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21 February 2025

Andrea Betty
Director of Planning & Community Development
Town of Penetanguishene
10 Robert Street West
PO Box 5009
Penetanguishene ON L9M 2G2

***By E-mail***

Ms. Betty,

**Re: 1290 Sandy Bay Road - EIS Peer Review Response**

This letter is in regard to the Environmental Impact Study (EIS) report[1] for the Property at 1290 Sandy Bay Road. Specifically, this letter is in response to the series of comments provided in the subsequent Peer Review of that EIS report, completed by Severn Sound Environmental Association (SSEA)[2].

At this time, the EIS report has not been formally revised and this letter serves in part as an addendum to the existing EIS report. The EIS report can certainly be revised if that is ultimately deemed necessary.

In closing, the SSEA Peer Review memo recommends that clarification or additional information is required with respect to four specific issues, as per SSEA comments 2 b, 5 a, 5 b and 5 c ii. The common theme of these comments is the status and implications of Species at Risk (SAR) within the property. The responses herein speak to the two key SAR elements of relevance; 1) SAR Bats (7 listed species at present, considered as a group), and 2) Black Ash.

In addition, SSEA has made recommendations pertaining to mitigation measures (i.e. comments 7a i and 7a ii), and follow-up comment regarding these recommendations is also provided herein.

Where deemed helpful for current purposes, the specific comments and/or recommendations provided by SSEA for certain issues are presented in italics at the outset of each response. Otherwise, the general theme of the issue is specified in the heading.

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[1] Environmental Impact Study - Gilwood Property. Report Prepared for Universalbau Corporation. Report prepared by Neil Morris, Consulting Ecologist. 29 August 2024. Report Reference # 23-15.1.

[2] Michelle Hudolin (Manager Watershed Resilience), Severn Sound Environmental Association (SSEA). 07 November 2024. Letter to Andrea Betty (Director of Planning), Town of Penetanguishene. Subject: EIS Review – 1290 Sandy Bay Rd, Town of Penetanguishene

**Reference: 1290 Sandy Bay Road - EIS Peer Review Response**

## SAR Bats and Bat Habitat

SSEA comment 5a - *Clarification should be provided to confirm that the most recent provincial guidance was utilized to inform the bat habitat survey and that the conclusions are valid.*

SSEA comment 5a - *Three additional bat species have been assessed by Committee on the Status of Species at Risk in Ontario as Endangered.*

SSEA comment 5c ii -*, it is unclear whether snag habitat was assessed using current provincial protocols and during leaf-off conditions and more information may be needed.*

The assessment of bat roosting habitat potential was undertaken largely in context of the Significant Wildlife Habitat (SWH) technical guidance and criteria[3]. A key indicator of significant maternal roosting colonies is the presence of large (i.e., >25 cm DBH) wildlife trees (i.e., snags) at a density of > 10 per hectare. The EIS findings and conclusions pertaining to bat habitat are based on a quantitative survey of transects and plots of set area (either 100 or 200 $m^2$) for the presence of wildlife trees measuring 25 cm DBH or more. It is acknowledged here that female bats prefer wildlife trees in early stages of decay, as noted in the Peer Review. Although emphasis during EIS monitoring was on trees in later stages of decay with observable characteristics of relevance (knot, holes, large bark flakes, open cavities), all classes[4] of snags were considered. This surveillance was completed primarily during the growing season, but confirmatory observations were also recorded in the months of April and December when foliage was absent or minimally established. In addition, site monitoring also included visual surveillance of woodland edges and openings during late evening hours during the bat-active season with a focus on bat presence.

SSEA correctly notes that these efforts are not in full keeping with the existing guidance in that the work was not completed fully in the leaf-off period and that potential roost trees <25 cm were not targeted in the snag counts. As noted by SSEA, the MECP has recently drafted guidance[5] pertaining to the surveillance of bats and bat habitat. It is noted that this guidance is unpublished and is not cited in any of the SAR regulations established under the Endangered Specie Act (ESA).

In specific regard to timing recommendations, the guidance recommends that "surveys are best conducted during the leaf-off period (i.e., fall to early spring) so viewing of tree cavities and crevices is not obscured by foliage". The existing forest cover within the Sandy Bay property is generally young and exhibits thin or absent sub-canopy. These characteristics are such that visual assessment of candidate roost sites was not significantly impaired. Example photos of typical canopy conditions within the area of

[3] Ontario Ministry of Natural Resources and Forestry (MNRF). 2015. Significant Wildlife Habitat Criteria Schedules for Ecoregion 6E. Queen's Printer for Ontario. 38 pp. January 2015.
[4] Watt, W.R. and M.C. Caceres. 1999. Managing for snags in the boreal forests of Ontario. OMNR Northeast Science and Technology (NEST) Technical Note TN-016.
[5] Ontario Ministry of Environment Conservation and Parks (MECP). 2022_Treed Habitats - Maternity Roost Surveys

the proposed lots are attached (Appendix C) to illustrate the general absence of obstruction of sight lines through the canopy.

