

Friday, November 19, 2010

Honourable Minister Blaikie
Minister of Conservation
330 Legislative Building
450 Broadway
Winnipeg, MB R3C 0V8

Ms. Tracy Braun,
Director, Environmental Assessment and Licensing Branch
Manitoba Conservation
123 Main St. Suite 160
Winnipeg, Manitoba,
R3C 1A5

Dear Minister Blaikie, Ms. Braun:

Re: File 5486.00 - Rettie Boat Access/Beaconia Channel – Robert and Margaret Rettie

INTRODUCTION

This project was constructed without an Environment Act license, which demonstrates a lack of communication between levels of governments, and both between and within Manitoba government departments. The proponent, Robert Rettie, received a development permit from the Selkirk and District Planning Area Board (SADPAB) in January of 2008 and a letter of advice from the federal Department of Fisheries and Oceans (DFO) in April 2008. Neither of these steps replace the need for a Manitoba environmental licence. Given the failure of the property owner to fulfill the DFO permit conditions, and the lack of notification and information to neighbours and land owners, we wonder whether Environmental Assessment and Licensing Branch (EALB) was notified of this proposal by either: SADPAB, or DFO. The procedural and regulatory failures with regard to this project highlight the need to have clear, consistent and publicly accessible policies and procedures for any activity or project that triggers the Manitoba Environment Act. In particular there was confusion on the part of the Municipality, the Planning Area Board, and the proponents regarding Manitoba Water Stewardship responsibilities, and Environment Act requirements. The Rettie Boat Access fiasco serves as a case study in how not to make decisions, and how not to co-ordinate decisions across governments and departments. Manitoba Wildlands (MWL) can only hope that these procedural and regulatory problems will never reoccur, moving forward.

ACCESS TO INFORMATION/PUBLIC REGISTRY

Manitoba Wildlands is responding based on the documentation posted online at:
<http://www.gov.mb.ca/conservation/eal/registries/5486Rettie/index.html>.

We have not reviewed the paper file at 123 Main. Searching the public registry database (<http://www2.gov.mb.ca/con-cat/Regquery.htm>) for: “Rettie”, “Boat Access”, and file number “5486” returned no results. Therefore there is no way of knowing what is in the paper registry file, or if a paper file even exists. Starting a public registry file late in a confused licensing process like this one does not fulfill

public interest, or standards of fairness or reasonableness.

We could find no information about this proposal on Water Stewardship's webpage, save for a link to the online public registry referenced above. Water Stewardship webpage claims they have a registry for all orders under the *Water Protection Act* at 123 Main, but it is unclear how, when, and where this "registry" is accessed. Certainly it is not online.

It seems the Manitoba Conservation public registry file under the Environment Act was not created until the channel was identified, a stop work order issued significant work and damage had already been done. Documentation between the proponents, Water Stewardship, Manitoba Conservation, EALB and other government authorities should be included in the file. For example, e-mail correspondence has revealed that Rettie submitted his first EIS in April 2010 but was asked to revamp it to adhere to the conditions of the *Environment Act*. This earlier draft and related correspondence should be in public registry file #5486.-

Presently there is also no public way to determine who has water rights and permits, and how much water they are withdrawing from Manitoba's lakes, rivers and aquifers. This license review highlights the gaps and problems with public information, and decision-making about water use in our province.

PUBLIC LAND VS PRIVATE LANDS AND WATERS

There is no complete scoping of this and further intended project steps in the materials provided by Mr. Rettie. Essentially it was not clear in the beginning what Mr. Rettie intended to build – and still is not clear what he intends to do - and no steps were taken to scope the full project. One result is the tripling of the length and width of the channel – in defiance of DFO permitting. This proposal is not only on private lands. *Mr. Rettie is gaining access to Crown land & water without a lease or paying compensation for use of Crown resources.*

ORDINARY HIGH WATER MARK

Presently there appears to be no way to know where the public and private land/waters starts and stops as there is no clear technical information as to the Ordinary High Water Mark in the south basin. When concerned citizens have to pay for aerial photos themselves to show the location and impact of an unlicensed project, we know there are significant problems as to technical information about Lake Winnipeg's southern basin. This is compounded by the lack of clear historic technical information about the effect of the Manitoba Hydro regulation of water levels in Lake Winnipeg, and resulting effects on the south basin.

