

## ST. MARYS RIVER

### BINATIONAL PUBLIC ADVISORY COUNCIL



9 October 2013

David Orazietti, MPP  
432 Great Northern Road  
Sault Ste Marie, ON, P6B 4Z9

Minister of Natural Resources  
6th Floor, Rm 6630  
99 Wellesley Street West  
Toronto, ON, M7A 1W3

Re: Protection of Wetlands in the St. Marys River Area of Concern.

Dear Minister Orazietti:

On behalf of the St. Mary River Binational Public Advisory Council (BPAC), we are writing because of our concerns for a Great Lakes Coastal Wetland located near Pointe Louise on the upper St. Marys River near its outflow from Lake Superior. The BPAC is a stakeholder group established in 1988 with the purpose, through input to the Remedial Action Plan (RAP), to protect and restore the ecology of the St. Marys River Area of Concern (AOC). The recognition of AOCs and the effort and budget invested in the RAPs are major initiatives of the Ontario government.

No one can turn back the clock and we realize that many parts of the original ecology of the river are lost forever, however we wish in this case to work toward the protection of an existing wetland that is threatened. Within the boundaries of the City of Sault Ste. Marie, nearly 70% of the coastal wetlands have been lost to development. One of the Beneficial Use Impairments identified in the St. Marys AOC is the loss of fish and wildlife habitat. At a time when government agencies are in the early stages of recovering lost habitat, our view is that existing wetlands should not be lost or destroyed.

On July 15, 2013 the City Council of Sault Ste. Marie, Ontario rejected an application by a developer, sometimes known as Chant Construction Limited, to build a 91-lot subdivision at Pointe Louise on the St. Marys River. Both the lead-up process through the Sault Ste. Marie Region Conservation Authority, and the presentations at the council meeting, were long and contentious. Ultimately, council rejected the application because the subdivision would have been built largely in an existing wetland adjoining the St. Marys River and because they were not satisfied that a 2-kilometre-long canal would have the ability to flush out septic tank effluent as claimed by the proponent and his engineers. This matter has been widely reported in the media. One notable issue was whether or not the wetland is "provincially significant"; the proponent argued that it is not, others argue that it is.

The developer has appealed the decision to the Ontario Municipal Board (OMB). This appeal will bring the official status of the wetland back in contention. It is case PL 130890.

The evaluation of the wetland is a complex issue with a number of facets to it, and we have laid out these in some detail. It is, unfortunately, impossible to be brief given the circumstances.

#### IS THIS A "PROVINCIALY SIGNIFICANT" WETLAND

One item that repeatedly arose during the debate at City Council and that will undoubtedly arise in the appeal to the OMB, was the opinion by specialists in environmental assessment that on one hand the wetland in question is not "provincially significant" and that on the other hand, it is. The point rating system used to determine that status reveals that the wetland was always very close to reaching the number of points necessary to be provincially significant; the addition of one more bird such as the Bald Eagle would have garnered the necessary points. The Pointes Protection Association, a citizen group that opposes the development, has evidence of the presence of these large, easily-identified birds at the wetland.

The St. Marys River BPAC feels that this "significant" question should be resolved. We believe that it lies at the heart of the approval or rejection of the subdivision proposal. If the wetland is adjudged, through a standard evaluation process, to be provincially significant, no destruction of it can occur, no development can take place in it, and there is no need to hold costly OMB hearings, as city council has already turned down the proposal.

We have examined all the documents available to us on the wetland and have determined:

- The most recent environmental document regarding the wetland is the "Pointe Estates Subdivision Scoped Environmental Impact Study for Development in a Wetland" produced for Chant Construction by 1353170 Ontario Limited operating as Great Lakes Environmental Services (GLES) and dated "Revised November 27, 2008"
- That document apparently replaced "Pointe Estates Subdivision Environmental Impact Study for Development in a Wetland (DRAFT)" produced for Chant Construction by the same company dated February 2007.
- A document entitled "Point Louise Wetland Evaluation" dated March 2010, by Tulloch Engineering Inc. operating as Great Lakes Environmental Services, is the most detailed report on the wetland and its flora and fauna. It largely follows MNR's Northern Ontario Wetland Evaluation Manual (NOWEM). It is based on GLES site visits in 2004 and 2006, and a "point count" bird monitoring survey



and other site visits in 2009 during June and August, as well as some site visits by MNR staff.

