APPLICATION NO.	LA 21037
NAME OF OPERATOR / OPERATION:	A&D CATTLE LTD.
LOCATION:	NE 27-8-26 W4M
MUNICIPALITY:	MUNICIPAL DISTRICT OF WILLOW CREEK #26
AFFECTED PARTY:	TOWN OF FORT MACLEOD
DOCUMENT:	**SUBMISSIONS OF THE AFFECTED PARTY, TOWN OF FORT MACLEOD IN RESPONSE TO REQUESTS FOR BOARD REVIEW**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY SUBMITTING THIS DOCUMENT:	**Janice A. Agrios, QC** Kennedy Agrios Oshry Law Barristers and Solicitors 1325 Manulife Place 10180 – 101 Street Edmonton, AB T5J 3S4 Phone: (780)969-6911 Fax: (780)969-6901 Email: jagrios@kaolawyers.com File No. 76215-1 JAA

A. INTRODUCTION

1. The Town of Fort Macleod (the "Town") and the Municipal District of Willow Creek No. 26 (the "MD") adopted an Intermunicipal Development Plan (the "IDP") **[Tab 1]** as required pursuant to Section 631(1) of the *Municipal Government Act* (the "MGA") **[Tab 2]**. The IDP sets out a Confined Feeding Operation ("CFO") exclusion area. The proposed CFO is located within the CFO exclusion area as set out in the IDP. Therefore, the Approval Officer correctly refused the application. Given that the IDP sets out the agreed upon policy of both the Town and the MD, it is submitted that the Natural Resources Conservation Board (the "NRCB") should uphold the Approval Officer's decision.

B. FACTS

The IDP

2. On November 19, 2021, the Town and the MD reached an agreement with respect to the form of the IDP **[Tab 3]**. In order to formally adopt the IDP, both municipalities required time to provide notice of the IDP, to hold public hearings and to give three readings to the IDP bylaws.

3. On January 19, 2022, the MD gave first reading to Bylaw 1922, which adopts the agreed upon IDP.

4. On January 24, 2022, the Town gave first reading to the Bylaw 1949, which adopts the agreed upon IDP.

5. On February 23 and March 9, 2022, the MD held a public hearing with respect to the IDP. On March 9, 2022, the MD gave third reading to the IDP bylaw.

6. On February 28, 2022, the Town held a public hearing with respect to the IDP. On the same day, the Town gave third reading to the IDP bylaw.

7. Map 3 of the IDP sets out the CFO exclusion area.

8. Policy 3.8 of the IDP requires the MD to amend its municipal development plan within one year of the IDP being adopted to reflect the CFO exclusion area.

The Application

9. On July 19, 2021, the Applicant submitted a Part 1 application to the NRCB to construct a new 2,000 head beef finisher CFO, including 12 pens (40 metres x 50 metres), four pens (20 metres x 30 metres) and a catch basin.

10. On December 3, 2021, the Applicant submitted a Part 2 application.

11. On January 5, 2022, the Approval Officer deemed the application complete.

12. On April 1, 2022, the Approval Officer denied the application on the basis that it did not comply with the IDP as the proposed CFO would be located within the CFO exclusion area set out in the IDP.

13. The Applicant, the MD and another party submitted Requests for Review of the Approval Officer's decision. The NRCB has directed a hearing to address the issues for review.

C. ARGUMENT

Relevant Legislation

14. Section 20 of the *Agricultural Operation Practices Act*, RSA 2000, c. A-7 (the "AOPA") **[Tab 4]** provides:

> 20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,
>
> (a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or
>
> (b) there is no inconsistency with the municipal development plan land use provisions and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations,...
>
> (3) The approval officer may, under subsection (1)(b),

(a) deny the application, or

(b) grant an approval or an amendment of an approval and impose terms and conditions on the approval or amendment including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.

15. Section 25 of the AOPA **[Tab 4]** provides:

25(4) In conducting a review the Board …

(g) must have regard to, but is not bound by, the municipal development plan, … .

(7) On holding a review the Board may

(a) grant an approval, registration or authorization or an amendment of an approval, registration or authorization on any terms and conditions that the Board considers appropriate, including the terms and conditions that a municipality could impose if the municipality were issuing a development permit,

(b) refuse to grant an approval, registration or authorization or an amendment of an approval, registration or authorization, or

(c) make any other disposition of the application that the Board considers to be appropriate.

16. Section 631(1) of the MGA **[Tab 2]** provides:

631(1) Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, 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.

17. Section 638(1) and (3) of the MGA **[Tab 2]** provide:

638(1) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

(3) An intermunicipal development plan prevails to the extent of any conflict or inconsistency between

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

(b) the intermunicipal development plan in respect of the development of the land to which the conflicting or inconsistent plans apply.

The Approval Officer correctly refused the application on the basis that it did not comply with the IDP

18. Section 20(1) of the AOPA **[Tab 4]** provides that an Approval Officer may only approve an application if the application is consistent with the land use provisions of the municipal development plan (the "MDP").

19. Section 631(1) of the MGA **[Tab 2]** requires municipalities with common boundaries to adopt an intermunicipal development plan (note that there are certain exceptions, which do not apply in this case).

20. Section 638(1) of the MGA **[Tab 2]** provides that a MDP must be consistent with any IDP. Further, Section 638(3) of the MGA **[Tab 2]** provides that an IDP prevails to the extent of any conflict or inconsistency between a MDP and the IDP in respect of the development of land to which conflicting or inconsistent plans apply. In effect, where there is an inconsistency, the IDP should be treated as amending the MDP.

21. The MD adopted its MDP on June 17, 2017. At that time, while the MGA required that adjacent municipalities adopt IDPs, the time frame for adopting an IDP had not yet passed. Further, at that time, the MGA did not yet contain Section 638(3), which addresses inconsistencies between an IDP and a MDP. Since then, the time has now passed for municipalities to adopt IDPs and Section 638(3) of the MGA (which provides that an IDP prevails over a MDP where there is an inconsistency) has been enacted. The result is that the MD's MDP should now be treated as being amended by the IDP to the extent of any inconsistencies.

22. In short, in the present case, to the extent that there is any inconsistency between the IDP and the MD's MDP, the IDP prevails. In light of the provisions of the MGA, the

Approval Officer must not only consider whether the application is in compliance with the MDP, but also must consider whether the application is in compliance with the IDP. If the application does not comply with the IDP, then the Approval Officer must deny the application.

23. The NRCB recently confirmed this interpretation in the Double H Feeders Decision 2022-2/LA1033 **[Tab 5]**. In that case, the NRCB found that Approval Officer should determine an application's consistency not just with the MDP, but also the IDP. This interpretation simply reflects the hierarchy of plans in section 638 of the MGA, and in particular, the provisions of Section 638(3) of the MGA.

24. Policy 3.1 of the IDP **[Tab 1]** provides:

> New confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO exclusion area) as excluded on Map 3-CFO Policy Area.

25. As the proposed CFO is located within the CFO exclusion area identified on Map 3 of the IDP, the Approval Officer correctly denied the application on the basis that it was not consistent with the IDP.

The NRCB should deny the application on the basis that it is not consistent with the IDP

26. Section 25(4) of the AOPA **[Tab 4]** provides that the NRCB must have a regard to, but is not bound by a MDP.

27. The comments set out above with respect to the applicability of the IDP under Section 20(1) of the AOPA also apply to Section 25(4) of the AOPA.

28. While the NRCB is not bound by the IDP, it should nevertheless follow the IDP unless there are sound planning reasons not to do so.

29. According to the Town's MDP **[Tab 6]**, the lands southwest corner of the Town are planned for future residential development.

30. The opening words of Section 3 of the IDP **[Tab 1]** set out the intent of the policies related to CFOs:

> The MD and the Town both recognize that it is the jurisdiction of the Natural Resources Conservation Board (NRCB) to grant permits and regulate confined feeding operations (CFOs), which are defined in the *Agricultural Operation Practices Act* along with a threshold for when a permit approval is required in the Part 2 Matters Regulation. These policies recognize that it is important for both jurisdictions to maintain a good quality of life and high-quality environment and support all types of agriculture, as both are fundamental to growth and development within each of their municipalities.

31. The IDP polices carefully balance the needs of agricultural uses, including CFOs, with residential uses. In particular, the policies are designed to minimize potential nuisance and conflict between CFOs and residential uses. In this regard, the CFO exclusion area in Map 3 does not cover the entire Referral Area set out in Map 6 of the IDP. Rather, the CFO exclusion area is confined to the southwest portion of the IDP area in recognition of the planned future residential area in the southwest corner of the Town. Further, Policy 3.4 of the IDP specifically recognizes existing CFOs within the CFO exclusion area and Policy 3.7 of the IDP contemplates continuation of existing policies and procedures with respect to intensive livestock operations.

32. In summary, it is submitted that the IDP policies represent the agreement of both the Town and the MD as to reasonable restrictions with respect to CFOs taking into consideration the desire to support agricultural uses while at the same time preserving the opportunity for future residential development.

The Approving Officer and the NRCB should apply relevant legislation and bylaws in effect as of the decision date.

33. The Approval Officer was correct in deciding the application based on the IDP as of the decision date. It is submitted that the NRCB also should base the review on the IDP presently in effect.

34. In Alberta, in the absence of bad faith, the Courts have held that land use decisions are to be made in accordance with applicable bylaws as of the date of the decision, not the date of the application.

Parks West Mall Ltd. v Hinton ("*Parks West Mall*"), 1994 CarswellAlta 7 (QB), at para. 27 **[Tab 7]**

698114 Alberta Ltd. v Banff (Town of), 1999 ABQB 59, at para. 11 to 15 **[Tab 8]**

Bouchard v Subdivision and Development Appeal Board of Canmore, 2000 ABCA 117, at paras. 7 and 11 **[Tab 9]**

35. In the *Parks West Mall*, the Court described the rationale for this principle as follows (at para. 27):

> First, I find the time for considering whether the prima facie case exists is the date of the court hearing, not the date of the application for development permit. The choice of this date is critical. Municipalities have the right to legislate in the public interest. Their attention is naturally directed to zoning issues through development efforts. If municipalities validly legislate before the Applicants get to court, the court should not be granting orders that fly in the face of that valid legislation.

36. The MD relies on *Ottawa (City) v Boyd Builders Ltd.*("*Boyd Builders*"), 1965 CarswellOnt 66 **[Tab 10]** in support of its position that the application should be decided based on bylaws in force at the time of the application. However, as discussed in both *Parks West* (at paras. 24-29) and *68114* (at para. 12), *Boyd Builders* is based on its unique facts.

37. To begin with, the bylaw in question in *Boyd Builders* was actually not in effect at the time of the application or at the time of the decision due to the process for bylaw approval in Ontario (at para. 5). The process for bylaw approval in Alberta is different. In the present case, the bylaws adopting the IDP were in effect at the time of the Approval Officer's decision.

38. Second, in *Boyd Builders*, the Court made an express finding of bad faith in that the bylaw amendment was passed specifically to defeat the development in issue (at paras. 15-16). In contrast, in the present case, the agreement to adopt the IDP, including the CFO exclusion area, predated the Part 2 application and was part of general planning between the Town and MD, as mandated by Section 631(1) of the MGA.

39. The MD has misinterpreted the decision in *Love v Flagstaff (County) Subdivision and Development Appeal Board* ("*Love*"), 2002 ABCA 292 **[Tab 11]** as standing for the

principle that the decision should be based on bylaws in effect as of the date of the application. In *Love*, the land use bylaw contained a minimum setback for residential development from an existing or proposed intensive animal operation ("IAO"). Landowners applied for single family residential dwellings, which were permitted uses. Subsequently, a neighbouring landowner applied for an IAO, which was a discretionary use. The single family residential dwellings were then refused on the basis that they did not meet the setback from a "proposed" IAO (at paras. 4-5, 10-12). The issue was to determine the point in the process at which an IAO becomes a "proposed" IAO (at paras. 14-15). The Court held that an IAO becomes "proposed" once the development permit is issued (at para. 31).

40. In obiter, the Court in *Love* found that a subsequent change in **facts** does not defeat a permitted use application. As such, *Love* is distinguishable from the present case which involves a bylaw change. In this regard, in *Love*, the Court noted that, subject to some exceptions, in general, a bylaw change will defeat a permitted use application (at paras. 73-75). In short, while *Love* states that a subsequent change in **facts** does not defeat a permitted use application, it does not state that the **bylaws** in effect at the time of the application prevail as is suggested by the MD.

41. Lastly, decisions such as *Boyd Builders* and *Love* are based on legislation that directs that an applicant is entitled to a permit as of right when certain conditions are met. For example, in *Love*, the Court was considering Section 642 of the MGA **[Tab 2]**, which provides that a development authority **shall** issue a development permit for a permitted use that fully complies with the land use bylaw. In contrast, there is no equivalent provision under the AOPA. Rather, whether to grant an approval is in the discretion of the Approval Officer or the NRCB, as the case may be. Section 20(3)(a) of the AOPA **[Tab 4]** provides that where there is no inconsistency with the MDP land use provisions and all requirements are met, the Approval Officer still **may** deny the application. Section 25(7) of the AOPA **[Tab 4]** similarly leaves decisions on a review to the discretion of the NRCB.

The MDs Request for Review is inconsistent with its agreement to the CFO exclusion area

42. The MD's letter of support and Request for Review are inexplicable in light of the MD's agreement to the IDP on November 19, 2021. The reason for the delay between agreement regarding the IDP and adoption of the IDP was to follow the necessary statutory steps (which were delayed, in part, due to the intervening holiday break in late December/early January and revisions to the IDP suggested by the NRCB). Although the IDP was not formally adopted, however, the MD and the Town had reached an agreement with respect to the form of IDP, including the CFO exclusion area.

43. Notably, in Policy 3.8 of the IDP, the MD agreed to amend its MDP to reflect the CFO exclusion area in the IDP.

44. The MD's agreement to the IDP, including the CFO exclusion area, predated submission of the Applicant's Part 2 application on December 3, 2021 and the date on which the application was deemed complete, being January 5, 2022.

45. Therefore, any support of the MD for the proposed CFO should be viewed in light of the MD's agreement on November 19, 2021 to the IDP, and in particular, to the CFO exclusion area. Regardless of whether the IDP bylaws were in place, as of the date of the Applicant's Part 2 application, the MD had already determined that CFOs should not be located in the CFO exclusion area and had reached an agreement with the Town to this effect.

D. RELIEF REQUESTED

46. The Town requests that the NRCB uphold the Approval Officer's decision and refuse the application.

Dated this 26th day of May, 2022.

AUTHORITIES AND APPENDICES

1. Intermunicipal Development Plan between the Town of Fort Macleod and the Municipal District of Willow Creek No. 26, dated March 2022

2. *Municipal Government Act*, RSA 2000 c.M-26, Sections 631, 638 and 642

3. Email dated November 19, 2021 with attached IDP
   Email dated November 24, 2021
   Letter dated November 26, 2021

4. *Agricultural Operation Practices Act*, RSA 2000, c. A-7, Sections 20 and 25

5. NRCB Double H Feeders Decision 2022-2/LA1033

6. Town of Fort Macleod Municipal District Plan, Bylaw No. 1826

7. *Parks West Mall Ltd. v Hinton*, 1994 CarswellAlta 7 (QB)

8. *698114 Alberta Ltd. v Banff (Town of)*, 1999 ABQB 59

9. *Bouchard v Subdivision and Development Appeal Board of Canmore*, 2000 ABCA 117

10. *Ottawa (City) v Boyd Builders Ltd.*, 1965 CarswellOnt 66

11. *Love v Flagstaff (County) Subdivision and Development Appeal Board,* 2002 ABCA 292

TAB 1

Intermunicipal Development Plan

Town of Fort Macleod and

Municipal District of Willow Creek No. 26

Bylaw No. 1949 and Bylaw 1922

March 2022

Prepared for:

Town of Fort Macleod

and

MD of Willow Creek

By:

OLDMAN RIVER REGIONAL SERVICES COMMISSION

Cover Art Courtesy of ORRSC

TOWN OF FORT MACLEOD
IN THE PROVINCE OF ALBERTA

BYLAW NO. 1949

BEING a bylaw of the Town of Fort Macleod in the Province of Alberta, to adopt an Intermunicipal Development Plan between the Town of Fort Macleod and the Municipal District of Willow Creek No. 26 pursuant to sections 631 and 692 of the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26*, as amended;

WHEREAS municipalities are required by the province to expand intermunicipal planning efforts to address planning matters that transcend municipal boundaries through an intermunicipal development plan;

AND WHEREAS both the Councils of the Town of Fort Macleod and the Municipal District of Willow Creek No. 26 agree that it is to their mutual benefit to establish joint planning policies and this negotiation and agreement reflects a continuing cooperative approach between the two municipalities and the desire to see well-planned, orderly, and managed growth.

AND WHEREAS the municipality must prepare a corresponding bylaw and provide for its consideration at a public hearing.

NOW THEREFORE, under the authority and subject to the provisions of the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26* as amended, the Council of the Town of Fort Macleod duly assembled hereby enacts the following:

1. That the Town of Fort Macleod and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan, attached hereto, be adopted.
2. This plan, upon adoption, shall be cited as the Town of Fort Macleod and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan Bylaw No. 1949 and Bylaw No. 1922.
3. This bylaw shall come into effect upon third and final reading thereof.

READ ~~a first~~ time this 24th day of January, 2022.

Mayor – Brent Feyter

Chief Administrative Officer – Liisa Gillingham

READ ~~a second~~ time this 28th day of February, 2022. (as amended)

Mayor – Brent Feyter

Chief Administrative Officer – Anthony Burdett

READ a **third** time and finally PASSED this 28th day of February, 2022.

Mayor – Brent Feyter

Chief Administrative Officer – Anthony Burdett

MUNICIPAL DISTRICT OF WILLOW CREEK NO. 26
IN THE PROVINCE OF ALBERTA

BYLAW NO. 1922

BEING a bylaw of the Municipal District of Willow Creek No. 26 in the Province of Alberta, to adopt an Intermunicipal Development Plan between the Municipal District of Willow Creek No. 26 and the Town of Fort Macleod pursuant to sections 631 and 692 of the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26*, as amended;

WHEREAS municipalities are required by the province to expand intermunicipal planning efforts to address planning matters that transcend municipal boundaries through an intermunicipal development plan;

AND WHEREAS both the Councils of the Municipal District of Willow Creek No. 26 and the Town of Fort Macleod agree that it is to their mutual benefit to establish joint planning policies and this negotiation and agreement reflects a continuing cooperative approach between the two municipalities and the desire to see well-planned, orderly, and managed growth.

AND WHEREAS the municipality must prepare a corresponding bylaw and provide for its consideration at a public hearing.

NOW THEREFORE, under the authority and subject to the provisions of the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26* as amended, the Council of the Municipal District of Willow Creek No. 26 duly assembled hereby enacts the following:

1. That the Town of Fort Macleod and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan, attached hereto, be adopted.
2. This plan, upon adoption, shall be cited as the Town of Fort Macleod and Municipal District of Willow Creek No. 26 Intermunicipal Development Plan Bylaw No. 1949 and Bylaw No. 1922.
3. This bylaw shall come into effect upon third and final reading thereof.

READ a **first** time this 19th day of January, 2022.

Reeve – Maryanne Sandberg

Chief Administrative Officer – Derrick Krizsan

READ a **second** time this 9th day of March, 2022. as amended.

Reeve – Maryanne Sandberg

Chief Administrative Officer – Derrick Krizsan

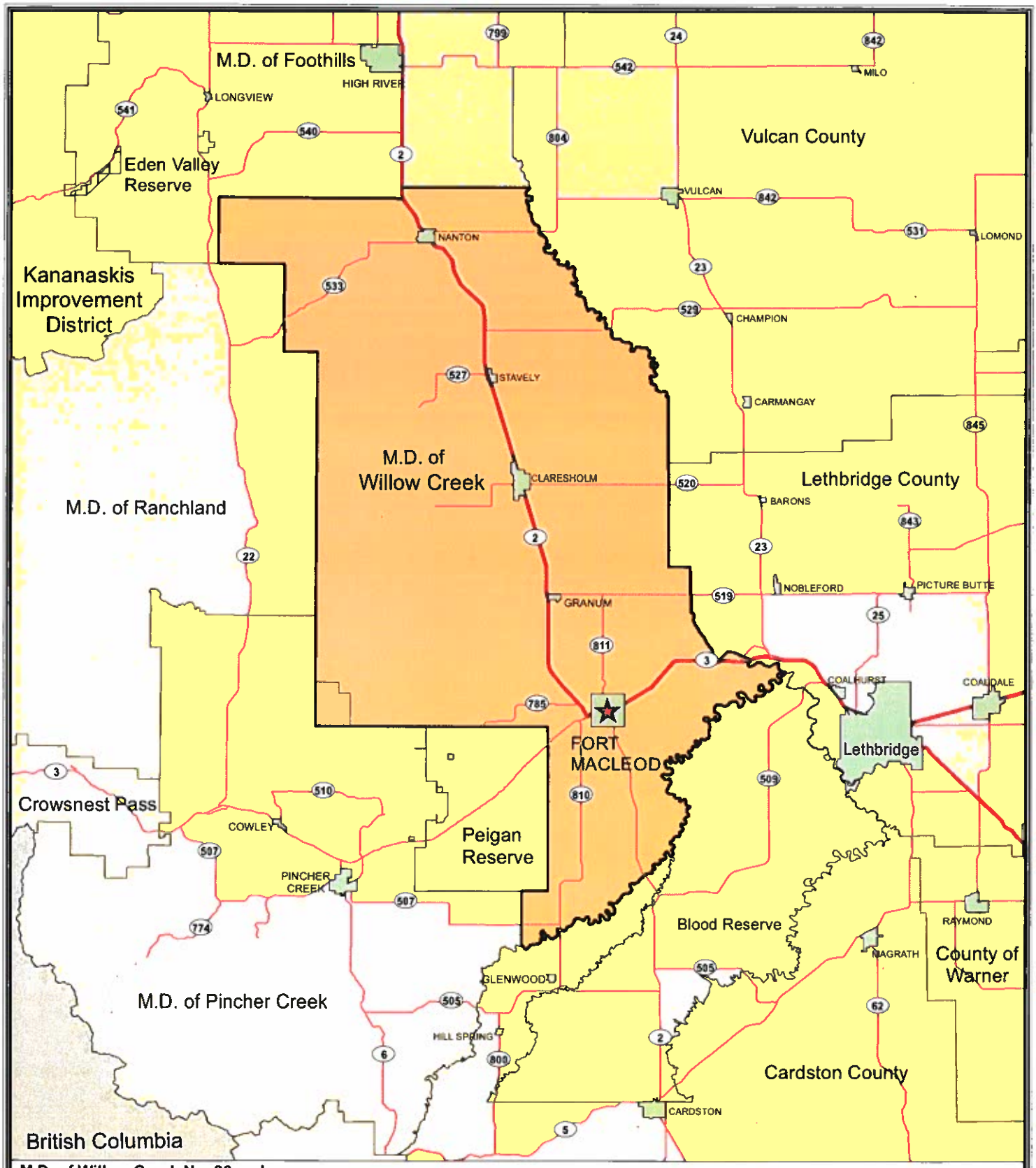
READ a **third** time and finally PASSED this 9th day of March, 2022. as amended.

