

Comment Index

Westchester Quarry Expansion Project- Addendum

Publication Date: February 13, 2023

Government

Number	Source	Date Received
1	Fisheries and Oceans Canada	January 11, 2023
2	NS Environment and Climate Change – Water Resource Management Unit	January 18, 2023
3	NS Environment and Climate Change – Inspection, Compliance and Enforcement	January 19, 2023
4	NS Environment and Climate Change – Inspection, Compliance and Enforcement	January 20, 2023
5	NS Environment and Climate Change – Water Resource Management Unit	January 23, 2023
6	NS Environment and Climate Change – Water Resource Management Unit	January 23, 2023
7	NS Natural Resources and Renewables	January 30, 2023

Nova Scotia Mi'kmaq

Number	Source	Date Received
1	Kwilmu'kw Maw-Klusuaqn Negotiation Office	January 26, 2023

Public

Number	Source	Date Received
1	Maritime Aboriginal Peoples Council	January 23, 2023



Fisheries and Oceans
Canada

Pêches et Océans
Canada

Bedford Institute of Oceanography
1 Challenger Drive
P.O. Box 1006, Station P510
Dartmouth, Nova Scotia, B2Y 4A2

Date: January 11, 2023

To: Jeremy Higgins, Environmental Assessment Officer

From: Sarah MacLeod, Hydro and Flow Unit, Regulatory Review Biologist, Fish and Fish Habitat Protection Program

Subject: Westchester Quarry Expansion Project – Additional Information Addendum Registration

Dear Jeremy Higgins:

Fisheries and Oceans Canada (DFO), Fish and Fish Habitat Protection Program (FFHPP) received the Nova Scotia Environmental Assessment additional information addendum submitted for the Westchester Quarry Expansion Project in Cumberland County. The project is to expand on the existing quarry that is currently less than four hectares (ha) to a total 40.36 ha over a 50-year span. Quarry operations are anticipated to remain the same, with periodic seasonal operations within the months of April to December.

The study area is bordered by three unnamed streams. The stream originating to the west of the study area has year-round flows and is considered a headwater stream to the River Phillip watershed. The two unnamed streams originating along the east and northeast of the study area are intermittent headwater streams draining into the Wallace River. No wetlands were identified within the study area.

DFO-FFHPP is responsible for administering the fisheries protection provisions of the *Fisheries Act (FA)* and *Species at Risk Act (SARA)* for aquatic species at risk. The fisheries protection provisions of the *FA* includes: section 34.4 which prohibits the death of fish by means other than fishing; section 35 which prohibits the harmful alterations, disruption, or destruction (HADD) of fish habitat; and section 36.3 which prohibits the deposition of deleterious substances into water frequented by fish or in any place where it may enter such water. *SARA* prohibits: the killing, harming, harassment, possession, capturing, or taking of a species listed as extirpated, endangered, or threatened; the damage or destruction of a residence; or the destruction of any part of the critical habitat of such a listed species, unless authorized by the minister.

Should the EA be granted conditional approval, DFO will be requesting additional information be provided through the Nova Scotia of Environment Watercourse Alteration Approval process to determine if the project will result in the HADD to fish and fish habitat and require an authorization under the *FA*.

From: [Dulmage, Marina Lorna](#)
To: [Higgins, Jeremy W](#)
Cc: [Kennedy, Elizabeth C](#)
Subject: RE: Westchester Quarry Expansion Project - Additional Information Addendum Registration
Date: January 18, 2023 9:41:47 AM
Attachments: [image001.png](#)

Hi Jeremy,

It is indicated in the EA Registration Document that the Project site has no wetland present within the proposed quarry expansion area or the nearby downstream areas which are supplied by flow from the Site. As such, the wetlands program has no comments related to the quarry expansion Project.

Regards,

Marina



1894 Barrington St.
Suite 1800
Halifax, NS, B3J 2P8

Marina Dulmage M.Sc.

Wetland and Water Resources Specialist

Water Resources Management Unit
Water Branch
Sustainability and Applied Science Division

C (902) 483-3891
Marina.Dulmage@novascotia.ca

From: Higgins, Jeremy W <Jeremy.Higgins@novascotia.ca>
Sent: December 9, 2022 8:38 AM
To: Greenwood, Mark <Mark.Greenwood@novascotia.ca>; Xie, Jun <Jun.Xie@novascotia.ca>; Check, Gordon G <Gordon.Check@novascotia.ca>; Deacoff, Cameron J <Cameron.Deacoff@novascotia.ca>; Dulmage, Marina Lorna <Marina.Dulmage@novascotia.ca>; Gallop, John <John.Gallop@novascotia.ca>; Montreuil, Krysta R <Krysta.Montreuil@novascotia.ca>; MacDonald, Jonathan E <Jonathan.MacDonald@novascotia.ca>; MacKenzie, Tanya L <Tanya.MacKenzie@novascotia.ca>; MacDonald, Jeffrey Malcolm <Jeffrey.MacDonald3@novascotia.ca>; 'ReferralsMaritimes@dfo-mpo.gc.ca' <ReferralsMaritimes@dfo-mpo.gc.ca>; sara.macleod@dfo-mpo.gc.ca
Subject: Westchester Quarry Expansion Project - Additional Information Addendum Registration

Hello everyone,

This is to advise that on December 15, 2022, Chapman Bros. Construction Ltd. (Chapman) will register the **Additional Information Addendum** for the Westchester Quarry Expansion Project for environmental assessment (EA), in accordance with Part IV of the Environment Act.

