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AGREEMENT UNDER S.23 OF O.REG. 242/08 MADE UNDER THE
ENDANGERED SPECIES ACT, 2007

FILE #: KV-23-007-10

THIS AGREEMENT made in duplicate as of June 29, 2010

BETWEEN:

HER MAJESTY THE QUEEN in right of Ontario as represented
by the Minister of Natural Resources

(the "Minister")

AND:

THE CITY OF OTTAWA

(the "Municipality")

WHEREAS subsections 9(1) and 10(1) of the *Endangered Species Act, 2007* prohibit certain activities with respect to a species that is listed on the SARO List as an extirpated, endangered or threatened species;

AND WHEREAS section 23 of Ontario Regulation 242/08 provides that clause 9(1)(a) and subsection 10(1) of the Act do not apply to a person who is constructing, improving, maintaining or repairing Drainage Works if the person complies with an agreement entered into between the person and the Minister;

AND WHEREAS the Municipality is constructing, improving, maintaining or repairing Drainage Works to which section 23 of the Regulation applies;

AND WHEREAS the Minister is of the opinion that the Agreement requires the Municipality to take reasonable steps to minimize adverse effects on the Species specified herein;

AND WHEREAS the Minister is of the opinion that if the Agreement is complied with, the construction, improvement, maintenance or repair of the Drainage Works will not jeopardize the survival or recovery of the Species specified herein in Ontario;

AND WHEREAS the Minister is of the opinion that the Agreement does not conflict with any obligation of the Minister to ensure the implementation of any action under subsection 11(9) of the Act that is in existence on the Effective Date;

NOW THEREFORE the Minister and the Municipality agree as follows:

ARTICLE 1
DEFINITIONS and GENERAL PROVISIONS

1.1 Singular and Plural. In the Agreement, words in the singular include the plural and vice-versa.

1.2 Headings. The headings in the Agreement are for convenience of reference only and do not form part of the Agreement and in no manner modify, interpret or construe the Agreement.

1.3 Definitions. In the Agreement the following words shall have the following meanings:

"ESA 2007" or "Act" means the *Endangered Species Act, 2007*;

"SARO List" means Ontario Regulation 230/08 (Species at Risk in Ontario List) made under the ESA, 2007;

"Activities" means those activities described in section 4.4a);

"Agreement" means this agreement entered into between the Minister and the Municipality, all schedules and attachments to it and any instrument amending it;

"Designated Representative" means the individual appointed by a Party to act on that Party's behalf as identified in section 3.1;

"Drainage Works" means "drainage works" as defined in the *Drainage Act*;

"Effective Date" means the date set out at the beginning of the Agreement;

"improvement" means "improvement" as defined in the *Drainage Act*;

"maintenance" means "maintenance" as defined in the *Drainage Act*;

"Mitigation Plan" means the plan identified in section 5.1 and described in Schedule C;

"Notice" means any notice or communication required or given under the Agreement;

"Party" means either the Minister or the Municipality, as applicable, and "Parties" means both of them;

"Regulation" means Ontario Regulation 242/08 (General) made under the ESA, 2007;

"repair" means "repair" as defined in the *Drainage Act*;

"Report" means "report" as defined in the *Drainage Act*; and

"Species" means those species listed in Schedule B.

1.4 Schedules. The following schedules form part of the Agreement:

- a) Schedule A (Drainage Works);

- b) Schedule B (Species to which the Agreement applies); and
- c) Schedule C (Mitigation Plan).

**ARTICLE 2
TERM OF THE AGREEMENT**

- 2.1 **Term.** The Agreement shall come into effect on the Effective Date and shall expire June 30th, 2040 unless terminated earlier pursuant to ARTICLE 10 (Termination).

**ARTICLE 3
DESIGNATED REPRESENTATIVE**

- 3.1 **Designated Representative.** For the purposes of the Agreement, for the Minister, the Designated Representative and address are:

Ontario Ministry of Natural Resources
ATTN: Alex Gardner
Ministry of Natural Resources
Kemptville District Manager
Kemptville, Ontario
K0G 1J0
Email: alex.gardner@ontario.ca
Tel: (613) 258 - 8201
Fax: (613) 258 - 3920

and, for the Municipality, the Designated Representative and address are:

City of Ottawa
ATTN: David Ryan
Project Manager Municipal Drainage
2155 Roger Stevens Drive,
Ottawa, ON
K0A 2T0
Tel: [613-580-2424
Fax: [613-489-2880

- 3.2 **Different Designated Representative.** Either Party, through its Designated Representative, may designate a different representative or provide a revised address, from time to time, by providing Notice in writing to the other Party.

