



Aaron L. Felt BA, LLB, LLM
Law Office
51 New Cove Road
St. John's, NL
Canada A1A 2B9

709 754 0401 (Voice)
709 330 3396 (Cell)
709 754 9901 (Fax)

aaron.felt@gmail.com (email)

Dept. of Environment
& Conservation

JAN 12 2015

Environmental
Assessment Division

RECEIVED

JAN 07 2015

Deputy Minister's Office
Dept. of Environment & Conservation

Monday December 22, 2014

Justin S.C. Mellor
Solicitor- Civil Division,
Office of the Attorney-General
Government of Newfoundland and Labrador
4th Floor, East Block, Confederation Building
P.O. Box 8700 St. John's, Newfoundland A1B 4J6
Tel (709) 729-6564
Fax (709) 729-2129

Dear Mr. Mellor,

Please find enclosed my clients' formal submission as per s. 107 of the NL
Environmental Protection Act. I look forward to hearing your response.

Sincerely,

Aaron Felt
Solicitor for the Appellants

December 13, 2014

The Honourable Dan Crummell
Minister, Department of Environment and Conservation
Government of Newfoundland and Labrador
P.O. Box 8700
St. John's, NL A1B 4J6

Dear Minister Crummell:

Pursuant to s. 107 of the Environmental Protection Act (EPA), we are writing to appeal your decision to release the Big Triangle Pond Mineral Exploration Access Road (Reg. 1725) from environmental assessment.

We represent a group of cabin owners and recreational users of the area where the proposed undertaking will occur. We initially outlined our concerns about this undertaking in a formal submission to the Department regarding the proponent's Environmental Preview Report (EPR). Our original submission, which was endorsed by 148 cabin owners and recreational users of the area, is attached for your information. Many of the concerns that we raised in our submission remain unaddressed.

We are appealing the decision on the grounds that neither the proponent's EPR nor the release's conditions appropriately assessed the undertaking's potential socio-economic impacts on land owners and recreational users of the area.

It is our contention that:

1. Assessment of social, economic, recreational, cultural, and aesthetic impacts of a proposed undertaking is required under the EPA.
2. The environmental assessment process has failed to adequately assess the public's concerns about the social, economic, recreational, cultural and aesthetic impacts of the proposal on the current land owners and users of the area.
3. Failure to assess and address these socio-economic impacts has resulted in a decision that is not consistent with the stated aims of the EPA.
4. An environmental impact statement should have been ordered based on the information received from the public regarding the proponent's EPR.

We outline our arguments related to each of the above points in the sections below.

1. Assessment of social, economic, recreational, cultural, and aesthetic impacts of a proposed undertaking is required under the EPA.

We note the following definitions under the EPA:

"environment" includes: (i) air, land and water, (ii) plant and animal life, including human life, (iii) the social, economic, recreational, cultural and aesthetic conditions and factors that influence the life of humans or a community, (iv) a building, structure, machine or other device or thing made by humans, (v) a solid, liquid, gas, odour, heat, sound, vibration or radiation resulting directly or indirectly from the activities of humans, or (vi) a part or a combination of those things referred to in subparagraphs (i) to (v) and the interrelationships between 2 or more of them.

"environmental effect" means a change in the present or future environment that would result from an undertaking.

"environmental assessment" means a process by which the environmental effect of an undertaking is predicted and evaluated before the undertaking has begun or occurred.

It is clear that the term "environment" as used throughout the EPA specifically includes people and a range of socio-economic factors that affect them. Consequently, "environmental effect" includes changes in the present and future social, economic, recreational, cultural and aesthetic conditions experienced by people, and the "environmental assessment" process therefore must include the prediction and evaluation of these socio-economic effects on people before an undertaking has begun.

2. The environmental assessment process has failed to adequately assess the public's concerns about the social, economic, recreational, cultural and aesthetic impacts of the proposal on the current land owners and users of the area.

The need to assess socio-economic impacts was apparently recognized to a limited extent in the guidelines issued to the proponent for preparation of the EPR which required the proponent to "Identify how the proposed road and mineral exploration will avoid interference with the rights of other land owners/users." However, the proponent was not asked to provide details on how the road and exploration activities would impact the social, economic, recreational, cultural and aesthetic conditions that influence the people who currently use the area.

In response to the requirement to identify how interference with the rights of others would be avoided, the proponent claimed that there are "no other known landowners within the project area" (EPR p. 17), that they "do not foresee any interference with the rights of any landowners or users" (EPR p. 17), and that this project would "eliminate any potential interference with public recreational needs and potential safety concerns" (EPR p. 14). The proponent provided no information to support these statements and included no discussion about the potential socio-economic impacts of the proposed undertaking.

Despite these claims by the proponent, a significant number of cabin owners and recreational users came forward through the public comment phase to express concern about disruption of recreational activities, impacts on aesthetics of the area, impacts on the property values of local land owners, and concerns about impacts on the personal safety of people using the area. In our own submission, we included an extensive discussion regarding our concerns about the socio-economic impacts of the proposal on cabin owners and people using the area for recreation and nature appreciation (see page 3, attached submission). Our discussion was supported by available information on the number of cabins in the area, the proximity of the road and exploration activity to those cabins and to areas used for recreation, and by our own local knowledge about the types and extent of recreational activities undertaken throughout the area of proposed mineral exploration. We also argued that the likelihood of recreational users and cabin owners encountering road construction and exploration activities while using this area will be very high, and that allowing this undertaking to proceed will therefore put the personal safety of existing users at risk.

We are aware that a number of other groups/organizations made submissions to the department in which they raised similar concerns. Likewise, similar concerns were expressed by numerous people in various public media (letters to the Telegram, VOCM open line, Newfoundland Sportsman, etc.) during the consultation phase. The Department would have been well aware that there was a high level of public concern about socio-economic impacts of this project, as well as a high level of public opposition to the undertaking in general.

However, despite the department being receiving that information, the potential socio-economic impacts were apparently ignored in the decision to release this undertaking from environmental assessment. The proponent was not ordered to amend the EPR to provide additional information about existing land owners/users and their activities, no component studies were ordered to collect baseline data on the social, economic, recreational, aesthetic, or cultural environment, no effort was made to

assess and predict the potential socio-economic impacts, and none of the conditions attached to the release of the undertaking addressed any of the public's concerns about how the undertaking would impact people who currently use the area. The department apparently accepted the proponent's claims about the lack of other land owners/users in the area without verifying the accuracy of these claims, and despite being in possession of information to the contrary.

Consequently, the extent to which this undertaking will impact the social, economic, recreational, aesthetic, and cultural environment has not been fully investigated, and the public's concerns about those impacts - including significant concerns about the personal safety of people using this area for family-based outdoor recreation - remain unaddressed.

3. Failure to assess and address these socio-economic impacts has resulted in a decision that is not consistent with the stated aims of the EPA.

Part X of the EPA states as its purpose to: *"(a) protect the environment and quality of life of the people of the province; and (b) facilitate the wise management of the natural resources of the province, through the institution of environmental assessment procedures before and after the commencement of an undertaking that may be potentially damaging to the environment."*

As established above, the "environment" includes people and the socio-economic factors that affect them. Consequently, protecting the environment and quality of life of people must include protecting people from unreasonably negative socio-economic impacts associated with proposed developments. Assessment procedures must therefore include a full accounting of such potential socio-economic impacts, including impacts on recreation and aesthetics. This method of accounting is consistent with internationally accepted standards of environmental impact assessment.

Thus, to meet the stated aims of the Act, the impacts of this undertaking on people and the way they use and value the natural environment should have been assessed and considered in the decision. The failure to do so in this case makes it impossible to determine if the environment and quality of life of people have been protected, or if the natural resources in question are being managed "wisely".

Given the significant concerns expressed by the public about the ecological, social, recreational, aesthetic, and economic impacts of this undertaking, it is unlikely that the public will consider their environment or quality of life to be protected should this undertaking be allowed to proceed, nor will they likely view this undertaking as a wise use of the natural resources of the province.

4. A full Environmental Impact Statement should have been ordered based on the information received from the public regarding the proponent's EPR.

Section 25 of the Environmental Assessment Regulations provides clear guidance to the minister as to when an environmental impact statement is required: *"Where the minister determines with respect to an undertaking that there (a) may be significant negative environmental effects; or (b) is of significant public concern, the minister shall require an environmental impact statement."*

The Regulations list nine criteria that the minister can examine when determining if there may be negative environmental impacts or significant public concern. Within the context of environment as defined in the EPA and noted above, the Big Triangle Pond Road undertaking fails 6 of those criteria on socio-economic grounds as outlined below. Based on this analysis, we believe that there was sufficient evidence of potential negative effects on the socio-economic environment and sufficient evidence of significant public concern to require the preparation of an environmental impact statement.

Environmental Criteria

Criteria A: Whether or not the environmental baseline information provided with respect to the undertaking is sufficient for predicting environmental effects.

There is very little baseline information available about the socio-economic environment of the area. The proponent provided an aerial photo which included the locations of recreational cottages and trails used by cottage owners and others to access the area. But despite providing this information on the photo, the proponent claimed that there are "no other known landowners within the project area" (EPR p. 17). No information was provided on the number of people who currently use the area, the types of activities that are undertaken there, where and when those activities occur, the economic importance of those activities, or how people who engage in those activities would interact with the proposed exploration activities. Although the aerial photo would suggest that impacts on people are likely given the proximity of the road and exploration activities to existing cabins and trails, it is not possible to predict the effects on the socio-economic environment using the information provided by the proponent.

Criteria B: Whether or not original field data collection is required.

To the best of our knowledge, baseline data on the socio-economic environment in this area is not available. Consequently, predicting and/or mitigating the socio-economic impacts of the undertaking would require the collection of original data to address the information gaps identified in *Criteria A* above. We note that the proponent was directed to collect original data on lichen distribution in the project area as a condition of release, but was not directed to collect any data on the timing and distribution of recreational activities or any other aspects of the socio-economic environment.

Criteria C: Whether or not the undertaking would be located in an environmentally sensitive area.

This area is environmentally sensitive from a social, recreational, and aesthetic perspective. As we noted in our original submission, the area through which the road will be constructed is highly valued and extensively used by a large number of people for a range of outdoor recreation activities and nature appreciation. This area is one of the few parts of the Salmonier Line that hasn't been opened up by road and cottage development in recent years, and thus provides excellent (and increasingly rare) opportunities for remote/back country recreation in a wilderness setting.

These types of recreational activities in this kind of setting are highly sensitive to impacts from the types of exploration activities proposed, for two reasons. First, road construction/operation and associated mechanized mineral exploration activities will directly interfere with current recreational users' access to, use of, and enjoyment of the area, and will pose a safety risk to people using the area. Second, the existence of the road and the associated ecological impacts of the exploration activities will degrade the aesthetic and wilderness values of the area that attract people there for remote/back country recreation. Once this area is opened up with a road, grid lines, and drill trails, it will not provide the same types of recreational experiences as it does now, and there are few (if any) substitute areas remaining on the Avalon Peninsula.

Criteria G: The economic importance of a resource to which the undertaking relates.

The area has significant economic importance to cabin owners and recreational users. As noted in our original submission, there are approximately 18 wilderness cabins within or in close proximity to the proposed area of exploration. Additionally, there are approximately 70-80 cabins on the eastern side of Salmonier Line within a few hundred meters of the boundary of the proposed exploration activities and within the area of the mineral exploration licenses held by the proponent. These cabin owners have expressed significant concerns about the impact of this undertaking and possible subsequent mining development on the values of their properties.

An important indicator of the economic value of the resource is the amount of money spent by people using this area for outdoor recreation. At present, no such data exist from which to make an estimate

of the economic importance of the area from a recreation standpoint, but the value placed on this area and the money spent by people using this area for recreation is likely to be large given the number of people involved.

We also note that the economic importance of the mineral resources being sought is unproven. Indeed, significant mineral deposits have yet to be discovered in the area, and the proponent acknowledges that the road "is not intended for any potential commercial production during exploration activities or in the future." (EPR p.10), and that as with most mineral exploration projects, there is "little chance" of finding "commercially viable economic mineral deposits" (EPR p. 11). Consequently, construction of the road cannot be justified on the basis that the underlying mineral resources are economically important.

Public Concern Criteria

Criteria A: Whether public acceptability of the undertaking is seriously questioned.

A large number of people are concerned about this undertaking. We believe that the department likely received substantially more submissions concerning this undertaking than they have for most other environmental assessments. Furthermore, as noted above, concerns about this undertaking have been expressed repeatedly in the public media, with members of the public raising a variety of concerns about the ecological, social, recreational, aesthetic, and economic impacts of this proposal. There is ample evidence that the public acceptability of the undertaking is seriously questioned.

Criteria B: Whether government policy has been established to address public concerns.

As discussed previously, the public's concerns about the potential social and economic impacts of the undertaking remain unassessed and unaddressed by the environmental assessment process, and no other policy has been established to address these concerns. We note that the conditions of release contain measures to attempt to answer the public's concerns about the ecological impacts of the proposal, but those conditions do nothing to address the significant concerns expressed about socio-economic impacts. We also note that there was no opportunity for the public to comment on the terms of reference for the Environmental Protection Plan or the Environmental Effects Monitoring Plans.

Conclusion

In summary, we argue that the environmental assessment process for this undertaking was seriously flawed because it failed to adequately investigate the potential social, economic, recreational, and aesthetic impacts on existing users despite concerns about such impacts being raised by a substantial number of people as part of the assessment process. Given the information that was available to the minister at the time, we believe that the Environmental Assessment Regulations required the preparation of an environmental impact statement to properly assess and address the full range of impacts of the undertaking.

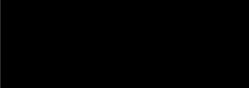
Failure to follow proper procedures has resulted in a decision that is not consistent with the aims of the EPA. Rather than protecting the quality of life of people who use the area, the decision has put cabin owners and recreational users in direct conflict with mechanized exploration activities which are incompatible with current uses and which even the proponent admits "could potentially be disruptive and pose a safety risk to the residents of the area" (EPR p. 5).

We note that the proposed road and associated activities are for exploration only – to date there have been no economically viable mineral deposits identified in the area and, as the proponent points out, if deposits are identified there is no guarantee that extraction will occur. We also note that these types of exploration activities in remote and inaccessible areas can be - and usually are - done without requiring road construction (i.e., using either helicopter or winter access), and they are usually done in stages to minimize environmental impacts should initial exploration prove unfruitful. In this case, construction of an 11 km road appears to be entirely for the proponent's convenience, and it will not lead to any public benefits. Given this, and given the nature and extent of the public's concerns that

remain unaddressed, we argue that the undertaking should not proceed without a full accounting of the costs and benefits and without extensive public consultation, both of which would be required through the preparation of an environmental impact statement.

Therefore, we request that the decision to release this undertaking from environmental assessment be overturned, and either a) the undertaking be rejected on public interest grounds; or at the very least b) a full environmental impact statement be ordered.

Sincerely,



Jeff Ivany



Jason Ivany



Stephen Sutton



Tobin's Pond, Salmonier Line

Enclosure: Cabin owners' submission regarding proponent's EPR.