

MANITOBA) Order No. 134/08
)
THE HIGHWAYS PROTECTION ACT) September 12, 2008

BEFORE: Graham Lane, CA, Chairman
Susan Proven, P.H.Ec., Member

APPEAL OF HIGHWAY TRAFFIC BOARD
PERMIT NO. 060-08
RURAL MUNICIPALITY OF HEADINGLEY

SUMMARY:

By this Order, the Public Utilities Board (Board) varies Highway Traffic Board (HTB) Permit No: 060-08 and removes the temporary status of the commercial use provided in the permit, directs that the proper legal description of the subject property replace the Permit's current descriptor, and, as well, makes a number of recommendations. Process is important. As well, highway safety is of paramount importance, and the Permit now varied by the Board does not adequately address the safety concerns of any party to this matter.

Permit 060-08 changed the status of two of three access driveways to Provincial Trunk Highway No. 1 (PTH #1), located approximately 64.0 metres and 98.5 metres east of Inglenook Street in the Rural Municipality of Headingley (subject property, RM), providing for commercial use while making the access temporary.

This Order follows an appeal of Swan Lake First Nation (SLFN) and a public hearing held on Monday, July 28, 2008 in the RM.

BACKGROUND:

SLFN:

A federal Ministerial Order provided reserve status to SLFN for the subject property (now SLFN Reserve No. 8A), effective April 28, 2006.

When this took place, there were four accesses from the subject property to PTH #1. However, on August 17, 2006 Manitoba Infrastructure and Transportation (MIT) advised SLFN that it had deemed one of the four accesses redundant. The advice referenced both a September 30, 2005 letter to SLFN and a subsequent meeting held with respect to the matter. Subsequently, MIT physically removed the redundant access in August 2006.

On August 21, 2006, on behalf of both himself (as the proposed owner of a gas bar located on the subject property) and SLFN, then-SLFN Chief Robert Daniels made application to HTB to change the use of two of the remaining three access driveways onto P.T.H. No. 1 (from Lots 1-6, Block 1, Plan 47671, R.L. 61, Parish of Headingley in the RM) to "commercial", to serve the then-proposed *Painted Sky Gas Bar*.

Subsequently and almost two years later, on May 2, 2008 HTB issued Permit 060-08 (Permit) allowing for the change of use to commercial for two of the three remaining accesses, but only on a temporary rather than permanent basis (the provision to expire in one year).

Following the issuance of the Permit, SLFN appealed HTB's Permit to the Board and a public hearing was held on Monday, July 28, 2008 in the Council Chambers of the RM offices, 126 Bridge Road, Headingley, Manitoba. The hearing was conducted on a 'hear and report basis' by Board Chairman Graham Lane. Immediately prior to the hearing, Mr. Lane viewed the subject property and current area accesses to PTH #1.

At the hearing conducted by Board Chairman, the following information was provided:

- Mr. Daniels was contacted on March 12, 2008 by HTB staff ahead of HTB hearing that led to the issuance of the Permit. The file indicates that Mr. Daniels had asked HTB to "cancel (his application) because he (Mr. Daniels) never got permission to build the gas bar".
- Nonetheless, HTB dealt with the matter and on May 2, 2008 issued Permit 060-08 changing the use status of two of SLFN's three remaining access driveways to temporary, subject to removal/relocation upon the highway being upgraded at the location (and with the Permit authorizing temporary use to expire in one year).
- In his letter of appeal to the Board, SLFN representative, Mr. Bob Green advised SLFN did not want the access driveways in question to be classified as temporary, rather that the First Nation sought for the use change to be permanent, as the three remaining access driveways (including the two referenced by the Permit) were the only direct access from the subject property that SLFN has to PTH #1.
- Mr. Green advised that when he questioned SLFN's current Chief and Council, neither the Chief nor the Council advised of having received notice from either HTB or MIT of HTB's intention to deal with Mr. Daniels original application with respect to the accesses from the subject property.

