

MGB FILE NO.	17/IMD-003
IN THE MATTER OF	AN INTERMUNICIPAL DISPUTE FILED PURSUANT TO SECTION 690 OF THE <i>MUNICIPAL GOVERNMENT ACT</i>, R.S.A. 2000 CHAPTER M-26 WITH RESPECT TO ROCKY VIEW COUNTY BYLAW NO. C-7700-2017, OMNI AREA STRUCTURE PLAN
INITIATING MUNICIPALITY	CITY OF CALGARY
RESPONDENT MUNICIPALITY	ROCKY VIEW COUNTY
DOCUMENT	LEGAL BRIEF OF THE CITY OF CALGARY
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I. INTRODUCTION

1. This memorandum of legal argument is filed on behalf of the City of Calgary ("**City**").
2. On October 23, 2017, the City appealed the Rocky View County ("**County**") OMNI Area Structure Plan ("**OMNI ASP**") under section 690 of the Municipal Government Act on the basis that the provisions of the ASP are detrimental to the City. While the detrimental impacts will be broadly felt, the three main areas of concern are:
 - A. Transportation;
 - B. Emergency Response; and
 - C. Planning.
3. The hearing scheduled to start July 30, 2018 is about whether or not the Municipal Government Board ("**Board**") should order specific amendments or repeal of OMNI ASP provisions. The evidence submitted by the City will show the level of detrimental impact of the OMNI development upon the City.
4. The City will be submitting a summary of its transportation, emergency services, and planning evidence under separate cover from the submission of this legal memorandum and its evidence will be presented at the hearing as follows:
 - A. Transportation (two full days):
 - i. Tom Hopkins, P.Eng., Manager Transportation Development Services, Transportation Planning for the City
 - ii. Kari Fellows, P. Eng, PTOE, Senior Transportation Planner, CIMA+
 - B. Emergency Services (full day):
 - i. Ken Uzeloc, Deputy Fire Chief, Calgary Fire Department.
 - C. Planning (full day):
 - i. Andrew Palmiere, Principal, Urban and Regional Planning, 02 Planning and Design
 - ii. Neil Younger, Manager, Intergovernment & Corporate Strategy

II. FACTS

5. As noted above, the City will be submitting a summary of its transportation, emergency services, and planning evidence in addition to this legal brief.
6. The OMNI ASP Plan area is directly adjacent to the City of Calgary boundary and covers 1,280 acres. The ASP allows for commercial and light industrial land uses in the Plan area. Commercial uses include large-format retail centers, shopping centers, outlet malls, entertainment, personal services, office parks, institutional uses, and tourist facilities. The OMNI ASP's vision is to develop medium to large sized commercial and light industrial uses and

employment for the region.

7. Despite a number of meetings and correspondence between City and County administrations about the City's concerns with the OMNI ASP, there remained a fundamental disagreement about the ASP's alignment with the County Plan, and the negative impact of the ASP on the City when the ASP Bylaw C-7700-2017 received third reading by County Council on September 26, 2017.

8. On October 23, 2017, the City commenced intermunicipal dispute proceedings pursuant to section 690 of the *Municipal Government Act*, RSA 2000, c M-26 ("**MGA**").

9. Since the adoption of the OMNI ASP, the Province has approved regional planning in the Calgary region. On January 1, 2018, the City and Rocky View became participating municipalities of the Calgary Metropolitan Region Board upon the coming into force of the Calgary Metropolitan Region Board Regulation 190/2017 ("**Regulation**"). The Calgary Metropolitan Region Board is required to create a Growth Plan and Servicing Plan pursuant to the Regulation.

III. ISSUES

10. The City appeals provisions of the OMNI ASP on the following grounds:

- A. Development in the ASP area will detrimentally affect The City of Calgary's Transportation Network.
- B. Development in the ASP area will detrimentally affect The City of Calgary's Emergency Services.
- C. The proposed land use is significantly more intense than envisioned in the County Plan and not appropriate for the proposed location which will detrimentally affect The City of Calgary.

11. The issues in this appeal are:

- a) whether provisions of the OMNI ASP are detrimental to the City;
- b) if they are detrimental whether or not those provisions should be amended or repealed by the Board; and
- c) the impact of the new Municipal Government Act provisions on this appeal and the Municipal Government Board's decision.

IV. THE BOARD'S JURISDICTION

12. Section 488(1)(j) of the MGA identifies that the Board has the jurisdiction to “decide intermunicipal disputes pursuant to section 690”.

Excerpts from the *Municipal Government Act*, RSA 2000, c M-26 (“MGA”), s. 488(1)(i) [TAB 1]

13. Pursuant to section 690(5) of the MGA, if the Board receives a notice of appeal and a statutory declaration under subsection (1)(a), it must decide whether the provision of the statutory plan is detrimental to the municipality that made the appeal. The Board may dismiss the appeal if it decides that the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

MGA, s. 690(5) [TAB 1]

14. Changes to the MGA that came into force October 26, 2017 include a requirement that in determining whether a provision of a statutory plan or amendment or land use bylaw or amendment is detrimental to the appealing municipality, the Board must disregard section 638. Section 638 of the MGA deals with hierarchy of plans issues and how a conflict would be deal with.

MGA, s. 690(6.1) and s. 638 [TAB 1]

15. In addition, any decision made by the Board under section 690 in respect of a statutory plan must be consistent with any growth plan approved under Part 17.1 of the MGA pertaining to that municipality.

MGA, s. 690(5.1) and (6.1) [TAB 1]

16. As of the date of this submission, no growth plan for the Calgary region has been approved. However, the member municipalities are seeking to finalize an Interim Growth Plan by September, 2018.

V. DETRIMENT

17. The primary duty of the Board in a section 690 hearing is to determine whether the appealing municipality will suffer detriment, and if the Board decides that they will, to direct amendments that will prevent that detriment, or repeal the detrimental provisions entirely. While significant changes to the MGA were recently made through the *Municipal Government Amendment Act* (Bill 20), *Modernized Municipal Government Act* (Bill 21), and *An Act to Strengthen Municipal Government* (Bill 8) the changes to section 690 do not materially impact the test for detriment.

18. Section 690(5) prior to the *Municipal Government Amendment Act* (Bill 20) had been:

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must, subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

- (a) dismiss the appeal if it decides that the provision is not detrimental, or
- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

19. Section 690(5) as of October 26, 2017 is:

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1.1)(a), it must, in accordance with subsection (5.1), decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

(b) subject to any applicable ALSA regional plan, order the adjacent municipality to amend or repeal the provision, if it is of the opinion that the provision is detrimental.

(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Municipal Government Board must disregard section 638.

20. Detriment is not defined in the MGA or its regulations, but the Board has previously considered its meaning and the evidentiary burden that must be met by initiating parties. The Board in its seminal decision *The City of Edmonton, the City of St. Albert, and The Town of Morinville v. County of Sturgeon*, MGB 77/98, provides a definition of the word “detriment” in the context of section 690:

The dictionary definition is straightforward enough. According to *Webster’s New World Dictionary*, “detriment” means “damage, injury or harm” (or) “anything that causes damage or injury.” This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as “nuisance” factors.

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another.” Similarly, the actions of one municipality in planning for its own

development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth.

The City of Edmonton, the City of St. Albert, and The Town of Morinville v. County of Sturgeon, MGB 77/98 ("Sturgeon") at 44 [Tab 2]

21. The *Sturgeon* decision also noted that if the Board is to exercise its powers under section 690, it must be satisfied that the detriment is reasonably likely to occur and to have a significant impact on the appellant municipality:

If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur. The remedy must then be finely tuned so that the bylaw is modified only to the extent necessary to prevent the harm.

There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote.

Sturgeon at 48 [Tab 2]

22. If the Board finds that the test of detriment is met, then it may direct amendments to the appealed statutory plan that will prevent such detriment keeping in mind that it should do so "without infringing on private interests more than is strictly necessary".

Sturgeon at 56 [Tab 2]

VI. THE CITY'S GROUNDS OF APPEAL

A. TRANSPORTATION

23. As set out in the City's transportation evidence report, development in the ASP area will detrimentally affect The City of Calgary's Transportation Network. The detriment is reasonably likely to occur and have a significant impact on the City.

24. In a previous decision, *Sunbreaker Cove v. Lacombe County*, MGB 007/11, the Board acknowledges that it could be detrimental to a municipality if a development in an adjacent municipality resulted in usage beyond capacity of facilities in the vicinity of the adjacent municipality and that allegations of traffic impacts, if established through evidence, might form the basis of a finding of detriment.

Sunbreaker Cove v. Lacombe County, MGB 007/11 ("Sunbreaker Cove") at paras 61 and 71 [Tab 3]

25. While the appellant in *Sunbreaker* was unable to prove detriment, the facts in the present case are distinguishable. In *Sunbreaker* detriment based on alleged increased traffic was not

made out because the appealing municipality was not able to provide enough evidence that significant detriment was likely to occur.

26. In contrast, the significant detrimental traffic impacts of the OMNI ASP is supported by the City's traffic analysis which is of sufficient quality to establish a reasonable likelihood of detriment. The City's transportation analysis shows that the OMNI ASP, even at 30% build out, will overload existing City transportation infrastructure and cause traffic congestion in the City.

27. Traffic congestion caused by the OMNI ASP that exceeds the capacity of the City's existing infrastructure is in and of itself detrimental to the City. In addition, the OMNI ASP area is being developed as a commercial area to attract citizens of Calgary to shop within the County. The traffic will almost exclusively be from Calgary, and the main developer within the OMNI ASP area, Genesis, is advertising that the development will be a commercial hub for Northeast Calgary and attract patrons from the rapidly developing Northeast Calgary residential communities. Given that this development has been solely marketed towards attracting Calgarians, it has clearly been recognized and contemplated that development in the ASP Plan area relies upon vehicular trips from within Calgary city limits, which, by extension, relies upon City infrastructure.

28. Given the reliance upon City infrastructure for the success of the development in the ASP plan area, the City is concerned that the City will be compelled to pay for significant upgrades to the infrastructure to respond to unacceptable traffic congestion and the County and its developers will benefit from improvements in the City required to manage development in the County without contributing to its attributable costs. The County has sole control over approval of development within OMNI with no obligation to cooperate with the City or fund City upgrades. Because the development is located in the County, the form and timing of development within the ASP Plan area is not within the City's control or subject to any input from the City. The substantial additional costs as a result of growth outside of its jurisdiction that will be forced upon the City will be detrimental to the City.

29. In the *Town of Okotoks v. Municipal District of Foothills No. 31* decision the Board declined to find transportation infrastructure detriment where no evidence was presented to detail the appealing municipality's infrastructure budget, the capital projects and their timetable anticipated for build out as a result of the ASP, or the estimated costs that could be assigned to the ASP and determined that there was insufficient evidence to show detriment.

Town of Okotoks v. Municipal District of Foothills No. 31, MGB 003/12 ("*Okotoks*") at para 219 [Tab 4]

30. In contrast, the City has submitted its traffic analysis and witnesses to provide evidence of its existing long term plans and associated cost estimates that do not include the OMNI ASP development compared with a cost estimate of the City's infrastructure costs required to support the OMNI ASP. The City submits that it has provided evidence of sufficient quality to demonstrate to the Board that transportation detriment is reasonably likely to occur and to have a significant detrimental impact on the City.

31. To summarize, Rocky View County, through the OMNI ASP, inflicts transportation detriment on The City of Calgary by its:

- a) **Failure to mitigate traffic impacts of the OMNI ASP on City of Calgary transportation systems:** ASP-generated traffic uses and strips the capacity of the City's transportation system without any commitment on the part of the County to mitigate OMNI ASP traffic issues.
- b) **Failure to mitigate significant City-funded capital costs of transportation infrastructure required to support the OMNI ASP:** the significant traffic generated by development contemplated in the ASP will compel the City of Calgary to fund significant capital costs of transportation infrastructure to support the OMNI ASP without any commitment on the part of the County to contribute to the funding or construction of the required infrastructure.
- c) **Failure to mitigate traffic safety issues:** traffic generated by development contemplated in the ASP has the potential to lead to a large increase in motor vehicle incidents, which will result in the reduction of traffic safety on City transportation systems without any commitment on the part of the County to mitigate ASP-related traffic safety issues.

City of Calgary Transportation Evidence [TAB A]

B. EMERGENCY SERVICES

32. As set out in the City's emergency services evidence report, development in the ASP area will detrimentally affect The City of Calgary's fire response system. The detriment is reasonably likely to occur and have a significant impact on the City.

City of Calgary Emergency Services Evidence [TAB B]

33. The OMNI ASP will negatively affect the City's ability to provide emergency services whether or not the City is required to respond to the OMNI development directly as evidenced in the City's emergency services submission. If the City is required to respond to calls in the OMNI development, there will be approximately 300 calls per year, which will cost the City several hundred thousand dollars per year or even more if there is a large hazardous materials incident or fire. In addition, responding to calls in the OMNI development will create service gaps and increase response times in other areas across the City. The detrimental impact on the City's time and resources is clear.

34. Even if the Calgary Fire Department is not required to respond to calls within the OMNI development, this development is being marketed to Calgarians and would not be economically feasible without Calgarians; as a result, the level of traffic heading from Calgary to OMNI will lead to increased accidents and emergency responses. It is probable that the number of motor vehicle collisions will increase by as much as 146% due to the increase vehicle traffic entering the Stoney Interchange system as a result of the OMNI development which will in turn require a response from the Calgary Fire Department inside the City.

City of Calgary Emergency Services Evidence [TAB B]

35. In the *Okotoks* decision, the Board determined that fire services in Okotoks would not be significantly impacted by the proposed development because, in part, fire services were addressed in the parties' joint fire services agreement and they were developing a master cost sharing document that included provision for fire services, both of which would ensure that adequate fire services levels were maintained and that the Town was compensated for additional services to the ASP.

Okotoks at para 253 [Tab 4]

36. Likewise in the Board's decision *City of Chestermere v Rocky View County re C-7468-2015 Conrich Area Structure Plan*, 2017 ABMGB 19, the Board determined that there was no detriment with respect to emergency response requirements because there had been demonstrated willingness to discuss changes to cost sharing requirements for dealing with emergency response and plans and agreements existed that could be updated, reopened or replaced as circumstances change and as more information became available.

City of Chestermere v Rocky View County re C-7468-2015 Conrich Area Structure Plan, 2017 ABMGB 19
("Chestermere") at para 127 [Tab 5]

37. In contrast, the detrimental impacts of the OMNI ASP on the City are supported by the City's traffic and emergency response analyses which prove that the ASP will have a quantifiable detriment on the transportation infrastructure and emergency services in Calgary. While the City does have a Secondary Emergency Response Fire Services Agreement with the County, this agreement does not include fire response for the OMNI development. The Calgary Fire Department and the County have not had any discussions about providing services as part of the ASP but even if the City were to enter into an agreement with the County to service the OMNI plan area, the OMNI ASP will detrimentally effect the City's emergency services.

38. The OMNI ASP overstates the ability of neighbouring municipalities to render aid in an emergency. Policy 15.2 within the OMNI ASP states, at page 41:

Fire services in the Plan area will be provided from existing and/or proposed County emergency service facilities, and where appropriate, by contract from adjacent municipalities.

39. While the City and the County have an existing contract, dated October 1, 2016, that deals with Secondary Emergency Response Fire Services, the agreement clearly states that:

By entering into this Agreement, The City does not warrant that it will provide any Emergency Responses to any future building.

Secondary Emergency Response Fire Services Agreement, p. 7 [Tab 6]

40. The City's Fire expert submissions highlight the emergency response detrimental impacts, including:

- a) *By increasing real costs to CFD as a result of the OMNI development.* The intensity, location and anticipated increase in emergency response events, will increase the need to find additional resources in order to adequately service another jurisdiction's development plans. Because Rocky View County does not have the resources to service a development such as OMNI, the CFD anticipates a request will be forthcoming.
- b) *By increasingly diluting emergency response times across the City of Calgary.* The NE quadrant of the city is already the busiest quadrant for response services, and drawing resources from this quadrant will create gaps and increased response times in other areas across the city of Calgary. **Any decrease in response times can make the difference in preserving life and property during an emergency event.**
- c) *By increasing risk to Calgary Fire and OMNI due to hydrant and water supply challenges.* Connecting to a water supply and adequate, consistent water supply may be a challenge during an emergency.
- d) *By not addressing the realities of fire service requirements to a development such as OMNI, Rocky View County is potentially burdening the City of Calgary, without discussion.* Rocky View County has not had any discussions with City of Calgary Fire Department about providing services as part of the ASP. Since Rocky View County emergency services has limited capacity to deal with emergency events that can occur from the commercial and industrial land uses at the densities proposed, the result of the OMNI development will be an expectation The City's secondary response agreement with Rocky View County will be initiated. This not only causes detriment related to cost and dilution of emergency response times, it impacts CFD staff capacity when Rocky View County requests negotiation of a new agreement and creates uncertainty for CFD.
- e) *By approving a development in the location and with the intensity proposed, Rocky View County negatively increases the number of MVC's in the NE quadrant of the City.* The potential for a 146% increase in MVC's is a significant cost and impact on CFD.

City of Calgary Emergency Services Evidence [TAB B]

C. PLANNING

41. As set out in the City's Planning Submissions evidence, the intensity of land uses proposed in the OMNI ASP are inconsistent with existing statutory planning policy frameworks. This has created a situation that will have a significant detrimental impact on the City. The OMNI ASP has resulted in an overly intense land use pattern that creates significant detrimental impact on the City's transportation network and emergency services.

City of Calgary Planning Evidence [TAB C]

Failure to align with the County Plan

42. The Board has previously recognized that certainty facilitates planning while uncertainty introduces complexity into the planning of any municipality. In the *Okotoks* decision, the Board stated:

[142] It is self evident that certainty facilitates planning while uncertainty introduces complexity into the planning of any municipality. One cannot plan in a void of information. For this reason, the Act requires certain municipalities to adopt MDPs and facilitates joint planning between neighbouring municipalities by providing for IDPs.

[143] It is equally self evident that plans and planning documents must be able to respond to changing circumstances. Similarly, municipalities are autonomous and retain authority to change their planning priorities, provided they do so responsibly without imposing undue hardship or detriment on neighbouring municipalities. Planning is an iterative process and a mere change in plan – even one that does not conform to previously shared plans - does not necessarily cause planning uncertainty or significant detriment to a neighbouring municipality

Okotoks at paras 142 and 143 [Tab 3]

43. The City acknowledges that a mere change in plan that does not conform to previously shared plans does not necessarily cause detriment. However, in these circumstances the OMNI ASP is likely to impose significant detriment to the City because the City invests significant time and resources and taxpayer investment in comprehensive planning and the County's failure to align with the County Plan limits the City's ability to logically and comprehensively plan and develop lands within its own municipal limits.

44. The OMNI ASP land uses are far too dense for a 'highway business' district. This is not a gas station with a motel for travellers, this is a new commercial hub that will have more commercial space than Chinook Mall. A summary of the size of this development, in contrast with existing City commercial areas can be found in Planning materials of the City.

Planning Evidence [TAB C]

45. The County Plan states that a Highway Business area should be of limited size and provide services to the travelling public. A major new shopping area goes well beyond the scope of what is envisioned within the County Plan:

Highway business areas are intended to take advantage of the provincial highway system. They are of limited size and should be located in proximity to highway intersections and interchanges. The purpose of a highway business area is to contribute to the County's fiscal goals, provide destination commercial and business services, provide services to the traveling public, and offer local employment opportunities.

Rocky View County, *County Plan*, p. 62 [Tab 7]

46. The proposed land use is not 'highway business', it is a 'regional business centre', which is an established use within the County Plan, but not for this area of the County. This appears to be an attempt to fit a square peg into a round hole, which is poor planning for the region and will create detriment for Calgary. Within the County Plan, a Regional Business Centre is defined as:

Regional Business Centres

Regional business centres are large areas of commercial and industrial development within the County. The purpose of a regional business centre is to provide regional and national business services, and local and regional employment opportunities. Regional business centres make a significant contribution in achieving the County's fiscal goals.

Rocky View County, *County Plan*, p. 61 [Tab 7]

47. By not assigning the proper land use, the County has overlooked the rules for a 'regional business centre', including ensuring proper infrastructure for the development and an adequate road network.

48. As discussed in the Planning arguments of the City, the County Plan provides that no regional business centres will be contemplated unless all others within the County are at maximum capacity. Additionally, "substantive planning, time, and public and private investment have resulted in identifying and developing regional business centres". The County Plan policies clearly indicate that regional business centres may not be created ad hoc and that they must be carefully planned to ensure they take into account market demand, servicing requirements, and regional context.

Rocky View County, *County Plan*, p. 61 [Tab 7]

49. A new Regional Business Centre was not indicated in the County Plan. Therefore, the City of Calgary did not anticipate that Rocky View County would be approving an ASP that directs regionally scaled and intense development adjacent to the City of Calgary boundaries. This lack of planning coordination is detrimental to the City of Calgary's transportation network capacity and delivery of emergency services.

50. As set out in the Planning evidence, The OMNI ASP is detrimental from a planning perspective to in two key ways:

- a) *Rocky View County's failure to align to approved statutory plans does not represent a coordinated approach to intermunicipal planning and is detrimental to the City of Calgary's ability to plan comprehensively.* The City's approach to comprehensive planning is reliant upon the County's Plan, IDPs, and other ASPs to anticipate and plan for future County development. The intensity and land uses of the OMNI ASP are not in alignment with the Council approved County Plan or the City of Calgary/Rocky View County IDP. As outlined previously, the intensity of the OMNI ASP, was not indicated in the County Plan and does not fall within County growth corridor in the joint IDP. Council

approved the ASP despite these policy contradictions. While it is understandable that small scale nuances in the details of an ASP could account for misinterpretation of a land use definition, it is not conceivable how and why a municipality would purposely ignore its own land use definition to develop an area that clearly does not fit the intent of the County Plan and will have such a large impact on an adjacent municipality. The lack of alignment to statutory documents sets a precarious planning precedent for 'leapfrog' development, and the lack of coordinated planning constrains The City's ability to accommodate growth and development within its own jurisdiction. The City will be required to address the impacts of OMNI as it develops and particularly to cope with the anticipated impact on The City's transportation network and emergency services.

- b) *By approving an intensity of land use that does not align with statutory plans or existing and planned servicing capacity, Rocky View County will cause detrimental impact to the City of Calgary's transportation infrastructure and emergency services.* It is clear to The City of Calgary that the land uses and level of intensity envisioned in the OMNI ASP are not appropriate for that location. The County failed to adequately address existing and planned transportation capacity in the approval of the OMNI ASP as well as the magnitude of emergency servicing it will require. This will create significant harm to City roadways and residents. Should the OMNI ASP proceed as planned, the City of Calgary would be forced to reconsider transportation planning to accommodate the unanticipated increase in traffic volume and impacts to emergency services. The Calgary Fire Department will see a decrease in emergency response times for the citizens of Calgary when it is needed to respond to emergencies in the OMNI ASP area. This will put Calgary citizens at greater risk, as response times can mean life or death in an emergency. These impacts have not been budgeted or planned for by the City of Calgary.

City of Calgary Planning Evidence [TAB C]

VII. CONCLUSION AND RELIEF SOUGHT

51. The City has provided sufficient evidence to the Board to prove that the detriment complained of is both likely to occur and will have a significant impact on the City. As a result, the City requests that the Board order that the OMNI ASP be entirely repealed. **The only remedy that completely alleviates all of the City's detriment concerns would be for the OMNI ASP to be completely repealed.**

52. It is premature for the OMNI ASP to proceed while the Part 17.1 of the MGA Growth Management Board is being established for the region pursuant to the Calgary Metropolitan Region Board Regulation. Once the new growth plan growth plan is in place, the detriment can be addressed in a holistic regional fashion.

53. Due to the cross-boundary, regional aspects of the detrimental impacts, the ultimate solution would be to have the City and County undertake a comprehensive and coordinated plan for the OMNI ASP lands, along the boundary between the County and the City.

54. If the Board is unwilling to alleviate all of the City's detriment by repealing the OMNI ASP, then the City requests an alternative remedy, whereby the following amendments be made to the OMNI ASP to remedy such detriment:

- a) Amend Map 5: Land Use Scenario on page 24 to replace the Commercial and Light Industrial land uses with a "Special Policy Area" designation.

55. The City requests the Board order the following:

- a) Add a policy 15.9 in the Emergency Services section of the ASP as follows:

15.9 The County shall negotiate an amendment to Secondary Emergency Response Fire Services Agreement with the City of Calgary Fire Department for secondary servicing the ASP area and secure funding for a fire station to service the ASP area prior to approving *local plans*.

- b) add a policy 16.16 in the Transportation section of the ASP as follows:

16.16 If a Transportation Impact Assessment prepared as part of a *local plan* or subdivision application identifies transportation improvements are necessary in the City of Calgary, the developer and/or the County will be the responsible for the cost of such improvements prior to approval of any *local plans* or subdivisions.

- c) replace policy 21.7 in the Implementation and Monitoring section of the ASP as follows:

As part of the *local plan* approval process, the identification, timing, and funding of any required off-site improvements relating to hard and soft infrastructure shall be required. If a Transportation Impact Assessment prepared as part of a *local plan* identifies transportation improvements are necessary in the City of Calgary, the developer and/or the County will be the responsible for the cost of such improvements prior to approval of any *local plans* or subdivisions.

- d) Replace policy 22.5 d. in the Intermunicipal Coordination and Cooperation section of the ASP as follows:

Impacts on 84th Street and East Stoney infrastructure including a commitment by the developer and/or the County to be responsible for the cost of any improvements;

All of which is respectfully submitted this 25th day of May, 2018

Per:



David E. Mercer
Counsel for the City of Calgary

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TAB 1

in accordance with any applicable regulations under the *Alberta Public Agencies Governance Act*.

(3) Repealed 2016 c24 s71.

(4) The chair may delegate to any person any of the powers, duties or functions of the chair.

RSA 2000 cM-26 s486;2009 cA-31.5 s60;2016 c24 s71

Panels of the Board

487(1) The chair must select any 3 or more members of the Board to sit as a panel of the Board unless subsection (1.1) applies.

(1.1) Subject to the conditions prescribed by the regulations, the chair may select one member of the Board to sit as a panel of the Board.

(2) The chair may establish as many panels as the chair considers necessary.

(3) The chair may appoint a presiding officer for a panel but if the chair does not do so, the members of a panel must choose a presiding officer from among themselves.

RSA 2000 cM-26 s487;2016 c24 s72

Qualifications of members

487.1 A member of a panel of the Board may not participate in a hearing related to assessment matters unless the member is qualified to do so in accordance with the regulations.

2009 c29 s33

Directors and other staff

487.2 In accordance with the *Public Service Act*, there may be appointed a director, case managers, legal counsel and other staff required to carry out the business of the Board.

2016 c24 s73

Jurisdiction of the Board

488(1) The Board has jurisdiction

- (a) to hear complaints about assessments for designated industrial property,
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,
- (c) repealed 2009 c29 s34,
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies,

referred to it by the Minister under the *Alberta Housing Act*,

- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,
 - (e.1) to perform any duties assigned to it by the Minister or the Lieutenant Governor in Council,
 - (f) to deal with annexations in accordance with Part 4,
 - (g) to decide disputes involving regional services commissions under section 602.15,
 - (h) to hear appeals pursuant to section 619,
 - (i) to hear appeals from subdivision decisions pursuant to section 678(2)(a),
 - (j) to decide intermunicipal disputes pursuant to section 690, and
 - (k) to hear appeals pursuant to section 648.1.
- (2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).
- (3) Sections 495 to 498, 501 to 504 and 507 apply when the Board holds a hearing to decide a dispute, or to hear an appeal, referred to in subsection (1).

RSA 2000 cM-26 s488;2009 c29 s34;
2015 c8 s54;2016 c24 s74

ALSA regional plans

488.01 In carrying out its functions and in exercising its jurisdiction under this Act and other enactments, the Board must act in accordance with any applicable ALSA regional plan.

2009 cA-26.8 s83

Limit on Board's jurisdiction

488.1(1) The Board has no jurisdiction under section 488(1) to hear a complaint relating to an equalized assessment set by the Minister under Part 9 if the reason for the complaint is

- (a) that the equalized assessment fails to reflect a loss in value where the loss in value has not been reflected in the assessments referred to in section 317,
- (b) that information provided to the Minister by a municipality in accordance with section 319(1) does not properly reflect the relationship between assessments and

- (e) in the case of an area structure plan, where the land that is the subject of the plan is adjacent to another municipality, notify that municipality of the plan preparation and provide opportunities to that municipality to make suggestions and representations,
- (f) in the case of an area structure plan, where the land that is the subject of the plan is within 1.6 kilometres of a provincial highway, notify the Minister responsible for the *Highways Development and Protection Act* of the plan preparation and provide opportunities for the Minister to make suggestions and representations,
- (g) in the case of a municipal development plan, notify
 - (i) the Indian band of any adjacent Indian reserve, or
 - (ii) any adjacent Metis settlement
 of the plan preparation and provide opportunities to that Indian band or Metis settlement to make suggestions and representations, and
- (h) in the case of an area structure plan, where the land that is the subject of the plan is adjacent to an Indian reserve or Metis settlement, notify the Indian band or Metis settlement of the plan preparation and provide opportunities for that Indian band or Metis settlement to make suggestions and representations.

(2) Subsection (1) does not apply to amendments to statutory plans.
RSA 2000 cM-26 s636;2008 c37 s11;2017 c13 s1(57)

Effect of plans

637 The adoption by a council of a statutory plan does not require the municipality to undertake any of the projects referred to in it.
1995 c24 s95

Plans consistent

638(1) In the event of a conflict or inconsistency between

- (a) an intermunicipal development plan, and
- (b) a municipal development plan, an area structure plan or an area redevelopment plan

in respect of the development of the land to which the intermunicipal development plan and the municipal development plan, the area structure plan or the area redevelopment plan, as the case may be, apply, the intermunicipal development plan prevails to the extent of the conflict or inconsistency.

- (2) In the event of a conflict or inconsistency between
- (a) a municipal development plan, and
 - (b) an area structure plan or an area redevelopment plan,

the municipal development plan prevails to the extent of the conflict or inconsistency.

RSA 2000 cM-26 s638;2015 c8 s65

Conflict with ALSA regional plans

638.1 In the event of a conflict or inconsistency between

- (a) a statutory plan or a land use bylaw, and
- (b) an ALSA regional plan,

the ALSA regional plan prevails to the extent of the conflict or inconsistency.

2009 cA-26.8 s83

Listing and publishing of policies

638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part

- (a) that have been approved by council by resolution or bylaw, or
- (b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209,

and that do not form part of a bylaw made under this Part.

(2) The municipality must publish the following on the municipality's website:

- (a) the list of the policies referred to in subsection (1);
- (b) the policies described in subsection (1);
- (c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part;
- (d) any documents incorporated by reference in any bylaws passed in accordance with this Part.

(3) A development authority, subdivision authority, subdivision and development appeal board, the Municipal Government Board

- (a) no evidence other than the evidence that was submitted to the Municipal Government Board or the subdivision and development appeal board may be admitted, but the Court may draw any inferences
 - (i) that are not inconsistent with the facts expressly found by the Municipal Government Board or the subdivision and development appeal board, and
 - (ii) that are necessary for determining the question of law or the question of jurisdiction,
- and
- (b) the Court may confirm, vary, reverse or cancel the decision.

(2) In the event that the Court cancels a decision, the Court must refer the matter back to the Municipal Government Board or the subdivision and development appeal board, and the relevant board must rehear the matter and deal with it in accordance with the opinion of or any direction given by the Court on the question of law or the question of jurisdiction.

(3) No member of the Municipal Government Board or a subdivision and development appeal board is liable to costs by reason or in respect of an application for permission to appeal or an appeal under this Act.

(4) If the Court finds that the only ground for appeal established is a defect in form or technical irregularity and that no substantial wrong or miscarriage of justice has occurred, the Court may deny the appeal, confirm the decision of the Municipal Government Board or a subdivision and development appeal board despite the defect and order that the decision takes effect from the time and on the terms that the Court considers proper.

RSA 2000 cM-26 s689;2014 c13 s35

Division 11 Intermunicipal Disputes

Intermunicipal disputes

690(1) A municipality that

- (a) is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it,
- (b) has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, and

- (c) has, as soon as practicable after second reading of the bylaw, attempted to use mediation to resolve the matter,

may appeal the matter to the Municipal Government Board.

(1.1) An appeal under subsection (1) is to be brought by

- (a) filing a notice of appeal and statutory declaration described in subsection (2) with the Municipal Government Board, and
- (b) giving a copy of the notice of appeal and statutory declaration to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

- (a) the reasons why mediation was not possible,
- (b) that mediation was undertaken and the reasons why it was not successful, or
- (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1.1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

- (a) the reasons why mediation was not possible,
- (b) that mediation was undertaken and the reasons why it was not successful, or
- (c) that mediation is ongoing and that if the mediation is not successful a further response will be provided within 30 days of its completion.

(4) When a notice of appeal and statutory declaration are filed under subsection (1.1)(a) with the Municipal Government Board, the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the notice of appeal and statutory declaration

are filed with the Board under subsection (1.1)(a) until the date the Board makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1.1)(a), it must, in accordance with subsection (5.1), decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

- (a) dismiss the appeal if it decides that the provision is not detrimental, or
- (b) subject to any applicable ALSA regional plan, order the adjacent municipality to amend or repeal the provision, if it is of the opinion that the provision is detrimental.

(5.1) In determining under subsection (5) whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal, the Municipal Government Board must disregard section 638.

(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,

- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(6.1) Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.

(8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

RSA 2000 cM-26 s690;2009 cA-26.8 s83;
2013 c17 s5;2015 c8 s75

TAB 2

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with Edmonton, St. Albert and Morinville**

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BOARD ORDER: MGB 77/98**FILE: P97/IMD-01/02/03****SECTION I - BACKGROUND TO THE APPEALS**

IN THE MATTER OF THE *Municipal Government Act*, S.A. 1994, c.M-26, as amended (“the *Act*”);

AND IN THE MATTER OF an appeal pursuant to Section 690 of the *Act* by the City of Edmonton, the City of St. Albert, and the Town of Morinville, respecting a Land Use Bylaw (LUB) and Municipal Development Plan (MDP) adopted by the County of Sturgeon (Sturgeon) on February 11, 1997.

BEFORE:

T. T. Helgeson, Presiding officer
W. Morgan, Member
V. Chatten, Member

This appeal is with respect to certain provisions in the MDP and LUB of the County of Sturgeon, being Bylaws 818/96 and 819/96, respectively, that have or may have a detrimental effect on the City of Edmonton, the City of St. Albert, and the Town of Morinville.

Upon notice being given to the interested parties, a hearing was commenced in the City of Edmonton, in the Province of Alberta, on May 2, 1997, which was then recessed and reconvened on June 18, and on July 24, then reconvened for the substantive hearing on September 8, 9, 10, 11, and 12, 1997, and finally closed on March 3, 1998.

BACKGROUND

On November 26, 1996, County of Sturgeon (County) gave first reading to Bylaw 818/96, adopting a new MDP, and Bylaw 819/96, its new LUB, both of which had been prepared pursuant to the provisions of the *Act*. In accordance with s.690(1) of the *Act*, the City of Edmonton (Edmonton) submitted comments in writing to the County on December 9, 1996, expressing its concerns regarding the new bylaws. On December 10, the County held a public hearing in connection with the bylaws. The City of St. Albert (St. Albert) then gave several written notices of its concerns to the County, on the 10 and 17 of December, 1996 and on January 17, 1997. The Town of Morinville (Morinville) provided notice of its concerns to the County on January 15, 1997. All three municipalities notified the County of their concerns prior to second reading of the bylaws, as required by s.690(1). The bylaws were given second and third reading by the County on February 11, 1997 and adopted on that date.

St. Albert filed an appeal with the Municipal Government Board, with notice to the County, on March 11, 1997, indicating the provisions of the MDP and LUB that might be detrimental to St.

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Albert, and describing efforts made to resolve matters with the County. Edmonton and Morinville each filed their appeals with the Board with notice to the County on March 12, 1997, specifying those provisions of the bylaws they considered detrimental to them, and setting out the efforts they had made to resolve their concerns with the County. All three appellant municipalities filed their notices of appeal within the 30 day time limit under s.690(1), and in accordance with s.690(2) of the *Act*.

Pursuant to s.691 of the *Act*, the Board set the initial hearing date for May 2, 1997, to comply with the 60 day time period specified in s.690(1)(a). To ensure those parties entitled to be heard under s.691(2) were made aware of the appeal and the pending hearing, the Board published notices in the *Edmonton Journal* on April 16 and 17, 1997, in the *St. Albert Gazette* on April 16 and 23, 1997, and in the *Morinville Mirror* on April 15 and 22, 1997. Prior to the hearing on the substantive issues held September 8 through September 12, 1997, the Board convened for administrative purposes on May 2, June 18, and July 24, 1997. During the course of these administrative sessions, certain preliminary questions respecting procedures, exchange of documentation, and legal interpretation were considered and ruled on by the Board.

LEGISLATION CONSIDERED

The Municipal Government Board considered the following legislation in making its decision in this appeal:

Sections 5, 617, 622 (1) , 622 (3), 632 (3), 690, and 691 of *Act*;

Section 11 of the *Subdivision and Development Regulation*, A.R. 212/95;

Section 44 of the *Planning Act*, R.S.A. 1980, c.P-9, as amended (since repealed)

Section 10 of the *Interpretation Act*, R.S.A. c.I-7, as amended.

SUBMISSIONS OF THE APPELLANTS

The City of Edmonton

1. Status of Discussions, City of Edmonton and the County of Sturgeon

From the time Edmonton filed an appeal in this matter, Edmonton staff and staff from the County have had numerous meetings in an effort to find a way by which Edmonton's concerns about the detrimental effects the Sturgeon MDP and LUB might have on Edmonton could be alleviated. On June 3, 1997, Edmonton Council approved the principles of an accord for intermunicipal

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planning which, if implemented through changes to the County's LUB and MDP, would alleviate some of the Edmonton's concerns.

On June 17, 1997, these principles were considered by the County Council, who expressed concerns about one of the principles, which was that there should be an interMDP for the Sturgeon Valley area. When it was clear that this was the only issue that remained unresolved, Edmonton staff took a subsequent report to Edmonton Council asking that Council support a proposal for an area structure plan for Sturgeon Valley. Council gave its support for this alternative on July 29, 1997. Subsequently, on August 12, 1997, County Council indicated support for the full set of principles.

Efforts were then made to translate the principles of the accord into specific amendments to the MDP and LUB. On August 13, 1997, the County provided Edmonton with revised copies of the MDP and LUB for review. Edmonton had not, by the close of business on August 16, 1997, received any maps from the County to assist in analyzing the proposed amendments to the LUB and MDP. This fact, combined with a lack of time, prevented Edmonton from completing its review of the amendments. Consequently, Edmonton was unable to discuss any concerns arising from it with the County prior to the submission of arguments before the Board. Despite the fact that Edmonton and the County reached an accord on intermunicipal planning, the County refused to admit that appealed sections of its MDP and LUB have or might have a detrimental effect on Edmonton. Therefore, Edmonton submits the following argument for consideration by the Board.

2. New Planning Regime

When the *Planning Act* was repealed, the statutory requirements for regional plans vanished. Regional planning commissions, the watchdogs who ensured that regional planning was implemented and maintained, became extinct. As a consequence, regional planning became the responsibility of individual municipalities. This implied a high degree of intermunicipal cooperation and coordination. In this new planning regime, the Board has been given the role of arbitrator, and must ensure that municipalities recognize and respect their respective regional planning responsibilities.

The Board's predecessor, the Alberta Planning Board, took a narrow view of "detrimental effect" under s.44 of the *Planning Act*. This view was justified because the potential impact of a municipality's planning bylaws on its neighbours was limited by the regional plan, which protected the general interests of all municipalities in the region. In light of the recent changes to the planning legislation, and the spirit of cooperation the new legislation relies on, a narrow interpretation of detrimental effect is no longer appropriate. Bylaws that fail to recognize the regional context must be found to be detrimental to adjacent municipalities.

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This new context must be recognized by the Board in defining detrimental effect. Under s.44 of the *Planning Act*, a municipality was able to appeal a statutory plan or LUB of an adjacent municipality if the council believed the bylaw “has or may have a detrimental effect within the boundaries of the first municipality.” Only where the Planning Board found detrimental effect within the boundaries of the appellant municipality could it order the offending provision repealed or amended. The phrase “within the boundaries of the (appellant) municipality” does not appear in s.690 of the *Act*. The only words in s.690 that qualify the nature of the detrimental effect are the words “on it.” It is submitted detrimental effect is not confined to a specific, concrete impact within the boundaries of the appellant municipality. Because of the difference in wording, the Board can direct the County to amend or repeal its bylaws if it finds there is detriment in a general sense.

3. General Detrimental Effects

(i) Lack of Consultation

A review of the interaction between the County and Edmonton during the period leading up to the adoption of the MDP and LUB will reveal that the County failed to engage in the kind of consultative process that is now a cornerstone of land use planning in the province. Virtually no consultation occurred during plan preparation. Once the County gave first reading to the plan and bylaw, Edmonton had only a short time to review and comment on them. This violated the spirit of s.636(1)(d) of the *Act*.

The County failed to respond to Edmonton’s comments, and there was no meaningful discussion between the two municipalities. Edmonton’s request to delay second and third readings of the bylaws so that concerns could be addressed was ignored. Edmonton was not sent a copy of the Policy Directions Discussion Paper containing information of the County’s proposed directions, an oversight acknowledged by the County. There was only one meeting with Edmonton, although there were 31 meetings for ratepayers and interest groups.

The only opportunity for consultation between the two municipalities occurred late in the process. Once first reading is given to a planning bylaw, policies are set, and land use patterns established. Not allowing an adjacent municipality to participate at this stage is tantamount to denying it an opportunity to participate at all. This kind of approach is certain to result in a detrimental impact on all municipalities in a region. Neighbouring municipalities have a responsibility to each other to participate in the preparation of their respective MDPs so that their obligations under s.632(30)(a)(iii) and (iv) of the *Act* can be fulfilled.

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(ii) Non-Compliance with the *Municipal Government Act*

Section 622(3) of the *Act* requires that every statutory plan, LUB and action undertaken by a municipality must be consistent with the provincial Land Use Policies. The County failed to consider policies 2 and 3, requiring coordination, cooperation and communication between municipalities. By failing to make a meaningful effort to involve Edmonton in its deliberations, or even informing Edmonton of its direction on the new MDP and LUB, the County ignored the spirit and intent of the Land Use Policies, that is, to encourage the development of a new and collaborative era of intermunicipal planning.

Neither was Edmonton given an opportunity to discuss differences in interpretation of the Land Use Policies with the County prior to enactment of the bylaws, contrary to s.1.2 of the Land Use Policies, which provides that:

“Municipalities and provincial departments and agencies are encouraged to consult with one another where questions on the spirit and intent of these policies arise during implementation.”

This lack of communication is a lost opportunity by which Edmonton has suffered detriment.

Sections 632(3)(a)(i) through (iv) of the *Act* require that MDPs address future land use and the manner of and proposals for future development. The County’s MDP fails to do this; it does not identify areas for future country residential, highway commercial, or new industrial parks, nor does it address coordination of land use, future growth patterns, infrastructure, and transportation with Edmonton. These deficiencies in the MDP have a detrimental effect on Edmonton.

4. Specific Detrimental Effects

(i) Defining An Appropriate Scope for Intermunicipal Planning

[Provisions that have a detrimental effect on Edmonton: MDP s.15, Policies 15.1 and 15.2; LUB, s. 2.5.1]

Under the aegis of the Edmonton Metropolitan Regional Planning Commission, there was a forum in which municipalities were able to explore regional and intermunicipal concerns. The elimination of regional plans and regional planning commissions should not be taken to mean that regional issues are to be ignored. It is now up to the municipalities to collaborate in finding a way to implement an effective substitute for regional planning. After the demise of the Edmonton Metropolitan Regional Planning Commission, the Alberta Capital Forum Ltd. was established as a vehicle for those municipalities in the Edmonton region who wished to discuss regional issues for their mutual benefit. The County does not participate in the Forum, hence the

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County and Edmonton must develop other means to ensure intermunicipal cooperation. It is detrimental to both municipalities not to have these intermunicipal processes defined.

Simply defining a fringe area between the two municipalities, as suggested in the County's MDP, ignores intermunicipal concerns that extend beyond the fringe. Sound intermunicipal planning involves four key components: a "ribbon" of land along shared borders; transportation, service and other corridors; blocks of land which due to regional significance may extend beyond the ribbon, and regional assets whose maintenance and preservation concerns everyone in the region. The County's MDP and LUB have failed to consider these components and this will have a detrimental effect on Edmonton.

The fringe area policies in s.15 of the MDP fail to provide a means for Edmonton to have input with respect to proposed development in close proximity to Edmonton. Policy 15.1 provides for a 1/2 mile primary zone adjacent to urban municipalities, and a secondary zone extending a further 1 1/2 miles beyond the primary zone, but only in the secondary zone will proposals for subdivision, development and statutory plans and plan amendments be referred to neighbouring municipalities. The inability to review and comment on proposals in the primary zone will be detrimental to Edmonton. Policy 15.1(i)(b) seems to create an option for adjacent municipalities to have input by providing for a meeting on subdivision or development applications in the primary zone if the developer elects to rely on the option. However, the purpose of the meeting is not stated. The silence of the Policy on this issue is detrimental to Edmonton.

Finally, there is no mention of referring applications for land use redesignations to adjacent municipalities. A redesignation in proximity to Edmonton could have a significant impact on the City. The need for consultation with respect to redesignations is particularly important in view of the County's practice of not redesignating land in advance of development proposals. A case in point is Sturgeon Valley, an area under pressure to expand country residential development. The only lands presently designated for country residential use in Sturgeon Valley are those already developed for that purpose. Edmonton will not even be notified in future of applications for redesignating lands in Sturgeon Valley unless Policy 15.1 is amended. Not being able to comment on such proposals would be detrimental to Edmonton.

These detrimental effects can be reduced or eliminated if the MDP and LUB are amended to provide for meaningful consultation between the County and Edmonton, and to deal with land uses in the Edmonton fringe area including the Sturgeon Valley Study Area, the South Sturgeon Study Area and a one mile strip along the boundary between Edmonton and the County. Amendments suggested for Policy 15 will help to obviate the detrimental effect. The proposed amendments will facilitate good communication and coordination of activities, thereby preventing many detrimental effects.

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(ii) Cumulative Impacts of Country Residential Use

[Provisions that have a detrimental effect on Edmonton: MDP s.3, Multi-lot Country Residential Subdivisions, Policies 3.1, 3.2 and 3.3; LUB Ss. 6.24.1, 8,5,4(f) and (h), 8.6.4(e), 6.21.2(b), 6.21.3, 6.21.4, 6.21.5, and 6.21.6]

The sections cited above are detrimental because they lack the detail and specificity that would allow Edmonton to plan for the impacts of intensified country residential use on its boundaries. The MDP contains no projections on growth nor any policy for the amount, timing, or location of future country residential development. This absence of information is a detriment to Edmonton because there is nothing by which Edmonton can estimate the magnitude of impacts it will be subject to as a result of development in the Sturgeon Valley area. While an interMDP involving both the County and Edmonton would be preferable, an area structure plan that addresses the key issues and indicates the extent and pace of anticipated development would be better than the current vacuum of information. *Ad hoc* development in this area is no longer acceptable to Edmonton.

Although Policy 3.1 of the MDP requires an area structure plan be submitted prior to application for subdivision, the Policy fails to specify the region the area structure plan is to encompass. If the region included in the area structure plan is confined only to the area of the subdivision, the opportunity to plan comprehensively is lost. The likelihood of meaningful intermunicipal planning arising from a proposal for multi-lot country residential subdivision is limited given the fragmented ownership of land in Sturgeon Valley. The County should therefore take the lead in preparing an area structure plan for the Valley, involving both Edmonton and St. Albert, so that issues of regional concern can be coordinated. Without an area structure plan for the Sturgeon Valley, Edmonton will be detrimentally affected because it will be unable to plan effectively for development in areas of Edmonton adjacent to Sturgeon Valley. The potential for detriment will increase upon the expiry of Section 11, *Subdivision and Development Regulation* A.R. 212/95 (as amended), when Edmonton will have no protection from the impact of multi-lot country residential development on its borders.

These detrimental effects can be reduced or eliminated by amending the MDP to provide for consideration of the impact that further multi-lot country residential development might have on Edmonton, and preparation of a comprehensive area structure plan for the Sturgeon Valley area that addresses Edmonton's concerns related to ongoing piecemeal subdivision.

(iii) Protecting the Integrity of Major Transportation Corridors and Facilities

[Provisions that have a detrimental effect on Edmonton: MDP s.12, Transportation and Utilities, Policy 12.6; Section 7, Industrial, Policies 7.3, 7.7(iii) and 7.10(iii); and s.8, Commercial, Policy 8.1. Also the map of Future Land Use showing CFB Edmonton as a Special Area. LUB s.8.9,

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Highway Commercial District; s.8.10, Industrial-Heavy District; and s.8.11, Industrial-Rural District]

The sections cited are detrimental to Edmonton because they lack the detail and specificity that would allow Edmonton to plan its major transportation corridors and facilities, taking into account the potential impacts on Edmonton of transportation corridors and facilities within the County, or potential demands on Edmonton's transportation corridors and facilities arising out of development within the County. There is a high degree of interaction between land use patterns and the nature of land uses, and the kind of transportation services required to serve such uses.

Roads in Edmonton do not end at the corporate limits, therefore transportation planning issues must be dealt with on a regional basis to protect rights-of-way for future expansion, development of truck routes to serve industrial areas, and ensure the free flow of heavy traffic. The *Municipal Government Act* requires, in Section 632(3)(iv), that MDPs address required transportation systems within the municipality and in relation to adjacent municipalities. The failure of the County's MDP to provide for this in a meaningful way is a detriment to Edmonton. The only way transportation systems in the County can be planned effectively is through consultation between the County and Edmonton. To date, no such consultation has occurred and there is nothing in the MDP that would indicate consultation will occur in the future. This is a detriment to Edmonton.

There is limited government funding for transportation, and it makes no sense for Edmonton to plan and budget for arterial extensions into the County if development in the County makes construction costs prohibitive. Timing and standards for the extension of arterial roadways such as 127 Street must be coordinated so that these roads are not built to serve a demand that does not exist. Conversely, if a road is built to carry commuter traffic and instead becomes a truck route, it will require more and earlier maintenance than if built to the appropriate standard to start with.

Edmonton submits that these detrimental effects can be reduced or eliminated if the MDP is amended to provide for policies that will encourage coordination of roadway and land use plans between the County and Edmonton. In lieu of a regional transportation plan, suggested amendments to MDP Policy 12, and the suggested change to Policy 15 will ensure that Edmonton is kept informed and has an opportunity to participate in land use decisions that may impact on Edmonton's transportation planning and the functioning of its transportation system.

(iv) Location of Industrial and Commercial Land Uses

[Provisions that have a detrimental effect of Edmonton: MDP, Section 7, Industrial, Policies 7.3, 7.7(iii), 7.10 and 7.11; Section 8, Commercial, Policy 8.1. LUB Ss. 6.20.5, 8.9.1, 8.93, 8.9.4(g) and (j)]

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It is submitted that the provisions noted above are detrimental to Edmonton because they lack the detail and specificity to allow Edmonton to plan for the impact of intensified industrial or commercial land uses on its boundaries. The MDP sets out some general policies concerning characteristics of potential industrial sites but does not specify where new commercial or industrial development is going to be encouraged. The resulting uncertainty is detrimental to Edmonton.

Major industrial and commercial land uses serve regional markets, not small local markets. Municipalities within a region must recognize and plan for commercial and industrial development together for the economic well-being of the region rather than the economic interests of individual municipalities. Large scale development requires a regional perspective. If Edmonton and the County established industrial or commercial nodes situated just across the municipal boundary from one another, the result could be detrimental to both municipalities if there was not enough demand to support both nodes in an economically viable condition. Eventually, both nodes might fail. Edmonton therefore suffers detriment if it is not consulted through the area structure plan process for the South Sturgeon Study Area. If both municipalities coordinated their efforts in a complementary way, successful and sustainable development might result on both sides of the boundary.

Policy 7 of the MDP is detrimental because of its lack of specificity. Because isolated heavy industrial activity appears to be supported by the County, Edmonton cannot plan within its boundaries to ensure that there will be adequate separation between potential heavy industrial development and possible incompatible land uses such as residential or institutional development. A 1,500 foot separation distance may not be sufficient. Edmonton has no assurance that if residential or institutional development takes place within its boundaries before development occurs in the County, that the County will consider the existing development in Edmonton in planning for future industrial development. The MDP does not deal with heavy industrial separation distances in a way that will protect land uses in Edmonton from the noxious qualities of heavy industry. This is a detriment to Edmonton.

These detrimental effects can be eliminated or reduced or eliminated if the MDP is amended to provide for preparation of a comprehensive area structure plan for the South Sturgeon Study Area. No specific amendments to the LUB, to deal with this issue are being requested at this time.

The detrimental effect to Edmonton arising from the silence of the MDP on the need to separate heavy industry from other uses can be obviated by an amendment to Policy 7 of the MDP to prescribe a minimum separation distance from nearby industrial uses in the County and the boundary of an urban municipality.

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(v) Environmental Protection

[Provisions that have a detrimental effect on Edmonton: MDP, s.11, Environmental Protection, Policies 11.5, 11.7, 11.9 and 11.10; s.14, Natural Resources, Policies 14.3 and 14.6. LUB: Ss. 6.9.9, 6.9.11, 6.15.1, 6.15.5 and 8.3.1, 8.3.2, 8.3.3, 8.3.4(a), (h) and (I)]

Environmentally sensitive areas of regional, provincial or national significance are, by definition, of intermunicipal interest. Environmentally sensitive areas of local significance may be of intermunicipal interest if the area lies within more than one municipality or near a shared boundary. There are a number of environmentally sensitive areas within the County that have been identified but whose recognition has not been mentioned in either the MDP or LUB. Until this is done there is a potential that these areas will be destroyed, to the detriment of all Albertans.

Environmentally sensitive areas have been inventoried and identified within the County as a first step in the protection process. The MDP and LUB should contain policies to ensure that when development pressures impinge on environmentally sensitive areas, studies will be undertaken to ensure an appropriate form of protection is implemented. Otherwise, important and unique areas may be lost "by accident." Policy 11.5 of the MDP provides that an environmental impact assessment will be required for multi-lot residential developments where an area is considered "particularly environmentally significant" but it is not clear if the assessment will be required before an application for subdivision or development can be processed, nor does the plan indicate which areas might be considered "particularly environmentally significant." The plan fails to explain why other uses which might have at least as great an impact on environmentally sensitive area as multi-lot country residential will not be required to conduct an environmental impact assessment.

Edmonton submits that even where the MDP or LUB recognizes an environmentally sensitive area, the measures proposed for protection and preservation of the environmentally sensitive area are not sufficiently detailed to allow Edmonton to be certain that an important and unique area of the province will not be lost by accident. The County's MDP and LUB should be amended to deal comprehensively with the recognition, protection and preservation of environmentally sensitive areas.

The detrimental effects to Edmonton which arise from the failure of the MDP to follow through with protection and preservation of environmentally sensitive areas can be obviated by amendments to Policy 11 and Policy 14 of the MDP. Suggested amendments are intended to provide greater opportunity for good stewardship of environmental resources of value to the region as a whole by increasing the number of events that will trigger an environmental impact assessment. Edmonton's concerns with LUB Ss. 6.9.9 and 6.9.11, dealing with Natural Resource Extraction, will be obviated through the proposed amendment to Policy 14.6. Concerns with

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LUB Ss. 6.15.1 and 6.15.5 (Bed and Breakfasts and Guest Ranches) are addressed through proposed amendment to Policy 11.5 and the new sub-policy proposed within MDP Policy 11. The proposed change to Policy 11.5 will help alleviate concerns with LUB s.8.3 (Agriculture-Nature Conservation District)

(vi) Fragmentation of Agricultural Land and Protection of the Agricultural Industry

[Provisions that have a detrimental effect on Edmonton: MDP, s.2, Agriculture, Policies 2.1, 2.2, 2.4, 2.5, 2.6; LUB, Sections 6.23.1, 8.2.2, 8.2.3, 8.2.4(a), 8.3.2, 8.3.3, and 8.3.4 (a) (Also sections 6.21.4, 6.21.5, 6.21.6 referred to previously)]

The provisions of the MDP and LUB are detrimental as they are not directed towards the prevention of the fragmentation of agricultural land. Although the goal of the MDP is stated as “To protect and allow for the enhancement of the valuable agricultural land resource, the agri-based economy and the rural life style”, the policies of the MDP seem to contradict the goal by allowing multiple subdivisions in a quarter section, with parcels as small as 2.47 acres (1 hectare). In addition, there are 29 permitted and discretionary uses within the district suggesting that it is not reserved for agricultural activities and is not intended to truly protect the agriculture industry, but to function as more of a holding district.

Edmonton’s policies with respect to preservation of agricultural land are much more restrictive. The different approaches of the two municipalities will lead to confusion for land owners who own land in both municipalities. The need for Edmonton and the County to work together to ensure a consistent approach for areas close to shared municipal boundaries should be addressed in the MDP.

The possibility of an intensive livestock operation being allowed in close proximity to an urban boundary may result in detriment to Edmonton. While the LUB and the MDP both suggest that intensive livestock operations within a 1/2 mile distance of an urban boundary will not be permitted, the Animal/Bird Regulations and the Intensive Livestock Operation Regulations in the LUB would permit a sizable concentration of animals to be kept on lands within the 1/2 mile distance. This apparent contradiction is a detriment to Edmonton.

The MDP policy that allows two residential lots to be subdivided from each quarter section will, over time, result in fewer and fewer locations and expansion opportunities for intensive agriculture, especially livestock operations. Livestock production and associated value-added processing industries are major growth sectors in the regional economy. Policies which limit the realization of this potential are detrimental to Edmonton. No specific amendments are suggested for Policy 2 of the MDP.

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(vii) Determining a Process for Effective Intermunicipal Planning

[Provisions that have a detrimental effect on Edmonton: MDP, s.16]

Section 16 of the MDP is detrimental because it fails to recognize that implementation and amendment of the MDP will require consultation not only with residents of the County but with Edmonton and the rest of the County's neighbours as well. Unless s.16 is amended to include a commitment by the County to consult with its neighbours, amendments to the MDP or LUB may suffer the same fate as the bylaws adopting the LUB and MDP. If consultation occurs early in the process, input will be more effective and may provide the foundation for a relationship that will enable the County and its neighbouring municipalities to act collaboratively and proactively.

The lack of initiative on the part of the County in communicating with its neighbours in the past causes concern that the County may not share the same level of commitment to intermunicipal planning as Edmonton. Formal recognition of its commitment by the County would ameliorate Edmonton's concerns. The silence of the MDP on the issue of non-adversarial resolution of conflicts between the County and its neighbours is a detriment to Edmonton. Providing a policy dealing with conflict resolution in the MDP would help the County and its neighbours avoid loss of time and money in complex appeals before the Board.

A concern regarding the adequacy of the intermunicipal consultation process between Edmonton and the County is at the heart of Edmonton's appeal of the provisions of the County's MDP and LUB. Amendments proposed to Policy 15 (Fringe Areas) will alleviate detriment to Edmonton, and if Policy 16 is amended as suggested, detriment will be further alleviated. These amendments will lay the foundation for more productive intermunicipal planning.

The City of St. Albert

1. The Factual Background

St. Albert has a population of approximately 47,000. The areas of St. Albert slated for residential development are adjacent to the boundary of the County. St. Albert is a comprehensively planned community with a general municipal plan, area structure plans (required for new subdivisions) a LUB, and engineering standards for storm and sanitary sewers, water mains, roads, curbs and sidewalks. Managing growth is critical for a well planned community, and in St. Albert new residential development is required to be contiguous with other development.

The County, on the other hand, is a rural community, with agriculture as its dominant land use and economic base. The County surrounds St. Albert on its western, northern and eastern boundaries. The County used to have policies that discouraged country residential development, but over time the County has been under pressure to permit country residential development in

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proximity to St. Albert. Recently a number of institutional uses have also been approved on St. Albert's boundary.

In 1994, St. Albert and the County began working toward a joint planning process with appointment of a Joint Planning Committee. Committee discussions continued through June 1996 and included consideration of an inter-municipally planned fringe zone. Efforts at joint planning were terminated by the County in September of 1996. At the same time, the County was working on its new MDP. Background discussion papers contemplated more intensive industrial, commercial and country residential use in proximity to St. Albert. In the public hearings and in submissions to the County, St. Albert strenuously supported effective urban fringe planning to ensure coordination and prevent land use conflicts.

The County Council disregarded its consultant's recommendation and the entreaties of St. Albert, and adopted the MDP with no effective mechanism for coordination of land use, future growth patterns and infrastructure with St. Albert and other adjacent municipalities. The absence of an effective fringe policy was reflected in the County's new LUB, which has no urban fringe zone to mitigate or prevent land use conflicts, thus setting the stage for this appeal. St. Albert filed its notice of appeal before the Municipal Government Board on March 11, 1997.

From the first scheduled hearing date before the Board, St. Albert and the County have worked to negotiate a form of order that will alleviate the concerns of St. Albert with respect to detrimental effects. The County's MDP may have a detrimental effect on St. Albert because it creates the potential for intensification of subdivision and development in the fringe zone along the boundary between the two municipalities without coordination of land uses, future growth and infrastructure.

2. Analysis of MDP Policies

(i) Agriculture

[Provisions that have a detrimental effect on St. Albert: MDP, Policy 2.8]

The sole concern St. Albert has with the County's agricultural policy is that it fails to recognize that specially tailored fringe policies are needed to minimize land use conflicts between intensive agriculture and urban residential communities.

(ii) Multi-Lot Country Residential

[Provisions that have a detrimental effect on St. Albert: MDP, Policy 3.2]

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While the County's old general municipal plan gave rural and agricultural uses pre-eminence, the new MDP expressly recognizes the right to create and develop residential subdivisions. One of the objectives set out s.3, "Multi-lot Residential Subdivisions," is to "provide a diversity of residential land use options, in locations proximate to service and employment centres." As a service and employment centre, St. Albert now faces the prospect of expanded multi-lot country residential and residential uses along its boundary. In fact, the County's Policy Directions Discussion Paper specifically acknowledged that the St. Albert fringe is the prime candidate for country residential growth.

Multi-lot country residential development that is not coordinated with St. Albert's planning scheme will cause traffic problems, sanitary sewer problems; risks of ground water contamination, fragmented parcels (making integration into the urban fabric difficult, if not impossible), and problems integrating rural servicing patterns, development standards and infrastructure.

(iii) Industrial Land Uses

[Provisions that have a detrimental effect on St. Albert: MDP, Policies 7.3 and 7.12; LUB, s.8.2.3]

The provisions of the MDP in conjunction with the LUB operate to allow development of "agricultural industrial" development in close proximity to St. Albert. Policy 7.3 provides that new industrial parks will be located adjacent to significant provincial highways, notably Highway 2. Section 8.2.3 of the LUB provides for "Agricultural Industrial Use" as a discretionary use immediately adjacent to St. Albert. Agricultural industrial uses in close proximity to St. Albert that are not coordinated with the St. Albert planning scheme will cause the following forms of detriment: traffic problems; environmental problems, including noise, odor, dust and ground water contamination; land use incompatibility with urban residential neighbourhoods, and rural development standards that are incompatible with urban development standards.

(iv) Commercial Land Use

[Provision that has a detrimental effect on St. Albert: MDP, 8.1]

The Commercial Policy of the MDP contemplates broadening the County's economic base through the encouragement of "new large retail format stores" with "different locational requirements". St. Albert is concerned that this is a precursor to "big box retail" on its boundary. The MDP Background Report specifically contemplates "big box" retail in proximity to urban centres. Big box retail located on or close to Highway 2 access to St. Albert will detrimentally affect traffic flows into and within St. Albert unless its planning is coordinated with St. Albert and the costs of additional traffic control borne by the County.

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(v) Fringe Areas

[Provisions that have a detrimental on St. Albert; MDP, Policies: 15.1 and 15.6.]

The fringe zone contemplated by Part 15 of the MDP is deficient in the following respects:

- It contemplates “interim measures,” whereas the *Municipal Government Act* requires measures to effectively “coordinate land uses, future growth patterns and other infrastructure”. This is dangerous as permanent uses and subdivisions with long term consequences will result from interim measures in land use planning.
- Within the half mile primary zone “future intensified land use and land use patterns” are contemplated. When coupled with the policies on country residential, industrial and commercial development, this is particularly ominous for St. Albert.
- There is no effective mechanism for land use coordination with St. Albert if the County chooses to proceed under Policy 15.1(1)(a) of the MDP. The County is able to unilaterally determine whether a subdivision or development can proceed without the necessary information to analyze the impact on affected urban landowners and without taking St. Albert’s concerns into account. If the County decides to proceed under 15.1(1)(b), the most St. Albert can expect is an opportunity to meet with representatives of the County and the proponent. There is no obligation to consider or mitigate detrimental effects with St. Albert.
- There is no obligation in the “primary zone” to refer statutory plans and statutory plan amendments to adjacent urban municipalities for review and comment (there is such an obligation in the “secondary zone”).
- There is no opportunity to review and comment on amendments to the LUB.

There is no effective mechanism for land use coordination in the MDP. Uncoordinated subdivisions and intensified land use on St. Albert’s boundary will cause the following detrimental effects:

- The City of St. Albert strives through its planning process to achieve a well planned community. *Ad hoc* urban development detracts from the creation of an internally cohesive community.
- St. Albert bars “leap frog development” and requires new residential development to be contiguous or close to existing development. Short-term development beyond the fringe of St. Albert that is incapable of being integrated into its planning process detracts from the establishment of a solid urban fabric.

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- St. Albert imposes urban infrastructure standards on all subdivision and development through the City of St. Albert Municipal Engineering Standards. It would be incongruous to allow adjacent land to be developed at intensities approaching urban densities on the immediate boundary of the urban area, but under less stringent rural development standards. This will lead to conflicts with respect to dust, increased traffic, disputes over sewage handling, and aesthetic concerns regarding water towers.

3. Analysis of the LUB:

The provisions of the LUB that have a detrimental on St. Albert:

(i) Absence of Urban Fringe, and Incompatible Land Use

St. Albert's key concern with the LUB is that it does not provide an urban fringe to assist in preventing land use conflict and intensified development on the County's shared boundary with St. Albert. The main land use zoning adjacent to the St. Albert is AG (agricultural), which allows a significant number of permitted and discretionary uses that may conflict with urban residential land uses if located in close proximity. Although the A-NC (agricultural-nature conservation) District affects a smaller area of the boundary, it contains many of the same conflicting uses such as intensive livestock operations.

(ii) Scope for Country Residential Subdivision

St. Albert is concerned that the permitted forms of dwelling - single detached dwelling and mobile home units - could form the basis for a country residential subdivision if either the parcel density regulations were ineffective, or were waived in the subdivision or development process.

(iii) Fragmentation of Parcels

With respect to the parcel density regulations, there is concern about a "drafting gap" that could render them ineffective. The regulations restrict the number of parcels that can be subdivided out of an "unsubdivided quarter". It does not deal with what happens to land once it is subdivided. This gap may allow a greater subdivision density to be achieved than was intended. Effective long term municipal planning cannot be achieved when there is premature fragmentation of land. Parcels must be maintained in large blocks until ripe for development. At worst, fragmented ownership can result in sterilization of land.

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4. Discussion of Selected Detrimental Effects

(i) Groundwater Contamination

The part of the fringe area north of Villeneuve Road has an extremely high water table. Groundwater flowing into St. Albert's Red Deer subdivision is charged from this water table. The groundwater poses a problem for the subdivision, requiring sump pumps that discharge the water into the streets. Because of this problem, the use of rural-standard sewage disposal techniques in the area poses a risk of groundwater contamination. Other uses, such as intensive livestock operations, institutional uses and gas processing plants also pose a risk.

(ii) Traffic Problems

The intensification of institutional, residential and other uses on the St. Albert fringe will result in increased traffic into and through St. Albert, especially on St. Albert Trail, which was not designed to handle increased traffic from this area.. St. Albert trail is presently operating above capacity at several intersections. Increased traffic cannot be accommodated without increased congestion that can be alleviated only with increased capital expenditure.

(iii) Economic Impacts

Failure to plan for the long term ultimately results in the need either to overleap scattered country residential and institutional development, or to retrofit it with urban-standard services at significant cost. Alternatively, if development proceeds based on the expectation it will have access to St. Albert's infrastructure, St. Albert will suffer economic detriment unless there is coordination, with an appropriate share of costs being borne by the new development.

If St. Albert's infrastructure is used by County residents, it will reach capacity sooner and require expansion and upgrading sooner. Unless there are intermunicipal agreements in place, St. Albert will bear an inordinate share of the costs. Intensification of development on the urban fringe gives rise to expectations of access to urban services. The cost of delivering these services includes not only the marginal cost of actually delivering the service, but the costs of maintaining an adequate capacity for total and peak demands, as well as the capability to respond to increased demand. No approval for such development should be given in the absence of integrated planning and cost sharing.

(iv) Social Detriments

St. Albert is designed to be a cohesive community. Unless adjacent communities are planned in coordination with St. Albert, the cohesion will tend to break down. Unless fringe development is integrated with St. Albert's land use pattern, there is a risk of social polarization and division.

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“Ex-urban” growth is often lacking in a sense of community, causing friction when non-residents use services and infrastructure they do not pay for.

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(v) Failure to Plan Intermunicipally as Detrimental *Per Se*

Under Part 17 of the *Act*, municipalities directly control intermunicipal planning. In the absence of an intermunicipal development plan, the MDP becomes the instrument that coordinates land use, future growth patterns and infrastructure with an adjacent municipality. S. 632(3) of the *Act* establishes intermunicipal planning as a mandatory component of a MDP:

A municipal development plan

a) *must address*

iii) *the coordination of land use, future growth patterns and other infrastructure with adjacent municipalities* if there is no intermunicipal plan with respect to those matters in those municipalities;

iv) the provision of the required transportation systems either generally or specifically within the municipality *and in relation to adjacent municipalities*.

(Italics added)

This obligation to coordinate intermunicipal planning is reinforced by the Land Use Policies adopted by Cabinet under s.622(3) of the *Act*. Under s.622(3), all statutory plans and LUBs must be consistent with the policies. These provide, *inter alia*:

It is therefore important that municipal and provincial planning efforts utilize consistent approaches and pursue a high level of cooperation and coordination. (p.1) ...

3.0 PLANNING COOPERATION

Goals

To foster cooperation and coordination between neighbouring municipalities and between municipalities and provincial departments and other jurisdictions in addressing planning issues and in implementing planning strategies.

Policies

1. Municipalities are encouraged to expand intermunicipal planning efforts to address common planning issues, especially where valued natural features are of interest to more than one municipality and where the possible effect of development transcends municipal boundaries.

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2. In particular, adjoining municipalities are encouraged to cooperate in the planning of future land uses in the vicinity of their joining municipal boundaries (fringe areas) respecting the interest of both municipalities and in a manner which does not inhibit or preclude appropriate long term use nor unduly interfere with the continuation of existing uses. Adjoining municipalities are encouraged to jointly prepare and adopt intermunicipal development plans for critical fringe areas. These plans may involve land which are in both of the adjoining municipalities.” (p.4)

4.0 LAND USE PATTERNS

Goal

To foster the establishment of land use patterns which *make efficient use of land, infrastructure, public services and public facilities*; which promote resource conservation, which enhance economic development activities; which minimize environmental impact; which protects significant natural environment; and which contribute to the development of healthy, safe and viable communities.(Italics added)

Policies

1. municipalities are encouraged to establish, on a municipal *and on an intermunicipal basis*, land use patterns which provide and appropriate mix of agricultural, residential, commercial, industrial, institutional, public and recreational land uses *developed in an orderly, efficient, compatible, safe and economical manner* “. . (p.6) (Italics added)

In the old planning regime under the *Planning Act*, general plans did not deal with intermunicipal matters; they were the responsibility of the Regional Planning Commissions. Regional plans provided planning control on a regional level, including fringe area planning. In the context of the obligation in s.630(3) of the *Act* to provide for intermunicipal coordination of planning matters, it is detrimental *per se* for the County’s MDP to be without an effective mechanism for coordinating land uses, future growth patterns and infrastructure.

5. Suggestion for an Order That Will Mitigate the Detriment

The Board should make an order directing the County to amend its MDP and LUB in a way that will ameliorate detriment to St. Albert as follows:

Proposed MDP amendments:

- Agriculture, s.2.8: to recognize that in some circumstances intensive livestock operations should be located further than the minimum separation distance from an urban community.

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- Multi-Lot Country Residential, s.3.2: to recognize that if there is to be new multi-lot residential subdivisions they must take place in the context of intermunicipal planning in the fringe zones.
- Industrial, ss. 7.3 and 7.12: to recognize that location of industrial zones in the fringe should reflect the intermunicipal planning process contemplated by s.15.
- Fringe Areas, s.15.6: to recognize that intermunicipal coordination is necessary in the fringe area.
- Sections 15.6(i) through (v): to reiterate the subdivision restrictions set out in the agricultural zone, to prevent excess fragmentation of agricultural lands in the fringe zone.
- Sections 15.6(vi) through (ix): to require referrals to St. Albert of for proposed subdivisions, discretionary use development applications, land use reclassifications and LUB amendments and area structure plans.
- Sections 15.6(x) and (xi): to work in conjunction with the obligations in Policies 3.1 and 7.5 requiring area structure plans for the development of multi-lot country residential subdivisions and industrial parks.
- Sections 15.6(xii) and (xiii): to ensure cooperation regarding municipal boundary changes in case St. Albert proceeds with a new major arterial on its west boundary.

Proposed LUB amendments:

Amendments to the LUB are intended to achieve the following objectives:

- To reduce risk of land use conflict. The St. Albert fringe provides an area tailored to deal with the coordination of land uses and future growth, in which the range of permitted and discretionary uses allowed in the general agricultural district has been appropriately adjusted, thereby mitigating potential land use conflicts relating to major home businesses, airports, intensive livestock operations, kennels, agricultural industrial uses, institutional uses and gas processing plants. Through the use of definitions that excluded “grouped country residential” development, groups of residential dwellings (approved as a permitted use) cannot be converted into country residential subdivisions through variance of lot density regulations. Existing institutional and intensive livestock operations in the St. Albert fringe are “grandfathered” through “S-DC” zoning.

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- To prevent unanticipated fragmentation of large parcels of land. The wording in the LUB leaves a question as to whether there would be any restrictions on further subdivision once a parcel was subdivided. The restrictions in s.8.2.4 speak only of limitations on “unsubdivided parcels,” apparently without consideration of standards for subdivided parcels.
- To ensure that appropriate referrals are made. The provisions dealing with referrals in ss. 2.5.1, 2.8.3 and 3.3(b) will be amended to ensure that appropriate notice is provided to adjoining municipalities. In addition, a number of consequential amendments are to be made throughout the LUB to recognize landowners’ rights and obligations in the Ag zone also apply to the fringe zone.

The Town of Morinville

1. Detrimental Effects Generally

Section 690 of the *Municipal Government Act*

Critical to the interpretation of s.690 is the meaning of the word “detriment.” This was addressed by the Alberta Court of Appeal in *City of Lloydminster v. Alberta Planning Board et al.* Although the case arose under s.44 of the old *Planning Act*, that provision was substantially the same as s.690 of the present *Act*. In their decision in *Lloydminster*, the Court of Appeal concluded that detrimental effects were not limited to land use planning matters, i.e., it was sufficient that the action complained of “may have some detrimental effect.” It is submitted that the conclusion to be drawn from the *Lloydminster* case is that any detrimental effect comes within the scope of s. 690.

An Appellant need not demonstrate an actual “detrimental effect.” Section 690(1) allows for an appeal where a statutory plan or land-use bylaw “has or may have” a detrimental effect. The scope of the provision therefore goes beyond actual detrimental effects. Statutory plans and land-use bylaws, addressing as they do future uses, give rise to “potential” detrimental effects. Because of this, any detrimental effects would almost inevitably be prospective in nature, otherwise s.690 would be ineffectual.

Morinville acknowledges that potential detrimental effects should not be too speculative in nature. It is submitted that it is those detrimental effects that are reasonably possible that come within the purview of s.690. Consequently, one must examine the consequences or effects arising from a particular bylaw. It is obvious that s.690 is intended to provide a remedy where a planning bylaw has an actual or potential adverse impact on an adjoining municipality. This is clearly the reason for s.690, and if the section is to be given any meaning, the imputed bylaw must be examined in terms of its potential consequences. It is further submitted that the

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consequences of a bylaw must be examined in terms of both its specific provisions and its omissions, for the simple fact that consequences flow from omissions as well as provisions.

The test under s.690 is whether the “bylaw” has or may have a detrimental effect. The reference to a bylaw establishes the scope for detriment effect in that all of s.690 must be read in the context of s.690(1), including the word “provisions” in s.690(5). Further, it is submitted that the authority of the Board to direct remedies must be interpreted in this context.

2. Specific Detrimental Effects

(i) Industrial Development

{Provisions that have a detrimental effect on Morinville: MDP, Policies 7.2, 7.3, 7.7 7.8 and 7.10; LUB, Part 6.0, (General Regulations), s.6.20 (Industrial Uses), Part 8.0 (Land Use Districts), s.8.10 (Industrial - Heavy District)}

With provisions for the approval of new rural industrial parks and isolated rural industrial developments throughout the rural area, the distinctive roles of “urban” and “rural” municipalities will be eroded. Morinville is concerned that its important role as an agricultural service centre within the region will be diminished and that future opportunities for economic development within Morinville will be adversely affected. There will also be additional strain upon urban services by this type of development within close proximity to Morinville’s boundary.

The visual impact of the development of new industrial parks along Highway 2 and Secondary Highway 642 will detract from the aesthetic value of these important transportation corridors, and adversely affect the efficient and safe flow of traffic. There is no requirement in the LUB for an area structure plan for industrial development near primary or secondary highways.

According to the LUB, heavy industrial uses may be separated by only 1,500 feet from the boundaries of an urban centre. Approval of Heavy Industrial uses outside the area zoned for it in the LUB creates potential for excessive and unnecessary costs that will have to be borne by Morinville in resolving future land use conflicts. Such costs could be avoided or minimized if these uses were located in areas appropriately zoned for them.

(ii) Commercial

{Provisions that have a detrimental effect on Morinville: MDP, Policy 8.1; LUB, Part 8 (Land Use Districts), s.8.9 (Highway Commercial District)}

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No direction is given as to where these kind of uses may locate in the County, whether under the Highway Commercial Land Use District or any other District in the MDP. “Warehouse sales” is listed as a discretionary use. Morinville’s concerns are therefore the same as its concerns respecting the location of new rural industrial parks and isolated rural industrial developments.

(iii) Fringe Area

[Provisions that have a detrimental effect on Morinville: MDP, Policies 15.1(i) and (ii), and 15.2].

These policies provide for a 0.5 mile “primary zone” adjacent to the boundary of urban municipalities in which subdivision and development will be somewhat restricted and a further 1.5 mile “secondary zone” which will be used as the limit within which all subdivision, development and planning proposals will be referred to respective urban municipalities for review and comment. Policy 15.2 provides for cooperation between the County and its urban neighbours in negotiating intermunicipal agreements.

The limitations on the extent of the urban fringe surrounding Morinville will hamper Morinville’s ability to plan for long term growth. Consequently, Morinville will be unable to plan effectively for and coordinate future land use or provide for infrastructure on lands adjacent to its boundary with the County. Rural residents adjacent to Morinville will use and come to rely upon urban services. Without being able to provide meaningful input with respect to rural development adjacent to its boundaries, Morinville will be restricted in its ability to plan for and maintain transportation and other services within its boundaries.

The interim nature of the MDP’s Fringe Areas Policies results in uncertainty respecting fringe development over the short term, and substantially limits Morinville’s ability to cooperate with the County in providing input into the planning and approval process. Short term decisions will result in the establishment of precedents in response to unplanned development pressures, unwarranted fragmentation of land, and the approval of development that will be premature in light of future agreements that may be put into place.

(iv) Intensive Livestock Operations

[Provisions that have a detrimental effect: LUB, Part 6 (general regulations), s.6.23 (intensive livestock operations)]

These provisions permit intensive livestock operation to locate as close as 1/2 mile from the boundary of an urban municipality. This proximity will lead to unnecessary and excessive costs arising from the resolution of future land use conflicts.

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3. Remedy Requested

Morinville respectfully requests that the Municipal Government Board:

(i) make a finding that Bylaws 818/96 and 819/96, as originally passed by the County, have or may have a detrimental effect on Morinville; and

(ii) order the County to amend Bylaws 818/96 and 819/96 to incorporate the proposed settlement reached between Morinville and the County.

SUBMISSIONS OF THE LANDOWNERS

Dale Maynard Industries Inc. and 702602 Alberta Ltd.

1. General

(i) Position of the Landowners

The goal of the landowners is to ensure that the County bylaws do not prejudge development proposals or preclude timely consideration of them, but rather allow them to be considered on their merits. It is the position of the landowners that, with few exceptions, the County's bylaws are not detrimental. They may not have been completed to urban standards, but only because they were not intended to regulate an urban region. Admittedly, the bylaws could be improved, but the fact they could be improved does not mean they are detrimental. Any amendments to the bylaws that the Board may direct should be kept to a minimum and address only those specific provisions that will clearly result in detriment. The Board has not been given a general mandate to re-write the Bylaws but is limited to amending or repealing provisions of the Bylaw found to be detrimental.

(ii) Agreements with Adjoining (Appellant) Municipalities

A municipal council should not act in a way that is contrary to its bylaws. It cannot enter into agreements that are contrary to its bylaws, and cannot in its corporate capacity amend its bylaws. Where it is appropriate for a municipality to amend its bylaws, the amendment should be done following proper procedures. The County agreed to the amendments on the understanding that they would be implemented only if the Board found detriment. It is submitted that a finding of detriment is essential.

The fact that the County has negotiated agreements with the adjoining municipalities is irrelevant to the determination of detriment. The County has not admitted that its bylaws are detrimental, but merely decided that if detriment is found, the County might be amenable to having its bylaws

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amended in accordance with the agreements. It is, in our view, premature for the County to have negotiated such agreements before it knew what the detriment might be. For the Board to regard the agreements as evidence would be an error of law that would jeopardize the validity of these proceedings: *Dallinga v. Council of City of Calgary* [1976] 1 W.W.R. 319 (Alta. S.C.).

(iii) Interrelationship of Municipalities

Generally, all municipalities have been created equal. They have equal legislative authority to adopt those policies and bylaws that they deem to be in the best interests of their residents. Such rights are exercised subject to the protection afforded to adjoining municipalities of having the Municipal Government Board review and remedy planning bylaws that the Board finds to be detrimental to an adjoining municipality. If a municipality does not believe that s.690 of the *Act* affords adequate protection to its long term interests and desires to have greater control over certain geographic areas, it may apply to annex those lands, thereby assuming full legislative control over them. In that way, political accountability is vested in the municipality that exercises control.

One municipality should not be in a position to dictate to another what may or may not be done within the boundaries of the other municipality unless the first municipality is prepared to accept political responsibility for its actions. Any effort that would segregate political control from political responsibility must be resisted. If the County retains jurisdiction over the subject lands, it should be at liberty to make decisions affecting those lands subject only to the over-riding jurisdiction of the Board with respect to provisions of its planning bylaws that are detrimental.

2. Legislative Scheme

(i) Fundamental Principles

There are a number of fundamental principles which must guide the Board in its assessment of the submissions made by the appellants in determining whether or not a provision of the bylaw is detrimental. Absent a finding of the Board that the bylaw has (or potentially has) a detrimental effect upon the appellants, the appeal must be dismissed. Absent evidence in that respect, the Board cannot make a finding that a bylaw is detrimental.

(ii) Burden of Proof

The onus of proof to establish that the bylaws have a detrimental effect is on the appellants. The burden of proof lies upon the party who asserts the affirmative of the issue: *Re CN/CP Telecommunications and Canadian Association of Communications and Allied Workers* (1985) 18 L.A.C. (3d) 78. It is not the duty of the County or the landowners to show that the bylaws do not have a detrimental affect.

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(iii) Only Provisions of a Bylaw can be Detrimental

It is the bylaw *per se* that must create the potentially detrimental effect. S.690(5) of the *Act* states: “The Municipal Government Board must decide whether *the provision of the . . . bylaw* is detrimental”. The present investigation must therefore be centred on the provisions of the County’s bylaws. The issue is not whether the process which led to the adoption of the bylaw was deemed to be satisfactory to the appellants, nor is it what the bylaw fails to provide. It is on “the provision” of the bylaw alleged to cause detriment that the Board must focus.

(iv) Development Potential

Whether or not a provision of a bylaw is detrimental must be assessed in relation to the development or potential development which may flow from the bylaw. It is trite to suggest that it is the development itself and not the bylaw which results in a detrimental effect. The issue is therefore whether or not the provisions of the bylaw will permit development that could have a detrimental effect on the appellant municipalities. The intent of s.690 is to ensure that development initiatives in one municipality address regional concerns and that any detrimental effects of the development are remedied by amendments to the offending bylaw.

(v) Specific Use and Location

It is submitted that if a bylaw does not designate a specific use for a specific location, the potential for the bylaw to have a detrimental effect is remote. A particular use may be considered beneficial or detrimental depending upon its location. Without knowledge as to the specific use and its intended location, the ability to determine whether detriment exists is virtually non-existent. An area structure plan, an area redevelopment plan and a LUB all designate specific land uses upon specific parcels. The MDP does not specify uses for specific parcels, but contains broad policy statements that can be implemented only through another bylaw and accordingly, in and of itself, the MDP cannot have a detrimental effect on an adjoining municipality.

(vi) Threshold of Detriment

To be detrimental, a provision of a bylaw must “unduly” affect the adjoining municipality. It is not simply any inconvenience or adversity which warrants intervention by the Board in the enactment of otherwise valid legislation by a duly elected body. In the context of combines legislation, the Supreme Court of British Columbia in *Valley Salvage Ltd. et al v. Molson Brewery B.C. Ltd. et al* (1975) 64 D.L.R. 734 @ 748 states: “The meaning of ‘detriment’ has been discussed in a number of authorities. It has been held that the word ‘detriment’ has the same meaning as the word ‘unduly’ as used in Section 32 of the *Act*.” Clearly, the prejudice or harm to the adjacent municipality must be serious enough to warrant intervention in the legislation of a duly elected municipal council.

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(vii) Amendments and the Board's Jurisdiction

If the Board finds provisions of a bylaw to be detrimental, it may remedy the detriment by ordering the provision to be amended, or it may order the repeal of the provision [s.690(5)(b) of the *Act*]. There must be a provision. The Board can neither repeal nor amend that which does not exist. It is submitted that the Board should keep the amendments it directs to a minimum, confining them specifically to detrimental effects. The Board has no mandate to re-write the County's MDP or LUB, or to create new land use districts. To do so would not constitute an amendment to the provision causing the detriment and would introduce new policies with which County council might not agree.

3. Response to the City of Edmonton

(i) General Comment

While Edmonton's submission may provide evidence of the need for discussions between municipalities to address matters of regional concern, for the most part Edmonton's submission fails to establish that any provision of the bylaws is detrimental. The submission is predicated on the basic premise that the bylaws of the County fail to address a number of items that the bylaws could otherwise have addressed. This view disregards the requirement that the Board, in making a determination of detriment, must identify the specific provision in the bylaw which it finds to be detrimental. Having found detriment, the Board may respond appropriately. The Board is not given the legislative mandate to incorporate new concepts into the bylaws to cover perceived deficiencies.

(ii) New Planning Regime

Edmonton submits that with the elimination of regional plans, the Board's jurisdiction in addressing and resolving intermunicipal disputes has been expanded commensurately over the scope of the jurisdiction exercised by its predecessor, the Alberta Planning Board. Such a conclusion does not follow. The jurisdiction of the Board must be found within the *Act*. The language of s. 690 is more definitive, both with respect to the assessment the Board must make and the remedies it may apply, than was s.44 of the *Planning Act*.

The legislature is presumed to avoid "stylist" variation in drafting statutes. Once a particular way of expressing a meaning has been used, it will be used again and again wherever the same meaning is intended. Therefore, when a different form of expression is used, the presumption is that a different meaning is intended. Had the legislature intended to expand the scope of the Board's jurisdiction over that enjoyed by the Alberta Planning Board, it would have said so clearly and unambiguously.

