

August 12, 2014

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Dear Kelly Thompson:

Re: Proposed Hydro-electric Generating Station at the Bala Falls

Summary

We understand that when portaging is required as part of marine navigation, Transport Canada's assessment of applications under the Navigation Protection Act will include ensuring portaging can continue safely around a proposed project.

We find that Transport Canada's September 18, 2012 letter concerning the subject proposed project included confusing statements about portaging, and also appeared to not consider land ownership and several important safety issues.

We detail these issues below and look forward to Transport Canada's responses to each lettered item.

Detail

1) We have the following questions about the letter dated September 18, 2012 from Mr. Al Robertson concerning the proposed hydro-electric generating station at the Bala falls:

a) Under the heading "Portage", the letter states "*... what we consider as the primary portage through the Municipal public lands/park to the North of the falls and utilizing the downstream public park and dock as a put in/take out location*".

As there are no "Municipal public lands" to the north of the falls and there is no "downstream public park", please clarify this statement.

b) Also under the heading "Portage", the letter states "*... Downstream it is quite likely that a new access trail/path may, over time, result on the municipal lands south of the proposed GS – as it is the shortest distance from upstream to downstream. The slope there is similar to the existing path ...*".

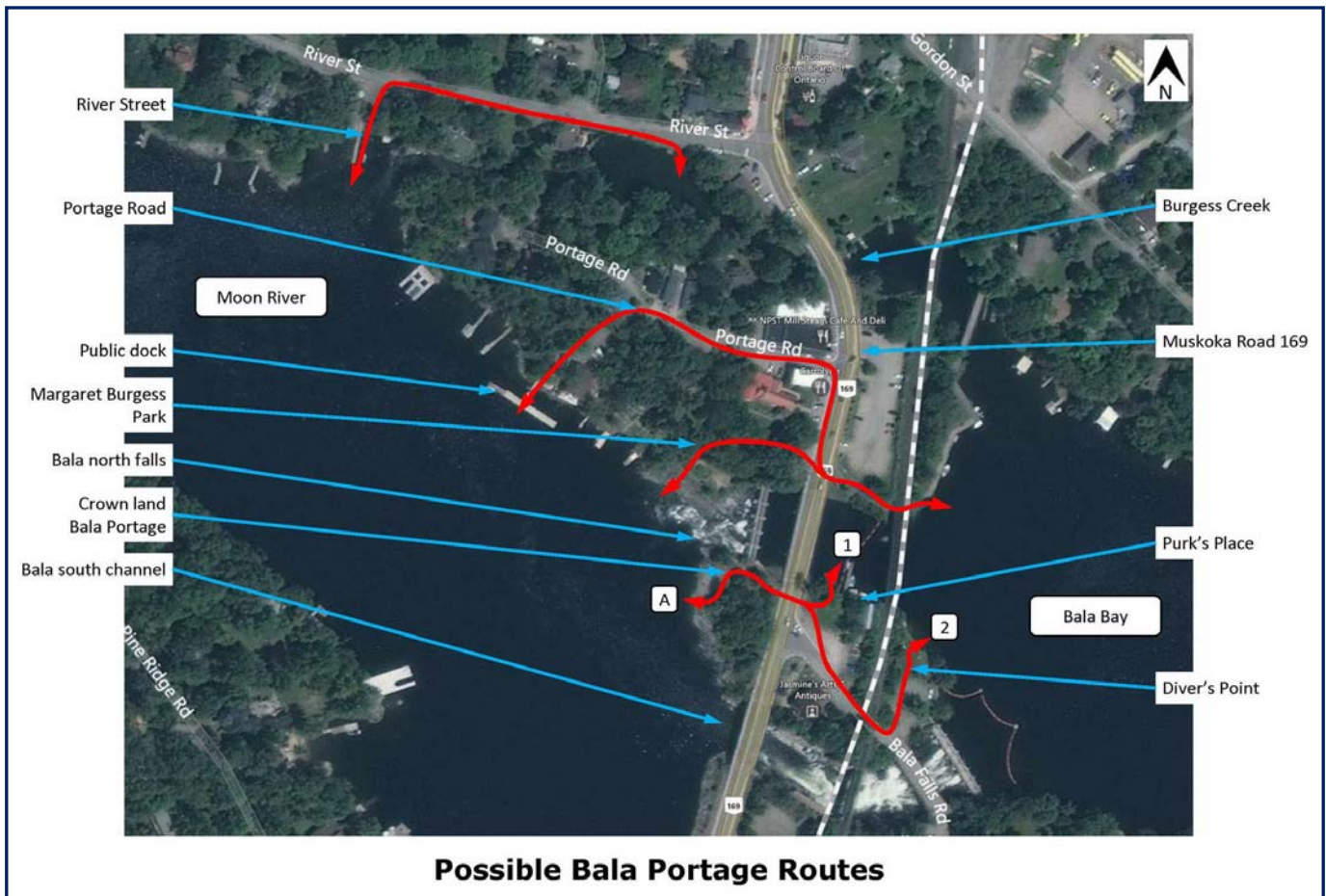
The slope on the municipal lands south of the proposed generating station is most definitely not similar, and in fact is too steep to even walk up, and certainly it would not be possible to carry a canoe up these municipal lands. Please clarify this statement.