The purpose of the proposed undertaking is for the continued operation and expansion of the existing quarry located at 2327 Westchester Road, in the community of Rose, Cumberland County, NS. The company is currently applying to expand the existing quarry to 40.36ha to allow continued operations for the next 50+ years. Future aggregate production rates are anticipated to increase from 25,000 metric tonnes per year up to 100,000 metric tonnes per year, pending demand. The associated activities are expected to remain consistent with the current quarry operations.

BACKGROUND - On January 18, 2022, the Minister of Environment and Climate Change released a decision concerning this review. The Minister decided that the Registration information was insufficient to make a decision on the Project and that additional information is required in accordance with Section 13(1)a of the Environmental Assessment Regulations, pursuant to Part IV of the Environment Act. The Proponent must provide additional information regarding surface water resources and fish and fish habitat. **The EA Branch is requesting comments on the from relevant reviewers on the Additional Information Addendum only.**

-

The Addendum documents can be obtained at:

FTP server: [ftp.envirosphere.ca](ftp://ftp.envirosphere.ca)

FTP Username: patrick@envirosphere.ca

FTP & explicit FTPS port: 21

pw: uNF84.Kjb4i3

[Copy the FTP server link into the Quick Access field in File Explorer and enter the username/password provided]

Please let me know if you have trouble accessing the document. These documents will also be posted on our website ([Westchester Quarry Expansion Project | Environmental Assessment \(novascotia.ca\)](#)) on December 15, 2022.

-

Comments on the Additional Information Addendum must be provided by **January 24, 2023**, via e-mail. If there are no comments, please reply indicating so. **Ensuring a clear, consistent and predictable review of EA projects is key to the EA process. We have developed the attached template to support you, in your role as reviewer, to help achieve this goal, and includes guiding questions to support reviewers in completing the template, requests a summary of comments be provided, and requests sign off by Managers/Directors (for provincial departments) prior to submission of final comments to the EA Branch.**

On or before **February 13, 2023**, the Minister of Environment and Climate Change will decide if the project can be granted conditional environmental assessment approval. **Your comments on the Addendum will be published on our EA website on the decision day.**

If you have any questions, please feel free to contact me.

Jeremy



*1903 Barrington St.
Suite 2085
Halifax, NS, B3J 2P8*

Jeremy W. Higgins

Environmental Assessment Officer

Policy, Planning and Environmental
Assessment

902-233-4477

Jeremy.Higgins@novascotia.ca

From: [MacKenzie, Tanya L](#)
To: [Higgins, Jeremy W](#)
Subject: RE: Westchester Quarry Expansion Project - Additional Information Addendum Registration
Date: January 19, 2023 11:21:20 AM
Attachments: [image001.png](#)

Hi Jeremy,

We have concerns with clearance distances. In the last couple of years we have received complaints associated with clearance distances from blasting activities at this Quarry. One property owner is very concerned with his drilled well at 2723 Westchester Road. It is currently over 800 m away from blasting activities but the expansion will bring it within 800 m. The Quarry does not have written approval from the property owner.

This concerned property owner also leases a property to a cell tower owned by Bell. The expansion of this quarry will bring the quarry to within 300 m from the cell tower during blasting activities. The property owner has not given permission to the Quarry for blasting.

I would like to make sure that this issue is considered/resolved and the Minister is aware of these issues. If the EA is approved an amendment to the Industrial approval will need to be approved.

Thanks,
Tanya

From: Higgins, Jeremy W <Jeremy.Higgins@novascotia.ca>
Sent: January 19, 2023 9:33 AM
To: Greenwood, Mark <Mark.Greenwood@novascotia.ca>; Xie, Jun <Jun.Xie@novascotia.ca>; Check, Gordon G <Gordon.Check@novascotia.ca>; Deacoff, Cameron J <Cameron.Deacoff@novascotia.ca>; Dulmage, Marina Lorna <Marina.Dulmage@novascotia.ca>; Montreuil, Krysta R <Krysta.Montreuil@novascotia.ca>; MacDonald, Jonathan E <Jonathan.MacDonald@novascotia.ca>; MacKenzie, Tanya L <Tanya.MacKenzie@novascotia.ca>; MacDonald, Jeffrey Malcolm <Jeffrey.MacDonald3@novascotia.ca>; 'ReferralsMaritimes@dfo-mpo.gc.ca' <ReferralsMaritimes@dfo-mpo.gc.ca>; sara.macleod@dfo-mpo.gc.ca; Gillis, Neil <Neil.Gillis@novascotia.ca>
Subject: RE: Westchester Quarry Expansion Project - Additional Information Addendum Registration

Hi Everyone,

Just a reminder that comments on the Westchester Quarry Expansion Project Additional Information Addendum are required by **Tuesday, January 24, 2023**. Thank you to those who have already provided your comments.

