



*A portion of the Byron gravel pit Bank Swallow colony on the west bank.*

April 23, 2024

Dear Mayor Morgan and Members of London City Council,

I am writing to you regarding the Byron Gravel Pit Secondary Plan and natural heritage considerations. Please note that I provide consent for this submission to appear on the public meeting agenda and I am circulating it to all members of Council. I would be happy to connect with you to discuss any questions.

**I urge you to pass the motion brought forward by Councillor Franke directing staff to include design options for Bank Swallow habitat in studies supporting the creation of a Master Plan.**

This will not create any extra work for staff or delay development and it is not redundant. This proactive direction is consistent with the motion passed at the Planning and Environment Committee aimed at clarifying regulatory requirements and ensuring they are met with plans that ultimately succeed in preserving natural heritage. What follows is a summary of my research and interactions with staff to inform this request.

I support Council adopting the draft Secondary Plan as written and I commend staff on their work to produce it. However, it is imperative that staff, Council and the public have access to information about how the significant biodiversity of this landscape will be impacted moving forward. I am concerned that the City does not yet have clarity about expectations from the province in terms of how Species at Risk habitat is legally required to be accounted for in the development of the Byron gravel pit. Conserving existing habitat or creating new habitat would require careful planning, beginning in the early stages of the site design. I encourage you to confer with planning and ecologist staff about this aspect.

I am eager to see the Byron gravel pit be transformed into a site that supports London's housing goals and new recreational uses, while preserving the unique character of the landscape together with the wildlife that have made it their home. **The incorporation of Bank Swallow habitat into this site could be a major ecotourism draw.** Each spring I receive inquiries from visitors to London and members of the public who want to check out where the Bank Swallows live. I believe the open space area in the Secondary Plan could become an attraction that reflects positively on [London as a Bird Friendly City](#).

## What happened at PEC?

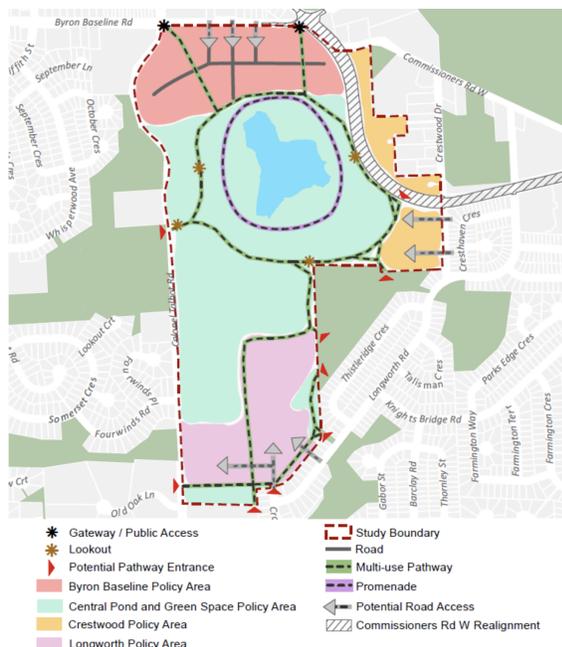
To recap, at the Planning and Environment Committee (PEC) meeting on April 9, Councillor Franke brought forward a motion requesting that 1) staff consult with the Ontario Ministry of Environment, Conservation and Parks (MECP) about Endangered Species Act regulatory requirements, 2) staff consult with the Ontario Ministry of Natural Resources and Forestry (MNRF) about Aggregate Resources Act regulatory requirements that apply to rehabilitation of the site, 3) staff report back to PEC with an update on these consultations by Q4 2024, and 4) staff provide information and options related to preservation or relocation of Bank Swallow habitat, in accordance with regulatory requirements, in future environmental studies to support the development of the Master Plan for the Byron gravel pit. This motion did not find a seconder; instead, Councillor Lewis adopted the first two clauses of Councillor Franke's motion into a separate amended motion. The motion passed by PEC did not include asking staff to report back to committee and to include Bank Swallow habitat in the scope of upcoming environmental studies.

## Background on the Bank Swallows in the Byron Gravel Pit

The Species at Risk concerns about this land are exceptional for London and the uncertainty surrounding them could carry risks to the implementation of the Secondary Plan and subsequent Master Plan. This is not the same as simply relocating a few Species at Risk trees or recreating a pond for turtles. The Byron gravel pit (specifically the Central Pond and Open Space Policy Area) contains breeding habitat of [nearly 2,000 Bank Swallows](#), representing what is believed to be the largest-known in-land breeding colony of the species in the entire province. The Bank Swallow is listed as Threatened under [Ontario's Endangered Species Act](#) and [Canada's Species at Risk Act](#). Bank Swallows and their breeding habitat are protected under the Migratory Bird Conservation Act and [Migratory Bird Regulations](#).

[Over half](#) of the population of Bank Swallows in Ontario breeds inside aggregate pits due to extensive loss of their natural habitat along banks of lakes and watercourses. According to the [Best Management Practices for the Protection, Creation and Maintenance of Bank Swallow Habitat in Ontario](#) (MNRF, 2017) the species requires a vertical or near-vertical (at least 75 degrees) surface of suitable material that typically consists primarily of fine sand or silt where they can dig their nest burrows each year.