Reeve – Maryanne Sandberg

Chief Administrative Officer – Derrick Krizsan

TABLE OF CONTENTS

MAPS



M.D. of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development Plan Regional Location Map

MAP 1

M.D. of Willow Creek (Bylaw No. 1922) & Town Of Fort Macleod (Bylaw No. 1949)

March 2022

Town of Fort Macleod

Primary Highway

Secondary Highway

Municipal District of Willow Creek

PART A: INTRODUCTION

1. PURPOSE OF THE PLAN

An intermunicipal development plan is a statutory document prepared for and adopted by two or more municipalities, which deals with land use planning matters of mutual interest. The complexity of intermunicipal development plans requires unique problem solving, negotiation and cooperation to reach mutual agreement. The Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development Plan (IDP) sets out the framework for the municipalities' efforts in intermunicipal planning. The adoption of the IDP is the result of a collaborative effort by the Town of Fort Macleod (Town) and the Municipal District of Willow Creek (MD) in addressing sensitive land use issues in close proximity to the Town.

2. GUIDING PRINCIPLES

The following guiding principles served to inform the preparation of the IDP and are the foundation for the goals and policies that follow:

1. The IDP is a **long-range** planning document that will help promote consistent decision making within the respective municipalities and facilitate orderly and efficient development patterns to the benefit of both municipalities.
2. Opportunities for **cooperation, collaboration, coordination, and communication** are essential components of an effective intermunicipal relationship and should serve as the basic tenets of planning policy and how this IDP is interpreted and implemented.
3. The IDP needs to **recognize** and **respect** that both municipalities should be afforded the opportunity for growth and development to ensure continued vitality and will attempt to balance municipal interests and support mutually beneficial outcomes to the extent possible.
4. The IDP must be **adaptable** to allow consideration of changing needs, evolving relationships, and uncertainty in anticipating all circumstances.

3. IDP GOALS

- To facilitate orderly and efficient development in the designated referral area while identifying each municipality's opportunities and concerns.
- To provide for a continuous and transparent planning process that facilitates ongoing consultation and cooperation among the two municipalities and affected ratepayers.
- To provide methods to implement and amend the various policies of the IDP which are mutually agreed to by both municipalities.
- To maintain and promote a safe and efficient roadway network.
- To ensure development is serviced to standards appropriate to the location and type of development.
- To identify possible joint ventures, such as the provision of municipal services.

4. LEGISLATIVE REQUIREMENTS

The IDP has been prepared in accordance with the legislative requirements of the ***Municipal Government Act (MGA)*** and the ***South Saskatchewan Regional Plan*** **(SSRP)**, which encourages cooperation and coordination between neighbouring municipalities.

Specifically, the *MGA* requires:

> ***631(1)*** *Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, 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.*
>
> ***631(8)*** *An intermunicipal development plan*
>
> *(a) must address*
>
> *(i) the future land use within the area,*
>
> *(ii) the manner of and the proposals for future development in the area,*
>
> *(iii) the provision of transportation systems for the area, either generally or specifically,*
>
> *(iv) the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,*
>
> *(v) environmental matters within the area, either generally or specifically, and*
>
> *(vi) any other matter related 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.

The ***South Saskatchewan Regional Plan*** came into effect September 1, 2014. The SSRP uses a cumulative effects management approach to set policy direction for municipalities to achieve environmental, economic and social outcomes within the South Saskatchewan Region through 2024. Pursuant to section 13 of the ***Alberta Land Stewardship Act (ALSA)***, regional plans are legislative instruments. The SSRP has four key parts including the Introduction, Strategic Plan, Implementation Plan and Regulatory Details Plan. Pursuant to section 15(1) of *ALSA*, the Regulatory Details of the SSRP are enforceable as law and bind the Crown, decision-makers, local governments, and all other persons while the remaining portions are statements of policy to inform and are not intended to have binding legal effect.

The SSRP is guided by the vision, outcomes and intended directions set by the Strategic Plan portion of the SSRP while the Implementation Plan establishes the objectives and the strategies that will be implemented to achieve the regional vision. As part of the *Implementation Plan, Section 8:* Community Development includes guidance regarding Planning Cooperation and Integration between municipalities with the intention to foster cooperation and coordination between neighbouring municipalities and between municipalities and provincial departments, boards and agencies. Section 8 contains the following broad objectives and strategies.

Objectives

- *Cooperation and coordination are fostered among all land use planners and decision-makers involved in preparing and implementing land plans and strategies.*
- *Knowledge sharing among communities is encouraged to promote the use of planning tools and the principles of efficient use of land to address community development in the region.*

Strategies

8.1 *Work together to achieve the shared environmental, economic, and social outcomes in the South Saskatchewan Regional Plan and minimize negative environmental cumulative effects.*

8.2 *Address common planning issues, especially where valued natural features and historic resources are of interests to more than one stakeholder and where the possible effect of development transcends jurisdictional boundaries.*

8.3 *Coordinate and work with each other in their respective planning activities (such as in the development of plans and policies) and development approval process to address issues of mutual interest.*

8.4 *Work together to anticipate, plan and set aside adequate land with the physical infrastructure and services required to accommodate future population growth and accompanying community development needs.*

8.5 *Build awareness regarding the application of land-use planning tools that reduce the impact of residential, commercial and industrial developments on the land, including approaches and best practices for promoting the efficient use of private and public lands.*

8.6 *Pursue joint use agreements, regional services commissions and any other joint cooperative arrangements that contribute specifically to intermunicipal land use planning.*

8.7 *Consider the value of intermunicipal development planning to address land use on fringe areas, airport vicinity protection plans or other areas of mutual interest.*

8.8 *Coordinate land use planning activities with First Nations, irrigation districts, school boards, health authorities and other agencies on areas of mutual interest.*

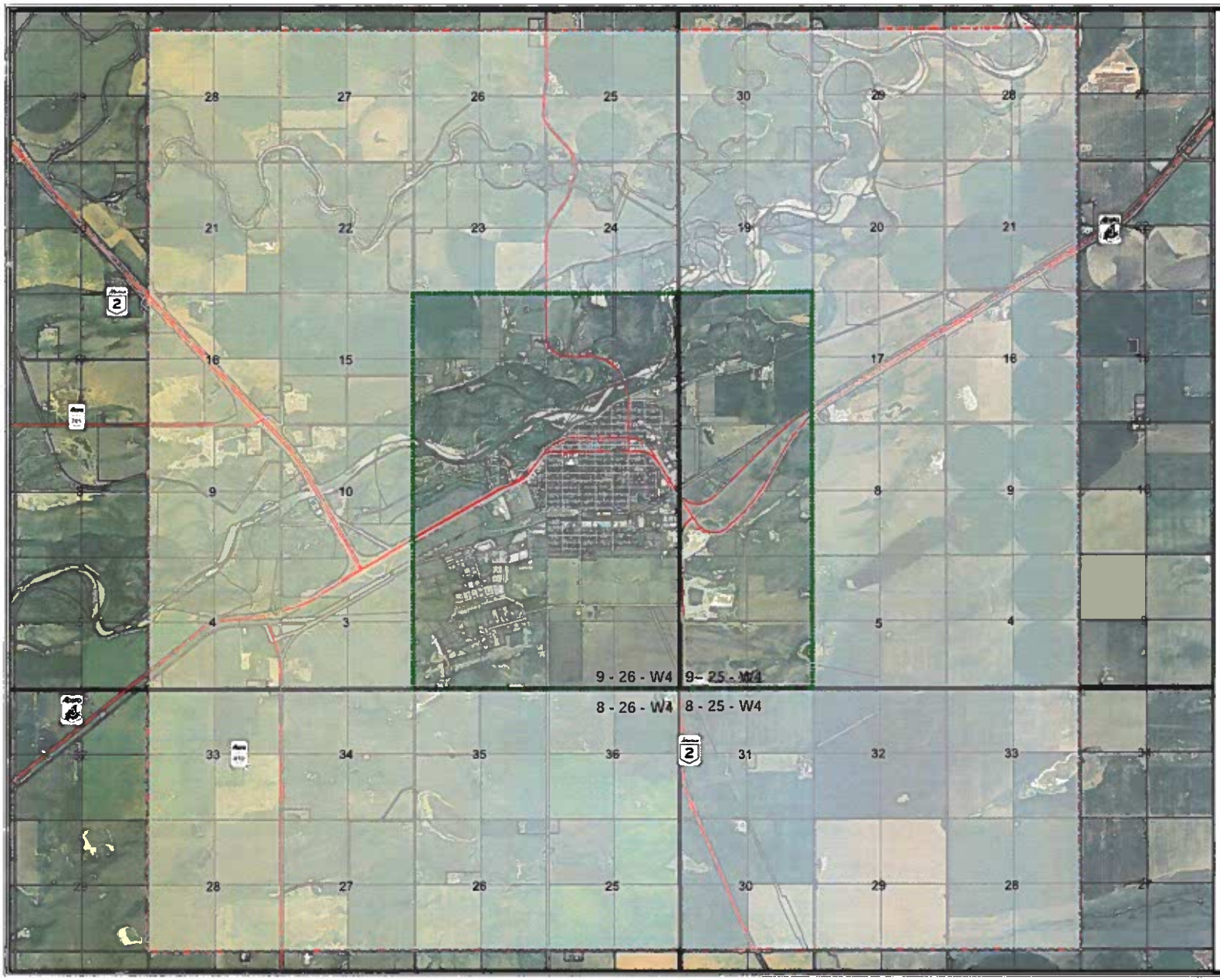
5. PLAN AREA & APPLICABILITY

The **IDP Area** (Plan Area) includes all lands within the MD surrounding the Town extending approximately 2 miles in all directions as delineated in **Map 2 – Plan Area.** The extent of the Plan Area was established based upon analysis of the characteristics of the area, consideration of development and growth pressures, and discussions about municipal concerns. The resultant Plan Area within the MD is intended to address and accommodate intermunicipal matters and interests well into the future.

Both municipalities agree that the area affected by the IDP includes all lands required to ensure the cooperation and coordination of land uses around the Town. The IDP contains one level of planning coordination around the Town. From the perspective of both municipalities, maintaining the integrity of the IDP is critical to the preservation of their long-term interests. The IDP is based upon a shared vision of a future growth framework and reflects a mutual agreement on areas of growth for each municipality.

The main purpose of the Plan Area is to act as a referral mechanism to ensure dialogue between the two municipalities regarding development adjacent to Town. It should be noted that some of the lands contained within the Plan Area are already zoned, subdivided or developed for non-agricultural uses. It is understood and agreed that existing uses within the Plan Area will be permitted to continue.

However, the expansion or intensification of existing uses shall be required to meet the policies of the IDP. Those lands that have been previously redesignated or subdivided or both need to be reviewed in the context of the IDP and amendments may be required to ensure that future development will comply with the mutually agreed upon growth pattern.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Plan Area

Map 2

Fort Macleod Municipal Boundary

IDP Plan Area

Highways

M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)

March 2022

MD of Willow Creek

Oldman River Regional Services Commission

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PART B: POLICIES

Except where otherwise stated, the IDP outlines policies that apply to lands in the Plan Area and is to be used as a framework for decision making in each municipality with input and cooperation of the other jurisdiction. Each municipality is responsible for decisions within their boundaries using the IDP policies and the procedures provided in the IDP.

This section is intended to provide guidance to decision makers when considering land use approvals within the boundary. Other sections of the IDP may also apply.

1. GENERAL POLICIES

INTENT

These general policies are applicable to all lands within the Plan Area and are intended to enable the implementation of an effective coordinated growth management strategy.

POLICIES

1.1 The IDP acknowledges land use designations for rural industrial and vacant country residential that existed prior to its adoption. Following adoption and for the purpose of managing land use around the Town, lands within the MD will typically be designated as Rural General under the MD Land Use Bylaw.

1.2 Extensive agriculture will be the primary land use of the lands, until these lands are redesignated in the MD Land Use Bylaw in accordance with the IDP.

1.3 Prior to developing lands for urban residential or urban industrial/commercial uses, the first step will be to commence an IDP amendment, area structure plan and/or redesignation process. These requirements are outlined in the following sections.

1.4 It is agreed that where intermunicipal programs relating to the physical, social and economic development of the Plan Area can be appropriately coordinated, both municipalities will seek to pursue such matters collaboratively.

2. AGRICULTURE

INTENT

Agricultural activities are to continue to operate under acceptable farming practices within the Plan Area.

POLICIES

2.1 Agriculture will continue to be the predominant land use in the Plan Area. The impact on agricultural uses should be a consideration when determining suitability of non-agricultural land uses in the Plan Area and on lands within the Town adjacent to the Town boundary.

2.2 Both municipalities will strive to work cooperatively to encourage good neighbour farming practices, such as dust, soil erosion, weed and insect control, through best management practices and Alberta Agriculture guidelines.

2.3 If disputes or complaints in either municipality arise between ratepayers and agricultural operators, the municipality receiving the complaint shall strive to direct the affected parties to the appropriate agency, government department or municipality for consultation or resolution wherever necessary.

3. CONFINED FEEDING OPERATIONS

INTENT

The MD and the Town both recognize that it is the jurisdiction of the Natural Resources Conservation Board (NRCB) to grant permits and regulate confined feeding operations (CFOs), which are defined in the *Agricultural Operation Practices Act* along with a threshold for when an permit is required in the Part 2 Matters Regulation. These policies recognize that it is important for both jurisdictions to maintain a good quality of life and high-quality environment and support all types of agriculture, as both are fundamental to growth and development within each of their municipalities.

POLICIES

3.1 New confined feeding operations (CFOs) and expansions to existing permits which would increase livestock numbers are not permitted within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on **Map 3 – CFO Policy Area**.

3.2 In regard to manure application on lands within the Plan Area or the lands adjacent to the Town boundary, the standards and procedures as outlined in the *Agricultural Operation Practices Act*, Standards and Administration Regulation shall be applied.

3.3 Both municipalities request the NRCB to circulate all applications for CFO registrations or approvals within the Plan Area to each respective municipality.

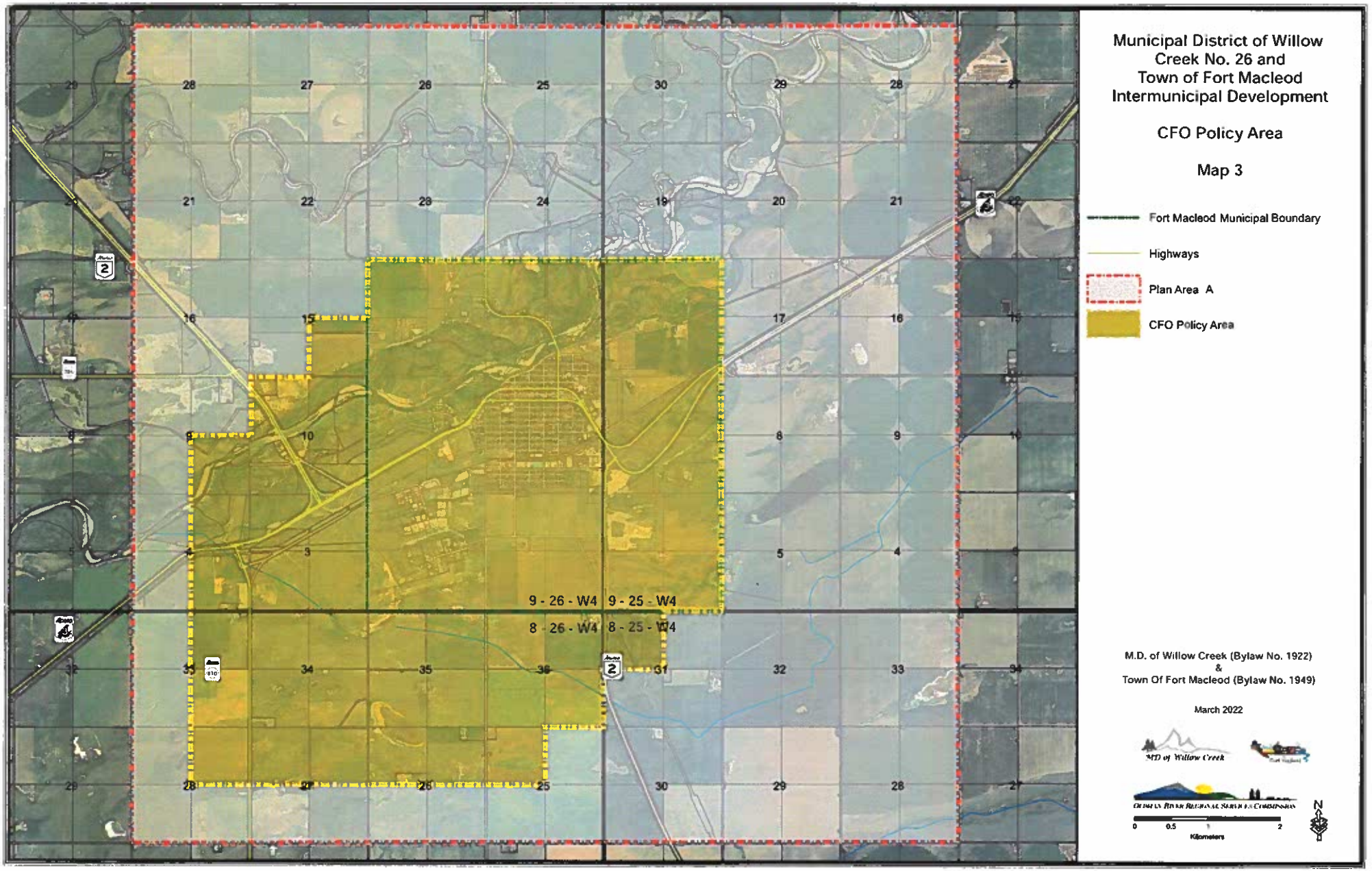
3.4 Both municipalities recognize and acknowledge that existing CFOs located within the CFO Exclusion Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the *Agricultural Operation Practices Act* and Regulations. Consistent with Policy 3.1 of the IDP, existing CFOs in the CFO Policy Area may continue to operate only within the scope of their existing permit.

3.5 The municipalities agree that they will notify and consult with the other municipality prior to engaging the NRCB or other provincial authorities, should a problem or complaints arise regarding a CFO operator's practices.

3.6 Consistent with the MD's Land Use Bylaw and Municipal Development Plan, all applications regarding intensive livestock operation (ILO) and CFOs within the Plan Area shall be forwarded to the Town for review and comment.

3.7 The Town acknowledges the benefits of ILO processing as outlined in the MD Land Use Bylaw and encourages the MD to continue the policy. Any Land Use Bylaw amendment affecting this policy shall be referred to the Town for comment due to the potential impact to Plan Area.

3.8 For statutory plan consistency, as required under the *MGA*, the MD Municipal Development Plan CFO policies and associated map shall be updated within the first year of the IDP being adopted, to reflect the CFO Exclusion Area as defined by Map 3.


9 - 26 - W4
9 - 25 - W4
8 - 26 - W4
8 - 25 - W4
Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development
CFO Policy Area
Map 3
Fort Macleod Municipal Boundary
Highways
Plan Area A
CFO Policy Area
M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)
March 2022
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4. GROUPED COUNTRY RESIDENTIAL DEVELOPMENT

INTENT

The MD has had a strong policy of protecting agricultural land by being very restrictive with respect to the approval of grouped country residential development, except for very specific areas of the municipality.

POLICIES

4.1 Lands considered high quality agricultural land shall not be subdivided for grouped country residential use.

4.2 The MD shall encourage grouped country residential uses to locate in or in close proximity to the hamlet areas established in the MD and not within the Plan Area.

4.3 A parcel or a lot located within the Plan Area that is intended to be used for grouped country residential development shall be designated grouped country residential in the MD Land Use Bylaw.

4.4 Prior to giving consideration to a redesignation request to grouped country residential in the MD Land Use Bylaw, the MD shall require the applicant to submit and have approved an area structure plan.

5. COMMERCIAL AND INDUSTRIAL DEVELOPMENT

INTENT

Commercial and industrial development applications can be expected, and the following policies will ensure coordination with existing and future developments in the Town. The MD may also benefit from development in specific locations.

POLICIES

5.1 A parcel or a lot located within the Plan Area that is intended to be used for commercial or industrial development shall be designated to the appropriate land use district in the MD Land Use Bylaw.

6. UTILITIES AND SERVICING

INTENT

A high degree of cooperation currently exists between the two jurisdictions and further opportunities for joint activities on a wide variety of issues may become available in the future.

POLICIES

6.1 Both municipalities shall ensure that land development and servicing is coordinated, recognizing that:

a. statutory plan compliance or amendment, land use redesignation, and subdivision to facilitate development are the first steps in land development,

b. where there is an existing servicing agreement, development shall be provided with suitable levels of service depending on its requirements and location, and

c. the actions of regulatory authorities shall be coordinated with those of both municipalities, whenever possible.

6.2 It is recognized by the two municipalities that benefits can occur through cooperation, and both may explore the option of sharing future services and/or revenues through an Intermunicipal Collaborative Framework or a special agreement. To that end, negotiations shall occur between the two municipalities and not with individual landowners.

6.3 Both municipalities have agreed that water service may be extended into the area identified on **Map 4 – Servicing Policy Area** with the details of the arrangement to be negotiated in a separate servicing agreement.

6.4 To ensure that water and sewage disposal are given full consideration well in advance of development approval, the MD and the Town agree that this shall be addressed as early as possible whenever land use decisions are being made. Where the municipalities can come to agreement on the development, any existing servicing agreements between the MD and the Town will be amended to incorporate the new proposal.