- Mr. Green, supported by a brief signed by SLFN Chief and three of the four current members of Council, noted the importance of the accesses to SLFN's property, and opined that the subject property is not in the RM, as SLFN lands are separate and apart, having being designated a Reserve.
- Mr. Green informed the Board that on February 13, 2008, prior to HTB's issuance of the Permit, SLFN's Chief, Council members and staff had met with MIT staff and discussed future plans for the subject property, and that at the meeting a need was identified for the access to PTH #1 to involve an intersection with traffic lights.
- Mr. Green advised that at that meeting SLFN learned of MIT's plan for the further development of PTH #1 within the RM, a plan that involves the eventual closure of all direct accesses from the subject property to PTH #1, with the subject property to be accessed by means of a to-be-constructed service road to connect to PTH #1 by way of a street to the west of the subject property, with an intersection to be constructed.
- Mr. Green further advised that at the February 2008 meeting SLFN were also then-advised that MIT's plans involved a gravel service road to SLFN's property, with it to be SLFN's responsibility to provide internal roads within the subject property. Mr. Green further advised that until the receipt of the Permit, SLFN's current Council had not been informed that MIT was proceeding to the HTB to remove the permanent status of the current accesses to PTH #1.

- Mr. Green advised that on May 9, 2008 SLFN received a copy of the Permit and that on May 12, 2008 he contacted HTB and was advised that HTB had met on March 18, 2008 to make the decision to issue the Permit. Mr. Green reported that HTB staff had confirmed to him that SLFN had not been invited to HTB's March 18, 2008 meeting, and advised that this is one ground for SLFN's appeal before the Board. Mr. Green noted that MIT also advised him that MIT had attempted to contact SLFN prior to the hearing that led to the Permit, but had been unable to reach SLFN.
- Mr. Green relayed SLFN's Chief and Council's concern as to HTB's process, a process that resulted in a Permit being issued that had not been applied for, and without SLFN being present at the HTB hearing.
- Mr. Green advised that SLFN expected HTB to have a process requiring an application followed by notice to all affected parties of any hearing related to an application. Mr. Green claimed that the only party aware of HTB's hearing was MIT, and that the "so called applicant (i.e. SLFN) who never applied was not invited to attend".
- Mr. Green observed that generally municipalities have a number of accesses onto PTH #1 and opined it was discriminatory towards SLFN to be denied similar treatment. Mr. Green advised SLFN is in the process of completing a commercial development plan for the subject property and that direct access to PTH #1 "will be

crucial to the overall future planning of the Reserve lands".

- SLFN's submission to the Board included a letter of support from Canoak Flooring Ltd., which owns property directly to the north (and across PTH #1) of SLFN's property. Canoak's letter outlined the company's experience upon it having had direct access to PTH #1 removed, opining that it is now situated at the 'dead end' of a service road, circumstances similar to what MIT proposes for SLFN land.
- Canoak indicated that its situation was superior to that of SLFN's as the "dead end road" leading to its property may be developed in the future if the property owner to the east of Canoak seeks to subdivide its property. In Canoak's view, in the SLFN circumstance, an extension of the proposed service road would be unlikely as the property to the east of SLFN's land is a public golf course.
- Mr. Green summarized SLFN's reasons for its appeal as follows:
 - SLFN never applied for the Permit;
 - SLFN was not invited to the HTB hearing that issued the Permit;
 - HTB should not have proceeded to consider the matter without all parties first having received notification;

- MIT personnel may have misled HTB hearing by stating at the HTB hearing that resulted in the Permit that MIT had tried to contact SLFN to no success, when, in fact, SLFN had not been contacted about the hearing;
- The legal description of the property contained on the Permit is not correct;
- SLFN must have direct access to PTH #1 for present and future development; and
- It would be discriminatory if SLFN was not provided direct access to PTH #1.

Mr. Green advised that SLFN's Chief and Council seek the Board's over-turn of HTB's decision.