Cheers,
Jeremy

From: Higgins, Jeremy W
Sent: January 9, 2023 1:57 PM
To: Greenwood, Mark <Mark.Greenwood@novascotia.ca>; Xie, Jun <Jun.Xie@novascotia.ca>;

Check, Gordon G <Gordon.Check@novascotia.ca>; Deacoff, Cameron J <Cameron.Deacoff@novascotia.ca>; Dulmage, Marina Lorna <Marina.Dulmage@novascotia.ca>; Gallop, John <John.Gallop@novascotia.ca>; Montreuil, Krysta R <Krysta.Montreuil@novascotia.ca>; MacDonald, Jonathan E <Jonathan.MacDonald@novascotia.ca>; MacKenzie, Tanya L <Tanya.MacKenzie@novascotia.ca>; MacDonald, Jeffrey Malcolm <Jeffrey.MacDonald3@novascotia.ca>; 'ReferralsMaritimes@dfo-mpo.gc.ca' <ReferralsMaritimes@dfo-mpo.gc.ca>; sara.macleod@dfo-mpo.g.ca; Gillis, Neil <Neil.Gillis@novascotia.ca>

Subject: RE: Westchester Quarry Expansion Project - Additional Information Addendum Registration

Hi everyone,

Just a reminder that comments on the additional information addendum relating to water resources and fish/fish habitat for the Westchester Quarry Expansion project are required by **Monday, January 24, 2023**.

Thank you,
Jeremy

From: Higgins, Jeremy W

Sent: December 9, 2022 8:38 AM

To: Greenwood, Mark <Mark.Greenwood@novascotia.ca>; Xie, Jun <Jun.Xie@novascotia.ca>; Check, Gordon G <Gordon.Check@novascotia.ca>; Deacoff, Cameron J <Cameron.Deacoff@novascotia.ca>; Dulmage, Marina Lorna <Marina.Dulmage@novascotia.ca>; Gallop, John <John.Gallop@novascotia.ca>; Montreuil, Krysta R <Krysta.Montreuil@novascotia.ca>; MacDonald, Jonathan E <Jonathan.MacDonald@novascotia.ca>; MacKenzie, Tanya L <Tanya.MacKenzie@novascotia.ca>; MacDonald, Jeffrey Malcolm <Jeffrey.MacDonald3@novascotia.ca>; 'ReferralsMaritimes@dfo-mpo.gc.ca' <ReferralsMaritimes@dfo-mpo.gc.ca>; 'sara.macleod@dfo-mpo.g.ca' <sara.macleod@dfo-mpo.g.ca>

Subject: Westchester Quarry Expansion Project - Additional Information Addendum Registration

Hello everyone,

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BACKGROUND - On January 18, 2022, the Minister of Environment and Climate Change released a

decision concerning this review. The Minister decided that the Registration information was insufficient to make a decision on the Project and that additional information is required in accordance with Section 13(1)a of the Environmental Assessment Regulations, pursuant to Part IV of the Environment Act. The Proponent must provide additional information regarding surface water resources and fish and fish habitat. **The EA Branch is requesting comments on the from relevant reviewers on the Additional Information Addendum only.**

-
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-
Comments on the Additional Information Addendum must be provided by **January 24, 2023**, via e-mail. If there are no comments, please reply indicating so. **Ensuring a clear, consistent and predictable review of EA projects is key to the EA process. We have developed the attached template to support you, in your role as reviewer, to help achieve this goal, and includes guiding questions to support reviewers in completing the template, requests a summary of comments be provided, and requests sign off by Managers/Directors (for provincial departments) prior to submission of final comments to the EA Branch.**

On or before **February 13, 2023**, the Minister of Environment and Climate Change will decide if the project can be granted conditional environmental assessment approval. **Your comments on the Addendum will be published on our EA website on the decision day.**

If you have any questions, please feel free to contact me.

Jeremy



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Jeremy W. Higgins

Environmental Assessment Officer

Policy, Planning and Environmental
Assessment

902-233-4477

Jeremy.Higgins@novascotia.ca



Environment and Climate Change

Date: January 20, 2023
To: Jeremy Higgins, Environmental Assessment Officer
From: Environmental Inspector, ICE
Subject: Chapman Brothers - Westchester Quarry Expansion Project, Rose, Cumberland County, Nova Scotia

Scope of review:

This review focuses on the following mandate: Additional Information Addendum, which mostly focuses on water quality.

