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FORBID ROADS OVER GREEN SPACES]

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February 12, 2022

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By Email

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Dear Mr. Sorochinsky:

Subject: Comments re Bradford Bypass Early Works Draft Report

Having thoroughly read the subject report, my initial response is the MTO and the AECOM project team have gone to great lengths to overwhelm a few very serious issues relating to this project with copious more general comments, many of which are best practices recommendations. Simply put this report goes to great length to distract the reader from identifying potentially deal stopping issues.

Through the passage of O.Reg. 697/21, the province has gone to extreme measures to avoid having to update the EA approval to address a number of salient developments since 1997. These developments would likely have a material impact on this proposed project. This is because any such update, or even now eliminated Class EA, require consideration of reasonable alternatives. This would likely necessitate abandonment of the currently approved route through the Holland Marsh, adjacent woodlands and greenbelt lands. These salient developments include:

- Elimination of the fundamental need for this highway in this location as is set out in the approved 1997 EA Study:
  - Traffic Problems - termination of provincial highways at lower-capacity municipal roadways (e.g. Highway 9 at Davis Drive). [Highway 9 is now a regional road].
  - Road Discontinuities - Inefficient, out-of-the-way travel .... barrier to east-west travel formed by the lack of a crossing of the Holland River north of

Highway 11 at Bradford. [The Bradford Bypass route is less than 1 km closer to Lake Simcoe than Queensville Sideroad, the current route. In its 1987 EA Study, MTO refused to consider the previously substantially approved Ravenshoe Road / Hwy 89 route which resolves out-of-the-way-travel problems].

- Organized misrepresentation of this highway's benefits by MTO and the Province's elected officials concerning the benefits of this highway to local residents aimed at securing strong support from local municipalities. (Details of the above points are set out in our Bait and Switch Report: <https://frogs.ca/wp-content/uploads/shared-files/Bradford-Bypass-Bait-Switch-with-Critical-Update-FINAL.pdf>)
- Substantially increased Places to Grow growth requirements for south Lake Simcoe Basin municipalities. The resultant population levels will require major local roadways improvements which will be overwhelmed or precluded by the presence of the Bradford Bypass. [Significantly greater than originally forecast levels of local traffic will be comingled with long distance highway traffic]. Fuller details are set out in our Fact Sheet entitled: REASONS WHY WE NEED A TOTALLY NEW HOLISTIC STUDY NOT RESTRICTED TO MTO'S MANDATE: <https://frogs.ca/wp-content/uploads/shared-files/Reasons-why-a-totally-new-holistic-study-which-is-not-restricted-to-MTO-is-needed-.pdf>
- Implementation of Go Train Service from Barrie to Union Station with frequent all-day service to be implemented shortly. This "reasonable alternative" was not considered in the 1997 EA Study and its subsequent 2002 EA Approval, which is now the final EA approval for this project.
- Implementation of a number of significant environmental protection statutes by the province such as the Greenbelt Protection Act and the Lake Simcoe Protection Act.
- Amendments to the Federal Fisheries Act, June 21, 2019, restoring protections to fish and fish habitat. Habitat protection provisions came into force on August 28, 2019 that prohibit the death of fish and the Harmful Alteration, Destruction, or Disruption of fish habitat. There are no MTO protocols with Fisheries and Oceans Canada to cover MTO's proposed works for this Early Construction project.
- At least six Supreme Court of Canada Cases have reinforced the crown's duty to consult with Canada's indigenous peoples. This duty to consult requires the development of mutual respect and meaningful two way consultations. Canada has created an Aboriginal and Treaty Rights Information System to assist proponents in meeting their consultation obligations. <https://www.rcaanc-cirnac.gc.ca/eng/1100100014686/1609421785838>

If these potential deal stoppers are not addressed now, the province could find itself in a position of having expended substantial further funds on the Bradford Bypass project (of which Early Works is a component) before encountering a situation where certain project pre-requisites, such as Fisheries Permits, or acceptable evidence of meaningful

first nations consultations are not available and the project must be abandoned. MTO's current strategy of assuming they can bulldoze their way through any problem is offensive to the point that MTO is likely to encounter unanticipated pushback outside the Province's jurisdiction which the province will be unable to fix with yet further unprecedented retroactive legislation.

