



# Sauble Beach Facts- May 4, 2021

## To the Residents of South Bruce Peninsula

With the Sauble Beach litigation dragging on for so long, Council was not always able to explain in detail, what we have been going through. With the bulk of the litigation over, and with so much misinformation circulating, Council felt this was the right time to give you the entire picture. We want to explain to you why Council firmly believes we did not deserve to be charged for the work we did on the Beach in 2017, what the verdict meant to the future of our Beach and what led to Council's decision to appeal. It's been an incredibly difficult journey but there are decisions that still need to be made concerning the Beach and we need your input. Please remember, whether you live at Sauble or elsewhere in SBP, this is your Beach, funded through your tax dollars and Paid Parking revenue.

We've endured an incredible ordeal with the Ministry that you should clearly understand as we contemplate our next move. Sauble belongs to you so please take 10 minutes to read this chronology of facts regarding the Beach, then help us decide where to go from here. Most every statement is supported by documentation; email, letters, memos, court transcripts, pictures, you name it, it's all here. We have created a separate page on the Town's website called *Sauble Beach Facts* where you'll find this transcript plus all of the supporting documentation. We will also include a platform in the near future, for you to give us your thoughts after you've read this. We want to hear from you.

Here we go...

After a lengthy absence, the Piping Plover returned to the north end of Sauble Beach in the summer of 2007. In 2008, the Ministry of Natural Resources asked the Town Council, under Mayor Gwen Gilbert, to cease all maintenance from the Tennis Courts to the River until the Plovers depart or upon Ministry permission. ([Exhibit 1](#))

Apr. 20, 2009      Letter was received from the Ministry advising no maintenance from Eleventh St. to the River. No garbage cans on the Beach. This is because garbage attracts seagulls who predate Plovers. They advised limited use of heavy equipment. ([Exhibit 2](#))

Aug. 17, 2009      Ministry advises we can now put out garbage cans and rake the Beach. ([Exhibit 3](#))

2010-2014      Following a delegation from the Ministry, the new Council under Mayor John Close takes the approach to discontinue maintenance of the north end of the Beach completely. No maintenance occurred for 4 years causing Willow bushes to blanket the Beach from the

dunes to the water's edge. Plovers began to abandon the north end and moved further south each year to nest. There was substantial community backlash on the loss of the north Beach. ([Exhibit 4.1](#), [Exhibit 4.2](#), & [Exhibit 5](#))

- Dec. 2014 A new Council was elected, it was Mayor Janice Jackson's first term as Mayor. The majority of Council committed to reclaiming the north end of Sauble. Council set out to convince the Ministry that we can easily share the Beach with the Plovers but advised that we are not willing to lose the Beach.
- Apr. 28, 2015 In an attempt to negotiate middle ground, Mayor Janice Jackson met with the Ministry on the Beach along with staff and former Councillor Ana Vukovic. They wouldn't budge.
- Summer of 2015 This was the 5<sup>th</sup> year without maintenance on the north Beach. Community anxiety increases. Plovers continue to move south on the Beach as the north end becomes increasingly uninhabitable. ([Exhibit 6](#))
- May 19, 2015 The Friends of Sauble Beach appear before Council expressing their concerns about raking ([Exhibit 7](#))
- Jun. 16, 2015 In a recorded vote, Council passes By-Law 62-2015 to begin raking the Beach. ([Exhibit 8](#))
- Jun. 16, 2015 Environmental Defense, the Blue Flag organization, revokes our Blue Flag status with the passage of the by-law to rake the Beach. This frustrates Council as all other Blue Flag beaches at that time, mechanically raked their beaches. ([Exhibit 9](#))
- Aug. 21, 2015 Request to meet the Ministry in Town Hall in an attempt to form an agreement on Beach maintenance. Invitation extended to MPP Bill Walker. ([Exhibit 10.1](#) & [Exhibit 10.2](#))
- Aug. 27, 2015 Email communication between Lake Huron Centre for Coastal Conservancy, Ministry and the Town. Geoff Peach of the Coastal Conservancy supported the spring removal of Willows in the north. Ministry concurred and arranged to meet with Town staff to map out areas. Both requested the Town wait until spring to remove vegetation from the extreme northern tip. With assurance the Ministry wouldn't change their minds, Council agrees to wait until the spring to address the Willow blanketed northern tip. ([Exhibit 11](#))
- Sep. 2, 2015 Meeting was held in Town Hall with the Ministry, MPP Walker, Mayor Janice Jackson, and Public Works. We agreed to maintenance on the Beach before the Plovers arrive, then raking

between nests while Plovers were here, and then the entire Beach after they departed. We felt we had made significant gains.

