

January 18, 2024

AEC 20-397

Peter Raikes
c/o Raikes Geomatics Inc.
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Re: **Response to Peer Review Comments Provided by The Town of
Penetanguishene September 15, 2023 – Proposed Severance 1500 Sandy
Bay Road**

Dear Mr. Raikes:

As requested, we provide the following responses to the Town of Penetanguishene's environmental peer review consultant's (WSP Canada Inc. [WSP]) comments on Azimuth's Environmental Impact Study - Proposed Severance 1500 Sandy Bay Road, Town of Penetanguishene, Simcoe County (March 1, 2023).

WSP Comment:

Planning Context, Background Review, and Agency Consultation

1. Section 2.0 provides an outline of the planning context and considers some of the planning policy and legislation that applies to the site from a municipal, provincial, and federal perspective. This section should also include a summary and assessment of other policy and legislation including the Migratory Birds Convention Act (MBCA; including consideration for the Migratory Bird Regulations, 2022), Simcoe County Regional Official Plan, and federal Species at Risk Act.

Azimuth Response:

The Planning Context section of the EIS only addresses natural heritage planning policy applicable to the proposed development, as well as applicable legislation that supercedes those policies (*i.e.*, Sections 2.1.6 and 2.1.7 of the PPS refer to fish habitat and habitat of



threatened and endangered species, which defer to the *Fisheries Act* and Ontario's *Endangered Species Act, 2007* (ESA)).

We do not refer to the federal Species at Risk Act (SARA) because with the exception of aquatic species/fish, SARA is applicable only on federal lands (except under exceptional circumstances under a specific Minister's order). The EIS determined that the drainage feature does not represent fish habitat, and no endangered or threatened aquatic species are identified locally in background data. Given that the subject and adjacent lands are privately owned, the SARA is not applicable to the proposed development and hence was not summarized/assessed. We understand that the natural heritage policies of the Simcoe County Official Plan are not applicable as the subject lands are located in the Penetanguishene settlement area and hence the regional/county OP was not summarized/assessed.

The federal *Migratory Birds Convention Act* (MBCA) and provincial *Fish and Wildlife Conservation Act* (FWCA) were addressed in Section 8 of the EIS with respect to the recommended timing of vegetation clearing to avoid the combined bat active season and woodland bird nesting season. This was the appropriate place to address these Acts, since they do not technically speak to development potential/conformity within applicable natural heritage policy, but instead only require avoidance of active nests. For most species, this can be accomplished by avoiding the bird nesting season, although 2022 updates to MBCA regulations require extended assessment in the case of the 18 species listed under Schedule 1 of the Migratory Birds Regulations, 2022 (SOR/2022-105) to confirm disuse. Given that only one Schedule 1-listed species was observed (Pileated Woodpecker), for which there was no nest observed and no probable or confirmed nesting evidence, basic mitigation through a vegetation clearing timing window was deemed suitable. A Planning Justification Report ([PJR], July 2023) was prepared by MHBC in which applicable planning policy (natural heritage and otherwise) was summarized/addressed. The PJR is the authoritative report with respect to planning context and conformity. The Planning Context section of the EIS is accurate and complete as it relates to the proposed development.



WSP Comment:

2. The background review sources outlined in **Section 3.2** are comprehensive and are in line with the Terms of Reference. However, based on WSP's review of background sources, several species afforded protection under the *Endangered Species Act, 2007* (ESA) have records in the vicinity of the site and are not included in the species at risk (SAR) assessment in **Appendix I**. Additional species WSP identified are as follows:

- Least Bittern (*Ixobrychus exilis*; eBird; OBBA)
- Eastern Foxsnake (*Pantherophis gloydi*; ORAA)
- Eastern Hog-nosed Snake (*Heterodon platirhinos*; ORAA)
- Massasauga (*Sistrurus catenatus* pop. 1; NHIC; ORAA)

An assessment for these species or rationale as to why they are not included should be incorporated into the EIS.

Azimuth Response:

Least Bittern – This species strongly prefers relatively large cattail marshes with a mix of open pools and channels for nesting as they provide dense vegetation for nest concealment and nearby aquatic habitat for foraging on frogs, small fish and aquatic insects. The subject and adjacent lands do not provide these habitat conditions and no Least Bittern were detected during breeding bird surveys.

Summary

The subject and adjacent lands do not provide habitat conditions of value to Least Bittern. Given the lack of suitable habitat, combined with the lack of observation of this species during breeding bird surveys (or at any other time), this species is not an issue related to the proposed development.

Eastern Foxsnake - Species is reported for the 100km² atlas square covering the subject and adjacent lands (17NK86). Atlas Square 17NK86 covers portions of Beausoleil Island known to contain relatively large numbers of this and other snake species. Provincial data (NHIC) for grid squares covering a 15km² area covering the subject and adjacent lands do not report Eastern Foxsnake. Range maps for Eastern Foxsnake indicate that the Georgian Bay population is not associated with the subject lands/Town of Penetanguishene (see below).