**Our review of the more pertinent sections of the draft report follow:**

**Statement of Qualifications and Limitations<sup>1</sup>**

The attached Report (the "Report") has been prepared by AECOM Canada Ltd. ("AECOM") for the benefit of the Client ("Client") in accordance with the agreement between AECOM and Client, including the scope of work detailed therein (the "Agreement").

The information, data, recommendations and conclusions contained in the Report (collectively, the "Information"):

- is subject to the scope, schedule, and other constraints and limitations in the Agreement and the qualifications contained in the Report (the "Limitations");
- represents AECOM's professional judgement in light of the Limitations and industry standards for the preparation of similar reports;

AECOM shall be entitled to rely upon the accuracy and completeness of information that was provided to it and has no obligation to update such information.

AECOM agrees that the Report represents its professional judgement as described above and that the Information has been prepared for the specific purpose and use described in the Report and the Agreement, but AECOM makes no other representations, or any guarantees or warranties whatsoever, whether express or implied, with respect to the Report, the Information or any part thereof.

**Comment**

This Early Works report is meaningless to any outside reader without knowing:

- the scope, schedule, and other constraints and limitations in "the Agreement",
- what information is included in this Early Works Report that has not been independently verified by AECOM, or is otherwise not warranted to be current as of the Date of this Early Works Report. - Please confirm that in every case, this Report identifies information that has not been independently verified and information that is not warranted to be current as of the date of this Report.

**Issues Resolution**

In accordance with Section 11(4) of the Ontario Regulation 697/21, the Ministry of Transportation established an issues resolution process for the County Road 4 Early

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<sup>1</sup> AECOM -Draft Early Works Report – 1<sup>st</sup> page after Report Cover

Works. Any concerns raised by Indigenous communities and interested persons during the public review period of this Draft Early Works Report will be documented in Section 4.7 of this Report, as required by Section 12(1 )(b) of Ontario Regulation 697/21.<sup>2</sup>

**Comment:**

While this process apparently follows O.Reg 697/21, as it will document the issue, it does not address how the issue will be resolved and what will happen with any issue that is not resolved. This is a serious shortcoming of the regulation which we recommend be addressed.

**Need for this speed:**

As the County is proceeding with the widening of County Road 4 and the Bradford Bypass crosses County Road 4, proceeding with the County Road 4 Early Works will provide cost efficiencies between the Ministry and the County, minimize disruptions to the travelling public and provide infrastructure needed to meet travel demands in the shorter term.<sup>3</sup>

**Comment:**

This rationale is no longer valid. There is now absolutely no compelling reason to proceed with early construction other the political aspirations of our Premier. Ford is essentially using this project to have the government fund a major platform of his re-election campaign. Simcoe County Road 4 construction is now delayed due to the need for stage 4 Archaeological assessment(s) <https://www.barrietoday.com/local-news/yonge-st-widening-south-of-barrie-delayed-by-archaeological-assessments-4982323>

## 2 Study Process

### 2.1 Ontario Regulation 697/21: Bradford Bypass

Ontario Regulation 697/21 provides the opportunity for the Ministry of Transportation to prepare an Early Works Report for the assessment of a bridge at County Road 4 and the potential to proceed in advance of the rest of the Bradford Bypass. The Ministry of Transportation is required to complete all regulatory requirements set forth in Ontario Regulation 697/21, such as carrying out consultation, and obtaining permits and approvals for the project.<sup>4</sup>

**Comment:**

A prudent person would think that these permits would be obtained prior to awarding the contract to build the bridge. If no, why not? It appears that MTO proposes to obtain important extra jurisdictional permits after the construction contract has been let. What happens if the permit is not issued? Perhaps this is simply an oversight in the wording of the Regulation. In any event, as noted in our opening comments, much has changed

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<sup>2</sup> Early Works Draft Report Page iii

<sup>3</sup> Ibid p 16

<sup>4</sup> Ibid p 17

since 1997. MTO would be well advised to adopt a consultative as opposed to its current apparently cavalier approach to address these fundamental matters.

