

The [Byron Gravel Pit Secondary Plan](#) and breeding habitat for Bank Swallows
December 2023

Relevant historical and legal background is outlined here:

2022: <https://www.birdfriendlylondon.ca/post/byron-gravel-pit-bank-swallow-update>

2020-2021: <https://www.facebook.com/notes/500472734254921>



Photographs showing the full extent of the Bank Swallow colony can be viewed [here](#).
Markers were added for each nest burrow and 1,913 were counted in software; see [here](#).
Photographic documentation of Bank Swallows using the site can be found [here](#).

Regarding Species at Risk, the draft secondary plan says:

“There are also some wooded and successional areas around the perimeter of the former aggregate extraction areas, some of which are associated with the steep slopes which have also been recently documented as supporting habitat for Species at Risk. The Unevaluated Wetland and Unevaluated Vegetation Patches identified in Schedule 3 are to be subject to environmental

review in accordance with the applicable environmental policies The London Plan prior to any proposed re-development of the area.

New development or site alternation will require Subject Lands Status Report (SLSR) and an Environmental Impact Study (EIS), as set out in The London Plan, to:

- a) Assess the extent and significance of the remnant natural features and areas in the Study Area;*
- b) Identify linkages within and between these features and areas;*
- c) Confirm or refine the boundaries of components of the local Natural Heritage System with regards for the natural features and areas as well as open spaces in the adjacent lands;*
- d) Evaluate the anticipated impacts of any proposed development or site alteration on the Natural Heritage System in the Study Area or in the adjacent lands; and,*
- e) Identify mechanisms to avoid impacts or, where impacts are unavoidable, measures to mitigate these impacts in accordance with the applicable policies and regulations.*

Recognizing the long history of disturbance in the Study Area has created some types of significant wildlife habitat not previously documented, opportunities to protect and enhance these features in the Study Area shall be identified through the development process.

- a) For significant wildlife habitat, replacement rather than in situ protection may be considered where the feature(s) and function(s) can be provided elsewhere in the Secondary Plan area and are demonstrated, through an EIS, to provide a net gain to the Natural Heritage System, including consideration of buffers to adjacent land uses.*
- b) Significant wildlife habitat protection and/or creation may overlap with other protected and/or created natural heritage features and areas (e.g., wetlands and/or woodlands).*
- c) Assessments shall also consider local scale upland corridors that support plant and wildlife movement within the Study Area and to natural features and areas outside the Study Area*

Questions for City of London staff

- 1. Have official records and plans been updated to reflect the true size of the breeding colony of Bank Swallows?** The colony was drastically underestimated or underreported by a consultant (reasons for this are unknown) in [a subject land status report](#) presented to the Environmental and Ecological Planning Advisory Committee October 17, 2019. It stated the Byron pit contained a nesting colony of 70-75 burrows, with 80% of observed burrows being active, and less than 100 individual birds present. **Why isn't this report being updated?**
- 2. Is the EIS complete? If not, when will it be submitted? When will it be reviewed by ECAC?**
- 3. Is there a mitigation plan on file for the Bank Swallows at the Byron Gravel Pits? Can we access it through the City's contact for this file at MECP?** Section 23.14(6) of the Endangered Species Act O.Reg. 242/08 sets out that a mitigation plan must be prepared within two years after the first appearance of the species at the pit or quarry site. The previously undocumented colony of 1,913 birds was first reported to the Ministry in July 2020.
- 4. When it comes to limiting harm to the existing Bank Swallow colony and creation of new artificial habitat, what capacity does the City actually have to make or influence decisions?** e.g., design of mitigation, preserving existing habitat, location of new habitat, approvals by the province
- 5. Will the City be applying for external (e.g., provincial, federal or private sector) funding to support creation of artificial habitat? Who (which staff) would take the lead on that?**
- 6. The use of concrete structures for artificial habitat has been successful in [a recent pilot project](#) by the Québec Port Authority. A small pilot test in London/at the Byron gravel pits would help to understand the utility of this method better before scaling. Will the City include such a project as a requirement of future development approval?**
- 7. Who is responsible for the Species at Risk habitat compensation, and when will the plan be available for review by the public and ECAC? What will the City do to implement it?**
- 8. There is ongoing backfilling on the property. What is the grade they are trying to achieve, and when will that work be completed? How soon will further backfilling or slope remediation impact the locations of existing nest burrows? If this is unknown, who can be approached for an answer?**

- 9. When will a protective barrier be erected around the nest burrows to limit risks associated with backfilling? We are not aware of this step having been completed as there is no barrier around the area with active nests and this is a legislated requirement.**

Clause 9 of s. 23.14(9) of) the Endangered Species Act O. Reg. 242/08 says:

"If the species uses nests or hibernacula to carry out its life processes, the person must, before and during the period of time when the species is likely to use the nests or hibernacula, install and maintain barriers or other structures to create a protective zone around the nests or hibernacula to limit the adverse effects that may be caused by the operation of the pit or quarry."

O.Reg. 242/08 s. 23.14(9) says that a person "must" take all the listed steps under that subsection, including clause 9 regarding the creation of barriers or other structures around the SARO listed species' nests, "to limit the adverse effects that may be caused by the operation of the pit or quarry" for any species identified on a submitted "notice of activity form" under s. 23.14(5)(i).

- 10. Has a notice of activity form been submitted to MECP regarding the bank swallows at the Byron Gravel Pit? If not, why not? This is a legislative requirement.**

Background: s. 23.14(5) of the ESA makes clear that the submission of a notice of activity form is required "before doing anything" that would otherwise be prohibited under ss. 9(1)(a) or s. 10(1) of the ESA, being killing, harming or harassing the SARO listed species, or damaging or destroying their habitat, respectively.

s. 23.14(5)(i) requires this form to be submitted to the Minister before any work is done at the site, and the license holder that submits the form is required in turn to follow clause 9 of s. 23.14(9).

- 11. Will an application be filed for a Species at Risk Overall Benefit Permit? If not why not? <https://www.ontario.ca/page/species-risk-overall-benefit-permits>**