Technical Comments:

Appendix B – Surface Water and Groundwater Resources Management Plan

- Rationale for the groundwater monitoring program design was not provided. Are three monitoring wells sufficient to monitor groundwater considering the size of the site? What are the proposed depths of the wells? Should they be clustered to monitor shallow and deeper groundwater?

Appendices C and D – Comprehensive Water Quality Monitoring Program and Fish And Fish Habitat Study

- As the partially blocked culvert is part of the quarry, could it be repaired or replaced to attempt to improve water quality, flow, and possible future fish passage?

Additional comments:

Clearance distances - I noticed in the file there were complaints associated with clearance distances from blasting activities to certain structures. As the quarry will be moving within 800 m of a potable well at 2723 Westchester Road and within 300 metres of a tower (owned by a telecommunications company but on leased land) to the south of the quarry, have property owners given written permission for blasting? Although the EA says that damage to these structures is unlikely, without property owner permission or a ministerial granted amendment, blasts won't be able to occur within 800 metres of these structures.

Guidance for Reviewers – Environmental Assessments

Environmental Assessment Branch, Environment and Climate Change

Summary of Recommendations:

- 1) It is recommended that a detailed groundwater monitoring plan be submitted to the Department for review and acceptance prior to drilling monitoring wells. As per comments on the original EA, the groundwater monitoring plan design should be prepared by a professional hydrogeologist (P.Ge. or P.Eng.).**
- 2) It is recommended that the partially blocked culvert be repaired or replaced so that it meets current standards.**
- 3) It is recommended that clearance distance requirements to surrounding property structures be addressed for the expanded quarry size as part of the industrial approval for operation of the quarry (*i.e.*, provide rationale for why an amendment is applicable or provide written property owner permission).**

From: [Crowell, Lynsey J](#)
To: [Higgins, Jeremy W](#)
Cc: [Kennedy, Elizabeth C](#)
Subject: RE: Westchester Quarry Expansion Project - Additional Information Addendum Registration
Date: January 23, 2023 11:39:11 AM

Hi Jeremy,

Where the Minister's decision letter didn't request additional information related to groundwater, I have no additional comment on the application.

Thanks,
Lynsey

Date: January 23rd, 2023

To: Jeremy Higgins, Environmental Assessment Officer

From: Surface Water staff, Water Resources Management Unit

Reviewed by Elizabeth Kennedy, Director, Sustainability and Applied Science Division

Subject: Westchester Quarry Expansion Project - Additional Information Addendum Registration

Scope of review:

Chapman Brothers Construction Limited provided a submission to Nova Scotia Environment and Climate Change dated December 15, 2022, titled the *Westchester Quarry Expansion Project Rose, Cumberland County, Nova Scotia - Addendum to Environmental Assessment Registration Document*. The submission is based on the response to the additional information requested by the Minister of Environment and Climate Change, January 18, 2022.

This review from the Water Resources Management Unit Surface Water staff with the Nova Scotia Environment and Climate Change (NSECC), Sustainability and Applied Science Division focuses on the following mandate:

- Surface water quantity
- Surface water quality
- Potential adverse effects and proposed mitigations with respect to surface water quantity and quality.

Documents reviewed:

- Chapman Brothers Construction Limited
Westchester Quarry Expansion Project, Rose, Cumberland County, Nova Scotia Environmental Assessment Registration (EAR) for a Class 1 Undertaking - Section 9(1) of the Nova Scotia Environment Assessment Regulations. November 2021.
- Chapman Bros. Construction Limited
Westchester Quarry Expansion Project Rose, Cumberland County, Nova Scotia Addendum to Environmental Assessment Registration Document (Addendum). December 2022.

Comments:

See attached Information Request (IR) response table below for details.

Summary of Review and Recommendations:

The submitted information and assessment on surface quantity and quality meet the information requested. With the information submitted, assessment indicates potential impacts to surface water quantity that will require more thorough monitoring and ongoing assessment, as identified in the table below with associated recommendations.

