

October 23, 2017

BEL 216035

Ms. Clara Ombiga
Manager, Planning & Development – Hi-Rise Division
Mattamy Corporation
7880 Keele Street, Suite 400
Vaughan ON L4K 4G7

Re: DFO Self-Assessment Screening for Proposed Works at 2082, 2086 & 2090 James Street, City of Burlington

Dear Ms. Ombiga:

Beacon Environmental Limited (“Beacon”) has been retained to complete the necessary tasks to acquire approvals from Fisheries and Oceans Canada (DFO), with respect to the proposed works for the redevelopment of 2082, 2086 & 2090 James Street in the City of Burlington, Regional Municipality of Halton. It is our understanding that in order to facilitate redevelopment of the site, a cut/fill has been proposed as well as bank stabilization of a reach of Rambo Creek, through the installation of a retaining wall. These efforts will also serve to reduce floodplain away from public property, strengthen the long term stability of the slope by reducing the impacts of toe erosion at the base of the slope, and reduce downstream sedimentation as a result of the current erosion issues. Nonetheless, the proposed works have the potential to impact the downstream fishery in Rambo Creek.

In the pre-consultation form for the Zoning Bylaw Amendment and Local Official Plan Amendment, dated February 24, 2016, the City identified a requirement for a “DFO Fish Habitat Screening”. The following provides an analysis of the abovementioned project using DFO’s Self-Assessment Tool for Projects Near Water, and details the necessary steps to acquire DFO approvals for the project, so as to satisfy that requirement.

Federal Fisheries Act

Fish habitat is protected under the Federal *Fisheries Act* (1985). In Ontario, the federal department of Fisheries and Oceans Canada manages fish habitat and the Ontario Ministry of Natural Resources and Forestry (MNRF) manages fisheries. Section 35 (1) of the Federal *Fisheries Act* precludes “any work, undertaking or activity that results in serious harm to fish” that are part of a commercial, recreational or aboriginal fishery, or to fish that support such a fishery. S. 35(2) provides that s. 35(1) does not apply where the work, undertaking or activity has been authorized by the Minister and is carried on in accordance with conditions established by the Minister.

The *Fisheries Act* defines “serious harm” to fish as “the death of fish or any permanent alteration to, or destruction of, fish habitat”. The Fisheries Protection Policy Statement (2013) was prepared by Fisheries and Oceans Canada (formerly Department of Fisheries and Oceans [DFO]) to provide guidance on compliance with the *Fisheries Act*.

Compliance with the provisions of s. 35 of the *Fisheries Act* in regard to particular water bodies is now made on a case-by-case basis through a self-assessment process to determine impacts to fish and fish habitat and to identify appropriate responses. DFO Review is not required for certain bodies of water or certain types of projects.

Self-Assessment Tool

If the project is taking place in one of the following existing waterbody types, there is no need to submit the project for review to DFO.

- Approved marine disposal or dumping sites that have been used in the past 10 years;
- Tailings Impoundment Areas (as listed in Schedule 2 of the Metal Mining Effluent Regulations);
- Artificial waterbodies that are not connected to a waterbody that contains fish at any time during any given year; and
- Any other waterbody that does not contain fish at any time during any given year, and is not connected to a waterbody that contains fish at any time during any given year.

The proposed works do not occur in these waterbody types, therefore are not excluded on this basis.

If the project meets the criteria listed below, the project does not require DFO review.

- Bridges, Causeways and Culverts
- Cottage, boating and recreation
- Harbours and Marine commercial activities
- Drainage, flooding and erosion control, stormwater and wastewater management
- Water Level and Flow Management
- Other Activities (e.g., habitat restoration, log removal/salvage)

The installation of retaining wall and proposed cut and fill provide erosion control and reduce flooding impacts; however, further details for this criterion are provided, and include:

- Stormwater management facilities/basins
 - Construction of new land-based stormwater management facilities, settling ponds and storage basins
 - No work occurring below the High Water Mark of a nearby waterbody
- Tailings impoundment areas
 - Construction of new land-based Tailings Impoundment Areas
 - No work occurring below the High Water Mark of a nearby waterbody

- Water outfalls
 - Construction of, and repairs to, water outfalls
 - No temporary or permanent increase in existing footprint below the High Water Mark
 - No new temporary or permanent fill placed below the High Water Mark
 - All removal activities
- Drainage channels
 - Construction and routine clean-out of drainage channels
 - Clean-out has occurred in the past 10 years
 - Work can be done in the dry or under frozen conditions
- Bank stabilization
 - Bank stabilization using rock protection, plantings or bioengineering
 - No temporary or permanent increase in existing footprint below the High Water Mark
 - No new temporary or permanent fill placed below the High Water Mark
- Aquatic vegetation removal
 - Removal of aquatic vegetation by hand or mechanical cutting for flood control
- Dykes
 - Repairs to existing dykes
 - No temporary or permanent increase in existing footprint below the High Water Mark
 - No new temporary or permanent fill placed below the High Water Mark
- Berms
 - Repairs to existing berms
 - No temporary or permanent increase in existing footprint below the High Water Mark
 - No new temporary or permanent fill placed below the High Water Mark

When screening the proposed works related to Rambo Creek against the criteria above, it is concluded that they do not meet the criteria in all cases, primarily because works are proposed below the High Water Mark (i.e., within the floodplain); therefore, DFO Project Review is recommended.

Next Steps – Request for Review

Where development activities taking place in or near water may affect fisheries by adversely affecting fish or fish habitat, the Fisheries Protection Policy Statement (2013) recommends that proponents of these activities should:

- understand the types of impacts their projects are likely to cause;
- take measures to avoid and mitigate impacts to the extent possible; and,
- request authorization from the Minister and abide by the conditions of any such authorization, when it is not possible to avoid and mitigate impacts of projects that are likely to cause serious harm to fish.

It is not anticipated that the project will cause “serious harm” to fish provided that avoidance and mitigation measures are applied. As further details of the project are developed during Site Plan Application and Detail Design stages, Beacon will continue to work with the project team to ensure that

all possible measures are taken to avoid and mitigate potential impacts to fish and fish habitat. The detail design and all mitigation measures, including Erosion Sediment Control (ESC) plans, flow diversion, phasing, detailed restoration planting plans, and any necessary fish and wildlife rescue plans will be submitted to DFO for review. This submission and resulting correspondence from DFO can be submitted to City of Burlington for its records.

We trust that the above will satisfy the requirements for the "DFO Fish Habitat Screening" identified in the pre-consultation form for the Zoning Bylaw Amendment and Local Official Plan Amendment, dated February 24, 2016. Should anything further be required at this time, do not hesitate to contact the undersigned at cglass@beaconenviro.com or 905-201-7622 ext. 231.

Yours truly,
Beacon Environmental



Carolyn Glass, BSc. MES
Ecologist



Kristi L. Quinn, B.E.S
Senior Planning Ecologist