

August 8, 2012

Ms. Agatha Garcia-Wright, Director,
Ministry of the Environment, Environmental Approvals Branch
2 St. Clair Avenue West, Floor 12A
Toronto, ON M4V 1L5

E-mail: Agatha.GarciaWright@ontario.ca

Dear Ms. Garcia-Wright:

**Re: Proponent is attempting to rewrite the Public Consultation history
of the
Proposed Hydro-electric Generating Station at the Bala Falls**

Summary

For years, the proponent has stated that their proposed Option 1 could be built solely on Crown land, but this is simply **not true**, as shown by the proponent's drawings below.

The proponent has known of their **fundamental error** since at least October 26, 2009, and yet they have wilfully ignored this, leaving the resulting confusion to be the public's problem. But now that the proponent's error **has become their own problem** the proponent is rewriting their public consultation history in an attempt to **erase their error from the public record**. They now claim that their communications concerning Option 1 actually were about their new proposal they call "Alternative 1A".

The proponent is **making things up that didn't happen**. They are pretending their own mistakes – and the confusion they caused – never happened. This is completely **unprofessional, unethical and unacceptable**.

This would rob the public of their right to meaningful public consultation. The proponent's abuse of, and contempt for, the environmental assessment process must be stopped.

We therefore repeat our request that the environmental assessment process be re-started, beginning with a public information centre, so that the public can be **correctly** informed of the proposed project.

Detail

Appendix C of the proponent's Addendum for the subject proposed project presents their Consultation Record – a fundamental and crucial component of an environmental assessment given the importance of public consultation as required in the *Guide to Environmental Assessment Requirements for Electricity Projects* (the *Guide*).

In this Consultation Record, the proponent refers to their communications concerning an "Alternative 1A" proposed project, site, or location as having occurred a total of 22 times between October 14, 2008 and June 23, 2011. However, the first time the public heard of

the term “Alternative 1A” began many months later, on May 30, 2012 when the proponent released their Addendum.

The reality is that for these 22 public consultation communications, the proponent actually referred to their Option 1. As detailed below, the proponent has repeatedly showed the public that their Option 1 has a different location and orientation than what they have recently presented in their Addendum as their “Alternative 1A” new proposal.

That is, the **proponent is attempting to rewrite their Public Consultation history**. The proponent is trying to change the record of the **confusing, incorrect, and contradictory information they provided to the public**.

Furthermore, we note that on **the last day** of the too-short 30-day public comment period for their Addendum, the proponent revised their Addendum, **without any notice** sent to the public and **without any detail** provided on what they actually changed.

Also, we note that without any explanation or detail, and without leaving the previous version posted for comparison, the proponent has since **modified Appendix E of their Addendum**.

This **arrogant behaviour and the clear and repeated lack of respect** for the public’s need and right to understand the proposed project **drives the public away** from being involved. This goes against the goals and intent of the fundamental aspect of meaningful public consultation in the environmental assessment process.

We have previously documented several other abuses of the environmental assessment process by the proponent, and we therefore repeat our request that this environmental assessment process be restarted, beginning with a public information centre, so that the public can be informed of the actual location and orientation, so that comments can be received from the public, and so that the requirements of Public Consultation be met, as required by the *Guide*.

Terminology

Firstly, we’d like to justify the terminology used for the proposals presented.

1) Option 1

- a) The proponent’s first proposal was dated July 5, 2005, to the Ministry of Natural Resources, in response to the MNR’s Competitive Site Release program. Figure 2.1 from their proposal (with property boundary and comments added) is reproduced as Figure 1 of the Appendix to this letter.
- b) On August 29, 2007 the proponent held a public information centre, and the presentation material from this was provided in Appendix D5 of their environmental screening report. Page 8 of this Appendix D5 showed the plan view of their first proposal, and this (with property boundary and comments added) is reproduced as Figure 2 below.

- c) Section 1.5.1.1, entitled *Layout Alternative 1*, of the proponent's environmental screening report, dated October 2009, states "*This original design (Drawing 327078-SK-101 in Appendix A2) was proposed as part of the as part of the site release program application ...*". This Section 1.5.1.1 also notes that "*Alternative 1 was presented during the Public Information Centre (PIC) of 2007*". This drawing is reproduced as Figure 4 below as provided in the environmental screening report, and as Figure 5 cropped and with property boundary lines and text added.

It is clear that these formal and public presentations of the proponent's first proposal have the same location and orientation, and are what the proponent and the public have referred to for many years as Option 1.

2) Option 2

- a) In October 2009 the proponent released their environmental screening report and Figure 2.1 in this showed what they now refer to as Layout Alternative 2D. This is reproduced in Figure 6 below, and is what the proponent and the public have referred to for many years as Option 2.

3) New Proposal / Alternative 1A

- a) On May 30, 2012 the proponent released an Addendum in which they presented a Figure 2.1 and described this as "Alternative 1A", this is reproduced in Figure 8 below.
- b) As is clear by comparing the location and orientation shown, this is the first time the public has been presented with a proposal which:
- Is described as being a possible proposal and shown to only require Crown land.
 - Has the water flow exiting the tailrace angled towards the base of the north falls and towards the north shore of the Moon River.