## **2.1.1 Early Works Report**

### **2.1.1.1 Draft Early Works Report**

The Draft County Road 4 Early Works Report was prepared to satisfy the requirements of Section 5 of Ontario Regulation 697/21 for the proposed works at County Road 4 (Section 3). This Early Works Report summarizes the local environmental conditions within the Early Works Study Area. The local environmental conditions were characterized through a combination of a desktop review and field studies by practitioners using industry standard techniques and provincial standards, protocols and guidelines, where appropriate.<sup>5</sup>

#### **Comment**

The fisheries information in this Early Works Report is not current nor is it complete. There is no justification to now move this to a Final Early Works Report and commence construction. No matter what legal environmental assessment regime you are working under, the timetable must be based on completion of all legislative / regulatory requirements. It is totally inappropriate to base your timing on the government's political aspirations. In order to comply with O. Reg. 697/21, since all work must cease upon issuance of this draft Early Works Report, this report needs to be withdrawn so that MTO can continue to properly complete this fisheries study, and obtain all necessary permits. This action is, or should be required to comply with Section 14 of O, Reg. 697/21.

### **2.1.1.2 Consultation and Issues Resolution Process**

In accordance with Section 11(4) of the Ontario Regulation 697/21, the Ministry of Transportation established an issues resolution process for the County Road 4 Early Works. Any concerns raised by Indigenous communities and interested persons during the public review period of the Draft County Road 4 Early Works Report will be documented in Section 4.7 of this Report, as required by Section 12(1)(b) of Ontario Regulation 697/21. Concerns received after the public review period will be addressed outside of the issues resolution process.<sup>6</sup>

#### **Comment**

Simply documenting reviewer's concerns does little to address or resolve them.

### **2.1.1.3 Final Early Works Report**

Comments received during the public review period of the Draft Early Works Report will be incorporated into Section 8 this Report and the Final County Road 4 Early Works Report will be published on the project website.

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<sup>5</sup> Ibid p 19

<sup>6</sup> Ibid p 19

After the Final County Road 4 Early Works Report is published, the Ministry of Transportation will provide a Statement of Completion of the Early Works Assessment process to the Director of the Ministry of Environment, Conservation and Parks Environmental Assessment Branch, after which the Statement of Completion will be published on the project website. **The Statement of Completion of the Early Works Assessment Process will indicate that the intention to proceed with the Early Works in accordance with the Final Early Works Report.** [emphasis added]

### Comment

So what you are saying is it doesn't matter what the input from this consultation is, the most you will do is document it in the final study but press on with early construction regardless of this input. Please confirm that the entire contents of all received comments for this report will be incorporated into the Final Early Works Report.

#### 2.2.3.1.2 Provincial Policy Statement

The Provincial Policy Statement, 2020 is issued under Section 3 of the Planning Act and provides policy direction on matters related to land use planning and development.

Maintaining or restoring the diversity and connectivity of natural features in an area, and the long- term ecological function and biodiversity of natural heritage systems (Provincial Policy Statement, 2020, Section 2.1.2);

- Restricting development and site alteration in, or adjacent to, significant wetlands, woodlands, valley lands, wildlife habitat, and Areas of Natural and Scientific Interest, unless it has been demonstrated that there will be no negative impacts on the natural features or their ecological functions (Provincial Policy Statement, 2020, Sections 2.1.4 and 2.1.5);
- Restricting development and site alteration in habitat of endangered or threatened species except in accordance with Provincial and Federal requirements (Provincial Policy Statement, 2020, Section 2.1.7); and
- Restricting development and site alteration in or near sensitive surface or groundwater features such that their features and related hydrological functions will be protected, improved, or restored (Provincial Policy Statement, 2020, Section 2.2.2).

The County Road 4 Early Works is consistent with the objectives of the Provincial Policy Statement as it supports the expansion and optimization of a multi-modal transportation system that provides connectivity to existing local and regional transportation infrastructure and supports long-term economic prosperity. The County Road 4 Early Works will also support areas that are planned for residential and employment growth.<sup>7</sup>

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<sup>7</sup> Ibid p 23

**Comment**

While the County Road 4 Early Works may be consistent with the objectives of the Provincial Policy Statement as a stand-alone bridge works, it totally violates the above noted policy objectives because it will be a component of the Bradford Bypass which violates these policy objectives.

