



**EB-2013-0268**

**IN THE MATTER OF** the *Ontario Energy Board Act* 1998, S.O.1998, c.15, (Schedule B);

**AND IN THE MATTER OF** section 99 of the Act;

**AND IN THE MATTER OF** an application by Dufferin Wind Power Inc. for authority to expropriate interest in certain lands for the purpose of constructing a new transmission line and associated facilities.

### **PROCEDURAL ORDER NO. 1**

Dufferin Wind Power Inc.(the "Applicant" or "DWPI") has filed an application (the "Application"), dated July 19, 2013, with the Ontario Energy Board (the "Board") under section 99 of the *Ontario Energy Board Act 1998*, S.O. 1998, c. 15 (Schedule B) (the "Act") for authority to expropriate interests in certain lands for the purpose of constructing, operating and maintaining a new electricity transmission line and associated facilities to connect DWPI's planned Dufferin Wind Farm to the provincial power grid. DWPI has negotiated land agreements with some affected landowners, but was not able to do so with all landowners along the entire route.

The Board has assigned File No. EB-2013-0268 to this application.

On September 17, 2013, the Board issued the Notice of Application (the "Notice") for this proceeding. DWPI served the Notice, the Application, property descriptions and relevant pre-filed evidence on all affected property owners and other interested parties.

**Properties over Which Expropriation is Sought**

There are 52 properties over which DWPI is seeking approval of the Board to expropriate interests in the lands needed to build, operate and maintain the new transmission line and associated facilities. There are 8 property owners with an interest in one or more of the 52 properties.

The Board has received requests for intervenor status from the following parties:

- Corporation of the County of Dufferin ("County of Dufferin")
- David Coe
- Atkinson Farms Ltd.
- Marc Atkinson
- James Daniel Black & Marian Arlene Black
- Hydro One Networks Inc.

All of the above-noted parties are granted intervenor status. A list of the intervenors, their representatives and contact information is attached as Appendix A to this procedural order.

Another party, D&G Ferguson Farms has also indicated a potential interest in intervenor status in this proceeding. Counsel for D&G Ferguson Farms is currently in discussion with the DWPI and his client to determine whether its intervention is necessary. The Board will deal with this intervention request when D&G Farms confirms (or withdraws) its request.

The Board has determined that all intervenors who are owners of lands that are subject to expropriation in this proceeding are eligible to apply for an award of costs under the Board's Practice Direction on Cost Awards. The Practice Direction and related forms are available on the Board's website at <http://www.ontarioenergyboard.ca/OEB/Industry/Rules+and+Requirements/Rules+Codes+Guidelines+and+Forms> - under Practice Directions. Note that cost award eligibility pertains to costs that relate to matters directly within the scope of this proceeding as described below. Also, costs for counsel and consultants are generally recoverable, but costs for time spent directly by the intervenor are generally not recoverable.

### **Scope of the Expropriation Proceeding**

The Board's power to grant an applicant authority to expropriate is derived from section 99 the Act. Under this legislation, any person who has been granted leave by the Board under section 92 of the Act may apply to the Board for authority to expropriate land for a work.

Pursuant to section 99 of the Act, if the Board is of the opinion that it is in the public interest to do so, it may make an order authorizing the Applicant to expropriate the land. However, as stated in the Notice of Application for this proceeding, the Board has no authority to determine the amount of compensation payable. If the authority to expropriate is granted by the Board and the parties do not agree upon compensation, Section 100 of the Act requires the compensation to be determined through the *Expropriations Act* or by the Ontario Municipal Board.

### **Preliminary Motions**

#### **James Daniel Black and Marian Arlene Black (the "Blacks")**

In their Notice of Application for Intervention dated October 15 (copy included as Appendix B to this procedural order), the Blacks submitted that they are currently engaged in an arbitration proceeding that is scheduled to be heard commencing on November 11, 2013. The Black's requested an order or directions on the preliminary issue of whether a stay of the DWPI application should be granted.

#### **The County of Dufferin**

On October 18, 2010, the County of Dufferin filed a Notice of Motion (the "Dufferin Motion") for an interim order(s):

- a. Setting a procedure for this Motion;
- b. Granting a stay of the Application pending a final determination of:
  - i. The Divisional Court appeal of the Board's decision granting leave to construct in EB-2012-0365; and
  - ii. The Environmental Review Tribunal's ("ERT") decision in the six appeals of the Dufferin Wind Power Inc. project which includes the transmission line, known as Bovaird v. Director, Ministry of the Environment, case nos. 13-070-13-075.

- c. Such other relief as this Board determines is reasonable.

A copy of the Notice of Motion is attached to this Procedural Order as Appendix B.

### **Procedural Steps**

The Board has decided to proceed with this case by way of an oral hearing. The Dufferin Motion and the Blacks' request for a stay, however, will be considered in writing.

The Board considers it necessary to make provision for the following procedural matters. Please be aware that further procedural orders may be issued from time to time.

### **THE BOARD ORDERS THAT:**

1. DWPI, any other party and Board staff may file with the Board and forward to DWPI and all intervenors on or before **Friday November 15, 2013**, a written response to:
  - The Blacks' request dated October 15, 2013 (Appendix B) for a stay of the DWPI application; and
  - The County of Dufferin's Notice of Motion for a stay of the application, dated October 18, 2013 (Appendix C).
2. The Blacks and the County of Dufferin may file a response to any submissions made by the Applicant or intervenors and forward to DWPI and all intervenors on or **before Friday November 22, 2013**.

All filings to the Board must quote the file number, EB-2013-0268, be made through the Board's web portal at <https://www.pes.ontarioenergyboard.ca/eservice/>, and consist of two paper copies and one electronic copy in searchable / unrestricted PDF format. Filings must clearly state the sender's name, postal address and telephone number, fax number and e-mail address. Please use the document naming conventions and document submission standards outlined in the RESS Document Guideline found at [www.ontarioenergyboard.ca](http://www.ontarioenergyboard.ca). If the web portal is not available you may email your

document to the address below. Those who do not have internet access are required to submit all filings on a CD in PDF format, along with two paper copies. Those who do not have computer access are required to file 7 paper copies.

All communications should be directed to the attention of the Board Secretary at the address below, and be received no later than 4:45 p.m. on the required date.

**ADDRESS**

Ontario Energy Board  
P.O. Box 2319  
2300 Yonge Street, 27th Floor  
Toronto ON M4P 1E4  
Attention: Board Secretary

E-mail: [Boardsec@ontarioenergyboard.ca](mailto:Boardsec@ontarioenergyboard.ca)  
Tel: 1-888-632-6273 (toll free)  
Fax: 416-440-7656

**DATED at Toronto, October 30, 2013**

**ONTARIO ENERGY BOARD**

*Original Signed By*

Kirsten Walli  
Board Secretary

**APPENDIX "A"**

**TO PROCEDURAL ORDER NO. 1**

**BOARD FILE NO. EB-213-0268**

**DATED: October 30, 2013**

**APPLICANT AND LIST OF INTERVENORS**

**Dufferin Wind Power Inc.  
EB-2013-0268**

**APPLICANT & LIST OF INTERVENORS**

October 30, 2013

**APPLICANT**

**Rep. and Address for Service**

**Dufferin Wind Power Inc.**

**Jeff Hammond**

Dufferin Wind Power Inc.  
TD Canada Trust Tower  
161 Bay Street  
Suite 4550, P.O. Box 203  
Toronto ON M5J 2S1

Tel: 416-551-2578  
Fax: 416-551-3617  
[jeff.hammond@clypg.com.cn](mailto:jeff.hammond@clypg.com.cn)

**APPLICANT COUNSEL**

**Jonathan Myers**

Torys LLP

79 Wellington St. W.  
Suite 3000, Maritime Life Tower  
P.O. Box 270, Toronto Dominion Centre  
Toronto ON M5K 1N2  
Tel: 416-865-7532  
Fax: 416-865-7380  
[jmyers@torys.com](mailto:jmyers@torys.com)

**Crawford Smith**

Counsel

Torys LLP

79 Wellington St. W.  
Suite 3000, Maritime Life Tower  
P.O. Box 270, Toronto Dominion Centre  
Toronto ON M5K 1N2  
Tel: 416-865-8209  
Fax: 416-865-7380  
[csmith@torys.com](mailto:csmith@torys.com)

**Dufferin Wind Power Inc.  
EB-2013-0268**

**APPLICANT & LIST OF INTERVENORS**

October 30, 2013

**INTERVENORS**

**Rep. and Address for Service**

**Atkinson Farm LTD**

**David Crocker**

Davis LLP

1 First Canadian Place, Suite 6000

PO Box 367

100 King St. W.

Toronto ON M5X 1E2

Tel: 416-941-5415

Fax: 416-777-7431

[dcrocker@davis.ca](mailto:dcrocker@davis.ca)

**Marc Atkinson**

Atkinson Farm LTD

705257 County Rd 21

Shelburne ON L9V 2A2

Tel: 519-925-5588

Fax: 519 -925-2188

Not Provided



**Dufferin Wind Power Inc.  
EB-2013-0268**

**APPLICANT & LIST OF INTERVENORS**

October 30, 2013

**David Coe**

**David Crocker**

Davis LLP

1 First Canadian Place, Suite 6000

PO Box 367

100 King St. W.

Toronto ON M5X 1E2

Tel: 416-941-5415

Fax: 416-777-7431

[dcrocker@davis.ca](mailto:dcrocker@davis.ca)

**David Coe**

Independent Participants

Melancthon ON

Tel: Not Provided

Fax: Not Provided

[david.coe@hotmail.ca](mailto:david.coe@hotmail.ca)

**Hydro One Networks Inc.**

**Erin Henderson**

Senior Regulatory Coordinator

Hydro One Networks Inc.

