

O. Reg. 406/19: How to Define Your Project Area

[O. Reg. 406/19: On-Site and Excess Soil Management](#) ("Excess Soil Regulation") includes provisions applicable to soil excavated at a project area, managed within a project area, and being removed from a project area. Excavated soil leaving a project area is excess soil and is designated as waste under the Excess Soil Regulation, unless certain criteria are satisfied. Soil reused within a project area is not excess soil and is generally not a waste. The delineation of a project area is important, and the Excess Soil Regulation includes provisions for defining a project area. Project areas are determined on a site-by-site basis, as each project may be different.

This resource sheet is intended to help explain what a project area is and to help inform decisions when defining a project area for a variety of different project scenarios.

What is a "project area" for excess soil management?

Under the Excess Soil Regulation, a project area is the site where any project is undertaken that involves the excavation of soil including for the purposes of redevelopment or site alteration. A project area is often referred to as a source site.

The Excess Soil Regulation includes the following definition of a project and project area:

- "project" means any project that involves the excavation of soil and includes,
 - (a) any form of development or site alteration,
 - (b) the construction, reconstruction, erecting or placing of a building or structure of any kind,
 - (c) the establishment, replacement, alteration or extension of infrastructure, or
 - (d) any removal of liquid soil or sediment from a surface water body
- "project area" means, in respect of a project, a single property or adjoining properties on which the project is carried out.

For the purposes of the Excess Soil Regulation, a project area may comprise of a single property or parcel of land or two or more adjoining properties or parcels of land. Under the Excess Soil Regulation, properties are adjoining if the boundary of one property touches or,

were it not for an intervening highway, road allowance, railway line, railway allowance or utility corridor, would touch the boundary of the other property.

Some key factors when delineating a project area for the purposes of the Excess Soil Regulation include:

- The project area relates to the entire area where a project will be undertaken, such as a redevelopment project. It is not just the part of a property where soil excavations will occur as part of the project. Accordingly, it includes areas of soil storage, processing or loading, and other areas of construction, material storage or operations and soil reuse that are part of the project.
- The project area may span two or more properties with multiple owners provided they are being used as part of the same project and are contiguous; the project would also have common control by the project leader(s)
- Separated properties are considered to be distinct project areas
- For linear infrastructure projects being undertaken in locations without distinct property boundaries on all sides, such as a road corridor, the area of continuous operations defines a project area and the entire road corridor would not be treated as one project area; as such, multiple separated work locations throughout a corridor or in different corridors would be distinct project areas
- Multiple projects under one contract do not necessarily become a single project or project area, unless the project areas are contiguous
- One project or project area could relate to multiple types of infrastructure or other works; for example, one project could be installing water, sewer and storm water infrastructure in a contiguous area, and in this case, these do not have to be treated as separate projects under the Excess Soil Regulation even if they are under separate contracts
- Off-site, temporary storage areas would not be part of the project area unless they are adjoining

As stated above, the Excess Soil Regulation does not set project areas based on contracts. One contract may apply to a portion of a project, a complete project, or multiple projects. Areas that are not contiguous, even under one contract, are their own project areas. These

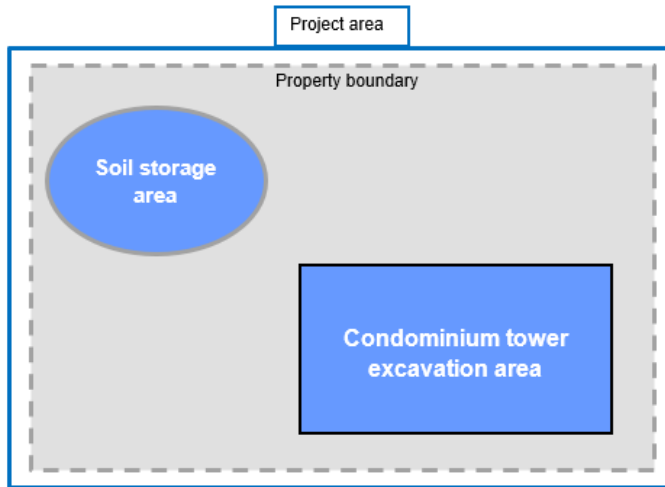
areas should also not get combined for determining the total amount of excess soil leaving a project area as it applies to this regulation.

How should a project area be delineated?

No two projects are the same and, as such, project areas should be determined on a case-by-case basis. When defining your project area, be sure to include any contiguous storage or processing locations for the project.

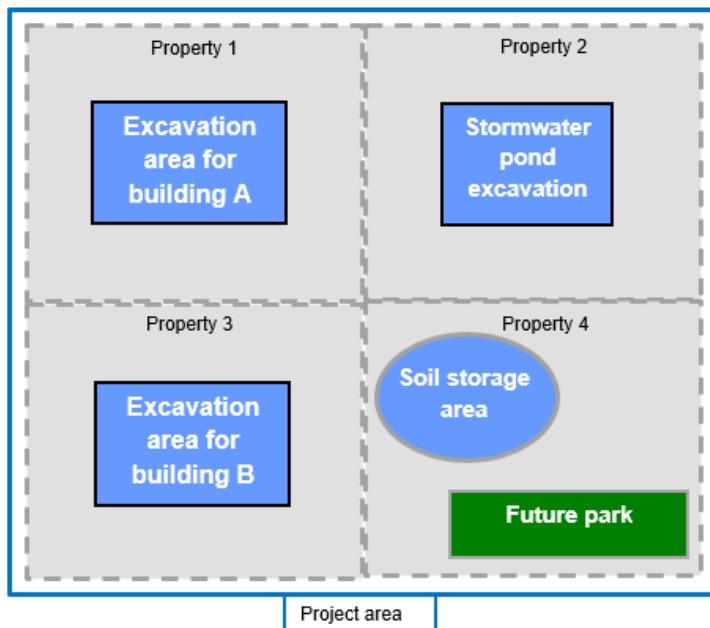
The following diagrams walk you through key considerations related to delineating the project area for various types of projects that typically involve excess soil management subject to the Excess Soil Regulation.