Addendum Appendix C, Consultation Record

When the proponent released their Addendum on May 30, 2012, it was the first time the proponent had ever used the term "Alternative 1A", and it was the first time the public had ever heard of an "Alternative 1A". Yet in Appendix C their Addendum, entitled "Consultation Record", the proponent refers to "Alternative 1A" a total of 22 times, all of these occurring **months and years before the proponent had ever used this term in public.**

The proponent is fabricating history that never happened. For example, in their Consultation Record the proponent claims that on May 16, 2011 to both the TML Council and DMM Council meetings the proponent "*Noted that Alternative 1A would be pursued if municipal land for Alternative 2D not available.*"

This is not true
What the proponent actually stated is that they would pursue their Option 1

Indeed, even in the advertisement the proponent placed in local newspapers on October 19, 2011, the proponent never used the term “Alternative 1A”. Instead, the advertisement only refers to Option 1, for example “...we have been left with little choice but to pursue the redevelopment on the MNR’s original Option 1 site ...”.

The proponent is **rewriting history** and to have it appear that the public has been shown and had a chance to ask questions about their new proposal which has a new location and orientation from that proposed before.

What is Option 1

The proponent has always referred to their Option 1 as requiring only Crown land, yet as we have shown in Figure 1, Figure 2, and Figure 3 below, **all the formal documents from the proponent have all shown that Option 1 could not be built solely on Crown land.** We have noted this confusion on our web site, in our e-Newsletters – and in public presentations to the District Municipality of Muskoka Council and the Township of Muskoka Lakes Council at which the proponent was present.

Yet in all these years, the proponent has **never made any effort to explain their misinformation.**

The public consultation for the proponent’s new “Alternative 1A” proposal has not been meaningful to date as the proponent has knowingly provided fundamental information which is wrong

And now they proponent tries to hide all this by pretending it didn’t happen by rewriting their Consultation Record.

Confusion from the Proponent

- 1) We noted this on-going confusion from the proponent in Section 2.9.2 2) of our comments submitted in response to the proponent’s environmental screening report (*Comments on the Environmental Screening Report for the North Bala Small Hydro Project, Technical Report, SaveTheBalaFalls.com, November 27, 2009, page 43*).
For example, the information provided by the proponent was incorrect and contradicted itself, as the proponent had stated that Option 1 could be built solely on Crown land, yet the drawings provided in the environmental screening report and other formal submissions showed that Option 1 also required municipal land.
- 2) Adding to the confusion from the proponent was a presentation by the proponent on October 14, 2008 to the District Municipality of Muskoka Council. This included a drawing, reproduced in Figure 3 below, labelled “*Alternative 1 General Arrangement Rev. C*”. Note that:
 - a) This drawing shows that for this version of Option 1, municipal land would not be required, in contradiction to the above three formally-presented Option 1 drawings.

- b) However, the required driveway and retaining wall is not shown. And a horizontal turbine is shown, even though the proponent has indicated this is not likely possible. And the downstream safety boom is shown anchored on municipal land, even though no such approval appeared forthcoming. So it would appear this was an inadequately-considered sketch rather than an actual possibility.
 - c) Also note this drawing shows the same orientation for the tailrace as the above three Option 1 drawings.
- 3) But subsequent to this October 14, 2008 drawing, the proponent's October 2009 environmental screening report contradicted this and showed Option 1 as requiring municipal land, as had been shown in earlier drawings.
- So it would appear that if the proponent was newly claiming in October 2008 that Option 1 could be built without municipal land, the subsequent information in their more-formal October 2009 environmental screening report showed they no longer considered this possible, and Option 1 indeed would require municipal land, as had been shown for years prior.
- 4) But subsequent to the October 2009 environmental screening report, in September 2010 the proponent posted on their web site yet another version of Option 1. This is reproduced as Figure 7 below, and was entitled "Option 1 General Arrangement".
- a) The proponent did not provide any explanation of why they posted this drawing or whether this was a new proposal, or if it replaced earlier drawings.
 - b) Inexplicably, the September 2010 Option 1 drawing shows the proposed station's generating capacity would be even greater than their Option 2 proposal, even though Section 1.5.1.1 of their environmental screening report stated that Option 1 must have less generating capacity; *"...the location of the intake would be between the North Bala Dam and the highway bridge. This is not an optimum location from a hydraulic standpoint and head losses would be incurred."* So again, it would appear this was an inadequately-considered sketch rather than an actual possibility.
 - c) This September 2010 drawing contradicts not only the Option 1 drawing in the environmental screening report (as it would apparently not require municipal land), but this also contradicts the October 14, 2008 drawing in that the tailrace is angled so the dangerously turbulent water exiting the tailrace would be angled towards the base of the north falls and towards the private docks on the north shore of the Moon River.
 - d) But without explanation, this new version of Option 1 was removed from the proponent's web site after a few weeks.
- 5) The proponent has never provided any explanation of these many versions of Option 1, we don't know what was possible and why drawings were retracted.