483 Bay Street

7th Floor - South Tower

Toronto ON M5G 2P5

Tel: 416-345-4479

Fax: 416-345-5866

[Regulatory@hydroone.com](mailto:Regulatory@hydroone.com)

**Dufferin Wind Power Inc.  
EB-2013-0268**

**APPLICANT & LIST OF INTERVENORS**

October 30, 2013

**James and Marian Black**

**Stephen Thom**

Barrister and Solicitor  
Stephen Thom, Barrister and Solicitor  
19 Yorkville Avenue, Suite 300  
Toronto ON M4W 1L1  
Tel: 416-364-3371  
Fax: Not Provided  
[thomsd@sympatico.ca](mailto:thomsd@sympatico.ca)

**James and Marian Black**

Independent Participants  
518156 Country Road 124  
Melancthon ON L9V 1V0  
Tel: 416-Not Provided  
Fax: 416-Not Provided  
Not Provided

**Marc Atkinson**

**David Crocker**

Davis LLP  
1 First Canadian Place, Suite 6000  
PO Box 367  
100 King St. W.  
Toronto ON M5X 1E2  
Tel: 416-941-5415  
Fax: 416-777-7431  
[dcrocker@davis.ca](mailto:dcrocker@davis.ca)

**Marc Atkinson**

Independent Participants  
705257 County Rd 21  
Shelburne ON L9V 2A2  
Tel: 519-925-5588  
Fax: 519 -925-2188  
Not Provided

**Dufferin Wind Power Inc.  
EB-2013-0268**

**APPLICANT & LIST OF INTERVENORS**

October 30, 2013

**The Corporation of the  
County of Dufferin**

**Scott Stoll**  
Counsel  
Aird & Berlis LLP  
181 Bay Street  
Suite 1800, Box 754  
Brookfield Place  
Toronto ON M5J 2T9  
Tel: 416-865-4703  
Fax: 416-863-1515  
[ssoll@airdberlis.com](mailto:ssoll@airdberlis.com)

**Sonya Pritchard**  
Chief Administrative Officer  
The Corporation of the County of Dufferin  
55 Zina Street  
Orangeville ON L9W 1E5  
Tel: 519-941-2816 Ext: 2502  
Fax: Not Provided  
[spritchard@dufferincounty.ca](mailto:spritchard@dufferincounty.ca)

**APPENDIX "B"**

**TO PROCEDURAL ORDER NO. 1**

**BOARD FILE NO. EB-213-0268**

**DATED: October 30, 2013**

**APPLICATION FOR INTERVENTION BY**

**JAMES DANIEL BLACK AND MARIAN ARLENE BLACK**

**STEPHEN THOM**, BARRISTER AND SOLICITOR  
19 YORKVILLE AVENUE, SUITE 300  
TORONTO, ONTARIO M4W 1L1  
TELEPHONE: (416) 364-3371  
EMAIL: thomsd@sympatico.ca

---

October 15, 2013

By email to boardsec@ontarioenergyboard.ca and by regular mail

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor. Box 2329  
Toronto, Ontario M4P 1E4

Dear Ms. Walli,

Re: Notice of Application for Intervention  
James Daniel Black and Marian Arlene Black  
File no. EB-2013-0268

I act for James Daniel Black and Marian Arlene Black in this matter and am sending a copy of their Notice of Application for Intervention by email with two hard copies to follow by regular mail

Yours very truly,

  
Stephen Thom

/tm  
Encl.

cc. Jonathan Myers, Torys LLP, Applicant's Counsel  
jmyers@torys.com

Scott Stoll, Counsel for the County of Dufferin  
sstoll@airdberlis.com

**Ontario Energy Board**

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998, S.O. 1998, c. 15 (Sched. B)* as amended (the "Act")

**AND IN THE MATTER OF** an application by Dufferin Wind Power Inc. ("DWPI") for an Order pursuant to Section 99(5) of the Act granting authority to expropriate land for the purpose of constructing, operating and maintaining transmission and distribution facilities that will connect DWPI's planned Dufferin Wind Farm to the IESO-controlled grid

**NOTICE OF APPLICATION FOR INTERVENTION**

1. James Daniel Black and Marian Arlene Black (the "Blacks") hereby apply for intervenor status.
2. The Blacks own certain lands, including Lot 22, Concession 3, Old Survey (P.I.N. 33141-0028 (LT)) and Lot 23, Concession 2, Old Survey (P.I.N. 33141-0048 (LT)), that are impacted but this Application.
3. The Blacks reserve their full rights to participate in this proceeding.
4. DWPI has received a Renewable Energy Approval from the Ministry of the Environment for the Dufferin Wind Farm that is currently the subject of an appeal before the Environmental Appeal Tribunal.
5. The Blacks and DWPI are currently engaged in an arbitration proceeding that is scheduled to be heard commencing on November 11, 2013 pursuant to the arbitration provisions of two Leases dated April 15, 2011 between the Blacks and Farm Owned Power (Melancthon) Ltd. that have been assigned to DWPI in which issues include the right of the DWPI to locate Turbines and Facilities on the lands referred to in paragraph 2 including the location of the Buried Electrical Cables on the said lands which are in the same location as the proposed distribution easements referred to in the within expropriation proceedings.
6. Given the arbitration proceedings that were initiated by DWPI by the issuance of a Notice of Arbitration dated July 5, 2013 the Blacks request an order or

directions on the preliminary issue of whether a stay of the the DWPI Application should be granted.

7. As landowners the Blacks seek costs for their participation in this proceeding and request that the Board confirm their eligibility for costs.
8. We request a hard copy of the Application be provided by the Applicant to the Blacks and their legal counsel at the addresses below.
9. The Blacks otherwise and as applicable adopt the positions being taken by the County of Dufferin in its notice dated September 23, 2013.
10. All communications in this proceeding should be copied to:


James and Marian Black  
518156 County Road 124  
Melancthon, Ontario L9V 1V0

Stephen Thom  
Barrister and Solicitor  
300-19 Yorkville Avenue  
Toronto, Ontario M4W 1L1  
Telephone: 416 364-3371

All of which is respectfully submitted.

Dated: October 15, 2013

Stephen Thom  
Barrister and Solicitor  
300-19 Yorkville Avenue  
Toronto, Ontario M4W 1L1  
Telephone: 416 364-3371  
Email: thomsd@sympatico.ca  
Counsel for James Daniel Black  
and Marian Arlene Black

  
\_\_\_\_\_  
(Stephen Thom)

To: Board Secretary, Ontario Energy Board  
boardsec@ontarioenergyboard.ca

And to: Jonathan Myers, Torys LLP. Applicant's Counsel  
jmyers@torys.com

And to: Scott Stoll, Counsel for the County of Dufferin  
sstoll@airdberlis.com

**APPENDIX "C"**

**TO PROCEDURAL ORDER NO. 1**

**BOARD FILE NO. EB-213-0268**

**DATED: October 30, 2013**

**NOTICE OF MOTION FILED BY**

**THE COUNTY OF DUFFERIN**



# AIRD & BERLIS LLP

Barristers and Solicitors

Scott Stoll  
Direct: (416)865.4703  
E-mail: sstoll@airdberlis.com

October 18, 2013

BY COURIER, EMAIL AND RESS

Our File: 111106

Ms. Kirsten Walli  
Board Secretary  
Ontario Energy Board  
2300 Yonge Street  
27<sup>th</sup> Floor  
Toronto, ON M4P 1E4

Dear Ms. Walli:

**Re: Dufferin Wind Power Inc.  
Stay Motion**

---

Please find attached a Notice of Motion for stay in these proceedings pending the determination of the Divisional Court and the Environmental Review Tribunal appeals related to the Leave to Construct Application in EB-2012-0365 and the Dufferin Power Wind Project respectively.

