

ST. MARYS RIVER

BINATIONAL PUBLIC ADVISORY COUNCIL



Conservation Authority Board
Sault Ste. Marie Region Conservation Authority
1100 Fifth Line East
Sault Ste. Marie, ON P6A 5K7

March 5, 2013

Mayor and Council
City of Sault Ste. Marie
P.O. Box 580, 99 Foster Drive
Sault Ste. Marie, ON P6A 5N1

Reeve and Council
Prince Township Municipal Office
3042 Second Line West
Sault Ste. Marie, ON P6A 6K4

Re: Proposed Pointe Estates Development.

Dear Mayor, Reeve, Councilors, and Conservation Authority Board Members:

On behalf of the Binational Public Advisory Council (BPAC) for the St. Marys River Remedial Action Plan (RAP), we are writing to express our concern regarding the recent decision by the Sault Ste. Marie Region Conservation Authority (SSMRCA) to approve the continued pursuit by a private developer of a proposed subdivision in wetlands adjacent to the St. Marys River (proposed Pointe Estates). In addition to reasons expressed in previous correspondence by BPAC, we believe that the development is at odds with the Great Lakes Water Quality Agreement, recently amended by Canada and the United States.

BPAC, created in 1988, is a stakeholder's group whose members include citizens, property owners, Native American Tribes, elected officials, health units, municipal staff, and university staff from both Canada and the United States. BPAC was formed to assist government agencies responsible for preparing a Remedial Action Plan (RAP) for the St. Marys River AOC. Specifically, BPAC informs the agencies about public views and opinions regarding the clean-up of the St. Marys River AOC, and advocates for projects that achieve the restoration goals. BPAC is dedicated to ensuring that the river water quality and the ecosystem are improved and protected for all users.

BPAC submitted a letter to the City of Sault Ste. Marie dated May 18, 2007 with the following major concerns regarding the proposed Pointe Estates:

- **Destruction of Wetlands** – The St. Marys River AOC has 11 beneficial use impairments (BUIs) as determined through the Great Lakes Water Quality Agreement. Loss of Fish and Wildlife Habitat and Degradation of Fish and Wildlife Populations are two of the BUIs directly linked to the historical and on-going destruction of coastal wetlands in the St. Marys River. This particular wetland site was part of a larger complex of dune and swale wetlands that was partially destroyed for construction of the city airport.
- **Alteration of Coastal Hydrology** – BPAC has been informed that the owner/contractor is also proposing to dredge up to 2.3 kilometers of the wetland to create a canal system for boat access to the proposed development. Not only will this result in additional loss of benthic communities and beneficial wetland functions but there is also concern that the resulting stagnant water will lead to unhealthy conditions.
- **Groundwater saturated with septic sewage** – BPAC understands that the contractor does not plan to connect the development to the city sewage treatment system. The owner/contractor has stated that there will be a septic tank on each of the home development sites. BPAC is concerned that the groundwater is already saturated with septic sewage in the Pointe aux Pins/Pointe Louise area because of the density of houses in that area that currently have on-site (and many ageing) septic tanks.

BPAC is currently involved in actions being taken on Canadian and U.S. sides of the river to restore fish and wildlife habitat. This includes: a review of different design options for the Little Rapids project (for which costs are projected to range between \$2,845,000 and \$12,611,984), and preliminary discussions on potential projects on the Canadian side of the river. This builds upon previous initiatives carried out on both sides of the boarder to restore parts of the river to more natural shorelines. Since multiple levels of government have invested, and continue to invest, tax dollars to further recover the St. Marys River environment under the RAP, it would be counterproductive to permit the loss or destruction of existing wetland habitat.

The Great Lakes Water Quality Protocol of 2012 (<http://www.ec.gc.ca/grandslacs-greatlakes/default.asp?lang=En&n=A1C62826>) provides clear direction for the protection and restoration of the Great Lakes, connecting waterways, and the watersheds that feed them. We believe the decision of the Board flies in the face of the intent of parts of this agreement, as encompassed by the Preamble which includes:

EMPHASIZING the need to strengthen efforts to address new and continuing threats to the quality of the Waters of the Great Lakes, including... nutrients, chemical substances, and the loss of habitats and species;

RECOGNIZING that nearshore areas must be restored and protected because they are the major source of drinking water for communities within the basin, are where most human

commerce and recreation occurs, and are the critical ecological link between watersheds and the open waters of the Great Lakes, and;

RECOGNIZING that the involvement and participation of ... Municipal Governments, watershed management agencies, local public agencies, and the Public are essential to achieve the objectives of this Agreement.

We ask you to refer to Article 2, Section 4 of the Agreement, which outlines the principles and approaches to be followed:

(c) adequate treatment – treating wastewater without relying on flow augmentation to achieve applicable water quality standards; we suggest that the proposed Pointe Estates development, that relies on water surges in the canal, fails to meet this principle.