- During the 2009 site visits there were sightings of a Black-crowned Night Heron (listed as a Sensitive Species by MNR's Natural Heritage Information Centre); MNR staff suggested it be included in the species list but GLES suggested it not be included. We question this decision by GLES.
- GLES also rated the category of NOWEM Section 4.2.5 "Migratory Passerine, Shorebird, and Raptor Stopover Area" as 'not significant' and gave it zero rating points out of a 100 maximum. The land area between the open waters of Lakes Superior and Huron forms a choke point for many migrating passerines that spread out into northern Ontario; the Sault Naturalists for many years participated in an annual springtime Raptor Watch at Gros Cap (10 km west of Pointe Louise) because of the high number of hawks to be seen there. Given the location of Pointe Louise where there is only a narrow river separating the north shore from the south shore of the St. Marys River, just before the water opens to the west to become Lake Superior, we question this rating.

Wetlands in general are the habitat of some birds that nest nowhere else. One of the reasons Great Lakes Coastal Wetlands are important to the environment is because they lie at or close to the interface between the open water and the land mass, creating places for wetland bird species to rest after migrating across open water. This particular wetland lies within the narrow land constriction between Lake Superior and Lake Huron; this funnelling effect concentrates birds that migrate over the Michigan landmass and into northern Ontario in spring. We suspect that these factors combine to make all the wetlands along and near the St. Marys River critical to all bird life including the wetland-specific bird life of northern Ontario.

- In category 4.4 "Great Lakes Coastal Wetlands" GLES put the wetland in the 10-50 hectare category that scored as 25 points, while elsewhere they indicate the overall wetland complex is larger, which would have scored it higher. In any event we are unable to find a map in any of the documents that calculates the wetland complex boundaries and full size as described, and required, in the Northern Ontario Wetland Evaluation Manual in Appendix A.
- In addition to the original MNR site evaluation of 1993 that is included in this 2010 evaluation, there were 14 site visits listed from 2004 to 2009; only 4 of these took place in the spring of the year (08, 13, 23, and 24 June 2009) when a variety of songbirds, frogs and toads, and spring-flowering plants are easiest to census and identify.
- The appendices of the lists of species observed in the wetland includes:



- 4 species of ferns (this seems low)
  - 41 species of birds. But according to documents quoted by the Pointes Protection Association, MNR staff apparently questioned whether *breeding* bird surveys were conducted, and GLES replied that they had not.
  - No small mammals (mice, shrews, moles) were recorded although these are generally common and abundant in wild areas, especially around wetlands, and MNR has a standard small-mammal inventory method using live traps. There is no indication that any survey for small mammals was conducted.
  - There is no list of frogs, which are generally found in the wetlands all year and can be easily heard calling in the spring when they are breeding in pools of water. This lack of reported frogs is odd, as it is stated that marsh monitoring was carried out in 2009 (no methodology, dates, or times of day are given) although there were a number of spring site visits. We have surmised that it is possible that no pre-dawn or after-sunset surveys were carried out, or that the surveyors were not knowledgeable about frog and toad species calls. Typical calling frog surveys are dependent on temperature conditions and therefore are spread out over a number of weeks; this takes time that may not have been available to the persons carrying out the monitoring.
  - No salamander monitoring was carried out (many species lay eggs in wetlands) although there are standard survey methods for this, and no turtles (most species live in wet environments) were reported. However, turtles have been photographed in the area by local residents.
  - There are no orchids in the list of herbaceous plants (16 species). The Marks Bay Conservation Area is only 2 kilometres directly north of this wetland, and is a site for some locally rare species including Heartleaf Twayblade, an orchid that is inconspicuous and easily overlooked. The Pointe Louise wetland includes a fen which is a common habitat for orchids, and some fen orchids do not bloom until mid-summer.
- There is an opinion letter from Beacon Environmental, an environmental assessment company based in Ontario that has taught wetland evaluation to MNR staff. They state that the Pointe Louise wetland is likely provincially significant, basing this on the presence of Bald Eagles. Notwithstanding the new information of the presence of Bald Eagles and a Black-crowned Night Heron, local MNR staff has not changed the designation of the site into a Provincially Significant Wetland.
  - There is an opinion letter by Mr. Anthony Usher, MCIP, RPP. He quotes the NOWEM:
    - "The evaluation is not a complete biophysical inventory, and certain information particularly about the presence of rare species and about hydrological functions may be lacking even after the evaluation is completed.