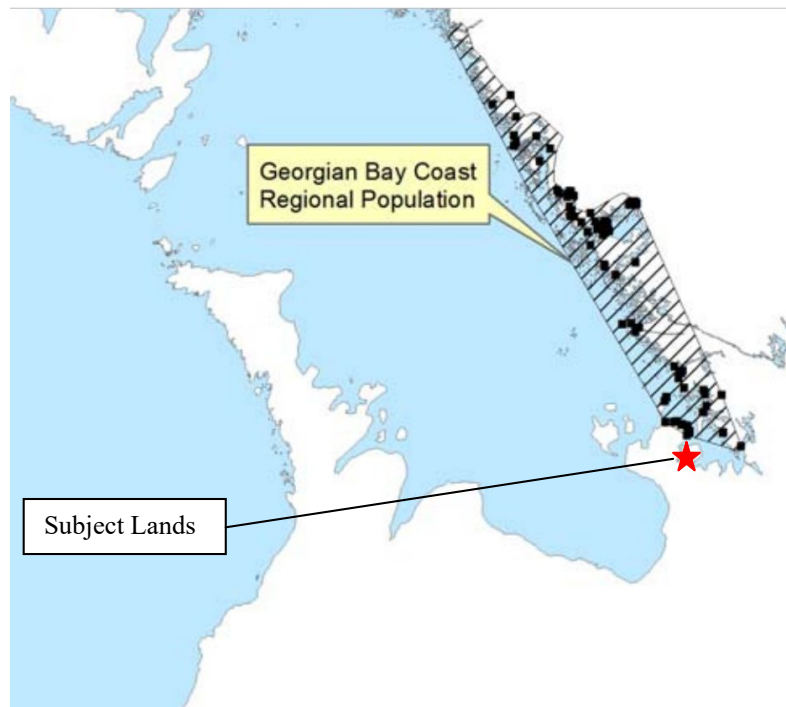


Image from: Figure 2. Eastern Foxsnake (*Elaphe gloydi*) distribution in Ontario, Canada (COSEWIC. 2008. COSEWIC assessment and update status report on the Eastern Foxsnake *Elaphe gloydi*, Carolinian population and Great Lakes/St. Lawrence population, in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. vii + 45 pp. (www.sararegistry.gc.ca/status/status_e.cfm). Subject Lands are highlighted using a red star.

Summary

The subject lands do not occur within the range of Eastern Foxsnake, and there are no provincial/NHIC species records to suggest the presence of this species in the vicinity of the subject lands. Therefore this species is not an issue related to the proposed development.

Eastern Hog-nosed Snake - Species is reported for the 100km² atlas square covering the subject and adjacent lands (17NK86). Atlas Square 17NK86 covers portions of Beausoleil Island known to contain relatively large numbers of this and other snake species. Provincial data (NHIC) for grid squares covering a 15km² area covering the subject and adjacent lands do not report Eastern Hog-nosed snake. The species is reported in Simcoe County with Wasaga Beach being the source of most sightings. Therefore, there is no evidence of the species occurring on or adjacent to the subject lands. However, there may be a low (but non-zero) probability of occurrence. Therefore,



out of an abundance of caution, we will address habitat requirements below based on: COSEWIC. 2007. COSEWIC assessment and update status report on the Eastern Hog-nosed Snake

Heterodon platirhinos in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. viii + 36 pp. (www.sararegistry.gc.ca/status/status_e.cfm).

Habitat Requirements

Platt (1969) described **six features to define the preferred habitat** of *H. platirhinos*: **well-drained soil; loose or sandy soil; open vegetative cover such as open woods; brushland or forest edge; proximity to water;** and climatic conditions typical of the eastern deciduous forest biome. An analysis of habitat used at **Wasaga Beach Provincial Park (P.P.)** in Ontario indicated that *H. platirhinos* preferred **forested areas as well as wetlands adjacent to conifer plantations**, and that meadows and areas currently being used by people (urban, agricultural, *etc.*) were the least suitable (Cunnington 2004b). Eastern Hog-nosed Snakes in shoreline areas such as Rondeau P.P. and Long Point P.P. often rely on driftwood and other ground cover in beach and beach dune habitats (Seburn 2005), where their prey of choice, *Bufo fowleri*, is found. A telemetry study done south of **Parry Sound** in Ontario suggests that, at the landscape level, Eastern Hog-nosed Snakes in that area **preferred meadow, sand, human impacted areas (i.e. private dwellings, trailer parks, sand/gravel pits), and forest habitats over rock, wetland, and aquatic habitats** (Rouse 2006) (COSEWIC 2007). Eastern Hog-nosed Snake is a prey specialist, preferring amphibians – mainly toads and hence availability of frogs and toads as a prey base is important (G. Cunnington, *Personal Communications with J. Broadfoot* on unrelated project in Wasaga Beach).

Habitat Assessment

As per Section 4.2 of the EIS, surficial soils of the property and adjacent lands are composed of VASEY series – sandy loam till underlain by silt till. The soils are not well drained as per the presence of wetlands and a drainage feature constructed to address poor drainage. As per the Significant Wildlife Habitat assessment in Appendix H of the EIS, there are no areas of sand barren or areas of disturbance providing bare sand/meadow associated with the subject lands, and none of these features were evident on adjacent lands. The subject and adjacent lands contain closed canopied forests/swamp wetlands and hence do not provide open canopy conditions. As per Section 4.4 of the EIS, the results of evening calling amphibian surveys revealed no amphibian calling within wetlands of the property (even by American Toad, the most common of Eastern Hog-nosed Snake's two preferred prey species in Ontario), which suggests no forage base for required prey.



Summary

The subject lands do not provide habitat conditions or a forage base of value to Eastern Hog-nosed Snake. No provincial/NHIC species records occur in the vicinity of the subject lands. Further, no observations of the species were documented during multiple search efforts (n=6), all of which were completed at suitable times and under suitable observation conditions when snakes would be active and hence detectable. This species is not an issue related to the proposed development.

Massasauga – The province (NHIC) indicates that it has records of Massasauga tagged to all 15 1km² NHIC grid squares associated with the subject and adjacent lands (*i.e.* all of the following squares: ATLAS NAD83 IDENT 17NK8761, 17NK8560, 17NK8561, 17NK8562, 17NK8660, 17NK8661, 17NK8662, 17NK8760, 17NK8762, 17NK8860, 17NK8861, 17NK8862, 17NK8960, 17NK8961, 17NK8962). Azimuth has confirmed with the NHIC that the records - in spite of each record having unique OGF IDs – are not fully independent observations/unique records. Some records intersect with multiple NHIC grid squares, and hence represent duplicates with low reporting accuracy. The NHIC advised that it has three records of Massasauga that intersect with the block of 15 NHIC grid squares listed above – one historic (1969), two from a decade ago (2011, 2013) and none recent. As such, there is very limited evidence of Massasauga associated with the region surrounding the subject lands. However, out of an abundance of caution, we will address habitat requirements below based on: COSEWIC. 2012. COSEWIC assessment and status report on the Massasauga *Sistrurus catenatus* in Canada. Committee on the Status of Endangered Wildlife in Canada. Ottawa. xiii + 84 pp. (www.registrelep-sararegistry.gc.ca/default_e.cfm).

Range maps for Massasauga indicate that the Georgian Bay population is not associated with the subject lands/Town of Penetanguishene (see below).

