

ERT FINDS WIND FARM WILL CAUSE SERIOUS HARM TO HUMAN HEALTH AND SERIOUS AND IRREVERSIBLE HARM TO THE LITTLE BROWN BAT

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On Friday, October 7, 2016, Ontario's Environmental Review Tribunal released its decision in *Wiggins v. Ontario (MOECC)* (ERT Case Nos.: 16-036 to 16-042).

The decision is significant because it is the first time that the Tribunal has found that engaging in a renewable energy project in accordance with its renewable energy approval ("REA") will cause serious harm to human health. In this case, the Tribunal found that serious harm to human health will occur if wind turbines are constructed at approved locations in close proximity to the takeoff and landing areas of two aerodromes (Collingwood Regional Airport and Clearview Field, Stayner). The margin of error posed by introducing the turbines at these locations would be inadequate to prevent collision with a wind turbine, or prevent a crash due to wind turbine-induced turbulence. Mitigation measures proposed during the hearing were rejected by the Tribunal as not able to significantly reduce the likelihood that such harms will occur.

The Tribunal also held that, unlike in *Amherst Island* the REA lacked progressive mitigation measures to reduce the risk of harm to the endangered Little Brown Bat in the vicinity of the project. The Tribunal suggested that if preventative mitigation measures such as increasing post-construction monitoring, precautionary blade rotation cut-out in low wind speeds and increased curtailment of operations in instances of additional bat fatalities were put into place for the project, it may have found that harm would be reduced below the threshold of serious harm.

The Tribunal has adjourned the proceeding to provide the parties with an opportunity to make further submissions on appropriate remedies, which range from amendment to revocation of the REA. The decision provides a cautionary tale to wind farm developers proposing facilities near aerodromes or without progressive mitigation measures in place to reduce the risk of harm to local endangered species.



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