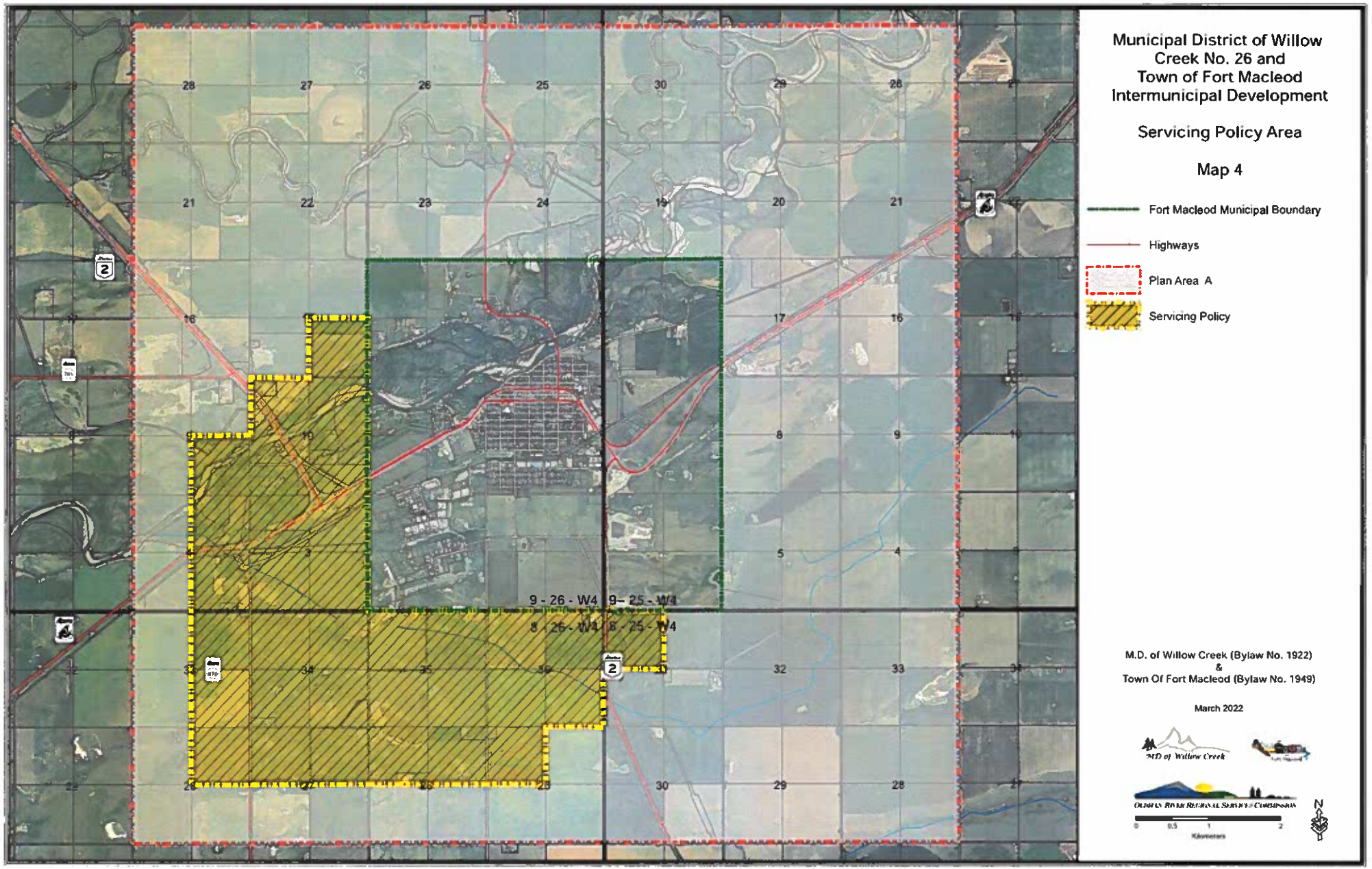
6.5 Where Town services for water are being considered by a developer, the developer shall obtain and utilize Town engineering standard in their plans.

6.6 Where proposed roads may become part of the Town infrastructure, the Town road engineering standards should be included in the area structure plan. If a proposed road may become part of the MD infrastructure, the MD road engineering standards should be included in the area structure plan.

6.7 Information for major servicing infrastructure proposed by one municipality shall be provided to the other municipality to allow for collaboration and coordinated planning.

6.8 For lands within the MD, developers shall be responsible to provide storm water management for their parcel as it pertains to a proposed development, or for a larger design or subdivision area, to the satisfaction of the MD.

6.9 Area structure plans shall include detailed servicing studies for the provision of water, sanitary sewer, stormwater management and utilities.


Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development
Servicing Policy Area
Map 4
Fort Macleod Municipal Boundary
Highways
Plan Area A
Servicing Policy
9 - 26 - W4
9 - 25 - W4
8 - 26 - W4
8 - 25 - W4
M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)
March 2022
MD of Willow Creek
Oldman River Regional Services Commission
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7. SUBDIVISION CRITERIA

INTENT

Although the subdivision process for the interface area may utilize the same policies as the rest of the MD, it is recognized that more evaluation may be necessary to minimize the potential for conflicts with existing or proposed uses and as outlined in the IDP.

POLICIES

7.1 New applications for subdivision or development of land within the Plan Area are subject to the policies of this IDP.

7.2 Subdivision of land within the Plan Area may be permitted in accordance with the MD's subdivision policies and applicable land use district provisions.

7.3 Subdivision of land within the Town adjacent to the Town boundary may be permitted in accordance with the Town's subdivision policies and applicable land use district provisions.

8. URBAN EXPANSION AND ANNEXATION

INTENT

It is recognized that the Town may need to expand its boundaries at some point to support continued urban growth. A clearly defined annexation procedure will help guide the annexation process and maximize opportunities for information sharing between the municipalities and affected landowners.

POLICIES

8.1 When the Town determines that annexation of land is necessary to accommodate growth, it will prepare and share with the MD a growth strategy/study which indicates the necessity of the land, describes how land has been utilized to its fullest potential within the Town, outlines proposed uses of the land, servicing implications, and any identified financial impacts to both municipalities, while addressing the Land and Property Rights Tribunal "Annexation Principles" and demonstrating consistency with the relevant portions of the *South Saskatchewan Regional Plan*.

8.2 Annexation boundaries shall follow legal boundaries and natural features to avoid creating fragmented patterns of municipal jurisdiction.

8.3 The Town and MD shall negotiate a formula for the determination of compensation on annexation. Negotiation may occur on any or all of the following:

- revenue or tax-sharing,
- off-site levies and levy transfers, and municipal reserve transfers.

9. NATURAL AND BUILT ENVIRONMENT

INTENT

Both municipalities recognize the connection between the natural environment and quality of life and the need to consider environmental protection, preservation, and enhancement as part of the planning process. The following policies are intended to minimize potential intermunicipal concerns regarding environmental matters.

POLICIES

9.1 When making land use decisions, each municipality will:

a. consider measures that minimize potential impacts to the Oldman River and Willow Creek; and

b. consider appropriate land use setbacks in the vicinity of significant water resources and other water and drainage features to maintain water quality, flood water conveyance and storage, bank stability and habitat.

9.2 Subdivision and development of lands should consider potential impacts to natural and historic resources in an identified Environmentally Significant Area or on lands that may contain Historic Resource Value (HRV).

9.3 Both municipalities should consider the provincial Wetland Policy when making land use decisions with the goal of sustaining environment and economic benefits. The developer, not the municipalities, is responsible for ensuring compliance with the provincial policy and any associated regulations.

9.4 Each municipality encourages applicants of subdivision and development proposals to consult with the respective municipality, irrigation district, and provincial departments, as applicable, regarding water supply, drainage, setbacks from sensitive lands, and other planning matters relevant to the natural environment in advance of submitting a proposal.

9.5 Both municipalities endorse the dedication of Environmental Reserve or an Environmental Reserve Easement within the Town or the lands subject to the IDP along the river and any other major natural drainage course, recognizing that the *MGA* authorizes:

a. the dedication of a minimum 6-metre strip; and

b. the dedication of any lands that are unstable or subject to flooding; and

c. the dedication of lands which consist of a swamp, gully, ravine, coulee or a natural drainage course.

9.6 Where either municipality identifies that a development, subdivision or redesignation application may occur on or in potentially hazardous land, the developer shall provide an analysis prepared by a qualified Alberta professional showing the approval is appropriate and safe at that location.

10. INDUSTRIAL SCALE WIND AND SOLAR DEVELOPMENTS

INTENT

Both Wind Energy Conversion Systems (WECS) and Solar Energy systems are a growing industry in southern Alberta and provides economic benefits to both urban and rural municipalities. As a land use, WECS structures can be imposing due to their size and commercial/industrial solar energy systems can be imposing due to their land coverage. Through municipal cooperation, it is hoped that the industry can expand and grow as a compatible land use.

POLICIES

10.1 Both municipalities agree to endorse green energy development and further agree to have open dialogue on proposed developments.

10.2 The protection of agricultural lands and associated land uses shall be considered when decisions regarding wind and solar power generation are made.

10.3 Commercial scale solar developments within the Plan Area may be supported, provided they can demonstrate compliance with the applicable standards of the MD's Land Use Bylaw, which includes provisions regarding application requirements, development standards, siting and suitability criteria, decommissioning, notification and public consultation, and conditions of approval. Commercial scale solar developments are encouraged to locate on lower quality agricultural lands and to utilize cut-off, fragmented and irregularly shaped parcels, while avoiding primarily unsubdivided quarter sections and environmentally sensitive and environmentally significant areas, including but not limited to wetlands or intact native grasslands.

10.4 Commercial scale wind energy developments within the Plan Area may be supported provided they can demonstrate compliance with the applicable standards of the MD's Land Use Bylaw, which includes provisions regarding application requirements, referrals, decommissioning, setbacks, minimum blade clearance, tower access and safety, energy collection lines, quality of development and public consultation.

10.5 Specifically, the MD shall require that all land use approvals for industrial scale wind or solar developments within 4000m of the Town Airport to consider the safe and efficient operation of the airport. Federal regulations, including TP312 (Aerodrome Standards and Recommended Practices) and TP1247 (Aviation: Land Use in the Vicinity of Aerodromes) will guide development near the airport.

11. TRANSPORTATION

INTENT

Transportation corridors are key components to any land use planning document. Land use and transportation cannot be planned separately, nor can two municipalities plan these components in isolation.

POLICIES

11.1 The Town and MD will cooperate on the development and approvals of all future Transportation Master Plans.

11.2 The MD and Town have identified key intersections shown on **Map 5 - Transportation** and agree to work in collaboration to explore and develop strategies to direct appropriate growth and development that does not compromise the transportation network.

11.3 The MD and Town, together with Alberta Transportation, should consider a long-term planning strategy for the provincial highway network within the Plan Area which would include the impacts or opportunities presented of any changes as a result of the CANAMEX trade corridor (highway bypass) of the Town as depicted on Map 5.

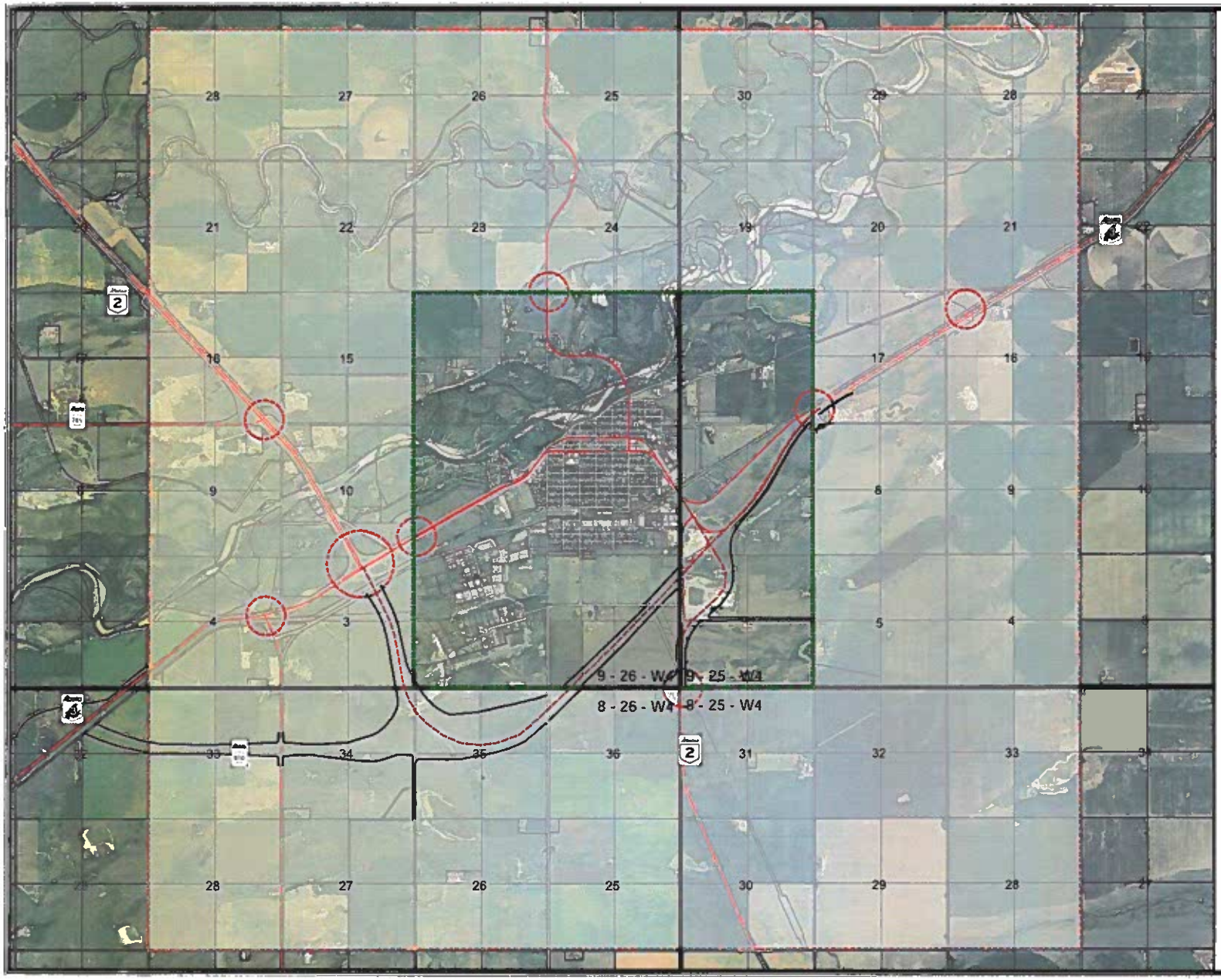
11.4 If required by Alberta Transportation or the municipality, at the time of subdivision or development, the developer shall conduct traffic studies with respect to impact and access onto Highways 2, 3, 810 and 811. Any upgrading identified by such studies shall be implemented by the developer at its sole cost and to the satisfaction of the municipality and Alberta Transportation.

11.5 Both municipalities agree to inform and invite the other municipality for all discussions with Alberta Transportation and CP Rail.

11.6 All subdivision proposals within the Plan Area and on lands within the Town adjacent to the Town boundary shall secure all right-of-way requirements for future road expansion. Particular attention should be given to major intersections requirements.

11.7 Standards for a hierarchy of roadways should be identified and established between the two jurisdictions. Access control regulations should also be established to ensure major collectors and arterials are protected.

11.8 Where the proposed roads may become part of the Town infrastructure, the Town road engineering standards should be included in the area structure plan. If a proposed road may become part of the MD infrastructure, the MD road engineering standards should be included in the area structure plan.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Transportation

Map 5

- Fort Macleod Municipal Boundary
- IDP Plan
- Highways
- Key Intersections of Mutual Interest
- Proposed Highway Bypass

M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)

March 2022

MD of Willow Creek

Oldman River Regional Services Commission

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PART C: IMPLEMENTATION OF THE IDP

The IDP's implementation will be the ongoing responsibility of both municipalities, whose actions must reflect the IDP. The support and cooperation of each municipal staff, planning advisors, public and private organizations, and the general public will also be needed for implementation. The following guiding principles shall govern the IDP's implementation:

1. The Town and MD agree that they shall ensure that the policies of the IDP are properly, fairly and reasonably implemented.
2. The Town and MD shall monitor and review the policies of the IDP on a regular basis or as circumstances warrant.
3. Where necessary, the Town and the MD's Land Use Bylaws and Municipal Development Plans shall be amended to reflect the policies of this IDP.

1. INTERMUNICIPAL DEVELOPMENT PLAN COMMITTEE POLICIES

INTENT

The implementation of the IDP is intended to be an ongoing process to ensure it is maintained and remains applicable. An Intermunicipal Development Plan Committee with joint representation will ensure continued dialogue and cooperation, as the purpose of this committee is to promote active cooperation and conflict resolution through a consensus-based approach.

POLICIES

1.1 For the purposes of administering and monitoring the IDP, the Town and the MD establish the Intermunicipal Development Plan Committee (the Committee).

1.2 Both municipalities agree the Committee will be an advisory body and may make comments or recommendations to the Town and the MD. In its advisory capacity, the Committee does not have decision making authority or powers with respect to planning matters in either municipality.

1.3 The Committee will be comprised of two (2) members of Council from both the Town and MD. Each municipality may appoint an alternate Committee member in the event a regular member cannot attend a scheduled meeting. Alternate Committee members shall have standing. Quorum shall consist of four (4) voting members.

1.4 Members of the Committee shall be appointed by their respective Councils at the Organizational Meeting. If a Council wishes to appoint a new member to the Committee (including the alternate), they must do so by motion of Council at a regular Council meeting. The municipalities shall notify one another upon appointing members and alternate members to the Committee.

1.5 The municipalities agree that the purpose of the Committee is to:

a. provide a forum for discussion of land use matters within the Plan Area,
b. provide recommendation(s) for proposed amendments to the IDP,
c. discuss and address issues regarding IDP implementation,
d. review and provide comment on referrals under PART C: Section 2 and any other matters referred to the Committee,
e. provide recommendation(s) regarding intermunicipal issues in an effort to avoid a dispute, and
f. provide a forum for discussion of any other matter of joint interest identified by either municipality.

1.6 Meetings of the Committee may be held at the request of either municipality to discuss land use or other planning matters, dispute resolution, or any other matter of intermunicipal importance. Additionally, any matter in PART C: Section 2 may be referred by either municipality to the Committee for comment prior to a decision being rendered.

1.7 A municipality may call a meeting of the Committee at any time upon not less than five (5) days' notice of the meeting being given to all members of the Committee and support personnel, stating the date, the time, purpose and the place of the proposed meeting. The five (5) days' notice may be waived with ¾ of the Committee members' agreement noted.

1.8 The municipality that called the meeting of the Committee shall host and chair the meeting and is responsible for preparing and distributing agendas and minutes.

1.9 At least one (1) member of each municipality's administrative staff shall attend each meeting in the capacity of technical, non-voting advisor.

1.10 Any changes to the Committee format, composition, roles, responsibilities or any aspect of its existence or operation may be requested by either municipality.

1.11 Where a matter has been referred to the Committee and a resolution cannot be found, the Dispute Resolution process in PART C: Section 3 of the IDP shall be adhered to.

2. REFERRALS

The IDP is designed with a referral system as outlined below.

Referral Intent

Land use issues within the Plan Area and on lands within the Town adjacent to the Town boundary as shown on **Map 6 – Referral Area** will be addressed at five main points in the approval system including:

- municipal development plans and amendments,
- all other statutory plans and amendments,
- land use bylaws and amendments,
- subdivision of a parcel and any appeal,
- development approval and any appeal.

Each referral shall contain all available information for review and a municipality may request further information to be provided.

Referral Policies

2.1 Municipal Development Plan and Amendments

a. The MD shall refer any newly proposed MD Municipal Development Plan or amendment that affects the Plan Area or will have an impact on the IDP to the Town for comment.
b. The Town shall refer any newly proposed Town Municipal Development Plan or amendment affecting the municipal expansion policies to the MD for comment.
c. The above referrals shall be made and considered prior to a public hearing.

2.2 All Other Statutory Plans and Amendments

a. The MD shall refer any newly proposed MD statutory plan or amendment that affects the Plan Area or will have an impact on the IDP to the Town for comment.
b. The Town shall refer any newly proposed Town statutory plan or amendment affecting the municipal expansion policies to the MD for comment.
c. The above referrals shall be made and considered prior to a public hearing.

2.3 Land Use Bylaws and Amendments (redesignation and text amendments)

a. The MD shall refer all Land Use Bylaw amendments for lands in the Plan Area or that will have an impact on the IDP to the Town for comment.
b. The Town shall refer all Land Use Bylaw amendments for lands adjacent to the Town boundary or that will have an impact on the IDP to the MD for comment.
c. Any proposed new Land Use Bylaw in the MD or Town shall be referred to the other for comment.
d. The above referrals shall be made and considered prior to a public hearing.

2.4 **Subdivision Applications**

a. The MD shall refer all subdivision applications within the Plan Area to the Town for comment.
b. The Town shall refer all subdivision applications for lands adjacent to the Town boundary to the MD for comment.
c. The above referrals shall be made and considered prior to a decision being made.

2.5 **Development applications**

a. The MD shall refer the following applications within the Plan Area to the Town for comment:
   i. all discretionary use applications; and
   ii. applications for uses of land or buildings which may have a noxious, hazardous or otherwise detrimental impact on land within the Town .
b. The Town shall refer the following applications on land adjacent to the Town boundary to the MD for comment:
   i. all discretionary use applications; and
   ii. applications for uses of land or buildings which may have a noxious, hazardous or otherwise detrimental impact on land within the MD.
c. The above referrals shall be made and considered prior to a decision being made.

2.6 **Other Approvals**

Municipalities are encouraged to refer any requests for approval to each other in areas not contained in the IDP if some impact may occur in the other jurisdiction.

2.7 **CFO / ILO Development applications**

a. The MD shall refer all CFO / ILO use applications located in the Plan Area to the Town for comment.
b. The above referrals shall be made and considered prior to a decision being made.

2.8 **Coordination of Transportation Planning**

a. The MD shall refer all transportation improvements located in the Plan Area to the Town for comment.
b. The above referrals shall be made and considered prior to a decision being made.