NSECC Minister's Request for Information	NSECC SAS Surface comments regarding response	Issues/ Risks/Gaps	Recommendations
<p>1) A detailed water balance analysis for the proposed quarry expansion. This analysis should include the following and be signed off by a qualified Professional Engineer or Geoscientist:</p> <ul style="list-style-type: none"> • Analysis of flows and discharges under current and post-development conditions (including reclamation conditions) with considerations for seasonal variation, with an assessment of potential impacts on the water resources identified in the Registration Document resulting from this analysis. • Delineation of watersheds for current and post-development conditions, modelling of flows and discharges using information currently available and justified assumptions where needed, and considerations for validation through monitoring; • A plan to progressively monitor and update results. 	<p>Water balance analysis was conducted for five quarry development conditions, which included existing conditions at the Westchester Quarry (4 hectares area), conditions at 10 hectares of active area, conditions at 20 hectares of active area, conditions at 40 hectares of active area, and conditions after quarry rehabilitation.</p> <p>The results of the water balance analysis indicate the changes in surface water runoff at the selected discharge location downstream of the quarry in the delineated Jersey Brook Watershed range from +0.1% to -1.1 %. And conclusion was made based on this analysis as not expected to have significant adverse effects on surface water resources to runoff and streamflow in East Branch and West Branch identified in the Jersey Brook Watershed.</p> <p>Delineation of a tertiary watershed named as Jersey Brook Watershed with an area of 330 hectares was completed and used to support water balance analysis.</p>	<p>1. Watershed delineation is contradictory with the information provided in the Biophysical Assessment Report (Appendix A) in the EAR. The watershed delineation in the Addendum delineated a tertiary watershed (Jersey Brook Watershed) that includes two different watercourses (watercourse west to the EA study area (West Branch), and watercourse east to the quarry site, (East Branch)). These two watercourses flow within two different secondary watersheds (River Philip and Wallace River watersheds) as indicated in Figure 2 of the Biophysical Assessment Report. No justifications are provided to support the hydrological appropriateness of this watershed delineation, and subsequently the associated water balance analysis.</p> <p>In more detail,</p> <p>a) As a result of the delineation outlined above, watershed area and runoff diversion does not occur between the secondary watersheds as it should be due to the proposed expansion as indicated in Figure 2 of the Biophysical Assessment Report.</p> <p>b) The Biophysical Assessment Report states first order tributaries within the western part of the EA Study Area and to the west of the site join to form Mountain Brook which is one of the headwaters of the East Branch of River Philip. Figure 2 of the Biophysical Assessment Report indicates the watercourse west of the EA Study Area flows into Mountain Brook and thus is within River Philip Secondary Watershed. This same watercourse was identified in the Surface Water and Groundwater Resources Management Plan (Figure #3, Appendix B of the Addendum) as flowing into Otter Brook, which is a tributary of West Branch of Wallace River in the Wallace River Secondary Watershed and thus is conflicting information.</p> <p>c) The Biophysical Assessment Report states surface runoff from the Westchester Quarry is by overland flow largely toward the north-northwest where it intercepts an ephemeral watercourse which flows into Mountain Brook (and eventually to River Philip), and to east through an ephemeral watercourse east of the existing quarry, which flows into Otter Brook and eventually to West Branch of Wallace River. These flows were shown in Figure 2 of the Biophysical Assessment Report and indicates the proposed area for the quarry expansion drains into two secondary watersheds (River Philip and Wallace River Watersheds).</p>	<p>Require a surface water quantity monitoring plan to collect necessary data to evaluate and assess potential impacts of the proposed expansion to the two watercourses west to and EA Study Area and east to the quarry site. The plan should be extended to both Mountain Brook and Otter Brook if significant changes in surface water quantity are found in the two watercourses.</p> <p>The plan should consider collecting data with appropriate frequencies to adequately assess impacts to surface water quantity in the two watercourses for various phases of the quarry development (including shutdown).</p> <p>The plan should consider including necessary water balance analysis and prediction of potential impacts to surface water quantity for the two watercourses. Necessary data should be collected during the proposed expansion to validate the water balance analysis and support more reasonable and accurate prediction and assessment of impacts, and thus to support planning and implementation of mitigation measures over the lifespan of the proposed expansion. Climate change should be also factored into the analysis.</p>

NSECC Minister's Request for Information	NSECC SAS Surface comments regarding response	Issues/ Risks/Gaps	Recommendations
		<p>2. The assessment of insignificant impacts to the watercourse west to the EA Study Area (West Branch in the Jersey Brook Watershed delineated in the Addendum) due to the proposed expansion is not adequately supported by the information provided in the Addendum.</p> <p>In more detail,</p> <p>a) The water balance model used for the water balance analysis was not calibrated or validated to support prediction and assessment of potential hydrological impacts and associated decision making and planning for mitigations measures. Very limited information was provided to justify the reasonableness of making the assumptions for the model.</p> <p>b) The water balance analysis was completed for the entire tertiary watershed delineated in the Addendum (Jersey Brook Watershed, 330 hectares) and assessment was completed at the discharge point of this watershed. Although the assessment concluded very minor runoff change (+0.1% to -1.1%) at the discharge point of this watershed, local drainage areas and runoff diversion between local watersheds of the two watercourses west to the EA Study Area and east to the quarry site are still not quantitatively assessed. This assessment is important to support the stated marginal impact in the Biophysical Assessment Report (Appendix A, EAR) since it states that this watercourse has no apparent obstructions to fish passage and has potential to be fish rearing habitat.</p>	

The following recommendations are presented for consideration in support of any approval applications that may follow the EA process, if the EA is successful.