Mr. Green submitted that SLFN is not a regular landowner, and that the First Nation is a separate government entity that is required to be consulted and fairly dealt with.

Mr. Green agreed with the position of MIT that safety is a concern with the present accesses, given the volumes of traffic and traffic speed in the area. Mr. Green submitted that permitting the three existing accesses to remain was safer than MIT's plan to limit SLFN to a single access point, one located further down the highway.

Mr. Green submitted that safest approach would have an intersection with a traffic light and left turning lane into SLFN's land, with that access to be placed at one of the three existing accesses, then removing the remaining

two accesses. Mr. Green reminded the Board of Canoak's experience, and its situation of having no alternate access with a dead end service road, advising that SLFN's situation if MIT's plan was implemented would be worse because of the location of the golf course to the immediate east of the subject property.

Mr. Green further submitted that proceeding with the installation of traffic signals, at Cameron Street to the west of SLFN land, with only a service road to access to PTH #1, would lead to difficulties if a serious accident occurred at the intersection resulting in residents, visitors and customers on SLFN's land being possibly trapped, with no alternate means for exiting the property.

MANITOBA INFRASTRUCTURE AND TRANSPORTATION (MIT):

MIT was represented at the Board's Hearing by:

- a) Mr. Richard Nichol, Senior Access Management Analyst, Highways Planning and Design (Winnipeg); and
- b) Mr. Eric Christiansen, Director of Highway Planning and Design, Highways Planning and Design (Winnipeg).

MIT filed a number of exhibits, these being:

Exhibit 1: RM of Headingley municipal maps providing the approximate location of the Swan Lake First Nation Reserve.

Exhibit 2: Copy of Highway Traffic Board Permit 060-08, and a copy of sketch plan 1001225-20- SACU-08.

- Exhibit 3: Copies of 2007 Traffic information.
- Exhibit 4: May 1, 2001 Memorandum of Understanding Between Manitoba Transportation and Government Services And The Rural Municipality of Headingley regarding the PTH #1 W proposed highway upgrading and access management plan.
- Exhibit 5: May 1, 2001 Memorandum of Understanding Between Manitoba Transportation and Government Services and The Rural Municipality of Headingley regarding the PTH #1 W proposed highway upgrading and access management plan.
- Exhibit 6: Aerial photograph overview showing the Swan Lake First Nations Reserve relative to John Blumberg, Canoak Flooring and the Husky Truck Stop adjacent to PTH #1 W.
- Exhibit 7: Aerial photograph showing the approved interim/short-term access to the Alpine Motel and Abe Klassen Farm Implement properties.
- Exhibit 8: Map showing the Functional Classifications of various Provincial Trunk Highways and Provincial Roads in the vicinity of Headingley.

MIT noted that the department was independent of HTB, and that HTB carries the responsibility to verify the facts indicated on the Permit, i.e. the legal description and applicant.

MIT advised of its support of HTB's effort to limit the number of driveway accesses onto PTH #1, including HTB Permit #060-08, for the following reasons:

1. The need to maintain the primary function of PTH #1 to carry traffic safely and efficiently.
2. The Swan Lake Reserve is currently serviced by 3 direct access connections and Inglenook Street, the latter a public road connecting onto PTH #1. All accesses are located within 150 metres of each other, creating a potentially unsafe situation for vehicles exiting and entering. MIT opined that the subject property, which fronts Inglenook Street at the west limit of the property, can function effectively with one point of access (Inglenook), similar to the position of other neighbouring businesses and developments.
3. MIT's Functional Classification Study classifies PTH #1 as an Expressway, a classification that does not allow for direct access; therefore the three access driveways do not comply.
4. The permanent retention of the three direct access connections to PTH #1 W does not comply with the Design Parameters of Headingley/Province's Access Management Plan, developed in 1992.
5. PTH #1 between the Headingley weigh scales to the west and the Perimeter Highway to the east is a heavily

travelled mixture of four lane divided and undivided highway that has a notable history of collisions.

