



Gary Blazak,  
Blast Inc.,  
PO Box 444 Lambeth Station,  
London, ON ,  
N6P 1R1

November 3, 2015

Dear Gary:

**Re: Response to MNRF Natural Heritage Comments on Seaside EIS  
(letter to C. Newton September 7 2015)**

---

This letter is in response to the MNRF letter noted above. Our reply is organized in the order presented in that letter with headings from the letter used to guide the reader.

**Page 1**

It is acknowledged that MNRF is responsible for reviewing and approving wetland evaluations and for administering the Endangered Species Act (ESA) 2007. It is also acknowledged that MNRF is a commenting agent to the municipality on all other natural heritage matters. It is left with the municipality to determine if the plan demonstrates no negative impact to all other natural heritage features and functions as per the Provincial Policy Statement 2014 (PPS) policies.

MNRF notes they feel their prior comments have not been addressed which is a surprise to us as the EIS was written with this in mind and was supported by a letter noting where these comments have been addressed. It is the responsibility of the EIS to provide the science-based interpretation of the policies and to assess a proponent driven submission to determine whether or not impacts have been avoided, mitigated and/or adequately compensated in the event of planned impacts. It is our opinion that the Condominium Declaration is an ideal tool to address these issues on an ongoing basis during planning and post development; a process which does not seem to be recognized by MNRF. Nevertheless, the proponent has opted to move to a revision of the draft plan to ensure avoidance of unit development within the surveyed tree dripline [See attached plan revision]. The Condominium Declaration will address protection of the features and functions through a Comment Element. It is our plan to submit a final EIS to accompany an integrated EA and Draft Plan and this will be further described in that EIS report.

The remaining comments refer to the prior MNRF comments (February 26, 2015) and their feeling there was a lack of a clear response in the letter from us dated May 26, 2015. The letter was written with the intent of referring the reader to the EIS document rather than re-iterating

what was said in the EIS. However, for better clarity, we have copied our response text from the May 26, 2015 letter then provide additional notes (additional notes identified with an Update as the lead in as part of indented no bullets paragraphs), to better clarify for MNRF what was said in the EIS. As part of the integrated EA and Draft Plan submission process, following the completion of Phase 3 of the EA an Environmental Study Report (ESR) will be submitted, including a final EIS. In the event it is our opinion that more details or text revisions are needed in the final EIS, this is also noted.

## **General Comments**

The MNRF requested more information to allow them to adequately identify and consider the potential negative impacts to natural heritage features on, and adjacent to, the proposed development. The MNRF concerns regarding the assessment of the proposed activities with respect to natural heritage include (items written in italics):

- *Detailed description of all proposed activities;*
  - This information has been provided for assessment in the updated EIS now that the EA process has proceeded to Phase 3 stage with more detailed engineering analysis. See Section 6 Description of Proposed Development and Section 7 Evaluation of Servicing Alternatives.

**Updated in EIS:** In the detailed description of proposed activities, it was demonstrated that 3 of the 4 servicing options avoid any small wetland pockets entirely while the fourth provides opportunity to re-construct a wetland that currently is not functioning for its intended use of providing fish habitat. MOECC discussions are proposed with respect to the credit they will consider related to the impact of Low Impact Development (LID) measures proposed for the site on the final Stormwater Management requirements. Once this is determined, the SWM options will become more focussed in the Phase 3 submission.

Update Required in the ESR: Evaluate the revised SWM alternatives based on MOECC discussion on LID credit

**Updated in EIS:** The secondary plan recognized there would be some impact in the vicinity of the Commercial Block which consists of Cultural Meadow and Cultural Savannah. This area of habitat supports demonstrated use by Milksnake, a Special Concern species and habitat enhancements and improvements in the protected natural corridor have been recommended. This approach of improved habitat, albeit reduced in areal extent, has been a commonly accepted practice for this species in other development and Aggregate Act applications. Discussions with MNRF related to ESA were initiated when this Commercial Block was being forwarded as a separate submission and it is fully expected that these discussions will resume as final details of this section of the development proceed.

- *Adequate consideration and delineation of all natural heritage features and functions on and*

*adjacent to the project area;*

- All natural heritage features and functions have been evaluated according to criteria of the NHRM (MNR, 2010). The dripline of woodland features extending to the tableland have been staked in the field and surveyed. The surveyed dripline has been included in the updated draft plan drawing by Sco-Terra (September 2015), a version of which was on accompanying graphics in the EIS. See Section 5 Natural Heritage Policy Considerations and Figures 6 and 7.