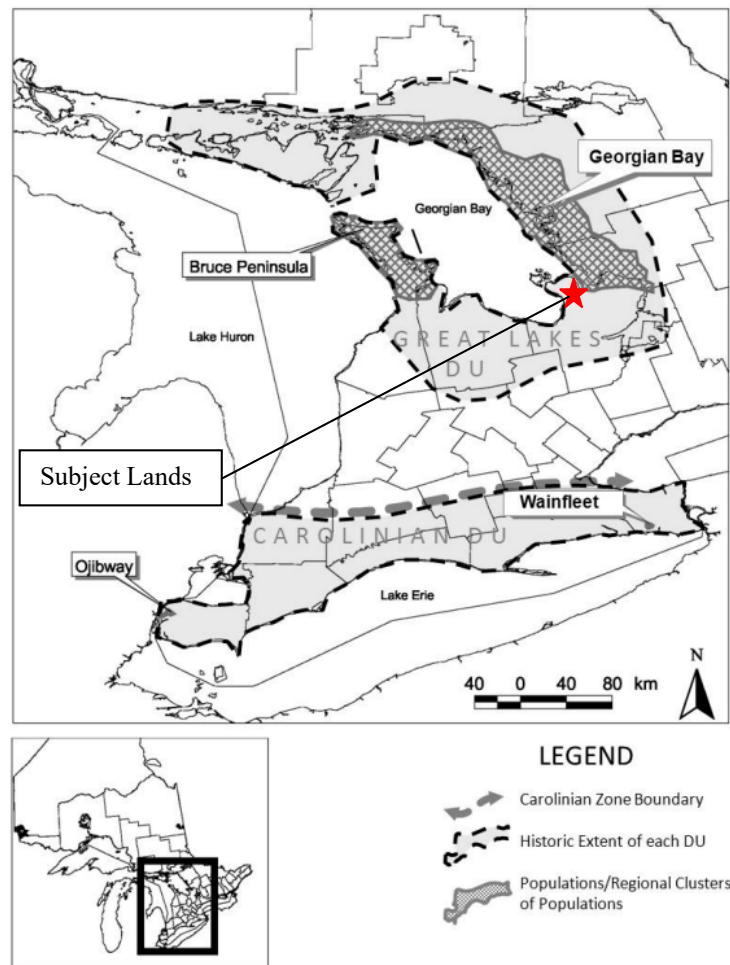


Image from: Figure 5. Approximate maximum extent of Massasauga (*Sistrurus catenatus*) designatable units in Canada based on historical and contemporary occurrence records (see Search Effort). Northern boundary of the Carolinian faunal province is approximate (COSEWIC 2009b). Image adapted from Rouse and Willson 2002 (COSEWIC 2012). Subject Lands are highlighted using a red star.

Habitat Assessment

General Habitat Use/Foraging Habitat

Massasaugas utilize strikingly different macrohabitats across their range (Reinert and Kodrich 1982; Seigel 1986; Weatherhead and Prior 1992; Johnson 1995; Kingsbury 1996, 1999; Johnson and Leopold 1998; Rouse 2005, Sage 2006; Bissell 2006).

Preference for suitable microhabitats appears to drive habitat selection in Massasaugas (Harvey and Weatherhead 2006a). **During the active season, this species prefers microhabitats with relatively low canopy cover (including gaps in forest), large rocks and dense ground cover or shrubbery** (retreat sites) (Harvey and Weatherhead



2006a; Sage 2006). Great Lakes/St. Lawrence Designatable Unit (DU): Radio telemetry data have shown Georgian Bay Massasaugas to **use a mosaic of bedrock barrens, conifer swamps, beaver meadows, fens, bogs, and shoreline habitats** (Beausoleil Island, Villeneuve unpub. data; Killbear Provincial Park (KPP), Parent unpub. data; Hwy 69 corridor; Rouse et al. 2001). On the **upper Bruce Peninsula**, radio telemetry data have demonstrated that Massasaugas are habitat generalists and the use of habitat **varies seasonally from forested habitats (dense deciduous, dense coniferous and sparse forest) during hibernation to open, wetland, and edge habitat with canopy closure < 50% in mid-late summer** (Harvey and Weatherhead 2006a; Harvey pers. comm. 2011).

Hibernation Habitat

Successful hibernacula for the Massasauga includes some or all of the following necessary features: structural stability, **access to the water table/moist substrate**, **access to sufficient depth below the frost line**, **protection from extreme temperature fluctuations (e.g., presence of vegetative cover or large rocks)** and space to adjust to changing conditions (Maple 1968; Reinert 1978; Johnson 1995; Johnson et al. 2000; Harvey and Weatherhead 2006b). Great Lakes/St. Lawrence DU: In Bruce Peninsula National Park, Massasaugas hibernate singly or in small groups in **old root systems, rodent burrows, and rock crevices, typically within forested habitats**. In Parry Sound District, Massasaugas demonstrate strong hibernacula fidelity and **hibernate in treed depressions in rock-outcrops and areas of wet conifer forest** (Rouse 2005).

Gestation Sites

The most important aspects of gestation sites are favourable thermal conditions for embryonic development (*i.e.*, **open canopy** areas with sufficient solar exposure) and available refuge that provides protection from predators and warmth during cool weather (Harvey and Weatherhead 2006a). Great Lakes/St. Lawrence DU: Gestation sites at KPP are usually located on the **rock-barren habitats** and consist of **large perched table rocks, with sufficient cover habitat (small bushes, grasses)**, and easily accessible protective retreat sites (Rouse 2005).

Summary

The subject and adjacent lands are heavily wooded throughout and hence do not provide open/semi-open habitat conditions preferred by the species (open habitat is limited to areas of highly disturbed existing residential development). There are no rock outcrops/rock barrens located on or adjacent to the subject lands and hence no suitable gestation habitat. The subject lands do not provide wet conifer forest preferred by Massasauga in the Georgian Bay population (*i.e.*, DU/population 1) and there are no obvious habitat elements such as rock crevices that would provide access to underground.



The water table is relatively high in the area of proposed development and hence opportunities to access moist but not saturated sites underground below the frost line are not apparent. Further, no Massasauga were observed during multiple search efforts (n=6) completed at times and under suitable observation conditions when snakes would be active and hence detectable. For these reasons Massasauga is not an issue related to the proposed development.

