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Your file / Votre référence

Our file / Notre référence
525-1131
525-3535

October 3, 2000

Ontario Ministry of the Environment
Environmental Assessment and Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, Ontario M4V 1L5

Dear Ms Solange Desautels:

SUBJECT: **Highway 404 Extension and Highway 400-404 CEAA Environmental Assessment**

Thank you for meeting on September 7, 2000 to discuss the Highway 400-404 (Bradford Bypass) and Highway 404 extension projects.

As you are aware, Fisheries and Oceans Canada, Fish Habitat Management (DFO-FHM) is responsible for the administration of the habitat protection provisions of the *Fisheries Act*. The Fisheries Protocol Agreement (1993), which is supported by DFO-FHM and signed between the Ontario Ministry of Natural Resources (MNR) and Ontario Ministry of Transportation (MTO), clearly defines the roles and responsibilities of the signatory agencies in the review of MTO highway projects—MNR is responsible for the review of projects in terms of impacts to fish and fish habitat. As soon as it is determined that there is potential for harmful alteration, disruption or destruction of fish habitat it is MNR's responsibility to contact DFO-FHM to initiate the authorization process.

It is my understanding that MNR has been extensively involved in the routing studies associated with Highways 400-404 and 404 extension to date. As indicated in their October 4, 1999 letter, MNR is satisfied with the route chosen through the routing study. DFO is also satisfied the routing study to date is sensitive to fisheries resources. However, DFO-FHM may require and reserves the right to require adjustments be made in the conceptual level design and detailed design stages to protect fish and fish habitat on a site specific basis.

Canada

Should you have any questions or comments, please call me at (705) 750-4008.
<Original signed by>

Dan Thompson
Fish Habitat Biologist
Fish Habitat Management-Ontario Area

copy Ian Buchanan, MNR Aurora
Pat Reynolds, MTO
Louise Knox, CEA Agency
Maria Ooi, Health Canada
Rob Dobos, DOE
Rick McLean, DFO-CCG

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Your file / Votre référence
TR-CE-02
Our file / Notre référence
525-3535

December 16, 1998.

Mr. Tim Sharp
Review Coordinator
Environmental Assessment Branch
Ministry of the Environment
250 Davisville Avenue
Toronto, Ontario
M4S 1H2

Attention: Mr. Sharp

RE: **Environmental Assessment for the Proposed Highway 404 Extension from Davis Drive (York Regional Rd. 31) Northerly to Highway 12**

Dear Mr. Sharp:

This will acknowledge that the department of Fisheries and Oceans –Fish Habitat Management (DFO-FHM)-Ontario Area has received the information forwarded by yourself to this office.

The Environmental Assessment suggests that the Ministry of Natural Resources (OMNR) has participated in the identification of broad fish habitat constraint areas when developing Highway 404 Extension route alternatives. While OMNR administers the sections of the *Fisheries Act* regarding habitat relative to provincial highway planning and highway development, only the federal Minister of Fisheries and Oceans, or Department of Fisheries and Oceans –Fish Habitat Management staff on behalf of the Minister, can authorize the harmful alteration, disruption or destruction of fisheries habitat.

From our initial review it appears that your project may result in a potential harmful alteration, disruption or destruction of fish habitat. This is prohibited unless authorized by the Minister of Fisheries and Oceans pursuant to Section 35(2) of the *Fisheries Act*. In keeping with the *Department of Fisheries and Oceans' Policy for the Management of Fish Habitat* (DFO 1986), Authorizations are issued on the condition that the proponent implements measures that compensate for the habitat harmfully altered, disrupted or destroyed, and follows the guiding principle of no net loss in the productive

capacity of fish habitat. Furthermore, authorizations are not issued in cases where adequate compensation is not possible or the loss of the given amount of habitat type is considered unacceptable. Information presented in the EA relative to identification of fish habitat appears on occasion to express views of the proponents' environmental consultant. The views of the consultant are not necessarily those of OMNR and/or DFO-FHM.

Additional sections of the *Fisheries Act* may apply. For example: Section 22(1) requires that sufficient flow of water at an obstruction must be provided for the safe and unimpeded descent of fish, and, Section 22(3) requires that a sufficient flow of water must be provided at all times below an obstruction for the safety of fish and the flooding of spawning grounds. The direct and indirect impacts to fish and fish habitat must be considered in determining whether a harmful alteration, disruption or destruction of fish habitat will occur. Design concepts for the highway that address seasonally inundated areas for fish on and off the highway right of way would be of importance in determining whether a harmful alteration, disruption or destruction of fisheries habitat will or will not occur at various locations along the length of the highway.