**Updated in the EIS:** The survey was completed by an Ontario Land Surveyor (OLS) that followed the flags placed at the tree dripline by our staff.

In the **September 2015 letter**, there is discussion by MNR on what constitutes the Significant Woodland Boundary

**Further Discussion:** The EIS did not include highly disturbed, culturally influenced or non-woodland components within the preliminary boundary while MNR wishes all to be included. However, in the Natural Heritage Reference Manual (NHRM) 2010, Policy explanation Section 7.1 it states “woodlands include treed areas, woodlots or forested areas and vary in their level of significance at the local, regional and provincial levels.” It further states a significant woodland is an area that “is ecologically important in terms of features such as species composition, age of trees and stand history; functionally important due to its contribution to the broader landscape because of its location, size or due to the amount of forest cover in the planning area; or economically important due to site quality, species composition, or past management history.”

The intent of leaving components out of the significant woodland category in the EIS (Community 12a and 15) is to reflect that the test for woodland (Community 12a not treed) and significance noted above (Community 15 - abandoned apple orchard) is not met in these areas (notably economically or ecologically). This separation also recognizes the acknowledgement in NHRM there are varying levels of significance. The division of the feature into what we consider significant and not significant was to help denote the varying sensitivities of the broader woodland feature. It is counterproductive to claim a broad patch as significant and treat the feature as a whole, just to come back later and argue why a trail can go in one part of the significant feature and not another, as an example. It is our opinion it is better to flag opportunities for restoration and trails and also to guide servicing options from conveyance to Sixteen Mile Creek to inclusion of some of the servicing within and through these features.

Finally, in NHRM Section 7.1. “Woodlands: means treed areas that provide environmental and economic benefits to both the private landowner and the general public such as erosion prevention, hydrologic and nutrient cycling, provision of clean air and the long term storage of carbon, provision of wildlife habitat...”. In areas that are not treed, the placement of a SWM pond provides additional benefits in erosion control and hydrologic and nutrient cycling. Also, particularly in conjunction with LID measures on the tableland, the SWM pond will introduce wetland habitat as part of an outlet design, habitat which is in

short supply in the valley system. Wetlands are discussed later in this letter.

EIS Conclusion: No changes to the EIS. It is appropriate to consider varying levels of sensitivity in a woodland and this is consistent with NHRM. There is no reason not to identify disturbance areas within a broader woodland context.

- *Detailed site plans overlaid with natural heritage feature mapping to demonstrate proposed footprint;*
  - The block plan is overlaid on the natural heritage features to provide a visual of potential impacts related to the development. These potential impacts are assessed in the updated EIS. See Revised Figures 10, 11, 11a.

**Revision:** All natural heritage features are now being avoided (no Restricted Use areas within the Condominium Units) and protected under a Common Element Condominium Declaration. The Common Element retains ownership and responsibility of the natural heritage system under one legal entity. This is an important component of the protection of natural heritage and it seems that some reviewers have had difficulty with the concept. More detail is being developed around the Condominium Declaration which will be circulated for discussion.

Update Required in the ESR: Remove reference to restricted uses and place all protected features into a Common Element Area(s). Include the more detailed Condominium Declaration.

- *Identification of all potential impacts to natural heritage features and functions on and adjacent to the project area in respect to proposed activities;*
  - The potential impacts have been included and reviewed in the updated EIS. See Section 6 Description of Proposed Development and Section 7 Evaluation of Servicing Alternatives. However, the habitat is now avoided in the updated plan and this EIS will be revised to reflect this change.

The **September 2015** letter references a lack of consideration of Significant Wildlife Habitat.

**Updated in the EIS:** This was thoroughly examined in Appendix F of the EIS report although we do note that for some unknown reason, raptor wintering habitat in the Sixteen Mile Creek corridor was left blank. Nevertheless, Raptor Wintering was discussed in the main body of the report (page 41) where it was determined there was limited upland foraging habitat. This was discussed in the Dave Martin report as well [Appendix K, Dave Martin 2013 - page 4).

Update Required in the ESR: Update Appendix K Raptor Wintering area to include a discussion on lack of upland foraging areas. Include reference to Dave Martin review in main body of the text under SWH Raptor Wintering area.

With respect to Wood Thrush, this species was not observed in the 2013 update inventories, conducted by the same person as in 2008 when they were observed. Wood Thrush became a

Special Concern species in 2012 as a result of dwindling populations and despite a concerted search effort, it appears this species no longer breeds in the vicinity of the proposed development. This species was therefore not discussed in the EIS.