This is all **ridiculously convoluted, contradictory and confusing**.

The proponent hasn't presented a complete proposal.

It would appear that **even the proponent doesn't know what Option 1 is**. Certainly any **public consultation concerning Option 1 is therefore of no value** since nobody could know what the proposal was.

The proponent has apparently decided they can unilaterally and retroactively rewrite their public consultation record to replace the confusion they caused of what Option 1 actually is, and now simply say it was always about their new proposal they call "Alternative 1A" – which nobody knew about at the time

This is absurd. The proponent is **making things up that didn't happen**. They are pretending their own mistakes – and the confusion they caused – never happened. This is completely **unprofessional, unethical and unacceptable**.

Conclusion

The proponent provided fundamentally-important incorrect information to the public and wilfully neglected to correct this confusion.

The proponent should not be allowed to use the confusion they have caused to rob the public of our right to meaningful consultation.

There has not been meaningful public consultation of the proponent's new proposal (which they now refer to as Alternative 1A), as no member of the public could possibly know what location or orientation of Option 1 was being referred to.

And for the proponent to retroactively change their written public consultation record so we are to believe that whenever they previously said Option 1 they really meant their new Alternative 1A is beyond contempt.

The proponent is abusing the environmental assessment process.

We therefore repeat our request that this environmental assessment process be restarted, beginning with a public information centre which includes correct drawings showing what is actually being proposed.

Sincerely,



Mitchell Shnier, on behalf of SaveTheBalaFalls.com

Cc: The Honourable Kathleen Wynne, Minister of Municipal Affairs and Housing, and
Minister of Aboriginal Affairs, KWynne.mpp.co@liberal.ola.org

K. McGhee, Swift River Energy Limited, balafalls@m-k-e.ca

Appendix – Plan Views of Proponent’s Proposals

- 1) Presented below, in chronological order, are the drawings provided by the proponent for their various proposals.
- 2) The source of all drawings is noted.
- 3) For some, as noted, text and property boundary lines have been added.

