



Greenspace Alliance of Canada's Capital
Alliance pour les espaces verts de la capitale du Canada

Postal address: P.O. Box 55085, 240 Sparks Street, Ottawa, Ontario K1P 1A1 ☐ Tel.: (613) 739-0727
E-mail: contact@greenspace-alliance.ca ☐ Web site: www.greenspace-alliance.ca

4 February 2016

To: Mr. Scott Lee, Resources Operations Supervisor
Ministry of Natural Resources and Forestry,
Regional Operations Division, Southern Region,
Kemptville District

By Email - scott.lee@ontario.ca

Re: "Overall benefit" application by KNL (EBR 012-6270)

Dear Mr. Lee,

SUMMARY

+ This Notice was defective from the start because the information is vague and no access to more substantive information is offered. On that basis alone the Notice should be withdrawn.

+ The application does not consider species at risk other than Blanding's Turtles, Butternuts and Least Bitterns and is therefore incomplete.

+ For each of the three species at risk considered, the application falls well short of demonstrating that an overall benefit would be achieved. The application should be rejected.

DETAIL

On process

1. The information offered in the posting (loaded January 4, 2016) does not allow the public to make reasoned comments about this application other than to express shock at the magnitude of the habitat and species destruction KNL would be allowed to do, and to be puzzled by the sketchy information about how KNL would meet the requirements of section 17(2)(c) of the *Endangered Species Act*. Nothing more than "potential approaches" are laid out, with no supporting information or guarantees that these potential approaches will actually be carried out.

2. Only through extraordinary efforts by the local Councillor and ourselves did more information reach the public (January 26-29). The information was provided in a chaotic manner which required much manipulation before it could become, in part, accessible electronically.

3. When, in late January, the comment period was extended to February 17, for up to three days the revised posting showed contradictory information and had deleted the opportunity to make on-line comments. As a result of our alert, the Notice was corrected the following day. More importantly, the revised Notice still did not offer access to the additional information that had been informally provided to the Councillor and ourselves.

These are unacceptable practices and for that reason alone the Notice should be withdrawn.

On substance

General

4. This application seeks to prove an overall benefit for three species at risk (SAR) but previous studies have identified other SARs on these lands as well, including Whip-poor-will, listed as Threatened in Ontario, and American Ginseng (Endangered); Golden Winged Warbler and Olive Sided Flycatcher are listed provincially as of Special Concern. Why does the application deal only with Butternut, Least Bittern and Blanding's Turtle? Again, this alone should be sufficient reason to withdraw this Notice until the applicant has provided more comprehensive proposals.

5. For an "overall benefit permit" to be granted, the Minister must be satisfied that

- (i) the overall benefit will be achieved in reasonable time;
- (ii) reasonable alternatives have been considered and the best one has been chosen; and
- (iii) the conditions of the permit require reasonable steps to minimize the negative impact on individuals of the species.

In our submission, proposals for all three species considered fail to meet these conditions. In the Notice's own words, "Overall benefit is more than "no net loss" or an exchange of "like for like". Overall benefit is grounded in the protection and recovery of the species at risk and must include more than mitigation measures or "replacing" what is lost." (underlining added).

6. For each of the species, the application describes three scenarios, including one that would see no development. That scenario is considered to be "unreasonable" but that amounts to a misinterpretation of the *ESA*. In the context of the *Act*, reasonableness refers to alternatives affecting the species. The ability of a developer to proceed does not enter into it. This is a key fault in the application.

7. Under the Notice's "Potential approaches to achieve an overall benefit for each species" almost all items listed involve research efforts. Presumably these are elaborated in Appendix F (Academic Program Research and Monitoring Proposal). However, this Appendix muddies the picture as it deals almost exclusively with Blanding's Turtles and is for the most part concerned with monitoring. To monitor is even less of a standard than to achieve no-net-loss or exchange like-for-like. Monitoring by itself cannot be considered to result in an overall benefit. The monitoring could amount to documenting the disappearance of the species from the area. There is no action specified that would be triggered as a result of any monitoring.