If this is determined to be the case, then more information should be obtained before making decisions about the types of land uses in the vicinity of evaluated wetlands (particularly those deemed to be provincially significant)." (p. 2).

- "The evaluation always remains as an open file, subject to change as more information becomes available or as a consequence of changes to the wetland itself." (p. 14)

#### IS THIS A "COASTAL WETLAND"

Also raised at the City Council debate was whether the wetland in question is a Great Lakes Coastal Wetland. These are rare on the Great Lakes, and especially so on Lake Superior. This wetland is located at Pointe Louise where Lake Superior narrows to form the St. Marys River. While not along the water's edge of Lake Superior or the St. Marys River, it is a fairly typical "dune and swale" type of wetland that lies just inland of Great Lakes waterways. This wetland was part of a much larger coastal wetland complex that has been bisected by the construction of the Sault Ste. Marie airport; at one time there was a virtually continuous wetland complex inland along the shore west of Pointe Louise. Documents submitted by the proponent clearly state that the wetland will be destroyed to construct the subdivision and a canal within it.

The Northern Ontario Wetland Evaluation Manual produced by the MNR defines a 'coastal' wetland as "any wetland that is on the Great Lakes (Lakes Ontario, Erie, Huron, and Superior) or their connecting channels (Lake St. Clair, St. Mary's, St. Clair, Detroit, Niagara, and St. Lawrence Rivers)". However, to our knowledge this wetland is not listed in the Ontario Great Lakes Coastal Wetland Atlas produced by MNR and Environment Canada, although a nearby and similar wetland of the beachridge-and-swale type, the Shore Ridges Conservation Area, is listed. We conclude that the Ministry of Natural Resources has not had the time or budget to critically examine and evaluate all of the wetlands along the St. Marys River.

The Ontario Coastal Wetland Atlas, on page 3, has a definition of Coastal Wetland: "For the purposes of the Atlas, coastal wetlands were considered to be those wetlands within 2 kilometres of the shoreline, greater than 2 hectares in size." The Pointe Louise wetland, at its closest point, is well within 0.5 km of the St. Marys River, and is close to 50 hectares in size.

Based on its proximity to the St. Marys River, and its beach ridge and swale characteristics, we suggest that this wetland falls within the definition of a "Coastal Wetland" and thus should benefit from the protections afforded other coastal wetlands in Ontario.

#### GREAT LAKES PROTECTION ACT and related legislation

First, Minister, we want to commend you and your colleagues in the Government of Ontario for re-introducing, as Bill 6, the Great Lakes Protection Act (GLPA). We hope



and anticipate that it will be passed into law sometime later this year, and urge you as Minister of Natural Resources to support that speedy enactment.

The GLPA is the embodiment, in provincial legislation, of the Canada-United States Water Quality Agreement that was signed in 2012. It includes many statements of purpose that relate to providing increased protection to habitat. We note, particularly, Part I Section 1 (1) that the purposes of the Act include "2. To protect and restore wetlands, beaches, shore-lines and other coastal areas of the Great Lakes-St. Lawrence River Basin."

