water quality issues (e.g.: nitrate, chloride) in municipal sources of drinking water as identified by the local SPC. Furthermore, fill which is contaminated, uncontaminated and/or inert could have unintended consequences on water quantity by reducing groundwater infiltration at the receiving site. In vulnerable areas that are already determined to be stressed for water quantity, importing unsuitable fill could potentially heighten the stress. In limited situations, construction activities may behave as ‘transport pathways’ under the *Clean Water Act*. This is defined as ‘land conditions caused by human activity that results in faster or more widespread distribution of contaminants in water, thus increasing the vulnerability of a municipal drinking water system’s source water supply’. If the type and quantity of fill placed is such that it allows for faster infiltration of precipitation into an intrinsically more vulnerable aquifer (e.g.: shallow aquifer, or groundwater table with sand layer above it), it could be considered a transport pathway to municipal drinking water wells. On the other hand, if the type and quantity of fill placed decreases infiltration into the soil but causes higher amounts of runoff to a municipal surface water intake, it could be considered a transport pathway to the surface water intake.

The O. Reg. 287/07 under *Clean Water Act* states that if a person applies to a municipality for approval of a proposal to engage in an activity (in a vulnerable area around municipal wellheads or surface water intakes) that may result in the creation of a new transport pathway or the modification of an existing transport pathway, the municipality shall give the local Source Protection Authority and the SPC notice of the proposal. The notice shall include a description of the proposal, the identity of the person responsible for the proposal and a description of the approvals the person requires to engage in the proposed activity. The municipality shall give a copy of the notice to the person responsible for the proposal as well.

Due to the above reasons, it is necessary that the proposed policy framework incorporate the *Clean Water Act* and local SPP policy requirements and recommendations. If fill is proposed to be imported to a site within a vulnerable area, a risk assessment must be conducted. This must include screening for vulnerable areas delineated under the *Clean Water Act*, an evaluation of risks of contamination and depletion of sources of municipal drinking water, keeping in mind the requirements of local SPPs. The proposed policy framework has identified the need for stringent standards to assess the fill; these standards must also ensure the protection of sources of drinking water. The exercise of matching the source site and receiving site should include source water protection considerations such that both water quality and water quantity (supply) is not impacted. The proposed framework should also assess the risk of fill being transport pathways, in order to avoid an increase in vulnerability of the municipal drinking water source.

Comment 10: Lack of Detail Provided for Interim Sites

CO notes there is relatively little detail included in the Framework for how interim sites will be addressed. The treatment of these sites would benefit from some further consideration as MOECC moves forward with the development of the Framework and policy tools. This should include defining what would constitute interim or ‘temporary’ storage. It is recommended that temporary storage sites should not include areas regulated under Section 28 of the *Conservation Authorities Act* unless there is some assurance that the material is clean and it receives a permit from the CA. CO suspects it may be challenging for municipalities to identify appropriate temporary excess soil sites that have minimal regulations (action 6, pg. 19).

Comment 11: Consideration of Healthy Soils

To promote healthy soils and responsible fill placement, the Province should explore the possibility of developing a classification or soil management grid that provides management options and different categories of approvals depending on the scale and quality of the soil. Clear legislated standards for soil quality that are understood and implementable by all stakeholders would be beneficial. The new standards should be set in conjunction with receiving sites and intended land use, be enforceable, and replace the current Soil Quality Tables. The Province should recognize that soil to be placed on receiving sites should match background soil conditions on the site.

One aspect that was not addressed in the document was best management practices for interim and receiving sites regarding the preservation and restoration of healthy soil. In this regard, the Toronto and Region Conservation Authority has produced a report (available via internet) entitled "Preserving and Restoring Healthy Soil: Best Practices for Urban Construction, 2012" which points to the importance of undertaking best management practices to maintain soil health and quality. For example, topsoil stockpiled in mounds greater than 1.3 metres in height for longer than six months should be amended with compost to re-establish healthy soil structure and help restore soil organism populations (see page 36 of the report). Please consider the addition of best management practices for maintaining or restoring soil as part of this review.

2. Are you aware of examples of existing best practices from other jurisdictions that may be helpful to Ontario that you would like to share?

