



October 12, 2019

Email to: Clairissa Myschowoda
Ministry of the Environment, Conservation and Parks (“MECP”)

Regarding:

ERO number: 019-0549

Notice type: Instrument

Act: Endangered Species Act, R.S.O. 2007

Posted by: MECP

Please accept this letter as our submission on the above.

The Georgian Bay Association (GBA) is an umbrella organization for 19 community associations along the east and north shores of Georgian Bay, representing around 3,000 families. We have been advocating on behalf of our land-owning members for over 100 years and estimate that we reach around 18,000 residents of the Georgian Bay. Our mandate is to work with our water-based communities and other stakeholders to ensure the careful stewardship of the greater Georgian Bay environment.

General comments

- 1. Although MECP indicates that the posting is voluntary, the March 2017 OMB decision essentially mandated public participation of all aspects of this project, with peer reviews where applicable. The developer has attempted to circumvent public participation on their sewage system application in violation of the EBR and OMB decision. An application for Judicial Review, of the conduct of MECP and Macey Bay Developments Corporation (“MBDC”) regarding the process followed for approval of the sewage plan for this development, was filed in the Superior Court of Justice, May 02 2019, by Eastern Georgian Bay Protective Society Inc. (the “Judicial Review”). It contends that the sewage system Environmental Certificate of Approval (ECA) was improperly approved.**
- 2. There are also many further aspects to this development that have not been included in the Proposal Details. Please refer to all the studies and peer reviews done to date that are available from the Township of Georgian Bay (“TGB”) and the Proponent’s full project description, which we assume you have requested and received? Accordingly, the information provided in the Proposal Details is incomplete and misleading.**

- 3. Significant rock blasting and rock removal will be required to facilitate the servicing for potable water distribution, wastewater collection, and stormwater management. This will have a direct impact – including killing and harming species, as well as harming or impacting species at risk habitat.**
- 4. Significant amounts of sand and gravel will need to be delivered to the site from offsite to facilitate the construction of leaching/dispersal beds in support of the wastewater treatment system. This will have a direct impact – including killing and harming species, along with the potential of introducing non-indigenous species to the area.**
- 5. Toxic chemicals, including unionized nitrogen compounds and aluminum cations, will be released to the environment. This will have a direct impact – including killing and harming species.**
- 6. Automobile and truck traffic will increase substantially along Macey Bay Road and Muskoka Road No.5. This will have a direct impact – including killing and harming species.**
- 7. Boat docking and launching facilities will disrupt access to Macey Bay, Severn Sound and Georgian Bay. This will have a direct impact – including killing and harming species.**
- 8. This project is too large for this site and far larger than the previous trailer park at this location. The Ministry of Natural resources and Forestry (“MNR”) rejected a previous similar proposal from MBDC in 2012-2014.**
- 9. Significant weight must be given to the following when assessing this application:**
 - Georgian Bay is one of the most diverse ecosystems in Canada. Its eastern coast is designated as a World Biosphere Reserve recognized by UNESCO: the Georgian Bay Biosphere Reserve (GBBR). Therefore protecting wetlands on or near the Bay within the GBBR should be a priority for MECP. The GBBR is home to 840 native plant species, 170 types of breeding birds, 44 mammal species and 34 species of reptiles and amphibians. 50 of these species are designated as species at risk.**
 - Tobie’s Bay Wetland is a provincially significant wetland adjacent to 3 Macey Bay Road that has been identified as one of the two most significant and valuable of all the provincially significant wetlands on Georgian Bay, in terms of species habitat and diversity. Since there are ~19,000 wetlands on Georgian Bay and its nearshore inland areas, this makes it particularly important to protect Tobie’s Bay from any impact from neighbouring developments.**

Specific Comments on Proposal

Please find below the *Proposal details* and our **specific comments** against each section:

An individual property owner is seeking a permit under clause 1 7(2)(c) of the Endangered Species Act to damage and destroy habitat of Blanding's Turtle, Eastern Foxsnake-Georgian Bay Population and Eastern Whippoor-Will to redevelop and expand the former Dreamers Trailer Park into Lighthouse Landing at Georgian Bay trailer park, located at 380 Macey Bay Road in the Town of Honey Harbour, Township of Georgian Bay.

Comment: The proponent is HH (MB) Limited Partnership, whereas the developer of record is MBDC. Please advise why the MECP is considering or accepting a proposal from a separate entity other than the developer of record.