Update Required in the ESR: Update Appendix K to include Wood Thrush discussion as noted above.

Eastern Wood-pewee was observed throughout the area in both 2008 and 2013. At that time of the latest inventory, this species was considered a Partners in Flight (PIF) species and so it was discussed in that context. The species became listed as Special Concern by MNRF in 2014 and this change in status was inadvertently skipped over by us between 2013 (when data was collected) and 2015 (when the report was written). This will be corrected moving the bird from PIF to significant wildlife.

Update Required in the ESR: Update Appendix K and text to include Eastern Wood-pewee as a Special Concern species.

- *Detailed description of proposed mitigation measures to demonstrate no negative impacts and negative impacts that may be unavoidable;*
  - Mitigation measures have been proposed for the potential impacts and have been included in the updated EIS. For areas where tree dripline extends into the condominium development, additional restrictions were recommended for the condominium agreement to ensure protection of the feature and function. Example legal text has been provided in Appendix L.

Appendix L was inadvertently omitted in the EIS. However, changes to the plan are proposed.

**Revision:** All natural heritage features are now being avoided (no Restricted Use areas within the Condominium Units) and protected under a Common Element Condominium Declaration. The Common Element retains ownership and responsibility of the natural heritage system under one legal entity. This is an important component of the protection of natural heritage and it seems that some reviewers have had difficulty with the concept. More detail is being developed around the Condominium Declaration which will be circulated for discussion.

Update Required in the ESR: Remove reference to restricted uses and place all protected features into a Common Element Area(s). Include the more detailed Condominium Declaration.

The Updated EIS (May 2015) provides up-to-date life science inventories, and evaluates the two preferred stormwater management options with design iterations developed as part of the interim Phase 3 process of the EA. The updated EIS provides an integrated assessment of the proposed tableland development and two servicing options (and their design iterations), on the natural heritage features and functions.

Update Required in the ESR: Following MOECC discussions with respect to LID credit to SWM design, revised Options will be evaluated.

MNRF questioned consistency with PPS in the last paragraph in this section of the **September 2015** letter with particular reference to Milksnake (SC) and Significant Woodlands.

**Updated in the EIS:** These have both been addressed above. In summary, Milksnake foraging habitat in the mixed use area will be compensated in the adjacent land through the introduction of additional habitat components (hibernaculum and basking) currently missing in the proposed mixed use area.

**Revision:** Significant woodlands will be avoided and protected through the Condominium Declaration with more details to be provided within a separate letter.

### **Habitat of Species at Risk (Threatened and Endangered)**

Observed Species at Risk individuals from the past (2008) site investigations has been included, as well as more recent site investigation data. Observations (including species found only once in the area migrating, visiting, and/or foraging) have been mapped [Appendix K of the updated EIS], however extended habitat use is also considered an important component to the analysis and determination of significance.

The only Threatened or Endangered species confirmed on site is the Butternut on the slope of Sixteen Mile Creek. The Threatened and Endangered species noted by MNRF (observations of Barn Swallow and, Bank Swallow) were considered migrants or visitors. One exception was a recent finding of a protected bird species not previously recorded in the area. While habitat for this species is beyond any contemplated development limits, additional targeted studies are being conducted this breeding season to confirm whether or not the area is being used for breeding or just as a migratory stopover. Results of this targeted study will be provided upon completion.

MNRF has requested details of the SAR snake board study be included in the EIS. The details of the snake board study conducted in 2012 have been compiled into a report under separate cover and submitted to Catherine Jong, Species at Risk Biologist, October 28, 2012. While no Threatened or Endangered Species were found, the results of the study have not been included in the updated EIS to respect privacy issues around ESA. The details will be discussed with MNRF directly as per the Technical Memo Species at Risk Screening Process (MNRF, March 2015).

**Note:** Once more details are available on the Commercial Block and SWM outlet construction, further discussions with MNRF will occur to ensure compliance with the ESA (2007).

In the **September 2015** letter MNRF notes a permit is required to install hair snags.

Hair snags were placed in burrows that were considered potential snake hibernaculum. While this project was conducted as part of a broader American Badger survey for Ontario Badger, it was our understanding the study was covered under a blanket permit and did not require site specific approvals.

### **Significant Woodland – Section 2.1.5b of PPS**

The updated EIS has reviewed all woodland features using the criteria of the Natural Heritage Reference



Manual (MNR, 2010) and updated data to determine significance of the woodland features on the Seaside lands. There has been no change to the overall conclusions of core features.