**2.2.3.1.3 Greenbelt Plan 2017**

The County Road 4 Early Works are not located within the Greenbelt Plan boundary as it is located on lands designated as Settlement Area.<sup>8</sup>

**Comment**

This is a blatant misrepresentation! The only reason for this bridge is that it will be a component of the Bradford Bypass. The Bradford Bypass clearly impacts the Greenbelt. If AECOM is prepared to make this extremely misleading, out of context statement, it begs the question: what other unethical acts are they prepared to perform to satisfy MTO?

**Lake Simcoe Protection Act / Plan****Comment**

It should be noted that no mention is made in this Draft Early Works Report of the Lake Simcoe Protection Act, (LSPA). This report requires that infrastructure projects, such as the Bradford Bypass, will only be permitted if they have been approved by an Environmental Assessment or similar process and that all reasonable alternatives have been considered (but rejected for reason that the proposed infrastructure is both needed and will cause the least impact of the reasonable alternatives on Lake Simcoe).

The 1997 Bradford Bypass EA was completed well before the passage of the LSPA. While that EA study was conducted with regard to the requirements to protect the Oak Ridges Moraine, the study had no regard for any form of protection of Lake Simcoe. When the proposal for this highway was resurrected, the original EA study was to be updated by the conduct of a Class EA Study. This study included a requirement to consider reasonable alternatives to the undertaking and reasonable routes including a combination of private and rural and regional roads as alternative routes to satisfy the problems to be addressed by the Bradford Bypass. These requirements were pointed out to the Consultants as part of the PIC 1 consultation process<sup>9</sup>.

Subsequently, in early October 2021, the province enacted Ontario Regulation 697/21. This Regulation terminated the requirement to complete a Class EA Study and apparently superseded the LSPA requirement to consider alternatives including alternative routes. Had the LSPCA been in effect when the original EA Study was done,

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<sup>8</sup> Ibid p 28

<sup>9</sup> Comment to PIC 1 Pages 7 – 9 [https://frogs.ca/wp-content/uploads/shared-files/Comments-re-Bradford-Bypass-PIC-1-April-2021\\_Optimized.pdf](https://frogs.ca/wp-content/uploads/shared-files/Comments-re-Bradford-Bypass-PIC-1-April-2021_Optimized.pdf)

based on the published selection criteria, one of the two ring road options south or Newmarket would have been selected rather than the current extremely environmentally intrusive corridor. This corridor will have serious detrimental impacts on Lake Simcoe due to salt runoff from the highway. The LSPA is intended to protect the lake from this very type of pollution.

#### **4.4 Meetings and Presentations** <sup>10</sup>

The following meetings and presentations were held throughout the study:

- The Project Team hosted a virtual meeting with the Town of Bradford West Gwillimbury and the County on September 22, 2021 to provide a project overview, project schedule, existing conditions, the design, construction staging, potential impacts and approvals for Country Road 4. Key discussion items such as changes in design speed, coordination of the widening of County Road 4 on behalf of the County of Simcoe, construction limits, realignments, and potential impacts were also discussed.
- On September 29, 2021, the Project Team hosted a virtual meeting with the Bradford West Gwillimbury Fire and Emergency Services, King Fire and Emergency Services, and South Simcoe Police Services. At the meeting the Project Team provided a project overview, and overview of the design and construction staging. Key discussion items such as construction staging and the implementation of the new detour route to ensure continued access to County Road 4 and communication plans for advance notice to emergency services of any changes as the project progresses.

#### **Comment**

We acknowledge that MTO / AECOM have given a number of presentations to various municipal groups which appear to be fairly informative. All of the presentations included in Appendix B give no indication of what actual consultations, in the form of two way communications, actually occurred. Additionally the information provided in these various presentations are only available to the public if they are given to municipal governments and the members of the public diligently tracked all municipal calendars and reviewed all meeting agendas to join the meeting while it was in process.

Furthermore the presentations to our First Nations have redactions. Why is different information being provided to different groups? What input did AECOM obtain from their limited First Nations presentations? Given the apparently limited number of contacts with each of these First Nations Groups, and lack of any feedback from any of these groups, how can AECOM prove that their consultations with our First Nations satisfied the requirements set down by the Supreme Court of Canada?

We respectfully request and recommend that all of these presentations and study reports be posted on the project website so that the public can be better informed of MTO / AECOM's activities. That practice would significantly improve the extent and quality of your consultations.

