

SUMMARY OF COMMENTS/RECOMMENDATIONS

PROPONENT: Manitoba Conservation,
Parks and Natural Areas Branch
PROPOSAL NAME: Duck Mountain ATV Trail Project
CLASS OF DEVELOPMENT: 2
TYPE OF DEVELOPMENT: Recreation
CLIENT FILE NO.: 5524.00

OVERVIEW:

An Environment Act Proposal for the project was received on April 12, 2011. The advertisement of the Proposal read as follows:

“A proposal has been filed by the Parks and Natural Areas Branch of Manitoba Conservation for the development of designated All Terrain Vehicle (ATV) trails in Duck Mountain Provincial Park. The purpose of the project is to reduce the environmental impact of off-road vehicle use in the park by establishing a system of designated ATV trails. The project is scheduled to begin in the summer of 2011 and be completed in phases over a period of 5 to 10 years.”

The Proposal was distributed to the "Recreation" TAC for review and was advertised in the Winnipeg Free Press on Saturday, June 4, 2011, and in The Dauphin Herald, The Roblin Review, The Swan Valley Star and Times, and the Grandview Exponent on June 7, 2011. It was placed in the following public registries: Conservation & Environment Library, Manitoba Eco-Network, Millennium Library, the North-West Regional Library and the Dauphin Public Library. Comments were requested by July 6, 2011.

A request for additional information was sent to the Proponent on July 8, 2011. A response was received on November 8, 2011. The request for additional information and the Proponent's response were placed in the public registries.

COMMENTS FROM THE PUBLIC:

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ROE OKO

The following are my comments on the aforesaid proposal. They are listed in the same chronological order as in the EAP itself.

EAP Form

A class 2 proposal such as this requires the payment of a \$5,000 fee. The only logical payer is ATV Manitoba. Who paid the fee?

1.0 Executive Summary

“The purpose of this project is to reduce the environmental impact” of ATVs” (emphasis mine). What does this mean, exactly? By what percentage will damage be reduced? What is an acceptable level of damage in a provincial park when it is caused by ATVs?

Paragraph 2 of the Executive Summary lists “potential impacts”. Why spin-doctor the terminology? “Potential impacts” is really “guaranteed damage”.

Paragraph 3 of the Executive Summary refers to “A community-based Trails Working Group”. From the first day the TWG was dominated by local ATV proponents. In no way was it representative of a broader community.

Paragraph 7 of the Executive Summary asks that the environmental license, that will undoubtedly be issued promptly, be effective for at least 10 years. This is nonsense. Throughout the body of the document it is clear that this is a giant experiment with unknown outcomes. This license should require annual renewals based on the performance of the Parks Branch and the behaviour of ATVers.

2.2 History of ATV Use

In response to the rapid rise in the number of ATVs on the land, the province is dutifully responding by spending money and effort on this regrettable phenomenon. But when canoeists and kayakers ask for more road-accessible lakes to be designated for non-motorized vessels we are ignored.

The last paragraph of this section makes the amazing conclusion that ATV use has contributed to the drop in the park’s moose population while the entire document actually encourages the use and ultimate growth of ATV use. In Manitoba, ATVs out rank moose in parks.

2.3 Trails Working Group

See paragraph 2. It is not surprising that “the TWG has established a shared understanding of ATV issues” (emphasis mine). Preaching to the choir will get you that.

See paragraph 3. I really need more elaboration on “new enforcement and public education strategies”. Expect to fail on this one. After all, it was irresponsible behaviour by ATVers that got them rewarded with this EAP.

3.5 Description of Proposed Development

See paragraph 2. It is appalling that ATV trails will lead into fishing lakes. The noise, pollution and litter that they will introduce is inevitable.

3.6 Funding

The EAP anticipates a 10 year endeavour but government funding is requested for only 5 years. This is not how one balances a budget. And don’t get your hopes up about significant contributions from other groups, especially ATVers.

5.0 Description of Environmental effects of the Proposed Development

Apparently, “the environmental effects of the proposed development will be reviewed on an ongoing basis” (emphasis mine). Yes, but will they be reported to the public?

5.5 Trail Development

See paragraph 2. “Best practices for ATV trail development” is an oxymoron in a provincial park. Given the dismal maintenance regime now in force in Manitoba’s provincial parks I see no reason to expect that the intensive maintenance required on ATV trails will ever be performed. The Parks Branch, today, cannot paint picnic tables, shingle cooking shelters or repair fire pits.

6.0 Mitigation Measures and Residual Environmental Effects

See bullet 1. “Noise, vehicle emissions, garbage and fire hazard concerns may be higher in areas with designated ATV trails.” No, really?