In January, 2006, the Netherlands' new Soil Protection Act came into effect. It focused on preventing soil contamination as well as functional remediation and introduced a criterion for urgent remediation. Then, in 2008, a Soil Quality Decree and an accompanying Soil Quality Regulation came into effect to address gaps in the existing legislation – to regulate the quality of the actual activities, the management of slightly polluted sites, and the environmental safe use of building materials. Coupled together, these deal with quality assurance requirements relative to the activities performed by proponents, with the safe re-use of construction and fill materials, with soil banking opportunities, and with soil quality criteria for different soil functions particularly related to site redevelopment scenarios. The Dutch experience sheds light on how to effectively manage excess fill and examine the means to safely re-use it rather than have it placed in landfills. CO believes their experience and practices are worth consideration.

3. Which proposed actions do you see as a priority?

CO has identified the following actions as top priorities:

- Develop a new regulation under the EPA (related to proposed action #1);
- Legislative amendments to extend municipal powers in CA regulated areas such that municipal controls of certain activities complement the regulation activities and purview of the CAs (related to proposed action #7); and
- The creation of an integrated multi-agency enforcement and compliance partnership, including the establishment of a litigation fund to support CAs and other agencies with legal fees to deal with major enforcement and legal costs associated with illegal fill activities (related to proposed action #9 and CO comments under Question 1, Comment 4 of this submission).

CO acknowledges the following proposed actions as supplementary priorities:

- Proposed action # 2 - proof of excess soil management plans for issuance of certain building permits;
- Proposed action #3 - linking requirements for excess soil management to applicable *Planning Act* approvals; and
- Proposed action #15 - encourage municipalities to develop soil re-use strategies as part of planning for growth and development.

While CO acknowledges that it is important to ensure all stakeholders have an opportunity to participate in defining implementation challenges and opportunities, we also feel it is extremely important to have a commitment from the Province that legislative or policy changes will be forthcoming and implemented within a specified timeframe. Every attempt should be made to implement the "Actions to be Taken" section of the document as quickly as possible.

4. What role do you see for you or your organization in implementing the proposed Framework?

CAs have long-standing local and site level experience as watershed managers and active participants in the land use planning and development regulation process within their watersheds. We see a CA as having the following potential roles, subject to capacity/resources, under the proposed Framework:

- Watershed conservation guardian focusing on hydrology, hydrogeology, natural hazards, natural heritage, landscapes, wildlife;
- Participant in and facilitator of multi-agency pre-consultations on proposals;
- Direct site alteration away from areas that would be negatively impacted by fill placement;
- Regulator of receiving sites at the interface between no-touch areas and non-regulated areas, focusing on watershed protection;
- Monitoring and reporting of adverse effects and cumulative effects;
- Local environmental knowledge expert;
- Local facilitator and collaborator with watershed municipalities;
- Integrated multi-agency enforcement and compliance partner with MOECC/municipalities;
- Involved in awareness, coordination and consultation for source site excess fill management plans in relation to acceptable receiving sites;
- Public and industry education and communication;
- Members on the MOECC excess soil stakeholder group and sub-working groups; and
- Provide information on local Source Protection Plans and raise awareness.

CAs, particularly within the GTA, have been actively managing excess soils for more than 30 years and are in a position to be leaders. CAs are experts in long-range land use planning policy and have established working relationships with municipal partners. CAs will play a significant role in helping the Province meet the goal of protecting human health and the environment from inappropriate relocation of excess soil. This will be maintained through the review and approval or denial of permits for excess soil and fill placement within regulated areas, and through compliance and enforcement activities under Ontario Regulation 97/04. In this regard, CAs either have expertise or have access to expertise in water resources engineering, ecology (terrestrial and aquatic), hydrogeology and groundwater, and environmental planning to ensure that any filling of regulated areas with excess soil/fill will have no adverse impact on the hydrology or ecology of natural features or functions.