As detailed design of a highway influences decisions relating to impact issues of mitigation and compensation the amount of information presented is presently insufficient for DFO to provide conclusive comments at this time. DFO-FHM will decline from initial comments on specifics of the project until OMNR has had an opportunity to provide the necessary comments of the EA as presented, to DFO-FHM. Structural design has definite implications to the impacts on fish and fish habitat and a more detailed review by DFO-FHM would occur during any design phase of the highway provided it is predetermined that the provincial Environmental Assessment meets the process requirements of the *Canadian Environmental Assessment Act (CEAA)*. Decisions to authorize a harmful alteration, disruption or destruction of fish habitat under Section 35(2) of the *Fisheries Act* trigger *CEAA* .

The EA discusses the development of route planning alternatives using a large number of social and natural environmental and engineering factors at a broad level of detail over a broad area. Constraints are considered and some factors appear to be more restrictive than others. It is recognized that in determining route planning alternatives at the provincial level the study area for fish and fish habitat is generally broad, and may vary depending upon the complexities of the resource and the interpreted significance of sensitivity relative to the local fisheries resource. To date the Department of Fisheries and Oceans has not participated in the route selection through reviews of biological data supporting route alternative decisions. As areas of interest of various federal departments may be expressed in the review of the EA, a coordinated federal review to address the requirements of CEAA may be required. The Department of Fisheries and Oceans will provide more detailed comments on the proposed undertaking on receiving comments from OMNR and after consultation with all the affected

federal agencies.

Should you have any questions or comments, please contact me at (905) 336-6235 or FAX (905) 336-4819.

<Original signed by>

David J. Ross
Fish Habitat Biologist
Fisheries and Habitat Management-Ontario Area

cc. John Woodward, Department of Fisheries and Oceans-Canadian Coast Guard
Rob Dobos, Environment Canada
Bill Aird, Canadian Transport Agency
Sheryl Smith, Canadian Parks Service
Ian Buchanan, Ontario Ministry of Natural Resources (Aurora District)
Graham Findlay, Ontario Ministry of Natural resources (Midhurst District)

Fisheries and Oceans Canada
Pêches et Océans Canada

Coast Guard
Garde côtière

Central & Arctic Region
Région du Centre et de l'Arctique

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Your file Votre référence

Our file Notre référence
8200-97-6418, 95-6021

September 13, 2000

Ontario Ministry of Environment
2 St Clair Avenue West, 14th Floor
Toronto, ON M4V 1L5

Attention: Solange Desautels

Dear Mrs. Desautels:

Re: Application for approval, Proposed 404 Extension and Bradford Bypass, Town of East Gwillimbury and Township of Georgina, County of York, Province of Ontario.

As per your request during our September 7, 2000 meeting at the CEA Agency office in Toronto, I have performed a thorough review of the above noted files. I offer the following as points of clarification on recommended navigational clearances, possible affected groups and the NWPA review and approval process. I believe some of this information was forwarded to you in February 1999.

Coast Guard followed up a meeting with DFO - Fish Habitat with a review of the file and preferred route, an on-site inspection via helicopter and a notice to MTO of requirement to apply under NWPA for 5 crossings. As noted in previous correspondence, the Pefferlaw Brook, Black River, Maskinonge River, Holland River West Branch and Holland River East Branch are all considered navigable and are all subject to NWPA approval. I will speak to each separately based on the Bradford "Recommended Plan" and the 404 Extension "Technically Preferred Route".

Pefferlaw Brook at Highway 48, Pefferlaw (44°19' 47"N x 79°13' 01"W) - As per correspondence from Cole Sherman and Associates dated June 27, 1997 the Ministry agrees to meet or exceed existing navigational clearances at the Highway 48 Pefferlaw bridge. These were measured at 15m horizontal x 3.6 - 4.6 m vertical above Normal Summer Water Levels. It is also required that this navigational channel be situated over the centre and deepest section of the river.

Black River at Catering Road Sutton (44°17' 29"N x 79°21' 30" W) - Pending further assessment of this site, the minimum recommended clearance of 6m horizontal x 2m vertical above Normal Summer Water Levels should be adequate. You will be made aware should further assessment determine the need for greater clearances.