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Edmonton has argued that by deleting the words “within the boundaries of the first municipality” and replacing them with the words “on it”, the legislature has expanded the Board’s jurisdiction from that of the Planning Board. This ignores the fact that a municipality has no existence beyond its boundaries. Since the new legislation has been written in “plain English”, the words “on it” can have no meaning other than “within the boundaries of the first municipality”. Therefore the Board’s authority has not been expanded to allow it to find detriment outside the boundaries of the subject municipality.

Edmonton further argues that general, as opposed to specific, detriment is sufficient to warrant intervention. They assert that because the bylaw could be enhanced to better Edmonton’s position, the failure to do so is detrimental. They invite the Board to re-write the legislation on behalf of the Municipal Council of the County, notwithstanding that specific provisions within the bylaw are not detrimental.

(iii) General Detrimental Effects

Edmonton’s position is that there has not been adequate consultation leading up to the adoption of the County’s bylaws and that this has caused detriment to Edmonton. But lack of consultation cannot be a detrimental effect as it does not appear within any specific provision of the bylaw.

It is suggested that the bylaws and actions must be consistent with provincial Land Use Policies, but s.1.2 of the Land Use Policies states: “Policies are presented in a general manner which allows municipal interpretation and application in a locally meaningful and appropriate fashion.” Policy statements do not receive the same strict interpretation as do bylaws and legislation: *Harvie v. R. in Right of Alberta* (1981) 16 A.L.R. (2d) 223 (Alta. C.A.). The general nature of the policies permits each municipality to prioritize its objectives to achieve that which it believes is in the best interest of the municipality, subject to the right of the Board to modify any legislative action taken by it found to have a detrimental effect on the adjoining municipality.

Section 4 of the Land Use Policies, dealing with land use patterns, states that municipalities are “encouraged to establish land use patterns which contribute to the provision of a wide range of economic development opportunities thereby enhancing local employment opportunities and promoting a healthy and stable economy.” Municipalities are therefore to complement and support economic development initiatives.

There is no specific provision of the MDP or the LUB which the City has identified as contravening any specific policy. Edmonton says that the MDP fails to address future land uses and it is acknowledged that it does not do so to the extent that an urban MDP might, but to force urban planning standards on rural municipalities would impose a burden not readily achieved.

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(iv) Specific Detrimental Effects.

If MDP policy 15.1.a or 15.1.b is detrimental, it is only to the extent that proposed LUB amendments are not required to be referred to the adjoining municipalities in the same way that statutory plans or amendments to statutory plans are referred and an amendment to policy 15.1.a to that effect is warranted.

It is acknowledged that there are municipal and regional issues which require communication, but a legislative requirement for it is not necessary and will not necessarily cure the problem. The County's MDP does not preclude communication. Therefore, it cannot be said to be detrimental. The landowners would not object to an amendment to the MDP which would require development applications and amendments to statutory plans and LUBs to be referred to Edmonton and St. Albert where the land affected was within the primary zone, the secondary zone, the Sturgeon Valley study Area, or South Sturgeon Study Area. . But Edmonton seeks an amendment whereby it would receive referrals for "comment and concurrence," which implies a bias in favour of Edmonton.

Any undeveloped lands in the County intended for country residential development in future will require reclassification to one of the country residential land use districts in the LUB, necessitating an amendment to the land use map. The amending bylaw, if considered detrimental by an adjacent municipality, could be referred to the Board for a determination of detriment.

An area structure plan can be prepared for those areas within the County that are referred to in the Edmonton's submission without a specific requirement in the MDP. Dale-Maynard Industries Inc. supports the preparation of an area structure plan for the Sturgeon Valley Study Area. Edmonton seeks to impose a higher standard and more detail for the MDP and LUB than is warranted.

Edmonton argues that sections of the MDP and the LUB lack detail and specificity and that this uncertainty is detrimental to Edmonton. However, the kinds of industrial and commercial development contemplated by the MDP would require amendments to the LUB that Edmonton would be able to appeal. Edmonton also claims to be concerned about a perceived lack of provisions with respect to environmental protection, but here again the complaint is about what the bylaw fails to provide, rather than what it does provide.

Edmonton submits that because there are a significant number of uses which are either permitted or discretionary in the agricultural zone that it appears to be more or a holding district than a district reserved for agricultural activities. Edmonton also submits that if its policies and those of the County differ, confusion will result, causing detriment to Edmonton. Neither of these concerns reveal detriment that will "unduly affect" Edmonton.

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Edmonton argues that section 16 of the MDP is detrimental because the section fails to specifically recognize that implementation and amendment of the MDP will require consultation. Again, it is not what the bylaw provides, but what it fails to provide that Edmonton argues is detrimental, and requests the Board to rewrite the MDP and LUB to accommodate their concerns. No detriment has been shown relative to the provisions of these documents.

4. Response to the City of St. Albert's Submissions

(i) General Comments

The premise that underlies the submission of St. Albert is that St. Albert is a sophisticated urban centre, well suited to industrial, commercial and intensive residential development, whereas the County is a rural municipality, best suited to agricultural development which does not conflict with the urbanization of St. Albert. Therefore the intensification of land uses in the County must be detrimental. This fails to recognize that the County is equal to St. Albert in almost all respects.

St. Albert's concern that the MDP has or may have a detrimental effect on St. Albert because it fails to deal adequately with the coordination of land uses, future growth patterns and other infrastructure, and specifically, the potential for intensification of subdivision and development in the St. Albert fringe zone, is premature. At present it is speculative whether the adverse effects will ever materialize.

(ii) Analysis of MDP

The landowners deny that the MDP contains no effective mechanism to coordinate land use, future growth and infrastructure with St. Albert and other adjoining municipalities. Part 15 of the MDP contemplates intermunicipal development agreements, municipal agreements or development plans.

It is speculative and premature on the part of St. Albert to conclude that multi-lot residential development will result in traffic, sanitary sewer problems, risk of ground water contamination or fragmented parcels which cannot be integrated with economic servicing patterns. Country residential development in the County will require a redistricting by amending bylaw, permitting St. Albert to again argue detriment before the Board.

It is appropriate to assess traffic problems and environmental problems relative to industrial development in the fringe zone. Section 15 of the MDP addresses integration of land use and land use patterns and to the extent that the MDP does permit industrial uses in the agricultural zone in the fringe area, it might be amended so as to require an LUB amendment for such uses, so that if detriment were perceived to arise, an appeal would lie to the Board.

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Clearly, no commercial development can occur in the fringe areas absent an amendment to the LUB. Such an amendment would allow St. Albert to appeal to the Board. Until the specific location of commercial development is identified and its nature and magnitude disclosed, it is not possible to determine if detriment will arise.

Development in the primary fringe zone may be beneficial to St. Albert and it is premature to suggest that it may be “ominous.” It is not what the MDP provides but what it fails to provide that St. Albert argues is detrimental. As suggested by St. Albert, it is appropriate to refer amendments to the MDP to St. Albert for comment, prior to adoption, but not before first reading.

(iii) Analysis of the LUB

St. Albert argues for the establishment of an “Urban Fringe” land use district, something the bylaw does not provide. The establishment of such a zone is inappropriate and is not authorized by s.690(5) of the *MGA*. For the most part it is premature, absent specific development proposals for specific lands, to conclude that smaller parcels result in any of the detrimental affects alleged.

Respecting economic impact, absent a specific development proposal, it is premature to assess whether or not there would be any adverse economic impact or social detriment.

The obligation for intermunicipal planning is reciprocal. Cooperation and coordination between neighbouring municipalities can occur only with both municipalities fully participating in the process and proceeding in the recognition that each municipality is equal, that each municipality is entitled to exercise legislative control over land within its boundaries, and that each therefore controls land use planning issues. It must be understood that it is inappropriate for a municipality to visit its wants, desires and objectives upon an adjoining municipality. Each must work together to achieve their respective objectives and to mitigate any detrimental effects which may result.

(iv) Conclusion

The landowners suggest limited amendments to the County’s bylaws. The landowners agree that:

- Referral to adjoining municipalities of LUB amendments within the applicable fringe zone should be required under Section 15.1. provided response to such referrals are completed in a timely manner.
- Some discretionary uses in the Agricultural District of the LUB should not be discretionary in fringe areas and should require rezoning.

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- The landowners do not take issue with modification to the fringe area boundaries as suggested by Edmonton.
- The landowners have taken no position relative to the amendments respecting Morinville.
- The landowners have no objection to the requirement for an area structure plan for Sturgeon Valley.

In all other the landowners request that the appeals be dismissed.

Walter K. Mis

The provisions of the MDP and the LUB are not detrimental and therefore the appeal should be dismissed for the following reasons:

1. General

The onus is on the appellants to show that the MDP and the LUB are detrimental in accordance with the requirements of the *Act*. There is no reverse onus on the respondent to show that the MDP and the LUB are not detrimental.

In the determination of detriment the *Act* provides two options to the MGB: either dismiss the appeal or order the adjacent municipality to amend or repeal the provision. In both instances the Board is required to identify a provision and determine if it is or is not detrimental.

The lack of a provision is not what is to be addressed by the Board, yet this is substantially what the appellants are objecting to in their appeals. The appellants have not met the onus of showing that a particular provision is detrimental.

2. The Fringe Areas

Policy 15 of the MDP introduces the concept of urban fringe area, a policy not found in previous development plans. The complaint of the appellants is not that the policy is detrimental, but that the new policy does not encompass all that they want. The St. Albert proposal is a massive extension of jurisdiction. For example, proposed Policy 15.6 would give St. Albert a veto over developments in the fringe area. Edmonton wants the proposed fringe surrounding its boundary expanded, yet at the same time acknowledging that it can have no jurisdiction over lands in an adjacent municipality.

The appellants must provide some evidence of a specific detriment, and identify the land in question. The appellants have not identified any specific land except in a general way, referring

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to lands adjacent to their boundaries. Landowners in the fringe would be subject to control not only by the County, but by Edmonton and St. Albert as well. This is completely untenable and extremely detrimental to the affected landowners.

Another reason why specific lands must be identified is that there are different planning considerations with respect to different parcels. Maintaining blanket control in a fringe area into which an adjacent city has no intention to expand is clearly and unreasonably detrimental to the owners of land in the fringe. Without identifying specific land uses for specific parcels, it is impossible to determine whether or not a use is detrimental to adjacent property owners or municipalities. The fringe area as proposed by St. Albert would effectively double the size of its control area without annexation.

The LUB as passed contains no provision respecting fringe areas. Again, lack of a provision is not the same as a specific provision found to be detrimental. It is not the provisions of the LUB that are detrimental to the landowners but the changes that are requested by the appellants. The proposed permitted uses in the fringe are considerably reduced from the original LUB, as adopted by the County. The effect is to sterilize the lands in the fringe, limiting them to activities that are not economic.

3. Country Residential

Section 11 of the *Subdivision and Development Regulation* provides for restrictions on country residential uses within a certain distance from the boundary of a city or town. If the appellants are correct, then the lack of any other restriction would mean that the regulation is detrimental. This is clearly not the case. Further, the regulation only addresses country residential uses, indicating that other uses were not considered important enough to warrant the wholesale intrusion of a city or town into the jurisdiction of a rural municipality.

4. Agricultural

It has been acknowledged that the County has not changed the agricultural land use designation in the fringe area from its previous designation. The mere act of implementing what was in the old bylaw into a new bylaw cannot change what was previously acceptable to something detrimental.

5. Consultation

The MDP and the LUB were drafted as a result of lengthy consultations. There were numerous meetings held at which interested landowners were given an opportunity to voice their concerns. The passing of another bylaw by the County, acquiescing to changes in the MDP and the LUB

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without first going through the public hearing process, is a contravention of the *Act*, in particular Part 7, even if passage of the bylaw is qualified.

6. The Appeal is Ultra Vires

The County is delegated the power to govern in its geographical area by the *Act*. Delegated power cannot be redelegated. The power to veto virtually any development in the fringe amounts to annexation in fact, if not in law. Municipalities are equal and one municipality is not to be given precedence over another. The appellants are not prepared to give an equivalent veto to the County with respect to development in a fringe area within the boundaries of Edmonton and St. Albert. For this and the reasons already set forth, the appeal should be dismissed.

James Sillito

It is submitted that Edmonton and St. Albert had insufficient argument and evidence to justify their position that the bylaws create a detriment or may create a detriment. It is illogical to suggest that urban development can occur only within urban boundaries. Further, the provisions of the disputed bylaws are sufficient to address the issue of compatibility problems with the expansion of the urban centres. All that is needed is intermunicipal cooperation. The large concentration of country residential development in the Sturgeon Valley, as well as hamlets and industrial development in the area, have not demonstrated that such uses have created severe detriment to the urban centres.

The appellants are asking the County to plan for the long term growth of the urban centres, yet the urban centres have not provided details of their long term growth plans. The arguments of the urban centres are economic and are an attempt to limit competition for growth opportunities. This is an unacceptable and unfair approach to demonstrating detriment. Economic protectionism is neither a legitimate planning goal, nor a legitimate rationale for these appeals.

The impact of the proposed changes suggested by the appellants on landowner in Sturgeon have not been presented. The proposed changes would be detrimental to the landowners. The appealed bylaws are the end result of an exhaustive democratic public participation process and the Board should not disturb this process. One municipality should not be allowed to control or amend the statutory plans and bylaws of another municipality in the absence of a clear and compelling justification for doing so.

In the past the County has been a good municipal neighbour and it should not be expected that this will change in the future.

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The Board must not consider the agreements reached by the parties regarding the proposed amendments to the County's bylaws until the Board has determined that the appealed provisions have or may have a detriment effect. Municipalities have the right to annex adjacent lands if they want to control development in a fringe area. Although consultation and cooperation are important, municipalities should be the final decision making authority within their boundaries and development should not be restricted if full agreement with neighbouring municipalities is not achieved. Municipalities make choices regarding the level of services and standards provided, just as residents make choices about the municipality they live in. The Board must respect those choices. There is no legislative requirement that a municipality provide services for residents outside their boundaries, and, in fact, the Province provides some of the basic services like transportation, water and sewer. It is submitted that the Board should dismiss the appeals, or if detriment is found, amend the bylaws as minimally as possible.

Ms. Christine Harrold

Public hearings have been held during which interested persons made submissions and the bylaws subsequently passed by the County's elected officials in a democratic process should be respected. It is submitted that the Board should dismiss the appeals.

Mr. R. Swist

It is submitted to the Board that the consultative process provided an opportunity for the appellants to make their concerns known to the County and that they should have taken advantage of that opportunity at the time. If St. Albert is not willing to annex the Villeneuve fringe area, then the landowners in that area should be able to develop their land in the same manner as other landowners throughout the County and not be limited by the St. Albert fringe restrictions.

Mr. Ed Sinclair

The Board should dismiss the appeals because the appellants are monetarily motivated and because the arguments are not based in fact, there is no detrimental effect.

Mr. Terry Bokenforh

It is submitted that the Board must dismiss the appeals. The consultative process was the place for the appellants to raise issues and that process had been performed in a satisfactory manner. The proposed amendments have not had to undergo the scrutiny of the landowners as is required in the bylaw adoption process. There is concern that the effect of the proposed amendments will

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be to create a veto over the County's actions, while the County and its landowners will have no recourse regarding decisions made within the appellants' boundaries. In particular, the proposed treatment of intensive agriculture, recreational uses and country residential in the fringe will limit development options for landowners in that area.

Mr. D. Savich, on behalf of Mr. Joe Dauphinais

It is submitted that the Board should dismiss the appeals. Mr. Dauphinais' land is located in the fringe area one mile north of St. Albert. The bylaw provisions do not have a detrimental effect, and, given the MDP's goal of fostering cooperation and coordination, it would be speculative to assume that there would not be an agreement between the municipalities. It is submitted that the municipality where an individual's land is located should have the ultimate responsibility over the use of the land.

Mr. Graeme McKay

It is requested that the Board dismiss the appeals.

Karl, Edwin, Walter and Gary Tappauf

It is requested that the Board dismiss the appeals because the proposed amendments would effectively freeze development of their lands. In addition, neighbouring urban municipalities should not be able to dictate what happens inside the County and what landowners could do with their land.

RESPONSE OF STURGEON COUNTY

1. General

The County takes the position that Bylaws 818/96 and 819/96 do not cause any detriment to the appealing municipalities. If the Board does find detriment, the County has submitted a suggested solution to the detriment in its original submission. County's position is not one of neutrality. The County takes the position that the Board must weigh the evidence and determine if it has jurisdiction to act pursuant to the provisions of the legislation, that is, to determine if there is any detriment caused to the appealing municipalities by the passage of the bylaws.

2. Response to the City of St. Albert

It must be pointed out that efforts at joint planning were not terminated by the County in September, 1996. The joint planning process was halted in the fall of 1995 due to the municipal election and the request of the Mayor of St. Albert. Following the election in early 1996 a joint

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committee was struck. The joint committee recommended a two mile fringe area. in the fall of 1996. St. Albert proposed a five mile fringe. At this point, the joint planning process came to an end.

St. Albert's concerns rest largely with development in the fringe, particularly with proposed development near or on the common boundary. The County would point out to the Board that the policy in section 15 of the MDP requires that proposed uses be compatible in accordance with generally accepted planning practices, that utility services be provided, and if those services were only available from the adjacent municipality, then agreement between the proponent and the adjoining municipality would be required before any approval was granted. This should be sufficient to address any of the concerns of St. Albert.

The policy adopted by the County with regard to multi-lot residential development is supported by Alberta Agriculture. Alberta Agriculture supports the clustering of country residential development.

With regard to item 33(b) in St. Albert's submission, the County is unclear as to what type of kennels are referred to.

3. Response to the City of Edmonton

(i) Lack of Consultation

The issue of consultation with neighbouring municipalities with respect to Bylaws 818/96 and 818/96 is not a matter before the Board on this appeal. Notwithstanding that the matter is not before the Board, the County disputes the statements made by Edmonton with regard to consultation. The County embarked upon extensive consultation in the process of preparing its MDP and LUB.

The County was of the opinion that it was unreasonable for Edmonton to expect the County to delay its plan process until Edmonton was finished the preparation of its MDP and LUB.

The County also provided numerous opportunities for input from the city. The County extended the timeline for comments to Jan. 15, 1997. As well, the County participates in a Senior Administrators and Planning Committee with adjacent municipalities which meet on three month regular intervals.

(ii) Provincial Land Use Policies

The County submits that the MDP and the LUB are consistent with the policies.

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(iii) *Municipal Government Act*

Edmonton feels there is detriment incurred under Policy 15.1 because it does not make mention of referring redistricting applications to adjacent municipalities. The County made no mention of these referrals. This was not included in the wording of policy 15 as s.692(5) of the Act specifically does not require that such notice must be given.

(iv) Redistricting Land

Edmonton states that the County's practice is to not redistrict lands in advance of a particular development. This statement is incorrect. The County does refuse development and subdivision that is not in compliance with the districting. It should be noted that the Alberta Planning Board sometimes permitted subdivisions even where existing districting was not appropriate.

(v) Multi-lot Country Residential

Edmonton questions the policy of allowing multi-lot country residential subdivisions adjacent to existing subdivisions, but this policy of the County is consistent with the policy of Alberta Agriculture. A letter of support from Alberta Agriculture was attached as evidence.

(vi) Separation Distance

Edmonton suggests that the County has no policy respecting the separation distance to be applied between heavy industrial uses and residential uses. This is incorrect. The County employs a separation distance of 457 meters. The County understands that Edmonton does not have a separation distance in its bylaws.

(vii) Miscellaneous Comments

The County supports referral of proposals to expand the boundaries of the Hamlet of Nameo for comment. The County does not support a referral system which requires concurrence from the appealing municipalities. There is no legislative authority for such a provision.

The County does not support any revisions to Policies 3.1, 3.2 or 3.3 of the MDP, since no detriment has been shown that would support these amendments.

The County does not support any amendments to policy 7.3, 7.10, or 8.1, or the addition of a sub-policy to policy 7, Policy 11 or Policy 14.6. The County does not support the second proposed amendment to s.12 as this amendment would apply everywhere in the County. It is not appropriate to make this mandatory in the general policy because the matter is dealt with in the fringe areas. With respect to Section 7.10, the section as passed requires proposed uses to be

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“evaluated on the merits”. Therefore compatibility with area land uses will be addressed. The proposed change to Policy 8.1 was not referred to in the accord and so it is not appropriate to impose this as a general requirement. If the proposed use is in a fringe area or on identified highway corridor, it will be referred to Edmonton for comment and concurrence.

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Edmonton has shown no detriment with respect to Policy 11.5. With respect to Policy 11.9, it is inappropriate to include Gladu Lake in this policy as the sub-policy deals with the preservation of shores. This is not an issue with Gladu Lake. With respect to Policy 11, it was not the intention of the accord that these areas be redistricted to Agriculture Nature Conservation District.

In conclusion, it is the position of Sturgeon County that none of the allegations by the appealing municipalities that the disputed bylaws will result in detriment are supportable.

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The following are the questions which the Board found to be fundamental to a decision in the Sturgeon Intermunicipal Dispute. Most, if not all of these issues were raised by counsel for the corporate landowners. These issues deal with fundamental aspects of the relationship between MDPs and LUBs, the definition of detriment in the planning context, the rights of landowners, and the jurisdiction of the Board itself.

- What is the meaning of “detriment” as it is used in s.690 of the *Municipal Government Act*?
- Have the provincial Land Use Policies changed the status of Alberta municipalities in a way that qualifies the meaning of detriment?
- Has a change in language from s.44 of the former *Planning Act* broadened or narrowed the jurisdiction of the Board under s.690 of the *Municipal Government Act*?
- Is there a “threshold” of detriment that must be present before the Board can act?
- If the new *Municipal Government Act* has made all municipalities equal, both urban and rural, has this affected the threshold?
- Does failure of a municipal development plan to conform to the provisions of the *Municipal Government Act* and the provincial Land Use Policies automatically result in detriment to adjacent municipalities, or are the provisions of a plan too remote to cause detriment?
- Does s.690 confine the Board to a consideration of the effect of each provision of a municipal development plan or land use bylaw in isolation, or may the Board examine the offending provisions in relation to other provisions, in the context of the spirit and intent of the document as a whole?
- Is the Board limited to amending only those provisions of a municipal development plan or land use bylaw that have been complained of, or may the Board amend other provisions, or even add new provisions where necessary, to remedy detriment?
- What is the effect of the relationship between the land use bylaw and the municipal development plan, and how should it be dealt with in finding and directing a remedy for detriment?

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- Is failure by a municipality to engage in meaningful negotiations with an adjacent municipality a factor that should be considered by the Board in finding detriment or in directing a remedy if detriment is found?
- What is the effect of an agreement by a respondent municipality to amend its municipal development plan or land use bylaw so as to obviate the detriment complained of?
- Must the Board find detriment before it can make an order directing the respondent to amend its municipal development plan and land use bylaw in accordance with the agreement?
- What is the role of the landowners, and what weight should the Board give to their concerns?

FINDINGS OF THE BOARD ON THE JURISDICTIONAL ISSUES

1. The Meaning of “Detriment”

The dictionary definition is straightforward enough. According to *Webster’s New World Dictionary*, “detriment” means “damage, injury or harm” (or) “anything that causes damage or injury.” This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area.. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as “nuisance” factors.

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another.”¹ Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them.

¹ F. Laux, *Planning Law*, Oct. 1996, p.5-40

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Another instance where detriment might be claimed is where there is a clearly defined difference in the nature, purpose and function of two municipalities. An attempt by one of them to appropriate to itself the kind of land use and development customarily accommodated by the other will likely be perceived as detrimental by the other. In Alberta, the predominant difference is that between urban and rural municipalities, and detriment is often said to arise from the migration of traditionally urban land uses into the countryside. This phenomenon is driven by lower land costs and less stringent development standards in rural municipalities. Urban municipalities naturally fear an erosion of their tax base as a result of out-migration of commercial and industrial businesses. In the past, regional planning commissions attempted to resist this tendency to “urban sprawl” by emphasizing the differences in function between urban and rural municipalities, and endeavoring to maintain a clearly defined geographic boundary between the two.

Finally, the meaning of detriment must be determined in the context of probability, causality and effect, then weighed in the balance of municipal autonomy and individual rights. This process raises complex issues. As counsel for the Town of Morinville has so aptly put it: “Regional planning under the previous legislation never got into all of the types of issues contemplated by Section 690.”²

2. The Effect of the Provincial Land Use Policies

In November of 1996, the provincial Land Use Policies were adopted by Order in Council pursuant to s.622 of the *Municipal Government Act*. Section 4.0 of the Land Use Policies deals with the establishment of land use patterns. Policies 1 and 3 of Part 4.0 are set out below:

1. Municipalities are encouraged to establish, on a municipal and on an intermunicipal basis, land use patterns which provide an appropriate mix of agricultural, residential, commercial, industrial, institutional, public and recreational uses developed in an orderly, efficient, compatible, safe and economical manner in keeping in keeping with the general policies of this section and the more specific policies found in sections 5.0 to 8.0.

. . .

3. Municipalities are encouraged to establish land use patterns which contribute to the provision of a wide range of economic development opportunities, thereby enhancing local employment possibilities and promoting a healthy and stable economy. In carrying out land use planning, municipalities are encouraged to complement and support provincial economic development initiatives.

² *Summary of Position of Town of Morinville*, p.4

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There is no mention of a distinction between urban and rural in these policies, and it appears the intent is to allow all municipalities to participate on an equal footing in securing for themselves a wide variety of residential, commercial and industrial uses. In the view of the Board, the effect of the policies is to diminish the importance of traditional distinctions between urban and rural land use. A necessary corollary is that the location of commercial or industrial uses in rural municipalities will not ground an appeal where a complaint is based solely on anticipated erosion of an urban municipality's tax base.

3. The Scope of the Board's Jurisdiction

Planning has been described as an attempt to bring rationality to decision making regarding future physical development. Because planning is by nature prospective in outlook, it seems only reasonable to conclude that the detriment contemplated by s.690 of the *Act* and its precursor, s.44 of the *Planning Act*, is the kind that is likely to arise in the future from a condition or set of conditions in the present. In the Board's view, this means that identifying the potential for detriment is the essence of the jurisdiction conferred on the Board by s.690.

In *Lloydminster v. Alberta Planning Board et al.*, the Alberta Court of Appeal in dealing with the application of s.44 of the *Planning Act*, found that:

Section 44 is a broad power. It was conceded that a municipal council using it need not necessarily point to any conflict with planning within its area: it is enough that the action complained of may have some detrimental effect. That may be an effect on the planning processes; it may be an effect on the use and enjoyment of property within the complaining municipality.³

Section 44 of the *Planning Act* enabled a municipality to appeal if it was of the opinion that a statutory plan or LUB of an adjacent municipality might have a detrimental effect "within" its boundaries. Section 690 of the *Act* confers a right of appeal where a municipality believes that the statutory plan or LUB of an adjacent municipality "has or may have a detrimental effect on it." In the Board's view, this change in language can only mean that detriment is no longer confined to effects on lands within the boundaries of the appellant municipality. This interpretation finds support in the fact that general plans often deal with lands beyond existing municipal boundaries, but which are likely to be brought within the municipality in future, usually within the five to ten year time horizon of the general plan.

Clearly, the scope of appeal, broad to begin with under s.44 of the *Planning Act*, has been further broadened by s.690, in both geography and time. This enhancement of the jurisdiction of the Board, enabling it to look beyond municipal boundaries for detrimental effect, would appear to

³ *City of Lloydminster v. Alberta Planning Board, County of Vermillion River No. 24, and Totran Services Ltd.* (1982) 39 A.R. (Alta C.A.) 402@405

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be an appropriate adjustment to the legislation, commensurate with the phasing out of regional planning in the province.

4. The Threshold of Detriment

It was submitted by counsel on behalf of the corporate landowners that the effect of recent sweeping changes in the province's municipal and planning legislation has been to "emancipate" municipalities, particularly rural ones. All municipalities have now been "created equal" by the *Act*, so the argument goes, and with this new regime has some freedom to do as they wish. This philosophy is reflected in the introduction to the MDP:

Two fundamental principles have been applied to the Sturgeon MDP. The first principle is embodied in the *Act*.

"In carrying out its planning responsibilities, the Municipal District of Sturgeon will not lose sight of the rights of individual citizens and landowners."

The second principle embodies the basic rationale behind the recent changes to planning legislation in Alberta. *The rationale is to encourage and support municipal autonomy.* (Board's emphasis)

The Municipal District of Sturgeon will establish land use patterns which make efficient use of land, infrastructure, public services and public facilities; and which contribute to the development of healthy, safe, and viable communities by encouraging appropriate mixes of all land use types, and a wide range of economic opportunities.

Anyone reading the above could scarcely avoid the conclusion that the County is "open for business." Nothing, however, is said about intermunicipal cooperation, one of the cornerstones of the province's Land Use Policies. Apparently, as far as the County's MDP is concerned, the mantle of municipal autonomy may be worn free of any obligation to one's neighbours.

It was further submitted that this new freedom implies a stringent test, or threshold, for detriment that must be satisfied before the Board can act. According to this argument, the sovereignty of a municipality must not be lightly interfered with; therefore the complainant municipality must be "unduly" affected before detriment can be found. According to this view, detriment may be found only where a provision of the County's MDP or LUB is virtually certain to cause significant harm in the immediate future. According to counsel for the corporate landowners, the test should be "whether or not the prohibited act imposes improper, inordinate, excessive or oppressive restrictions upon competition the benefit of which is the right of everyone."⁴ If the

⁴ *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions, p.2*

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appellants wish to control land use beyond their boundaries, so the argument goes, they should annex it.

The Board must reject this argument. If the legislature had intended to limit the scope of the Board's jurisdiction under s.690, it could have done so expressly. Instead, as the Board has found its powers have been broadened. With freedom from the dictates of regional planning comes greater responsibility to neighbouring municipalities. Where freedom is abused, the Board has the power to implement appropriate measures to restore a balance. Finally, annexation is hardly an appropriate tool for land use control, involving as it does a variety of other considerations, including issues of assessment and taxation, serviceability, and growth projections.

The Board is, however, keenly aware of the gravity of its powers under s. 690 of the *Act*. A municipality's lawfully adopted planning documents must be respected, reflecting as they do the hopes and aspirations of a community and its citizens, expressed and defined through the grass-roots democracy of meetings and public hearings. **If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur. The remedy must then be finely tuned so that the bylaw is modified only to the extent necessary to prevent the harm.**

There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote.

Finally, the nature of the Board itself must be taken into account. The Board is not a regional planning commission. It does not have a staff of planners and technicians to study a matter and make recommendations, nor does it keep a library of reports, studies and plans of the area in question. Its approach to the matters that come before it is quasi-judicial, rather than investigative or directed toward policy. The detriment complained of must therefore be of a nature that raises issues that are capable of adjudication in the context of an adversarial hearing. This means that issues for which detriment cannot be readily established, or which would require further study before an effective remedy can be developed, will fall outside the ambit of matters that can be effectively dealt with by the Board.

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5. The Effect of Non-Conformity with the Municipal Government Act and the Provincial Land Use Policies

Both Edmonton and St. Albert have submitted that the County's MDP does not conform to the requirements of s.622(3) and s.632(3) of the *Act*. Section 622(3) provides as follows:

(3) Every statutory plan, land use bylaw and action undertaken pursuant to this part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal Board or the Municipal Government Board *must be consistent with the land use policies.* (Board's emphasis)

Edmonton argues that the County failed to act in consideration of provincial Land Use Policies 2.0 and 3.0, which describe, in a very broad and general way, the kind of participation and cooperation between municipalities that the province wishes to encourage as part of the planning process. Edmonton has alleged that the County made insufficient efforts to involve Edmonton in its deliberations, or to inform Edmonton of its activities and directions with respect to its MDP or LUB. This, it is said, has resulted in detriment to Edmonton.

Edmonton also alleges that the County has acted contrary to s.1.2 of the Land Use Policies, which encourages municipalities, provincial departments and agencies to consult with one another "where questions on the spirit and intent of these policies arise during implementation." Edmonton's position is that there was no meaningful communication between the two municipalities regarding the interpretation of the provisions of the Land Use Policies. This loss of an opportunity to consult with the County has allegedly resulted in detriment to Edmonton.

St. Albert submits that the County not only failed to meet the requirements of s.3.0 of the Land Use Policies, but completely ignored s.4.0 of the Land Use Policies, and that the lack of a mechanism for coordinating land use, further growth, and infrastructure in the MDP is contrary to the requirements of s.632(3) of the *Act*. Section 632(3) provides as follows:

- (3) A municipal development plan
- (a) must address
 - (i) the future land use within the municipality,
 - (ii) the manner of and the proposals for future development in the municipality,
 - (iii) the coordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,
 - (iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and
 - (v) the provision of municipal services either generally or specifically . . .

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St. Albert's position is that the absence of an effective mechanism for coordinating land uses, future growth patterns and other infrastructure in the County's MDP is in and of itself detrimental to St. Albert, and urges the Board to find accordingly.

The Board does not agree with the proposition that simply because a MDP does not conform with the requirements of the *Act* or the Land Use Policies, detriment must necessarily result. Instead, the question the Board must address is whether the MDP will cause detriment, and if it is found that it will, the Board must then decide whether the detriment can be remedied by amending the plan to bring it into conformity with the legislation.

Finally, it should be noted that the requirement is merely that the MDP "address" items (i) through (v) of s.632(3). Had the legislature meant that the MDP was to effectively provide for these matters, it could have expressed that intention clearly and unambiguously. The Board finds that the County has in fact addressed these items in its general municipal plan, although perhaps not in as thorough a manner as adjoining municipalities may have wished.

6. Are the Provisions of a MDP "Too Remote" to Cause Detriment?

Counsel for the corporate landowners has submitted that any finding of detriment must be tied to a specific provision of the County's MDP or LUB. Therefore, it is said, the issue before the Board is simply whether or not the impugned provision permits any development which could have a detrimental effect on the appellant municipalities. The argument is summed up in the following quotation:

In our submission, if a bylaw does not designate a specific use for a specific location, the potential for the bylaw to have a detrimental effect is remote. Any particular use may be deemed to be beneficial or detrimental pending (*sic*) upon its specific location. Without specific knowledge as to the use and without specific knowledge as to the location, the ability of the Board to determine detriment is virtually non-existent. An Area Structure Plan, an Area Redevelopment Plan and the LUB all designate specific land uses upon specific parcels. *The MDP does not specify uses for specific lands. It contains broad policy statements which can be implemented only through further bylaw and accordingly, of itself, cannot have a detrimental effect on an adjoining municipality* (Board's emphasis)⁵

The Board takes issue with the statement that MDPs do not specify uses for specific lands. This may be true of some MDPs, but it is certainly not true of the County of Sturgeon's, which provides for a number of specific land uses including agriculture, industrial, commercial and country residential uses. This fact has been recognized by counsel for the corporate landowners

⁵ *Response of the Landowners Dale Maynard Industries Inc. and 702602 Alberta Ltd.*, pp. 4, 5

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in his response to the argument of the City of Edmonton that a MDP that does not set out specific uses for specific lands is incapable of being appealed:

In response, the MDP of the County does contain a map that designates specific uses for specific lands and designates the urban fringeland as Agricultural.⁶

While the Board concedes that detriment arising from the provisions of a MDP may, by the very nature of the document, be more distant in time and perhaps less certain in point of origin, this should not be taken to mean that the potential for detriment can be dismissed out of hand as too remote. Such an interpretation flies in the face of the *Act*, which contemplates detriment arising from statutory plans, which by definition include general municipal plans:

S.616(dd) “statutory plan” means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4 . .

If the Board were to accept the analysis offered by counsel for the corporate landowners, it would limit the Board’s jurisdiction under s.690 to *ad hoc* decisions based on piecemeal applications for land-use redesignation. This would confine the Board to a reactive role, tantamount to the former Alberta Planning Board’s jurisdiction to adjudicate subdivision appeals. In the Board’s view, this is not what was intended by the legislature.

The purpose of a plan is to guide municipal decision making in a comprehensive way. In this way the plan prevents *ad hoc* decision-making. It has been said that the most common effect of plans is to restrain the municipality in the exercise of its powers rather than to directly control land use:

. . . plans can be so vague and nebulous as to have little effect on municipal decision-making. Such plans not only run counter to the traditional rationale for municipal plans in that they do not prevent *ad hoc* decision-making but they also run contrary to the view that the plan is a “quasi-constitutional” document which is to protect the citizens of the municipality, particularly property owners from unwarranted and poorly considered or rapid changes. The plan, therefore, should be seen as a stabilizing device but it may not always fulfill that function.⁷

In the context of the new regime of regional planning through intermunicipal cooperation and interdependence, it is not unreasonable to suggest that the role of the MDP also includes protection of neighbouring municipalities from rapid or poorly considered change. This certainly

⁶ *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions*, p.4

⁷ S. M. Makuch, *Canadian Municipal and Planning Law*, Carswell, Toronto, 1983, p.185

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seems to have been the intent of the legislature in prescribing the matters that a MDP is to address pursuant to s.632(3)(a)(iii) and (iv).

The MDP is the “guidance system” for the LUB. Whether or not a particular land use redesignation will be approved will depend to a large extent on what is provided for in the MDP’s policies and future land use map. The plan therefore plays a significant role in land use regulation, only a little removed from the more “direct” effect of the LUB. The MDP is often determinative in deciding whether or not to approve a discretionary use. It also manifests itself pursuant to certain provisions of the *Act* by preventing the approval of a subdivision that does not conform to its provisions [s.654(1)(b)]; ensuring that its provisions are taken into account in subdivision appeals [s.680(2)(a)], or forcing subdivision and development appeal Boards to comply with it [s.687(a)]. This illustrates the restraining effect of the plan, operating through the LUB.

In the view of the Board, the MDP is clearly capable of causing detriment in a number of ways that are far from being too remote. The fact that the plan is implemented over time through the vehicle of the LUB does not change this.

7. Is it Open to the Board to Read the MDP or LUB as a Whole in Finding Detriment?

Counsel for the corporate landowners submits that a finding of detriment must be tied to a particular provision of the plan or bylaw:

. . . it is evident that it is that which is expressed that is a provision, and not that which is not expressed. The question then arises as to whether or not such provision may cause a detrimental effect. That the bylaw could be improved upon or enhanced or made less objectionable by additions does not render it detrimental. Morinville argues . . . that the word “provisions” which appear throughout s.690 must be read in the context of subsection 1 (page 2) and should therefore be given a broad general interpretation. In fact, the converse is true. With respect, unless the appellants can point to a specific provision that causes detriment, the bylaw cannot be seen to be detrimental.⁸

In the Board’s view, this analysis might be appropriate where only one or two of the provisions of a plan or bylaw have been complained of, but certainly not where many or most of them have, as in the present case. The Board agrees with counsel for Morinville that the test to be applied is the one set forth under s.690(1), i.e., whether or not a statutory plan or bylaw has or may have a detrimental effect on an adjacent municipality. It is a rule of legal interpretation that an enactment must be read as a whole, so that each provision may be understood in the context of all the other provisions. Where a number of the provisions of a plan or bylaw have been appealed, it is axiomatic that they be read together, rather than in isolation. The use of the word

⁸ *Response of Dale Maynard Industries Inc. and 702602 Alberta Ltd. to Written Submissions*, pp. 6, 7

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“provision” or “provisions” in the subsections that follow s.690(1) is, in the view of the Board, due primarily to the fact that a plan or bylaw is made up of provisions, and it seems only reasonable that the detriment complained of should be with reference to them as a whole or individually.

8. Is the Board Limited to Amending or Repealing Only the Provisions That Have Been Appealed in Order to Remedy Detriment?

Where detriment is found, certain of the provisions of a MDP or LUB will be subject to amendment or repeal. Should this be taken to mean that the Board is confined to repealing an offending provision in entirety when the problem could be remedied by a minor amendment to another provision that might not be detrimental in and of itself? Counsel for the corporate landowners has addressed this issue in his written response:

What the bylaws fail to prohibit is not allowed. No development permit will issue unless the development is specifically authorized by a “provision” of the bylaws. If however, a bylaw specifically authorizes a development but fails to provide adequate separation space, the failure to provide adequate separation space may be seen to be detrimental and is in the nature (of) an amendment which the Board could direct be made. *If by a minor amendment, the detriment can be eliminated, the Board is authorized to make such amendment.* (Board’s emphasis)⁹

Clearly, counsel has recognized that provisions work together. An otherwise innocent provision, for example, a development standard like a minimum separation distance, can result in detriment when coupled with a potentially offensive provision such as an industrial land use. This understanding is the nub of the matter, and it is central to the issues before the Board. If an adjustment can be made to a part of the plan or bylaw that is not in itself detrimental, but which would if amended obviate the need to radically alter or even repeal the offending provision, it would be preferable to the more intrusive remedy.

But this begs the question: what would the situation be if the bylaw failed to provide a separation distance at all, or, taking things a step further, if it failed to designate a location where potentially noxious uses could be safely accommodated? Could the Board nevertheless add a provision to the bylaw if it would prevent detriment? Counsel for Morinville has submitted that consequences flow from omissions as well as provisions, a view with which the Board agrees. It seems only reasonable that if the detriment can be expunged by amending the plan or bylaw through adding a new provision rather than repealing existing provisions, then that remedy is one the Board should have recourse to. This would accord to s.690 “the fair, large and liberal construction and interpretation that best ensures the attainment of its object” required by s.10 of

⁹ *Response of Dale Maynard Industries Inc. and 702602 Alberta Inc. to Written Submissions, p.7*

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the *Interpretation Act*. In the view of the Board, it would allow s.690 to be used with precision, rather than in “shotgun” fashion.

9. How Should the Relationship between the LUB and the MDP be Approached in Remediating Detriment?

In the view of the Board, it is trite to suggest that the MDP and the LUB must be read together to understand their effect. They are intended to work together; the plan as the guiding policy document giving direction to the bylaw, and the bylaw implementing its policies. With respect to a finding of detriment, an amendment to the plan may either obviate or create the need for an amendment to the bylaw, and vice-versa. It is therefore imperative that the plan and bylaw be read together, just as provisions of the same document must be read together.

10. Should the Board Take into Account the Failure of a Municipality to Engage in Meaningful Negotiations in Finding Detriment or in Directing a Remedy?

Failure to negotiate in good faith will not necessarily result in detriment, but it will likely result in a LUB or MDP that at worst will be detrimental, and at best will be distrusted by neighbouring municipalities. However, the Board is loath to assign blame to a party where negotiations either failed to produce a result satisfactory to an appellant, or broke down entirely. Each side will tend to blame the other where this occurs, and it will often be exceedingly difficult to determine which side was at fault, even assuming fault can be found. Negotiations often break down despite the best efforts of all concerned.

However, where there is clear evidence that negotiations failed due to an entrenched attitude of the part of a respondent that brooked no consideration of reasonable compromise, the Board might be justified in taking into account the probability that that same attitude will result in conflicts between the parties in future. This might have an effect on the nature of the remedy that the Board directs. For example, the remedy might be made more stringent than where both parties seemed generally able to work together successfully. Alternatively, a mediation clause might be found to be an appropriate remedy.

11. What is the Effect of an Agreement between an Appellant and a Respondent to Amend the Plan or Bylaw in a Way that would Obviate Detriment? Is it Necessary for the Board to find Detriment before it Can Implement the Agreement?

The Board agrees with counsel for Morinville that a proposed settlement of an intermunicipal dispute is not a case of one municipality abdicating its authority in favour of another, but rather an example of intermunicipal cooperation. It is a tacit recognition that the actions of one municipality can affect its neighbour. To accept the argument of counsel for the corporate landowners that such agreements are by nature beyond the legislative authority of council of the

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respondent municipality would deny both appellant and respondent the right to engage in a mediation style process whose result would be virtually certain to be preferable to an order imposed on them unilaterally by the Board.

The effect of launching an appeal under s.690 is both unusual and oppressive. The provisions of the plan or bylaw of the respondent municipality are frozen in time as of the date the appeal arrived at the offices of the Municipal Government Board. Where a substantial number of provisions have been appealed, the entire municipal planning system may be rendered inoperable. The fate of the appealed provisions is entirely in the hands of the Board. When the Board reaches its decision, the parts of the plan or bylaw that the Board has directed be repealed simply disappear, while provisions that are to be amended have no force or effect until they are enacted in their new form. Clearly, no agreement by a municipality to amend its planning documents can have any effect while the documents themselves are in limbo pursuant to s.690.

The agreement reached should not be regarded as anything more than an intimation of what might have happened had negotiations come to a successful conclusion before the appeal. The fact that the agreement is the result of negotiations between equals suggests that the changes recommended are the least intrusive, and reflect what the parties are prepared to live with. Counsel for the County of Sturgeon has made it very clear that the agreement is to be regarded as “without prejudice” with respect to whether the provisions of its MDP and LUB are detrimental. The Board accepts this position. Such an agreement can be given effect only if the Board were to find, firstly, that the provisions it dealt with were in fact detrimental, and secondly, that the proposed amendments were capable of remedying the detriment. The decision of the Board is therefore a condition precedent to the agreement having any force or effect.

12. What is the Role of the Landowners, and What Weight Should the Board Give to Their Concerns?

When all has been said and done, what is central to the landowners’ concerns is their ability to use their property as they see fit. It has even been suggested by one of the landowners that implementation of the proposed settlement would require zoning so restrictive that it would amount to expropriation without compensation. The right of this Board to direct amendments to lawfully adopted municipal development plans and land use bylaws has also been challenged.

Persons who may be affected by the outcome of a hearing have a right to be heard. It is a part of the democratic process specifically included in s.690. Nevertheless, the primary duty of the Board in a s.690 hearing is to determine whether the appellants will suffer detriment, and if the Board decides that they will, to direct amendments that will prevent it. In the Board’s view, this is an instance where the legislature has decided that the greater public interest lies in protecting the rights of communities over the rights of private landowners. Counsel for Morinville has stated it as follows:

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As we have pointed out . . . in the land use planning process, there are inevitably conflicts between the rights of individuals and the rights of the community as a whole. This is inherent in the system and will never be eliminated. Land-use planning will always be a balancing act between the general public benefit and the rights of individuals. This is recognized in Section 617 of the MGA.

However, it is submitted that the public good must be measured by different means in different contexts. At the local level, there are restrictions, for the public benefit, on the use of land by individuals. Similarly, in a broader context, Section 690 places restrictions on the actions of individual municipalities for the greater public benefit. Section 690 recognizes that this must be done to achieve another aspect of the public benefit.¹⁰

The bottom line is that s.690 mandates unusual and invasive measures. It gives the Board the power to alter municipal bylaws that are otherwise within the exclusive preserve of the municipality itself. Some landowners have questioned the constitutionality of such an enactment, but that is not an issue resolvable within the jurisdiction of this Board.

However, this does not mean that the effect on landowners is to be disregarded. S.617 of the *Act* requires that preparation and adoption of plans and related matters must be accomplished “without infringing on the rights of individuals for any public purpose except to the extent that it is necessary for the overall greater public interest”. In the Board’s view, this means that amendments directed under s.690 must be tailored to achieve the goal of preventing detriment without infringing on private interests more than is strictly necessary.

¹⁰ Summary of Position of Town of Morinville, pp. 6, 7

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SECTION III - THE BOARD'S DECISION

Summary of the Decision

The Board dismisses the appeal of Morinville with respect to the provisions of the County's LUB and MDP as they affect lands within the County that lie outside the urban fringe area surrounding Morinville and identified (in dark yellow as primary urban fringe and light yellow as secondary urban fringe) on the MDP Future Land Use Map. For the purposes of this Order, the described area shall be referred to as the Morinville intermunicipal fringe.

The Board dismisses the appeals of Edmonton and St. Albert respecting the provisions of the MDP and LUB as they relate to or affect lands within the County but lying outside the primary and secondary urban fringe areas adjacent to Edmonton and St. Albert as identified on the MDP Future Land Use Map. For the purpose of this Order, the St. Albert intermunicipal fringe includes the lands which lie north of Big Lake between the watercourse known as Riviere Qui Barre and St. Albert and shown on the MDP Future Land Use Map in light and dark green as Recreation and Environmental Protection Areas.

For the purpose of this Order, portions of the Sturgeon Valley Study Area and the South Sturgeon Study Area are included in the fringe shown as light yellow and dark yellow on the MDP Future Land Use Map.

When referred to collectively in this Order, these fringe areas are termed "the intermunicipal fringe."

The appeals have been allowed with respect to certain provisions of the MDP and the LUB in relation to the intermunicipal fringe. In the context of the Board's findings regarding the definition and threshold of detriment, the Board has determined that detriment is sufficiently probable or significant enough to warrant repealing or amending certain provisions of the MDP and LUB as they apply within the intermunicipal fringe.

A number of appeals have been allowed respecting the entire areas of the Sturgeon Valley Study Area and the South Sturgeon Study Area as shown on the MDP Future Land Use Map. The changes only apply to the MDP. There are no alterations to the LUB respecting the areas lying outside the intermunicipal fringe. The provisions which have been added to the MDP regard the adoption of area structure plans because the Board felt that these areas are significant in relation to Edmonton and St. Albert and that further unplanned development in these areas would be detrimental to the appellant cities. The Board has included these provisions as there was general consensus on the need for area structure plans for these locations.

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In arriving at a definition of the intermunicipal fringe, the Board felt that in view of the fact that the urban fringe areas in the MDP represent an initiative by the County toward intermunicipal consultation, they should not be interfered with more than strictly necessary. Also, the Board noted that the boundaries of the urban fringe as specified in the MDP seemed acceptable to the appellants. The Board has not distinguished between the Primary Urban Fringe and the Secondary Urban Fringes as defined in the MDP because, in the view of the Board, the same detrimental effects can arise in both and therefore both should be subject to the same policies. The Board foresees that in the course of detailed studies and discussions, the municipalities themselves may decide to adjust the intermunicipal fringe boundaries as appropriate.

Context for the Decision

The purpose of this section is to provide a brief overview of the context in which the Board reached its decision. More detail is provided in Section II, The Key Jurisdictional Issues. The Board heard considerable argument from the parties respecting the legislative framework, and reached the conclusions outlined in the following text.

Before the Board can take action pursuant to s.690 of the *Act*, it must be satisfied that the appealed provisions have, or may have, a detrimental effect on an appellant municipality. In the Board's opinion, the detriment complained of must be significant enough to justify the Board's intervention in the local legislative process. The Board does not accept the that any finding of detriment, no matter how minor or remote, warrants intervention.

The Board rejects the argument of certain landowners that, in determining detriment pursuant to s.690, the Board must confine itself to consideration of each appealed provision of a bylaw in isolation, that is, without reference to other provisions of the bylaw, whether appealed or not. Instead, the Board found that individual provisions of a bylaw can be properly understood only in the context of all other provisions. A municipal development plan and a land use bylaw are, of necessity, closely linked, since they are intended to function together. It follows therefore, that a municipal development plan and a land use bylaw must be read and understood in relation to one other. Similarly, the fact that a municipal development plan manifests itself directly through the mechanism of a land use bylaw, negates the argument of the landowners that the provisions of a municipal development plan are "too remote" to cause detriment.

The role of the Board pursuant to s.690 is limited to finding detriment and if found, to repealing or amending the offending provision. The Board's mandate does not include acting as a "regional planning commission," or to taking on the duties and functions of a planning authority. Accordingly, the Board rejects the argument that it should act as a planning authority and set ideal intermunicipal planning policies. The current legislation requires municipalities to do this through their own initiatives in intermunicipal cooperation and communication. In the Board's

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opinion, the appellants have demonstrated detriment only in a limited number of areas. Consequently, the Board is prepared to intervene only in those areas.

The Board accepts the appellant's argument that the provincial Land Use Policies serve as a backdrop to the decision of the Board. However, the Board does not accept that mere non-compliance with the Land Use Policies is detrimental in and of itself. Actual detriment must be shown. The Board also accepts the appellants' argument that under the current legislative scheme and the provincial Land Use Policies, municipalities are to be treated as full equals.

The Board heard arguments of detriment from all three municipalities, Morinville, Edmonton and St. Albert, and found common themes relating to their respective fringe areas. The Board acknowledges that the size and growth rates of the three municipalities differ significantly and recognizes the impact of these differences on the fringe areas.

A finding of detriment is a condition precedent to the Board's authority to repeal or amend a municipal bylaw under s.690. The fact that the appellants and the respondent had negotiated possible amendments to the bylaws does not enable the Board to circumvent its responsibility under s.690 of the *Act*. Although the agreements provide indications of consensus on what is considered detrimental as well as potential remedies, the Board accepts the argument of the landowners that the tentative agreements between the municipalities cannot be implemented without first finding detriment.

The Board heard argument from the respondent and the landowners that if the Board found a level of detriment that warranted intervention, and subsequently ordered amendments to the Bylaws, the amendments should not have the effect of sterilizing land or infringing on individual rights to an extent that offends s.617 of the *Act*. Land use change must be accommodated in an orderly fashion within the context of Section 617. Evidence presented at the hearing indicated that expansion by the appellant municipalities into the fringe would occur in most areas at a relatively slow and gradual pace.

Under s. 691(2), the Board is required to hear from owners of "the land that is the subject of the appeal." The Board accepts that the role of the landowners is to ensure that their rights as provided for in s.617 are not overlooked. The Board carefully reviewed its decision in light of this section.

Reasons for the Decision

Generally, the Board has accepted the appellants' evidence and arguments regarding detriment in the fringe areas, the Sturgeon Valley Study Area, and the South Sturgeon Study Area. In particular, the Board accepts the appellants' position that certain provisions of the bylaws have or may have a detrimental effect because they are deficient in regulations regarding the location of

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incompatible land uses, in detail regarding planning coordination and specific policies, and in appropriate mechanisms for intermunicipal consultation. These deficiencies are detrimental in view of certain policies in the MDP, for example “providing a diversity of residential land use options in locations proximate to service and employment centres.” While the Board might obviate detriment by repealing such a provision, that in itself would not prevent country residential and other development from concentrating near urban centres. Such development concentrating near urban centres may be a positive activity provided the development is properly planned with intermunicipal communication being key.

Although it may be true that all municipalities have been “created equal,” experience and practicality have shown that urban style municipalities offer more services than the more rural style municipalities, and tend to expand outward into rural style municipalities. Unplanned, piecemeal development on land near urban boundaries can cause significant detriment in a number of ways, most of which have been dealt with exhaustively by the appellants. For these reasons the Board is ordering certain amendments to the MDP and LUB as they apply in the intermunicipal fringe areas, as well as MDP amendments for the Sturgeon Valley Study Area and the South Sturgeon Area. Outside these areas, the Board concluded that generally, the effect of the impugned provisions did not achieve a threshold of detriment that would justify the Board’s intervention.

In the Municipal Development Plan

1. Detriment Not Found

(i) General Remarks

In the Board’s view, the appellants’ arguments comprise four main themes: location, economic impact, servicing, and transportation. The Board found that, with respect to the operation of the appealed provisions of the bylaws outside the fringe areas, there was not sufficient evidence that significant detriment would result. Development outside the fringe will not only be more distant from municipal boundaries, but more dispersed as well. Then too, most of the land in the County has been designated for agricultural use, both in the MDP and the LUB. Other kinds of development will require a redesignation by amendment to the LUB’s land use map, and arguably the MDP’s Future Land Use Map as well. Such redesignations would be appealable to the Board. In general, the Board found that the appellants’ arguments relating to the issues of agriculture, the environment, country residential, industrial and commercial development, and resource extraction, to be speculative with respect to land outside the urban fringe, and a potential for detriment was not established. Appeals were therefore dismissed with respect to the application of these provisions outside the fringe.

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(ii) Fragmentation of Agricultural Land

The Board concluded that the agricultural policies of the MDP are substantially consistent with the provincial Land Use Policies. Although fragmentation of agricultural land may be a concern to the residents of Alberta as a whole, arguments and evidence adduced to the effect that the bylaws create a detrimental impact on adjacent municipalities was not compelling. The Land Use Policies do not appear to anticipate that each municipality will address the conservation of agricultural land in the same manner, but rather that each municipality is encouraged to design mechanisms suitable to its individual needs. Therefore, the Board dismissed the appeals with respect to the policies in Part 2 of the MDP.

(iii) Country Residential

The Board is of a similar view regarding country residential development as it may occur outside the fringe area. Argument heard by the Board was not sufficient to show that the growth patterns of the appellant municipalities would be impeded, that incompatible land uses would locate adjacent to the appellants, or that the provision of cost effective servicing would be compromised. The Board accepts that the locational criteria for country residential development outside the fringe, including the proximity of these uses to agricultural uses, are land use planning matters solely within the purview of the County. The Board also finds that the MDP and LUB do in fact deal with issues of compatibility. The Board does not accept the appellants' contention that they are affected detrimentally by patterns of country residential development outside the fringe. Because of the County's extensive use of agricultural zoning, further country residential development cannot occur without over most of the area of the County without rezonings. Therefore, the Board dismisses the appeals with respect to the policies in Part 3 of the MDP, relative to the area outside the fringe.

(iv) Industrial and Commercial Uses

The Board found that location of industrial and commercial uses outside the fringe minimizes the potential for incompatibility with uses within the appellant municipalities. Municipal growth patterns are not compromised by uses outside the fringe, and servicing of remote uses is not dependent on service extensions from urban municipalities. Due to the vast area of Sturgeon County, the Board finds it would be unreasonable to expect the County to use the same planning approach as that employed by the appellant municipalities, who are required to regulate concentrated land use patterns associated with urban densities. Many rural industrial uses are well suited to isolated locations. The appellants can gauge and respond to the impact of location and transportation issues outside the fringe area by means other than direct intervention in the respondent's planning bylaws.

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The Board found that the potential economic impact of commercial/industrial uses locating in the County, rather than in the appellant municipalities, was not detrimental *per se*. The *Act* and the Provincial Land Use Policies no longer make a distinction between urban and rural municipalities in regard to land use. The Board would not intervene if a business located in Morinville rather than St. Albert or Edmonton; consequently, the Board could see no reason why intervention would be warranted if it were to locate in the County. Part 7 of the MDP contains provisions for assessing the environmental of industrial uses, and sets minimum separation standards. These minimums can be increased by the approving authority, based on the merits of a particular proposal and its relation to adjacent land uses. Therefore the Board finds that detriment does not arise from the provisions of Part 7 or 8 as they apply outside the urban fringe.

The appellant municipalities argued that the Board should find detriment in the fact that residents or business locating in the County may use “soft” services within the appellant municipalities. The Board has concluded that the MDP sufficiently addresses this matter in Part 15, and that the arguments and evidence of the appellants are not sufficiently compelling to warrant intervention. Residents in all municipalities are very mobile, and the Board is not prepared to intervene in the methods of allocating servicing costs and revenue sharing. This is a matter to be negotiated by the municipalities themselves.

(v) Transportation

In the Board’s opinion, Edmonton did not present convincing evidence that provisions in the bylaws with respect to traffic safety and visual impact of development adjacent to highways outside the fringe would result in a reasonable likelihood of detriment. Although Part 12 of the MDP does not address the issues raised to the degree requested by the appellant, the Board is not of the view that amendments to Part 12 are warranted. Policy 12.7 of the MDP addresses traffic safety related to accessing highways and secondary highways. In addition, key portions of the highway corridors leading into the appellant municipalities are within the fringe and will be dealt with through the amendments directed in relation to the fringe.

(vi) Environmental and Natural Resources

The appellant Edmonton raised concerns about the adequacy of the MDP policies regarding environmental and natural resources in environmentally significant areas. The Board was unable to find detrimental effect on Edmonton based on the evidence of the appellant that a number of its residents make occasional use of these areas. The concern of the appellant seemed to be that the MDP failed to deal with the areas in the same manner as the appellant would have done had they been situated within its municipal boundaries. The MDP does address key environmentally sensitive areas such as the Coronado Sand Dune Area, Big Lake, and Manawan Lake. It contains policies for lands adjacent to lakes, requires environmental impact assessments for multi-lot country residential and industrial development, and recognizes a special gravel extraction area

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outside the fringe. The Board does not accept that the treatment of resource extraction and environmentally sensitive areas is a cause of detriment. The appeals are therefore dismissed with respect to Parts 11 and 14 of the MDP.

(vii) Consultation and Plan Implementation and Amendment

In the Board's opinion, the consultation provisions in the MDP are insufficient in relation to the fringe areas. Outside the fringe areas, the implementation and amendment provisions of the Bylaws provide adequate mechanisms for intermunicipal consultation.

2. A Reasonable Likelihood of Detriment

(i) General Remarks

The Board finds that the potential for detriment of a degree significant enough to warrant the Board's intervention is to be found in the fringe areas. Urban municipalities are centres of gravity for a variety of land uses and development tends to concentrate in these areas. The Board therefore accepts the arguments of the appellants that lack of coordinated, detailed planning and consultative mechanisms, combined with a variety of land uses, many of them incompatible, can result in this degree of detriment. The Board heard convincing argument in relation to the Sturgeon Valley and South Sturgeon Study Areas and areas in both the primary and secondary fringe of the County's MDP.

The Board accepts the argument that certain land uses may be inappropriate in the fringe due to incompatibility of existing or proposed uses. Potential land use conflicts may be avoided or minimized if appropriate planning mechanisms are in place and opportunities to evaluate the application of use and development standards are provided for in the planning process. The Board accepts that certain uses proposed for the fringe that are associated with potential air or water pollution, excessive noise, odour or other nuisance factors, should receive special attention prior to receiving planning approval.

The appellants presented argument and evidence about the land use conflicts created by the location of intensive livestock, large dog kennels and other intensive agricultural uses, air strips and major home based businesses and heavy industrial development in proximity to their boundaries. The Board accepts that these land uses may be incompatible due to odour, noise, other nuisance factors, as well as traffic generation, especially in areas where residential uses are located nearby. The Board agrees that if the County does not seek input from neighbouring municipalities when such uses are proposed within the fringe, conflicts among land uses are likely to result in detriment to urban municipalities.

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The fringe is an area in transition from less intensive development to more intensive development. Lack of sufficient detail in the provisions of the MDP and LUB may result in land use conflicts and inefficient patterns of servicing as the fringe areas change from semi-rural to more intensified uses. The Board agrees with the appellant municipalities that the lack of detailed planning mechanisms in the fringe areas may cause detriment of a degree warranting intervention. In addition, the provisions dealing with the coordination of land use and future growth patterns in the fringe area, as set out in Policy 15 of the MDP, are somewhat vague and thus have the potential of creating uncertainty that may result in incompatible land uses, inefficiencies in extension of hard services, uncoordinated transportation corridors, and curtailment of options for growth.

The Board acknowledges that references to generally accepted planning principles are not definitive in that they may mean different things to different planners. The appellants expressed concern that the County's Fringe Policy is described as an interim measure until intermunicipal agreements are reached. The Board accepts their argument that if an intermunicipal agreement is not reached, or if permanent uses with long term consequences are approved prior to the completion of an intermunicipal agreement, detriment may result.

The appellants presented compelling argument and evidence regarding the location of multi-lot country residential development, institutional, commercial, and industrial uses within the fringe areas. The Board is not convinced that the mere existence of these uses in the fringe may cause detriment, but agrees that a lack of detailed planning and direction with respect to the location and the intensity of these uses may be detrimental, for example where incompatible residential, commercial and industrial uses are situated adjacent to one another. This is a particular concern where growth directions for intensive residential, commercial or industrial uses are well established. The Board recognizes that there will be a transition in land use intensity over time, and agrees with the appellants that a lack of detail in future land use planning and policies may result in land use conflicts and the inefficient and costly provision of hard servicing. In the Board's opinion, the likelihood of significant detriment warrants intervention in the fringe areas.

The appellants presented compelling argument and evidence that the lack of detailed transportation policies and planning in the fringe areas could result in the duplication of transportation resources, inefficient development of roadways, and costly "retro-fit" expenditures on roadways that become over or under design capacity. The Board heard evidence in relation to 127 Street in Edmonton and St. Albert Trail in St. Albert. The Board accepts that there is a direct relationship between land use and transportation needs that manifests itself in appropriate locations for major arterials, the function and capacities of the roadways and the timing of improvements and financial capacity to meet changing needs. The Board recognizes that the lack of detailed planning for allocation of land uses combined with somewhat scanty transportation policies meets the threshold of detriment in the urban fringe. Similar arguments with respect to the extension of hard services is accepted by the Board.

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The provincial Land Use Policies place considerable emphasis on intermunicipal coordination and cooperation. The Board heard compelling evidence and argument that a lack of consultation at key points in the preparation of subdivision or development plans, or amendments to statutory plans or LUBs having effect in fringe areas, is likely to result in significant detriment to adjacent urban municipalities. The Board agrees that certain provisions of the County's bylaws lack sufficient detail and direction to ensure that adjacent municipalities have an opportunity for input in preparation of these plans and amendments in the fringe areas and the Sturgeon Valley Study Area.

When adjacent municipalities are left out of the information loop concerning the types, intensity and magnitude of development that may occur in the fringe, they are deprived of the opportunity to comment on and make suggestions for the resolution of land use incompatibility, servicing and transition problems. Nor are they able to make such modifications to their own planning, development, transportation and servicing plans as may be necessary to ensure compatibility of land uses and cost effective servicing. This is especially so for the Sturgeon Valley Study Area and the South Sturgeon Study Area because development in these areas may result in a large population, or the relocation of heavy industry that may impact the development and effectiveness of transportation routes in the County, St. Albert and Edmonton.

Without detailed plans and substantial consultation between municipalities, the Board finds a high potential for detriment in the urban fringe areas and the two Study Areas. Policy 15 of the MDP does not go far enough in providing locational criteria for specific land use proposals and other detailed planning requirements, nor does it establish a complete and effective referral system between the subject municipalities. This uncertainty with respect to possible location of these uses creates a significant potential for detriment in the intermunicipal fringe. The provisions of the County's MDP which the Board found to be detrimental in the intermunicipal fringe areas and the South Sturgeon and Sturgeon Valley Study Areas are set out below.

(ii) Multi-lot Country Residential Subdivision (Part 3)

The location of multi-lot country residential subdivision may have a detrimental impact on the adjacent municipality. Without an area structure plan or an agreement between municipalities, a country residential subdivision could occur in an area adjacent to an industrial plant or similar operation causing the limitation for expansion of the plant or causing complaints about heavy traffic or dangerous activities in or near residential settlements. Of particular concern is the Sturgeon Valley Study Area where servicing, subdivision design, and transportation need to be planned in order to avoid detrimental effects to both Edmonton and St. Albert.

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(iii) Industrial (Part 7)

The location of industrial land uses may have a detrimental impact on an adjacent municipality. Without an area structure plan or an agreement between municipalities, an industrial use could locate adjacent or near urban residential, parks or similar uses, resulting in heavy traffic, noise, odour or dangerous activities, all of which are clearly incompatible with residential uses. Further, the expansion of residential uses may be limited in an urban centre thereby causing uneconomic construction of urban infrastructure. Of particular concern is the South Sturgeon Study Area which is generally planned for rural industrial development.

(iv) Commercial (Part 8)

The location of commercial land uses may have a detrimental impact of the adjacent municipality. The locations need to be clearly defined and planned in order to avoid the creation of a hazardous and cumbersome transportation network in the fringe. Further, there is a need to buffer commercial activity from adjacent residential land uses in order to avoid problems with heavy traffic and noisy activity.

(v) Environmental Protection (Part 11)

Inside the intermunicipal fringe area and the Study Areas, the lack of identification, protection and development of environmentally significant areas may have a detrimental impact on adjacent municipalities. The issues surrounding the identification and development of environmental areas rarely respect municipal boundaries. Rivers, park systems, historical sites, other water bodies and similar features need the benefit of protection from at least two municipalities. A good plan and sharing of information in fringe areas can provide protection to environmental areas without compromising the rights of either municipality.

(vi) Transportation and Utilities (Part 12)

The location and status of transportation routes and the location and type of utility servicing may be detrimental to the adjacent municipalities. It is crucial that the design and location of such facilities address the needs of all municipalities in order to avoid uneconomical construction and dangerous traffic movements. In the fringe areas, benefit to both municipalities can be attained provided detailed plans and consultation are prevalent between the municipalities involved.

(vii) Natural Resources (Part 14)

The location of natural resources and the subsequent extraction of the resources may have a detrimental impact on the adjacent municipalities. For example, a gravel extraction operation adjacent to an urban style residential subdivision may not only be annoying but may be

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dangerous to the residents. A detailed plan and consultation in the fringe area will not only identify the location of such resources but may address means to mitigate severe impacts to neighbours.

(viii) Fringe Areas (Part 15)

Inside the identified fringe areas, the lack of information respecting the location of future land uses and the lack of adequate measures to provide for detailed plans or agreements and the lack of complete referral systems on applications, may be detrimental to the adjacent municipalities. Intermunicipal fringe areas require special treatment to acknowledge the rights of neighbours without infringing on the rights of landowners except to the benefit of the greater public interest. Fringe areas represent significant public interest in both municipalities.

In the Land Use Bylaw

Most of the land in the intermunicipal fringe is designated “Agricultural” (“AG”) or “Agricultural - Nature Conservation” (“A-NC”) in the LUB. The Board finds that certain use provisions of these land use districts have significant potential for detriment within the intermunicipal fringe of the appellant municipalities. Outside the intermunicipal fringe, these provisions will have little or no detrimental effect on the appellants. The remaining provisions that have been appealed are not, in the view of the Board, detrimental, either within or outside the intermunicipal fringe for the same reasons as given *supra*.

The provisions of the AG and A-NC Districts that the Board has found to be potentially detrimental in the intermunicipal fringe are as follows: intensive agriculture, intensive livestock operations, kennels, major home based business, agriculture industrial use, and airstrip. The Board notes that the only future land use categories shown on the Future Land Use Map of the County’s MDP that are not reflected as Land Use Districts in the LUB are the Primary and Secondary Urban Fringe Categories. Consequently, the Board is directing amendments that will reduce the potential for detriment by expunging certain uses such as intensive livestock operation from the list of permitted uses and moving some permitted uses into the discretionary category. These amendments will affect the AG and A-NC Districts. These are relatively minor changes, but an incidental effect of the amendments will be the creation of two new land use districts. As mentioned, these changes to the AG and A-NC District will result in a redesignation directed only to lands within the intermunicipal fringe. Where a parcel of land designated AG or A-NC is only partially within the intermunicipal fringe as defined by this Order, the redesignation will apply to the total area of land within the titled parcel.

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Remedies

General Remarks

Where the Board finds detriment, it must direct amendments to the County's planning bylaws pursuant to s.690(5) of the *Act*. The Board is satisfied that the following amendments will remedy the detriment the Board has found without infringing on the rights of individual landowners except as necessary in the overall greater public interest. The Board is of the view that individual rights will be enhanced by these amendments because certain of the amendments encourage and require further public input into planning matters in the fringe.

The amendments will create an intermunicipal fringe district only around those municipalities that were parties to the appeal. They do not apply to create fringe districts around municipalities that were not appellants, such as Fort Saskatchewan, Bon Accord, and Legal. Similarly, the amendments the Board has directed to the policies of the MDP will apply only within the intermunicipal fringe areas around the appellant municipalities. It is hoped that the County will consider applying the fringe policies directed by the Board to the municipalities that did not appeal. These additions would be negotiated outside this appeal process and would be the subject to the public hearing process outlined in s.692 of the *Act*.

The amendments related to the Sturgeon Valley Study Area and South Sturgeon Study Area deal with detriment found by the Board. Primarily, this detriment arises from provisions that do not provide adequate processes for consultation with neighbouring municipalities. The Board notes that the corporate landowners supported the preparation of an Area Structure Plan for the Sturgeon Valley Study Area. The ordered amendments will enhance opportunities for input from landowners.

The Board also notes that for the consultative process to be effective, comments on referrals of subdivision proposals, development permits, and statutory plan amendments must be returned in a timely fashion. Failure to do so would impose an undue burden on the County's planning process. Further, the ordered amendments provide for referral to and comments by the appellant municipalities, but do not grant a "veto power" to them. S.690 does not, in the Board's view, confer authority on the Board to direct amendments of a kind that would delegate a municipality's decision-making power to adjacent municipalities.

In ordering amendments to the LUB with respect to certain uses such as intensive livestock operations, the Board is not ordering the prohibition of these uses in the intermunicipal fringe. Instead, the Board's intention is to ensure that the approval of new intensive agricultural operations or expansion of existing intensive livestock operations in the intermunicipal fringe require a an amendment to the County's LUB, which will be referable to adjacent municipalities for comment, as well as appealable to this Board.

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The provincial Land Use Policies place considerable emphasis on intermunicipal cooperation and coordination. The Board was convinced by the argument of the appellants that the bylaws did not provide sufficient opportunities for consultation with adjacent municipalities and this lack may result in development that causes detriment to the County's neighbours. The following amendments ordered by the Board address these deficiencies within the intermunicipal fringe and in part, within the Sturgeon Valley Study Area and the South Sturgeon Study Area. Again, the Board wishes to stress that consultation means a full, fair and formal opportunity for input, but does not mean a "veto".

The Board heard arguments of detriment in the intermunicipal fringe from Morinville, St. Albert and Edmonton and found common themes related to the kinds of detriment complained of. The Board acknowledges that the ideal boundaries of the intermunicipal fringe and its associated provisions might differ from what has been ordered due to variables such as population size, growth rates, land use and growth patterns, geography, geological or topographic features, transportation routes and patterns, servicing capacities and extensions, and many other community features. The Board, however, is a quasi-judicial appeal tribunal and not a regional planning authority. Therefore, the ordered amendments are more generic in nature, based on the argument and evidence submitted at the hearings to demonstrate detriment. The Board is convinced that the appellant municipalities and the respondent municipality, with input from affected landowners, can develop more precise and detailed intermunicipal fringe plans with provisions that comprehensively meet the future needs of the parties. The objective of the ordered amendments is to prevent detriment as the Board has found it, not to enhance the County's planning bylaws.

IT IS ORDERED THAT the Sturgeon County MDP be amended as follows:

In Part 3, Multi-lot Residential Subdivisions, by adding the following after Policy 3.4:

3.5 For the purpose of developing an Area Structure Plan, the Sturgeon Valley Study Area shall be the area shown as such on the Future Land Use Map, and more particularly described as that area bounded on the west by the road allowance one mile east of Highway 2; on the north by Highway 37; on the east by Highway 28, and by the shared boundary with Edmonton and St. Albert on the south.

3.6 In addition to the provisions of Policies 3.1 and 3.3, the following provisions apply to the Sturgeon Valley Study Area:

- (i) within six months of the date of this Order of the Municipal Government Board, development of an area structure plan for the whole of the Sturgeon Valley Study Area shall be commenced, and shall be completed and ready for adoption within 18 months of the commencement date;

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- (ii) preparation of the area structure plan shall be guided by a steering committee composed of representatives from Sturgeon County, the City of Edmonton, the City of St. Albert, Alberta Transportation and Utilities, and any other persons who may be reasonably regarded as having an interest in the Sturgeon Valley Study Area;

3.7 The area structure plan shall address questions of supply and demand, and provide for the following matters:

- (i) the amount, location, phasing and density of future country residential subdivisions
- (ii) utility servicing
- (iii) demands for educational, recreational and social services;
- (iv) transportation issues and impacts;
- (v) impacts on nearby urban centres;
- (vi) other land uses such as trails, open space, agriculture; and
- (vii) procedural matters for dealing with the plan process and plan implementation matters, such as referrals, plan amendment and repeal.

In Part 7, Industrial, by adding the following after Policy 7.6:

7.6.1 In addition to the provisions of 7.5, an Area Structure Plan shall be adopted for all of the South Sturgeon Study Area which will

- (i) be guided by a steering committee with representatives from Sturgeon County, City of Edmonton, Alberta Transportation and Utilities, residents/landowners in the study area and other key stakeholders;
- (ii) consider the integration of future land uses and infrastructure in North East Edmonton;
- (iii) through the approval of a detailed terms of reference, address such matters as:
 - (a) the type, amount, location, phasing and density of future land uses;
 - (b) utility servicing;
 - (c) demands, if any, for educational, recreational and social services;
 - (d) transportation issues and impacts;
 - (e) impacts on nearby urban centres;
 - (f) other land uses such as trails, open space, agriculture;
 - (g) procedural matters for dealing with the plan process; and
 - (h) plan implementation matters, such as referrals, plan amendment and repeal.

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15 Fringe Areas

Morinville, St. Albert and Edmonton Intermunicipal Fringe

15.6 Notwithstanding Section 15.1 and notwithstanding any other provision of the MDP, the following provisions apply to the intermunicipal fringe for Morinville, St. Albert and Edmonton.

1. The intermunicipal fringe for St. Albert, Edmonton and Morinville shall be the combined area of the primary and secondary fringe as illustrated on the Future Land Use Map near St. Albert, the area north of Big Lake and east of the Riviere Qui Barre.
2. The purpose of the intermunicipal fringe is to ensure that orderly planning and development occurs. The purpose is not to prohibit development but to ensure that intensive development has growth options, locational acceptance, and that development in the fringe can be absorbed into a more intensive development pattern in a cost effective manner.
3. The LUB shall provide for the following:
 - (a) an Intermunicipal Fringe District (IMF) for Morinville, St. Albert and Edmonton based on the boundary of the fringe. The district may be in the form a single district for all three municipalities or separate districts;
 - (b) subdivision standards in the IMF District based on the guidance outlined in Section 2.3 to 2.7 inclusive within this plan;
 - (c) uses which may generate heavy traffic, odour, excessive noise, air or water pollution or nuisances shall be considered only as discretionary uses;
 - (d) a referral system to the respective urban municipality for subdivision applications, development permits for discretionary uses, and LUB amendments in the urban fringe;
 - (e) a referral system in the St. Albert and Edmonton fringe overlap that shall result in referrals being sent to both adjacent municipalities.
4. An area structure plan shall be required for any subdivision or development which exceeds the subdivision density standard in the IMF District.
5. Any statutory plan preparation, adoption or amendment or LUB adoption or amendment within the fringe shall require participation and referral, with the intent of giving meaningful comment by the urban municipality adjacent to that fringe. Responses to referrals shall be completed in a timely fashion.

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6. The above system of referrals may be eliminated after the adoption of an Inter-MDP or a system of area structure plans, the preparation of which provided the respective municipalities with an opportunity for input and participation.
7. Within one year of the adoption of the amendments in this order, Sturgeon County, with the participation of the respective municipalities, shall develop a mechanism to resolve disputes. Any resolution developed through this mechanism regarding a policy matter that affects the MDP or LUB shall subsequently be subject to the public hearing process required by Section 692 of the *Municipal Government Act*.
8. Sturgeon County expects that St. Albert, Morinville and Edmonton will reciprocate with similar provisions for cooperation and coordination in their planning bylaws.
9. The other provisions of this plan are subject to this provision where the subject land is within the intermunicipal fringe as described on the Future Land Use map.

IT IS ORDERED THAT the Sturgeon County LUB be amended as follows:

Sturgeon County is directed to amend LUB 819/96 by adding two new districts known as the Intermunicipal Fringe District (A) (*IMF-A*) and Intermunicipal Fringe District B (*IMF-B*). These new districts apply to all land designated Agricultural District (becomes *IMF-A*) and Agricultural - Nature Conservation District (becomes *IMF-B*) in Bylaw 819/96 which are located within the defined fringe of Edmonton, St. Albert and Morinville, and the intermunicipal fringe portions of the Sturgeon Valley Study Area and the South Sturgeon Study Area, all as shown on the Future Land Use Map in the MDP. The new districts do not apply to other lands in the intermunicipal fringe areas of Morinville, Edmonton and St. Albert which have been designated for other uses by Bylaw 819/96.

1. The Intermunicipal Fringe District -A (*IMF-A*) shall contain all the provisions of the Agricultural District in Bylaw 819/96 with the following additions or deletions:

Delete from the Permitted Uses Section:

- (i) Intensive agriculture with farmstead
- (ii) Intensive livestock operation with farmstead on a lot located a minimum of 1.0 miles from the boundary of an urban centre or Hamlet.
- (iii) Kennels, Boarding and breeding use on a pre-existing lot located more than 1000 feet from a dwelling on an adjacent lot.
- (iv) Major home based business on a pre-existing lot.

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Delete from the Discretionary Use Section:

- (i) Agricultural industrial use
- (ii) Airstrip
- (iii) Intensive livestock operation with farmstead on a lot located between 0.5 miles and 1.0 miles from the boundary of an urban centre or hamlet
- (iv) Kennels, Boarding and breeding use on a pre-existing lot located less than 1000 feet from a dwelling on an adjacent lot

Add to discretionary uses:

- (i) Kennels, Board and breeding use on a pre-existing lot located more or less than 1000 feet from a dwelling on an adjacent lot or the boundary of an urban municipality
- (ii) Major home based business on a pre-existing lot.

Add the following provision:

- (i) All applications for a development permit for a permitted or discretionary use shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
- (ii) All applications for redesignation and subdivision shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County
- (iii) Alterations to the boundary of the Hamlet of Namao shall be referred to Edmonton for review and comment prior to a decision by the County
- (iv) The processes to initiate the preparation of Area Structure Plans for Sturgeon Valley Study Area and the South Sturgeon Study Area shall be referred to Edmonton and St. Albert for review and comment in accordance with the provisions of the MDP and prior to any public hearing being held to consider the adoption of an Area Structure Plan.

2. The Intermunicipal Fringe District-B (IMF-B) shall contain all the provisions of the Agricultural - Nature Conservation district in Bylaw 819-96 with the following additions or deletions:

Delete from the Permitted Uses Section

- (i) Intensive livestock operation with farmstead on a lot located a minimum of 1.0 miles from the boundary of an urban centre or hamlet.
- (ii) Kennels, Boarding, breeding use on a pre-existing lot located more than 1000 feet from a dwelling on an adjacent lot.

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(iii) Major home business on a pre-existing lot.

Delete from the Discretionary Uses Section

- (i) Intensive livestock operation with farmstead on a lot located between 0.5 miles and 1.0 mile from the boundary of an urban centre or hamlet.
- (ii) Kennels, Boarding, breeding use on a pre-existing lot located less than 1000 feet from a dwelling on an adjacent lot

Add to Discretionary Uses

- (i) Kennels, Boarding and breeding use on a pre-existing lot located more or less than 1000 feet from a dwelling on an adjacent lot or the boundary of an urban municipality.
- (ii) Major home based business on a pre-existing lot.

Add the following provision:

- (i) All applications for a development permit for a permitted or discretionary use shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
- (ii) All applications for redesignation and subdivision shall be referred to Edmonton, St. Albert or Morinville, as appropriate, for review and comment prior to a decision by the County.
- (iii) The processes to initiate the preparation of area structure plans for Sturgeon Valley Study Area and the South Sturgeon Study Area shall be referred to Edmonton and St. Albert for review and comment in accordance with the provisions of the MDP and prior to any public hearing being held to consider the adoption of an area structure plan.

Observations

The following are observations of the Board which are not binding on the parties, but which the parties may wish to give consideration to in future endeavors. In the Board's opinion, the best planning solutions are developed with the full cooperation of the parties involved, in an environment of mutual respect for each other's autonomy, and within the context of inter-municipal cooperation and land use coordination. The Board expects that many of the amendments made in this order will be considered by the appellant municipalities as they prepare their MDPs and LUBs. The intermunicipal fringe works in both directions. Municipalities must also realize that planning decisions must be accomplished within the context of individual rights as referred to in Section 617 of the *Act*.

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Although the MDP and the LUB of the appealing municipalities were not before the Board, it is not unreasonable to expect that many of the mechanisms to resolve detriment discussed with respect to the subject bylaws should be considered in a reciprocal effort because the inter-municipal fringe works both ways. Within the context of the new provincial Land Use Policies, municipal boundaries should not be seen as a “Chinese wall” separating one municipal authority from another. Globalization is removing boundaries internationally and urbanization of Alberta generally is making municipal boundaries, especially in metropolitan settings, less important. Intermunicipal cooperation and coordination are the new watchwords.

Throughout the hearing, the Board was told about problems with vagueness and lack of detail in the plans and policies for the fringe. The Board appreciates that land use planning outside the fringe in the vast rural area can only reasonably be done with broad policy statements. However, the advantages of increasing detail in the fringe of large municipalities, or municipalities experiencing rapid growth, or in a fringe area with distinctive and unique features or land uses should not be discounted to quickly for the sake of flexibility. The fringe, an area going through transition from low intensity uses to higher intensity uses over perhaps a number of generations, requires that land owners and neighbouring municipalities have the right to a greater degree of clarity and detail respecting future land uses and policies.

Dated at the City of Edmonton, in the Province of Alberta, this 2nd day of April, 1998.

MUNICIPAL GOVERNMENT BOARD

T. Helgeson, Presiding Officer

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SECTION IV

APPENDIX "A"

PERSONS IN ATTENDANCE, MAKING SUBMISSIONS OR GIVING EVIDENCE

(List of landowners and observers may not be complete)

NAME	CAPACITY
Sheila McNaughton, <i>Reynolds Mirth Richards & Farmer</i>	Solicitor representing Sturgeon County
Gilbert Boddez	Witness, Sturgeon County
Ken Gwozdz	Witness, Sturgeon County
Leo Burgess, Barry Sjolie <i>Brownlee Fryett</i>	Solicitors representing Morinville
Randy Leal	Witness, Morinville
William Shores, David Jarome <i>Shores Belzil</i>	Solicitors representing the City of St. Albert
Jeff Greene	Witness, City of St. Albert
Dwayne Kalynchuk	Witness, City of St. Albert
Darryl Howery	Witness, City of St. Albert
Charlotte St. Dennis, Marlene Exner, Gwendolyn Stewartt-Palmer	Solicitor, City of Edmonton Witness, City of Edmonton Witness, City of Edmonton
Lorne Mc Master L. Stephenson	Witness, City of Edmonton Witness, City of Edmonton
Richard Haldane <i>Parlee McLaws</i>	Solicitor representing County Landowner Dale Maynard Industries
Ronald Swist	Landowner
Christine Harrold	Landowner
James Sillito	Landowner
Ken Fisher	Morinville Mirror
Terry Bokenfohr	Landowner
H. Shuttleworth	Landowner
David Klippenstein	UMA Engineering Ltd.

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Sheila McDonald	Landowner
Shannon Wyatt	Student, Brownlee Fryett
Don Savich	Landowner
Bob McCulloch	Dale Maynard Industries
Walter Mis	Landowner
Peter Mis	Landowner
Dorothy Chartrand	Landowner
Richard Priest	UMA Engineering Ltd.
Ernest Pare	Landowner
Drina Culo	Observer
Edward Sinclair	Landowner
Hal Morris	Observer
Ann Pare	Landowner
Graeme MacKay	Landowner

APPENDIX “B”

DOCUMENTS RECEIVED DURING THE HEARINGS

1. Sturgeon County Legal Submission
2. Sturgeon County Response Brief
3. City of Edmonton Legal Submission
4. City of Edmonton Response Brief
5. City of St. Albert Legal Submission
6. Letter from RL Planning Associates to Brownlee Fryett respecting submissions to be made on behalf of the Town of Morinville along with the curriculum vitae of Randy Leal.
7. Response brief on behalf of Dale-Maynard Industries Inc. (County landowner)
8. Letter from Terry Bokenfohr (County Landowner)
9. Letter dated Sept. 2, 1997 from Edward Sinclair (County Landowner)
10. Letter dated September 4, 1997, from Karl, Edwin, Walter and Gary Tappauf (County Landowners)
11. Certified copy of resolution made by Morinville Town Council on August 26, 1997.
12. City of St. Albert errata sheet
13. City of St. Albert map - 1979 Annexation
14. City of St. Albert Land Use Map
15. AM Peak Traffic Counts
16. PM Peak Traffic Counts
17. Future Land Use Map
18. Water Supply and Reservoir
19. Hydraulic Capacity Rating Wet Weather Flow
20. City of St. Albert Council Motion - August 11, 1997

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21. Chart comparing existing land use and proposed land uses, (LUB)
22. Chart proposing new policies for the MDP, along with comments
23. July 21, 1997 letter from Sturgeon to Edmonton
24. July 30, 1997 letter from Edmonton to Sturgeon
25. Comparison Chart between land uses
26. "Will Say" statement of Ken Gwozdz (Sturgeon Development Officer)
27. Statement of R. W. McCulloch dated September 11, 1997
28. Section 250, Edmonton LUB RR - Rural Residential District
29. Letter from D.M. Savich to the MGB and dated September 11, 1997.
30. Bokenfohr Brief
31. Sturgeon County Council Resolution of August 12, 1997
32. Lac Ste. Anne County letter to Sturgeon dated April 9, 1996
33. Sturgeon Annual Report for Open House held April 10, 1997
34. Excerpts from the Alberta Subdivision and Development Regulation
35. Letter dated Sept. 30, 1996 from Sturgeon to St. Albert regarding fringe planning.
36. Alberta Court of Appeal Decision - Lloydminster v. Alberta Planning Board
37. Alberta Planning Board Order 419-M-91/92 - City of Red Deer vs. County of Red Deer
38. Excerpt from the 1963 Alberta Planning Act - Sec. 93
39. Supreme Court of Canada Decision - 1984 - Hartel Holdings vs. City of Calgary
40. Excerpt from the Alberta Interpretation Act
41. Letter dated October 14, 1997 along with summary brief and reply submissions from St. Albert to the Municipal Government Board
42. Summary argument of James Sillito sent to the Municipal Government Board on September 30, 1997.
43. Summary position of Walter K. Mis to the Municipal Government Board received on September 30, 1997.
44. Summary position of the Town of Morinville to the Municipal Government Board
45. Summary argument of the City of Edmonton to the Municipal Government Board received on September 30, 1997.
46. Letter dated September 25, 1997 from Reeve Frank Shoenberger to the Municipal Government Board.
47. Final position and argument submitted by Sturgeon County to the Municipal Government Board on September 30, 1998
48. Letter dated November 7, 1997 from the solicitor for Sturgeon County to the Municipal Government Board.
49. Response of Dale-Maynard Industries Inc. and 702602 Alberta Ltd., submitted to the Municipal Government Board on October 14, 1997.

