

Appendix B

Attachments to Letter A37

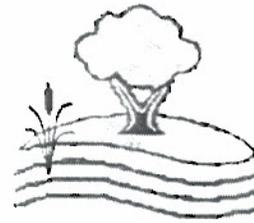
EBCC

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A37
Appendix B

Without Prejudice

April 19, 2010

To: Stakeholders per Appendix "A"

**Re: Beaconsia Beach swapped to private ownership by Council,
Canal Excavation within Beaconsia Marsh,
Access and impact upon potable water, aquifers, and artesian wells.**

The Eastern Beaches Conservation Coalition (EBCC) strives to preserve the public beaches, wildlife, and wetlands on the lower Eastern side of Lake Winnipeg through advocacy, lobbying, and education. The EBCC was formed as a grass roots response to the lack of transparency, due process, and public accountability to various constituents. These constituents consist of local permanent residents, seasonal residents, beach enthusiasts, nature lovers, conservationists, and other concerned stakeholders – all of whom are citizens and taxpayers. The EBCC is registered with the Province of Manitoba.

We wish to advise you of the facts involving the trade of Beaconsia Beach to private ownership, the multiple issues surrounding the excavation of Beaconsia Marsh without due transparent process and adherence to applicable *Acts, Regulations, Bylaws, and Letters of Advice*, and issues surrounding the access and impact upon potable water in the immediate area such as aquifers and artesian wells.

The EBCC has been investigating this complex situation for some time now via public records, Land Title records and related instruments, *Access to Information* requests, and review of relevant legislation and bylaws. The results indicate what appears to be an orchestrated plan to subvert applicable legislative authority and procedural processes crossing the jurisdiction of several stakeholders. Without prejudice to any party, the EBCC respectfully and urgently calls upon the applicable legislative and regulatory authorities to immediately and fully investigate the contraventions outlined hereafter.

Beaconia Beach Traded to Private Ownership

As many stakeholders are aware, Beaconia Beach is frequented by a widely diverse spectrum of people and has been enjoyed by generations of local residents, seasonal residents, and day-trippers. It is a sanctuary for an extensive diversity of wildlife – it is one of only nine bird migratory routes in Manitoba that topped over 1000 birds using this migratory route per <http://tinyurl.com/y6b7fxn>. Beaconia Beach is also a known nesting habitat for the endangered piping plover <http://tinyurl.com/y4sd9x8>.

Public records prove that the entrance areas of the beach (parking lots and immediately adjacent fields extending to the eastern shoreline) were traded by the RM of St. Clements to the Sopko family of Grand Marais on October 14, 2008 (see section 18.1 at <http://tinyurl.com/y24qpdz>). The traded areas of the beach are parcels A, B, C, and D in the lower left corner of <http://tinyurl.com/ycdqex5>.

We encourage you to view <http://tinyurl.com/ykr4enu> for a timeline overview and further explanation. Note that the land swap only concerns parcels A, B, C, and D of the beach – however these parcels are the only non-water avenues of access to the beach so for all intents and purposes this is a de-facto transfer of a public beach to private ownership without public consultation or input.

Of greater concern is that almost a year after Council conducted the beach land swap, the RM – not the Sopko family - requested the discharge of a caveat that essentially prohibited all non-park development on the beach property. Caveat is at <http://tinyurl.com/y8nh4e4> and Province's response to caveat discharge request is at <http://tinyurl.com/y83bzqm>

It is unknown if the RM disclosed to the Province the fact that the RM had already swapped the land to a new owner almost a year prior to when the caveat discharge request was made by the RM.

Please see <http://tinyurl.com/y4l9mpd> for the RM's position on the land swap and response of the EBCC. A compilation of the Land Title records is available at <http://tinyurl.com/y3r2vt2>.

The EBCC respectfully and urgently requests that the Minister's letter of July 29, 2009 <http://tinyurl.com/y83bzqm> be immediately revoked and/or rescinded. The EBCC respectfully requests that the Province invoke clause 2 (c) of the caveat <http://tinyurl.com/y8nh4e4>.

Excavation of Beaconia Beach Marsh

The EBCC wishes to bring to your attention the existence of a 1500-foot long canal that has been dug through the sensitive riparian marsh at the northernmost extent of the Netley-Libau Marsh immediately adjacent to Beaconia Beach. The marsh and its riparian zones are extremely diverse, fragile, and important ecosystems which multiple levels of governments have acknowledged as vital to the overall health of Lake Winnipeg via funding of extensive studies and conservation schemes.

Please see <http://www.flickr.com/photos/48368441@N02/> for pictures of the excavation and resulting extensive environmental damage to the marsh. The scope is breathtaking.