Response Timelines

2.9 The responding municipality shall, from the date of the referral, have the following timelines to review and provide comment on intermunicipal referrals:

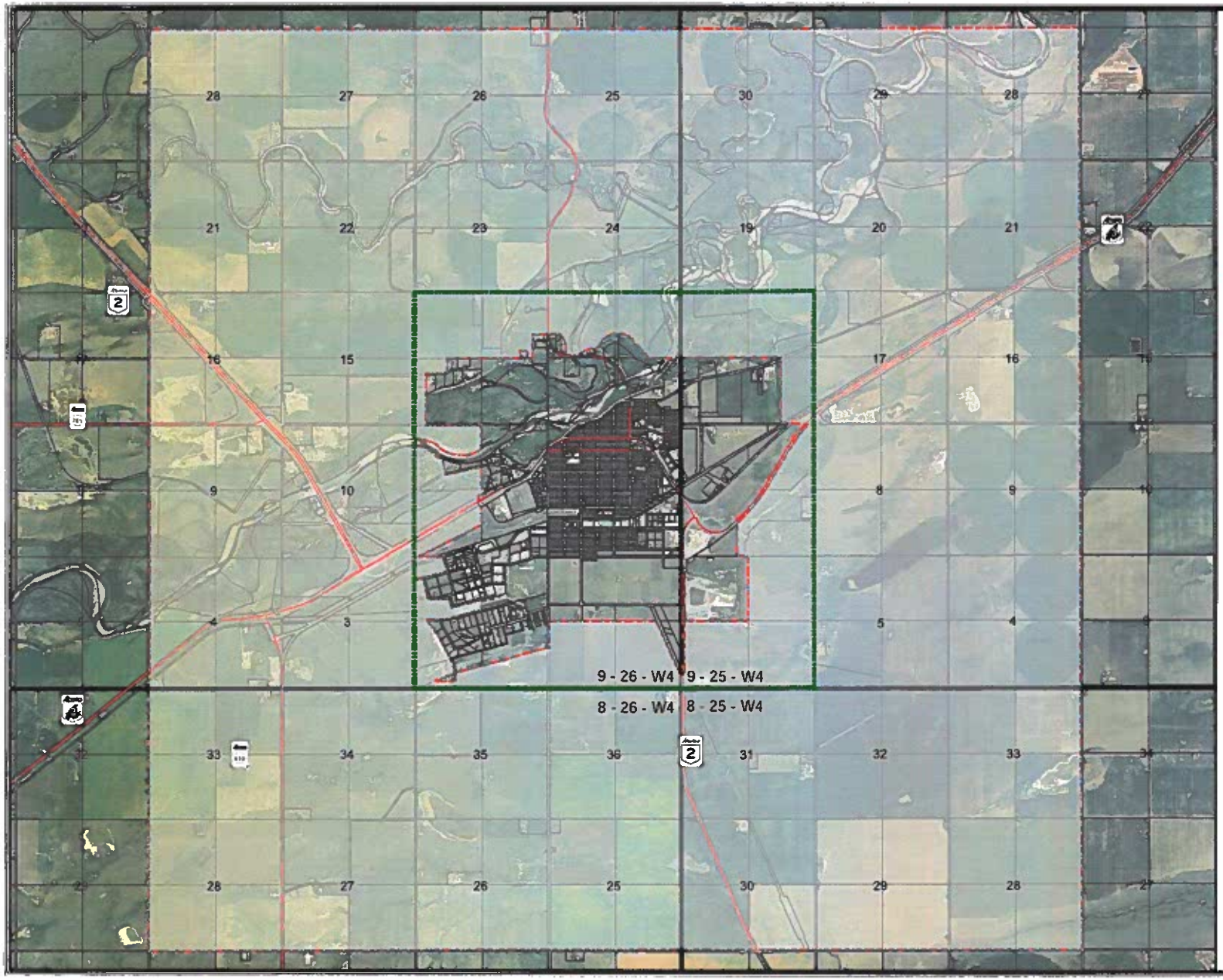
a. 15 calendar days for all development applications,
b. 19 calendar days for subdivision applications, and
c. 30 calendar days for all other intermunicipal referrals.

2.10 In the event that either municipality or the Committee does not reply within, or request an extension by, the response time for intermunicipal referrals stipulated in this Section, it is presumed that the responding municipality and/or Committee has no comment or objection to the referred planning application or matter.

Consideration of Responses

2.11 Comments from the responding municipality and/or the Committee regarding proposed Municipal Development Plans, other statutory plans, and Land Use Bylaws, or amendments to any of those documents, shall be considered by the municipality in which the application is being proposed, prior to a decision being rendered.

2.12 Comments from the responding municipality and/or the Committee regarding subdivision and development applications shall be considered by the municipality in which the application is being proposed, prior to a decision being rendered on the application.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Referral Area

Map 6

Fort Macleod Municipal Boundary

IDP Plan Area

Highways

M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)

March 2022

MD of Willow Creek

Oldman River Regional Services Commission

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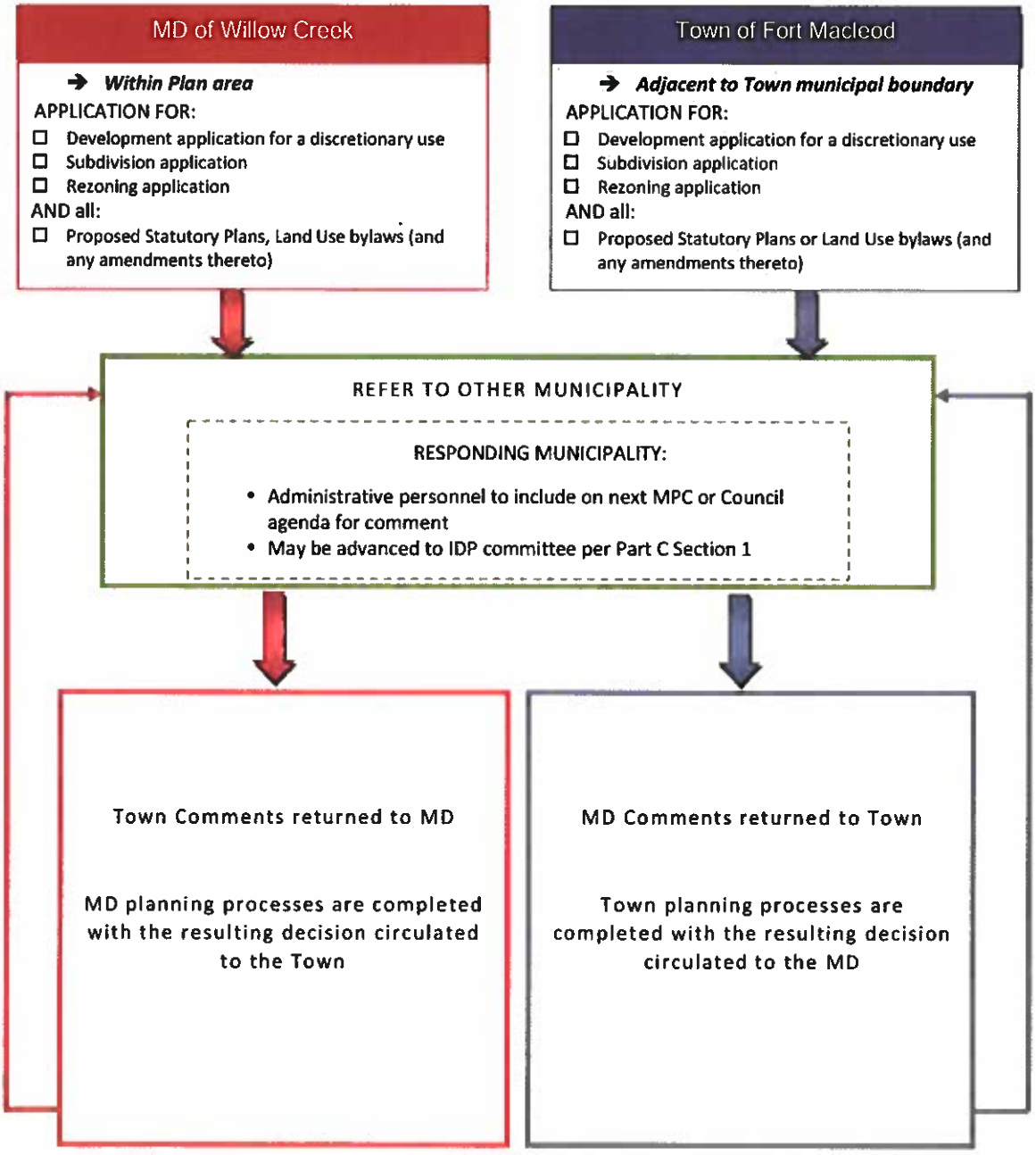
Figure 1: Intermunicipal Development Plan Referral Flow Chart



3. DISPUTE RESOLUTION

INTENT

The intent of the dispute resolution process is to maximize opportunities for discussion and review in order to resolve areas of disagreement early in the process. Despite the best efforts of both municipalities, it is understood that disputes may arise from time to time affecting land use within the Plan Area. The following process is intended to settle disputes through consensus and minimize the need for formal mediation.

POLICIES

The municipalities agree that:

3.1 It is important to avoid dispute by ensuring that the IDP is adhered to as adopted, including full circulation of any permit or application that may affect the municipality as required in the IDP and prompt enforcement of the IDP policies.

3.2 Prior to the meeting of the Committee, each municipality through its administration, will ensure the facts of the issue have been investigated and clarified, and information is made available to both parties. Staff meetings are encouraged to discuss possible solutions.

3.3 The Committee should discuss the issue or dispute with the intent to seek a recommended solution by consensus.

Dispute Resolution

In the case of a dispute, the following process will be followed to arrive at a solution:

3.4 When a potential intermunicipal issue comes to the attention of either municipality relating to a technical or procedural matter, such as inadequate notification or prescribed timelines, misinterpretation of IDP policies, or a clerical error regarding the policies of the IDP, either municipality's Land Use Bylaw, or any other plan affecting lands in the Plan Area, it will be directed to the administrators of each municipality. The administrators will review the technical or procedural matter and if both administrators are in agreement, take action to rectify the matter.

3.5 Should either municipality identify an issue related to the IDP that may result in a dispute that cannot be administratively resolved under Section 3.4 or any other issue that may result in a dispute, the municipality should contact the other and request that a Committee meeting be scheduled to discuss the issue. The Committee will review the issue and attempt to resolve the matter by consensus.

3.6 Should the Committee be unable to arrive at a consensus, the administration of each municipality will schedule a joint meeting of the two Councils to discuss possible solutions and attempt to reach consensus on the issue.

3.7 Should the Councils be unable to resolve the matter, either municipality shall initiate a formal mediation process to facilitate resolution of the issue.

Filing an Intermunicipal Dispute under the *Municipal Government Act*

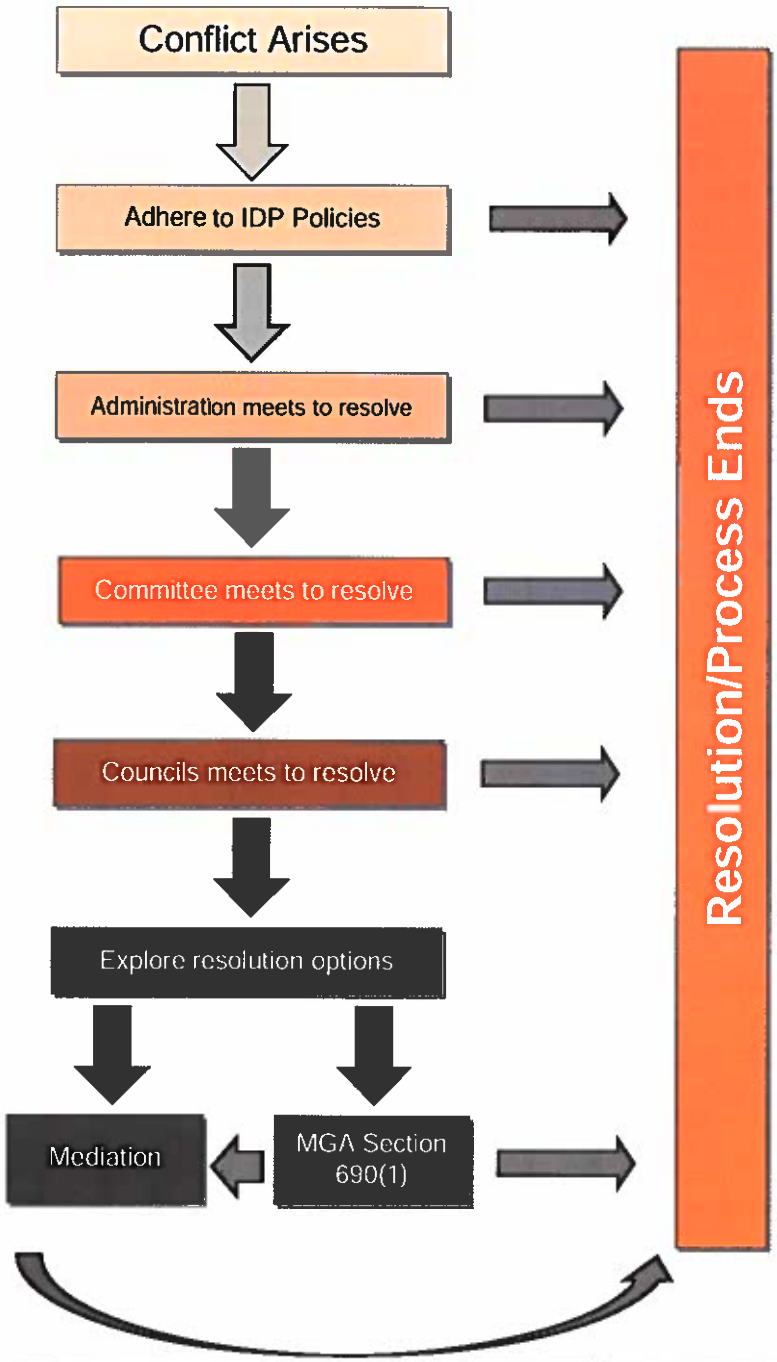
3.8 In the case of a dispute involving the adoption of a statutory plan, Land Use Bylaw or amendment to such, within 30 days of adoption, the municipality initiating the dispute may, without prejudice, file an appeal to the Land and Property Rights Tribunal under section 690(1) of the *MGA* so that the provincial statutory right and timeframe to file an appeal is not lost.

3.9 The appeal may then be withdrawn, without prejudice, if a solution or agreement is reached between the two municipalities prior to the Land and Property Rights Tribunal meeting. This is to acknowledge and respect that the time required to seek resolution or mediation may not be able to occur within the 30 day appeal filing process as outlined in the *MGA*.

Note: Using section 690(1) of the MGA is the final stage of dispute settlement, where the municipalities request the Land and Property Rights Tribunal to intercede and resolve the issue.

Dispute Resolution Flow Chart

The dispute resolution flow chart presented here is for demonstration purposes only and shall not limit the ability of either municipality to explore other methods of resolution or to choose one method in place of another.



4. IDP VALIDITY AND AMENDMENT

The IDP will require amendment from time to time to accommodate unforeseen situations, and to keep it relevant.

4.1 The IDP comes into effect on the date it is adopted by both the Town and the MD.

4.2 Recognizing that the IDP may require an amendment from time to time to accommodate an unforeseen situation, such an amendment must be adopted by both municipalities using the procedures established in the *MGA*.

4.3 Third party applications for an amendment to the IDP shall be made to both municipalities and be accompanied by the appropriate fees to each municipality.

4.4 Administrative staff should review the policies of the IDP annually and discuss land use matters, issues and concerns on an on-going basis. Administrative staff may make recommendations to their respective Councils for amendment to the IDP to ensure the policies remain relevant and continue to meet the needs of both municipalities.

4.5 That staff of both municipalities review the IDP every five years from the date of adoption and report to the respective councils. Each council shall respond within 60 days with a recommended course of action.

APPENDIX A – Definitions

Adjacent means land which is contiguous or would be contiguous if not for a river, stream, railway, road or utility right-of-way or reserve land.

Area structure plan means a statutory plan prepared in accordance with Section 633 of the *MGA* and the Municipal Development Plan for the purpose of providing a framework for subdivision and development of land in the municipality.

Commercial means the use of land and/or building for the purpose of display, storage and wholesale or retail sale of goods and/or services to the general public. On-site manufacturing, processing or refining of goods shall be incidental to the sales operation.

Confined feeding operation (CFO) has the same meaning as in the regulations of the *Agricultural Operation Practices Act.*

Country residential means a use of land, the primary purpose of which is for a dwelling or the establishment of a dwelling in a rural area.

Development means development as defined in the *MGA*.

Development authority means the development authority of the MD or the development authority of the Town, whichever development authority applies.

Extensive agriculture means the production of crops or livestock or both by the expansive cultivation or open grazing of normally more than one parcel or lot containing 160 acres (64.8 ha) more or less.

Grouped country residential means two or more contiguous country residential lots.

Industrial means development used for manufacturing, fabricating, processing, assembly, production or packaging of goods or products, as well as administrative offices, warehousing and wholesale distribution uses which are accessory to the above provided that the use does not generate any detrimental impact, potential health or safety hazard or any nuisance beyond the boundaries of the site upon which it is situated.

Intensive livestock operation (ILO) means any land enclosed by buildings, shelters, fences, corrals or other structures which, in the opinion of the MD Municipal Planning Commission, is capable of

confining, rearing, feeding, dairying or auctioning livestock, but excepting out wintering of a basic breeding herd of livestock but is less than the thresholds established by the NRCB.

Land use bylaw has the same meaning as in the *MGA*.

May means, within the context of a policy, that the action described in the policy is discretionary.

MGA means the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26*, with amendments there to.

Noxious industry means an industry which is hazardous, noxious, unsightly or offensive and cannot, therefore, be compatibly located in an urban environment. Examples include, but are not necessarily limited to: abattoirs, oil and gas plants, asphalt plants, sanitary landfill sites, sewage treatment plants or lagoons, auto wreckers or other such uses determined by the Municipal Planning Commission to be similar in nature. Confined feeding operations and Intensive livestock operations are separate uses.

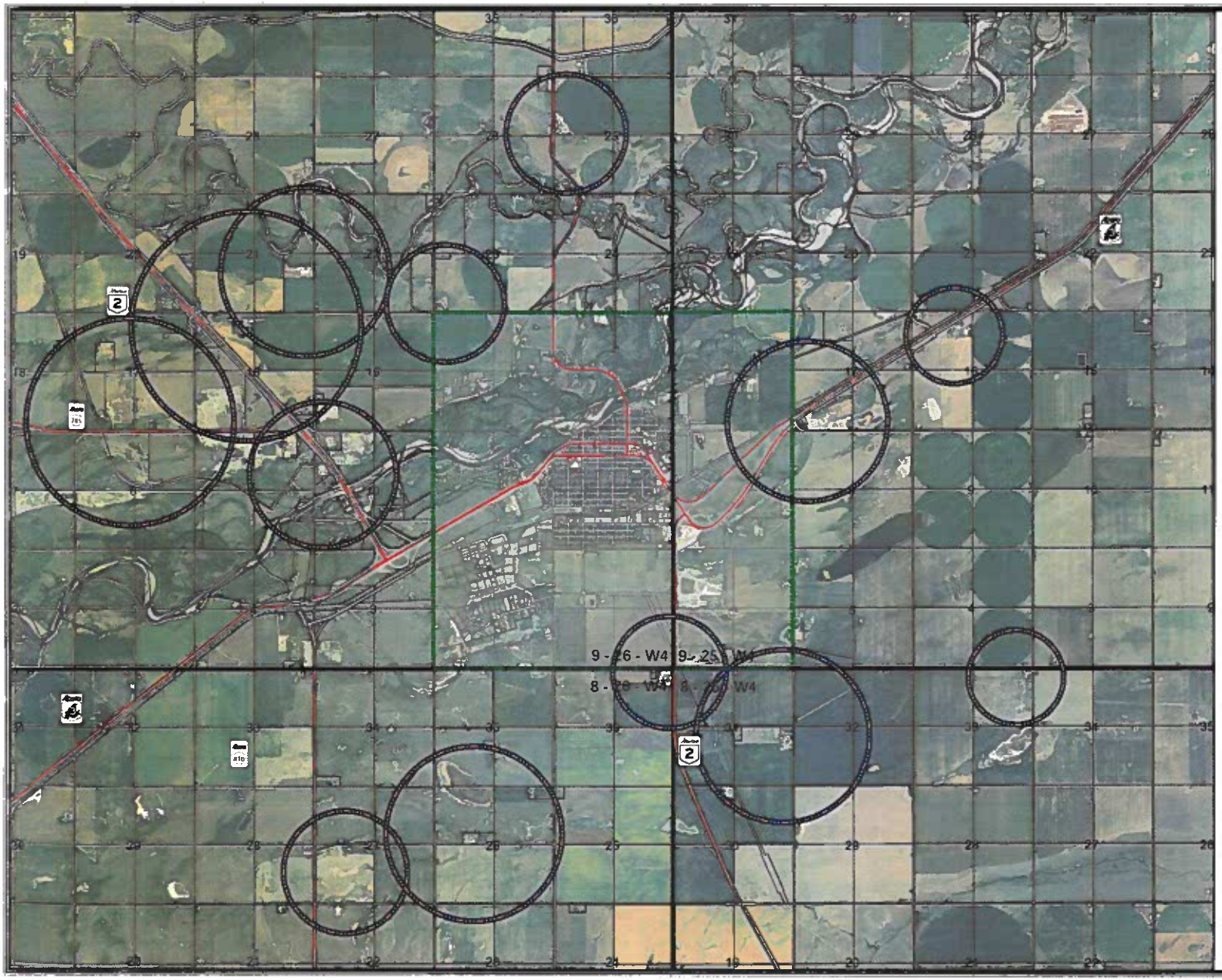
Redesignation "redesignate", "redistrict", or "rezone" means changing the existing land use district on the official Land Use District Map in the Land Use Bylaw.

Residential means the use of land or buildings for the purpose of domestic habitation on a continual, periodic or seasonal basis.

Shall means, within the context of a policy, that the action described in the policy is mandatory.

Solar energy system, commercial/industrial means a system using solar technology to collect energy from the sun and convert it to energy to be used for off-site consumption, distribution to the marketplace, or a solar energy system not meeting the definition of solar energy systems, household.

Wind Energy Conversion System (WECS) means a system consisting of subcomponents which converts wind energy to electrical energy using rotors, tower and a storage system.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Appendix B Map

Fort Macleod Municipal Boundary

IDP Plan

Highways

Minimum Distance Seperation (MDS): Category 4 From Existing CFOs

M.D. of Willow Creek (Bylaw No. 1922)
&
Town Of Fort Macleod (Bylaw No. 1949)

March 2022

MD of Willow Creek

Oldman River Regional Services Commission

0 0.5 1 2
Kilometers

N

TAB 2

Alberta Statutes
Municipal Government Act
Part 17 — Planning and Development (ss. 616-708)
Division 4 — Statutory Plans
Intermunicipal Development Plans

Most Recently Cited in: Okotoks (Town), Re , 2012 CarswellAlta 130, [2012] A.W.L.D. 1887, [2012] A.W.L.D. 1890 | (Alta. Mun. Gov. Bd., Jan 25, 2012)

R.S.A. 2000, c. M-26, s. 631

s 631. Intermunicipal development plans

Currency

631.Intermunicipal development plans

631(1) Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, 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.

631(1.1) [Repealed 2019, c. 22, s. 10(20).]

631(1.2) [Repealed 2019, c. 22, s. 10(20).]

631(2) Subsection (1) does not require municipalities to adopt an intermunicipal development plan with each other if they agree that they do not require one, but any of the municipalities may revoke its agreement at any time by giving written notice to the other or others, and where that notice is given the municipalities must comply with subsection (1) within one year from the date of the notice unless an exemption is ordered under subsection (3).

631(3) The Minister may, by order, exempt one or more councils from the requirement to adopt an intermunicipal development plan, and the order may contain any terms and conditions that the Minister considers necessary.

631(4) Municipalities that are required under subsection (1) to adopt an intermunicipal development plan must have an intermunicipal development plan providing for all of the matters referred to in subsection (8) in place by April 1, 2020.

631(5) If 2 or more councils that are required to adopt an intermunicipal development plan under subsection (1) do not have an intermunicipal development plan in place by April 1, 2020 because they have been unable to agree on a plan, they must immediately notify the Minister and the Minister must, by order, refer the matter to the Land and Property Rights Tribunal for its recommendations in accordance with Part 12.

631(6) Where the Minister refers a matter to the Land and Property Rights Tribunal under this section, Part 12 applies as if the matter had been referred to the Tribunal under section 514(2).

