



December 11, 2017

Peterborough District  
Ministry of Natural Resources and Forestry  
Regional Operations Division – Southern Region  
200 Water Street, Floor 1  
Robinson Place South Tower  
Peterborough ON K9J 8M5

**Re: Magenta Waterfront Development Corp Permit  
Response to EBR Registry Number: 013-1130  
Loughborough Lake, Frontenac County**

To whom it may concern,

We represent Ms Evonne Potts and Ms Meela Melnik-Proud (the “Respondents”) regarding the proposed Magenta Waterfront Development Corp. (“MWDC”) Permit for activities with conditions to achieve overall benefit to the species – *Endangered Species Act* (“ESA”) s. 17(2)(c) (the “Permit”).

Please see attached the submissions of the respondent pursuant to the EBR Registry Notice Number 013-1130.

MWDC has conditional zoning for a 15-unit condominium development and 1,100 metre roadway on Johnston Point on Loughborough Lake, in South Frontenac Township. Development is conditional on MWDC obtaining a Permit for habitat loss.

Specifically, the Respondents submit that the MWDC consultants have failed to adequately demonstrate that there will be no negative impacts to the natural features or their ecological functions on site, including the habitat of numerous species at risk such as the Blanding’s Turtle, Gray Ratsnake, Eastern Whip-poor-will, Cerulean Warbler, Little Brown Myotis, etc.

Regarding the Permit and your review, critically the MWDC has failed to demonstrate that: avoidance and reasonable alternative to habitat destruction have been considered for the Blanding's Turtle, Gray Ratsnake and other species at risk; adverse effects have been adequately studied and considered; adverse effects have been minimized; and the development will result in an overall benefit to the species in Ontario.

According to an expert retained by the Respondents, Mr. Gord Miller, B.Sc., M.Sc., "MNRFF should not issue the proposed overall benefit to species permit".

This opinion confirms the finding by the District Planner for the MNRFF Peterborough District Office that the overall benefit measures to be taken by MWDC are not apparent. Reducing road speeds, amphibian crossing signage and a prediction that the roadway will be only occasionally used by amphibians and reptiles is not sufficient to satisfy the condition of ESA clause 17(2)(c).

Sections 9 and 10 of the ESA prohibits the killing of Species at Risk Ontario List threatened or endangered species, and the destruction of their habitat.

The Ontario Municipal Board decision *Magenta Waterfront Development Corp. v. South Frontenac (Township)*, 2016 Carswell 10613, dealt with a Zoning By-law Amendment ("ZBA") and Draft Plan approval, specifically a change to rezone the lands from 'Rural' to site specific Residential Zones. The Board left it to the County of Frontenac to clear the conditions of draft plan approval. In particular, the rezoning is conditional on Condition 5.E.D., that "all recommendations from the MNRFF included in any Benefit Permit, if issued, related to Gray Rat Snakes and Blandings Turtle or any other species at risk identified". [emphasis added]

In other words, the Board having heard evidence from ecological or biology experts, left the decision regarding the protection of species at risk and habitat to MNRFF. In so doing, the Board also made clear that the development is entirely contingent on MNRFF doing its job of carefully ensuring habitat is protected.

Most importantly, as one of the stewards of the planning process and protection of the public interest, the Minister must be satisfied the development is beneficial to the species.

Of greatest concern to the Respondents is the fact many of the species recorded on the site, including threatened and endangered species, are not the subject of the Permit application. This is a significant omission.

The Respondents retained several qualified experts to conduct wildlife surveys regarding the property. In addition, they retained Mr. Bob Bowles, a renowned field naturalist to review the MWDC Environmental Impact Assessments, McIntosh

Perry Peer Review, additional field surveys for Whip-poor-will and bats, and the MNRF Registry Information Notice.

According to Mr. Bowles:

*I am confident there exists great potential for a good population of Blanding's Turtle on site. A new reptile and amphibian habitat survey must be undertaken because I am confident this is a good place for five-lined skink, musk turtles, snapping turtles and map turtles.*

*The bat and Eastern Whip-poor-will studies were very professionally done. They certainly document and map a healthy population of Whip-poor-will. The site should be re-surveyed for Little Brown Myotis (Endangered).*

This conclusion places a strong onus on MNRF to consider the adequacy of the application it has before it, particularly in light of the comments shared with the developer previously about the lack of apparent overall benefit actions prescribed for the project.

It is respectfully submitted “education and monitoring actions” are not sufficient to meet the strict onus on the Minister under the ESA to be satisfied the recovery and protection of the all species at risk is achieved.

In *Burleigh Bay Corporation v North Kawartha (Township)* 2015 CarswellOnt 15154 (OMB), the Board was acutely aware of the need to treat the subject property as a “whole”, without falling into the trap of treating each species and wet area as discrete units of biological values. The decision states:

*“The evidence in this hearing relating to the intensity and ecologically enriched character of the BBC Lands, and the surrounding area, very much “syncs” with the policies of the PPS in that it becomes self-evident as to why the Fraser PSW Complex and the Fairy Lake PSW Complex have been assessed and designated as natural heritage lands that are the most valuable and subject to the special protection afforded by the policies of the PPS. It is clear that s. 2.1.2 should not be considered lightly as the PPS emphasizes “the linkages between and among natural heritage features and areas, surface water features and ground water features”. In the Board’s view, based on the evidence provided by the experts, this recognition of the “whole” and the areas in, around, and between as part of the complex, linked to the PSWs and Stony Lake is required.” [para. 129]*

The evidence from the Provincially Significant Wetland and ANSI of Johnston Point points in a similar direction, towards a comprehensive and cumulative impact assessment of the landscape.

In other words, the Board in *Magenta* established a principle that does not support the MWDC rezoning without confirmation from MNR that the ecological features and functions of the site are being protected, specifically with respect to species at risk habitat.

We trust that given the extraordinary effort by the Respondents and others around the lake to retain multiple experts to provide you with solid, peer reviewed information, this will assist you in reaching a conclusion about whether an overall benefit permit should be issued.

We respectfully submit the evidence clearly indicates this Permit should not be issued, and the property should remain zoned as it is.

Please do not hesitate to contact me at 416-572-0464, or by email to [david@donnellylaw.ca](mailto:david@donnellylaw.ca), cc'ing [sara@donnellylaw.ca](mailto:sara@donnellylaw.ca), should you have any questions or comments.

Yours truly,

A handwritten signature in blue ink, appearing to read "D. R. Donnelly", is enclosed in a thin black rectangular box. The signature is fluid and cursive, with a long horizontal stroke at the bottom.

David R. Donnelly

cc: Respondents