6. The positive impact on motorist safety resulting from reducing, removing and minimizing the number of driveways onto PTH #1 where possible.
7. Maintaining consistency by ensuring all landowners are treated equally to facilitate the safe, orderly and planning of development of the lands adjacent to PTH #1.
8. The existing driveways onto PTH #1 will not be required/ necessary for the long-term development of this property since reasonable access will be provided to the upgraded Cameron Street intersection via a service road when reconstructed.
9. Establishing a pattern of intersection connections onto PTH #1 W would safely accommodate the expected growth adjacent to PTH #1 W within the RM and the resulting increase in traffic on PTH #1.

BACKGROUND: FUNCTION OF PTH #1:

MIT provided statistics regarding the portion of PTH #1 abutting the subject property:

- Average traffic count - 15,580 (2007), seasonally adjusted - 17,605 (+113%) - truck volume increases being in the range of 12-16%.
- Annual traffic growth rate, 20-year average, 1.4%.

MIT indicated the existing highway through Headingley is a mixture of 4-lane undivided roadway with portions divided, of standard lane widths and 3.0m wide, fully paved shoulders, with substantial increases in both through and local traffic due to the development of adjacent land. In addition to intersections at PR 334 North and PR 334 South, there are several intersecting municipal roads and private access driveways generating numerous turning movements from/to PTH #1 - left-turning vehicles sit unprotected in the passing lane on undivided portions waiting for a gap in the opposing traffic, including turning vehicles from nearby driveways. This has contributed to increasing collisions on this section of the highway.

Over the past 15-20 years, MIT developed plans for upgrading PTH #1 between Winnipeg and Headingley to a fully divided highway with a limited number of strategically placed intersections. MIT has been implementing this plan in a staged manner since 1997, with the construction of four major intersections and the elimination of 3 km of undivided cross-section out of a total of 6 km to-date.

In or about 2000, SLFN entered negotiations with the former owners of the former Alpine Hotel and Abe Klassen of Used Agricultural Implement for the subject property, and, at that time, SLFN's consultants approached MIT with respect to further development.

In August 2001 the RM entered into an access management agreement with MIT and, since then, the RM and MIT have worked to acquire the necessary rights-of-way through

subdivision and re-zoning processes to facilitate the reconstruction of the Headingley portion of PTH #1 towards a fully divided highway, as funding permitted.

In 2004, SLFN acquired ownership of the subject property and it was designated as Swan Lake First Nation Indian Reserve 8A by a Federal Ministerial Order dated April 28, 2006.

The original use of the property that existed in 1997 has changed, with SLFN now operating a gas bar, VLT Barn and using the former motel buildings for Band administration purposes.

In the intervening period 1999 to 2006, MIT reviewed and commented on a variety of development proposals for this property, including the current gas bar. As early as January 2000, MIT advised the-then SLFN governing body that access to these properties were to be removed with redevelopment, with access to be obtained from internal or service roads in accordance with the Access Management Plan.

And, over the past 10 years MIT has undertaken a number of projects to improve the safety of this highway, in accordance with the department's functional and phased implementation plans for selected strategic intersections and service road segments between PTH #100 and PR #334; such as:

- Upgrading and signalizing the PTH #1/PR 334 S intersection, with a short section of PTH #1 W reconstructed to a four lane divided highway (\$2.5 million).
- Upgrading the Coverall/Husky and John Blumberg Park intersections were approved and constructed to a four lane divided cross section with traffic signals in 2005 (John Blumberg Park intersection) and in 2006 (Coverall/Husky Intersection) (\$4.7 million).
- Reconstruction of the intersection at Camp Manitou Road (Flying J) to a four lane divided cross-section with traffic signals in 2006 (Developer Pay Practice - \$3.0 million).
- Construction of medians as part of the above four intersections has resulted reducing a 6 km continuous stretch of four-lane undivided roadway to 3 km.
- From 1997 to present, several short sections of service roads along PTH # 1 W were constructed to accommodate adjacent land development. Service roads were cost shared between MIT and the RM in accordance with a Memorandum of Understanding (MOU).
- Service roads are being constructed as land development occurs; therefore continuous service roads have not yet been fully established.
- In accordance with the MOU, MIT and the RM are continuing to acquire rights-of-way required for the

highway widening in cases where private property owners subdivide or rezone.