GOVERNMENT RESPONSIBILITIES

Our government is responsible to ensure that all laws and public policies are complied with. We also would assume our government does not give away or allow alteration of crown land and resources for no public benefit. There is clearly extensive use of crown or public lands and water by this project – with significant and ongoing environmental effects.

Manitoba Conservation and Water Stewardship responsible for restoration of this site – and a complete renewal of the technical and scientific regarding this project site and adjacent lands and waters.

References to a ‘development’ permit in the documentation available is not clear. The lack of any reference in planning district information to potential provincial or federal government responsibilities, especially where crown lands and waters may be impacted is a significant omission. See below.

“Through the Selkirk and District Planning Area Board office, development permit applications are processed for the Rural Municipalities of West St. Paul, St. Clements, and St. Andrews, the City of Selkirk and the Village of Dunnottar. This page provides you with information on application requirements and guides you to other offices where permits may also be required, depending on your building needs.”

(Source: http://www.selplan.net/index.php?option=com_content&task=view&id=22&Itemid=36)

Shoreline Erosion Development Permit

“Surrounding low-lying areas of the Red River, its tributaries, marshes and delta system, and the south basin of Lake Winnipeg, in our District are highly susceptible to shoreline erosion. As such, when working in low-lying areas, or within 350 feet of these water systems, special consideration is required of development permits. Development can include removing existing trees along a shoreline, placing rip-rap or other material to build up or stabilize a shoreline, replacing existing material with new fill, constructing a building in proximity to a shoreline, etc... For building structures, please refer to the requirements found under the building permits section of this website. For all other shoreline development, please read the information below.”

(Source SADPAB: http://www.selplan.net/index.php?option=com_content&task=view&id=35&Itemid=61)

All municipal and planning district information provided to the public across Manitoba needs to be explicit as to potential impacts on crown lands and waters, with access to Manitoba licensing authorities provided. Municipalities do not issue permits regarding crown lands and waters or with potential impacts on crown lands and waters. An initial review by provincial authorities is essential. Municipal authorities should be held responsible in situations such as this unlicensed, highly damaging project.

Department of Fisheries and Oceans public information (below) :

Three step process:

1. Planning Guidance - You can avoid harm to fish and fish habitat and comply with the Fisheries Act by planning your project using the guidance provided below. You will not need to come to Fisheries and Oceans Canada (DFO) for review if you can follow the planning guidance found in an Operational Statement.
2. Project Review- If you are not able to follow the planning guidance provided in Step 1 or it is not applicable to your project, then you will need to submit your project proposal to Fisheries and Oceans Canada for review and assessment. DFO's preference is to avoid harm to fish and fish habitat wherever possible. If the project is considered to be low risk then you may proceed without further authorization. DFO staff will advise you of additional impacts that you will need to work to minimize.
3. Fisheries Act Authorization - If the assessment determines that harm to fish or fish habitat cannot be avoided, then you progress to Step 3 for a Fisheries Act Authorization.

(Source: <http://www.dfo-mpo.gc.ca/habitat/habitat-eng.htm>)

Two things are essential, based on this situation: *Clarity on who in government responds to failure to comply with a DFO permit, and formalized communication between government departments regarding federal responsibility.*

CONSULTATIONS & NOTIFICATION

There was no consultation with the public before Mr. Rettie began work on his project. It also appears there was no application with the Lakeshore Erosion Technical Committee (ETC) as required by Selkirk and Area District Planning requirements. There is no indication in the Environmental Assessment Proposal Report (EAP) filed by the developer that an application was filed. If an application was filed with ETC this documentation should be included in the public registry file. Manitoba Conservation should have required the proponent to provide all documentation with other levels of government in this proposal filed after the fact.

DFO PERMIT

The 23 April 2008 DFO letter of advice stipulated an understanding that the channel was to be, “...approximately 213m (770ft) long, 5m (15ft) wide, and 1.5m (5ft) deep,” with “...a 3m (10ft) by 1.5m (5ft) area ... excavated at the shoreline to connect the proposed channel to Lake Winnipeg.”

Furthermore the DFO letter stated:

“[I]f the plans have changed or if the description of your proposal is incomplete you should contact this office to determine if the advice in this letter still applies.”

However the September 16, 2010 EAP states: “*[t]he chanel will be approximately 1,600 feet long, approximately 25 fet wide and approximately 6 feet deep.*”

Additionally in the request to DFO there was no mention of a boat launch to the north and a docking area to the south. The DFO Letter of Advice is very clear in stating that any changes in plans needed to be submitted to the DFO before proceeding. At the very least the developer is in breach of its federal DFO permit. And the developer was going ahead without its Manitoba environmental license. On these two points alone, Manitoba Conservation should not license this project – and should require the developer to pay for restoration.