631(7) Two or more councils of municipalities that are not otherwise required to adopt an intermunicipal development plan under subsection (1) 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.

631(8) An intermunicipal development plan

(a) must address

(i) the future land use within the area,

(ii) the manner of and the proposals for future development in the area,

(iii) the provision of transportation systems for the area, either generally or specifically,

(iv) the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,

(v) environmental matters within the area, either generally or specifically, and

(vi) any other matter related 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.

631(9) Despite subsection (8), to the extent that a matter is dealt with in a framework under Part 17.2, the matter does not need to be included in an intermunicipal development plan.

631(10) In creating an intermunicipal development plan, municipalities must negotiate in good faith.

Amendment History
2016, c. 24, s. 97; 2019, c. 22, s. 10(20); 2020, c. L-2.3, s. 24(30)

Currency
Alberta Current to Gazette Vol. 118:5, (March 15, 2022)

End of Document

Alberta Statutes
Municipal Government Act
Part 17 — Planning and Development (ss. 616-708)
Division 4 — Statutory Plans
General Provisions

Most Recently Cited in: Biernacki v. Alberta (Land and Property Rights Tribunal), 2022 ABCA 56, 2022 CarswellAlta 468 | (Alta. C.A., Feb 17, 2022)

R.S.A. 2000, c. M-26, s. 638

s 638. Consistency of plans

Currency

638.Consistency of plans

638(1) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

638(2) An area structure plan and an area redevelopment plan must be consistent with

(a) any intermunicipal development plan in respect of land that is identified in both the area structure plan or area redevelopment plan, as applicable, and the intermunicipal development plan, and

(b) any municipal development plan.

638(3) An intermunicipal development plan prevails to the extent of any conflict or inconsistency between

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

(b) the intermunicipal development plan

in respect of the development of the land to which the conflicting or inconsistent plans apply.

638(4) A municipal development plan prevails to the extent of any conflict or inconsistency between

(a) an area structure plan or an area redevelopment plan, and

(b) the municipal development plan.

Amendment History
2015, c. 8, s. 65; 2020, c. 39, s. 10(23)

Currency
Alberta Current to Gazette Vol. 118:5, (March 15, 2022)

End of Document

Alberta Statutes
Municipal Government Act
Part 17 — Planning and Development (ss. 616-708)
Division 5 — Land Use

Most Recently Cited in: Hutterian Brethren of Summerland v. Vulcan County, 2022 ABLPRT 555, 2022 CarswellAlta 1125 | (Alta. L.P.R.T., Apr 29, 2022)

R.S.A. 2000, c. M-26, s. 642

s 642. Permitted and discretionary uses

Currency

642.Permitted and discretionary uses

642(1) When a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw and is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

642(2) When a person applies for a development permit in respect of a development that may, in the discretion of a development authority, be permitted pursuant to section 640(2)(b)(ii), the development authority may, if the application is complete in accordance with section 683.1, issue a development permit with or without conditions as provided for in the land use bylaw.

642(3) A decision of a development authority on an application for a development permit must be in writing, and a copy of the decision, together with a written notice specifying the date on which the written decision was given and containing any other information required by the regulations, must be given or sent to the applicant on the same day the written decision is given.

642(4) If a development authority refuses an application for a development permit, the development authority must issue to the applicant a notice, in the form and manner provided for in the land use bylaw, that the application has been refused and provide the reasons for the refusal.

642(5) Despite subsections (1) and (2), a development authority must not issue a development permit if the proposed development does not comply with the applicable requirements of regulations under the *Gaming, Liquor and Cannabis Act* respecting the location of premises described in a cannabis licence and distances between those premises and other premises.

Amendment History
2017, c. 13, s. 1(58); 2017, c. 21, s. 28(4); 2018, c. 11, s. 13(5); 2020, c. 39, s. 10(31)

Currency
Alberta Current to Gazette Vol. 118:5, (March 15, 2022)

End of Document

TAB 3

Tracey Higgins

From: Janice Agrios
Sent: November 19, 2021 2:00 PM
To: Richard Duncan
Cc: Shauna N. Finlay
Subject: Fort Macleod / Willow Creek IDP
Attachments: MD Willow Creek Fort Macleod IDP Final Version Nov 19 2021 corrected.pdf

Hi Rick – Here is the agreed upon version of the IDP that both municipalities are posting. Shauna and I will discuss next steps in light of the agreement that has been reached and get back to you with our proposed course of action.

This version is being posted right away. I am waiting on the link and will provide it shortly.

Janice Agrios

From: Janice Agrios
Sent: November 19, 2021 1:54 PM
To: 'Shauna N. Finlay' <SFinlay@rmrf.com>
Subject: FW: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

Gavin sent this directly to me. It looks fine. Are you ok with me sending it to Rick?

Also, I will let Adrian know that he can post it as soon as I hear back from you.

Janice Agrios

From: Gavin Scott <gavinscott@orrsc.com>
Sent: November 19, 2021 1:47 PM
To: Janice Agrios <JAgrios@kaolawyers.com>
Subject: FW: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

FYI

From: Diane Horvath <dianehorvath@orrsc.com>
Sent: Friday, November 19, 2021 1:46 PM
To: Shauna N. Finlay <SFinlay@rmrf.com>; Derrick Krizsan <Derrick@mdwillowcreek.com>; Cindy Chisholm <cindyc@mdwillowcreek.com>
Cc: Gavin Scott <gavinscott@orrsc.com>
Subject: RE: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

Ok – I also got Janice's updated via Gavin so the final corrected version

- Correct Table of contents with Leg. Req. – 2 and Map 2 reference
- Replaced page with Policy 3.4 with red "a"

- Moved "subdivision" Title on bottom of page 17 to top of 18
- Changed Map 6 Legend to "Referral Area"

Diane Horvath
Senior Planner
Oldman River Regional Services Commission
3105 16 Avenue North, Lethbridge, AB T1H 5E8
Ph: (403) 329-1344 Toll Free 1-844-279-8760

From: Shauna N. Finlay <SFinlay@rmrf.com>
Sent: Friday, November 19, 2021 1:22 PM
To: Diane Horvath <dianehorvath@orrsc.com>; Derrick Krizsan <Derrick@mdwillowcreek.com>; Cindy Chisholm <cindyc@mdwillowcreek.com>
Subject: RE: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

Ok – do you want to correct it and send a new version?

Shauna N. Finlay | Partner
Direct: 780.497.3302

From: Diane Horvath <dianehorvath@orrsc.com>
Sent: Friday, November 19, 2021 1:22 PM
To: Shauna N. Finlay <SFinlay@rmrf.com>; Derrick Krizsan <Derrick@mdwillowcreek.com>; Cindy Chisholm <cindyc@mdwillowcreek.com>
Subject: RE: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

The title of Map 2 is incorrect – needs to be updated. Please let me know I need to change it. Thanks\
Diane

Diane Horvath
Senior Planner
Oldman River Regional Services Commission
3105 16 Avenue North, Lethbridge, AB T1H 5E8
Ph: (403) 329-1344 Toll Free 1-844-279-8760

From: Shauna N. Finlay <SFinlay@rmrf.com>
Sent: Friday, November 19, 2021 1:14 PM
To: Derrick Krizsan <Derrick@mdwillowcreek.com>; Cindy Chisholm <cindyc@mdwillowcreek.com>
Cc: Diane Horvath <dianehorvath@orrsc.com>
Subject: FW: [EXTERNAL] RE: Fort Macleod / Willow Creek IDP

FYI – final version. I am going to send it Janice now.
Shauna

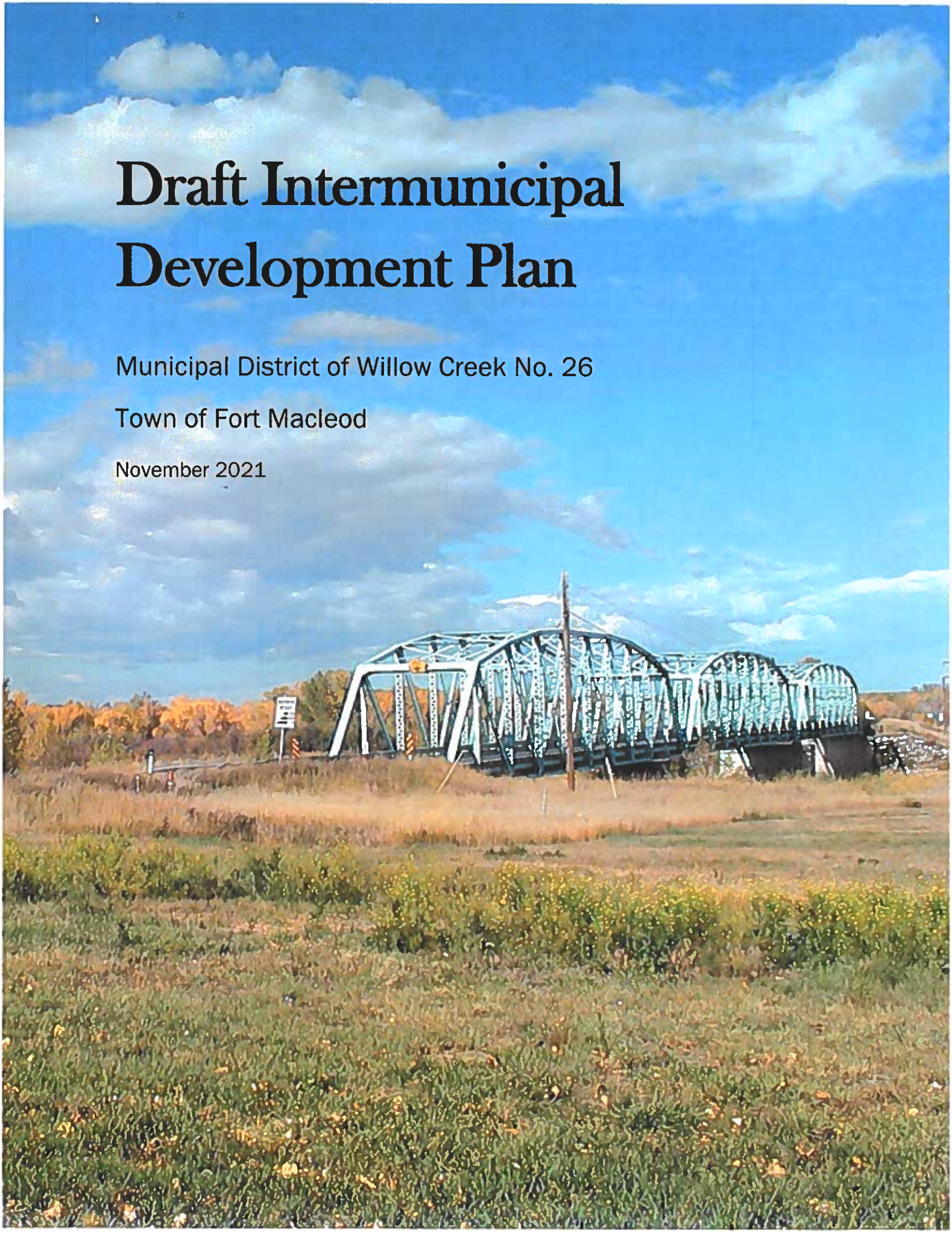
Shauna N. Finlay | Partner
Direct: 780.497.3302

Draft Intermunicipal Development Plan

Municipal District of Willow Creek No. 26

Town of Fort Macleod

November 2021



Prepared for:

MD of Willow Creek

and

Town of Fort Macleod

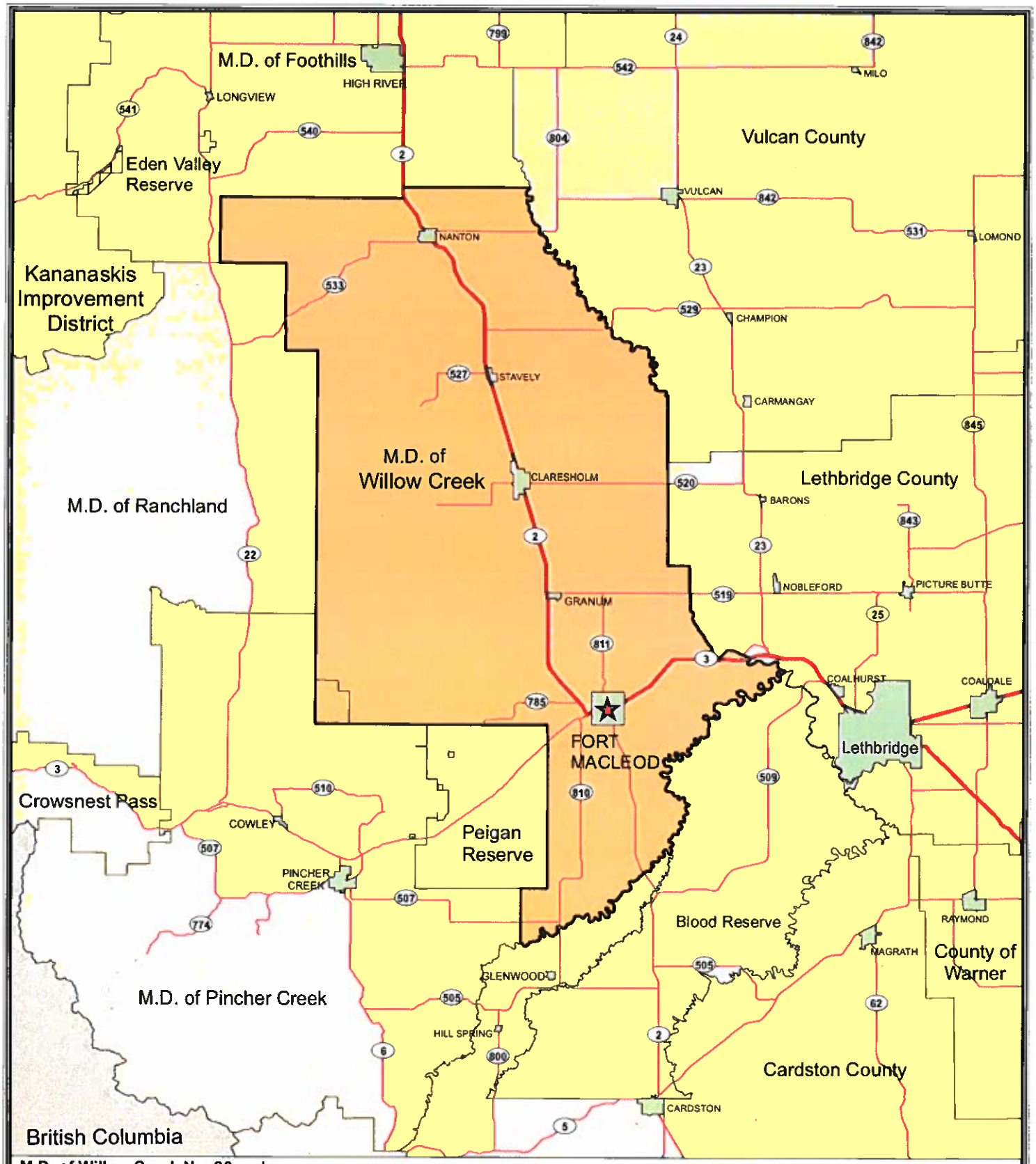
By:

OLDMAN RIVER REGIONAL SERVICES COMMISSION

Cover Art Courtesy of ORRSC

TABLE OF CONTENTS

MAPS



M.D. of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development Plan Regional Location Map

MAP 1

M.D. of Willow Creek (Bylaw No. ____) & Town Of Fort Macleod (Bylaw No. ____)

November 2021

Town of Fort Macleod

Primary Highway

Secondary Highway

Municipal District of Willow Creek

Municipal District of Willow Creek No. 26 and Town of Fort Macleod
INTERMUNICIPAL DEVELOPMENT PLAN

PART A: INTRODUCTION

1. PURPOSE OF THE PLAN

An intermunicipal development plan is a statutory document prepared for and adopted by two or more municipalities, which deals with land use planning matters of mutual interest. The complexity of intermunicipal development plans requires unique problem solving, negotiation and cooperation to reach mutual agreement. The Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development Plan (IDP) sets out the framework for the municipalities' efforts in intermunicipal planning. The adoption of the IDP is the result of a collaborative effort by the Town of Fort Macleod (Town) and the Municipal District of Willow Creek (MD) in addressing sensitive land use issues in close proximity to the Town.

2. GUIDING PRINCIPLES

The following guiding principles served to inform the preparation of the IDP and are the foundation for the goals and policies that follow:

1. The IDP is a **long-range** planning document that will help promote consistent decision making within the respective municipalities and facilitate orderly and efficient development patterns to the benefit of both municipalities.
2. Opportunities for **cooperation, collaboration, coordination, and communication** are essential components of an effective intermunicipal relationship and should serve as the basic tenets of planning policy and how this IDP is interpreted and implemented.
3. The IDP needs to **recognize** and **respect** that both municipalities should be afforded the opportunity for growth and development to ensure continued vitality and will attempt to balance municipal interests and support mutually beneficial outcomes to the extent possible.
4. The IDP must be **adaptable** to allow consideration of changing needs, evolving relationships, and uncertainty in anticipating all circumstances.

3. IDP GOALS

- To facilitate orderly and efficient development in the designated referral area while identifying each municipality's opportunities and concerns.
- To provide for a continuous and transparent planning process that facilitates ongoing consultation and cooperation among the two municipalities and affected ratepayers.
- To provide methods to implement and amend the various policies of the IDP which are mutually agreed to by both municipalities.
- To maintain and promote a safe and efficient roadway network.
- To ensure development is serviced to standards appropriate to the location and type of development.
- To identify possible joint ventures, such as the provision of municipal services.

4. LEGISLATIVE REQUIREMENTS

The IDP has been prepared in accordance with the legislative requirements of the ***Municipal Government Act (MGA)*** and the ***South Saskatchewan Regional Plan*** **(SSRP)**, which encourages cooperation and coordination between neighbouring municipalities.

Specifically, the *MGA* requires:

> ***631(1)*** *Subject to subsections (2) and (3), 2 or more councils of municipalities that have common boundaries and that are not members of a growth region as defined in section 708.01 must, 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.*
>
> ***631(8)*** *An intermunicipal development plan*
>
> *(a) must address*
>
> *(i) the future land use within the area,*
>
> *(ii) the manner of and the proposals for future development in the area,*
>
> *(iii) the provision of transportation systems for the area, either generally or specifically,*
>
> *(iv) the co-ordination of intermunicipal programs relating to the physical, social and economic development of the area,*
>
> *(v) environmental matters within the area, either generally or specifically, and*
>
> *(vi) any other matter related 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.*

The ***South Saskatchewan Regional Plan*** came into effect September 1, 2014. The SSRP uses a cumulative effects management approach to set policy direction for municipalities to achieve environmental, economic and social outcomes within the South Saskatchewan Region through 2024. Pursuant to section 13 of the ***Alberta Land Stewardship Act (ALSA)***, regional plans are legislative instruments. The SSRP has four key parts including the Introduction, Strategic Plan, Implementation Plan and Regulatory Details Plan. Pursuant to section 15(1) of *ALSA*, the Regulatory Details of the SSRP are enforceable as law and bind the Crown, decision-makers, local governments, and all other persons while the remaining portions are statements of policy to inform and are not intended to have binding legal effect.

The SSRP is guided by the vision, outcomes and intended directions set by the Strategic Plan portion of the SSRP while the Implementation Plan establishes the objectives and the strategies that will be implemented to achieve the regional vision. As part of the *Implementation Plan, Section 8:* Community Development includes guidance regarding Planning Cooperation and Integration between municipalities with the intention to foster cooperation and coordination between neighbouring municipalities and between municipalities and provincial departments, boards and agencies. Section 8 contains the following broad objectives and strategies.

Objectives

- *Cooperation and coordination are fostered among all land use planners and decision-makers involved in preparing and implementing land plans and strategies.*
- *Knowledge sharing among communities is encouraged to promote the use of planning tools and the principles of efficient use of land to address community development in the region.*

Strategies

8.1 *Work together to achieve the shared environmental, economic, and social outcomes in the South Saskatchewan Regional Plan and minimize negative environmental cumulative effects.*

8.2 *Address common planning issues, especially where valued natural features and historic resources are of interests to more than one stakeholder and where the possible effect of development transcends jurisdictional boundaries.*

8.3 *Coordinate and work with each other in their respective planning activities (such as in the development of plans and policies) and development approval process to address issues of mutual interest.*

8.4 *Work together to anticipate, plan and set aside adequate land with the physical infrastructure and services required to accommodate future population growth and accompanying community development needs.*

8.5 *Build awareness regarding the application of land-use planning tools that reduce the impact of residential, commercial and industrial developments on the land, including approaches and best practices for promoting the efficient use of private and public lands.*

8.6 *Pursue joint use agreements, regional services commissions and any other joint cooperative arrangements that contribute specifically to intermunicipal land use planning.*

8.7 *Consider the value of intermunicipal development planning to address land use on fringe areas, airport vicinity protection plans or other areas of mutual interest.*

8.8 *Coordinate land use planning activities with First Nations, irrigation districts, school boards, health authorities and other agencies on areas of mutual interest.*

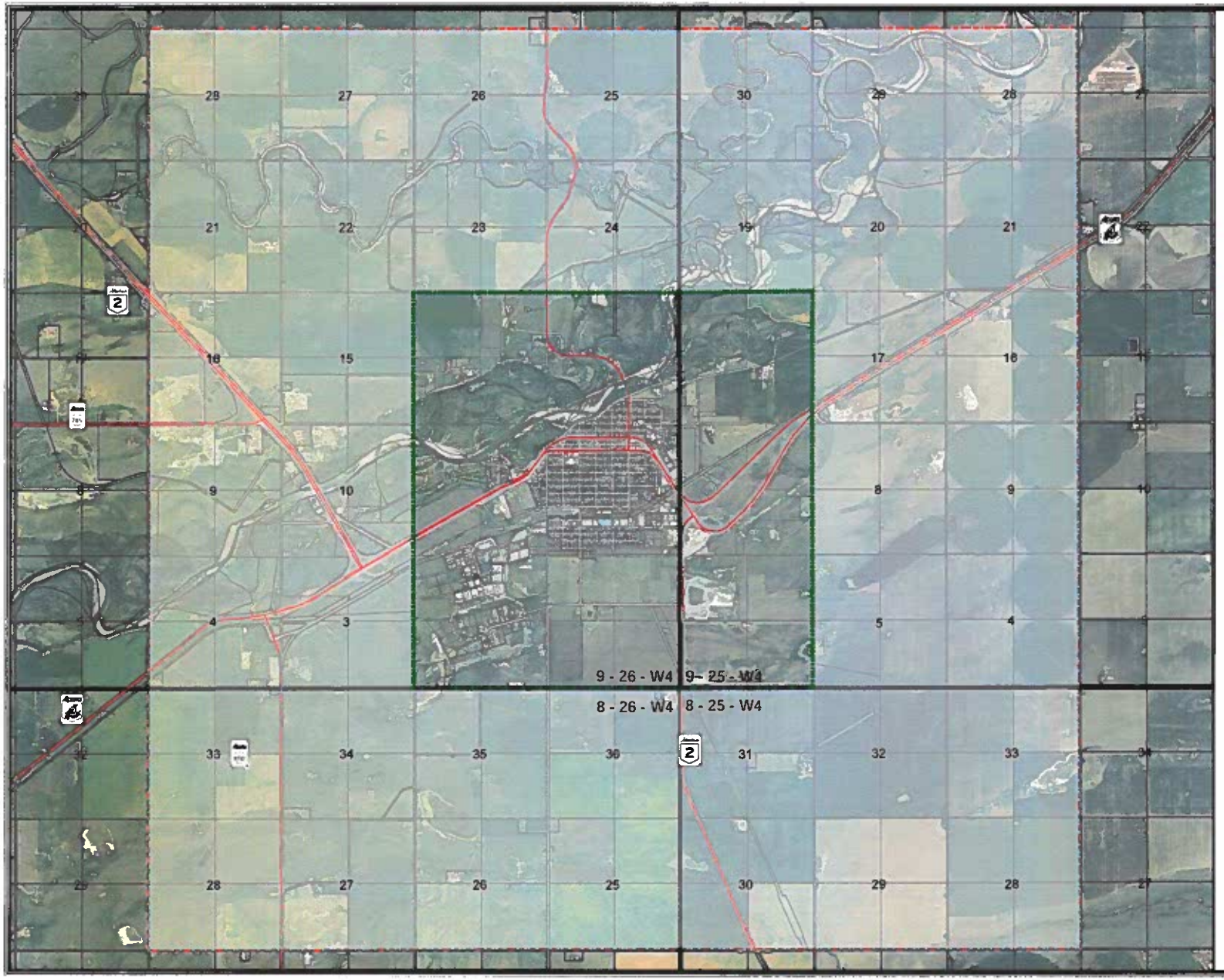
5. PLAN AREA & APPLICABILITY

The **IDP Area** (Plan Area) includes all lands within the MD surrounding the Town extending approximately 2 miles in all directions as delineated in **Map 2 – Plan Area.** The extent of the Plan Area was established based upon analysis of the characteristics of the area, consideration of development and growth pressures, and discussions about municipal concerns. The resultant Plan Area within the MD is intended to address and accommodate intermunicipal matters and interests well into the future.

