



association to protect AMHERST ISLAND

APAI NEWSLETTER – August 2010

SYNOPSIS

Developments since the last Newsletter (June 2010) include draft regulations for off-shore wind farm approval, a possible site plan for the Wolfe Island Shoals off-shore wind farm, the presentation by consulting companies of two draft reports on aspects of wind turbine noise, and developments in the legal challenge to the Ministry of the Environment noise regulations and set-back distances. Two things for members to consider are a) commenting on the draft regulations for off-shore wind farms, and b) making a donation to the Ian Hanna Legal Challenge Fund.

OFF-SHORE REGULATIONS

The Ontario Government released a discussion paper on draft regulations for off-shore wind energy generating systems in June. The document can be accessed at:

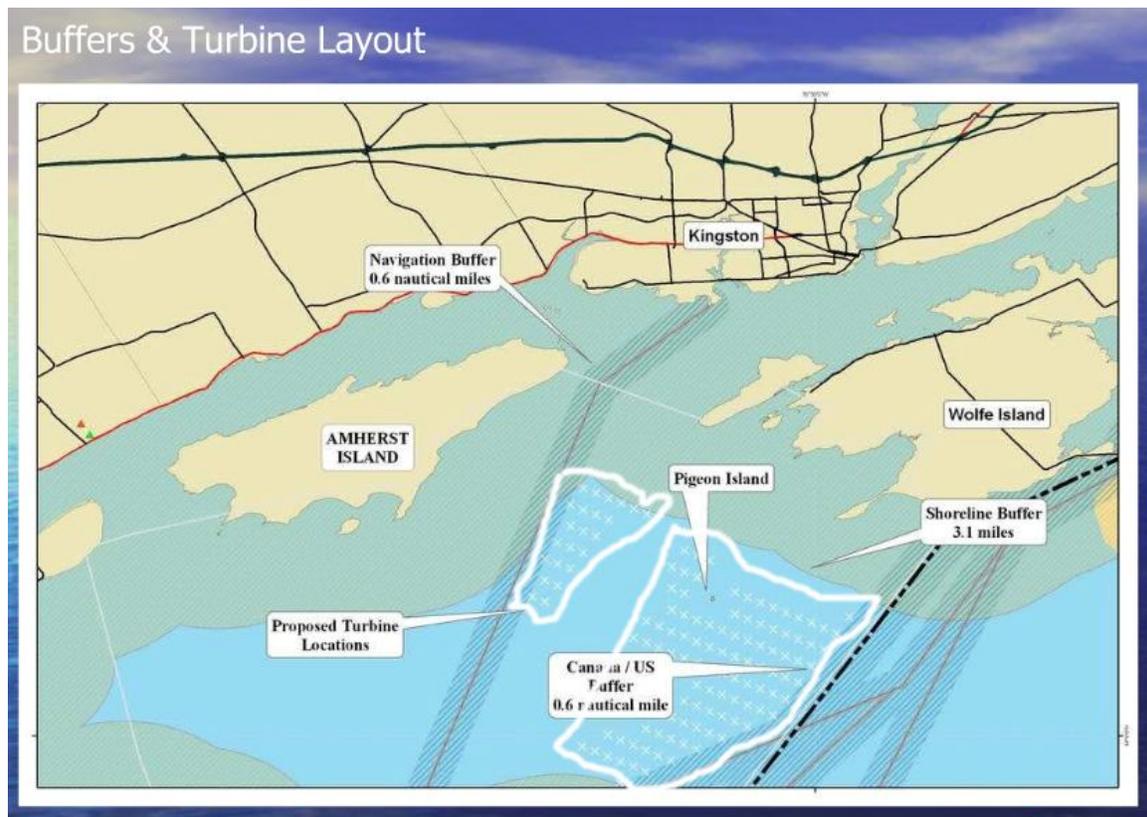
http://www.ene.gov.on.ca/envision/env_reg/er/documents/2010/011-0089.pdf

For those of us on Amherst Island, the main provision is that there will be a 5 km exclusion zone from the water's edge of the Great Lakes and other inland lakes, and from the major islands. This exclusion zone is being vigorously challenged by Toronto Hydro which wants off-shore wind turbines off the Scarborough Bluffs. The lake-bed falls sharply beyond 2 to 4 km offshore from the bluffs adding extra costs if the 5 km zone is upheld. As we are all aware, sound travels readily across water. This common knowledge is supported by studies that show that sound reflects from water and multiple reflections decrease the fall-off of sound with distance, particularly for low frequency sound. If there is time, it would be helpful if you could let the Ministries of the Environment and of Natural Resources know that you believe 5 km to be an absolute minimum exclusion zone. Of course, you may believe that turbines have no place being in the Great Lakes at all, in which case you should let MOE know this. There are good reasons: migratory birds and bats, fish habitat, pleasure boating, visual pollution, shadow flicker. Your response can be made to the Environmental Registry: control + click the following: <http://www.ebr.gov.on.ca/ERS-WEB-External/displaynoticecontent.do?noticeId=MTA5OTIz&statusId=MTY0OTkz&language=en>

The cut-off date for responding is August 24th. Apologies for this late notice – the summer went by so quickly!