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<sup>10</sup> Ibid p 47



- On December 8, 2021, the Project Team hosted a virtual meeting with the Environment, Community and Agriculture Committee as part of the overall Bradford Bypass. The purpose of the Environment, Community and Agriculture Committee is to understand and address community concerns and gather input on how to best implement the Bradford Bypass in a context sensitive manner. The committee is comprised of representatives from local communities and stakeholder groups that have focused interest or lands within the Study Area. The meeting included a presentation and a breakout discussion. The presentation provided an update on the County Road 4 Early Works and the County Road 4 Early Works were discussed in further detail in the break-out portion of the meeting. A copy of the committee presentation and minutes will be made available on the project website when available and will be documented in the Draft Environmental Conditions Report for the Bradford Bypass.<sup>11</sup>

### **Comment**

As someone who has participated in the original Bradford Bypass 1993-1997 EAS, the Highway 404 Extension Study and the York Region Water Reclamation EA study, I have great difficulty understanding how you can state that you have actively addressed concerns from Indigenous Communities and interested parties. I am on your ECA Committee. This committee has only been consulted once – December 8, 2021. Following that meeting, I requested a video of the zoom meeting or at least minutes of the meeting. I have never received a response to my request. I provided substantial comments in response to your PIC #1 and received at best a perfunctory response some months later. There is no reason why the video of that December 8<sup>th</sup> meeting cannot be made public and posted on the project website now. Also of note: traditionally minutes of meetings are approved by the attendees at the meetings, at which time they are appropriately filed and preserved. Aecom's form of minutes, if they are ever produced, will likely be one sided and essentially say what AECOM wants them to say. Hence, given AECOM's strong desires, if not specific instructions, to please MTO, these minutes are useless as any form of official record of these consultation meetings.

### **5.1.2 Fish and Fish Habitat<sup>12</sup>**

A Fish and Fish Habitat Existing Conditions and Impact Assessment was completed as part of the County Road 4 Early Works to document existing aquatic features within the Study Area, and identify anticipated impacts to fish and fish habitat and potential project permitting needs, future constraints and considerations that may be required to facilitate the Early Works.

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<sup>11</sup> Ibid p 47

<sup>12</sup> Ibid p 63

No correspondence with Fisheries and Oceans Canada at this stage of the project has been completed; however, Fisheries and Oceans Canada's online aquatic Species at Risk mapping has been reviewed.<sup>13</sup>

## Comments

The following is an excerpt of a 2020 Fisheries Report<sup>14</sup>

### 6. Recommendations

A comprehensive Fisheries Assessment is typically supported by field investigations; therefore, it is recommended that the information regarding fish and fish habitat provided within this report be supplemented with field investigations conducted in accordance with the MTO Environmental Guide for Fish and Fish Habitat (MTO, 2009) during the Preliminary Design phase.

Outdated habitat information (flow regime, substrate type, riparian and in-stream habitat, barriers to fish movement etc.) and any related constraints and opportunities that may exist at and/ or near the identified aquatic features have been identified as the key data gaps within this report. Additionally, the Study Area is largely within an area of dynamic agriculturally-dominant land use and thus there is an extensive network of field and field edge drainage ditches designed to lower water levels in the surrounding agricultural fields. These drainage ditches and flow conveyance features can potentially contain or support fish habitat but may periodically change configuration through regular farming and maintenance practices. Field investigations would close any identified data gaps, including the identification of aquatic features that have not been acknowledged as part of EA (1997), within the Fisheries Report (AMEC, 2002) and upon the review of current LIO (2019) data. During future design phases and field programs, any recorded/ identified field data that does not align with MNR data, will be communicated to MNR to discuss any changes in order to provide the appropriate categorization of the watercourse.

Due to the records for Northern Pike throughout the Study Area, updated habitat information will be required to confirm if Specialized Habitat, such as habitats that are used for spawning, nursery (e.g. slower moving areas with instream cover) or overwintering (e.g. pools), is present.

#### 5.1.2.2.2 Fish Species<sup>15</sup>

The watercourse approximately 1.3 km downstream of culvert EX-CL-9 (Figure 5-2) is direct fish habitat spawning area for muskellunge species (Ministry of Natural Resources and Forestry, 2019).