- 2) The proposed Bala hydro-electric generating station would obstruct the portage route at “A” shown in the marked-up aerial photograph below. As a result, the proponent and Transport Canada have suggested alternate portage routes, also as shown below.

As has been detailed in documents posted at <http://savethebalafalls.com/?p=4166> and <http://savethebalafalls.com/?p=4181>, since before 1837, the traditional and historic Bala Portage has always been south of the Bala north falls, such as using routes A1 and A2 below. These routes:

- Are exclusively over public lands.
- Have ample room to wait until it is safe to cross Muskoka Road 169, the road is crossed directly without any need to walk along the shoulder or behind parked cars, and as the road is straight at this location, the crossing has excellent lines-of-sight between portagers and vehicles.
- Also, the portage landing on the Moon River is a distance from the faster water which is typically flowing down the Bala south channel, which adds to the safety of this route.

As detailed below, all of the suggested alternative portage routes do not have these important safety characteristics.



Concerning portaging along River Street:

- a) Portaging along River Street (around the Burgess Creek generating station) requires paddling on Burgess Creek (which is also called the Mill Stream) under the Muskoka Road 169 bridge. This bridge opening is narrow and therefore the water speed is high and was recently measured to be 1 m/s (it is not known if the

generating station was operating at full capacity at the time, so the water speed could be even higher).

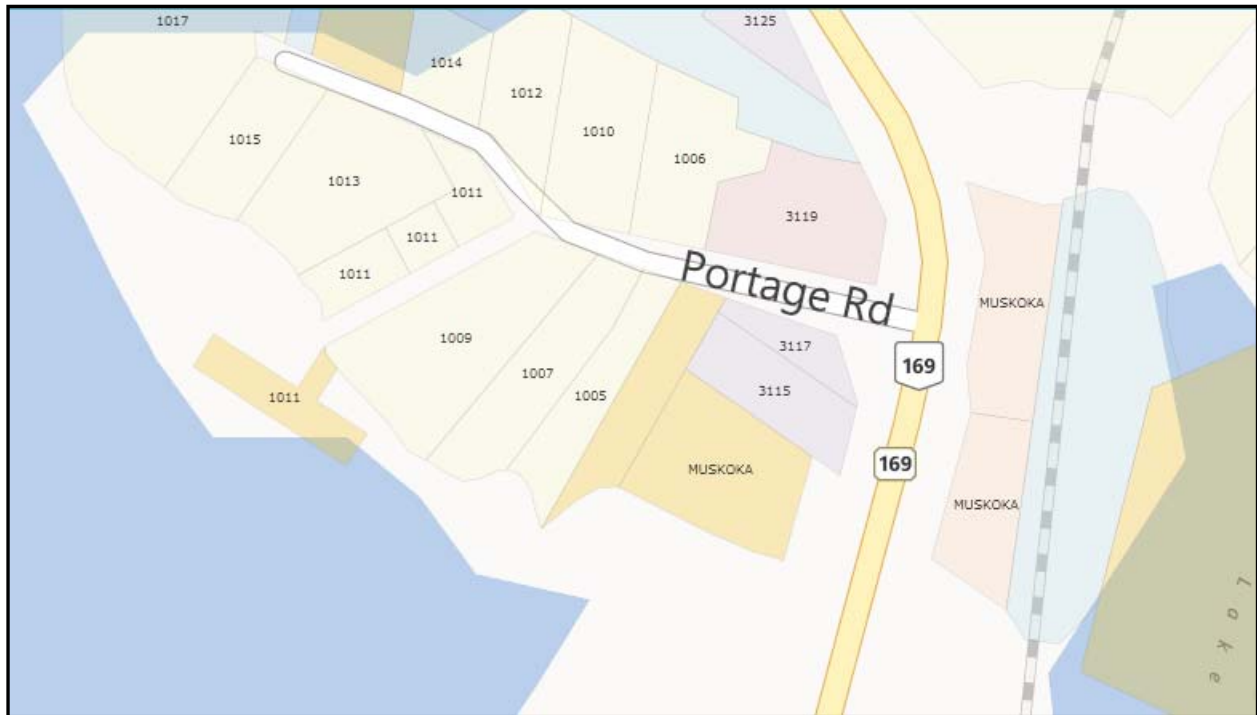
Please respond whether it is considered safe to canoe upstream through a narrow channel which has a surface water speed of 1 m/s.

