



Fisheries and Oceans Canada
Pêches et Océans Canada

P.O. Box 1006
Dartmouth, N.S.
B2Y 4A2

February 21, 2011

Your file Votre référence
31801'11

Our file Notre référence
11-HMAR-MA3-00017

Scott Hatcher
Town Engineer
Town of Rothesay
70 Hampton Rd.
Rothesay, NB
E2E 5L1

Dear Mr. Hatcher:

Subject: Proposal likely to result in impacts to fish and fish habitat. DFO authorization required.

Fisheries and Oceans Canada - Fish Habitat Management Program (DFO) received your proposal on January 25, 2011. Please refer to the file number and title below:

DFO File No.: **11-HMAR-MA3-00017**
Title: **Unknown Trib to Salmon Creek – Oakville Acres
Proposed Detention Pond**

Your proposal has been reviewed to determine whether it is likely to result in impacts to fish and fish habitat which are prohibited by the habitat protection provisions of the *Fisheries Act* or those prohibitions of the *Species at Risk Act* that apply to aquatic species.*

Our review consisted of:

- New Brunswick Department of the Environment, Watercourse and Wetland Alteration Permit Application #31801'11 with associated design plans received January 25, 2011.
- Site meeting held with Mr. John Jarvie, Mr. Scott Hatcher and Mrs. Gay Drescher from the Town of Rothesay, Mrs. Tammy Savoie-McIntosh from the New Brunswick Department of Environment (NBE) and Miss Leanda Delaney, from Fisheries and Oceans Canada (DFO) on July 8, 2009.

*Those sections most relevant to the review of development proposals include 20, 22, 32 and 35 of the *Fisheries Act* and sections 32, 33 and 58 of the *Species at Risk Act*. For more information please visit www.dfo-mpo.gc.ca.

- Meeting held between Mr. Jarvie, Mr. Hatcher, Mrs. Savoie-McIntosh and Miss Delaney on July 22, 2009.
- Site visit with representatives from NBE, the Town of Rothesay and DFO on August 18, 2010.
- Meeting held with representatives from NBE, the Town of Rothesay, the consultant for the Town of Rothesay, CBCL Ltd., DFO and a concerned citizen from the Oakville Acres subdivision on December 6, 2010.
- Oakville Acres Detention Pond: Watercourse and Wetland Alteration Application, Supplementary Information Report submitted by CBCL Ltd. on February 8, 2011.
- Email correspondence from Mr. David Parsons, Project Engineer, CBCL Ltd. to Miss Delaney on February 14th, 15th, 16th and 18th, 2011.

We understand that you propose to:

- Construct a storm detention pond with approximately 50,000m² of storage along with the installation of a 99m of 1800mm diameter overflow pipe and 268m of 2400mm by 1800mm diversion box culvert along a tributary to Salmon Creek.
- Construct a diversion pipe which will outfall within 30m of a second unnamed tributary to Salmon Creek. Stream banks will be rip rapped to secure the banks of the tributary.
- The instream footprint for works proposed for the detention pond and box culvert will be 833.9m² and the instream footprint to secure the banks of the second unnamed tributary to Salmon Creek will be 159.2m². **Therefore the total known in stream footprint as a result of this project will be 993.1m². **Please note** these calculations are based on preliminary design plans. The final footprint will be determined during the EA process and may include impacts on downstream fish habitat from the reduction of water volume by the proposed attenuation structure.**

Based on the above information DFO has concluded that your proposal is likely to result in impacts to fish and fish habitat.

Of particular concern is the potential for your proposal to result in:

- The harmful alteration, disruption or destruction of fish habitat, which is prohibited under Section 35 of the *Fisheries Act*.
- The destruction of fish by means other than fishing, which is prohibited under Section 32 of the *Fisheries Act*.

In order to be in compliance with the above legislation you must obtain an authorization from DFO. In most cases the issuance of a *Fisheries Act* authorization is conditional on developing habitat compensation and monitoring plans to ensure there will be no net loss in the productive capacity of fish habitat.

Oftentimes relocating or redesigning elements of a proposal can reduce impacts to fish and fish habitat to a level where a *Fisheries Act* authorization is no longer required.

With specific reference to this proposal we suggest:

- Providing for fish passage in the new box culvert along the unnamed tributary to Salmon Creek.
- Reducing the area to be rip rapped along the second unnamed tributary of Salmon Creek by using alternative stabilization techniques, such as tree revetments.
- Ensuring bankfull width is adequately provided downstream of the detention pond during a 1 in 2 year rainfall event.

Before a *Fisheries Act* authorization can be issued, DFO must ensure that an environmental assessment is conducted which meets the requirements of the *Canadian Environmental Assessment Act*. This process may involve circulating your proposal to other relevant federal departments and making information about your proposal available to the public through the Canadian Environmental Assessment Registry (CEAR). For more information about the CEAR please visit www.ceaa-acee.gc.ca.

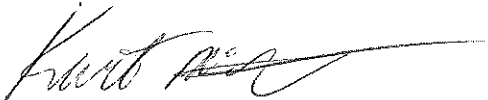
In order for us to continue processing your request, please:

- Complete the attached application form.
- Provide additional information regarding:
 - The fish and fish habitat that is likely to be affected by your proposal.
 - The design details, construction techniques and mitigation measures being proposed.
 - The habitat compensation plan, including a rationale on how it will achieve no net loss in the productive capacity of fish habitat.
 - A monitoring plan that will ensure habitat compensation and mitigation measures function properly.
 - Any relocation or redesign options considered for reducing impacts to fish and fish habitat.

Please be advised that any impacts to fish and fish habitat which result from proceeding with your proposal without first obtaining a *Fisheries Act* authorization could lead to corrective action such as enforcement.

If you have any questions please contact the Referrals Secretariat at our Dartmouth office by telephone at (902) 426-3909.

Yours sincerely,

A handwritten signature in black ink, appearing to read "Kurt McAllister", with a long horizontal flourish extending to the right.

Kurt McAllister
Section Head – Freshwater Protection Unit
Habitat Protection & Sustainable Development Division

(ATTACHMENT)

c.c.: H. Millar, DFO
R. MacDougall, DFO
L. Delaney, DFO
O. Gaudet, DFO
H. Pelkey, NBE
A. McHarg, CBCL Ltd.
Referrals Secretariat, DFO