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<sup>13</sup> Ibid p 63

<sup>14</sup> Aecom Fisheries Report Page 25 - RPT-2020-02-14\_Final Bradford Bypass Fisheries-60601761.Docx

<sup>15</sup> Draft Early Works Report Page 73

No fish were observed in the stormwater management pond on the west side of County Road 4, but it is anticipated that small-bodied pollution tolerant warmwater fish would be present given the size of the pond, observed water depths, and abundant aquatic vegetation.

Although no fish were observed during field investigations, the Unnamed Tributary crossing at culvert EX-CL-9 is considered direct, warmwater fish habitat.

**Comment**

Yet another reason for further investigation and communication with Fisheries and Oceans Canada.

**5.1.4 Surface Water and Hydrology<sup>16</sup>**

Culvert EX-CL-8 (Figure 5-2) conveys flows across County Road 4 from a drainage area of 26.90 ha. Culvert EX-CL-9 (Figure 5-2) conveys flows across County Road 4 from a drainage area of 19.1 ha. This area includes the drainage area (18.6 ha) to the existing stormwater management pond located upstream of the culvert. Flows from these two culverts are conveyed easterly to a tributary of the West Branch of Holland River which ultimately discharge to Lake Simcoe.

Conveyance of runoff in the road area just north of 8th Line, is achieved by a storm sewer system where runoff is collected by catchbasins located along the urban section of the road. Runoff collected by the storm sewer system discharges to a 2000 x 2000 mm corrugated steel pipe that crosses 8th Line and that discharges to the tributary of the West Branch of Holland River.

**Comment**

Yet another reason for further investigation and communication with Fisheries and Oceans Canada.

**5.2.3.4 Bradford Bypass Noise Impact Assessment<sup>17</sup>**

A separate, overarching noise impact assessment will be completed for the Bradford Bypass to assess potential noise impacts related to the preferred Preliminary Design alternative. The study will capture approved residential developments during the review of noise sensitive areas and the evaluation of alternatives. It will be carried out in accordance with the Ministry of Transportation Environmental Guide for Noise, involving noise modelling to determine the need for mitigation investigation and both asphalt and concrete pavement types will be considered in the assessment. The results of the Noise Study will be documented in a stand alone technical report and presented to the public in accordance with Ontario Regulation 697/21.

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<sup>16</sup> Ibid p 85

<sup>17</sup> Ibid p 94

**Comment**

Mitigation requirements are triggered by either noise increases of greater than 5db or total noise of >65 db. It appears that an incremental approach will be used for this project which may ultimately result in no requirement for mitigation when the Bradford Bypass Noise Impact assessment is done as the noise from the then pre-existing County road 4 widening and bridge will become the baseline for measuring the increased level of noise caused by the Bradford Bypass. This is an inappropriate approach. The baseline for the Bradford Bypass Noise Impact Assessment should be on the basis that the bridge will be built as part of building the Bradford Bypass.

**5.2.5.3 Climate Change Adaptation<sup>18</sup>**

This project will be staged in approximately three to four years for the construction phase, and it will be operational for approximately 75 years (the life span of the infrastructure). Therefore, the assessment is carried out using the projections for time periods 2021 -2040, 2041-2060, 2061-2080, and 2081-2100

The analysis of climate data from the Toronto airport weather station highlights eleven (11) climate variables with a high probability of occurrence in the future. These indicators were selected based on the following criteria:

- Climate indicators identified in past extreme weather events: past extreme weather events were researched and provided insights on which climate indicators are relevant to the future infrastructure.
- Historical and future annual and seasonal variation for both temperature and precipitation were reviewed and provided insights on future trends
- Relevant climate indicators showing significant increases in probability during the project's timeframe
- Relevance of climate indicators to local reality
- Potential interactions of a certain climate condition with the Project component

**Comment**

While this is an interesting intellectual analysis. We believe it totally misses the point of national and international climate change mitigation efforts. The fundamental question is: How much greenhouse gas emissions will occur as a result of both the construction phase and the operations / maintenance phases of this project that would not exist if the project were not undertaken. We respectfully ask that you provide this information. The answer for the construction phase is likely the greenhouse gasses emitted as a consequence of the construction, concrete and steel manufacturing plus emissions from construction equipment. The answer for the operational / maintenance phase is a combination of emissions expected to be generated by vehicles while travelling the length of the project and levels of increased vehicular traffic due to induced demand.

