
MILLER ENVIRONMENTAL SERVICES INC.

26 Riddle Court
North Bay, ON
P1B 8S6

April 3, 2018

Sandy Levin
59 Longbow Road
London, ON, N6G 1Y54

Dear Mr. Levin,

Re: Construction of Access Infrastructure within the Medway Valley Heritage Forest ESA

The Medway Valley Heritage Forest ESA (MVHF) is a unique element within the City of London's natural heritage system. Surrounded by urban development, it is a valley which fosters rare remnant species from the Carolinian forest and provides habitat to at least nine species listed as threatened or endangered under the *Endangered Species Act*.

Appropriately, the City has recently developed a new conservation management plan (CMP) for the property. As of March 2018, a version of that plan is available for review.

An issue exists with respect to a proposal to expand the access to the ESA trail system by the public by installing two bridges across Medway Creek (at locations referred to as A and D in the CMP). Proponents of these additions argue that there is public demand for this access and point to minor disturbances of the stream banks and stream bed when bolder hikers occasionally ford the stream at these points. It is generally observed that since the bridges would constitute re-development of recreational trails, they would be subject to accessibility standards required under O. Reg. 191/11 of the *Accessibility for Ontarians with Disabilities Act (AODA)*.

Those not in favour of the bridges cite concern over the implications of the construction and maintenance of bridges of this standard and, more significantly, what the increased traffic induced by the bridges would mean to some of the threatened and endangered plant species which are

particularly sensitive to foot traffic, cyclists, wandering dogs, etc. They hold that this additional risk cannot be sufficiently mitigated.

The conservation management plan does consider this management issue and concludes that it is possible within applicable guidelines to build bridges at sites A and D. At the present time, there is a staff recommendation put forward to Council endorsing the two-bridge scheme.

I have been asked to review the situation and provide a professional opinion. The opinion is as follows:

There are two aspects to this controversy. First is the issue of whether the two bridges should be built or not. This proposal is a public undertaking subject to environmental assessments. Although it is clearly a Category A undertaking requiring no public process under the legislation, it must be recognized that the principles of the *Environmental Assessment Act* still apply. A key principle of environmental assessment in the first instance is to consider the “need” you are addressing. Subsequently, the process directs you to consider alternative ways of addressing that need including the possibility of doing nothing. It is in this context of “need” within which the environmental assessment lens can bring clarity to this decision.

The debate over the bridges is clearly a disagreement over the appropriate degree of access. But is this what should be in discussion? The CMP document clearly lays out the following guiding principals for managing the ESA:

- Natural features and ecological functions for which the Environmentally Significant Area (ESA) have been identified shall be protected.
 - The ecological integrity and ecosystem health of the ESA shall have priority in any use or design related decision.
 - A properly designed and implemented trail system appropriate to specific management zones and reflecting sensitivity of the natural features will be implemented to achieve the primary objective of protection and the secondary objective of providing suitable recreational and educational opportunities.
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These guiding principles clearly state that the focus of management of this ESA is ecological function, ecological integrity and protecting the natural features. Further the CMP document itself acknowledges that trail development is a risk to natural heritage features. Creating any additional risk to endangered species like the False Rue-anemone would violate the guiding principles. The MVF is required as the largest sub-population of False Rue-anemone in Canada.

Providing recreational opportunities are secondary to the primary objectives. Thus the “need” for increased access is subservient to achieving long-term ecological integrity and protection of the ESA and such a need should not be considered unless there is absolute certainty that the species at risk won’t be impacted directly or indirectly.

To my reading of the analysis to date such certainty has not been ascertained. The review of the possible river crossings merely considered whether there was a significant ecological feature present at the location (answer “no” for both A and D). There was no mention of consideration of the change in volume and nature of traffic on the newly linked trails and how this might impact adjacent colonies of species at risk (neither was such an analysis in the terms of reference). In my opinion, the absence of such information is fatal to the decision to proceed with the linkages and the bridges should not be built.

The second aspect of this controversy is created by the belief that if bridges are built, they must be subject to the rigorous accessibility standards required under O. Reg. 191/11 of the *Accessibility for Ontarians with Disabilities Act* (“AODA”). This is not a correct assumption in all cases. When the AODA was drafted, it was foreseen that there would be circumstances where the construction and maintenance of recreational trails to AODA standards would conflict with the protection of sensitive natural heritage features. In those cases, AODA defers to the priority of maintaining the biodiversity by allowing for exceptions. Section 80.15 of the regulation states that exceptions to the requirements that apply to recreational trails are permitted where the obligated organization can demonstrate there is a significant risk that the requirements, or some of them, would adversely affect water, fish, wildlife, plants, invertebrates,

species at risk, ecological integrity or natural heritage values, whether the adverse effects are direct or indirect. It is important to note that there is no legal definition of “significant risk” in this statute. There is no external agency or authority that would make that determination. The responsibility is left to the stewards of the ESA, which in this case are the municipality and the ESA Management Team. If the stewards determined that there is in their opinion a significant risk to any species at risk (or any other natural heritage value in the list), then they can build access structures to any appropriate reduced standard and still be completely in compliance with AODA and O. Reg. 191/11.

Although it is reasonable to be concerned that such significant adverse effects could exist, the true risk is not known. There is no finding in the CMP about the risks to the threatened and endangered species along the trails leading up to these proposed crossings nor is there such a finding about the impacts on the creek ecology during and after construction of the bridges because the analysis has not been done. If such an analysis were done and a likely significant adverse effect was demonstrated, a much more limited and less disruptive mechanism to traverse the creek could be installed and still be fully compliant with *AODA*, if the crossing is truly necessary at all.



Gord Miller, B.Sc., M.Sc.