THE WINDSTREAM PROJECT

There is now a map (see below) showing the possible turbine siting for the so-called Wolfe Island Shoals off-shore project. As you will see, there will be a wall of turbines facing the south shore, nudging right up to the 5 km minimum setback. (The image contrast makes it difficult to see the turbines on a black and white image and hence the added white outlines around the two groups of turbines.) The layout is tentative because the Ministry of the Environment has yet to determine guidelines for meeting its noise regulations and Windstream has yet to present an environmental review for the project. Also, the proposed off-shore exclusion zone is still in draft form.



MINISTRY OF THE ENVIRONMENT (MOE) DEVELOPMENTS

MOE placed 2 contracts with acoustic consulting companies. Both companies have now presented draft reports and APAI was represented at focus groups when both draft reports were presented to MOE.

a) Protocol for Measurement of Turbine Noise. There are two issues: Are turbines in compliance with noise guidelines once erected and started up? Is a resident justified when a complaint is registered with MOE? There have been numerous complaints of turbine noise across rural Ontario causing annoyance, sleep disturbance and consequent health problems. More than a dozen families have abandoned their homes. Presently, MOE claims that it is not able to check

compliance or complaints and therefore does not do so. It is of course absurd to have regulations and not be able to enforce them. Their reasons are that it is difficult to separate turbine noise from background noise, that wind noise in the noise-meter microphone can mask the turbine noise and that it does not have the resources to have equipment and manpower on hand at a residence for when the noise reaches a level to cause annoyance and sleep disturbance. The draft report included a literature search of what is happening else-where and proposals for technology that can separate turbine noise from background noise. Hopefully the final report will establish a protocol. There is equipment in use in New Zealand which is fully automatic and can be started by a resident when the turbine noise becomes sufficiently annoying.

b) Low Frequency Sound and Infrasound. Wind turbines generate sound over a wide range of frequency (or pitch). The high frequencies are more readily absorbed by the atmosphere and ground so that it is predominantly low frequency sound that reaches a home. Furthermore, house walls allow low frequency sound to penetrate more readily so enhancing the low frequency sound in, say, a bedroom. This is then compounded by possible resonances inside the room. It is acknowledged that low frequency sound is particularly annoying, especially when it is modulated as the blades pass the tower supporting the blades. MOE requested a report on low frequency sound and inaudible infrasound, with a view to whether the regulations need to be up-dated. The draft report did include many aspects of low frequency sound generation by turbines but was remarkably weak in including much of present knowledge into the conclusions and recommendations. Again, it is to be hoped that the consulting company will take heed of points raised in the meeting and come up with firmer recommendations to MOE.

LEGAL CHALLENGE

The legal challenge to the Ministry of the Environment over its wind turbine regulations is working its way to a final showdown. The following is based upon a talk given by Ian Hanna in June of this year and a recent up-date on the Wind Concerns Ontario web-site. The challenge is based on a couple of simple precepts. The Precautionary Principle – which simply says, when considering development – if there is any degree of scientific uncertainty a development will cause harm to humans, animals or the environment that precaution shall prevail. One must prove that such harm does not exist before proceeding. The onus is on the developer to prove harm will not result – it is not on the potential victim to prove it will.

Secondly, the Ministry of the Environment has developed a Statement of Environmental Values which governs their actions. One of those values states that they will respect the Precautionary Principle in all decision making.

In proceeding with the Challenge at the Ontario Divisional Court, it is Ian's position that there is significant scientific uncertainty surrounding the health threats associated with Industrial Wind Turbines. Furthermore, he asserts that

the MOE has clearly not respected the Precautionary Principle, as required by their Statement of Environmental Values, when determining the setbacks as set out in the Green Energy Act.

The application was filed October 19th 2009. In January 2010, counsel for the Ministry of the Attorney General contacted Ian's attorney to confirm they would be acting for the Ministry of the Environment, in this action. Discussions went back and forth – CanWEA – the Canadian Wind Energy Association was kept in the loop, although, at that time they had taken no action to become officially involved in this case. Subsequently, CanWEA did seek leave to intervene.

In her decision to permit the CanWEA motion for leave to intervene, Madame Justice Swinton also concluded, **“If the application succeeds, (that is, the application for Judicial Review) the members (of CanWEA) will no longer have an opportunity to obtain regulatory approval for the construction of new wind energy projects in Ontario, and the development of utility-scale wind projects in Ontario will be effectively halted for an indeterminate period of time.”**

Ian's team submitted evidence to the other side for their review, early in March – in the form of a lengthy Affidavit from Dr. Robert McMurtry and subsequently received responding evidence from the Ministry of the Attorney General, at the end of March. In July, the parties convened again at the Divisional Court. The Attorney General's legal team sought to remove Dr. McMurtry's affidavit, and was rebuffed. This means that the Attorney General's team must now address the evidence. This team now needs more time to prepare for the Divisional Court hearing, which has been postponed beyond its original September date. For a more complete up-date, see:

<http://windconcernsontario.wordpress.com/2010/07/21/ian-hanna-v-ontario/>

All of us across the province stand to gain if Ian's challenge is successful.

Donations are still being sought towards the legal costs of this challenge.

Ian Hanna Fund
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Box 173
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Make Cheque to: APPEC Legal Fund