CAs also coordinate with municipalities where municipal approvals for fill placement may be required under local by-laws. CAs, through their service agreements, will also continue to provide input to municipalities on *Planning Act* applications and would be well positioned to comment on any future excess soil management plans/requirements. Similarly, CAs often provide comments to proponents of projects carried out under the *EAA* and could provide input to excess soil management plans completed through the EA processes. CO would be pleased to participate in discussions about what elements should be required as part of these plans. In particular, it is important that the technical requirements that are part of the plan meet the breadth and depth of information required by the CA in the review of a permit application.

Compliance and enforcement is another key role that CAs play. If soil or inert fill has been placed or dumped within a regulated area, the CA can investigate and charge the landowner/contractor for illegal dumping. CA staff endeavor to work with the landowner/contractor to have the excess soil or fill removed from the regulated area; however, if this is unsuccessful, court proceedings may be initiated. In this regard, the financial and human resource burden placed on the CA is substantial and hindered by the lack of enforcement tools that are standard under other environmental legislation (See CO Comments under Question 1, Comment 4 of this submission). Consideration for how this issue can be appropriately addressed is requested.

5. What role do you see for industry or non-governmental organizations in supporting delivery of excess soil programs for soil matching, tracking, and promoting innovation, etc.?

CO believes there is a significant role for industry and non-governmental organizations in supporting the delivery and success of an excess soil framework. Industry should be responsible for the development and promotion of industry Best Management Practices and innovative technologies to minimize potential for undesirable impacts from excess fill (for example: Residential and Civil Construction Alliance of Ontario BMP's and outreach). Further, CO believes industry can play an important role by: educating from within about legislative, planning, permitting, and tracking requirements; promoting and sharing information on re-use, recycling and appropriate receiving site opportunities; and discouraging illegal dumping. Industry should also be responsible for following protocols and coordinating industry responses to public agency initiatives. CO does not support industry having a direct regulatory role in the management of excess soil/ fill.

6. How can the province best continue to engage you or your organization and the public as it moves forward?

Please continue to work with CO to ensure that any legislation created is feasible, practical and enforceable. Representatives from CAs have expertise, experience and regulations that influence excess soils management. In this regard, it is requested that CA representatives be invited through CO to participate on the various stakeholder and government consultative groups and that CO/CA staff be invited to participate fully in other consultation opportunities.

In addition, we recommend the Province consult early on any proposed legislation, regulatory and policy changes through formal opportunities such as the Environmental Registry. As MOECC moves forward with developing the Framework and its regulations/tools, focused working group, periodic workshops and/or multi-stakeholder 'listening' sessions involving CO and CA staff are welcomed. Direct email updates of these opportunities have worked well in the past; however, it would be beneficial if the email updates were sent out further in advance. Holding sessions to engage the public, municipalities and multi-stakeholder groups is an essential method to get feedback and assists in refining the Framework. It is encouraging to see that the Province held at least one session in Toronto on March 2nd to discuss and obtain feedback on the document.

7. Do you have any other comments or feedback?

General Comments

CO provides the following outstanding comments:

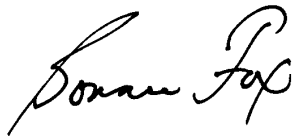
1. To monitor the effectiveness of the Excess Soil Policy Framework, it is recommended the Province establish a program so that municipalities and CAs can report to the Province on activities and issues as a means to track activity and the efficacy of the framework.
2. The Province is encouraged to place a stronger direction on soil conservation at source sites through the use of Low Impact Development techniques that require less landform alteration.
3. The Province is encouraged to strengthen transparency around communication regarding large fill sites to the public.
4. It is recommended that the Province develop transition procedures for dealing with existing sites that are partially under federal jurisdiction (e.g. Aerodrome). Some of the development might be related to the safety and security of aeronautics but not the entire site, in all cases.
5. It is recommended the Province identify and clarify roles and responsibilities of excess soil monitoring. CO suggests the Province endorse and fund a proactive monitoring approach vs. reactive.

Please see **Appendix A** for a table of specific comments pertaining to the proposed Framework for your consideration.

CO would like to commend the Province on the release of the Proposed Excess Soil Management Policy Framework. We are particularly pleased with the proposal to review the *Municipal Act* with regard to the *Conservation Authorities Act* exclusion and the proposed new regulation under the *EPA* for source sites. In addition, we believe that identifying the source site as a responsible party, with regulations and provincial intent to administer the process, will allow for a coordinated and comprehensive program to track and use excess soil.