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APPENDIX “C” LEGISLATION REFERENCES**Municipal Government Act**

Powers, duties and functions

5 A municipality

- (a) has the powers given to it by this and other enactments,
- (b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and
- (c) has the functions that are described in this and other enactments.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

1995 c24 s95

Division 2

Land Use Policies

Land use policies

622(1) The Lieutenant Governor in Council may by order, on the recommendation of the Minister, establish land use policies.

(2) The Regulations Act does not apply to an order under subsection (1).

(3) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Municipal Government Board must be consistent with the land use policies.

1995 c24 s95

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Division 3
Planning Authorities

Subdivision authority

623(1) A council must by bylaw provide for a subdivision authority to exercise subdivision powers and duties on behalf of the municipality.

(2) A subdivision authority may include one or more of the following:

- (a) any or all members of council;
- (b) a designated officer;
- (c) a municipal planning commission;
- (d) any other person or organization.

1995 c24 s95

Division 4
Statutory Plans

Intermunicipal Development Plans

631(1) Two or more councils may, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(2) An intermunicipal development plan

- (a) may provide for
 - (i) the future land use within the area,
 - (ii) the manner of and the proposals for future development in the area, and
 - (iii) any other matter relating to the physical, social or economic development of the area that the councils consider necessary,

and

- (b) must include
 - (i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,
 - (ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and
 - (iii) provisions relating to the administration of the plan.

1995 c24 s95

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Municipal Development Plans

632(1) A council of a municipality with a population of 3500 or more must, by bylaw, adopt a municipal development plan.

(2) A council of a municipality with a population of less than 3500 may adopt a municipal development plan.

(3) A Municipal Development Plan

- (a) must address
 - (i) the future land use within the municipality,
 - (ii) the manner of and the proposals for future development in the municipality,
 - (iii) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,
 - (iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and
 - (v) the provision of municipal services and facilities either generally or specifically,
- (b) may address
 - (i) proposals for the financing and programming of municipal infrastructure,
 - (ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,
 - (iii) environmental matters within the municipality,
 - (iv) the financial resources of the municipality,
 - (v) the economic development of the municipality, and
 - (vi) any other matter relating to the physical, social or economic development of the municipality,
- (c) may contain statements regarding the municipalities development constraints, including the results of any development studies and impact analysis, and goals, objectives, targets, planning policies and corporate strategies,
- (d) must contain policies compatible with the subdivision and development regulations to provide guidance on the type and location of land uses adjacent to sour gas facilities, and
- (e) must contain policies respecting the provision of municipal, school or municipal and school reserves, including but not limited to the need for, amount of and allocation of those reserves and the identification of school requirements in consultation with affected school authorities.

1995 c24 s95;1996 c30 s56

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Division 11
Intermunicipal Disputes

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may appeal the matter to the Municipal Government Board by

- (a) filing a notice of appeal with the Board, and
- (b) giving a copy of the notice of appeal to the adjacent municipality

within 30 days of the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and the efforts it has made to resolve matters with the municipality that adopted it.

(3) A municipality, on receipt of a notice of appeal under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statement setting out the actions it has taken and the efforts it has made to resolve matters with that municipality.

(4) When the Municipal Government Board receives a notice of appeal under this section, the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal under this section, it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

- (a) dismiss the appeal if it decides that the provision is not detrimental, or
- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

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(6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,

- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

(7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.

(8) The Municipal Government Boards decision under this section is binding, subject to the rights of either municipality to appeal under section 688.

1995 c24 s95

Subdivision and Development Regulation

Restrictions

11(1) On or before March 31, 1998, a subdivision authority must not approve an application for subdivision for country residential use unless the land that is the subject of an application

- (a) is 8 kilometres or more from the boundaries of a city or town having a population of 5000 or more persons,
- (b) is 3.2 kilometres or more from the boundaries of a city, town or village having a population of 1000 or more but less than 5000 persons, and
- (c) is 1.6 kilometres or more from the boundaries of a town, village or summer village having a population of less than 1000 persons.

(2) If an urban fringe boundary was established and existed on August 31, 1995 under a regional plan adopted pursuant to the Planning Act RSA 1980 cP-9, that boundary applies in place of the distances established under subsection (1).

(3) Notwithstanding subsection (1) or (2), a subdivision authority may approve an application for subdivision for country residential use if

- (a) the affected city, town, village or summer village gives its consent in writing to the application,
- (b) the use is permitted under the applicable intermunicipal development plan, or

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- (c) the use is permitted under an agreement entered into between the affected city, town, village or summer village and the municipality in which the land that is the subject of an application is located.

(4) This section does not apply

- (a) to a subdivision adjusting the boundary of an existing parcel,
- (b) to the subdivision of a fragmented parcel from a titled area, or
- (c) to the subdivision of the first parcel from a previously unsubdivided quarter section

if it is permitted in the applicable land use bylaw.

(5) In this section, country residential use means the use of land in a rural municipality for residential purposes, other than in a hamlet established under section 59 of the Act.

AR 212/95 s11;122/97

TAB 3

BOARD ORDER: MGB 007/11

FILE: 09/IMD-06

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL brought pursuant to Section 690 of the Act by the Summer Village of Sunbreaker Cove (SV) respecting Bylaw 1087/08 (Bylaw) adopted by Lacombe County (County) on November 26, 2009.

BEFORE:

Members:

D. Thomas, Presiding Officer
P. Mowbrey, Member
J. Noonan, Member

Case Manager:

P. Kemp

[1] This is the decision of the Municipal Government Board (MGB) from a hearing held September 8, 9 and 10, 2010 respecting the SV's appeal of Bylaw 1087/08, passed by the County on November 26, 2009 and alleged to have a detrimental effect on the SV.

OVERVIEW

[2] This appeal concerns Lacombe County Bylaw 1087/08, which redesignated approximately 59.71 hectares (147.5 acres) of land (Development Site) from Agricultural ("A") district to Recreational Vehicle Resort ("R-RVR") district. The owner of the lands, Delta Land Co. (Developer) applied to redistrict the Development Site to accommodate the development of "Sky Country Golf and RV Resort" (Proposed Development).

BACKGROUND

[3] On November 26, 2009, Lacombe County gave third reading to Bylaw No. 1087/08, which re-designated 59.71 ha (147.5 ac) of land from the Agricultural ("A") District to Recreational Vehicle Resort (R-RVR") District. The subject lands are located within NE 34-39-2-W5M. The proponent of the rezoning was the owner of the land, Delta Land Co. Inc. (Developer). The Bylaw provides for the right to apply for the uses stated, however, it stipulated that prior to approval of any change in land use the Developer must execute a development agreement (DA). The DA was executed on December 4, 2009.

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[4] The Summer Village of Sunbreaker Cove (SV) reviewed the Bylaw and participated in the public hearings that took place prior to the adoption of the Bylaw. Subsequently, the SV determined that some of the provisions have or may have a detrimental effect on the SV. On December 17, 2009, SV filed an appeal to the Municipal Government Board (MGB) pursuant to Section 690 of the *Municipal Government Act* (Act).

[5] The SV is a community of approximately 270 lots extending for approximately 1.5 kilometres along the northern shore of Sylvan Lake in central Alberta. It contains both seasonal and year round residences, the majority of which use public pathways to gain access to the lake. There has been little recent development activity on the lake apart from the approval of 200 lots in 2004. However, there is significant demand for recreational property close to the lake.

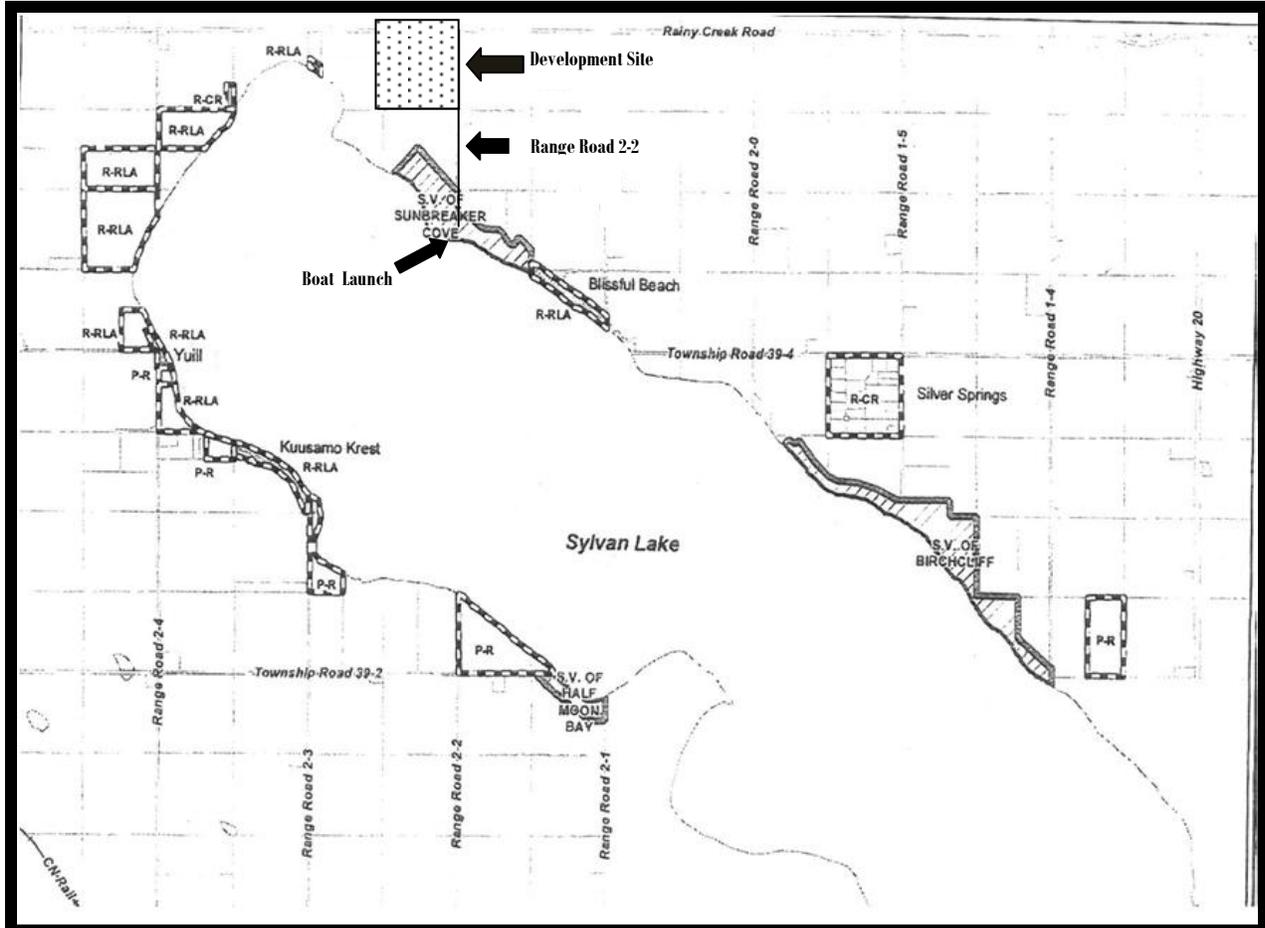
[6] One of the two boat launches on Sylvan Lake is located at the south end of Range Road 2-2, adjacent to the SV. The County operates the boat launch under a license of occupation (LOC) from the Provincial Government. There is an adjacent recreation area including parking, picnic tables and washrooms that is managed by the SV. The County has applied to the Provincial Government to amend the LOC to permit the County to double the existing width of the boat launch by having two side-by-side ramps. Originally, the LOC was held by the Sylvan Lake North Shore Access Association, which transferred it to the County in 2006 on condition that the boat launch remains open to the public. The other boat launch is located in the Town of Sylvan Lake and is privately owned.

[7] In 2009, the recreation area was upgraded in accordance with recommendations in the Sylvan Lake Public Access Study of 2003 (SLPAS). The SLPAS had recommended the addition of 25-30 parking spaces, however, only 17 were added.

[8] The southern boundary of the Development Site is approximately 0.8 kilometres north of the northern boundary of the SV, as shown on the map below.

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[9] The Proposed Development is called Sky Country Golf & RV Resort. It involves a number of RV sites and facilities including a 9-hole golf course and a pool area.

[10] The County required the Developer to hold public consultations prior to adopting the bylaw in which the SV participated. One “open house” was held on July 14, 2007 and another was held on September 8, 2007. All parties agreed that steps were taken to address potential effects identified during the public consultation process, but opinions differed as to whether the steps taken were sufficient to mitigate potential detriment to the SV.

[11] The original Proposed Development was a bare land condominium consisting of 582 condominium ownership lots and 85 daily rental lots. The concept was redesigned following the public consultation process and the number of lots reduced to 423 condominium ownership lots and 84 daily rental lots. (The diagram below represents the current configuration of the Proposed Development.)

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- No adequate plans have been put forward to address the excessive motor vehicle traffic that will or is likely to be caused by any development pursuant to the Bylaw;
- The approval of the Bylaw was predicated on plans which have never coalesced and which continue to evolve;
- The County's Municipal Development Plan (MDP) requires that an Area Structure Plan (ASP) be in existence before a multi-lot subdivision can occur. There is no such plan in existence;
- The proposed Bylaw affects land which is not located within any outline plan of the County; and
- At the time of the Public Hearing, there was a proceeding pending to amend the terms of the "R-RVR" land use district with in the LUB 1056/07, which would substantially change the rules as to what was to be allowed in a development with in the R-RVR land use district. A public hearing in the matter of the general amendment to the LUB was held within one week after the hearing in this case (the site specific land use amendment; the Bylaw). Since then, there has been a further public hearing with regard to the general amendment to the LUB. Therefore, the approval of the Bylaw, intentionally or not, may have been misleading as to its potential impact as the SV and other members of the public (and, possibly, members of the County Council) were, or may have been, uncertain as to the nature of the approval of the Bylaw.

ISSUES

[13] Some of the reasons for appeal listed in the Notice of Appeal were not argued by the SV at the hearing.

1. Does the Bylaw have a detrimental effect on the Summer Village?
 - a. Is the Bylaw premature and therefore detrimental to the SV?
 - b. Is the Bylaw contrary to the Sylvan Lake Management Plan (SLMP) and therefore detrimental to the SV?
 - c. Is the Bylaw in conflict with the County's Municipal Development Plan and therefore detrimental to the SV?
 - d. Will an increase in traffic congestion resulting from the Proposed Development be detrimental to the SV?
 - e. Will the Proposed Development cause detriment to the SV resulting from increased usage beyond the capacity of the recreation and parking area near the boat launch?
 - f. Will the Proposed Development cause detriment to the SV resulting from increased illegal parking on the SV's roadways?

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SUMMARY OF THE SUMMER VILLAGE'S POSITION

Test for Detriment

[14] The Summer Village argued that the test for detriment is set out in the Sturgeon decision (MGB 77/98). Detriment does not have to be proved beyond a reasonable doubt. There is a two part test involving both the reasonable likelihood of detriment to the SV resulting from the bylaw and the significance of the impact on the SV should detriment result. In the Sturgeon decision the MGB used the words “*potential for detriment of a degree significant enough to warrant the Board's intervention*”.

[15] The Summer Village quoted from the Sturgeon decision at page 44 of 84 where it states:

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another.” Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth.

The Bylaw Does Not Comply with the County's MDP

[16] The SV submitted that it, the County and six other municipalities approved the Sylvan Lake Management Plan (SLMP) in or around 2000. The SLMP was intended to be an intermunicipal development plan, but that was not completed. Subsequently, it was revised and endorsed by Lacombe County, Red Deer County, the Town of Sylvan Lake, the SV and five other summer villages. The SLMP is not a statutory plan and was not adopted as such by a bylaw. Neither is it identified as an outline plan on the County's website.

[17] The SLMP identified the area within approximately 1.6 kilometres (1 mile) of the lakes as the “Lake Development Area”. The Development Site is located within this area.

[18] The County approved the current Land Use Bylaw (LUB) and the Municipal Development Plan (MDP) by bylaw on August 28, 2007.

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[19] The MDP states that:

County Council shall not consider an application for a multi-lot residential subdivision, unless an area structure plan prepared and approved by Council is in place to guide decisions on development in the area.

The MDP also states that:

Any existing outline plans adopted by Council prior to the adoption of this Municipal Development Plan shall be recognized in place of an area structure plan.

However, the MDP does not define “outline plan”. Neither is “outline plan” defined in the LUB or the Act. The SLMP is not identified as an outline plan on the County website or in its published materials.

[20] The MDP further states that:

The County may consider higher density housing development along Sylvan Lake provided publicly accessible open space with lakefront access is provided as a trade off for increased density.

[21] The SV argued that no publicly accessible open space has been provided as a trade off for increased density as anticipated by the MDP. Further, as no ASP is in place and the SLMP is not an outline plan, the Proposed Development does not comply with the unequivocal mandatory language of the MDP and should, therefore, be found *ultra vires* and struck down.

The Bylaw is Premature

[22] The SV submitted that the County is currently in the process of developing a “Sylvan Lake Area Structure Plan” (Sylvan Lake ASP). This is the planning document that would guide developments proposed to be located within the area close to the lake. As the planning documents and policy direction that would guide the Proposed Development are still in the process of being formulated by the County, the SV argued that the Bylaw is premature.

The Bylaw is Contrary to the SLMP

[23] The SV submitted that the Bylaw proposes a use to accommodate the proposed development and that the development is contrary to the SLMP. It is, therefore, incompatible with and detrimental to the SV.

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[24] The SLMP contains the following statements:

1. *No defined limits for development are set as municipalities intend to rely on further site specific analysis to determine the level or density of development that can be supported at any particular location.*
2. *Public access to the lake is a very contentious issue with local residents acknowledging that there is a need for additional public access to the lake but not in agreement as to where such development should occur.*
3. *Land bordering ... Sylvan Lake should be used to support and take advantage of the residential and recreational potential of the lake.*
4. *Significant opportunities for public access and use of Sylvan Lake must be maintained ... it is recognized that new access areas will need to be carefully planned so as to minimize conflicts with surrounding land uses and not be detrimental to the lake.*
5. *Details regarding the form or density of development that may be appropriate at any particular location will ... have to be determined following further site specific analysis.*

[25] The SV contended that no site-specific analysis of the particular development proposal has occurred with respect to the external impacts the Proposed Development will have on the SV. Hence, the Proposed Development is contrary to the SLMP.

Direct Control Zoning vs. Development Agreement

[26] The SV argued that the DA entered into by the County and the Developer is a contract to which the SV is not a party. As such, it is subject to amendment by the signatories without input or comment from the SV. SV witness Mr. B Romanesky, a professional planner, stated that a well considered Direct Control designation would have been preferable in that respect.

Increased Usage Beyond Capacity of Beaches

[27] Mr. Romanesky testified that he visited the SV in July on a Wednesday afternoon to look at the amenities that are available. He noted that the beach was very well used, even though it was not a weekend, and stated that he believed people from the development will want to use the lake and the beaches, whether or not they own boats. He pointed out that the SV had no sidewalks and that no plans exist to build sidewalks. Pedestrians walking to the beach must walk on the SV roads.

Increased Usage Beyond the Capacity of the SV Recreation and Parking Area

[28] The SV stated that there are now two boat launches on Sylvan Lake. One is a private facility located in the Town of Sylvan Lake and the other is a public facility located in the SV. There is already pressure on the boat launch located in the SV. During the summer it is very

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busy, particularly on long weekends. As the boat launch is integrated with the recreation and parking area, increased use of the boat launch will result in increased use of the recreation and parking area.

[29] The SV referred to the County Staff Report that was prepared in November of 2008 and presented to the County Council prior to approval of the Proposed Development. It includes the following paragraph on page 4:

The impact of 400+ additional seasonal lots raised concerns about the effects on the existing local boat launch facilities. Even with significant upgrades, the parking and launching areas located in the Village of Sunbreaker Cove are often congested with lengthy wait times to launch a boat and insufficient parking. Staff feels it is unreasonable to expect that these facilities will be capable of handling additional traffic. Although Mr. Wilson has noted a shuttle service would be provided to residents of the RV development, at peak usage times, to mitigate parking issues, there has been no consideration made related to the impacts based on the increase of total users.

[30] The Proposed Development will include a large overflow parking area on the southeast corner of the property, the intention of which is to prevent overuse of the present parking facilities in the area of the boat launch. A shuttle service will be available to transport users of the overflow parking and their boats to the boat launch. However, this lot will be approximately one kilometre away from the boat launch and the SV is not convinced that it will prevent problems at the existing facility due to increased usage resulting from the Proposed Development.

[31] The SV referred to the Sylvan Lake Public Access Study (SLPAS) which was recommended by the SLMP and undertaken in 2003. The following table and comments appear on page 16 of the SLPAS:

Table 2.2: Boat Capacity Estimates

Peak Boats in use on the lake:	Current 300	Future 425
Total Boats Moored on the Lake:	Current 1200	Future 1660
Total Boats Launched on Peak Days	Current 200	Future 300
Total Truck/Trailer Stalls:	Current 75	Future 150

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If the current launches on peak days are estimated at 200/day and the future launches are estimated at 300/day, that equates to 100 additional launches per day. Literature suggests that boat launch parking turns over twice per day (ie. morning fishing and afternoon water skiing), so to meet the estimated launching requirements in the future, an additional 50 truck/trailer stalls would be required. However, in addition to increased capacity to support future launching estimates, additional truck/trailer stalls are required in the short term to meet existing demand and resolve some of the existing problems associated with boat launching at road allowances and other public access sites. Currently there are only about 75 truck/trailer stalls to support 200 launches and as such an additional 25 stalls are required just to meet current demand.

[32] The SLPAS goes on to recommend that Sun Haven, the Sunbreaker Cove site, add 25 to 30 new truck/trailer stalls. Accordingly, the Sun haven parking lot is already at capacity and any increase in the number of users will exceed capacity.

[33] The SV introduced into evidence a report from D.A. Watt Consulting, a firm hired by the SV to do a peer review of the Williams Engineering Traffic Impact Assessment (TIA) of 2009. Mr. E. Van Weelderen spoke to the D.A. Watt report. The report commented that the TIA did not address the potential impact of the Skyy residents on the capacity of the parking area or boat launch arising from secondary uses such as recreation. The report also noted that there are already parking infractions in the vicinity of the boat launch and indicated that there is a strong potential for parking spill over on Sunbreaker Cove Road and the adjacent streets and roads in the SV. For the Skyy users that make use of the day use parking lot, the report expressed concern regarding their safety as they are directed to walk on Sunbreaker Cove Road in conflict with vehicular traffic. Upon questioning by counsel for the SV, Mr. Van Weelderen stated that additional transportation analysis, specifically in the areas of the boat launch and Sunbreaker Cove Road between the Proposed Development and the boat launch, would be needed to determine whether increased traffic would have a detrimental impact on the SV.

[34] Mr. G. Clark, a resident of the SV, testified that parking was a problem, especially on summer weekends. He explained that the SV had hired a retired RCMP officer to provide some enforcement for the "No Parking" signs the SV had been obliged to install on some of the SV roadways. Mr. Clark introduced the enforcement officer's report into evidence to show that there had been some parking infractions since the enforcement officer was retained.

[35] Ms. P. Jorgensen, another SV resident, testified that the parking is already a problem and that sometimes residents have a difficult time accessing their lots because of vehicles and boat trailers parked on the streets. Further, she contended that this is a safety issue. Emergency vehicles would have a difficult time accessing the homes of residents because of the parking

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problem as it exists now. She also stated that, in her opinion, the boat launch would become unsafe if the number of users increased.

[36] The SV argued that the Bylaw is predicated on the implicit or tacit requirement for reasonable and sufficient lake access and facilities for the proposed development. The SV submitted that there is no analysis of how the proposed development will manage its needed lake access; there is no provision either within the Bylaw or within the LUB requiring construction of additional boat launching facilities to accommodate the proposed development. The SV further submitted that while there is a collection of funds through the DA, that money is tied to each plan of subdivision with no guarantee that the County will build new lake access facilities by any certain date, if at all.

SUMMARY OF THE COUNTY'S POSITION

Process of Adopting the Bylaw

[37] The County described the process followed in adopting the bylaw as follows.

- Following the first two open houses, the Developer was asked to prepare a summary of who attended and the concerns that were raised, and to provide the County with an indication of how the Developer intended to address those concerns.
- Subsequently, the Developer made a formal request to Council to consider an amendment to the LUB to redistrict the land.
- As part of that process, the planning department prepared a report to council providing a general description of the request, with an overview of all the policy considerations and any statutory documents that needed to be considered. They confirmed that the land fell within the Lake Development Area of the SLMP and that further site specific examinations would be required during the redistricting process to confirm that the individual lots and locations were suitable for the type of development proposed.
- Council passed first reading of the bylaw on January 8, 2009 and set a date for public hearing on March 4th, following which the Developer was again to review the submissions made at the public hearing and provide the County with an indication as to how they intended to address the concerns raised.
- The County, as part of its process, requires the Developer to sign a DA before council will consider third and final reading of a redistricting bylaw.
- There were negotiations occurring throughout a number of months that involved reviewing various reports (including the TIA, and environmental report, a hydrological study and a historical study) with the planning and operations departments, and site visits.
- The environmental study showed that there were no environmental concerns and the hydrological study showed that there was adequate water without influencing the lake

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water. The TIA indicated that some road improvements and infrastructure improvements would be required.

- Once the DA and concept plan were finalized, Council approved the DA and gave third and final reading to the bylaw.

County Involvement with Parking and the Boat Launch

[38] During a mediation process in relation to a different appeal involving the same parties, the County agreed to look at enhancing the parking at the boat launch. Part of the agreement with the SV was that the County would remain the holder of the license of occupation for the boat launch and that the adjacent amenities, which are the Sun Haven recreation area (including the camp house, washroom facility and parking) would be transferred to the SV. The County retains the license of occupation for the boat launch pursuant to an agreement (with the previous holder) that the boat launch will remain open to the public. Recently, the County obtained approval from the Province to double the size of the boat launch.

Test for Detriment not Met

[39] The County referred to previous MGB decisions with respect to the test for detriment, and concluded that to find the Bylaw is detrimental to the SV, the Board must be satisfied that the harm to be prevented is both reasonably likely to occur and reasonably likely to have significant impact on the SV. In other words, there must be a probability, not just a possibility, that detriment will occur, and the detriment demonstrated must not be minor or remote. Further, the onus is on the SV to demonstrate that significant detriment is reasonably likely to occur. It is not up to the County to demonstrate otherwise.

[40] In the County's view, the test for detriment was not met for the reasons described below.

The Process of Adopting Bylaw was not Detrimental to the SV

[41] The County contended that the process followed in adopting the bylaw was correct and that the proposed development is consistent with the applicable statutory plans. However, the County took the position that, even if there was some procedural irregularity in the adoption process, which was not admitted, the SV did not demonstrate that the alleged irregularity resulted in detriment to the SV. There was no suggestion that the process followed limited the SV's opportunity to communicate its concerns in any way. In fact, the SV admitted that they had every opportunity to make their concerns known throughout the consultation process.

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Increased Use of Beaches

[42] The County argued that Mr. Romanesky's evidence and opinion regarding potential overuse of the beaches around the SV should be given little or no weight, as it was based on a single visit to the SV.

Traffic Congestion and Parking

[43] The County reiterated the steps that are being taken to address the SV's concerns regarding traffic and parking, but pointed out that the SV provided no studies to support allegations of increased traffic congestion or increased parking on SV roadways. The evidence that was provided was either anecdotal or based on a single visit, which is an insufficient sample.

[44] The County also noted that the only evidence brought forward regarding the potential for increased usage at the boat launch and consequent traffic and parking issues was brought forward by the Developer. According to the Developer, less than 5% of occupants at two resorts without direct lake access owned boats. Given those numbers, it seems unlikely that the residents of the Proposed Development will significantly affect usage of the boat launch and adjacent parking lot.

[45] There was evidence at the hearing that the Developer tried to buy land immediately north of the SV for the overflow parking lot, but the land was not for sale. The County argued that when that land is developed, the County will have the power and authority to have some part of it set aside to ameliorate the parking situation in the SV. The County pointed out that Mr. Van Weelderren, the SV's witness, testified that he could not give a professional opinion that there will be a detrimental effect due to traffic or parking.

[46] The SV's evidence was that parking is already a problem. In accordance with the recommendations of the SLPAS, the County and the SV upgraded the parking at the Sun Haven recreation area. However, only 17 spaces were added rather than the recommended 25 to 30 additional spaces. No evidence was produced to show that the existing problem has anything to do with the Proposed Development. It is not the Developer's responsibility to fix the parking problem in the SV. Rather, the developer's obligation is to work with the County to mitigate any detriment the Proposed Development may cause.

[47] The County argued that its evidence showed the County went to great lengths to identify potential negative affects on adjacent municipalities and to impose conditions on the Developer to address and mitigate those effects.

[48] The County listed the following steps that were taken to address the SV's concerns:

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- In response to the SV's concerns and through negotiations with the Developer, the County reached an agreement that the main access to the Proposed Development would be from Rainy Creek Road rather than Sunbreaker Cove Road. Further, there would be only one main entrance and the other entrance would be for emergency use only.
- Also in response to the SV's concerns, the County worked with the Developer to move construction of some of the amenities from the third and fourth phases to the first and second phases of the Proposed Development. Further, there will be public facilities (parking, a clubhouse, washrooms and ball diamonds) located in the Northwest corner of the Proposed Development that will be available to all members of the public, including the residents of the SV.
- The County negotiated with the Developer for a Municipal Reserve (MR) strip all along Sunbreaker Cove Road. The MR will contain a berm with trees and landscaping so as to minimize views into the RV Park itself.
- The County required the Developer to make a \$2,500 per lot contribution toward improving lake access.
- After a site visit, the County determined that it would be in the best interest of all if the MR was retained on-site with a particular mind being paid to the issue of parking at the boat launch. The County required the Developer to agree to construct an overflow parking area in the MR on the southeast corner.
- The County required that the Developer dedicate MR and construct a regional trail, as envisioned in the SLPAS, along the north and east boundaries of the Proposed Development. The trail will be for the use of both Skyy Country residents and the general public and will connect with other developments as they occur in the future.

[49] In conclusion, the County reiterated that the issue before the MGB is not whether enough studies were done by the County to determine possible detrimental effects on the SV. It is not up to the County to demonstrate that the Proposed Development will not have a detrimental effect. The issue is not whether this is a good or bad development, or what has been done about the boat launch or current parking issues in the SV. It is not whether the right process was followed in passing the bylaw. The issue before the MGB is whether this development is likely to have a significant detrimental impact on the SV. The County submitted that it has substantially addressed the potential detriment by way of the DA, the scaled down concept plan, expanded boat launch and expanded parking.

SUMMARY OF THE DEVELOPER'S POSITION

[50] Mr. L. Dzaman spoke on behalf of the Developer. The Developer described the changes that were made to the draft concept of the Proposed Development in response to concerns raised by the SV and other members of the public. These changes included moving the main entrance, changing the type of lots (from small to larger) and reducing the number of lots (from 667 to 515), the addition of the water park, addition of the overflow parking area and shuttle service,

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addition of the regional trail and more. Over 4,000 trees will be planted on the site of the Proposed Development.

[51] The Proposed Development is a four phase development that could take as many as 20 years to complete, so the increase in the number of residents would be more gradual than the residents of the SV appeared to believe. The Developer also pointed out that the Proposed Development, being a recreational facility, not all of the lots would be occupied at any given time.

[52] The Developer spoke to the management of four resorts: Lakewood Golf Course at Sylvan Lake, Coyote Creek west of Sundre, Raymond Shores at the north end of Gull Lake and Glenniffer Lake Resort along the Red Deer River. Two of those developments are directly on the lake and have excellent access to the lake directly from the resorts. Lakewood is similar to the Proposed Development, being approximately one mile away from the lake. Coyote Creek is near the Red Deer River, but there are no lakes nearby.

[53] All four developments reported that their average occupancy in May, June and September was 20% to 25% on weekdays and 30% to 40% on weekends. In July and August they are occupied at approximately 25% to 30% on weekdays and 50% to 60% on weekends.

[54] Glenniffer Lake Resort reported that 35% or 40% of the occupants owned boats. At Raymond Shores, boat owners numbered 25%. Those are the two resorts with lake access on site. Less than 5% of occupants at Lakewood and Coyote Creek own boats.

[55] The Developer testified that the amenities intended to be provided in the Proposed Development are high quality amenities that will tend to keep the occupants in the development. He compared the proposed water park to the water park in Red Deer, which is well used because it is safe and has a beach and a picnic area. The water park was originally intended to be put in as part of the third or fourth phase but was moved to the first phase due to negotiations with the County.

FINDINGS

[56] Upon hearing and considering the representations and the evidence of the parties shown on Appendix A, and upon having read and considered the documents shown on Appendix B, the MGB finds the facts in the matter to be as follows.

1. No detriment will result to the SV due to the adoption of the bylaw prior to the completion of the Sylvan Lake ASP.
2. The process followed by the County in passing the impugned bylaw was not detrimental to the SV.

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3. No detriment will result to the SV from the alleged incompatibility of the bylaw with other planning documents.
4. The evidence did not demonstrate that significant detriment to the SV is likely to result from the Proposed Development due to increased traffic or increased use of the boat launch.
5. The evidence did not demonstrate that significant detriment to the SV is likely to result from the Proposed Development due to increased usage of the beaches in the vicinity of the SV.

DECISION

The Appeal is dismissed.

It is so ordered.

REASONS

Whether Bylaw Premature

[57] The SV argued that the redistricting bylaw is premature because the County is presently developing a Sylvan Lake ASP, which is the planning document that would guide developments proposed to be located within the area close to the lake. The County responded by saying, in essence, that the guidance provided by the SLMP was sufficient for its purposes.

[58] The MGB notes that an ASP is not a mandatory statutory plan:

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

[59] The SV did not expand upon this argument at the hearing, and it remains unclear how the adoption of the redistricting bylaw prior to the ASP results in detriment to the SV. The MGB finds no detriment in this respect.

Conflict of Bylaw with Strict Requirements of MDP

[60] It appears to the MGB that the SV concentrated the majority of its resources for the appeal in its effort to demonstrate that the County did not follow the correct process in adopting the impugned bylaw as outlined in the MDP. Indeed, the second last sentence in the SV's legal submission states:

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The SV believes it has demonstrated that LC [Lacombe County] has failed to comply with the clear and strict requirements of the MDP and, consequently, the LUB amendment should be found to be ultra vires and struck down.

[61] In a section 690 appeal, the MGB's jurisdiction is limited to amending or repealing provisions of a bylaw found to be detrimental. That an improper process was used in adopting a bylaw does not, in itself, lead to the conclusion that detriment to an adjacent municipality has or will occur. A somewhat similar issue was argued before the MGB in the Sturgeon appeal, in which the MGB remarked:

The Board does not agree with the proposition that simply because a MDP does not conform with the requirements of the Act or the Land Use Policies, detriment must necessarily result.

[62] There must be a connection between the process followed by the adopting municipality and some form of harm suffered by the adjacent municipality. For example, if the process followed by the adopting municipality had the effect of preventing the adjacent municipality from participating in the consultative process or from voicing its concerns with respect to the bylaw, the adjacent municipality might argue that the process itself was detrimental.

[63] In this case, no such allegation was made. In fact, at the hearing the SV candidly admitted that it was invited to participate in the consultative process, that it participated fully, and that the County took corrective action with respect to many of its concerns.

[64] The MGB agrees with the County that the procedure followed in adopting the bylaw, whether valid or not, was not detrimental to the SV. The MGB makes no finding as to the validity of the bylaw. Jurisdiction to declare a bylaw invalid for flawed process is given not to the MGB but to the Alberta Court of Queen's Bench:

Application to the Court of Queen's Bench

536(1) A person may apply by originating notice to the Court of Queen's Bench for

- a) a declaration that a bylaw or resolution is invalid, or*
- b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.*

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

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Procedure

537 *A person who wishes to have a bylaw or resolution declared invalid on the basis that*

- a) *the proceedings prior to the passing of the bylaw or resolution, or*
- b) *the manner of passing the bylaw or resolution does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.*

Validity relating to public participation

538 *Despite section 537, a person may apply at any time*

- a) *for a declaration that a bylaw is invalid if*
 - (i) *the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,*
 - (ii) *the bylaw is required to be advertised and it was not advertised, or*
 - (iii) *a public hearing is required to be held in respect of the bylaw and the public hearing was not held,*
- or*
- b) *for an order requiring a council to pass a bylaw as a result of a vote by the electors.*

Conflict with Sylvan Lake Management Plan

[65] The SV argued that the bylaw was detrimental to the SV because it conflicted with the SLMP. Specifically, the SV alleged that the SLMP stated it would rely on “more site-specific analysis of particular development proposals to determine the level or density of development that is deemed appropriate at any given location.” The SV alleged that no such site specific analysis occurred with respect to the “external” impacts the Proposed Development will have on the SV. There were no submissions demonstrating how the lack of site-specific analyses would result in harm to the SV. Accordingly, the MGB finds no detriment in this regard.

Usage Beyond Capacity of Summer Village Facilities, Beaches and Boat Launch

[66] In order for the MGB to take action in a section 690 appeal, there must be a finding of detriment to the appellant municipality. The meaning of detriment was discussed in the Sturgeon decision as follows:

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The dictionary definition is straightforward enough. According to Webster’s New World Dictionary, “detriment” means “damage, injury or harm” (or) “anything that causes damage or injury.” Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as “nuisance” factors.

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another.”¹ Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth.

[67] The MGB acknowledges that it could be detrimental to a municipality if a development in an adjacent municipality resulted in usage beyond capacity of facilities in the vicinity of the adjacent municipality. However, it is not sufficient simply to assert that such a result is the inevitable result of the location of the Proposed Development in proximity to the SV. To quote once more from the Sturgeon decision:

There is also a functional or evidentiary component to the Board’s ability to direct an effective remedy under s.690. Simply put, **the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment.** Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote. [Emphasis added]

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[68] Having heard the submissions of all the parties, the MGB cannot conclude that the harm alleged by the SV is reasonably likely to occur or that if it occurred, it would significantly impact the SV such that an exercise of the MGB's power under subsection 690(5)(b) is justified. The MGB does not find that the SV established, with the evidence led by it that the Proposed Development will more likely than not result in significant harm to the SV.

[69] The MGB heard from the SV's witness, Mr. Van Weelderren that the TIA done by the County did not address the potential impact of the Skyy residents on the capacity of the parking area or boat launch arising from secondary uses such as recreation. In Mr. Van Weelederren's professional opinion, additional transportation analysis, specifically in the areas of the boat launch and Sunbreaker Cove Road between the Proposed Development and the boat launch, would be needed to determine whether increased traffic would have a detrimental impact on the SV. Unfortunately, the SV did not retain Mr. Van Weelederren's firm to perform the necessary additional transportation analysis and as a result, he could only testify that it had not been done by the County. However, the County is not obliged to disprove the SV's claims of detriment in this appeal. Rather, it is the responsibility of the SV to establish through evidence that significant detriment is likely to occur. This was not done.

[70] Mr. Romanesky, testified that, in his opinion, significant numbers of residents from the Proposed Development will come to the beaches in the vicinity of the SV. Mr. Clark and Ms. Jorgensen testified that parking is a problem in the SV during the summer months that the boat launch is already used to, if not beyond capacity. Ms. Jorgensen stated that illegal parking in the vicinity of the boat launch obstructs SV residents' driveways and makes it difficult for emergency vehicles to access the SV. All were of the opinion that these situations will probably worsen due to the proximity of the Proposed Development to the SV.

[71] The MGB reiterates that these allegations, if established through evidence, might form the basis of a finding of detriment. However, the evidence used to establish these claims must be of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact. As stated in the Sturgeon decision:

A municipality's lawfully adopted planning documents must be respected; reflecting as they do the hopes and aspirations of a community and its citizens, expressed and defined through the grassroots democracy of meetings and public hearings. If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur....

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[72] The evidence provided by the SV in support of its claims of detriment was largely unscientific and/or anecdotal and does not support a finding of detriment with regard to any of the grounds put forward.

No costs to any party.

Dated at the City of Edmonton, in the Province of Alberta, this 26th day of January 2011.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Presiding Officer

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APPENDIX "A"

APPEARANCES

NAME	CAPACITY
C. Davis	Solicitor for the Appellant (Summer Village of Sunbreaker Cove)
B. Romanesky	Witness for the Appellant (Summer Village of Sunbreaker Cove)
E. van Weelderen	Witness for the Appellant (Summer Village of Sunbreaker Cove)
G. Clark	Witness for the Appellant (Summer Village of Sunbreaker Cove)
K. Becker Brookes	Solicitor for the Respondent (Lacombe County)
T. Hager	Witness for the Respondent (Lacombe County)
A. Williams	Witness for the Respondent (Lacombe County)
F. Wilson	Landowner/Developer (Skyy Country)
L. Dzaman	Witness for Landowner/Developer (Skyy Country)
P. Jorgensen	SV Resident
K. Purdy	Observer (Developer)
M. Reiter	Observer
R. Wuetherick	Observer
T. Boets	Observer
B. Carr	Observer
B. Newton	Observer
K. Paul	Observer

APPENDIX "B"

DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO.	ITEM
1A	Brief of the Appellant Summer Village of Sunbreaker Cove
2R	Argument of the Respondent Lacombe County
3A	Rebuttal of the Appellant Summer Village of Sunbreaker Cove
4A	Appellant's Additional Evidence
5R	Response of the Respondent Lacombe County
6A	Appellant's Rebuttal re: Additional Evidence
7L	Letter submitted by Frank Wilson dated July 5, 2010

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8L Letter submitted by Frank Wilson dated August 30, 2010
 9R Respondent's Letter dated September 7, 2010 and excerpt from Development Agreement
 10L Landowner's Map of Proposed Development
 11A Appellant's Site Maps
 12L Results of Landowner's Resort Survey
 13A Appellant's list of remedy options

APPENDIX "C"

LEGISLATION

The MGB considered the following legislation in making its decision in this appeal.

Municipal Government Act

Section 488 of the Act sets out the MGB's jurisdiction to hear intermunicipal disputes.

488(1) The Board has jurisdiction

(j) to decide intermunicipal disputes pursuant to section 690.

Section 690(1) of the Act provides that a municipality may appeal, to the MGB, an allegedly detrimental statutory plan or land use bylaw of an adjacent municipality.

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and

(b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

Section 690(2) and (3) require both the appealing municipality and the other municipality to file statutory declarations regarding mediation.

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690(2) *When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating*

- (a) the reasons why mediation was not possible,*
- (b) that mediation was undertaken and the reasons why it was not successful, or*
- (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.*

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

- (a) the reasons why mediation was not possible, or*
- (b) that mediation was undertaken and the reasons why it was not successful.*

In hearing an intermunicipal dispute, the MGB must hear the appeal and make a decision within certain timelines. These timelines are set out in section 691, which also determines who must be notified of the Appeal, and from whom the MGB is required to hear in making the decision.

691(1) *The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must*

- (a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*
- (b) give a written decision within 30 days after concluding the hearing.*

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

Section 690(4) and (5) provide that a statutory plan under appeal is of no effect from the time the MGB receives the Notice of Appeal until it makes a decision under subsection (5). Subsection (5) requires the MGB to determine if the statutory plan is detrimental to the appealing municipality.

690(4) *When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).*

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

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- (a) *dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) *order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

Section 616 defines terms used in Part 17 of the Act.

616 *In this Part,*

(k) *“land use bylaw” means a bylaw made under Division 5 and a bylaw made under section 27 of the Historical Resources Act;*

(dd) *“statutory plan” means an intermunicipal development plan, a municipal development plan, an area structure plan and an area redevelopment plan adopted by a municipality under Division 4;*

653(4.4) *For the purposes of this section,*

(b) *“conceptual scheme” means a conceptual scheme adopted by the municipality that*

(i) *relates a subdivision application to the future subdivision and development of adjacent areas, and*

(ii) *has been referred to the persons to whom the subdivision authority must send a copy of the complete application for subdivision pursuant to the subdivision and development regulations;*

The Act also sets out requirements for holding public hearings generally and for specific bylaws passed under Part 17:

230(1) *When this or another enactment requires council to hold a public hearing on a proposed bylaw or resolution, the public hearing must be held, unless another enactment specifies otherwise,*

(a) *before second reading of the bylaw, or*

(b) *before council votes on the resolution.*

(2) *If a public hearing is held on a proposed bylaw or resolution, council must conduct the public hearing during a regular or special council meeting.*

(3) *A council may by bylaw establish procedures for public hearings.*

(4) *In the public hearing, council*

(a) *must hear any person, group of persons, or person representing them, who claims to be affected by the proposed bylaw or resolution and who has complied with the procedures outlined by the council, and*

(b) *may hear any other person who wishes to make representations and whom the council agrees to hear.*

(5) *After considering the representations made to it about a proposed bylaw or resolution at a public hearing and after considering any other matter it considers appropriate, the council may*

(a) *pass the bylaw or resolution,*

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- (b) make any amendment to the bylaw or resolution it considers necessary and proceed to pass it without further advertisement or hearing, or*
- (c) defeat the bylaw or resolution.*

(6) The minutes of the council meeting during which a public hearing is held must record the public hearing to the extent directed by the council.

692(1) Before giving second reading to

- (a) a proposed bylaw to adopt an intermunicipal development plan,*
- (b) a proposed bylaw to adopt a municipal development plan,*
- (c) a proposed bylaw to adopt an area structure plan,*
- (d) a proposed bylaw to adopt an area redevelopment plan,*
- (e) a proposed land use bylaw, or*
- (f) a proposed bylaw amending a statutory plan or land use bylaw referred to in clauses (a) to (e),*

a council must hold a public hearing with respect to the proposed bylaw in accordance with section 230 after giving notice of it in accordance with section 606.

TAB 4

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THE MATTER OF THE Municipal Government Act being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN APPEAL brought pursuant to Section 690 of the Act by the Town of Okotoks, respecting the adoption by the Municipal District of Foothills on August 11, 2010 of Bylaw 25/2010, the Wind Walk Area Structure Plan.

BEFORE:

Members:

D. Thomas, Presiding Officer
 T. Golden, Member
 R. Irwin, Member
 P. Mowbrey, Member
 M. Vercillo, Member

Case Managers:

K. Lau
 C. Miller Reade
 D. Weber (Assistant)

This is the decision of the Municipal Government Board (MGB) from a hearing held June 6 to June 16, 2011, regarding an intermunicipal dispute respecting a claim of detriment by the Town of Okotoks (Town) after the adoption by the Municipal District of Foothills (MD) of the Wind Walk Area Structure Plan (ASP).

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EXECUTIVE SUMMARY AND OVERVIEW

Introduction

[1] This hearing concerns a dispute between the MD of Foothills and the Town of Okotoks over the Wind Walk Area Structure Plan (ASP). This ASP contemplates urban density development on a quarter section adjacent to the Town of Okotoks south of the Highway 7. The Town believed the ASP would have a detrimental effect upon it and appealed the ASP to the MGB under s. 690 of the Act. That section authorizes the MGB to repeal or amend a bylaw which, in its opinion, has or may have a detrimental effect on an adjacent municipality. In this case, the Board found the Town had presented insufficient evidence to demonstrate a reasonable likelihood of significant detriment. Accordingly, the MGB declined to repeal the ASP.

Issues and Arguments before the MGB

[2] At the merit hearing, the Town organized its case into nine issues where it argued the ASP has or may have a detrimental effect. These issues are discussed individually in detail in the body of the order, but can be grouped into the following three categories.

[3] First, the Town argued the ASP contravenes or is inconsistent with previous agreements between the Town and MD, including the Foothills – Okotoks Intermunicipal Development Plan (IDP) and recently signed Joint Planning Agreement (JPA). The following were alleged to be examples of detriment owing to inconsistency:

- The ASP contemplates urban development, whereas the IDP and JPA suggest that only traditional low density, rural style development will occur in the MD. According to the Town, this inconsistency creates uncertainty about planning in the region and constitutes detriment in its own right.
- By not following the planning documents consistently, the ASP reduces the documents' effectiveness and that of the Town's own MDP (the Legacy Plan) which adopted the IDP assumptions.
- The dispute resolution process within the IDP was not followed, leaving the Town with insufficient opportunity to resolve inconsistencies or discuss options prior to the ASP's adoption.

[4] Second, the Town submitted that the cumulative effect of the proposed ASP would place a strain on Town's infrastructure. Three distinct aspects were raised in this connection, including water resources (water, wastewater, storm water), transportation (congestion, and cost of additional infrastructure) and facilities and services (such as libraries, fire response, and community services).

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[5] Third, the Town maintained that the bylaw that established the ASP was not properly passed and was therefore invalid.

[6] The MD of Foothills and the Landowner both opposed the appeal, arguing that the Town has not shown detriment. In their submission, the ASP contemplates sustainable and responsible development which is both consistent with the existing and proposed uses for adjacent lands, and the IDP and JPA. The IDP and JPA anticipate growth in the area, and the ASP merely accelerates the process for a single quarter section. Contrary to the Town's assertions, the parties followed the dispute resolution process as outlined in the IDP and meetings were held with the Town to allow for its input.

[7] In addition, the MD and Landowner argued that the Town's concerns about water, wastewater and storm water are dealt with by measures in the proposal and, in any event, are matters more properly dealt with by Alberta Environment and the Alberta Environmental Appeals Board. Any need to upgrade infrastructure or services will be manageable and can be dealt with by way of agreements, partnerships and funding arrangements. Finally, both argued that the ASP's alleged invalidity is a matter for the Court of Queen's Bench.

Board Findings

[8] While there were some inconsistencies between the ASP and the IDP, the Town failed to show that this inconsistency created a reasonable likelihood of significant detriment to the Town. The ASP is a clear and comprehensive plan, and the land uses it contemplates are consistent with those occurring or proposed for adjacent lands in both municipalities.

[9] The addition of 1200 people residing in Wind Walk will inevitably have some impact on the Town's infrastructure if ultimately developed. However, any detrimental financial impact on the Town can be eliminated through the creation or expansion of existing cost sharing agreements. Cost sharing agreements have been used previously for other proposals near the Town. Other possible impacts can also be mitigated by cooperation between the Town, MD and the Landowner, who have a record of good communication concerning joint initiatives.

[10] Water, storm water and wastewater supply and management were three grounds initially raised as being beyond the scope of an intermunicipal dispute. While some issues relating to water are clearly for Alberta Environment and the Alberta Environmental Appeals Board, the potential for water treatment and servicing are also planning matters properly before the MGB.

[11] In this case, the potable water plan proposed credible sources of water which do not appear to have a significant effect on the Town's water supply. Furthermore the ASP includes a provision to ensure that development or subdivision would only proceed with an appropriate water source in place. The storm water management plan proposed by the Landowner

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incorporates mitigating measures to preserve water quality and avoid additional run off which might otherwise strain the Town's infrastructure. The Landowner also proposed options for off-site wastewater treatment that address the Town's original concerns about contamination through the potential mixing of waste and storm water.

[12] As with water infrastructure, transportation and fire services have been previously addressed by cost sharing agreements and partnerships between the two municipalities. The MGB expects these to continue. The Traffic Impact Assessment (TIA) prepared by the Landowner showed that there would be some impact, but the impacts would not have a significant effect on wait times or traffic flows in Okotoks. Response times for fire services in Okotoks will not be significantly impacted by additional population in Wind Walk. Any impacts that do occur can be resolved through agreements.

[13] With respect to community services and libraries, these have been previously managed by agreements between the Town and MD. The MGB expects these agreements and partnerships will continue to occur. Just as the MD residents use services within the Town, there are recreation facilities and other services located within the MD which are used by Town residents. Libraries, in particular, are provided through a regional library system to which both municipalities belong.

[14] With respect to the allegation that the bylaw was passed illegally, an application has already been filed with the Court of Queen's Bench and the MGB found that matter is better addressed by the Courts.

[15] As the MGB has previously observed, the amendment or repeal of municipal bylaws is an invasive remedy amounting to "legislative surgery". Such a remedy is appropriate only in cases where the harm to forestalled is both reasonably likely to occur and to have a significant impact on the appellant municipality should it occur. In this case, insufficient evidence was put forward to establish these conditions and the MGB declined to repeal the bylaw as requested by the Town.

PART A - BACKGROUND

1. Terms used in this Order

[16] Many disciplines rely on the use of jargon and acronyms for ease of handling common but lengthy discipline-specific terms. Alberta planning practice is no different, yet inevitably the use of acronyms distances the general reader from the subject. The MGB has compiled the key terms and acronyms used in this order in a convenient list for general reference.

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ASP – the Wind Walk Area Structure Plan, enacted by the Municipal District of Foothills as Bylaw 25/2010.

IDP – Intermunicipal Development Plan

IMC – Intermunicipal Committee

JDA – Joint Development Area

JPA – Joint Planning Agreement

JPI – Joint Planning Initiative

The Landowner – Alberta Foothills Properties Ltd.

The Legacy Plan – the Town of Okotoks' Municipal Development Plan

LUB – Land Use Bylaw

LUF – Land Use Framework

The MD – the Municipal District of Foothills

MDP – Municipal Development Plan

MTP – Master Transportation Plan of Okotoks.

PLUP – (or **LUP**) Provincial Land Use Plan

SSRB – South Saskatchewan River Basin

TIA – Traffic Impact Assessment

The Town – the Town of Okotoks

UPA – Units Per Acre

2. The ASP Approval Process

[12] The ASP contemplates development of 458 residential units, 80,300 square feet of commercial space, and a range of open space lands on 145 acres of undeveloped land. The lands are located immediately south of Highway 7, in the MD of Foothills. Highway 7 forms the south boundary of the Town of Okotoks. Adjacent to these lands is a previously approved rural commercial area called Gold Medal Development. Directly east of the parcel is an undeveloped quarter section, which lies between WindWalk and the Highway 2A Industrial Area Structure Plan.

[13] The chronology of events for this ASP is as follows:

- a. The site design for the ASP was prepared through a five-day public design charrette. The charrette was held in the Town from May 23, 2008 to May 27, 2008.
- b. In April 2009, the MD circulated the ASP to the Town. Pursuant to s. 3.1.4 of the IDP, the MD gave the Town 30 days to respond to the ASP before final approval. The Town requested an extension of time to provide a response, which the MD granted.
- c. On July 14, 2009, the Town requested that the MD postpone the ASP referral until the Joint Planning Initiative (JPI) between the MD and Town was completed. In that same month, the MD sent a letter to the Town advising that the ASP application would not be delayed pending completion of the JPI. The MD further offered to extend the 30-day time period for response to circulation until August 30, 2009.

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- d. On August 31, 2009, Town Council passed the following motion: “That the MD of Foothills be advised that the Town of Okotoks is opposed to the Wind Walk proposals...” The Town also submitted a letter of concern respecting the ASP application to the MD. The letter stated that the Town was opposed to the development.
- e. On September 3, 2009, the MD held a public hearing for the ASP. The Town attended, and advised the MD that the Town was opposed to the development.
- f. On January 18, 2010, the Joint Planning Agreement (JPA) was adopted by the MD and the Town.
- g. On January 26, 2010, the MD passed a motion to reopen the public hearing for the ASP. Notice was sent to the Town to notify them of the February 11, 2010 public hearing.
- h. On February 8, 2010, the Town requested the MD close the public hearing and repeal the ASP. The following day the Town submitted a letter of concern to the MD.
- i. On February 11, 2010, the second public hearing was held for the ASP and the February 9, 2010 letter of concern was noted by the MD.
- j. On February 24, 2010, an intermunicipal council meeting took place. The MD advised the Town that 1st reading had been given to the bylaw to adopt the ASP.
- k. On July 15, 2010, three motions respecting the ASP were passed by MD Council. These were that:
 - 2nd and 3rd reading of Bylaw 25/2010 (ASP) would be tabled until the MD received a formal response from the Town;
 - MD staff be authorized to send a letter to the Town requesting clarification of the Town’s position respecting surface water supply; and
 - The ASP would be on the agenda for the Council meeting scheduled for August 11, 2010.
- l. On August 9, 2010, Town Council passed the following motions:
 - The Town advises the MD that it does not support Phase I of the Wind Walk development prior to resolution of the Town’s concerns;
 - That Town Administration {be directed} to appeal the ASP to the MGB.
- m. On August 10, 2010, the Town sent an e-mail to the MD advising of the August 9, 2010 motions passed by the Town, and renewing its opposition to the ASP.
- n. On August 11, 2010, the MD Council gave 2nd and 3rd reading to Bylaw 25/2010.
- o. On August 12, 2010, Coreena Carr, Planner for the MD, confirmed that the MD Council had given 2nd and 3rd reading to the ASP on August 11, 2010 in an e-mail to Jeff Laurier, Senior Long Range Planner for the Town.

3. The Town’s Notice of Appeal

[14] Section 690(1) of the Act permits a municipality to file an appeal with the MGB if it is of the opinion that a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it.

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[15] The MGB received a notice of appeal of Bylaw 25/2010, a bylaw to adopt the Wind Walk ASP on September 9, 2010. The notice of appeal enumerated thirteen grounds for the appeal, which were written as follows:

1. The ASP facilitates premature conversion and fragmentation of a large continuous agricultural land holding and is therefore not consistent with the Provincial Land Use Policies (PLUP), the Land Use Framework (LUF) and the Foothills/Okotoks IDP [Sections 6.1(2) & (3) – LUP; Strategy 3 & 5 –LUF; Section 2.1.1, 2.1.2(1) IDP].
2. The ASP fails to take a cumulative effects approach to growth management particularly as it relates to the environment [LUF Strategy 3].
3. The ASP conflicts with the policy direction of the LUP and IDP with respect to potential conflicts with surrounding agricultural activities particularly the existing agricultural activity on the subject property [LUP Sections 6.1(1), (4); IDP Sections 2.1.1, 2.1.2(1)].
4. The ASP conflicts with Provincial direction that adjoining municipalities plan future land uses cooperatively and in a manner that respects the interests of both municipalities [LUP Sections 3.0(1) & (2); LUF Strategies 1 & 5].
5. Contrary to the IDP, Foothills passed the ASP without amending the IDP to allow residential development in this location. The IDP requires an amendment prior to Foothills proceeding with the higher-density residential development proposed in the ASP [MGA Sections 631(2)(a)(i), (ii); IDP Sections 1.4.1, 2.2.1, 2.2.2(4)].
6. Foothills has not secured a potable water license for the Wind Walk ASP. Foothills may allow a portion of the development to proceed utilizing a ground water supply and the remainder to proceed using a surface supply, neither of which have received preliminary or final approval from Alberta Environment [IDP Sections 2.2.2(1)(d),(f),(h); 2.2.2(4)(b)(c),(e)].
7. The proposed development may have a detrimental impact on drainage in the Sheep River [IDP Sections 2.2.1, 2.2.2(1)(d),(f),(h); 2.2.2(4)(b),(c),(e)].
8. The ASP contravenes the *Subdivision and Development Regulations* passed under the Act, as it includes a proposed wastewater treatment plant within 300 metres of proposed residential uses within the ASP and existing residential uses within the Town of Okotoks [Subdivision and Development Regulation, Alta. Reg. 43/2002, Part 2, Section 12(2)].

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9. There will be negative impacts on the regional transportation system. Foothills did not take into consideration the impacts of the ASP development on the regional transportation system as required under Section 2.2.2(1)(e) of the IDP [IDP Sections 2.2.1(e); 1.4.5; 2.2.2(1)(d)(e); 2.2.2(4)(b)].
10. The proposed development will have a detrimental impact on the provision of protective, recreational, social and cultural services by the Town [LUF Strategy 3; IDP Sections 1.4.4, 2.2.2(1)(h)].
11. Foothills approved the ASP without complying with the entire Dispute Resolution process set out in Section 3.3 of the IDP.
12. The proposed development violates the Joint Planning Agreement (“JPA”) adopted by the Town and the MD, specifically through establishing an urban settlement pattern rather than a distinct rural settlement pattern that is inconsistent with the historical growth rate of the lands surrounding Okotoks [JPA Sections 2.1(2)(4), 3.1(1),(2),(4),(6)].
13. Letters sent by Okotoks to the MD of Foothills express concern regarding the Wind Walk ASP.

[16] Pursuant to section 690(1)(a), a statutory declaration, signed by the Town’s Municipal Manager (Mr. Richard Quail) was provided. The statutory declaration stated that, consistent with the IDP passed by both municipalities, the Town had attempted to resolve the dispute through intermunicipal committee meetings.

[17] The MD of Foothills responded on September 28, 2010 with a statutory declaration, as required by section 690(3), signed by the Municipal Manager (Mr. Harry Riva Cambrin). The document stated that the two municipalities had been in discussions on the matter for two years and that attempts to negotiate a mutually satisfying solution had occurred both prior to the public hearing and further to the closing of the public hearing.

[18] The MGB sent notices of the appeal to all affected landowners and scheduled the merit hearing for June 6 to 16, 2011, pursuant to section 691 of the Act. This decision was communicated to the parties and confirmed in MGB Decision Letter DL 008/11, later amended by Board Order: MGB 021/11.

[19] On May 26, 2011, the developer amended its plan for wastewater disposal. The amended development plan proposed a wastewater pipeline from the ASP to the Town of High River’s wastewater treatment facility. The pipeline represented an alternative to the originally proposed and contested on-site wastewater facility.

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4. Intermunicipal Planning Documents

Intermunicipal Development Plan

[20] IDPs are statutory plans under the Act. Section 631(1) permits two or more councils to pass a bylaw to adopt an IDP pertaining to those areas of land lying within the boundaries of the municipalities, as they consider necessary. Under section 631(2)(a), an IDP may provide for the future land use within the area, the manner of and the proposals for future development in the area, and provisions relating to the administration of the plan. Pursuant to subsection (2)(b), an IDP must include a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan, a procedure to be used to amend or repeal the plan, and provisions relating to the administration of the plan.

[21] In 1998, the administrations of both municipalities worked together on the “Town of Okotoks/M.D. of Foothills Intermunicipal Development Plan.” The IDP was approved by Town Council September 21, 1998, through Bylaw #51-98, and by MD Council September 24, 1998, through Bylaw 139/98. The IDP contains two parts: Statutory Plan Policies and Background. Part 1 includes a map of the areas covered by the IDP, and sets out the goals and policies for agriculture, residential, special areas (e.g. intermunicipal gateways), commercial industrial and institutional development, open space, transportation, utilities and servicing, plan implementation, plan administration, intermunicipal dispute resolution, and future growth and annexation. Part 2 provides the statutory and administrative background of the plan. This part includes the required element of the plan, the dispute resolution process, the adoption, amendment and repeal protocols, and other administrative procedures.

Joint Planning Agreement

[22] After disputes were filed on other area structure plans in the intermunicipal fringe, the municipalities embarked on a Joint Planning Initiative in 2009. On January 18, 2010, both councils adopted the “MD of Foothills and Town of Okotoks Joint Planning Agreement” (JPA). The JPA has five parts: Agreement Framework, Development and Growth Management, Preconditions to Proceed, Next Steps, and Termination of Agreement. The attached map entitled the “Joint Development Management Strategy Area” shows the area covered by the agreement, the boundaries of the IDP, and area structure plans or concept plans that are either in process or adopted.

5. History of Development in the Fringe Area.

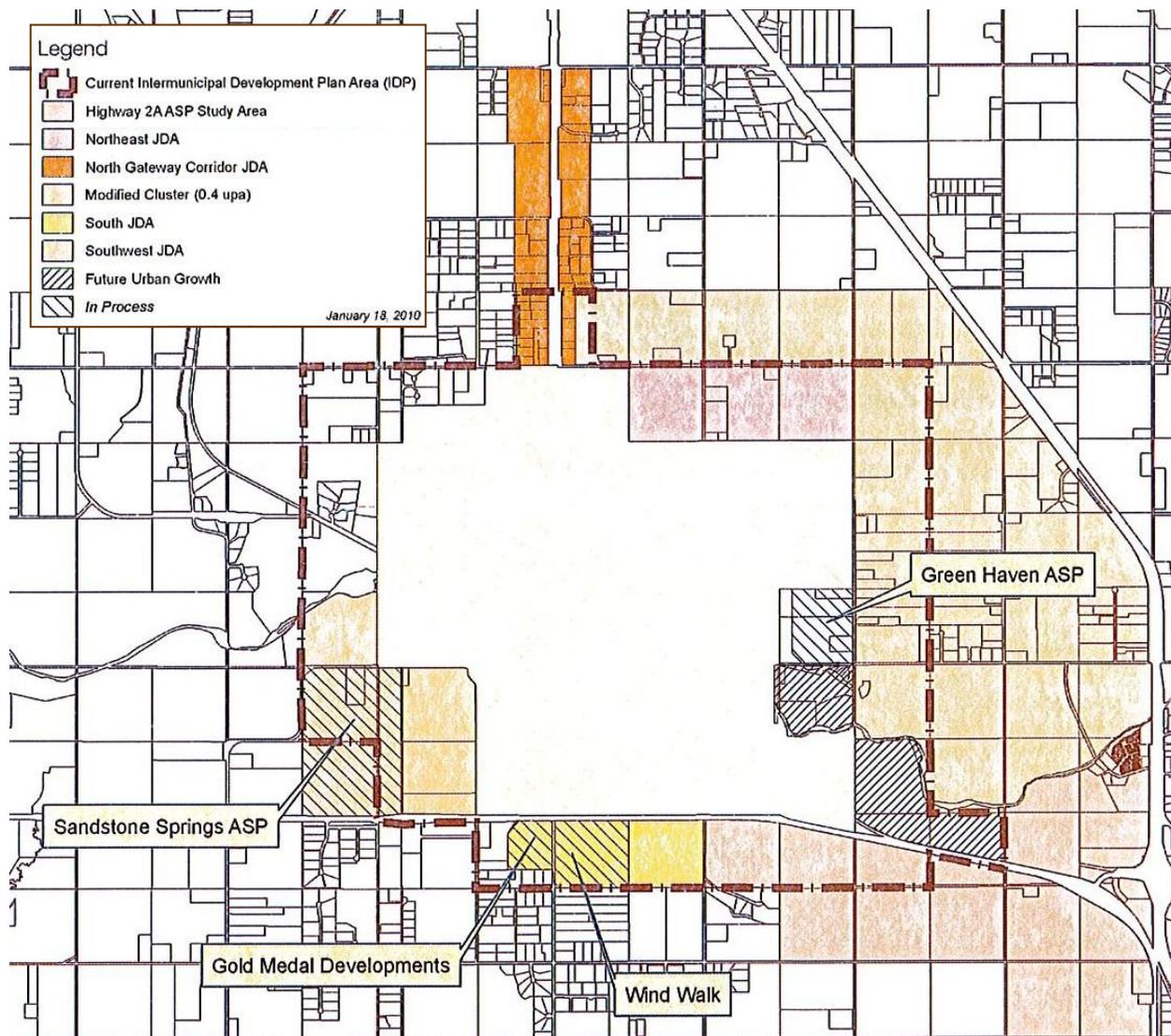
[23] At the time the Wind Walk ASP was passed, five other developments were planned and in various stages of development within the Town and MD’s intermunicipal fringe area as designated in the IDP. They are as follows: Green Haven, Sandstone Springs, Gold Medal, Highway 2A Industrial Area, and the North Gateway Corridor. The Green Haven and Sandstone

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Springs developments were designated for residential use with their associated ASPs proposing density levels of 0.7 and 0.72 units per acre respectively. The Gold Medal, Highway 2A Industrial Area, and North Gateway Corridor developments were designated as rural commercial, industrial, and mixed commercial/ industrial areas, respectively. Of the three, only the latter had an associated ASP. The Green Haven, Sandstone Springs, and Gold Medal developments did not conform to the density requirements of the IDP. Notwithstanding this failure to conform, the Town did not request an amendment to the IDP.

Exhibit A Map Illustrating the Abridged Joint Development Management Strategy Area



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6. Area Structure Plans

[24] Under section 633(1), a council may, by bylaw, adopt an area structure plan in order to provide a framework for subdivision and/or development of land. Section 633(2) requires that area structure plans describe the sequence of development proposed, the land uses proposed, the density of population proposed, the general location of major transportation routes and public utilities, and any other matters that council considers necessary for the area.

PART B – THE MEANING OF DETRIMENT

[25] Pursuant to section 690(5), if the MGB receives a notice of appeal and a statutory declaration under subsection (1)(a), it must, subject to any *Alberta Land Stewardship Act*, SA 2009, c A-26.8, regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal. The MGB may dismiss the appeal if it decides that the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

[26] Detriment is not defined in the Act or its regulations, but the MGB has previously considered its meaning and the evidential burden that must be met by initiating parties. Although not bound by its previous decisions, the MGB finds it useful, in some circumstances, to use established meanings and thresholds. For s. 690 appeals, *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. County of Sturgeon*, MGB 77/98 [*Sturgeon*] contains a thorough discussion of detriment.

[27] The meaning of detriment was discussed in the *Sturgeon* decision as follows:

The dictionary definition is straightforward enough. According to Webster’s New World Dictionary, “detriment” means “damage, injury or harm” (or) “anything that causes damage or injury.” This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as “nuisance” factors (page 44/84).

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But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another”. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them (page 44/84).

[28] The *Sturgeon* decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both **reasonably likely to occur**, and to have a **significant impact** on the appellant municipality should it occur (page 48/84; emphasis added).

There is also a functional or evidentiary component to the Board’s ability to direct an effective remedy under s.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84).

[29] Similar points were made in the MGB’s recent decision in *Sunbreaker Cove v. Lacombe County*, MGB 007/11 [*Sunbreaker Cove*], with the MGB observing that there must be

evidence...of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71).

[30] Generally, the onus rests with the initiating party to show a detrimental effect rather than with the respondent to refute the allegation of detriment. In this case, the MGB weighed the evidence and submissions of the parties to determine if harm was reasonably likely to occur and

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if it would have a significant impact on the Town of Okotoks. Each of the issues were measured against this test.

PART C - PRELIMINARY MATTERS

Part I - Preliminary Hearings

[31] The MGB scheduled a preliminary hearing for October 8, 2010 to set dates for the exchange of materials. At that time, the MD questioned whether the following three grounds advanced in the original Notice of Appeal were properly before the Board, or whether they should be decided by the Alberta Environmental Appeals Board:

6. Foothills has not secured a potable water license for the Wind Walk ASP. Foothills may allow a portion of the development to proceed utilizing a ground water supply and the remainder to proceed using a surface supply, neither of which have received preliminary or final approval from Alberta Environment [IDP Sections 2.2.2(1)(d),(f),(h); 2.2.2(4)(b)(c),(e)].

7. The proposed development may have a detrimental impact on drainage in the Sheep River [IDP Sections 2.2.1, 2.2.2(1)(d),(f),(h); 2.2.2(4)(b),(c),(e)].

8. The ASP is in contravention of the MGA Subdivision and Development Regulations, as it includes a proposed wastewater treatment plant within 300 metres of proposed residential uses within the ASP and existing residential uses within the Town of Okotoks [Subdivision and Development Regulation, Alta. Reg. 43/2002, Part 2, Section 12(2)].

[32] For its part, the Landowner argued that several of the issues raised in the Town's Notice of Appeal relate to enforcement of the JPA (i.e. contract law) and, therefore, fall outside the scope of a section 690 appeal.

[33] These questions became topics for a second preliminary hearing on December 6, 2010 (and were raised once again at the beginning of the merit hearing). As explained fully in MGB 005/11, the MGB found that evidence concerning Grounds 6, 7 and 8 as well as evidence concerning compliance with the JPA could be relevant to the issue of detriment contemplated by section 690; therefore, it declined to rule out such evidence at that stage in the proceedings. However, the parties remained free to ask the Board to refuse to hear certain evidence as it was introduced if it appeared to be offered in support of a determination more properly made by the courts or the Environmental Appeals Board.

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Part II - Adjournment Request

Town's Position

[34] At the beginning of the merit hearing, the Town requested an adjournment to give its experts additional time to review and comment on reports provided by the MD and Landowner. These reports include the MD's amended water supply plan and wastewater management plan, which now contemplate involving High River to help with the necessary arrangements. They also include the Landowner's finalized Traffic Impact Assessment (TIA). While the MD's amended reports were exchanged on May 26, 2010, the Town only received the TIA the day before this hearing.

[35] In addition to these difficulties, the Landowner's "will say" statements were not detailed enough to give an accurate idea of the intended evidence; therefore, in the event the adjournment application was unsuccessful, the Town requested the Landowner be ordered to provide amended and more detailed will say statements.

MD's and Landowner's Position

[36] The MD and Landowner both opposed the adjournment request. They noted that the appeal had suspended the ASP and frozen all development. Nine months had elapsed since the appeal was launched and nearly ten since the passing of the ASP. Further delay would amount to a de facto win for the Town and could jeopardize financing for the developer.

[37] The MD and Landowner did not agree that the reports in question should come as a surprise to the Town. Water supply, water treatment and traffic have been subjects of discussion between the parties for many months and the ASP itself refers to the possibility of sourcing water from High River. Further, the suggestion that wastewater be processed in High River should not concern Okotoks greatly or require extensive analysis.

[38] The MD and Landowner expressed surprise that the Town had not submitted its own independent expert reports concerning difficulties with transportation and utilities to support its claim of detriment. In their view, the Town should have begun to procure expert reports in February, when its (former) counsel indicated such material would be gathered and presented.

[39] With respect to the TIA, some parts are not relevant to this appeal, since the Landowner commissioned it to fulfill the MD's approval conditions for the ASP. Also, the Landowner had expected the Town to undertake traffic counts to support its argument regarding detriment, as its former counsel indicated it would. Upon learning no such work had been undertaken, the Landowner commissioned the TIA to include traffic counts on relevant routes in Okotoks. It disclosed the traffic count numbers on its filing date, since these were available. The full report followed as soon as it was completed.

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Findings - Preliminary Issue

- The date of these hearings was established at the request of the Town to allow it to obtain reports.
- All parties had their materials prepared and the witnesses available to proceed.

Decision and Reasons - Preliminary Issue

[40] The Board's Procedure Guide contemplates adjournments in appropriate circumstances, including "where it would be just and practical to do so". In this case, the MGB weighed prejudice to the Landowner and MD that would result from further delay and disruption of the hearing schedule against potential impairment of the Town's ability to understand and answer the case against it.

[41] With these factors in mind, the Board concluded that the most just and practical process would be for the Landowner to provide detailed "will says" by the following morning, and to indicate the portions of the TIA to which its traffic expert would speak. In addition, the Board requested the Landowner to rearrange its witnesses so that the Town would have the maximum possible opportunity to review the relevant portions of the TIA. If these measures proved insufficient, the Town remained free to raise any concerns about its ability to respond once the Landowner finally presented its witness.

[42] The Board adopted a similar process to deal with the reports about water and wastewater; that is, it ordered the hearing to proceed, but left the Town free to point out anything at a future stage in the proceedings that called for an adjournment or for an opportunity to make additional submissions. In this way, the hearing proceeded with minimal disruption, but still allowed the Town a full opportunity to understand and respond to all of the evidence.

PART D - NONSUIT APPLICATION

[43] Having heard the Town's presentation and one of the MD's witnesses, the Landowner applied to have the appeal summarily dismissed on the grounds that the Town had not proved detriment as required by section 690.

[44] After hearing from the parties, the Board concluded that the Town had presented some evidence that, if believed and left uncontradicted, could potentially lead to a finding of detriment. Therefore, the Board dismissed the nonsuit application and proceeded to hear the balance of the evidence from the MD and the Landowner.

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PART E – ISSUES UNDER APPEAL

[45] The Town submitted a list of remaining issues in May 2011 that were later argued before the Board. The list articulated by the Town is as follows (omitting some of the grounds that appeared on the original Notice of Appeal):

1. Does the Wind Walk ASP contravene the express terms of the IDP?
 - a. If so, does contravention of the IDP have a detrimental effect on the Town?
2. Does the Wind Walk ASP contravene the express terms of the JPA?
 - a. If so, does contravention of the JPA have a detrimental effect on the Town?
3. Does the passing of the Wind Walk ASP cause planning uncertainty for the Town?
 - a. If so, is the planning uncertainty detrimental to the Town?
4. Does the ASP's proposed potable water plan pose a detriment to the Town?
 - a. Does the ASP's proposed water plan have a detrimental effect on the Town's water usage and availability?
 - b. Does the ASP's proposed water plan have a detrimental effect on the Town's ability to secure alternative water licenses?
5. Does the Wind Walk ASP, and the corresponding influx of population on the Town's boundary, have a detrimental effect on the Town with respect to transportation infrastructure and planning?
 - a. Does the ASP create undue and unplanned stress on existing roadways within the Town?
 - b. Does the ASP generate unanticipated and premature capital expenditures for the Town?
6. Does the ASP's storm water drainage plan pose a detriment to the Town?
7. Does the Wind Walk ASP, and the corresponding increase of population on the Town's boundary, have a detrimental effect on the Town's community services?
8. Does the ASP's amended wastewater plan have a detrimental effect on the Town?
9. Was the Wind Walk ASP passed illegally?
 - a. If so, does the illegality have a detrimental effect on the Town?

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ISSUE 1: Does the ASP contravene the express terms of the Intermunicipal Development Plan and thereby cause detriment to the Town?

[46] As noted earlier, the Foothills-Okotoks IDP contains policies pertaining to residential, commercial and industrial land as well as provisions governing referrals and dispute resolution. It also contains policies to discourage premature use of agricultural land. The Town argued that the ASP contravenes all of these policies, thus causing detriment. For ease of reading, this section has been split into four sub-issues, reflecting the major points of argument in the Town's submission: residential, commercial, agricultural preservation and dispute resolution. Each will be discussed separately.

Sub-issue A: In Respect to Residential Development?

Town's position - Residential development

[47] Mr. Steven Hanhart, Planner for the Town of Okotoks provided evidence on this matter. The IDP establishes an agreement that country residential development is to take place in the County and urban residential development is to occur in the Town. The Wind Walk ASP contemplates a dense urban development within the MD and thus violates the IDP. More specifically, the Town pointed to section 2.2 of the IDP, which it said is violated by the scale and type of development proposed in the ASP.

[48] Section 2.2.1 of the IDP indicates that:

The residential policies contained in this Intermunicipal Development Plan are intended to:

1. accommodate the forms of residential development within the Plan Area which have been agreed to for both respective municipalities, and
2. establish servicing limits for common municipal services (e.g. water, sanitary sewer).

[49] Section 2.2.2 of the IDP defines the form of residential development that is to take place within the MD under the heading Country Residential Development Policies:

1. Rural lands beyond current Town boundaries and Urban Growth Areas may further develop for country residential use according to the country residential policies of the M.D. of Foothills and this Intermunicipal Development Plan.
2. Country residential areas beyond current Town Boundaries and Urban Growth Areas will not be incorporated into the Town. Subdivision applications within designated areas of existing country residential development must address ultimate servicing requirements (e.g. water, sanitary).

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[50] The ASP lands fall beyond the current Town boundaries and Urban Growth Areas, where the IDP contemplates Country Residential development. It is evident that the type, scale, and density of development being proposed in the ASP does not meet the definition of country residential. Mr. Hanhart argued that servicing requirements were not fully established at the time of the ASP. In addition, the style of servicing has changed from strictly onsite servicing to a mixture of on- and off-site services, and most recently servicing appears to be coming from the Town of High River through an extension of services to the Aldersyde area.

[51] Mr. Hanhart noted section 2.2.4 defines the form of residential development that is to take place within the Town under the heading “Urban Residential Development Policies”:

2. Urban residential development within the Plan Area and under the jurisdiction of The Town of Okotoks shall be approved subject to the following:
 - a. conformity to Town policies affecting residential development;
 - b. prior approval of an area structure plan or community plan;
 - c. consideration of impacts on adjacent land uses within the M.D. of Foothills (i.e. applicants may be required to address impacts on lands within the M.D. of Foothills);
 - d. consideration of impacts on regional and intermunicipal transportation systems (i.e., the traffic impacts that development may have within the M.D. of Foothills);
 - e. consideration of environmental impacts (e.g., water quality, soil stability and natural areas); and
 - f. appropriate intermunicipal referral and consultation as provided for under section 3.1 of this Intermunicipal Development Plan.

[52] The ASP proposes an urban level of development in the MD, which is not contemplated by the IDP. Mr. Hanhart explained that density is a clear indicator as to whether a development can be characterized as either rural or urban. Even though the MD has been transitioning towards “smarter” rural development strategies, which have been generally accepted by the Town, the newer form of country residential development taking place in the MD remains clearly rural in character with dramatically lower densities than ASP’s proposed density of 3.27 units per acre (UPA).

[53] The Town concluded that the IDP makes no provision for urban style residential development within the MD portion of the plan area and that the evidence before the MGB clearly demonstrates that the ASP is not a country residential use as mandated by the terms of the IDP.

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MD's Position - Residential Development

[54] Mr. Harry Riva Cambrin, who is the Chief Administrative Officer and Director of Planning for the MD, submitted that the language used in the IDP reflects the residential developments at the time of its adoption and does not contemplate or preclude developments such as contemplated in the ASP. The MD further stated that the ASP represents an evolution in its planning in that the ASP contemplates higher densities to allow for less consumption of agricultural land, which ultimately preserves natural capital.

[55] In its written argument, the MD argued that the IDP does not require an amendment for the ASP, because the IDP is silent on the issue of high density residential development being located in the MD. Both Mr. Riva Cambrin and the Municipal Planner, Ms. Heather Hemingway cited section 2.2.1 and 2.2.2(4) as describing the type of residential development that was within the municipalities in 1998, rather than dictating that those forms of development will be the only forms allowed. There are no policies in the IDP which prevent the MD from pursuing higher density residential development. Section 2.2.2(5) contemplates amendment of the IDP when new uses or significant changes in density or area are proposed for an existing ASP. Wind Walk does not fall into either of these categories.

[56] The MD further noted that while the Town now objects to the ASP based on its perceived contravention of the IDP, it did not object to three other proposed ASPs on similar grounds. These ASPs are adjacent to the Town (Green Haven ASP (1.32 UPA) on the east side of the Town, the Sandstone ASP (1.4 UPA) located on the west side of the Town, or the Gold Medal subdivision immediately to the west of the Wind Walk site). These ASPs were not subjects of IDP amendments and were resolved using servicing agreements.

[57] No parties dispute that country residential development, at the densities reflected in the 1998 IDP, is neither sustainable nor supportable given the 1996 Provincial Land Use Policies and the more recent Land-use Framework. Both encourage municipalities to increase densities in order to reduce the human footprint on the land. The MD emphasized that this sentiment is reflected in its MDP (adopted in 2010), and in the ASP.

[58] Ms. Hemingway specifically noted that its MDP contemplates that the majority of new development will be “communally serviced, compact, mixed use communities planned for the perspective of environmental social and economic sustainability.” In the MD’s view, the IDP does not contain any policies which prohibit the type of development contemplated in the ASP.

Landowner's Position - Residential Development

[59] The Landowner disputed the Town’s argument that the IDP requires country residential development on the subject site. The Landowner submitted that the IDP does not prohibit other forms of development. Two more recent plans, the MD of Foothills’ MDP and the Calgary

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Metropolitan Plan, have described country residential development as unsustainable. The IDP should not be interpreted to mandate an unsustainable form of development. While the “Urban Growth Areas” designated in the IDP do not include the subject parcel, the IDP does not prohibit urban growth in other areas.

MGB Findings - Residential

- Although the urban nature of the ASP is not contemplated in the IDP, there is no detriment.

MGB Reasons - Residential

[60] As noted by the Town, the IDP contemplates country residential development in the MD under section 2.2.1 and urban development in the Town under section 2.2.2. There are repeated references to the MD being associated with and limited to country residential development including:

2.2.2 “Rural land beyond current Town boundaries and Urban Growth Areas may further develop for country residential use according to country residential policies of the M.D. of Foothills and this Intermunicipal Development Plan.”

[61] The MD argued that because the IDP only mentions country residential and does not specifically exclude other forms of residential development, it does not prevent urban development within the MD. The MGB does not find this argument convincing. The fact that there are no provisions in the IDP for urban development suggests that such development was not contemplated at the time of its development and adoption. In this regard, the MGB notes there are specific provisions that contemplate expansion of country residential development, but even these require amendments to the IDP.

[62] The MGB reads the IDP as only permitting country residential development within designated areas, unless amendment to the IDP is made. The development densities proposed in the ASP indicate it is an urban residential development that does not meet the spirit of the policies contained within the IDP – at least until that document is amended.

[63] Having said this, the relevant issue is not merely whether the ASP complies with the spirit of the residential policies of the IDP, but whether its failure to comply is detrimental to the Town for the purposes of section 690. As noted in previous orders, failure to comply with an IDP or other bylaw is not necessarily detrimental to an adjacent municipality. As stated in *Sturgeon*:

“The Board does not agree with the proposition that simply because a MDP does not conform with the requirements of the Act or the Land Use Policies, detriment must necessarily result. Instead, the question the Board must address is whether the MDP will cause detriment...”(page 49 of 84)

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[64] In this case, the MGB sees no evidence that the residential component of the ASP's departure from the IDP results in detriment.

[65] First, it appears, based on the pattern of recent proposals in the IDP (Sandstone Springs, Gold Medal, and Green Haven) that the amendment provisions of the IDP have been disregarded frequently in recent years with no ill effects to either party. Planning issues in these cases have been resolved effectively through other means, and no reason was presented to explain why similar resolution could not be achieved in the case of Wind Walk. While the circumstances show that the IDP may be obsolete, they do not demonstrate that contravention of the IDP is a detriment to the Town.

[66] Second, while the higher density ASP represents a departure from historical development in the MD, legislation and past practice indicate that the MD is operating within its jurisdiction. As noted in *Sturgeon* (with which the Board still agrees):

There is no mention of a distinction between urban and rural in these policies, and it appears the intent is to allow all municipalities to participate on an equal footing in securing for themselves a wide variety of residential, commercial and industrial uses. In the view of the Board, the effect of the policies is to diminish the importance of traditional distinctions between urban and rural land use. A necessary corollary is that the location of commercial or industrial uses in rural municipalities will not ground an appeal where a complaint is based solely on anticipated erosion of an urban municipality's tax base (page 46 of 84).

[67] It is of course true that factors associated with urban style developments - such as transportation and servicing requirements - can result in detriment. These and other similar matters are examined in the balance of this Order. However, for the reasons expressed above, the MGB is satisfied that a breach of the IDP by the addition of an urban style development adjacent to the Town is not detrimental in and of itself.

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Sub-issue B: In Respect to Commercial Development?

Town's Position - Commercial Development

[68] The Town argued that, as with residential development, the IDP differentiates between rural and urban commercial development. Rural commercial development is defined in 2.4.1 in two basic forms: rural local commercial and rural highway commercial. In both cases, commercial development in the IDP area is to be concentrated in major nodes. The Town's Planner, Mr. Hanhart, described that under section 2.4.2(2), Rural Commercial, Industrial and Institutional Policy, a planned cluster of more than five rural commercial lots may require an ASP, subject to negotiation between the Town and the MD. However, he said that no negotiation had occurred during the ASP's development, which in his view contravened the IDP.

[69] Mr. Hanhart noted that the ASP proposes 80,300 square feet of commercial activity. In North America, the expected ratio of population to floor space is 35 square feet per capita. Mr. Hanhart asserted that, given the ASP's population at full development is 1,260 people, the amount of commercial floor space required to serve its population is only 45,000 square feet. With the excess square footage, the ASP's commercial area will adversely impact existing and planned commercial development in the Town by relying on Okotoks residents to sustain it. The commercial areas will compete with, and may divert, significant commercial activity away from the Town's business community. This will significantly compromise the Town's objective outlined in the Legacy Plan to achieve a balanced assessment base. The Legacy Plan, which is also the Town's MDP, targets a 22% non-residential assessment base. The Town has set aside sufficient lands within its planning documents to achieve this.

MD's Position - Commercial Development

[70] The MD acknowledged that the IDP requires an area structure plan to be prepared before commercial development may occur. However, it said that the ASP has fulfilled this requirement. Further, the commercial development does not contravene the IDP. In this regard, Ms. Hemingway stressed that the IDP does not limit the amount of commercial development.