- b) The Burgess Creek generating station's upstream safety boom; is within only a few metres of the generating station's intake, uses very small diameter logs rather than the currently-approved large "TUFFBOOM" booms, and the boom is not angled towards shore so does not facilitate self-rescue.

Does Transport Canada agree this is not a desirable location for canoeing.

3) Concerning portaging along Portage Road:

- a) This alternative portage route requires using the public dock on the Moon River, this is marked property "1011" on the property boundary map from the Municipal Property Assessment Corporation shown below.



As can be seen, a portage route using the public dock on the Moon River requires travelling over the private property marked "1009" on the above section of map. There is no agreement with the owner of property 1009 to continue to permit the public to trespass over this private property.

Does Transport Canada recommend portages which require trespassing over private property where there is no agreement with the private landowner.

- b) While this private landowner currently permits the public to trespass in order to use the public dock, as described in our letter dated February 7, 2014 to Suzanne Shea, A/Manager, Navigable Waters Protection Program, the proposed generating station's tailrace flow would negatively affect marine navigation near the public dock, and this could result in boating accidents. To avoid liability for such accidents, the private landowner's insurance company may require that this trespassing not be allowed if the proposed generating station was to be built.

Does Transport Canada recommend portage routes over private property where such trespassing may at any time no longer be allowed.

- c) As shown in the above aerial photograph and map, portaging along Portage Road requires crossing Muskoka Road 169 (which has a speed limit of 50 km/h) just south of a curve in the road. This curve prevents vehicles approaching from the north from seeing, or being seen by, portagers crossing the road at or south of Portage Road.

Has Transport Canada considered sight-lines between drivers and portagers in assessing this proposed alternate portage route.

- d) The photograph below shows a portager at the east end of Portage Road, attempting to cross Muskoka Road 169 (which is often quite busy). As can be seen, Portage Road is narrow and has no shoulders or sidewalks. Also, as shown, cars are sometimes parked at the side of the road, further narrowing it.



Given that the historic and traditional Bala Portage does not require portaging along a road with no shoulders or sidewalks, would Transport Canada recommend the above portaging along Portage Road.

- e) The photograph below shows a portager travelling north on the east side of Muskoka Road 169, approaching the intersection of Portage Road. Note the need to portage past a parked car and close to a car travelling northbound (note that portaging on the other side of the road would require portaging behind parked cars). Muskoka Road 169 (which has a speed limit of 50 km/h), often has large truck traffic (from which the turbulent draft could blow one's canoe around). Also, note that the peak portaging season coincides with the peak traffic volumes.

Does Transport Canada agree that it would be much safer to directly cross Muskoka Road 169 (as is the case for the traditional and historic Bala Portage, south of the Bala north falls) rather than to also have to walk along it.