Furthermore, Macey Bay Developments Corporation submitted an Environmental Impact Study (EIS) for the proposed development that completely failed to adequately protect Species at Risk, according to the Township of Georgian Bay's peer reviewers, North South Environmental. We recommend that MECP investigate whether this permit application by a different company in the same group is an attempt to delink the application from this failed EIS in an attempt to ensure that neither the TGB nor any other stakeholders opposing the development were notified of the permit application.

Details include:

- *the site is proposed to be used as a seasonal facility; operating from approximately May 1 to October 31 each year*

Comment: The site is road access therefore there is no guarantee that it will not be in use from Nov 1 to Apr 30. The previous "seasonal" trailer park on this site was used year-round, so it is highly likely that this proposed trailer park will also be used year-round. This will likely have a significant impact on several aspects of the environmental assessments for this project, including this permit application given the additional disturbance of species at risk habitat off season.

- *the park is proposed to include up to 180 trailer sites, two rental cottages, a pool, a clubhouse and a 10,000 square foot maintenance building*
- *docking facilities would also be available on the bay*

Comment: The bay at this location contains significant areas of sensitive aquatic environments where docks cannot be located. There is therefore limited space for docks, and we are informed that there may be significant issues involved with locating sufficient docks to meet the needs of 180 trailers, which supports our contention that this development is not appropriate in this location. To our knowledge no study has been done in this respect. The application would have to be made with the MNR and we request that a full public comment and peer review process is followed on this matter.

- *access around the park would be provided via electric golf carts using 8 foot wide cart paths*
- *the park would be developed in three phases; dependent on sales*
- *the project is anticipated to impact Blanding's Turtle, Eastern Foxsnake-Georgian Bay Population and Eastern Whip-poor-will (the species)*
- *the applicant is seeking a permit under clause 17(2)(c) of the Endangered Species Act, 2007 to damage and destroy the habitat of Blanding's Turtle (i.e. 13.66 ha of damage, 1.58 ha of destruction) and Eastern Foxsnake-Georgian Bay population (i.e. 6.35 ha of damage, 2.46 ha of destruction) as well as to damage 8.63 ha of Eastern Whip-poor-Will habitat*
- *this damage and destruction are expected to be a result of vegetation clearing, grading and the construction of new facilities and infrastructure*
- *no direct impacts, such as killing or harming the species, are expected to occur as a result of the proposed redevelopment*
- *Blanding's Turtle, Eastern Foxsnake-Georgian Bay Population and Western Whip-poor-will are listed on the Species at Risk in Ontario List, under O. Reg. 230/08 of the ESA, as threatened*
- *subsection 9(1) of the ESA provides for the protection of endangered, threatened (and extirpated) species on the Species at Risk in Ontario List while subsection 10(1) provides for the protection of their habitat*

Comment: Please note that, in accordance with the federal Species at Risk (SAR) Eastern Whip-poor-will Recovery Strategy, the Macey Bay property is located within one of the 110 areas defined as critical habitat for the Whip-poor-will in Ontario. On their SAR website, the province advises that they are cooperating with the federal government on SAR recovery strategies. Critical Habitat is defined based on two criteria: habitat occupancy and habitat suitability. The Recovery Strategy notes that habitat destruction due to development is one of the greatest threats to the slowing of the loss of the Whip-poor-will and the eventual recovery of the populations. Please see:

https://wildlife-species.canada.ca/species-risk-registry/virtual_sara/files/plans/rs_eastern_whip_poor_will_e_final.pdf

Comment: Given the above we respectfully suggest that this application be declined. In addition to the strategies of both the federal and provincial governments to protect SARs, considerable effort is also made by NGOs throughout the Georgian Bay Biosphere Reserve to protect the Whip-poor-will and other above-named species, such as the:

- **Georgian Bay Biosphere Reserve, see:** <https://www.gbbr.ca/building-in-the-biosphere-habitat-screening-tool/>;
- **Georgian Bay Land Trust, see:** <https://www.gbtl.org/enjoying-land/native-species-risk/> and <https://www.ontario.ca/page/eastern-whip-poor-will> ; and
- **Georgian Bay Forever, see:** <https://georgianbayforever.org/ecosystems/ecosystem-preservation-and-protection/>

and many others. It is therefore unconscionable to permit a project to destroy so much of their habitat.

- *further approvals from the township are still outstanding*

Comment: The Judicial Review is aimed at revoking the ECA granted by MECP for MBDC's sewage plan application. This matter should be dealt with before any further approvals are considered or issued for this development by MECP or the TGB. Since the Judicial Review and the verbal evidence assembled to date bear on the conduct of MECP and MBDC, we respectfully suggest that the EBR office at MECP review the verbal evidence provided, which is now available, before proceeding with this permit application.

