

**Ministry of the Environment,
Conservation and Parks**

**Ministère de l'Environnement,
de la Protection de la nature
et des Parcs**

Environmental Assessment
Branch

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environnementales

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December 16, 2020

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Rob Amos, MAsc., P. Eng.
Project Manager
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Dear Mr. Russwurm and Mr. Amos:

Thank you for attending the teleconference with the Ministry of the Environment, Conservation and Parks (Ministry) on November 9, 2020 to discuss the Emma Street to Earl Street Pedestrian Bridge (Project). As discussed, the Minister of the Environment, Conservation and Parks (Minister) received one Part II Order request on October 29, 2020, requesting an order imposing conditions for the Project.

As part of the evaluation of the Part II Order request, staff at the ministry reviewed the Project File for the Project and determined that the Project was not planned in accordance with the requirements of the Municipal Class Environmental Assessment (Class EA). Section 15.1.1 of the *Environmental Assessment Act, 1990* (Act) prohibits proponents of an undertaking subject to a class EA from proceeding with an undertaking unless the proponent does so in accordance with the approved class EA. The noted deficiencies are set out below.

Aboriginal Consultation

The project documentation does not demonstrate that the Proponent met the requirements of the Class EA for notifying and consulting with Indigenous communities.

As confirmed during our teleconference, the required consultation with Aboriginal communities has not been undertaken for the Project. It is the proponent's responsibility to ensure they reach out and consult with Indigenous communities as part of the Class EA.

The ministry requires you to notify and consult with the communities identified below about the proposed project and any potential impacts on their existing or credibly asserted Aboriginal and treaty rights.

Based on the information provided, the Crown's preliminary assessment has identified the following communities for consultation:

- Six Nations of the Grand River - both the Six Nations Elected Council and the Haudenosaunee Confederacy Chiefs Council
- Mississaugas of the Credit First Nation

If at any time during your consultation with the identified Aboriginal communities a community indicates that they have rights that may be impacted by your proposed project or you have reason to believe that your proposed project may adversely impact a community's rights; or the consultation reaches an impasse you should contact the Director of the Environmental Assessment Branch to discuss the information and obtain assistance. Please email the Director at EABdirector@ontario.ca.

As part of the consultation process, project documentation must be updated to include information on the consultation efforts with Aboriginal communities, including:

- Contact record with Aboriginal communities (including date and individuals contacted); and
- Issues/concerns identified by any Aboriginal communities and how they will be addressed.

Public Consultation

The project documentation does not indicate how public concerns or comments were considered in the identification of the preferred alternative.

Section A.4.1 of the Class EA directs proponents to ensure that a Project File explains the public consultation program employed and how concerns raised have been addressed.

The project documentation must be updated to indicate how public comments or concerns were addressed during the identification of the preferred alternative.

Species at Risk

Plant and animal species listed under Ontario's *Endangered Species Act, 2007* (ESA) as Threatened or Endangered, as well as their habitat, receive protection under sections 9 and 10 of the ESA, respectively. Specifically, section 9 prohibits the killing, harming, harassing, possessing, buying, collecting selling, trading, leasing, and transporting of Extirpated, Endangered, and Threatened species, and section 10 prohibits the damage or destruction of the habitat of Endangered and Threatened species.

In this class EA study, there does not appear to have been a screening for species at risk bats or their habitat. Information about species at risk bats, their habitat and the potential impacts of the project on species at risk bats is required by the proponent in order to determine whether the project will contravene the two prohibitions noted above, and therefore whether an authorization may be required under the ESA. Early consideration of species at risk in the class EA process is highly recommended, so that the requirements of the ESA can be considered in the planning stages of a project. Proponents are responsible for ensuring that the proper permits and applications are completed as required under other legislation before proceeding with the project.