We would request the opportunity to make formal submissions regarding cost eligibility as the County of Dufferin (the "County") is being directly impacted by the request to expropriate more than 30km of its nature trail. The County submits the Board has the discretion pursuant to section 3.07 of the Board's Practice Direction on Cost Awards. The County would note that the lands under consideration are not a road allowance but rather are a public trail. As such, the County feels there are special circumstances that should be considered in the present case.

Yours truly,

AIRD & BERLIS LLP



Scott Stoll

SAS/hm

Encl.

October 18, 2013

Page 2

cc: Sonya Pritchard, County of Dufferin  
Jeff Hammond, Dufferin Wind Power Inc.  
Jonathan Myers, Torys LLP  
Crawford Smith, Torys LLP

15597587.1

**IN THE MATTER OF** the *Ontario Energy Board Act, 1998*, S.O. 1998, c.15, (Sched. B) as amended (the “**Act**”);

**AND IN THE MATTER OF** an application by Dufferin Wind Power Inc. (“**DWPI**”) for an Order pursuant to section 99(5) of the Act granting authority to expropriate land for the purposes of constructing, operating and maintaining transmission and distribution facilities that will connect DWPI’s planned Dufferin Wind Farm to the IESO-controlled grid.

## **NOTICE OF MOTION**

### **THE CORPORATION OF THE COUNTY OF DUFFERIN**

#### **Introduction**

1. Pursuant to the Ontario Energy Board’s Rules of Practice and Procedure (the “Rules”), the Corporation of the County of Dufferin (the “**County**”) will make a motion to the Board for the matter described herein on a date and at a time to be determined by the Board at the Board’s office located at 2300 Yonge Street, Toronto, Ontario. The County requests this order be heard in writing.

#### **Relief Sought**

2. THIS MOTION IS FOR an interim order(s):
  - a. Setting a procedure for this Motion;
  - b. Granting a stay of the Application pending a final determination of:
    - i. The Divisional Court appeal of the Board’s decision granting leave to construct in EB-2012-0365; and
    - ii. The Environmental Review Tribunal’s (“**ERT**”) decision in the six appeals of the Dufferin Wind Power Inc. project which includes the transmission line, known as *Bovaird v. Director, Ministry of the Environment*, case nos. 13-070-13-075.
  - c. Such other relief as this Board determines is reasonable.

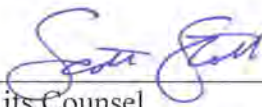
3. The County is bringing this motion because of the multiple proceedings that are currently underway that may impact the proposed transmission line and thereby the rights required for its construction.
4. The County understands the local group, Conserve Our Rural Environment (“**CORE**”) has filed an appeal in Divisional Court challenging the Board’s decision granting leave to construct. If the appeal is successful, the Board’s Decision granting leave to construct could be overturned and/or subject to review and rehearing. A copy of the Notice of Appeal may be found at **Tab 1**. CORE is also in intervenor in this Application.
5. Six parties appealed to the ERT the issuance of a Renewable Energy Approval to DWPI.
6. DWPI is currently engaged in the appeal hearing with the ERT wherein six appellants (individuals and groups) have challenged the environmental aspects of the proposed wind project – including the transmission line. The Ministry of the Environment and the ERT have jurisdiction over the transmission line in respect of the environmental aspects of that line. A copy of the six Notices of Appeal with the ERT may be found at **Tab 2**.
7. Some appellants are requesting that the project be discontinued. If successful, that decision would eliminate the need for a transmission line and therefore the easement.
8. Further, the County understands that there have been requests that the ERT order the transmission line to be installed underground. If DWPI is required to install the transmission line underground by the ERT, either DWPI would require a variance to the Board’s Decision in EB-2012-0365 or would not construct the transmission line. Such a change would impact the construction methods and access rights necessary to install, operate, maintain and decommission the transmission line.
9. Given the various proceedings which are currently underway, the County submits the Board should grant a temporary stay in this matter until the other proceedings have been finally determined.

## **MATERIALS**

10. The County seeks to rely upon the following materials:
  - a. The record from EB-2012-0365;
  - b. The pleadings from the Divisional Court Appeal;
  - c. The pleadings from the Environmental Review Tribunal; and
  - d. Such other materials as this Board may permit.

**ALL OF WHICH IS RESPECTFULLY SUBMITTED.**

**The Corporation of the County of Dufferin**

  
By its Counsel  
Scott Stoll & Piper Morley

TO: Torys LLP  
Suite 3000  
79 Wellington St. W.  
Box 270, TD Centre  
Toronto, ON M5K 1N2

Attention: Mr. Jonathan Myers  
Tel: 416-865-7532  
Fax: 416-865-7380  
Email: [jmyers@torys.com](mailto:jmyers@torys.com)

and

Mr. Crawford Smith  
Tel: 416-865-8209  
Fax: 416-865-7380  
Email: [csmith@torys.com](mailto:csmith@torys.com)

Counsel for the Applicant

and

TO: Davis LLP  
Suite 6000  
1 First Canadian Place  
PO Box 267  
100 King St. W  
Toronto, ON M5X 1E2

Attention: David Crocker  
Tel: 416-941-5415  
Fax: 416-777-7431  
Email: [dcrocker@davis.ca](mailto:dcrocker@davis.ca)

Counsel to Conserve our Rural Environment ("**CORE**")

## TAB 1

**ONTARIO  
SUPERIOR COURT OF JUSTICE  
(DIVISIONAL COURT)**

**BETWEEN:**

**CONSERVE OUR RURAL ENVIRONMENT (CORE) INC.**

Appellant

-and-

**DUFFERIN WIND POWER INC.**

-and-

Respondent

**ONTARIO ENERGY BOARD**

Respondent

**AMENDED AMENDED NOTICE OF APPEAL**

**THE APPELLANT, CONSERVE OUR RURAL ENVIRONMENT (CORE) INC.**  
**APPEALS** to the Divisional Court from the Decision and Order of the Ontario Energy Board, dated July 5, 2013 and bearing Case No.: EB-2012-0365.

**THE APPELLANT ASKS** that the Decision and Order of the Ontario Energy Board be set aside and a judgment be granted as follows:

1. An Order that leave to construct approximately 47 kilometres of single circuit 230 kilovolt electricity transmission line and associated facilities should not be

granted to Dufferin Wind Power Inc in accordance with section 92 of the *Ontario Energy Board Act*;

2. An Order that the forms of easement agreements provided in the application of Dufferin Wind Power Inc. should not be approved in accordance with section 97 of the *Ontario Energy Board Act*;
3. An Order that the construction of certain transmission facilities upon, under, or over a highway, utility line, or ditch should not be approved in accordance with section 101 of the *Ontario Energy Board Act*;
4. An Order certifying the Court's opinion to the Ontario Energy Board and directing that the Ontario Energy Board shall make an order in accordance with this Court's opinions, in accordance with section 33(4) of the *Ontario Energy Board Act*;
5. An Order that costs shall be awarded to the Appellant on a substantial indemnity basis; and
6. Such further and other relief as to this Court may seem just.