Both municipalities agree that the area affected by the IDP includes all lands required to ensure the cooperation and coordination of land uses around the Town. The IDP contains one level of planning coordination around the Town. From the perspective of both municipalities, maintaining the integrity of the IDP is critical to the preservation of their long-term interests. The IDP is based upon a shared vision of a future growth framework and reflects a mutual agreement on areas of growth for each municipality.

The main purpose of the Plan Area is to act as a referral mechanism to ensure dialogue between the two municipalities regarding development adjacent to Town. It should be noted that some of the lands contained within the Plan Area are already zoned, subdivided or developed for non-agricultural uses. It is understood and agreed that existing uses within the Plan Area will be permitted to continue.

However, the expansion or intensification of existing uses shall be required to meet the policies of the IDP. Those lands that have been previously redesignated or subdivided or both need to be reviewed in the context of the IDP and amendments may be required to ensure that future development will comply with the mutually agreed upon growth pattern.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Plan Area

Map 2

Fort Macleod Municipal Boundary

IDP Plan Area

Highways

M.D. of Willow Creek (Bylaw No. ____)
&
Town Of Fort Macleod (Bylaw No. ____)

November 2021

M.D. of Willow Creek

Oldman River Regional Services Commission

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Kilometers

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PART B: POLICIES

Except where otherwise stated, the IDP outlines policies that apply to lands in the Plan Area and is to be used as a framework for decision making in each municipality with input and cooperation of the other jurisdiction. Each municipality is responsible for decisions within their boundaries using the IDP policies and the procedures provided in the IDP.

This section is intended to provide guidance to decision makers when considering land use approvals within the boundary. Other sections of the IDP may also apply.

1. GENERAL POLICIES

INTENT

These general policies are applicable to all lands within the Plan Area and are intended to enable the implementation of an effective coordinated growth management strategy.

POLICIES

1.1 The IDP acknowledges land use designations for rural industrial and vacant country residential that existed prior to its adoption. Following adoption and for the purpose of managing land use around the Town, lands within the MD will typically be designated as Rural General under the MD Land Use Bylaw

1.2 Extensive agriculture will be the primary land use of the lands, until these lands are redesignated in the MD Land Use Bylaw in accordance with the IDP.

1.3 Prior to developing lands for urban residential or urban industrial/commercial uses, the first step will be to commence an IDP amendment, area structure plan and/or redesignation process. These requirements are outlined in the following sections.

1.4 It is agreed that where intermunicipal programs relating to the physical, social and economic development of the Plan Area can be appropriately coordinated, both municipalities will seek to pursue such matters collaboratively.

2. AGRICULTURE

INTENT

Agricultural activities are to continue to operate under acceptable farming practices within the Plan Area.

POLICIES

2.1 Agriculture will continue to be the predominant land use in the Plan Area. The impact on agricultural uses should be a consideration when determining suitability of non-agricultural land uses in the Plan Area and on lands within the Town adjacent to the Town boundary.

2.2 Both municipalities will strive to work cooperatively to encourage good neighbour farming practices, such as dust, soil erosion, weed and insect control, through best management practices and Alberta Agriculture guidelines.

2.3 If disputes or complaints in either municipality arise between ratepayers and agricultural operators, the municipality receiving the complaint shall strive to direct the affected parties to the appropriate agency, government department or municipality for consultation or resolution wherever necessary.

3. CONFINED FEEDING OPERATIONS

INTENT

The MD and the Town both recognize that it is the jurisdiction of the Natural Resources Conservation Board (NRCB) to grant approvals and regulate confined feeding operations (CFOs), which are defined in the *Agricultural Operation Practices Act* along with a threshold for when an approval is required in the Part 2 Matters Regulation. These policies recognize that it is important for both jurisdictions to maintain a good quality of life and high-quality environment and support all types of agriculture, as both are fundamental to growth and development within each of their municipalities.

POLICIES

3.1 New confined feeding operations (CFOs) are not permitted to be established within the Intermunicipal Development Plan Confined Feeding Operation Policy Area (CFO Exclusion Area) as illustrated on **Map 3 – CFO Policy Area**.

3.2 In regard to manure application on lands with the Plan Area or the lands adjacent to the Town boundary, the standards and procedures as outlined in the *Agricultural Operation Practices Act*, Standards and Administration Regulation shall be applied.

3.3 Both municipalities request the NRCB to circulate all applications for CFO registrations or approvals within the Plan Area to each respective municipality.

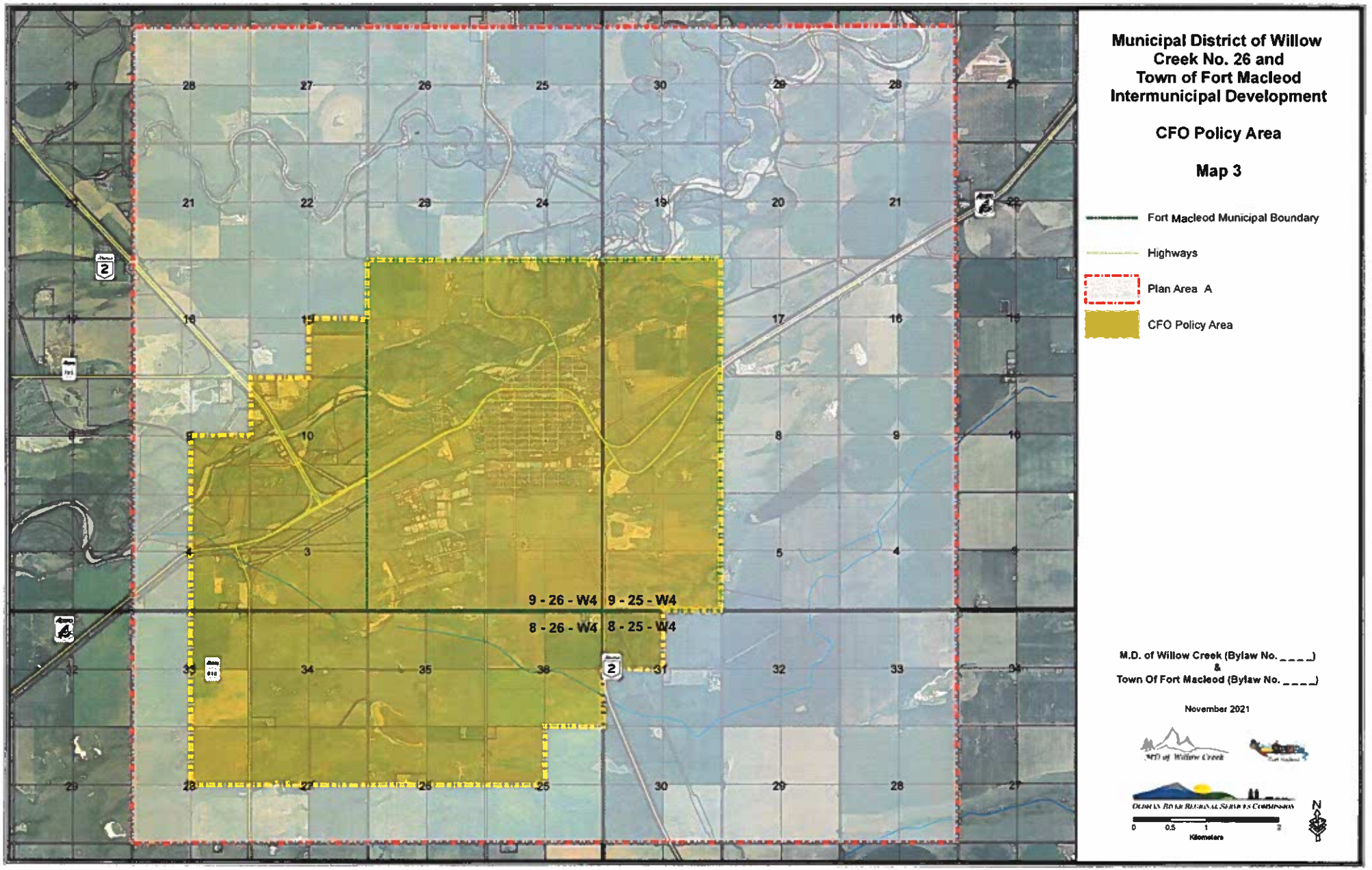
3.4 Both municipalities recognize and acknowledge that existing CFOs located within the CFO Exclusion Area will be allowed to continue to operate under acceptable operating practices and within the requirements of the *Agricultural Operation Practices Act* and Regulations. Consistent with Policy 3.1 of the IDP, existing CFOs in the CFO Exclusion Area may continue to operate only within the scope of their existing registrations or approvals. New CFO registrations or approvals are not permitted in the CFO Exclusion Area.

3.5 The municipalities agree that they will notify and consult with the other municipality prior to engaging the NRCB or other provincial authorities, should a problem or complaints arise regarding a CFO operator's practices.

3.6 Consistent with the MD's Land Use Bylaw and Municipal Development Plan, all applications regarding intensive livestock operation (ILO) and CFOs within the Plan Area shall be forwarded to the Town for review and comment.

3.7 The Town acknowledges the benefits of ILO processing as outlined in the MD Land Use Bylaw and encourages the MD to continue the policy. Any Land Use Bylaw amendment affecting this policy shall be referred to the Town for comment due to the potential impact to Plan Area.

3.8 For statutory plan consistency, as required under the *MGA*, the MD Municipal Development Plan CFO policies and associated map shall be updated within the first year of the IDP being adopted, to reflect the CFO Exclusion Area as defined by Map 3.


Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development
CFO Policy Area
Map 3
Fort Macleod Municipal Boundary
Highways
Plan Area A
CFO Policy Area
9 - 26 - W4
9 - 25 - W4
8 - 26 - W4
8 - 25 - W4
M.D. of Willow Creek (Bylaw No. ____)
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4. GROUPED COUNTRY RESIDENTIAL DEVELOPMENT

INTENT

The MD has had a strong policy of protecting agricultural land by being very restrictive with respect to the approval of grouped country residential development, except for very specific areas of the municipality.

POLICIES

4.1 Lands considered high quality agricultural land shall not be subdivided for grouped country residential use.

4.2 The MD shall encourage grouped country residential uses to locate in or in close proximity to the hamlet areas established in the MD and not within the Plan Area.

4.3 A parcel or a lot located within the Plan Area that is intended to be used for grouped country residential development shall be designated grouped country residential in the MD Land Use Bylaw.

4.4 Prior to giving consideration to a redesignation request to grouped country residential in the MD Land Use Bylaw, the MD shall require the applicant to submit and have approved an area structure plan.

5. COMMERCIAL AND INDUSTRIAL DEVELOPMENT

INTENT

Commercial and industrial development applications can be expected, and the following policies will ensure coordination with existing and future developments in the Town. The MD may also benefit from development in specific locations.

POLICIES

5.1 A parcel or a lot located within the Plan Area that is intended to be used for commercial or industrial development shall be designated to the appropriate land use district in the MD Land Use Bylaw.

6. UTILITIES AND SERVICING

INTENT

A high degree of cooperation currently exists between the two jurisdictions and further opportunities for joint activities on a wide variety of issues may become available in the future.

POLICIES

6.1 Both municipalities shall ensure that land development and servicing is coordinated, recognizing that:

a. statutory plan compliance or amendment, land use redesignation, and subdivision to facilitate development are the first steps in land development,

b. where there is an existing servicing agreement, development shall be provided with suitable levels of service depending on its requirements and location, and

c. the actions of regulatory authorities shall be coordinated with those of both municipalities, whenever possible.

6.2 It is recognized by the two municipalities that benefits can occur through cooperation, and both may explore the option of sharing future services and/or revenues through an Intermunicipal Collaborative Framework or a special agreement. To that end, negotiations shall occur between the two municipalities and not with individual landowners.

6.3 Both municipalities have agreed that water service may be extended into the area identified on **Map 4 – Servicing Policy Area** with the details of the arrangement to be negotiated in a separate servicing agreement.

6.4 To ensure that water and sewage disposal are given full consideration well in advance of development approval, the MD and the Town agree that this shall be addressed as early as possible whenever land use decisions are being made. Where the municipalities can come to agreement on the development, any existing servicing agreements between the MD and the Town will be amended to incorporate the new proposal.

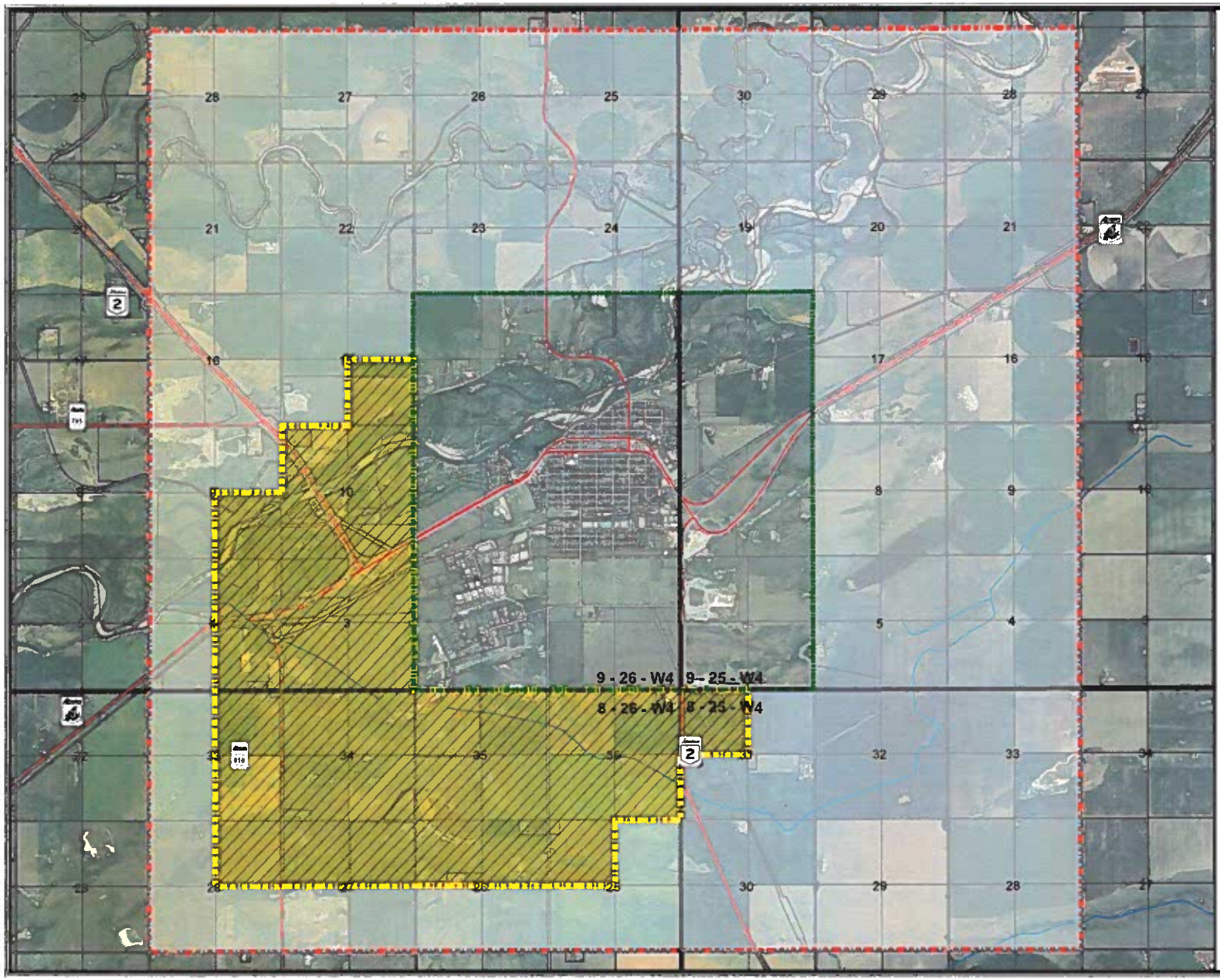
6.5 Where Town services for water are being considered by a developer, the developer shall obtain and utilize Town engineering standard in their plans.

6.6 Where proposed roads may become part of the Town infrastructure, the Town road engineering standards should be included in the area structure plan. If a proposed road may become part of the MD infrastructure, the MD road engineering standards should be included in the area structure plan.

6.7 Information for major servicing infrastructure proposed by one municipality shall be provided to the other municipality to allow for collaboration and coordinated planning.

6.8 For lands within the MD, developers shall be responsible to provide storm water management for their parcel as it pertains to a proposed development, or for a larger design or subdivision area, to the satisfaction of the MD.

6.9 Area structure plans shall include detailed servicing studies for the provision of water, sanitary sewer, stormwater management and utilities.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Servicing Policy Area

Map 4

- Fort Macleod Municipal Boundary
- Highways
- Plan Area A
- Servicing Policy Area

M.D. of Willow Creek (Bylaw No. ____)
&
Town Of Fort Macleod (Bylaw No. ____)

November 2021

MD of Willow Creek

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7. SUBDIVISION CRITERIA

INTENT

Although the subdivision process for the interface area may utilize the same policies as the rest of the MD, it is recognized that more evaluation may be necessary to minimize the potential for conflicts with existing or proposed uses and as outlined in the IDP.

POLICIES

7.1 New applications for subdivision or development of land within the Plan Area are subject to the policies of this IDP.

7.2 Subdivision of land within the Plan Area may be permitted in accordance with the MD's subdivision policies and applicable land use district provisions.

7.3 Subdivision of land within the Town adjacent to the Town boundary may be permitted in accordance with the Town's subdivision policies and applicable land use district provisions.

8. URBAN EXPANSION AND ANNEXATION

INTENT

It is recognized that the Town may need to expand its boundaries at some point to support continued urban growth. A clearly defined annexation procedure will help guide the annexation process and maximize opportunities for information sharing between the municipalities and affected landowners.

POLICIES

8.1 When the Town determines that annexation of land is necessary to accommodate growth, it will prepare and share with the MD a growth strategy/study which indicates the necessity of the land, describes how land has been utilized to its fullest potential within the Town, outlines proposed uses of the land, servicing implications, and any identified financial impacts to both municipalities, while addressing the Land and Property Rights Tribunal "Annexation Principles" and demonstrating consistency with the relevant portions of the *South Saskatchewan Regional Plan*.

8.2 Annexation boundaries shall follow legal boundaries and natural features to avoid creating fragmented patterns of municipal jurisdiction.

8.3 The Town and MD shall negotiate a formula for the determination of compensation on annexation. Negotiation may occur on any or all of the following:

- revenue or tax-sharing,
- off-site levies and levy transfers, and municipal reserve transfers.

9. NATURAL AND BUILT ENVIRONMENT

INTENT

Both municipalities recognize the connection between the natural environment and quality of life and the need to consider environmental protection, preservation, and enhancement as part of the planning process. The following policies are intended to minimize potential intermunicipal concerns regarding environmental matters.

POLICIES

9.1 When making land use decisions, each municipality will:

a. consider measures that minimize potential impacts to the Oldman River and Willow Creek; and

b. consider appropriate land use setbacks in the vicinity of significant water resources and other water and drainage features to maintain water quality, flood water conveyance and storage, bank stability and habitat.

9.2 Subdivision and development of lands should consider potential impacts to natural and historic resources in an identified Environmentally Significant Area or on lands that may contain Historic Resource Value (HRV).

9.3 Both municipalities should consider the provincial Wetland Policy when making land use decisions with the goal of sustaining environment and economic benefits. The developer, not the municipalities, is responsible for ensuring compliance with the provincial policy and any associated regulations.

9.4 Each municipality encourages applicants of subdivision and development proposals to consult with the respective municipality, irrigation district, and provincial departments, as applicable, regarding water supply, drainage, setbacks from sensitive lands, and other planning matters relevant to the natural environment in advance of submitting a proposal.

9.5 Both municipalities endorse the dedication of Environmental Reserve or an Environmental Reserve Easement within the Town or the lands subject to the IDP along the river and any other major natural drainage course, recognizing that the *MGA* authorizes:

a. the dedication of a minimum 6-metre strip; and

b. the dedication of any lands that are unstable or subject to flooding; and

c. the dedication of lands which consist of a swamp, gully, ravine, coulee or a natural drainage course.

9.6 Where either municipality identifies that a development, subdivision or redesignation application may occur on or in potentially hazardous land, the developer shall provide an analysis prepared by a qualified Alberta professional showing the approval is appropriate and safe at that location.

10. INDUSTRIAL SCALE WIND AND SOLAR DEVELOPMENTS

INTENT

Both Wind Energy Conversion Systems (WECS) and Solar Energy systems are a growing industry in southern Alberta and provides economic benefits to both urban and rural municipalities. As a land use, WECS structures can be imposing due to their size and commercial/industrial solar energy systems can be imposing due to their land coverage. Through municipal cooperation, it is hoped that the industry can expand and grow as a compatible land use.