Thank you once again for the opportunity to comment on the Proposed Excess Soil Management Policy Framework. Overall, CO believes the document is well written and is supportive of the policy framework that has been proposed with some noted additions such as the *Clean Water Act* and Source Protection Plans. Should you have any questions regarding the above comments please contact myself at 905-895-0716 ext. 223.

Sincerely,

A handwritten signature in black ink that reads "Bonnie Fox". The signature is written in a cursive, flowing style.

Bonnie Fox
Manager, Policy and Planning

c.c.

All Conservation Authorities, CAOs

Heather Malcolmson, Director (Acting), Source Protection Programs Branch, MOECC

Jason Travers, Director, Natural Resources Conservation Policy Branch, MNRF

Appendix A: Specific Comments

Specific Comments	
Page #	Comment
8	Excess soil from “brownfield” sites SHOULD be better tracked. It is not a matter of could, but should.
10	Diagram – The diagram is difficult to interpret as there is no legend. If this diagram is to be used as a future illustration, it should be labelled properly and an appropriate legend included.
10	Building on and Enhancing Existing Tools – while there is emphasis on the Province providing technical guidance to help municipalities and “others” impose appropriate conditions on sites that received excess soil, given the substantial role CAs play, the statement should read “the Province would provide technical guidance to help municipalities, CAs and others impose appropriate conditions on site that receive excess soil.”
11	Chart – the chart is unlabelled and should have a title and number for reference. The <i>Conservation Authorities Act</i> could potentially apply to interim sites and should be added to the chart. In addition, the following correction should be added under receiving sites: <i>Conservation Authorities Act</i> (permission) to make it consistent with the reference to the <i>Municipal Act</i> (bylaws) which is directly above in the chart.
12	Diagram – the diagram is unlabelled with no legend and is therefore difficult to interpret. This should be revised if it is to be used again.
12	MNRF – Given the substantive role CAs play in the decision-making process regarding excess soils in regulated areas and in enforcement, similar bullet points to those which are indicated under the MMAH for municipalities should be included: <ul style="list-style-type: none"> • guidance and educational materials to support CAs, e.g. CA permissions; • authority for CA regulations; provide for integration with other planning and development regulatory tools, as appropriate; • integration of excess soil management requirements into relevant approvals as appropriate, e.g. aggregate resource licenses and permits
13	Figure – this figure needs an appropriate title. We suggest that the roles and responsibilities of MNRF should be clarified by adding “work with CAs to provide education and guidance”. We suggest that the explanation beside the bracket linking municipalities and CAs should read: “Municipalities provide for land use planning. CAs provide for natural hazard management. Municipalities and CAs provide local by-laws, permissions, and enforcement.”
14	Principles – as noted in page 6 “protection of sensitive areas of provincial and local interest”, Principle 3 should be revised to read “excess soil management should ensure that farmland, environmentally sensitive natural areas and ecological and hydrological functions are protected, and that the future uses of land are considered”. We also suggest that another principle be added: “excess soil should be stored using best management practices to retain soil health.”
14	Principles - consider the term “reasonable” instead of “flexible” given the severity and potential impact associated with this issue.
14	Principles - Include “precautionary principle and polluter pays principle” as stand-alone principles within the Framework.
15	Figure – the figure should be labelled. Under the bullet points for interim sites, add: <ul style="list-style-type: none"> • consider best management practices to retain soil health. Under the bullet points for receiving sites, <ul style="list-style-type: none"> • consider amendments (as part of the municipal legislation review and <i>Conservation Authorities Act</i> review) to ensure that municipal by-laws and CA regulations in regulated areas are integrated and work together. It is important to note that it is not only farmers that accept excess soils and that best practice guidance should be provided to farmers and rural landowners.