[71] In response to the Town's concerns about competition between commercial developments in the MD and the Town, Ms. Hemingway stated that she is unaware of any policy, guideline, or directive that addresses this issue. There is no policy or regulation in place limiting competition between municipalities. Therefore, competition cannot be considered a detriment.

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Landowner's Position - Commercial Development

[72] Both the Act and the Provincial Land Use Policies have removed the distinction between urban and rural municipalities. In *Sturgeon*, the MGB confirmed that “urban” municipalities do not have a monopoly on “urban” types of development. Given this finding, it would be inconceivable to read the IDP as restricting or limiting the MD to rural commercial development. Like country residential development, rural commercial development is an outdated form of commercial development that is not sustainable.

MGB Findings – Commercial development

- Although the ASP exceeds the IDP’s commercial provisions, there is no detriment.

MGB Reasons - Commercial development

[73] In keeping with the urban-rural distinction recognized in its residential development policies, the IDP contemplates only two types of commercial development within the MD, both of which are rural in character (“rural commercial” and “rural highway”). However, the IDP does not rule out larger commercial developments in the MD; rather, it indicates that an ASP may be required where a subdivision involves more than five commercial lots, subject to negotiation between the MD and the Town.

[74] In the Board’s view, the ASP probably does contravene the commercial provisions of the IDP. Certainly, section 2.2.4 appears to contemplate only “rural” type commercial development within the MD. Ambiguity in the wording of section 2.2.4(2) leaves some doubt as to the required “negotiation” to be triggered by subdivisions involving five or more rural commercial lots. A requirement for negotiation during the preparation of an ASP in respect of five or more commercial lots would be salutary and was most likely intended. It is true that the MD and landowner provided many opportunities for public input during the ASP’s preparation (for example, the charrette held in May 2008) and the Town could have participated in these; however, it does not appear that direct negotiation occurred between the Town and MD.

[75] Having said all this, potential breach of the IDP’s intent does not necessarily cause detriment for the purposes of a section 690 appeal. In this case, the Board finds insufficient evidence of detriment in this case for the following reasons - consistent with its earlier finding in the context of residential development.

[76] First, the area designated for commercial development in the ASP will form part of a commercial cluster that includes development in Gold Medal to the west and the Town’s commercial box stores on the north side of Highway 7. The proposed development is thus compatible with adjacent development.

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[77] Second, as argued persuasively by the MD and Landowner, “urban” municipalities do not have a monopoly on “urban” types of development. While the Town is no doubt correct that commercial development in the MD will compete with similar development in the Town, this fact cannot be considered detrimental given the equal right of municipalities to pursue growth and development. Commercial competitiveness is not detriment. The Town itself is a regional economic centre, supporting a larger area that falling within its boundaries. That the ASP will also attract residents from the region and the Town is not in itself a persuasive ground of complaint. The same passage from *Sturgeon* quoted earlier in this order illustrates the diminished importance of the urban-rural distinction and the intent to allow municipalities to compete or participate on an equal footing in securing a variety of commercial or industrial uses.

[78] Third, the Town’s request assumes that repealing or amending the ASP to prevent competing commercial development will promote urban commercial development within the Town. However, this assumption was not backed by any persuasive evidence. There appears no reason to presume that the commercial development now planned for Windwalk could not relocate to other areas outside the Town, with similar implications for the mix of commercial property in its assessment base.

Sub-issue C: In Respect to Agricultural Protection?

Town’s Position - Agricultural Protection

[79] Mr. Hanhart gave evidence on this matter on behalf of the Town. The Town submitted that the Okotoks-Foothills IDP provides clear, mutually agreed, jointly beneficial, long term direction to protect agricultural lands within its plan area. The IDP’s goal of protecting agricultural lands is consistent with provincial direction in the Provincial Land Use Plan (PLUP) and Land Use Framework (LUF) encouraging municipalities to protect agricultural lands from premature conversion to other uses. Section 2.1.1 of the IDP demonstrates that the IDP specifically contemplated preservation of agricultural land through a twofold strategy -- that agricultural land should be; firstly, protected from premature development and; secondly, from inappropriate development.

[80] The Town stated that the responsibility for protecting agricultural lands from premature and inappropriate development is shared between the Town and the MD. Under section 2.1.2(1) of the IDP, which applies to lands within the MD, the MD should avoid premature development of agricultural lands within the Plan Area so as to allow such lands to continue to be used for agricultural purposes. In addition, Policy 2.1.3(1) required the Town of Okotoks to avoid premature conversion of agricultural land through the urbanization process.

[81] Mr. Hanhart expressed the opinion that these policies, which are consistent with urban and rural development policies elsewhere in the IDP, allow for staged and planned urbanization to occur over time within Okotoks and low intensity development within the MD. In addition,

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the lands are designated in the Agricultural District within the MD's LUB. The purpose and intent statement is "[t]o preserve agricultural lands for agricultural purposes and [allow] for a broad range of agricultural uses" (Policy 12.1.0). This is consistent with the MDP, which has the goal of conserving and protecting agricultural land. The Town maintained that the ASP prematurely removes an intact quarter section from agricultural use to a proposed use, specifically urbanization, which is not identified as a use of the lands in an IDP.

[82] The Town reported that it has urbanized approximately 783 ha (1,935 acres) of land between 1998 and 2011 in a compact and contiguous manner with existing urban areas. The MD approved a limited number of country residential parcels, primarily as infill within already fragmented parcels, preserving areas for agriculture in the MD's portion of the Plan Area. Mr. Hanhart estimated that the Town currently has an inventory of 245 ha (605 acres) of land already removed from agriculture to accommodate short and medium term growth. The Town relied on this planned growth model to demonstrate that a significant amount of capital has already been expended by developers within the Town. The lands are planned to accommodate growth pressures in a logical, planned manner that is consistent with the IDP. The ASP deviated from the IDP, PLUP, and LUF by prematurely removing an intact quarter section from agricultural use to urban residential.

[83] The MD's decision to remove one quarter section of land from agriculture puts undue pressure on surrounding landowners to abandon agricultural pursuits. In the Town's opinion, the ASP will likely create a domino effect facilitating the conversion of remaining agricultural lands along the south side of Highway 7 to uses other than agricultural, which will lead to a conflict between urban and agricultural activities. Mr. Hanhart asserted that the intent of the Town's urban growth boundary is to protect agricultural activity.

MD's Position - Agricultural Protection

[84] The MD submitted that premature conversion and fragmentation of agricultural land are regional concerns, not direct issues that are likely to cause detriment to the Town. The ASP is a comprehensive high-level development plan, which does not actually fragment the land. Citing *Grande Prairie (City) v. Grande Prairie (County)*, MGB 096/06, the MD submitted that development is premature when it is seemingly isolated and not connected to any existing plans or development. In contrast, the lands surrounding the subject site have or are in the process of being developed and the subject land is being comprehensively planned as a residential and commercial development. Further, the Town has stated it has no intention to annex this area as indicated by the IDP and JPA.

[85] The areas surrounding Wind Walk also show this is not an isolated parcel. The ASP lands are adjacent to Highway 7, directly south of the Town, east of an existing industrial development (Gold Medal), west of the Highway 2A Industrial ASP, and north of a country residential development. Mr. Riva Cambrin, Chief Administrative Officer and the Director of Planning,

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described how a ravine area south of the ASP forms a physical separation from the country residential areas to the south. In addition, the land is not part of a larger agricultural holding, and a hay crop is currently produced on the lands.

[86] The ASP does not constitute premature development of the site; rather, it reflects the MD's MDP policy of having future development clustered around municipal centres with agricultural land remaining intact. This policy also aligns with Strategy Five of the LUF, which seeks to maintain agricultural land and reduce the footprint of human activities.

Landowner's Position - Agricultural Protection

[87] The Landowner framed the Town's argument about the preservation of agricultural land as follows: The ASP represents a premature conversion of agricultural land, and this conversion should not occur because the Town has already converted extensive amounts of agricultural land within its boundaries for development. The Landowner submitted that this argument is self-contradictory and that it is not supported by the MGB's decision in *Sturgeon*, where the MGB held that:

[t]he Land Use Policies do not appear to anticipate that each municipality will address the conservation of agricultural land in the same manner, but rather that each municipality is encouraged to design mechanisms suitable to its individual needs (page 41/84).

MGB Findings – Agricultural Protection

- The Wind Walk quarter section is better agricultural land.
- The ASP is out of phase with the IDP.
- There is insufficient evidence to determine that the ASP is detrimental.

MGB Reasons – Agricultural Protection

[88] The materials the Town presented with this appeal shows that the quarter section is CLI Class 2, which is better agricultural land. In addition, the IDP has the area denoted as 4th priority. These factors tend to support the argument that development is premature. On the other hand, the MD and Landowner's submissions make clear that development around the subject site is already taking place. Residential development has occurred to the south of the subject site and commercial development is occurring to its immediate west. It is also clear that other ASP and subdivision proposals have been agreed to nearby, and that proposed development will be contiguous with existing development in the Town. The quarter section is not part of any large agricultural undertaking and agricultural activities are mainly limited to hay production. Removal of this land from agricultural production has no direct impact on the Town. Finally, the Calgary Metropolitan Plan contemplates the site of the ASP as a growth area for the region. All

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of these considerations show that development is contemplated for the area and that urbanization is already taking place. In light of these circumstances, the MGB finds this application does not represent premature conversion.

[89] The Board notes, incidentally, that there is a distinction between general arguments about what may or may not represent optimum planning and arguments about detriment specific to the Town. While premature conversion of agricultural land - if shown – may constitute less than optimum planning in a general sense, it would not necessarily show a particular detrimental effect on the Town. Further evidence showing how loss of agricultural land is detrimental to the Town would be required in order to justify the MGB’s interference with a municipal planning document.

Sub-issue D: In Respect to Dispute Resolution?

Summary of Town’s Position - Dispute Resolution

[90] Mr. Hanhart argued that the MD did not comply with the IDP’s dispute resolution procedures. In particular, it failed to mediate when agreement on the ASP proved impossible as contemplated by the Strategy for Effective Communication and Conflict Resolution (Step Four – Mediation) of the IDP. Furthermore, at its August 11, 2010 council meeting, the MD’s council and the development team went “in-camera”. Following the “in camera” session, council returned to the public portion of the meeting and gave second and third reading to the ASP. In the Town’s view, this procedure improperly excluded the Town from contributing to the ASP process and violated the IDP provisions for dispute resolution.

Summary of MD’s Position - Dispute Resolution

[91] The MD reported that the Town failed to respond to several requests for consultation between April and July of 2010. Mediation was initiated in December 2010; however, no resolution was achieved. Mr. Riva Cambrin also argued that the MD followed the IDP intermunicipal consultation and dispute resolution requirements as follows:

1. Section 3.3 of the IDP states that Stage 1 of the intermunicipal dispute resolution process requires circulation of the proposed document to the Town for review and comment. This was satisfied in April of 2009 when the MD referred the ASP to the Town for review and comment.
2. Under Stage 2, a municipality may refer the proposal to the Intermunicipal Committee (IMC) for review. The Town requested the ASP be referred to the IMC. The IMC discussed the ASP at a number of meetings from February 24 to June 29, 2010. The IMC minutes show that meaningful consultation occurred. The MD submitted that the referral occurred and that the review took place.

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3. Where no consensus is reached after an IMC review, Stage 3 requires both councils to establish their position on the proposal. The MD submits that both councils completed this step.
4. The MD described that both Stage 4 (Mediation Process) and Stage 5 (Appeal Process) are discretionary. The parties did not undertake the mediation process prior to the MD Council giving third reading to the ASP bylaw. The MD made numerous attempts to engage the Town in meaningful discussions. However, the Town did not consider a position other than complete refusal of the development. The MD reported eight key dates in which consultation was attempted.
5. It is open to the respondent municipality to pass a bylaw to implement the proposal before undertaking mediation. At that point, Stage 5 becomes available – which involves an appeal to the MGB. The appeal process itself provides an opportunity for mediation.

[92] Mr. Riva Cambrin submitted that the MD met all consultation and dispute resolution requirements and, therefore, did not contravene the IDP provisions under this heading.

[93] The MD stated that a breach of the IDP is not inherently detrimental. While the Town has argued that such a breach creates a presumption of detriment, there is no support for this claim. The MD specified that the MGB's role is not to enforce the IDP, but rather to determine whether the ASP is detrimental to the Town. The MD submitted that even if the IDP had been breached (which is not the case) the Town has not suffered detriment or demonstrated that detriment will result.

Summary of Landowner's Position - Dispute Resolution

[94] The Landowner asserted that the IDP mediation process was substantially followed by the MD. All stages of the IDP process were followed. It is difficult to see how this alleged procedural irregularity has caused detriment to the Town, given the unsuccessful mediation and the Town's continued contrary position to the development, regardless of its merit.

[95] As noted by the MD, a breach of the IDP is not inherently detrimental. The Landowner cited *Sturgeon* and *Sunbreaker Cove* as cases where the MGB found no detriment despite a conflict between planning bylaws and statutory plans. The Landowner also agreed with the MD that the Board's role is not to enforce the IDP, but rather to determine whether the ASP is detrimental to the Town. Further, even if the IDP was breached, the Town suffered no detriment as a result.

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MGB Findings – Dispute Resolution

- The MD did not contravene the intermunicipal consultation and dispute resolution requirements under the IDP.
- The Town had an opportunity to provide input.
- The MD’s actions during the dispute resolution process did not constitute detriment.

MGB Reasons - Dispute Resolution

[96] When two municipalities develop an intermunicipal development plan, section 631(2)(b) of the Act requires that it include a procedure to be used to resolve or to attempt to resolve any conflict between the municipalities that have adopted the plan.

[97] This provision was written into the Act in 1995. In *Sturgeon*, the MGB commented that consultation means “a full, fair, and formal opportunity for input but does not mean a veto” (page 69/84).

[98] In this case, the IDP includes both a provision for making land use decisions (which is the optional content) as well as the required content that includes a procedure for dispute resolution. As noted by the MD, the dispute resolution procedure has five stages including a final stage where, if the parties are not in agreement, the municipality that is to make a land use decision in the IDP area would complete third reading of the bylaw, and the other municipality could appeal the bylaw to the MGB. This stage is undertaken only after the other stages of the dispute resolution process have failed to generate agreement.

[99] The MGB accepts the April 2009 letter as beginning of Stage One of the IDP dispute resolution process. After several months and discussion at intermunicipal committee, the Town received additional time to respond to the ASP. The discussion at intermunicipal committee fulfils Stage 2 of the process. Discussions at both councils fulfilled Stage 3. From the evidence presented at the hearing, it was clear that each municipality understood the other’s position: in short, the Town did not support the ASP and the MD did.

[100] Mediation was suggested, but not entered into, so Stage 4 was not completed. However, Stage 4 of the IDP dispute resolution process is discretionary in the sense that both parties must agree to enter into mediation prior to third reading. In this case, the MD’s view was that despite extensive discussion, both sides had fixed positions and mediation would not be successful. This view appears reasonable under the circumstances. Therefore, it was open to the MD to force Stage 5 by proceeding to second and third reading and then waiting for notice of a section 690 appeal. The MGB observes that the section 690 appeal process itself involves further opportunity for mediation, which was not effective in this case.

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[101] The MGB concludes that although the MD and Town had somewhat different expectations of the dispute resolution process – particularly with respect to mediation – the process was nevertheless completed. More accurately, it was advanced to Stage 5 for completion through the section 690 appeal process. The actions of the MD caused no detriment to the Town, which had many opportunities for discussion and input. The dispute resolution process could not delay the MD’s adoption of the ASP indefinitely.

[102] In reaching this conclusion, the MGB makes no finding as to whether the Town’s decision to hold an “in camera” meeting prior to second or third reading was appropriate. The Board simply observes that the parties had many opportunities to communicate both before and after the bylaw passed, and enjoyed a relatively communicative relationship. The MGB sees no detriment arising from the dispute resolution process.

ISSUE 2: Does the ASP contravene the express terms of the Joint Planning Agreement and thereby cause detriment to the Town?

Town’s Position

[103] The Joint Planning Agreement (JPA) was executed in January 2010, prior to the MD’s adoption of the ASP. The JPA was intended to create a long term integrated management strategy to facilitate successful joint planning. The Town listed several sections of the JPA that were violated by the MD passing the ASP:

- Section 2.1(2), which requires the lands within the Joint Development Area be jointly planned by the two municipalities;
- Section 2.1(4), which requires the municipalities to work together to achieve efficient development while maintaining a “small town” character for the Town and a “rural” character for the MD;
- Section 2.1(12), which limits residential growth within the Development Management Strategy Area to historical MD growth rates; and
- Section 3.1(4), which requires that development applications within the Development Management Strategy Area be reviewed within the context of the JPA’s development strategy.

[104] Mr. Hanhart submitted that the ASP was not jointly planned and that the process used by the MD to adopt the ASP was passed contrary to the provisions of the JPA.

[105] The Town anticipated that it would be able, upon passage of the JPA, to openly discuss the ASP and jointly plan for the area in a manner more consistent with the definitions set out in the JPA. This line of reasoning is supported by the February 9, 2010 letter from the Town’s Mayor, Bill McAlpine, to Reeve Roy McLean of the MD. In the letter Mayor McAlpine wrote

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that the upcoming IDP amendments and associated joint plans must occur prior to site specific proposals such as The ASP. The letter stated:

These comprehensive planning processes cannot be fettered by planning approvals for site specific applications. The key purpose of upcoming IDP amendments and four anticipated joint plans is to determine appropriate land uses, densities and servicing strategies for the four Joint Development Areas in a comprehensive integrated manner that will subsequently guide proposals for individual land holdings such as the subject lands. A clean slate is required for lands within NW-16-20-29-W4M and other lands surrounding Okotoks at this time to move forward with review and adoption of the amendments to the IDP in 2010 and a joint plan for the South JDA.

Given the above, Council for the Town of Okotoks on February 8, 2010 passed the following motion: “The Town of Okotoks requests that the MD of Foothills:

- close the public hearing for the Wind Walk proposals upon consideration of the recently adopted Joint Planning Agreement;
- quash the Wind Walk ASP [File # 09 R 040] and Land Use Redesignation [File # 09 R 041] applications; and
- advise the applicant to resubmit proposals for the subject lands upon completion of IDP amendments expected in late 2010 with amendments if necessary to ensure consistency with the amended IDP.

[106] The Town anticipated that once the JPA was signed, the ASP could be discussed in that context and a determination made if the population projections and servicing requirements were adequately covered. Instead, the MD maintained it could not discuss the ASP, because the public hearing was still open. The Town asked the MD to close the public hearing and defeat second and third reading of the bylaw, but that did not occur. Finally, the Town advised the MD in writing that it objected to the ASP and would pursue an appeal to the MGB.

MD’s Position

[107] The MD agreed that the JPA designates the area where the ASP is located as a Joint Development Area (JDA); however, it pointed out that the JPA anticipates commercial development for the area and does not set out defined densities or land uses under section 2.1(13). Both Mr. Riva Cambrin and Ms. Hemingway also stressed that the ASP was already well underway when the JPA was developed and adopted. Further, MD Council received and considered information on the JPA when it re-convened the public hearing in February 2010.

[108] The ASP does not violate the residential growth projections set out in Table 1 of section 2.1(12). The MD has been pursuing different types of the residential development over the last

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several years, which have moved toward a more sustainable and efficient type of development. When built out, the population of approximately 1,200 persons in 458 units is within the projected growth and development of Table 1 of the JPA.

[109] The MD did not agree with the Town's argument that the MD violated the JPA by adopting the ASP despite the Town's objections and by not working jointly with the Town to plan the Wind Walk lands. The MD remarked the Town has no interest in pursuing joint planning for the Wind Walk ASP and wishes simply to veto it. Mr. Riva Cambrin submitted that the MD had attempted to engage in good faith negotiations with the Town, but the Town has refused to enter into bona fide negotiations; this left the MD with no option but to proceed with the ASP.

[110] Finally, the MD argued that because the JPA is a contract and not a statutory plan, the MGB has no jurisdiction to enforce its provisions or mediate over them. The MD cited *Rocky View v. City of Calgary*, MGB 094/10, for the proposition that even if the MD contravenes the provision of the JPA, the onus is still on the Town to establish detriment.

Landowner's Position

[111] The Landowner framed the Town's argument as twofold: 1) the JPA mandates country residential development within the MD, while the ASP - which falls into the JPA area - allows for much greater density; 2) the MD breached the JPA by passing the ASP because the Town was opposed to it.

[112] The Landowner argued that the first argument must fail because the JPA is at best ambiguous with respect to the ASP area contained on the map found on page 13 of the JPA and whether it is exempt from consideration under this JPA as it is one "in process".

[113] The second argument must fail because the Town does not have a „veto“ over MD development proposals. Even in the context of the government's duty to consult with First Nations groups, arguably the highest level of duty to consult, there is no „veto“ (*Haida Nation v. British Columbia (Minister of Forests)*, [2004] 3 S.C.R. 511). The Landowner also cited *Sturgeon* for the proposition that consultation means a full, fair, and formal opportunity for input, but does not mean „veto.“

[114] The Landowner argued that, if anything, it is the Town who has contravened the JPA by failing to enter into bona fide negotiation or consultation on the ASP. Various consultants engaged by the Landowner contacted the Town for information; however, telephone calls and requests for information went unanswered in some cases, while in others very little information was provided. This, the Landowner posited, contravenes the JPA.

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[115] Finally, the Landowner agreed with the MD that – as noted in *Rocky View* - the JPA is not a statutory plan, but rather a contract and is, therefore, outside the MGB’s jurisdiction.

MGB Findings

- The ASP does not appear to contravene the terms of the JPA.

MGB Reasons

[116] The JPA is an agreement intended to facilitate discussions about development in the Development Management Strategy Area, which encompasses both the Town and a large swath of surrounding MD lands. Unfortunately, the parties appear to have developed different expectations as to how the JPA applies to the area under dispute.

[117] The Wind Walk ASP is shown in Appendix B of the JPA as part of one of a number of JDAs, which section 1.6 defines as areas that require “additional evaluation of appropriate land uses, densities and servicing strategies”. Section 2.1(3) clarifies that JDAs are to be “planned together which will define future development and may include location, land use, density limits ... and associated servicing requirements as well as responsibilities (both hard and soft services)”. At first sight, these provisions could be taken to support the Town’s view that the JPA intended further consultation on proposed density and land uses for Wind Walk.

[118] On the other hand, the Appendix also shows Wind Walk as one of four “in process” areas, which form parts of various JDAs. Section 3.1 addresses the other three “in process” areas specifically, but is silent as to Wind Walk. Thus, while the precise intent of the JPA with respect to Wind Walk is unclear, its demarcation as “in process” suggests its status as an area where detailed plans are already underway was intended to be recognized (In this connection, the Board recognizes that section 3.1(4) addresses “development applications in process”; however, since the ASP is not a development application, this section sheds limited light on the JPA’s application to Wind Walk).

[119] At the very least, it is clear that both municipalities were aware of the ASP throughout the negotiations for the JPA. Given the advanced stage of the ASP and the extensive discussions and consultation that had already occurred between the developer, MD Council, Town and the general public, it is reasonable to conclude that the JPA was not intended to require the parties to enter into yet further extensive consultation concerning the ASP. Similarly, without specific language to the contrary, it would be unreasonable to believe that the entire charrette and consultation processes already undertaken for the Wind Walk ASP were intended to be subject to a further intermunicipal planning document. The more reasonable interpretation is that the “in process” Wind Walk ASP is simply to be taken into account when planning the less well defined portions of the various JDAs.

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[120] Alternatively, if the MGB is incorrect and the JPA required further joint review of the Wind Walk ASP, the Town provided little evidence that the claimed contravention resulted in detriment for the purposes of section 690. Simple failure to comply with an agreement does not necessarily imply detriment any more than failure to comply with a statutory plan. As noted in *Sturgeon* (page 50 of 84):

The Board does not agree with the proposition that simply because a MDP does not conform to the requirements of the Act or the Land Use Policies, detriment must necessarily result.

[121] As observed earlier in this Order, the Town has already had many opportunities for discussion and input into the ASP. The Town provided insufficient evidence to show how failure to engage in further review pursuant to the JPA has resulted in any significant detriment.

ISSUE 3: Does the ASP create planning uncertainty and thereby cause detriment to the Town?

Town's Position

[122] In efforts to ensure sustainability objectives are achieved, the Town has undertaken numerous studies under its MDP, the Legacy Plan. These studies represent a significant expenditure of resources and are premised on the Town's finite growth model. The Town expressed that the introduction of the ASP challenges key assumptions of the Legacy Plan and compromises all of the Town's long term planning investment. If a small town is permitted to develop on the edge of the Town, significant forethought and regional planning is required by municipalities who deliver services. Care must be taken to ensure that there is no adverse impact on service delivery to residents of Okotoks and the small population within the immediate vicinity of the Town.

[123] In addition, Mr. Hanhart indicated that violation of the intermunicipal planning documents deteriorates the relationship between the municipalities. If the MD is allowed to contravene these documents, it renders meaningless any intermunicipal planning and cooperation as contemplated by the Land Use Policies and by previous Board decisions. The Town believed that discussion about the ASP was going to occur after the municipalities entered into the JPA, however, that was not the case. Instead, the MD advised that since the ASP was in progress it was not included in discussions about the JPA.

[124] In previous MGB decisions, effects such as uncertainty and the deterioration of intermunicipal relationships and cooperation can constitute detrimental effect. The evidence before the MGB clearly establishes detriment to the Town. Mr. Hanhart referred to the IDP and JPA, and their overall scheme to assist the joint planning of developments within the

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intermunicipal fringe. The Town asserted that the MD acted unilaterally and blatantly in contravention of the intermunicipal planning documents. The Town is placed in a worse position than if there were no intermunicipal planning arrangements. If the MD can step outside of the planning agreements whenever they want, the Town is left with no certainty whatsoever. The resulting uncertainty surrounding intermunicipal planning has a detrimental effect on the Town.

[125] Mr. Hanhart submitted that that ASP contravenes the urban growth portion of the IDP (sections 3.4.1-3.4.3), thereby jeopardizing the Town's long term planning. The IDP explicitly shows which lands in the MD (at the time the IDP was adopted) are to be annexed into the Town for urbanization. The ASP is clearly ad hoc urbanization and its associated population density and growth detrimentally affect long term planning (e.g. services and infrastructure) made by the Town under its MDP (the Legacy Plan) and the IDP. The Town stressed that the IDP is a long term plan that requires mandatory review in 2017. Its intent was to provide planning stability for the Town, allowing planning for servicing and infrastructure upgrades over the life of the plan.

[126] The IDP recognizes the potential for amendment within the 20-year plan horizon, yet no amendment to the IDP was sought by the MD or developer. This creates an atmosphere of perpetual uncertainty, whereby the Town never knows what new development may occur on its outskirts or how those developments will alter the Town's service delivery. Mr. Hanhart requested the MGB to suspend approval of the ASP and require the plan to be negotiated under the IDP and the JPA.

[127] Mr. Hanhart also referred to section 638 of the Act, which states that all statutory plans adopted by a municipality must be consistent. The Town submitted that its Legacy Plan (MDP) is consistent with the IDP, but that the ASP is not. The Town relied on this section to demonstrate that there is an expectation of conformity with the IDP, whilst non-conformity creates uncertainty.

[128] Mr. Hanhart and Mr. Oness both stated that because the MD has approved the ASP, the Town has no option but to plan as if the development will proceed. This requires the Town undertake future planning to accommodate the impacts of the ASP. This includes hard and soft services such as fire and emergency services, recreational services, transportation and roadway infrastructure, and storm water drainage.

[129] Secondly, Mr. Berzins submitted that the approval of the ASP without confirmation of water creates planning uncertainty - as there may be insufficient water to allow development to proceed - yet the Town is forced to plan for infrastructure expenditures to accommodate the ASP. It argues that the adoption of the ASP without confirmation of water supply is premature, and as a result it must carry out additional is capital planning that may never be required.

[130] Mr. Hanhart drew the Board's attention to the seven strategies set out in the Province's 2008 Land Use Framework to implement effective regional planning and growth management.

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Strategy 3 incorporates cumulative effects management into regional planning and contemplates two types of cumulative effects from development: cumulative effects of individual developments and cumulative effects of multiple developments.

[131] The individual developments subsection of Strategy 3 addresses the multiple impacts that an individual development has on its surroundings (e.g. land, air, water, etc.). If built, the ASP will affect numerous aspects of the Town which have been comprehensively planned to manage growth. The Town specifically pointed to the ASP's impact on the Town's Legacy Plan (growth model). Under the Legacy Plan, all infrastructure within the Town was planned based on a finite growth model. The addition of the ASP will exceed the capacity thresholds of the Town's core services (fire, recreation, library, roads, and storm water drainage) and, as a result, will detrimentally impact the sustainability and growth management of Okotoks and the surrounding region. Mr. Hanhart concluded his submission on Strategy 3 by opining that the MD decision to grant the ASP has not taken a cumulative effects approach and is, therefore, inconsistent with provincial direction under the LUF.

[132] Mr. Hanhart continued that the second type of cumulative effect identified in the LUF is the effect that multiple developments, if not properly planned, will have on their surroundings (e.g. land, water, and air). The ASP, if permitted to be built, will encourage the „build it as they come“ syndrome, thereby signalling to the development community that there is a way to bypass the Town's long term Legacy Plan, the statutory framework of the IDP, and basic fundamental land use economics as driven by planning policy.

[133] The Town specifically identified the proposed water source as a cumulative effects issue. The Town stated, in reference to the proposed pipeline from High River through Aldersyde that if implemented, would provide a separate water source to all lands south of Highway 7. The Town emphasized that this would ultimately pressure the development of this area in the same manner and in similar densities to the ASP, thereby creating a cumulative effect on the Town. Mr. Oness stated that the MD and the developer have not adequately budgeted for the cost and maintenance of the pipeline. The future cost might be borne by the Town itself.

MD's Position

[134] The MD pointed out that the ASP is outside of the Town's jurisdiction and that, although its associated growth will impact the Town, planning matters fall within the authority of the MD. Both Mr. Riva Cambrin and Ms. Hemingway asserted that the progression from traditional country residential development, which is not sustainable, towards more efficient high density development serviced by communal servicing represents consideration of cumulative effects by limiting the amount of agricultural lands, watershed lands, aspen parklands, water bodies and riparian areas that are impacted by residential development as contemplated by the LUF and PLUP.

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[135] The MD submitted that there is nothing in the complaint before the MGB that will cause actual detriment to the Town. The MD once again cited *Sturgeon*, whereby the MGB did not accept the argument that mere non-compliance with the Land Use Policies is a detriment in and of itself. Rather, actual detriment must be shown. The MD noted that it was the Town, and its approach to the ASP that violated section 3.02 of the Provincial Land Use Policies, which mandates that the interests of both municipalities must be respected and that planning must be carried out in a manner that does not inhibit or preclude appropriate long term uses. The MD reiterated that the Town's position on the ASP was that it should not occur; therefore, it was the Town that failed to respect the interests of both municipalities.

[136] Furthermore, Strategy 3 of the LUF states that a cumulative effects management approach will be used in regional plans. The LUF does not mandate a cumulative effects management approach in either the current ASP or local planning documents.

[137] The MD noted that in its MDP, adopted in 2010, residential development policies had changed to encourage cluster residential and hamlet residential as the preferred form of residential development. The ASP is consistent with the direction of the MDP. Mr. Riva Cambrin also noted that the Calgary Metropolitan Plan had contemplated a population of 40,000 to 50,000 in the vicinity of Okotoks. The previous mayor of Okotoks, Mr. McAlpine, had suggested that the Plan recognize the ASP in this population projection. Mr. McAlpine had also speculated that if Okotoks could secure water licenses, that it might consider annexing the ASP in the future. Mr. Riva Cambrin noted that this comment was made in passing and reflected Mr. McAlpine's thoughts and was not a motion of Town Council.

[138] In a discussion in the May 2010 IMC meeting, Mr. Riva Cambrin on behalf of MD council, had suggested a range of options for discussing the ASP, and had put three options on the table to discuss the ASP. The first was entering into mediation, the second was arbitration and the third was that both municipalities sit down and undertake a joint planning process for the ASP. Mr. Riva Cambrin noted that the two councils discussed the development and instead opted to have a meeting with the developer. Further discussion about dispute resolution did not occur. The meeting with the developer did occur on June 24, 2010 and questions were asked by both councils.

[139] The MD stated that the municipalities have a history of working together on regional projects and continue to have cost sharing and mutual aid agreements on hard and soft infrastructure. The historical partnership is not in jeopardy. Both municipalities are part of a housing foundation, a regional services commission, and are members of the Marigold Library system. Along with the Town of High River, the municipalities have been working on the Highway 2A Industrial Area Structure Plan and the Town and MD cooperate on a number agreements and cost sharing arrangements including fire services agreements, mutual aid agreements and recreation agreements.

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[140] Mr. Riva Cambrin maintained that the primary impediment to cooperation on this ASP was the Town's objection to the development as a concept, rather than to some specific aspect of the development. The MD cited the Town's previous actions, which indicate that the Town was looking for extensive involvement or a veto over the MD's planning. The MD referred to *Sturgeon, Drayton Valley v. Brazeau County*, MGB 181/99, and *Edmonton v. Strathcona*, MGB 098/08, for the proposition that consultation, cooperation, and coordination between adjoining municipalities means a full fair and formal opportunity for input. The MD remarked that this does not mean a veto or extensive involvement in planning

Landowner's Position

[141] The Landowner stated during its non-suit application that the presence of uncertainty does not show detriment, since uncertainty is an inherent part planning for future unknown events in unknown circumstances. It also cited *Rocky View County*, MGB 094/10, to support its view that no detriment occurred as a result of planning uncertainty. In that case, the County claimed that a breach of an annexation agreement with the City of Calgary would degrade faith in intermunicipal negotiations; however, the MGB found that argument to be without foundation. It held that while disagreement and the adversarial nature of section 690 disputes can strain the relationship between municipalities for a time, ultimately elected officials will continue to act in the public interest. The Landowner submitted that similarly in case now before the Board, planning uncertainty and the potential straining of intermunicipal relations are not detrimental to the Town.

MGB Finding

- The adoption of the ASP may cause some planning uncertainty; however, the link between uncertainty and detriment was not established.

MGB Reasons

[142] It is self evident that certainty facilitates planning while uncertainty introduces complexity into the planning of any municipality. One cannot plan in a void of information. For this reason, the Act requires certain municipalities to adopt MDPs and facilitates joint planning between neighbouring municipalities by providing for IDPs.

[143] It is equally self evident that plans and planning documents must be able to respond to changing circumstances. Similarly, municipalities are autonomous and retain authority to change their planning priorities, provided they do so responsibly without imposing undue hardship or detriment on neighbouring municipalities. Planning is an iterative process and a mere change in plan – even one that does not conform to previously shared plans - does not necessarily cause planning uncertainty or significant detriment to a neighbouring municipality.

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[144] Both the MD and the Town have developed MDPs to help guide future planning. These are documents over which each municipality retains authority and which each may adjust to reflect changing circumstances. Indeed, the MD has recently improved and updated its MDP. For its part, the Town has established a clear and unique planning vision in its Legacy Plan. This plan is a comprehensive document that defines how and where the Town intends to pursue growth within limitations imposed by scarce water resources. The Legacy plan has been successful in helping both the Town and the MD perform land planning.

[145] Historically, the Town and MD have co-operated effectively to develop joint planning documents - notably the IDP and JPA. They have also communicated effectively where proposals for new localized plans are inconsistent with the aging IDP. With the exception of Wind Walk, the two municipalities have succeeded in establishing processes to come to mutually acceptable solutions. The proposed plans for Gold Medal, Sandstone Springs and Green Haven are examples of such co-operation.

[146] As noted previously, Wind Walk is inconsistent with the spirit of the IDP, which envisions mainly rural development within the MD. It also clashes with the Town's well established vision of restrained urban development within its boundaries and rural or country residential development on adjacent land in the MD. However, while the ASP is undoubtedly inconsistent with the Town's vision for development on land adjacent to its boundaries, the Board does not accept that it introduces significant planning uncertainty. The ASP is clear and well articulated. Its planned land uses are consistent with the uses of adjacent land in the Town. As will be outlined in other sections of this order, the services provided to the ASP are also largely independent of the Town – so impacts on the Town's planning are unlikely to be extensive. Finally, the Board observes that the Town currently has no plans to annex the area for different uses.

[147] Nor does the MGB accept that the MD's approval of the ASP illustrates unpredictable planning behavior or shows that the well established co-operative and communicative relationship between the Town and MD is in any danger. On the contrary, the parties have a record of reaching mutually acceptable solutions where possible. While disagreement remains in the case of Wind Walk, the two municipalities have enjoyed a communicative relationship and the Town has had many opportunities for comment. Going forward, it appears that the JPA will provide a new framework for joint planning and may soon form the basis of an amended IDP. Under these circumstances, the Board finds no reasonable likelihood of significant detriment owing to planning uncertainty in the wake of the ASPs approval.

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ISSUE 4: Does the ASP's proposed potable water plan cause detriment to the Town by affecting:

Sub-issue A: The Town's water usage and availability?

Town's Position

[148] Mr. Bill Berzins, a principal of Fossil Water Corporation, presented evidence on behalf of the Town. Mr. Berzins was previously the Chair of the Bow River Basin Council and currently assists clients in a number of areas including securing water licences. Mr. Berzins explained that water resources are scarce in the subject area and there are significant demands on existing resources. At this point, there is insufficient information available to determine whether there are sufficient potable water resources to support Phase I or subsequent phases of the ASP. Approval of the ASP without a proper investigation into the availability of sufficient potable water constitutes detriment, as does failure to determine whether the ASP development will affect the overall availability of water resources for the Town and broader region.

[149] The Town advised that both municipalities obtain their water supply from two sources: the Sheep River/High River system, and ground water. These rivers have had a moratorium placed on water licenses. Further, the Town is concerned that the groundwater sources proposed will be accessing the same aquifer used by the Town in its shallow wells located in the north east part of the Town adjacent to the Sheep River. With the approval of the ASP, the MD has endorsed an urban style development concept without considering the detrimental effects that this decision will have on the availability of water. Before taking this step, there should have been confirmation that the proposed water sources do not impact the availability and security of water resources for the Town. The Town noted that one reason it entered into the JPA was to ensure there would be sufficient water resources for its proposed and approved developments.

[150] Although the ASP's water license application for groundwater extraction has been submitted to Alberta Environment, it does not comply with the requirements of the *Alberta Land Stewardship Act*, because it includes neither an impact assessment nor a groundwater management plan. Furthermore, Mr. Berzins opined that the application is not complete, because the groundwater supply identified will likely require treatment owing to the presence of dissolved solids and elevated hardness. There is no indication how this water will be treated. As all drainage from the ASP flows through the Town, additional pollutant loading is expected in the overland drainage channel in the Town and further downstream in the Sheep River. All of these considerations show the ASP is detrimental to the Town's sustainability model.

[151] The Landowner has also planned insufficiently to deal with shortages owing to potential errors in its assumptions about aquifer yield and per capita consumption, or owing to drought or decreases in the aquifer over time. Any shortage would impact the Town's water supply, because

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the Town will face public pressure to make up shortfalls. This lack of planning is once again detrimental to the Town.

[152] In response to questions by the Landowner, Mr. Berzins contended that the water consumption in the region is higher than figures presented by the Landowner which were pulled from the EPCOR website. The climate is different in Okotoks, which is in the grassland region, than that of Edmonton which is in the parkland region. The Town's emphasis on sustainability occurred before there licensing restrictions on the South Saskatchewan River Basin (SSRB), not as a result. The Town has been actively seeking licenses to augment its current licenses so that its growth model can be sustained. As some of the current licenses are junior licences, the Town believes that they ought not to rely on these licenses if they can secure senior licenses.

[153] The Town is also concerned about the proposed supplementary water source from the Town of High River, via a pipeline extension from the Aldersyde industrial area. Mr. Berzins stated that the use of water from the Highwood River will increase the amount drawn from the Highwood River by the Town of High River. And, he argued, there would be a risk of failing to meet in-stream objectives downstream of the diversion from the Highwood Management Plant. Currently, the Highwood River assimilates effluent that is extremely high in phosphorous (12.0 parts per billion) compared to other locations such as the Town of Strathmore at (0.81 parts per billion). This situation would worsen with additional water and wastewater being treated through the Town of High River's system. The proposed diversion from the Highwood River may also be contrary to the South Saskatchewan River Basin Water Management Plan and Highwood Management Plan. These factors suggest that this proposed alternate source cannot be relied upon.

MD's Position

[154] The MD reiterated its view that water issues are not properly before the MGB in a section 690 appeal; rather, they are properly decided by Alberta Environment and the Environmental Appeals Board.

[155] It also indicated that in accordance with sections 6.4.3 and 6.4.5 of the ASP, the necessary LUB redesignation (amendment) which would permit Phase I and II of the Wind Walk development to proceed will not receive third reading from Council until the developer has secured all necessary Alberta Environment licenses and approvals with respect to water supply. The water licensing and approval process ensures the Town will not experience any detrimental effect from water shortages.

[156] The MD highlighted that although drought in the region is a possibility, there is no reason to suggest that the Town would be responsible for providing some of its water surplus to the development to meet any shortfalls. This alleged detriment is too remote and outside the jurisdiction of the Town.

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Landowner's Position

[157] The Landowner submitted that it is considering three sources of potable water for the ASP: service by well; service from High River via pipeline; and inter and intra basin licenses. The Landowner acknowledged that water licences would have to be procured from Alberta Environment before any of the above three sources could be used.

[158] The Landowner brought to the MGB's attention that Phase I of the ASP will be serviced by a ground water well and that testing has shown that sufficient water is available. The Landowner noted that the well tests met Alberta Environment standards.

[159] The Landowner also presented the MGB with expert testimony from Dr. Nielsen, a hydrogeologist with Stantec. Dr. Nielsen's testimony demonstrated that the proposed water well will draw from a different hydrological stratum than those that the Town currently uses, and would, therefore, not affect the Town's water supply. Dr. Nielsen also noted that if the ASP only used ground water for Phase I, that would account for 67% of the ground water capacity of the aquifer, and if water conservation measures such as storm water irrigation and/or xeriscaping were used the residential, commercial and civic use of Phase I would only be 45% of the capacity of the aquifer.

[160] Dr. Nielsen concluded his presentation by stating that Alberta Environment has deemed the application for the ground water well complete under the *Water Act*. The ASP has proven ground water capacity that is sufficient to service all three phases of the development. These ground water sources have no hydraulic connection to surface water nor are they under the influence of surface water. In addition, testing has proven that the cumulative effects of withdrawing at full capacity are within accepted standards and guidelines of Alberta Environment.

[161] Evidence was also given by Tom Gilliss, an engineer with MPE Engineering, for the Landowner about the potential for extending water and wastewater services from the Highway 2A Industrial Area Structure Plan at Aldersyde. The services to Aldersyde originate in the Town of High River. Extension of a water and wastewater line to the ASP would involve construction of 6.4 kilometres of pipeline and would cost approximately 20 million dollars. Mr. Gilliss understood that the pipeline was being constructed by way of a public and private partnership. There had been discussions during the development of the Highway 2A Plan about the need to service the area and High River and the MD had agreed that servicing would occur through the High River System. Upon questioning, Mr. Gilliss noted that the ASP was currently considered as the only client on the line, but that that the partners could connect other developments to the line if capacity was available.

[162] Based on the above testimony, the Landowner concluded that since the ASP lands are outside of the Town's boundaries and since the potable water solutions proposed in the ASP do

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not impact the Town's water supply, the Town will not be impacted by these solutions. Furthermore, in the case of prolonged drought, water use from the proposed well could be reduced so as to not exceed the aquifer's capacity. As such, the Town's claim of detriment is too remote.

MGB Findings

- Phase I of the ASP is serviceable by an aquifer not used by the Town of Okotoks.
- There are alternative plans for water servicing to the ASP through extension of service from the Highway 2A Industrial Area Structure Plan or through the acquisition of other water licenses.
- The ASP does not cause detriment to the Town's ability to secure an adequate water supply.

MGB Reasons

[163] There is no question that licensing and approvals concerning water and wastewater are within the province of the Environmental Appeal Board. Such matters are not for the MGB to decide, since the MGB's expertise lies in land development and planning rather than engineering and hydrogeology. Having said this, it is equally clear that the availability or potential for water and wastewater servicing are matters at the core of municipal and development planning. Similarly, actions taken in one municipality concerning water and wastewater servicing can have detrimental effects on a neighbouring municipality and its development if undertaken improperly or without adequate consideration for the neighbouring municipality's needs and aspirations. These matters are thus highly relevant in a section 690 appeal.

[164] In this case, one of the Town's concerns is that water scarcity in the region means the development contemplated by the ASP will have a detrimental effect on the water supply that the Town needs for present and future development. It is also concerned that development with insufficient planning for contingencies such as drought and insufficient consideration of local climatic influences may force the Town to supplement the ASP's supply from its own resources at some point in the future. For these reasons, it says the ASP should not have been passed at least until further work has been done to ensure the Town's water supply will not be detrimentally affected.

[165] In the Board's view, these legitimate planning concerns have been answered convincingly by evidence from the MD and Landowner, and especially by the testimony of Dr. Nielsen, who – as a hydrogeologist - has expertise in the area of groundwater and aquifers. The MD and Landowner indicated that they plan to service Phase I of the ASP using a groundwater source. Further, Dr. Nielsen's report indicates that the aquifer in question is adequate to supply Phase I. Dr. Nielsen also testified that the aquifer proposed for the ASP is not connected to any of the aquifers currently used by the Town. The MGB accepts this evidence and concludes there that

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there is most likely a source of water for the ASP Phase I that is distinct in its hydrogeology and can be drawn from without any detrimental effect on the Town.

[166] In reaching this conclusion, the MGB did not overlook the report submitted from another hydrogeologist, Dr. Fennell. Though he did not testify in person, his written comments on the Nielsen report were presented by Mr. Berzins. Dr. Fennell's report recommends further testing before development takes place to ensure long term sustainability of the proposed groundwater resource. However, as pointed out by Dr. Fennell, the tests carried out to date suggest a viable water source is likely available and there are as yet no contradictory studies. In the Board's view, the work undertaken to date provides a reasonable basis to proceed to the ASP stage. In this regard, the Board notes that an ASP is still a relatively high level planning document and leaves scope for further studies at later stages prior to subdivision or development.

[167] In addition to Dr. Nielsen's report, the evidence of Mr. Gilliss established that there are alternate plans for water servicing in relation to phases II and III. For example, there is a potential for extending services from the Highway 2A Industrial Area Structure Plan, or there may be other licenses on the Sheep or the Highwood Rivers that have already been secured by the Landowner.

[168] The evidence of Dr. Nielsen and Mr. Gilliss are sufficient to show that the Landowner and MD have considered questions concerning water availability and servicing and the potential effects on the Town in enough depth to warrant passing the ASP under appeal. As noted above, it is not the Board's role to establish whether licensing and approvals should be granted, and the MGB makes no comment as to whether the Environmental Appeals Board may or may not find deficiencies in this regard. However, from a land planning perspective, the Board is satisfied that planning for water servicing has progressed to the point where it is appropriate to pass the ASP now under appeal and that no detriment to the Town has been shown. Finally, the MGB observes that the ASP contains policies which require the Landowner to secure water supplies prior to the approval of any phase of the development. Thus, the ASP includes an appropriate safeguard to ensure that development will not occur if it transpires that - contrary to current expectations - a sufficient water supply cannot be secured.

[169] Related concerns for the Town include competition for potable water licenses and the impact wastewater servicing arrangements will have on the Town's ability to plan future development. These topics are addressed in subsequent sections of this Order.

Sub-issue B: The Town's ability to secure alternative water licenses?

Town's Position

[170] The Town submitted that the lack of water in the Okotoks/MD region is a serious concern for the Town. In addition, it does not feel that a sustainable water supply has been secured for the

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ASP. Mr. Berzins has been contracted by the Town since 2006. Since then the Town, with the assistance of Mr. Berzins, has identified and has been actively contacting license holders in the Bow River Basin, in order to ensure that the Town has adequate water supplies for its population. There is no evidence to suggest that there is an inventory of licenses within the Sheep and Highwood River basins available for transfer to the ASP to satisfy its water requirements. The Town is concerned that this will contribute to a situation like the Balzac Mall, in which development approvals were granted in advance of securing a water supply, to demonstrate the untenable position that is created when approvals precede the confirmation of a secure water supply. Using Balzac as an example, the price of securing a water licence went from \$5,000 dollars to \$7,500 dollars per acre foot due to the eleventh hour efforts to secure water for the partially completed development.

[171] The Town pointed to the testimony of Mr. Berzins, who stated that the Highwood and Sheep Rivers are subject to the South Saskatchewan Water Management Plan and are hampered by limited water license availability. The Town has a mixture of senior and junior water licenses and is trying to secure additional senior licenses. Mr. Berzins explained that in a time of drought, only senior licenses are allowed to continue to draw water. Currently the Town needs to obtain additional licenses, as previously their past practice was to apply only when a licence was needed. When the moratorium on water licences was introduced on the South Saskatchewan River Basin, the Town was left at a disadvantage.

[172] At the current time, the Town needs to secure more licences for areas of the Town which are not yet developed. Because the ASP will consume some of the available license capacity, or may be competing for the same licenses, it puts the ASP (and the MD) into direct competition with the Town. The ASP will have an immediate (and arguably irreversible) impact on the water license market by increasing market valuations. This, in the Town's appraisal, is detrimental to Town's growth model.

MD's Position

[173] The MD did not make extensive submissions on this topic, but supported the Landowner's position that competition between municipalities is insufficient to ground a finding of detriment.

Landowner's Position

[174] The Landowner reframed the Town's argument as saying, in effect, that the approval of the ASP before the water license is issued creates planning uncertainty. The Landowner submitted that this position fails to recognize that numerous approvals must be obtained for planning, and there is no specified order in which they must be obtained. While each approval is necessary, none is sufficient on its own for a development to proceed. The Landowner stated that concerns over another "Balzac Mall" are unfounded as the ASP specifically states that the

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requisite development permits will not be granted until a potable water source is located, and a licence granted by Alberta Environment.

[175] In response to Mr. Berzins' testimony about the potential for competition and increased prices for water licences, the Landowner noted that none of this evidence had been given under seal as expert evidence. Further, Mr. Berzins presented nothing to support a conclusion that the Landowner is looking for licenses on the Sheep River or that the ASP would interfere with licences on the Sheep River. In contrast, the Landowner's witnesses, Dr. Neilsen and Mr. Gilliss, stated that the water sources were distinct from the Town's and were not licences on the Sheep River. The Landowner also expressed the opinion that Alberta Environment and the Environmental Appeals Board have jurisdiction over water licences, not the MGB. It concluded by stating that the Town had not provided substantive evidence demonstrating that the ASP is detrimental to the Town's ability to secure alternative water licenses.

MGB Findings

- The ASP's proposed water plan does not have a detrimental effect on the Town's ability to secure water licences.

MGB Reasons

[176] The Town raised concerns over the ASP's ongoing search for water licenses in the South Saskatchewan River Basin (SSRB), arguing that its entrance into the water "market" poses a competitive risk in terms of price and availability. However, the MGB does not see its role as the judge of who should get access to water resources and at what price. The natural increase in demand for resources that follows in the wake of responsible development is not a detriment for the purposes of section 690. Otherwise, every new development would pose some degree of detriment to every existing development. Undoubtedly, water licenses within the SSRB are limited. Nonetheless, competition created by the Landowner's search for additional water licenses for the Wind Walk development is not an issue specific to the Town. Competition for water licenses in the SSRB is a regional issue. There may well be other parties in competition for regional water licenses who are not involved in this appeal. In the Board's view, competition that may be created by the development contemplated in the ASP cannot be considered detrimental to the Town under these circumstances.

[177] The Town also raised a concern that the ASP now leaves the door open for development to proceed without securing adequate water servicing. The MGB believes this concern is ill founded, since the subject land remains zoned as "Direct Control" (Policy 4.1.5) and the ASP is explicit that no development permit will be approved by the MD until a water source has been secured.

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[178] Having said this, the Board notes that it is not responsible for weighing the adequacy or compliance of water licensing applications, but rather for determining whether a statutory plan and the proposals within it are detrimental to an adjacent municipality. The ASP states that water licenses are required and the Landowner has taken significant steps toward fulfilling this requirement in a responsible fashion. These steps include listening to the Town's concerns, investigating a groundwater source, applying for the license, and investigating the extension of services from an adjacent area. Though few details were provided, the Landowner also appears to have secured an additional license and offered to share it with the Town. The Board finds no evidence of significant detriment to the Town under these circumstances.

ISSUE 5: Does the ASP's storm water management plan cause detriment to the Town?

Town's Position

[179] Mr. Berzins provided evidence on stormwater drainage through his presentation on sustainable water planning. The Town noted that existing storm water from the ASP flows into and through the Town on its way to the Sheep River. The ASP's design concept for storm water continues this system with all storm water discharging into the Town's storm water collection system before being discharged into the Sheep River. After development, more water will flow off of the ASP lands, leading to a greater volume of water discharging into the Town. This will result in prolonged periods of greater flow and more frequent high flow events for the Town. Historically, flooding has been a major issue for the Town. The ASP will increase the occurrence of flooding and impact the Town's ability to dispose of its storm water.

[180] When onsite wastewater treatment was proposed, the Town had significant concerns with the potential for cross connections between the wastewater treatment facility and the storm water drainage system. During significant storm events, more nutrients are discharged. The additional volumes and possible pollutants from the ASP's stormwater facilities would then be discharged into the storm system and ultimately into the Sheep River. This would decrease the Town's ability to obtain additional water licenses, because the overall water quality would decrease. Mr. Berzins indicated that the ASP's stormwater management plan should be tied to the Town's to ensure that stormwater is managed and does not contribute to additional flooding or contamination in the Sheep River.

MD's Position

[181] The MD submitted that pursuant to section 6.2.4 of the ASP, a detailed storm water management plan must be prepared at the subdivision stage to the satisfaction of the MD, Alberta Environment, and Alberta Transportation before the subdivision authority will grant the subdivision approval. That storm water management system must incorporate, where feasible

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and practical, the best management practices as outlined in Alberta Environment's Guidelines for Storm Water Management in Alberta.

Landowner's Position

[182] The Landowner argued that Mr. Berzins' concerns about storm water management are unfounded given that detailed engineering of the storm water facilities are a condition of subdivision approval. Since stormwater management arrangements would be included in a subdivision approval, they would be the subject of a development agreement and would be required to comply with Alberta Environment guidelines and approval.

[183] Mr. Dennis Westhoff, the engineer who prepared the storm water management plan for the ASP, also presented evidence on the proposed stormwater management plan. Mr. Westhoff indicated that the ASP's Drainage System Concept Plan has three objectives: to minimize impacts on the Sheep River watershed with respect to water quality and quantity; to preserve natural flow patterns where feasible; and to incorporate low impact development strategies, including water reuse systems.

[184] The plan intends to use a naturalized drainage system that will retain water above ground level where feasible and provide an opportunity for natural processes such as filtration, sedimentation and infiltration to enhance water quality. This system will minimize, detain and retain post development run off volumes close to their source to simulate predevelopment flows. Mr. Westhoff concluded by stating that the plan is designed well above Alberta Environment standards.

[185] Given the current proposal for piping the wastewater for treatment in the Town of High River, cross connection between the storm and waste water systems are eliminated.

MGB Findings

- The evidence does not show the proposed storm water drainage plan will have a detrimental effect on the Town.

MGB Reasons

[186] The MGB was presented with three arguments of detriment concerning the ASP's storm water drainage plan: the potential mixing of wastewater and storm water runoff; the amount of storm water runoff from the Wind Walk development; and the quality of storm water runoff from the Wind Walk development through the Town.

[187] The original wastewater plan proposed that the ASP would have an on-site wastewater facility. However, in light of the Town's concerns, an alternate proposal has been advanced to

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have wastewater treated in the Town of High River. The MGB accepts Mr. Westhoff's evidence that the plans for this system have been amended by the developers so that only storm water will be held onsite. With wastewater being taken off site, there is no opportunity for mixing. This alleviates the Town's first concern.

[188] The MGB also accepts Mr. Westhoff's testimony that the proposed storm water system will include retention ponds and incorporate various strategies to manage the stormwater onsite. Mr. Westhoff indicated that under the proposed storm water management system, the Wind Walk site will not produce appreciably more runoff than the undeveloped quarter. As no contradictory evidence was presented by the Town, the MGB finds that the storm water plan will not result in detriment owing to the quantity of storm water running through the Town. This alleviates the Town's second concern.

[189] With respect to quality of water runoff, Mr. Westhoff indicated that the proposed storm water plan not only removes the possibility of mixing storm water with wastewater, but also incorporates opportunities to apply natural processes to water runoff such as filtration, sedimentation and infiltration. These processes are designed to enhance water quality. Again, as no contradictory expert evidence was presented by the Town and the MGB finds that the storm water plan will not result in detriment owing to the amount or quality of storm water running through the Town.

ISSUE 6: Does the ASP's wastewater plan cause detriment to the Town?

Town's Position

[190] The proposed wastewater pipeline extension from the ASP to the Town of High River would be detrimental to the Town of Okotoks for several reasons that were explained by Mr. Berzins. He first cited a Statistics Canada study, which demonstrates that the required expenditures for municipal utility or water assets are growing at a much greater rate than revenue coming from the sale or taxation of serviced properties. The resulting gap between expenditures and revenues creates pressure on municipalities and the province to provide repair and replacement funding. The detriment caused by the ASP, as stated by Mr. Berzins, is that at some point there will be competition for limited infrastructure funding between the MD and Town.

[191] Mr. Berzins also explained that the SSRB is under a management plan because of a shortage of water. As such, use of water, quality of return flow and nutrient balance within the river basin must all be considered carefully. Under the cumulative effects approach to sustainable management, municipal use of a river system and the ability of that river system to take up nutrient load is critical to the overall water supply's sustainability.

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[192] The Town of High River system takes water from the Highwood River, which is located on the Bow River sub-basin. The High River wastewater treatment plant then discharges through Frank Lake, which is on the Oldman River system. The effect is to transfer water out of the Bow River system, thus reducing the quantity of water available in the Highwood River below the confluence of the Sheep and Bow Rivers. This stretch of river is already vulnerable due to dissolved oxygen excursion. An additional reduction in the total quantity of water will further reduce the river's ability to assimilate nutrient loading and storm water in-flows during extreme events.

[193] Piping wastewater to High River will also mean increasing the flow of wastewater to the High River treatment facility. This facility has been ordered to upgrade in order to handle even its current capacity; therefore, adding the ASP wastewater will only compound the problem. Since the High River wastewater treatment plan discharges into Frank Lake it the proposed ASP wastewater plan will also increase the nutrient load into the lake, making it less able to treat water. With water that contains more nutrients being discharged into it, the overall assimilative capacity of the SSRB will be reduced. Thus, when the Town looks for transfers or approvals under APEA, it will be constrained by the reduction in the quality and quantity of water downstream the Highwood River.

[194] Finally, Mr. Berzins noted that aerosols may be released into the air in the operation of the pipeline, which travels over a long distance.

MD's Position

[195] Both Mr. Riva Cambrin and Ms. Hemingway noted that in accordance with sections 6.4.3 and 6.4.5 of the ASP, the necessary Land Use Bylaw re-designation, which would permit Phase I and II of the ASP development to proceed, will not receive third reading from MD Council until the developer has secured all necessary Alberta Environment licenses and approvals with respect to water supply, treatment, and distribution.

[196] The MD further noted that on May 9, 2011, Council for the Town of High River passed a resolution directing its administration to negotiate a new water and waste water service agreement with the MD, which would include servicing of the Wind Walk development. The MD submitted that water and wastewater servicing from the Town of High River fully addressed any of the Town's concerns. The reason that these concerns were addressed was that originally, the ASP was to be serviced by an onsite sewage treatment plant. The Town was concerned about the proximity of the onsite sewage treatment plant to the storm water system. One of the concerns relayed by the Town was that the stormwater system would discharge into the Town's storm water system and then into the Sheep River. The Town was also concerned about proximity of the onsite sewage treatment plant to both domestic ground water wells within the MD as well as the interim communal water supply proposed for Phase I.

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Landowner's Position

[197] The Landowner presented testimony from Tom Gilliss, MPE Engineering Ltd., concerning the development of a water and wastewater pipeline from Highway 2A Industrial Area Corridor ASP (Aldersyde) to the subject lands in the ASP. The origin of the servicing to Aldersyde is the Town of High River. If the servicing were extended, an upgrade to High River's water and wastewater system would be required. Using High River would create a sub-regional servicing strategy, which would have the capacity for future developments. Like an "anchor tenant" or catalyst, the ASP could initiate regional co-operation on water and wastewater resources. A public-private partnership would provide economic benefits to the MD and the Town of High River as there are government grants available for intermunicipal infrastructure projects.

[198] The Landowner responded to the Town's concerns that there will be a higher surcharge to cover operating and maintenance costs for these utilities by stating that infrastructure costs between the MD and developer are outside the Town's jurisdiction. The *Sturgeon* decision established that effects on land near, but not within a municipality's boundaries, could be detrimental to the municipality, but only in areas where annexation is impending. The Town has stated that it does not intend to extend its boundaries south of Highway 7. The infrastructure costs contemplated by the extension of services to the ASP from the Town of High River should not concern Okotoks, and the proposed wastewater plan is not a detriment to the Town.

[199] With respect to Mr. Berzins' testimony, the Landowner emphasized that the evidence was not given over his seal as a professional engineer, and he did not testify as an expert; further, his conclusions about the gap between utility revenues and capital expenditures were speculative and remote. Although he testified that the developer's search for and potential acquisition of a water licence might interfere with the Town's ability to procure licences and might raise the cost of a given water licence, Mr. Berzins did not show that the ASP was looking for, or interfering with, licences on the Sheep River. Finally, the Landowner reiterated that Alberta Environment and the Environmental Appeals Board have jurisdiction over water licences, not the MGB.

MGB Findings

- The proposed wastewater treatment options demonstrate no likelihood of detriment to the Town.

MGB Reasons

[200] The Landowner's plan for development under the ASP is that waste water from the Wind Walk lands will flow through the MD and be treated by the Town of High River, circumventing the Town. Previous plans for the Wind Walk development included an on-site waste treatment facility, which may have had an impact on the Town, but these plans have now been scrapped by

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the Landowner. Other concerns which the Town raised about Wind Walk's waste water do not show a detriment to the Town. Some issues relate to speculative future competition between municipalities. Some relate to general issues of water quality within the river basin, but do not quantify a specific detrimental effect on the Town and will be dealt with more effectively by other tribunals with different expertise, such as the Environmental Appeals Board. The Town also raised the matter of waste water aerosols, but the evidence on this last issue can best be categorized as speculative; further the matter of release of aerosols is also a pipe line design concern that may be brought up with the appropriate authority.

[201] As indicated above, competition between municipalities is not typically a detriment for the purposes of s. 690 of the Act. Here, the Town says that it will face undue competition for infrastructure funding as a result of the cost of the ASP's waste water treatment plan. The Town expects funding competition to intensify in 20 to 30 years, believing that the cost of building and improving treatment facilities will increase. The Town's hypotheses about costs and funding decades from now is speculative and the effects too remote to support a finding of detriment for the purposes of this appeal. As stated in *Sturgeon*, an appellant should be able to point specifically to how an area structure plan, such as the ASP, will impact a municipality and to what effect. The MGB continues to agree with this statement. Evidence before the Board does not demonstrate that infrastructure cost underfunding with certainty (as a result of the ASP or otherwise). Additionally, the Board notes that the Town did not present convincing evidence to support Mr. Berzins' claim that either the Town of High River's waste treatment facility was overloaded or, were this to be the case, that upgrading the facility would have any impact on the Town.

[202] The Town's water presentation illustrated for the MGB the complex nature of water in the SSRB, including the linkages between sub-basin transfers and the future impact this might have for the region. Although the MGB appreciated the presentation, it observes that while the Sheep River flows through the Town, the rest of the basin is downriver from the Town's boundaries. The *Water Act*, RSA 2000, c W-3, sets out the framework for water management, including water flow, as a sphere of provincial responsibility. Waste treatment matters are also a provincial concern under the *Environmental Protection and Enhancement Act*, RSA 2000, c E-12. Beyond addressing matters outside of the Town's boundaries, the Town's evidence regarding regional water concerns as a result of water use by the ASP are too remote to prove a detriment to the Town. Parenthetically, the same or greater water use could be planned in a municipality where the Town would have no right of appeal before the MGB on the basis of a detriment to the Town. Such regional environmental concerns may be dealt with more appropriately by other authorities such as the Environmental Appeals Board.

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ISSUE 7: Does the ASP's effect on the Town's transportation and infrastructure planning cause detriment to the Town by creating undue and unplanned stress on existing roadways, and requiring unanticipated and premature capital expenditures?

Town's Position

[203] Mr. Marley Oness, the Municipal Engineer for the Town of Okotoks, provided evidence about detriment to the transportation and infrastructure services posed by the ASP. He explained that the Town relied heavily on the Legacy Plan when planning its transportation and infrastructure needs. The Legacy Plan contemplated a defined urban growth boundary, with steady lower density growth on its fringe and in the region generally. The Town's utility and transportation infrastructure has been planned and built consistent with the population figures, servicing capacity and the land base anticipated in The Legacy Plan. Its Master Transportation Plan (MTP) was also established with these assumptions in mind.

[204] If development contemplated by the ASP proceeds, the additional traffic will strain the Town's roadway and traffic infrastructure. According to Mr. Oness, there is already traffic congestion at various intersections on the Northridge/Southridge Drive route (formerly Highway 2A). Congestion along this route is exacerbated by a railway crossing, which the Town has attempted to deal with by developing 32 Street on the east side of the Town. This route includes a second river crossing and a grade separation from the railway. In developing this solution, the Town did not analyze the implications of the ASP on the existing transportation routes, because it relied on information set out in the Legacy Plan.

[205] In reviewing the Traffic Impact Assessment (TIA) submitted by the developers, Mr. Oness indicated there will be additional congestion at four intersections rather than the two identified in the TIA. The congestion will result in a situation where a vehicle may wait for up to three lights at an intersection if a train were to pass through at rush hour. In addition, Mr. Oness noted that the ASP has only a single point of entry/exit, which is not conducive to efficient circulation or a strong transportation network required for a healthy urban community.

[206] The Town also pointed to the evidence of Mr. Glen Pardoe, who also reviewed the Landowner's TIA and is the professional engineer who updated the Town's MTP in 2008. Mr. Pardoe raised three notable points. First, the TIA did not model a major intersection at Riverside Gate and Southridge Drive near the ASP. This omission meant there could be a congested area not identified by the TIA. Further, because of the traffic around this area from Elizabeth Street, the main street in the Town, there could be an overlap between traffic queuing for both intersections. The second point was that the proportion of commuter traffic coming from the ASP and traveling through the Southridge/Northridge Corridor to Calgary might be overstated. Related to this was the potential that a commercial development in the ASP area might affect the traffic pattern, particularly, if a business such as a coffee bar with a drive through were to be

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located adjacent to the Highway. In Mr. Pardoe's view, the analysis presented by the Landowner did not seem to account for this type of business. The final point was that the traffic queues along Northridge and Southridge Drive might increase if traffic from the ASP used that route through Okotoks rather than the new route and bridge constructed on 32nd Street.

[207] Based on advice from Mr. Pardoe, the Town observed that the increased traffic generated by the ASP will cause traffic to move over to the 32nd Street route earlier than anticipated. Increased traffic over the 32nd Street bridge will likely force an expansion much earlier than previously anticipated under the MTP. Further, because the development is located in the MD, the developer cannot be subject to the Town's offsite levy bylaw. Therefore, the Town would experience additional costs for growth which it cannot recover.

[208] The ASP also undermines the Town's relationship with its developers who have paid off-site levies for infrastructure upgrades. The off-site levy bylaw may require adjustment if there are additional costs to services covered by the bylaw as a result of new users from the ASP. These additional costs will have to be borne by the development community within the Town. The Legacy Plan and the MTP set out the framework of transportation and infrastructure upgrades within Okotoks. In turn, the Town uses this information to develop and review its off-site levy bylaw, which is used to help fund the upgrades. If transportation upgrades are required ahead of the timelines in the MTP, Okotoks residents will have to bear the unanticipated cost of the improvements.

MD's Position

[209] The MD submitted that the Town has not presented the Board with substantive evidence (e.g. a TIA) in support of its concerns that the increased density proposed by the ASP cannot be supported by the Town's road system. To this, the MD referred to the *Sturgeon* decision, whereby the MGB held that "there is a direct relationship between land use and transportation needs" (page 64/84). The MD concluded by expanding on the above proposition, stating that road capacities are an issue in places with growing populations and that specific evidence of detriment (e.g. TIA), and not just generalized effects, must be presented before the MGB can uphold an appeal.

[210] The MD agreed that the ASP would generate traffic that would use roadways in the Town. However, the Town would not bear the sole burden of financing improvements. Mr. Riva Cambrin submitted that the MD has a long history of contributing to the Town's infrastructure (such as roads) and soft services. The MD intends to continue to share costs. Since the adoption of the JPA, both municipalities have been working together to craft a comprehensive Master Cost Sharing Agreement. Section 2.1(9)(d) of the JPA specifically contemplates roads and transit under the Master Cost Sharing Agreement. Furthermore, the MD submitted that infrastructure costs for roadways are often split between municipalities, the province, and the federal government.

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[211] Section 5.2.3 of the ASP requires the developer to prepare a TIA identifying any off-site road improvements. The MD could, therefore, request the developer to expand the scope of the TIA to include additional impacts of Southridge Drive in the Town. If improvements were required on roads which served the ASP, including Southridge Drive, those improvements would be performed at the cost of the developer in accordance with the ASP. These costs could be included in the MD's off-site levy bylaw or by an agreement for oversizing under section 651 of the Act.

[212] Previously, the MD has resolved the Town's concern over use of the Town's infrastructure by MD residents through servicing agreements. Mr. Riva Cambrin specifically cited the Sandstone Springs development as an example. On June 9, 2010, both parties entered into a servicing agreement, which addressed cost sharing for sewer utilities as well as upgrades to Big Rock Trail and Southridge Drive. The MD indicated that a similar approach could be taken for the ASP.

Landowner's Position

[213] The Landowner referred to *Sunbreaker Cove* for the proposition that the evidence used to establish claims of detriment must be of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact on the initiating municipality. The Landowner submitted that the Town has not completed a TIA to support its claim that the ASP will impact the Town's infrastructure, and has not provided evidence to support a claim of detriment.

[214] The only TIA before the Board was prepared by Mr. Jay Magus, a professional engineer with expertise in the area of transportation. Mr. Magus explained that the initial TIA was required by Alberta Transportation given that the north and easterly boundaries of the parcel occupied by the ASP are highways. Repeated requests to the Town for additional information and data went unanswered, so both the initial and the updated TIA were based on information in the Town's MTP.

[215] Mr. Magus stated that four intersections near the ASP were identified and the traffic patterns modeled using traffic simulation software. There are areas which will experience additional traffic from the ASP; however, these impacts can be mitigated by upgrading roadways and signaling and by altering traffic flow during different times of the day. In response to questions from the Town about queuing and implication of the railway crossing, Mr. Magus indicated that the Town's MTP that could be amended to accommodate additional traffic by changing traffic signal length, or by adopting other traffic measures. The Landowner also noted that upon questioning, Mr. Pardoe confirmed there is no comparison between the queuing anticipated by the ASP and the kind of queuing that occurs in Calgary.

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[216] Finally, the Landowner disagreed with the Town's position that the ASP might result in an unfair financial burden being placed on its residents or business. The Landowner supports the idea of paying its proportional share of additional costs if it is shown that the Town's transportation system will be affected. It is also willing to pay for upgrades at essential intersections in the Town as a result of traffic generated by the ASP. Some upgrades were already identified by Mr. Magus in preparing the TIA, including a lane adjustment at Milligan Drive.

MGB Findings

- The evidence does not show that addition of the ASP and the corresponding influx of population on the Town's boundary will create undue stress on the Town's existing roadways.
- The evidence does not show that the increase in traffic will create unmanageable capital expenditures.
- If there are additional costs, these may be entered into an agreement to cover the proportionate share of the improvements.
- The Town, MD and Landowner have options that all parties are willing to explore to address the potential impacts of the ASP on traffic and any additional resulting costs for infrastructure.
- The evidence did not show the ASP would result in detriment owing to increased stress on traffic infrastructure in Okotoks.

MGB Reasons

[217] The strongest evidence received concerning the impact that the ASP would have on the Town's transportation infrastructure was the Landowner's TIA. This evidence shows that based on current traffic patterns within the Town, the ASP would have a nominal impact on the Town's traffic patterns, even during peak hours (at which time the TIA projects a 30% chance of waiting for two light sequences at certain intersections). Mr. Pardoe, the Town's witness, hypothesized that some intersections not included in the study may be affected by Wind Walk; however, no TIA was prepared to quantify those effects, although the Town had many months to prepare one and even made representations to the effect that it would. In the Board's view, the determinative evidence on traffic impacts remains the Landowner's TIA and it does not show that road congestion will get significantly worse. As the Landowner noted, this is a similar circumstance to the one in *Sunbreaker Cove*: the Town has not provided evidence to support a claim of detriment in regards to traffic congestion to the Board's satisfaction.

[218] Aside from traffic congestion, the Town also raised concerns relating to funding. One such concern is that the future residents of Wind Walk will benefit from Town infrastructure without paying for it. Another is that the Town may be compelled to make unanticipated and premature additional capital expenditures. Having advanced these concerns, however, the Town

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presented no evidence other than anecdotal testimony to confirm what additional costs the Town may face as a result of potential development at Wind Walk. For example, it did not submit its Offsite Levy Bylaw or other information about how offsite levies were collected in other cases and how the funds so collected were used. The Town could have extrapolated from such information to estimate the offsite levies that might be charged to the ASP if it were it within the boundaries of the Town, and to detail the expected loss of revenue and addition to expenditures.

[219] Similarly, no evidence was presented to detail the Town's infrastructure budget, the capital projects and their timetable anticipated as a result of the ASP, the estimated costs that could be assigned to Wind Walk, nor the proportion of these costs that could be attributed to the proposed population of 1,200. In summary, there is insufficient evidence before the MGB to show detriment owing to a strain on or additional costs to build or maintain infrastructure as a result of the ASP.

[220] Finally, the Board observes that the Town and the MD have a history of developing cost sharing agreements. In this case, the Landowner has also represented at the hearing that it is willing to pay its "pro-rata fair share" of the cost of traffic impacts. Accordingly, the MGB is confident that if it is determined at a future date what effects ASP may have on traffic in the Town, these effects may be accommodated by measures that the Town, MD and Landowner can implement through existing infrastructure or by agreement and cost sharing, if new infrastructure is needed.

ISSUE 8: Does the ASP's effect on the Town's community services cause detriment to the Town?

Town's Position

[221] Mr. Oness, on behalf of the Town, submitted that it has carried out significant long range planning for community services under the Legacy Plan. Its capital planning for facility and service requirements were based on the growth projections and patterns contained within the IDP. Both Mr. Oness and Mr Hanhart noted that since 1998, the Town has made over 120 million dollars in capital expenditures and upgrades based on the Legacy Plan. The unanticipated addition of the ASP and its increase in population will render the assumptions of the Legacy Plan incorrect. As a result, the Town is concerned it may have to spend more money in two areas: (1) to redo its long range planning to accommodate the ASP's population and (2) to upgrade community facilities to accommodate increased users. These additional capital expenditures are detrimental.

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The Town's Soft Service Delivery

[222] In its written submission, the Town reiterated that if the MD is permitted to make "one-off" arbitrary and unilateral decisions, the growth patterns and assumptions used by the Town would be rendered useless. In an effort to quantify the increased cost of services that would result from the ASP, the Town referred to its "Cost of Community Services Analysis" prepared in August of 2009 by Harold Johnsrude Consulting Inc. Taking into account the costs reported there (including fixed costs and variable costs per person) as well as the fact that certain costs such as water and sewer will not be used by Wind Walk residents, the Town submitted that the population represented by the ASP will account for \$289,200 of cost increases.

Fire

[223] Mr. Oness outlined the Town's concerns over the provision of fire services. Based on the information provided in the ASP, it appears that a reduced standard of fire protection is proposed from that required by urban municipalities. The ASP proposes water flows and storage for fire protection well below the recommended levels. The capacity proposed is more typical of rural development where there is a significant distance between buildings. As there is a mutual aid agreement between the municipalities, the proposed water storage and flow would impede the Town's ability to provide fire services to the development and endanger its first responders.

[224] The development would also increase the Town's fire service area (travel distance and response time) as a result of the need for additional fire inspections, fire prevention activity, EMS calls, and the potential for additional motor vehicle collision response. These challenges would act as a detriment to the level of fire service and protection currently in the Town and the MD.

Library

[225] Mr. Oness raised concerns over the impact this ASP would have on the Town's library services. The Town's library was expanded in 2005 to accommodate the Town's growing population, consistent with the Legacy Plan. It was not constructed to accommodate the expansion of the MD. Currently, 22% of library patrons are MD residents who do not contribute funding towards the maintenance and operating costs of the building. The additional population generated by the ASP would mean a larger percentage of the patrons coming from the MD, using library resources and this is a detriment to Town residents.

Recreation Capacity/Growth Impact

[226] Mr. Oness and Mr. Hanhart argued that changes in density and population will impact the Town's provision of recreation and leisure services. Planning, design, and construction for the newly expanded indoor recreation facilities were based on principles found within the IDP and

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did not anticipate the ASP. There is currently minimal space in existing facilities to accommodate an increase in participants beyond existing population projections. Overcrowding in lessons, activities, and structured sport leagues would have a detrimental effect on the quality of the programs and the value of the participants' experience. An increase from the anticipated future population projections would require a completed re-work of all master planning for recreation and leisure services and facilities, which cannot be accommodated in Town boundaries.

MD's Position

[227] The MD argued that the Town has not substantiated its allegation that the ASP will have a detrimental effect on its ability to provide "soft services." While other MGB decisions have recognized that social or economic arguments can form the basis of detriment, it has never found detriment on this ground. By way of example, the MD cited Grande Prairie, where the City argued that providing soft services to County residents had an economic impact on the City that amounted to detriment. The MGB did not accept this line of argument. In its reasons, it noted that the County contributed to the cost of soft services provided by the City. The MGB also noted that populations are mobile, that use of services flows in both directions between the municipalities, and that plans were in place for provision of future County facilities for use by both municipalities' residents. The MD also cited *Sturgeon*, where the MGB held:

Residents in all municipalities are very mobile, and the Board is not prepared to intervene in the methods of allocating servicing costs and revenue sharing. This is a matter to be negotiated by the municipalities themselves (page 62/84).

[228] The MD noted that it has a long history of contributing to the cost of the Town's soft services and that it fully intends to continue to share costs with the Town. Since the adoption of the JPA, the Town and the MD have been working together to craft the comprehensive Master Cost Sharing Agreement. Section 2.1(9) of the JPA specifically contemplates cost sharing for emergency and protective services, school sites, library, medical services, economic development/business services, cemetery, recreation, family and community support services, social services, seniors housing, affordable housing, and other cultural and community facilities.

[229] Insofar as the MD contributes reasonably to the funding of soft services, this complaint does not demonstrate detriment to the Town. Mr. Riva Cambrin reported that the MD has been a significant contributor to regional projects and is a member of the Foothills Foundation and Foothills Regional Services Commission. The MD and Town have been parties in various cost sharing agreements in the past, are parties to current cost sharing agreements, and are currently engaged in the negotiation of a comprehensive Master Cost Sharing Agreement, which includes a Fire Services Agreement. Currently, under a recreation cost sharing agreement, the MD provides \$433,500 to the Town to assist in the operations of facilities within the Town. In some cases, the MD has also taken a debenture for recreation facilities within Okotoks. The MD also

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noted that the Town from time to time imposes user fees for the purpose of cost recovery for soft services especially for library and recreation facilities. With specific reference to the Okotoks Public Library, there is a “non-resident” membership, and a higher fee is charged.

[230] The MD also noted Town residents use facilities in the MD just as residents of the MD use Town facilities. For example, Mr. Riva Cambrin noted that the MD is building a new arena to the north of the Town. Prior to opening, ice time is 60% booked by Town residents. The Town and the MD also worked together to construct the Regional Field House and the ASP contains a variety of facilities and amenities that the MD anticipates will be used by Town residents.

[231] Finally, the MD explained that it is the Town’s decision to provide most infrastructure services to the MD. If the Town is unable or unwilling to provide services to the new development, the MD and the Developer will have to address this issue.

Landowner’s Position

[232] The Landowner argued, citing *Sunbreaker Cove* that it is insufficient in a section 690 appeal to simply assert that the ASP will result in an increased demand for services because of the location of the proposed development and that neither the Landowner nor the MD will contribute to their costs.

[233] Rather than providing evidence, the Town has presented unsubstantiated claims that do not consider many factors, including the regional nature of some services, the benefit of intermunicipal networks and agreements, economies of scale, contributions made by the MD to the Town’s services, and services (e.g. school and playing fields) that will be offered to the Town as a result of this development. The Town also provided insufficient evidence to back its predictions concerning demand on services from Wind Walk residents. For example, the Town assumed that all of the residents in the ASP will use the library services, whereas only half of the Town’s residents currently use the library. The MGB decision in *Grande Prairie* demonstrated that that cross-use of facilities between municipalities and cost sharing arrangements mitigate arguments of detriment as they pertain to soft services.

MGB Findings

- The location of the ASP is still within the regulated fire response times.
- The ASP does not affect the Town’s ability to provide community services, and no detriment was shown.
- Any operational costs may be resolved under existing or proposed servicing agreements.

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MGB Reasons

[234] The Town argued three specific areas of community service will be affected detrimentally by adding the ASP on its fringe: fire service delivery, library services, and recreation services. While each of these matters is considered below.

Fire and Emergency Services

[235] The Town argued that providing fire service to the ASP would present a financial burden, lower service levels, increase response times, and reduce the ability to plan for future development. Fire services are addressed in the Town and MD's joint Fire Services Agreement. The Town and MD are developing a Master Cost Sharing Document, which includes provision for fire services. This document is also contemplated under section 2.1(9)(e) of the JPA. In the Board's view, these two agreements, the Fire Services Agreement and Master Cost Sharing Document, will ensure that adequate fire service levels are maintained and that the Town is compensated for additional services to the ASP.

[236] The Town provided a map detailing emergency response times from its existing fire station and the south fire station, which is currently under construction. The map illustrates that responders can reach the lands that include the ASP within 4.5 minutes from the south fire hall (Woodhaven). The provincial standard for response time is less than 10 minutes from the initial call to deployment at the scene. It is unclear to the MGB how this ASP differs from other recent fringe area proposals which also fall within the response area. The Board sees little evidence to base a finding that the additional residents contemplated for Wind Walk will extend current response times.

[237] Mr. Hanhart expressed concern that approval of the ASP and subsequent extension of water and sewer services would trigger further applications regarding areas on the Town's periphery – for example, on the quarter section to the east of the ASP. He suggested such applications could jeopardize the Town's ability to plan for future fire services and that additional population in these areas would impact response times, especially if one of the two routes over the Sheep River become blocked. In the Board's view, difficulties that may arise from future applications are speculative at this point in time. Furthermore, Mr. Hanhart and Mr. Riva Cambrin noted in response to questioning that if they should arise, these issues can be discussed and dealt with through the Fire Services Agreement or under a mutual aid agreement. The Board is confident these mechanisms are adequate to resolve future planning and response time issues and will ensure standards under the *Safety Codes Act* are met.

Library Services

[238] Under section 2.1(9)(h) of the JPA, library services are contemplated for cost sharing between the Town and MD. As the ASP is included in within the JPA, it appears that additional

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costs incurred by the Town because of library users residing in the ASP may be offset through a cost sharing agreement. The MD and Landowner also advised that the Town's library is designated as a regional library, suggesting service to non-Town residents is intended. In addition, the parties also agreed that the Library's fee structure includes a higher fee for non-resident members. Non-resident fees are often charged to help recover additional costs of providing services otherwise paid for by property taxes. For all these reasons, the Board sees no detriment to the Town from use of library services by residents of the ASP.

Recreation Services

[239] Under section 2.1(9) (l) and (q) of the JPA, recreation and other cultural and community facilities are contemplated for cost sharing between the Town and MD. Both municipalities also have a long-standing history of cooperation and have demonstrated an appreciation for the need to cost-share local and regional recreational and cultural services. One example of a recent cost sharing arrangement is the Regional Field House, which is scheduled to be built in the MD to serve both Town and MD residents. Mr. Oness also confirmed that the MD has compensated the Town for the use of its recreation facilities and services by residents. Under a recreation cost sharing arrangement, a lump sum of \$433,500 was paid by the MD to the Town in 2011. In light of this history, the MGB is confident that successful arrangements can be reached to offset any additional costs that may be incurred by Town.

[240] Finally, while the Town stated that its recreation services are at capacity, it did not provide details as to how approval of the ASP would affect use. For example, it did not establish a baseline for service presently provided and show how this might change with a proportion of the Wind Walk residents using Town services. It is evident that not all of the future residents of the ASP will use the recreation facilities within the Town; similarly, Town residents can use both Town and regional facilities. In short, the Town did not provide enough evidence to demonstrate the detriment alleged.

Conclusion

[241] The Board observes that the population contemplated for ASP will fall within the projected growth in the JPA. Similarly, it does not exceed the population outlook for the MD; rather, it represents an acceleration of those growth projections in one node. In the Board's view, the ASP's residents will not significantly affect the Town or MD's ability to provide effective services. For all of the reasons described above, the MGB sees no detriment to the Town from use of emergency, library or recreational services by residents of the ASP.

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ISSUE 9: Is the ASP invalid because it was passed illegally and thereby cause detriment to the Town?

Town's Position

[242] The Town argued that the MGB has the power to decide questions concerning the validity of bylaws, as recently confirmed by the Court of Queen's Bench in (*Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417). Further, it claimed that the MD held an "in camera" meeting after the public hearing but before third reading of the ASP. This procedural irregularity rendered the ASP invalid and resulted in planning uncertainty detrimental to the Town.

MD's Position

[243] The MD noted that the Town's argument concerning the potential illegality of the ASP was not contained in its Notice of Appeal. Further, it argued the MGB is not the proper forum to address questions concerning whether the ASP is illegal or invalid as a result of in-camera meeting(s) between the MD and the Landowner. Rather, section 536 of the Act provides that the validity of a bylaw can be challenged by making a judicial review application to the Court of Queen's Bench, which is where this matter should be decided.

Landowner's Position

[244] The Landowner also argued that the MGB is not the correct venue to address the procedural validity of the Bylaw. Two cases were cited to support this position: *Mather v. Gull Lake*, 2007 ABCA 123 [*Mather*], and *Sunbreaker Cove*. In *Mather*, the Alberta Court of Appeal considered the role of administrative tribunals in determining the validity of municipal bylaws. The Court stated at paragraph 21:

If Mather seeks to challenge the validity of the bylaw, he cannot do so by appeal to the SDAB. The SDAB must comply with the bylaw then in effect and has no power to declare the bylaw invalid.

[245] In *Sunbreaker Cove* a summer village had made an allegation of procedural defect. The MGB stated at paragraph 64:

The MGB makes no finding as to the validity of the bylaw. Jurisdiction to declare a bylaw invalid for flawed process is given not to the MGB but to the Alberta Court of Queen's Bench.

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[246] The Landowner also highlighted that sections 536 and 537 of the Act provide for an appeal to the Court of Queen's Bench.

MGB Finding

- The MGB makes no finding as to the validity of the bylaw.

MGB Reasons

[247] The MGB must often consider questions of law including - from time to time - questions about the validity of legislation. Most commonly, this type of question arises when the Board is called upon to apply a bylaw or regulation, but is faced with an argument from a party before it that the regulation (or one of its provisions) is invalid. Since the MGB may not apply invalid laws, it must determine whether the impugned provisions are valid before applying them (*Calgary (City) v. Canadian Natural Resources Limited*, 2010 ABQB 417 at para. 86).

[248] The question now before the Board is of a much different character. The MGB has not been asked to apply an ASP of suspect validity. Rather, the Appellant argues that it will suffer detriment owing to invalidity of an ASP. To cure this detriment, it says the MGB should repeal the bylaw using its power under section 690. In the MGB's view, this would not be an appropriate use of the section 690 power. The MGB's role under section 690 is to repeal or amend bylaws which it finds are detrimental to another municipality - not to repeal bylaws which it finds to be invalid owing to a flaw in the way they were passed. That role properly belongs to the courts, as recognized by section 536 of the Act:

536(1) A person may apply by originating notice to the Court of Queen's Bench for
(a) a declaration that a bylaw or resolution is invalid, or
(b) an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.