See bullet 3. Where I live no amount of observing trails prevents ATVers from trespassing. They view it as a challenge.

7.0 Follow-up Plans, including Monitoring and Reports

See bullet 1. “Park staff will visually monitor and assess trail conditions on an annual basis.” Does this mean once per year?

See bullet 2. “An enforcement strategy will be developed”. This is an Environment Act Proposal, not a wish list. The license should be withheld until the strategy is defined and accepted as having some chance of success. Otherwise, this is boiler plate.

See bullet 3. What is “Public education programming”, if not more boiler plate? An EAP is meant to be rigorous. This is loose talk and merely demonstrates that the Parks Branch is doing the bidding of ATVers.

See bullet 6. The “Establishment of a volunteer Trail Ambassador program” is proof that the Parks Branch is not prepared to follow through with legitimate enforcement. It would rather let the fox guard the hen house.

Other

I cannot seem to find a definition of “ATV” in this EAP. Does it include high-revving, yappy dirt bikes with narrow tires that gouge the landscape? Does it include go-carts and home-made vehicles? Does it include Jeeps and dune-buggies?

Conclusion

I have no doubt that the EAP will be approved. Upon that event, I request that Duck Mountain Provincial Park be decommissioned as a park. The combination of Louisiana-Pacific and ATVs is intolerable.

Proponent’s response:

Different parks are managed to provide different types of recreational opportunities, with ATV trails offered in a very limited number of areas. At Duck Mountain Provincial Park, the effect of a designated trail system will be to better protect natural areas by reducing the overall number of trails in the park and by restricting the operation of ATVs to specific routes. Trail use will be limited to all-terrain and all-terrain utility vehicles as defined by The Off-Road Vehicles Act and Manitoba Public Insurance. Other types of off-road vehicles such as dirt bikes, dune buggies, sport buggies and four wheel drive trucks will not be permitted. Managing ATV use in Manitoba is a significant and ongoing challenge. The Trails Working Group for Duck Mountain Provincial Park includes a wide range of interests and all project newsletters, questionnaires and reports have been distributed and posted online for public review. Subject to environmental licensing,

Parks and Natural Areas will continue to consult with the public and provide regular updates as the project proceeds.

Disposition:

The comments were addressed in the proponent's response and in licence conditions.

COMMENTS FROM THE TECHNICAL ADVISORY COMMITTEE:

Parks and Natural Areas Branch

No comments.

Disposition:

No action needed.

Manitoba Conservation - Aboriginal Relations Branch

Hunting, gathering and harvesting of food and medicines as well as ceremonial activities may be hindered if access to established trails are blocked. ARB recommends that a consultation assessment (form available on the intranet sight : <http://gww.internal/mcacr/>) to determine if consultation is required. If required then consultation should take place to ensure that Aboriginal and Treaty rights are mitigated and accommodation is considered.

The Government of Manitoba has a duty to consult in a meaningful way with First Nations, Métis communities and other aboriginal communities when any proposed provincial law, regulation, decision or action may infringe upon or adversely affect the exercise of a treaty or aboriginal right of the First Nation, Métis community or other aboriginal community.

As Manitoba Conservation is aware, if a thorough, adequate consultation process is not completed by the Government of Manitoba, the possibility of a successful legal challenge from First Nation and Aboriginal communities is significantly increased. The claim could be based on an unjustified infringement(s) of a Treaty or Aboriginal right.

We assume that we do not know all of the aboriginal rights that are beyond the assertions already made and therefore information gathering and consultation results in these issues being brought forward by the people who practice them and use the land. Issues are accommodated and building relationships in a process like this includes assessments on the following; Traditional Ecological Knowledge (TEK), capacity building and education, adequate information sharing and access, environmental impacts, heritage, cultural and significant sites, socio-economic impacts and public involvement in the process from the start.

Proponent's response:

ATV trail planning for Duck Mountain Provincial Park has involved communications between Manitoba Conservation staff and the West Region Tribal Council (WRTC), Pine Creek First Nation and Tootinaowaziibeeng (Valley River) Treaty Reserve. Pine Creek and Valley River are located geographically nearest to the park and are most likely to be affected by park activities. The WRTC, Pine Creek and Valley River have participated in the management planning process

for Duck Mountain Provincial Park and have been involved in subsequent ATV trail planning meetings. The use of ATVs for the exercise of Aboriginal and Treaty rights will not be affected by this project, which is directed at recreational ATV use only. Based on Manitoba Conservation's initial assessment, formal consultations are not required, however the continued participation of the WRTC, Valley River and Pine Creek will be an important part of all future ATV trail planning activities.