WSP Comment:

3. As outlined in **Section 3.3** of the EIS, habitat for Special Concern (SC) and provincially rare species (S1-S3) are not afforded protection under the ESA but are considered Significant Wildlife Habitat (SWH). Generally, WSP recommends that these species (generally referred to as Species of Conservation Concern; SOCC) are included in the habitat screening to identify candidate habitat and to inform the SWH assessment. The SWH assessment in **Appendix H** does consider these species for the Special Concern and Rare Wildlife Species SWH type if identified through field studies (i.e., Eastern Wood-pewee, *Contopus virens*), however, no assessment of suitable habitat was completed for other SC and provincially rare species with records in the vicinity of the site. In the absence of targeted surveys for other SC and provincially rare species (e.g., snakes, turtles, insects), suitable habitat for these species would be subject to SWH policies in the PPS and Town of Penetanguishene Official Plan (TPOP) as candidate SWH.

Azimuth Response:

Other Special Concern (SC) & provincially rare (S1-3) species identified in background data for the subject and adjacent lands include: Wood Thrush (SC); Common Nighthawk (SC); Snapping Turtle (SC) and Eastern Musk Turtle (SC).

Birds

As per Section 4.4 of the EIS, dawn breeding bird surveys were completed in June 2022 and confirmed no use of the subject or adjacent lands by Wood Thrush. As per Section 4.4 of the EIS, nocturnal bird surveys completed in June 2022 confirmed no use of the subject or adjacent lands by Common Nighthawk.

Turtles

As per the Significant Wildlife Habitat Assessment table in Appendix H of the EIS – Wetlands provide shallow water only (water not deep enough to provide overwintering habitat). As per Section 4.4 of the EIS - searches of vernal pools and the drainage feature were completed at times and under observation conditions when turtles would be active and hence detectable on the following dates: April 11, May 18, June 4, June 23, July 8, September 14, 2022. No turtles or signs of turtles (predated turtle nests, *etc.*) were observed.



Summary

The field program completed by Azimuth was sufficient to address the potential for SC birds and turtles reported in background data for the area, with none found. Therefore, there is no candidate habitat for SC or provincially rare species associated with the subject or adjacent lands as per the findings and conclusions of the EIS.

WSP Comment:

Field Investigations

4. Based on a review of the field investigations outlined in **Section 3.1**, WSP agrees with the protocols referenced and timing of the completed surveys. However, Azimuth references a technical note on survey methods from 2015 for bat snag density mapping in **Section 3.1** and the most recent bat survey standards note from 2022 in **Section 7.2**. In the absence of a summary of the methods for the snag density mapping in **Section 4.4**, WSP requests confirmation that the updated SAR bat guidance (MECP, 2022a; 2022b) was utilized as referenced in **Section 7.2**. This 2022 reference should also be included in the list of references (Section 10).

Azimuth Response:

The Technical Note Species At Risk (SAR) Bats (“Technical Note”; MNRF, 2015) remains the most comprehensive and closest-to-publication Ministry document relating to Endangered bat study methods for EIS work in Ontario. As such, it is the Technical Note that Azimuth referenced in the methods section, although it should have been clarified that the updated guidance from the MECP’s unpublished “Bat Survey Standards Note 2022” was applied to bat snag density mapping field work in this EIS.

Regardless of protocol, Azimuth notes that our EIS concluded, conservatively, that there was potential for the study area to function as habitat for Endangered bats (Little Brown Myotis, Northern Myotis, Tri-colored Bat and potentially Eastern Small-footed Myotis), and as such these were considered in the Impact Assessment.

The Bat Survey Standards Note 2022 was referenced in Section 7.2 instead of the Technical Note because specific timing guidance for the bat active season has changed rapidly since the Technical Note publication, and it has long been irrelevant to cite the Technical Note in that regard. The Bat Survey Standards Note 2022 was not cited in our references list because it is not dated, not officially designated as “draft” or “published”, does not credit an author, and (to our knowledge) cannot be found on a webpage through a link; as such there are no details to provide as part of the citation. However, Azimuth will include this reference in the future.



WSP Comment:

5. Based on a review of the background records (as outlined in Comment #2 above), there are records of SAR snakes within the vicinity of site, and it appears there is suitable habitat within the study area. No snake species were included in the SAR assessment in **Appendix G**. WSP acknowledges that surveyors conducted searches in areas deemed to have the greatest likelihood of snake activity. However, Ontario SAR snakes are cryptic and their detectability is highly dependent on weather conditions (MNRF, 2016). The MNRF Survey Protocol for Ontario's Species at Risk Snakes (MNRF, 2016) provides a detailed outline of the required environmental conditions and level of effort to reliably determine presence / absence. This guidance recommends a minimum of ten snake visual encounter surveys (VES), with at least five prior to July 1st, at a search effort of approximately 1-2 hours per hectare (MNRF, 2016). Please update the SAR assessment to consider SAR snakes that have the potential to occur within the vicinity of the site.

Unless no suitable habitat is present based on the SAR assessment or targeted surveys under appropriate conditions are completed in accordance with MNRF (2016), all suitable habitat on-site would be considered candidate SAR habitat and would be subject to ESA considerations, as well as applicable PPS and TPOP policies.

Azimuth Response:

As per the results of the habitat assessments for Eastern Foxsnake, Eastern Hog-nosed Snake and Massasauga presented in response to WSP Comment # 2, the subject and adjacent lands do not provide candidate habitat for any of the snake species and hence are not subject to ESA considerations – *i.e.*, no damage or destruction to habitat of ESA protected snakes, and no expectation of kill, harm or harassment of individuals. The six reptile specific surveys completed as part of the EIS on April 11, May 18, June 4, June 23, July 8, September 14, 2022 were more than adequate to screen the subject lands for snakes, particularly in areas not expected to provide habitat for these species – no snakes or signs of snakes (shed skins, etc.) found.

WSP Comment:

Wetlands

6. Azimuth outlines that there are no Provincially Significant Wetlands (PSWs) identified on or adjacent to the site. However, no wetland evaluation was completed to determine significance for the large wetland adjacent to the site (> 2 ha), as per the Ontario Wetland Evaluation System (OWES; MNRF, 2022), which should be clarified in the text. Surface water connectivity (if any) to the wetlands to the east of the site (*i.e.*, via culverts below Sandy Bay Road) should be discussed in the EIS.