(2) A judge may require an applicant to provide security for costs in an amount and manner established by the judge.

[249] The MGB understands that the Appellant has already made a section 536 application, which appears the appropriate route to address the question of validity in this case.

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PART F – DECISION AND SUMMARY

[250] The Town of Okotoks has an award-winning and well-articulated municipal development plan called the “Legacy Plan”, linking the Town’s growth to the water licensing capacity of the Sheep River. Developed in 1998, the Legacy Plan establishes a maximum population for the Town and sets out a process and a schedule for developing and rehabilitating infrastructure to serve that identified population. From a corporate planning perspective, the Legacy Plan is a combination of a long range planning document and a strategic plan that makes its readers aware of the Legacy Plan’s philosophy and the direction in which the Town wishes to proceed.

[251] The MD of Foothills, on the other hand, recently adopted a municipal development plan that is more traditional in Alberta. The MD’s MDP carries the same weight as the Town’s Legacy Plan, but it does not appear to be as integrated or as comprehensive, probably due to the larger land base and the different characteristics of the MD of Foothills. The MD has, in other circumstances, allowed statutory plans or concept plans, which support further subdivision, development and construction of residential neighbourhoods near or adjacent to other urban municipalities. In the past, a plan such as this would be the precursor to the development of a hamlet or an urban municipality, not an adjunct to an existing urban municipality.

[252] The quarter section containing the Wind Walk ASP is identified in both the Okotoks’ and MD of Foothills’ intermunicipal development plan and their joint planning agreement as an area for growth and further study. While the Wind Walk ASP’s proposal is out of phase (4th priority), it is contemplated as an area where growth might occur and the MD has chosen to speed the process by passing the ASP, after significant public input and consultation.

[253] Since the premise of the Town’s Legacy Plan is to structure growth and development to a defined population, the addition of a neighbourhood on the periphery of the Town will have some impact. However, what the MGB observed after hearing the matter is that while this impact might have some effect on the Town, no clear evidence was shown to establish a causal link between the ASP and a likelihood of significant detriment. Without evidence to establish such a finding, the MGB can find no reason to interfere with the ASP which has been adopted by the MD of Foothills council.

[254] Going forward, the MGB notes that the ASP is a relatively big picture document and that construction – if it occurs at all – will not commence for some time. Other approvals will be necessary before any activity occurs on the site, leaving considerable scope for further discussions between all parties about the implications of this ASP. The MGB was encouraged by the willingness and ability of these two municipalities to work together and is confident that, together with the Landowner, they can discuss and resolve their remaining differences.

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[255] The appeal of the Town is dismissed.

Dated at the City of Edmonton, in the Province of Alberta, this 25th day of January 2012.

It is so ordered.

No costs to either party.

MUNICIPAL GOVERNMENT BOARD

(SGD.) D. Thomas, Presiding Officer

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APPENDIX "A" – APPEARANCES

NAME	CAPACITY
G. Ludwig	Counsel for the Appellant (Town of Okotoks)
B. Dell	Assistant Counsel for the Appellant (Town of Okotoks)
E. Sands	Witness for the Appellant (Town of Okotoks)
S. Hanhart	Witness for the Appellant (Town of Okotoks)
M. Oness	Witness for the Appellant (Town of Okotoks)
B. Berzins	Witness for the Appellant (Town of Okotoks)
G. Pardoe	Witness for the Appellant (Town of Okotoks)
J. Klauer	Counsel for the Respondent (Municipal District of Foothills)
L. MacFarlane	Assistant Counsel for the Respondent (Municipal District of Foothills)
H. Riva Cambrin	Witness for the Respondent (Municipal District of Foothills)
H. Hemmingway	Witness for the Respondent (Municipal District of Foothills)
H. Ham	Counsel for the Affected Landowner (AB Foothills Properties Ltd.)
J. Sykes	Assistant Counsel for the Affected Landowner (AB Foothills Properties Ltd.)
T. Gilliss	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
G. Nielsen	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
D. Westhoff	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
S. Atkins	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
J. Floyd	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
J. Magus	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
G-C. Carra	Witness for the Affected Landowner (AB Foothills Properties Ltd.)
D. Atkins	Observer
D. Brezsnyak	Observer
C. Carr	Observer
T. Dabrowski	Observer
L. Hodson	Observer
J. Laurien	Observer
J. Laycraft	Observer
A. Mar	Observer
M-C. McIntosh	Observer
D. Patterson	Observer
R. Quail	Observer
B. Robertson	Observer
D. Skorenki	Observer
L. Spilak	Observer

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V. Tran Observer
L. Wasylenko Observer

APPENDIX "B" – DOCUMENTS RECEIVED AND CONSIDERED BY THE MGB:

NO	ITEM
1A	Letter to MGB from Town of Okotoks (Sept. 9/10)
2R	Letter to MGB from Municipal District of Foothills No. 31 (Sept. 28/10)
3A	Submission of the Town of Okotoks (A-1)
4R	Argument of the Municipal District of Foothills No. 31 (R-1)
5R	Authorities of the Municipal District of Foothills No. 31 (R-2)
6R	Materials of the Municipal District of Foothills No. 31 (R-3)
7L	Argument of Alberta Foothills Properties Ltd. (S-1)
8L	Rebuttal of Alberta Foothills Properties Ltd. (S-2)
9A	Legal Submission of the Applicant (The Town of Okotoks).
10A	Wind Walk Appeal: Submission on the Impact of Foothills August 11, 2010 ASP On the Town of Okotoks - Includes Dr. Sands' "Will Say" Statement
11A	Wind Walk Appeal: Submission on the Impact of Foothills August 11, 2010 ASP On the Town of Okotoks – Supplementary Documents
12R	Respondent Municipal District of Foothills No. 31 Legal Brief
13R	Municipal District of Foothills No. 31: Book of Authorities Volume I of II
14R	Municipal District of Foothills No. 31: Book of Authorities Volume II of II
15R	Municipal District of Foothills No. 31: Evidentiary Submissions
16L	Alberta Foothills Properties Ltd.: Memorandum of Argument
17L	Landowner Authorities
18L	Landowner Materials
19L	Amended Wind Walk Traffic Impact Assessment
20L	Sanitary Sewer Servicing Study
21L	Water Network Analysis
22L	Wind Walk – The Smart Community
23L	Cumulative Effects Evaluation, Wind Walk Project
24L	Master Drainage Plan, Wind Walk Project
25A	Town of Okotoks Rebuttal Brief: Legal Argument
26A	Town of Okotoks Rebuttal Brief: Planning
27A	Town of Okotoks Rebuttal Brief: Services
28A	June 2, 2011 - Email from Okotoks Counsel
29L	AB Foothills Properties Ltd. Expanded "Will Say" Statement
30L	Traffic Impact Assessment
31A	2008 Aerial Photograph of Town of Okotoks
32R	Map ASPs for Green Haven Estates and Sandstone Springs

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- 33A PowerPoint: Sustainable Water Supply Wind Walk Appeal
- 34L Rocky View County – Proposed Bragg Creek Wastewater Treatment Plant (Approval Application 001-267306)
- 35A Town of Okotoks Transportation Plan: Final Report (2002)
- 36L Peppertree Apartments Ltd. Represented by Canadian Valuation Group and William A.C. Rowe, Barrister & Solicitor, Appellant v. City of Edmonton, Respondent (Non-Suit Motion)
- 37L *Lor-al Springs Ltd. v. Ponoka County Subdivision and Development Appeal Board*, 2009 ABCA 299. (Non-Suit Motion)
- 38L *Emeric Holdings Inc. v. Edmonton (City)*, 2009 ABCA 65. (Non-Suit Motion)
- 39L AB Foothills Properties Ltd. Non-Suit Application
- 40A *Ironside (Re)* in response to non-suit motion.
- 41L Curriculum Vitae of Dr. Nielsen
- 42L Environment Canada: Average (International) Daily Domestic Water Use
- 43A Wind Walk TIA Addendum Transportation Review
- 44L E-mail Invitation from Gian-Carlo Carra re: Wind Walk Charrette (May 23-27)
- 45L Meeting Summary: Town of Okotoks Developers’ Meeting
- 46A Wind Walk Appeal: Impact of Wind Walk ASP On the Town of Okotoks (PowerPoint Hardcopy)
- 47L Tom Gilliss PowerPoint Presentation
- 48L Grant Nielsen PowerPoint Presentation
- 49L Dennis Westhoff PowerPoint Presentation
- 50L Seth Atkins PowerPoint Presentation
- 51L Jim Floyd PowerPoint Presentation
- 52L Jay Magus PowerPoint Presentation
- 53L Gian-Carlo PowerPoint Presentation
- 54R *Water Act*, RSA 2000, c W-3
- 55R Alberta Environmental Appeals Board Decision: *Donkersgoed and all v. Director, Southern Region, Environmental Management, Alberta Environment*, re: *Douglas J Bergen & Associates Ltd.* (20 December 2010, Appeal No. 10-003, 005 & 006-D (A.E.A.B.))
- 56R *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)*, 2003 ABQB 456.
- 57L *Assessment Complaints and Appeals Regulation*, Alta Reg 238/2000
- 58L *Colledge v. Calgary (Subdivision and Development Appeal Board)*, 2010 ABCA 34
- 59 October 8, 2010 Transcript
- 60 December 6, 2010 Transcript
- 61 June 6, 2001 Merit Hearing Transcript (Volume 1)
- 62 June 7, 2001 Merit Hearing Transcript (Volume 2)
- 63 June 8, 2001 Merit Hearing Transcript (Volume 3)
- 64 June 9, 2001 Merit Hearing Transcript (Volume 4)
- 65 June 10, 2001 Merit Hearing Transcript (Volume 5)

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- 66 June 13, 2001 Merit Hearing Transcript (Volume 6)
- 67 June 14, 2001 Merit Hearing Transcript (Volume 7)
- 68 June 15, 2001 Merit Hearing Transcript (Volume 8)
- 69 June 16, 2001 Merit Hearing Transcript (Volume 9)

APPENDIX "C" – LEGISLATION REFERRED TO IN THIS ORDER:

Municipal Government Act, RSA 2000, c M-26

Application to the Court of Queen’s Bench

536(1) *A person may apply to the Court of Queen’s Bench for*

- (a) *a declaration that a bylaw or resolution is invalid, or*
 - (b) *an order requiring a council to amend or repeal a bylaw as a result of a vote by the electors on the amendment or repeal.*
- (2) *A judge may require an applicant to provide security for costs in an amount and manner established by the judge.*

Procedure

537 *A person who wishes to have a bylaw or resolution declared invalid on the basis that*

- (a) *the proceedings prior to the passing of the bylaw or resolution, or*
 - (b) *the manner of passing the bylaw or resolution*
- does not comply with this or any other enactment must make an application within 60 days after the bylaw or resolution is passed.*

Validity relating to public participation

538 *Despite section 537, a person may apply at any time*

- (a) *for a declaration that a bylaw is invalid if*
 - (i) *the bylaw is required to be put to a vote of electors and the vote has not been conducted or if the bylaw was not given the required approval in such a vote,*
 - (ii) *the bylaw is required to be advertised and it was not advertised, or*
 - (iii) *a public hearing is required to be held in respect of the bylaw and the public hearing was not held,*
- or*
- (b) *for an order requiring a council to pass a bylaw as a result of a vote by the electors.*

Definitions

616 *In this part*

- (b) *“development” means*
 - (i) *an excavation or stockpile and the creation of either of them,*
 - (ii) *a building or an addition to or replacement or repair of a building and the construction or placing of any of them on, in, over or under land,*

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- (iii) a change of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the use of the land or building, or
- (iv) a change in the intensity of use of land or a building or an act done in relation to land or a building that results in or is likely to result in a change in the intensity of use of the land or building;

Intermunicipal development plan

631(1) Two or more councils may, by each passing a bylaw in accordance with this Part or in accordance with sections 12 and 692, adopt an intermunicipal development plan to include those areas of land lying within the boundaries of the municipalities as they consider necessary.

(2) An intermunicipal development plan

(a) may provide for

- (i) the future land use within the area,
- (ii) the manner of and the proposals for future development in the area, and
- (iii) any other matter relating to the physical, social or economic development of the area that the councils consider necessary,

and

(b) must include

- (i) a procedure to be used to resolve or attempt to resolve any conflict between the municipalities that have adopted the plan,
- (ii) a procedure to be used, by one or more municipalities, to amend or repeal the plan, and
- (iii) provisions relating to the administration of the plan.

Municipal development plan

632(1) A council of a municipality with a population of 3500 or more must by bylaw adopt a municipal development plan.

(2) A council of a municipality with a population of less than 3500 may adopt a municipal development plan.

(3) A municipal development plan

(a) must address

- (i) the future land use within the municipality,
- (ii) the manner of and the proposals for future development in the municipality,
- (iii) the co-ordination of land use, future growth patterns and other infrastructure with adjacent municipalities if there is no intermunicipal development plan with respect to those matters in those municipalities,
- (iv) the provision of the required transportation systems either generally or specifically within the municipality and in relation to adjacent municipalities, and
- (v) the provision of municipal services and facilities either generally or specifically,

(b) may address

- (i) proposals for the financing and programming of municipal infrastructure,
- (ii) the co-ordination of municipal programs relating to the physical, social and economic development of the municipality,

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- (iii) environmental matters within the municipality,*
- (iv) the financial resources of the municipality,*
- (v) the economic development of the municipality, and*
- (vi) any other matter relating to the physical, social or economic development of the municipality,*

(c) may contain statements regarding the municipality's development constraints, including the results of any development studies and impact analysis, and goals, objectives, targets, planning policies and corporate strategies,

(d) must contain policies compatible with the subdivision and development regulations to provide guidance on the type and location of land uses adjacent to sour gas facilities,

(e) must contain policies respecting the provision of municipal, school or municipal and school reserves, including but not limited to the need for, amount of and allocation of those reserves and the identification of school requirements in consultation with affected school boards, and

(f) must contain policies respecting the protection of agricultural operations.

Area structure plan

633(1) For the purpose of providing a framework for subsequent subdivision and development of an area of land, a council may by bylaw adopt an area structure plan.

(2) An area structure plan

(a) must describe

(i) the sequence of development proposed for the area,

(ii) the land uses proposed for the area, either generally or with respect to specific parts of the area,

(iii) the density of population proposed for the area either generally or with respect to specific parts of the area, and

(iv) the general location of major transportation routes and public utilities,

and

(b) may contain any other matters the council considers necessary.

Statutory plan preparation

636(1) While preparing a statutory plan a municipality must

(a) provide a means for any person who may be affected by it to make suggestions and representations,

(b) notify the public of the plan preparation process and of the means to make suggestions and representations referred to in clause (a),

(c) notify the school boards with jurisdiction in the area to which the plan preparation applies and provide opportunities to those authorities to make suggestions and representations,

(d) in the case of a municipal development plan, notify adjacent municipalities of the plan preparation and provide opportunities to those municipalities to make suggestions and representations, and

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(e) in the case of an area structure plan, where the land that is the subject of the plan is adjacent to another municipality, notify that municipality of the plan preparation and provide opportunities to that municipality to make suggestions and representations.

(2) Subsection (1) does not apply to amendments to statutory plans.

Plans consistent

638 All statutory plans adopted by a municipality must be consistent with each other.

Intermunicipal disputes

690(1) If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by

(a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and

(b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating

(a) the reasons why mediation was not possible,

(b) that mediation was undertaken and the reasons why it was not successful, or

(c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.

(3) A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating

(a) the reasons why mediation was not possible, or

(b) that mediation was undertaken and the reasons why it was not successful.

(4) When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).

(5) If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may

(a) dismiss the appeal if it decides that the provision is not detrimental, or

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- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*
- (6) A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,*
- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and*
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.*
- (7) Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.*
- (8) The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.*

Board hearing

- 691(1) The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must*
- (a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*
- (b) give a written decision within 30 days after concluding the hearing.*
- (2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.*

TAB 5

IN THE MATTER OF THE *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

AND IN THE MATTER OF AN INTERMUNICIPAL DISPUTE lodged by City of Chestermere against Rocky View County Bylaw C-7468-2015 (Conrich Area Structure Plan)

CITATION: City of Chestermere v Rocky View County re C-7468-2015 Conrich Area Structure Plan, 2017 ABMGB 19

BEFORE:

Members:

D. Thomas, Presiding Officer

T. Golden

B. Horrocks

Case Managers:

C. Miller Reade

R. Duncan

This is a dispute filed with the Municipal Government Board (MGB) after the adoption of Bylaw C-7468-2015 by Rocky View County (Rocky View). The City of Chestermere (Chestermere) has filed a dispute under Section 690 of the *Act* claiming that portions of the Bylaw has or may have a detrimental effect on it. Upon notice being given to the interested parties, a hearing was held in the City of Calgary, in the Province of Alberta, from September 13 to September 23, 2016. Closing summaries were submitted following the hearing, and the hearing was closed April 19, 2017.

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OVERVIEW

[1] Chestermere filed this appeal because it believed that the Conrich ASP will impact the long term growth and development of the City. Since City of Calgary and Rocky View County reached an agreement after mediation on three areas of detriment that were in common between the appeals, Chestermere argued, that these three areas (transportation, stormwater and the Highway 1 Gateway) should be treated as general detriment.

[2] At the hearing, the bulk of Chestermere's arguments requested that the board find specific detriment in the areas of economic development, planning and social infrastructure. Chestermere argued that the ASP would draw commercial and industrial development into Rocky View and would result in a shortfall in tax revenue for Chestermere. With development choosing to go into Rocky View, there would not be the opportunity for Chestermere to become a sustainable community. Rocky View advised that Conrich ASP is intended to serve as an overall outline for development of the lands uses surrounding the CN Intermodal Terminal, to reduce land use conflicts. The Conrich ASP phases development such that the lands adjacent to Chestermere are designated for Phase 2.

[3] Secondly, Chestermere stated that the social infrastructure needed to support the amount and type of development in the Conrich ASP has not been addressed in the plan. In particular, there are no proper population projections in the Conrich ASP, and the introduction of 5,000 to 10,000 people into the area will place a strain upon a number of services in Chestermere including library, recreation, community services, and emergency services including fire, policing and emergency response services. A social plan is needed to fully understand the impacts of the Conrich ASP. Until a social plan is prepared, or all of the issues relating to social infrastructure are resolved, the ASP is premature. In response, Rocky View noted that there are numerous agreements and plans in place which address all of the issues raised by Chestermere, and these will be amended as needed. As well, much of the residential development in the Conrich ASP will occur in later phases of the plan, allowing for additional population projections to be generated, and plans adjusted with any statutory plans or outline plans adopted in the area conforming to the Conrich ASP.

[4] Finally, Chestermere requested different wording to various provisions of the Conrich ASP, and the application of Growth Management Overlay (GMO) for the Highway 1 Gateway area in place until an IDP, a regional stormwater management system was chosen and constructed, and several plans such as the regional transportation plan be in place. This remedy was requested to resolve Chestermere's concerns about the potential for lack of coordination of plans and for ad hoc development that harms Chestermere and prevents it from becoming a complete community, and moving towards a sustainable assessment split. In response, Rocky View outlined the various plans, reports, consultations and communication about the intention to develop Conrich as a full service hamlet. Despite not having an IDP with Chestermere, Rocky View has intermunicipal

planning policies in its MDP, policies for coordination in the Conrich ASP, and an intermunicipal committee to discuss matters in Chestermere.

[5] The MGB determined that there is no detriment to Chestermere. The Conrich ASP is consistent with the Rocky View MDP which contains intermunicipal planning policies for Chestermere and Rocky View to work together to address coordination of plans. The MGB observes that there were many instances in the plans and documents presented by both municipalities that they had previously worked together, and, the MGB sees no reason why this practice cannot continue.

TERMS USED IN THIS ORDER

This order uses various acronyms and terms, which are listed for convenience.

Act – The Municipal Government Act, Chapter M-26 of the Revised Statutes of Alberta 2000

Affected Party – A party granted limited status in this appeal. Calgary was granted affected party status in this hearing in MGB 004/16

Conrich ASP – The statutory plan under appeal. It is Rocky View County Bylaw C-7468-2015.

Calgary CMA – As defined by Statistics Canada, the Calgary Census Metropolitan Area includes Calgary, Chestermere, Airdrie, Cochrane, the Tsuu T’ina Nation, Rocky View County, Irricana, Beisiaker and Crossfield.

CCCASP – Calgary Chestermere Corridor Area Structure Plan 2004, adopted by Rocky View.

CN Site – The CN Intermodal Terminal and associated lands included in the Calgary Logistics Park Conrich Master Site Development Plan.

CSMI – Comprehensive Stormwater Management Initiative

CRCA—Chestermere Regional Community Association

FCSS – Family Community Support Services

GMO – Growth Management Overlay This is a remedy proposed by Chestermere for the Highway 1 Gateway Area

Highway 1 Gateway Area – Lands located North and South of Highway 1 in Chestermere, Rocky View County and Calgary

Hamlet of Conrich – Unincorporated area, adjacent to the CN Railway.

IDP – Intermunicipal Development Plan

Intermunicipal Dispute Procedure Rules or IMD rules – Procedure rules adopted by the members of the Municipal Government Board under section 523 of the *Act*, January 2013.

PM peak hour trips – Estimated traffic generated in defined area for a particular land use between 1600-1800 in the afternoon.

SRDP – Shepard Regional Drainage Plan

SSRP – South Saskatchewan Regional Plan

SWMF – Stormwater Management Facilities

Waterbridge ASP – Waterbridge Master Area Structure Plan, adopted by Chestermere in 2013

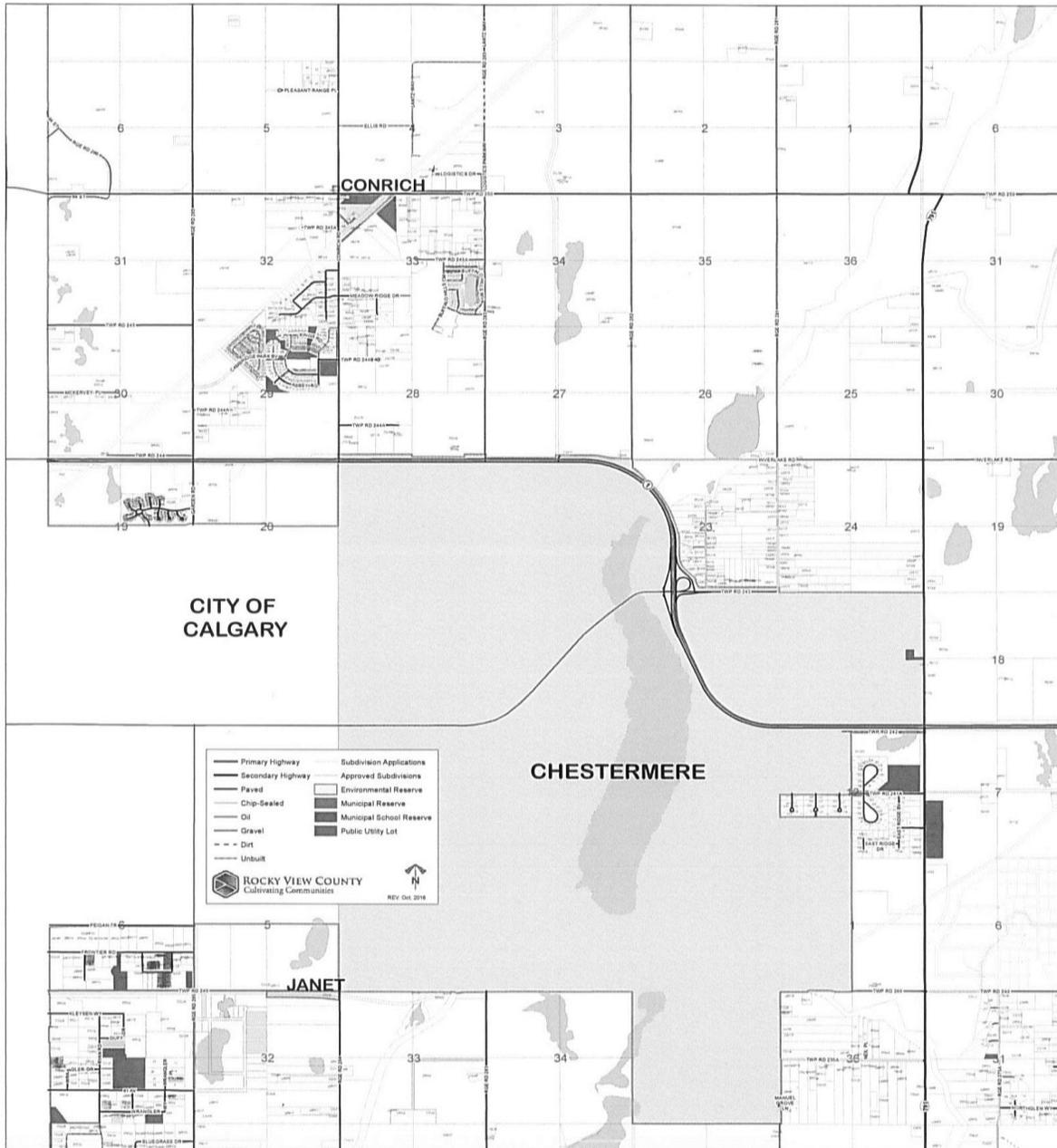
WID – Western Irrigation District

PART A: BACKGROUND TO THE INTERMUNICIPAL DISPUTE?

[6] Section 690 of the *Act* states that if a municipality is of the opinion that a statutory plan or land use bylaw or an amendment adopted by an adjacent municipality has or may have a detrimental effect on it, the municipality may file an intermunicipal dispute. In this case, City of Chestermere filed a dispute stating that Rocky View County Bylaw C-7468-2015 (the Conrich ASP) is detrimental in 14 areas relating to planning including land use, the need for intermunicipal development plans, and the coordination of plans.

[7] Conrich is a hamlet in Rocky View east of Calgary and north of Chestermere. It lies south of Township Road 250 (McKnight Blvd within Calgary) and is bisected by the CN railway. Figure 1 below provides an area map showing Conrich in relation to Calgary and Chestermere.

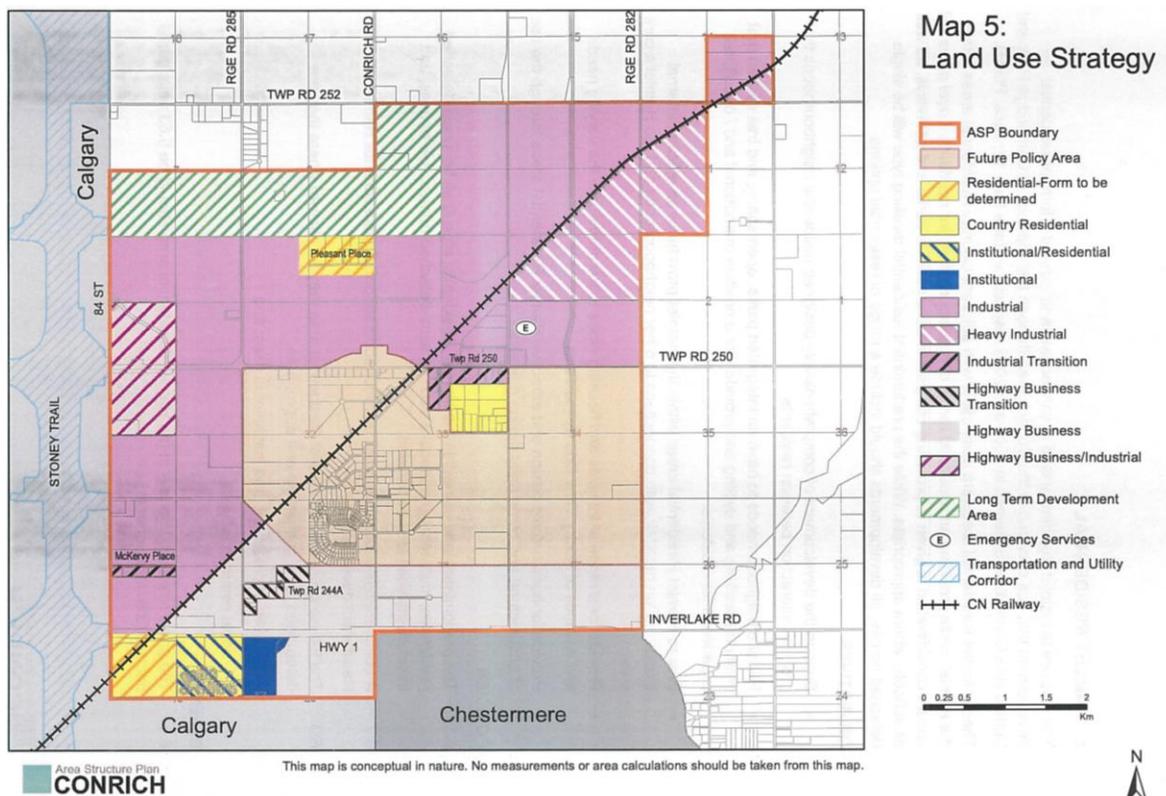
Figure 1: Chestermere and Conrich Area



[8] In 2012, Transport Canada approved the CN Intermodal Terminal for an area of three quarter sections adjacent to the traditional northern boundary of the hamlet of Conrich. This area, also known as the CN Logistics Park, is intended for use as a container storage and transshipment point.

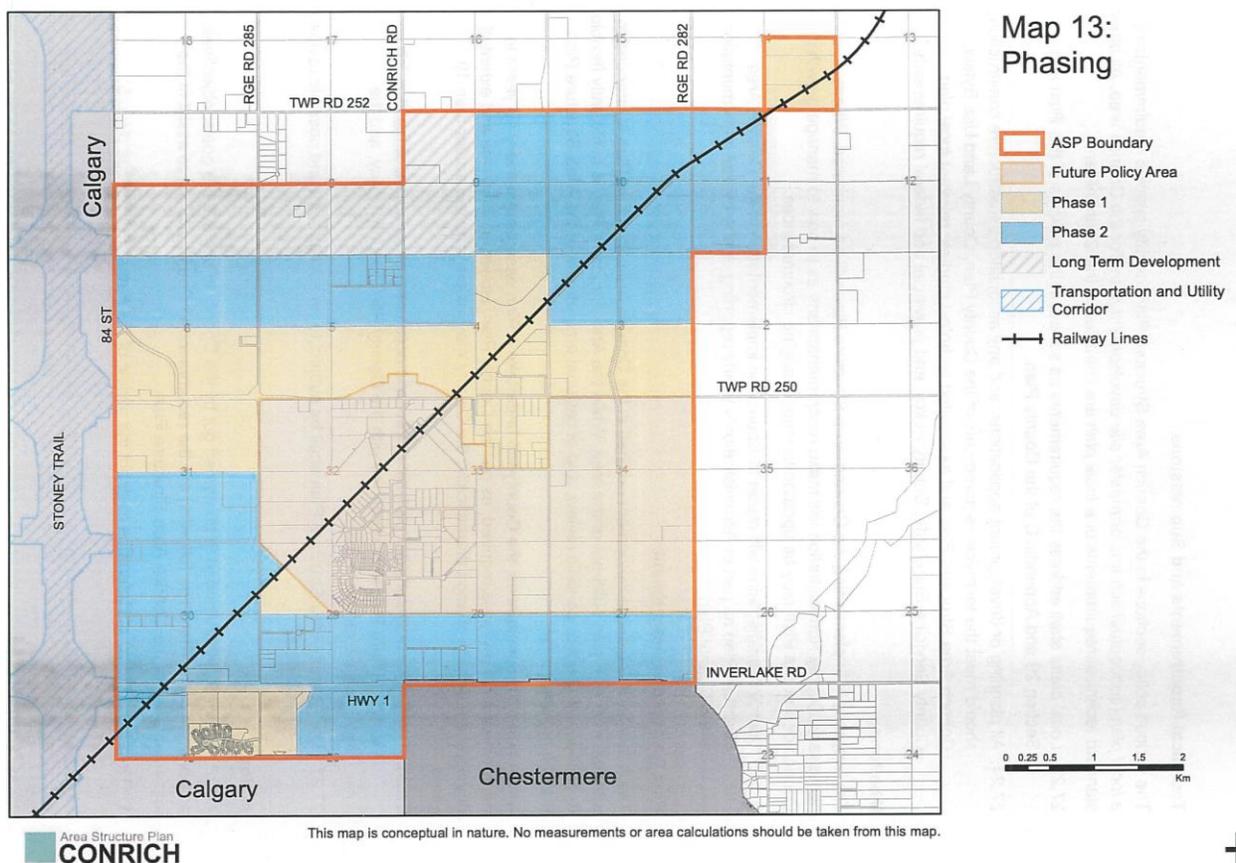
[9] While the area around Conrich has traditionally contained agricultural holdings and local commercial uses, the location of the CN Intermodal Terminal introduced new planning challenges. In 2013, Rocky View began a process to develop a new ASP for Conrich. Visioning, community consultation and information sessions were held throughout the development of the plan. An initial draft was produced, and several amendments were made. On December 8, 2015, Rocky View adopted the Conrich ASP, which contemplates a full service hamlet of 5000-10,000 people and would replace the existing ASP for the Chestermere Calgary Highway 1 corridor - the Calgary Chestermere Corridor Area Structure Plan (CCCASP). The land use strategy for the Conrich ASP is shown in Figure 2 below:

Figure 2: Land Use Strategy (taken from Conrich ASP)



[10] While the Conrich ASP includes a number of other maps, timing and phasing of development was an intended to provide for a logical and cost effective progression of development for the ASP lands and the region. Figure 3, attached below, is the Phasing Map for the Conrich ASP, which shows the location of each of 4 phases for development of the lands. Phase 1 lands include those areas with existing planning approvals, or are adjacent to transportation or utility infrastructure, or were identified as industrial lands. Phase 2 lands have a longer development timeline, since they cannot proceed without a marketing study and a regional stormwater management scheme. The Future Policy Area, in the southern central part of the plan area and including the hamlet of Conrich, requires further study. The last area, is the Long Term Development Area, identified as commercial and industrial lands not required within the life of the plan, but which require protection from fragmentation or incompatible development.

Figure 3: Phasing Plan (taken from Conrich ASP)



[11] Calgary and Chestermere both filed appeals of the Conrich ASP. Although both appeals concern the same ASP, all three municipalities requested the appeals be heard separately for reasons described in MGB Decision Letter 018/16. Accordingly, the MGB heard the appeals separately and allowed Calgary and Chestermere to make submissions as affected third parties on the appeal they did not file. At the hearing for Calgary's appeal - which occurred immediately before the current hearing - Calgary and Rocky View suggested jointly to the MGB that it finds detriment and order changes to the Conrich ASP to align the wording with the wording in their IDP.

PART B: THE MEANING OF DETRIMENT IN S. 690 APPEALS

[12] Under Section 690(5), if the MGB receives a notice of appeal and a statutory declaration under subsection (1)(a), it must, subject to any *ALSA* regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal. The MGB may dismiss the appeal if it decides that the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

[13] Detriment is not defined in the *Act* or its regulations, but the MGB has previously considered its meaning and the evidential burden that must be met by initiating parties. Although not bound by its previous decisions, the MGB finds it useful, in some circumstances, to use established meanings and thresholds. For section 690 appeals, *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. County of Sturgeon*, MGB 077/98 [*Sturgeon*] contains a thorough discussion of detriment.

[14] The meaning of detriment was discussed in the *Sturgeon* decision as follows:

The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact “could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another”. Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County’s MDP will result in detriment to them (page 44/84).

[15] The *Sturgeon* decision also noted the invasive nature of the remedy under section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur (page 48/84; emphasis added).

There is also a functional or evidentiary component to the Board’s ability to direct an effective remedy under section 690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84).

[16] Similar points were made in the MGB’s recent decision in *Sunbreaker Cove v. Lacombe County*, MGB 007/11 [*Sunbreaker Cove*], with the MGB observing that there must be:

evidence...of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71).

Generally, the onus rests with the initiating party to show a detrimental effect rather than with the respondent to refute the allegation of detriment. In this case, the MGB weighed the evidence and

submissions of the parties to determine if harm was reasonably likely to occur and if it would have a significant impact on Chestermere. Each of the issues were measured against this test.

PART C: ISSUES

[17] The issues arising from the arguments and material presented to the panel may be framed as follows:

1. Does the agreement between Calgary and Rocky View County demonstrate “general” detriment?
2. Does the ASP cause detriment to Chestermere in the areas of transportation, stormwater management and the Highway 1 corridor? In particular:
 - a. Will there be detriment to Chestermere due to the transportation infrastructure requirements of the Conrich ASP?
 - b. Does the Conrich ASP’s Strategy for Stormwater have a detrimental effect on Chestermere?
 - c. Will the Conrich ASP cause detriment to Chestermere by allowing incompatible or competing development adjacent to Highway 1?
3. Will there be detrimental economic effects to Chestermere as a result of the Conrich ASP?
4. Will the Conrich ASP cause detriment to Chestermere by requiring it to pay for additional resources such as FCSS, libraries, parks and recreation, emergency, fire and police services?
5. Without an intermunicipal plan or a regional plan, will there be a lack of coordination of plans that will be detrimental to Chestermere?

ISSUE 1: Does the agreement between Calgary and Rocky View County demonstrate general detriment?

Chestermere’s Position

[18] Counsel for Chestermere referred to argument made previously in the context of the Calgary Appeal, where he noted that *Sturgeon* distinguishes between general and specific detriment. It was Chestermere’s position that the agreement between Calgary and Rocky View demonstrates the Conrich ASP’s failure to adequately address several areas, including proposed development’s effect on regional stormwater management, transportation, and the Highway 1 Gateway Focus Area. Chestermere says this agreement amounts to an admission that the ASP in its current form is neither clear nor comprehensive in these areas, and that this lack of clarity causes detriment. Further, these general areas of detriment affect both Calgary and Chestermere, so if the MGB finds the Conrich ASP is detrimental to Calgary on the basis of the agreement, it must also find detriment to Chestermere.

Rocky View's Position

[19] Rocky View disagreed with this contention. It noted that the agreement put forward in the context of the Calgary appeal is the product of a completely different process than the current MGB hearing, and was reached following mediation between Rocky View and Calgary. Moreover, Calgary and Rocky View did not discuss the issues under appeal raised by Chestermere, which are unique and different from the issues raised by Calgary in the context of its appeal.

Findings

1. The Agreement does not demonstrate “general” detriment to both Calgary and Chestermere.

Decision and Reasons

[20] While comments in *Sturgeon* imply there may be cases where an omission or lack of recognition of a regional context in a bylaw are detrimental in a general sense, the detriment addressed by the agreement between Rocky View and Calgary does not fall into this category. Rather, the agreement is largely designed to resolve inconsistencies between the Conrich ASP and 2011 Calgary-Rocky View IDP that raised specific concerns for Calgary about arrangements for stormwater, transportation, and so on. Accordingly, the agreement does not show “general” detriment, and a finding of detriment to Calgary on the basis of the agreement does not imply the ASP must also be detrimental to Chestermere. More detailed examination of each area of detriment alleged by Chestermere in connection with the agreement (i.e transportation, stormwater, and Highway 1 key focus area) supports this conclusion.

Issue 2(a): Is there detriment to Chestermere due to the transportation infrastructure requirements of the Conrich ASP?

Chestermere's Position:

[21] Chestermere argued that the Conrich ASP is detrimental because it does not show full build-out of all development within the area, including commercial and industrial development. Therefore, transportation impacts are not known, and may adversely affect traffic patterns and road infrastructure in Chestermere.

[22] In support of its position, Chestermere pointed to the evidence of Mr. S. Power, a professional engineer and a registered planner for Parsons Corporation. Mr. Power authored a Technical Memorandum critiquing the 2015 and 2016 traffic studies and models that Rocky View prepared for the Conrich ASP. The 2015 Conrich Area Network Study (2015 Network Study) was

based on the assumption of full build-out of the ASP and full traffic and included total PM peak hour trip generation. In contrast, the 2016 Conrich Area Network Complementary Analysis (2016 Complementary Analysis) used lower build-out assumptions: 10 to 30 percent residential, 50 to 100 percent hamlet, 10 percent commercial, and 10 to 50 percent industrial. The lower assumptions greatly reduce traffic generation, and do not reflect accurately the amount of traffic or its impact on Chestermere.

[23] Another difficulty with Rocky View's reports is that neither appears to reflect the combined build-out of the Conrich ASP and the Waterbridge ASP within Chestermere. In this regard, Mr. Power noted the Rocky View studies fail to reflect Chestermere's own traffic data and transportation model. In contrast, Calgary's Regional Transportation Model (Regional Model) shows, for example, that 50% of the traffic that originates in Chestermere will remain there.

[24] Yet another difficulty with the Rocky View reports is that they were prepared using information from Chestermere's 2010 Transportation Master Plan (2010 TMP). The 2010 TMP will be superseded by a new TMP prepared by Parsons, which is currently being reviewed by Chestermere Council. While the draft is not yet public, Mr. Power shared that Rainbow Road will be the primary north-south route in Chestermere. Mr. Power explained that as development occurs on the western side of Chestermere, and the area shifts from agricultural operations to an urban neighbourhood, traffic will increase on Rainbow Road. Mr. Power is concerned that introduction of additional traffic onto Range Road 283 (RR283) from the Conrich ASP south to Rainbow Road may overwhelm the roadways as currently designed.

[25] Although Township Road 250 (TR 250) was upgraded for the CN site, with the intention that traffic would go west to Stoney Trail, Highway 1 is closer if traffic were to go south on RR 283. Chestermere is concerned that the increased traffic will require an interchange at Highway 1 and RR 283/Rainbow Road. With no funding in place, and without access to offsite levy funds collected by Rocky View, Chestermere would be required to construct the interchange.

[26] In addition to the evidence of Mr. Power, Chestermere's Director of Development and Infrastructure Services, Mr. John Popoff, explained why the Conrich ASP's transportation infrastructure plans are detrimental to Chestermere. Mr. Popoff began his presentation by explaining that the CN site is important to the region and requires appropriate transportation planning. The Conrich ASP, however, does not account for the increased volume and intrusiveness of industrial traffic generated by the CN site and the surrounding lands. Given the current land uses, there is very little traffic generated by the residents and agricultural operation around Conrich.

[27] Mr. Popoff identified that Chestermere is concerned about the increased truck traffic and additional volume of traffic from the CN site and from future phases of the Conrich ASP. Despite the upgrading of TR 250 to provide access to east Stoney Trail, traffic travelling from the CN site

to Janet will likely travel south on RR 283 through Chestermere. While the prospect of funding a new interchange at Highway 1 is a concern, heavy vehicles using RR 283 and continuing south on Rainbow Road through Chestermere is also highly problematic. Rainbow Road is the primary north south route in the Waterbridge ASP, and there will be conflicts between local traffic accessing the future residential and commercial uses in the Chestermere and truck traffic travelling to Janet.

Rocky View's Position:

[28] Rocky View maintained its transportation models are standard in the industry and provide a realistic projection of traffic for this area. The models show that Chestermere's specific concerns about traffic along Rainbow Road and the intersection with Highway 1 are overstated. To support its position, Rocky View referred to the evidence of Mr. A. Guebert, and Ms. E. Hofbauer-Spitzer. Mr. Guebert is a professional engineer specializing in traffic and operations, and Ms. Hofbauer-Spitzer has graduate training in transportation and environment. Both are employees of DA Watt and Associates, which Rocky View retained to prepare its transportation studies.

[29] Mr. Guebert explained the methodology used to develop both studies. The 2015 Network Study was developed after the release of Rocky View County's Growth Study, and was applied to the Conrich ASP. As the industry standard for transportation master plan is 20 years, the area contained within the Conrich ASP will not be fully built out by 2035. It would not be reasonable to attempt to incorporate projections for later phases at this point in the planning process.

[30] Ms. Hofbauer-Spitzer provided further details about the model in the 2016 Complementary Analysis. This model was developed with Calgary's assistance using the Calgary Regional Model, and reflects nodal development in Rocky View. The 2016 Complementary Analysis also corrected for the opening of Stoney Trail, and included traffic data from other municipalities in the region including Calgary, Chestermere, and Cochrane. Mr. Guebert explained that four different data sets were used to develop the model. The first data set was comprised of different traffic zones within Rocky View. The zones were developed based on the land uses within the catchment area, and to the extent the information was available, also included urban municipality data. The second data set was the distribution of traffic under origin and destination studies, which measures where traffic trips begin and end. The third set is modal split, which factors in both the type of traffic and the available infrastructure to determine amounts. The final area is trip assignment, which is the choice of route based on type of trip, the quality of road, and the vehicle.

[31] When Watt prepared its report, it did not have access to Chestermere's most recent transportation plan and models, and therefore used the Bunt TMP projections for Chestermere together with projections published in the Waterbridge ASP. The Bunt TMP projects Chestermere's population exclusive of Waterbridge at 30,000 by 2035, and the Waterbridge ASP projects a further 46,350. However, not all the growth within Waterbridge will occur by 2035, and

Watt estimates Chestermere's total population will be 38,000 by 2035. Watt's traffic models in the 2016 Complementary Analysis reflect this estimate.

[32] Watt identified truck movement as an issue, but not in the way described by Chestermere. When it constructed its Intermodal Terminal, CN also upgraded and paved TR 250 to provide direct access to Stoney Trail. Since the opening of Stoney Trail, traffic patterns in the region have changed, and the Complementary Analysis shows Chestermere's traffic projections for Rainbow Road are not supported. There are also many options available to manage traffic anticipated within Chestermere – e.g. traffic calming measures and speed limits.

[33] In addition to the evidence of Mr. Guebert and Ms. Hofbauer-Spitzer, Rocky View referred to testimony from its Director of Engineering, Mr. R. Wiljamaa. Mr. Wiljamaa stated Rocky View does not plan to improve RR 283 south of the hamlet of Conrich. RR 283 becomes Rainbow Road within Chestermere. CN's work to upgrade TR 250 should limit the effects of truck traffic on area residents by directing it to Stoney Trail. Rocky View has prepared its detailed transportation plans within the Conrich ASP with support and guidance from Alberta Transportation (AT). In addition, AT's 2012 Access Management Study set a long term strategy for access to Highway 1, including the intersection with Rainbow Road. Once an interchange becomes necessary at Rainbow Road and Highway 1, AT will consult with Chestermere, Rocky View and Calgary before design and construction. Finally, Mr. Wiljamaa noted that when ASPs or other plans are developed within the Conrich ASP, detailed traffic impact assessments (TIA) are required by Rocky View. Rocky View will circulate the TIAs to Chestermere for review and comment.

Findings – Issue 2(a)

2. Rocky View's traffic models are in line with industry standards and are sufficiently detailed to support inter-municipal planning
3. The Conrich ASP will not have a detrimental effect on Chestermere's transportation network.

Decision and Reasons – Issue 2(a)

[34] While it is true that the traffic models prepared in conjunction with the Conrich ASP do not reflect full build-out, this cannot be interpreted as a failure that amounts to detriment for the purposes of the *Act*. Rocky View's 2015 Network Study outlines ultimate rights of way and network requirements for the entire ASP area, including its later phases. The MGB accepts the testimony of Mr. Guebert that Phase 2 development is not anticipated until 2035, and agrees that it is unreasonable to require detailed traffic projections beyond this date. Both municipalities' transportation engineers agreed the 20 year time frame for the transportation master plan is standard in the industry. The 2016 Complementary Analysis addresses traffic movement between

Conrich and Chestermere and provides a basis for both municipalities to plan for the effects of Phase 1 development.

[35] In reaching this conclusion, the MGB did not overlook Mr. Power's criticism of Rocky View's projections and data. One concern identified was that the population projections used to create the 2016 Complementary Analysis' model are inaccurate and do not include the Waterbridge ASP. However, it is clear from the evidence of Mr. Guebert and Ms. Hofbauer-Spitzer that the population projections for Waterbridge were in fact included. While further data may become available once the Chestermere's TMP is released, detailed information was not made available either to Rocky View or the MGB. A second concern was that Rocky View did not use, or consider data from the Calgary Regional Model, which shows that 50% of vehicle trips in Chestermere remain within its boundaries. However, Ms. Hofbauer-Spitzer clarified that the 2016 Complementary Analysis was in fact developed using the Regional Model.

A second area of alleged detriment related to transportation is the potential effect of development on Rainbow Road and its intersection with Highway 1.

[36] As development in the larger area proceeds, traffic volumes will increase and some vehicles will use Rainbow Road. If upgrades or an interchange are required at Rainbow Road and Highway 1, there will be consultation between AT, area municipalities, and residents. As noted by Rocky View, the interchange at Rainbow Road and Highway 1 will be constructed by AT as part of their capital plan process, or it may be cost shared, or funded separately. The MGB accepts that while the majority of traffic generated by Phase 1 will choose to travel along TR 250, some additional vehicles will most likely find their way onto Rainbow Road. The MGB does not view this possibility as detrimental. As acknowledged by Mr. Wiljamaa, if the Conrich ASP results in requirements for new roadways or other infrastructure, these may be funded or constructed by the developer, or Rocky View's off-site levy fund. Chestermere also has an off-site levy bylaw, which could also help to fund upgrading of Rainbow Road as development proceeds in the Waterbridge ASP. The final conclusion in the Parsons Technical Memorandum stated that impacts on Rainbow Road based on the 2016 Complementary Analysis are mitigatable due to the level of land use projected for Phase 1.

[37] Mr. Power noted that as a result of full build-out of the Conrich ASP and the Waterbridge ASP, traffic volumes on Rainbow Road could exceed 11,000 PM peak hour trips from Chestermere and 3,600 PM peak hour trips from Conrich. This would require upgrading and expansion of Rainbow Road within Chestermere. However, the MGB notes that the timeframe for the full build-out of both ASPs is beyond 2035; in the interim, a number of transportation studies -- TIAs, new transportation master plans, updated traffic models -- will be developed to reflect growth.

[38] The MGB also heard many variables must be considered for transportation planning in this growth area, including the completion of Stoney Trail, the location of the CN Intermodal Terminal,

and the approval of both the Waterbridge and Conrich ASPs. As identified by Mr. Popoff, these factors raise the level of planning complexity, and in this context the MGB believes a higher level of coordination between the municipalities would be desirable. However, while greater cooperation and data-sharing would facilitate regional transportation planning, the MGB finds no detriment in Rocky View's approach in this case. Rocky View has kept Chestermere apprised of its plans and has made reasonable efforts to obtain relevant information from Chestermere to inform the draft ASP and supporting documents.

Issue 2(b): Does the Conrich ASP's strategy for stormwater have a detrimental effect on Chestermere?

Chestermere's Position

[39] Chestermere argued that, without a regional stormwater system, the Conrich ASP will compromise the West Creek watershed and wetlands. Counsel for Chestermere explained there are two potential regional stormwater systems: the Cooperative Stormwater Management Initiative (CSMI) and the Shepard Regional Drainage Plan (SRDP). Rocky View's preference for CSMI is evident from the ASP; however, while Rocky View may prefer CSMI, there are many partners in the program, consultation has not occurred, and no decision has been made. CSMI is problematic, because it may divert water from West Creek, which is an important part of Chestermere's drainage and stormwater management system. Changes in water levels will affect water quality and volume in both West Creek and Chestermere Lake.

[40] Another problem with drainage planning under the Conrich ASP is that private stormwater management facilities (SWMF) systems will be used until a regional stormwater system has been chosen and constructed. Chestermere has at least three concerns with this approach. First, a large number of private SWMF will reduce the amount of water available to flow into the West Creek catchment. Second, there has been a history of failures when landowners maintain private SWMF. For example, failures occurred in the Janet area south west of Chestermere. Chestermere is concerned similar failures will occur in Conrich, and that the resulting runoff will overtax Chestermere's drainage systems. Third, private SWMF require more land.

[41] To support its position, Chestermere introduced Ms. L. Bozic, a professional engineer, who is the Senior Water Resources Engineer with Urban Systems Ltd. Ms. Bozic explained how the choice of CSMI in the Conrich ASP and Conrich Master Drainage Plan will affect West Creek. If CSMI is implemented, all the stormwater collected north of Chestermere will be diverted east to Serviceberry Creek and Weed Lake, and will not flow into West Creek. The analysis prepared by MPE Engineering does not cover the West Creek catchment, so additional studies are necessary to ensure that water continues to flow into West Creek.

[42] Ms. Bozic noted that the Conrich ASP does not include mapping of the West Creek watershed. West Creek has a watershed of about 3,300 hectares, roughly half of which is located in the north part of the Conrich ASP area. Currently West Creek flows through Chestermere, feeding a wetland, flowing into the Western Irrigation District (WID) Canals on its way to Chestermere Lake. Without the West Creek watershed being mapped into the Master Drainage Plan or included in the Conrich ASP, there is an increased potential that the flow of water will be interrupted, possibly affecting the wetland and the naturalized drainage area.

[43] Ms. Bozic also confirmed that SWMF are often undersized and landowners often neglect maintenance. As a result, these private SWMF fill with sediment, and fail. In the Janet area, such failures have led to illegal discharges from the private SWMF into area ditches, since the emergency catchment is often full. If this occurs in Conrich, overland flows will enter the West Creek basin or spill into ditches and result in water flowing through developed areas of Chestermere. Not only will Chestermere need to manage additional overland flows, these flows will include industrial land runoff, which may require a higher level of treatment to meet WID water quality guidelines. The WID system includes Chestermere Lake and WID's canals.

[44] Finally, Ms. Bozic noted that the wording in Section 27.18 implies that Phase 2 lands can proceed without the construction of the regional system or an identified tie-in point for the Conrich ASP lands. Further, the Conrich ASP appears to allow private SWMF to continue to be used as long as there is an agreement for financing. This is unacceptable to Chestermere, since it may result in long term use of the SWMF and additional development in Phase 2 without the benefit of a regional system.

Rocky View's Position:

[45] The Conrich ASP accommodates different types of stormwater management until the regional system is chosen. Rocky View has allowed the use of private SWMF as an interim measure in many areas, as does Chestermere in the Waterbridge ASP. While there have previously been issues with private SWMF, Rocky View has upgraded its design standards for SWMF, resulting in fewer failures. Rocky View's Engineering Standards require stormwater to be managed onsite without any discharges, so there will not be an increased flood risk downstream and in Chestermere.

[46] Rocky View disagreed with Chestermere's characterization that development could proceed at any time on the Phase 2 lands. The intent within the Conrich ASP, as stated in its policies, was that development of Phase 2 would await approval and construction of a regional stormwater management system. This intention is also echoed within the Conrich Master Drainage Plan. While Chestermere may not prefer CSMI, approval for this system rests with Alberta Environment and Parks. Consultation between area municipalities, WID, Ducks Unlimited and AEP must occur before the approval.

[47] In response to Chestermere's concern that private SWMF will reduce the amount of water in the West Creek catchment, Rocky View argued that Phase 1 will only affect about 10% of the West Creek catchment, and will not reduce downstream flows significantly. While zero-release facilities like private SWMF are not preferable as a long term solution, many CSMI partners have adopted this approach in the interim pending a decision on a regional system.

[48] Rocky View introduced Mr. D. Seeliger and Mr. C. McNab, two professional engineers employed by MPE Engineering to provide evidence about stormwater management. Mr. Seeliger prepared both the Hydrogeological Impact Assessment Report (Hydrogeological Assessment) and a response to Chestermere's submissions. Mr. Seeliger indicated the Hydrogeological Assessment Report's intent was to assess downstream impacts of Phase 1 of the Conrich ASP. Phase 1 will have a negligible impact on West Creek, as it includes very little of the West Creek catchment, and there is a zero release strategy in place. Mr. Seeliger also noted in his analysis that urban areas have an even greater run-off than developed rural areas, such as the Conrich ASP.

[49] Mr. Seeliger understands that a regional drainage strategy will be approved before development of the Phase 2 or later lands. Since no decision has been made, the Conrich Master Drainage Plan accommodates both CSMI and SRDP. However, Mr. Seeliger explained there are several advantages to CSMI: it can be staged, it will divert peak flows away from West Creek and Chestermere and it is easier to maintain, since it is a zero discharge system. Mr. Seeliger also explained that under CSMI, post-development stormwater from the west side of Chestermere will be conveyed over West Creek, allowing West Creek to convey water from north to south into Chestermere Lake.

[50] Mr. Seeliger agreed that additional studies are required before development proceeds on lands within the Conrich ASP. These studies will start with sub-catchment drainage plans and conclude with detailed design drawings. The required studies are listed in Section 700 of the County's Servicing Standards. To complement policies in the Conrich ASP, a portion of the Conrich Master Drainage is devoted to West Creek. Mr. Seeliger noted that the intent of the Conrich Master Drainage Plan is that, regardless of phasing, there would be a lower risk of flooding post-development than pre-development. Finally, due to Alberta Environment and Parks requirements, regional predevelopment flows must be maintained for West Creek.

[51] Mr. C. McNab is the Calgary Region Manager for MPE Engineering and has been involved with the development of the CSMI regional stormwater system. He stated that while initial evaluations of CSMI are complete, there is no agreement yet on a governance structure, funding model, or – if CSMI is chosen – an implementation plan. Ultimately, Alberta Environment and Parks must approve either CSMI or SRDP as the regional system.

[52] Mr. McNab explained that the WID initiated CSMI to maintain the water quality in its main supply canals, and to divert stormwater from Conrich and south west of Chestermere into another part of the WID system. One area, west of Chestermere near the hamlet of Janet, contains stormwater management systems constructed to an older standard, which have been unable to manage stormwater flows. Currently, excess stormwater in Janet flows into the Western Headwaters Canal, one of WID's main supply canals, impacting water quality.

[53] To address Chestermere's concern that private stormwater management facilities in Conrich are insufficient, Rocky View has updated its engineering standards. In 2013, Rocky View reviewed its engineering standard for stormwater management ponds and incorporated continuous water balance modelling. Continuous water balance modelling, based on 50 years' worth of rainfall and evaporation data, ensures that the systems developed and installed can contain a 1 in 100 year event. This new standard will apply to lands developed in Phase 1 of the Conrich ASP.

Findings – Issue 2(b)

4. The Conrich ASP and the Conrich Master Drainage Plan contain policies to manage stormwater, and ensure water continues to flow into West Creek.
5. The Conrich ASP's strategy for stormwater management does not have a detrimental impact on Chestermere.

Reasons – Issue 2(b)

[54] The MGB acknowledges that further discussions need to occur about the regional stormwater management plan, and encourages the parties to continue the process. However, the fact the municipalities involved have not yet decided on a regional system does not imply no development may proceed until a decision is finalized. To freeze development in the region until a decision is made would be unreasonable and is not reflective of current municipal practice.

[55] Until a decision on a regional system is made, interim stormwater management measures must be used to reduce the potential for flooding, and protect water quality in bodies of water such as West Creek which also feed the canals and other components of WID's system including Chestermere Lake. Rocky View proposes to use onsite stormwater management facilities for Phase 1 development within the Conrich ASP only, which the MGB finds a reasonable approach. Indeed, Chestermere has itself adopted a similar approach under the Waterbridge ASP, which incorporates private SWMF as an interim measure until a regional system is chosen and constructed. Given that the Waterbridge ASP proposes the use of onsite stormwater management facilities capable of being connected to the future regional system, a similar proposal for Phase 1 of the Conrich ASP lands cannot be considered detrimental in itself.

[56] Chestermere expressed concern about the potential for failure of private SWMF, citing past experience with similar systems south west of Chestermere in Janet. However, as explained by Mr. Seeliger, Rocky View has mitigated such risks by updating its engineering standards after 2013. Further studies will also be undertaken before development proceeds, and issues with the design, operation, and maintenance of any onsite stormwater management facilities may be raised with Alberta Environment and Parks, which is responsible for registration and approval of such facilities.

[57] Chestermere stressed that development should not proceed on Phase 2 or later lands without a regional system in place. It appears that Rocky View agrees with this contention, as the Conrich Master Drainage Plan and the Conrich ASP states that development of the Phase 2 lands, long term development lands and the Future Policy Area cannot proceed until a decision on a regional system is made. The MGB sees no reason to believe Rocky View intends to deviate from this plan. Finally, as the timeframe for development of the Phase 2 land is beyond 2035, the MGB accepts that by that time, one of the regional systems will have been chosen. Finally, where Chestermere expressed concern about the private SWMF facilities using additional lands or that diversions of water from West Creek will occur, these are matters that will be addressed when a decision on a regional stormwater system is made, and designs are finalized.

ISSUE 2(c): Will the Conrich ASP cause detriment to Chestermere by allowing incompatible or competing development adjacent to Highway 1?

Chestermere's Position:

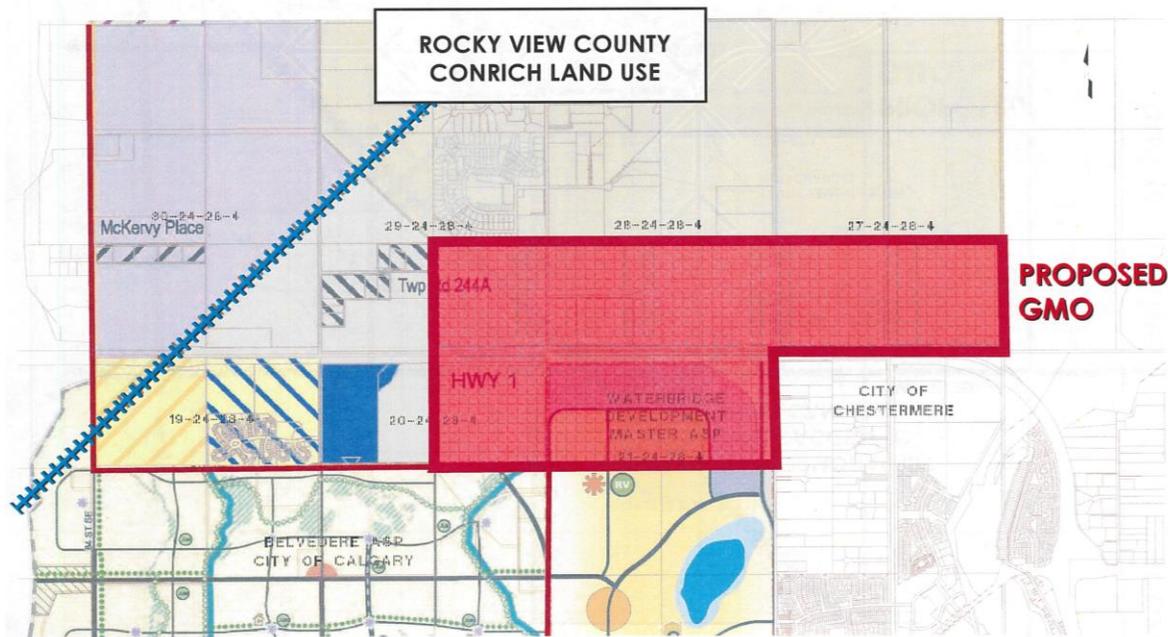
[58] The proposed commercial and industrial developments adjacent to Highway 1 in the Conrich ASP are incompatible with the adjacent uses in Chestermere and will draw development away from Chestermere. Chestermere maintained that a gateway area along Highway 1 should be jointly planned and developed to ensure the needs of all three municipalities (Chestermere, Rocky View and Calgary) are addressed.

[59] Chestermere pointed the evidence of Mr. Popoff, who is a registered planner employed by Chestermere as Director of Infrastructure and Development Services. He advised that the Conrich ASP will cause ad hoc and disjointed development resulting in commercial and industrial uses on the north side of Highway 1. These uses will siphon development away from Chestermere's downtown and other commercial and industrial areas. Historically, the Calgary Chestermere Corridor Area Structure Plan (the CCCASP) envisioned compatible uses on either side of Highway 1, but these did not come forward into the Conrich ASP. And while the Calgary and Rocky View IDP contains policies for joint planning adjacent to Highway 1, Chestermere has not been included in these discussions.

Remedy Request: Growth Management Overlay

[60] To support collaborative intermunicipal planning for the Highway 1 Gateway Area, Mr. Popoff proposed that the MGB order the placement of a Growth Management Overlay (GMO) to guide development on both sides of the highway in both municipalities. The MGB previously used this approach in Sturgeon when it ordered the completion of an area structure plan, and, in the 1999 dispute between Drayton Valley and Brazeau County about the Brazeau County MDP. The GMO is intended to support both municipalities to diversify their assessment base, while the other plans are developed.

Figure 4: Proposed Growth Management Overlay



[61] The GMO would allow 8 quarter sections of land, located both north and south of Highway 1 in Rocky View and Chestermere, to be jointly planned. Mr. Popoff explained this overlay requires Chestermere and Rocky View to jointly plan the Highway 1 corridor, allowing for complementary land uses, design compatibility and transportation interconnectivity. The GMO can be removed once the IDP, Alberta Transportation Study, Calgary Regional Transportation Plan, and a regional stormwater solution have been finalized.

[62] Chestermere conceded its proposed GMO includes an area of land now contained within the Waterbridge ASP, which is not under appeal. However, while the MGB cannot order a change to a plan or bylaw not before it, it could still order the municipalities to meet and develop a GMO or similar policy within a reasonable period (e.g. six months).

Rocky View's Position:

[63] The development patterns adjacent to Highway 1 in the Conrich ASP are consistent with the 2004 CCCASP, and reflect the development pattern contained within Chestermere's Waterbridge ASP. As noted by Chestermere, the CCCASP was formulated in part to guide development adjacent to Highway 1, and Rocky View continues to apply it. As such, Rocky View incorporated the land use pattern established in the CCCASP into the Conrich ASP.

[64] The Conrich ASP is intended to guide the development of detailed area structure plans and concepts for smaller areas of the plan. Ms. A. Zeluski, a registered planner who is employed by Rocky View as the Planning Policy Supervisor, explained that the Conrich ASP is consistent with Rocky View's evolving policies and vision contained in other plans and documents such as the CCCASP, 2009 Growth Management Strategy, and MDP. Ms. Zeluski confirmed that the land use pattern for the Highway 1 area in the Conrich ASP is consistent with the adjacent lands in Chestermere's Waterbridge ASP. Section 14 of the Conrich ASP contains policies to mitigate conflict between residential and non-residential land uses as well as policies to address potential intermunicipal interface concerns in the lands surrounding Highway 1. Finally, Ms. Zeluski explained those lands adjacent to Highway 1 that are not contained within existing approved plans or bylaws are located within the Phase 2, which will be developed after a decision on a regional stormwater system has been made.

[65] In addition, public consultation and input are required, integral components of plan development. Ms. Zeluski explained that the public and adjacent municipalities (such as Airdrie, Chestermere and Calgary) were invited to participate in the development of any statutory plans, bylaws, visioning documents, and growth management strategies. Consistent with the *Act* and policies in its MDP, Rocky View currently circulates area structure plans to both cities for review and comment, and, sees no reason to change this practice. As a matter of practice, Rocky View circulates applications for development or subdivision in ASP to adjacent municipalities. This practice will continue when the Conrich ASP is in place.

[66] Rocky View objects to the GMO because of conditions placed upon its removal. Completion of three plans, of different scales and extended timelines, creates uncertainty. Similarly, the GMO would impact lands within the Conrich ASP and the Waterbridge ASP. The Waterbridge ASP is not under appeal, and therefore the MGB could not impose the GMO as it would amend the Waterbridge ASP.

Findings – Issue 2(c)

6. Policies in the Conrich ASP require cooperative planning in the Highway 1 Gateway Area.
7. The Highway 1 Gateway Area in Conrich ASP is consistent with the CCCASP, and the Rocky View MDP.

8. A GMO is not necessary to plan co-operatively for the Highway 1 Gateway Area

Decision and Reasons – Issue 2(c)

[67] The MGB observes that development adjacent to Highway 1 in the Conrich ASP appears consistent with CCCASP. While it was argued that the CCCASP is out of date, Rocky View did not rescind the bylaw, and the municipalities, Calgary, Chestermere and Rocky View, have continued to follow the spirit and intent of the plan. Thus, the commercial uses adjacent to Highway 1 originally proposed in the CCCASP have been carried forward into the Rocky View MDP, the Chestermere MDP, and most recently Chestermere's Waterbridge ASP and Conrich ASP.

[68] Chestermere expressed concern that phasing as proposed in the Conrich ASP may not be followed, resulting in premature development adjacent to Highway 1 that will compete with and prevent development now planned for Waterbridge and other industrial/commercial lands in Chestermere. However, there is very little evidence before the MGB to substantiate this concern. The Conrich ASP states that the lands adjacent to Highway 1 will be developed in Phase 2, and the MGB sees no reason to suspect this phasing will be abandoned. Since the Phase 2 lands are proposed to be developed only after a market demand study and after the establishment of a regional stormwater management system, the industrial and commercial lands in Waterbridge and other portions of Chestermere will be available before the Phase 2 lands.

[69] Chestermere also expressed concern that the Conrich ASP contains no mechanism to resolve disputes about phasing or other planning issues that may arise as development proceeds, and that its policies do not require joint planning. While it is true that the Conrich ASP contains no dispute resolution mechanism, there is such a mechanism under Rocky View's MDP, which is available to Chestermere concerns arise about phasing or incompatible development. Furthermore, the Conrich ASP – together with the Calgary-Rocky View Memorandum of Agreement – does require collaboration and discussion with neighbouring municipalities including Chestermere. In short, the MGB sees no reason to suspect the Conrich ASP will prevent discussion and collaboration between the municipalities, or that Rocky View's approach to planning with Chestermere and Calgary for the Conrich ASP is detrimental.

[70] Given that the Conrich ASP is not detrimental for the reasons described, there is no need to impose the GMO suggested by Chestermere – even if this remedy were possible given the potential impact on the Waterbridge ASP, which is not under appeal. The MGB observes parenthetically that a GMO is innovative, and remains a potential option for cooperative intermunicipal planning that, under agreement between the affected municipalities, could be pursued. As Highway 1 is also included in the Calgary and Rocky View IDP, future discussions and plans would also have to include Calgary.

[71] Chestermere provided the MGB with additional argument about planning matters beyond those raised during Highway 1 evidence; these will be addressed in Issue 5, Planning, later in this decision.

ISSUE 3: Will there be detrimental economic effects to Chestermere as a result of the Conrich ASP?

Chestermere's Position:

[72] Chestermere argues that the industrial and commercial land proposed in the Conrich ASP is excessive and will draw economic development away from Chestermere. Drawing economic activities into Rocky View will prevent Chestermere from increasing the amount of non-residential assessment from 4% to its desired goal of 20% of its total assessment and from reaching its full potential. Chestermere introduced two economists to provide evidence with respect to the Conrich ASP, and their report "Economic Impact of Conrich ASP on the City of Chestermere and Region – Summary Report" (Economic Impact Report). Mr. R. Woodward from RW Consulting spoke to the report, while Mr. S. Johnson from SJ Research Services spoke specifically about long-term industrial land requirements.

[73] Mr. Johnson described briefly how Chestermere's industrial land needs were calculated, and the current supply of industrial and commercial land in Chestermere. In 2038, Chestermere's projected population of 53,000 will need approximately 1770 acres of commercial and industrial land. While the Chestermere MDP has designated approximately 1800 acres of land for commercial and industrial development only a small amount of these lands are currently developed. 176 acres of commercial land are developed and occupied, 100 acres of serviced industrial lands are vacant, and an additional 1100 acres of vacant lands are designated industrial and commercial in various statutory plans.

Impacts on Chestermere's economic development

[74] The Conrich ASP proposes 6,500 acres of commercial and industrial lands to serve a population projected to range between 5,000 to 10,000 people. In comparison, the City of Calgary has about 30 million square feet of development supported by a population of 1.2 million, or approximately 29 acres of developed lands per 1000 population. Using the same metric for Conrich ASP lands, Mr. Woodward stated only 119 acres of developed land are needed to serve Conrich if its population increases to 5000.

[75] Designating such a large amount of land within Conrich for commercial purposes will stifle growth elsewhere in the Calgary Census Metropolitan Area (CMA), including Chestermere. According to the Conference Board of Canada, the projected average absorption rate for commercial and industrial land in the entire Calgary CMA is between 188 to 282 acres per year.

With the 6,500 acres proposed in the Conrich ASP, absorption rate of these lands alone would add 22 - 32 years of industrial land to the regional amount.

[76] Development contemplated by the Conrich ASP will also impact the regional labour supply and increase wages in the region. The future employment demand in the Conrich ASP was estimated using employment density per acre figures from a 2014 Parkland County study (within an Alberta CMA of equivalent size). At an average density of 7 jobs per acre, the Conrich ASP will require 46,053 employees. Rocky View's projected labour force is estimated between 35,000 to 38,000 employees. The labour shortfall will have to be met from elsewhere within the Calgary CMA, which may result in increased wages and labour shortages in other parts of the region. Therefore, any saving in land costs as a result of a surplus in industrial/commercial land would likely be offset by higher wages.

[77] If only Chestermere developed, then it is expected that industrial and commercial developments would generate over \$3.0M by 2026 and \$53.0M by 2038 in tax revenue. However, development of a large industrial/commercial complex close to Chestermere would impact the city's ability to diversify its tax base (currently largely residential) by creating a competing growth pole. If the Conrich ASP was developed at the same time as Chestermere's commercial lands, significant amounts of industrial/commercial development would be expected to migrate to Conrich lands. If Chestermere's projected proportional uptakes (18% of industrial lands and 11% of commercial lands) are developed rather than full 100% development, there would be a projected shortfall in tax revenues of -\$6.2M by 2026 and -\$12.2M by 2038. With reduced revenue, Chestermere would be forced to rely on residential taxes to maintain services and a 25% increase in the tax rate would be needed.

[78] Chestermere also argued that from a provincial economic perspective, a major industrial/commercial land project such as that proposed in the Conrich ASP would have a larger positive economic impact if it were located in a larger and economically more self-sufficient community. In support of this position, it pointed to a multiplier analysis within the Economic Impact Report. Multipliers measure the response of the economy to a change in demand or production. The higher the multiplier, the more successful economic development initiatives will be in achieving sustained improvement for a target area. The analysis concludes that the Conrich ASP would have a larger economic impact if located in a larger and economically more self-sufficient community. Mr. Johnson affirmed that the beneficial impacts are diminished, because the hamlet of Conrich doesn't have the necessary population, labour force or service and support industries.

Retail Gap Analysis

[79] Chestermere asserts Conrich will attract large scale commercial retail development similar to Cross Iron Mills, rather than the regional or provincial scale warehouse development claimed

by Rocky View. Area residents will therefore shop in Conrich rather than Chestermere, and Chestermere will have difficulty attracting competing retail commercial development.

[80] To support this assertion, Chestermere submitted an executive summary of a Retail Gap Analysis (Gap Analysis) prepared by Cushing Terrell Architecture. According to this summary, Chestermere has 275,000 square feet of commercial space capturing about 37% of the overall resident spending and generating \$105 million in sales. Since Chestermere has a shortage of commercial space, \$240.5 million in sales occur in surrounding areas (Calgary, Rocky View and Strathmore). To increase overall spending to 50%, the Gap Analysis estimates Chestermere needs 95,000 more square feet of commercial space. This space would incorporate desired retail categories such as full service restaurant, home improvement store, and a sports, automotive and leisure retailer (e.g. Canadian Tire).

[81] The Gap Analysis also identifies Chestermere's primary and secondary trade areas. Both Conrich and Calgary's East Hills development are located in the primary trade area; therefore, Chestermere argued that any commercial development in these areas will reduce retail activity within Chestermere, impacting its ability to attract development. The study concludes that the East Hills development is a threat to Chestermere's commercial and industrial development.

[82] Chestermere introduced its Economic Development Director, Mr. J-M Lacasse, as an expert witness to provide evidence in support of the Gap Analysis Report and to speak to the economic impacts of the Conrich ASP on Chestermere's economic development efforts. Mr. Lacasse explained that two specific areas in Chestermere – the Waterbridge and Chestermere Gateway ASP areas – are identified for commercial and industrial development. While there is also a commercial and industrial area in NE Chestermere, development of these lands has been delayed due to the developer's bankruptcy. Mr. Lacasse confirmed that in his view, the Conrich ASP will draw development and shoppers away from Chestermere and reduce Chestermere's ability to attract competing retail development.

[83] In contrast to Gap Analysis' conclusion, Mr. Lacasse expressed the view that the Calgary's East Hills development will actually enhance and promote commercial development within Chestermere. He explained that East Hills is designed for warehouse retail stores such as Costco and Superstore, drawing shoppers from across the Calgary region. Regional shoppers looking for products or services not available in East Hills will likely continue to Chestermere. Due to its proximity, East Hills may draw smaller retailers to serviced commercial lands within Chestermere.

[84] In response to a question by Rocky View about the Retail Gap Analysis' conclusion stating that East Hills, not the Conrich ASP, is a threat to Chestermere's commercial and industrial development, Mr. Lacasse stated that this conclusion is primarily due to a larger population in the Primary Market Area. Mr. Lacasse explained that the full report contained a reference to Conrich and an analysis of the retail potential of the Conrich ASP. In response to a question posed by the

panel if the full report analyzes the Conrich ASP and makes a statement about its impact on Chestermere, Mr. Lacasse stated that the report mentions the Conrich ASP as a plan under development, but does not include it amongst the more detailed analysis.

Rocky View's Position:

[85] Rocky View submitted that urban and rural municipalities are equals, and both can pursue a variety of development. Therefore, an urban municipality cannot successfully argue detriment on the basis of an anticipated loss of non-residential tax base. In support, Rocky View referred the MGB to three of its previous decisions about intermunicipal disputes -- *City of Grande Prairie v County of Grande Prairie* (MGB 096/06), *St Albert, Edmonton, and Morinville v Sturgeon County* (MGB 077/98), and *Town of Okotoks v Municipal District of Foothills* (MGB 003/12) -- which determined that commercial competitiveness is not detriment. Competition between municipalities maximizes “customer welfare” and encourages innovation. Rocky View should not be forced to restrict its economic growth because Chestermere has not properly managed its own growth and development.

[86] Even if competition could be considered detrimental, the land uses planned for the Conrich ASP should not adversely affect Chestermere. The Economic Impact Report prepared by Woodward and Johnson is unreliable for a variety of reasons, and its conclusion that the Conrich ASP will impact Chestermere is not correct. In support of this contention, Rocky View pointed to the Evidence of Mr. Shewchuk, an economist with Nichols Applied Management, to prepare the economic analysis included in the Conrich ASP. Mr. Shewchuk also reviewed the Economic Impact Report and responded to Chestermere's experts, Mr. Johnson and Mr. Woodward.

[87] Mr. Shewchuk outlined several errors within the Environmental Impact Report. The first concerns Chestermere's analysis of the employment forecast in the Conrich ASP. By using Conference Board of Canada data, Chestermere's employment forecast was based on the last five years which is a short period for a forecast, but, more importantly, reflects a time of recession. The result is a forecast that both fails to recognize the cyclical nature of economy and is below historic levels. Based on data from the last 28 years, Mr. Shewchuk demonstrated that the historical average employment growth in the Calgary Region is 2.9%. If this figure were used to forecast growth for the period 2016 to 2026, employment in the region would be 187,300 rather than the figures illustrated by Chestermere which were 101,600 under the low growth scenario and 129,100 under the high growth scenario.

[88] A second error is the context for meaningful fiscal analysis resulting in an overestimate of the hypothetical impact of lost industrial development on Chestermere. The impact on Chestermere's tax revenues is based on the assumption that the Conrich ASP will develop in the same timeframe as Chestermere lands. Chestermere's report discusses tax implications, but fails to consider costs associated with servicing/maintaining industrial lands or net revenues. Thus, the

claim that Chestermere may require additional 25% tax revenue is incorrect. Mr. Shewchuk observed that Chestermere is not unique or unhealthy fiscally when compared to its peers. It has also historically kept its residential mill rate below similar communities. The study's findings about significant tax increases may be partly due to this historical reluctance to raise rates and not fully attributable to industrial development. Chestermere could align its expenditures and revenues by raising its mill rate and reducing spending.

[89] A third error is that the Economic Impact Report both misunderstands and misapplies metrics used to estimate the relationship between employment and land requirements. This results in an overstatement of labour needs for the industrial lands, because the study applies the figure of 7 jobs per acre on gross area rather than net area of industrial lands. It also results in an overstatement of future available labour because it bases the projected population on 2016 figures and the size of the labour force on 2013 figures when 2013 was during a period of high growth. Mr. Shewchuk observed that the figure of 7 jobs per acre was taken from a 2014 Parkland County study prepared by MDB and Watson & Associates Economists Ltd. In actuality, the study reported that employment in Parkland County fell within a range of 3 jobs per acre for primary-energy sector jobs and 8 jobs per acre for manufacturing jobs. Secondly, the calculation was based on jobs per net acre, not jobs per gross acre. To convert gross acres to net acres, the authors of the Parkland County study assumed that 35% of the lands would either be required for infrastructure or have development constraints, and included a vacancy rate adjustment of 15%. Using that methodology, Mr. Shewchuk reported that the net area of industrial commercial lands in Conrich ASP is 3,635 acres. Using the estimate of 7 jobs per net acre, the resulting employment generated by the Conrich ASP is 25,444 jobs per net acre, not the 46,053 jobs reported in the Economic Impact Report by Chestermere. If phasing of the ASP were included, the Phase 1 lands would yield approximately 7,900 jobs and the balance of approximately 17,500 would occur in Phase 2.

[90] Building on the error in calculating land requirements, another error in Chestermere's Economic Impact Report is that it does not consider labour mobility and the relationship between wages and prevailing prices. Workers will migrate in to fill demand if there is a labour shortage and there will not necessarily be "upward wage pressure". Whether wages are "unduly" high or low requires further analysis and Chestermere's claims of detriment are oversimplified.

[91] Finally, Mr. Shewchuk noted that there is a mischaracterisation of economic multipliers leading to a false impression that it would be more beneficial to the province if the development proposed in the Conrich ASP were to occur in Chestermere. For the benefit of the MGB, Mr. Shewchuk explained that economic multipliers are based on an "input-output" model (IO model) that is better suited to provincial or national economies. When used for smaller economies (i.e. a municipality), a location quotient is used to estimate what proportion of total provincial benefit may accrue to a particular area. The location quotient is calculated based on labour force residing in the area of interest. Mr. Shewchuk explained that Chestermere's study miscalculates locational quotient and misunderstands that IO models estimate total provincial impact regardless of where

a project is built. If labour force is used as a measure of the size of the local economy, then the work force of the entire Calgary CMA is the appropriate local economy. As such, it is incorrect to suggest that the locational quotient for Conrich would be materially different than that of Chestermere.

[92] Given the numerous errors identified, Rocky View argued the Environmental Impact's Report's conclusions about the Conrich ASP's impact on Chestermere are unreliable and incorrect. Further, an accurate appreciation of phasing and the scale and type of industrial and commercial uses that will locate in Conrich due to the CN site, makes it clear that the Conrich and Chestermere industrial lands are not in competition – nor will there be an oversupply of commercial and industrial lands. In fact, Chestermere is seeking light industrial and commercial development, while Conrich ASP development will be largely heavy industrial uses intended to serve a regional market. Likewise, the preferred locations for industrial land are in areas of low population density, so the population contained within the area of the Conrich ASP should not be a determining factor for industrial land demand. Finally, with respect to phasing, the Phase 1 lands, which comprise about one third of the total area of the Conrich ASP, will proceed in the near term. These lands are either contained within existing plans (Buffalo Hills and Prince of Peace) or are located north of TR 250, adjacent to the CN Intermodal Terminal. Phase 2 of the Conrich ASP is governed by Policy 27.18. Phase 2 lands are identified for long term development, and development will only occur when a regional stormwater management system is chosen or market demand has been demonstrated.

Findings – Issue 3

9. The economic analysis prepared by Chestermere shows that the municipalities are pursuing different markets and Chestermere must act to develop its commercial and industrial lands.
10. Competition between municipalities is not detriment.

Decision and Reasons – Issue 3

[93] The Economic Impact Report and the Gap Analysis Executive Summary were the two main pieces of evidence supporting Chestermere's claim of economic detriment. As explained below, the MGB finds neither of these reports links development of the Conrich ASP to detriment to Chestermere.

[94] First, as the MGB has noted in many previous decisions – including *Sturgeon* and *Okotoks* - economic competition is not generally considered detrimental. This finding holds true for the current appeal. As noted by Rocky View, many of the statistics used in Chestermere's reports were based on the entire Calgary CMA. And while development of additional industrial and commercial lands in Conrich may have some effect on development in Chestermere's, the same observation applies equally to industrial development elsewhere in the Calgary CMA.

[95] Even if the MGB were to accept that competition could in some cases constitute detriment, the MGB sees nothing detrimental in the circumstances of this case. The MGB finds the Economic Impact Analysis does not show the development proposed in the Conrich ASP will pose significant competition to Chestermere's own development. To begin with, the MGB accepts Mr. Shewchuk's criticisms of the Economic Impact Report prepared by Chestermere's experts, which undermine the reliability of its conclusions. Further, it is clear that Chestermere and Rocky View are pursuing different types of non-residential development, with divergent land requirements. The Conrich ASP is intended ensure that that incompatible development is minimized by establishing an area for the CN Intermodal Terminal with its associated regional and provincial scale industrial and commercial developments, and, by directing residential development away from this facility. This intent is reflected not only in the phasing in the Conrich ASP, but also in the marketing of the lands adjacent to the CN Intermodal terminal. Rocky View's MDP and Growth Management Strategy identify Conrich as a growth node, intended to generate employment for the region and the province.

[96] The Conrich ASP describes Phase 1 as the build-out of existing ASPs (Prince of Peace, Buffalo Hills) and lands adjacent to the CN site for its Intermodal Terminal. Policy 27.18 of the Conrich ASP states that Phase 2 will not be developed until market demand can be demonstrated, and a regional stormwater system is in place, a governance structure determined and, the means to construct or implement the system is in place. The use of the word "and" in Policy 27.18 confirms that timeframe for the development of the Phase 2 lands will not be occurring in the near term and may, given economic fluctuations, take additional time if the build-out of Phase 1 takes longer, or if the regional stormwater system does not proceed. Given these two requirements, the MGB believes that commercial and industrial development in Chestermere will be in place and underway before the Phase 2 lands in the Conrich ASP are developed.

[97] As previously mentioned, the types of development identified for Phase 1, such as the areas adjacent to the CN intermodal terminal, such as warehousing and material laydown areas, are not compatible with dense residential areas. Such developments need large land areas, produce noise throughout the day and night, included lighting is designed for safety and security, and require transportation access for large vehicles which will access the area at all hours. These are not the types of uses that would locate in Waterbridge ASP, and since the Mountain View area is not available, there do not appear to be similar lands within Chestermere.

[98] Chestermere's Waterbridge ASP identified as a "Master Area Structure Plan" contains a concept for a large area and is intended to serve as a blueprint for future area structure plans, neighbourhood plans, or conceptual schemes. A large scale or a master ASP does not mean that the area will be serviced and built immediately; rather, it is intended to sketch out the longer term intent for the area, and assign generic uses. This is a planning approach used in many jurisdictions in Alberta. Similarly, the Conrich ASP is blueprint for Rocky View. As more information becomes

available, estimates and forecasts will be adjusted, resulting in amendments to the plan, changes to the boundaries of phases, or the development of detailed plans for the Future Policy Area. Based on policies in Rocky View's MDP and the Conrich ASP, Chestermere will be consulted and will have input on any proposed amendments.

[99] The MGB recognizes that Chestermere introduced an Economic Impact Analysis and the executive summary of the Retail Gap Analysis to highlight the need to attract additional non-residential assessment to Chestermere, and to determine how much additional retail space is required to serve the existing and future population and the types of uses desired by residents. Both documents speak to Chestermere's need for additional commercial and industrial land within Chestermere to serve the population. The Retail Gap Analysis establishes that Chestermere requires additional commercial developments to serve its residents, and discusses the types of retail uses that Chestermere should pursue. Contrary to the opinion of Mr. Lacasse, the Retail Gap Analysis clearly identifies the East Hills development in Calgary as Chestermere's competition. While the executive summary states that Chestermere needs to increase the amount and types of commercial development, it does not state that the Conrich ASP would impact this need and does not provide the MGB with any evidence of detriment.

Issue 4: Will the Conrich ASP cause detriment to Chestermere by requiring it to pay for additional resources such as FCSS, libraries, parks and recreation, emergency police and fire services?

Chestermere's Position:

[100] Chestermere argued the placement of 5,000 to 10,000 people in Conrich would put undue strain on Chestermere's services. The Conrich ASP does not contain a population projection, a requirement under section 633 of the *Act*, and it is unclear how much population would be generated by each phase of the ASP. While Rocky View said much of the residential development would occur in the Future Planning Area, there is no indication if these lands will be included in Phase 1 or Phase 2. A population projection or projected density is required, to ensure that Rocky View has the appropriate infrastructure and services for Conrich residents.