Disposition:

It has been determined that Crown consultation is not required for this project (see the Crown-Aboriginal Consultation section below). However, neighbouring First Nations have been and continue to be involved in the ATV trail planning activities.

Manitoba Conservation - Sustainable Resource & Policy Management Branch

The EA proposal guidelines include: "identification of First Nation communities in the vicinity of the proposed development". It is my understanding that the DMPP trails working group has First Nation representation (page 3). I suggest more detail with regard to representation of "First Nation communities in the vicinity" to better demonstrate proponent and FN involvement thus far.

Disposition:

Information on the involvement of First Nations is provided in the proponents response to the Aboriginal Relations Branch's comments above.

Manitoba Water Stewardship

- Manitoba Water Stewardship requires an Environment Act Licence to include the following:
 - The Licencee is required to comply with the guidelines of Manitoba's All Terrain Vehicle Interdepartmental Committee.
 - Manitoba Water Stewardship was advised that a contact person is Ms. Rebecca McKay, Senior Policy Analyst, Manitoba Conservation, telephone: (204) 945-0819.
 - The Licencee is required to located a course or trail for an "all terrain vehicle" or "off-highway vehicle" at least 30 metres away from the shoreline of all surface waters, marsh areas, and wetlands.
 - An "all terrain vehicle" or "off-highway vehicle" must not be driven in the banks of surface waters, wetlands, or marsh areas, at any location.
 - Any rutting that occurs from repetitive use, particularly if it is wet when the event occurs, and if it has the potential to enter surface water, should be addressed (leveled and re-vegetated).
 - The Licencee is required to comply with the Manitoba Stream Crossing Guidelines for the Protection of Fish and Fish Habitat (attached).
 - In order to protect riparian areas, the Licencee is required to establish and maintain an undisturbed native vegetation area located upslope from the ordinary high water mark and adjacent to all waterbodies and waterways connected to the provincial surface water network:
 - A 30-metre undisturbed native vegetation area is required for lands located adjacent to all surface waters, including wetlands;

- Permanent development is prohibited within an undisturbed native vegetation area;
 - The combined alteration—including new and existing structures—within this undisturbed native vegetation area is limited to a maximum of 25 % of the shoreline length (for example: 25 metres per 100 metres of shoreline length) of each lot for a boat house, path, dock, etc.; and,
 - Alteration within this undisturbed native vegetation area—including a dock and/or the removal of near shore or stream aquatic habitat—shall not occur unless an activity conforms to a Department of Fisheries and Oceans Canada Operational Statement or an activity is reviewed by the Department of Fisheries and Oceans Canada.
 - The Licencee is required to comply with Manitoba Water Stewardship’s Wetland Policy:
 - The net loss of semi-permanent or permanent wetlands shall not occur. Wetlands are defined as areas that are periodically or permanently inundated by surface or ground water long enough to develop special characteristics including persistent water, low-oxygen soils, and vegetation adapted to wetland conditions. These include but are not limited to swamps, sloughs, potholes, marshes, bogs and fens.
 - A proponent shall establish and maintain an undisturbed native vegetation area with at least a 30-metre width.
 - Prior to the commencement of construction of all stream crossings that require culverts or bridges, the Licencee is required to submit an application for a Water Rights Licence to Construct Water Control Works:
 - A contact person is Mr. Ed MacKay, C.E.T., Senior Water Resource Officer, Water Control Works and Drainage Licensing, Manitoba Water Stewardship, 1129 Queens Avenue, Brandon, Manitoba R7A 1L9, telephone: (204) 726-6226, email: ed.mackay@gov.mb.ca.
 - The Licencee is required to develop a standard protocol to prevent the introduction of foreign biota:
 - A contact person is Ms. Lauren Janusz, Fisheries Biologist, Fisheries Branch, telephone: (204) 945-7789.
 - The Licencee is required to develop and implement an Emergency Response Plan, including provisions for oil spills, gas spills, fires, and floods.
- Manitoba Water Stewardship submits the following recommendations:
 - Manitoba Water Stewardship recommends including water sources for public water systems in an inventory (section 5.1 of the proposal) of features to be considered as part of the evaluation process in determining trail alterations.
 - Stream crossings are implemented at designated road crossings. If this is not feasible, Manitoba Water Stewardship recommends implementing clear span bridges to minimize alteration to the stream’s hydrology and allow unrestricted fish passage.
- Manitoba Water Stewardship submits the following comments:
 - Manitoba Water Stewardship does not object to this proposal, at this time.
 - The Manitoba Department of Water Stewardship’s recent policy direction recommending undisturbed native vegetation areas to protect water is founded, in part, on the 135 recommendations in the Lake Winnipeg Stewardship Board’s (December 2006) report titled, “Reducing Nutrient Loading to Lake Winnipeg and its Watershed, Our Collective Responsibility and Commitment to Action.” All 135 recommendations were accepted in principle by the Minister of the Manitoba Department of Water Stewardship, on behalf of the Government of Manitoba.