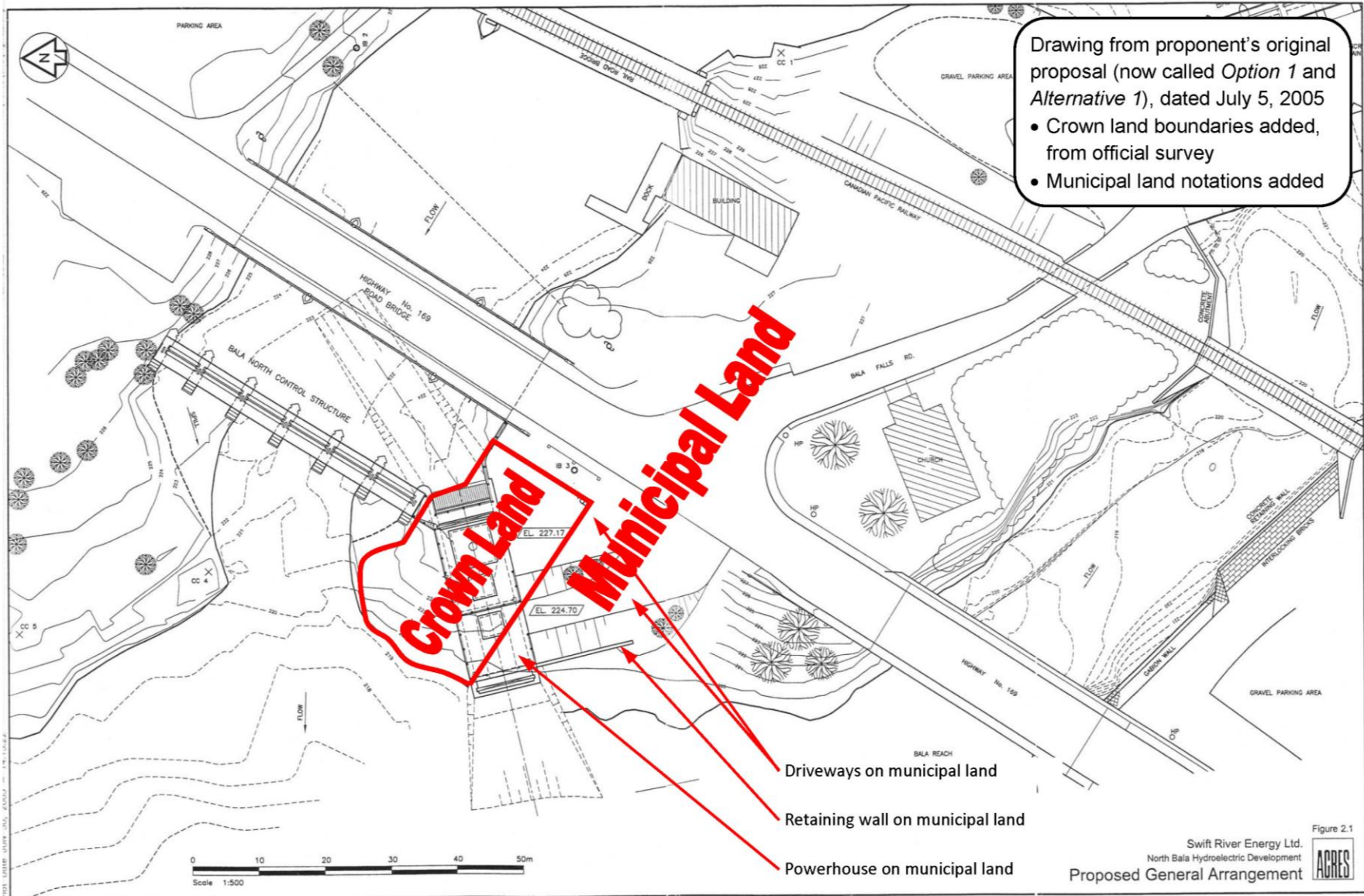


Figure 1 – Option 1 as shown in July 5, 2005 proposal (property boundary and text added)

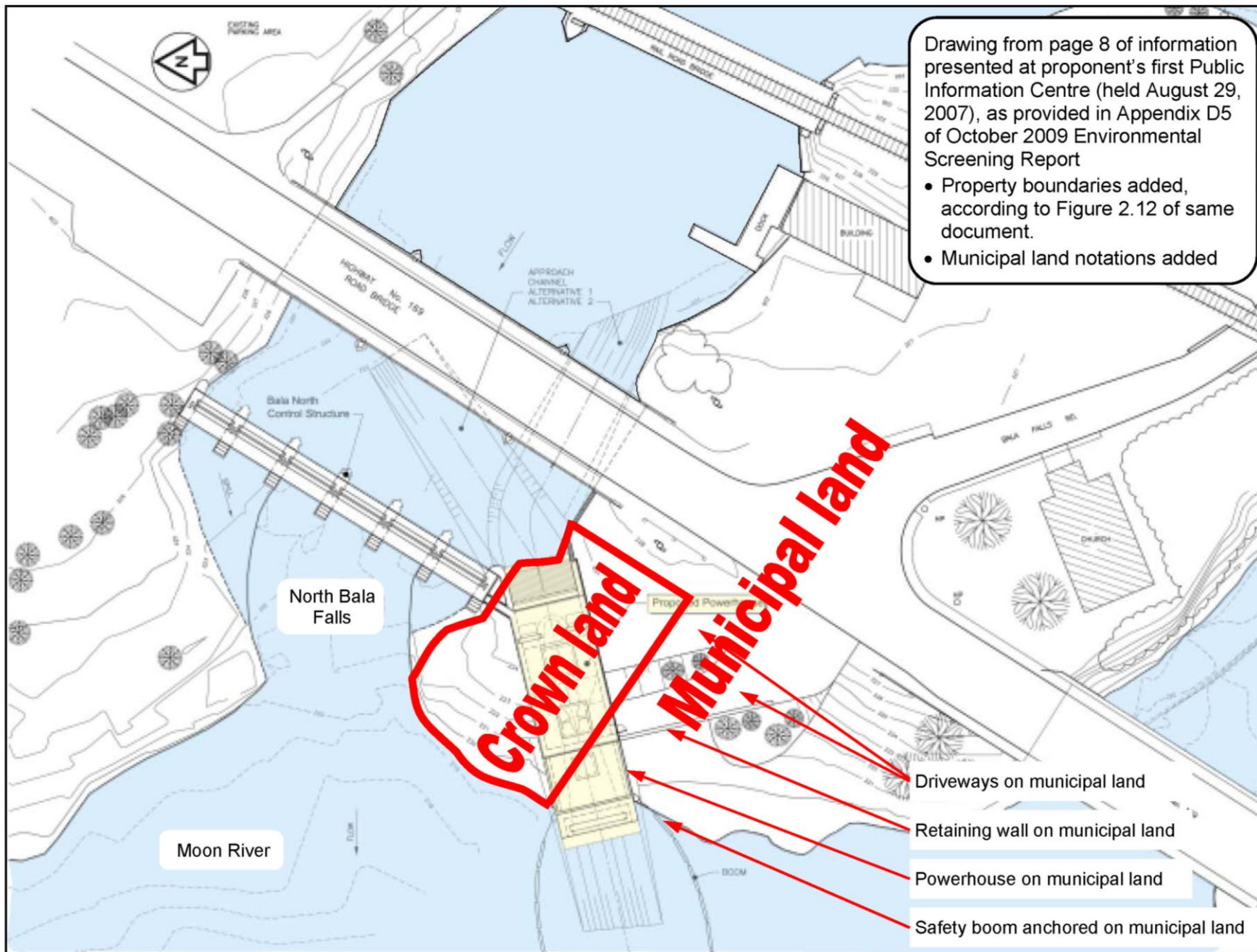


Figure 2 – Option 1 as shown at August 29, 2007 Public Information Centre (property boundary and text added)

Option 1 (Aug. '07)

- Intake/Powerhouse both on west side of highway.
- No tunneling under road.
- Will still entail blasting and rock removal from site.