[101] Chestermere introduced testimony from Ms. L. Brankovich, a registered social worker and social planning consultant who prepared Chestermere's Social Plan. For this hearing, Ms. Brankovich interviewed members of Chestermere administration and stakeholders and prepared a report entitled "*Social Infrastructure Impacts on the City of Chestermere As a Result of the Conrich Area Structure Plan*" (Social Infrastructure Report) to demonstrate that the Conrich ASP will be detrimental to Chestermere. Ms. Brankovich's opinion is that the Conrich ASP is premature for four reasons and should be delayed until plans or agreements are in place between Chestermere and Rocky View to accommodate growth.

[102] Firstly, the Conrich ASP is premature because Chestermere and Rocky View do not have an IDP in place. The IDP is necessary to ensure that the municipalities have a process for collaborative planning, dispute resolution and to discuss costs and revenues. As part of the 2009 Annexation Agreement, Rocky View and Chestermere agreed to prepare and adopt an IDP. There is no IDP in place, and therefore, Rocky View is breaching the agreement by proceeding with the Conrich ASP. Since the proposed *Modernized Municipal Government Act* will make an IDP mandatory for all municipalities the Conrich ASP should be set aside until the IDP is complete.

[103] Secondly, before proceeding with the Conrich ASP, Ms. Brankovich stated that Rocky View must prepare master plans for recreation, family and community services (FCSS), fire, policing, disaster response and recovery to deal with the influx of population in the plan area. In addition, Rocky View should be required to negotiate and enter into regional agreements for fire, policing, family and community services and recreation. Based on the interviews undertaken by Ms. Brankovich and her personal knowledge, if Rocky View has plans or agreements, they are either out of date or very general, and do not contain sufficient detail to accommodate an additional 10,000 residents. If development occurs in Conrich, additional fire and policing services will be required for the industrial development due to the increased population and traffic. Library services, which are at capacity in Chestermere, will be oversubscribed without additional funding or expanded space.

[104] Thirdly, Ms. Brankovich explained that if development and construction in the Conrich ASP were to proceed today, Rocky View residents will access Chestermere's services, since policing, fire and disaster services, recreation, library and FCSS programs are readily available in Chestermere. While growth in Chestermere has increased the demand for these services, the additional demand by Rocky View residents will stretch resources, increase lifecycle and maintenance costs, and increase Chestermere's expenses. Ms. Brankovich noted that while demand by Rocky View County residents has increased for facilities and services in Chestermere, Chestermere has received no additional funding to cover the associated expenses.

[105] In the Social Infrastructure Report, Chestermere noted that there was precedent for their concerns as population growth in Langdon, south of Chestermere, occurred without the IDP in place. Langdon grew 87% to just under 5000 residents in a short time frame. Langdon residents rely on Chestermere's Community Services Department, attend Chestermere's high school, recreation facilities and library. While Langdon is served by a volunteer fire department and its policing needs are met by the Strathmore RCMP, all other services are available in Chestermere and used by Langdon residents.

[106] Ms. Brankovich highlighted FCSS programming and funding and the Chestermere Regional Recreation Centre as two areas of detriment occurring currently which would be complicated by additional population in the Conrich ASP. While FCSS programs in Chestermere serve a growing population, the funding for providing and staffing these programs has not

increased. In 2013, Chestermere introduced a new program delivered by a non-profit society; this innovation led to a reduction in funding a result of the old FCSS funding criteria. While funding was restored the following year, total funding to Chestermere remained the same despite the new program. In contrast, other programs have been established and funded in South East Rocky View.

[107] Additional population in Conrich will also increase use of the Chestermere Regional Recreation Centre (Recreation Centre) without any cost recovery mechanism in place. The Chestermere Regional Community Association (CRCA) operates the Recreation Centre and the surrounding 28 acres of land under a lease arrangement with Rocky View. There is an ongoing dispute between the CRCA and Rocky View over the terms of the lease. As a result, Rocky View withdrew its operating funds and is not allowing major maintenance or upgrades to the Recreation Centre until a new lease is signed. Rocky View also reclassified the Recreation Centre in 2015 from a “Regional” to a “District” facility, further reducing the amount of funding for facilities and programs at the Recreation Centre. Without an IDP to establish a dispute resolution process, Chestermere and Rocky View cannot easily resolve this dispute.

[108] Lastly, Ms. Brankovich expressed disappointment that the Conrich ASP does not contain a social planning component or population projections, arguing that the plan is premature and should be set aside until details are known or agreements are in place. Without the social planning component and population projections, the Conrich ASP does not adequately consider social infrastructure, as required by the SSRP. Given all of these deficiencies, the MGB should set aside the ASP.

[109] In response to questions by Rocky View, Ms. Brankovich explained she generated her findings and conclusions in the Social Infrastructure Report by reviewing various planning documents, agreements and other bylaws and compiling the results of interviews with Chestermere administration and stakeholders, including the acting Fire Chief and RCMP detachment commander. Ms. Brankovich explained that in producing her report, she did not interview anyone from Rocky View, nor did she request or review any copies of Rocky View’s current plans and agreements for the above mentioned areas.

Rocky View’s Position:

[110] Rocky View advised the MGB that, contrary to the evidence provided by Chestermere, there are agreements and master plans in place for social infrastructure programs and services that will serve current and future residents in the Conrich ASP and in Chestermere. As the lands within the Conrich ASP develop and the population increases, funding and other resources will be adjusted to serve the area and the increased demand.

[111] In response to Chestermere’s evidence and the contents of the Social Infrastructure Report, three members of Rocky View’s staff were introduced as witnesses. Mr. R. Ell, FCSS Coordinator

for Rocky View, explained that social infrastructure is a direct or conscious action to provide supports to people and build social capital. The FCSS programs are administered locally with provincial funds. Provincial FCSS funding is based on budget allocated in the previous year, which means that programs funded in 2016 are based on a budget finalized in 2015. Funding is allocated based on projects submitted and requests.

[112] Mr. Ell explained that the FCSS board determines and allocates funding based on a Community Needs Assessment and the FCSS Strategy Road Map. The funding given to Chestermere has been in the amount requested. Mr. Ell agreed a funding decrease in 2013 occurred due to the establishment of the Synergy Program, a non-profit organization. The reason the FCSS Board did not fund Synergy is that their approach did not meet the criteria under the FCSS Strategy Road Map. Funding was restored in 2014 once Synergy was operating.

[113] Rocky View also introduced testimony from Ms. S. Baers, a registered planner and Manager of Planning for Rocky View to explain the open space and recreation policies in the Conrich ASP and describe the differences between recreation facilities in Rocky View. The Conrich ASP already includes provisions for parks and open spaces. As more detailed plans for the Future Planning Area are developed, population projections will be adjusted and additional documents such as the Rocky View's Recreation and Cultural Master Plan will be completed.

[114] Ms. Baers explained that the reclassification of the Chestermere Recreation Centre by Rocky View Council occurred because there was no agreement on cost sharing with CRCA. Rocky View has set aside money that would have been paid to CRCA if the operating lease were in place, and will pay it once an agreement is reached. There are currently legal proceedings between the CRCA and Rocky View concerning this matter, but these proceedings have no bearing on the adoption of Conrich ASP.

[115] Rocky View's final witness was Chief R.E. Smith, who is Rocky View's Fire Chief and Director of Emergency Management. Chief Smith provided evidence about fire, emergency management and disaster services as well as police services. Chief Smith reviewed the Chestermere's Social Infrastructure Report and provided content for Rocky View's submissions for this hearing. He explained that Rocky View Fire Services operates as a regional fire service with 7 stations, 74 full time fire fighters, 120 part time fire fighters and approximately 100 volunteer positions. Fire Services also coordinates with a number of other agencies and has mutual aid agreements with municipalities in the region. City of Calgary is a partner, providing dispatch services for 911 calls.

[116] There is a mutual aid agreement between Chestermere and Rocky View. Developed by both municipalities, the mutual aid agreement is structured so that if there is an emergency call in one municipality, the partner responds and, if available, the responding partner sends the requested equipment and firefighters. Mutual aid agreements allow firefighters and equipment to be deployed

from different areas. Chief Smith noted that the Rocky View and Chestermere fire services work together regularly and have a good working relationship. The agreement, structured around the type and volume of calls, is currently set for 80 calls a year at a flat rate. The number of calls can be increased in a time of need. In 2015, there were more than 80 mutual aid calls to Rocky View; many of these calls were due to flooding in Chestermere, and Rocky View Fire Service assisted in evacuations and pumped out flooded basements. In 2015, there were 30 calls due to motor vehicle accidents on Highway 1, for which Chestermere had requested inclusion of its fire service.

[117] In response to questions posed by Chestermere, Chief Smith agreed that if increased industrial development occurs in Conrich, additional services will be required. Currently, stations in Balzac and Langdon provide service to Conrich and assist Chestermere; if a fire station is needed to serve the additional population or provide additional services, it can be built.

[118] Chief Smith is also Rocky View's Director of Emergency Management. Rocky View has an Emergency Management Plan and an Emergency Management Committee that can respond to emergencies and disasters. There is a separate Emergency Social Services Plan, which is used when there is a large scale emergency or disaster, and a reception centre or other services are needed. Although these plans are available, Chief Smith does not believe Chestermere has requested copies of either document. While Chestermere might have similar documents, these have not been circulated to Rocky View, nor has a copy been provided.

[119] Chief Smith affirmed that the Strathmore RCMP detachment is responsible for providing policing services to Conrich, but if necessary can call upon the Calgary Police Service, CN Police, Alberta Sheriffs, and the County's Peace Officers for assistance. Recently, Rocky View has funded an additional position at the Strathmore detachment to assist in policing duties in the eastern part of Rocky View. As development proceeds in the Conrich ASP and the population increases, additional services will be added consistent with the Provincial Police Services Agreement.

[120] In response to Chestermere's assertion that social infrastructure or funding must be in place prior to Rocky View proceeding with the approval and development of the Conrich ASP, Rocky View reminded the MGB that section 633 does not require social plans as a precursor to an ASP. Section 3(b) of the *Act* states that the purpose of a municipality is "to provide services, facilities or other things that in the opinion of council, are necessary or desirable for all or a part of the municipality." In this case, Rocky View Council has not requested a social plan, nor has it required its preparation to guide social programs in within Rocky View. Counsel for Rocky View advised that there are no Alberta counties who have a social plan. Further, Chestermere's Waterbridge ASP does not include a reference to the Social Plan, nor does it mention social infrastructure. After a quick review of Calgary's planning documents and the Rocky View and Calgary IDP, Rocky View observes that there are no references to Calgary's Social Plan. Chestermere also recently prepared a recreation master plan, funded by Rocky View, for which there was little consultation.

[121] While the SSRP includes references to social infrastructure, the provision cited by Chestermere is located in the Strategic Plan, not the Regulatory Details Plan. Rocky View reminded the MGB that the three portions of the SSRP (strategic plan, implementation plan and regulatory details plan) are intended to be read together; to focus on the provision cited does not give a true sense of the intent of the SSRP. There is a great deal of cooperation between Rocky View and area municipalities and continuing efforts to plan for social infrastructure.

[122] The Rocky View MDP identified Conrich as a growth node with a range in population of 5000 to 10000 residents. The Conrich ASP is designed as a framework, and more detailed policies for population growth and social infrastructure will be added when other ASPs or conceptual schemes adopted under the Conrich ASP. Any future statutory plans or land use bylaw amendments will be circulated and discussed with Chestermere. Other than previously approved ASPs and Conceptual Schemes, there will be no residential development in Phase 1. While there may be residential development in Phase 2, the time frame in which these lands would be further planned and developed will not put a stress on social infrastructure, and programming can be adjusted. Residential growth (with a large increase in population) will not occur until services area in place, and a plan developed for the Future Planning Area.

[123] The issue of social infrastructure raised by Chestermere in this appeal was not identified or discussed with Rocky View during the development of the Conrich ASP, nor in its written notice to Rocky View prior to second reading of the Conrich ASP bylaw. There are agreements for many of the services that Chestermere raised as concerns (fire, disaster, FCSS, library and recreation). These are not part of the ASP, but do support it. Counsel for Rocky View argued the findings of the Social Infrastructure Report are incomplete and incorrect, since Ms. Brankovich interviewed only Chestermere staff or residents and summarized the results. Without access to copies of the interviews, the statements in the report cannot be confirmed.

Findings – Issue 4

11. Social infrastructure is optional content in an Area Structure Plan, but is not generally part of an Area Structure Plan.
12. Rocky View and Chestermere have master plans and agreements in place to address social infrastructure.
13. The ASP does not cause detriment to Chestermere related to social infrastructure funding or service provision

Decision and Reasons – Issue 4

[124] Chestermere is concerned about providing services to a growing population, including a potential 10,000 new residents in Conrich. Further it is concerned that funding for services

provided to Conrich residents will be at Chestermere's expense. The MGB accepts that it is important to plan ahead for future residents, and that residents from Conrich will likely use services in Chestermere; however, it is not unusual for residents of neighbouring municipalities to use services in municipalities where they do not reside, and detriment cannot be inferred from such circumstances. Rather, detriment would require an unreasonable failure to cooperate with a neighbouring municipality to facilitate service provision, mitigate risks, and share costs: for example, a refusal to provide appropriate services or to enter into joint planning arrangements, mutual aid agreements, and cost sharing agreements as appropriate.

[125] In this case, the evidence does not establish any such failure. On the contrary, the MGB heard that there are many agreements in place between Chestermere and Rocky View that address the concerns identified in Chestermere's Social Infrastructure Report. While these agreements are not contained within the Conrich ASP, it does not mean that the contents of the agreements will be overlooked when planning for social infrastructure generated by the different phases of the Conrich ASP.

[126] It is true that Chestermere has prepared a Social Plan to address requirements for services, whereas Rocky View has no equivalent to date. However, Rocky View's decision not to proceed with a social plan does not establish detriment. There is no legislated requirement for a social plan; furthermore, joint service requirements may be planned and delivered effectively without one. Municipalities cooperate in many ways that are not necessarily reflected in statutory planning documents such as IDPs and ASPs.

[127] In this case, Rocky View has arrangements in place with neighbouring municipalities – including Chestermere – to deal with emergency response requirements, and has demonstrated willingness to discuss changes to cost sharing requirements as circumstances evolve. The evidence from Chief Smith, Mr. Ell, and Ms. Baers shows plans and agreements exist between the two municipalities that can be updated, reopened or replaced as circumstances change and as more information becomes available. While it is unfortunate that litigation is ongoing with respect to the Recreation Centre, this appears to be a dispute over interpretation of a lease agreement rather than a failure to plan jointly or cooperate to provide services. Accordingly, the MGB does not accept Chestermere's assertion Rocky View has failed to participate in providing services or funding.

[128] The MGB observes that the Conrich ASP does include provisions to address the needs of an increasing population. For example, it has provisions for recreational, cultural, and community uses, including provisions for a regional and local network of pathway and trail connections. It also has provisions for schools, open spaces, natural environment, reserves, and emergency services. In the MGB's view, the ASP demonstrates good planning practice in the circumstances and includes as much detail as can be expected for a document of its kind.

[129] It is important to recognize that the Conrich ASP includes phasing and population projections for Phase 1 to deal with industrial and commercial warehouse development adjacent to the CN site. Development of the balance of the Conrich ASP will not occur until a market study is complete and either CSMI or SRDP is in place. Throughout the hearing and in its written submissions, Rocky View estimated that the development of later phases of the Conrich ASP would occur after 2035. There will be time for the discussion and planning for future population, and a mutual determination of social infrastructure needs and funding.

[130] Nor can the MGB accept that the lack of an IDP between Rocky View and Chestermere is detrimental for the purposes of this appeal. As noted earlier in this order, intermunicipal planning policies exist in the ASP and Rocky View MDP, including a dispute resolution mechanism. While an IDP may become mandatory once amendments to the MGA take effect, this fact does demonstrate detriment in the context of an intermunicipal dispute.

[131] With respect to Chestermere's assertion that the Conrich ASP does not comply with the SSRP, The MGB notes that, at page 33 in the SSRP Strategic Plan, the SSRP states:

Decision-makers in the region will need to deliberately cooperate and coordinate their planning to meet the physical and social infrastructure needs of their communities and to ensure the quality of life for all residents is enhanced in thriving urban and rural communities.

SSRP Implementation Plan, Strategy 8.1 requires partners "to work together to achieve the shared environmental economic and social outcomes". There is evidence that Chestermere and Rocky View have worked together in the past, the MGB sees no reason to believe communication will not continue in the future. As noted by Rocky View, there are three parts to the SSRP, only one of which, the Regulatory Details Plan, is a regulation. The Regulatory Details Plan is silent on the provision of social infrastructure. In any event, as noted in *Canmore v. Bighorn*, MGB 010/17 at paragraph 85, the MGB's role is to determine whether another municipality's bylaw causes detriment rather than to assess consistency with a regional plan.

Issue 5: Without an Intermunicipal or a Regional Plan, will there be a lack of coordination of plans that will be detrimental to Chestermere?

Chestermere's Position:

[132] Chestermere raised two specific concerns about detrimental effects it says will result from implementing the Conrich ASP without prior co-ordination of plans. The first is that the CN Intermodal Terminal is a regional asset for Southern Alberta, and the Conrich ASP requires appropriate transportation and land use plans that should be coordinated with area municipalities. The second concern raised is that, in its current form, the Conrich ASP harms the ability of

Chestermere to develop as a complete and sustainable community. Mr. Popoff contended harm be defined as: “social, economic or environmental damage or injury, an act that causes the other party to be made less sustainable or viable in relation to their identified growth ambitions and mandate as a municipality.”

[133] To support its position on both these concerns, Chestermere introduced evidence from Mr. J. Popoff, who is a registered planner and Chestermere’s Director of Development and Infrastructure Services. Mr. Popoff explained that the CN site is important and necessary to the logistics and warehousing industry. The surrounding region - including Chestermere - benefits economically from the CN site, which generates between 400 and 1100 jobs. In Mr. Popoff’s view, this regional asset requires appropriate regional planning, including an integrated transportation network, and a collaborative planning framework.

[134] The Conrich ASP is a very large area: 10,000 acres of land, of which 4800 acres will be industrial. As demonstrated by the Economic Impact Report, this amount of industrial land would support all of Rocky View’s needs for 70 years. Setting aside such a vast amount of land for industrial development unprecedented and inefficient, and does not align with established planning documents, including the Rocky View MDP, Calgary Metropolitan Plan, the CCCASP and the SSRP.

[135] In contrast to the very large industrial/warehousing Future Policy Area identified within the ASP, the Rocky View MDP identifies a much smaller Regional Business Centre north of the hamlet of Conrich, while the CCCASP defines a compact light industrial area on Highway 1. Contrary to the ASP, the CCCASP and SSRP also discourage premature conversion of agricultural land. More generally, the SSRP also requires efficient use of land and infrastructure, and minimization of land required for the built environment. The ASP undermines all of these objectives by zoning industrial land beyond realistic absorption rates.

[136] A related concern is that Rocky View’s practice of using non-statutory plans such as Local Plans will promote inefficient, incremental planning rather than efficient, regional planning. Non Statutory plans have no requirements for circulation and no avenue of appeal. As a specific example of how the ASP will result inefficiencies through incremental planning, Mr. Popoff compared two planning scenarios – one collaborative and the other independent. The two scenarios show how collaborative design can contribute to efficient use of land, connectivity of development, and effective transportation connections.

[137] Mr. Popoff explained that failure to plan collaboratively will harm Chestermere’s goal to develop into a complete and sustainable Community. In this regard, he echoed testimony from Mr. Woodward and Mr. Johnson that Conrich’s designation of such a large amount of commercial/industrial land affects Chestermere’s ability to attract similar development, reduces the available workforce and contributes to a loss in tax revenue. He also indicated that without an

IDP in place, the Conrich ASP allows ad hoc and disjointed development. The Highway 1 corridor, in particular, needs to be planned collaboratively and comprehensively. Ad hoc development is detrimental as it increases cost of infrastructure. Where both Chestermere and Rocky View intend to increase their non-residential tax base, comprehensive planning should be occurring.

[138] Mr. Popoff acknowledged there have been other plans approved in the area without an IDP (Example: Janet ASP in Rocky View and Waterbridge ASP in Chestermere); however, he emphasized the Conrich ASP is unique because it straddles Highway 1, which is the most important gateway for Chestermere. A GMO and IDP, when completed, will support the Community Development segment of the SSRP, as these documents will promote planning cooperation, integration and knowledge sharing between communities, and allow collaborative solutions to planning challenges.

[139] In its written summary, Chestermere also suggested the MGB could allow only the portions of the Conrich ASP applicable to the Phase 1 lands, and require certain amendments Policy 27.18 – namely, to ensure Phase 2 only proceeds after (1) completion of a market study in partnership with Chestermere, (2) an agreed terms of reference and consultant, and (3) approval and construction of the regional stormwater system. Should the MGB determine both Phases could proceed, Chestermere requested further amendments to provisions of the Conrich ASP Policies regarding Emergency Services, Transportation, Stormwater and Drainage. These amendments would protect Chestermere from potential effects of development of the Conrich ASP and require consultation with Chestermere.

Rocky View's Position:

[140] The Rocky View Municipal Development Plan includes a protocol for intermunicipal planning, used when there is no intermunicipal development plan. As Conrich ASP is required to comply with the MDP, the protocol would apply. Further the Conrich ASP complies with other policies in the MDP and, the pattern of growth is consistent with previous plans such as the CCCASP. As the *Okotoks* decision noted, all municipalities are autonomous and can make planning and development decisions in their own boundaries without interference as long as the decisions don't cause detriment to their neighbours.

[141] Rocky View explained the Conrich area is evolving from an agricultural community to one with increased demand for related intermodal industrial and commercial development. There have been issues with increased truck traffic from the CN site, and impacts on area residents due to increased train movements – for example, noise and additional lighting. While some mitigation has occurred, additional work is needed.

[142] Although an ASP is not strictly required, Rocky View decided to proceed with the Conrich ASP to help manage growth. The Conrich ASP is consistent with Rocky View's evolving policies

and vision, the 2009 Growth Management Strategy and 2013 MDP, all of which were developed after public consultation. The lands in the Conrich ASP have been identified for business in the CCCASP since 2004. Chestermere raised no concerns when consulted on the CCCASP or the 2013 MDP, nor did it file an intermunicipal dispute. Chestermere's own Waterbridge ASP also includes commercial uses adjacent to Highway 1 identified in the CCCASP.

[143] Ms. Zeluski explained the Rocky View MDP was prepared at the same time as the SSRP, and incorporates the draft principles of the SSRP. MDP Principle 3 is "Support the agricultural sector by focusing growth to existing identified areas and limiting development in agricultural areas", which echoes the Agriculture Strategies in the Community Development section of the SSRP. Designating lands near the CN site for commercial and industrial development will allow other agricultural lands in Rocky View to remain in production.

[144] Ms. Zeluski noted that the Rocky View MDP and Conrich ASP contain extensive policies for intermunicipal collaboration. Where Rocky View does not have an IDP with a municipality, it relies on Section 27 of the MDP, Intergovernmental Affairs, which is the intermunicipal planning section. This section includes Policy 27.12, which requires Rocky View to engage in alternative dispute resolution if there is an intermunicipal dispute. While an invitation to mediate was sent to Chestermere, there was no response, and Chestermere filed an appeal under section 690. After the issuance of DL 004/16, Chestermere and Rocky View entered into mediation, but this did not result in resolution. There is a draft IDP, however, it does not include the various joint planning, economic, cost and revenue sharing, and social infrastructure issues raised by the Chestermere in this appeal. These issues had not been identified prior to the development of the draft IDP.

[145] Rocky View argued that adopting the Conrich ASP prior to an IDP does not cause detriment to Chestermere, and delaying the ASP until the IDP is adopted would increase uncertainty and freeze development. Given Chestermere's recent attempt to annex the Conrich ASP area, it is reasonable to conclude that the Minister is aware of the situation and could mandate an IDP, but none has been mandated. Section 631.1 of the *Act* allows the Minister to make regulations or require two municipalities to establish an IDP. While the MGB had previously been requested to place a moratorium on development, it has declined to do so.

[146] Development in the Conrich ASP will pay its own way and will not increase costs to Chestermere. As noted by Mr. Wiljamaa, Rocky View has an off site levy bylaw and infrastructure charges will be applied at the time of development or subdivision. In addition, the Conrich ASP will be consistent with Rocky View's 2013 County's Servicing Standards and engineering standards. The Conrich ASP requires engineering and servicing plans be circulated with both Chestermere and Calgary. Mr. Wiljamaa stated the Conrich ASP requires a decision be made on the regional stormwater system with a governance system prior to the development of the Phase 2 lands, it does not require that the system be completely constructed. The advantage of the CSMI alternative is that it can be constructed in segments when funding is in place.

[147] The planned uses on the boundaries of Chestermere and the Conrich ASP area are not incompatible. Development in Phase 1 is either included in existing approved plans, or industrial development is north of Conrich adjacent to TR 250, which is also approximately 3 km north of Chestermere. The Phase 2, Highway Business Area is consistent with development planned on adjacent lands in Chestermere's Waterbridge ASP. Policies contained within Section 14 of the Conrich ASP were drafted to mitigate land use conflict between residential and non-residential uses. Chestermere administration recommended approval of the Conrich ASP.

[148] Finally, Chestermere's requested remedy, that the MGB impose a Growth Management Overlay on lands adjacent to Highway 1 is not acceptable to Rocky View. The MGB cannot impose such a scheme, nor can it order that an IDP be prepared prior to consideration of the Conrich ASP. While Chestermere relied on provisions within the *Modernized Municipal Government Act*, to infer that IDPs will become mandatory and the MGB ought to order the preparation of the Chestermere and Rocky View IDP, this legislation has not been proclaimed, and the MGB cannot order compliance with draft legislation. Policies within Rocky View's MDP and the Conrich ASP target timely and meaningful consultation between Chestermere and Rocky View, but as the MGB determined in the Sturgeon decision. "Consultation...does not mean a veto". Rocky View submits that Chestermere has not proven detriment and is not entitled to any remedy whatsoever.

Findings – Issue 5

14. There are provisions within the Rocky View MDP for intermunicipal planning to engage in coordinated and cooperative planning.
15. The MGB cannot require or enforce the adoption of an IDP.
16. The ASP does not result in a lack of co-ordination of plans detrimental to Chestermere.

Decision and Reasons – Issue 5

[149] Underway for several years and the subject of much consultation, the need for the Conrich ASP appears to have been generated by Transport Canada's decision to locate the CN Intermodal Terminal adjacent to the hamlet of Conrich, and Rocky View's need to ensure that incompatible development is minimized. The MGB accepts the evidence of Rocky View that the Conrich ASP is consistent with the Rocky View MDP. The MDP identifies the hamlet of Conrich as a growth area, and gives a target population of 5000-10000 people.

[150] While Chestermere argued that Conrich ASP requires coordinated and appropriate transportation and land use plans with regional municipalities, there was no indication that plans could not be developed and amended. The Conrich ASP sets out a framework on which to base development of the areas surrounding several important regional features: the CN site, the hamlet

of Conrich, Highway 1, the Cities of Chestermere and Calgary, and Stoney Trail. The ASP sets a vision for development of the area, and includes provisions that identify and protect water resources and features of the natural environment, stormwater management features, utility servicing, transportation routes. Land use bylaws and statutory plans, including area structure plans, are not static documents and can be added to or amended over time. Generally, the identification of phases in statutory plans recognize the need for orderly development and the ability to identify areas which may require study, or require specific servicing to proceed.

[151] The MGB notes that administration of both Rocky View and Chestermere agreed to the content and wording of policies in the Conrich ASP, although Chestermere's council subsequently objected to the plan. The MGB heard Rocky View has made reasonable efforts to communicate with Chestermere to resolve planning issues affecting the region. For example, Rocky View prepared a matrix comparing issues of concern raised by Chestermere Council as a matter of discussion, but Chestermere Council ordered administration to cease all communication with Rocky View. Invitations by Rocky View to mediate were not responded to. Although lack of communication can be a form of detriment in some circumstances, no such circumstances apply here.

[152] The MGB observes that the 2004 CCCASP shows residential, commercial, industrial and corridor development for the lands south of the hamlet of Conrich and extending into lands which are now part of Chestermere. While the CCCASP focused on development adjacent to both Highway 1A and the Highway 1 Corridor, there was a wide range of uses shown for the balance of that Area. Highway 1 in the CCCASP, creates a buffer for land uses, transitioning from agricultural uses south of Highway 1 to commercial, residential, residential infill and commercial north of Highway 1 to surround the hamlet of Conrich. That general concept is continued in the Conrich ASP.

[153] Chestermere argued that the Conrich ASP violates SSRP provisions that encourage community development and the efficient use of land. The MGB observes that these provisions do not occur in the regulatory portion of the SSRP; even so, the evidence of Ms. Zeluski makes clear that Rocky View did consider them when formulating its ASP. Chestermere would evidently prefer a greater level of detailed regional planning before development proceeds; however – as noted earlier in this order - it would be unfair to freeze development in the Conrich Area until the level of certainty Chestermere has requested is achieved. Similar sentiments have been expressed in previous MGB orders. For example, in *Drayton Valley v Brazeau County* (MGB 181/99), the MGB stated

“The Board is unwilling to place a moratorium on development in the intermunicipal fringe until an IDP is complete. Such a moratorium translates into a de facto veto by the Town...It is not the practice of the Board to virtually freeze

a huge geographical area from any form of development activity pending the adoption of a plan which may or may not be realized.”

[154] As found earlier in this order, the absence of an IDP does not necessarily establish detriment, nor would it be appropriate for the MGB to determine the contents of such a plan. Imposition of an IDP is not a remedy identified by section 690 for the MGB to apply in the context of an intermunicipal dispute. Further, the *Act* now in force clearly contemplates development without the benefit of an IDP, and it has been common practice in Alberta for municipalities to include policies for intermunicipal cooperation within their MDPs. The case now before the MGB conforms to this longstanding practice.

[155] While the CN Intermodal Terminal is a clearly a regional asset for Southern Alberta, the Conrich ASP includes appropriate transportation and land use plans that provide a reasonable basis for coordination with other municipalities in the area to develop services for area residents.

Landowner Submissions

[156] The MGB provided notice to approximately 665 landowners in the Conrich ASP area, and also advertised the merit hearings in the Rocky View Weekly and on the municipality’s websites. To allow landowners and the public to make submissions about Chestermere’s appeal, the MGB convened an evening session on September 19, 2016 to allow the public to make submissions.

[157] A total of 13 submissions were received or heard by the MGB, all in support of the Conrich ASP and opposed to the Chestermere and Calgary claim of detriment. Rocky View’s approach to develop and adopt the Conrich ASP was comprehensive, fair and open, and the adopted version of the plan was an effort to balance all of the interests in the area. While many of the Landowners expressed a preference for the May 2015 version of the Conrich ASP which did not include the Future Policy Area, all encouraged the MGB to dismiss the claims of detriment and allow the Conrich ASP.

[158] The appeal of the Conrich ASP is the most recent in a long series for delays impacting the Landowners’ ability to plan for activities including future development of their lands, to complete real estate transactions, or to continue their agricultural operations. The delays have been as a result of a lack of certainty for planning in the area, and while there have been several strategies by Rocky View to develop a plan for Conrich, including the Growth Management Strategy and the Reeve’s Task Force, these studies have further delayed their plans. There has been no decision made on regional stormwater management which has also delayed planning in Conrich. This has contributed to uncertainty for several Landowners as they understood that their lands would be required for stormwater management facilities.

PART D: DECISION

[159] The MGB finds no detriment on any of the issues raised by Chestermere and dismisses the appeal.

Dated at the City of Edmonton, in the Province of Alberta, this 9th day of May, 2017

MUNICIPAL GOVERNMENT BOARD

(SGD) D. Thomas, Presiding Officer

APPENDIX "A"**PERSONS WHO WERE IN ATTENDANCE OR MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:**

NAME	CAPACITY
R. Jones	Legal Counsel, City of Chestermere
M-E Scott	Legal Counsel, City of Chestermere
J. Popoff	Witness, Director of Development and Infrastructure Services, City of Chestermere
S. Power	Witness, Transportation Engineer, Parsons Corporation
J-M Lacasse	Witness, Director of Economic Development, City of Chestermere
R. Woodward	Witness, Economist, RW Consulting
S. Johnson	Witness, Economist, SJ Consulting
L. Bozic	Witness, Water Resources Engineer, Urban Systems Ltd.
L. Brankovich	Witness, Social Planning Consultant, L. Brankovich Consulting
J. Klauer	Legal Counsel, Rocky View County
A. Zeluski	Witness, Senior Policy Planner, Rocky View County
A. Guebert	Witness, Senior Transportation Engineer, Watt Consulting
E. Hofbauer-Spitzer	Witness, Transportation Analyst, Watt Consulting
P. Shewchuk	Witness, Senior Economist, Nichols Applied Research
C. McNab	Witness, Water Resources Engineer, MPE Engineering
P. Seeliger	Witness, Water Resources Engineer, MPE Engineering
R. Ell	Witness, FCSS Coordinator, Rocky View County
S. Baers	Witness, Manager of Planning, Rocky View County
R.E Smith	Witness, Fire Chief, Director of Disaster Services, Rocky View County
R. Wiljamaa	Witness, Director of Engineering, Rocky View County
D. Mercer	Legal Counsel, Affected Party, City of Calgary
M. Senek	Legal Counsel, Affected Party, City of Calgary

LANDOWNERS WHO MADE SUBMISSIONS AT SEPTEMBER 19, 2016 LANDOWNER SESSION

S. Staddon	Landowner
J. Kuz	Buffalo Hills Developments Ltd
S. Grande	Remax Real Estate
B. Tobler and J. McKervey	Landowner
P. Mosca	Landowner

APPENDIX “B”**DOCUMENTS RECEIVED PRIOR TO THE HEARING:**

NO.	ITEM
1A	City of Chestermere Dispute Filing, Declaration of R. Patrick CAO
2R	Map of Area and Landowner list generated from assessment roll
3R	Rocky View County Response, Declaration of K. Greig
4A	City of Chestermere proposed exchange dates
5A	City of Chestermere mediation report
6A	City of Chestermere Legal Brief
7A	City of Chestermere Submissions
8R	Rocky View County Legal
9R	Rocky View County Planning Response
10R	Rocky View County Social Infrastructure Response
11R	Rocky View County Stormwater Response /Rocky View County Economic Assessment Response (binder tab 2)
12R	Rocky View Transportation Response (binder) ***replacement of August 11 letter

LANDOWNER SUBMISSIONS – Common to both Calgary and Chestermere

13L	Buffalo Hills Developments for Spearpoint Holdings, Kuz
14L	B Tobler for C. Land
15L	C. McKervey
16L	Amar Developments
17L	Stoney Gateway Business Park (B & A Planning Group - D. MacDonald)
18L	Harriman and Harriman Trust (Urban Systems Ltd.- K. Nelson)
19L	Remax for Landowners Coates, Gehbari, Gill, Jeha, Gill, Longair, Matthews, Mosca, Orban, Mosca, Penikett, Roberts, Sabbah, Sheppard, Soderberg, Staddon, Soderberg, and Vaughan (S. Grande - Remax Complete)
20A	City of Chestermere Reply Submission
21A	City of Chestermere Reply to the Rocky View Memorandum of Legal Argument and Authorities
22R	Rocky View County Memorandum of Legal Argument (Surrebuttal)

APPENDIX "C"

DOCUMENTS RECEIVED AT THE HEARING.

NO.	ITEM
23A	Lacasse CV – Chestermere Economic Development Director
24R	City of Chestermere MDP 2016
25R	City of Chestermere MDP 2009 (excerpt)
26R	City of Chestermere Gateway ASP (excerpt)
27R	City of Chestermere Waterbridge ASP
28R	City of Chestermere Letter of Support for CSMI to Western Irrigation District (WID)
29A	PowerPoint - Summary of City of Chestermere Planning Evidence
30R	City of Chestermere Future Recreation and Leisure Centre Feasibility Study
31R	City of Chestermere Feasibility Study
32R	PowerPoint – Summary of Rocky View County Planning Response
33A	2008 Annexation Agreement between Rocky View County and Town of Chestermere
34A	Canada Transportation Agency Decision 50-R-204 for CN Logistics Park (identifier only)
35A	Calgary Logistics Park Master Site Development Plan (report)
36A	Rocky View County Website excerpts – CN Logistics Park – Economic Development
37A	Rocky View County Council Report – CN Logistics Park
38A	Conrich ASP Phase 1 Engagement Report – Golder and Associates
39A	Conrich ASP Phase 2 Engagement Report – Golder and Associates
40A	Conrich ASP Phase 3 Engagement Report – Golder and Associates
41A	February 12, 2015 Letter to Honourable D. McQueen, Minister of Municipal Affairs (identifier only)
42A	Growth Management Board Submission to Minister of Municipal Affairs
43R	PowerPoint - Transportation Evidence of DA Watt
44R	PowerPoint - Hydrogeological Input Assessment Evidence of MPE Engineering
45A	Map of Cooperative Stormwater Management Initiative (CSMI)
46A	Cooperative Stormwater Management Initiative Report Excerpts
47A	Parkland County Employment and Industrial Land Strategy
48R	PowerPoint - Stormwater and Transportation Operations response

49R	January 7, 2015, letter from Alberta Transportation Re: Conrich ASP
50A	APEGA Practice Standard for Authenticating Professional Documents
51A	Engineering and Geosciences Profession Regulation Section 49 and 54 AR 150/99
52R	PowerPoint - Social Infrastructure – (FCSS) Response
53R	PowerPoint - Social Infrastructure – (Parks) Response
54R	PowerPoint - Social Infrastructure – (Fire/Police EMS) Response

APPENDIX "D"

DOCUMENTS RECEIVED AFTER THE HEARING.

NO.	ITEM
55-64	Transcripts
65A	Written Summary of City of Chestermere, October 14, 2016
66R	Written Summary of Rocky View County, October 21, 2016
67A	Written Rebuttal of City of Chestermere, October 27, 2016
68A	Written Sur-Rebuttal of Rocky View County, November 2, 2016

APPENDIX "E"

LEGISLATION

The *Act* contains key provisions that apply to the MGB when it has an intermunicipal dispute filed with it under section 690. While the following list may not be exhaustive, some key provisions are reproduced below:

Municipal Government Act

Part 12, Section 488, sets out the jurisdiction of the MGB.

488(1) *The Board has jurisdiction*

- (a) *to hear complaints about assessments for linear property,*
- (b) *to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,*
- (c) *repealed 2009 c29 s 34,*
- (d) *to decide disputes between a management body and a municipality or between 2 of more management bodies, referred to it by the Minister under the Alberta Housing Act,*
- (e) *to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,*
- (f) *to deal with annexations in accordance with Part 4,*
- (g) *to decide disputes involving regional services commissions under section 602.15,*
- (h) *to hear appeals pursuant to section 619,*
- (i) *to hear appeals from subdivision decisions pursuant to section 678(2)(a), and*
- (j) *to decide intermunicipal disputes pursuant to section 690.*

(2) *The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).*

(3) *Sections 495 to 498, 501 to 504 and 507 apply when the Board holds a hearing to decide a dispute or hear an appeal referred to in subsection (1)(g) to (j).*

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in determining an intermunicipal dispute, each decision must comply with the philosophy expressed in 617.

Purpose of this Part

617 *The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted*

- (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and*
- (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,*

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Section 690 and 691 govern the process and procedure for intermunicipal disputes. In addition to these sections, the MGB utilizes the *Intermunicipal Dispute Procedure Rules*

Intermunicipal Disputes

690(1) *If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it and if it has given written notice of its concerns to the adjacent municipality prior to second reading of the bylaw, it may, if it is attempting or has attempted to use mediation to resolve the matter, appeal the matter to the Municipal Government Board by*

- (a) filing a notice of appeal and statutory declaration described in subsection (2) with the Board, and*
- (b) giving a copy of the notice of appeal and statutory declaration described in subsection (2) to the adjacent municipality*

within 30 days after the passing of the bylaw to adopt or amend a statutory plan or land use bylaw.

(2) *When appealing a matter to the Municipal Government Board, the municipality must state the reasons in the notice of appeal why a provision of the statutory plan or amendment or land use bylaw or amendment has a detrimental effect and provide a statutory declaration stating*

- (a) the reasons why mediation was not possible,*
- (b) that mediation was undertaken and the reasons why it was not successful, or*
- (c) that mediation is ongoing and that the appeal is being filed to preserve the right of appeal.*

(3) *A municipality, on receipt of a notice of appeal and statutory declaration under subsection (1)(b), must, within 30 days, submit to the Municipal Government Board and the municipality that filed the notice of appeal a statutory declaration stating*

- (a) the reasons why mediation was not possible, or*
- (b) that mediation was undertaken and the reasons why it was not successful.*

(4) *When the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), the provision of the statutory plan or amendment or land use bylaw or amendment that is the subject of the appeal is deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date the Board receives the notice of appeal and statutory declaration under subsection (1)(a) until the date it makes a decision under subsection (5).*

(5) *If the Municipal Government Board receives a notice of appeal and statutory declaration under subsection (1)(a), it must, subject to any applicable ALSA regional plan, decide whether the provision of the statutory plan or amendment or land use bylaw or amendment is detrimental to the municipality that made the appeal and may*

- (a) dismiss the appeal if it decides that the provision is not detrimental, or*
- (b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.*

(6) *A provision with respect to which the Municipal Government Board has made a decision under subsection (5) is,*

- (a) if the Board has decided that the provision is to be amended, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from the date of the decision until the date on which the plan or bylaw is amended in accordance with the decision, and*
- (b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.*

(6.1) *Any decision made by the Municipal Government Board under this section in respect of a statutory plan or amendment or a land use bylaw or amendment adopted by a municipality must be consistent with any growth plan approved under Part 17.1 pertaining to that municipality.*

(7) *Section 692 does not apply when a statutory plan or a land use bylaw is amended or repealed according to a decision of the Board under this section.*

(8) *The Municipal Government Board's decision under this section is binding, subject to the rights of either municipality to appeal under section 688.*

Board hearing

691(1) *The Municipal Government Board, on receiving a notice of appeal and statutory declaration under section 690(1)(a), must*

- (a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and*
- (b) give a written decision within 30 days after concluding the hearing.*

(2) The Municipal Government Board is not required to give notice to or hear from any person other than the municipality making the appeal, the municipality against whom the appeal is launched and the owner of the land that is the subject of the appeal.

TAB 6

SECONDARY EMERGENCY RESPONSE FIRE SERVICES AGREEMENT
(for Secondary Emergency Response to Rocky View County as described herein)

THIS **AGREEMENT** made effective as of the 1 day of October, 2016

BETWEEN:

THE ROCKY VIEW COUNTY, a municipal corporation within the meaning of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26 (hereafter sometimes "The County")

- and -

THE CITY OF CALGARY, a municipal corporation within the meaning of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26 (hereafter sometimes referred to as "The City")

WHEREAS The City owns and operates a municipal fire service via the Calgary Fire Department;

AND WHEREAS The County owns and operates a fire service with multiple apparatus and 24 hour staff via the Rocky View County service;

AND WHEREAS The County requests Secondary Emergency Response Fire Services to certain lands within The County as provided for in this Agreement, which lands collectively constitute:

ALL LANDS WITHIN THE BOUNDARIES OF ROCKY VIEW COUNTY, which are represented on Schedule "A", attached.

AND WHEREAS The City has agreed it may use its fire fighting personnel and equipment to provide emergency services as a secondary response if required for the suppression of fires for The County, pursuant to the terms, covenants and conditions hereinafter contained;

AND WHEREAS The County has agreed to pay the reasonable costs for Secondary Emergency Response services to be provided pursuant to the terms, covenants and conditions hereinafter contained;

AND WHEREAS although similar agreements for the provision of Fire Services by The City on behalf of The County were previously entered into by the Municipal District of Rocky View No. 44 and The City from time to time, the parties have agreed that what is appropriate for the current circumstances and going forward is an agreement for Secondary Emergency Response Fire Services;

AND WHEREAS the parties wish to provide suitable terms and conditions for the provision of Secondary Emergency Response Fire Services for The County;

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants of the parties agreed to herein, **THE PARTIES HERETO COVENANT AND AGREE AS FOLLOWS:**

1.0 INTERPRETATION

1.1 In this Agreement unless the context otherwise requires the words and phrases set out below will be interpreted as having the meaning that follows each word or phrase.

- (a) "Assistance Call" means a call for attendance and provision of services under this Agreement;
- (b) "Calgary Fire Department" or "CFD" means the business unit of The City that provides Fire Services;
- (c) "Emergency" means a present or imminent event that requires prompt coordination of action or special regulation of persons or property to protect the safety, health or welfare of people or to limit damage to property;
- (d) "Extraordinary Costs" means actual costs for consumables such as foam, or other materials, equipment, or contractors deemed necessary for service delivery;
- (e) "Fire Service" means an entity or department or business unit that provides Fire Protection Services;
- (f) "Fire Protection Services" means providing equipment and trained personnel and equipment to assist in the provision of emergency rescue services and reasonable measures to suppress fire, including fire medical response (but does not include the provision of emergency medical services generally);
- (g) "First Response" or "First Emergency Response" or "Primary Emergency Response" means the initial or primary response of Fire Protection Services that will be dispatched in the event of an Emergency being reported;
- (h) "Incident Command System" or "ICS" means an all-hazards incident management system that provides a standardized method of managing events or emergencies of any size. Such events are managed using an Incident Commander for single agency response or Unified Command for multi-agency responses;

- (i) "On Duty" means full time staff engaged in or responsible for assigned work in a scheduled hourly work day and performing said work as part of one's job;
- (j) "Per Incident Charges" means the amounts determined in the manner set out in Schedule "B" which is attached hereto and made part of this Agreement;
- (k) "Rate Adjustment" means any change to the Per Incident Charges to be made pursuant to section 2.2;
- (l) "Response Map System" means a system of a map or maps and signs with code references to be maintained by The County pursuant to Article 8.0 herein;
- (m) "Rocky View County Fire Services" or "RVCFS" means the business unit of The County that provides Fire Protection Services;
- (n) "Secondary Response" or "Second Response" or "Secondary Emergency Response" means a second or secondary response of Fire Services that will only be dispatched in the event that the provider of the First Response requests additional assistance;
- (o) "Unified Command" means a team effort that allows multiple agencies with jurisdictional or operational responsibility for equipment or personnel to establish a common set of incident objectives and strategies. This is done without losing or abdicating agency authority, responsibility or accountability.

2.0 FEES

- 2.1 The County shall pay to The City Per Incident Charges in respect of the provision of Emergency Response. The Per Incident Charges are calculated as set out in Schedule "B" and will be invoiced on a monthly basis. Payment is due within thirty (30) days of receipt of each invoice.
- 2.2 The payments made to The City pursuant to section 2.1 hereof are subject to review from time to time by The City. Payments may be fixed and determined at such other amount as may be determined by The City (based on Schedule "B"). If The City proposes to change any of the rates, it must provide at least thirty (30) days notice in writing prior to the new rates coming into effect. For example, if The City were to propose a rate change to be effective as of the 1st day of January, notice in writing should be provided on or about the 1st of December. All invoices rendered to The County for payment will bear identification of the location of the facility attended pursuant to an Assistance Call.

- 2.3 The County shall pay The City for any Extraordinary Costs incurred by The City in providing Secondary Emergency Response Fire Services, including but not limited to costs from third party contractors or damages to The City's equipment.

3.0 TERM AND TERMINATION

- 3.1 Subject to The County having and maintaining its own Fire Service that is responsible for and capable of competently providing First Emergency Response, this Agreement will be in effect for the period commencing as of the effective date shown at the top of page one and continuing until the earlier of:

- (a) five (5) years from the effective date of this Agreement; or
- (b) after the expiry of a notice period described in section 3.2 or section 3.3.

- 3.2 In the event of a material default by one of the parties, the non-defaulting party may give notice in writing of the material default and the Agreement will terminate thirty (30) days following the notice unless the defaulting party has rectified the default to the satisfaction of the non-defaulting party, acting reasonably.

- 3.3 The parties agree that The County has its own Fire Service which is responsible for providing a First Response to any Emergency reported. The parties also acknowledge that there are other alternatives available to The County for the provision of Secondary Emergency Response. The parties further acknowledge and agree that either party may terminate this Agreement for any reason after providing reasonable notice, which must be at least six (6) months prior notice in writing.

- 3.4 Without limiting sections 3.2 or 3.3, the parties acknowledge that a fundamental basis for, and precondition to, entering into this Agreement was The County having its own Fire Service that is responsible for and capable of competently providing First Emergency Response. If The County fails to maintain such a First Emergency Response, that would undermine the basis for this Agreement and constitute a material default under section 3.2.

The County agrees to provide confirmation in writing, at least once annually as well as within ten (10) days of a written request from The City, that it is continuing to operate its own Fire Service that is responsible for and capable of competently providing First Emergency Response.

For greater clarity and for the purposes of this Agreement, a capable and competent First Emergency Response must have all of the following attributes:

- (a) it is able to respond at any time, on a 24 hour per day and 7 day per week basis;

- (b) firefighters will be trained to meet or exceed a NFPA 1001 standard or equivalent;
- (c) it utilizes an Incident Command System compatible with the Calgary Fire Department;
- (d) it has a source of water and is capable of delivering water for fire suppression;
- (e) it has hoses and equipment, including personal protective equipment for its firefighters, and the capacity to effectively fight a fire; and
- (f) it is operating and maintaining at least one fire station in The County, and if it at any time operates more than one fire station then each station will meet or exceed the attributes described in this section.
- (g) Rocky View County must have and maintain a radio communication system that is compatible with the communication system used by CFD. (currently have mobile radios with Calgary frequencies in all apparatus and command vehicles)

4.0 DELIVERY OF SERVICES

- 4.1 The Fire Chief of The County Fire Service, or their designate, may place an Assistance Call through Calgary 911 Centre for Secondary Emergency Response to supplement the First Response of The County Fire Service to an Emergency.
- 4.2 Subject to section 4.5, upon receiving an Assistance Call from the Fire Chief of The County's Fire Service, or their designate, the Calgary Fire Department will do one of the following:
 - (a) assign firefighting equipment and firefighters as per CFD response protocols, or
 - (b) assign such lesser amount of firefighting equipment and number of firefighters as the Fire Chief of the Calgary Fire Department or his designate determines in his sole opinion can be reasonably assigned without impairing the capacity of the CFD to protect life or property within the corporate limits of Calgary, and without compromising the safety of City personnel; or
 - (c) if so determined by the Fire Chief of the Calgary Fire Department or their designate that in his sole discretion there is insufficient capacity to assign any firefighting equipment or firefighters without impairing the capacity of the CFD to protect life or property within the corporate limits of Calgary, or

without compromising the safety of City personnel, The City will inform the Fire Chief of The County Fire Service that CFD will not be responding.

- 4.3 If The City responds and if section 4.2(b) does not apply, the response will be compatible with a full response sent within The City of Calgary to a call that originated within the corporate limits of Calgary, including firefighting equipment and firefighters and an Incident Safety Officer (ISO) and incident commander. However, The City may choose at its discretion to provide additional resources consistent with CFD procedures and protocols as in section 4.4 and The County agrees to pay for all personnel and equipment dispatched by The City to The County, in accordance with the Per Incident Charges set out in Schedule "B".
- 4.4 The parties acknowledge that the safety of City personnel is a priority of The City. It is required that all CFD operating procedures and safety protocols that apply within City limits will also apply when City personnel are providing emergency services outside City limits in the region around Calgary. All City personnel will be under the direct control of the CFD incident commander at the incident. The Calgary Fire Department incident commander will form part of The County's unified command and operate within an Incident Command System.
- 4.5 Further to section 4.2, The City is not required to respond to Emergency calls in The County if, in the opinion of The City's Fire Chief or their designate, its firefighters and firefighting equipment cannot reasonably be spared at the time of the call, or if the circumstances or conditions would compromise the safety of City personnel or involve risk to personnel beyond the safety protocols that apply within City limits.
- 4.6 If The City receives an Assistance Call from the Fire Chief of The County or their designate to provide an Emergency Fire Response to an incident from any location within The County and including all highways, lying within the area shown in Schedule "A", The City may respond to the call but The County shall be liable to pay The City any additional costs and charges arising out of the services rendered pursuant to this Agreement. It will be up to The County to decide whether or not it wishes to recover any portion of the amount paid by The County to The City from the party to whom the service was rendered. Upon request The City will provide copies of the incident response reports for the immediately preceding month.

5.0 NEW STRUCTURES AND NEW COMMERCIAL DEVELOPMENTS

- 5.1 The parties acknowledge that in order for The City to be able to respond appropriately and safely to a request for Emergency Response all existing and new occupancies in The County must be built to applicable building and fire codes.
- 5.2 If the City receives an Assistance Call for any structure or Commercial Development that contains any of the hazards or hazardous materials listed

below in 5.3, the caller shall notify The City prior to or at the time of the call regarding such conditions. The City will then determine how best to, or if, it is willing to respond. A separate written agreement may be required before The City will proceed to respond.

- 5.3 Buildings, occupancies or processes that pose unacceptable risks or safety concerns for City personnel, will also not be covered by this Agreement and will not qualify to receive any Secondary Emergency Response. Unacceptable hazards include, but are not limited to, any one or more of the following:
- fireworks or explosives storage or manufacturing,
 - tire storage/dump,
 - refuse dumps,
 - petroleum or gas extraction or production,
 - hazardous materials storage, or
 - manufacturing requiring hazardous processes.
- 5.4 Although the parties recognize that none of The County or its residents or businesses are required to obtain approvals or permits from The City, they acknowledge that all buildings must be constructed and maintained as identified in the Alberta Building and Fire Codes.
- 5.5 The County agrees to conduct fire inspections as set out in the Quality Management plan approved by the Alberta Fire Commissioners office.
- 5.6 Prior disclosure of detailed information as described above for each structure or Commercial Development is essential in order to safely provide Fire Services in an Emergency. If reasonable information has not been provided in advance to The Calgary Fire Department that will constitute grounds for The City's Fire Chief, or their designate, to exercise their discretion under section 4.5 to not respond.
- 5.7 By entering into this Agreement, The City does not warrant that it will provide any Emergency Response to any future building.
- 5.8 If The City of Calgary adopts a Fire Safety Plan Lockbox Program, or similar program, The County will consider adopting the same program.
- 6.0 SPRINGBANK AIRPORT**
- 6.1 The Springbank Airport is included within the terms of this Agreement based upon its current rating and usage. Any plan to change the rating class or use of the airport must be promptly reported by The County to The City, and confirmed in writing. In the event of any implementation of any material change to the rating class or use of the airport, The City at its sole discretion may exclude the Springbank Airport from eligibility for receiving services under this Agreement.

7.0 MAPPING

- 7.1 (a) The County must design and maintain a comprehensive Response Map System based on an extension of the grid system presently in use in Calgary, and establish a code reference number system applicable to The County. Such mapping should also be in an electronic form and acceptable to The City of Calgary to ensure its compatibility with The City's electronic mapping system. In addition The County will provide hard copy maps in a format acceptable to the Calgary Fire Department for apparatus that will respond to The County and such maps will be at the expense of The County. The County shall ensure that signs are erected and maintained, for existing structures and for future structures, as set out in Schedule "C" attached hereto.
- (b) The County must educate its community members on how to effectively report an Emergency. It is important that all requests for emergency service be made through the 911 Centre.
- (c) The County understands and agrees that requests for Secondary Emergency Response will only be accepted through an Assistance Call from the Fire Chief of The County or their designate through the 911 Centre.
- 7.2 The County, with the assistance of The City but at the sole expense and responsibility of The County, must provide on a reasonable and timely basis an updated index of street names, changes and additions to residences and other facilities in The County or The County's covering area.

8.0 CAPITAL EXPENSES

- 8.1 The City is not obliged to construct any fire stations or fixed equipment outside City limits for The County. The equipment and firefighters of The City providing Fire Services in The County will respond from existing fire stations within the corporate limits of The City.

9.0 RESPONSIBILITY, INDEMNIFICATION AND INSURANCE

- 9.1 The City will not be liable for any damage for failing to respond to any call or for a delay in responding to any call or for failure of the apparatus in going to the scene of any Emergency. Without limiting the provisions set out elsewhere in this Article 9.0, The City, including its officials, officers, agents and employees, is hereby released and saved harmless by The County from all claims for damages or loss resulting from failure to provide or delay in providing Fire Services, firefighters or firefighting equipment, and from failure to prevent, control or extinguish any fire whether resulting from any negligence or other action on the part of The City, its officers, agents or employees.

- 9.2 The County agrees to defend, indemnify and save harmless The City as well as its officials, officers, employees, agents and each of its personnel engaged in the performance of this Agreement from and against any and all claims, demands, loss, costs, damages, actions, suits or other proceedings by whomsoever made, brought or prosecuted, in any manner based upon, occasioned by or attributable to the matters agreed to by the parties in this Agreement, or any action taken or not taken or things done or maintained by virtue hereof, or the performance or non-performance of services under this Agreement, even in the case of negligence by The City.
- 9.3 (a) Without limiting the foregoing, The County shall indemnify The City against any loss or expense occasioned to The City by reason of any damage to its equipment caused by the performance of services by The City under this Agreement, excluding damage resulting from willful misconduct on the part of The City or its representatives in the use of the equipment. The County shall also defend and indemnify The City and all of its personnel engaged in the performance of this Agreement against any cost or expense to The City and to any of its personnel by reason of personal injury (including death) resulting from the performance of this Agreement which may be caused or contributed to by The County. Any and all costs of carrying out the obligations under this Article 9.0 will be in addition to and not included in the payments pursuant to Article 2.0.
- (b) Without limiting the wording in section 9.2 or section 9.3(a) but for greater clarity, the obligations to defend and indemnify will apply from the time that the vehicle or apparatus leaves the fire hall or other location it was dispatched from until it returns to the fire hall (or active service at some other location back in Calgary). The obligations to defend and indemnify apply to any motor vehicle collision that occurs while enroute from the time of dispatch until the return to the fire hall (or active service at some other location back in Calgary), even in the case of negligence by The City. However, the obligation to defend and indemnify pursuant to this subsection 9.3(b), and this subsection only shall be up to and including the first \$25,000.00 of any loss that occurs.
- 9.4 Further to its obligation to indemnify The City, The County shall maintain at its own expense the following types of insurance with insurers allowed by the laws of the Province of Alberta to issue insurance policies in Alberta and in forms satisfactory to The City:
- 9.4.1 Commercial General Liability insurance policy for bodily injury (including death) and property damage in an amount of not less than FIVE MILLION DOLLARS (\$5,000,000.00) inclusive limit for each and every occurrence, such insurance to include:
- (i) The City as an Additional Insured;
 - (ii) a Non-owned Automobile Liability Extension;

- (iii) a Cross Liability Clause;
 - (iv) a Broad Form Contractual Liability Clause; and
- 9.4.2 an Automobile Third Party Liability insurance policy (Owner's Form) for bodily injury (including death) and property damage in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) inclusive limit per occurrence covering all automobiles relevant to this Contract; and
- 9.4.3 an All Risk Property insurance policy covering the full replacement value of all property supplied by The City and which is in the care, custody or control of The County. Such insurance policy must include The City as a Named Insured and also as the only Loss Payee relating to loss of or damage to such property.
- 9.4.4 The County will maintain coverage for each and all of the firefighters with its Fire Service, with the Workers Compensation Board of Alberta, or an equivalent federal board or body.
- 9.5 In view of the possibility of fire medical response being needed as part of Fire Protection Services, The County is also responsible for placing and maintaining a Paramedic Malpractice Liability insurance policy in an amount of not less than TWO MILLION DOLLARS (\$2,000,000.00) per occurrence.
- 9.6 With respect to the insurance to be maintained by The County:
 - 9.6.1 The insurance policies mentioned above must include provision for The City to be given at least thirty (30) days written notice prior to cancellation as well as at least thirty (30) days prior notice of any material change of said policies of insurance requested by The County.
 - 9.6.2 The County must provide documentary evidence satisfactory to The City of the existence of the above mentioned insurances at inception of this Agreement and at each renewal date of such insurances.
 - 9.6.3 The County, and not The City, is responsible for any deductible(s) which may apply in relation to such insurances.
 - 9.6.4 The County covenants and agrees that The City's insurance requirements mentioned above are not to be construed to, and in no manner will, limit or restrict The County liability in terms of this Agreement.
 - 9.6.5 In the event that The County receives monies from its insurance company arising from loss of or damage to all or part of the property referred to in section 9.4.3 above, it is understood and agreed that

such monies must be paid immediately to The City without offset or counter-claim.

10.0 RECIPROCAL SERVICE DELIVERY

- 10.1 It is acknowledged that on occasion, The City may request assistance from The County. If such assistance is provided from The County, The City agrees to pay for services in accordance with the schedule of fees as outlined in Schedule "B" of this Agreement.
- 10.2 When such assistance is provided by The County, it should be delivered in a timely manner and the County will provide trained and competent personnel.
- 10.3 The Fire Chief of The City Fire Service, or his designate, may place an Assistance Call through Calgary 911 Centre for Emergency Response assistance to supplement the Response of The City Fire Service to an Emergency.
- 10.4 All County personnel will be under the direct control of a County Fire Officer at the incident. The County resources will form part of and operate within the CFD Incident Command System.

11.0 APPLICABLE LAW

- 11.1 All services and responsibilities are to be performed in accordance with the applicable laws in force in the Province of Alberta. This Agreement is subject to the courts of competent jurisdiction of the Province of Alberta as regards all matters as to interpretation or enforcement.

12.0 CONTACTS AND COMMUNICATIONS

- 12.1 For all communications contemplated under this Agreement, the authorized representative and contact on behalf of The County will be the Fire Chief of the Fire Service of The County, or their designate.
- 12.2 The County may change its designation of its Fire Chief from time to time upon reasonable notice to The City confirmed in writing.
- 12.3 For all communications contemplated under this Agreement, the authorized representative and contact on behalf of The City will be the Fire Chief of the Calgary Fire Department, or their designate.

- 12.4 The City may change its designation of its Fire Chief from time to time upon reasonable notice to The County confirmed in writing.
- 12.5 COMMUNICATIONS – The County must have and maintain a radio communication system that is compatible with the communication system used by CFD.

13.0 GENERAL PROVISIONS

- 13.1 A waiver by either party hereto of the strict performance by the other of any covenant or provision of this Agreement will not of itself constitute a waiver of any subsequent breach of such covenant or provision or of any other covenant, provision, or term of this Agreement.
- 13.2 Each of the parties agrees that it will from time to time and at all times do all such further acts and execute and deliver all such further documents and assurances as may be reasonably required in order to fully perform and carry out the terms of this Agreement.
- 13.3 This Agreement, including the Schedules attached or incorporated by reference, is the entire agreement between The City and The County for Emergency Fire Services for The County and supersedes all prior negotiations, representations or agreements, either written or oral.
- 13.4 The parties agree that this Agreement may be amended from time to time upon mutual agreement confirmed in writing to give effect to the intention of the parties as the circumstances at the time may require.
- 13.5 The recitals set out at the beginning of this document are hereby incorporated into, and form part of, this Agreement.
- 13.6 All documents submitted to The City will be subject to the protection and disclosure provisions of the *Freedom of Information and Protection of Privacy Act* (Alberta), as amended, revised or substituted from time to time. While this Act allows persons a right of access to records in The City's custody or control, it also prohibits The City from disclosing personal or business information where disclosure would be harmful to business interests or would be an unreasonable invasion of personal privacy as defined in Sections 15 and 16 of the Act.
- 13.7 Any dispute between the parties as to the interpretation of, subject matter of, or in any way related to, this Agreement, is to be resolved by the two parties attempting to reach a fair and equitable resolution by using, in good faith, one or more of the following means, in the order listed, until a resolution is arrived at. The means to be used are:

η.

- (a) negotiation;
- (b) mediation;
- (c) arbitration; or
- (d) legal proceedings in a court of competent jurisdiction.

Except for the purposes of preserving a limitation period or obtaining an appropriate interim order or remedy where reasonably necessary, unless otherwise agreed to in writing by the two parties, it is a condition precedent to the bringing of any legal proceedings that the means or procedures in this section have been used and followed in good faith. With respect to mediation, unless otherwise agreed to in writing by both parties, mediation will be in accordance with the procedures of the ADR Institute of Canada, Inc. (hereinafter sometimes referred to as the "Institute"), using as mediator a third party neutral person either as mutually agreed to by the parties, or if the parties are unable to agree as selected by the Institute. With respect to arbitration, unless otherwise agreed to in writing by both parties, arbitration is to be by way of a single arbitrator pursuant to the *Arbitration Act* of Alberta, in accordance with the rules and procedures of the Institute.

For greater clarity, if The City has terminated this Agreement for a material default by or on behalf of The County, including a breach of section 3.4, The City will not be obligated to participate in negotiation, mediation, or arbitration.

13.8 NOTICE - If either party desires to give notice to the other party under or in connection with this Agreement, such notice is to be given as follows:

- (a) by The City to the attention of The County's Fire Chief, at

Rocky View County Fire Services
911 – 32 Avenue N.E.
Calgary, Alberta T2E 6X6

or by fax to the fax number of The County at:

(403) 230-7091

or by postage prepaid mail addressed to The County at the above address.

(b) by The County to the attention of Executive Officer, Office of the Fire Chief, at:

The City of Calgary
 4124 – 11th Street S.E.
 Calgary, Alberta T2G 3H2

or by fax to the fax number of the CFD at: (403) 243-1490

or by postage prepaid mail addressed to The City of Calgary at the above address.

Either party may change its address for receiving any notices by giving notice as provided herein. A notice which is mailed will be considered as having been given at such time as it would in the ordinary course of mail being received by the party to which it is directed, except in the event of a disruption of postal services. In such event, one of the other means must be used.

IN WITNESS WHEREOF the parties hereto have executed these presents as of the day and year first above written.

APPROVED	
AS TO CONTENT	<i>SW</i>
FIRE	
AS TO FORM SOLICITORS	<i>AS</i>

THE CITY OF CALGARY

Per: *[Signature]*
 General Manager

Per: *[Signature]*
 City Clerk
 Bonnie L. Hilford
 Acting City Clerk

DEC 06 2016

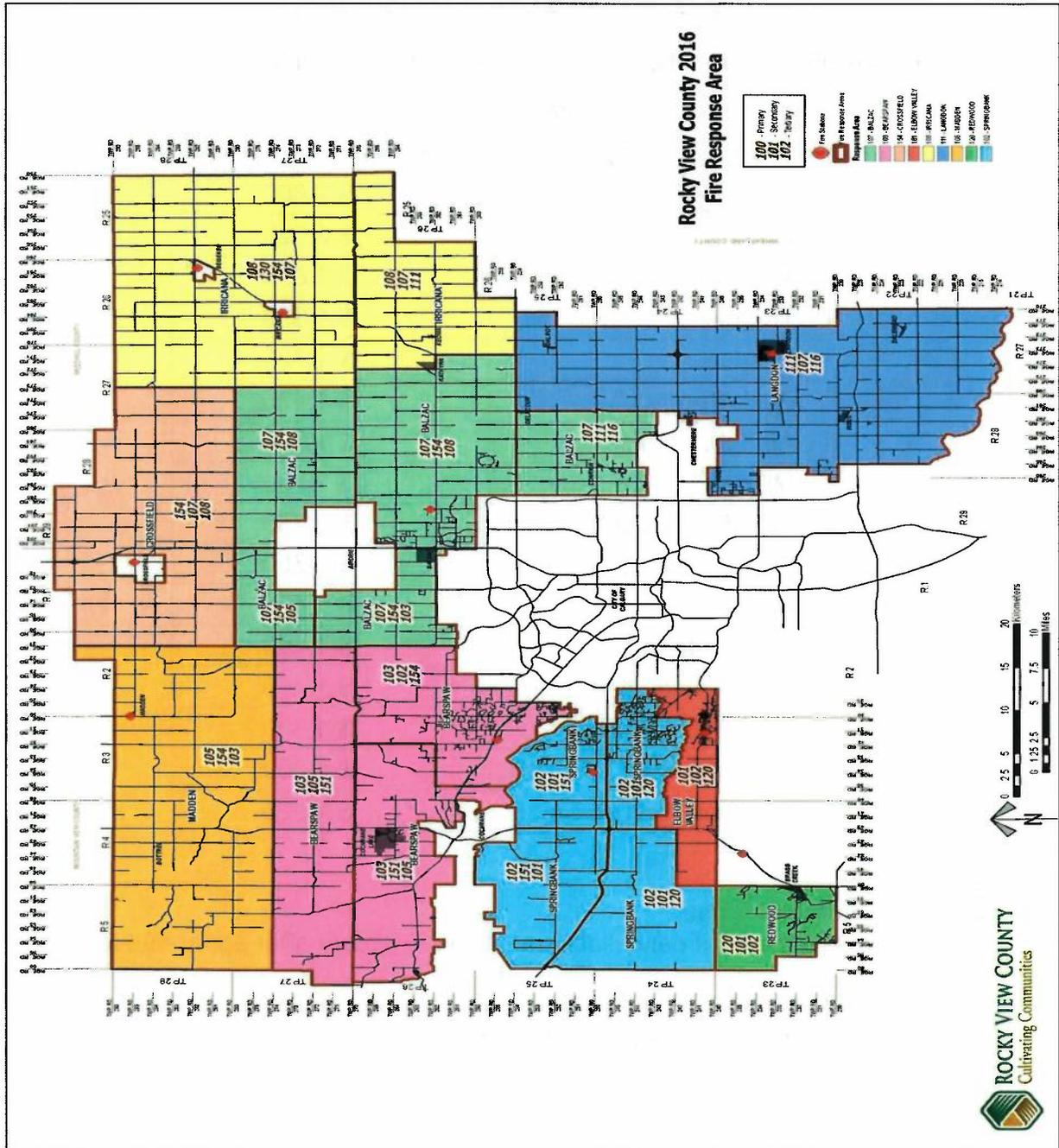
THE ROCKY VIEW COUNTY

Per: *[Signature]*
 General Manager

Per: _____

SCHEDULE "A"

THE COUNTY SECONDARY EMERGENCY RESPONSE BOUNDARIES



SCHEDULE "B"

CALGARY FIRE DEPARTMENT
2016 RESPONSE FEE SCHEDULE FOR
OUT OF TOWN RESPONSES ONLY

Preparedness Fee: To Be Determined – Based on Municipality/Agreement

Apparatus Fees*:

TYPE OF APPARATUS	2016 HOURLY RATE
Quint (6 FF)	\$ 2,600
Engine	\$ 2,525
Aerial	\$ 1,675
Tender	\$ 1,350
Rescue	\$ 1,725
Bush Buggy	\$ 1,475
Air-light Vehicle	\$ 1,300
MRU	\$ 1,300
High Rise Support	\$ 1,750
Heavy Rescue Support	\$ 1,750
Haz mat	\$ 1,400
Air Monitoring	\$ 1,400
Decontamination	\$ 1,400
Batt/District Chief	\$ 1,300
Boat and Boat Tow Unit	\$ 1,300
Aquatics Rescue Unit	\$ 1,525

Note:

- * Minimum charge of 1 hour.
- * 1 hour charge incurred if cancellation notification occurs after apparatus leaves Station(s).
- * Additional time required will be billed in 30 minute increments.
- * An overtime premium will be added if required.
- * Unusual or extraordinary expenses will be added if incurred.

SCHEDULE "C"

**SIGNS FOR RESPONSE MAP SYSTEM
(SEE Section 7.1(a))**

h.

Dated: _____

BETWEEN:

THE ROCKY VIEW COUNTY, a municipal corporation within the meaning of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26 (hereafter sometimes "The County")

- and -

THE CITY OF CALGARY, a municipal corporation within the meaning of the *Municipal Government Act*, R.S.A. 2000, Chapter M-26 (hereafter sometimes referred to as "The City")

SECONDARY EMERGENCY RESPONSE FIRE SERVICES AGREEMENT

GLEND A E. COLE, Q.C.
CITY SOLICITOR
The City of Calgary
Law Department (8053)
12th Floor, Calgary Municipal Building
800 Macleod Trail S.E.
P. O. Box 2100, Station "M"
Calgary, Alberta
T2P 2M5

Solicitor: GARY R. ZEMP

File No.: KN8070

TAB 7



Rocky View County
COUNTY PLAN

**BYLAW C-7280-2013
AMENDED JULY 25, 2017**



ROCKY VIEW COUNTY
Cultivating Communities

This document was approved and adopted by Council with the passing of Bylaw C-7280-2013 on October 1, 2013. To view a copy of this bylaw, search County Plan at www.rockyview.ca.

Planning documents are regularly reviewed and updated by Rocky View County Council. To ensure you are viewing the current copy of any plan, search for the plan's title at www.rockyview.ca to see the most up-to-date version.

County Plan
Rocky View County
911 - 32 Avenue NE, Calgary, AB

Phone 403-230-1401

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I. Introduction

1.0 CONTEXT

To describe Rocky View County is to paint a picture of regional and community diversity. Agriculture dominates the landscape. To the west, at higher elevations, a moist climate and a shorter growing season result in coniferous forests that quickly change to grassy rolling hills. Larger ranches, haying, and cattle dominate the western landscape. Moving east, the foothills soon give way to prairie grasslands and major wetland complexes. With a dryer climate and longer growing season, eastern Rocky View is heavily cultivated; producing cereal and oilseed crops.

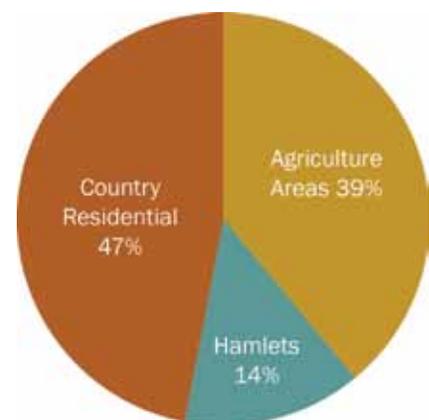
Scattered across the landscape are farm homes and isolated dwellings interspersed with small hamlets and rural towns. Hamlets in the County mostly originated alongside railway stops as places to provide services to the surrounding *agricultural area*. Some hamlets remain small, having experienced very little growth, while others have grown over time. The most recent additions to the rural landscape are country residential acreages. These acreages have grown rapidly in number over the last 40 years and have evolved as distinct communities.

Rocky View County is unique as a rural municipality, but it grapples with a challenge common to all rural municipalities located on the edge of a large urban centre - growth pressure. Over a 20 year time period (1991 to 2011), the County's population grew by 93 per cent as people moved into the Calgary region. Rocky View residents recognize the reality of regional growth and are willing to accept a moderate level of growth if natural landscapes, rural character, agriculture and finances can be sustained. The County Plan lays out a framework for balancing these various and sometimes competing challenges.

Did you know?

- Rocky View County, with a 2011 Canada Census population of 36,461, is the 11th largest municipality by population in Alberta.
- The County is almost 1 million acres in size (403,428 hectares).
- There are 1,551 farms and ranches in the County, which comprise approximately 92% of the total land base.

Total County Population: 36,461*



*2011 Canada Census

2.0 VISION AND PRINCIPLES

The County Plan's vision and principles serve as a guide for county development and the future aspirations of county residents.

Vision

Rocky View is an inviting, thriving, and sustainable county that balances agriculture with diverse residential, recreational, and business opportunities.

Principles

The following principles provide a framework to guide decision making when implementing the goals, policies, and actions of the County Plan.

1. Growth and Fiscal Sustainability

Rocky View County will direct new growth to designated development areas, and in doing so it will remain fiscally responsible. The County will:

- Encourage a 'moderate' level of residential growth that preserves and retains the County's rural character.
- Attract business development to specified areas, thereby providing jobs and strengthening the County's fiscal situation.

2. The Environment

Rocky View County will develop and operate in a manner that maintains or improves the quality of the environment. The County will:

- Manage stormwater and wastewater systems in a manner that does not adversely impact surface or groundwater, while providing for a safe and reliable drinking water supply.
- Undertake a wide range of measures to support the conservation of land, water, watersheds, energy, and other natural resources.
- Maintain the rural landscape and character of dark skies, open vistas, and working agricultural lands.
- Provide a variety of well-designed parks, open spaces, pathways, and trails that connect communities and accommodate residents' recreation and cultural needs.

3. Agriculture

Rocky View County respects, supports, and values agriculture as an important aspect of the County's culture and economy.

The County will:

- Facilitate diverse and sustainable agriculture operations and agriculture businesses.
- Support partnerships and education to increase operator knowledge and opportunities.
- Help minimize adverse impacts on agriculture operations and support agriculture diversity through land use policy.

4. Rural Communities

Rocky View County will support the development and retention of well-designed rural communities. The County will:

- Encourage agriculture, hamlets, and country residential communities to retain their rural character and maintain a strong sense of community.
- Support communities in providing attractive, well-designed, and distinct, residential neighbourhoods, gathering places, parks, and open spaces.

5. Rural Service

Rocky View County will strive to provide an equitable level of rural service to its residents. The County will:

- Provide access to high quality services and facilities for residents of all ages, income levels, skills, and lifestyles while remaining fiscally sustainable.
- Empower and support residents and organizations in improving their community.

6. Partnerships

Rocky View County will maintain a strong web of partnerships to help extend the range of services it provides to its residents.

The County will:

- Develop and strengthen partnerships with communities, stakeholders, and neighbouring municipalities.
- Support volunteerism, collaboration, and community participation to strengthen and enhance communities.

Rocky View County provides a wide range of services such as:

- Fire protection
- Libraries
- Enforcement Service
- Waste transfer and recycling
- Weed Control
- Road Maintenance
- Snow Plowing

3.0 PLAN ORGANIZATION AND PROJECT OVERVIEW

Plan Organization

The County Plan has been organized into four parts.

PART I INTRODUCTION: This part of the Plan summarizes the context in which the Plan was written, the vision and guiding principles, a description of how the goals, policies and actions are to be used to achieve the Plan's vision, and the legislative framework under which it operates.

PART II COUNTY DEVELOPMENT: This part of the Plan addresses how the County is to develop. Part II is subdivided into three sections. Section A addresses County growth in the context of remaining fiscally and environmentally sustainable. Section B provides guidance on community design and emphasizes the importance of retaining the county's rural character. Section C recognizes the importance of community services to Rocky View residents and the challenge of providing service in a rural setting.

PART III REGIONS: This part of the Plan recognizes the wide variety of landscapes, communities, and approaches to rural living within the county. Identifying regions provides additional context by which to interpret the policies of the County Plan when evaluating applications for land use and development.

PART IV IMPLEMENTATION AND MONITORING: This part of the Plan describes the ongoing activities to implement the plan. It summarizes the various Actions that will be conducted over the life of the plan and proposes monitoring tools to measure the success of the Plan.

Goals, Policies, and Actions

The Plan's vision and principles are achieved through its goals, policy, and actions as described below:

GOALS are specific objectives and/or targets for individual policy sections that achieve the County's vision and principles.

POLICY provides guidance to decision makers and the public throughout the life of the Plan. Policy provides direction and/or evaluation criteria that allow the County to achieve specific goals.

ACTIONS are activities that need to be done in the future to achieve a specific goal or policy. Actions include studies, regulation changes, and programs. A study may be necessary as an action before proceeding to a program or regulation.

Language

The following describes the meaning of some of the key words that are contained in a policy:

SHALL: a directive term that indicates that the actions outlined are mandatory and therefore must be complied with, without discretion, by administration, the developer, the Development Authority and the Subdivision Authority.

SHOULD: a directive term that indicates or directs a strongly preferred course of action by Council, administration and/or the developer but one that is not mandatory.

MAY: a discretionary term, meaning the policy in question can be enforced by the County if it chooses to do so, dependent on the particular circumstances of the site and/or application.

SUPPORT: means to provide for, or to aid the cause or interest of something. Generally, when the word support is used, administration is in agreement with the proposal or premise, if other relevant policy is met.

Definitions

All definitions are italicized. Where they first occur, definitions are defined on the side bar and are grouped in Appendix B.

Public Engagement Process

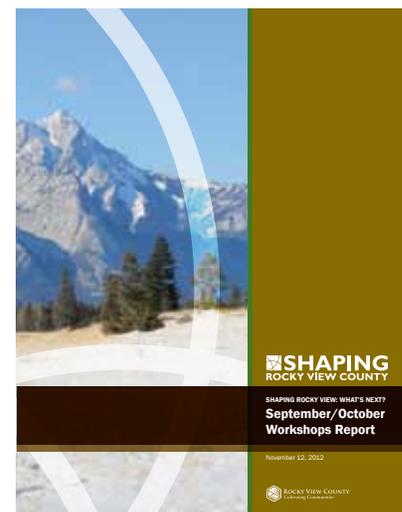
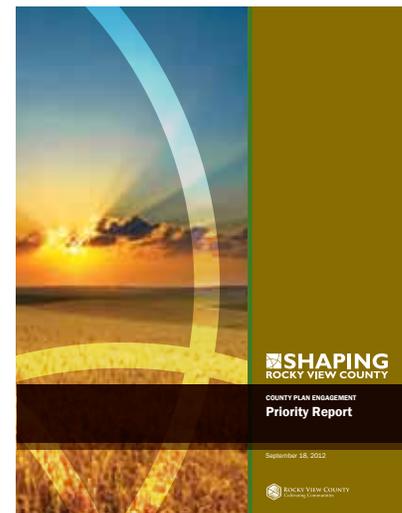
Rocky View residents were made aware of the County Plan project through a variety of media including two direct mail outs, advertising, road signs, radio, media articles, and the County website. A total of 617 participants signed up to receive direct email notification about the County Plan process.

The County engaged participants in five separate sessions and reported back to participants on the results of the first four sessions:

- June to September (2012): 1,276 residents and land owners were surveyed and asked to rank their priorities either in-person or online¹.
- September/October (2012): in-person and online workshops were conducted to seek participants' input on growth, economic, social, and environmental issues. The workshops were held at seven locations around the county. A total of 204 participants attended the workshops with an additional 194 participants² providing input online.

¹ County Plan Engagement Priority Report, 2012, Rocky View County

² September/October Workshops Report, 2012, Rocky View County

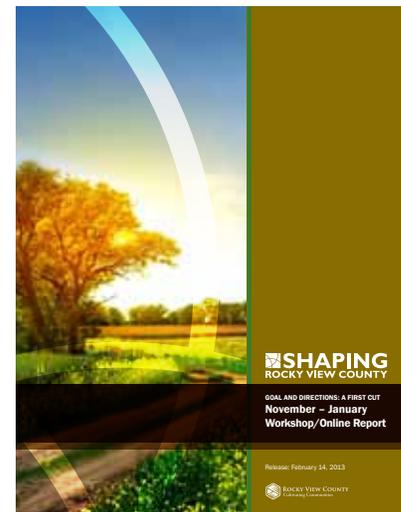


- November/January (2012-13): a ‘first cut’ of goals and directions were presented for public comment at seven workshops and online. A total of 172 participants attended the workshops with an additional 215 online participants³.
- March (2013): A total of 143 participants attended the presentation of the first draft of the County Plan at seven open houses held throughout the County. In total, 183 open house comments, online comments, or email/letter submissions on the first draft were received by the County.
- May 29/June (2013): The final draft of the County Plan was presented at an open house held at the County office. Finally, written public comments were submitted to Council as part of the statutory Public Hearing process to approve the Plan.

Plans, Studies, and Legislation Informing the County Plan

The development of the County Plan has been guided and informed by the following plans, studies, strategy documents, and legislation:

1. Non-statutory plans and reports developed by, or in consultation with, Rocky View residents. Key documents guiding the County Plan include:
 - Agriculture Master Plan
 - Council’s Response to the Reeve’s Task Force
 - Growth Management Strategy
 - Parks and Open Space Master Plan
 - Report of the Reeve’s Task Force on Growth Planning
 - Solid Waste Master Plan
2. Existing statutory plans (e.g. area structure plans and intermunicipal development plans).
3. *County Policy*, 2011-13 Corporate Strategy, Land Inventory and Residential Capacity (2012) and the Rural Growth Management Discussion Paper.
4. Provincial legislation (Municipal Government Act) and direction including the Land Use Framework Strategy and Water for Life Strategy.



County Policy is adopted by resolution of Council and addresses the following areas:

- i. Administration
- ii. Finance & Systems
- iii. Planning & Development
- iv. Infrastructure & Operations
- v. Agricultural Service Board
- vi. Utility Services

Key policy documents contributing to the County Plan are identified in Appendix D.

³ November/January Workshops Report, 2013, Rocky View County

4.0 THE PLANNING FRAMEWORK

Municipal Government Act

The Municipal Government Act provides the legislative framework under which all municipalities must operate. The Act states the County's purpose is to:

- a) provide good government,
- b) provide services, facilities or other things that, in the opinion of Council, are necessary or desirable for all or a part of the municipality, and
- c) develop and maintain safe and viable communities.

In order to achieve this direction, the Act requires and allows the preparation of plans to:

- a) achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
- b) maintain and improve the quality of the physical environment within which patterns of human settlement are situated..., without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

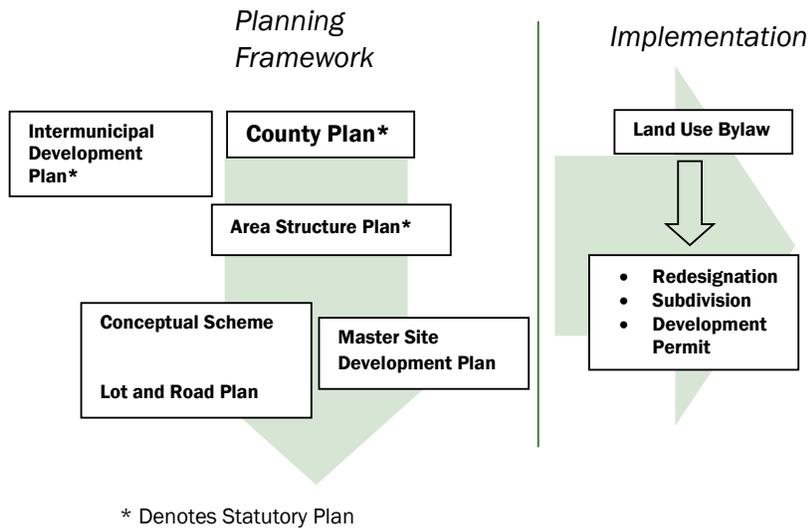
Specifically, the Act directs the preparation of the Municipal Development Plan (named the County Plan) and allows for subordinate plans such as an area structure plan.

Planning and Development Process

The planning framework outlines the key planning documents to be utilized by Council and administration to guide land use decision-making, and to review and evaluate development applications. The planning framework is one of two parts of the overall Planning and Development Process (Figure 1); the other being implementation.

The planning framework outlines the relationship and level of detail of the different plans. The plans at the top of the framework provide broad, high-level policy direction to either the entire county (County Plan) or a specific county border area (Intermunicipal Development Plan). The lower-level plans are subordinate to the plans above and must be consistent with the policies and direction of the higher-order plans. Subordinate plans (area structure plans, conceptual schemes, and master site development plans) increase in detail and encompass smaller land areas than the higher-order plans.

Figure 1: Planning and Development Process



Plans higher in the framework will generally determine when a subordinate plan is required. For example, an area structure plan provides criteria for conceptual scheme preparation. When there is no area structure plan or other subordinate plan, the County Plan will determine whether a subordinate plan is required to provide greater planning detail.

The following are the key *statutory* and *non-statutory* planning documents used by the County.

COUNTY PLAN: The County's principal statutory plan. It is the County's Municipal Development Plan prepared in accordance with the Municipal Government Act. The County Plan is adopted by bylaw and provides strategic growth direction, overall guidance for land use planning, and service delivery policy.

The County Plan also provides specific policy guidance for areas that do not fall within the boundaries of an area structure plan or other subordinate plan.

A **statutory plan** is a plan that has legal status and requirements prescribed by the Municipal Government Act. All statutory plans are adopted as a bylaw by Council after a public hearing. Statutory plans include: the County Plan (Municipal Development Plan), intermunicipal development plans, and area structure plans. When an area structure plan is amended to include a conceptual scheme, the conceptual scheme becomes part of the statutory area structure plan.

The County's subdivision authority and development authority must follow the direction of a statutory plan. The Subdivision and Development Appeal Board and Municipal Government Board must comply with statutory plans in a development appeal and must have regard to statutory plans in a subdivision appeal.

A **non-statutory plan** may or may not be adopted by Council Bylaw. The plan provides guidance and more detailed direction for development. It is non-binding on Subdivision and Development Authorities, Subdivision and Development Appeal Boards and the Municipal Government Board. Examples of non-statutory plans include conceptual schemes, master site development plans, and lot and road plans.

INTERMUNICIPAL DEVELOPMENT PLAN: A statutory plan developed and adopted in partnership with an adjoining municipality and prepared in accordance with the Municipal Government Act. An intermunicipal development plan is adopted by bylaw, and contains policies which co-ordinate land use and development for boundary lands between adjacent municipalities. This plan addresses matters of mutual interest and is used to evaluate development applications, set up communication protocols, and provide a mechanism for resolving intermunicipal disputes.