The significant woodland along Sixteen Mile Creek has been designated as Parks and Open Space in the Port Glasgow Secondary Plan while the woodland feature on the east side of Haven's Lake Road is designated as a Protected Natural Corridor.

All mapping has been updated to reflect identified significant features, including significant woodland in relation to the SWM facilities, trail access points, and other development considerations.

**Note:** No additional comments

### **Significant Wetland- Section 2.1.4 and 2.1.5 f of PPS**

There has been considerable discussion around the wetland pockets within the Sixteen Mile Creek valleyland. Much of this discussion was related to the need to evaluate these patches. The Ontario Wetland Evaluation System (OWES) third edition as updated (MNR, 2013) indicates that

“In general, wetland smaller than 2 ha (5 acres) are not evaluated” pg. 36.

This refers to individual wetland or wetland complexes adding up to 2 ha.

Further to the above, it indicates that:

“The minimum size of a wetland type for mapping purposes is typically 0.5 hectares. This minimum size can be smaller when highlighting a specialized community” (MNR, 2013 -pg 48).

None of the initial pockets noted by MNRF for evaluation meet either of the above criteria (size or specialized community).

Nevertheless, MNRF insisted this evaluation be completed and this was submitted as part of the December 2014 package. Specific wetland evaluation comments are summarized below and have been incorporated into an updated wetland evaluation in the attached updated EIS [Appendix E]. Any adjustments were minor and the wetland score still does not meet PSW thresholds.

Update: This evaluation is our opinion as Certified Wetland Evaluators. We acknowledge that MNRF must sign off on this evaluation to be deemed final. Nevertheless the evaluation protocols should be followed and MNRF has not provided supporting information to indicate the special circumstances that would warrant this from being evaluated in the first place. It is our contention, as before, that this evaluation did not warrant submission to MNRF and as such should be part of the local review only.

### **Wetland Size**

Other than one small pocket of wetland beyond the lot 6 ownership and west of Sixteen Mile Creek, no other pockets have been added to this evaluation because of the above size standards. The intent of the OWES process is to identify significant wetlands and not to try to keep adding small pockets to try and reach thresholds. The minimum 0.5 ha size should be adhered to and with no special wetland type or

feature, no other small pocket was added.

### **Wetland Areas within 750m**

Complexed wetland units within 750m should be hydrologically related or be substantiated as biologically important as a group (MNR, OWES Manual, 2013). In this case, there is no connection between the pockets of ponded isolated flood plain waters along Sixteen Mile Creek and a wetland community associated with Lot 4 to the west. Only the wetland pockets, most too small to be noted according to OWES or ELC guidelines, have been evaluated for this submission.

### **Site Type**

MNR is suggesting that some of the communities are riverine. The wetlands have been evaluated as per the OWES, and the wetland pockets are best described as palustrine as they are separated from the creek by upland habitat and therefore separated from the creek in typical high water. Nevertheless, these pockets are too small to be separated out and all should be treated the same rather than to introduce artificial diversity not intended in the OWES manual. Conversion of all pockets to riverine would not affect the ranking of this wetland.

### **Great Lakes Coastal Wetland**

Coastal Wetlands are by definition, significant features on the Great Lakes or tributaries to the Great Lakes. None of the tiny wetland pockets are on the Sixteen Mile Creek tributary but are separated by upland habitat. None are significant. Therefore none of these features can or should be considered coastal.

### **Special Features Section**

#### **Feeding habitat for an Endangered or Threatened Species**

MNR is suggesting scoring Barn Swallow and Bank Swallow as part of the formal evaluation. Notwithstanding that Barn Swallow and Bank Swallow were not observed in updated data specific to the wetland areas, the foraging activity noted in 2008 was not in the vicinity of these features. These wetland pockets would only be scored if these birds were actively utilizing the wetlands which is not the case now or in 2008. No changes to the evaluation score is warranted in this category.

#### **Provincially Significant Animal Species**

MNR is suggesting that provincially significant animal species observed in 2008 should be included in the wetland evaluation. None of the listed species were observed in the wetland pockets that are the subject of the evaluation. No changes to the evaluation score is warranted in this category.

#### **Provincially Significant Plant Species**

MNR is suggesting Butternut be scored in the evaluation. Butternut were not found in any wetland pocket and are also not a wetland or wetland indicator according to OWES. No changes to the evaluation score is warranted in this category.

#### **Locally Significant Species**

MNR is suggesting Weak St. John's Wort be scored. Weak St. John's Wort is not a wetland or wetland indicator plant and was not found within the wetlands nor the subject lands in updated floral inventories. No changes to the evaluation score is warranted in this category.



