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Ontario

ENV1283MC-2005-4795

DEC 2 1 2006

Ms. Gillian McEachern

[redacted]

and

Ms. Anna Baggio

[redacted]

Dear Ms. McEachern and Ms. Baggio:

RE: Application for a Review of the need for a new policy for comprehensive land use planning in the Far North area of the province
EBRO File Number: 05EBR005.R

Thank you for your application for a review under the *Environmental Bill of Rights* of the need for a new policy for comprehensive land use planning in the Far North area of the province. We appreciate the amount of time and effort that you have invested to bring this matter to our attention. The ministry takes these applications very seriously. We considered your concerns at length and reviewed how our acts, regulations and approvals process take northern issues into account.

In assessing your application, the ministry included the participation of ministry staff from the Northern Region and the Environmental Assessment and Approvals Branch. The ministry also consulted with staff of the Ministry of Natural Resources, the Ministry of Northern Development and Mines, the Ministry of Energy and the Ontario Secretariat of Aboriginal Affairs. The assessment was based on the evidence provided in the application and information found in ministry files.

After thoroughly considering all the information available and the requirements of the EBR, I have determined that a review is not warranted. The full rationale for my decision on the issues that you have raised, is outlined in the attached decision summary.

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The ministry recognizes community stakeholders as important partners in the delivery of environmental protection programs. We appreciate and respect your concerns associated with protecting the environment of the Far North area.

In the event that you have any questions regarding the above, please contact Clarke Kirkland, Program Support Coordinator, at (416) 314-8688.

Sincerely yours,

Debra Sikora

for Michael J. Williams
Assistant Deputy Minister, Operations Division
Ministry of the Environment

Attachment

c: P. Lapp, Environmental Commissioner's Office

EBR Application for a Review
Decision Summary

EBRO File No.: 05EBR005.R

Issue:

The Ministers of the Environment, Natural Resources, Energy and Northern Development and Mines received an *Environmental Bill of Rights* (EBR) application for a review of the need for a new policy for comprehensive land use planning in the Northern Boreal area (Area) of the province, before resource allocations are made in the area.

Review Recommendation:

The Ministry of the Environment (MOE) has completed its preliminary assessment of the application for a review. After careful consideration of the information available and the requirements of subsection (ss.) 67 and ss. 68 of the EBR, the Assistant Deputy Minister (ADM), Operations Division has concluded that a review is not warranted.

Ministry's Preliminary Assessment of the Application:

Applicants Request:

The applicants requested a review of the need for a new policy for comprehensive land use planning in the Northern Boreal area of the province before resource allocations are made in the area. The applicants have defined the area as that which is north of the land that is included in the Environmental Assessment Declaration Order for the Ministry of Natural Resources' (MNR) Class Environmental Assessment Approval for Forest Management on Crown Lands in Ontario, here in after referred to as the "Far North".

- The applicants request this review because they allege that the:
    - Northern Boreal Initiative (NBI) does not address all the planning issues, only covers a small portion of the area, is solely focused on forestry activities and does not address landscape level planning;
    - NBI and thus MNR does not have jurisdiction over all possible projects (i.e. roads, coal bed methane exploration, mine staking and prospecting, hydro generation projects, transmission corridors, etc.);
    - NBI does not ensure that Aboriginal peoples will have a leadership role in the management of activities in their traditional territories;
    - Current lack of planning is inconsistent with the province's proposed biodiversity strategy by not adequately protecting habitat for species at risk (e.g. woodland caribou, lake sturgeon and wolverine);
    - Current planning has little or no coordination with other provincial ministries and the federal government;

- New policy is required before decisions are made to allocate resources in the Area;
- If ministries had considered their Statement of Environmental Values (SEVs) when making decisions on projects, different decisions would have been made; and
- Development scheduled to take place in the area has not been undertaken in accordance with the sustainable development principles outlined in the ministries SEVs.

- The applicants identified the following "known development threats" to the Far North as evidence of the need for a review:
  - Coal Bed Methane Exploration of over an area of 1000 km^2 in the Moose River Basin;
  - Mine Staking and Prospecting, 4,400 staked claims to date;
  - Hydro Transmission Corridors, proposed corridor connecting Manitoba to Thunder Bay and/ or Sudbury;
  - Hydro Generation Projects, approximately 45 sites identified;
  - Victor Diamond Mine, with a federal and three provincial environmental assessments in various stages of development;
  - Logging, with 90% of logging in Ontario by the clear cutting method; and
  - Roads, there are 62,000 kilometres of logging roads in Ontario's southern boreal forests.