AREA STRUCTURE PLAN: A statutory plan, prepared in accordance with the Municipal Government Act. The area structure plan is subordinate to the County Plan and provides a land use strategy for redesignating (rezoning) and developing a specific area of land in the County. It contains maps, goals, and policies, which set out general locations for major land uses (e.g. residential, commercial, institutional, schools, and parks), major roadways, utility servicing, and recreation.

Area structure plans guide development in country residential communities, hamlets, regional business centres, and highway business areas.

CONCEPTUAL SCHEME: A non-statutory plan, subordinate to an area structure plan, and may be adopted by bylaw or resolution. To ensure the opportunity for public input, the County will continue its practice of adopting a conceptual scheme by bylaw with a public hearing. If an area structure plan is amended to include a conceptual scheme, the conceptual scheme becomes a statutory plan.

Conceptual schemes provide detailed land use direction, subdivision design, and development guidance to Council, administration, and the public. Conceptual schemes are meant to be developed within the framework of an area structure plan.

If a conceptual scheme is of sufficient size that further detail is required for specific areas and phases, the subsequent document will be referred to as a 'development cell'. Upon approval, the 'development cell' document will be amended into the conceptual scheme as an appendix.

LOT AND ROAD PLAN: A non-statutory plan that is not adopted by bylaw or resolution. A lot and road plan accompanies a land use redesignation application and is used to address a limited set of specific planning issues to demonstrate an area is capable of supporting increased residential development – issues such as lot and road layout, stormwater management, water supply, and sewage treatment. A lot and road plan is for existing fragmented quarter sections as identified in section 10. The lot and road plan addresses the practical difficulty of multiple parcel ownership and the burden of plan preparation falling on a single owner of a limited amount of land. The lot and road plan requires consultation with owners within the plan area and will be retained by the County to guide future subdivision approval.

MASTER SITE DEVELOPMENT PLAN: A non-statutory plan that is adopted by Council resolution. A master site development plan accompanies a land use redesignation application and provides design guidance for the development of a large area of land with little or no anticipated subdivision. In some cases, a master site development plan may be used following a conceptual scheme when certain site design details have not been finalized.

A master site development plan addresses building placement, landscaping, lighting, parking, and architectural treatment. The plan emphasis is on site design with the intent to provide Council and the public with a clear idea of the final appearance of the *development*.

Supporting Documents

The County Plan provides overall direction for growth in the county. To determine the need for a new area structure plan, or amendments to an existing area structure plan, the County may prepare a context study for a specific area of interest.

CONTEXT STUDY: A background technical assessment prepared by the County to determine the need for an area structure plan or an area structure plan amendment. The exact content of a context study will vary depending on the specific area in which it is prepared. Components may include: population growth and demographics; economic and fiscal feasibility; existing land supply and building rate; potential and/or feasibility of servicing solutions; transportation infrastructure; environmental considerations; development constraints; and other items determined appropriate by the County. All context studies should provide a clear assessment of existing conditions, development pressures, policy gaps, and changing needs. Context studies do not provide policy direction for land use and development.

The word *development* is used throughout the County Plan in its broadest context. In cases dealing with the development of land, it includes the processes of redesignation, subdivision, and development permitting.

Implementation

Implementation of the statutory and non-statutory land use plans described above is primarily achieved by:

- a) the application and amendment of the Land Use Bylaw;
- b) the evaluation and approval of applications for land use *redesignation* and *subdivision*;
- c) the evaluation and approval of *development permits*; and
- d) the application of *County Policy* and *Servicing Standards*.

LAND USE BYLAW: A regulatory bylaw of the County required by the Municipal Government Act. Every parcel of land in the County has a land use district. The Land Use Bylaw details the permitted and discretionary land uses in each district and regulates the development of land and buildings within the county.

POLICY

- 4.1 Where an area structure plan or subordinate plan is silent on a policy matter contained in this Plan, the policies of the County Plan shall apply.

Redesignation (zoning) is a public process that changes the uses allowed on a parcel of land.

Subdivision is a legal process to obtain title to a new parcel of land by dividing larger parcels of land into smaller lots.

Development Permit approval is required to allow many of the land uses allowed in the Land Use Bylaw to proceed.

II. County Development

A. Growing Communities

1991-2011: 20 Years of Residential Growth

Rocky View County's proximity to its large urban neighbours has profoundly shaped its pattern of growth. The desire to live in a rural area, while remaining close to an urban centre, has resulted in the growth of new communities and existing hamlets. Growth has impacted the agriculture sector: land prices have risen and ranching and farming is more difficult in areas where residential lifestyles are not dependent upon agriculture.

Between the years 1991 and 2011, the County's population almost doubled, growing from 18,939 to 36,461 residents⁴ (Figure 2). To house new residents, 7,230 homes were constructed. Country residential development accounted for much of the growth, with 48 per cent of the new homes located in the communities of Bearspaw, Bragg Creek, East Balzac, Elbow Valley, and Springbank (Figure 3). The other centre of growth occurred in the Hamlet of Langdon with the building of 1,306 homes (18% of total)⁵.

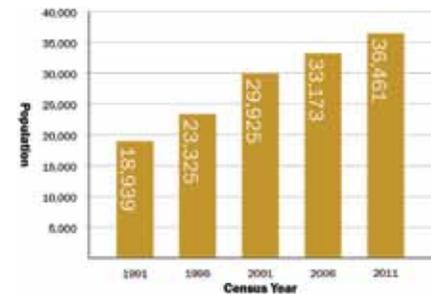
To provide development guidance to these areas of growth, a number of area structure plans and conceptual schemes were approved over this 20 year period. At the time of plan development, the majority of these planning areas had existing residential populations.

The boundaries of the Hamlets of Balzac West, Bragg Creek, Cochrane Lake, Dalroy, Delacour, Langdon, Indus, and Kathryn were formalized and expanded by their area structure plan or conceptual scheme during this time frame. Finally, the Hamlet of Harmony was approved as a new development area.

Country residential area structure plans for the communities of Bearspaw, Bragg Creek, Cochrane North, East Balzac, Elbow Valley, and Springbank were also approved. These plans provided development design guidance, established boundaries, and identified future growth areas.

Some communities in the County, notably the Hamlet of Langdon and Elbow Valley, are reaching the limit of their residential capacity. Aside from those two areas, there is significant existing potential for hamlet and traditional country residential development in the County⁶, assuming the appropriate land use (zoning) is approved and market demand for that type of development exists.

Figure 2: County population change 1991 to 2011 (Canada Census).



⁴ Canada Census 1991 – 2011

⁵ Land Inventory and Residential Development Capacity, 2012, Rocky View County

⁶ Land Inventory and Residential Development Capacity, 2012, Rocky View County

Population Trends and Housing Requirements

In the last decade, the rate of population growth in the Calgary region has declined. Nevertheless, the region’s population has still increased by 300,000 residents⁷. The County has also seen its residential population increase by 6,536 residents (Figure 2), primarily in country residential communities. However, the rate of dwelling construction has declined from a peak period in the late 1990’s (Figure 4).

Despite the decrease in housing construction, the demand for rural housing is expected to continue, as the overall Calgary regional population is projected to increase from 1.4 million residents (2011) to 1.9 million by 2026⁸.

Historically, the County has accommodated an increasing percentage of the regional population (Table 1), despite losing population to a series of annexations. Based on the projected 2026 regional population of 1.9 million residents and the County absorbing a similar percentage of the regional population (2.71 to 3.11 percent), the County’s population is projected to grow between 51,490 to 59,090 residents by 2026 (Table 2).

Figure 3: Residential Dwellings per Section (640 acres)

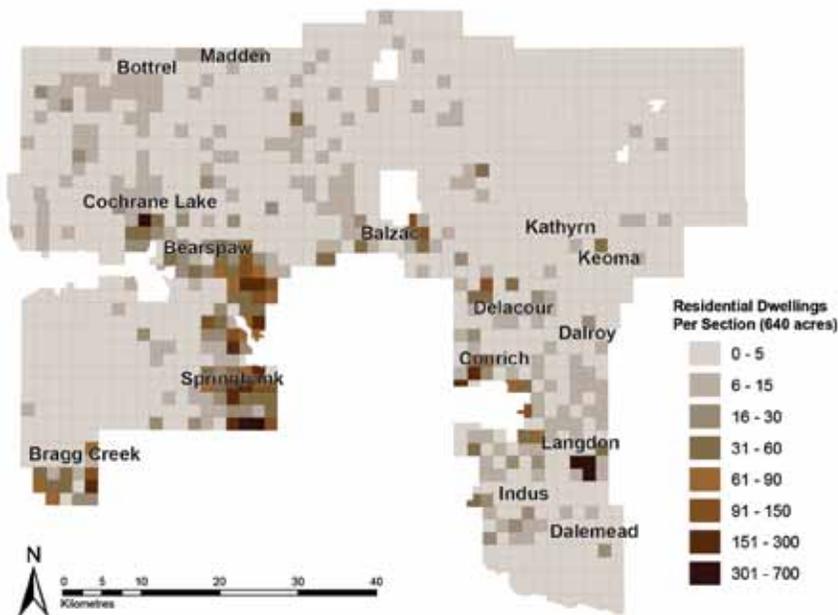


Table 1: Rocky View County: Percent of the Calgary Regional Population.

Year	1971	1996	2006
%	2.41	2.71	3.11

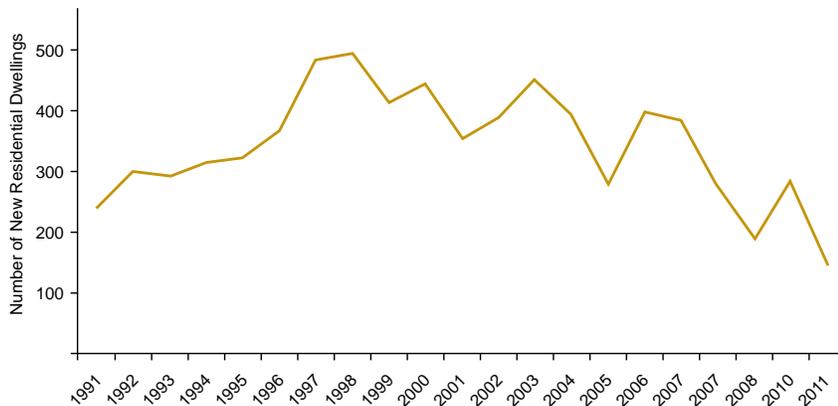
Table 2: Projected 2026 County Population (based on a regional population of 1,900,000).

% of the regional population	2.71 – 3.11 %
Projected 2026 population	51,490 – 59,090
Projected 2011 - 2026 population increase	15,059 – 22,659

⁷ A Context for Change Management in the Calgary Regional Partnership Area - Future Population, Housing, Labour Force, and Employment, Urban Futures

⁸ A Context for Change Management in the Calgary Regional Partnership Area - Future Population, Housing, Labour Force, and Employment, Urban Futures

Figure 4: Rocky View County Dwelling Construction by Year.



GROWTH MANAGEMENT STRATEGY

The majority of county residents have indicated they are willing to accept “some”⁹ or a “moderate amount of”¹⁰ residential growth provided it is properly implemented, financed, and environmentally sound. The County Plan provides a strategy to achieve this by:

- Setting a moderate population goal that can be responsibly planned for over the life of this Plan (10 to 12 years).
- Identifying the preferred areas for residential growth for the next 10 to 12 years.
- Providing a financial strategy to ensure the costs of growth are addressed. The strategy recognizes growth has two components; short term development costs and long term operating costs.
- Recognizing all forms of growth must occur in an environmentally responsible manner.

Moderate Residential Growth

What does ‘moderate’ residential growth mean? On the regional scale, population growth will be driven by demographics and economics. Within this larger context, ‘moderate’ residential growth means - an increase of no more than 2.5 to 3 per cent of the region’s population by 2026 (approximately 11,000 to 20,000 net new residents), provided financial and environmental goals can be achieved.

Achieving ‘moderate’ growth does not mean saying ‘no’ but rather ‘not now’. Achieving this goal will be a challenge given the lack of control over external economic factors, existing residential capacity, and no yearly regional population forecasts.

A **Moderate County** population growth would result in a **30 % – 56 % increase in residents** over a 10 – 12 year time span.

This magnitude of growth would require **3,300 to 6,700** new dwellings based on an average occupancy of 3.0 residents per home.

⁹ September/October (2012) Workshops Report, 2012, Rocky View County

¹⁰ November/December (2012) Workshops Report, 2013, Rocky View County

Preferred Residential Growth Areas

Within the County there are 18 hamlet and country residential communities whose development boundaries and form have been set by existing plans. As the majority of these areas have not been fully developed, the County Plan identifies these areas (Map 1 and section 5) as the focus of residential growth for the next 10 to 12 years. In addition, the County Plan:

- Allows for increased agriculture land use flexibility (Section 8).
- Encourages residential development to locate in small rural towns and villages that serve as the local community for Rocky View residents (Section 5).
- Directs high density residential development to adjacent urban municipalities (Section 5).
- Provides preferred direction on Country Residential and Hamlet development and form (Sections 9 and 10).
- Recognizes long term growth corridors identified in the Rocky View/City of Calgary Intermunicipal Development Plan (Section 5).

Financial Sustainability

Section 6 provides the goals, policy, and actions to address the upfront costs of development and long term operating costs (service to residents and infrastructure replacement costs). Key features of the strategy include:

- Ensure development costs are primarily the responsibility of the developer.
- Increase the County's business assessment base in order to reduce reliance on the residential tax base for long term operating costs.

Section 14 provides the policies and actions necessary to increase the business assessment base and provide employment opportunities in the county. Regional business centres, highway business areas, and hamlet business areas are identified on Map 1 and their characteristics are identified in section 14.

Environment

Section 7 provides the direction whereby residential and business growth can occur in an environmentally responsible manner. The section recognizes provincial direction on the environment, establishes goals, and provides policy and actions to achieve these goals.

5.0 MANAGING RESIDENTIAL GROWTH

Section 5 identifies the desired residential growth levels, growth locations, and the criteria under which development will be evaluated.

GOALS

- Achieve a moderate level of growth, amounting to no more than 2.5 to 3 per cent of the region's population over the 10 to 12 year time frame of this Plan.
- Direct the majority of residential growth to those areas identified on Map 1, over the time frame of this Plan.
- Manage residential growth so that it conforms to the County's environmental, fiscal, and community goals; and so that the rural character of the county is retained.
- Monitor growth to determine if planned development is being implemented and growth goals are being met.

POLICY

Hamlets

- 5.1 Support the development of the *Hamlets* of Conrich, Harmony, Langdon, Balzac, and Glenbow Ranch as full service rural communities providing a range of land uses, housing types, and rural services to their residents and local area; in accordance with their area structure plan or conceptual scheme. These hamlets are identified as "Hamlet – Full Service" on Map 1.
- 5.2 Support the development of the Hamlets of Bragg Creek, Cochrane Lake, Dalroy, Delacour, Indus, and Kathryn, as rural communities with basic services, in accordance with their area structure plan or conceptual scheme. These hamlets are expected to experience moderate growth over the next 10 years and the County will assist in managing development as it occurs. These Hamlets are identified as "Hamlet – growth as per the adopted plan" on Map 1.
- 5.3 The small Hamlets of Bottrel, Dalemead, Keoma, and Madden are not identified as growth locations. It is not anticipated that the preparation of an area structure plan will be necessary within the timeframe of this Plan. These Hamlets are identified as "Small Hamlet" on Map 1.

Hamlets are characterized as having primarily residential development with a main street, crossroads, or central gathering area (section 9). There may be an associated business park with commercial/industrial uses.

In Rocky View County, the following hamlets are contained within a larger area structure plan or conceptual scheme that includes country residential uses:

- Bragg Creek
- Dalroy
- Delacour
- Indus
- Kathryn.

Hamlets with a boundary coinciding with an area structure plan or conceptual scheme boundary include:

- Cochrane Lakes
- Harmony
- Langdon.

The final area structure plan boundaries and form of Balzac West and Conrich will be determined by their planning process.

- 5.4 New hamlet development should not be considered unless (i) existing overall hamlet residential potential is not being significantly developed, and (ii) a need and rationale for a new hamlet has been demonstrated based on the following criteria:
- a. consistency with the County's residential population goals;
 - b. is an appropriately located development within the existing settlement pattern;
 - c. opportunity for community input;
 - d. meeting the financial, environmental, community infrastructure goals of this Plan; and
 - e. market demand.
- 5.5 In order to retain rural character and a sense of community, consideration should be given to the ultimate size of a hamlet. To retain these qualities, the County considers the upper population limit of a hamlet community to be in the range of 5,000 - 10,000 residents. Hamlet size shall be determined based on the following criteria:
- a. County residential population goals;
 - b. existing hamlet population goals;
 - c. community input;
 - d. local commercial service requirements;
 - e. fiscal impact;
 - f. infrastructure capacity; and
 - g. retaining rural character.
- 5.6 Applications to redesignate land for *multi-lot* residential use adjacent to, or in the vicinity of, an existing hamlet should not be supported unless the proposed development area is approved as an amendment to the hamlet boundaries.

Multi-lot means development of two or more new residential lots and includes country residential and hamlet development. The definition of *multi-lot* development does not apply to the subdivision and development of lands within a fragmented quarter section (policy 10.10 to 10.14).

- 5.7 Expansion of a hamlet boundary for residential purposes should only be considered when hamlet development is close to meeting residential capacity. Proposals shall be evaluated on the following criteria:
- a. County residential population goals;
 - b. hamlet population goals;
 - c. community input;
 - d. the proposed development represents orderly, appropriately sequenced development;
 - e. benefit to the community;
 - f. compatibility and integration with the existing area structure plan or conceptual scheme;
 - g. fiscal impact and infrastructure capacity;
 - h. local commercial service requirements; and
 - i. market demand.

Country Residential

- 5.8 Support the development of existing country residential communities (identified on Map 1) in accordance with their area structure plan.
- 5.9 New country residential area structure plans or conceptual schemes should not be considered unless (i) existing overall country residential areas are not being significantly developed, and (ii) a need has been demonstrated based on the following criteria:
- a. consistency with the County's population goals;
 - b. opportunity for community input;
 - c. is an orderly, appropriately sequenced development consistent with a desirable pattern of settlement;
 - d. meeting the financial, environmental, community, and infrastructure goals of this Plan; and
 - e. market demand.

Agricultural Area

- 5.10 Residential development in the *agricultural area* shall be guided by the goals and policies of this Plan.
- 5.11 Support *first parcel out* residential and agricultural subdivision in the agricultural area as per the policies of this Plan (section 8).
- 5.12 Where appropriate, direct new multi-lot residential development to the Towns of Crossfield and Irricana, and the Village of Beiseker.

Agricultural Area means the area of Rocky View County where redesignation, subdivision, and lot development are not guided by an area structure plan, conceptual scheme, or master site development plan.

First Parcel Out means the subdivision of a single residential or agricultural parcel created from a previously un-subdivided quarter section.

Other

- 5.13 Direct high density forms of residential development to adjacent urban municipalities.

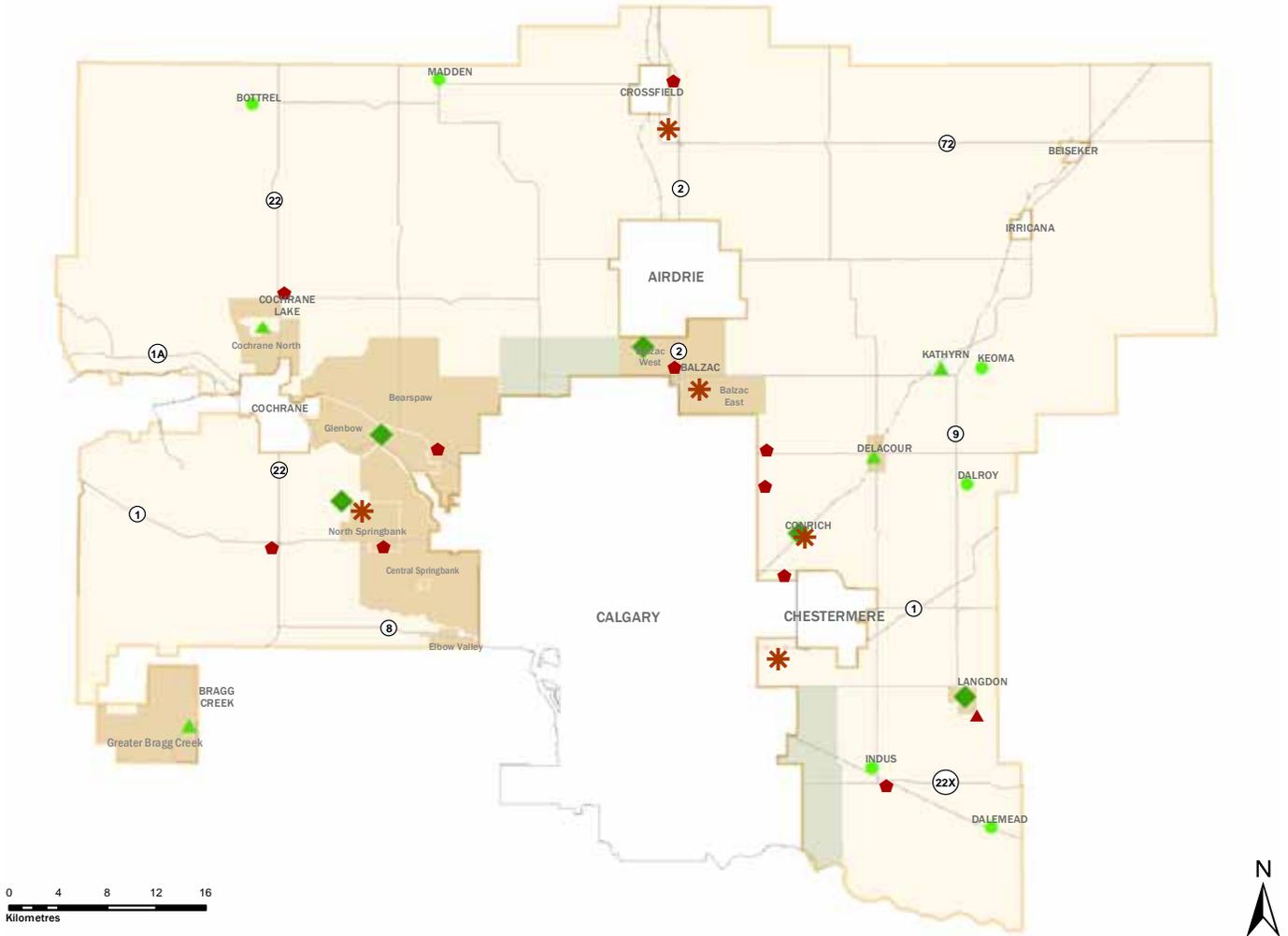
Long Term Growth

- 5.14 The Rocky View County/City of Calgary Intermunicipal Development Plan identifies future growth corridors for the County (Appendix A). The County considers all of these corridors important, however, the timing for development within a growth corridor may vary and some corridors are expected to experience minimal development within the timeframe of this Plan.

ACTIONS

- Monitor and report on county population growth relative to the regional population growth (goal 1).
- Monitor and report on area structure plan build-out for the number of new dwellings and dwelling types (goal 2 and 4).
- Review the population objectives and development form of the Balzac West Area Structure Plan (policy 5.1).

MAP 1-MANAGING GROWTH



Residential Communities

- ◆ Hamlet-Full Service
- ▲ Hamlet-Growth as per the adopted plan
- Small Hamlet
- Country Residential (Area Structure Plan)

Business Areas

- ✳ Regional Business Centers
- ⬠ Highway Business Area
- ▲ Hamlet Business Area

Future Urban Growth Areas

- Calgary Growth Areas
(Rocky View County/Calgary Intermunicipal Development Plan)

General Legend

- Rocky View Boundary
- City/Town/Village
- Highway



6.0 FINANCIAL SUSTAINABILITY

One of the purposes of the County is to develop communities and provide services and facilities that are necessary or desirable (Municipal Government Act). The cost to build communities, provide services, and operate facilities is dependent on many factors such as location, infrastructure needs, and residents' demand for services. The upfront costs of development (primarily *hard infrastructure*) are the responsibility of the developer. Long term operating costs related to providing *soft infrastructure*, infrastructure replacements, and services to residents are paid for by the residential and business property tax base, user fees, and provincial grants. Residents have expressed the view that development must pay for itself and be affordable over the long term.¹¹

GOALS

- Maintain financial sustainability through careful management of growth and development.
- To the extent possible, ensure development costs are primarily the responsibility of the developer.
- Increase the County's business assessment base in order to reduce the reliance on the residential tax base.

POLICY

Development

- 6.1 Direct new development to areas of existing infrastructure.
- 6.2 On-site and off-site hard infrastructure costs related to new development are the developer's responsibility.
- 6.3 Developers are strongly encouraged to build, or contribute to the building of soft infrastructure.
- 6.4 All identified hard infrastructure, or land necessary for infrastructure placement, shall be provided by the developer as part of the subdivision or development permit approval process.
- 6.5 Depending on the scope and scale of a proposed development, a fiscal impact analysis of the proposed development shall be required, in accordance with County Policy.
- 6.6 An applicant proposing to provide utility infrastructure shall be required to provide a cost feasibility and life cycle analysis detailing operating and replacement costs in accordance with County Policy.
- 6.7 Prior to approving a development proposal, the County shall ensure that full cost recovery methods are in place to capture the capital and interest cost of development.

Financially sustainable development occurs when the cost to develop and build is not the responsibility of county residents and future County operating costs remain affordable.

The **business assessment base** is the total property value of all business in the County (referred to in the Municipal Government Act as non-residential assessment). Tax collection is based on the assessed value of a property.

Hard infrastructure means land and infrastructure related to roads, pathways and trails, and water, stormwater, wastewater, and parking and loading facilities.

The Municipal Government Act allows the County to require developers to be responsible for hard infrastructure costs.

Soft infrastructure includes, but is not limited to, infrastructure relating to recreation, libraries, protective services, fire protection services, and schools.

The cost of soft infrastructure is not the responsibility of the developer under the Municipal Government Act, although in some cases, developers opt to contribute to these types of services.

¹¹ September/October Workshops Report, 2012, Rocky View County

¹¹ November/January Workshops Report, 2013, Rocky View County

Operating

- 6.8 Direct the majority of new commercial and industrial businesses to locate in the business areas identified on Map 1.
- 6.9 Utility operational and life cycle costs shall be recovered, through user fees, from those benefitting from the service.
- 6.10 Future debt financing must be cautiously used by the County, be low risk, and have an identified stable stream of income to pay the debt cost.

ACTIONS

- Develop a business assessment base target and report on the appropriate balance between the business and residential assessment base (goal 3).
- Identify soft infrastructure needs that come with growth and the methods to finance those needs. Negotiate a comprehensive approach to the recovery of soft infrastructure costs with the development industry (policy 6.3).
- Advocate and support changes to provincial legislation to allow the recovery of soft infrastructure cost from developers (policy 6.3).
- Implement the County's fiscal impact model as a tool to:
 - assess development applications;
 - allow consistent comparison between projects; and
 - measure the county wide impact of growth (policy 6.5).
- Develop and adopt County Policy on the requirements and use of a fiscal impact model and a utility infrastructure cost feasibility and life cycle analysis (policy 6.6).

7.0 ENVIRONMENT

County residents have a strong connection to the natural environment; valuing water, *watersheds*, working agricultural land, and wildlife. However, by the very nature of building communities, developing business parks, and farming and ranching, the environment is affected.

The County approves where development is located, how it is built, and how it operates. The County Plan supports decisions that minimize the adverse impacts of development on the environment. The Plan's policies in this section are supported and guided by the following provincial direction:

- Municipal Government Act that provides the legislative framework for statutory plans that "...maintain and improve the quality of the physical environment."
- Land Use Framework Strategy, which encourages conservation, land stewardship, healthy ecosystems, and the efficient use of land.
- Water for Life strategy goals of:
 - a safe, secure drinking water supply;
 - healthy aquatic ecosystems; and
 - reliable, quality water supplies for a sustainable economy.

Achieving a sustainable environment requires integration across the Plan. In addition to the policies and actions listed below, other policies addressing land stewardship, water, wastewater, stormwater, and the efficient use of land are captured in the agriculture, managing growth, building communities, utility, and solid waste sections.

GOALS

- Manage private development and County operations in a way that maintains and improves the quality of the natural environment.
- Encourage partnerships and public education initiatives that contribute to environmental awareness and management.
- Provide for a safe, secure, and reliable drinking water supply.
- Treat and manage stormwater and wastewater to protect surface water, riparian areas, and wetlands.
- Practice sound land use planning in order to protect agricultural operations, native habitat, environmentally sensitive areas, and wildlife corridors.
- Retain rural landscapes, dark skies, open vistas, and agriculture lands.
- Promote and implement conservation measures to reduce waste, improve water use, reduce land consumption, and increase building energy efficiency.

Watershed is the area of land where surface water from rain and melting snow or ice converges to a single point such as a major river.

Did you know? Both the Red Deer watershed and the Bow River watershed drain land within the County. The two rivers join together in Saskatchewan.

POLICY

Education and Partnering

- 7.1 Educate county residents and developers on:
 - a. water conservation;
 - b. invasive weed control and pest management; and
 - c. small parcel environmental stewardship.
- 7.2 Facilitate education for agricultural producers on Beneficial Land Management Practices to reduce the impact of farm operations on the environment.
- 7.3 Support and participate in environmental management initiatives undertaken by:
 - a. watershed councils and water stewardship groups;
 - b. the regional air shed working group; and
 - c. agricultural and regional invasive weed management groups.

Water

- 7.4 Protect ground water and ensure use does not exceed *carrying capacity* by:
 - a. supporting long term ground water research and monitoring programs;
 - b. mitigating the potential adverse impacts of development on groundwater recharge areas;
 - c. adhering to provincial ground water testing requirements, as part of the development approval process; and
 - d. encouraging and facilitating the capping of abandoned water wells to protect against ground water leakage and cross contamination.
- 7.5 Use relevant watershed management plans as guiding documents and planning tools.

Did You Know? Rocky View County participates and supports five watershed councils and stewardship groups

- Bow River Basin Council
- Red Deer River Watershed Alliance
- Elbow River Watershed Partnership
- Nose Creek Watershed Partnership
- Jumpingpound Creek Watershed Partnership

Carrying capacity is the ability of a watershed, air shed, and/or landscape to sustain activities and development before it shows unacceptable signs of stress or degradation.

Riparian land is the vegetated (green zone) area adjacent to rivers, creeks, lakes, and wetlands.

Wetlands are marshes and ponds that vary in terms of water saturation and permanence. Riparian areas and wetlands:

- improve water quality
- contribute to groundwater recharge
- reduce erosion and flooding
- provide recreation
- protect biodiversity

Low Impact Development (LID) uses a variety of techniques to treat and manage stormwater runoff close to the areas where rain falls. LID focuses on site design and stormwater control options such as green roofs, stormwater capture and re-use, and landscaping that increases the absorption and filtering of rainwater.

Stormwater and Wastewater

- 7.6 Require environmentally sustainable wastewater disposal practices to protect watersheds and surface/ground water quality. Wastewater treatment systems should not exceed the land's carrying capacity.
- 7.7 Effectively treat stormwater to protect surface water, *riparian areas*, and *wetlands*.
- 7.8 Encourage and support *Low Impact Development* as an approach to treat and manage stormwater.
- 7.9 Stormwater treatment should avoid the use of natural wetlands.
- 7.10 Support the use of constructed stormwater wetlands for treatment and storage of surface runoff.
- 7.11 Stormwater treatment and storage facilities shall not be located in floodways or riparian areas located along waterways.

Land and Environmental Stewardship

- 7.12 Encourage the efficient use of rural land and infrastructure by directing residential, commercial, and industrial development to the defined growth areas and by encouraging infill development within those areas.
- 7.13 Support the conservation and effective management of riparian areas and wetlands in accordance with County Policy.
- 7.14 Encourage sustainable agricultural operations through sound land stewardship.
- 7.15 Encourage development to retain and reintroduce natural habitat and native grasslands.
- 7.16 Development shall be planned, designed, and constructed to protect *alluvial aquifers*.
- 7.17 Development applications may require the preparation and implementation of a bio-physical impact assessment to protect environmentally sensitive areas.
- 7.18 Environmental site assessments shall be required when a previous use may have contaminated the proposed development area.
- 7.19 Utility systems shall be designed and constructed to minimize adverse impacts to environmentally sensitive areas, as identified by a Biophysical Impact Assessment.
- 7.20 Require the control and eradication of regulated weeds on private and public land in accordance with the provincial regulations and County Policy.

Alluvium is loose, unconsolidated clay, silt, or gravel, which has been deposited by a stream or river.

An **aquifer** is an underground layer of consolidated or unconsolidated rock and sediment through which groundwater moves.

When water flows directly from the underground aquifer to a surface, which is under the influence of surface water (river), an **alluvial aquifer** exists.

The **Weed Control Act** requires County staff to inspect private and public land for regulated weed species. Landowners are obligated to control or eradicate weeds on their property.

During the growing season, weed inspectors locate weed infestations and encourage landowner action.

Development in Hazard Areas

- 7.21 Development in hazard areas, such as *flood fringes* and escarpments, shall be allowed only if an appropriate technical evaluation demonstrates suitability, to the satisfaction of the County and in accordance with the Land Use Bylaw.
- 7.22 Development within the flood fringe is discouraged and, where allowed, shall comply with the Land Use Bylaw.

Construction Practices

- 7.23 Country residential development should build with the contours of the land and avoid stripping and grading.
- 7.24 Require best management construction practices to reduce wind and water erosion of soils and to suppress dust dispersion.
- 7.25 Encourage and support proper disposal and recycling of solid waste from construction.

Conservation

- 7.26 Encourage and support conservation design as a form of compact residential development in new or amended area structure plans.
- 7.27 Encourage potable water conservation measures for all users of public and private water systems.
- 7.28 Encourage green building techniques and energy efficiency in subdivision and building design.
- 7.29 Maintain dark skies by:
- a. ensuring dark sky principles are incorporated when developing or amending area structure plans;
 - b. requiring public and business lighting in outdoor areas to be downward directed and conform to the Land Use Bylaw; and
 - c. encouraging residents to use downward directed lighting.
- 7.30 Support and encourage the use of agricultural land for small scale production of renewable sources of energy.
- 7.31 Provide convenient, cost effective, and environmentally responsible ways to reduce, reuse, and recycle household waste.

Floodway typically includes the main channel of a stream and a portion of the adjacent overbank. It is the inner portion of a floodrisk area where the floodwaters are the deepest, fastest, and most destructive.

Flood Fringe is the outer portion of the flood risk area. The water in the flood fringe is generally shallower and flows more slowly than in the floodway.

Floodrisk Area means the area of land bordering a water course or water body that would be inundated by 1 in 100 year flood as determined by the province in consultation with the County and may include both flood fringe and floodway.

ACTIONS

- Develop an environmental review checklist to provide for consistent review of development applications (goal 1).
- Undertake an inventory of regionally important environmental areas and develop policies and procedures to address these areas (goal 4).
- Review the Land Use Bylaw to establish criteria with respect to building setbacks from escarpments to preserve *viewscales* and ensure safety (goal 5, policy 7.21).
- Assess the use of *Transfer Development Credits*, in accordance with the Alberta Land Stewardship Act, as a way to direct development to preferred growth areas in order to sustain agriculture, benefit agriculture land owners, and achieve compact development (policy 7.26).
- Develop a water conservation policy for public utility systems and adopt water conservation policies in new or amended area structure plans (policy 7.27).
- Review the dark sky lighting requirements of the Land Use Bylaw (policy 7.29).

Viewscales are those features that provide a community asset, such as pleasing vistas and scenes that provide a sense of landscape identification and character. Views within viewscales include open land, vistas, skylines, ridgelines, and peaks.

Transfer Development Credit (TDC) programs allow municipalities to direct development away from areas where it is not preferred (sending areas), and toward a preferred development area (receiving area). Owners of the 'sending area' benefit by putting development rights on an open market but in return must permanently give up future development potential. Landowners/developers in a 'receiving area' are able to increase development density beyond the base amount allowed by zoning.

B. Building Communities

Participants in the County Plan engagement process strongly supported the following statement.

“The rural nature and importance of country residential, hamlet, and agricultural communities must be maintained.”¹²

At the same time, some participants questioned whether parts of the County are truly rural. What does it mean to be rural? Rural is a difficult word to define and it depends on whom you ask and where they live.¹³

Without question, farms and ranches, which produce crops and livestock are considered rural. What about the small hamlets, villages, and towns that started as places to trade commodities and provide services to the surrounding agriculture area? They have some of the physical characteristics of an urban centre, but because of their size and location in the county, have a very different feel and sense of community from their urban counterparts. And what about country residential communities; are they considered to be rural? These communities often arise because of their proximity to large urban centres. Nevertheless, residents of these communities strongly value the features that characterize the rural landscape.

The challenge to county residents, landowners, and developers is to build communities that retain a rural sense and feel. The following table captures some of the characteristics of Rocky View’s three types of rural communities. These characteristics should be considered in planning, design, and development of a rural community.

¹² September/October (2012) Workshops Report, 2012, Rocky View County

¹³ Putting Smart Growth to Work in Rural Communities International City/County Management Association

Table 3: Characteristics of Rocky View's Rural Communities

	Agriculture Area	Hamlet	Country Residential
The 'sense' of living in the country	self-reliant and independent	connection and participation	self-reliant and independent
	heritage and community	friendly, community spirit	community
	privacy	safety, family, and neighbours	privacy
	quiet	quiet	quiet
	space and distance	space and distance	space and distance
	livestock and wildlife	countryside	nature and wildlife
	associated with a distinct community or area	small and distinct community	part of a distinct community
Physical Characteristics	working land	surrounded by working or conservation land	interconnected with working land
	dark skies	dark countryside and public lighting	dark skies
	barns, corrals, granaries, livestock, fields, grain, pasture, noise, smells, and equipment	main street, central park, and/or commercial crossroad	paved roads connecting dispersed acreage communities
	farm homes with isolated country residential homes and gravel roads	larger residential lots with opportunity for a mix of residential uses and lot sizes	primarily residential development, variety of lot sizes, unique houses, and landscaping
	no local commercial services and amenities, distant community centres, and ball diamonds	some commercial services, amenities, a community hall, and playing fields	limited commercial services and amenities, a community centre, and sports fields in the general area
	wells and septic systems	piped water and wastewater, wells, and septic systems	piped water and wastewater, wells, and septic systems
	distant schools	schools	may be schools in the general area
	limited regional pathways	sidewalks and pathways for recreation and local transportation	recreational trails, opportunities for walking, riding, and cycling

8.0 AGRICULTURE

Agriculture has been a mainstay of the County's economy and has guided its settlement pattern since the early 1900's. Most of the hamlets in the county started as places to trade livestock and grain and provide service to the surrounding area. Traditional agriculture still dominates the rural landscape, but in recent times new agricultural ventures are emerging.

The County Plan envisions Rocky View as a community where:

- traditional farming and ranching continues to be valued and respected;
- agriculture flourishes through innovation and diversification; and
- agriculture is promoted and recognized as vital to the County's social, economic, and environmental integrity.

Achieving this vision requires a comprehensive approach to education, the business of agriculture, and land use planning. The County can assist by providing services, encouraging business opportunities, and supporting the diversity and flexibility of agriculture operations.

GOALS

- Foster an agriculture sector that is diverse, sustainable, and viable.
- Promote partnerships and education initiatives that support the agriculture sector and contribute to increased operator knowledge and opportunities.
- Support individual agriculture producers and related business to help them be successful.
- Support agriculture operators in going about their day-to-day business with minimum adverse impacts from non-agricultural land uses.
- Encourage and support new forms of agriculture innovation and diversification through land use policy.

POLICY

Partnering, Education, and Food Production

Maintaining a viable and sustainable agricultural sector requires practical hands-on support to educate agricultural producers and county residents, and facilitate the broadening of agriculture markets and regional food production.

In the years ahead "traditional agriculture uses including large scale crop and cattle production still dominate the landscape. However, the industry has been revitalized through a renewed global emphasis on food production... the next generation of producers and general diversification and innovation."

- vision from the Agriculture Master Plan

- 8.1 Partner and co-operate with other municipalities, levels of government, industry, and non-governmental organizations to:
 - a. develop a regional approach to food production, marketing, and distribution;
 - b. build linkages from producer to consumer that increase local food consumption and crop diversification;
 - c. educate agricultural operators and the public; and
 - d. support initiatives identified in the Agriculture Service Board Strategic Plan.
- 8.2 Support and encourage operators involved in regional and local food production, marketing, distribution, diversification, and food security as per the Agriculture Master Plan.
- 8.3 Facilitate education and provide advice in such areas as:
 - a. beneficial land management practices to address high risk environmental issues and to reduce the impact of farm operations on the environment;
 - b. new agricultural opportunities, technology, and diversification;
 - c. trends and research on crops, livestock, and range and pasture management;
 - d. agricultural business management and farm succession; and
 - e. environmental stewardship.
- 8.4 Facilitate education and provide advice to all county residents and developers regarding:
 - a. weed control and pest management;
 - b. planting and landscaping recommendations and requirements;
 - c. basic agricultural principles, practices, and neighbour relations;
 - d. environmental stewardship on small parcels;
 - e. land management and stewardship; and
 - f. challenges and threats to agriculture.
- 8.5 Increase public awareness and understanding of agriculture by promoting the importance of the agriculture industry for food, jobs, trade, economics, and the environment.
- 8.6 Raise public awareness about the rewards and challenges of living in a rural area.

Business

Agricultural operators and the entire agricultural sector make an important contribution to the economy and employment levels in the County.

- 8.7 Support and encourage agriculture operations and agricultural related economic activity.
- 8.8 Support and encourage *small scale, value-added agriculture* and *agriculture services* to locate in proximity to complementary agricultural producers.
- 8.9 Direct large scale value-added agriculture and agriculture services to develop in identified and comprehensively planned business centres.
- 8.10 Provide a road network that allows for the safe and timely movement of agricultural equipment and goods.
- 8.11 Provide for increased home based business opportunities.
- 8.12 Support the province in recognizing, preserving, and accounting for the *natural capital* of land.
- 8.13 Support and encourage the use of agricultural land for small scale production of renewable sources of energy.

Land Use

Agriculture viability and diversity requires the recognition of different types and scales of agriculture operations; and the need to allow operators to go about their day-to-day business without new land uses adversely impacting their operation.

- 8.14 Support traditional agriculture and new, innovative agricultural ventures.
- 8.15 Support and encourage the viability and flexibility of the agriculture sector by allowing a range of parcel sizes, where appropriate.
- 8.16 All redesignation and subdivision approvals shall address the development requirements of section 29.

Farmstead

- 8.17 Redesignation and subdivision to create a *farmstead* should be supported if the following criteria are met:
 - a. the proposed site meets the definition of a farmstead;
 - b. the proposed site is a minimum of 1.6 hectares (3.95 acres) and a maximum of 7.99 hectares (19.7 acres);
 - c. access to the proposed site is acceptable to the County;
 - d. there are no *physical constraints* to subdivision; and
 - e. the balance of the quarter section is maintained as an agricultural land use.

Did you know? In 2008, the primary agriculture industry in Alberta accounted for \$4.7 billion in revenues and employed 61,000 Albertans.

Value-added agriculture

involves the processing of primary agricultural products and services into secondary products to increase overall product value.

Agriculture services assist the agricultural operator in the production of primary and value-added agriculture products and services.

Small scale means activities that are minor in nature, as per the land use bylaw; and limited in scope, extent, traffic, and employees. Small scale, value-added agriculture and agriculture services may not require upgrades to the road network if traffic volumes can be safely accommodated. Examples of small scale, value-added production and agriculture services include:

- berries to jam
- meat to sausage
- agri-tourism
- farrier services
- welding shop

Natural Capital is the land resource that supports economic activity (agriculture, forestry, recreation). It includes physical resources (minerals, timber, and petroleum) as well as the ecosystems (grasslands, wetlands, and forests) that produce ecological goods and services (clean water and air).

Farmstead means a single parcel of land on which a habitable residence is situated for a minimum of 10 years, is used in connection with the ranching or farming operation, and is located on a previously unsubdivided quarter section. The farmstead may include associated buildings and landscape improvements.

Physical Constraint means a natural feature or human made hazard that impacts or restricts site suitability for development. Constraints include; rivers, water bodies, wetlands, ravines, escarpments, steep slopes, land that is subject to flooding, and land that is, in the opinion of the subdivision authority, unstable.

Agriculture First Parcel Out

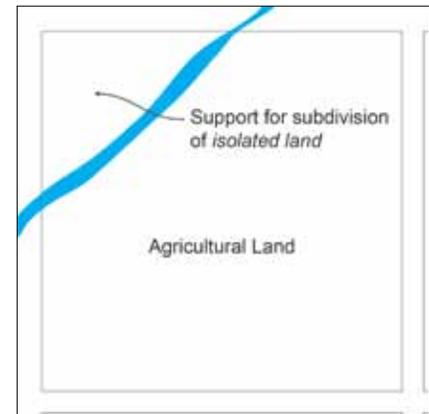
- 8.18 First parcel out subdivision of a minimum of 20.23 hectares (50.00 acres) of land designated for agricultural use should be supported without redesignation if:
- the proposed site meets the definition of a first parcel out; and
 - access to the proposed site is acceptable to the County.
- 8.19 First parcel out subdivision of *isolated land* designated for agricultural use should be supported without redesignation if:
- it meets the definition of a first parcel out;
 - the parcel size is greater than or equal to 8.10 hectares (20.01 acres);
 - a minimum of 2 acres of developable land exists; and
 - access to the proposed site is acceptable to the County;

Residential First Parcel Out

- 8.20 A first parcel out residential redesignation and subdivision of a parcel of land between 1.60 hectares (3.95 acres) and a maximum of 2.50 hectares (6.18 acres) in size should be supported if the proposed site:
- meets the definition of a first parcel out;
 - is redesignated to a residential land use whose minimum parcel size allows only one lot to be created at subdivision;
 - is located at least 300 metres from the right-of-way of a highway, or as otherwise allowed by the Province;
 - has direct access to a developed public roadway;
 - has no physical constraints to subdivision;
 - minimizes the need for new public infrastructure;
 - minimizes adverse impacts on agricultural operations by meeting agriculture location and agriculture boundary design guidelines; and
 - the balance of the *un-subdivided quarter section* is maintained as an agricultural land use.

Isolated Land means the smaller portion of an un-subdivided quarter section that, in the opinion of the County, is isolated from the rest of the quarter section by a physical barrier that prohibits the movement of livestock or equipment. The barrier may have been created by natural features such as a river, ravine, wetland, or human made features such as roads, railway lines, and irrigation canals.

Isolated land Example



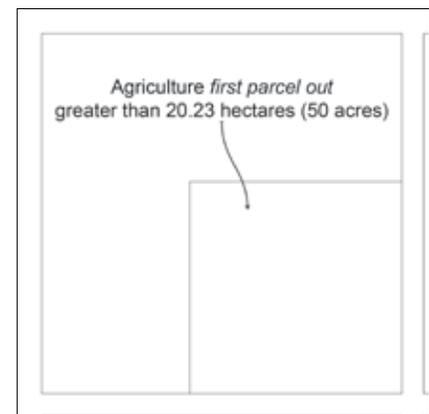
Un-subdivided Quarter Section is a titled area of:

- 64.7 hectares (160 acres) more or less; or
- a *gore strip* greater than 32.38 hectares (80 acres) in size,

that has not been subdivided, excluding subdivisions for boundary adjustments; road widening; and public uses such as a school site, community hall, and rights of way of roads, railroads, and canals.

Gore Strip means a fractional $\frac{1}{4}$ section of land created to allow for the convergence of meridian lines.

Agriculture first parcel out



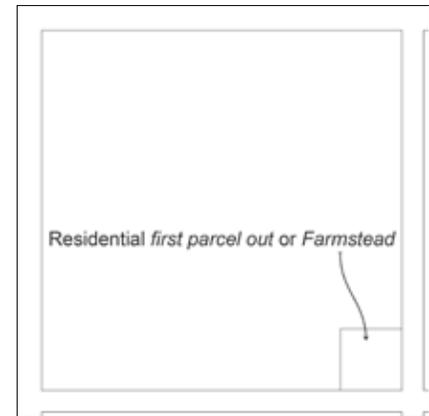
- 8.21 A residential first parcel out redesignation and subdivision greater than 2.50 hectares (6.18 acres) in size to a maximum of 7.99 hectares (19.7 acres) may be supported if:
- a proposed agricultural use requires additional area;
 - meets the criteria of policy 8.20;
 - setbacks, topography, or natural features require a larger parcel size; or
 - it is isolated land.

Redesignation and Subdivision for Agricultural Purposes

The following policies provide for a variety of parcel sizes to accommodate a wide range of agricultural pursuits by acknowledging that emerging trends in agriculture may be successfully developed on smaller parcels of land.

- 8.22 Redesignation and subdivision to smaller agriculture parcels as a new or distinct agricultural operation may be supported. Proposals will be evaluated on the following criteria:
- A similar pattern of nearby small agricultural operations;
 - A planning rationale justifying why the existing land use and parcel size cannot accommodate the *new or distinct agricultural operation*;
 - A demonstration of the need for the new agriculture operation;
 - An assessment of the proposed parcel size and design, to demonstrate it is capable of supporting the new or distinct agricultural operation. Site assessment criteria include:
 - suitable soil characteristics and topography;
 - suitable on-site infrastructure for the proposed use. Required infrastructure may include access areas, water wells, irrigation and sewage infrastructure, and manure management capability; and
 - compatibility with existing uses on the parent parcel and adjacent lands;
 - An assessment of the impact on, and potential upgrades to, County infrastructure; and
 - An assessment of the impact on the environment including air quality, surface water, and groundwater.
- 8.23 The approval of discretionary agriculture land uses, or land uses related to agriculture, is supported where there are existing or potential concentrations of agricultural resources, markets, animal types, agriculture related industries, or other discretionary land uses, as identified in the Land Use Bylaw.

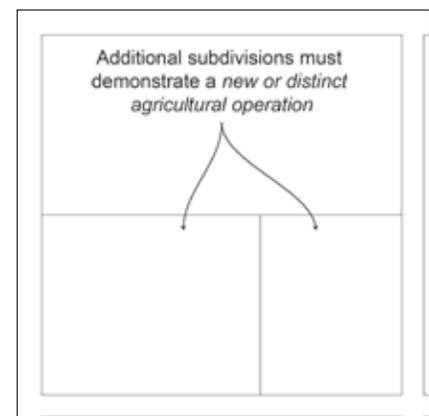
Residential first parcel out



New or Distinct Agricultural Operation

- New agricultural operations are distinctly different from the existing use of the land in terms of agricultural products, livestock, and/or facilities.
- Distinct operations are where two or more different agricultural uses are established on a single agriculture parcel for a period of 5 years or more. Such uses may include agricultural products, livestock, and/or facilities.

New or distinct agricultural operation example



Estate planning or personal financial considerations do not constitute a planning rationale for changing a parcel's land use.

Confined Feeding Operations

The Province defines, approves, and regulates *confined feeding operations*. Municipalities may make recommendations to the Province regarding location and operation of confined feeding operations.

- 8.24 The County should make site recommendations on all new or expanded confined feeding operations. The recommendation will consider:
- proximity to any County statutory planning area, adjacent municipality, existing residential developments, or residential land use;
 - impact on adjacent land uses;
 - proposed minimum distance of separation;
 - environmental impact;
 - impact on the County infrastructure; and
 - any other matter the County considers relevant.
- 8.25 It is recommended a confined feeding operation applicant provide nearby landowners with technical and design information, receive feedback through a public involvement process, and report back to the County on how the proposal addresses public input.
- 8.26 Confined feeding operations should be located in an area where there will be minimal conflict with non-complementary land uses.
- 8.27 Land uses incompatible with the operation of a confined feeding operation shall not be supported when proposed within the *minimum distance of separation* of the confined feeding operation.
- 8.28 A confined feeding operation, including its minimum distance of separation should not be located within the boundary of any intermunicipal development plan or notification zone, statutory planning area, hamlet, residential area, institutional use, or federal, provincial, or municipal park or recreation area.

Confined Feeding Operation means fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing, or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks, or exhibition grounds.

Minimum Distance of Separation means a provincially regulated setback established between a confined feeding operation and the neighbouring residences that is in existence at the time the application is submitted. The purpose is to minimize the impact of odour. It is measured from the outside walls of neighbouring residences to the point closest to the confined feeding operation's manure storage facilities or manure collection areas.

Minimize Land Use Conflict

Non-agricultural development adjacent to, or near, an agricultural operation may adversely impact that operation. One way of addressing land use compatibility is to emphasize the importance of buffering and setbacks.

- 8.29 Discourage intrusive and/or incompatible land use in the agricultural area.
- 8.30 Applicants proposing new residential, institutional, commercial, and industrial land uses shall design and implement measures to minimize their adverse impacts on existing agriculture operations, based on the County's 'agriculture boundary design guidelines.'
- 8.31 Encourage houses in residential areas adjacent to agricultural land to be set back an appropriate distance from the agricultural land so as to minimize the impact on both the agriculture operations and the house owners.
- 8.32 Work with adjacent municipalities to minimize the adverse impact of new land uses within their jurisdiction on existing agriculture operations in Rocky View County. Ensure joint planning with adjacent municipalities respects and addresses the County's 'agriculture boundary design guidelines'.

ACTIONS

- Review the Land Use Bylaw home based business uses and regulations to provide greater opportunity on larger parcels of land (policy 8.11).
- Explore the use of provincial tools to compensate landowners for the natural capital of agricultural land (policy 8.12).
- Review the Land Use Bylaw to allow for the development of renewable energy sources. (policy 8.13).
- Amend the Land Use Bylaw to allow a first parcel out for an agriculture subdivision, and agriculture subdivision of isolated land without redesignation (policies 8.18 to 8.19).
- Develop a Right to Farm Policy which aligns with provincial legislation and, where feasible, enhances provincial objectives (policies 8.29 to 8.30).
- Develop and apply 'agriculture boundary design guidelines' to minimize negative impacts on agricultural land from new non-agricultural land uses, including a consideration of increased building setbacks (policy 8.31).

9.0 HAMLETS

Hamlets form a traditional part of the rural landscape. The County's hamlets vary in size, appearance, and function, with each hamlet having a distinct character that reflects its particular history and environment. Hamlets range from those with a wide variety of services and relatively steady growth, to those with limited services and little or no growth.

Hamlet communities are encouraged to build on their historical character and to evolve over time. This Plan provides policies to ensure development strengthens these communities, is sensitive to the needs of all residents, and is as orderly and efficient as possible. Local community planning processes will determine hamlet form, amenities, and population size.

GOALS

- Support hamlets in maintaining and developing a strong sense of community identity and in carrying on their role as service hubs to the surrounding agricultural regions.
- Support hamlets in developing and maintaining attractive, high quality built environments and distinct, safe residential neighbourhoods.

POLICIES

Hamlets: Appearance and Function

- 9.1 Encourage and support the development of the Hamlets of Conrich, Harmony, Langdon, Balzac, and Glenbow Ranch as full service rural communities providing a range of land uses, housing types, and rural services to their residents and local area, in accordance with their area structure plan or conceptual scheme.
- 9.2 Support the development of the Hamlets of Bragg Creek, Cochrane Lake, Kathyrn, Delacour, Dalroy, and Indus as small rural communities with basic services, in accordance with their area structure plan or conceptual scheme.
- 9.3 Services in hamlets will be rural in nature and not necessarily equivalent to those in urban municipalities.
- 9.4 Land uses in hamlets may include:
 - a. residential uses, including seniors housing;
 - b. local commercial uses;
 - c. institutional and community uses such as schools, community halls, and religious assemblies;
 - d. recreational and cultural uses; and
 - e. light industrial uses.

Balzac

Balzac is named after a famous French writer, Honore de Balzac (1799 - 1850) who was the favourite author of a CPR executive in the early 20th Century. Balzac was designated as a flag station on the CPR line to Edmonton in 1915.

Bottrel

Bottrel is named after Edward Botterel (Botterel was originally misspelled.) who came to the area from Montreal in order to start the Dog Pound Ranch in 1892, later named the Bottrel Ranch.

Bragg Creek

Bragg Creek is named after Albert Warren Bragg and John Thomas Bragg who homesteaded in the area in 1894. Established between the forest reserve, the Tsuu T'ina reserve and a Provincial Park, the community founds its roots in recreation.

Cochrane Lake

The Hamlet derives its name from Senator Matthew Henry Cochrane, who founded the Cochrane Ranche in 1881. Development began in Cochrane Lake in 1962.

Conrich

Conrich was named after two real estate developers, Connacher and Richardson. The hamlet was established in 1913.

Dalemead

Established in 1913, originally named Strathmead but after some confusion with the nearby town of Strathmore, its name was changed to Dalemead.

Dalroy

Dalroy was established in 1910, just before the rail line was constructed from Langdon to Acme.

Delacour

Named after Mr. De Lacour, the foreman of the crew building the Grand Trunk railway, a small store was established in the community in 1914.

- 9.5 In order to retain their rural character, hamlets are not encouraged to grow beyond a population range of 5,000 - 10,000 residents.

Hamlets: Planning and Design Considerations

- 9.6 Development in a hamlet shall be guided by, and conform to, the adopted area structure plan or conceptual scheme.
- 9.7 All new commercial or industrial subdivisions or multi-lot residential subdivisions proposed within a hamlet shall require the preparation of a subordinate plan to the area structure plan or conceptual scheme.
- 9.8 An area structure plan for a hamlet shall address the following planning and design matters:
- a. future land use concept;
 - b. the amount of remaining undeveloped land within existing boundaries;
 - c. population estimates and impact on existing services, infrastructure, and amenities;
 - d. form, quality, design, and compatibility of proposed development;
 - e. potential for enhancements to the main street, crossroads area, and/or community gathering places;
 - f. provision of sufficient parks, open space, amenities, and pedestrian connections;
 - g. impact on the environment;
 - h. interface design with adjacent agriculture land;
 - i. provision for regional transit connections; and
 - j. the proposal addresses the development review criteria identified in section 29.
- 9.9 In order to retain rural character, identify a distinct community, and preserve viewscales, a physical separation between an urban boundary and a hamlet is desirable. Preferred uses of land to achieve this transition are:
- a. agriculture;
 - b. open space and parks;
 - c. conservation lands such as wetland complexes;
 - d. stormwater retention areas; and
 - e. compact country residential development within the transition area.

Indus

Established in 1911, Indus was named by Dr. J.M. Fulton who submitted a shortened form of the word "industry". A more romantic version links the name to an Indian name meaning "constellation of the stars."

Kathryn

Established in 1911, Kathryn is named after a daughter of a local pioneer, Neil McKay. Neil McKay offered a piece of land to the railway for the town site so the town would be named after his daughter. The unusual spelling is apparently the responsibility of a sign painter whose spelling skills left something to be desired.

Keoma

Keoma made its first appearance in 1910, just as the CP rail line was completed through to Irricana and Beiseker. Keoma is an Indian name meaning "far away".

Langdon

Langdon was named after Jim Langdon of Langdon and Shepard railroad contractors and at one time was the end of the railway line.

Madden

Madden is named after Bernard "Barney" Madden, an early pioneer who is believed to have homesteaded in the area before 1880. Madden was also known as Sampsonston.

- 9.10 Support hamlets in providing:
 - a. an attractive community and distinct identity; and
 - b. a high quality built environment.
- 9.11 Encourage a variety of housing forms to be developed in hamlets in order to provide a range of affordability and lifestyle opportunities for county residents.
- 9.12 Support local employment and small business opportunities in hamlets.
- 9.13 Encourage well-designed public gathering places in hamlets that:
 - a. are pedestrian and cyclist-friendly, safe, accessible, and attractive;
 - b. respect and enhance community identity and character;
 - c. encourage social interaction;
 - d. address the needs of residents of all ages and abilities;
 - e. are connected by pathways and sidewalks;
 - f. allow for passive and active recreation and cultural activity.

10.0 COUNTRY RESIDENTIAL DEVELOPMENT

Country residential communities are a form of rural living. They play a significant role in shaping the landscape and providing a sense of belonging to their residents. The county has a number of country residential communities, some formally defined by area structure plan policy, while others have grown gradually over time.

GOALS

- Manage the planning and development of country residential communities so that they provide residents with a safe, healthy, and attractive community.
- Support country residential communities in maintaining a strong sense of community.
- Encourage alternative residential development forms that retain rural character and reduce the overall development footprint on the landscape.
- Provide an effective process to support the orderly, efficient, and cost effective development of fragmented quarter sections in agricultural areas.

POLICIES

Country Residential Communities.

- 10.1 Development within Greater Bragg Creek, Bearspaw, North and Central Springbank, Elbow Valley, Balzac East (Sharp Hills/Butte Hills), Cochrane North, and Glenbow Ranch shall conform to their relevant area structure plan.
- 10.2 Country residential development in the agriculture area shall be guided by the goals and policies of this Plan.
- 10.3 Encourage and support country residential communities in providing a high quality built environment while maintaining rural character.
- 10.4 Country residential development shall address the development review criteria identified in section 29.

Amendments to Existing Country Residential Area Structure Plans

- 10.5 When an existing country residential area structure plan is undergoing a comprehensive review, the following policy areas shall be addressed:
 - a. Update all policies in accordance with this Plan, County Policies, and other relevant County planning documents.
 - b. Consider alternative development forms, such as compact residential development or a Conservation Community, which retain rural character and reduce the overall development footprint on the landscape.

Within the county there is considerable variety in the appearance and character of **country residential** communities. Common characteristics include:

- mainly residential,
- variety of lot sizes,
- primarily dispersed low density development,
- rural character,
- designed with the landscape, and
- passive and active recreational, and cultural opportunities

- c. Where an area structure plan is extensive in size and the development potential is not being achieved as expected, communities and the County should consider reducing the overall area dedicated to country residential development.
- d. Where an area structure plan is extensive in size, and has distinct natural planning or physical boundaries, a separate area structure plan may be created to deal with the planning considerations in the identified area.
- e. Consider the planning and design direction for new country residential communities (policy 10.6).

New Country Residential Communities: Planning and Design

The Managing Growth section (5.0) of this Plan does not contemplate the development of new country residential area structure plans or the expansion of existing area structure plans until those plans reach *build-out*. However, if an application complies with the requirements of policy 5.9 and the County determines a new or amended country residential area structure plan is needed, the plan will be evaluated on the basis of its compliance with policy 10.6, as well as other policies of this Plan.

10.6 Where a new country residential area structure plan is needed the plan should:

- a. ensure development supports rural character, is well designed, and conforms to current technical servicing requirements and master servicing plans and policies;
- b. propose alternative residential development forms, such as *compact residential development* or a Conservation Community, to reduce the development footprint on the rural landscape;
- c. provide for well-designed public gathering places such as parks, open spaces, and community facilities. Gathering places should:
 - i. be safe, accessible, and attractive;
 - ii. be centrally located;
 - iii. respect and enhance community identity and character;
 - iv. encourage social interaction; and
 - v. address the needs of residents of all ages and abilities.

Build-out is an estimate of the amount and location of potential housing or business development for an area.

Compact residential development has the following features:

- permanent retention of a significant amount of open land;
- no reduction in dwelling units within the overall project area;
- may provide for a range of housing types and lot sizes;
- reduced development footprint;
- reduced infrastructure costs by shortening road and utility runs;
- increased opportunities to treat and store stormwater;
- opportunity for onsite waste water treatment systems; and
- retention of rural character.

Traditional country residential development



Compact residential development



- d. ensure development retains the area's natural features and that buildings are situated to create minimal visual impact on adjoining properties;
- e. provide patterns of development and transportation networks that create linkages between subordinate plans; and
- f. address the following matters:
 - i. future land use concept, population at build-out, and the phasing of development;
 - ii. form, quality, design, and compatibility with existing development;
 - iii. impact on municipal servicing costs and proximity of development to existing road and servicing infrastructure;
 - iv. fiscal impact analysis;
 - v. efficient internal road network;
 - vi. need for institutional uses, open space, recreational areas, amenities, and pedestrian connections;
 - vii. impact on the environment;
 - viii. designing with the landscape;
 - ix. interface design with adjacent agriculture land; and
 - x. other policies of this Plan.

Compact Residential Development

Compact residential design sensitively integrates housing with the natural features and topography of a site by grouping homes on smaller lots, while permanently preserving a significant amount of buildable land for conservation, recreation, or agriculture uses. Principles of compact development suggest "half or more of the buildable land area is designated as undivided permanent open space."¹⁴

- 10.7 Incorporate compact residential development as a development form in new country residential area structure plans and consider it when amending existing country residential area structure plans.
- 10.8 Compact residential development shall be designed to achieve:
 - a. a reduction in the overall development footprint through a permanent retention of a portion of *developable land* as *open land*;
 - b. a portion of open land that is publicly accessible and used for *greenways*, regional pathways, and/or trails;

Developable Land includes all land on which building could occur and excludes land identified as environmental reserve or environmental reserve easement.

Open Land is developable land and includes:

- i. parks and open space;
- ii. publicly or privately owned land permanently used for conservation, recreation, agriculture, and/or institution uses;
- iii. public utility lots;
- iv. municipal reserve land dedication;
- v. riparian areas, constructed wetlands, stormwater treatment areas, wastewater treatment areas;
- vi. flood fringe areas; and
- vii. Other environmentally important land not qualifying as environmental reserve.

Primary uses of open land are for conservation, recreation, and/or agriculture.

A **greenway** is a linear open space established along a corridor, such as a river, stream, ridgeline, rail-trail, canal, or other route suitable for conservation and recreation purposes.

¹⁴ Conservation Design for Subdivisions: A practical guide to creating open space networks. Randall G. Arendt 1996, pg. 6.

- c. an efficient, compact, walkable building area;
- d. servicing and transportation efficiencies, minimizing operational costs, and retention of viewscales;
- e. minimal impacts on adjacent agricultural operations; and
- f. environmental best practices, interconnected open land, efficient development, and retention of rural character.

10.9 Area structure plans providing for compact residential development shall:

- a. be informed by an analysis of conservation, recreational, and/or agriculture needs;
- b. permanently retain a significant amount of the developable area as *open land*. The minimum desired percentage of open land will be determined by the area structure plan;
- c. determine the parameters for establishing the maximum number of dwelling units on the basis of developable land;
- d. provide for the distribution and varied densities of dwelling units within portions of the development area;
- e. allow for residential dwelling unit bonusing when dedicated open land exceeds the minimum requirement or to achieve other identified benefits;
- f. identify and apply mechanisms that permanently prevent subdivision of the open lands; and
- g. identify mechanisms to effectively manage the open lands.

Conservation Community

A Conservation Community is a form of compact development that incorporates conservation design principles. A Conservation Community is large in scale and may include the characteristics of a hamlet by concentrating allowable country residential development into a mixed-use centre that includes residential, institutional and limited commercial uses.

10.10 Conservation Communities:

- a. shall comprise multiple quarter sections of land that are comprehensively planned and developed;
- b. shall follow *conservation design* principles;
- c. shall meet the intent of the Compact Residential Development preamble and the requirements of policies 10.8 and 10.9;
- d. may include a mixed use centre that:
 - i. shall address all relevant parts of Section 9.0 (Hamlets), section 14.0 (Business) and other policies of this Plan; and
 - ii. shall not be required to meet the conditions of policy 5.4 (new hamlet development).

Fragmented Country Residential Areas

Historical subdivision approval in parts of the County's agricultural area has resulted in fragmented pockets of country residential lots and small agricultural parcels.

Incremental development in these areas divides viable agricultural land, impacts agriculture operators, and creates an inefficient settlement pattern. From a fiscal perspective, dispersed residential development is not cost effective; requiring increased road maintenance and impacting service providers such as the County and local school boards.

In response to this development pattern, this Plan addresses the issues related to fragmented land and provides policies to enable a gradual transition to a more orderly and efficient residential development pattern within *fragmented quarter sections*.

- 10.11 Within a fragmented quarter section, the redesignation of residential lots or agricultural parcels less than or equal to 10 hectares (24.7 acres) in size to a new residential land use may be supported if the following criteria are met:
 - a. A *lot and road plan* is provided that;
 - i. plans for an area determined by the County at the time of redesignation application. The plan shall include, at a minimum, all residential or small agricultural acreages that are adjacent to the application;

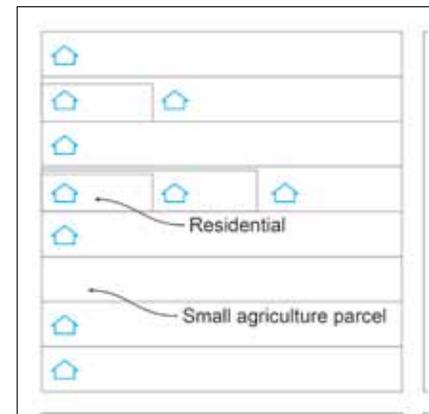
Conservation design is a method of site planning that begins with the identification of a land area's features and values that are to be retained and protected. These features may include natural habitat, wildlife corridors, open land, vistas, farm/ranch land and historical areas. Once these areas are identified for protection, sustainable site planning may occur on the remaining lands.

Fragmented Quarter Section

is a quarter section of land within the agriculture area divided into six or more:

- i. residential lots; and/or
- ii. small agricultural parcels, each of which is less than 10 hectares (24.7 acres) in size.

Fragmented quarter section example



A **lot and road plan** is a non-statutory plan that accompanies a land use redesignation application and is used to comprehensively address a limited set of specific planning issues. It addresses the practical difficulty of multiple parcel ownership and the burden of plan preparation falling on a single owner of a limited amount of land. The lot and road plan requires consultation with owners within the plan area and will be retained by the County to guide future subdivision approval.

- ii. includes design measures to minimize adverse impacts on existing agriculture operations; and
 - iii. demonstrates potential connectivity to residential or small agricultural acreages outside of the lot and road plan area.
 - b. A technical assessment of the proposed design is provided, to demonstrate that the lot and road plan area is capable of supporting increased residential development. The assessment shall address:
 - i. the internal road network, water supply, sewage treatment, and stormwater management; and
 - ii. any other assessment required by unique area conditions.
 - c. A technical assessment of the impact on off-site infrastructure, roads, and stormwater systems is provided;
 - d. A report is provided that documents the consultation process undertaken to involve affected landowners within the plan area in the preparation and/or review of the lot and road plan.
- 10.12 Within a fragmented quarter section, the redesignation or subdivision of agriculture parcels greater than 10 hectares (24.7 acres) in size to a residential use shall not be supported. Redesignation or subdivision to a new or distinct agricultural operation may be supported as per policy 8.22.
- 10.13 Subdivision of residential lots or small agricultural parcels within a fragmented quarter section may be supported if:
 - a. a lot and road plan acceptable to the County has been provided;
 - b. the application area has the appropriate land use designation; and
 - c. the conditions of subdivision implement the lot and road plan.
- 10.14 For development within a fragmented quarter section, an internal road to service a subdivision as per the lot and road plan may be required as a condition of subdivision.
- 10.15 The County strongly encourages the applicant preparing a lot and road plan in a fragmented quarter section to work co-operatively, collaboratively, and equitably with land owners in the lot and road plan area to:
 - a. ensure an effective road network, servicing, and stormwater management system; and
 - b. maximize lot yields which create an efficient development pattern.

ACTIONS

- Develop planning and design standards and guidelines with respect to compact country residential development (policies 10.7 to 10.9).
- Amend the Land Use Bylaw to accommodate compact residential forms of development contemplated in this Plan (policies 10.7 to 10.9).

11.0 INSTITUTIONAL AND COMMUNITY LAND USE

Institutional and community land uses benefit residents and contribute to the community by serving culture, education, health, religious, recreation, and social needs.

GOALS

- Ensure institutional and community land uses support local needs, are appropriately located, are well designed, and enhance the local community.
- Provide opportunities for institutional and community uses that serve the broader public interest, while ensuring they are compatible with surrounding land uses.

POLICY

- 11.1 Institutional and community land uses shall be encouraged to locate in hamlets, country residential communities, and business centres and shall be developed in accordance with the policies of the relevant area structure plan or conceptual scheme.
- 11.2 Proposed institutional and community land uses for hamlets or country residential communities shall demonstrate:
- a. a benefit to the local area or community; and
 - b. compatibility with existing land uses.
- 11.3 Proposals for institutional and community land uses that are not within hamlets, country residential communities, or business centres may be considered if the following is addressed:
- a. justification of the proposed location;
 - b. demonstration of the benefit to the broader public;
 - c. compatibility and integration with existing land uses or nearby communities;
 - d. infrastructure with the capacity to service the proposed development; and
 - e. the development review criteria identified in section 29.
- 11.4 When area structure plans are prepared or amended, the planning process shall address the need for institutional and community land uses, and where appropriate, consult with school boards, recreation boards, and other relevant partners.

Community uses include a wide range of activities such as:

- Public and private schools
- Places of worship
- Libraries
- Senior's and youth centres
- Recreational facilities
- Emergency services
- Day cares
- Museums
- Health Care facilities
- Government facilities
- Camps and retreats

- 11.5 Redesignation and subdivision applications for institutional and community land uses should provide:
- a. an operational plan outlining details such as facility hours, capacity, staff and public numbers, facility use, and parking requirements; and
 - b. a master site development plan, as per section 29. The master site development plan shall address servicing and transportation requirements and ensure the site is of sufficient size to accommodate the parking requirements as set out in the Land Use Bylaw.

12.0 PARKS, OPEN SPACE, PATHWAYS, AND TRAILS

Parks, open space, pathways, and trails contribute to community building by preserving rural landscapes and providing residents opportunities for passive and active recreation. The County Plan supports the development and protection of these amenities by providing guidance on: development along park boundaries; parks and open space creation; land acquisition; pathway and trail linkages; and amenity design and construction.

GOALS

- Provide a variety of parks, open space, pathways, and trails that are well designed, connect communities, and accommodate residents' recreational and cultural needs.
- Acquire land for parks, open space, pathways, and trails through such means as purchase, land dedication, and donations.
- Partner and collaborate with neighbouring municipalities and other organizations in the development, use, and maintenance of parks, pathways, and trails.
- Ensure transition areas between parks and adjacent uses are well designed and complement the park's function.

POLICY

Partnering on Parks Development, Connectivity, and Maintenance

- 12.1 Partner and collaborate with adjacent municipalities, the province, school divisions, conservation agencies, district and regional recreation boards, community groups, developers, and other organizations to develop and maintain parks, open space, pathways, trails, and associated amenities.
- 12.2 Encourage multi-purpose and joint use parks and recreation facilities projects wherever possible.
- 12.3 Promote and provide for the connectivity of pathways and trails to hamlets, small towns, and adjacent municipalities in a manner consistent with the Parks and Open Space Master Plan and Local Recreation Master Plans.
- 12.4 Collaborate with adjacent municipalities on the development of the Trans-Canada Trail as a multi-use pathway throughout the county.

Park Planning and Land Acquisition

- 12.5 Engage in comprehensive parks and open space planning using the Parks and Open Space Master Plan as a guiding document.

Parks are developed public land and may include trails and pathways, sports facilities, play grounds, and recreation facilities.

Open space includes land and water areas with minimal development that are either publicly owned or offering public access.

Pathway means any recognized route that is formally engineered, constructed, and hard surfaced with asphalt or concrete.

Trail is any recognized, non-paved route which is surfaced with natural or aggregate materials.

- 12.6 Acquire land for parks, open space, pathways, trails, and recreational and cultural amenities, through such means as:
- dedication of reserve;
 - land purchase;
 - easements and rights-of-way; and
 - donations, endowment funds, and land swaps.

Design and Standards

- 12.7 Develop and apply design principles and guidelines to provide for high quality parks, open space, pathways, trails, and associated amenities. The principles and guidelines should address design elements such as:
- maintaining respect for the rural landscape;
 - providing variety in appearance and function to accommodate a diversity of people and interests;
 - minimizing land use conflicts;
 - protecting the privacy of residents;
 - incorporating *Crime Prevention Through Environmental Design* features; and
 - meeting the environmental goals and policies of this Plan.
- 12.8 Integrate and connect escarpments, creek valleys, river valleys, and water bodies through the development and use of parks, open space, pathways, and trails.
- 12.9 Connect residential communities, institutional, commercial, and industrial areas by pathways and trails where feasible.
- 12.10 Planning and design of pathways and trails in the agricultural area shall address the safety and protection of agricultural operations.
- 12.11 Apply design standards to help ensure consistent development of parks, pathways, and trail systems.

Financing and Life-Cycle Maintenance

- 12.12 Finance a system of parks, open space, pathways, and trails through both County and non-County funding measures. Use the Parks and Open Space Master Plan as a guiding policy document in determining strategies and priorities.
- 12.13 When approving new and redeveloped parks, open space, pathways, and trails, undertake a cost feasibility and life cycle analysis in accordance with County Policy.
- 12.14 Seek out non-County funding options for parks, open space, pathways, and trail development.

Crime Prevention Through Environmental Design (CPTED)

is an approach to planning and development that reduces the opportunities for crime. Proper design of a neighbourhood or public space can reduce crime, reduce the fear of crime, and improve residents' quality of life.

Parks and Community Interface

The County is fortunate to have provincial and county parks with regional and national significance. The following policies address the need to guide development at the border of these areas in order to retain their integrity.

- 12.15 The values of parks, open spaces, pathways, and trails should be respected and, where possible, enhanced by adjacent development.
- 12.16 Ensure the location, design, and scale of residential, institutional, commercial, and industrial development is sensitively integrated with adjacent parks, open space, trails, and pathways in a comprehensive and supporting manner.
- 12.17 Development adjacent to, or affecting, parks, open space, pathways, and trails should include a comprehensive approach to:
 - a. shared and mutually supportive facilities and/or amenities;
 - b. access;
 - c. stormwater management;
 - d. preserving viewscales into and within the park, where appropriate;
 - e. vegetation and invasive species management; and
 - f. wildlife management.

ACTIONS

- Identify key land required for parks acquisition (policy 12.5 and 12.6).
- Develop design principles and standards for the design, construction, maintenance, and operation of parks, open space, pathways, trails, and associated amenities (policy 12.7).
- Review and update the County's Parks and Open Space classification system to reflect new design standards when they are developed (policy 12.11).
- Develop a life-cycle fund to assist with capital replacement and repair costs (policy 12.13).

13.0 RESERVES

Reserves and environmental reserves are lands dedicated to the community as public land during the subdivision process. Reserves enhance the community by providing land for parks, schools, and recreational amenities. Environmental Reserves protect the community and natural environment by preventing development in hazardous areas such as ravines and floodways.

GOALS

- Ensure reserve lands contribute to residents' recreational, educational, social, and environmental needs.
- Acquire reserve lands for parks, open space, pathways, and trail development.
- Prevent development in hazardous areas, provide access to lakes and rivers, and protect the natural environment by the dedication of environmental reserves.

POLICY

Municipal, School, and Community Reserves

- 13.1 When acquiring reserves, the County shall require that the owners of land proposed for subdivision provide reserves in the form of:
 - a. land;
 - b. money in place of land; or
 - c. a combination of land and money.
- 13.2 The County may defer all or a portion of the required reserves by registering a deferred reserve caveat when the reserve could be provided through future subdivision.
- 13.3 The acquisition, deferral, and disposition of reserve land, and use of cash-in-lieu shall adhere to County Policy, agreements with local school boards, and the requirements of the Municipal Government Act.
- 13.4 Reserves should be provided to the maximum amount allowed by the Municipal Government Act.
- 13.5 The County may accept a voluntary dedication of reserve land beyond the maximum amount allowed by the Municipal Government Act. Over-dedication of reserve land may be used to support the development of a compact residential community or any other need identified by the County.

Reserves are lands dedicated to the community by the developer through the subdivision process as defined in the Municipal Government Act and include:

- Municipal reserves
- community services
- school and municipal reserves
- school reserves

Instead of a land dedication, the County may accept the equivalent value of the land as money. **Cash-in-lieu** money is shared between the school boards and the recreation districts.

- 13.6 When assessing the proposed dedication of reserve land, the dedication should meet the present or future needs of the County by considering the recommendations of this Plan, the Parks and Open Space Master Plan, area structure plans, conceptual schemes, local school boards, local recreation boards, and regional recreation boards.
- 13.7 The amount, type, location, and shape of reserve land shall be suitable for public use and accessible to the public.
- 13.8 When determining the amount, type, location, and shape of the reserve land within an intermunicipal development plan area, the adjacent municipality shall be consulted prior to determining the reserve requirement.
- 13.9 The County shall not dispose of reserve land in an intermunicipal development plan area without prior consultation with the appropriate municipality.

Environmental Reserve and Environmental Reserve Easements

- 13.10 *Environmental reserves or environmental reserve easements* shall be taken at the time of subdivision, in accordance with the Municipal Government Act, on lands designated for:
- residential, business, or institutional uses;
 - on agricultural parcels less than 12.00 hectares (29.65 acres); or
 - as determined by the County.
- 13.11 Where the County determines public use is not desirable or where management of public land by the County is not required, land qualifying as environmental reserve may be designated as an environmental reserve easement in accordance with the Municipal Government Act.
- 13.12 A voluntary *conservation easement*, in accordance with the Alberta Land Stewardship Act, may be used to preserve areas that do not qualify as environmental reserve or environmental reserve easements under the Municipal Government Act. The conservation easement may be executed as a legal agreement between the private landowner and the County or a conservation organization.

Environmental reserves are defined in the Municipal Government Act as lands dedicated to prevent development in hazard areas (e.g. floodways or escarpments), reduce water pollution, and provide access to lakes and rivers. Environmental reserves are dedicated as public land.

Environmental reserve easements have the same goals and obligations as environmental reserves under the Municipal Government Act, but are allowed to remain privately owned.

A **conservation easement** is a method to protect significant natural landscape features or agriculture land whereby a landowner voluntarily gives up all or some of the rights to develop the land.

14.0 BUSINESS DEVELOPMENT

A strong local economy provides multiple benefits to the social, economic, and environmental fabric of the County. Businesses provide:

- employment and services
- a commercial focus adding to the vitality of a hamlet
- taxes to help provide community services
- local employment to reduce vehicle use

The County Plan provides a number of business areas and development forms which accommodate the wide variety of businesses wishing to locate in the county. This Plan identifies regional business centres, highway business areas, and hamlet business areas as areas where the majority of commercial and industrial development should locate. By focusing development in these locations, the County provides for orderly growth and economic efficiencies in the development of its transportation and infrastructure systems.

The County Plan supports and encourages a robust market-driven economy by facilitating economic development and providing planning policies that help foster private and public investment in the county.

GOALS

- Provide a range of well-designed *business areas* that serve county residents and the Calgary region.
- Direct the majority of new commercial and industrial businesses to locate in the business areas identified on Map 1.
- Support the growth of a variety of business areas, agriculture businesses, and home based businesses.
- Support hamlets in developing main streets or central commercial areas that add to the social fabric of the hamlet and provide enhanced services to the local area.
- Support business development that meets the County's community and environmental goals.
- Increase the business assessment base to support the financial sustainability of the County's operations, while reducing reliance on the residential tax base.

The term **business** is used in its broadest meaning to encompass commercial, industrial, agriculture, and home based activities.

Business areas are defined as regional business centres, highway business areas, hamlet business areas, or areas for business identified in an area structure plan or conceptual scheme.

The general location of existing or proposed regional business centres, highway business areas, and hamlet business areas is shown on Map 1.

POLICY

General Business

- 14.1 Provide a range of locations and development forms in the county to accommodate the growth and diversification of the county's business sectors.
- 14.2 Direct business development to locate in identified business areas as identified on Map 1.
- 14.3 Encourage the infilling or intensification of existing business areas and hamlet main streets in order to complement other businesses, maximize the use of existing infrastructure, minimize land use conflicts with agriculture uses, and minimize the amount of traffic being drawn into rural areas.
- 14.4 A business area shall have an adopted area structure plan in place prior to development, with the exception of lands in business areas that already have the appropriate land use designation allowing business development.
- 14.5 Boundary expansion of a business area shall require an area structure plan or an area structure plan amendment.
- 14.6 Business development shall address the:
 - a. County's Commercial, Office, and Industrial Design Guidelines; and
 - b. development review criteria identified in section 29.

Regional Business Centres

Regional business centres are large areas of commercial and industrial development within the County. The purpose of a regional business centre is to provide regional and national business services, and local and regional employment opportunities. Regional business centres make a significant contribution in achieving the County's fiscal goals.

Substantive planning, time, and public and private investment have resulted in identifying and developing regional business centres. This Plan does not contemplate developing other regional business centres until the identified centres are approaching full build-out.

Identified regional business centres, shown on Map 1, have the following characteristics:

- existing businesses
- an efficient road connection to the provincial highway network;
- significant scale and scope of operations;
- infrastructure with the potential to service the proposed development;

- potential of multiple transportation options (road, rail, or air); and
 - regulated by existing statutory policy, and/or identified in annexation agreements.
- 14.7 Development of a new regional business centre should not be supported unless a need has been demonstrated, based on the following criteria:
- a. the proposal has regional or national significance;
 - b. existing regional business centres within the *trade area* of the proposed development are approaching full build-out, and the County has determined the expansion of the existing regional business centres is not desirable;
 - c. existing regional business centres within the trade area do not meet market demand;
 - d. land uses and target markets are clearly defined;
 - e. the proposed development meets the environmental and infrastructure goals and policies of this Plan;
 - f. the proposed development has the potential to provide a substantial financial benefit to the County;
 - g. adverse impacts on existing residential communities and agriculture operations will be minimized; and
 - h. the proposed development is in close proximity to the provincial transportation network.
- 14.8 Direct new commercial and industrial development to existing, identified regional business centres and ensure development complies with existing area structure plans.

Trade area is the geographic area from which a business generates the majority of its customers.

Highway Business Areas

Highway business areas are intended to take advantage of the provincial highway system. They are of limited size and should be located in proximity to highway intersections and interchanges. The purpose of a highway business area is to contribute to the County's fiscal goals, provide destination commercial and business services, provide services to the traveling public, and offer local employment opportunities.

- 14.9 Area structure plans shall be adopted to provide the framework for highway business area development.

- 14.10 Highway business areas are identified on Map 1 and should have the following characteristics:
- a. located along intersections or interchanges with the provincial highway network;
 - b. land uses consistent with the purpose of a highway business area;
 - c. limited development area close to one or all of the quadrants of the intersection or interchange;
 - d. planned in a comprehensive manner and not subject to incremental expansion;
 - e. meet the environmental, infrastructure, and financial goals and policies of this Plan;
 - f. minimize adverse impacts on existing agriculture or residential development;
 - g. developed in consultation with Alberta Transportation; and
 - h. consistent with the provincial freeway and access location plans.
- 14.11 Proposed highway business areas not identified on Map 1 shall:
- a. meet the characteristics identified in policy 14.10; and
 - b. demonstrate the proposed location would not adversely impact the build-out of land within nearby business areas.
- 14.12 In the Conrich area, the relationship of business to the TransCanada Highway shall be determined by the applicable area structure plan.

Hamlet Business Areas

Hamlet business areas contribute to local employment opportunities and provide services to the local area. Hamlet business areas accommodate a wide variety of retail commercial, office commercial, and light industrial uses. There are a number of different forms of commercial or industrial business parks within the County's hamlets.

- 14.13 Planning and design of a hamlet business area shall be guided by the hamlet area structure plan, conceptual scheme, the Land Use Bylaw, and any other relevant statutory plan.
- 14.14 Hamlet business areas or regional business centres are supported in, or near, the Hamlets of Conrich, Harmony, Balzac, and Langdon.

Hamlet Main Street

Commercial and institutional development on a main street, crossroads, or central area contributes to the fabric of a hamlet by providing a community meeting place, adding visual interest to the hamlet, and offering services to the local area. The ability of the hamlet to support commercial development and institutional development is related to the size of the local population and the location of other commercial areas.

- 14.15 Support and encourage existing hamlets in developing and improving their main street, crossroads, or central area.
- 14.16 Hamlet main streets or central areas are encouraged to develop with a consistent design theme.
- 14.17 Hamlet area structure plans and/or subordinate plans shall address the design and function of the hamlet's main street, crossroads, or central area.

Agriculture

Agricultural operators and the entire agricultural sector make an important contribution to the County's economy and employment levels. The agricultural service goals, strategies, and policies that support the business of agriculture are found in policies 8.7 to 8.13.

Home Based Business

Home based business is encouraged as a self-employment opportunity for residents as long as the business has minimal impact on adjacent home owners and County infrastructure.

- 14.18 Home based business is encouraged and supported when it is in accordance with any applicable area structure plan, subordinate plan, and the Land Use Bylaw.

Other Business Development

Substantive planning, time, and public and private investment have resulted in identifying and developing business areas. This Plan encourages new businesses to locate within the existing business areas as identified on Map 1 and does not support business development on business area boundaries. Proposals for small scale business development away from identified business areas must justify their need and location.