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<sup>18</sup> Ibid p 97

**Preliminary Impact Assessment<sup>19</sup>**

As a result of the proposed works, there will be a permanent loss of approximately 80.64 m2 of direct warmwater fish habitat when the existing culvert (EX-CL-9) is abandoned and the channel is infilled upstream and downstream of the culvert (67.20 linear meters of channel x 1.2 meters channel width). The new culvert will convey flows underneath County Road 4 immediately north of the existing culvert. The existing culvert will be plugged and abandoned once the new culvert is online. The proposed culvert will create 120.96 m2 of habitat (proposed culvert dimensions: 67.2 m x 1.8 m).

**Comment**

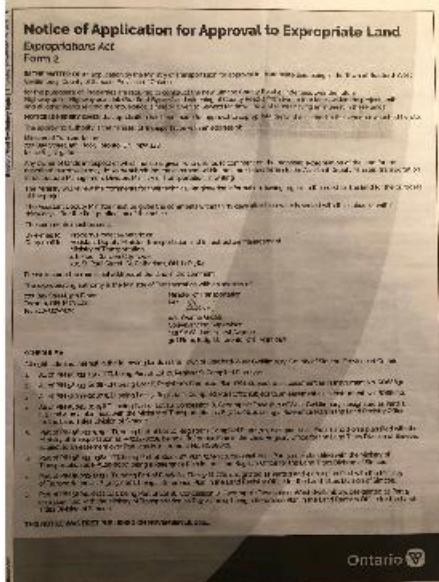
This matter will be addressed in our comments to: **7.1.1 Fisheries Act**

**6.2.1.2 Commitments and Recommended Mitigation Measures**

Access to these entrances shall be maintained throughout construction. Reconstruction of County Road 4 will require modifications, **relocations and reconstruction and/or property acquisition are required in consultation with property owners.** [emphasis added]

**Comment**

Given that the Early Works Report is still in draft form, on what authority has MTO proceeded with any expropriation proceedings?



Notice of Application for Approval to Expropriate Land.pdf

**6.3.2.2 Commitments and Recommended Mitigation Measures<sup>20</sup>**

Upon receiving concurrence of the Stage 2, Stage 3 and Stage 4 Archaeological Assessment Reports from the Ministry of Heritage, Sport, Tourism and Cultural

<sup>19</sup> Ibid p 110

<sup>20</sup> Ibid p 164

Industries, the following measures shall be adhered to for lands within the Limits of Work that will be impacted by the County Road 4 Early Works:

- If the portion of the Wheatfield Site (BaGv-113) within the study area cannot be avoided by future development, it which will be impacted by development it must be subject to Stage 4 mitigation as outlined in Section 4.2 of the Standards and Guidelines for Consultant Archaeologists (Ontario Government 2011).

Archaeological sites recommended for further archaeological fieldwork or protection remain subject to section 48 (1) of the Ontario Heritage Act and may not be altered, or have artifacts removed from them, except by a person holding an archaeological license.

### **Comment**

What is the current status of BaGv-113? If avoidance is required, how will that impact the detailed design of this bridge? The absence of a Ministry of Heritage, Sport, Tourism and Cultural Industries review and satisfaction letter of concurrence strongly suggests that issuance of this Early Works Report is premature.

### **FISH-2.00 Temporary Alteration, Disruption, Destruction Of fish habitat<sup>21</sup>**

As the fish and fish habitat assessment was completed for the 30% detail design, further assessment shall be carried out and consultation with and review of the Early Works by Fisheries and Oceans Canada will be required to confirm the approval requirements under the Fisheries Act. **It is anticipated that a Letter of Authorization may be issued** as the potential impacts to fish and fish habitat occur in low sensitive habitat, and through implementation of design and construction mitigation measures, the potential impacts will be localized and temporary. [Emphasis added].