Butternut

8. As a result of the construction of Terry Fox Drive Extension, 177 Butternut trees were removed from the area. This permit would allow, under the "preferred alternative" for Butternut trees, up to a further 120 specimens to be removed; just six trees would be retained. Against such wholesale destruction, proposals to archive cancer-resistant specimens, collect their seeds and nurse seedlings can hardly be seen as an "overall" benefit. Appendix F devotes exactly two lines to Butternuts and discloses no further information.

Least Bittern

9. The impact on Least Bittern is tied to the ultimate choice of storm water management (SWM) solution. Of three alternatives sketched out, two are said to have minimal effect on the Kizell cell and therefore on this species -- at least that is what is asserted on page 7 of the application. The SWM issue is the other major hurdle for KNL's development plans and is far from resolved. In light of this uncertainty, it would be prudent to consider the application for an overall benefit under the *ESA* assuming the worst-case scenario for Least Bittern.

10. Page 6 of the application admits that this alternative (the original SWM plan) would result in "significant ecological change throughout the Kizell Cell and reduced habitat functionality for Least Bittern..." The Notice suggests that the overall benefit for this species could come about by creating new wetland habitat and undertaking a research project to monitor the use of both original and new habitat before and after construction. Appendix F specifies that the new wetland would be created west of the rail line where it meets Terry Fox Drive; and the monitoring would be over three years post-construction and a further three years after the SWM system is fully operational. Again, monitoring does not necessarily imply an overall benefit.

11. Whether the second alternative (said to be the preferred option) would indeed have minimal effect on this species remains to be demonstrated.

12. Given the uncertainty over the ultimate SWM solution, this application is premature.

Blanding's Turtles

13. The Notice states that an overall benefit for this species could be achieved by creating new nesting and overwintering habitat, decreasing road mortality and supporting a research project to monitor the movement and use of remaining and new habitat. It takes heroic faith in the success of wildlife management to believe that these efforts will, net, prove a benefit for the species after 124 hectares of its current habitat have been destroyed. Earlier studies of this population -- the largest in Eastern Ontario -- have concluded that it will survive only if great care is taken not to disturb it and is given all possible support. Massive destruction of its habitat (5% of Category 1 habitat, 33% of Category 2 habitat and 86% of Category 3 habitat according to Table B in Appendix B) does not do that.

14. A recent study about the efficacy of wetland restoration demonstrates what has long been suspected: "Our results from a meta-analysis of 621 wetland sites from throughout the world show that even a century after restoration efforts, biological structure ... and biogeochemical functioning ... remained on average 26% and 23% lower, respectively, than in reference sites." (David Moreno-Mateos et al.,

"Structural and Functional Loss in Restored Wetland Ecosystems," *PLOS-Biology*, January 24, 2012) Counting on the success of creating new overwintering habitat for the many specimens that have been chased out of their current habitat should be considered an experiment and cannot be considered *a priori* to be an overall benefit.

15. As noted, Appendix F deals almost exclusively with proposed activities involving Blanding's Turtles. The expressed intent is to find a Doctoral Researcher but if unsuccessful one or more Master students would have to do. The research would take place from April 2016 to October 2019. Should the researchers encounter situations that impact the viability of the research then KNL would develop, within two years, a contingency plan for alternative actions to achieve as yet an overall benefit. One imagines here a situation where the existing population of Blanding's Turtles is being wiped out, leaving nothing to research. Since development meanwhile would have proceeded, still achieving an overall benefit seems highly unrealistic.

16. Development will result in many more roads and much more traffic. It remains to be demonstrated whether the extensive fencing that would be erected would suffice to counter the increased road kill that must be expected.

17. Not mentioned in the application is the impact of extensive blasting of bedrock so that more storm water can be retained. This absorptive capacity is a requirement in the preferred SWM option. It would seem reasonable that such blasting would significantly disturb the remaining Blanding's Turtle habitat and may possibly poison the ecosystem and cause their death.

18. Blanding's Turtles live 50 years or longer. Any credible commitment to an overall benefit would have to extend well beyond the four years of monitoring proposed in Appendix F.

CONCLUSION

This application would have a massively destructive impact on the three SARs considered and fails to consider other SARs also in the area. For each of the three species considered, the application fails to demonstrate that an overall benefit would be achieved. The application should therefore be rejected.

Sincerely,

Erwin Dreessen

Erwin Dreessen

Co-chair