- Provide an erosion and sediment control (ESC) plan which is to be developed by a qualified professional engineer licenced to practice in Nova Scotia. The plan should be submitted as part of any industrial approval application for NSECC review and acceptance prior to any construction and operation activities take place, including clearing and grubbing. The plan should at least include,
 - Design details of selected ESC measures and associated drawings, including locations;
 - approaches to maintain effectiveness of ESC measures (including inspection and monitoring);
 - Design criteria and details of the two proposed sediment ponds in the northeast corner, including,
 - settling/treatment capacity;
 - how the settling ponds will be updated to cope with increased surface runoff with quarry expansion;
 - approach to monitor settling pond performance/compliance during the different operational phases of the year, including times of shutdown.
 - considerations for removal of TSS and minimizing impacts to surrounding water resources.

- Provide a site surface water management plan which is to be developed by a qualified professional engineer licenced to practice in Nova Scotia with the intent of minimizing impacts and alterations to nearby surface water resources. This plan should at least include,
 - detailed design of surface water management to cope with increased surface water runoff and maintain site drainage pattern, including the planned drainage ditches, erosion control berms, series of low-gradient drainage ditches to direct surface runoff into sediment ponds and the rock-lined drainage ditch to direct water from sediment ponds toward the mixed forest area as mentioned in the Addendum;
 - approaches to maintain effectiveness of surface water management measures. It is recommended to consider climate change factors into site surface water management;
 - considerations for surface water management during rain season, winter, extreme weather conditions and the times of shutdown.

- Provide details on how wastewater from dust suppression will be addressed, if water is to be used for this purpose.

- Provide design details of aggregating washing system (e.g., closed-loop system).

Maritime Aboriginal Peoples Council



The Maritime Regional Aboriginal Leaders
Intergovernmental Council of Aboriginal Peoples
Continuing to Reside on Traditional Ancestral Homelands

January 23rd, 2023

Forums

- Leaders Congress
- MAPC Commissions/Projects
- MAARS Secretariate
- IKANAWTIKET SARA
- MAPC Administration

MAPC Regional
Administrative Office
80 Walker Street, Suite 3
Truro, Nova Scotia
B2N 4A7

Tel: 902-895-2982
Fax: 902-895-3844
Toll Free: 1-855-858-7240
Email: frontdesk@mapcorg.ca

Governmental APRO Councils

Native Council of
Nova Scotia
P.O. Box 1320
Truro, Nova Scotia
B2N 5N2

Tel: 902-895-1523
Fax: 902-895-0024
Email: chiefaugustine@ncns.ca

New Brunswick Aboriginal
Peoples Council
320 St. Mary's Street
Fredericton, New Brunswick
E3A 2S4

Tel: 506-458-8422
Fax: 506-451-6130
Email: chief@nbapc.org

Native Council of
Prince Edward Island
6 F.J. McAuley Court
Charlottetown
Prince Edward Island
C1A 9M7

Tel: 902-892-5314
Fax: 902-368-7464
Email: chief@ncpei.com

Environmental Assessment Branch
P.O. Box 442
Halifax, Nova Scotia
B3J 2P8

RE: Westchester Quarry Expansion Project

To Whom It May Concern,

On behalf of the Native Council of Nova Scotia (NCNS), the Maritime Aboriginal Aquatic Resources Secretariate (MAARS) is providing comments to the Environmental Assessment Branch of the Nova Scotia Department of Environment and Climate Change regarding the Environmental Assessment Application for the Westchester Quarry Expansion Project by Chapman Bros. Construction Ltd. Our comments primarily relate to the matters of the targeted lichen surveys, invasive species vectors, and employee education regarding sensitive bird habitat. NCNS and MAARS met via conference call with the proponent on November 24th, 2020 and further provided commentary on December 10th, 2021 during which we called attention to a few concerns related to the Environmental Assessment (EA), which were not addressed in the NSECC Additional Information Request. We take note that throughout the 2017 survey, and the subsequent "Environmental Background Update", the study and the surrounding areas were not inspected for lichens. While we can appreciate the use of the Mersey Tobeatic Research Institute's modelled occurrences of endangered Boreal Felt Lichen, we do not find it a fitting one-to-one substitute for a ground survey. We understand the majority of the study area is composed of recently disturbed land, regenerating deciduous forest, and blueberry fields; however, there is still a northeast portion of mature deciduous forest that we find warrants the need for a lichen survey to take place.

Introductory vectors for invasive alien species (IAS) are one concern given that IAS are predisposed to establish themselves in recently disturbed areas, due to the localized eradication of natural predators and the removal of resource competition from anthropogenic activity.

Activities such as grubbing, that will take place during the expansion of this quarry, are one of such heavy stressors on the environment that will provide an opportunity for IAS to establish themselves. As the environment is stressed, there is an increased potential for IAS to be successfully introduced via vehicles, mobile facilities, on the boots of workers, and other vectors if no preventative measures are taken.

MAARS requests Chapman Bros. Construction Ltd. develop procedures to mitigate introductory vessels for IAS. This could include mandated practices to clean mobile facilities and vehicles prior to entry of the project site, to ensure they do not act as introductory vectors. Additionally, we request clarification if an IAS survey has been performed during the 2017 field study, and if not, we recommend that one be conducted.