- Spring 2016 Ministry changes their minds and no longer supports the removal of vegetation from the northern tip.
- Mar. 13, 2017 Ministry emails staff advising minor raking may be permitted after Plovers have arrived. ([Exhibit 12](#))
- May 9, 2017 Email from the Town to the Ministry asking for permission to rake the private Beach between Fifth and Sixth St. Ministry approves of raking 500 metres away from Plover nests once the Plovers arrive and raking the entire Beach after they leave. ([Exhibit 13](#))
- Aug. 9, 2017 Town sends a letter to the Ministry explaining planned work on the Beach as Plovers had departed. We advised the Ministry that the work included using a mid-size bulldozer. Ministry expresses no concerns. In fact, the Ministry works with Town staff to drive orange stakes into the Beach, near the base of the dunes, to guide Town on the work parameters. ([Exhibit 14.1](#) & [Exhibit 14.2](#))
- Aug. 18, 2017 Letter from the Ministry stating raking, leveling and the removal of debris is not likely to damage habitat but requests we do not work in the spring until after the Plovers arrive. ([Exhibit 15](#))
- Aug. 23-Sept 7, 17 Plovers are gone for the season. Town works on the Beach to remove Willow bushes with no objection from MNR.
- Late Aug. 2017 Upset with our work on the Beach, a local environmental group appeals to larger environmental groups to assist in stopping the Town from working on the Beach.
- Sep. 9, 2017 Ministry issues their annual "Year End Report" thanking the Town for our assistance and partnership with the Ministry. No mention of any concerns over Beach maintenance and no mention of the bulldozer work. ([Exhibit 16](#))
- Feb. 9, 2018 Memo from the Ministry requesting the Town not rake in the Spring until Plovers nest. Once nested, raking, removal of debris, straightening Beach drains and clearing around exercise equipment can begin. Raking is permitted after Plovers depart. ([Exhibit 17](#))
- Mar. 22, 2018 Ministry Enforcement Officers arrive at Town Hall and charge us with damaging Plover habitat. ([Exhibit 18](#))
- Mar. 28, 2018 Ministry issues a Stop Order on any work north of Paisley Lane. A Stop Order gives the Town specific direction or prohibition of maintenance activities. ([Exhibit 19](#))

- Apr. 4, 2018 Ecojustice (legal firm representing environmental groups) files a Motion to prevent all maintenance on Sauble Beach. ([Exhibit 20](#))
- Apr. 2018 After the Town reclaimed the Beach with the bulldozer, the Plovers return to the north end.
- May 7, 2018 Second Stop Order issued. We are permitted to clean out Beach drains, exercise and lifesaving equipment, can place benches, clean off walkways, remove zebra mussels with a hand rake and place mobi-mats. We were given permission to use a backhoe and a small loader for this work. ([Exhibit 21](#))
- Jun. 28, 2018 Third Stop Order issued. We are permitted to rake the Beach between nests, then rake the entire Beach once Plovers leave. We are also permitted to place garbage cans throughout Beach. ([Exhibit 22](#))
- Jul. 25, 2018 Ministry charges the Town again with damaging Plover habitat. ([Exhibit 23](#))
- Aug 21, 2018 Town sends a letter to the newly elected PC Government asking for help. ([Exhibit 24](#))
- Summer of 2018 Town boasts one of the largest Plover recoveries in Sauble's history. (Refer to [Exhibit 6](#))
- Oct. 5, 2018 Fourth Stop Order issued, permitting cleaning of the Beach drains. ([Exhibit 25](#))
- 2018-to present All maintenance of the Beach prohibited with the exception of emergency work.
- May 30-Jun 6, '19 Trial for damaging habitat begins with Justice of the Peace Anderson presiding.
- Former Public Works Manager testifies that he chose to use a mid-size dozer as he felt it was less invasive and damaging to the Beach than the high-hoe they had tried on several occasions. ([Exhibit 26](#))
- US Plover expert Dr. Francesca Cuthbert testifies that the south end of the Beach is not Plover habitat due to the vast number of beachgoers. ([Exhibit 27](#))
- Dr. Francesca Cuthbert also testifies that heavy vegetation in the north end of the Beach prevented the area from being Plover habitat. ([Exhibit 27.1](#))

Ministry expert Biologist Suzanne Robinson testifies that removal of Willows in the north end of the Beach from Eleventh St. to the River is not damaging to Plover habitat. ([Exhibit 28](#))

Ministry agrees there is no legislative definition of Plover habitat unlike that of other Endangered Species. ([Exhibit 28.1](#))