Alternative 1 General Arrangement Rev. C

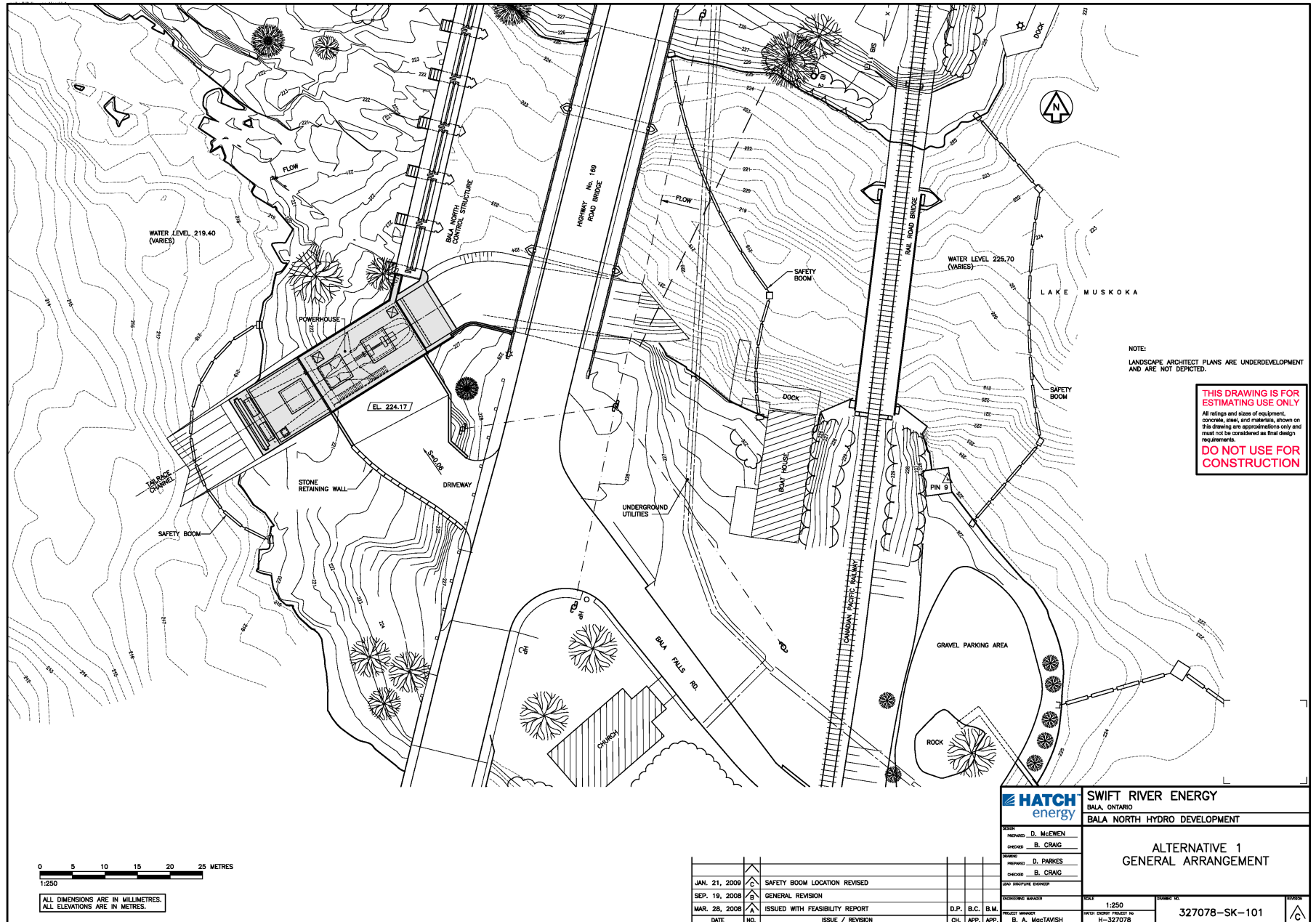


Figure 4 – Option 1, as shown as Layout Alternative 1 in Appendix A of October 2009 Environmental Screening Report