- Subject to the MOU and implementation of the Access Management Plan, developers (Sobeys, Women's Correctional Centre, etc.) have met with MIT and the RM to produce traffic management strategies that will undoubtedly result in pressures for MIT to construct additional on-highway enhancements and upgrading.
- Areas currently under consideration by MIT for upgrading are the Cameron Street intersection to the west of SLFN Reserve, the Dodds Road (PR 334 N) intersection, and the 4 lane undivided portion of PTH #1 between Camp Manitou road and the John Bloomberg intersection.

Traffic Safety:

MIT's submitted that, as a result of the undivided cross-section, high traffic volumes and a notable collision history, the speed limit was decreased to 70 km/hr in 1979, and that between 1995 and 2001 this portion of PTH #1 had a collision rate of 1.34 collisions per million vehicle-kilometres of travel (MIT considers rates are high if over 1.0).

MIT advised that at the location of the subject property, PTH #1 is a heavily travelled, 4-lane primarily undivided highway with a number of direct access connections and a significant accident history directly related to traffic

entering and exiting the highway at the many driveways. In addition, MIT indicated recognition of the relationship between access connections and accidents, and advised that the department has promoted the removal, relocation and rationalization of access driveways wherever possible.

Precedent:

As noted previously, MIT and the RM have undertaken significant investment in the construction of frontage roads and intersections to improve motorist safety and rationalize driveways on PTH #1 through Headingley since the mid 1990s. These projects involved the removal and/or relocation of existing driveways to improve safety on PTH #1 and include:

- PR 334/Nick's Inn/Holy Trinity Church - intersection improvements;
- The Red River Exhibition/Assiniboia Downs - intersection improvements;
- The Fast Subdivision east of Cameron Street, Wojciulan's property and the Glowatski Commercial Subdivision between PR 334 and Lyons Street - access removals and intersection improvements;
- The Federated Co-Op/ Big Sky Truck Stop in west Headingley to extend/relocate the PTH #1 service road south of their buildings and improves the access onto PTH #1 at Bobiche;

- Upgrading of Camp Manitou Road intersection to a 4-lane divide intersection.

MIT advised that with the support of the HTB the department has managed to reduce the number of driveways onto PTH #1 by;

- a) requiring the removal of redundant driveways where properties adjacent to the highway are being redeveloped; or
- b) constructing frontage roads, including:
 - McDiarmid Lumber - 1 access removed and a street connection (Simmons) removed;
 - Oak Bluff Estates between Simmons and Lyons - 2 driveways removed,;
 - Bowes Polar King - 1 driveway designated temporary, subject to removal;
 - Red River Exhibition - 2 access connections removed, 2 driveways designated temporary, subject to removal when property redevelops and frontage road is constructed;
 - Classic Trailers - 2 accesses designated temporary, subject to removal when property redevelops and/or the frontage road is constructed;
 - Headingley Husky - 2 access removed and 1 driveway designated temporary, subject to removal when the service road is extended westerly;

- John Blumberg Golf Course - 1 driveway removed;
- Swan Lake First Nations - 1 access removed, 3 driveways designated temporary, subject to removal;
- Fedoruk - 1 access legalized and designated temporary, subject to removal when frontage road constructed to the west limit of the property;
- Totem Energy Ltd. - 1 access relocated and designated temporary, subject to removal when frontage road constructed to the east limit of the property.