**THE GROUNDS OF APPEAL** are as follows:

1. On September 21, 2012, Dufferin Wind Power Inc. ("**DWPI**") applied to the Ontario Energy Board (the "**Board**") pursuant to sections 92 and 96(2) of the *Ontario Energy Board Act*, S.O. 1998, c. 15, Sched B (the "**Act**") seeking an order of the Board for leave to construct approximately 47 kilometres of single



circuit 230 kilovolt electricity transmission line and associated facilities (the "**Project**"). DWPI also applied to the Board pursuant to section 97 of the Act for an order approving the forms of easement agreements (the "**Agreements**") provided in the application; and pursuant to section 101 of the Act, for an order approving the construction of certain transmission facilities upon, under, or over a highway, utility line, or ditch;

2. The Board granted Intervenor status to Conserve Our Rural Environment (CORE) Inc. ("**CORE**") in the hearing of DWPI's application (the "**Application**");
3. Upon conducting a written hearing on the Application, the Board granted leave to carry out the work, subject to conditions of approval;

***The Board Erred By Approving the Agreements***

4. The Board erred in approving the Agreements. The Agreements are unreasonable and unfair, and are not in the public interest;
5. The Board must consider the public interest in disposing of applications under section 97 of the Act;
6. The Agreements are also not in the landowners' interest, notwithstanding that the Board's statutory mandate in accordance with sections 97 of the Act is to ensure fairness to landowners;
7. The unreasonableness and unfairness of the Agreements are evidenced in some of the Agreements by a clause regarding independent legal advice (the "**ILA**

**Clause")** which is false and misleading, and which distorts the balance of power between DWPI and the landowners to whom DWPI may offer the Agreements;

8. It was not in the public interest, as required by the Act, for the Board, a statutory tribunal with jurisdiction over the approval of the Agreements, to countenance the ILA Clause and permit the Agreements to be offered to landowners who may already be in a position of unequal bargaining power;
9. The Board therefore erred in law by approving the Agreements containing the ILA Clause;

***The Board Erred In Granting Leave To Construct***

10. In an application under section 92 of the Act, the Board is not permitted to grant leave to construct until the applicant satisfies the Board that it has offered or will offer to each owner of land affected by the approved route or location an agreement in a form approved by the Board;
11. Upon being presented with unsatisfactory agreements, the Board did not have jurisdiction to grant leave to construct pursuant to section 92 of the Act, as satisfactory agreements are a condition precedent to the granting of leave to construct;
12. The Board therefore also erred in law in granting leave to construct pursuant to section 92 of the Act;

***The Board Erred By Failing to Give Adequate Reasons for the Approval of the Agreements***

13. The Board erred in law by failing to give reasons supporting its approval of the Agreements;
14. The duty of procedural fairness required that the Board give reasons in this case. The Board has failed to comply with this duty;
15. It is the Board's practice to give reasons in granting approval of agreements under section 97 of the Act, related to whether there were objections to the proposed agreements, whether agreements have been finalized or are still being negotiated with landowners, and whether the agreements are generally reasonable. The Board failed to give reasons of this nature, or any reasons, for its approval of the Agreements;
16. By way of particular example, the propriety of the ILA Clause was a live issue in the hearing. The Board, however, failed to make any findings about the ILA Clause. There is nothing in the Board's reasons that evidences that the Board grappled with the substance of the ILA Clause, and how, in the face of the ILA Clause, it was appropriate for the Board to approve the Agreements;

***The Board Erred By Declining Jurisdiction Over the Approval of the Agreements***

17. In the alternative, the Board erred by declining jurisdiction to approve the Agreements in their entirety, and by instead referring any concerns it may have had with the ILA Clause to the Law Society of Upper Canada (the "LSUC");

18. Any delegation of decision-making power from a tribunal to another body must be clearly and expressly authorized by statute. The Act does not authorize the delegation of decision-making power by the Board to the LSUC;
19. The Board was required to decide the matters before it that were within its jurisdiction to decide, which included that propriety of approval of the Agreements;
20. In failing to make a decision about the propriety of the ILA Clause, the Board failed to exercise its jurisdiction to approve the Agreements. The Agreements must be read in their entirety, and a failure to decide on a critical component of the Agreements amounts to a failure properly to consider their approval;
21. Sections 33, 92, 96, 97 and 101 of the Act;
22. Rules 1.04, 2, 3, 57, and 61 of the *Rules of Civil Procedure*;
23. Such further and other grounds as counsel may advise and this Court may permit;

**THE BASIS OF THE APPELLATE COURT'S JURISDICTION IS:**

- (i) section 33 of the Act, which provides that an appeal lies to Divisional Court from an order of the Board upon a question of law or jurisdiction;
- (ii) the Order appealed from is final;
- (iii) leave to appeal is not required; and

- (iv) the above-noted grounds of appeal relate to questions of law or jurisdiction. There are no other facts relevant to establishing jurisdiction.

**THE APPELLANT REQUESTS** that this appeal be heard at Toronto.

Date: August 2, ~~8~~, 21, 2013

**Davis LLP**

1 First Canadian Place, Suite 6000  
P.O. Box 367  
100 King Street West  
Toronto, ON M5X 1E2

**David Crocker**

Tel: 416.941.5415  
Fax: 416.777.7431  
e-mail: [dcrocker@davis.ca](mailto:dcrocker@davis.ca)

**Laura K. Bisset**

Tel: 416.941.5400  
Fax: 416.777.7432  
e-mail: [lbisset@davis.ca](mailto:lbisset@davis.ca)

**Lawyers for the Appellant, Conserve  
Our Rural Environment (CORE) Inc.**

TO:

**Torys LLP**

Suite 3000  
79 Wellington Street West  
Box 270, TD Centre  
Toronto, ON M5K 1N2

**Jonathan Myers**

Tel: 416.865.7532  
Fax: 416.865.7380  
e-mail: [jmyers@torys.com](mailto:jmyers@torys.com)

**Charles Keizer**

Tel: 416.865.7512  
Fax: 416.865.7380  
e-mail: [ckeizer@torys.com](mailto:ckeizer@torys.com)

**Lawyers for the Respondent,  
Dufferin Wind Power Inc.**

AND TO: **Ontario Energy Board**  
P.O. Box 2319  
2300 Yonge Street  
Toronto, ON M4P 1E4

**Kristi Sebalj**

Tel: 416.481.1967  
Fax: 416.440.7656  
e-mail: [Kristi.Sebalj@ontarioenergyboard.ca](mailto:Kristi.Sebalj@ontarioenergyboard.ca)

## TAB 2



**Roselyn Bovaird  
746084 30th Sideroad  
Mulmur, Ontario, L9V 0X5**



June 25, 2013

**Delivered by hand**

Secretary  
Environmental Review Tribunal  
655 Bay Street, Floor 15  
Toronto, M5G 1E5

Environmental Commissioner of Ontario  
1075 Bay Street, Suite 605  
Toronto, M5S 2B1

Vic Schroter  
Director, Section 47.5 Environmental Protection Act  
Environmental Approvals Branch  
2 St. Clair Ave West, Floor 12A  
Toronto, M4V 1L5

Dufferin Wind Power  
161 Bay Street, Suite 4550  
Toronto, M5J 2S1

Dear Sirs:

**Subject: Grant of Renewable Energy Approval to Dufferin Wind Power Inc.**  
**ERB Registry Number: 011-7852 in the township of Melancthon.**

**Renewable Energy Approval Number 5460-98BPH8**

In reference to the recently granted Renewable Energy Approval (REA) issued to Dufferin Wind Power Inc. to engage in a renewable energy project in respect of a class 4 wind facility consisting of the construction, installation, operation, use and retiring of up to 49 turbines, the undersigned strongly objects to the granting of the REA in question and respectfully requests a hearing by the Environmental Review Tribunal in regard to subject decision.

I request a stay of the Approval.

Appellant information

Roselyn Bovaird

746084 30th Sideroad ,

Mulmur ,Ontario,L9V 0X5

Mailing address :

Roselyn Bovaird

9 Deer Park Crescent #1005

Toronto,Ontario,M5M 2C4

416 48444457 416 5180324

My concerns regarding my appeal of this Approval are as follows:

(a) (i)Engaging in the renewable energy project will cause serious harm to human health

On a personal level I am concerned that the project will cause serious harm to my own and my family's health. I am a retired biologist who purchased my retirement home almost five years ago. My home is approximately one kilometer from the nearest turbine and slightly more to seven other turbines. I have health issues that include tinnitus and atrial arrhythmia. Although no epidemiological study exists at this time ,worldwide studies show that there is sufficient evidence that industrial wind installations located at similar distances can produce serious harm to human health. Additionally, there is general recognition in the scientific and governmental field that there are "some people "or "a non-trivial percentage" who are adversely affected by wind turbines. I do not wish to be the lottery winner in this situation, especially as it is also generally agreed that people with similar health symptoms, may be more susceptible to the affects of noise and other issues related to closeness to Industrial wind turbines. It is also very concerning to my own health to find that the turbines closest to my home are in the most densely populated area of the 49 turbine project. I am distressed that several neighbours are actually closer than the Provincial setback of 550m .It is of great concern that unproven design mitigations to the turbines have been approved that could realistically increase the projected noise levels over the estimated 40dBA which is already at the Provincial maximum. This would cause both serious harm to the owner's health and an inability to for them to live in their home or use their land. It is also of great concern that scientific studies of evaluation and measurement to audible noise and low- frequency sound have not been perfected scientifically. There is still no usable test to measure low-frequency . It is clear to me and my family that the Federal Government's



announcement in 2012, that it is initiating a wind turbine and health study shows that there is sufficient evidence for all levels of the community to adopt a Precautionary approach to the issue of the safety of the siting of industrial wind turbines.