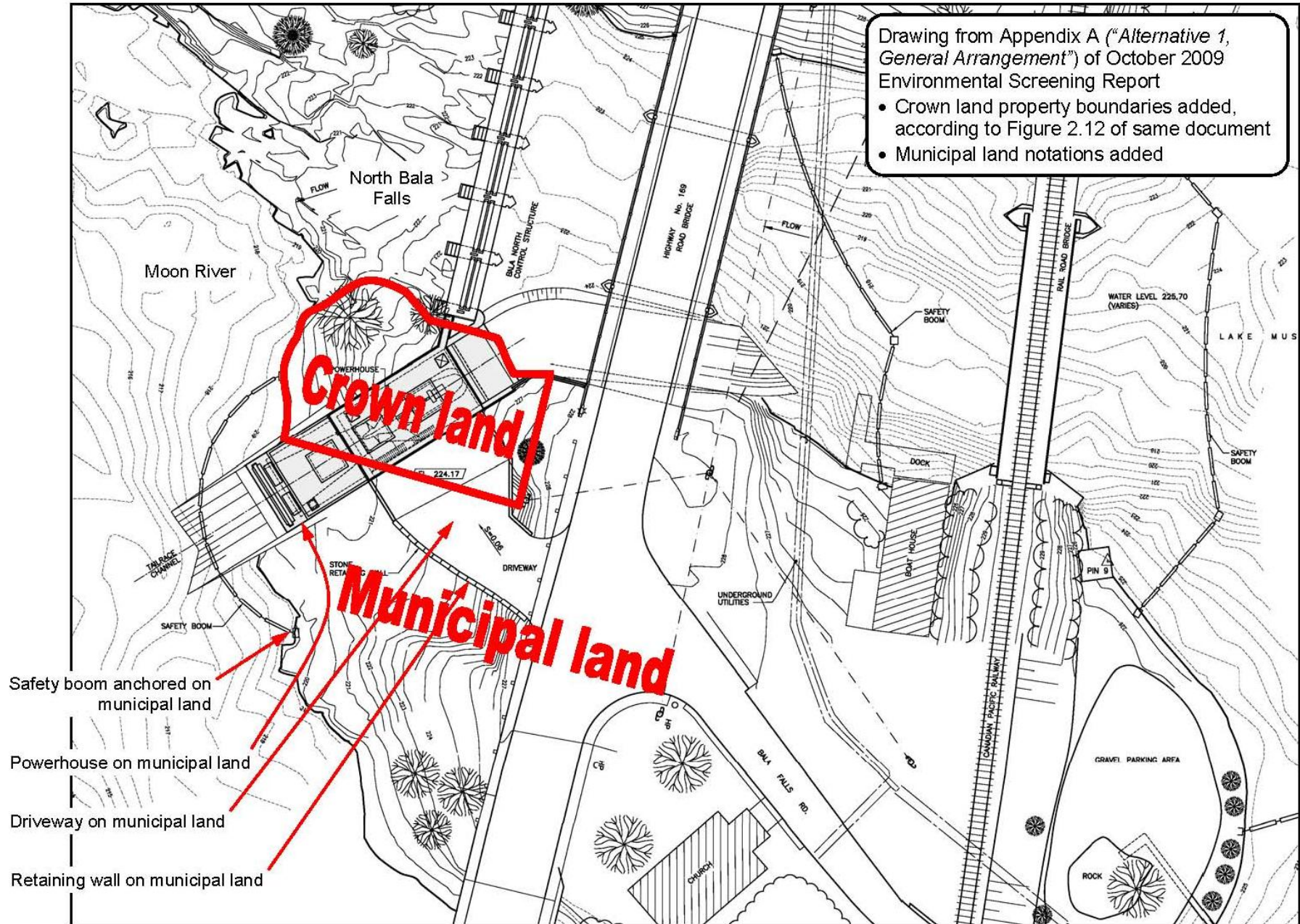
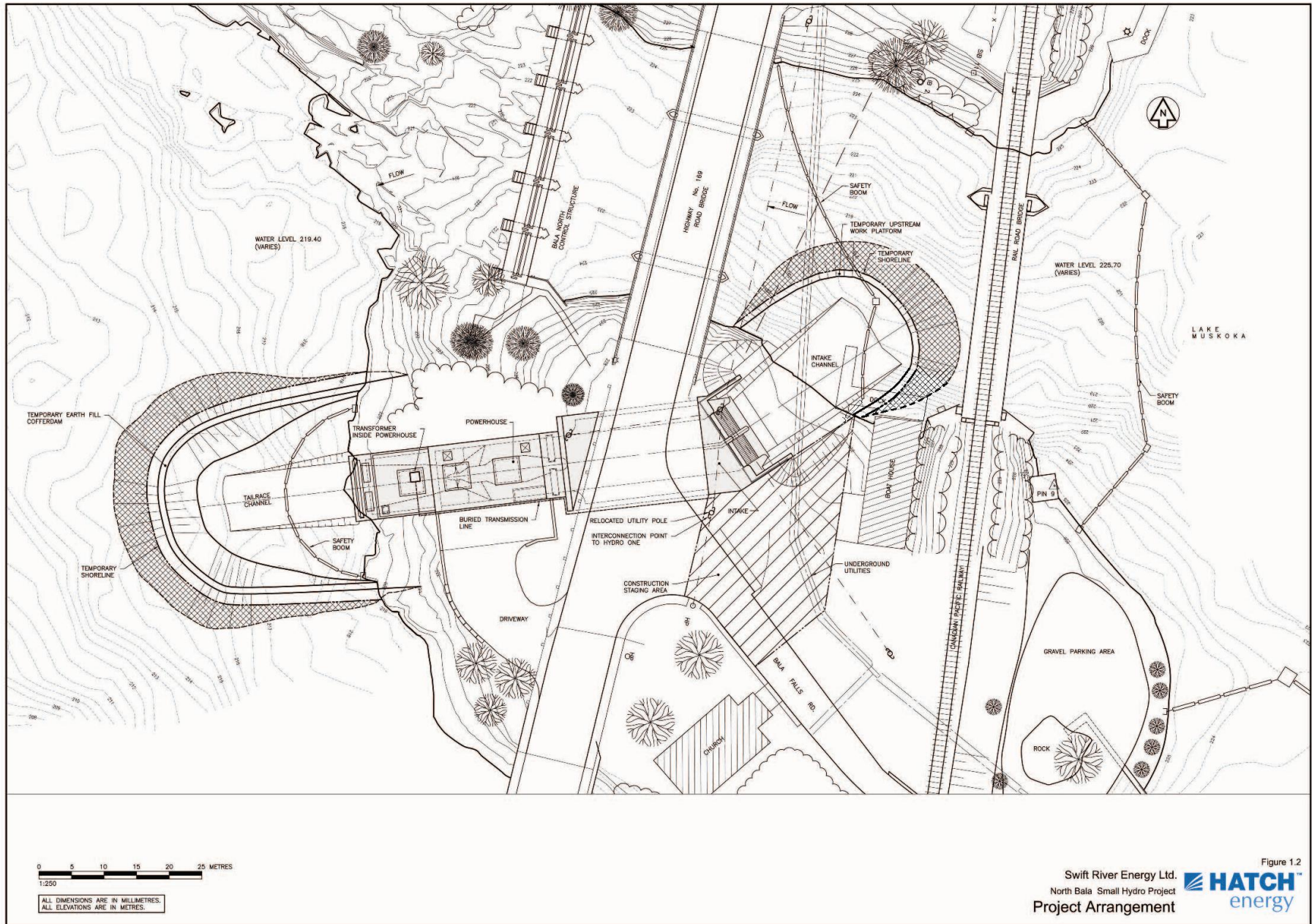