Based on the foregoing, MIT recommended that the Board require HTB to vary and reissue the permit to:

- Include the immediate consolidation of the three access driveways into one access driveway to temporarily service the subject property until the Cameron Street intersection is constructed and access to this property is available solely from the service road.
- Amend Condition 2, of the permit, the expiry date with respect to the removal of the driveways where the highway is upgraded at this location at any time in the future.

MIT also noted it will be responsible for the costs of physically removing two of the driveways and physically modifying the remaining driveway to ensure departmental standards are met.

RURAL MUNICIPALITY OF HEADINGLEY (RM):

Mr. Chris Fulsher, CAO of the RM, supported MIT's contention that the portion of PTH #1 in question is included in long-term plans developed by MIT and the RM. Mr. Fulsher advised that the plans were subjected to a public hearing process when in the development stage and have been in place prior to SLFN acquiring the affected lands. Mr. Fulsher suggested that SLFN was aware of the plans, including the proposed service road and closure of current accesses.

Mr. Fulsher advised that the RM paves service roads once constructed, and that all of the RM's service roads have access to PTH #1.

OTHERS IN ATTENDANCE

Mr. Robert Lang advised of an interest in the proceeding. MIT objected to Mr. Lang having standing at the hearing and questioned his interest in the subject property.

Mr. Lang contended that MIT had 'confused the facts' and opined that it is less expensive to develop a divided highway with turning lanes than what is now proposed by MIT. Mr. Lang also indicated that MIT's numbers for traffic counts were wrong; questioned MIT's statistics with respect to accident experience at signalized vs. non-signalized intersections; and advised of his view that MIT's statistics for accidents at driveways are skewed (as there are commercial and residential driveways involved,

and that there is a difference).

He noted that, while MIT speaks of the danger of redundant accesses, the speed of actual removal of such accesses is slow. Mr. Lang also submitted that if SLFN had not been advised of the HTB hearing leading to the Permit, it would be unfair to allow the Permit to stand.

Mr. Lang also indicated that the portion of PTH #1 through Headingley is designated as Suburban highway as per a transportation planning manual available on MIT's website, and that a suburban highway is not subject to the same access restrictions as a general highway is.

BOARD FINDINGS:

After carefully reviewing the evidence and considering the positions of the parties present at the hearing, the Board will vary the Permit and remove the provision making commercial access temporary.

The proper legal description of the subject property should be provided, and the accesses be allowed for commercial use without a temporary limitation being placed on such accesses. MIT, the Province and the RM of Headingley should work with SLFN towards a solution that represents fairness to SLFN and allows for reasonable further development of the subject property, while reducing the number of accesses to one, with that access to be by way of an intersection with lights and a proper left turning lane.

The Board has a number of concerns with HTB's process related to HTB's handling of the initial 2006 application through to the issuance of Permit No. 060-08 in 2008.

Then-Chief Robert Daniels made the 2006 application on behalf of both himself and SLFN. And, even though HTB subsequently confirmed with Mr. Daniels on March 12, 2008 that he wanted the application cancelled as he did not have the necessary authority, HTB proceeded to consider the matter without the involvement of SLFN, and its new Chief and Council, and then issued the Permit on May 2, 2008.

While the change in governance within SLFN may have not been drawn to HTB's attention, HTB should exercise care to ensure that parties affected by its decisions are aware of its proceedings and provided proper notice and an opportunity to make representations.

In the matter at hand, a significant amount of time elapsed from the receipt of the application by HTB to its hearing and the issuance of the Permit. The Board recommends that particularly in such circumstances notice of hearing be served again on all parties, this to best ensure the parties involved have notice and an opportunity to make representations.

The Board did not see evidence that either HTB or MIT has thoroughly considered the distinction that exists between general property owners, municipal governments and First Nations. The Board understands there to be a constitutional requirement for adequate consultation to be undertaken prior to affecting the rights of First Nations.

The Board recommends that HTB investigate the constitutional requirements for consultation in relation to First Nations and develop a protocol with respect to such applications.