(ii) Engaging in renewable energy project will cause serious and irreversible harm to plant life, animal life and the natural environment

In particular I refer to the area near my home. Turbines 1 and 2 are to be within 500m to an area which is designated Protected and Natural Niagara Escarpment and also is in very close proximity to the Noisy River Provincial Park. I am not satisfied that the Natural Heritage Environmental Effects Monitoring Plan dated June 2013, adequately allows for protection for the organisms in this high ridge area. My main concern is that according to the Nottawasaga Conservation Authority who monitor this area, there has been no formal scientific study done on the migratory bats in the adjacent area. The DWPI Environmental Impact Report does identify that five bat maternal roost colonies, in which all contain three species of migratory bats that are classified as endangered; the Little Brown Bat, the Northern Long eared Bat, and the Eastern Pipistrelle. Incredibly, the only pre-construction monitoring that is to be required for this project does not even include monitoring of bat populations. Many scientific studies have shown that bats are more susceptible to death from wind turbines than even ridge dwelling birds as they experience Barotraumas. Mortality of any endangered bats will cause serious and permanent damage to these bat populations and result in serious harm to the biodiversity of all the involved ecosystems. In particular there is great concern for the especially the large numbers of wetlands in the area. My own property contains vast wetlands which have not been evaluated. In discussion with the MNR it will be fifteen year wait to have them officially evaluated as to their designated significance. I have only discussed a few of the vast number of environmental issues of concern in relation to this project. There are many areas of concern and it is necessary to re-evaluate the long term effect of not re-visiting the serious need for more studies.

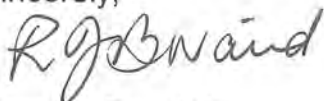
(b) The following areas of the REA Approval needs re-evaluating.

1. Noise and Vibration and monitoring concerns
2. The number of Turbines already in the area.
3. Impacts on Birds, Bats and the natural environment, in particular the areas bordering on the Niagara Escarpment and water bodies.

(c). Relief requested : As the appellant I request the following relief:

I request that the Tribunal revoke the issuance of Approval.

Sincerely,



Roselyn Bovaird



**DAVIS**  
LLP

LEGAL ADVISORS  
SINCE 1892

**RECEIVED**

① JUN 25 2013 ①

ENVIRONMENT & LAND  
TRIBUNALS ONTARIO

FROM THE OFFICE OF  
DIRECT LINE  
DIRECT FAX  
E-MAIL

Laura K. Bisset  
416.941.5400  
416.777.7432  
lbisset@davis.ca

13-071

FILE NUMBER: 81310-00002

June 25, 2013

**DELIVERED BY HAND**

Dufferin Wind Power Inc.  
161 Bay Street  
Suite 4550  
Toronto, ON M5J 2S1

Vic Schroter  
Director, Section 47.5, Environmental Protection Act  
Environmental Approvals Branch  
2 St. Clair Avenue West  
Floor 12A  
Toronto, ON M4V 1L5

Environmental Commissioner of Ontario  
1075 Bay Street  
Suite 605  
Toronto, ON M5S 2B1

The Secretary  
Environmental Review Tribunal  
655 Bay Street, 15th Floor  
Toronto, ON M5G 1E5

Dear Sirs:

**Re: Notice of Appeal pursuant to s. 142.1 of the *Environmental Protection Act* of Approval for Renewable Energy Project issued to Dufferin Wind Power Inc., on behalf of Conserve Our Rural Environment**

We are counsel for Conserve Our Rural Environment ("**CORE**"), an incorporated residents' group in the Township of Mulmur who have an interest in the wind farm proposed by Dufferin Wind Power Inc. ("**DWPI**"), and whose members can be impacted by it.

CORE hereby appeals the June 10, 2013 decision of the Director to issue a Renewable Energy Approval (the "**Approval**" or the "**REA**") to DWPI to engage in a renewable energy project (the "**Project**") in respect of a Class 4 wind facility consisting of the construction, installation, operation, use and decommissioning of a wind facility with 18 2.75 MW wind turbines, and 31 1.6 MW wind turbines with a total nameplate capacity of 91.4MW. We enclose herewith a copy of the Director's decision (the "**Decision**"), being Renewable Energy Approval number 5460-98BPH8.

In accordance with the *Environmental Protection Act* (the "**Act**") and the Rules of Practice and Practice Directions (the "**Rules**") of the Environmental Review Tribunal (the "**Tribunal**"), this Notice contains all necessary Appellant information, the grounds for appeal, and a statement of the relief requested.

CORE intends to seek a stay of the Approval.

**Appellant Information**

CORE's contact information is as follows:

Conserve Our Rural Environment (CORE), Inc.  
c/o Aird & Berlis LLP  
Brookfield Place, 181 Bay Street  
Suite 1800, Box 754  
Toronto, ON M5J 2T9

N. Jane Pepino  
Tel: 416.865.7727  
Fax: 416.863.1515  
email: [jpepino@airdberlis.com](mailto:jpepino@airdberlis.com)

CORE will be represented in these matters by David Crocker and Laura K. Bisset of Davis LLP, whose contact information is as follows:

Davis LLP  
1 First Canadian Place, Suite 6000  
P.O. Box 367, 100 King Street West  
Toronto, ON M5X 1E2

David Crocker:  
Tel: 416.941.5415  
Fax: 416.777.7431  
email: [dcrocker@davis.ca](mailto:dcrocker@davis.ca)

Laura K. Bisset  
Tel: 416.941.5400  
Fax: 416.777.7432  
email: [lbisset@davis.ca](mailto:lbisset@davis.ca)

CORE requests that all notices and other official documents be delivered to the attention of David Crocker and Laura K. Bisset at Davis LLP.



**Sections Under Appeal**

CORE appeals the following portions of the Approval:

*Terms and Conditions:*

- (a) A - General - A1, A5, A6 and A8
- (b) C - Noise Performance Limits - C1, C2, C3 and C4
- (c) D - Confirmation of Vacant Lot Noise Receptors - D1
- (d) E - Acoustic Audit - Immission - E1, E2 and E3
- (e) F - Acoustic Audit - Emission - F1 and F2
- (f) J - Natural Heritage and Pre and Post Construction Monitoring - J1 to J17
- (g) O - Operation and Maintenance - O1, O2, and O3
- (h) P - Record Creation and Retention - P3
- (i) Schedule A - Facility Description
- (j) Schedule B - Coordinates of the Equipment and Noise Specifications
- (k) Schedule C - Noise Control Measures

**Grounds for Appeal**

1. Engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health.

Industrial wind turbines are reported to cause a range of serious health effects in a segment approximately 5-30% of the population, including sleep disturbance, headache, tinnitus, ear pressure, dizziness, vertigo, nausea, visual blurring, tachycardia, irritability, problems with concentration, memory and panic episodes associated with sensations of internal pulsation or quivering when awake or asleep, excessive tiredness, loss of quality of life. These impacts can lead to increased morbidity and significant chronic disease and health effects.

Experts believe that these health effects are most likely the result of exposure to infrasound, low frequency noise, audible noise, visual impact, shadow flicker, stray voltage, and/or electromagnetic fields. These effects are produced by exposure to industrial wind turbines and will be produced by exposure to the industrial wind turbines in the Project.

These health effects occur at sound levels below the level that is permitted by the Approval for the Project. The effects also occur at distances which exceed the setbacks prescribed for the Project.

There are approximately 259 non-participating receptors and 105 vacant lots identified in the vicinity of the Project. If 5-30% of individuals at these points of reception experience the above-noted health effects, the impact of the Project on human health will be serious.

2. Engaging in the renewable energy approval will cause serious and irreversible harm to plant life, animal life, or the natural environment.

(a) Agricultural Considerations

Industrial wind turbines negatively interfere with agricultural operations, which foster plant and animal life. The success of plant and animal life depends on the natural environment in which it is located, including the component elements of the natural environment such as the soils and groundwater.

The construction, installation, use, operation, maintenance and decommissioning of industrial wind turbines strip significant amounts of land of the soils on which plant and animal life depend, and interferes with the flow of groundwater used for irrigation purposes. In particular, DWPI proposes to remove and/or sterilize hundreds of acres of Honeywood soil for the purposes of constructing, operating, and decommissioning the Project, and constructing turbine footings which will interfere with the flow of groundwater.

Dufferin County, particularly in the Townships of Melancthon and Mulmur, is generously blanketed by Honeywood soils. The Honeywood soils are well drained and have developed in wind-deposited silt loam or fine sandy loam materials which are underlain by calcareous loam till at two to four feet. The materials overlying the till are remarkably uniform, maintaining an average thickness of three feet even where the topography is rough. These soils occur principally on gently undulating topography. The soil surface is usually stone-free. It is friable, easily worked, and contains a good reserve of plant nutrients. These soils drain rapidly and have a sufficiently high moisture holding capacity to supply plants with moisture even during the dry period of the year.