#### SUMMARY and CONCLUSIONS

1. On reviewing all of the above, we have concluded that there were information gaps in the surveys of the Pointe Louise wetlands conducted to date.
2. Despite the statement by the subdivision proponent and the local MNR staff that the Pointe Louise wetland is not provincially significant, based on additional evidence we strongly suspect that it is.
3. This additional evidence had not been used in the determination of whether or not this wetland is Provincially Significant, even though the Northern Ontario Wetland Evaluation Manual specifically calls for additional evidence to be used.
4. At the very least, the documents support the conclusion that there has not been sufficient examination, in scope and detail, to determine whether this is a provincially significant wetland.
5. We believe that the gaps in knowledge about the flora and fauna in the wetland can be filled, by a concerted effort in additional comprehensive and detailed surveys conducted by qualified personnel, and that these can be used to make a definitive evaluation of whether this is, or is not, a provincially significant wetland.
6. The lack of detail on flora and fauna species and on the methodology and timing of site visits reported by the proponent, and the reluctance to accept the presence of the Black-crowned Night Heron (and the presence of Bald Eagles), suggest that the proponent or GLEs are not the best qualified to conduct detailed surveys of the site.
7. Although the Pointe Louise wetland may not be listed in the Ontario Great Lakes Coastal Wetland Atlas, we believe its location, size, and hydrology qualify it to be included in that category, and by extension, to receive the protection promised in the forthcoming Great Lakes Protection Act.

#### REMEDIES

We feel that there are a number of remedies both immediate and in the longer term that you, in your capacity as Minister of Natural Resources, a member of the Government of Ontario, and the local member for Sault Ste. Marie, can carry out directly or indirectly to resolve this issue.

Immediate solutions:

1. As Minister of Natural Resources, you are able to instruct your staff to engage in an "in office" review of the wetland evaluation of this site, that takes into account the sightings of Bald Eagles and Black-crowned Night Herons, both of which are regarded as species of special interest by MNR, and as provided for in the wetland evaluation methodology. The information available to us indicates that this alone could change the status of the wetland from "not provincially significant" to "provincially significant".

Longer term solutions:

1. If the above cannot be quickly accomplished, as Minister of Natural Resources you have the ability to:
  - a. Ask the proponent for permission for your staff to access his property at Pointe Louise for the purpose of new and supplementary surveys as detailed below, and
  - b. Instruct your staff to carry out a modern, comprehensive, and detailed environmental study of the wetland including:
    - i. Spring and fall migration, and early summer breeding, of birds
    - ii. A "Marsh Monitoring" type investigation (spring calling) of breeding frogs and toads carried out using current methodology and standard timing intervals
    - iii. A survey to determine the use of the wetland and adjoining uplands by turtles and salamanders (these latter often lay their eggs in adjoining wetlands)
    - iv. A survey of small mammals using current live trapping techniques
    - v. Summer nocturnal survey for bats and other wildlife
    - vi. Botanical survey to determine the full list of plant species, carried out in spring, summer, and fall to capture the species that are prevalent in each season
    - vii. Use trained and experienced staff to achieve the above
  - c. Collate the surveys and apply them to the numerical rating system for Provincially Significant Wetlands using the Northern Ontario Wetland Evaluation methodology.
2. By way of an Ontario Regulation made under the Great Lakes Protection Act, the government of Ontario can declare all Great Lakes Coastal Wetlands that are listed in the Ontario Great Lakes Coastal Wetland Atlas as "Provincially Significant".
2. By way of an Ontario Regulation made under the Great Lakes Protection Act, the government of Ontario can make provisions for the addition of other coastal wetlands such as the wetlands at Pointe Louise, as Provincially Significant, through the setting of simple criteria such as:
  - a. All wetlands within or partly within 2 km of the shore of the Great Lakes or connecting waters, and
  - b. Greater than 2 hectares in size or having a significant natural feature



4. By way of an Ontario Regulation made under the Great Lakes Protection Act, the government of Ontario can declare a buffer zone of 120 metres around each Great Lakes Coastal Wetland that is also a Provincially Significant Wetland, to be part of that wetland.

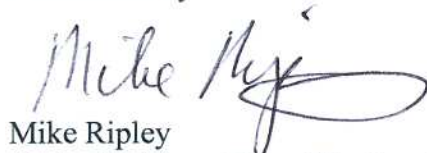
All of these would demonstrate that the Government of Ontario is taking positive steps to implement the purposes of the Great Lakes Protection Act. Further, it would demonstrate a commitment by you as the provincial member for Sault Ste Marie to the Remedial Action Plan for the St. Marys River Area of Concern, and support for the decision reached by the City Council of Sault Ste. Marie in rejecting the application by Chant Construction Limited to build a 91-lot housing subdivision in an existing Great Lakes Coastal Wetland.

Signed



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