ARTICLE 4
APPLICATION OF AGREEMENT

- 4.1 **Authority.** The Agreement is entered into under the authority of section 23 of Ontario Regulation 242/08 and only applies to the species and the activities that are specified herein.
- 4.2 **Application to Species.** The Agreement applies to the species listed in Schedule B, which are all listed on the SARO List as extirpated, endangered or threatened
- 4.3 **Authorization Provided.** Subject to all the conditions and limitations set out in the Agreement, while the Agreement is in force and the Municipality is in compliance with the Agreement:
- a) clause 9(1)(a) and subsection 10(1) of the ESA 2007 do not apply to the Municipality in respect of the Species; and
 - b) subclauses 9(1)(b)(i) and (ii) of the ESA 2007 do not apply to the Municipality's possession or transportation of the Species.
- 4.4 **Application to Activities.** The authorization provided in section 4.3 applies only to the Municipality:
- a) with respect to its undertaking of
 - maintenance of a ditch constructed under the Ditches and Watercourses Act, chapter 109 of the Revised Statutes of Ontario, 1960, in accordance with subsection 3(18) of the Drainage Act;
 - maintenance and repairs of existing drains as authorized by section 74 of the Drainage Act;
 - improvement of existing drains as authorized by section 77 or 78 of the Drainage Act; or
 - emergency work carried out in accordance with section 124 of the Drainage Act.(hereinafter referred to as the **Drainage Activities**) which will be undertaken in respect of the Drainage Works which are more fully described in Schedule A; and
 - b) as is necessary to fulfill the conditions of the Agreement, including the conditions set out in Schedule C (Mitigation Plan).
- 4.5 **Protection and Safety.** Nothing in the Agreement requires the Municipality to conduct an activity in a manner that would reasonably be expected to cause damage to infrastructure or create risk to the safety of the public, its employees or contractors.
- 4.6 **Failure to Comply.** Failure to comply with the Agreement may result in a contravention of the ESA 2007.

**ARTICLE 5
MITIGATION PLAN**

- 5.1 Mitigation Plan.** The Mitigation Plan:
- a) establishes the reasonable steps that the Municipality shall take to minimize the adverse effects of the Activities on the Species;
 - b) provides for monitoring of the effects of the Activities on the Species; and
 - c) establishes reporting requirements.
- 5.2 Term of Mitigation Plan.** The Mitigation Plan is in effect for the term set out in Schedule C, but no Mitigation Plan may be in effect for a term longer than 10 years. The Mitigation Plan shall expire at the end of its term unless it is amended and replaced in accordance with this Article.
- 5.3 Amendments to Mitigation Plan.** Any Mitigation Plan may be amended at any time, including for the sole purpose of renewing its term, by agreement in writing by the Parties or their Designated Representatives.
- 5.4 Amendment - Consideration of New Scientific Information.** In making any decision to amend a Mitigation Plan, the Parties will consider the incorporation of new scientific information with respect to the Species, including information:
- a) contained in any completed recovery strategy for the Species;
 - b) contained in any statements made by the Government of Ontario under subsection 11(8) of the ESA 2007; or
 - c) obtained pursuant to any monitoring, assessment or reporting under this Agreement.
- 5.5 Required Amendment -** The Mitigation Plan shall be amended if,
- a) habitat protection under section 10 of the ESA 2007 comes into effect for the Species and the Minister is of the opinion that new or revised conditions are required to address such protection; and
 - b) new information becomes available in respect of the location of one or more threatened or endangered species that in the opinion of the Minister requires new or revised Sensitive Areas in order to minimize adverse effects on one or more Species.
- 5.6 Agreement Not in Force.** The Agreement is not in force without a Mitigation Plan that is in effect.

**ARTICLE 6
AMENDMENTS**

- 6.1 **Amendments Require Written Agreement.** Except as provided in ARTICLE 5, the Agreement may only be amended by a written agreement duly executed by the Parties or their respective Designated Representatives.

**ARTICLE 7
ASSIGNMENT**

- 7.1 **No Assignment Without Consent.** The Municipality shall not assign the Agreement or any part thereof without the written consent of the Minister, which shall not be unreasonably withheld. Such consent shall be in the sole discretion of the Minister and subject to any terms and conditions that may be imposed by the Minister.

**ARTICLE 8
AUDIT**

- 8.1 **Audit.** The Minister or the Minister's authorized representatives may enter the lands and facilities described in Schedule A that are owned by the Municipality, or for which landowner permission has been obtained, in order to conduct an audit to assess the Municipality's compliance with the terms and conditions of the Agreement.
- 8.2 **Time of Audit.** An audit under section 8.1 shall be conducted at a time agreed to in writing by the Parties that is within 20 business days of the Municipality receiving Notice of a request for the audit, unless a later time is agreed to in writing by the Parties.
- 8.3 **Audit if No Response or Agreement.** If
- a) the Municipality does not respond to a request for an audit within 10 business days of receiving Notice of such request; or
 - b) the Parties are unable to agree within 20 business days of the Municipality receiving Notice of a request on the time for the audit,

the Minister or the Minister's representative may enter the lands and facilities described in Schedule A at any safe and reasonable time in order to conduct an audit in accordance with section 8.1.