The Crown claimed the Town damaged or eliminated the invertebrate on the Beach. The tiny insects the Plovers feed from. The Ministry (US Plover expert Dr. Francesca Cuthbert and Biologist Suzanne Robinson) could not quantifiably or scientifically prove there was any alteration to the invertebrate. (Transcript) ([Exhibit 28.2](#) and [Exhibit 28.3](#))

Oct. 3, 2019 In spite of our legal team providing documentation that the Ministry not only knew we planned to use a mid-size bulldozer on the Beach and in fact drove in stakes to guide our work, and in spite of the Crown's inability to prove Beach invertebrate suffered, and in spite of the Crown's two expert witnesses acknowledging the south end of the Beach is not habitat and where the Willows blanketed the north end was also not considered habitat, the Town was convicted of damaging Plover habitat and issued a \$100,000 fine. In a stunning decision, against the testimony of the Crown's own expert witnesses, Justice of the Peace Anderson ruled the entire Beach is Plover habitat and that any human contact on the Beach destroys habitat. This was a devastating ruling that left the Town with no choice but to appeal. ([Exhibit 29](#))

Sep 24, 2019 Town receives letter from the Ministry allowing the use of pesticides to address the Willows on the Beach. Town undertakes the work that fall which proves to be effective. The dead Willows were then washed away by the high waters levels that followed. ([Exhibit 29.1](#))

Mar. 8, 2021 On Appeal, Ontario Court Justice Julia Morneau upheld the conviction but overruled the JP stating that the entire south end of the Beach is not habitat nor anywhere there are Willows. A partial victory for the Town. ([Exhibit 30](#), paragraphs 61,62,63)

Mar. 26, 2021 Ministry issues a letter to the Town stating they disagree with the Court's decision and insists the entire Beach is habitat and will remain habitat for ten years after the last Plover has departed. Considering Plovers have nested on the full length of the Beach, this is devastating. The Ministry stated that grooming and other beach maintenance can result in charges. This Ministry position will force us to abandon the Beach for a minimum of a decade and more than likely beyond. For instance, if we have no Plovers for 9

years and then they come back, the clock will restart. We could easily have our hands tied indefinitely. The Town could rake the south Beach (as it was deemed by the Court of Appeal to not be Plover habitat), then we'd be charged by Ministry staff, and likely win due to the Court's recent ruling, but the cost to defend ourselves yet again would be substantial given the cost to defend the 2017 charges approached one million dollars. The Town managed the cost to defend itself as the payments were spread over the last 4 years. There will be no massive tax increase as some are suggesting and there hasn't been an out of the ordinary tax increase since we hired our legal team in 2018. ([Exhibit 31](#))

Apr. 7, 2021

With the future of the Beach in peril, the Town issued a Leave to Appeal. We faced a deadline of April 7<sup>th</sup> to preserve our right to launch a 2<sup>nd</sup> appeal on the Beach decision. This appeal takes the case to a higher Court and it could take a up to a year before proceedings begin, this will give the Town time to determine our position. Please keep in mind that the majority of the costs to fight these charges has already been paid. As the last Appeal only took one day in Court, a 2<sup>nd</sup> appeal is expected to be the same as we will use all the evidence we've amassed over the last 4 years. We've come this far, should we walk away with only one day remaining? The cost to Appeal is minor in comparison to what's been invested to date. With the future of Sauble Beach looking quite grim, Council will discuss options on how to proceed and solicit the will of our taxpayers, given the current prohibition of any work on the Beach. We must keep in mind that the entire north end of Sauble was overtaken by Willow bushes in just 4 years of abandonment. We now have Willows in many places throughout the entire length of the Beach. Do we drop the Appeal and abandon the Beach completely? Do we keep fighting for Sauble Beach despite the obstacles? What is Sauble Beach worth to our Town? It's the centre of our tourism industry with a thriving business community. It's home to over 3,400 residents providing assessment to our Town coffers. Sauble Beach is all about the Beach so where shall we go from here? Perhaps you're not from Sauble. Perhaps you live near Red Bay Beach, Howdenvale Beach, Chelsey Lake, Berford Lake, Gould Lake...the list goes on. What if your beach or lake goes through what Sauble has experienced? Would you expect the Town to stand up for you? Would you expect support from all our residents if your beach faced such challenges? We are all one Town. Sauble might not be the beach in your backyard but it's YOUR Beach.

## Judicial Review

The Town has been quite concerned about the narrowing of parking areas along Lakeshore, particularly from The Crowd Inn to Kinloss Lane. Sand at the rear of the dunes has encroached upon the road. The Town pushed this parking area back each spring as regularly scheduled road maintenance however that annual work was halted when the Plover issues began. Abandoning this work for 3 years caused unsafe parking.