- 14.19 Applications to redesignate land for business uses adjacent to, or in the vicinity of, the boundaries of an identified business area shall not be supported.
- 14.20 Small scale value-added agriculture and agriculture services, natural resource extraction, and business as defined in relevant Federal or Provincial legislation may be supported adjacent to, or near, a business area.

- 14.21 Applications to redesignate land for business uses outside of a business area shall provide a rationale that justifies why the proposed development cannot be located in a business area (e.g. requirement for unique infrastructure at the proposed location).
- 14.22 Proposals for business development outside of a business area should:
- a. be limited in size, scale, intensity, and scope;
 - b. have direct and safe access to a paved County road or Provincial highway;
 - c. provide a traffic impact and intersection assessment; and
 - d. minimize adverse impacts on existing residential, business, or agricultural uses.

Industrial Storage

Location and design are important factors when considering redesignation and subdivision applications for industrial storage. Unless they are properly sited and designed, industrial storage facilities may adversely impact land values and agricultural operations. They may also create traffic problems in an area by increasing traffic volume and dust.

- 14.23 Applications to redesignate land for industrial storage shall:
- a. Adhere to policies 14.19 to 14.22;
 - b. Locate in a manner that minimizes traffic and dust on nearby lands;
 - c. Provide a landscape and site development plan to reduce visual impact through the use of existing landscaping or topographical elements and visually attractive perimeter screening that incorporates vegetation, fencing, and/or berms; and
 - d. Provide a management plan for the handling and storage of waste materials, including leakage from vehicles or other sources.

Economic Development

- 14.24 Support business development, in accordance with the policies of the County Plan.
- 14.25 Facilitate economic development by providing assistance and reducing barriers to companies wishing to invest in the County.
- 14.26 Facilitate investment opportunities for a variety of investor groups.
- 14.27 Link investors and developers to investment opportunities.
- 14.28 Work with producers and commodity specialists to add value and expand the agriculture industry.

ACTIONS

- Undertake a commercial/industrial land inventory to assist in determining the future potential for the growth and diversification of the County's business sectors (policy 14.1).
- Develop Main Street commercial guidelines for the Hamlet of Langdon (policies 14.15 to 14.17).

15.0 NATURAL RESOURCES

Natural resource extraction is an important land use in the County that satisfies local, regional, and provincial resource needs. However, these activities may have significant impact on adjacent land uses and the environment. Aggregate (sand and gravel) and oil and gas extraction often cause community concern.

Aggregate resources are important for the construction of roads, buildings, and other infrastructure. A number of significant gravel resources are located in the county. Potential natural resource extraction impacts include: noise, air quality, truck traffic, aesthetics, and reclamation.

The County is responsible for approving land use and issuing development permits for all *aggregate extractions*. Additionally, aggregate pits of all sizes are subject to provincial legislation, with pits greater than five hectares on private land being further regulated by the Province through the Code of Practice for Pits. The Code of Practice addresses a number of items including pit operations, reclamation, and environmental monitoring.

In Alberta, the task of regulating energy development and related activities belongs to the Province. The County only has control over the design and appearance of permanent facilities such as gas processing plants.

GOAL

- Support the extraction of natural resources in a manner that balances the needs of residents, industry, and society.
- Support the environmentally responsible management and extraction of natural resources.

POLICY

Aggregate Extraction

- 15.1 Minimize the adverse impact of aggregate resource extraction on existing residents, adjacent land uses, and the environment.
- 15.2 Encourage collaboration between the County, the aggregate extraction industry, and affected residents to develop mutually agreeable solutions to mitigate impacts of extraction activities.
- 15.3 Discourage residential development that may limit future aggregate extraction when proposed outside of an adopted area structure plan.
- 15.4 Direct all aggregate related traffic to identified major haul routes that are monitored and appropriately maintained.

Aggregate extraction is considered a temporary land use, as the land will eventually be reclaimed and used for other purposes.

- 15.5 Where aggregate activities are located in proximity to an adjacent municipality, the County should co-operate with that jurisdiction to ensure co-ordination of major haul routes and mitigation of impacts on adjacent land uses.
- 15.6 Until such time as a County aggregate extraction policy is prepared, applications for aggregate extraction shall prepare a master site development plan that addresses the development review criteria identified in section 29.

Oil and Gas

- 15.7 Require appropriate design and appearance of permanent energy facilities in accordance with the Rocky View Commercial, Office, and Industrial Design Guidelines.
- 15.8 When considering applications for development, provincial setback regulations and guidelines shall be applied respecting petroleum wells, sour gas facilities, pipelines, and other oil and gas facilities.
- 15.9 Encourage the Province to minimize the impacts of oil and gas extraction on agriculture lands and to provide fair market value remuneration for the industrial use undertaken on those lands.
- 15.10 Encourage the Province and industry to efficiently and effectively remediate petroleum well sites and abandoned pipelines.

ACTIONS

- Prepare an aggregate extraction policy that addresses site design, location criteria, visual impact, mitigation of extraction impacts, and appropriate setbacks between extraction activities and other land uses (policies 15.1 to 15.6).
- Develop an aggregate management plan to identify resource areas and address land use management issues; prepare the plan in consultation with residents, industry, and stakeholder groups (policies 15.1 to 15.6).

16.0 TRANSPORTATION

Vehicular traffic is the primary method of transportation in the county and many residents have identified *highways* and *roads* as their highest County priority.¹⁵ Concerns include road maintenance, the interaction of vehicles, and alternative methods of transportation such as cycling and walking. The presence of airports and railroads creates a unique challenge to ensure surrounding development is compatible and complementary.

GOALS

- Support existing development and future growth areas by providing an effective and fiscally sustainable transportation system.
- Develop and maintain the County's transportation infrastructure in a safe, efficient, fair, and cost effective manner.
- Ensure communities are served by a well-designed and integrated transportation network.

POLICY

- 16.1 Partner and co-operate with the provincial government and neighbouring municipalities to protect and improve, where necessary, regional transportation corridors.
- 16.2 Partner and liaise with other municipalities and developers to co-ordinate transportation improvements and the expansion of transportation infrastructure.
- 16.3 New development shall make use of, extend, and enhance existing transportation infrastructure where feasible.

Road Planning and Development

- 16.4 Road network development shall be based on existing development, future growth areas, area structure plans, and interconnectivity with adjacent municipalities.
- 16.5 Ensure the *Transportation Model* remains current and relevant through regular reviews and updates. The Transportation Model will anticipate and plan future road networks based on:
 - a. Existing development patterns;
 - b. Identified growth areas;
 - c. Changing traffic types, patterns, and volumes; and
 - d. Provincial and adjacent municipal transportation networks and plans.

Highways are under the jurisdiction of Alberta Transportation and are maintained by private contractors. A highway is typically asphalt surfaced although there are two gravel-surfaced highways within Rocky View. All development within 800 metres of a highway requires a roadside development permit issued by the province.

Roads are under the control and jurisdiction of the County, are built within public rights-of-way, and have been developed primarily for public vehicular traffic.

The *Transportation Model* is a forecasting tool to project future traffic volume based on existing and future growth areas, an interconnected road network, and the existence of provincial highways. The model identifies necessary improvements to accommodate growth and development.

The **Long Range Transportation Network** (Map 2) is based on the transportation model and plans out the skeletal road network necessary to efficiently move traffic.

The Transportation Network establishes two levels of road systems that are designed to accommodate traffic volumes greater than 2500 vehicles per day (Network A roads) and up to 2500 vehicles per day (Network B roads).

¹⁵ County Plan Engagement Priority Report, 2012, Rocky View County

- 16.6 The County's long-term (10 year) and current capital plan for road construction, and medium term (5 year) and current operational plan for road maintenance shall guide road development and maintenance.
- 16.7 New development shall make use of and extend the existing transportation network/infrastructure.

Supporting Communities

- 16.8 Roads, pathways, and trails shall connect adjacent neighbourhoods within hamlets and country residential development areas.
- 16.9 Country residential and hamlet area structure plans and subordinate plans should include comprehensive and integrated road network design at a local and regional level.
- 16.10 Support and encourage alternative forms of transportation in hamlets and regional business centres. Opportunities should provide for:
- Pathways, trails, and sidewalk connections;
 - Cyclists; and
 - Public/private transportation.
- 16.11 Support and encourage the development of pathways and trails for recreational use in country residential areas.
- 16.12 Support the long-term development of the conceptual regional pathway and trail plan as identified in the Parks and Open Space Master Plan.

Road Access

- 16.13 Residential redesignation and subdivision applications should provide for development that:
- provides direct access to a road, while avoiding the use of *panhandles*;
 - minimizes driveway length to highways/roads;
 - removes and replaces panhandles with an internal road network when additional residential development is proposed; and
 - limits the number and type of access onto roads in accordance with County Policy.

Supporting Agriculture

- 16.14 The County's road network should provide for the safe and timely movement of agricultural equipment and goods.

Did you know? Rocky View has a total of 29 highways which connect with the County's 2,342 kilometres of road network.

In 2012, the average cost to maintain 1 kilometre of County road was \$4,140.

Panhandles are long strips of land used to provide direct lot access to a roadway.

Service Levels

- 16.15 Rocky View County shall provide a core level of road maintenance service levels to all areas based on the principles of equity and public safety, in accordance with County Policy.
- 16.16 Road service and maintenance levels will be based on road classification and traffic volume, in accordance with County Policy.
- 16.17 Requests for a higher level of maintenance and service beyond the core level shall be based on a user pay principal.

Airports

- 16.18 Business or large scale residential development associated with the operation of an airport shall be comprehensively planned as part of an area structure plan.
- 16.19 The following land uses may develop adjacent to an airport without an area structure plan if the use does not adversely affect the airport operation:
- a. general agricultural operations;
 - b. recreational land uses, or
 - c. Farmsteads and first parcels out.

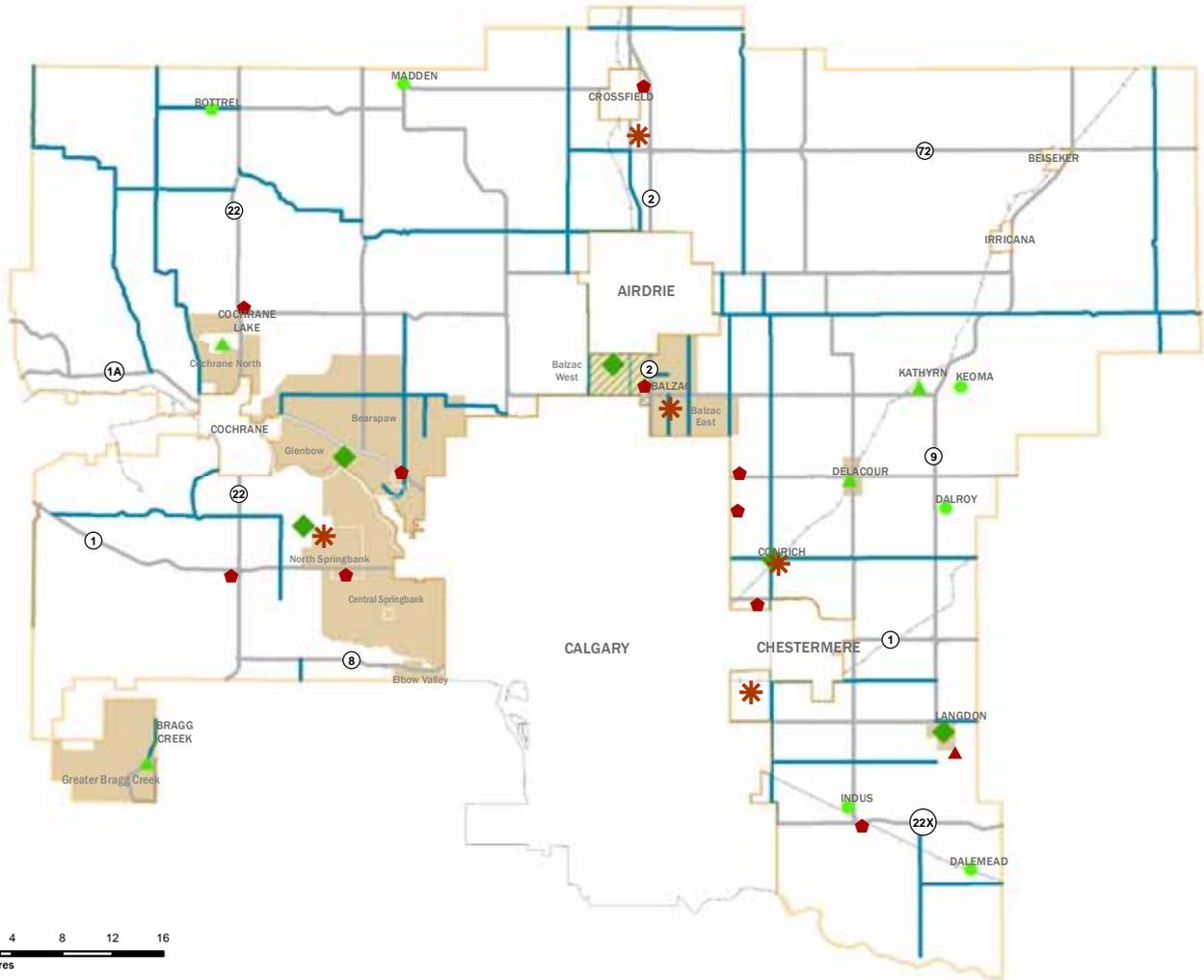
Railways

- 16.20 Area structure plans and conceptual schemes in close proximity to active rail lines should provide the minimum building setback and/or buffering requirements requested by the rail line owners.
- 16.21 Abandoned railway corridors should be considered for incorporation, following an environmental impact assessment, into an open space system or consolidation with adjacent lands.

ACTIONS

- Develop a comprehensive maintenance and operation policy for parks, open space, pathways, trails, and sidewalk maintenance (policies 16.8 to 16.12).
- Explore the definition, identification, and standards for agricultural priority roads (policy 16.14).
- Define and adopt road service standards in terms of performance, quality, road classification, traffic volume, and development type (residential, agriculture, and business) (policies 16.15 to 16.17).

MAP 2-LONG-RANGE TRANSPORTATION MAP



Residential Communities

- ◆ Hamlet-Full Service
- ▲ Hamlet-Growth as per the adopted plan
- Small Hamlet
- West Balzac (Review size and form)
- Country Residential (Area Structure Plan)

Business Areas

- ✱ Regional Business Centers
- ◆ Highway Business Area
- ▲ Hamlet Business Area

Transportation Network

- Highway
- County Long-range Transportation Network

General Legend

- Rocky View Boundary



17.0 UTILITY SERVICES

Well-designed and effective *utility systems* are the foundation of a well planned development. Utility systems must be designed and constructed in a manner that is safe and reliable and does not adversely impact neighbouring lands.

Traditionally, the County has relied on stand-alone utility systems, such as groundwater wells and septic fields. As development intensifies, piped methods of servicing will become necessary in certain areas. The need to design stormwater management systems to consider catchment areas beyond a site-specific solution has become increasingly apparent and will be facilitated by master planning.

GOALS

- Support existing communities and growth areas by providing for effective and fiscally sustainable utility systems.
- Ensure private and public utility systems are developed and operated in a safe and reliable manner.
- Provide for a long-term, safe, and reliable potable water supply.
- Ensure wastewater disposal practices protect watersheds, surface water, and groundwater quality.
- Provide for stormwater management systems that are safe, effective, and do not adversely impact other lands.

POLICY

General

- 17.1 New development shall, in accordance with master plans:
 - a. make use of, extend, and enhance existing utility infrastructure where feasible;
 - b. provide water, wastewater, and shallow utility services; and
 - c. provide stormwater systems where necessary.
- 17.2 Allow a variety of water, wastewater, and stormwater treatment systems, in accordance with provincial/federal regulations and County Policy.
- 17.3 Where required, prepare master plans for existing and future water servicing, wastewater collection and treatment, and stormwater management systems, in existing and proposed growth areas.
 - a. Water, wastewater, and stormwater development shall adhere to the relevant master plan.

Utility systems include:

- Water
- Wastewater
- Stormwater
- Shallow utilities (Electricity, Gas, and Telecommunications)

- 17.4 Partner and co-operate with other jurisdictions, regional service commissions, and other levels of government to ensure efficient and integrated utility systems are established and maintained.
- 17.5 Partner and liaise with other municipalities and developers to co-ordinate enhancements and expansion of existing utility services and infrastructure.

Water Supply

- 17.6 Water well performance and deliverability testing shall be required of all development relying on ground water, in accordance with the requirements of the Water Act.
- 17.7 A new regional or decentralized water system, required as part of a development approval, shall be transferred to County ownership, in accordance with County Policy.
- 17.8 To achieve consistency in water supply systems, the County will consider negotiating public ownership of existing private water licenses and infrastructure in cases where; it is fiscally prudent to do so, the existing system meets regulatory standards, and the existing system is in good operating order.

Wastewater Management

- 17.9 New residential development shall provide wastewater treatment, in accordance with County Policy, by:
 - a. connecting to, or constructing, regional or decentralized wastewater services; or
 - b. confirming the lot(s) is capable of private wastewater treatment.
- 17.10 New business development shall provide wastewater treatment, in accordance with County Policy, by:
 - a. connecting to, or constructing, regional or decentralized wastewater services; or
 - b. using pump out tanks in non-serviced areas.
- 17.11 Wastewater treatment systems shall not exceed the land's carrying capacity; in developing such systems, consideration shall be given to the following requirements:
 - a. Development proponents shall assess the land's carrying capacity to determine system requirements in accordance with County Policy. The type of private on-site wastewater treatment system will be dependent on lot density, lot size, and soil capability.
 - b. Construction and connection to a regional or decentralized wastewater treatment system shall be required when the density of development exceeds thresholds identified in County Policy.

A **regional wastewater system** consists of a communal system that collects wastewater from multiple developments or developing areas and conveys the wastewater to a regional facility.

A **decentralized wastewater system** consists of a communal system that collects wastewater from multiple lots, usually in a single development, and conveys it to a local wastewater treatment facility associated with the development.

- 17.12 The ownership, operation, and maintenance of private on-site wastewater treatment systems, or wastewater holding tanks shall be the responsibility of the landowner.
- 17.13 Ownership of a new regional or decentralized wastewater infrastructure system, required as part of a development approval, shall be transferred to the County in accordance with County Policy.

Stormwater

- 17.14 Stormwater shall be managed in accordance with provincial regulations. Where required and in accordance with provincial approvals, on-site stormwater may be effectively released into a downstream receiving water body in accordance with the following requirements:
- a. Stormwater shall be conveyed downstream in a manner that protects downstream properties; and
 - b. Where required, proponents of new development shall identify and secure the downstream stormwater conveyance system.
- 17.15 Stripping, grading, or the placement of fill shall not alter the existing pattern of stormwater storage and/or movement across private land unless the activity complies with the Land Use Bylaw and a development permit has been issued for such activity.
- 17.16 Stormwater ponds required for stormwater storage and treatment shall be provided as per the Servicing Standards.

Pipeline/Utility Corridors

- 17.17 Major utility corridors for pipelines and power lines should avoid residential areas, wherever possible, and minimize adverse impacts on agriculture and the environment.

ACTIONS

- Encourage the development of provincial regulation that allows the reuse of stormwater (policy 17.14).
- Develop a stormwater offsite bylaw levy for the construction of regional stormwater infrastructure in required areas (policy 17.14).
- Review the Land Use Bylaw to ensure the regulations regarding the stripping, grading, and/or the placement of fill meet the stormwater goals (goal 5 and policy 17.15).

C. Strengthening Communities

One of the purposes of the County is to provide “necessary or desirable” community services and to “develop and maintain safe and viable communities” (Municipal Government Act). By providing community service, the County hopes to strengthen community identity and enhance the quality of life for individuals within those communities.

The level and variety of services provided to residents is influenced by the county’s rural nature and resident expectations. Living in a rural area means self-reliance and working with your neighbours. Some residents expressed the view that “We should have fewer services ... this is why we chose to live in a rural area.”¹⁶ Nevertheless, as the population increases, residents and communities request additional community support.

A challenge to providing a variety and high level of service are the fiscal constraints inherent to a population greater than 36,000 residents¹⁷, spread across an area 3,885 km² (960,000 acres) in size.

¹⁶ November/December (2012) Workshops Report, 2013, Rocky View County

¹⁷ Canada Census 1991 – 2011

18.0 RURAL SERVICE AND PARTNERSHIPS

The service the County is able to provide to its residents is limited by fiscal constraints, a large service area, and a dispersed population. The County's response to this challenge has been to develop strong partnerships with senior levels of government, adjacent municipalities, local communities, and grass roots organizations.

The benefits of partnering include both the anticipated and the unexpected. Partnering:

- enhances and leverages service dollars;
- broadens the range of services;
- helps to provide County wide services;
- provides new service ideas;
- contributes to community building;
- removes barriers to communications; and
- allows adjacent municipalities to increase their level of service.

GOALS

- Provide County residents with an equitable level of rural service.
- Provide for high quality services using available resources.
- Seek a variety of partnerships to extend the range of County facilities and services.
- Maintain strong, healthy partnerships with adjacent municipalities, other levels of government, school boards, communities, and stakeholders.
- Strengthen and enhance communities by supporting volunteerism, collaboration, social networks, and community participation.

POLICY

Rural Service

- 18.1 Provide an *equitable* level of core rural service to County residents.
- 18.2 Service levels beyond the core level should be financed in accordance with a user pay model.

Partnerships

- 18.3 Maintain and grow existing partnerships as a way to extend County financial resources, provide a greater variety of services, and extend service coverage.
- 18.4 Actively seek out new partnerships to address ongoing and emerging needs.

A Selection of County Services

- Fire protection
- Libraries
- Recreation
- Culture
- Enforcement Service
- Waste transfer and recycling
- Weed Control
- Agriculture education
- Pathways and trails
- Specialized transportation
- Cemetery services
- Social support
- Community support
- Road Maintenance
- Snow Plowing

Partnering in action initiatives include:

- Regional recreation centres
- Integrated pathways
- Waste collection sites
- Community support services
- Regional food initiatives
- Agriculture education
- Fire services
- Joint park and school sites
- Mentoring programs

Equitable means dealing fairly and impartially with all concerned.

Core Services are services provided by the County on a regular basis that are considered essential or important to a modern rural community. Core services may vary over time as priorities and expectations change.

- 18.5 Coordinate, co-operate, and collaborate with adjacent municipalities and senior levels of government to address service needs and other matters of mutual interest.
- 18.6 Support and encourage volunteerism, social networks, and community based initiatives in order to build connections between individuals and maintain and manage community amenities, programs, and services.
- 18.7 Encourage private sector donations, private-public sector partnerships, developer contributions, endowment funds, and other sponsorships as a way to develop and sustain facilities, services, and amenities.

ACTIONS

- Identify core County services (policy 18.1).

19.0 AGRICULTURE SERVICES

The County will continue to provide support and education through its Agriculture Service staff. The agricultural service goals, strategies, and policies are found in the agriculture section (8.0).

20.0 EMERGENCY SERVICES

Emergency Services encompass all aspects of Fire Prevention, Suppression, and Rescue, Disaster Services, Bylaw Enforcement, Development Compliance, Traffic Enforcement, and Municipal Enforcement. Safety and ability to access an emergency response, when needed, are critical components for building communities and contributing to residents' sense of well-being.

GOALS

- Deliver efficient fire and protective services in order to provide for safe and livable communities.
- Optimize fire prevention and control by implementing the Plan's growth management strategy and efficient development patterns.
- Ensure community design contributes to fire prevention and safe, livable communities.
- Optimize fire and protective service by collaborating and partnering with neighbouring municipalities and other organizations.

POLICY

Collaboration, Co-operation, and Partnership

- 20.1 Co-operate and partner with neighbouring municipalities to develop integrated plans and agreements regarding fire prevention and firefighting services.
- 20.2 Maintain strong collaborative relationships with the Royal Canadian Mounted Police (RCMP), Alberta Sheriffs, and the Calgary and Cochrane Humane Societies.
- 20.3 Explore new partnerships to address on-going and emerging protective service issues.

Land Use Planning and Community Design

- 20.4 Land use planning, subdivision design, and lot development shall address fire prevention and *fire control factors*.
- 20.5 Encourage compact development and *efficient road design* to optimize firefighting efficiency.
- 20.6 Ensure subdivision and development plans provide safe and efficient access for emergency service vehicles.

Fire control factors are those things that affect the ability to fight a fire once started. They include such things as safe emergency access and sufficient water supply.

Efficient road design minimizes driveway and cul-de-sac road length, connects neighbourhoods, and links country residential developments.

- 20.7 Identify and address protective and bylaw service requirements for new communities.
- 20.8 New community design should address Crime Prevention through Environmental Design (CPTED) principles (policy 12.7).

Master Fire Plan

- 20.9 Prepare and update, every five years if required, a Master Fire Plan.

Water Supply and Distribution

- 20.10 Prepare and implement a strategic long-term program to improve the County's supply and distribution of firefighting water.
- 20.11 Encourage private water suppliers to construct distribution systems designed for the suppression of fire.

Wildland Fire Protection

- 20.12 Develop and maintain measures to prevent and control wildland fires, including public education, design of efficient emergency access, and measures to effectively slow fire growth.

Service

- 20.13 Ensure public concerns and complaints are handled in a prompt and expedient manner.
- 20.14 Educate and promote traffic safety on County roads.
- 20.15 Ensure compliance with regard to emergency service matters with all County bylaw requirements.

ACTIONS

- Prepare a Master Fire Plan to provide comprehensive, long-term direction for fire services (goal 1).
- Assess the County's firefighting water supply and distribution system to identify cost effective mechanisms to improve pressurized and non-pressurized water sources (policy 20.10).
- Develop a Wildland Fire Protection strategy encompassing public education, improved access and egress in high hazard areas, and preventative measures to slow fire growth and enable rapid protective fire mobilization services (policy 20.12).

21.0 RECREATION, SOCIAL, AND CULTURE

Residents' quality of life is enhanced when they are able to access a variety of recreational, *social*, and *cultural* opportunities. Strong social networks and positive relationships reinforce the ability of individuals and communities to meet needs, support one another, and adapt to change.

The County, as the most visible and accessible level of government, has a role to advocate, empower, and support residents and organizations in improving their community. This requires partnerships, co-operation, and support from all levels of government, neighbouring municipalities, community groups, non-governmental organizations, and individual residents.

GOALS

- Ensure recreational, social, and cultural services and facilities are available for residents of all ages, income levels, skills, and lifestyles.
- Cultivate social connections between residents by supporting volunteerism, social networks, and local leadership.
- Develop, enhance, and manage recreation, social, and cultural services and facilities through a wide variety of partnerships.

POLICY

Community Needs

- 21.1 Identify and support the different recreational, leisure, and cultural characteristics of the County's communities.
- 21.2 Provide a fair and equitable distribution of facilities, services, and programs across the County, while recognizing the unique needs of communities and regions.

Community Recreation and Management

- 21.3 Support recreation and cultural facility development and programs through the Community Recreation Funding program.
- 21.4 Support *volunteer Regional and District Recreation Boards* to achieve their mandate.
- 21.5 Encourage local community groups to assist with the management of local park and community facilities and enter into maintenance and operation agreements with a community group when this occurs.

Did you know? Rocky View contributed \$2.5 million to 80 community groups in 2012.

Social means the connections individuals have to each other and to the wider community.

Culture means a shared community identity as expressed by beliefs, values, traditions, and aspirations found in local events, arts, and heritage.

The **County's volunteer recreation boards** are appointed by Council. Their task is to identify, recommend, and support recreational, cultural, and open space needs.

Partnerships, Cost Sharing, and Co-ordination

- 21.6 Co-operate with neighbouring municipalities through recreation, social, and cultural cost sharing agreements to improve affordability and access, create user fee equity, and avoid duplication of services.
- 21.7 Liaise with school boards, regional library service providers, and social service providers to help co-ordinate activities with local groups and agencies.

Connect and Empower Residents and Community

- 21.8 Foster social development by supporting connections between residents.
- 21.9 Support projects and programs that develop a sense of community, empower residents, and encourage social inclusion.
- 21.10 Recognize, support, and encourage the important role community leaders play in providing service to their community.

Fostering connections is the support given to community centres or groups to provide programs such as youth mentoring, seniors clubs, and drop-in classes for residents of a variety of ages and interests.

Responsible Design

- 21.11 Promote community design that assists residents to be safe, healthy, and form positive relationships.

Culture

- 21.12 Recognize the value of culture as an economic contributor to the county and the role it plays in enhancing residents' quality of life, health, and sense of well-being.
- 21.13 Support and promote cultural programs, activities, and facilities that generate a sense of community pride and local identity.
- 21.14 Recognize and enhance the cultural heritage of the county by:
 - a. celebrating the county's rural and western roots;
 - b. identifying and conserving significant historic resources; and
 - c. promoting and fostering culture by marketing local assets to the general population.

Library Services

- 21.15 Continue to provide residents with library services through participation in the regional library system.

ACTIONS

- Develop a comprehensive strategy to guide the provision of cost effective, financed, and appropriate recreational, social, and cultural services (goal 1, policy 21.6).
- Develop a comprehensive master plan to guide the sustainable development of recreation and cultural amenities, in collaboration with district and regional recreation boards, residents, community groups, and neighbouring municipalities (goal 1).

22.0 SOLID WASTE

The dispersed population of the County, coupled with the unique types of solid waste generated by the agricultural industry, has led to innovative approaches to garbage disposal and recycling in Rocky View. The County's Waste Management Strategy goal is to provide every household with convenient access to easy, environmentally responsible, and cost effective ways of reducing, reusing, recycling, and disposing of their solid waste.

GOAL

- Provide convenient, cost effective, and environmentally responsible ways to reduce, reuse, and recycle household waste.
- Increase the opportunities and range of material diverted from landfill sites.

POLICY

Partnering

- 22.1 Co-ordinate with neighbouring municipalities in providing solid waste disposal services to County residents.
- 22.2 Collaborate with neighbouring municipalities on regional solid waste recycling initiatives.
- 22.3 Support and promote markets and industries that consume recyclables and/or actively minimize waste.

Service

- 22.4 Ensure the County's waste collection stations provide a wide variety of waste disposal and recycling options.
- 22.5 Provide waste collection stations that are accessible, user-friendly, efficient, and cost effective.
- 22.6 Provide for the year-round drop off and disposal of household hazardous wastes.
- 22.7 Provide agriculture operators with waste and recycling services and options specific to the agriculture industry.

Did you know? The 2012 County recycling data shows:

- 145 bathtubs of paint were collected at roundups (16,435 litres).
- 1752 m³ of landfill space was saved from the recycling of paper, newsprint, and cardboard.
- there was a 54% increase in E-Waste recycled from 2011 to 2012.

A 2012 waste composition study conducted on residents' garbage discovered:

- 1,302 refundable beverage containers were found in one week's worth of garbage. If this rate continued for a year it would have amounted to \$8,000 in refunds.
- organics, wood, and plastic form the majority of residents' garbage.

Education

- 22.8 Promote the County's solid waste services and recycling opportunities.
- 22.9 Encourage more sustainable solid waste practices by providing education and information to agriculture operators, residents, and business owners.

Waste Reduction

- 22.10 Identify and implement opportunities to expand the variety of recycled materials accepted at collection stations.
- 22.11 Encourage and promote construction practices that are consistent with sound waste management practices.

III. Regions

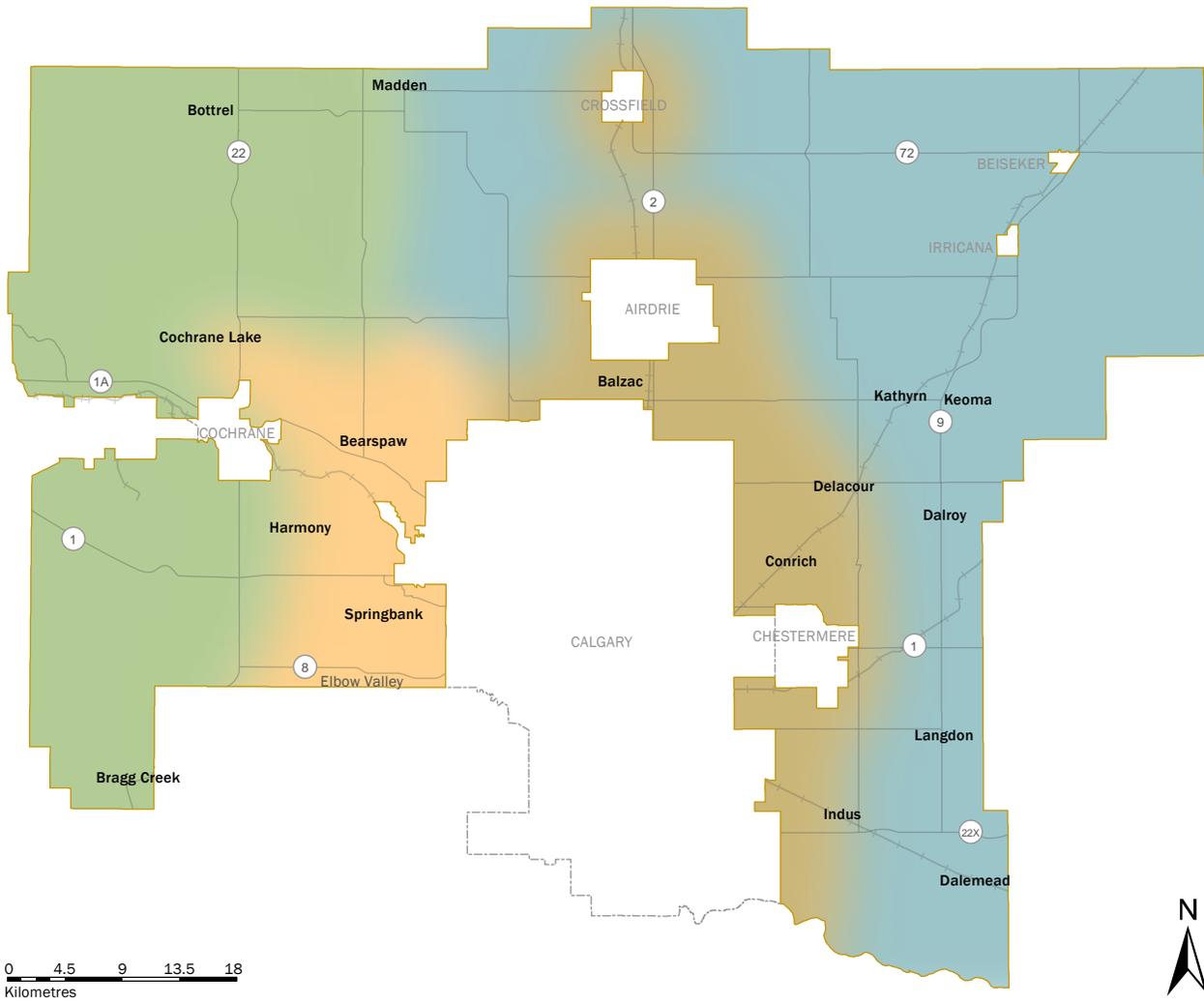
Regions

Rocky View County encompasses a wide variety of landscapes, communities, and approaches to rural living. Identifying regions within the County Plan is intended to recognize and respond to the diversity within the County. This part provides additional context by which to interpret the policies of the County Plan when evaluating applications for land use and development.

The four *regions* of the County Plan (Map 3) are defined by common characteristics including; watersheds, natural landscapes, human settlement patterns, agricultural types, environmental concerns, and growth pressures. For each region, this section describes common characteristics, vision of the future, and regional direction. All regions have internal variations, but the intent of the County Plan is to identify shared features to better address area-specific preferences and conditions. The boundaries of the regions on Map 3 are gradational as many characteristics overlap in border areas.

Region in this Plan are land areas of significant size united by similarities of human settlement patterns, geography, agriculture, and environmental characteristics.

MAP 3 - REGIONS



Regions

- West Rocky View
- Central West Rocky View
- East Rocky View
- Central East Rocky View

General Legend

- Highway
- Rocky View Boundary
- City/Town/Village



23.0 WEST ROCKY VIEW

Characteristics

Spanning the western-most portion of the County (Map 3), the West Rocky View region is linked by the foothills and eastern slopes natural zones. The region is an important area for groundwater recharge and includes the Bow River, Elbow River, and Red Deer River watersheds. With the Rocky Mountains as a backdrop, numerous forests, rivers, streams, and wetlands create a beautiful and unique landscape.

Higher elevation contributes to increased precipitation and a shorter growing season. As a result, West Rocky View contains extensive grazing lands for cattle. Large scale ranching and woodlots are two of the primary agricultural activities in this region. Residents live primarily on large agricultural parcels, small farmsteads, and large acreages. Bragg Creek, a historical hamlet in the very south of the region, contains a concentration of people living on small hamlet lots and surrounding acreages. Commercial activity in West Rocky View is situated primarily along major highways and in Bragg Creek. Oil and gas exploration and production, logging, and a number of pipelines and gas processing plants are the primary industrial activities in this area.

Residents of this region indicated their top priorities were road maintenance, continued viability of agricultural land, watershed management, and environmental protection. Residents of Bragg Creek were particularly concerned with fire protection and also identified the provision of parks, trails, and pathways as important.¹⁸

Growth pressure in this region has been relatively low over the past twenty years, with slow but steady development of acreages in Bragg Creek and the north Grand Valley areas. Large scale ranching continues to thrive in West Rocky View.

¹⁸ County Plan Engagement Priority Report, 2012, Rocky View County

Vision of the Future

In the future, West Rocky View continues to be a beautiful area in which to live, work, visit, and recreate. Planning and service directions for the Region include; the retention of large ranches and farms, protection of native rangeland, preservation of viewscales, well maintained roads, and protection and enhancement of significant heritage and archaeological sites. FireSmart practices are encouraged throughout the region but are particularly important where population is higher and chances of an incident are greater. Recycling programs, transfer sites, and opportunities to dispose of agricultural waste are continued and advanced.

Protection of watersheds is extremely important and is accomplished by adhering to watershed plans such as Jumpingpound Creek, Elbow River, and Bow Basin. Development has avoided, rather than mitigated its impact on, wetlands and environmentally sensitive areas.

Development in the community of Bragg Creek helps the local commercial area to remain viable and flourish. In the north Grand Valley area, residential development is consistent with the policies of the County Plan. However, larger residential parcels that blend into the existing settlement pattern and landscape have been created.

Key Directions

- Encourage the retention of large agriculture parcels.
- Encourage and support the FireSmart program in areas of high wildfire risk.
- Encourage new development to build with the land and avoid stripping and grading.
- Encourage watershed protection by implementing and following adopted watershed management plans.
- Avoid development on wetlands and riparian areas.
- Support the viability of the Hamlet of Bragg Creek commercial area through development of the Hamlet and surrounding area.
- In the north Grand Valley area, consider residential acreages at the maximum size allowed within the policies of this Plan.

Key Direction is an idea or preference that is desired in a particular region that may not be as important in other regions. Key directions may be used to provide context when making land use decisions, determining future planning needs, and identifying service delivery requirements.

24.0 CENTRAL WEST ROCKY VIEW

Characteristics

The hills and valleys of the foothills transition into the prairie grasslands in the Central West Region (Map 3). These natural landscapes, combined with significant glacial river valleys and pot and kettle topography, result in dramatic landscapes and views. As a consequence, this region contains a significant portion of the County's residential population, primarily in traditional country residential acreages. There are six adopted area structure plans that encompass a considerable amount of undeveloped land, the majority of which is identified for future homes. Compact residential communities, such as Elbow Valley and the Hamlet of Cochrane Lake, exist in this region. The presence of two provincial parks (Big Hill Springs and Glenbow Ranch), numerous golf courses and some trails provide residents with a number of amenities.

The area receives moderate amounts of precipitation and has a moderate growing season. The resulting agricultural pattern is a combination of ranching, equestrian operations, and diversified agriculture such as greenhouses and nurseries. Commercial activity is situated adjacent to the provincial highways, primarily at Range Road 33 and Springbank Airport. Natural gas exploration and development has recently increased and gravel extraction occurs in some areas.

The top priorities identified by residents of Central West Rocky View included road maintenance, fire protection, watershed management, and stormwater management. In the Cochrane Lake area, agricultural viability and protective services were important, while residents in the Springbank area identified parks, pathways, and trails as a key priority.¹⁹

Growth pressures in the area include gravel extraction, gas exploration, demand for non-traditional country residential development within area structure plans, commercial growth along the highways, and additional residential growth pressure outside of existing planned areas.

Vision of the Future

The vision for the future of the Central West region is that it continues to be a desirable place for country residential areas and the agriculture sector to co-exist. Compact residential communities, which preserve open space and conserve natural landscapes, have developed adjacent to traditional acreages. Residential development is occurring within the areas identified by the County Plan. The region contains parks and pathways in new developments that are sensitive to private property and provide recreation opportunities for residents.

¹⁹ County Plan Engagement Priority Report, 2012, Rocky View County

Commercial development is limited to business areas as described in the County Plan. The Hamlet of Harmony is developing as an attractive community and provides services for area residents and the region. The Glenbow Ranch Provincial Park is enjoyed by area residents and attracts large numbers of visitors each year. Adjacent residential development conserves landscapes and enhances the unique features of the park.

Ranching and farming continues in the area while new development adjacent to agricultural lands is designed to minimize adverse impacts on agriculture operators. Equestrian and small scale agricultural operations continue to thrive and contribute to the community. Comprehensive solutions to stormwater management are established prior to development and protection of watersheds is implemented. All development is sensitive to the landscape and viewscales are preserved.

Key Directions

- Respect and follow area structure plans. Public consultation forms an important part of the amendment process.
- Conserve open land by considering compact country residential development when area structure plans are amended or created.
- Direct new multi-lot residential development to existing area structure plan areas, as described in the County Plan.
- Locate new highway commercial development as per the requirements of the County Plan, in consultation with area residents.
- Encourage new development to build with the land and avoid stripping and grading.
- Encourage watershed protection by implementing and following adopted watershed management plans.
- Provide comprehensive stormwater management plans and solutions as part of a development proposal.
- Encourage new developments to integrate parks and pathways that connect the region, while being sensitive to private property.
- Encourage development adjacent to parks to sensitively integrate with the natural features of the park.

25.0 EAST ROCKY VIEW

Characteristics

Covering the eastern extent of the County and extending in the north across Highway 2, the East Rocky View region (Map 3) is characterized by prairie grasslands, major wetland complexes, water fowl migration areas, a high water table, and groundwater discharge. Relative to the western parts of the County, this region has decreased precipitation and a longer growing season; a change that results in fertile growing conditions for cereal crops, oil seeds, and hay production. Intensive farming operations such as dairy and feedlots are found in this region. The presence of irrigation canals allows for agricultural pursuits on smaller parcels of land.

The landscape is dotted by small, unplanned country residential developments, farmsteads, and isolated residential parcels. Several hamlets, small towns, and villages, such as the Hamlets of Langdon, Dalroy, and Kathryn, the Town of Irricana, and the Village of Beiseker, provide focal points and local services to residents. Commercial development occurs primarily in the towns and hamlets. A number of small scale oil and gas exploration and industrial activities are scattered throughout this region, with some aggregate extraction occurring in the north-east.

Key priorities for residents in East Rocky View are: road maintenance, support for agriculture and related businesses, fire protection, and stormwater management. In the southeast, particularly in the Hamlets of Langdon and Indus, recreation and culture issues were identified as important to residents.²⁰

East Rocky View has a relatively low rate of residential growth as compared to the County as a whole, with of the Hamlet of Langdon being the exception.

Vision of the Future

A successful agriculture sector continues to characterize the East Rocky View Region. Support for regional food-based agricultural partnerships, small-scale agricultural operations tied to irrigation, and a variety of innovative agricultural business ventures are allowing the region to flourish. Previously fragmented quarter sections have been consolidated and extensive tracts of unfragmented agricultural parcels are prospering. Agricultural priority roads are identified and protected to facilitate the movement of equipment and materials. Significant wetland complexes and natural areas such as the Shepard Slough, Weed Lake, and McKinnon Flats are retained as healthy aquatic systems.

The existing hamlets and small towns in this region provide a focal point and services to surrounding residents. The Hamlet of Langdon has a population that supports a redesigned and active

²⁰ County Plan Engagement Priority Report, 2012, Rocky View County

main street. Isolated acreages and farmsteads continue to develop but impacts on agricultural operations are minimized through appropriate location and design.

Key Directions

- Support the agricultural industry by identifying and maintaining agricultural priority roads.
- Support smaller agricultural parcels in areas where similar parcel sizes are the predominant pattern.
- Recognize and value the importance of agriculture as the primary business in this region.
- Continue to support residential development, businesses, and services in existing hamlets, particularly Langdon.
- Support Langdon in improving its main street through developing and implementing design guidelines that will help create a desirable and functional gathering area.
- Direct new multi-lot residential development to existing hamlets and small towns.
- Continue to protect significant wetlands and natural areas.

26.0 CENTRAL EAST ROCKY VIEW

Characteristics

Stretching along the east boundary of Calgary and northward to Airdrie and Crossfield, the Central East region (Map 3) is dominated by its interaction with Rocky View's urban neighbours. Geographically, the region is similar to the East Rocky View region with prairie grasslands and major wetland complexes. Agriculture is characterized by large and small scale operations interspersed with a number of informal residential and small agricultural subdivisions. More formal, planned country residential communities have been built in the Butte/Sharp Hills and Conrich areas. This region contains the County's key commercial areas of Balzac, Conrich, and Janet. Defining characteristics are the Queen Elizabeth 2 Highway corridor and the adjacent cities and towns (Calgary, Airdrie, Chestermere, and Crossfield), all of which place significant growth pressure on the County.

Residents of this region indicated that their top priorities included road maintenance, agricultural viability, fire protection, protective services, and watershed management.²¹

The boundary between urban and rural land is an important consideration in this area as is the future growth of the urban municipalities. Continued growth pressure for non-residential development is expected in this region, with residential and business pressure currently focused on the Conrich area.

Vision of the Future

Development in the Central East region is characterized by business development that supports the County's financial goals, while successfully integrating with adjoining residential communities. Regional business centres in East Balzac, Conrich, and Janet are vital centres of commercial and industrial activity that provide employment to the local community and region. The Hamlet of Conrich, with its redesigned central gathering place and integration with the CN rail yard, is a thriving rural community. A number of small scale agriculture operations are successfully developed. Overall, agriculture continues to be challenged by the residential and commercial activity in this region, but adverse impacts are reduced by a focus on buffering of the non-agricultural uses.

²¹ County Plan Engagement Priority Report, 2012, Rocky View County

Stormwater management and conveyance is a key infrastructure consideration for successful development in this area, with adjoining municipalities and agencies working together to successfully resolve this challenge. The growth patterns and future needs of adjacent municipalities in this region, including Chestermere, Calgary, Airdrie, and Crossfield, are recognized and respected. Good communication, partnerships, and well-designed transitions between adjoining municipalities characterize the County's relationship with its urban neighbours.

Key Directions

- Encourage new development to focus on high quality boundary design between agriculture, commercial/industrial, and residential uses.
- New development proposals are to respect and carefully consider boundary planning with adjacent municipalities as well as the future growth needs of those municipalities.
- Support new residential, business, and commercial development described in the County Plan.
- Comprehensive stormwater management plans and solutions are needed to guide and allow for development.
- Encourage fragmented quarter sections to develop in a manner that increases land use efficiency and provides attractive development for acreage owners.

IV. Implementation and Monitoring

Part IV provides direction on the implementation of the County Plan and describes the proposed monitoring process to measure the success of the plan.

Implementation will occur through a number of mechanisms and processes including:

- ongoing administration of the development review process and periodically reviewing and amending area structure plans;
- carrying out actions (studies, programs, and changes to regulations) required to implement the goals of the County Plan; and
- collaborating with neighbouring municipalities on day-to-day planning matters, as well as activities related to major processes and plans.

27.0 INTERGOVERNMENTAL RELATIONSHIPS

Rocky View County shares boundaries with the following fifteen jurisdictions (Map 4):

CITIES: Airdrie, Calgary

TOWNS/VILLAGES: Beiseker, Chestermere, Cochrane, Crossfield, Irricana

RURAL: Kananaskis Improvement District, Kneehill County, Mountain View County, Municipal District of Bighorn, Municipal District of Foothills, Wheatland County

FIRST NATIONS: Stoney Indian Reserve, Tsuu T'ina Nation

The County values its neighbours and is committed to building positive relations that:

- create opportunities for collaboration;
- ensure effective communication;
- result in mutually beneficial solutions to growth and development; and
- provide opportunities for partnering to deliver services.

GOALS

- Positive and open relationships with neighbouring municipalities and First Nations.
- Effective communications between adjacent municipal councils and administrations.
- Extend the range of facilities and services available to residents through partnerships with adjacent neighbours and other levels of government.

The Ranchehouse Accord is a collaborative agreement between the Town of Cochrane and Rocky View County. The Accord provides a commitment and a framework with guidelines, processes, and strategies to assist the County and Town to sustain a cooperative, open, and communicative relationship with each other.

POLICY

Working Together

The manner in which Rocky View County works with neighbours varies depending on the specific context and degree of activity on its boundaries. There are multiple mechanisms used to achieve co-ordination and ensure positive relationships. These include: intermunicipal committees, administrative co-operation, and intermunicipal development plans. In addition to these specific mechanisms, the County may engage in collaborative opportunities as they arise.

Intermunicipal Committees

Intermunicipal committees consist of elected officials from each municipality who are assisted by members of their respective administrations. The purpose of an intermunicipal committee is to exchange information, discuss matters of mutual interest and concern, and build positive working relationships.

- 27.1 Intermunicipal committees may be mutually established with adjacent municipalities and First Nations to facilitate effective communication, co-operation, and co-ordination.

Administrative Co-ordination

County administration routinely works with administrations from neighbouring municipalities to create opportunities, resolve issues, and address the needs of residents. Examples include: development of transportation networks, co-development of regional drainage solutions, arrangements to connect pathways, and agreements to develop regional recreation facilities.

- 27.2 County administration shall communicate and co-ordinate on a regular basis with adjacent administrations to recognize and address matters of mutual interest.

Intermunicipal Development Plans

Intermunicipal development plans are statutory plans that provide an opportunity for understanding approaches to growth and development at the boundaries between jurisdictions. An intermunicipal development plan outlines methods for communicating and co-operating at a strategic level. It also addresses matters of mutual interest, is used to evaluate development applications in boundary areas, and assists with co-ordination of infrastructure linkages with an adjacent municipality. Intermunicipal development plans are particularly helpful in areas with significant development pressure. The County has a number of adopted intermunicipal development plans and will continue to support the preparation and use of these plans as an essential collaboration tool.

Rocky View County participates in intermunicipal committees with

- Airdrie
- Beiseker
- Calgary
- Chestermere
- Cochrane
- Crossfield
- Irricana
- Foothills
- Wheatland

- 27.3 Where appropriate, intermunicipal development plans shall be prepared and adopted in collaboration with an adjacent municipality to enhance co-operative working relationships and to address issues of mutual interest.
- 27.4 Intermunicipal development plans shall be prepared in accordance with the Municipal Government Act.
- 27.5 An adopted intermunicipal development plan shall provide guidance for referral requirements and communication, with regard to matters within the plan area.
- 27.6 The County will continue to communicate and consult with First Nations neighbours on mutual planning matters.

Co-ordination Without an Intermunicipal Development Plan

When there is no intermunicipal development plan with an adjacent municipality, the Municipal Government Act requires the County Plan to address the co-ordination of land uses, growth patterns, and infrastructure in the area adjacent to that municipality. The following policies guide communication, co-ordination, and application referral between adjacent jurisdictions in situations where an intermunicipal development plan is not in place.

- 27.7 The County commits to ongoing communication and co-operation with adjacent jurisdictions on all matters of interest to both parties.
- 27.8 When appropriate, the County shall co-operate and communicate with adjacent jurisdictions through regular meetings of an intermunicipal committee or other agreed upon means.
- 27.9 Where appropriate, the County should work co-operatively with adjacent jurisdictions to pursue opportunities for the joint provision or improvement of utility services, transportation infrastructure, and/or community services.
- 27.10 For planning related matters that are proposed within 1.6 kilometres of an adjacent jurisdictional boundary, or as otherwise agreed to by the County and adjacent municipality, the County shall refer the matter to the adjacent jurisdiction for comment. This area is referred to as the *notification zone*. Referral items may include:
- a. statutory plan creation or amendment;
 - b. land use bylaw preparation or amendment;
 - c. subdivision;
 - d. development permit;
 - e. improvements or changes to municipal transportation infrastructure;
 - f. local or regional community or recreation facilities; and
 - g. any other item deemed appropriate by both jurisdictions.

Notification Zone means an area within 1.6 kilometres of an adjacent jurisdictional boundary. The zone is for the purpose of informing an adjacent municipality of a development application within the County.

- 27.11 For planning related matters in adjacent jurisdictions within 1.6 kilometres of the boundary with the County or as otherwise agreed to by the County and adjacent municipality, the County shall request that the adjacent jurisdiction refer the matter to the County for review and comment. Referral items may include:
- a. statutory plan creation or amendment;
 - b. land use bylaw preparation or amendment;
 - c. subdivision;
 - d. development permit;
 - e. improvements or changes to municipal transportation infrastructure;
 - f. local or regional community or recreation facilities; and
 - g. any other item deemed appropriate by both jurisdictions.
- 27.12 Where appropriate, the County shall mitigate any intermunicipal dispute by engaging in alternative dispute resolution processes such as facilitated negotiation, mediation, or arbitration.
- 27.13 In the event an intermunicipal development plan is adopted, the policies of that plan shall be used to guide intermunicipal co-operation with the participating municipality.

Annexation

Annexation is the process by which the jurisdiction of land is transferred from one municipality to another; typically to allow for growth of the receiving municipality. The County has been involved in a number of annexations, usually involving the transfer of land to an urban municipality. Annexation may also occur with rural neighbours where it is generally used to address roads, utilities, or lands difficult to access.

The County recognizes the growth pressures facing the region and the need for additional land for urban centers. The County will continue to enter into annexation negotiations, when requested, to develop mutually beneficial solutions to growth needs. The County Plan defines the key growth areas (Map 1 and Appendix A) for Rocky View County which should be considered in a negotiation process.

- 27.14 The County shall consider the negotiation of annexation areas with adjacent municipalities in accordance with the Municipal Government Act or adopted intermunicipal development plan.

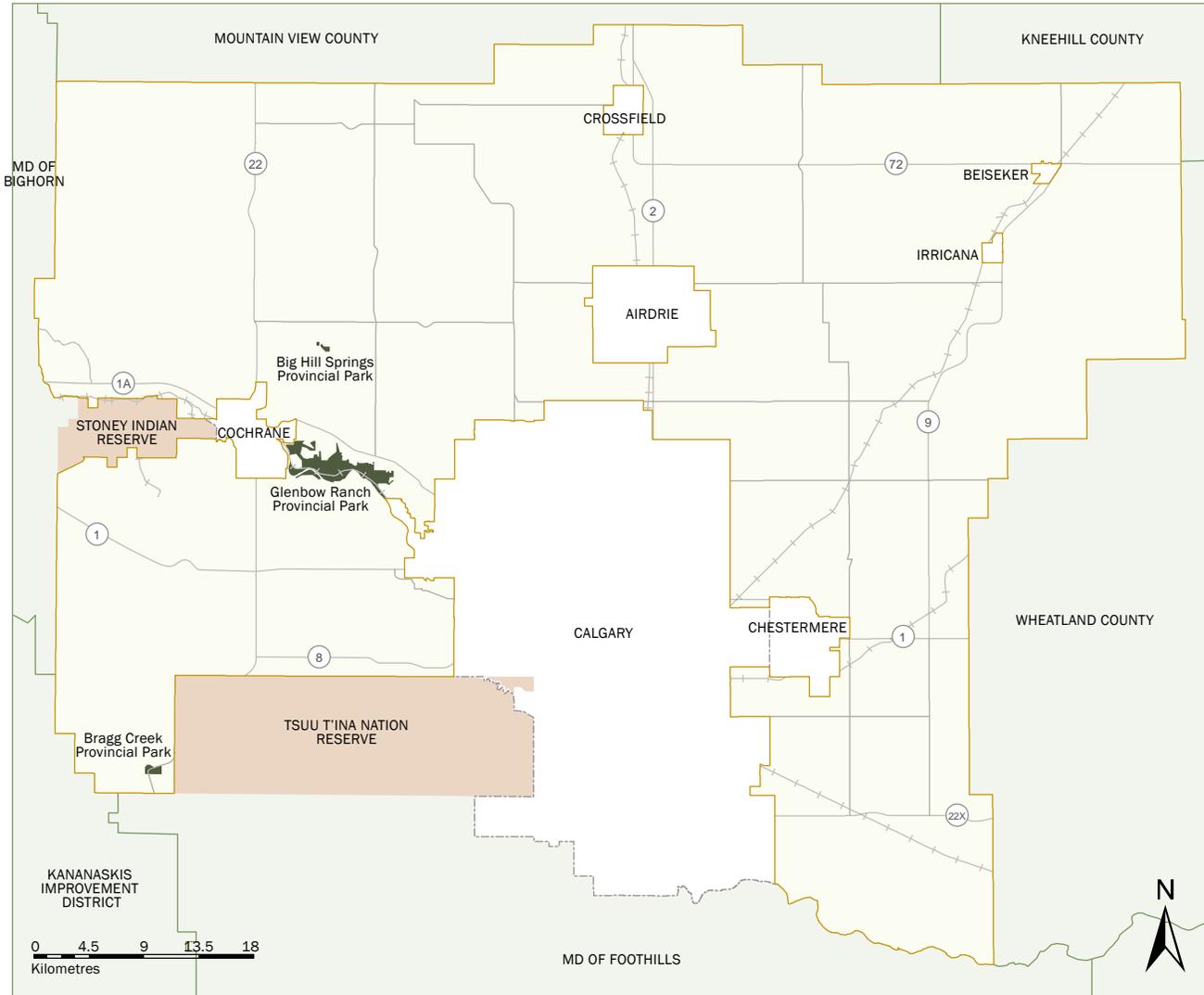
- 27.15 Annexation negotiations should take into consideration detailed growth studies that include such matters as: analysis of population trends and projections, land absorption rates, community development, infrastructure analysis, and financial considerations.
- 27.16 The County shall use the growth policies of the County Plan, adopted intermunicipal development plans, other statutory plans, and growth strategies as the basis for determining county needs and interests with regard to annexation negotiations.

Urban Growth Corridors

The Rocky View County/City of Calgary Intermunicipal Development Plan defines future growth areas for the City of Calgary and Rocky View County. The identified growth areas will form the basis for future annexation requests by the City of Calgary. These growth areas are identified on Map 1 and Appendix A.

- 27.17 The County shall evaluate redesignation, subdivision, and development permit applications within the City of Calgary's identified growth areas, as shown on Map 1 and Appendix A, in consultation with the City of Calgary and in accordance with the Rocky View County/City of Calgary Intermunicipal Development Plan.

MAP 4 - MUNICIPAL PARTNERS



Neighbouring Jurisdictions

-  City/Town/Village
-  First Nation Reserve
-  Rural Municipality
-  Provincial Parks

General Legend

-  Highway
-  Rocky View Boundary



28.0 AREA STRUCTURE PLAN PREPARATION AND AMENDMENT

Periodic review of an area structure plan is necessary to ensure the policies and strategies reflect the current community and County vision. New area structure plans may also be prepared to provide a framework to guide future growth and change in specific areas of the County.

POLICY

- 28.1 The decision to prepare a new area structure plan, or to amend an existing area structure plan, shall be directed by the policies of this Plan. The terms of reference for the work shall be approved by Council.
- 28.2 A new area structure plan, or an amendment to an area structure plan, shall be prepared by, or directed by, the County.
- 28.3 Area structure plans should be assessed every 10 years to determine whether a review is required.
- 28.4 A review of an area structure plan may be initiated by Council prior to 10 years if:
- available residential capacity is reaching full build-out;
 - there are multiple applications for alternative development forms inconsistent with the area structure plan;
 - changes in major servicing policies or conditions occur;
 - external planning changes (regional plans, County Plan, intermunicipal development plans, adjacent area structure plans, etc.) affect the area structure plan;
 - there is a change in County boundaries; or
 - Council otherwise determines that a review is required.

Development Initiated Area Structure Plan Amendment

- 28.5 A *major amendment* to an area structure plan shall be led or directed by the County in consultation with the local community.
- 28.6 A *minor amendment* to an area structure plan may be prepared by the development proponent in consultation with the local community, at the direction of the County.

ACTIONS

- Review area structure plans for alignment with the County Plan. Prioritize and recommend area structure plan reviews based on the criteria identified in policy 28.4.

A *major amendment* to an area structure plan may be initiated by a development application. In determining whether the application requires a major amendment, the County will consider the following:

- existing area structure plan policies including land use, density, and/or form;
- a proposed scale and scope change resulting in significant impact beyond the subject land;
- potential to result in similar applications on surrounding lands; and
- potential need for new or expanded major infrastructure.

A *minor amendment* to an area structure plan is initiated by a development application and in the opinion of the County is:

- consistent with the overall intent of the area structure plan and the policies of this Plan; and
- is minor in nature.

Minor amendments may include specific policy or map amendments.

29.0 TECHNICAL REQUIREMENTS AND SUBMISSIONS

Implementing the County Plan involves a variety of ongoing planning processes. The following policies provide guidance as to the information needed to properly evaluate an application. A detailed listing of required information is provided in Appendix C.

TECHNICAL REQUIREMENTS/ SUPPORTING INFORMATION

- 29.1 All planning or development applications, and any associated infrastructure construction should meet the technical requirements of the County Plan, Land Use Bylaw, area structure plans, subordinate plans, Servicing Standards, County Policy, and provincial and federal requirements.

Request for variations from County requirements must include technical justification with all relevant studies, reports, and tests.

The County will make a decision to approve, approve with conditions, or deny a request to vary from County requirements as the County deems appropriate after reviewing all supporting information.

- 29.2 The County may require studies, reports, and tests to be submitted in support of any planning or development application.
- 29.3 All planning or development applications may be required to provide information on, and evaluation of, the matters identified in Appendix C.

SUBMISSIONS

Conceptual Schemes

- 29.4 When required by the relevant area structure plan and/or the County, conceptual schemes shall be created to guide subdivision development. The County will determine when a proposed subdivision variance from an adopted conceptual scheme requires conceptual scheme amendment.
- 29.5 The content of a conceptual scheme shall be determined by the relevant area structure plan and/or by the County. Conceptual schemes should address the requirements identified in Appendix C, sections 1 and 2.

Master Site Development Plans

- 29.6 Where applicable, master site development plans shall guide the implementation and sequencing of development permit applications, as determined by the County.
- 29.7 A master site development plan should address all matters identified in Appendix C, sections 1 and 3.
- 29.8 A master site development plan for aggregate development shall address all matters identified in Appendix C, sections 1 and 4.

ACTIONS

- Amend the Land Use Bylaw to recognize master site development plans (policy 29.6).

30.0 IMPLEMENTATION: ACTION SUMMARY

The following is a summary of the recommended actions to implement the Plan. Council plays a key role in implementing the Plan by setting priorities, providing work direction to administration, and approving actions. Based on the actions summarized below, administration will prepare annual work programs, proposed budgets, progress reports, and other materials for Council review and approval.

The actions include studies, programs, and regulations.

STUDIES: are undertaken when future needs are identified but no solution is known. They may involve research and analysis. A study may be necessary as an initial action before proceeding to a program or regulation.

PROGRAMS: focus on the needs of a community. Programs often do not end, but achieve a goal.

REGULATIONS: deal with land use, development review, and other policies or procedures that may require modification, implementation, or monitoring. Implementing this type of action will occur through changes to the Land Use Bylaw, area structure plans, and subdivision and development review.

Table 4: Action Summary

SUBJECT	ACTION/GOAL OR POLICY REFERENCE	ACTION TYPE	PLAN PRINCIPLE
5.0 Managing Growth			
Overall growth management	Monitor and report on county population growth relative to the regional population growth (goal 1).	Program	Growth & Fiscal Sustainability
Monitoring development	Monitor and report on area structure plan build-out for number of new dwellings and dwelling types (goals 2 and 4).	Program	Growth & Fiscal Sustainability
Growth in Balzac West	Review the population objectives and development form of the Balzac West Area Structure Plan (policy 5.1).	Study	Growth & Fiscal Sustainability
6.0 Finance			
Business growth	Develop a business assessment base target and report on the appropriate balance between the business and residential assessment base (goal 3).	Study	Growth & Fiscal Sustainability
Identifying infrastructure needs	Identify soft infrastructure needs that come with growth and the methods to finance those needs. Negotiate a comprehensive approach to the recovery of soft infrastructure costs with the development industry (policy 6.3).	Study	Growth & Fiscal Sustainability

SUBJECT	ACTION/GOAL OR POLICY REFERENCE	ACTION TYPE	PLAN PRINCIPLE
Financing soft infrastructure	Advocate and support changes to provincial legislation to allow the recovery of soft infrastructure cost from developers (policy 6.3).	Study	Growth & Fiscal Sustainability
Assessing fiscal impact of development	Implement the County's fiscal impact model as a tool to: <ul style="list-style-type: none"> • assess development applications; • allow consistent comparison between projects; and • measure the county wide impact of growth (policy 6.5). 	Regulation	Growth & Fiscal Sustainability
Assessing fiscal impact of operations	Develop and adopt County Policy on the requirements and use of a fiscal impact model and a utility infrastructure cost feasibility and life cycle analysis (policy 6.6).	Regulation	Growth & Fiscal Sustainability
7.0 Environment			
Environmental checklist	Develop an environmental review checklist to provide for consistent review of development applications (goal 1).	Regulation	Environment
Important environmental areas	Undertake an inventory of regionally important environmental areas and develop policies and procedures to address these areas (goal 4).	Study	Environment
Viewscapes and safety	Review the Land Use Bylaw to establish criteria with respect to building setbacks from escarpments to preserve viewscapes and ensure safety (goal 5, policy 7.21).	Regulation	Rural Communities
Transfer of Development Credits	Assess the use of Transfer Development Credits, in accordance with the Alberta Land Stewardship Act, as a way to direct development to preferred growth areas in order to sustain agriculture, benefit agriculture land owners, and achieve compact development (policy 7.26).	Study	Environment
Water conservation	Develop a water conservation policy for public utility systems and adopt water conservation policies in new or amended area structure plans (policy 7.27).	Regulation	Environment
Dark skies	Review the dark sky lighting requirements of the Land Use Bylaw (policy 7.29).	Regulation	Rural Communities
8.0 Agriculture			
Home based businesses	Review the Land Use Bylaw home based business uses and regulations to provide greater opportunity on larger parcels of land (policy 8.11).	Regulation	Agriculture

SUBJECT	ACTION/GOAL OR POLICY REFERENCE	ACTION TYPE	PLAN PRINCIPLE
Compensation for landowners	Explore the use of provincial tools to compensate landowners for the natural capital of agricultural land (policy 8.12).	Study	Agriculture
Renewable energy development	Review the Land Use Bylaw to allow for the development of renewable energy sources. (policy 8.13).	Regulation	Agriculture
First parcel out subdivision	Amend the Land Use Bylaw to allow a first parcel out for an agriculture subdivision, and agriculture subdivision of isolated land without redesignation (policies 8.18 to 8.19).	Regulation	Agriculture
Minimize land use conflict	Develop a Right to Farm Policy which aligns with provincial legislation and, where feasible, enhances provincial objectives (policies 8.29 to 8.30).	Regulation	Agriculture
Minimize land use conflict	Develop and apply 'agriculture boundary design guidelines' to minimize negative impacts on agricultural land from new non-agricultural land uses, including a consideration of increased building setbacks (policy 8.31)	Regulation	Agriculture
10.0 Country Residential Development			
Compact residential design	Develop planning and design standards and guidelines with respect to compact country residential development (policies 10.7 to 10.9).	Study	Rural Communities
Compact residential regulations	Amend the Land Use Bylaw to accommodate compact residential forms of development contemplated in this Plan (policies 10.7 to 10.9).	Regulation	Rural Communities
12.0 Parks, Open Space, Pathways and Trails			
Land acquisition for parks	Identify key land required for parks acquisition (policies 12.5 and 12.6).	Study	Rural Communities
Design standards for parks, open space, & trails	Develop design principles and standards for the design, construction, maintenance, and operation of parks, open space, pathways, trails, and associated amenities (policy 12.7).	Regulation	Rural Communities
Update County Policy re: design standards	Review and update the County's Parks and Open Space classification system to reflect new design standards when they are developed (policy 12.11).	Regulation	Rural Communities
County Policy re: life cycle analysis	Develop a life-cycle fund to assist with capital replacement and repair costs (policy 12.13).	Regulation	Growth & Fiscal Sustainability

SUBJECT	ACTION/GOAL OR POLICY REFERENCE	ACTION TYPE	PLAN PRINCIPLE
14.0 Business Development			
Land inventory	Undertake a commercial/industrial land inventory to assist in determining the future potential for the growth and diversification of the County's business sectors. (policy 14.1).	Study	Growth & Fiscal Sustainability
Main Street guidelines	Develop Main Street commercial guidelines for the Hamlet of Langdon (policies 14.15 to 14.17).	Regulation	Rural Communities
15.0 Natural Resources			
Aggregate extraction policy	Prepare an aggregate extraction policy that addresses site design, location criteria, visual impact, mitigation of extraction impacts, and appropriate setbacks between extraction activities and other land uses (policies 15.1 to 15.6).	Regulation	Environment
Aggregate management plan	Develop an aggregate management plan to identify resource areas and address land use management issues; prepare the plan in consultation with residents, industry, and stakeholder groups (policies 15.2 to 15.6).	Study	Environment
16.0 Transportation			
Maintenance of trails & sidewalks	Develop a comprehensive maintenance and operation policy for parks, open space, pathways, trails, and sidewalk maintenance (policies 16.8 to 16.12).	Regulation	Rural Service
Agriculture priority roads	Explore the definition, identification, and standards for agricultural priority roads (policy 16.14).	Study	Agriculture
Road maintenance standards	Define and adopt road service standards in terms of performance, quality, road classification, traffic volume, and development type (residential, agriculture, and business) (policies 16.15 to 16.17).	Regulation	Rural Service
17.0 Utility Services			
Stormwater use	Encourage the development of provincial regulation that allows the reuse of stormwater (policy 17.14).	Study	Environment
Financing stormwater infrastructure	Develop a stormwater offsite bylaw levy for the construction of regional stormwater infrastructure in required areas (policy 17.14).	Regulation	Environment
Stripping & grading	Review the Land Use Bylaw to ensure the regulations regarding the stripping, grading, and/or the placement of fill meet the stormwater goals (goal 5 and policy 17.15).	Regulation	Environment

SUBJECT	ACTION/GOAL OR POLICY REFERENCE	ACTION TYPE	PLAN PRINCIPLE
18.0 Rural Service and Partnerships			
Core services	Identify core County services (policy 18.1).	Study	Rural Service
20.0 Emergency Services			
Master fire plan	Prepare a Master Fire Plan to provide comprehensive, long-term direction for fire services (goal 1).	Study	Rural Service
Water supply & distribution	Assess the County's firefighting water supply and distribution system to identify cost effective mechanisms to improve pressurized and non-pressurized water sources (policy 20.10).	Study	Rural Service
Wildland fire protection	Develop a Wildland Fire Protection strategy encompassing public education, improved access and egress in high hazard areas, and preventative measures to slow fire growth and enable rapid protective fire mobilization services (policy 20.12).	Program	Rural Service
21.0 Recreation, Social and Culture			
Planning for services	Develop a comprehensive strategy to guide the provision of cost effective, financed, and appropriate recreational, social, and cultural services (goal 1, policy 21.6).	Study	Rural Service
Comprehensive recreation & cultural plan	Develop a comprehensive master plan to guide the sustainable development of recreation and cultural amenities in collaboration with district and regional recreation boards, residents, community groups, and neighbouring municipalities (goal 1).	Study	Rural Service
28.0 Area Structure Plan Preparation and Amendment			
Review of Area Structure Plans	Review area structure plans for alignment with the County Plan. Prioritize and recommend area structure plan reviews based on the criteria identified in policy 28.4.	Study	Growth & Fiscal Sustainability
29.0 Technical Requirements and Submissions			
Master site development plans	Amend the Land Use Bylaw to recognize master site development plans (policy 29.6).	Regulation	Rural Communities

31.0 MONITORING

The County Plan is a living document, to be amended from time to time to reflect changing conditions; monitoring, evaluating, and progress reporting is required.

Where necessary and possible, the results of the goals, policies, and actions should be measured. Monitoring occurs through the use of performance measurement tools such as indicators, benchmarks, and targets.

INDICATOR: a measurement that assists in tracking the Plan's goals and policies.

BENCHMARK: a "starting point" from which to measure progress. It represents the state of a measurement or indicator at a particular time.

TARGET: a quantifiable outcome that represents a level of performance the County would like to achieve with respect to a particular goal or policy.

POLICY

- 31.1 County administration will report to Council on implementation of the County Plan on an annual basis.
- 31.2 Administration will develop and update performance measures (indicators, benchmarks, and targets) to monitor the implementation of the County Plan.
- 31.3 Changes and additions to the implementation program and performance measures (indicators, benchmarks, and targets) shall occur as required and are not to be considered as amendments to the County Plan.

Table 5 provides examples of indicators, benchmarks, and targets. These monitoring tools will be periodically reviewed and updated as part of the implementation report.

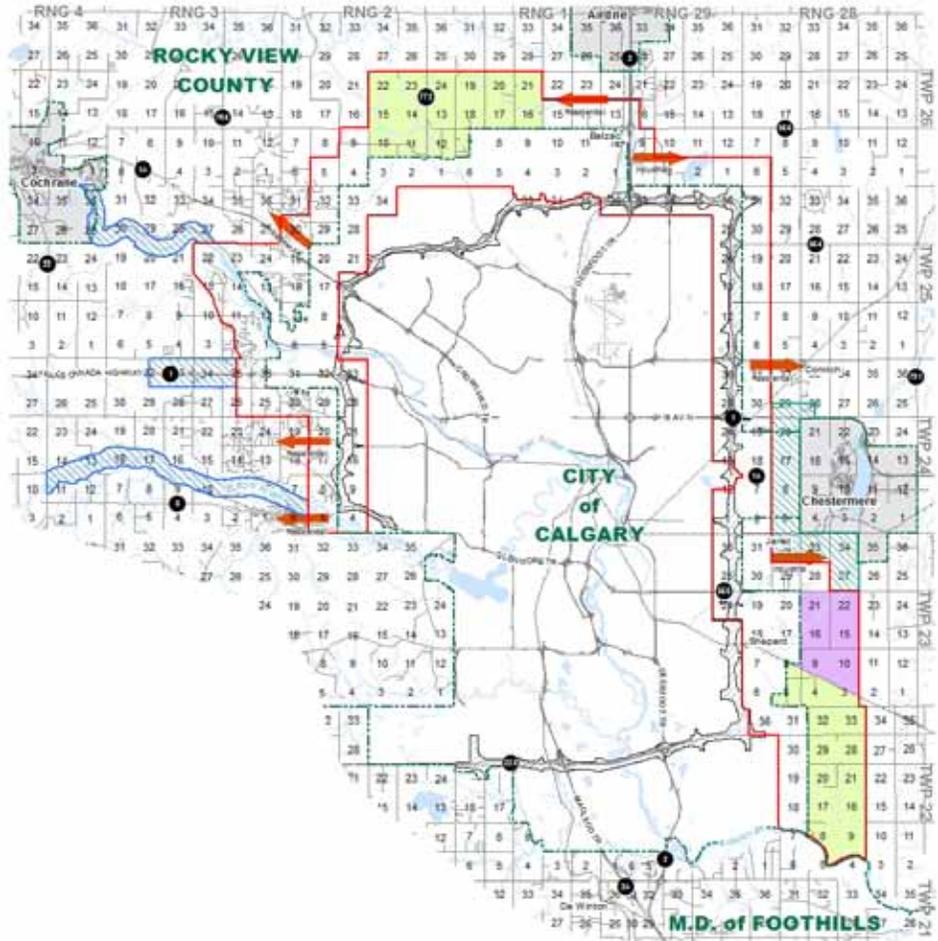
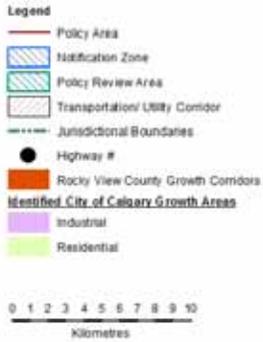
Table 5: Indicators, Benchmarks, and Targets

CATEGORY	INDICATOR	BENCHMARK	TARGET
Managing growth	County population growth	Population in 2011	No more than 3 % of the regional population over the life of the Plan
Managing growth	Monitor area structure plan build-out for dwelling numbers and dwelling type	Lot inventory 2011	Dwellings are built in defined growth areas
Financial sustainability	Business assessment base	2013 Assessment base	To be determined (action)
Financial sustainability	Change in business acreage inventory	2013 Business land inventory	To be determined (action)

V. Appendices

Appendix A

ROCKY VIEW COUNTY/CITY OF CALGARY: INTERMUNICIPAL DEVELOPMENT PLAN



Approved:
Calgary Bylaw: 14P2011
Rocky View Bylaw: C-707B-2011
This map is conceptual only. No measurements of distances or areas should be taken from this map.

Appendix B

DEFINITIONS

The following definitions provide clarity to the terms used throughout this Plan. All definitions within the County Plan are italicized and where the word is first used in the text, the definition is provided in the side bar.

AGRICULTURAL AREA: means the area of Rocky View County where redesignation, subdivision, and lot development are not guided by an area structure plan, conceptual scheme, or master site development plan.

AGRICULTURE SERVICES: assist the agricultural operator in the production of primary and value-added agriculture products and services.

BUSINESS AREAS: are defined as regional business centres, highway business areas, hamlet business areas, or areas for business identified in an area structure plan or conceptual scheme.

CARRYING CAPACITY: is the ability of a watershed, air shed, and/or landscape to sustain activities and development before it shows unacceptable signs of stress or degradation.

CONFINED FEEDING OPERATION: means fenced or enclosed land or buildings where livestock are confined for the purpose of growing, sustaining, finishing, or breeding by means other than grazing and any other building or structure directly related to that purpose but does not include residences, livestock seasonal feeding and bedding sites, equestrian stables, auction markets, race tracks, or exhibition grounds.

CONSERVATION DESIGN: is a method of site planning that begins with the identification of a land area's features and values that are to be retained and protected. These features may include natural habitat, wildlife corridors, open land, vistas, farm/ranch land, and historical areas. Once these areas are identified for protection, sustainable site planning may occur on the remaining lands.

COUNTY POLICY: is adopted by resolution of Council and addresses the following areas:

1. Administration
2. Finance & Systems
3. Planning & Development
4. Infrastructure & Operations
5. Agricultural Service Board
6. Utility Services

DEVELOPABLE LAND: includes all land on which building could occur and excludes land identified as environmental reserve or environmental reserve easement.

FARMSTEAD: means a single parcel of land on which a habitable residence is situated for a minimum of 10 years, is used in connection with the ranching or farming operation, and is located on a previously un-subdivided quarter section. The Farmstead may include associated buildings and landscape improvements.

FIRST PARCEL OUT: means the subdivision of a single residential or agricultural parcel created from a previously un-subdivided quarter section.

FLOODRISK AREA: means the area of land bordering a water course or water body that would be inundated by 1 in 100 year flood as determined by the Province, in consultation with the County, and may include both flood fringe and floodway.

FRAGMENTED QUARTER SECTION: is a quarter section of land within the agriculture area divided into six or more:

1. residential lots; and/or
2. small agricultural parcels, each of which is less than 10 hectares (24.7 acres) in size.

HARD INFRASTRUCTURE: means land and infrastructure related to roads, pathways and trails, and water, stormwater, wastewater, and parking and loading facilities.

ISOLATED LAND: means the smaller portion of an un-subdivided quarter section that, in the opinion of the County, is isolated from the rest of the quarter section by a physical barrier and prohibits the movement of livestock or equipment. The barrier may have been created by natural features such as a river, ravine, wetland, or human made features such as roads, railway lines, and irrigation canals.

LOW IMPACT DEVELOPMENT: uses a variety of techniques to treat and manage stormwater runoff close to the areas where rain falls. Low Impact Development focuses on site design and stormwater control options such as green roofs, stormwater capture and re-use, and landscaping that increases the absorption and filtering of rainwater.

MINIMUM DISTANCE OF SEPARATION: means a provincially regulated setback established between a confined feeding operation and the neighbouring residence that is in existence at the time the application is submitted. The purpose is to minimize the impact of odour. It is measured from the outside walls of neighbouring residences to the point closest to the confined feeding operation's manure storage facilities or manure collection areas.

MULTI-LOT: means development of two or more new residential lots and includes country residential and hamlet development. The definition of multi-lot development does not apply to the subdivision and development of lands within a fragmented quarter section (policy 10.10 to 10.14).

NEW OR DISTINCT AGRICULTURAL OPERATION:

1. New agricultural operations are distinctly different from the existing use of the land in terms of agricultural products, livestock, and/or facilities.
2. Distinct operations are where two or more different agricultural uses are established on a single agriculture parcel for a period of 5 years or more. Such uses may include agricultural products, livestock, and/or facilities.

NOTIFICATION ZONE: means an area within 1.6 kilometres of an adjacent jurisdictional boundary. The zone is for the purpose of informing an adjacent municipality of a development application within the County.

OPEN LAND IS DEVELOPABLE LAND AND INCLUDES:

1. parks and open space;
2. publicly or privately owned land permanently used for conservation, recreation, agriculture, and/or institution uses;
3. public utility lots;
4. municipal reserve land dedication;
5. riparian areas, constructed wetlands, stormwater treatment areas, wastewater treatment areas;
6. flood fringe areas; and
7. Other environmentally important land not qualifying as environmental reserve.

PHYSICAL CONSTRAINT: means a natural feature or human made hazard that impacts or restricts site suitability for development. Constraints include rivers, water bodies, wetlands, ravines, escarpments, steep slopes, land that is subject to flooding, and land that is, in the opinion of the subdivision authority, unstable.

SERVICING STANDARDS: means the County's technical requirements that govern infrastructure design, construction, testing, inspection, maintenance, and transfer of public works.

SOFT INFRASTRUCTURE: includes, but is not limited to, infrastructure relating to recreation, libraries, protective services, fire protection services, and schools.

UN-SUBDIVIDED QUARTER SECTION: A titled area of:

1. 64.7 hectares (160 acres) more or less; or
2. a gore strip greater than 32.38 hectares (80 acres) in size, that has not been subdivided, excluding subdivisions for boundary adjustments, road widening, and public uses such as a school site, community hall, and rights of way of roads, railroads, and canals.

VALUE-ADDED AGRICULTURE: involves the processing of primary agricultural products and services into secondary products to increase overall product value.

Appendix C

TECHNICAL REQUIREMENTS AND SUBMISSIONS

1. TECHNICAL REQUIREMENTS AND SUPPORTING INFORMATION

The County may require studies, reports, and tests to be submitted as per section 29 on the following matters:

Compatibility

- a) compatibility of the proposed development with adjacent land uses and the use of design measures to mitigate adverse impacts;
- b) compatibility of the proposed development with existing agricultural, business, or residential uses;
- c) potential off-site impacts such as dust, smell, and odour;

Fiscal Impact

- d) fiscal impact to the County;
- e) infrastructure, operational, and life-cycle costs (utilities);
- f) identified commercial/industrial trade area (business);

Design

- g) proposed land uses;
- h) development scale, size, and site design;

Emergency Services

- i) fire protection requirements;
- j) protective service requirements;
- k) emergency response requirements;

Environment

- l) bio-physical impact assessment of potential impacts on the natural environment;
- m) any on-site or off-site physical constraints;
- n) geotechnical assessment (slope stability);

Landscaping

- o) landscape requirements for visual appearance and/or mitigating measures;

Servicing

- p) water and wastewater requirements, and service method;
- q) impact on County services and/or private utility services;
- r) nature of any on-site or off-site engineering works that may be required to support the proposed business;
- s) on-site stormwater management and off-site conveyance;

Transportation

- t) efficiency of the proposed road network within Rocky View County and, where applicable, other jurisdictions;
- u) impact on the intersections, highways, roads, and road network within Rocky View County and, where applicable, other jurisdictions;
- v) access to a paved County road or provincial highway;
- w) safe access and egress from a road or highway;
- x) pathways, trails, and sidewalks.

Other

- y) historical and archeological assessment;
- z) potential for the area to support natural resource extraction; and
- aa) any other matters the County deems appropriate.

2. CONCEPTUAL SCHEME SUBMISSIONS

Conceptual schemes should address the following:

1. A description and evaluation of the existing plan area:
 - a) topography, soils, vegetation, geotechnical considerations (constraints);
 - b) environmental sensitivity and significance;
 - c) agricultural capability, natural resources;
 - d) existing land use, ownership, development, and adjacent land uses;
 - e) archaeological and historical considerations; and
 - f) existing utilities and transportation routes.

2. A land use concept which includes;
 - a) a future land use scenario;
 - b) demonstration of consistency with a higher order plan;
 - c) design controls/guidelines, where appropriate;
 - d) reserve area dedication and strategy (municipal/school/environmental);
 - e) transportation network and pedestrian network;
 - f) stormwater management plan;
 - g) servicing strategy;
 - h) anticipated improvements to existing infrastructure;
 - i) population densities, population projection, and an indication of target market to determine impact on the area's School District;
 - j) phasing of development; and
 - k) landscaping and aesthetic details that will enhance the development.
3. A summary of the Applicant's community consultation and results.
4. Any other matter identified by the County.

3. MASTER SITE DEVELOPMENT PLAN SUBMISSIONS

Master site development plans should address the following matters:

1. A general introduction to the proposed development: a discussion of the vision and purpose of the proposal.
2. A master site plan addressing:
 - a) building placement and setbacks;
 - b) building height and general architectural appearance;
 - c) parking and public lighting;
 - d) landscaping for visual appearance and/or mitigating measures;
 - e) agriculture boundary design guidelines; and
 - f) anticipated phasing.
3. A summary of the Applicant's community consultation and results.
4. Technical issues identified by the County that are necessary to determine the project's viability and offsite impacts. These may include any item identified in Appendix C.

4. AGGREGATE MASTER SITE DEVELOPMENT PLAN SUBMISSIONS

Applications for aggregate extraction shall include a master site development plan that addresses the following:

1. A general introduction to the proposed development: a discussion of the vision and purpose of the proposal, summary of physical attributes of subject lands, site context overview, and guiding principles for development.
2. Development rationale including justification for proposed land use.
3. Summary of proposed operations including: site activities, proposed hours of operation, haul routes, etc.
4. Aggregate extraction guidelines and site development/ aggregate extraction plan.
5. Phasing plan.
6. Development permitting structure which is to include monitoring and reporting requirements.
7. Reclamation plan.
8. Environmental mitigation strategies and initiatives including a summary of the use of sustainable technologies and initiatives during extraction and reclamation stages.
9. Identification of impacts to surrounding lands and mitigation strategies (may require landscaping and buffering strategies for effective screening and visual aesthetics).
10. Assessment of cumulative aspects of extraction activities in the area.
11. Summary of interim and post reclamation land uses – a discussion of land uses that may coincide with aggregate extraction (i.e. agricultural uses).
12. Any special policies that may be required to give guidance to the preparation of development proposals.

13. A technical summary of the proposal with supporting documentation that addresses:
 - a) transportation and access management (submission of a traffic impact assessment);
 - b) stormwater management (submission of a stormwater management plan);
 - c) ground and surface water hydrological analysis;
 - d) environmental overview (submission of a biophysical overview);
 - e) noise and dust mitigation strategies and reports; and
 - f) erosion and weed management control.
14. Supplementary information - any additional information that may help further define the proposal.
15. Summary of required Provincial Approvals. This could include: Alberta Environment Code of Practice, Alberta Environment wetland loss and mitigation approvals, Alberta Community Development historical resource clearance, Alberta Transportation roadside development permits, etc.
16. A summary of the Applicant's community consultation and results.
17. Any other item deemed appropriate by the County.

Appendix D:

COUNTY POLICY

Key policy documents contributing to the County Plan are:

- Policy 220: Debt acquisition and management
- Policy 313: Disposal of reserve land
- Policy 317: Community recreation funding
- Policy 318: Pathways and trails
- Policy 411: Residential water and sewer requirements
- Policy 412: Servicing requirements
- Policy 415: Domestic potable water system servicing
- Policy 419: Riparian land conservation and management
- Policy 420: Wetland conservation and management
- Policy 430: Communal wastewater system management
- Policy 431: Stormwater system management
- Policy 449: Performance requirements for wastewater treatment systems
- Policy 600: Water conservation

COUNTY PLAN

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Cultivating Communities