The optimum soil conditions for potato production are defined in terms of drainage, texture, stoniness, and topography. Honeywood soils "are among the best agricultural soils in Southern Ontario" and are capable of producing all crops adapted to the area, namely potato, cereal grains, hay, silage corn, grain corn, and beans. The Honeywood soils are identified as Class 1 (excellent) for all adapted crops. Potato production in Dufferin County has been concentrated on the Honeywood silt loam in Melancthon and Mulmur townships.

The agroclimatic conditions in the highlands of Dufferin County are the best match in southwestern Ontario to the optimum soil conditions for potato production. The combination of the soil and agroclimatic conditions and the properties of the Honeywood soil, together, combine to make the areas of Honeywood soil in Dufferin County uniquely suited, and special for production of potatoes.

(b) Bats

Three species of bat, classified as endangered by COSEWIC, were identified during site investigation with the potential to occur within the vicinity of the Project: the Little Brown Bat, the Northern Long-Eared Bat, and the Eastern Pipistrelle; as were numerous other bat species. There are Project components, in some cases, located within 5 metres of significant habitat for these species. DWPI does not propose to undertake pre-construction surveys, within certain bat habitat, and no mitigation measures are proposed for those areas. Contingency measures have not been developed to deal with bat mortality.



As a result, these bat species will be subjected to direct serious and irreversible harm from collision mortality as a result of the operation of the Project. And, in the areas where turbines, transmission lines, transformers and access roads will be located which constitute habitat for these species, habitat will be lost and the species displaced. The Project will therefore cause serious and irreversible indirect harm as well.

### **Issues and Material Facts**

*Will the Project cause serious harm to human health?*

In addition to the above-noted facts, the appellant relies on the fact that previous projects, elsewhere in the Province and the Country, approved under similar terms and conditions of approval, have caused serious harm to human health. The Project will operate at sound levels and at setbacks that will expose receptors to the same conditions as have previous projects, and will cause the same or similar negative health effects.

*Will the Project's noise modelling accurately estimate the noise impacts of the Project?*

The Proponent's noise modelling does not comply with the applicable MOE noise criteria. The predicted noise levels have not been adequately assessed at all receptors.

In any event, previous approvals have demonstrated that the noise model used to estimate the noise impacts of industrial wind turbines in Ontario is inaccurate and underestimates the sound levels produced by the industrial wind turbines. Moreover, previously approved projects, which were estimated to meet Ministry of the Environment criteria, have exceeded approved audible sound levels, in particular as turbines age. The Director has no ability, in respect of this Project, to accurately predict or control exceedances, which will allow for serious harm to human health.

The Director has not considered and is unable to predict low frequency sound and infrasound noise levels. There are no applicable standards for low frequency and infrasound. In the absence of evaluation standards, and any evaluation of low frequency and infrasound, serious harm to human health will be caused by the Project.

The Director has not given adequate consideration to the cumulative impact of the Project, in the context of the nearby TransAlta Melancthon and AIM Plateau wind farms. The turbines associated with these older projects are aging, and emit excessive noise. Combined with the excessive noise that will be generated by the Project, the risk of serious harm to human health will be serious.

*Will the Project cause serious and irreversible harm to plant life, animal life or the natural environment?*

#### **(a) Agricultural Considerations**

The appellant repeats and relies upon the facts set out above. The Approval for the Project permits the construction, installation, use, operation, maintenance and decommissioning of the Project without regard for the natural environment which allows Dufferin County, and particularly the Township of Melancthon, to be the best agricultural land in southern Ontario. The Project, as approved will cause serious and irreversible harm to the agricultural lands of Dufferin County, which in turn will seriously harm plant life, animal life or the natural environment.

(b) Bats

The appellant repeats and relies upon the facts set out above. The operation of the project will result in serious and irreversible direct harm to bat species, as well as serious and irreversible indirect harm through the destruction of habitat of bat species.

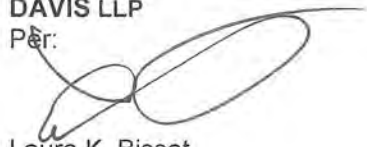
**Relief Requested**

CORE requests that the Tribunal revoke the issuance of the Approval.

Yours truly,

**DAVIS LLP**

Per:

A handwritten signature in black ink, appearing to be 'Laura K. Bisset', written over the 'Per:' text.

Laura K. Bisset  
LKB/sxo

Encl.



**DAVIS**  
LLP

LEGAL ADVISORS  
SINCE 1892

**RECEIVED**

① JUN 25 2013 ①

ENVIRONMENT & LAND  
TRIBUNALS ONTARIO

FROM THE OFFICE OF  
DIRECT LINE  
DIRECT FAX  
E-MAIL

Laura K. Bisset  
416.941.5400  
416.777.7432  
lbisset@davis.ca

13-072

FILE NUMBER: 81310-00002

June 25, 2013

**DELIVERED BY HAND**

Environmental Commissioner of Ontario  
1075 Bay Street  
Suite 605  
Toronto, ON M5S 2B1

Vic Schroter  
Director, Section 47.5, Environmental Protection Act  
Environmental Approvals Branch  
2 St. Clair Avenue West  
Floor 12A  
Toronto, ON M4V 1L5

The Secretary  
Environmental Review Tribunal  
655 Bay Street, 15th Floor  
Toronto, ON M5G 1E5

Dufferin Wind Power Inc.  
161 Bay Street  
Suite 4550  
Toronto, ON M5J 2S1

Dear Sirs:

**Re: Notice of Appeal pursuant to s. 142.1 of the Environmental Protection Act of Approval for Renewable Energy Project issued to Dufferin Wind Power Inc., on behalf of D&C Vander Zaag Farms Ltd.**

We are counsel for D&C Vander Zaag Farms Ltd. ("D&C Farm"), the owner of approximately 560 ha of land, based at Lot 22, Concession 2, Melancthon Township, which is actively being farmed. The principals of D&C Farms, David and Colleen Vander Zaag, have their home at that same location.

D&C Farms hereby appeals the June 10, 2013 decision of the Director to issue a Renewable Energy Approval (the "Approval" or the "REA") to Dufferin Wind Power Inc. ("DWPI") to engage in a renewable energy project (the "Project") in respect of a Class 4 wind facility consisting of the construction, installation, operation, use and decommissioning of a wind facility with 18 2.75 MW wind turbines, and 31 1.6 MW wind turbines with a total nameplate capacity of 91.4MW, June 10, 2013. We enclose herewith a

copy of the Director's decision (the "**Decision**"), being Renewable Energy Approval number 5460-98BPH8.

In accordance with the *Environmental Protection Act* (the "**Act**") and the Rules of Practice and Practice Directions (the "**Rules**") of the Environmental Review Tribunal (the "**Tribunal**"), this Notice contains all necessary Appellant information, the grounds for appeal, and a statement of the relief requested.

D&C Farms does not intend to seek a stay of the Approval, but should another party seek a stay, D&C Farms would likely support the relief sought.

**Appellant Information**

D&C Farms; contact information is as follows:

D&C Vander Zaag Farms Ltd.  
5900 County Road 10  
Alliston, ON L9R 1V2

Tel: 705.435.3226  
Fax: 705.435.8893  
email: [dave@hjvequip.com](mailto:dave@hjvequip.com)

D&C Farms will be represented in these matters by David Crocker and Laura K. Bisset of Davis LLP, whose contact information is as follows:

Davis LLP  
1 First Canadian Place, Suite 6000  
P.O. Box 367, 100 King Street West  
Toronto, ON M5X 1E2

David Crocker:  
Tel: 416.941.5415  
Fax: 416.777.7431  
email: [dcrocker@davis.ca](mailto:dcrocker@davis.ca)

Laura K. Bisset  
Tel: 416.941.5400  
Fax: 416.777.7432  
email: [lbisset@davis.ca](mailto:lbisset@davis.ca)

D&C Farms requests that all notices and other official documents be delivered to the attention of David Crocker and Laura K. Bisset at Davis LLP.