17	<p>Source Sites – Policy Needs: Requirements for an “excess soil management plan” – the third bullet point states that the plan should “identify and ensure receiving sites are authorized to accept excess soil (e.g. site is regulated by municipal permit and authorized to accept specific quality of excess soil). How would this happen? A site alteration permit from the municipality and a development permit from the CA would most likely be required if the site was partially or fully within a regulated area (assuming the legislation changes to require both approvals in regulated areas). In this case, would permit applications need to be submitted and approved by both the municipality and the CA before the excess soil management plan is completed? CAs are not only concerned about the quality of the soil, but also the quantity of soil to be placed. Further discussion is required. Additional comments:</p> <ul style="list-style-type: none"> • The owner of the source site should have clear responsibility and due diligence to provide better planning, tracking, and management from “source to re-use”. • There should be a requirement that ensures early characterization of excess soil and planning for beneficial re-use, where feasible. • There should be verification that excess soil is received at an appropriate location for re-use. • There is a need to eliminate unauthorized or misinformed activities within the industry (i.e., fill brokers soliciting source sites to sell fill tickets without approved receiving site) • It should be clearly stated that permission to place excess soil on a site for re-use may be required (depending on grading needs and location of placement) through a site alteration by-law or permission from the CA. • It is recommended that “re-use” be more fully defined.
17 & 18	<p>Source Sites - Unlawful deposit of excess soil – unlawful dumping of excess soil often takes place in areas regulated by CAs (e.g. wetlands and adjacent areas, floodplains, valleylands). Currently, CAs enforce the <i>Conservation Authorities Act</i> in regulated areas. How will CAs and the MOECC work together to ensure that the materials dumped on the site are removed and relocated to an appropriate site? Further discussion in this regard is required.</p>
18	<p>Source Site - There is no reference to the role of MNRF and CAs in the implementation of “excess soil management plans”. Further discussion is required in this regard. Additional comments:</p> <ul style="list-style-type: none"> • The threshold for larger sites should also include infrastructure projects that are related to transportation and servicing (i.e., grade separations/underpasses, water mains, feeder mains, sanitary trunk sewer projects, etc.). • The cumulative impact of smaller projects should not be discounted. Due diligence for a corporation should include fill management systems. This should include mid-sized companies that generate fill as part of normal business operations such as single lot residential redevelopment, pool companies, landscaping companies, etc. This could also include municipal operations particularly with respect to infrastructure. • Tracking plans should be required for all fill movement and the use of electronic tracking using GPS should be encouraged. Any proposed regulation should require submission of records as a condition of approval and/or the possibility of random auditing to ensure transparency. • Please consider the use of securities from large source sites to ensure the material can be relocated after a violation or illegal dumping is discovered.
20	<p>Receiving Sites – Policy Needs – more discussion is required with CAs about what “minimum” environmental and technical requirements might be. The policy goals should be to prevent negative impacts on natural features and their associated ecological and hydrological functions as well as groundwater.</p>
21	<p>Receiving Site – proposed action #8 – it is important that MNRF and the CAs be included in the development of educational materials respecting receiving sites to inform CAs in the development or updating of policies for the administration of development regulations</p>