- 8.4 **Audit Activities.** In conducting an audit in accordance with this Article, the Minister or the Minister's authorized representatives, as the case may be, may:
- a) examine anything that is relevant to the Agreement; and
 - b) conduct any tests, take any measurements, take any specimens or samples, set up any equipment and make any photographic or other records that may be relevant to the audit.

- 8.5 **Municipality's Co-operation.** The Municipality shall cooperate with the Minister or the Minister's authorized representative, as the case may be, in respect of any audit undertaken in accordance with this Article, including providing in a timely manner before the date of the audit any information in respect of the Agreement that is reasonably requested by the Minister or the Minister's authorized representative.
- 8.6 **Minister's Authorized Representatives.** For the purpose of this Article, the Minister's authorized representatives include individuals who are enforcement officers under the ESA 2007.

ARTICLE 9 INSURANCE

- 9.1 **Insurance.** The Municipality is responsible for obtaining its own insurance and should carry all the necessary and appropriate insurance that a prudent person in the business of the Municipality would maintain, including but not limited to commercial general liability insurance. The Municipality is not covered by the Province of Ontario's insurance program and no protection will be afforded to the Municipality by the Government of Ontario for any claims that may arise out of the Agreement.

ARTICLE 10 TERMINATION

- 10.1 **Termination by the Municipality.** With the written consent of the Minister, which consent shall not be unreasonably withheld, the Municipality may terminate the Agreement for convenience and not for cause.
- 10.2 **Termination by the Minister.** The Minister may terminate the Agreement upon giving Notice to the Municipality if:
- a) the Municipality has knowingly provided false or misleading information in respect of the Agreement;
 - b) the Municipality breaches any provision of the Agreement; or
 - c) notwithstanding that the Municipality has complied with the requirements of the Mitigation Plan, the Minister is of the opinion that the Activities of the Municipality in respect of the Drainage Works identified in Schedule A will:
 - i. jeopardize the survival or recovery in Ontario of one or more of the Species; or
 - ii. conflict with the obligation of the Minister to ensure the implementation of any action that arises under subsection 11(9) of the Act.
- 10.3 **Opportunity to Remedy Breach.** If the Minister is of the opinion that it is appropriate to allow the Municipality the opportunity to remedy a breach of the Agreement, the Minister shall give the Municipality Notice of:

- a) the particulars of the breach;
- b) the period of time within which the Municipality is required to remedy the breach; and
- c) the steps that the Municipality is required to undertake to remedy the breach.

10.4 Municipality not Remediating. If the Minister has provided the Municipality with an opportunity to remedy a breach of the Agreement pursuant to section 10.3 and:

- a) the Municipality does not remedy the breach within the time period specified in the Notice;
- b) it becomes apparent to the Minister that the Municipality cannot completely remedy the breach within the time specified in the Notice or such further period of time as the Minister considers reasonable; or
- c) the Municipality is not remedying the breach in a way that is satisfactory to the Minister,

the Minister may terminate the Agreement by giving Notice of termination to the Municipality.

10.5 Request for Review. The Municipality may request that the Minister review a decision to terminate the Agreement by providing Notice to the Minister within 15 business days of receiving Notice of the decision to terminate by the Minister. If the Municipality makes a request for review, the Agreement shall continue until the Minister's decision is made under section 10.6. For greater certainty, this section does not apply to a decision to terminate made in accordance with subsection 10.6(c).

10.6 Minister's Decision Following Request. If the Municipality makes a request to review under section 10.5, the Minister shall consider the Municipality's request and may:

- a) continue the Agreement;
- b) continue the Agreement in an amended form; or
- c) terminate the Agreement by giving Notice to the Municipality, in which case section 10.5 does not apply.

10.7 Effective Date of Termination. The effective date of any termination under this Article shall be:

- a) 15 business days after the Municipality receives Notice under section 10.2 if a request for review is not made under section 10.5;
- b) 15 business days after the Municipality receives Notice under section 10.4 or subsection 10.6(c); or
- c) immediately upon the date the Municipality receives the written consent of the Minister under section 10.1.

**ARTICLE 11
NOTICES**

11.1 Notice. Any Notice shall be:

- a) in writing;
- b) delivered personally or by pre-paid courier, or sent by facsimile, certified or registered mail; and
- c) forwarded to the Designated Representative of the respective Party.

11.2 Notices Effective From. All Notices shall be effective:

- a) at the time the delivery is made if the Notice is delivered personally, by pre-paid courier or by facsimile; or
- b) five business days after the day the Notice was deposited in the mail if the Notice is sent by certified or registered mail,

unless the day the Notice is effective falls on a day when the Municipality or the Ministry is normally closed for business or the Notice is sent by facsimile after 5:00 p.m. on a business day, in which case the Notice shall not be effective until the next business day that the Municipality or the Ministry, as the case may be, is normally open for business.