**Sections Under Appeal**

D&C Farms appeals the following portions of the Approval:

*Terms and Conditions:*

- (a) A - General - A1, A5, A6 and A8
- (b) C - Noise Performance Limits - C1, C2, C3 and C4
- (c) D - Confirmation of Vacant Lot Noise Receptors - D1
- (d) E - Acoustic Audit - Immission - E1, E2 and E3
- (e) F - Acoustic Audit - Emission - F1 and F2
- (f) J - Natural Heritage and Pre- and Post- Construction Monitoring - J1 to J17
- (g) O - Operation and Maintenance - O1, O2, and O3
- (h) P - Record Creation and Retention - P3
- (i) Schedule A - Facility Description
- (j) Schedule B - Coordinates of the Equipment and Noise Specifications
- (k) Schedule C - Noise Control Measures

**Grounds for Appeal**

1. Engaging in the renewable energy project in accordance with the renewable energy approval will cause serious harm to human health.

Industrial wind turbines are reported to cause a range of serious health effects in a segment approximately 5-30% of the population, including sleep disturbance, headache, tinnitus, ear pressure, dizziness, vertigo, nausea, visual blurring, tachycardia, irritability, problems with concentration, memory and panic episodes associated with sensations of internal pulsation or quivering when awake or asleep, excessive tiredness, loss of quality of life. These impacts can lead to increased morbidity and significant chronic disease and health effects.

Experts believe that these health effects are most likely the result of exposure to infrasound, low frequency noise, audible noise, visual impact, shadow flicker, stray voltage, and/or electromagnetic fields. These effects are produced by exposure to industrial wind turbines and will be produced by exposure to the industrial wind turbines in the Project.

These health effects occur at sound levels below the level that is permitted by the Approval for the Project. The effects also occur at distances which exceed the setbacks prescribed for the Project.



There are approximately 259 non-participating receptors and 105 vacant lots identified in the vicinity of the Project. If 5-30% of individuals at these points of reception experience the above-noted health effects, the impact of the Project on human health will be serious.

2. Engaging in the renewable energy approval will cause serious and irreversible harm to plant life, animal life, or the natural environment.

Industrial wind turbines negatively interfere with agricultural operations, which foster plant and animal life. The success of plant and animal life depends on the natural environment in which it is located, including the component elements of the natural environment such as the soils and groundwater.

The construction, installation, use, operation, maintenance and decommissioning of industrial wind turbines strip significant amounts of land of the soils on which plant and animal life depend, and interferes with the flow of groundwater used for irrigation purposes. In particular, DWPI proposes to remove and/or sterilize hundreds of acres of Honeywood soil for the purposes of constructing, operating, and decommissioning the Project, and constructing turbine footings which will interfere with the flow of groundwater.

Dufferin County, particularly in the Townships of Melancthon and Mulmur, is generously blanketed by Honeywood soils. The Honeywood soils are well drained and have developed in wind-deposited silt loam or fine sandy loam materials which are underlain by calcareous loam till at two to four feet. The materials overlying the till are remarkably uniform, maintaining an average thickness of three feet even where the topography is rough. These soils occur principally on gently undulating topography. The soil surface is usually stone-free. It is friable, easily worked, and contains a good reserve of plant nutrients. These soils drain rapidly and have a sufficiently high moisture holding capacity to supply plants with moisture even during the dry period of the year.

The optimum soil conditions for potato production are defined in terms of drainage, texture, stoniness, and topography. Honeywood soils "are among the best agricultural soils in Southern Ontario" and are capable of producing all crops adapted to the area, namely potato, cereal grains, hay, silage corn, grain corn, and beans. The Honeywood soils are identified as Class 1 (excellent) for all adapted crops. Potato production in Dufferin County has been concentrated on the Honeywood silt loam in Melancthon and Mulmur townships.

The agroclimatic conditions in the highlands of Dufferin County are the best match in southwestern Ontario to the optimum soil conditions for potato production. The combination of the soil and agroclimatic conditions and the properties of the Honeywood soil, together, combine to make the areas of Honeywood soil in Dufferin County uniquely suited, and special for production of potatoes.

D&C Farms' operations depend on the use of irrigation wells. The irrigation wells it relies on are highly producing wells (2000L/minute) which draw on underground streams in the karst which are shallow and difficult to map. Some of the proposed turbines are within 500 metres of D&C Farms' highly producing wells. DWPI proposes to construct the wind turbines on large-spread footings. The depth of the excavation required to facilitate construction of the turbine bases will be between 2.3 to 4 metres below ground surface. The turbine footings have the potential to interfere with the flow of groundwater through the subterranean environment and into the irrigation wells.

Corn is an integral part of D&C Farms crop rotation. It is now recommended that fungicide be sprayed on corn when it is at full height to enhance and protect crop yields. When corn is at full height, the only practical way to spray fungicide is aerially. Aerial spraying cannot be done safely, if at all, when there are

industrial wind turbines in proximity to the area to be sprayed, in particular at the densities proposed for this project.

### **Issues and Material Facts**

*Will the Project cause serious harm to human health?*

In addition to the above-noted facts, the appellant relies on the fact that previous projects, elsewhere in the Province and the Country, approved under similar terms and conditions of approval, have caused serious harm to human health. The Project will operate at sound levels and at setbacks that will expose receptors to the same conditions as have previous projects, and will cause the same or similar negative health effects.

*Will the Project's noise modelling accurately estimate the noise impacts of the Project?*

The Proponent's noise modelling does not comply with the applicable MOE noise criteria. The predicted noise levels have not been adequately assessed at all receptors.

In any event, previous approvals have demonstrated that the noise model used to estimate the noise impacts of industrial wind turbines in Ontario is inaccurate and underestimates the sound levels produced by the industrial wind turbines. Moreover, previously approved projects, which were estimated to meet Ministry of the Environment criteria, have exceeded approved audible sound levels, in particular as turbines age. The Director has no ability, in respect of this Project, to accurately predict or control exceedances, which will allow for serious harm to human health.

The Director has not considered and is unable to predict low frequency sound and infrasound noise levels. There are no applicable standards for low frequency and infrasound. In the absence of evaluation standards, and any evaluation of low frequency and infrasound, serious harm to human health will be caused by the Project.

The Director has not given adequate consideration to the cumulative impact of the Project, in the context of the nearby TransAlta Melancthon and AIM Plateau wind farms. The turbines associated with these older projects are aging, and emit excessive noise. Combined with the excessive noise that will be generated by the Project, the risk of serious harm to human health will be serious.

*Will the Project cause serious and irreversible harm to plant life, animal life or the natural environment?*

The appellant repeats and relies upon the facts set out above. The Approval for the Project permits the construction, installation, use, operation, maintenance and decommissioning of the Project without regard for the natural environment which allows Dufferin County, and particularly the Township of Melancthon, to be the best agricultural land in southern Ontario. The Project, as approved will cause serious and irreversible harm to the agricultural lands of Dufferin County, which in turn will seriously harm plant life, animal life or the natural environment.



**Relief Requested**

D&C Farms requests that the Tribunal revoke the issuance of the Approval.

Yours truly,  
**DAVIS LLP**

Per:

A handwritten signature in black ink, appearing to be "Laura K. Bisset", written over a horizontal line.

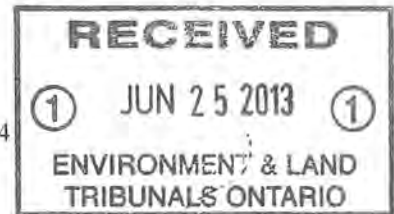
Laura K. Bisset  
LKB/sxo

Encl.



Kathleen Kurtin  
124 Wells St  
Toronto, M5R 1P4

June 24, 2013



Re: EBR Registry # 011-7852, Dufferin Wind Power REA approval

To whom it may concern:

I would like to request a hearing to appeal the decision on the recent Renewable Energy Approval issued to Dufferin Wind Power Inc. for a Class 4 wind facility for the following reasons:

1. The impact of flickering on up to 13 houses, as stated by Dufferin Wind Power in a public meeting last fall, along with their failure to post those findings on their information web site, as promised in two public meetings is problematic. Their failure to disclose the information is concerning on two fronts: one, a failure to live up to commitments made, and two, residents being unaware that their homes will be impacted by flickering and of the possible health risks associated with flickering. Preliminary studies I had done suggest that my property may be one of the properties impacted by the flickering. Flickering can cause headaches and nausea. Nausea is one of the triggers for the form of epilepsy I have, and so will result in a significant medical impact for me, personally. This will result in my being unable to use my property whenever it is exposed to flickering. Germany, which has a longer history with wind turbines, now regulates exposure to flickering.
2. The failure to await the outcome of the federal government's study, due in 2014, on the impact of industrial wind turbines on human health is irresponsible considering the mounting body of evidence around the impact of infrasound on the health of people living in close proximity to industrial wind turbines. Infrasound from large industrial wind turbines in excess of 2 MW increases significantly over that produced by the smaller wind turbines that were the norm when the legislation was put in place, calling into question the distance limitations currently in place.