POLICIES

10.1 Both municipalities agree to endorse green energy development and further agree to have open dialogue on proposed developments.

10.2 The protection of agricultural lands and associated land uses shall be considered when decisions regarding wind and solar power generation are made.

10.3 Commercial scale solar developments within the Plan Area may be supported, provided they can demonstrate compliance with the applicable standards of the MD's Land Use Bylaw, which includes provisions regarding application requirements, development standards, siting and suitability criteria, decommissioning, notification and public consultation, and conditions of approval. Commercial scale solar developments are encouraged to locate on lower quality agricultural lands and to utilize cut-off, fragmented and irregularly shaped parcels, while avoiding primarily unsubdivided quarter sections and environmentally sensitive and environmentally significant areas, including but not limited to wetlands or intact native grasslands.

10.4 Commercial scale wind energy developments within the Plan Area may be supported provided they can demonstrate compliance with the applicable standards of the MD's Land Use Bylaw, which includes provisions regarding application requirements, referrals, decommissioning, setbacks, minimum blade clearance, tower access and safety, energy collection lines, quality of development and public consultation.

10.5 Specifically, the MD shall require that all land use approvals for industrial scale wind or solar developments within 4000m of the Town Airport to consider the safe and efficient operation of the airport. Federal regulations, including TP312 (Aerodrome Standards and Recommended Practices) and TP1247 (Aviation: Land Use in the Vicinity of Aerodromes) will guide development near the airport.

11. TRANSPORTATION

INTENT

Transportation corridors are key components to any land use planning document. Land use and transportation cannot be planned separately, nor can two municipalities plan these components in isolation.

POLICIES

11.1 The Town and MD will cooperate on the development and approvals of all future Transportation Master Plans.

11.2 The MD and Town have identified key intersections shown on **Map 5 - Transportation** and agree to work in collaboration to explore and develop strategies to direct appropriate growth and development that does not compromise the transportation network.

11.3 The MD and Town, together with Alberta Transportation, should consider a long-term planning strategy for the provincial highway network within the Plan Area which would include the impacts or opportunities presented of any changes as a result of the CANAMEX trade corridor (highway bypass) of the Town as depicted on Map 5.

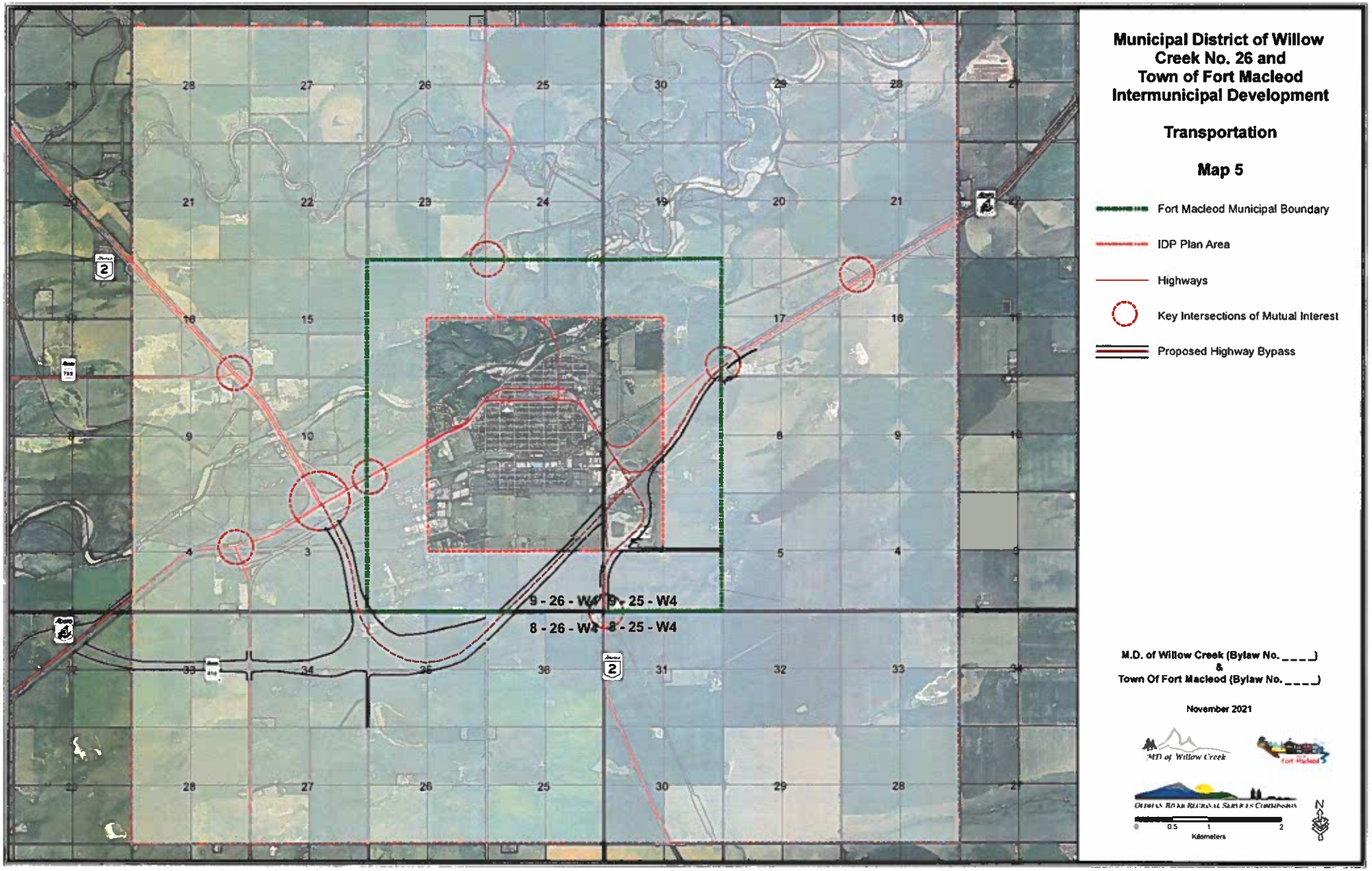
11.4 If required by Alberta Transportation or the municipality, at the time of subdivision or development, the developer shall conduct traffic studies with respect to impact and access onto Highways 2, 3, 810 and 811. Any upgrading identified by such studies shall be implemented by the developer at its sole cost and to the satisfaction of the municipality and Alberta Transportation.

11.5 Both municipalities agree to inform and invite the other municipality for all discussions with Alberta Transportation and CP Rail.

11.6 All subdivision proposals within the Plan Area and on lands within the Town adjacent to the Town boundary shall secure all right-of-way requirements for future road expansion. Particular attention should be given to major intersections requirements.

11.7 Standards for a hierarchy of roadways should be identified and established between the two jurisdictions. Access control regulations should also be established to ensure major collectors and arterials are protected.

11.8 Where the proposed roads may become part of the Town infrastructure, the Town road engineering standards should be included in the area structure plan. If a proposed road may become part of the MD infrastructure, the MD road engineering standards should be included in the area structure plan.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Transportation

Map 5

- Fort Macleod Municipal Boundary
- IDP Plan Area
- Highways
- Key Intersections of Mutual Interest
- Proposed Highway Bypass

M.D. of Willow Creek (Bylaw No. ____)
&
Town Of Fort Macleod (Bylaw No. ____)

November 2021

MD of Willow Creek

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PART C: IMPLEMENTATION OF THE IDP

The IDP's implementation will be the ongoing responsibility of both municipalities, whose actions must reflect the IDP. The support and cooperation of each municipal staff, planning advisors, public and private organizations, and the general public will also be needed for implementation. The following guiding principles shall govern the IDP's implementation:

1. The Town and MD agree that they shall ensure that the policies of the IDP are properly, fairly and reasonably implemented.
2. The Town and MD shall monitor and review the policies of the IDP on a regular basis or as circumstances warrant.
3. Where necessary, the Town and the MD's Land Use Bylaws and Municipal Development Plans shall be amended to reflect the policies of this IDP.

1. INTERMUNICIPAL DEVELOPMENT PLAN COMMITTEE POLICIES

INTENT

The implementation of the IDP is intended to be an ongoing process to ensure it is maintained and remains applicable. An Intermunicipal Development Plan Committee with joint representation will ensure continued dialogue and cooperation, as the purpose of this committee is to promote active cooperation and conflict resolution through a consensus-based approach.

POLICIES

1.1 For the purposes of administering and monitoring the IDP, the Town and the MD establish the Intermunicipal Development Plan Committee (the Committee).

1.2 Both municipalities agree the Committee will be an advisory body and may make comments or recommendations to the Town and the MD. In its advisory capacity, the Committee does not have decision making authority or powers with respect to planning matters in either municipality.

1.3 The Committee will be comprised of two (2) members of Council from both the Town and MD. Each municipality may appoint an alternate Committee member in the event a regular member cannot attend a scheduled meeting. Alternate Committee members shall have standing. Quorum shall consist of four (4) voting members.

1.4 Members of the Committee shall be appointed by their respective Councils at the Organizational Meeting. If a Council wishes to appoint a new member to the Committee (including the alternate), they must do so by motion of Council at a regular Council meeting. The municipalities shall notify one another upon appointing members and alternate members to the Committee.

1.5 The municipalities agree that the purpose of the Committee is to:

a. provide a forum for discussion of land use matters within the Plan Area,
b. provide recommendation(s) for proposed amendments to the IDP,
c. discuss and address issues regarding IDP implementation,
d. review and provide comment on referrals under PART C: Section 2 and any other matters referred to the Committee,
e. provide recommendation(s) regarding intermunicipal issues in an effort to avoid a dispute, and
f. provide a forum for discussion of any other matter of joint interest identified by either municipality.

1.6 Meetings of the Committee may be held at the request of either municipality to discuss land use or other planning matters, dispute resolution, or any other matter of intermunicipal importance. Additionally, any matter in PART C: Section 2 may be referred by either municipality to the Committee for comment prior to a decision being rendered.

1.7 A municipality may call a meeting of the Committee at any time upon not less than five (5) days' notice of the meeting being given to all members of the Committee and support personnel, stating the date, the time, purpose and the place of the proposed meeting. The five (5) days' notice may be waived with ¾ of the Committee members' agreement noted.

1.8 The municipality that called the meeting of the Committee shall host and chair the meeting and is responsible for preparing and distributing agendas and minutes.

1.9 At least one (1) member of each municipality's administrative staff shall attend each meeting in the capacity of technical, non-voting advisor.

1.10 Any changes to the Committee format, composition, roles, responsibilities or any aspect of its existence or operation may be requested by either municipality.

1.11 Where a matter has been referred to the Committee and a resolution cannot be found, the Dispute Resolution process in PART C: Section 3 of the IDP shall be adhered to.

2. REFERRALS

The IDP is designed with a referral system as outlined below.

Referral Intent

Land use issues within the Plan Area and on lands within the Town adjacent to the Town boundary as shown on **Map 6 – Referral Area** will be addressed at five main points in the approval system including:

- municipal development plans and amendments,
- all other statutory plans and amendments,
- land use bylaws and amendments,
- subdivision of a parcel and any appeal,
- development approval and any appeal.

Each referral shall contain all available information for review and a municipality may request further information to be provided.

Referral Policies

2.1 **Municipal Development Plan and Amendments**

a. The MD shall refer any newly proposed MD Municipal Development Plan or amendment that affects the Plan Area or will have an impact on the IDP to the Town for comment.
b. The Town shall refer any newly proposed Town Municipal Development Plan or amendment affecting the municipal expansion policies to the MD for comment.
c. The above referrals shall be made and considered prior to a public hearing.

2.2 **All Other Statutory Plans and Amendments**

a. The MD shall refer any newly proposed MD statutory plan or amendment that affects the Plan Area or will have an impact on the IDP to the Town for comment.
b. The Town shall refer any newly proposed Town statutory plan or amendment affecting the municipal expansion policies to the MD for comment.
c. The above referrals shall be made and considered prior to a public hearing.

2.3 **Land Use Bylaws and Amendments (redesignation and text amendments)**

a. The MD shall refer all Land Use Bylaw amendments for lands in the Plan Area or that will have an impact on the IDP to the Town for comment.
b. The Town shall refer all Land Use Bylaw amendments for lands adjacent to the Town boundary or that will have an impact on the IDP to the MD for comment.
c. Any proposed new Land Use Bylaw in the MD or Town shall be referred to the other for comment.
d. The above referrals shall be made and considered prior to a public hearing.

2.4 **Subdivision Applications**

a. The MD shall refer all subdivision applications within the Plan Area to the Town for comment.
b. The Town shall refer all subdivision applications for lands adjacent to the Town boundary to the MD for comment.
c. The above referrals shall be made and considered prior to a decision being made.

2.5 **Development applications**

a. The MD shall refer the following applications within the Plan Area to the Town for comment:
   i. all discretionary use applications; and
   ii. applications for uses of land or buildings which may have a noxious, hazardous or otherwise detrimental impact on land within the Town .
b. The Town shall refer the following applications on land adjacent to the Town boundary to the MD for comment:
   i. all discretionary use applications; and
   ii. applications for uses of land or buildings which may have a noxious, hazardous or otherwise detrimental impact on land within the MD.
c. The above referrals shall be made and considered prior to a decision being made.

2.6 **Other Approvals**

Municipalities are encouraged to refer any requests for approval to each other in areas not contained in the IDP if some impact may occur in the other jurisdiction.

2.7 **CFO / ILO Development applications**

a. The MD shall refer all CFO / ILO use applications located in the Plan Area to the Town for comment.
b. The above referrals shall be made and considered prior to a decision being made.

2.8 **Coordination of Transportation Planning**

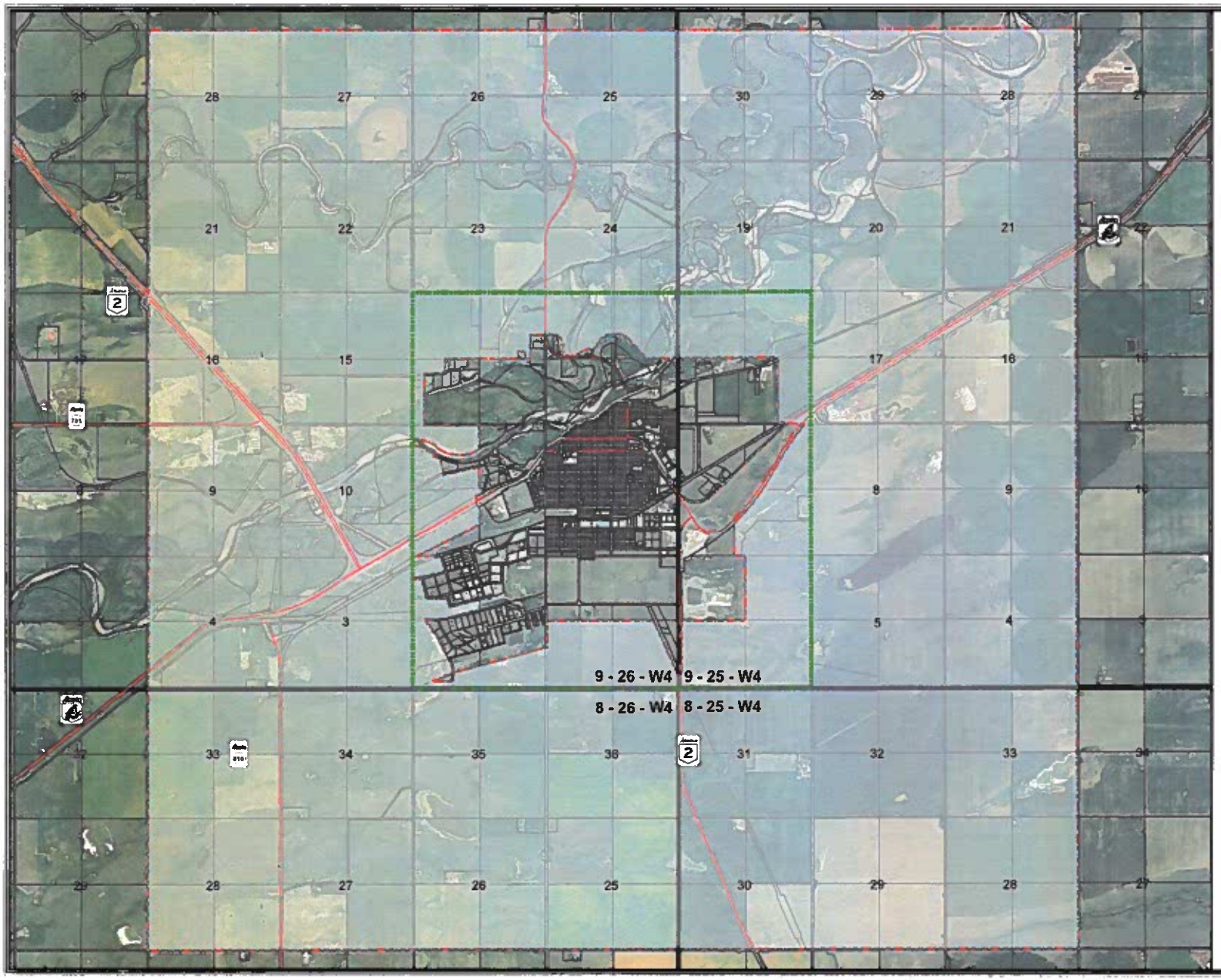
a. The MD shall refer all transportation improvements located in the Plan Area to the Town for comment.
b. The above referrals shall be made and considered prior to a decision being made.

Response Timelines

2.11 The responding municipality shall, from the date of the referral, have the following timelines to review and provide comment on intermunicipal referrals:

a. 15 calendar days for all development applications,
b. 19 calendar days for subdivision applications, and
c. 30 calendar days for all other intermunicipal referrals.

2.12 In the event that either municipality or the Committee does not reply within, or request an extension by, the response time for intermunicipal referrals stipulated in this Section, it is presumed that the responding municipality and/or Committee has no comment or objection to the referred planning application or matter.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Referral Area

Map 6

Fort Macleod Municipal Boundary

Referral Area

Highways

M.D. of Willow Creek (Bylaw No. _____)
&
Town Of Fort Macleod (Bylaw No. _____)

November 2021

MD of Willow Creek

Fort Macleod

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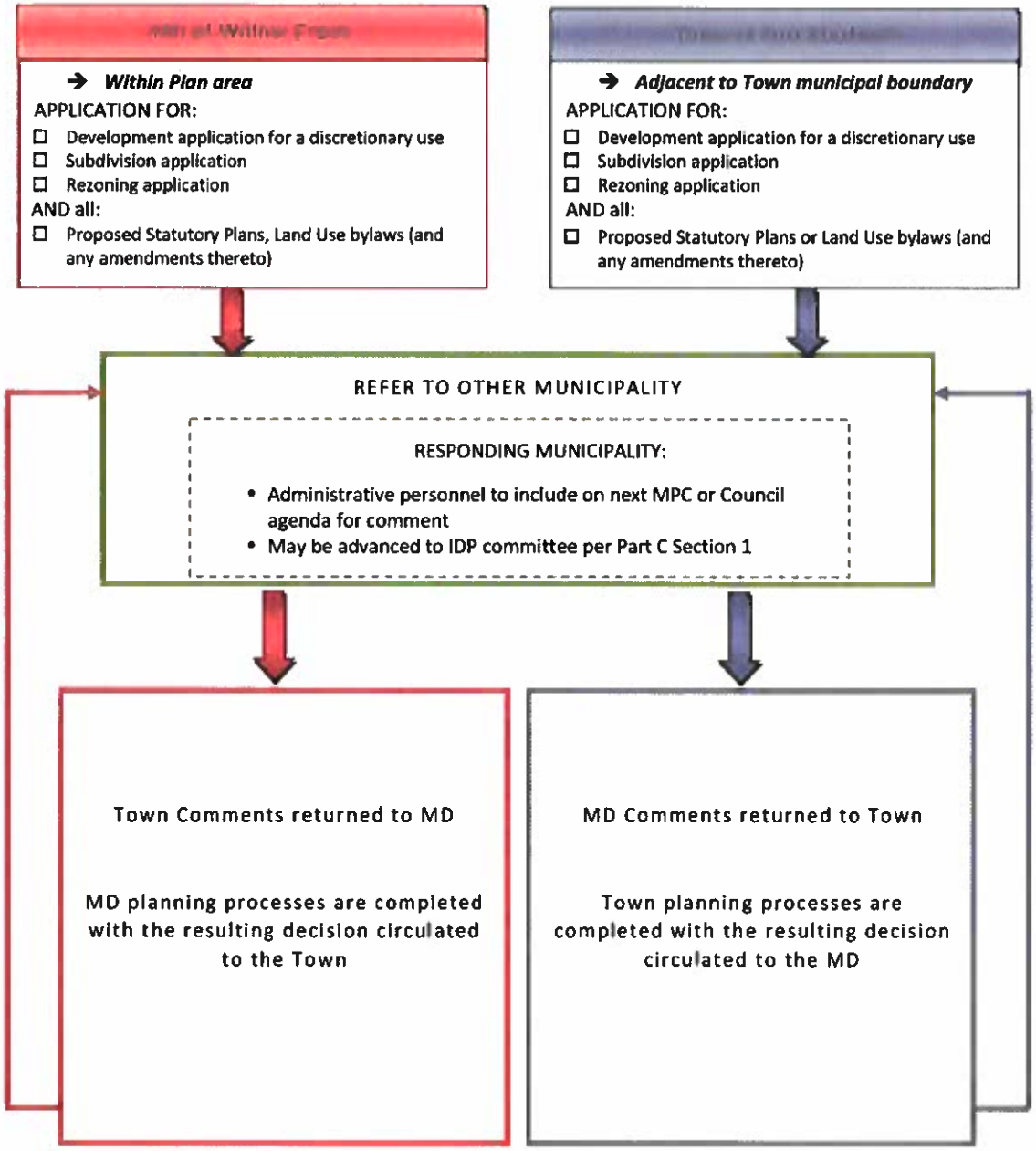
Consideration of Responses

2.13 Comments from the responding municipality and/or the Committee regarding proposed Municipal Development Plans, other statutory plans, and Land Use Bylaws, or amendments to any of those documents, shall be considered by the municipality in which the application is being proposed, prior to a decision being rendered.

2.14 Comments from the responding municipality and/or the Committee regarding subdivision and development applications shall be considered by the municipality in which the application is being proposed, prior to a decision being rendered on the application.

Figure 1: Intermunicipal Development Plan Referral Flow Chart



3. DISPUTE RESOLUTION

INTENT

The intent of the dispute resolution process is to maximize opportunities for discussion and review in order to resolve areas of disagreement early in the process. Despite the best efforts of both municipalities, it is understood that disputes may arise from time to time affecting land use within the Plan Area. The following process is intended to settle disputes through consensus and minimize the need for formal mediation.