CROSS GOVERNMENT COMMUNICATION/ RESPONSIBILITIES

The fact that this project was mostly constructed and caused significant environmental effects without an Environment Act license demonstrates a lack of communication between levels of government and between provincial government departments. There should be clear, public policies and procedures that identify all regulatory steps when Manitoba Conservation and Manitoba Water Stewardship responsibilities under Manitoba Acts overlap.

What are the present communication policies/procedures/guidelines/standards between governments and within government regarding projects that likely require licensing under the *Environment Act* and the *Water Protection Act*? Are there any? The lack of a joint public registry, or cross-referenced sources for public regulatory information causes confusion and adds risks to decision making about crown lands and waters. With changes in government department structure, and new legislation in recent years, there has

been no regulatory review to make sure that both departments are able to fulfill their policy and regulatory responsibilities.

TECHNICAL & SCIENTIFIC BASIS

There are numerous technical issues and gaps in the process followed prior to the channel being dug including a stop work order being issued.

These include lack of confirmation of the property line and the required 90' setback from the ordinary high water mark, which has not been confirmed.

No drainage plan was provided, as required by the Municipal development permit, and the effects of this channel on the water table have not been determined.

The proposal under the Environment Act includes numerous differences in specifications and scope from the original plan submitted by Mr. Rettie. At this time it is unclear whether Mr. Rettie's most recent information reflects the actual unlicensed project.

Information about the development of a boat launch and dock and potential damage to aquatic life and other environmental elements appears to be missing at all steps.

Varying and inaccurate definitions of vegetation in the marsh and the 'sand' used for the plug have resulted in increased damage and environmental effects.

The environmental impacts of this extensive excavation on wildlife, fish and fish habitat, shoreline species, and other environmental elements seems to have been ignored, resulting in significant damage, that continues.

The effects of the recent weather bomb on Lake Winnipeg south basin shorelines tells us all that tampering with the aquatic habitat while increasing risk and making decisions in isolation can have systemic multipliers. Now the need for planning, restoration and a new integrated regime for any shoreline decisions are unavoidable.

BIODIVERSITY

The Green Spaces Report appended to the EAP shows the huge diversity of wildlife species, which have been impacted by this development. Identified were: 180 plant species, 19 mammalian species, 83 bird species, 7 amphibian species, 3 reptilian species.

"The tranquility of the setting [Beaonia Lagoon], aptly described as 'nature's paradise', was transformed by the construction of the long trench and berm," concludes the report. Moreover, the fact that the species inventory was conducted between June 19 and August 19, after the damage from the channel construction was already done means that there is no baseline data from which to compare to."

Manitoba Wildlands agrees with this report. No attempt was made by any of the three levels of government to require or provide baseline data before 'decision-making'.

WETLANDS

The Manitoba Water Council was charged by the Manitoba government to host a series of policy discussion over the course of Summer 2010, related to public policy for preservation and reconstruction of Manitoba wetlands. Our government and the Water Council recognize the value of ecological services from wetlands in filtering unwanted nutrients and chemicals from water, as well their capacity to slow down the runoff of water in times of flooding, spring melt, etc. It seems strange that while we wait for this policy to be finalized and approved our government turns a blind eye to the destruction of the Beaconia marsh and wetland. It should be noted that we are not lacking in policy that pertains to this project. Manitoba's Water Strategy was renewed in 2003, and the Lake Winnipeg Stewardship Board's reports and recommendations, as accepted by the provincial government, are also in place. In short we have policy to safeguard our wetlands and shorelines. Will the government please fulfill these policies? As addressed above, any after-the-fact approval of this channel would contradict Manitoba government policy in the "Manitoba Water Strategy" and the "Lake Winnipeg Stewardship Board Final Report".

LAKE WINNIPEG

Lake Winnipeg is considered the most eutrophic large lake in the world. Protection and renewal of Lake Winnipeg is a public policy goal in Manitoba. Actions hundred, even thousands, of kilometres away affect the lake, yet we seem unwilling to protect even the shoreline, wetlands, and marshes in the south basin of Lake Winnipeg. Manitoba Wildlands has long advocated for the legal protection of more designated marshes in our province, and establishment of more protected areas in the natural regions surrounding the Lake Winnipeg south basin. It should be noted that currently there is a significant gap in regulatory tools to actually protect crown waters from industrial activity.