Additional comments from the ministry can be found in the appendix to this letter. The ministry requires the following information be included in the final project documentation:

- More detail regarding the methodologies used for the maternity roosting surveys, specifically related to Tri-Coloured bat. This information would be needed to determine if there will be impacts to species at risk bat habitat and to what extent
- Project design and bridge footprint (when available) and how this may impact the trees identified as maternity roosting habitat for species at risk bats. In order to determine the severity of impacts, information such as the number of trees that will be removed, as well as the number of maternity roosting trees that will be removed are important factors to consider

Given that the requirements of the Class EA have not been met for the reasons listed above, before proceeding with the Project you are required to fix the identified deficiencies and issue a new Notice of Completion for the Project. This will start a new 30-day public review period during which Part II order requests may be submitted in accordance with section 16 of the Act.

The Part II Order requester will be notified in writing that their request will not be considered at this time as the Project cannot proceed until the above noted steps have been taken.

It is the ministry's expectation that you will directly notify the requester when the new Notice of Completion for this Project has been issued. You should confirm that this has been done when providing the new notice to the ministry.

If you have any further questions regarding the Part II Order, please contact Simon Zhao, Project Evaluator at 437-225-5790 or simon.zhao@ontario.ca.

If you have any questions about the Class EA requirements, please contact Barb Slattery, Environmental Resource Planner and EA Coordinator at 363-366-8185 or at barbara.slattery@ontario.ca.

Yours Sincerely,

Kathleen O'Neill

Kathleen O'Neill
Director,
Environmental Assessment Branch

EA File No. 20025 – Emma to Earl Street Pedestrian Bridge

Appendix: Species at Risk Branch Comments

Emma Street to Earl Street Bridge – Species at Risk Review

Based on the preliminary information provided in the Environmental Impact Statement authored by Aquafor Beech Ltd., in November 2019, the Ministry of Environment Conservation and Parks (MECP) would like to offer the following comments:

Butternut

- Aquafor Beech Ltd., conducted a botanical survey of the anticipated project footprint, as well as in adjacent lands (those within 120 m) and concluded that no Butternut trees are within the project area.
- MECP- has no further concern related to Butternut

SAR Bats

- Aquafor Beech Ltd., conducted Phase 1 and 2 Species at Risk (SAR) bat maternity roosting surveys in 2016 and 2018 as per the *Survey Protocol for Species at Risk Bats within Treed Habitats* (2017).
- Twenty-seven (27) candidate roosting trees were identified within 20 m from the anticipated disturbance area for myotis species (Little Brown Myotis, Northern Myotis and Eastern Small-footed Myotis).
- Fourteen (14) candidate roost trees were identified for Tri-Coloured Bat using the tree inventory data.
- MECP requires more information on the surveys conducted to determine the potential impact the project could have on SAR Bats:
 - MECP requires more detail regarding the methodologies used for the maternity roosting surveys, specifically related to Tri-Coloured bat. This information would be required before MECP is confident in the survey results, subsequently providing MECP with the information needed to determine if there will be impacts to SAR bat habitat and to what extent.
 - MECP requires information on the project design and bridge footprint (when available) and how this may impact the trees identified as maternity roosting habitat for SAR bats. In order to determine the severity of impacts, information such as the number of trees that will be removed, as well as the number of maternity roosting trees that will be removed are important factors for MECP to consider.
- **Potential outcomes:**
 - 1) MECP is satisfied with the surveys conducted by Aquafor Beech Ltd., and Aquafor Beech Ltd., concludes that impacts to bats can be avoided. If MECP agrees with these findings, no permit under the *Endangered Species Act, 2007* (ESA) is required.
 - 2) Survey results and project details conclude that impacts to SAR bats cannot be avoided: a permit under ESA is required.

Snapping Turtle

- Snapping turtle is listed as Special Concern under the ESA and therefore no authorization is required.

Eastern Wood-Pewee

- Eastern Wood-peewee is listed as Special Concern under the ESA and therefore no authorization is required.