- The applicants suggest that the land use planning policy should:
  - Include proper engagement of First Nation communities from the area and the public;
  - Require environmental assessments of each project;
  - Ensure proper land use planning with consideration of the ecosystem and designation of protected areas before allocation of resources;
  - Include a recommendation to provide financial resources to support First Nations in carrying out land use planning tasks, such as data collection and mapping;
  - Address the cumulative impacts of all proposed developments in the area including the impacts of development already proceeding further south; and
  - Require that landscape – level plans should be completed before any areas are licenced to industry or allocated for development.

- The applicants provided 31 documents as evidence including fact sheets, reports, presentations, radio transcripts, etc.

Review of the Application

The ministry considered ss. 67 and 68 of the EBR in making its decision as follows:

Ss. 67 (1)
As per ss. 67 (1) of the EBR, MOE has considered the application for review in a preliminary way to determine whether the public interest warrants a review of matters raised in the application.

- The decision on the assessment of this application for a review has been delegated to the ADM, Operations Division.

- The assessment of this application included the participation of MOE staff from the Northern Region and the Environmental Assessment and Approvals Branch (EAAB). The assessment was based on the evidence provided in the application and information found in ministry files. MOE also consulted with staff of the MNR, the Ministry of Northern Development and Mines (MNDM), the Ministry of Energy (Energy) and the Ontario Secretariat of Aboriginal Affairs.

Ss. 67 (2)
The following factors found in ss. 67 (2) were considered in determining whether the public interest warrants a review:

(a) the ministry's statement of environmental values;
- The MOE applies the purposes of the EBR and the guiding principles of its SEVs as it develops Acts, regulations, and policies. The principles and considerations related to MOE's SEVs also guide the MOE's internal management practices. In addition, staff considered the SEVs as part of the review of the application.

(b) the potential for harm to the environment if the review applied for is not undertaken;
- The MOE protects the environment through the application of the *Environmental Assessment Act* (EAA), *Environmental Protection Act* (EPA), *Pesticides Act* and *Ontario Water Resources Act* (OWRA), and related regulations and policies and procedures.
- Most projects in the Far North would be subject to one or more of the following environmental assessment (EA) instruments under the EAA: Electricity Projects Regulation under the EAA; MNR's Class EA for Resource Stewardship and Facility Development Projects; MNDM's Declaration Order for Dispositions of Crown Resources; or individual environmental assessment requirements.
- Projects in the Far North may also require MOE approvals (i.e. certificates of approval, permits to take water) under the OWRA or the EPA.
- Further, these would apply where required, to the examples of activities identified by the applicants (i.e., hydro corridor transmission corridors, hydro generation projects, mines, logging, roads, mines, coal bed methane extraction, etc.)
- Other federal and provincial legislation may also apply.

(c) the fact that matters sought to be reviewed are otherwise subject to periodic review;
- This matter is not subject to periodic review and therefore this clause cannot be considered.

(d) any social, economic, scientific or other evidence that the Minister considers relevant;

- The EAA instruments/process require consideration of all social, economic, scientific or other evidence concerning undertakings and any decision under the EAA or EAA instruments involve the consideration of these factors.
- These factors have been considered for the EA decisions that have been made specific to the Victor Diamond Mine project.

(e) any submission from a person who received a notice under s. 66;

- As an instrument is not the subject of this review notice was not required.

(f) the resources required to conduct the review; and

- MOE does not have the expertise required to address all the areas raised by the applicants, such as wildlife management, mining staking and prospecting, etc.

(g) any other matter that the Minister considers relevant.

- *Ministry Responsibilities*

MOE: The ministry is responsible for protecting clean and safe air, land and water to ensure healthy communities, ecological protection and sustainable development for present and future generations of Ontarians.

MNR: As the lead conservation and resource management agency in the province, the ministry pursues a mission of managing Ontario's natural resources in an ecologically sustainable way by safeguarding nature's capacity to renew itself.

MNDM: The lead ministry for the North, and through: *Northern Economic Development* - promote northern economic and community development and coordinate the delivery of programs and services in the North; and *Mineral Sector Competitiveness* - enhance mineral sector competitiveness and ensure the sustainable development of Ontario's mineral resources by providing basic geological information, and administering the province's Mining Act in a fair and consistent manner.

- *MNR's Land Use Planning Exercise*

Since early 2005, MNR has been exploring potential approaches for expanding land use planning in the Far North. This exercise is continuing.

- *Canada-Ontario Agreement on Environmental Assessment Cooperation*

Ontario and the federal government each have EA responsibility and both parties support the need for harmonization. The Canada-Ontario Agreement on Environmental Assessment Cooperation (the Agreement) commits Canada and Ontario to coordinate the environmental assessment process whenever projects are subject to requirements of both jurisdictions. The Agreement maintains the current level of environmental standards and the legislative and decision-making responsibilities of both levels of government.