**ARTICLE 12
SEVERABILITY OF PROVISIONS**

12.1 Invalidity or Unenforceability of Any Provision. The invalidity or unenforceability of any provision of the Agreement shall not affect the validity or enforceability of any other provision of the Agreement and any invalid or unenforceable provision shall be deemed to be severed.

**ARTICLE 13
WAIVER**

13.1 Waivers in Writing. A waiver of any failure to comply with any term or condition of the Agreement shall be in writing and signed by the Party providing the waiver. Any waiver must refer to a specific failure to comply and shall not have the effect of waiving any subsequent failure to comply.

13.2 Failure to Enforce not a Waiver. The failure of the Minister to insist in one or more instances upon the performance by the Municipality of any of the terms or conditions of the Agreement shall not be construed as a waiver of the right of the Minister to require future performance of any such terms or conditions and the obligations of the Municipality with respect to such future performance shall continue in full force and effect.

**ARTICLE 14
ENTIRE AGREEMENT**

- 14.1 Entire Agreement.** The Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained in the Agreement and supersedes all prior oral or written representations and agreements.

**ARTICLE 15
GOVERNING LAW**

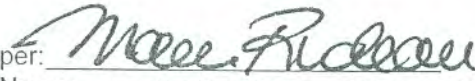
- 15.1 Governing Law.** The Agreement and the rights, obligations and relations of the Parties shall be governed by and construed in accordance with the laws of the Province of Ontario, and the federal laws of Canada applicable therein. Any litigation arising in connection with the Agreement shall be conducted in Ontario unless the Parties agree in writing otherwise.

**ARTICLE 16
COMPLIANCE WITH LAWS**

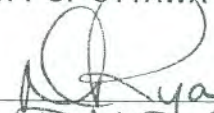
- 16.1 Compliance With Laws.** For greater certainty, nothing in this Agreement absolves the Municipality and its employees, contractors and representatives, if any, from complying with all applicable federal, provincial and municipal laws, ordinances, statutes, rules, regulations and orders, and all by-laws of all relevant authorities.

IN WITNESS WHEREOF the Parties have executed the Agreement made as of the date first written above.

HER MAJESTY THE QUEEN IN RIGHT
OF ONTARIO as represented by the
Minister of Natural Resources

per: 
Name: Marc Rondeau Date: _____
Position: Director
Species at Risk

THE CITY OF OTTAWA

per: 
Name: DAVID RYAN
Position: DRAINAGE SUPERINTENDENT

I have authority to bind the Municipality.

per: _____
Name:
Position:

I have authority to bind the Municipality.

SCHEDULE A
DRAINAGE WORKS

A.1 The Agreement applies to:

- (a) all drainage works situated in the Municipality if before June 30, 2008;
 - i. an agreement for the construction, improvement or maintenance was filed under subsection 2(2) of the *Drainage Act*; or
 - ii. a report detailing the drainage works was adopted under subsection 3(15) or adopted by by-law under subsection 45(1) of the *Drainage Act*, and
- (b) all ditches constructed under *The Ditches and Watercourses Act*, chapter 109 of the Revised Statutes of Ontario, 1960.

SCHEDULE B

SPECIES TO WHICH THE AGREEMENT APPLIES

Endangered Species

The Agreement applies to the following species listed on the S SARO List as endangered:

- a) Spotted Turtle (*Clemmys guttata*);
- b) Eastern Prairie Fringed Orchid (*Platanthera leucophaea*); and
- c) Butternut (*Juglans cinerea*).

Threatened Species

1. The Agreement applies to the following species listed on the S SARO List as threatened:

- a) Blanding's Turtle (*Emydoidea blandingii*);

SCHEDULE C – MITIGATION PLAN

The Mitigation Plan shall be in effect until June 30, 2015.

The Municipality shall undertake measures to minimize adverse effects on species at risk in accordance with the general conditions described in Part B and taxa-specific conditions described in Part C, and the monitoring and reporting requirements described in Part D of this Mitigation Plan.

PART A. DEFINITIONS

1. Definitions:

1.1. In this Schedule, the following words shall have the following meanings:

"DFO" means Fisheries and Oceans Canada;

"MNR" means the Kemptville District Office of the Ministry of Natural Resources;

"Contact" means to contact the MNR in accordance with the notification/contact schedule provided to the Municipality by the MNR's Designated Representative from time to time;

"Holding Tub" means a large, light-coloured container fitted with a non-airtight latchable lid approved by the MNR for the temporary storage of captured snakes, turtles, amphibians, birds or eggs;

"Interagency Notification Form" means the form issued by DFO, available at www.dfo-mpo.gc.ca, which is required to be completed when a drain is being maintained or constructed;

"Monitoring and Reporting Form" means the document that must be completed by the Municipality in accordance with Part D to this Schedule and will be provided to the Municipality;

