

# Building More Mines Act, 2023

## FACT SHEET

April 2024

### POST-CLOSURE STATE DETERMINATION

Through the *Building More Mines Act, 2023*, the definition of “rehabilitate” under subsection 139(1) of the *Mining Act* was amended, supported by corresponding regulatory amendments in O. Reg. 35/24, to clarify the process by which proponents can obtain approval to return a site to a use or condition that is different from the prior use or condition, and the circumstances in which they can do so.

For the purposes of O. Reg. 35/24, this post-closure use or condition is now called a “post-closure state”, and the Minister’s approval for a post-closure state that is not the prior use or condition is called a “post-closure state determination.”

A post-closure state determination is a discretionary approval from the Minister. It is available where the Minister determines the proposed use or condition is or will be compatible with adjacent land or is suitable for a different use of the site.

Where a post-closure state determination is issued, a closure plan would then be expected to contain the rehabilitation measures necessary to achieve the post-closure state described in the determination. For example, in other jurisdictions, mine sites have been rehabilitated to support future uses that are different from the prior use, such as tourism, wildlife habitat, or recreation.

A specific example is a golf course on a former mine site, where the contouring and water features of the golf course reflect prior mining uses, and vintage mining equipment is left on-site as a feature of interest, and the site is actively managed by a golf-course operator.

In a hypothetical example where a post-closure state determination for a similar use is granted under the *Mining Act*, the closure plan would contain the measures necessary to prepare the site for future use as a golf course. Compliance with applicable standards, procedures, and requirements in O. Reg. 35/24 and the Mine Rehabilitation Code is still required, but not all the requirements would necessarily be applicable; for example, removal or treatment of powerlines, underground infrastructure or transportation corridors may not be applicable if the existing infrastructure would be used to serve the facility.

#### How to apply for a Post-Closure State Determination

Proponents must submit a request for a “post-closure state determination” to the Minister in the approved form prior to their closure plan or closure plan amendment submission. The information provided in the form will assist the Minister in making a decision on whether a different post-closure state is appropriate, and assessing what, if any, public notice or consultation requirements may apply.

It is recommended that proponents submit their requests well in advance of when they plan to submit a closure plan or closure plan amendment.

The application form requires the following information:

- A description of the proposed different use or condition, including the identification of any risks to public health and safety or the environment associated with the proposed post-closure state;
- Whether the different use or condition will be compatible with the use of adjacent land or be suitable for a future use of the site that the proponent is requesting the Minister determine to be acceptable;
- If the different use or condition of the site will be compatible with the use of adjacent land, information on the land tenure and land use controls of the adjacent property (i.e., municipal zoning, farmland, private land ownership, Crown land, etc.);
- A description of the site’s current land tenure and why it is conducive to the proposed different use or condition, or if the proposed land tenure is not suitable for the proposed different use or condition, a description of how this will be addressed;
- Whether, and to what extent, the site would require active management after the project is closed out, if the different use or condition were achieved, including, if applicable, information about the required site management;
- Whether, and to what extent, the different use or condition could pose greater risk to public health and safety and the environment than the former use or condition; and
- Whether consultation with Indigenous communities has been undertaken in connection with any earlier process of regulatory authorization related to the proposed post-closure state or undertaken on a voluntary/proactive basis.

A proposal to approve a post-closure state determination may be subject to public notice and comment processes, and, where applicable, may also be subject to consultation requirements associated with the Crown’s duty to consult.

If the Minister makes a post-closure state determination, a copy of the determination must be attached to the closure plan or closure plan amendment as an appendix.

While this fact sheet is intended to provide information on post-closure state determinations under the *Mining Act*, it is not legal advice. Requirements relating to post-closure state determinations are contained in the *Mining Act* and its regulations. The hypothetical example provided in this fact sheet is provided for the purpose of illustration only and should not be construed as a representation that a similar project would necessarily receive the Minister's approval if an application were received.

While all efforts are made to ensure the accuracy of this information, if there is any discrepancy between this fact sheet and the Act or its regulations, the provisions of the Act and/or regulation prevail.