- Maintaining an undisturbed native vegetation area immediately adjacent to the shoreline of lakes, rivers, creeks, and streams helps stabilize banks, provides aquatic and wildlife habitat and protects water quality through filtering overland runoff. The width of an undisturbed native vegetation area should be the widest width possible and practical. In conjunction with other best management practices such as eliminating fertilizer use adjacent to surface waters, and the proper management and disposal of waste water, maintaining an undisturbed native vegetation area adjacent to waterbodies is important to help prevent degradation of water quality.
- The Manitoba Department of Water Stewardship is mandated to ensure the sustainable development of Manitoba's water resources. Manitoba Water Stewardship is committed to the goals of: protecting aquatic ecosystem health; ensuring drinking water is safe and clean for human health; managing water-related risks for human security; and stewarding the societal and economic values of our waterways, lakes and wetlands; for the best water for all life and lasting prosperity. Manitoba Water Stewardship achieves these goals, in part, through administering legislation, including *The Water Protection Act*, *The Water Rights Act*, and *The Water Power Act*.

Disposition:

The comments were addressed in licence conditions and forwarded to the proponent for their information. The Sustainable Resource Management and Policy Branch has indicated that the All Terrain Vehicle Interdepartmental Committee does not have guidelines.

Manitoba Culture, Heritage and Trade - Historic Resources Branch

I have reviewed the above-noted application for an Environment Act License. The Historic Resources Branch has concerns with regard to this project's potential to impact heritage resources.

Section 5.1 Mapping indicates that archaeological sites will be compiled. The contact person for this information is Gary Dickson, Manager, Provincial Heritage Registry Services at the Historic Resources Branch. He can be contacted at Gary.Dickson@gov.mb.ca or 204-945-4420.

In order to identify and assess any heritage resources that may be negatively impacted by the ATV trail, it is recommended that an archaeological consultant be employed to conduct a heritage resource impact assessment. If desirable, the Branch will work with Manitoba Conservation to draw up terms of reference for this project.

If at any time significant heritage resources are recorded in association with these lands during development, the Historic Resources Branch may require that an acceptable heritage resource management strategy be implemented by the developer to mitigate the affects of development on the heritage resources.

Proponent's response:

The June 10, 2010 memo from Gordon Hill has been followed up. Gary Dickson, Historic Resources Branch was contacted with respect to mapping of archaeological sites. It was agreed that when potential trail routes are selected, an on-site heritage resource impact study will be conducted as directed.

Disposition:

Heritage resource impact assessments are required as a licensing condition.

Manitoba Infrastructure and Transportation

MIT has reviewed the Environment Act Proposal noted above and while we have no objection to the ATV Trails Project, we would like to draw attention to the following:

- MIT would like to be consulted for input once the proposed trail routes have been established. Both MIT Region 1 and Traffic Operations need to review the access points to and from the Provincial Roads (PR 366 and PR 367) within the Park as well as trail signage within the Highway right of way.

Disposition:

The comments were address as a licensing condition and forwarded to the Proponent for their information.

Canadian Environmental Assessment Agency (CEAA)

Based on responses from federal departments, application of the *Canadian Environmental Assessment Act* with respect to the project will not be required.

PUBLIC HEARING:

A public hearing is not recommended.

CROWN-ABORIGINAL CONSULTATION

It has been determined that Crown-Aboriginal consultation is not required for this project. The use of ATVs for the exercise of Aboriginal and Treaty rights will not be affected by this project, which is directed at recreational ATV use only. Visual inspections of proposed trail segments are to be conducted to identify any cultural features that should be avoided.

Pine Creek First Nation and Tootinaowaziibeeng (Valley River) Treaty Reserve are located geographically nearest to the park and are most likely to be affected by park activities. The ATV trail planning has involved communications between Manitoba Conservation, the West Region Tribal Council (WRTC), Pine Creek, and Valley River. The WRTC, Pine Creek and Valley River have been and will continue to be involved in ATV trail planning meetings.

RECOMMENDATION:

The comments received on the Proposal can be addressed as conditions of licensing for the project, or have been forwarded to the Proponent for their information. Therefore, it is recommended that the Development be licensed under The Environment Act subject to the limits, terms, and conditions as described in the attached Environment Act Licence. It is further recommended that enforcement of the Licence be assigned to the Western Region prior to construction.

PREPARED BY:

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November 10, 2011

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