The minister may issue a permit under clause 1 7(2)(c) of the ESA that authorizes a person to engage in an activity that would otherwise be prohibited by sections 9 or 10 of the ESA if the Minister is of the opinion that:

- *an overall benefit to the species will be achieved within a reasonable time through the conditions of the permit*

Comment: Our information is that “an overall benefit to the species” cannot possibly be achieved by this project, therefore the Minister should not issue a permit under clause 1 7(2)(c) of the ESA. Furthermore, in reference to the requirement below that: “a permit may only be issued where the legal requirements set out in clause 1 7(2)(c) of the Endangered Species Act have been satisfied”, we respectfully submit that this legal requirement is also, therefore, not met.

- *reasonable alternatives have been considered, including alternatives that would not negatively affect the species, and the best alternative has been adopted*

Comment: see next comment below.

- *reasonable steps to minimize negative effects on individual members of the species are required by conditions of the permit*

The applicant has explored reasonable alternatives, including alternatives that would not adversely affect the species, such as:

- *not proceeding with the project*

Comment: GBA respectfully submits that this is the only reasonable alternative for all the reasons set out in this submission.

- *proceeding with the project but on a smaller scale (i.e. fewer trailer sites)*
- *this option would still result in impacts to the species and was considered financially unviable by the applicant*

The best alternative being proposed includes proceeding with the applicant's preferred alternative subject to measures to minimize adverse effects on the species and undertake beneficial actions.

The applicant is seeking ways to minimize adverse effects on individuals of the species, such as:

- *installing exclusion fencing to ensure the Blandings Turtle and Eastern Foxsnake-Georgian Bay*

population are unable to access the site during construction

- *completing site grading the preparation outside of the active season for the species to avoid potential mortality or harm to individuals*
- *Minimizing the removal and disturbance of vegetation and rock barrens outside of development envelopes*

The applicant is working with the ministry to identify proposed actions to achieve an overall benefit for the species with may include:

- *protecting existing habit in the area of the proposed project for the long term by placing an area of private property to the west of the property under a conservation easement*

Comment: This area is currently pristine natural state therefore there is no net benefit from this action.

- *enhancing this area by restricting the use of off-road motorized vehicles on existing trails*

Comment: Given the intended extensive roads, parking areas and golf cart paths proposed there is a massive net negative impact on habitat relating to paths, trails and roads, which this action does very little to offset.

- *creating new artificial nesting sites for the species within this area*

Comment: This is the only measure that might create a benefit. However, given the presence of many trailers and significant human presence, we are highly skeptical that these proposed nesting sites will yield a sufficient benefit that will result in: “an overall benefit to the species will be achieved within a reasonable time through the conditions of the permit.” This would imply that the nesting sites will compensate for all the damage to habitat and on top of that add additional benefit to the species to furnish a net benefit. This is completely unrealistic.

- *erecting signage to support outreach and education about the species*

Comment: It is unlikely that this action will provide any positive benefit so we suggest it should be disregarded.

A government response statement published under subsection 11(8) of the ESA exists for Eastern Foxsnake-Georgian Bay Population and will be considered when reviewing proposed permit conditions.

Please note that the posting of this proposal on the Environmental Registry does not imply that a permit will be approved; a permit may only be issued where the legal requirements set out in clause 1 7(2)(c) of the Endangered Species Act have been satisfied.

Comment: We hope that you will take all the comments in this submission into account in addition to your own determinations and decide not to issue the permit, or, at least delay the approval process for the permit until after the Judicial Review has been completed.

We look forward to hearing from you in this respect and request a meeting to discuss this matter further. We believe that you will have received a number of other objections to this permit from other local stakeholders. We therefore recommend that a meeting with local stakeholders, including ourselves, would be beneficial to this process.

Yours sincerely



Rupert Kindersley
Executive Director

Copied to:

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|-------------------|------------|---------------------------------------|
| Jeff Yurek | Minister | Environment, Conservation and Parks |
| Catherine McKenna | Minister | Environment and Climate Change Canada |
| Peter Koetsier | Reeve | Township of Georgian Bay |
| Jessica Gundy | CAO | Township of Georgian Bay |
| Peter Cooper | Councillor | Township of Georgian Bay |
| Al Hazelton | Councillor | Township of Georgian Bay |
| Steve Jarvis | Councillor | Township of Georgian Bay |