Azimuth Response:

Azimuth's statement in Section 5.1 of the EIS that "there are no Provincially Significant Wetlands identified on or adjacent (*i.e.*, within 120m) to the property" is accurate, as there are no Provincially Significant Wetlands (PSWs) identified on or adjacent to the subject lands as per Town of Penetanguishene Natural Heritage Study mapping (SSEA 2017) provided in Appendix C of the EIS. Likewise, the Province's Natural Heritage mapping (NHIC 2023) corroborates this mapping.

It is our understanding that there is no underlying requirement by the PPS or municipal policy to complete an *OWES evaluation* on nearby unevaluated wetlands as part of an EIS process (as this would be prohibitively burdensome), and as such in Azimuth's experience there is typically no reason to specify that an OWES evaluation has not been completed. Azimuth notes there may be a degree of confusion here between OWES evaluation and LSW evaluation (see response to WSP Comment #7 for details).

For clarity, Azimuth did not complete an OWES evaluation of any wetlands as part of this EIS. The completion of a full Wetland Evaluation under OWES is an extensive process requiring thorough background research and field work extending to areas well beyond the defined subject lands and adjacent lands, as well as a degree of labor-intensive analysis. Since this is not a typical standard for a one-property EIS, an OWES evaluation would require early clarification in a given EIS Terms of Reference. There was no requirement to complete either a "wetland staking," OWES evaluation, or scoped LSW evaluation specified when establishing the Terms of Reference for the EIS with the Town/WSP as per Appendix B of the EIS. As such, these items were not undertaken as part of the EIS.

Sections 4.5 and 7.4 of the EIS address drainage, indicating that the subject lands are drained to the west and then north to Georgian Bay. Surface water connections across/beneath Sandy Bay Road were not raised because no connections (*i.e.* no culverts) were identified crossing Sandy Bay Road. While historically the wetlands east and west of Sandy Bay Road may have been contiguous, any such surface connectivity appears to have been interrupted by the construction of Sandy Bay Road, with flow rate between these areas negligible/insufficient to require culvert connection. There are no alterations proposed to this pattern of drainage or alterations to roadside drainage associated with Sandy Bay Road and hence as per Section 7.4 of the EIS - the proposed development does not impact the hydrology of wetlands. Therefore, the status of local wetlands is accurately reported and surface water connectivity and drainage impacts have been considered adequately in the EIS.



WSP Comment:

7. Based on the proximity of the wetland on-site to the lots proposed for severance, the limits of the wetland will require staking, to be confirmed (and subject to revision) in the field with WSP and Azimuth certified wetland evaluators. Following the confirmation of the staking, the limits will need to be surveyed by an Ontario Land Surveyor. Once surveyed, updated mapping will be required to determine any changes to the wetland limits and an updated impact assessment may be required. Further, should the limits change such that the contiguous wetland is >2 ha, a wetland evaluation using the OWES (MNRF, 2022) may be required to determine its significance.

Azimuth Response:

Wetland Delineation and Staking

The wetland boundary was delineated under appropriate summer conditions by qualified professionals based on the “50% rule” of the OWES consistent with the requirements of the terms of reference for the EIS established with the Town/WSP. This is discussed in further detail in the “Wetland Delineation” response to WSP comment #11.

Wetland Evaluation

As per Section 5.1 of the EIS:

“site specific wetland delineation revealed an area of treed swamp covering much of the lowland portion of the northern portion of the property below the ridge. This wetland covers approx. 1.6ha of the property and is continuous with wetland habitat that extends off onto adjacent lands to the west that is partially mapped as unevaluated wetland by the province and more extensively mapped as Local (coastal) Wetlands by the Town (i.e., continuous area of wetland associated with property and adjacent lands ≥ 2 ha). Therefore, the EIS indicates that contiguous wetlands exceed 2ha and hence are considered Locally Significant Wetlands (as per Sections 2.4 and 7.1 of the EIS) – a factor compelling consideration of conformity to the requirements of Section 3.10 of the TPOP that “development and site alteration shall not be permitted within, and potentially adjacent to Locally Significant Wetlands”

Based on the above approach, regardless of Provincially Significant or Locally Significant Wetland status, the proposed site plan is already established to locate development outside of contiguous wetlands >2ha in size, a factor requiring reduction of the number of lots proposed from five to three as per Section 6.0 of the EIS. The



requirement for no development and site alteration within Locally Significant Wetlands of the TPOP is the same as the requirement of Section 2.1.4 of the PPS with respect to Provincially Significant Wetlands. Given that wetlands will be avoided, we see no need to complete a wetland evaluation using the OWES moving forward as the outcome, as far as satisfying the objective of configuring lots outside of wetland limits remains the same.

As noted in our response to WSP comment #6, it is our understanding that there is no underlying requirement by the PPS or municipal policy to complete an *OWES evaluation* on nearby unevaluated wetlands as part of an EIS process (as this would be prohibitively burdensome). Azimuth notes there may be a degree of confusion here between OWES evaluation and LSW evaluation. The Terms of Reference requests a wetland *delineation* per OWES standards, which is a common standard. TPOP suggests the use of a “scoped wetland evaluation” for determining *local significance* of wetlands in proximity to development, which is the TPOP’s prerogative for Locally Significant Wetlands (LSW). However, it should be clarified that *OWES evaluation* is not the standard referenced for evaluation in the TPOP (OWES is not cited anywhere in the TPOP), and while OWES lists several locally significant feature categories to consider in the evaluation process, OWES has no protocol for determining LSW status. Likewise, the TPOP also does not recommend evaluating *provincial significance* for wetlands >2ha under OWES. This makes practical sense; if an OWES evaluation was required to characterize LSW, all LSW would be PSW, and the designation would be meaningless.

Further, as stated in response to WSP Comment #6, the completion of a full Wetland Evaluation under OWES is an extensive process requiring thorough background research and field work, extending to areas well beyond the defined subject lands and adjacent lands, as well as a degree of labour-intensive analysis. Since there is no underlying requirement by the PPS or municipal policy to complete an OWES evaluation on nearby unevaluated wetlands as part of an EIS process (as this would be prohibitively burdensome), it is not a typical consideration for a one-property EIS. Due to the requirement to evaluate adjacent wetland elements beyond their own property, it is not typically incumbent on a landowner to complete an OWES evaluation. As landowners do not own the adjacent lands they are not assured access for wetland assessment and if the result of the wetland evaluation indicate provincial significance - development capability of the adjacent lands are highly constrained. Thus, application of an OWES assessment by a private landowner has the capability of severely impacting neighbor relations.