The Board also recommends that HTB append reasons for decisions where possible. No reasons were appended to the Permit by HTB, which, while in accordance with HTB's normal practice, means that affected parties may not understand HTB's rationale.

HTB is a quasi-judicial administrative tribunal, and such tribunals are generally expected to support their decisions with written reasons following properly conducted processes. While the Board understands that operational and resource factors may make it difficult for HTB to provide reasons for its decisions, and that it has not been HTB's practice to "give reasons", the Board suggests that in most cases, written reasons should be provided.

The Board also notes that the Permit legal description in the Permit is incorrect and suggests that HTB verify such information on receipt of all applications. Also, the Permit deals with only two of SLFN's three PTH #1 accesses, and is silent with respect to the third. The safety risks that concern this Board abound with the third access just as is the case with the two addressed by the Permit.

Furthermore, the Permit declares the accesses in question to be temporary; yet, the Permit itself expires a year from the date of issue, leaving unanswered the question as to

whether the accesses reverts to being permanent after the expiry date or is to be removed in its entirety before the expiry date. The Board addresses this by varying the Permit to allow commercial access with no specific time limit.

The Board has a general concern with MIT's preferred solution of removing all accesses from SLFN to PTH #1, with access to be only by way of a service road that currently is no more than a right-of-way.

In the absence of a firm timeline for constructing a service road connecting PTH #1 to SLFN's land, the development of SLFN's land would remain in limbo. Furthermore, as noted in the presentation of Canoak, even the development of the service road would result in a dead end and this may cause permanent hardship on SLFN since there is not expected to be any service road developed east of the property.

While the Board assumes the issuance of the Permit has been based in part on the highway development plan entered into between the RM and MIT, it notes that the plan was prepared before SLFN was granted Reserve status for the land.

Beyond the particular matter addressed by the Board with respect to the Permit, the Board recommends a permanent solution be developed to deal with this situation, and that consideration be given to one direct access from SLFN's Headingley Reserve lands to PTH #1, with that access to include a traffic light and a left turning lane.

The Board emphasizes the necessity for moving quickly towards arriving at and implementing a permanent change, a change that will meet safety and reasonability tests, while allowing the number of accesses to SLFN to be reduced to one as soon as possible, given evident safety risks.

The Board notes that all parties supported safe access to and from SLFN's property, and that both SLFN and MIT agree as to the risks now present given the high traffic volumes and resulting unsafe conditions arising from the current multiple access points from SLFN's land.

PTH #1 is far too busy to leave the situation as it now stands, with vehicles attempting to drive west leaving from SLFN's current three access driveways.

That said the Board recognizes that the development of a safer access to the subject property will require a considerable investment. The priorities of MIT, the Province, the RM and SLFN will have to be considered. Nonetheless, the Board suggests that consideration be given to this approach, as the three present accesses represent a danger to motorists and all those attending the subject property.

IT IS THEREFORE ORDERED THAT:

1. Highway Traffic Board Permit No. 060-08 BE AND IS
HEREBY VARIED as follows:
 - a) Condition #5 of Permit 060-08, which makes the
commercial access temporary, is deleted;
 - b) the legal description of the subject property on
the permit, is to be corrected.

THE PUBLIC UTILITIES BOARD

"GRAHAM LANE, CA"
Chairman

"H. M. SINGH"
Acting Secretary

Certified a true copy of
Order No. 134/08 issued by
The Public Utilities Board

Acting Secretary

APPEARANCES:

| | |
|-----------------------|--|
| Mr. Richard Nichol | Senior Access Management Analyst, Highway Planning and Design, (Winnipeg), Manitoba Infrastructure and Transportation |
| Mr. Eric Christiansen | Director of Highway Planning and Design, Highways Planning and Design (Winnipeg) |
| Mr. Bob Green | Representative of Swan Lake First Nations |
| Mr. Robert Lang | Interested Party |