"Ontario Operational Statement" means one of the documents issued by DFO, available at www.dfo-mpo.gc.ca, that sets out the conditions and measures to be incorporated into a project in order to avoid negative impacts to fish and fish habitat in Ontario, as modified from time to time;

"Process Charts" means the charts attached as Part E to this Schedule which describe the steps set out in this Mitigation Plan;

"Seasonal Timing Windows Chart" means the chart attached as Part G to this schedule which describes the Sensitive Periods applicable to each Taxonomic Group;

"Sensitive Area" means a geographic area in the Municipality where additional mitigation measures are required to be undertaken for one or more Taxonomic Groups;

"Sensitive Areas Location" means a location described in Part F to this schedule which is where the applicable Sensitive Areas are located;

"Sensitive Period" means a time of year set out in the Seasonal Timing Windows Chart during which taxa-specific mitigation measures are required to be undertaken for a

Taxonomic Group because of ambient air/water temperatures, water-levels or important life-history stages;

"Taxonomic Group" means the distinct group comprising one or more Species based on their taxonomic relationship and common approaches to mitigating adverse effects (i.e., fish, mussels, turtles, snakes, amphibians, birds or plants); and

"Work Zone" means the geographic area in the Municipality where an Activity in respect of one of the Drainage Works is being conducted.

- 1.2. For greater certainty, any defined terms that are not defined in section 1.1 have the same meanings as in the Agreement.

PART B. GENERAL MEASURES TO MINIMIZE ADVERSE EFFECTS

2. Process Charts

- 2.1. The general steps set out in this Part B are visually described in the Process Charts.

3. Review of Documentation

- 3.1. Prior to conducting any Activities in respect of the Drainage Works the Municipality shall determine if conditions apply to the place, time or manner in which the Municipality wishes to pursue them by reviewing:
 - (a) the Sensitive Areas Location(s) to determine if the Work Zone for the proposed Activities will occur within a Sensitive Area;
 - (b) the DFO Reference Guide for Fish and Mussel Species at Risk Distribution Maps: A Referral Review Tool for Projects Affecting Aquatic Species at Risk;
 - (c) the Seasonal Timing Windows Chart to determine if the proposed Activities will occur during a Sensitive Period for one or more of the Taxonomic Groups; and
 - (d) the Process Charts to determine if prior notification is required;
 - (e) the mitigation measures for each applicable Taxonomic Group in Part C to determine what additional site-specific mitigation measures, if any, are required.
- 3.2. The Municipality shall document the results of the review undertaken in accordance with section 3.1 using the Monitoring and Reporting Form.

4. Sensitive Areas Locations

- 4.1. The Sensitive Areas Locations contain sensitive information about the distribution of species at risk, are provided for the sole purpose of informing this Agreement and are not to be copied or distributed for any other purposes or to any other party without the prior written authorization of the MNR's Designated Representative.

5. Prior Notification to Seek Direction

- 5.1. If, after completing the review of documents described in section 3.1, the Municipality determines that the proposed Activities will be undertaken:
 - (a) in a place;
 - (b) at a time; or
 - (c) in a manner,

that requires prior notification in accordance with the Process Charts, the Municipality shall provide prior notification to the MNR in order for the MNR to determine if the Municipality must undertake additional site-specific or Species-specific mitigation measures, and if applicable, to identify such measures.

- 5.2. The prior notification under section 5.1 shall include a completed Interagency Notification Form:
 - (a) in respect of maintenance/repair where the proposed Activities are being undertaken pursuant to subsection 3(18) or section 74 of the *Drainage Act*; or
 - (b) in respect of construction/improvement where the proposed Activities are being undertaken pursuant to section 77 or 78 of the *Drainage Act*.
- 5.3. Where an Activity is undertaken in accordance with section 124 of the *Drainage Act* and would otherwise have required prior notification under section 5.1, the Municipality shall Contact the MNR by email prior to the commencement of the Activity, and complete and submit the applicable Interagency Notification Form within one week of the Activity's completion, unless otherwise directed in writing by the MNR's Designated Representative.

6. General Mitigation Measures

- 6.1. Notwithstanding that prior notification or additional mitigation measures may be required in accordance with this schedule, in undertaking any Activity at any time in respect of the Drainage Works the Municipality shall:
 - (a) undertake the mitigation measures for sediment control and for erosion control and bank stabilization set out in The Drain Primer (Cliff Evanitski 2008) published by DFO (ISBN 978-0-662-48027-3), unless otherwise authorized in writing by the MNR's Designated Representative;
 - (b) use net free, 100% biodegradable erosion control blanket for all erosion control or bank stabilization done in conjunction with their Activities; and
 - (c) where applicable, follow the guidelines set out in the following Ontario Operational Statements:
 - (i) Beaver Dam Removal;
 - (ii) Bridge Maintenance;
 - (iii) Culvert Maintenance;
 - (iv) Isolated Pond Construction;
 - (v) Maintenance of Riparian Vegetation in Existing Right of Ways; and
 - (vi) Temporary Stream Crossing.