In regard to candidate roost sites, SSEA notes that SAR bats may use trees of any size for roosting. While this statement is generally true, the specifications of the MECP habit assessment protocol and the criteria for SWH assessment are both focused on trees of certain size classes and stages of decay. The habitat assessment at the Sandy Bay Property has been conducted with that same focus.

Notwithstanding noted limitations, the methods employed for purposes of the EIS do provide some level of relevant information pertaining to bat habitat potential. Based on that information, the EIS conservatively concludes that there is some risk of adverse effects on SAR bats. As noted by SSEA, Eastern Red Bat, Hoary Bat, and Silver-haired Bat were formally added to Ontario's Species at Risk List in January 2025. It is now the case that seven of the eight bats species endemic to the province are listed as *Endangered*. Despite the population trends that have lead to these listings, bats are still relatively wide spread and routinely encountered in the province. Eastern Small-footed Myotis and Tri-colored bat are considered to be relatively rare in the province, but other species are widely distributed Effectively, there is some likelihood that any wooded area in the province may serve as habitat for at least a small number of individuals of one or more of the seven species listed as SAR. It is reasonable to conclude that all seven species could theoretically be found within or immediately adjacent to the Sandy Bay Property. While there is some possibility of occasional and intermittent presence of species-at-risk bats within or near the Property, the available information does not suggest that there would be a concentrated presence of bats within the Sandy Bay Property for hibernation or maternal roosting purposes.

It is acknowledged and understood that the potential presence of SAR bats necessitates due diligence in context of ESA regulations. In regard to the current planning application, the EIS concludes that the proposed severance is feasible in terms of compliance with OP policies related to bat SAR and SWH. It is acknowledged that the presence of bats and bat habitat at the Sandy Bay property will still require consultation with MECP to determine if there are any outstanding concerns or requirements to address for purposes of compliance with relevant regulations under the Endangered Species Act (ESA). It is understood that more rigorous acoustic monitoring and further detailed inventory of all potential high quality roosting sites may be requested by MECP for that purpose. It is also understood and recommended that various mitigation measures may be necessary to achieve compliance with ESA regulations. In following the precautionary principle, there are several measures recommended to avoid or reduce any risk of negative impacts to bat SAR or bat maternal colonies that could constitute SWH. This includes:

- scheduling of clearing or site preparation activities to avoid the active bat period,
- post-construction installation of artificial roost sites or creation/enhancement of natural roost sites, with various considerations to

optimize effectiveness (structure design and capacity, location and orientation of placement),

- identification of existing candidate roost sites as retention priorities as part of a Tree Preservation Plan (TPP) process, and
- targeted tree planting to compensate for losses of any high quality treed habitat.

In the context of mitigation, the EIS has identified a bat active period of 01 April to 30 September, which is in keeping with the period identified in the MECP technical note. However, SSEA has suggested consideration of a bat active period of March 15 to November 15 to allow for possible presence of Eastern Small-footed Myotis. As noted above, this species is rare in Ontario, and the theoretical likelihood of its presence at the Sandy Bay Property is considered to be very remote. The potential for occurrence of Eastern Small-footed Myotis and any implications to timing windows will be a matter for discussion at the time of any formal consultation with MECP.

In regard to the TPP process, a Master TPP[6] has now been prepared in support of the severance application. The Master TPP identifies the need to consider bat roosting sites, and also the presence of Black Ash, in the eventual preparation of Lot-specific TPP reports for each of the 5 lots. It is anticipated that those lot-specific TPPs will be a requirement for later stages of development approval (e.g. issuance of building permit).

**Black Ash**

SSEA comment 5b - *It is unclear if a Black Ash assessment report has already been submitted to the Ministry…. SSEA recommends that the Town require confirmation that the assessment report has been submitted and/or results of Provincial review are provided to confirm exemption from ESA prohibitions for Black Ash on the subject lands.*

Black Ash was listed as Endangered under the Endangered Species Act, 2007 (ESA) in 2022, but formal protection was delayed for a two year period. This delay was to allow time for development of a balanced approach to support protection and recovery of a species that is still abundant and widely encountered. In January 2024 Ontario Regulations (O.Reg.) 6/24 and 7/24 came into effect, protecting Black Ash species and habitat. O. Reg. 6/24 identifies exceptions to ESA prohibitions against direct harm that consider both the health and size of the tree. O. Reg. 7/24 specifies Black Ash habitat as a radial distance of 30 m from the stem of every Black Ash not exempt under O. Reg. 6/24. In June 2024, the province also released guidance[7] for the assessment of health of Black Ash in context of O. Reg. 6/24 (MECP, 2024).