WSP Comment:

Significant Wildlife Habitat & Appendix H – Significant Wildlife Habitat Assessment

8. WSP generally agrees with the SWH assessment and screening, as provided in **Section 5.5** and **Appendix H**. However, any SC and/or provincially rare species identified through the background review should be considered for candidate SWH in the absence of targeted surveys or if they cannot be screened out based on the existing surveys or other rationale. Generally, we recommend SOCC be included within the SAR screening table to show how SOCC have been screened out through a habitat assessment or appropriate surveys. Refer to Comment #3.

Azimuth Response:

Please see Azimuth's response to WSP Comment #3. The subject and adjacent lands do not provide candidate habitat for any of the species of conservation concern identified locally in background data. No additional SWH functions to address.

WSP Comment:

Habitat for Endangered and Threatened Species & Appendix I – Species at Risk Assessment

9. WSP generally agrees with SAR assessment and screening, as provided in **Section 5.8** and **Appendix I**. However, the background review identified multiple SAR snakes with potentially suitable habitat. An assessment of these species should be included in the EIS. Refer to Comment #2.

Azimuth Response:

Please see Azimuth's response to WSP Comment #2. The subject and adjacent lands do not provide candidate habitat for any of the endangered or threatened species identified in the general area not addressed within the EIS.



WSP Comment:

3) **Impact Assessment, Mitigation, and Policy Compliance**

A review of potential impacts, mitigation measures, and an assessment of compliance with municipal, provincial, and federal legislation should be included in the updated EIS. The following outlines comments from WSP's peer review of these components of the EIS:

General

10. The impact assessment should focus on the impact of the lot severance (and potential for future single residential dwellings) only, rather than impacts of tree clearing and proposed future development since those details are unknown at this time. Future EIS(s) or an EIS Addendum will be required to assess potential impacts to ecological features and functions during the site plan application process(es). Furthermore, it is recommended that a tree inventory and tree protection plan be completed during the site plan application process and prior to any tree clearing.

Azimuth Response:

The EIS does assess/review potential impacts and provides recommendations for mitigation measures. Section 9 of the EIS assesses compliance with applicable municipal, and provincial policy and regulations, as discussed in response to WSP Comment #1. The PJR by MHBC is the authoritative document addressing policy conformity with respect to the proposed development.

General

This is confusing as WSP indicates the impact assessment should consider “potential for future single residential dwellings” but advises that the impact assessment should not focus on “tree clearing for the future development as those details are unknown at this time”. While it is true that the exact details of future development are unknown at this time, consider that:

- 1) the proposed lots are tree covered throughout,
- 2) the proposed lots are relatively small due to the constraints associated with wetlands; and,
- 3) future development would be privately serviced with septic systems requiring considerable lot area to be maintained in a cleared condition (spatial requirements for servicing assessed by Jackie Coughlin, Azimuth - Partner/ Senior Environmental Engineer, P. Eng.).

Given the above, it is reasonable to assume that requirements for tree clearing will involve most (essentially all) of the lot area. Therefore, Section 7.2 of the EIS assumes “full clearing of the severed lots (Parts 1, 2 and 3)” to assess impacts to Significant Woodland and related ecological functions. The impact assessment could not be completed without this fundamental assumption regarding tree clearing.



WSP Comment:

Wetlands

11. WSP acknowledges the configuration of the lot severance has considered the wetland communities on-site (based on the current wetland limits) and adjacent to the site, and that the number of severed lots has been reduced from five to three. In principle, WSP agrees that the development of a single residential dwelling on each of the three severed parcels may be feasible with no impacts to the adjacent wetland features and functions, however further information is required to make this determination. Furthermore, as noted in Comment #10, the impact assessment should be re-framed from the perspective of the lot severance with potential for future single residential dwellings, rather than the 'proposed development' as the details of the proposed development (e.g., tree clearing limits, building footprint, area of impermeable land), are unknown, particularly the required details to assess water balance. WSP also notes that the final statement of: "*the proposed development can be achieved with no direct or indirect impacts to Local/Coastal Wetlands as per the requirements of Section 3.10 of the TPOP and Section 2.1.5 f) of the PPS*", cannot be made at this stage (i.e., lot severance) and without confirmation of the wetland limits.

Azimuth Response:

Development

As per Azimuth's response to WSP Comment #10, we see no need to "re-frame" the impact assessment. Azimuth notes that the PPS defines development as "the creation of a new lot, a change in land use, or the construction of buildings and structures requiring approval under the *Planning Act*", Therefore, the term development as used in the EIS is appropriate in two policy-based senses of the word, as it relates to the proposed severance (creation of new lots) and future construction of buildings or structures. Further, as per the title of the EIS "Environmental Impact Study - Proposed Severance 1500 Sandy Bay Road, Town of Penetanguishene, Simcoe County" it is clear that the focus of the study was lot severance.

Wetland Delineation

We disagree with WSP that confirmation of wetland limits is required for Azimuth to have concluded that "the proposed development can be achieved with no negative impacts to: Local/Coastal Wetlands; Significant Woodlands; Significant Wildlife Habitat Functions; Habitat Linkage or individuals or habitat of species protected under the ESA consistent with the requirements of the TPOP, PPS and Sections 9 and 10 of the ESA".

The Terms of Reference (WSP, 2022) insists on the OWES standard for delineation of wetland limits, which was implemented by Azimuth in good faith. As of the most recent iteration of OWES (MNRF, 2022), modern OWES broadly defers to trained evaluators operating under best professional judgment; even consequential OWES evaluations resulting in revisions to existing (or future) PSW boundaries are considered complete



when submitted by a trained OWES evaluator operating under their best professional judgment, as reflected in the change in text between the 2014 and 2022 manuals:

OWES, Southern Manual (MNR 2014), pp. 6, under “Approval of the Wetland Evaluation”:

“Any trained wetland evaluator may carry out a full wetland evaluation; however, all wetland evaluations must be reviewed and approved by MNR before they are considered complete and ‘official’ (i.e. the wetland status may be used to make land use planning decisions)”

This section has been removed in the updated manual. In its place, the OWES Southern Manual (MNR 2022), pp. 7, states the following in the section titled “A Complete Evaluation”:

“A wetland evaluation, re-evaluation or mapping update will be considered complete and final once a trained wetland evaluator attests that they have undertaken an evaluation in accordance with OWES.”