4) Concerning Portaging through Margaret Burgess Park (the green space north of the Bala north falls):

- a) The proponent has stated that this area would be used for construction purposes for the 18- to 24-month proposed construction period. The area would therefore be entirely fenced-off and it would not be possible to use this as part of a portage route.

Does Transport Canada agree that during the proposed construction period, it would not be possible to portage through Margaret Burgess Park.

- b) As described in our letter dated February 7, 2014 to Suzanne Shea, A/Manager, Navigable Waters Protection Program, the fast and turbulent flow of water exiting the tailrace of the proposed generating station would negatively impact marine navigation near Margaret Burgess Park.

Does Transport Canada agree this could affect being able to safely use a portage put-in / take-out at Margaret Burgess Park.

- c) Recreating in the water at the base of the Bala north falls has been very popular for more than 100 years, yet this would be just a few feet from the fast and turbulent water exiting the proposed generating station. And this would be even more dangerous as the flows would be completely unpredictable; everything from the station running at full capacity an average of 21 days every summer, to beginning operation at about noon for more than $\frac{1}{3}$ of summer days.

The MNR has stated *“it would be the direct responsibility of Swift River Energy Limited to ensure appropriate public safety measures are in place as they relate to the flows ...”*, which apparently means that the proponent’s insurance company and lawyers would require that Margaret Burgess Park be fenced-off during operation.

Does Transport Canada agree that during the proposed operation, it would therefore not be possible to portage through Margaret Burgess Park.

- 5) Given that the Bala site is complex:
 - a) Have Transport Canada staff actually portaged through Bala, during the main canoeing period, to assess and compare alternative portage routes.
 - b) As part of assessing proposed alternate portage routes, will Transport Canada solicit and accept public input.

The historic and traditional Bala Portage

The two concerns raised about the historic and traditional Bala Portage south of the Bala north falls are:

- 1) The water flows from the Bala north falls and south channel.
 - These flows are entirely visible, natural, and predictable (that is, they can't suddenly change, as would the flow from the automatically- and remotely-operated proposed generating station).
 - Therefore the best portage landing location between these two flows can be selected by those using the portage.
 - There has never been a serious accident portaging or canoeing through Bala.
 - Note that aerial photographs used by the proponent which show very high flows both over the north falls and through south channel were taken during spring freshet when it would not have been safe to portage anywhere through Bala (for example, note the public docks on the Moon River are actually submerged in this photograph).
 - Therefore there is no foundation for the concerns about needing to canoe between the two flows.
- 2) The steep slope and loose gravel of the Crown land.
 - Yes, portages sometimes have steep sections, but the risk of a slip and needing a band-aid is a rather less serious issue than being hit by a car.

Conclusion

The proposed hydro-electric generating station at the Bala falls would obstruct the traditional and historic Bala Portage, and alternative portage routes proposed all have major problems, such as:

- Trespassing on private property.
- Having to walk beside and behind parked cars and along the often-busy Muskoka Road 169, or crossing it where there are inadequate sight-lines (given the road's speed limit).
- Having to walk along Portage Road which has no shoulders or sidewalks.
- The route through Margaret Burgess Park would not be possible, as it would be fenced-off.
- The water speed of Burgess Creek through the bridge opening below Muskoka Road 169 is 1 m/s, which is too fast for the often weaker and inexperienced paddlers from nearby summer camps.

Please respond to each of the lettered questions above so the public can know that Transport Canada understands the area and has fully assessed any suggested portage routes as alternates to the traditional and historic Bala Portage.

Sincerely,

A handwritten signature in cursive script that reads "Mitchell Shnier".

Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: The Honourable Lisa Raitt, Minister of Transport, Lisa.Raitt@parl.gc.ca

The Honourable Tony Clement, MP for Parry Sound – Muskoka, Tony.Clement@parl.gc.ca

Ann Whitely-Gillen, Navigable Water Protection Officer, Transport Canada, Ann.Whitely-Gillen@tc.gc.ca

Her Worship Alice Murphy, Mayor, Township of Muskoka Lakes, AMurphy@muskokalakes.ca