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[6] Tree Preservation Plan - 5 Lot Severance - 1290 Sandy Bay Road. Report prepared for: Mr. Martin Kiener, Universalbau Corporation. Report prepared by Neil Morris, Consulting Ecologist. 10 February 2025. Report Reference # 23-15.2

[7] Ontario Ministry of Environment, Conservation and Parks (MECP). 2024. Black Ash Assessment Guidelines: Assessment of Black Ash (*Fraxinus nigra*) for the purposes of the Endangered Species Act, 2007 June 2024 (Version 1).

**Reference: 1290 Sandy Bay Road - EIS Peer Review Response**

To confirm, in August 2024 the Black Ash specimens identified within the area of proposed lot creation were subject to assessment in general accordance with the MECP Assessment Guidelines to determine their status in context of O. Reg. 6/24. The assessment revealed that many of the Black Ash within the Property are smaller than the regulatory size threshold of 8 cm DBH. Also, the few specimens that do exceed the size threshold have suffered significant decline as a result of EAB infestation, with a canopy condition rating of 5 and indications of High Severity EAB infestation (multiple exit holes, extensive larval galleries). In addition, a substantial percentage of the Black Ash measuring 5 to 8 cm DBH also exhibited signs of EAB infestation, and a majority of the many specimens of White Ash throughout the Property are also in severe decline due to EAB. It is likely that the level of EAB infestation of any ash species within the Property will increase in the near future.

A detailed assessment report has not been formally submitted at this time, but such a report will be prepared and submitted at the time of anticipated consultation with MECP in regard to ESA regulatory compliance. As noted by SSEA, the MECP recommends that formal assessment be completed and submitted as close to the time of potentially harmful activity as possible. In the case of the proposed lots, this may not occur for 2-3 years, or longer.

For current purposes, the EIS provides information that demonstrates the feasibility of lot creation in keeping with planning policy, with an understanding that the presence of Black Ash may require further consideration and specific efforts to meet the requirements of ESA regulations.

## Closing

Overall, the understanding of the presence of SAR at the property is the key issue underlying the comments provided by SSEA.

In the case of SAR bats, the assessment of habitat reported in the EIS is not fully in keeping with guidance, but does provide information suggesting a limited presence of high quality roost sites, and no obvious locations where such sites are prevalent within the proposed area of lot creation. The theoretical presence of SAR bats within the Property is acknowledged and necessitates eventual consultation with the MECP in regard to ESA compliance. With certain mitigation measures (timing windows, habitat creation/enhancement, Tree Preservation Planning), it is certainly possible compliance could be achieved under the proposed lot creation.

For Black Ash, recent assessment suggests that the specimens identified within the property will not be subject to ESA regulations at the eventual time when construction plans are finalized and/or implementation of those plans commences. It is also noted that the current regulations appear to allow for accommodation of some degree of direct impacts, as long as registration is completed. With this and other regulatory mechanisms (e.g. Overall Benefit Permits), the identified risk of Black Ash impacts at the Property should not be taken as a matter of non-compliance with SAR policies in the planning approval process.

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In general regard to compliance to SAR regulations for both bats and Black Ash, it is fully agreed that consultation with appropriate agencies in regard to ESA regulations is necessary and will be a due diligence requirement prior to any eventual activity that has potential to have adverse effects on these SAR or their habitat. It is also acknowledged that owners of the property are responsible for ensuring compliance with all other relevant provincial, federal and municipal requirements and policies (e.g., Migratory Birds Convention Act, Fisheries Act, Fish and Wildlife Conservation Act, tree cutting/forest conservation By-laws, etc.) and to obtain any required approvals. However, the advancement of planning approval at this time is not necessarily contingent on completion or initiation of the regulatory compliance process. The current assessment supports the conclusion that the development proposal is feasible in terms of there being identifiable and reasonable means to achieve compliance with relevant regulations.

Please feel free to forward this letter as you see fit. If you or other parties have any questions or concerns regarding the content of this letter, or otherwise in general regard to the matters discussed herein, please do not hesitate to contact me at your convenience.

Sincerely,

Neil Morris, Consulting Ecologist
2480 Olde Baseline Rd.
Caledon, Ontario
L7C 0J3

cc: Owen Taylor, Planner otaylor@penetanguishene.ca
Martin Keiner (Universalbau Corporation)

Att: Example photos of forest cover

# Photos

Typical early spring appearance of FOD9 community within proposed lots

Typical early spring appearance of FOD3 community within proposed lots

Typical early spring appearance of FOD5 community within proposed lots