### **Comment**

The issuance of this Early Works Final Report is both premature and likely not in compliance with the requirements of O. Reg 697/21. Fisheries permits are a fundamental precondition for construction of the Bradford Bypass. The only reason this bridge is being built is because it is a necessary component of the Bradford Bypass project. The phrase “It is anticipated that a Letter of Authorization may be issued” should not be taken lightly! This is the only place in this lengthy, repetitive, report that the use of the word “may” has been used in this context. We read this as the author’s way of protecting himself from a charge that he failed to disclose the true risks of not first obtaining Fisheries and Oceans Canada Letters of Authorization. We suspect the writer of this section of the Report had also seen Appendix C of this Report.

Seven Lake Simcoe Basin municipal governments have passed resolutions requesting further studies to determine the impact of the proposed Bradford Bypass on Lake Simcoe primarily due to salt run-off. The Federal Fisheries Act was amended on June

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<sup>21</sup> Ibid p 168 Table 6-14

21, 2019 to restore protections to fish and fish habitat. Habitat protection provisions came into force on August 28, 2019 that prohibit the death of fish and the Harmful Alteration, Destruction, or Disruption of fish habitat. Given what we know from reports issued by Lake Simcoe Region Conservation Authority, salt run-off from roadways and highways are already exceeding safe levels. Unless MTO can find a way to totally avoid salt run-off from this highway and highway 407, proper enforcement of the Federal Fisheries Act dictates that Letters of Authorization for any part of the proposed Bradford Bypass should not be issued.

## 7.1 Federal

### 7.1.1 Fisheries Act

Based on the known background information and proposed works at this time, submission to Fisheries and Oceans Canada under a Request for Review is anticipated for the culvert extension or replacement work. The Federal Fisheries Act was amended on June 21, 2019 to restore protections to fish and fish habitat. Habitat protection provisions came into force on August 28, 2019 that prohibit the death of fish and the Harmful Alteration, Destruction, or Disruption of fish habitat. The 2019 amendments to the Fisheries Act no longer provide for a self-assessment process unless activities can follow the measures to protect fish and fish habitat as stipulated by Fisheries and Oceans Canada, or if works are occurring in a waterbody that is not protected under the Fisheries Act. There is currently no Ministry of Transportation Best Management Practice for culvert extensions or culvert replacements. Therefore, the proposed culvert extensions/replacement and in-water works that result in the permanent alteration of fish habitat in the Study Area should be reviewed by Fisheries and Oceans Canada. The need for Fisheries and Oceans Canada submission will need to be further assessed during the detail design stage once the design plans are finalized. Once design plans are finalized, submission to Fisheries and Oceans Canada can be completed **(if necessary)**. [emphasis added]

### Comment

Appendix C is noteworthy:

Relocating the existing culvert to the north **will result in the permanent loss of direct fish habitat in the existing culvert as described above**. [Emphasis added].

Therefore, the existing fish habitat will be destroyed and recreated in the new culvert immediately to the north.

### Fisheries Assessment Specialist Recommendation:

Check one of the boxes based on the summary of findings.

- Proceed with project with identified mitigation measures (Complete MTO Project Notification Form)
- Recommendation to send project for review by DFO\*

\*Project submission to DFO should be reassessed once the design process has been advanced further.

**MTO Review of the Fisheries Assessment Specialist's Recommendation (to be completed by MTO):**

**All projects identified by the Fisheries Assessment Specialist as likely to result in the death of fish or HADD of fish habitat require a review by MTO prior to completion of any forms or submission to DFO. Only once advised by MTO should the Fisheries Assessment Specialist complete a DFO Request for Review Form to submit to MTO for signature and submission to DFO. [Emphasis added]**

**Comment**

MTO is clearly on notice that this part of the project will require DFO participation. Withholding material information from DFO until the project is nearly a fait accompli is a confrontational, rather than a conciliatory approach to dealing with a regulatory body such as DFO. A confrontational approach towards DFO is likely beyond the MTO Project Manager's approved job description. If he has this authority, that information should be included in the preamble for this draft report. If he does not have this authority in his job description, but he has this authority in writing from a superior, that information should be included in the preamble of this report. The fact that a ministry of the province would address any part of the federal government, especially a regulator, in a confrontational manner, is an extremely serious matter that needs to be promptly addressed and rectified!

Respectfully Submitted,

Original signed by

C.W.D. Foster

On behalf of  
Forbid Roads Over Green Spaces