- *Northern Boreal Initiative*

The MNR currently has different types of coverage under the EAA for its various program areas, including forestry, resource stewardship and facility development projects, parks and so on. This coverage ranges from Class EA approval, exemption orders, declaration orders to the general exemptions under O. Reg. 334.

The ministry is working closely with MNR to ensure any EAA requirements of the NBI are met.

- *DeBeer's Victor Diamond Mine*

The Ontario government is participating in the review and evaluation of DeBeer's Victor Diamond Mine Project. The province has taken a one-window approach on this project through MNDM with involvement from the MOE, the MNR and the Ontario Energy Board.

A number of EA processes for the project have been completed including:

- MOE received a request to designate the entire Victor Diamond Mine Project. The provincial Minister of the Environment (Minister) determined that an individual environmental assessment for the entire Victor Diamond Project was not required and denied this designation request.

- DeBeers has completed a provincial Class EA using the *Class Environmental Assessment for Minor Transmission Facilities* for the transmission line that will provide a permanent power source to the mine by twinning the existing coastal transmission line from Otter Rapids to Attawapiskat and constructing a new line from Attawapiskat to the mine site.

  MOE received a bump-up request and the Minister determined that an individual EA was not required and denied the request.

- DeBeers has completed a screening under Ontario Regulation 116/01, *The Electricity Projects Regulation*, for the use of 3.6 MW of temporary diesel generators for the advanced exploration and construction of the mine. DeBeers has completed a Category B screening for the project under O. Reg. 116/01 because the proposed electricity generation capacity is between 1 and 5 MW.

  MOE received a request to elevate the project to an individual EA and the Director of the EAAB denied the request. The Minister did not receive any requests under the Electricity Project Regulation to review the Director's decision.

- MNR has completed a screening under the MNR's Class Environmental Assessment for Resource Stewardship and Facility Development Projects (RSFD Class EA) for the disposition of Crown resources and land use permits under the *Public Lands Act* and permits under the *Lakes and Rivers Improvement Act*. The EA requirements for

the disposition of Crown resources by MNR were coordinated through the federal comprehensive study and the transmission line Class EA which was then used by MNR to screen the project as required by the RSFD Class EA.

MOE received a request for a Part II Order and the Minister determined that an individual EA was not required and denied the request. MNR may now issue its Statement of Completion and may proceed with issuing licenses and permits.

- The Victor Diamond Mine Project will also require MOE approval under the OWRA and the EPA for discharges to the natural environment.

- In addition, the federal Environment Minister made a determination that the Victor Diamond Mine Project is not likely to cause significant adverse environmental effects with the mitigation measures outlined in the comprehensive study report.

- *Aboriginal Consultation*

The province is committed to dialogue with the First Nations on projects and project permit applications in the Far North.

- *EAA Initiatives*

The ministry is currently reviewing the recommendations of the Environmental Assessment Advisory Panel to improve the EA process by making it more transparent and efficient.

There are other on-going initiatives that will address the concerns raised in the submission. The Ontario Waterpower Association, for example, is in the process of developing a Class EA for Waterpower Development Projects.

Ss 67 (3) and ss. 68 (1) and (2)

Ss. 67 (3), and ss. 68 (1) and (2) do not apply as there is no existing policy and no decision made within the last five years.

- Ss. 67 (3) states that "in addition, in determining whether the public interest warrants a review of an existing policy, Act, regulation or instrument applied for under subsection 61 (1), the Minister may consider, (a) the extent to which members of the public had an opportunity to participate in the development of the policy, Act, regulation or instrument in respect of which a review is sought; and (b) how recently the policy, Act, regulation or instrument was made, passed or issued."

- Ss. 68 (1) states "for the purposes of ss. 67 (1), a Minister shall not determine that the public interest warrants a review of a decision made during the five years preceding the date of the application for review if the decision was made in a manner that the minister considers consistent with the intent and purpose of Part II" and the exception ss. 68 (2) which states "ss. (1) does not apply where it appears to the Minister that, (a) there is social, economic, scientific or other evidence that failure

to review the decision could result in significant harm to the environment; and (b) the evidence was not taken into account when the decision sought to be reviewed was made."

Conclusion:

The MOE has conducted a preliminary assessment, as per ss. 67 (1) of the EBR, of the application and the evidence provided by the applicants. Having considered ss. 67 (2) and (3) and ss. 68 (1) and (2) of the EBR, MOE has concluded that the public interest does not warrant a review by the MOE of the need for a new policy for comprehensive land use planning in the Far North area of the province before resource allocation decisions are made in the area.