Figure 5 – Option 1, as shown as Layout Alternative 1 in Appendix A of October 2009 Environmental Screening Report (cropped, and property boundary and text added)



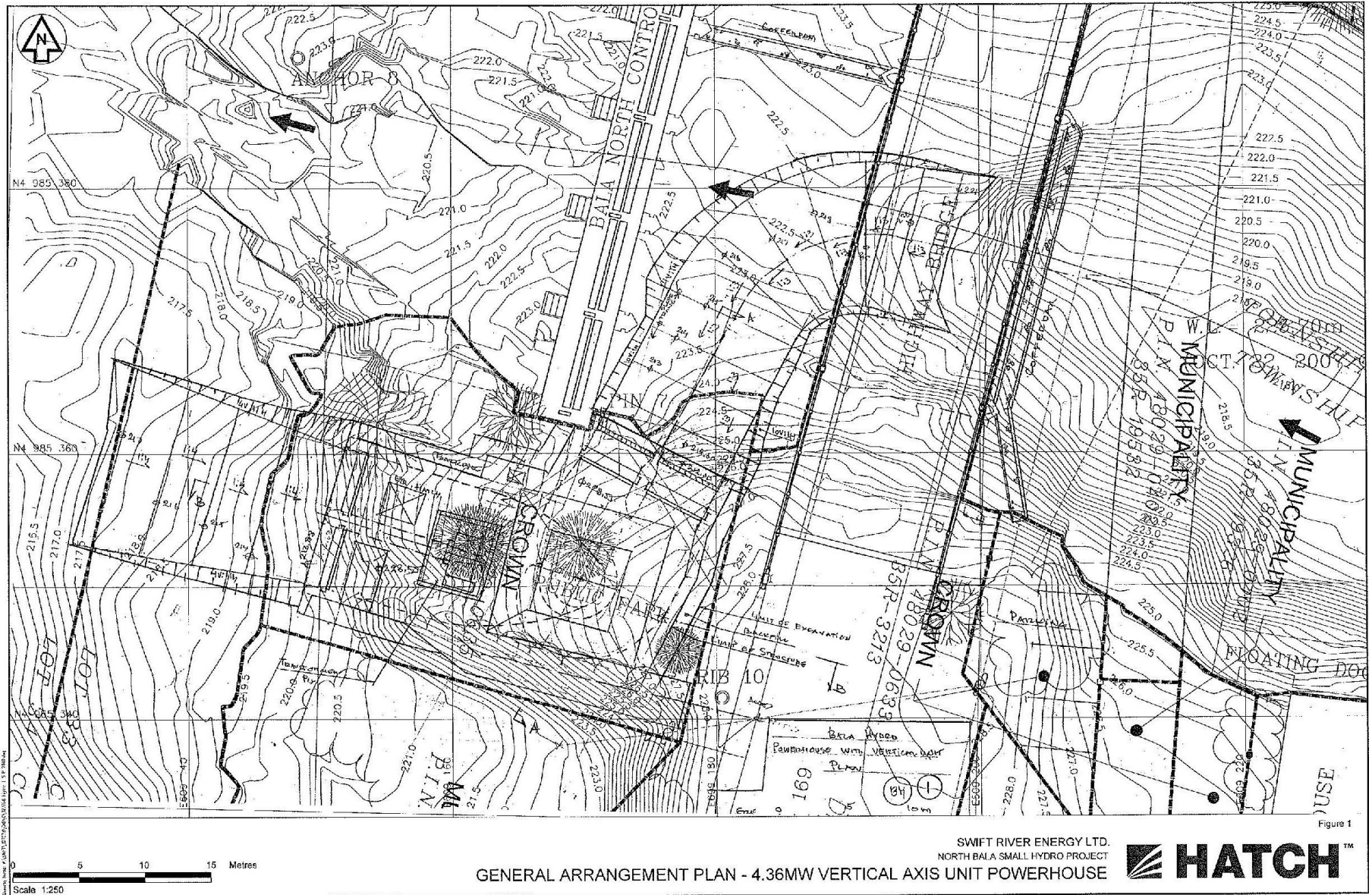


Figure 7 – Option 1, as posted on proponent’s web approximately September 2010, entitled “Option 1 General Arrangement”, removed from web site after a few weeks. Both