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# ALBERTA ENVIRONMENTAL APPEALS BOARD

## Report and Recommendations

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Date of Decision – May 2, 2017

**IN THE MATTER OF** sections 91, 92, 94, and 95 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** an appeal filed by Chris and Kendra Gilbert with respect to Approval No. 00381707-00-00 issued to Ole and Diane Ellefson, under the *Water Act*, by the Director, Upper Athabasca Region, Alberta Environment and Parks.

Cite as: *Gilbert v. Director, Upper Athabasca Region, Alberta Environment and Parks, re: Ellefson* (02 May 2017), Appeal No. 16-037-R (A.E.A.B.).

**BEFORE:**

Mr. Alex MacWilliam, Board Chair.

**PARTICIPANTS:**

**Appellants:**

Mr. Chris and Ms. Kendra Gilbert.

**Approval Holders:**

Mr. Ole and Ms. Diane Ellefson.

**Director:**

Mr. Muhammad Aziz, Director, Upper Athabasca Region, Alberta Environment and Parks, represented by Ms. Jade Vo, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

Alberta Environment and Parks issued an Approval under the *Water Act* to Mr. Ole and Ms. Diane Ellefson allowing for aquatic vegetation to be cut on Baptiste Lake. Mr. Chris and Ms. Kendra Gilbert appealed the issuance of the Approval to the Environmental Appeals Board (the Board).

A mediation meeting was held and a resolution was reached whereby the parties asked the Board to recommend to the Minister the Approval be varied by adding additional conditions. The Board accepted the mediated agreement and recommended the Approval be varied accordingly.

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## **I. BACKGROUND**

[1] On October 28, 2016, the Director, Upper Athabasca Region, Alberta Environment and Parks (the “Director”), issued Approval No. 00381707-00-00 (the “Approval”) pursuant to the *Water Act*, R.S.A. 2000, c. W-3, to Mr. Ole and Ms. Diane Ellefson (collectively, the “Approval Holders”), allowing for aquatic vegetation to be cut on Baptiste Lake at Lot 9 Block 2 Plan 5979KS.

[2] On November 16, 2016, the Environmental Appeals Board (the “Board”) received a Notice of Appeal from Mr. Chris and Ms. Kendra Gilbert (the “Appellants”). The Board acknowledged receipt of the appeal and notified the Director and Approval Holders of the appeal. The Board requested the Appellants, Approval Holders, and Director (collectively, the “Parties”) provide available dates for a mediation meeting.

[3] A mediation meeting was held on April 18, 2017, in Edmonton. Productive discussions resulted in a resolution of the appeal.

## **II. DISCUSSION**

[4] The mediated agreement resulted in the Parties asking the Board to recommend to the Minister the Approval be varied by adding the following terms and conditions to the Approval:

1. Immediately after condition 4.1(b), the following condition be added:  
“(c) the Approval Holder will cut the access approximately 4 metres from the northwest boundary of the Approval Holder’s property (See attached Map A).”
2. Immediately after condition 4.3, the following condition to be added:  
“4.4 (a)The Approval Holder shall notify the Director at least 7 days prior to cutting the vegetation.  
(b) The Approval Holder shall submit to the Director an as-built drawing within 14 days after the vegetation has been cut describing how the vegetation was cut, where the vegetation was cut, and providing photographs showing the site prior to the vegetation being cut and after the vegetation has been cut.”

[5] The Board considers the mediated agreement as reasonable and recommends to the Minister the Approval be varied according to the agreement reached between the Parties.

### III. RECOMMENDATIONS

[6] In accordance with section 99 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”),<sup>1</sup> the Board recommends the Minister of Environment order that *Water Act* Approval No. 00381707-00-00 be varied in accordance with the agreement reached by the Parties.

[7] Based on the mediated agreement, the Board recommends the Approval be varied as follows:

1. The Approval is amended by adding the following immediately after condition 4.1(b):
  - “(c) the Approval Holder will cut the access approximately 4 metres from the northwest boundary of the Approval Holder’s property (See attached Map A).”
2. The Approval is amended by adding the following immediately after condition 4.3:
  - “4.4 (a) The Approval Holder shall notify the Director at least 7 days prior to cutting the vegetation.
  - (b) The Approval Holder shall submit to the Director an as-built drawing within 14 days after the vegetation has been cut describing how the vegetation was cut, where the vegetation was cut, and providing photographs showing the site prior to the vegetation being cut and after the vegetation has been cut.”

[8] Pursuant to section 100(2) of EPEA,<sup>2</sup> a copy of this report and recommendation and of any decision by the Minister are to be provided to:

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<sup>1</sup> Section 99 of EPEA provides:

“In the case of a notice of appeal referred to in section 91(1)(a) to (m) of this Act or in section 115(1)(a) to (i), (k), (m) to (p) and (r) of the *Water Act*, the Board shall within 30 days after the completion of the hearing of the appeal submit a report to the Minister, including its recommendations and the representations or a summary of the representations that were made to it.”

<sup>2</sup> Section 100(2) of EPEA states:

1. Mr. Chris and Ms. Kendra Gilbert;
2. Mr. Ole and Ms. Diane Ellefson; and
3. Ms. Jade Vo, Alberta Justice and Solicitor General, on behalf of the Director, Upper Athabasca Region, Alberta Environment and Parks.

Dated on May 2, 2017, at Edmonton, Alberta.

“original signed by”

Alex MacWilliam  
Board Chair

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“The Minister shall immediately give notice of any decision made under this section to the Board and the Board shall, immediately on receipt of notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the Board and to all other persons who the Board considers should receive notice of the decision.”

**Ministerial Order  
31/2017**

*Environmental Protection and Enhancement Act*  
R.S.A. 2000, c. E-12;

and

*Water Act*  
R.S.A. 2000, c. W-3.

**Order Respecting Environmental Appeals Board  
Appeal No. 16-037**

I, Shannon Phillips, Minister of Environment and Parks, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal No. 16-037.

Dated at the City of Edmonton, Province of Alberta, this \_\_\_31\_\_\_ day of \_\_\_May\_\_\_\_\_, 2017.

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Shannon Phillips  
Minister



Order Respecting Environmental Appeals Board Appeal No. 16-037

With respect to the decision of the Director, Upper Athabasca Region, Alberta Environment and Parks (the “Director”), to issue Approval No. 00381707-00-00 (the “Approval”), under the *Water Act*, R.S.A. 2000, c. W-3, to Ole and Diane Ellefson, (the “Approval Holder”) I, Shannon Phillips, Minister of Environment and Parks, order that:

1. The decision of the Director to issue the Approval is varied as follows.
2. The Approval is amended by adding the following immediately after condition 4.1(b):
  - “(c) the Approval Holder will cut the access approximately 4 metres from the northwest boundary of the Approval Holder’s property (See attached Map A).”
3. The Approval is amended by adding the following immediately after condition 4.3:
  - “4.4 (a) The Approval Holder shall notify the Director at least 7 days prior to cutting the vegetation.
  - (b) The Approval Holder shall submit to the Director an as-built drawing within 14 days after the vegetation has been cut describing how the vegetation was cut, where the vegetation was cut, and providing photographs showing the site prior to the vegetation being cut and after the vegetation has been cut.”

Map A