Robert and Margaret Rettie of Okotoks, AB commenced excavation of the canal in December 2009. The Retties are of the opinion that their property extends into the marsh itself – an opinion reiterated to the EBCC several times by Lloyd Talbot, manager of the Selkirk & District Planning Area Board (SDPAB).

Mr. Talbot provided the EBCC with a map showing the path of the excavated canal in red, and coastal shoreline property lines in yellow <http://tinyurl.com/ycdqex5>. Mr Talbot stated during his presentation to 60 attendees at the EBCC Meeting of March 6, 2010 <http://tinyurl.com/y4zyp86> that it is also the opinion of the SDPAB that Mr. Retties property extends into the marsh. Should Mr. Rettie decide to subdivide or re-zone then the title would change and the water rights would become Public Preserve. Until such time, Mr. Rettie owns the property and can do whatever he decides.

In response to questions from attendees, Mr. Talbot acknowledged that no permit had been issued for the canal excavation by the SDPAB until members of the EBCC brought that omission to the SDPAB's attention. Mr. Talbot stated the SDPAB issued a permit within a matter of hours of being advised of this omission. The justification for the permit being issued with such haste and without any environmental impact review, public notice, or regulatory compliance review was that the applicant – the Retties – had their own timeline to complete the canal excavation prior to ice break up.

Mr. Talbot stated there "is no requirement for a permit to be displayed" in response to questions asking why the permit was not displayed in a visible place on the edge of the Rettie property. Mr. Talbot advised the attendees that the SDPAB would not release a copy of the permit – which EBCC believes to be public record – "due to privacy issues".

Finally, Mr. Talbot stated numerous times that since no "development" is occurring nor has a development application been made, the Retties are not subject to section 3.8 of the Zoning Bylaws of the RM <http://tinyurl.com/y26fgvo>.

The EBCC notes that the existing legal survey of title 2126059 (the Rettie property) is contained in Plan 2045. Plan 2045 is not available electronically and is a 10-foot long scroll containing a railroad right-of-way plan running from approximately Scantebury to Grand Marais completed by the *Winnipeg & Northern Railway Company* in 1913. As such, no legal survey of the property has been registered with Land Titles since 1913, even though the property has changed ownership at least twice since that time. Title 2126059 is so old there isn't even a hydro easement. A compilation of Land Title records is available at <http://tinyurl.com/y3r2vt2>.

All documentation and correspondence surrounding the canal excavation infers the canal excavation took place on land owned by the Retties. It is astonishing that a map of unknown provenance with a coastal property line simply drawn on it <http://tinyurl.com/ycdqex5> has been accepted as legally valid by multiple governmental authorities. Neither the Retties nor SDPAB has divulged any documentation revealing exactly what criteria was used to determine the coastline property boundary. As such, the accuracy of Rettie's stated coastal property line is unverified.

Per the definitions found within The Province of Manitoba "The Planning Act, Provincial Land Use Policies Regulation" <http://tinyurl.com/y2k4kwq>:

- **"Ordinary high water mark"** means the level at which the water in a water body or waterway has been held for a period sufficient to leave a mark on the vegetation and/or soil along the bank; the line identified in a plan of survey as "O.H.W.M." or "Ordinary High Water Mark", or the line on a plan of survey delineating the bed of a water body or waterway;

The EBCC believes Rettie's stated coastline boundaries do not correspond to the OHWM applicable to this section of Lake Winnipeg, thus the canal excavation and environmental damage occurred on property belonging to the Crown. Reviews of LiDAR (Light Detection And Ranging) maps available at <http://tinyurl.com/y3ennm9> strongly indicate the coastline boundaries utilized to justify the canal excavation are likely at 712 feet above sea level (ASL) or lower. The causeway road, at 718 ASL, is itself frequently under water during ordinary periods of high water <http://tinyurl.com/y4ytyrw>. Because of the shallow slope of the marsh, a water level difference of only one foot ASL results in a vastly different placement of the coastal shoreline. The EBCC is of the opinion that the "true" OHWM of 716 ASL places the true coastal shoreline several hundred feet east of the boundary as provided by the SDAPB <http://tinyurl.com/ycdqex5>.

Furthermore, Mr Talbot advised the EBCC that the property is "grand fathered" and exempt from any Crown setback – despite the fact the property changed hands in 1974 and again in 2005. Mr. Talbot also advised the EBCC that the application and enforcement of RM bylaws was solely at the discretion of the RM.

In the opinion of the EBCC the mitigation measures contained in the *Letter of Advice* issued by the Department of Fisheries and Oceans (DFO) <http://tinyurl.com/y7nxuyh> have been ignored in their entirety. Indeed, it is the opinion of the EBCC that the information provided to the DFO in order to obtain the *Letter of Advice* does not correspond to what has occurred in reality – the most blatant example being the fact the length of the canal is 1500 feet rather than the 700 feet as proposed.