- Spring 2017            This was the last time our annual roadside maintenance was done. Please reference the Ministry email from March 13, 2017 where they clearly state they have no issues removing sand from the back of the dunes specifically to create deeper parking. They also suggest we place the sand back on the Beach, which was the plan this year too. ([Exhibit 32](#) & [Exhibit 33](#))
- Aug. 27, 2020        Town contacts the Ministry to advise them of our planned work and ask if they have any issues. ([Exhibit 34](#))
- Aug. 28,2020        Town receives an email from the Ministry stating that it has no concerns with the proposed work, so long as it does not compromise the integrity of the dune ecosystem as a whole and Plover habitat is not impacted. ([Exhibit 35](#))
- Sep. 15, 2020        An application for permission is filed with GSCA for the parking improvement project. Staff worked with GSCA to obtain the information they require to issue a permit ([Exhibit 36](#))
- Nov. 13, 2020        Ministry staff after speaking with GSCA indicated that they did not take issue with the project and encouraged the Town to continue to work with GSCA. Ministry staff and GSCA determine that the sand has to be transported offsite to the landfill. ([Exhibit 36.1](#))
- Nov. 17, 2020        Public Works presented Council with a plan to recapture the lost parking area and install a 36" high stone like retaining wall to ensure this encroachment isn't repeated. The plan stated we would place the removed sand back onto the Beach. Initially, the Conservation Authority refused to allow this as they felt the sand was contaminated. After several attempts to have them change their mind, they agreed, as long as we sifted the sand before placing it back on the Beach. Email of approval from the

- Conservation Authority is on the special webpage. ([Exhibit 32](#)). Council approved the plan. ([Exhibit 37](#))
- Nov. 20, 2020 Permit from Grey Sauble Conservation was issued ([Exhibit 38](#))
- Nov. 23, 2020 Geoscientist Peter Zuzek approached the Town offering his report on the Lakeshore work. His report stated our work might harm the dunes. The Town expressed appreciation but explained we already had a Biologist working on this issue. Zuzek report dated December 1, 2020. ([Exhibit 39](#))
- Nov. 24, 2020 Town receives a letter from First Nations requesting the Town “consult” with them over the proposed work. Consulting with the First Nations is not simply a conversation. It’s paying them to review the proposed work which they will either approve or deny. The First Nations has never before requested consultation on roadside maintenance and due to the land claim, we were unable. ([Exhibit 40](#))
- Nov. 26, 2020 The Biologist retained by the Town, Dave Stevenson of Natural Resource Solutions Inc., issues a report which supports the proposed work. ([Exhibit 41](#))
- Dec 3, 2020 Deputy Mayor Kirkland, and members of our staff meets the First Nations via teleconference. First Nations advises the Deputy Mayor and staff that consultation will cost between \$6-\$10,000 and that approval is not guaranteed. In addition, Duty to Consult typically resides with the Crown.
- Dec. 8, 2020 On-site protest was held by the First Nations. They objected to our inability to “consult” and they insisted that area on Lakeshore Blvd is under the land claim dispute. ([Exhibit 42](#))
- Dec. 15, 2020 Business owner Tom Laforme opposes the safety work and launches a Judicial Review asking the Court to revoke or quash the Grey Sauble Permit. Mr. Laforme includes the report from Geoscientist Peter Zuzek in his suit against the Town. ([Exhibit 43](#))
- Jan. 6, 2021 The Ministry suggests the Town hires a Coastal Engineer to assess the issue. Coastal Engineers specialize in assessing structures on or near water. The Town hires industry expert Milo Sturm who delivers a report (Feb 9, 2021) which debunks the Zuzek report. ([Exhibit 44](#))
- Jan. 15, 2021 In response from both the GSCA and the Ministry for additional information, the Town’s Biologist reviews all matters, including the Zuzek report and the Town’s Engineering document, and provides an updated opinion. ([Exhibit 45](#))