PART C. ADDITIONAL TAXA-SPECIFIC MEASURES TO MINIMIZE ADVERSE EFFECTS

7. Training and Required On Site Materials for Turtles

- 7.1. The Municipality will ensure any person:
 - (a) involved in the capture, temporary holding, transfer and release of any turtle Species has received training in proper turtle handling procedures; and

- (b) who undertakes an Activity has a minimum of two Holding Tubs and cotton sacks on site at all times.

8. Activities undertaken in Sensitive Areas and Sensitive Periods for Turtles

- 8.1. Subject to section 8.2, where a proposed Activity will occur in a Sensitive Area for any turtle Species and during a Sensitive Period for that Species, the Municipality shall:
 - (a) not undertake any Activities that include the excavation of sediment or disturbance to banks during the applicable Sensitive Period unless otherwise authorized;
 - (b) undertake Activities in accordance with any additional site-specific measures provided in writing by the MNR's Designated Representative;
 - (c) avoid draw-down and de-watering of the Sensitive Area during the applicable Sensitive Period; and
 - (d) if authorized by the MNR's Designated Representative under (a) above to undertake Activities that include excavation of sediment or disturbance of banks, in addition to any other measures required under (b) above, ensure any person undertaking an Activity has at least two Holding Tubs on site at all times.
- 8.2. Section 8.1 does not apply where the applicable Drainage Works are:
 - (a) in a naturally dry condition;
 - (b) classified as a Class F drain in DFO's *Class Authorization System for the Maintenance of Agricultural Municipal Drains in Ontario* (ISBN 0-662-72748-7); or
 - (c) a closed drain.

9. Measures for Encounters with Turtles During a Sensitive Period

- 9.1. Where one or more individuals belonging to a turtle Species is encountered in the undertaking of an Activity in any part of a Work Zone (including, but not limited to, a Sensitive Area) during a Sensitive Period for that Species, the Municipality shall:
 - (a) capture and transfer all uninjured individuals of that Species into a Holding Tub;
 - (b) capture and transfer all individuals injured as a result of the Activities into a Holding Tub separate from any Holding Tub containing uninjured individuals;
 - (c) ensure that the Holding Tubs with the captured individuals are stored at a cool temperature to prevent freezing until the individuals can be transferred; and
 - (d) immediately Contact the MNR to seek direction and to arrange for the transfer of the individual turtles.

10. Measures for Encounters with Turtles Laying Eggs or Nest Sites

- 10.1. Where one or more individuals belonging to a turtle Species laying eggs, or an active nest site of any turtle Species, is encountered in undertaking an Activity in a Work Zone, the Municipality shall:
 - (a) not disturb a turtle encountered laying eggs and not conduct any Activities within 20 metres of the turtle while it is laying eggs;
 - (b) collect any displaced or damaged eggs and capture any injured dispersing juveniles and transfer them to a Holding Tub;
 - (c) store all captured injured individuals and collected eggs out of direct sunlight;

- (d) immediately Contact the MNR to seek direction and to arrange for the transfer of any injured individuals and eggs;
- (e) immediately stop any disturbance to the nest site and recover exposed portions with soil or organic material to protect the integrity of the remaining individuals;
- (f) not drive any equipment over the nest site or conduct any Activities within 5 metres of the nest site;
- (g) not place any dredged materials removed from the Drainage Works on top of the nest site;
- (h) mark out the physical location of the nest site for the duration of the project but not by any means that might increase the susceptibility of the nest to predation or poaching; and
- (i) where there are no collected eggs or captured individuals, record relevant information and Contact the MNR within 72 hours to provide information on the location of the nest site.

11. Measures for Encounters with Turtles Outside of a Sensitive Period

- 11.1. Where one or more individuals belonging to a turtle Species is encountered while undertaking an Activity in any part of a Work Zone (including, but not limited to, a Sensitive Area) but outside of any Sensitive Period for that Species, the Municipality shall:
- (a) briefly stop the Activity for a reasonable period of time to allow any uninjured individual turtles of that Species to leave the Work Zone;
 - (b) where individuals do not leave the Work Zone after the Activity is briefly stopped in accordance with (a) above, capture all uninjured individuals and release them in accordance with section 12.1;
 - (c) where circumstances do not allow for their immediate release, transfer captured uninjured individuals for a maximum of 24 hours into a Holding Tub which shall be stored out of direct sunlight and then release them in accordance with section 12.1;
 - (d) capture and transfer any individuals that have been injured into a Holding Tub separate from any Holding Tub containing uninjured individuals; and
 - (e) store all captured injured individuals out of direct sunlight and immediately Contact the MNR to seek direction and to arrange for their transfer.