Comprehensive wetland evaluations (let alone simple wetland edge delineations) are no longer reviewed, even by MNR. The process only requires submission to the relevant planning authorities, notification of relevant landowners, and submission of final boundaries to MNR as part of the due process. Modern OWES broadly defers to trained evaluators operating under best professional judgment, whether completing a comprehensive OWES evaluation or delineating a small section of unevaluated wetland; to this end, Azimuth has provided our OWES-based wetland delineation using our best professional judgment, in keeping with the OWES standard.

Given that external validation is not a prerequisite to the OWES process, a trained/certified wetland evaluator is wholly justified in implementing their professional judgment to delineate a wetland boundary in accordance with OWES protocol. While a second certified OWES evaluator may disagree with a given wetland line, this represents a difference of professional opinion, not a universally “correct” answer. The authority of an external reviewer (such as a Conservation Authority, consultant, *etc.*) to adjudicate a wetland line in this regard does not derive from the OWES process itself, but from a given Peer Reviewer’s alternative professional opinion and their ability to forestall the municipal permitting process under municipal authority. For that reason, a reasonable and typical approach by a peer reviewer for sites with known wetland complications would be to require a combined wetland delineation exercise *as part of the Terms of Reference*, since it is not an assumed requirement.



Azimuth finds it atypical and unreasonable for a municipal Peer Reviewer to expand the Terms of Reference after completion of the EIS for features *clearly present and known* from the beginning of the study. In WSP's March 30, 2022 Terms of Reference letter, WSP confirms knowledge of the importance of wetlands on-site, specifically emphasizing unevaluated wetlands as a key driver for the EIS. Between the clear aerial imagery, clear mapping of unevaluated wetlands available from MNRF, and the verbal acknowledgement of this in the Terms of Reference letter, the requirement for a joint site visit (if needed) should have been evident at the time of establishment of the Terms of Reference. In Azimuth's experience, even in jurisdictions with Conservation Authorities, wetland staking for evident wetland areas are clearly established at the time of the Terms of Reference to allow for sufficient planning. The addition of this item to the end of the EIS process is problematic and unduly burdensome on a proponent adhering to the process in good faith.

Wetland Delineation Conclusions

The wetland boundaries established in completing the EIS were delineated by experienced and qualified professionals during an appropriate season (summer) based on the "50% rule" of the OWES as per the terms of reference established for the EIS with the Town/WSP (Appendix B of the EIS) and hence the conclusion is based on professionally and properly delineated wetland limits. All natural heritage features summarized (in any EIS) are determined, mapped, and assessed for impacts using the best judgment of professional ecologists to characterize those natural heritage features. As such, it is appropriate for Azimuth to draw conclusions on impacts based on a wetland line produced based on best professional judgment of a trained/certified wetland evaluator, as this is the standard set by OWES and the typical standard for natural heritage feature delineation. While it remains true that WSP does not have to accept the wetland line, this is a difference of professional opinion rather than missing criteria for the impact assessment.

At this late point in the process, we find it atypical and unreasonable for WSP to have known the importance of wetlands on-site from the beginning, but to have:

- 1) Not requested a joint wetland staking at the initial Terms of Reference phase, when this could have been scheduled during field work two years ago;
- 2) Not collected any internal data to support further evidence-based discussion of the wetland boundary;
- 3) Defer review and project timelines for 6 months as a result of the above; and,
- 4) Incur significant cost to the proponent as a result of the above, both in municipal fees and consulting expenses.



Given the above, it is Azimuth's opinion that it would be pragmatic, fair, and in keeping with typical EIS standards to accept the wetland boundary at this late stage in the process. It is our opinion that impacts should be evaluated based on the boundary as it is mapped in Azimuth's EIS.

Impacts to Wetland

In Section 7.1 of the EIS Azimuth provides an assessment of the potential for impact on wetland hydrology (as per assessment by Mike Jones, Senior Hydrogeologist/P. Geo. – professional qualified to address hydrogeology). This section concludes that “the scale of proposed development is minor relative to the area of land on the retained lot and adjacent lands available for infiltration, and hence the proposed development does not impact water balance”. For these reasons Azimuth's conclusions with respect to direct and indirect impacts to wetlands were appropriately made and hence the report's conclusions are valid.

Azimuth further notes that the locations proposed for lot severance and development are fully outside of the delineated wetlands, and occur in the external, disturbed areas of forest adjacent the wetland polygons and near the existing road edge. The wetland elements adjacent Lots Part 2 and Part 3 are early-successional, with significant components of Green Ash and Trembling Aspen, indicative of a history of anthropogenic influence (potentially associated with historical works adjacent Sandy Bay Road). These vegetation types are not rare or unique to this part of the study area, and these successional community types are not anticipated to be highly sensitive to disturbance. Lot Part 1 is proposed adjacent a wetland polygon dominated by Silver Maple swamp; while this is a later-successional vegetation type, the proposed severance is only adjacent to the very tip of this polygon and the vast majority of this vegetation type extends deep into the interior of the subject lands and onto adjacent lands. All of these wetland vegetation types are unified into a larger wetland block, the majority of which is embedded deep within the part of the study area where development will be avoided. Considering that no development will occur within wetlands, considering that development is only proposed in proximity to a very small fraction of the contiguous wetland block, considering the disturbance history of the forest areas within the proposed lot severances, and considering that the water balance of these wetlands is not anticipated to be impacted, there is no expectation that the proposed development will result in negative impacts to the form or function of wetlands on or adjacent to the property, provided that Recommendations in EIS report Section 8.0 are adhered to.



WSP Comment:

Significant Wildlife Habitat

13. WSP agrees with the assessment that there will be no impact to the function of the SWH types identified in the EIS (Woodland Area-sensitive Breeding Bird Habitat, Bat Maternity Colonies, and Special Concern and Rare Wildlife Species – Eastern Wood-pewee) based on the proposed lot severance and pending resolution of Comments #3 and #7.