I have been following the Byron gravel pit development since 2019 when [a subject land status report](#) was presented to the Environmental and Ecological Planning Advisory Committee. This report estimated that the gravel pit contained approximately 70-75 nests. Upon visiting the site, myself and other biologists [confirmed](#) that the colony is actually closer to 1000 nests in size. The public expressed strong interest in the preservation of this colony, recognizing [a petition](#) that has collected over 30,000 signatures to date.



### **Applicable legislation is conflicting**

I consulted with legal experts about what appears to be a conflict between two pieces of provincial legislation that apply to the Byron gravel pit and are enforced by different provincial ministries (this conflict is reviewed [here](#)). In summary, the [Aggregate Resources Act](#) requires the license holder (for the southern portion of the pit) to rehabilitate the site by backfilling it to an extent that is currently unknown. A previous estimate given by staff to the advisory committee suggested this could amount to delivery of over 300,000 trucks of fill – a process that would take decades to complete and drastically alter the conditions of the site. More recently, staff indicated that the license holder has yet to engage with MNRF to alter this requirement, but may intend to do so. Meanwhile, in my correspondence with MECP it was [confirmed](#) that the [Endangered Species Act](#) applies to the Bank Swallows and their habitat within the Byron gravel pit (despite [an exemption](#) that may also apply).

If rehabilitation of the Byron gravel pit proceeds in keeping with Aggregate Resources Act requirements, there is a strong likelihood that existing habitat for the Bank Swallows will be destroyed. This would apparently result in a contravention of the Endangered Species Act. Destroying the existing colony would force the birds to relocate, likely to other areas nearby (e.g., piles of construction aggregate) where they would resume attempting to nest and defending their territory, and could pose conflicts with future intended uses. Disturbance of Bank Swallow habitat in aggregate pits has historically been the basis of [charges](#) brought against municipalities and individuals under the Migratory Bird Conservation Act. There are no comparable sites for displaced Bank Swallows to nest in the surrounding neighbourhoods.

### **Regulatory requirements are unclear**

In carrying out my research in consultation with City of London planning staff, representatives from MECP, MNRF and the Canadian Wildlife Service, I have been unable to ascertain what exactly is required of the City, the landowners and the license holders in terms of mitigating development impacts to the Bank Swallows and their habitat in the Byron gravel pit. In a discussion just before the PEC meeting, planning staff indicated they have not received confirmation from MECP about Endangered Species Act requirements (e.g., a mitigation plan is required by [s. 23.14\(5\)\(1\)](#) but is unknown to staff).

Future construction activities at the site will require Environmental Impact Studies. However, by the time rehabilitation of the pit is completed, significant damage to the existing breeding habitat may have already occurred. It is my understanding that obligations are being communicated by MECP directly to the landowners and aggregate license holders, but not to the City. It remains unclear how Species at Risk regulatory requirements could affect the layout of the future Master Plan. Direction from Council will support staff obtaining information from the ministries and keeping the public apprised.

Based on precedent in other jurisdictions, it seems likely that the Endangered Species Act will require either for existing Bank Swallow habitat to be preserved to some extent, or for habitat to be relocated (i.e., offset). Preserving habitat is better for the birds, but might be impossible if the banks are deemed too unsafe to be embedded into parkland within a buffer. Replacing habitat would represent an unprecedented feat for conservation management of the Bank Swallow. To date there have been very few projects in Ontario that were successful in recreating artificial breeding habitat for the Bank Swallow, let alone for 1000 breeding pairs. The location and specifications for Bank Swallow habitat (e.g., ecological buffers) are not defined in the Secondary Plan, but may need to be incorporated somehow into the design of the Central Pond and Open Space Policy Area (subject to regulatory requirements).

## Potential solutions

Given the existing slopes in the Byron gravel pit may pose unacceptable risks to human safety, it may be preferable to switch to an alternative design for recreating Bank Swallow habitat. In 2019 the Port of Quebec published [a report](#) documenting the creation of artificial breeding habitat using concrete structures. This approach shows promise, but it is unknown if this could be similarly effective for relocating the Byron gravel pit colony. Previous attempts in Ontario proved unsuccessful as birds did not use the structures.

I have been in communication with City of London planning staff, the Upper Thames River Conservation Authority, faculty at the Advanced Facility for Avian Research at Western University, subject experts from Environment and Climate Change Canada and Birds Canada about developing a pilot project to construct and test a similar design to the Port of Quebec project somewhere in London. This study could inform future plans for relocating Bank Swallow habitat in Byron at greater scale.

It will be important for the long-term implementation of this project to align with regulatory requirements that apply to the Byron gravel pit as well as the timing of redevelopment (noting that the birds will be displaced and in need of somewhere to go). I recommend that regulatory requirements and management plans should be made public through a future staff report to PEC.

Thank you for your consideration,

Brendon Samuels

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*Concept art showing a potential design for the artificial habitat pilot project.*