12. Release of Captured Individuals Outside of a Sensitive Period

- 12.1. Where uninjured individuals are captured under section 11.1, they shall be released:
- (a) within 24 hours of capture;
 - (b) in an area immediately adjacent to the Drainage Works;
 - (c) in an area that will not be further impacted by the undertaking of any Activity; and
 - (d) not more than 250 metres from the capture site.
- 12.2. Following a release under section 12.1, the Municipality shall Contact the MNR within 72 hours of the release to provide information on the name of the Drainage Works, the location of the encounter and the location of the release site.

13. Measures for Dead Turtles

- 13.1. Where one or more individuals of a turtle Species is killed as a result of an Activity in a Work Zone, or if a person undertaking an Activity finds a deceased individual of a turtle Species within the Work Zone, the Municipality shall:
- (a) place any dead turtles in a Holding Tub outside of direct sunlight; and
 - (b) Contact the MNR within 72 hours to seek direction and to arrange for the transfer of the dead individuals.

14. Additional Measures for Butternut

- 14.1. Where Butternuts may exist in a Work Zone and may be affected by an Activity, the Municipality shall:
- (a) identify and mark as retainable trees all individual Butternut trees within the Work Zone during work planning site visits unless the individual Butternut has been assessed as a non-retainable tree due to infection by Butternut canker by a person designated by the Minister as a Butternut Health Assessor;
 - (b) retain and avoid disturbance to all individuals identified under (a) above that have been identified as retainable trees or that have not been assessed, unless otherwise authorized in writing by the MNR's Designated Representative;
 - (c) conduct Activities by:
 - (i) limiting equipment access and operations to the side of the Drainage Works that will minimize disturbance to where any of the individual Butternut trees occur,
 - (ii) working around trees,
 - (iii) avoiding compacting and/or disturbing the soil by keeping excavation and other heavy equipment a minimum of 2 metres away from the main stem of retained individuals to avoid damaging roots and stems,
 - (iv) placing excavated materials on areas not within 2 metres of the main stem of retained individuals, and
 - (v) where branches are required to be removed to allow for safe operation of equipment, removing them using appropriate equipment, such as pruning saws, chain saws or lopping shears, in accordance with good forestry practices.

PART D. MONITORING AND REPORTING REQUIREMENTS

15. Compliance Monitoring

- 15.1. The Municipality shall inspect the undertaking of the Activities at the locations described in Part F of this Schedule C, and shall record the results of the inspections in the Monitoring and Reporting Form.
- 15.2. The Municipality shall record all encounters with Species and the resulting mitigation measures taken by the Municipality in the Monitoring and Reporting Form.

16. Reporting

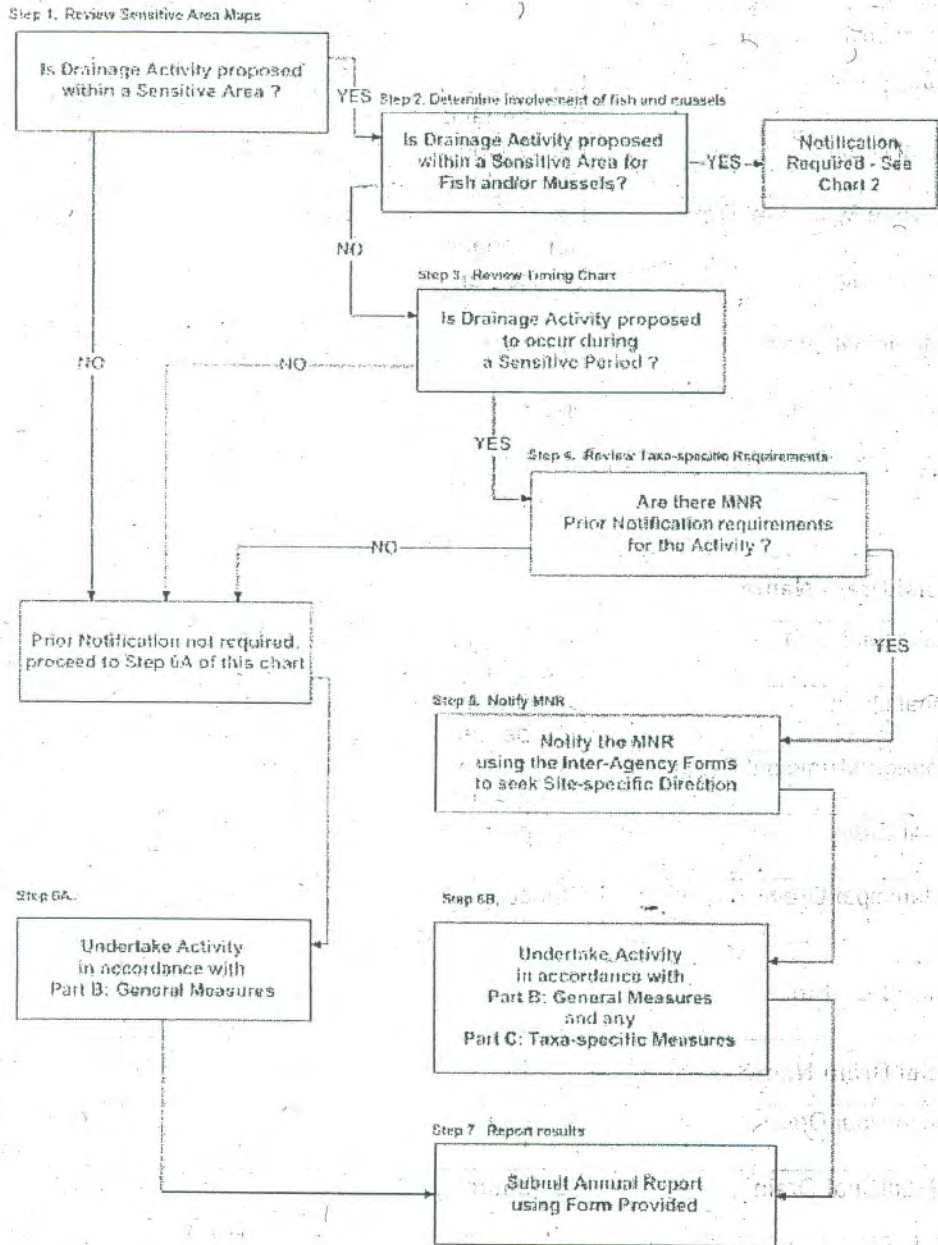
- 16.1. Prior to March 31 of each year the Mitigation Plan is in effect, the Municipality shall submit a completed Monitoring and Reporting Form containing all of the information collected under sections 15.1 and 15.2 during the previous twelve months to the MNR Designated Representative.