(d) anti-degradation – implementing all reasonable and practicable measures to maintain ... areas that have outstanding natural resource value; we suggest that permitting development within the wetlands would violate this provision.

(i) precaution – incorporating the precautionary approach, the Parties intend that, “Where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation”; we suggest that there is currently enough scientific certainty that the wetland in question is of high environmental value, and that there is sufficient evidence that the water circulation plan for the proposed canal does not meet environmental standards.

(j) prevention – anticipating and preventing pollution and other threats to the quality of the Waters of the Great Lakes to reduce overall risks to the environment and human health; we suggest the proposed subdivision is a clear threat to the high quality wetland environment, and that the Board by authorizing the next step in the subdivision implementation has failed to anticipate and prevent this threat.

(l) science-based management – implementing management decisions, policies and programs that are based on best available science, research and knowledge, as well as traditional ecological knowledge, when available; we suggest that the best available science and knowledge points to a Board decision that should have rejected the plans for the subdivision in the wetland.

Article 3, Section 1 (a) of the Agreement spells out in the General Objectives that the waters of the Great Lakes should:

(v) support healthy and productive wetlands and other habitats to sustain resilient populations of native species;

(vi) be free from nutrients that directly or indirectly enter the water as a result of human activity, in amounts that promote growth of algae and cyanobacteria that interfere with aquatic ecosystem health, or human use of the ecosystem;
Article 3 further states (in the part titled Implementation): “The Parties shall progress toward the attainment of these General Objectives ... through their respective domestic programs. The Parties shall use best efforts to ensure that ... regulatory requirements of the Parties, State and Provincial Governments ... Municipal Governments, watershed management agencies, and other local public agencies are consistent with all of these objectives. Objectives developed jointly by the Parties do not preclude either Party from establishing more stringent domestic requirements.

At BPAC, we view this statement to mean that Municipal Governments including its Boards are required through the Agreement to meet the Objectives. We see no provision for “opting out” of the Objectives in order to further a local proposed development in wetlands that adjoin the Great Lakes. Further, a study that has shown problems with nutrient-laden water in the proposed subdivision canal, and since this water would drain into the Great Lakes, the proposed subdivision and canal would appear to not meet Objective (vi).

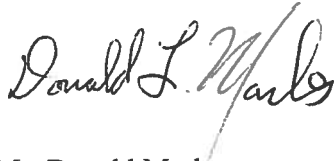
Article 4, Section 1 of the Agreement states that “The Parties, in cooperation and consultation with ... Municipal Governments ... shall develop and implement programs and other measures to fulfill the purpose of this Agreement, in accordance with the Principles and Approaches set forth in Article 2; and to achieve the General and Specific Objectives set forth in Article 3.” Section 2 of Article 4 states “These programs and other measures shall include, but are not limited to pollution abatement, control, and prevention programs for urban drainage, and ...conservation programs to restore and protect habitat.” We believe that the recent decision by the Board regarding the Pointe Estates development, instead of preventing pollution would add to it, and; instead of protecting habitat, would damage it.

We would also call your attention to Bill 100 entitled An Act to protect and restore the Great Lakes-St. Lawrence River Basin, which went to First Reading on June 06, 2012 in the Ontario Legislature. This is the provincial means of implementing the Canada-US Water Quality Agreement, designed specifically to protect and restore wetlands and beaches and other coastal areas, and natural habitats and bio-diversity of the Great Lakes-St. Lawrence River Basin. From our understanding of this Bill, municipalities and municipal planning authorities that have jurisdiction in the Great Lakes-St. Lawrence River Basin must conform with the principles and objectives of the Agreement (See sections 21 to 24 of Bill 100). The Bill would have provided for regulations to protect the ecological health of the Great Lakes-St. Lawrence River Basin, and would apply to areas close to shorelines, tributaries or wetlands (See section 26). Should this Bill become law, all municipal bylaws and plans must conform to it. We suggest that the proposed development of the Pointe Estates subdivision cannot meet the provisions of Bill 100.

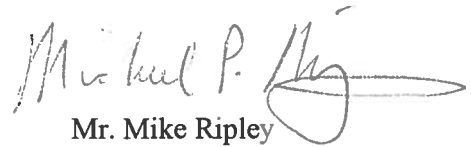
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We urge the Board of the SSMRCA to reverse their decision to grant a permit regarding Pointe Estates, and further urge other parties involved in this process to recognize the Agreement and reject any further steps towards creating this subdivision in the wetlands within the upper reach of the St. Marys River AOC.

Sincerely,



Mr. Donald Marles
Canadian BPAC Vice Chair



Mr. Mike Ripley
U.S. BPAC Vice Chair

Cc: International Joint Commission, Canadian Section
MPP David Oraziotti, Minister of Natural Resources
Jerry Dolcetti, Commissioner of Engineering and Planning
Don McConnell, Planning Director
Sherri Cleaves, Algoma Public Health