MANITOBA WATER STRATEGY – RIPARIAN PROTECTION

<http://www.gov.mb.ca/waterstewardship/waterstrategy/pdf/index.html#Lake%20Winnipeg>

"The Manitoba government has announced an action plan to begin to achieve the goal of reducing nutrients in the lake to pre- 1970 levels. The plan includes enhanced riparian protection..."

Yet here we are with a channel that is damaging the riparian system of Beaconia Lagoon.

"Further refine land use planning strategies in partnership with local governments to ensure appropriate development occurs in areas of high flood risk."

The Beaconia channel is in an area of high flood risk as evidenced by the August 14-19 2010 storm. Please also view the photos on ebconservation.ca

"Develop and implement a clear, co-ordinated approach among local organizations, all levels of government, First Nations and jurisdictions outside of Manitoba to properly assess and manage drainage issues."

The lack of government coordination underlies the whole problem and current situation with this project.

“Policy 2.1 - River, lake, and shoreland habitat and the general environmental, subsistence, and economic values of rivers, lakes, and wetlands shall, where possible, be conserved.”

“Policy 2.2 - Soil conservation, wetland retention, and the application of appropriate land use practices shall be promoted primarily by the provision of incentives, but with regulation where required, not only as essential elements of water conservation and protection, but also as key measures to reduce siltation impacts, downstream flooding, and non-point source pollution.”

“Policy 5.1 - Development on land subject to flooding or other water related hazards shall occur only under planning guidelines which prevent human suffering and property damage, limit public costs and liabilities, and address environmental impacts”

“Policy 5.3 - The negative impacts of changes to water level and flow regimes caused by hydro-electric development projects shall be mitigated to the extent possible.”

LAKE WINNIPEG STEWARDSHIP BOARD FINAL REPORT

The Lake Winnipeg Stewardship Board Report made numerous recommendations, including:

“12.1 The Province of Manitoba and municipalities should establish an integrated land and water resource planning process that is environmentally conscientious, and ensures planned and orderly growth with respect to land drainage and sewer and water services.”

“12.7 The Province of Manitoba should consider establishing regulations, such as minimum set-back distances from shorelines for new developments, to prevent significant disturbances which would result in increased erosion along lakes and waterways.”

***Note:** even forestry riparian standards are 100m or more, but this channel is roughly 30m from the shoreline depending on the water level.

(Forestry link: http://www.gov.mb.ca/conservation/forestry/pdf/practices/riparian_mgmt_final_sept2009_.pdf)

CONCLUSION

Clearly the Manitoba government is liable here in that the recommendations accepted by the government, and forming public policy relevant for this project, are simply being ignored.

We understand that Manitoba Conservation EALB was unaware of the existence of the Rettie Boat Access project, and we recognize that certain of the policy issues identified in our submission are outside of the scope of EALB. What is lacking of course is a Manitoba Water Stewardship review process, or clear combined departmental responsibilities and procedures for a development request of this sort. That said government departments do not operate in a bubble. As the Rettie Boat Access scenario shows, when intra and inter-government communication and policy integration is inadequate it makes the jobs of government employees more difficult, and it the health of Manitoba’s ecosystem which primarily suffers.

Manitoba Wildlands urges Manitoba Conservation *not to license this project, and to issue and order for*

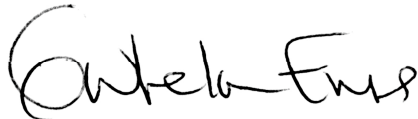
remediation and restoration of the lagoon. We also urge the department to assemble an internal departmental mechanism so there are no further instances of this sort. In particular a review of the any other municipal requests for permits that could affect crown land and waters is needed immediately. Municipalities do not have jurisdiction over crown lands. So it is clear this situation points to the other risks to crown shorelines, marshes, wetlands and waters.

We have the opportunity to indicate our support for review comments (among many) received by the EALB from:

- Wayne Larstone
- Vikki Burns (Coordinator, Foundations in the Lake Winnipeg Watershed Initiative, Community Foundations of Canada)
- Chris Davis
- David and Candy Crabb

In particular the Eastern Beaches Conservation Coalition members are to be commended for their technical work and advocacy. They clearly understand this motorized watercraft channel should not have happened. Manitoba Wildlands supports their goals and concerns.

Regards,



Gaile Whelan Enns
Owner, Manitoba Wildlands

Cc: Bruce Webb, EALB