	for regulated areas. Considerations should not only be for filling of natural features and maintenance of ecological process, they should also include filling of natural features and adjacent areas (such as wetlands and adjacent areas which are regulated by CAs) and maintenance of ecological and hydrological functions and processes. Also included should be stormwater considerations, surface drainage, and erosion and sediment control and groundwater protection considerations (recharge and discharge areas).
22	Receiving Site – proposed action #11 – Guidance should be provided to farmers regarding the use of excess soil for agricultural operations. In addition, consider providing educational materials for other rural landowners.
26	Planning for Re-Use Opportunities –proposed action #16 – It is recommended that Environmental Assessments include a preliminary estimate of soil surplus or deficit, summarize re-use options explored as part of study, and specify geotechnical and soil quality parameters of various soil materials expected for project design.
26	We recommend that the <i>Conservation Authorities Act</i> be added to the list of legislation provided in the "Policy Needs" section on page 26 of the draft policy framework.
33	<i>Conservation Authorities Act</i> – Regulations: this section requires further explanation. Suggested wording is as follows: Enables municipalities within watersheds to establish CAs and defines authority for enacting regulations for the purposes of public safety and natural hazard management. The placement, either temporary or permanent, of any material in areas affected by the regulations made under the <i>Conservation Authorities Act</i> requires permission from the CA. The CA may grant permission if in its opinion, the control of flooding, erosion, pollution, conservation of land or dynamic beaches is not affected.
Specific Comments – Source Water Protection	
11 & 26	Existing applicable legislation is listed on page 11 (Enforceable policy tools) and page 26 (Policy needs). The <i>Clean Water Act (2006)</i> should be added to these lists, in order to ensure that the impacts on sources of drinking water are considered while determining suitability to use or dispose of fill.
6,14 & 24	Under the ‘Summary of Findings’ (Section 2.1, page 6), reference to vulnerable areas delineated under the <i>Clean Water Act</i> is absent. Sensitive areas to be protected from the potential impacts of the import and disposal of fill should include the four types of vulnerable areas delineated under the <i>Clean Water Act</i> : Wellhead Protection Areas (WHPAs), Intake Protection Zones (IPZs), Highly Vulnerable Aquifers (HVAs), and Significant Groundwater Recharge Areas (SGRAs). These are related to the protection of both water quality and quantity. In (a) ‘Goals and Principles’ (Section 4.0, page 14) the 3 rd principle and also in (b) ‘Action to be taken’ (Section 4.2 page 24), reference should be made to ‘vulnerable areas related to the protection of drinking water sources’.
12	Under ‘Roles and Responsibilities’, additional points should be added to: a) MOECC: ‘Clarification of the <i>Clean Water Act (2006)</i> and its regulations’; and b) Municipalities and CAs: ‘Clarification of the local Source Protection Plan policies, and education and awareness’.
13	In the Roles and Responsibilities figure, reference should be made to ‘CAs provide information on local Source Protection Plans and raise awareness’.
16-26	It is recommended that MOECC work with local CAs also in order to develop approaches to ensuring the protection of vulnerable areas delineated under the <i>Clean Water Act</i> . Under ‘Policy Needs and Actions’ (Section 5): Source Sites (pages 16-17), it is highly recommended that the proposed new regulation include requirements for a risk assessment that incorporates the assessment of risks to the quality and quantity of sources of municipal drinking water within vulnerable areas. For Interim Sites (pages 18-19) and

	<p>Receiving Sites (pages 20-23), the exercise of matching a source site and receiving site should include source water protection considerations. The 'Technical Standards' (Section 4.0, page 23-25) and 'Planning for Re-Use Opportunities' (Section 5.0, page 25-26) should be updated accordingly.</p> <p>(a) The risk assessment must include an initial step of screening using mapping tools, to check if the proposed receiving site is within a vulnerable area delineated per the <i>Clean Water Act</i>.</p> <p>(b) The physical characteristics of the fill may impact groundwater recharge by reducing infiltration at the receiving site. In vulnerable areas that are already determined to be stressed for water quantity, importing unsuitable fill could potentially worsen the stress. Therefore the characterization of the fill must include physical parameters (e.g.: particle size, permeability) as well as chemical parameters (e.g.: dense non-aqueous phase liquids). The exercise of matching a source site and receiving site should include source water protection considerations such that water quantity supply is not impacted.</p> <p>(c) The proposed policy framework has identified the need for stringent standards to assess the fill (page 24); these standards must also ensure the protection of sources of drinking water. In the 'Technical Standards' (Section 4.0, page 24), the risk based approaches suggested by MOECC should incorporate the protection of sources of drinking water. The legally binding local source protection policies must be complied with to ensure that the quality and quantity of local drinking water sources are protected.</p> <p>(d) The use of local background conditions (page 24) for fill may be viable if they are on par or better than the provincial background levels. Where this is not the case, an assessment of the risks posed by allowing fill that does not meet the provincial background levels, should be made. The MOECC proposal to develop guidance for smaller, lower risk source or receiving sites (page 25) is an acceptable approach, which should give due consideration to source water protection.</p>
21	<p>Include a separate bullet point: 'protection of vulnerable areas under the Source Water Protection program as per the <i>Clean Water Act (2006)</i>'.</p>
28	<p>Under 'Actions to be taken' (Section 6.2), it is recommended to include CAs in the Technical sub-working group in order to participate in the development of approaches that incorporate source water protection.</p>