MNRF is considering *Glyceria grandis*, *Leersia virginica*, and *Bromus ciliatus* “locally significant wetland species”. “Species listed as rare in a county or regional municipality are considered locally significant.” (Pg 235 OWES, MNR 2013). These species are **not** listed as rare (R1-R3) in the county of Elgin (Oldham, 1993). These species were listed as present in communities 6 or 12 in the floral inventory in 2008; however the floral inventory does not relay species dominance in a community, just presence. The presence of the plant does not equate to the presence of a wetland. The OWES 50/50 rule was applied when delineating the boundaries of the MNRF requested units to be subject to the OWES evaluation process. The OWES wetland evaluation is attached to the updated EIS in Appendix E.

In the **September 2015 MNRF** requested additional clarification to the wetland evaluation. The following are updates as direct responses to the individual bullet points.

**Update:** Shapefiles have been sent to MNRF.

**Update:** Community 18 lies on the tableland, next to the shores of Lake Erie, on lands owned others. We have not been given permission to evaluate this wetland further. However, seepage from this wetland was observed flowing to Lake Erie. The wetland pockets we have reviewed are along Sixteen Mile Creek and therefore part of a different hydrologic system. “Wetlands must not be complexed across watersheds except in rare circumstances.” OWES 2013.

**Update:** Riverine wetlands do not describe the pockets of wetland found in the subject area, with the exception of the Phragmites pocket near the marina. In each instance, the pockets are separated from the creek by upland vegetation on the creek bank. Perhaps the interpretation of riverine by MNRF comes from a review of our mapping at a scale that makes it difficult to observe the separation. Because of this separation, they were labelled as palustrine in the evaluation.

**Update:** Bank Swallow and Barn Swallow were observed flying overhead while in Community 5. This area is near the lakeshore and creek where insects would be more abundant. Bank Swallow nests were found further west but there is no habitat for either species in Community 5. Therefore, MNRF interpretation is incorrect. We have internally discussed a better way of recording these overhead species in breeding bird studies to limit this confusion. An added note indicating no breeding habitat in the community is needed in our forms if these species are simply seen flying nearby.

**Update:** Species locations in specific habitats are difficult based on the broad scale communities used in the initial studies. More detailed community data is provided in the 2013 update inventory and maps. In that study, no species of significance were found breeding in the wetland pockets or Community 12 where these pockets were found. Wood-pewee were observed in Community 8 along the Sixteen Mile Creek valley woodland and Community 13 near the lake on the opposite side of Sixteen Mile.

**Update:** No significant plant species with fewer than 80 occurrences (S1-S3 or SC) were found in the wetland pockets.

**Update:** In the 2008 species list, some were noted that are considered S ranked. However, it was the practice of that biologist to assume S rank until they could confirm otherwise. This confirmation was not completed before they moved on to other work. Our update floral list conducted in 2013 should be used as the final list whereby confirmations were completed. Any rare plants found in the wetland pockets were recorded in the evaluation report.

**Update:** Coastal wetlands, by definition, need to be directly connected to a Great Lake, Connecting Channel or tributary to either of these (OWES, 2013 - pg 142 and 143).

None of the wetland pockets meet this definition of direct connection. These are not coastal wetlands and therefore do not fall under policy 2.1.5f of the PPS.

MNRF had no additional comment on Significant Wildlife Habitat (SWH) – Section 2.1.5d of PPS Fish Habitat – Section 2.1.6 of PPS or the Summary sections of the EIS. Therefore, it is our assumption these have been adequately addressed in the EIS or as followup in this letter.

## Summary

The Draft Plan of Subdivision (Master Condominium Plan) has been revised. All protected habitat is now outside the Unit Blocks on the tableland. As a result, only Common Element and associated management and protective covenants are required in the Condominium Declaration.

An updated Appendix K is needed to address missing information on Raptor Wintering, Wood Thrush and E. Wood-pewee.

Additional review of the SWM outlet treatments is required as part of the ongoing discussions with MOECC with respect to LID measures and final preferred alternative location(s) and design.

Some discussions are still required with MNRF with respect to the Endangered Species Act. These discussions will be take place once development details are determined in the Environmental Study Report (ESR) of the Integrated EA and Draft Plan process.

Should you have any questions or comments, do not hesitate to contact us.

Yours truly,  
BioLogic

---

Dave Hayman MSc.

ResponsetoMNRFletterSep72015FinalwRevisedPlan.wpd

Attachment: Revised Draft Plan of Subdivision