

January 13, 2009

Peter Taylor
Water Resources Supervisor
Eastern Region Technical Support Section
Ontario Ministry of the Environment
P.O. Box 22032
1259 Gardiners Road, Unit 3
Kingston, ON K7M 8S5

Dear Mr. Taylor:

RE: Permit to Take Water Application
EBR Registry Number: 010-5426
Posted December 12, 2008

1. On behalf of the Greenspace Alliance of Canada's Capital (the Alliance) and the Sierra Club of Canada (Sierra), we make the following submissions in respect of the application by Golder, on behalf of Findlay Creek Properties Ltd. and 1374537 Ontario Ltd. in respect of this proposal.
2. This is a proposal for a permit to take water from a trench sump, for the purpose of construction dewatering, up to 17, 020, 800.00 litres per day for 90 days. In effect, this proposal is an application to continue the water taking authorized by the permit which expired on September 30, 2008 and is encompassed within the application for a 10 year PTTW.
3. On November 27, 2008 the ERT issued reasons for its decision to dismiss the application for leave to appeal the permit that expired on September 30, 2008 as moot. In

paragraph 6 of that decision the ERT quoted from an email sent by your counsel confirming that it was not your intention to issue any additional short term permits. This representation, which was relied upon by my clients in consenting to the dismissal of the leave application, and by the ERT in making its order of dismissal, was qualified as follows:

“However, I cannot absolutely guarantee that no additional short term permits will be issued. The proponents are also dealing with demands of the Department of Fisheries and Oceans, The South Nation Conservation Authority, and the Ministry of Natural Resources, who have in the past required the proponents to pump water at times to insure the proponents comply with their legislative requirements.”

4. We have not been apprised of any orders to the proponents by any of these agencies, requiring them to pump water.
5. In our view, any decision which is inconsistent with the representation made to the ERT constitutes contempt.
6. Section 13 (1) (c) of the Statutory Powers Procedure Act provides that where any person, without lawful excuse, does any thing that would, if the tribunal had been a court of law having power to commit for contempt, have been contempt of that court, the tribunal may, of its own motion or on the motion of a party to the proceeding, state a case to the Divisional Court. After a hearing, the contemnor may be punished as if he or she had been guilty of contempt of court.
7. In preceding proposals, we have reviewed in detail your obligations pursuant to the applicable legislation, policies and case law. We continue to rely upon these requirements as set out in those submissions, which you have.

8. We also rely upon all of the materials filed in support of those submissions including the expert opinions of Dr. Fred Michel P.Geo. and Dr. Clarke Topp, P.Ag. and the Affidavit of Erwin Dreessen sworn June 13, 2008.
9. Some of the comments on the proposal for a 10 year PTTW which are relevant to the current proposal are:
 - a) the pattern of seeking short term permits for long term water takings continues. Although you have posted the notice of permit on the Registry as a class 1 instrument that is subject to leave to appeal, the approval of short term water takings in series precludes the examination of the long-term cumulative impacts.
 - b) the choice of base year for comparison of pre-and post-development groundwater levels is biased.
 - c) monitoring data are missing for key boreholes that might trigger low water table alarms.
 - d) there is no evidence to support the Golder assertion that groundwater levels recover quickly after each pumping period.
 - e) on the contrary, the evidence indicates that the cumulative effect of water taking pursuant to the series of short term permits issued to date has permanently lowered groundwater levels in the wetland. Tartan contends that it need only protect the “core” of the wetland pursuant to some “deal” made with the Minister of Natural Resources in 1995. This “core” has not been protected. Significant environmental degradation has occurred not only in that portion of the wetland that has allegedly been written off, but also in this “protected” portion.
10. We enclose the Report of Dr. Clarke Topp, P.Ag., dated January 12, 2009. Dr. Topp has commented generally on several aspects of the application, and specifically on Attachment 2, “Technical Study in support of a Category 3 PTTW Application Findlay Creek Subdivision.” Dr. Topp finds that:

- a) the data in Table 2 of this study are of little interpretive value without associated precipitation data and pumping volumes; and
- b) drawing “significant” inferences from borehole data lying off the prediction curve is invalid.

11. Among the reasons cited by the applicant for seeking a permit now rather than to wait for the outcome of the 10 year PTTW is a desire to adhere to the developer’s construction schedule. This consideration should be entirely disregarded by the Ministry. The Ministry’s concern is protection of the environment.

12. Another reason cited is that the current residents of Findlay Creek Village expect “the park” to be constructed. We find no evidence of such expectations with regard to “the park” referred to here – the swale and an area to the northeast. The residents have been very anxious to see Butterfly Park completed and hope to see completion of Tiger Lilly Park in 2009. They also have been shown a design for Dragonfly Park. None of these Parks are “the park” referred to in this application nor has any firm date been established for the opening of this park.

13. While this is an application for a 90-day permit, the proposed works clearly are the first step in the development of the Stage 2 Phase 3 land area. Much more water taking will be required, hence the 10 Year PTTW Application before the Ministry. The Ministry has previously rejected this piece-meal approach to water taking permits and it has been held invalid by the ERT. This application appears to assume approval of the 10 Year PTTW Application. If the entire project, cumulatively, may have adverse impacts on the water levels in the wetland, then granting of individual components should also be denied.

Linda McCaffrey Q.C.