- Feb. 9, 2021 Canadian Wildlife Services sends correspondence explaining their position on Endangered Species and outlining the Plover's needs. Their correspondence acknowledges that our project area is not Plover habitat. ([Exhibit 46](#))
- Feb. 12, 2021 Cross-examinations take place in advance of the Judicial Review. Under oath, Zuzek admits that once he was retained by Mr. Laforme, he changed his opinion from claiming our work "may" harm the dunes, to it "will" harm the dunes. Mr. Zuzek under oath also testified that Milo Sturm is a leading expert in Coastal Engineering. The Sturm report not only refutes Zuzek's claims, but it stated that the work we propose to do will actually stabilize the dunes. He believes the project will not harm the dune structure or its stability at all. Mr. Sturm also points out the work will create specific entrance ways to the Beach which will further protect the dunes and clearly create pedestrian safety on Lakeshore.
- Mar. 17, 2021 Following Justice Morneau's decision on Appeal, that the south end of the Beach is not Plover habitat, Mr. Laforme supplies an affidavit from Plover expert Dr. Francesca Cuthbert, in which she changes her testimony from the Plover trial and now claims that the entire south end of the Beach is in fact Plover habitat.
- Grey Sauble is also named as a Respondent in this litigation but chose not to respond or even participate in the hearing. They wouldn't even allow their expert, who issued the permit, to be interviewed by the Town's lawyer. They chose to provide nothing to the Court in their own defense.
- Mar. 22, 2021 Judicial Review was heard by 3 Justices who expressed concern that the co-respondent in the case, Grey Sauble Conservation, chose not to respond to the litigation. The Town was left to defend Grey Sauble and their permit in addition to our own planned work.
- Mar. 29, 2021 Judicial Review Decision announced. The Justices revoked Grey Sauble's permit. They have asked that the application for the work go back to Grey Sauble but they have not yet explained why. They announced that they expected to deliver the reasoning for their decision by the end of June but did indicate that the decision may not have been unanimous. ([Exhibit 47](#))

As the work on Lakeshore has always been about safety, and it's been well publicized that the Town feels we have a safety issue on our hands, we cannot allow anyone to park in this area until this is resolved. If anyone were hurt in this area and sued the Town, we could not defend ourselves if we publicly stated this to be an unsafe area, yet we allowed people park there anyway. Once the Judicial Review was over and we were

prevented from doing the Lakeshore work, we looked at possible alternatives. We again considered making Lakeshore Blvd one way and painting a solid line on the road to delineate appropriate parking depth. However, making Second Ave a one-way street in the other direction will put far too much traffic on that road. Second Ave has 3 times the number of cottages which has created one of the busiest pedestrian roads in Sauble. Doubling the traffic without sidewalks for safety was not an option. In addition, it would create a constant flow of traffic onto the little east/west laneways while cars headed to Lakeshore. We also gave consideration to parallel parking, however staff advised Council against it, and Council agreed. With the amount of constant traffic, people stopping and backing in would create log jams plus people could very easily open their roadside door into moving cars or bikes. This area simply has too many pedestrians and no sidewalks, which compounds the danger. As a result, the Town has chosen to place barriers along this stretch of Lakeshore to prevent parking but it will create a safe pedestrian walkway between it and the dunes. In the meantime, we will simply have to wait for the reasoning of the three Justices in June so we can begin the process of approvals next year, and hopefully fix this in time for next summer season.

It's unfortunate there was opposition to the work we've been doing for so many years, especially when we now have a critical safety issue on our hands. This action against the Town has hit our taxpayers in the pocketbook. Having to defend our Town once again was incredibly expensive and a loss for our community in several different ways. If we are not permitted to proceed, our staff believes the encroaching sand could potentially cause a total loss of parking in this area on Lakeshore within 10 years.

## **2020 COVID Beach Closure**

One last item we'd like to address concerns the temporary closure of the Beach in 2020 during the first wave of COVID. During Council's June 22nd discussion on whether to close the Beach, Mayor Jackson advised Council that on her way to Town Hall, she spoke with Dr. Arra, our Medical Officer of Health, regarding our concern that we have lost control over the Beach with respect to mass gatherings. The Mayor advised Dr Arra that Council is concerned about the fast approaching Canada Day long weekend and that Council might decide to temporarily close the Beach in order to regain control. Dr. Arra shared our concern and stated he would support Council if that was our decision and he suggested we create our own by-law to control or modify Beach access, which Mayor Jackson advised we had already done. When Dr. Arra offered his support for the closure of our Beach, Mayor Jackson asked him to kindly put that in writing which he did later that day. In an email sent to all Mayors in Grey and Bruce, Dr. Arra stated he would support the closure of any beach to control or avoid mass gatherings. There have been accusations that Dr. Arra did not support the closure of Sauble Beach. That simply is not true. His June 22<sup>nd</sup> email is attached here. ([Exhibit 48](#))

We hope this document and supporting exhibits help shed some light on the trials and tribulations of our Beach issues since 2008 and now our Lakeshore Blvd Parking. All of the statements made here are supported by documentation. Please go to the Town's website and you'll see the special Sauble Beach Facts page. Click on this presentation and within it, you'll see the links to each supporting document. Thank you for taking the time to listen.

Sincerely,  
The Council for the Town of South Bruce Peninsula