While the bird survey conducted is thorough, it is important to emphasize the need to educate employees on the nesting and migrating bird species that have been found within and around the study area. While ensuring that “employees will be made aware of the need to check areas for activity and nests before undertaking activities which would disturb established surfaces”¹, there is an equally important need to ensure employees are educated on what to look for.

We would like to take this opportunity to reiterate that it is important for all proponents of projects to understand that the Off-Reserve Aboriginal Community represented by the NCNS is included within the definition of the word “Indian” of Section 91(24) of the *Constitution Act*, 1982. The Supreme Court of Canada in a landmark decision in *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, declared that “the exclusive Legislative Authority of the Parliament of Canada extends to all Indian, and Lands reserved for the Indians” and that the “word Indians’ in s.91(24) includes Métis and non-Status Indians”². Since 2004, in multiple decisions passed by the Supreme Court of Canada: *Haida Nation*³, *Taku River Tlingit First Nation*⁴, and *Mikisew Cree First Nation*⁵, has established that,

Where accommodation is required in decision making that may adversely affect as yet unproven Aboriginal Rights and title claims, the Crown must balance Aboriginal concerns reasonably with the potential impact of the decision on the asserted right or title and with other societal interests.

Further, both the Government of Nova Scotia and the Government of Canada are aware that the “Made in Nova Scotia Process” and the *Mi’kmaq-Nova Scotia-Canada Consultation Terms of Reference* does not circumvent the Provincial Government’s responsibility to hold consultations with other organizations in Nova Scotia that represent Indigenous Peoples of Nova Scotia. While the proponent may have to engage with the thirteen Mi’kmaq First Nations through the Assembly of Nova Scotia Mi’kmaq Chiefs, represented by the Kwilmu’kw Maw-klusuaqn Negotiation

¹ Chapman Brothers Construction Limited, Westchester Quarry Expansion Project, Rose, Cumberland Country, Nova Scotia 92012) Appendix A, 45

² *Daniels v. Canada (Indian Affairs and Northern Development)*, 2016 SCC 12, [2016] 1 S.C.R. 99

³ *Haida Nation v. British Columbia (Minister of Forests)*, (2004), 2 S.C.R. 511

⁴ *Taku River Tlingit First Nation v. British Columbia (Project Assessment Director)*, (2004), 3 S.C.R. 550

⁵ *Mikisew Cree First Nations v. Canada (Minister of Canadian Heritage)*, (2005), 3 S.C.R. 388

Office (KMKNO), the KMKNO does not represent the Off-Reserve Aboriginal Community who have elected to be represented by the NCNS since 1974.

We assert that the Off-Reserve Aboriginal Communities, as 91(24) Indians, are undeniably heirs to Treaty Rights and beneficiaries of Aboriginal Rights as substantiated by Canada's own Supreme Court jurisprudence. As such, there is absolutely an obligation to consult with the Off-Reserve Community through their elected representative body of the NCNS. The Crown's duty to consult with all Indians extends beyond that only with Indian Act Bands, or as through the truncated Terms of Reference for a Mi'kmaq Nova Scotia Canada Consultation Process.

For contextual purposes, for over forty years, the three Native Council partners of the Maritime Aboriginal People's Council (MAPC) have continued to be the Aboriginal Peoples Representative Organizations representing and advocating for the Rights and issues of the Mi'kmaq/Wolastoqiyik/Peskotomuhkati/Section 91 (24) Indians, both Status and non-Status, continuing to reside on their unceded Traditional Ancestral Homelands. In the early 1970s, the communities recognized the need for representation and advocacy for the Rights and Interests of the off-Reserve community of Aboriginal Peoples, "the forgotten Indian". Women and men self-organized themselves to be the "voice to the councils of government" for tens of thousands of community members left unrepresented by Indian Act-created Band Councils and Chiefs. Based on the Aboriginal Identity question, Statistics Canada (2016 Census - 25% sample) enumerate 21,915 off-Reserve Aboriginal Persons in New Brunswick, 42,145 in Nova Scotia, and 2,210 in Prince Edward Island.

Each Native Council in their respective province asserts Treaty Rights, Aboriginal Rights, with Interest in Other Rights confirmed in court decisions, recognized as existing Aboriginal and Treaty Rights of the Aboriginal Peoples of Canada in Part II of the Constitution Act of Canada, 1982. Each Native Council has established and maintains Natural Harvesting Regimes, and each have a co-management arrangement with DFO for Food, Social, and Ceremonial use of aquatic species, through the: Najiwsetaq Nomehs (NBAPC), the Netukulimkewe'l Commission (NCNS), and the Kelewatl Commission (NCPEI).

The Native Council of Nova Scotia was organized in 1974 and represents the interests, needs, and rights of Off-Reserve Status and Non-Status Section 91(24) Indians/Mi'kmaq/Aboriginal Peoples continuing on our Traditional Ancestral Homelands throughout Nova Scotia as Heirs to Treaty Rights, Beneficiaries of Aboriginal Rights, with Interests to Other Rights, including Land Claim Rights.