Scenario #1: Condominium development project



In this situation, the **full property (including storage area)** will be considered **one project area**.

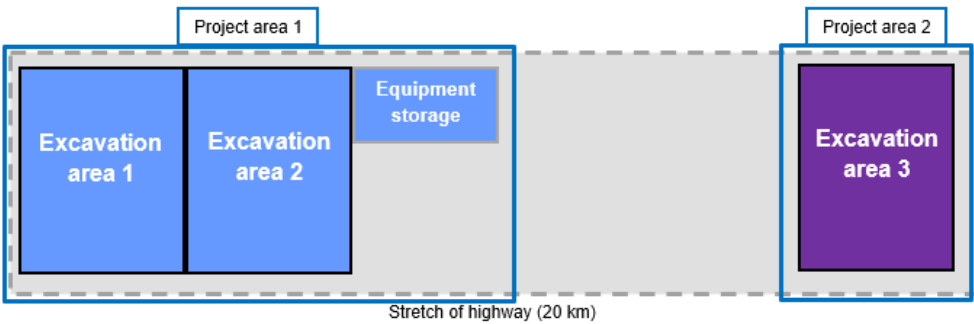
Scenario #2: Residential subdivision project



In this situation, all **four properties** can be considered **one project area** since:

- The same project is being carried out on all properties (with common control)
- The properties are all adjoining

Scenario #3: Linear infrastructure project (highway maintenance)

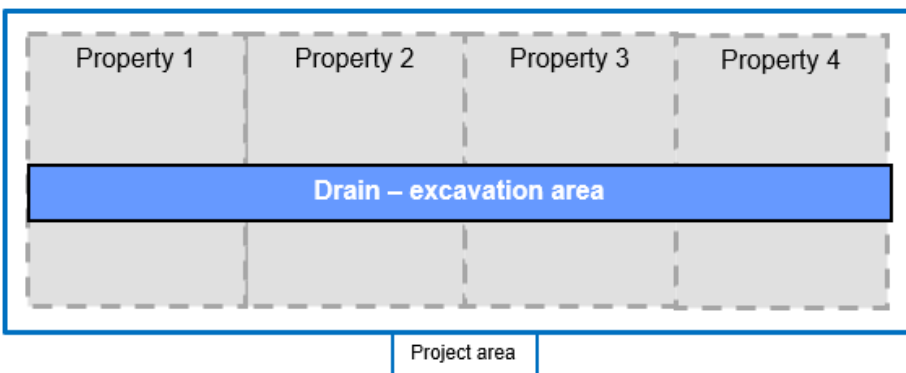


In this scenario, there would be **two project areas**:

- Excavation area 1 and 2, as well as the equipment storage area, would be considered one project area, as they are contiguous and have an area of continuous operations. An indicator of the project area may be the extent of a roadway that is required to be closed to other uses to enable the project to be completed.
- Excavation area 3 would be considered a separate project and project area, even if it is under the same contract, as this is a separate work location

Note: larger scale linear infrastructure projects and tunneling projects may span over several years and be undertaken in phases. In some cases, it may be appropriate to treat each phase as its own project and project area. This will allow flexibility for planning activities (e.g., characterization, determining reuse sites, etc.) each phase.

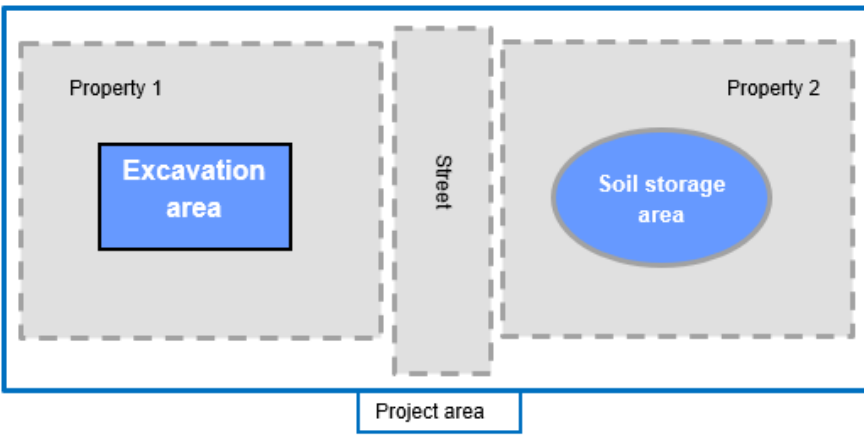
Scenario #4: Drainage work across multiple properties



In this scenario, there is **one project area** as:

- The same project is taking place across four adjoining properties, and the project area would include the entirety of each property

Scenario #5: Utilities project separated by a street



In this scenario, there is **one project area** as:

- The excavation area and the storage area are contiguous (i.e., adjoining if not for the intervening street)
- They are part of one project (with common control)

Disclaimer:

This document is intended to be a brief summary of some of the provisions of Ontario Regulation 406/19 On-Site and Excess Soil Management (the regulation) made under the Environmental Protection Act. This is for information purposes only and should not be construed as legal advice or substitute for seeking independent legal advice on any issues related to the regulation. Any person seeking to fully understand how the regulation may apply to any of the activities they are engaged in must refer to the regulation. In the event of any inconsistency between the regulation and this resource, the regulation will always take precedence.

For more information, visit Ontario's [Handling excess soil](#) webpage