A preliminary investigation conducted by Water Stewardship at the request of the EBCC resulted in a stop work order <http://tinyurl.com/y56zka3> and indicates no further works are to be undertaken without the proper regulatory considerations and approvals in place. Despite the stop work order, heavy equipment was observed continuing work in the marsh for the next week until a piece of equipment broke down.

Please see <http://tinyurl.com/y4evv2a> and <http://tinyurl.com/y6q82jb> for more in-depth overviews of the canal excavation impact on the environment including the revelation of structural pillings being placed in the marsh, drainage and runoff issues, and local potable water quality impact.

The EBCC respectfully and urgently requests that the applicable regulatory and legislative authorities conduct a full investigation to determine the true coastal shoreline boundary of the property in question. The resolution of this key issue will determine if the excavation of the canal has contravened any applicable legislation and by-laws, environmental assessment requirements, and licensing requirements under the authority of - but not limited to - *The Environment Act* and *The Water Rights Act*. Remedial and enforcement action is obligated to follow should contravention be determined.

Access and Impact Upon Potable Water, Aquifers, and Artesian Wells

Potable drinking water is life – without it there can be no life. There is an artesian well on the extreme south edge of the Rettie property that has been utilized for generations by local residents. The closest other public potable artesian well is in Lac du Bonnet.

Previous owners of the Rettie property allowed unrestricted access to the artesian well. They even built a shed. The sign on the shed placed by the previous owner, and retained over the past five years the Retties have owned the property, mentions no access restrictions beyond a donation request for maintenance <http://tinyurl.com/y5qccx7>.

At the first General Meeting of the EBCC <http://tinyurl.com/y4zyp86>, the attendees made it clear they wished to retain public, unrestricted and uncompensated access to the artesian well on the Rettie property. Many stakeholders have contacted the RM privately to make this concern known individually. It is therefore unclear why the lawyer for the RM questions whether any residents have approached the RM regarding well access <http://tinyurl.com/y2ev5jn>. While the Retties have owned the property and artesian well for five years, they recently stated they will only allow continued public use of the artesian well if liability and safety issues are borne by the RM – and retain the right to terminate access for any reason <http://tinyurl.com/y3m7172>.

The water table in the immediate area feeding the artesian aquifer is extremely shallow. Two residents of immediately adjacent Island Beach have already notified the EBCC that their private wells have gone murky and cloudy whereas the water was perfectly clear prior to the usage of heavy equipment to excavate the channel over a period of three months. The pounding of the pilings into the marsh rattled cupboards and satellite dishes 0.5 kilometres away. One can only speculate the impact this has made on the near-surface aquifers feeding the artesian well as well as nearby private wells.

The EBCC respectfully and urgently requests that a water quality review be conducted, a study conducted to determine the impact of the canal excavation process on the pre-existing water table and aquifers, and that the historically unrestricted and uncompensated access to the aquifer on the Rettie property be retained in perpetuity – be it by written agreement or subdivision of the Rettie property.

Conduct of the RM of St. Clements

The EBCC has high concerns regarding the transparency of the process. We invite you to view letters publicly distributed by the RM.

<http://tinyurl.com/ydf6t3q>
<http://tinyurl.com/y2ckv4p>

<http://tinyurl.com/y4u3afw>
<http://tinyurl.com/y4l9mpd>

Besides the obvious contradictions of facts as presented in the course of the RM's letters, the stated and inferred meanings of the RM's letters is interpreted by the EBCC as threatening, intimidating, possibly slanderous, and may possibly be an abuse of office.

The Mayor of the RM stated during a noon hour interview with CBC Radio Winnipeg on Friday, March 26 that the canal was excavated so Rettie's boat would not be vandalized. Common sense states that development of this vast scale and cost would not merit approval "just in case" Mr. Rettie's currently non-existent boat may be vandalized at some unknown time in the future. During the same interview the Mayor utilized the word "tinkering" in reference to seeking full approval from applicable legislative and regulatory authorities for the canal excavation.

In conclusion, the EBCC wishes to work in a co-operative and collaborative spirit with all stakeholders to ensure that the issues and concerns documented in this letter are resolved in a clear and transparent manner. Perhaps a Town Hall Forum attended by all stakeholders may be the best avenue. The EBCC welcome the opportunity to meet with any and all stakeholders to provide further explanation, context, and evidence.

Sincerely,
Executive of the Eastern Beaches Conservation Coalition

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Treasurer	John Bartlett
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