posting and removal had no explanation of how this related to drawings provided previously or why it was removed

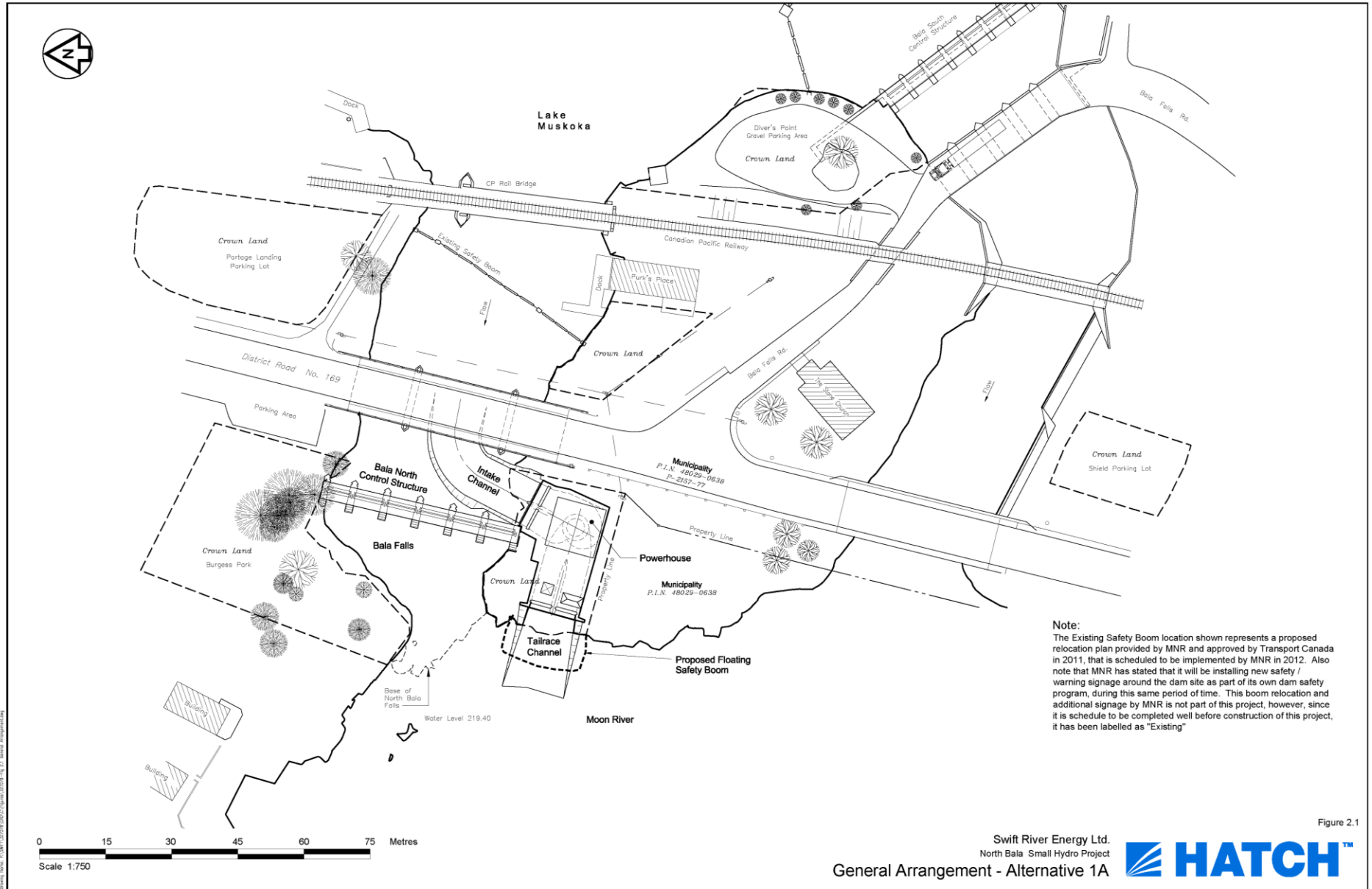


Figure 2.1

Swift River Energy Ltd.
 North Bala Small Hydro Project
 General Arrangement - Alternative 1A **HATCH™**

Figure 8 – New Proposal / “Alternative 1A”, as presented as Figure 2.1 in May 2012 Addendum