Azimuth Response:

Noted

WSP Comment:

Significant Woodland

14. WSP generally agrees with the assessment that the removal of a maximum of 0.7 ha (i.e., ~2% of the Significant Woodland), assuming full clearing of the sites, is unlikely to impact the function of the Significant Woodland.

Azimuth Response:

Noted and speaks to the necessity of evaluating impacts of tree clearing/extent of vegetation removal associated with future development (see reply to WSP Comment #10).

WSP Comment:

Habitat of Endangered and Threatened Species

15. Please refer to Comments #2 and #9. Any updates to the candidate or confirmed SAR habitat identified on-site and within the Study Area should be considered in the impact assessment and mitigation sections (e.g., SAR snakes).

Azimuth Response:

Addressed – please see responses to WSP Comments #2, and #9.



WSP Comment:

16. WSP agrees with the assessment related to Black Ash (*Fraxinus nigra*) that any proposed removal of these species after January 25, 2024 (as per O. Reg 23/22 to the ESA) will require ESA considerations. Section 7.5 outlines a date of "February 25, 2024"; however, the rest of the report refers to the correct date in January.

Azimuth Response:

The province released information recently indicating probable direction to be taken with respect to enacting protections to Black Ash under Ontario's ESA, summarized as follows:

Black Ash was listed as endangered in Ontario in January 2022 but the province, through O. Reg. 23/22 enacted a temporary suspension of protections under Ontario's *Endangered Species Act*, 2007 (ESA) until January 26, 2024. Therefore, the species is not currently protected under the ESA (nor is it assessed as provincially rare – S Rank 4). We understand that the province may extend the suspension of protections for another year to "no later than January 2025 so that the proposed regulatory approach can be implemented" (Environmental Registry of Ontario [ERO] number 019-7378 [Comment period September 18, 2023 - November 2, 2023], <https://ero.ontario.ca/notice/019-7378>). The proposed regulatory approach outlined in the ERO posting - Protecting Black Ash and its habitat under the Endangered Species Act, 2007,) states: "Ontario is proposing to limit the application of the 'species protection' prohibitions in subsection 9(1) of the ESA to healthy Black Ash, those that appear appear (sic) to have survived exposure to EAB, located in areas of the province that have experienced significant EAB-caused mortality of ash trees. A healthy Black Ash tree is one that appears to have survived exposure to EAB, remains in a healthy condition ('lingering ash'), and has a trunk diameter at breast height (DBH) of at least 8 cm (sic). Ontario is proposing to apply 'habitat protection' prohibitions in subsection 10 (1) of the ESA to a radial distance of 30 metres around each Black Ash tree protected under subsection 9 (1)" (*i.e.*, 30m from a healthy Black Ash with DBH \geq 8cm). Note: EAB = Emerald Ash Borer.

Summary

At present Black Ash receives no protection under the ESA, protections may be extended to January 2025 and protections would likely only apply to healthy Black Ash larger than 8cm DBH. The size class distribution and health status of Black Ash on the subject lands has not been established pending issue of regulations and guidance documents by the province and approval of the property severance by the Town.



WSP Comment:

Mitigation Recommendations

17. WSP recommends separating the recommendations into two parts: 1) recommendations to be completed prior to the lot severance and 2) mitigation recommendations for future development.

Azimuth Response:

None of the recommendations are to be completed prior to the lot severance. Therefore, all six recommendations are recommendations for future/post severance development activities. No need to disaggregate recommendations.

WSP Comment:

18. WSP agrees with the recommendation to minimize the extent of tree clearing, where possible, to maintain the woodland functions (e.g., SWH, SAR bat habitat, etc.). To facilitate this recommendation, WSP recommends that a tree inventory and tree protection plan be prepared during the site plan application process prior to any tree clearing. Furthermore, WSP recommends consideration of TPOP Policy 3.10.2 related to tree replacement to mitigate loss of trees as a result of the proposed development, in consultation with the Town of Penetanguishene.

Azimuth Response:

Noted.

WSP Comment:

19. WSP recommends that the Clean Equipment Protocol for Industry (Halloran et al., 2013) be implemented during construction and tree clearing to mitigate the spread of invasive species to the site. Furthermore, an Invasive Species Management Plan should be completed and approved by the Town at the time of the proposed development.

Azimuth Response:

Noted.



WSP Comment:

4) Conclusions and Summary

Based on the above comments provided through this Peer Review, it is WSP's opinion that additional information is required to assess the project's feasibility and compliance with municipal, provincial, and federal legislation and policy. In particular, confirmation of the wetland limits, an updated SAR screening and more clarity in the impact assessment section are required. The final conclusions should speak only to the proposed severance rather than the proposed development, as development details are unknown. Pending the resolution of the above comments, it is WSP's opinion that it is likely that the proposed severance will be in compliance with applicable legislation based on the assessment in the EIS.

Azimuth Response:

We recommend that the Town/WSP rely on the PJR by MHBC as the authoritative source with respect to planning conformity.

An updated/expanded SAR screening is provided in responses to WSP Comments #2 and #3 above. Results indicate that the subject lands do not provide habitat for the additional endangered and threatened species considered consistent with field observations indicating none present. Results also indicate that the subject lands do not provide habitat for the SC and provincially rare (S1-3) species identified locally in background data consistent with field observations indicating none present.

The wetland boundary was delineated at an appropriate time of year (summer) by qualified professionals based on the 50% rule of the OWES consistent with the requirements of the terms of reference for the EIS established with the Town/WSP.

As per response to WSP Comment #10, the approach to impact assessment speaking to likely extent of lot clearing to facilitate future residential development is appropriate as the proposed development is lot severance to construct privately serviced single-detached dwellings in the future. In our opinion these two factors - lot creation and construction - cannot be logically decoupled. The severance of a lot with a Rural Area designation conveys or implies certain development rights relating to the creation of a single detached dwelling; thus a lot cannot be severed without consideration of for how a single detached dwelling (and associated infrastructure) may be accommodated. We also note that both lot creation and construction are defined as development under the PPS.



Yours truly,
AZIMUTH ENVIRONMENTAL CONSULTING, INC.

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Attach:

cc: Patrick Townes, MHBC