The T1 and T2 2.75 MW turbines in the proposal have an immediate impact on my country property at 558655 Mulmur Malancthon Townline, Mulmur. I currently use the property 2 to 3 days a week and post retirement, am planning to spend up to 5 days a week in the country. If the project proceeds, I will be unable to use my property as a result of the infrasound and possible flickering. This results in a significant hardship to me personally.

Consequently, I would like T1 and T2 deleted from the project at a minimum, and the total project cancelled as an optimum solution. If neither is possible, I expect my property to be purchased by either the Ontario Government or Dufferin Wind at fair market value.

As a tax payer, I find the lack of rigor in the application of the Green Energy Act very concerning. The province's eagerness to move forward with a financially flawed project that has been challenged by the province's own auditor and will impact the health and well-being of its citizens unconscionable. I urge you to reconsider this decision.

Yours Sincerely,

A handwritten signature in black ink, appearing to read "K. Kurtin". Below the signature, the name "Kathleen Kurtin" is printed in a small, black, sans-serif font.

Kathleen Kurtin

**Appellate Body:**

Secretary

Environmental Review Tribunal

655 Bay Street

Floor 15

Toronto

M5G 1E5

**Environmental Commissioner of Ontario:**

Environmental Commissioner of Ontario

1075 Bay Street

Suite 605

Toronto Ontario

M5S 2B1

**Issuing Authority:**

Vic Schroter

Director, Section 47.5 Environmental Protection Act

Environmental Approvals Branch

2 St. Clair Avenue West

Floor 12A

Toronto Ontario

M4V 1L5

**Proponent:**

Dufferin Wind Power Inc.

161 Bay Street, Suite 4550

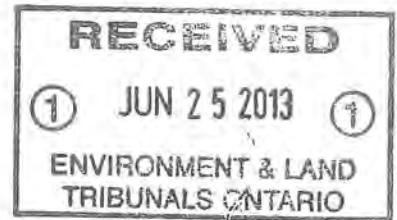
Toronto, Ontario

M5J 2S1

ccs Kathleen Wynne, Bob Chiarelli







**To whom it may concern:**

This is to request a hearing by the Environmental Review Tribunal regarding the Decision on EBR Registry Number: 011-7852 (Dufferin Wind Power Incorporated REA).

13-074

Having reviewed the Decision, I feel it was seriously flawed in a number of critical areas of concern, especially regarding human health (including impacts from electro-magnetic fields), noise & vibration, impacts on natural environments & wildlife, visual impacts, setbacks, and property values.

The Decision ignored solid research and mounting evidence of the harm to human health from the electro-magnetic fields, low-frequency noise and vibrations from wind turbines (inaudible infrasound), and shadow flicker.

The Decision was dismissive of the impact of the wind turbines on natural environments and wildlife, as well as the considerable visual impact and degradation of the Niagara Escarpment.

The Decision was naïve in their acceptance of the dubious setbacks provided by the applicant for the location of the turbines in relation to existing dwellings, and the criteria they used to determine those setbacks has already been rendered inadequate by countries with considerably more experience with wind turbines.

The Decision was completely inconsistent with third party research regarding diminished property values for properties abutting the wind farms.

If the Dufferin Wind Power project is allowed to proceed, my family's property, which is currently a tranquil and valuable piece of nature, will be rendered uninhabitable and unmarketable.

In terms of relief, I would like to see the complete termination of the project. If that cannot be achieved, then as a minimum I am seeking the elimination of the most offensive of the turbines, T1 and T2, each 448 feet tall. If that is not possible, then the applicant, or the province of Ontario, should be required to purchase the properties adjacent to T1 and T2 (including the property of which I am co-owner) for fair market value.

Sincerely,

John Maguire

Address of property in question:  
825498 Melancthon-Nottawasaga Town Line

**Request for a hearing by the Environmental Review Tribunal re: Decision on  
EBR Registry Number: 011-7852 (Dufferin Wind Power Incorporated REA)**

**Date:** June 24, 2012.

**From: John Maguire**  
2905-33 Lombard Street  
Toronto, ON  
M5C 3H8  
Phone: 416-938-2905  
Email: j.maguire@sympatico.ca

**To: Appellate Body:**  
Secretary  
Environmental Review Tribunal  
655 Bay Street  
Floor 15  
Toronto  
M5G 1E5  
Phone: (416) 212-6349  
Fax: (416) 314-4506

**Environmental Commissioner of Ontario:**  
Environmental Commissioner of Ontario  
1075 Bay Street  
Suite 605  
Toronto Ontario  
M5S 2B1  
Phone: (800) 701-6454

**Issuing Authority:**  
Vic Schroter  
Director, Section 47.5 Environmental Protection Act  
Environmental Approvals Branch  
2 St. Clair Avenue West  
Floor 12A  
Toronto Ontario  
M4V 1L5  
Phone: 416-314-8573

**Proponent:**  
Dufferin Wind Power Inc.  
161 Bay Street, Suite 4550  
Toronto, Ontario  
M5J 2S1





ERT Case No. 13-075

**ENVIRONMENTAL REVIEW TRIBUNAL**

**BETWEEN:**



**DENNIS SANFORD**

*- and -*

**DIRECTOR, MINISTRY OF THE ENVIRONMENT**

---

**NOTICE OF APPEAL**

---

June 25, 2013

**ERIC K. GILLESPIE  
PROFESSIONAL CORPORATION**  
10 King Street East, Suite 600  
Toronto, ON M5C 1C3

Eric K. Gillespie  
Tel.: (416) 703-6362  
Fax: (416) 703-9111  
Email: [egillespie@gillespielaw.ca](mailto:egillespie@gillespielaw.ca)

Solicitors for the Appellant

**(i) Contact Information**

***(a) Name and contact information of the Appellant***

Dennis Sanford  
398132 - 5<sup>th</sup> Line  
Melancthon, Ontario  
L9V 1R7  
Tel: 519-925-5556

***(b) Name and contact information of the Appellant's Representative***

Eric K. Gillespie  
Eric K. Gillespie Professional Corporation  
10 King Street East, Suite 600  
Toronto, ON M5C 1C3  
Tel.: (416) 703-6362  
Fax: (416) 703-9111  
Email: [egillespie@gillespielaw.ca](mailto:egillespie@gillespielaw.ca)

**(ii) Renewable Energy Approval Being Appealed**

1. The Appellant is appealing the decision of the Director to issue a Renewable Energy Approval to Dufferin Wind Power Inc. (the "Proponent") to engage in the Dufferin Wind Power Project in respect of a Class 4 wind facility consisting of the construction, installation, operation, use and retiring of a wind facility consisting of 49 wind turbine generators with a total name plate capacity of 99.1 MW in the Township of Melancthon, Town of Shelbourne and the Township of Amaranth, County of Dufferin, Ontario (the "Project").
2. A copy of the instrument decision notice under appeal is attached, being Renewable Energy Approval Number 5460-98BPH8, issued June 10, 2013 to the Proponent - EBR Registry Number 011-7852, posted to the Registry on June 10, 2013.

**(iii) Portions of the Renewable Energy Approval being Appealed**

3. The portions of the Renewable Energy Approval that the Appellant is appealing are the

contribute to negative health impacts.

6. The precise mechanism(s) that cause these health effects have not been determined. However, these mechanisms either individually or in combination cause these health effects. These effects are produced by exposure to IWTs and will be produced by exposure to the IWTs in the Project.

7. These health effects occur at sound levels starting at approximately 30 dbA, which is lower than the levels permitted by the Renewable Energy Approval for the Project. These effects are also known to occur at distances of up to 10 kilometres, which is much greater than the setbacks prescribed for the Project.

8. If between 5% and 30% of individuals at points of reception experience the health effects enumerated above, the impact of the Project on human health will be very serious.

#### **(v) Issues and Material Facts**

##### ***(a) Issues***

*Issue #1: Will the project as approved cause serious harm to human health?*

*Sub-issue #1(a) - Will the project as approved cause serious harm to human health of non-participants?*

*Sub-issue #1(b) - Will the project as approved cause serious harm to human health if the Approval Authority is unable to properly predict, measure or assess sound from the facilities including audible noise, low frequency noise and infrasound?*

##### ***(b) Material Facts***

***Issue 1(a) – Serious Harm to Human Health***

9. The Appellant repeats and relies upon the material facts set out in paragraphs 1 through to and including paragraph 8 above.

16. The Appellant requests that the Environmental Review Tribunal revoke the decision of the Director to issue a Renewable Energy Approval to the Proponent to engage in the Project.

**(vii) The Appellant Will Seek a Stay**

17. The Appellant will be seeking a stay of the decision.