The Native Council of Nova Scotia (NCNS) Community of Off-Reserve Status and Non-Status Indians/Mi'kmaq/Aboriginal Peoples supports projects, works, activities and undertakings which do not significantly alter, destroy, impact, or affect the sustainable natural life ecosystems or natural eco-scapes formed as hills, mountains, wetlands, meadows, woodlands, shores, beaches, coasts, brooks, streams, rivers, lakes, bays, inland waters, and the near-shore, mid-shore and off-shore waters, to list a few, with their multitude of in-situ biodiversity. Our NCNS Community has continued to access and use the natural life within those ecosystems and eco-scapes where the equitable sharing of benefits arising from projects and undertakings serve a beneficial purpose towards progress in general and demonstrate the sustainable use of the natural wealth of Mother



Kwilmu'kw Maw-klusuaqn Negotiation Office
Mi'kmaq Rights Initiative

Our Rights. Our Future.

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January 26th, 2023

Jeremy Higgins
Environmental Assessment Officer
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RE: Continuing Consultation with the Mi'kmaq of Nova Scotia on the Westchester Quarry Expansion Project – Chapman Bros. Construction Ltd.

Mr. Higgins,

I write to acknowledge receipt of your letter dated December 12, 2022, with respect to continued consultation under the *Terms of Reference for a Mi'kmaq-Nova Scotia-Canada Consultation Process* (ToR) as ratified on August 31, 2010, on the above noted project.

After reviewing your letter, Kwilmu'kw Maw Klusuaqn Negotiation Office (KMKNO) poses the following questions:

- Has an Archaeological Resource Impact Assessment (ARIA) been conducted? If so, please provide for our team to review. If not, one is requested prior to construction.
- Please forward the link to for the Environmental Assessment (EA) for our review.

We kindly request that all information and continued correspondence be forwarded to KMKNO to facilitate the flow of the process and communication. Please contact me or Gerard Francis Consultation Project Support Officer at KMKNO for any further questions.

Yours in Recognition of Mi'kmaw Rights and Title,

Director of Consultation
Kwilmu'kw Maw-Klusuaqn Negotiation Office

c.c.:

Consultation Project Support Officer, Kwilmu'kw Maw-Klusuaqn Negotiation Office
Energy and Mines Lead, Kwilmu'kw Maw-Klusuaqn Negotiation Office
Sipekne'katik Consultation Team, Sipekne'katik First Nation
Millbrook First Nation
Membertou First Nation
Consultation Advisor, Nova Scotia Office of L'nu Affairs



Date: January 30, 2023
To: Jeremy Higgins, Wetland Specialist
From: Department of Natural Resources and Renewables
Subject: **Westchester Quarry Project, Nova Scotia**

Scope of review:

This review focuses on the following mandate: Aquatic species under Endangered Species Act and federal Species at Risk Act

Technical Comments:

Regional Services, Wildlife divisions:

The following comments are provided with respect to the Westchester Quarry Expansion Project Addendum and are associated with water quality as it relates to species habitat for both the Wallace River and River Philip Watersheds.

Three headwater streams originate near the boundaries of the study area for the Wallace River and River Philip watersheds. The River Philip and Wallace River provide habitat for rare and protected species, including fish, wood turtle and freshwater mussels. Changes to water quality, heightened by the elevation and slope of the study area, could heighten the impact to this habitat.

The elevation and slope of the study area and the potential for severe weather events places these systems at higher risk of degradation. This area can experience harsh weather events with wind, rain, ice, and snow.

Results from watercourse monitoring of certain properties (TSS, specific conductivity, pH) may be attributed to dust from activity on the quarry access road and the Westchester Mountain Road. Traffic related to quarry operations would occur on both of these roads, and the Westchester Mountain Road is maintained by the Provincial Department of Public Works.

Summary of Recommendations: (provide in non-technical language)

Regional Services, Wildlife divisions:

- To prevent or minimize the release of suspended sediments into the water system, an approved surface water drainage control system shall be established.
- The elevation and slope present at the quarry location, and the potential for significant weather events, shall be incorporated into the development of the drainage control system. This area can experience harsh weather events with wind, rain, ice, and snow. Effective erosion and sedimentation control mechanisms are to be established and approved.
- The proponent should establish a regular monitoring and maintenance schedule for surface water drainage control and erosion/sedimentation control systems.
- Mitigation measures for dust should be implemented and include a regular monitoring and maintenance schedule to ensure maintenance of water quality.
- At present, aggregate produced at the quarry is not washed on site. If this changes and a requirement for washed aggregate arises, an approved plan for washing aggregate and for materials entering the watershed should be established to preserve water quality.

IMPORTANT:

- **Always provide a response back to the EA Branch, even if it is simply to confirm that there is “no comment.”**
- **The comments will be published on the EA website on decision day (privacy review is NOT conducted on comments from government).**