17. Review

- 17.1. Within six months of the expiry of this Mitigation Plan but no later than three months from the time of its expiry, the Parties shall meet to review the measures and actions taken and the Activities undertaken during its term and to discuss the terms and conditions of the next Mitigation Plan.

PART E. PROCESS CHARTS

Flow Chart 1. Process to Determine if Prior Notification is Required



PART F. SENSITIVE AREAS LOCATIONS

Blanding's Turtle

| Official Drain Name | Location |
|------------------------------------|--|
| Bear Brook Municipal Drain | Lot 17 Con 10 Lot 14 Con 11 Cumberland |
| Savage Municipal Drain | Lot 17 Con 10 to Lot 9 Con 11 Cumberland |
| East Branch Savage Municipal Drain | Lot 11 Con 10 to Lot 10 Con 11 Cumberland |
| Lacroix Municipal Drain | Gloucester |
| Ottawa Front Municipal Drain | Gloucester |
| Carp River Municipal Drain | March |

Spotted Turtle

| Official Drain Name | Location |
|------------------------------------|--|
| Bear Brook Municipal Drain | Lot 17 Con 10 Lot 14 Con 11 Cumberland |
| Savage Municipal Drain | Lot 17 Con 10 to Lot 9 Con 11 Cumberland |
| East Branch Savage Municipal Drain | Lot 11 Con 10 to Lot 10 Con 11 Cumberland |
| Lacroix Municipal Drain | Gloucester |
| Ottawa Front Municipal Drain | Gloucester |

Eastern Prairie Fringed-orchid

| Official Drain Name | Location |
|-------------------------------|-----------------|
| Hobbs Creek Municipal Drain | Goulbourn |
| Flowing creek Municipal Drain | Goulbourn |
| Taylor Municipal Drain | Marlborough |

PART G. SEASONAL TIMING WINDOWS CHART

| <i>Dates</i> | <i>Jan</i> | <i>Feb</i> | <i>Mar</i> | | | <i>Apr</i> | | | <i>May</i> | | | <i>Jun</i> | | | <i>Jul</i> | | | <i>Aug</i> | | | <i>Sept</i> | | | <i>Oct</i> | | | <i>Nov</i> | <i>Dec</i> | | | |
|-----------------------------|--|------------|------------|---|---|------------|---|---|------------|---|---|------------|---|---|------------|---|---|------------|---|---|-------------|---|---|------------|---|---|------------|------------|---|--|--|
| | | | E | M | L | E | M | L | E | M | L | E | M | L | E | M | L | E | M | L | E | M | L | E | M | L | E | M | L | | |
| Taxa/Common Name | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Aquatic Species | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Turtles | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Terrestrial Species | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Herbaceous Plants | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| NOT a Sensitive Time | IF NO Sensitive Areas Identified in Part F THEN NO Prior Notification to the MNR is required | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| Sensitive Time | IF in a Sensitive Area Identified in Part F THEN Prior Notification to the MNR is required | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |