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Your file / *Votre référence*

Our file / *Notre référence*

May 30, 2010

Louissette Lanteigne
700 Star Flower Ave.
Waterloo Ontario
N2V 2L2

Dear Ms. Lanteigne,

Thank you for your e-mail of May 12, 2010, expressing concerns over site inspection findings related to Clair Creek.

In previous correspondence, we have underscored that the mandate of Fisheries and Oceans Canada (DFO)'s Fish Habitat Management Program. This mandate includes the conservation and protection of fish and fish habitat through the implementation of policies and programs related to the application of the *Fisheries Act* and *Species at Risk Act*. We have also provided information on how DFO, in association with other federal, provincial and municipal agencies to proactively and reactively conserve and protect aquatic resources in Ontario.

Land use planning being undertaken by provincial agencies and Conservation Authorities per the Ontario Planning Act provides a strong mechanism to proactively conserve and protect aquatic resources. While decisions made during land use planning can protect areas of sensitive fish habitat, DFO does not have the mandate to participate in or audit decisions made by the Ontario Municipal Board (OMB) or other planning authorities. In fact, decisions made by the OMB are not binding on DFO—irrespective of the OMB's decision, developers undertaking works or undertakings that have the potential to impact fish and fish habitat are still subject to requirements of the *Fisheries Act*.

Acknowledging the relationship between land use planning and regulatory requirements for works or undertakings that may impact fish and/or fish habitat, DFO has formal agreements with Conservation Authorities (CA)'s throughout Ontario. By virtue of CA's being placed within the watersheds they regulate per the Conservation Authorities Act they are well positioned to monitor, study and regulate aquatic resources therein. Their strong understanding of the natural resources within their watershed(s) enables them to make science-based regulatory decisions. Many CA's like the Grand River Conservation Authority (GRCA) have developed integrated

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watershed and fisheries management plans that further enhance their ability to make regulatory decisions that contemplate issues and opportunities within a watershed context.

By being engaged in the full spectrum of pro-active (e.g. land use planning) and reactive (e.g. CA regulations) management of projects that have the potential to impact fish and fish habitat, CA's are well positioned to guide a development from concept to detailed design.

Within the DFO/CA formal agreements, CA's provide initial screenings of projects (at the detailed design stage) to ensure that watercourse alterations are carried out in accordance with the habitat protection provisions of the *Fisheries Act*. In circumstances where works or undertakings require authorization per. S. 35(2) of the *Fisheries Act* before they can proceed, they refer these projects to DFO for further review and authorization where appropriate. Based on my team's assessment of the Grand River Conservation Authority's management of the Clair Creek development of concern, I am satisfied that they appropriately reviewed the project per the *Fisheries Act* on DFO's behalf.

In response to your e-mail from April 1st, 2010, I asked senior staff from our Habitat Management Program and our Enforcement Program to undertake a site inspection to consider what concerns DFO *might* have under the habitat protection provisions of the *Fisheries Act*. The inspection took place on April 11, 2010 and was conducted in accordance with DFO occurrence management protocols. Staff attending the site were in agreement that no evidence of impacts to fish and fish habitat were evident.

A site inspection process is informed by several components. DFO's Risk Management Framework is one of the key operational policy tools used by DFO staff to make decisions under the *Fisheries Act* and *Species at Risk Act*. You may wish to view this framework by visiting our internet site at www.dfo-mpo.gc.ca/oceans-habitat/modernizing-moderniser/risk-risques_e.asp ..

Staff have placed the findings, communicated to you in this letter, on file with the department. The Canadian *Access to Information Act* regulates the manner by which we may or may not release information to the public. Should you wish to obtain further information from DFO on this matter, I would encourage you to visit the Access to Information and Privacy website at <http://www.tbs-sct.gc.ca/atip-aiprp/index-eng.asp>.

Based on the fact that senior Fish Habitat Management and Enforcement personnel were unable to find any impacts to fish and fish habitat, there is

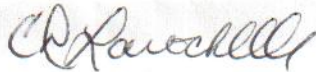
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no evidence to suggest a contravention of DFO's regulatory mandate has occurred.

Given the findings in relation to our mandate, I strongly urge you to pursue land use planning concerns or stemming from the Ontario Municipal Board process, with the appropriate municipal planning authorities and/or GRCA.

If you would like to discuss our role or our site inspection process, please contact me at (905) 639-2935 to make arrangements.

Sincerely,



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