Maskinonge River at Glenwood Ave, Keswick (44°13' 36"N x 79°25' 56" W) - Further assessment will be required to verify if the Maskinonge crossing(s) are navigable (Maskinonge and north tributary). If either or both are deemed navigable, they will likely be subject to the minimum clearance of 6m horizontal x 2m vertical above Normal Summer Water Levels.

Holland River East Branch at Queensville Sdrd, Holland Landing (44°08' 12"N x 79°30' 46" W) - Consultation with marina operators in 1995 determined that a minimum navigable clearance of 19.8m horizontal x 6.9m vertical above Normal Summer Water Levels was adequate. Coast Guard concurred with these clearances and advised several marina operators of this decision. At that time, the tallest vessel used in the area was 18' above water level. In light of the passage of time since the last consultation, further consultation with marina owners should be initiated to determine if the above reflects the current situation.

Holland River West Branch at 8th Con, Bradford (44°07' 58"N x 79°32' 46" W) - This site was included in the above mentioned 1995 consultation with a recommended minimum navigable clearance of 19.8m horizontal x 6.9m vertical above Normal Summer Water Levels. It too would be subject to current consultation.

As far as major stakeholders, I believe your file will show 6 marina operators in the Holland River area. My understanding is that all these marinas are still in operation however may or may not be under new management. There are several marina operators in Keswick and Pefferlaw who may be affected by the Maskinonge and Pefferlaw crossings. I believe the Maskinonge crossing is significantly upstream to reduce impact, however the Pefferlaw crossing may pose concern to operators in the area. I also suggest private dock owners on all 5 waterways be consulted/notified before designs are finalized.

Each of the 5 crossings will be reviewed under Section 5 (1) of the NWPA. This review process, as outlined in the application guide mailed to the Ministry August 3, 2000, will require at minimum:

- site inspection of the work site(s) by CCG-NWPA officers,
- deposition of final plans in the local lands registry office for 30 days,
- advertising deposition in 2 local newspapers as well as the Canada Gazette,
- addressing legitimate navigation concerns raised during the consultation/noticeprocess,
- completion of a Canadian Environmental Assessment (CEAA) screening,
- receiving formal approval and
- final inspection of the completed work by CCG-NWPA officers.

In addition to navigational clearances, one or more conditions may be placed on the approval and could include; limitations on when construction can commence, signage and methods required during the construction phase, conditions for temporary works, limitations on fish habitat compensation, etc.

I trust the foregoing will adequately address any questions you may have pertaining to formal approval for the above project under the NWPA. Should you have any further questions concerning the above, please contact the undersigned at (519) 383-1866.

Yours truly,

<Original signed by>

Barry Putt
A/NWP Inspections Officer
Navigable Waters Protection

BP/dmp

cc Ross, David - FHM
Reynolds, Patrick - Ontario MTO

Fisheries and Oceans Canada
Pêches et Océans Canada

Coast Guard
Garde côtière

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Your file Votre référence

Our file Notre référence
8200-95-6021

August 3, 2000

Ontario Ministry of Transportation
3RD Floor, Building 'D'
1201 Wilson Avenue
Downsview, ON M3M 1J8

Attention: Audrey Steele

Dear Sir:

Re: Application for approval under the Navigable Waters Protection Act, Proposed Brantford Bypass, Township of King, County of York, Province of Ontario.

In response to your letter to Ms. Suzanne Shea, received by this office on June 23, 2000, a thorough review was completed of the proposed route and waterway crossings for the Bradford Bypass. Discussions were also held with Mr. David Ross of the Department of Fisheries and Oceans concerning review process and the screening required under CEAA.

The review noted above determined that both the East and West Holland Rivers are deemed navigable and will require approval under the Navigable Waters Protection Act before work can commence. For your convenience, I have enclosed a copy of the NWPA Application Guide for your use in completing applications for both crossings once determined.

As Mr. Ross may have already advised you, the CEAA process cannot be initiated unless a trigger has been identified. For your information, formal approval under the NWPA is a trigger under CEAA.

As requested, the file will remain open until such time as we have received an application or have been advised that the project is cancelled or postponed indefinitely. Should you have any further questions concerning the above, please contact the undersigned at (519) 383-1866.

Yours truly,

<Original signed by>

Barry Putt
A/NWP Inspections Officer
Navigable Waters Protection

BP/dmp

cc Ross, David - FHM

Canada