POLICIES

The municipalities agree that:

3.1 It is important to avoid dispute by ensuring that the IDP is adhered to as adopted, including full circulation of any permit or application that may affect the municipality as required in the IDP and prompt enforcement of the IDP policies.

3.2 Prior to the meeting of the Committee, each municipality through its administration, will ensure the facts of the issue have been investigated and clarified, and information is made available to both parties. Staff meetings are encouraged to discuss possible solutions.

3.3 The Committee should discuss the issue or dispute with the intent to seek a recommended solution by consensus.

Dispute Resolution

In the case of a dispute, the following process will be followed to arrive at a solution:

3.4 When a potential intermunicipal issue comes to the attention of either municipality relating to a technical or procedural matter, such as inadequate notification or prescribed timelines, misinterpretation of IDP policies, or a clerical error regarding the policies of the IDP, either municipality's Land Use Bylaw, or any other plan affecting lands in the Plan Area, it will be directed to the administrators of each municipality. The administrators will review the technical or procedural matter and if both administrators are in agreement, take action to rectify the matter.

3.5 Should either municipality identify an issue related to the IDP that may result in a dispute that cannot be administratively resolved under Section 3.4 or any other issue that may result in a dispute, the municipality should contact the other and request that a Committee meeting be scheduled to discuss the issue. The Committee will review the issue and attempt to resolve the matter by consensus.

3.6 Should the Committee be unable to arrive at a consensus, the administration of each municipality will schedule a joint meeting of the two Councils to discuss possible solutions and attempt to reach consensus on the issue.

3.7 Should the Councils be unable to resolve the matter, either municipality shall initiate a formal mediation process to facilitate resolution of the issue.

Filing an Intermunicipal Dispute under the *Municipal Government Act*

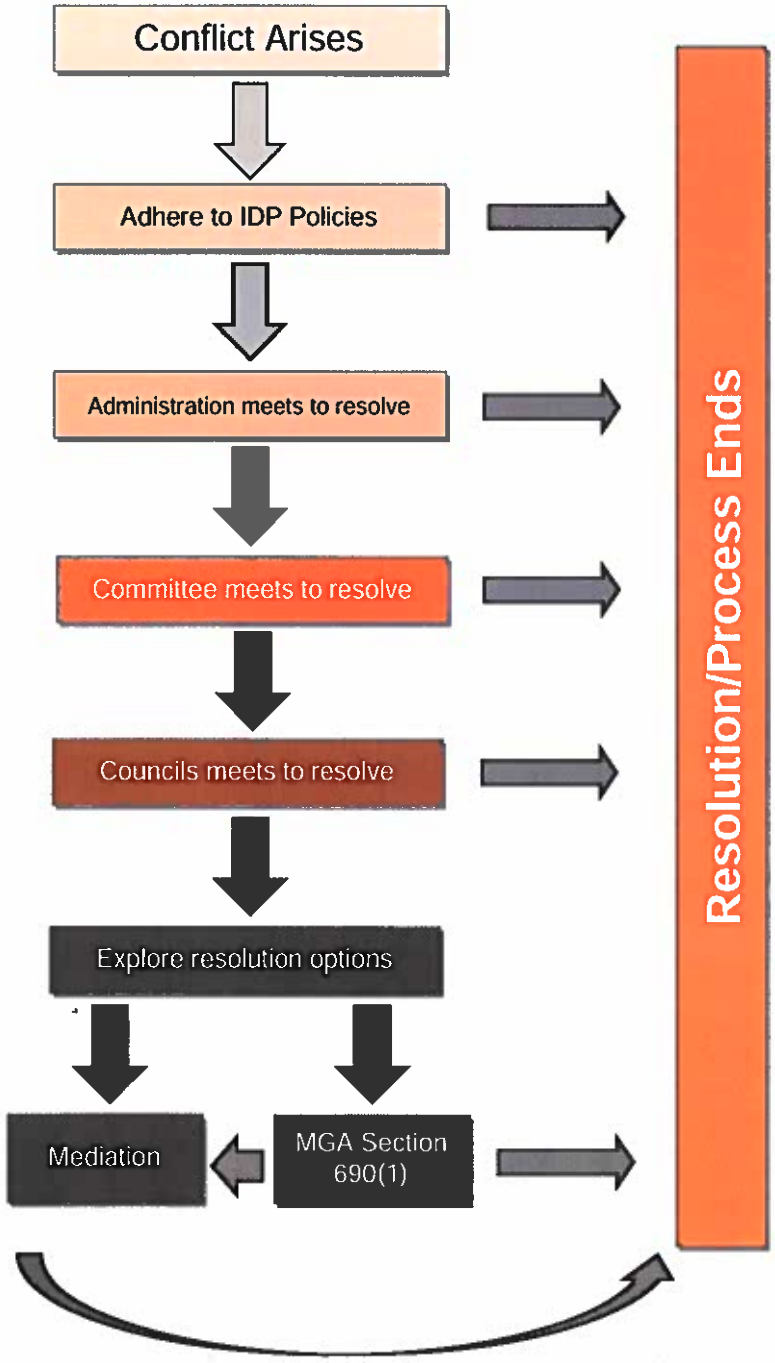
3.8 In the case of a dispute involving the adoption of a statutory plan, Land Use Bylaw or amendment to such, within 30 days of adoption, the municipality initiating the dispute may, without prejudice, file an appeal to the Land and Property Rights Tribunal under section 690(1) of the *MGA* so that the provincial statutory right and timeframe to file an appeal is not lost.

3.9 The appeal may then be withdrawn, without prejudice, if a solution or agreement is reached between the two municipalities prior to the Land and Property Rights Tribunal meeting. This is to acknowledge and respect that the time required to seek resolution or mediation may not be able to occur within the 30 day appeal filing process as outlined in the *MGA*.

Note: Using section 690(1) of the MGA is the final stage of dispute settlement, where the municipalities request the Land and Property Rights Tribunal to intercede and resolve the issue.

Dispute Resolution Flow Chart

The dispute resolution flow chart presented here is for demonstration purposes only and shall not limit the ability of either municipality to explore other methods of resolution or to choose one method in place of another.



4. IDP VALIDITY AND AMENDMENT

The IDP will require amendment from time to time to accommodate unforeseen situations, and to keep it relevant.

4.1 The IDP comes into effect on the date it is adopted by both the Town and the MD.

4.2 Recognizing that the IDP may require an amendment from time to time to accommodate an unforeseen situation, such an amendment must be adopted by both municipalities using the procedures established in the *MGA*.

4.3 Third party applications for an amendment to the IDP shall be made to both municipalities and be accompanied by the appropriate fees to each municipality.

4.4 Administrative staff should review the policies of the IDP annually and discuss land use matters, issues and concerns on an on-going basis. Administrative staff may make recommendations to their respective Councils for amendment to the IDP to ensure the policies remain relevant and continue to meet the needs of both municipalities.

4.5 That staff of both municipalities review the IDP every five years from the date of adoption and report to the respective councils. Each council shall respond within 60 days with a recommended course of action.

APPENDIX A – Definitions

Adjacent means land which is contiguous or would be contiguous if not for a river, stream, railway, road or utility right-of-way or reserve land.

Area structure plan means a statutory plan prepared in accordance with Section 633 of the *MGA* and the Municipal Development Plan for the purpose of providing a framework for subdivision and development of land in the municipality.

Commercial means the use of land and/or building for the purpose of display, storage and wholesale or retail sale of goods and/or services to the general public. On-site manufacturing, processing or refining of goods shall be incidental to the sales operation.

Confined feeding operation (CFO) has the same meaning as in the regulations of the *Agricultural Operation Practices Act.*

Country residential means a use of land, the primary purpose of which is for a dwelling or the establishment of a dwelling in a rural area.

Development means development as defined in the *MGA*.

Development authority means the development authority of the MD or the development authority of the Town, whichever development authority applies.

Extensive agriculture means the production of crops or livestock or both by the expansive cultivation or open grazing of normally more than one parcel or lot containing 160 acres (64.8 ha) more or less.

Grouped country residential means two or more contiguous country residential lots.

Industrial means development used for manufacturing, fabricating, processing, assembly, production or packaging of goods or products, as well as administrative offices, warehousing and wholesale distribution uses which are accessory to the above provided that the use does not generate any detrimental impact, potential health or safety hazard or any nuisance beyond the boundaries of the site upon which it is situated.

Intensive livestock operation (ILO) means any land enclosed by buildings, shelters, fences, corrals or other structures which, in the opinion of the MD Municipal Planning Commission, is capable of confining, rearing, feeding, dairying or auctioning livestock, but excepting out wintering of a basic breeding herd of livestock but is less than the thresholds established by the NRCB.

Land use bylaw has the same meaning as in the *MGA*.

May means, within the context of a policy, that the action described in the policy is discretionary.

MGA means the *Municipal Government Act, Revised Statutes of Alberta 2000, Chapter M-26*, with amendments there to.

Noxious industry means an industry which is hazardous, noxious, unsightly or offensive and cannot, therefore, be compatibly located in an urban environment. Examples include, but are not necessarily limited to: abattoirs, oil and gas plants, asphalt plants, sanitary landfill sites, sewage treatment plants or lagoons, auto wreckers or other such uses determined by the Municipal Planning Commission to be similar in nature. Confined feeding operations and Intensive livestock operations are separate uses.

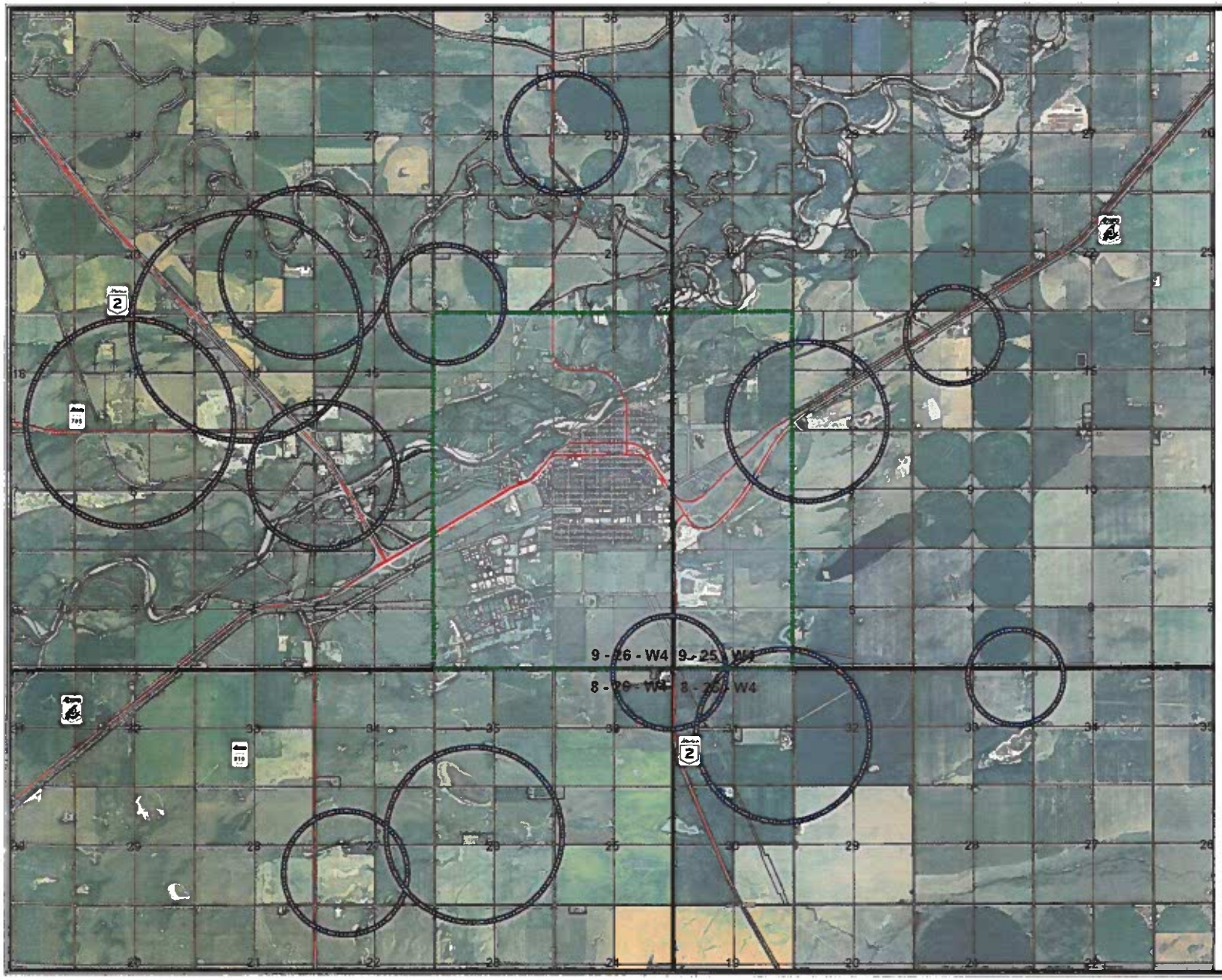
Redesignation "redesignate", "redistrict", or "rezone" means changing the existing land use district on the official Land Use District Map in the Land Use Bylaw.

Residential means the use of land or buildings for the purpose of domestic habitation on a continual, periodic or seasonal basis.

Shall means, within the context of a policy, that the action described in the policy is mandatory.

Solar energy system, commercial/industrial means a system using solar technology to collect energy from the sun and convert it to energy to be used for off-site consumption, distribution to the marketplace, or a solar energy system not meeting the definition of solar energy systems, household.

Wind Energy Conversion System (WECS) means a system consisting of subcomponents which converts wind energy to electrical energy using rotors, tower and a storage system.



Municipal District of Willow Creek No. 26 and Town of Fort Macleod Intermunicipal Development

Appendix B Map

Fort Macleod Municipal Boundary

IDP Plan

Highways

Minimum Distance Seperation (MDS): Category 4 From Existing CFOs

M.D. of Willow Creek (Bylaw No. ____)
&
Town Of Fort Macleod (Bylaw No. ____)

November 2021

MD of Willow Creek

Oldman River Regional Services Commission

0 0.5 1 2
Kilometers

N

From: Janice Agrios
Sent: November 24, 2021 10:42 PM
To: Richard Duncan <richard.duncan@gov.ab.ca>
Cc: Shauna N. Finlay <SFinlay@rmrf.com>
Subject: RE: Fort Macleod / Willow Creek IDP

Hi Rick – As you may have gathered from the IDP that was submitted last week, the Town and MD have reached an agreement on the form of IDP. Shauna and I are now working on a process for implementation of that agreement. In order to allow both municipalities more time to work through that process, we are jointly requesting that the hearing be delayed for approximately 60 days (to late March/ early April). If the Tribunal is agreeable to this request in principle, we can then work out exact dates.

Please let us know what you require from us in order for the Tribunal to consider our adjournment request. Thank you for your ongoing assistance.

Janice Agrios

KENNEDY AGRIOS OSHRY | LAW

1325 Manulife Place, 10180-101 Street
Edmonton, AB, Canada T5J 3S4
Phone: (780) 969-6900
Calgary: (403) 265-6899

Janice A. Agrios, Q.C.
Direct Line: 780.969.6911
jagrios@kaolawyers.com

delivered via email

November 26, 2021

Our File: 76215-2 JAA

Land and Property Rights Tribunal
1229 - 91 Street, SW
Edmonton, AB T6X 1E9

Attention: Rick Duncan

Dear Sir:

Re: Fort Macleod and Willow Creek – IDP
Request for Postponement of Hearing

I am writing to request that the hearing with respect to the above matter, which is scheduled to start on January 31, 2022 be postponed for approximately 60 days to sometime in either late March or early April 2022. I am making this request with the concurrence of Ms. Finlay, on behalf of the MD.

The reason for the request is that the Town and MD have reached an agreement with respect to the form of IDP. The intention of both the Town and MD is to be able to implement the agreed upon IDP without the need for a hearing before the LPRT. The Town and MD are now working on a process to implement the IDP, but require some additional time in order to do so.

In terms of a replacement date, as set out above, the Town and MD are requesting a postponement of approximately 60 days with the new date to be subject to the LPRT's availability and availability of the Town and MD representatives. With respect to document exchange dates, the proposal is that the existing document exchange dates simply be adjusted by the same number of days that the hearing is postponed.

Thank you for considering this request. If you require anything further, please advice.

Yours truly,

KENNEDY AGRIOS OSHRY LAW

Per:
JANICE A. AGRIOS, QC
JAA/lh

cc. client

{076215/0002 00143105.DOC }

cc. Reynolds Mirth Richards & Farmer LLP
Attention: Shauna Finlay

TAB 4

Alberta Statutes
Agricultural Operation Practices Act
Part 2 — Livestock and Manure (ss. 10-43) [Heading added 2001, c. 16, s. 5.]

Most Recently Cited in: Ponoka Right to Farm Society v. Ponoka (County), 2020 ABQB 273, 2020 CarswellAlta 733, [2020] A.W.L.D. 1797, 317 A.C.W.S. (3d) 325, 100 M.P.L.R. (5th) 74 | (Alta. Q.B., Apr 20, 2020)

R.S.A. 2000, c. A-7, s. 20

s 20. Considerations on approvals

Currency

20.Considerations on approvals

20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,

(a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, or

(b) there is no inconsistency with the municipal development plan land use provisions and the requirements are met or a variance may be granted under section 17 and compliance with the variance meets the requirements of the regulations, the approval officer

(i) must consider matters that would normally be considered if a development permit were being issued,

(ii) may make, or require the applicant to make, inquiries and investigations and prepare studies and reports,

(iii) must give directly affected parties a reasonable opportunity to review the information relevant to the application that is submitted to the approval officer and a reasonable opportunity to furnish evidence and written submissions relevant to the application,

(iv) may hold meetings and other proceedings with respect to the applications,

(v) may provide or facilitate mediation among directly affected parties,

(vi) must consider the effects the proposed approval or amended approval may have

on natural resources administered by ministries,

(vii) must consider the following if available when the application for approval is considered: any applicable statement of concern submitted under section 73 of the *Environmental Protection and Enhancement Act* or under section 109 of the *Water Act* and any written decision of the Environmental Appeals Board or the Director under the *Water Act* in respect of the subject-matter of the approval,

(viii) may consider any evidence that was before the Environmental Appeals Board or the Director under the *Water Act* in relation to the written decision referred to in subclause (vii), and

(ix) must consider the effects on the environment, the economy and the community and the appropriate use of land.

20(1.1) In considering under subsection (1) whether an application is consistent with the municipal development plan land use provisions, an approval officer shall not consider any provisions respecting tests or conditions related to the construction of or the site for a confined feeding operation or manure storage facility nor any provisions respecting the application of manure, composting materials or compost.

20(1.2) In considering whether an application for an amendment to an approval meets the requirements of the regulations, an approval officer

(a) shall not consider whether the existing buildings and structures meet the requirements of the regulations unless in the opinion of the approval officer the existing buildings and structures may cause a risk to the environment, but

(b) must consider whether the proposed expansion or alteration of an existing building or structure or any proposed new building or structure meets the requirements of the regulations.

20(2) A Director under the *Environmental Protection and Enhancement Act* and the Director under the *Water Act* may disclose the statements of concern referred to in subsection (1)(b)(vii) to an approval officer and the approval officer may use the information in the statements of concern for the purposes of this Part.

20(3) The approval officer may, under subsection (1)(b),

(a) deny the application, or

(b) grant an approval or an amendment of an approval and impose terms and conditions on the approval or amendment including the terms and conditions that a municipality could impose if the municipality were issuing a development permit.

20(4) The approval officer must provide a written copy of the decision under subsection (l)(a) or (3) to the directly affected parties and the persons and organizations who were determined, under section 19, not to be directly affected parties.

20(5) A directly affected party may, within 10 working days of receipt of the decision under subsection (4), apply to the Board in accordance with the regulations for a review of the decision.

20(6) A person or organization that was determined under section 19 not to be a directly affected party may, with written reasons,

(a) within 10 working days of receipt of the decision under subsection (4), apply to the Board, with written reasons, for a review of whether the person or organization is a directly affected party, and

(b) apply to the Board, in accordance with the regulations, for a review of the decision under subsection (4).

20(7) An applicant under subsection (6)(a) must provide, on the request of the Board, further information relevant to the application.

20(8) The Board must notify the applicant under subsection (6)(a) in writing of the Board's determination whether the applicant is a directly affected party.

20(9) If a person is determined under subsection (8) to be a directly affected party, the Board must consider the person's application, if any, for a review of the decision under subsection (5).

20(10) Despite anything in this section, in considering an application for an approval or an amendment of an approval, an approval officer must act in accordance with, and ensure that the application complies with, any applicable ALSA regional plan.

Amendment History
2001, c. 16, s. 5; 2003, c. 42, s. 6(10)(a); 2004, c. 14, s. 11; 2009, c. A-26.8, s. 70(3)

Currency
Alberta Current to Gazette Vol. 118:5, (March 15, 2022)

End of Document

Alberta Statutes
Agricultural Operation Practices Act
Part 2 — Livestock and Manure (ss. 10-43) [Heading added 2001, c. 16, s. 5.]

Most Recently Cited in: Ponoka Right to Farm Society v. Ponoka (County), 2020 ABQB 273, 2020 CarswellAlta 733, [2020] A.W.L.D. 1797, 317 A.C.W.S. (3d) 325, 100 M.P.L.R. (5th) 74 | (Alta. Q.B., Apr 20, 2020)

R.S.A. 2000, c. A-7, s. 25

s 25. Review

Currency

25.Review

25(1) The Board must, within 10 working days of receiving an application under section 20(5), 22(4) or 23(3) and within 10 working days of the Board's determination under section 20(8) that a person or organization is a directly affected party,

(a) dismiss the application for review, if in the opinion of the Board, the issues raised in the application for review were adequately dealt with by the approval officer or the issues raised are of little merit, or

(b) schedule a review.

25(2) Before conducting a review under subsection (1)(b) the Board may, in accordance with the regulations, determine which matters include in the application for review will be included in the review, and in making that determination the Board my consider

(a) whether the matter is the subject of a public hearing or review under the *Environmental Protection and Enhancement Act* or the *Water Act* based on statements of concern filed under either of those Acts,

(b) whether the applicant for the review under this Act received notice of and participated in or had the opportunity to participate in that hearing or review,

(c) whether other persons or organizations who are entitled to receive notice and be heard at a hearing under the *Environmental Protection and Enhancement Act* or the *Water Act* should receive notice and have the opportunity to participate in the Board's review,

(d) any applicable and available written decision of the Director under the *Water Act* or the Environmental Appeals Board in respect of the subject-matter of the approval, registration or authorization, and

(e) any applicable and available statement of concern or evidence submitted to the Director under the the *Water Act* or under section 73 of the *Environmental Protection and Enhancement Act*.

25(3) A Director under the *Environmental Protection and Enhancement Act* and the Director under the *Water Act* may disclose the statements of concern referred to in subsection (2) to the Board, and the Board may use the information in the statements for the purposes of this Part.

25(4) In conducting a review the Board

(a) may arrange a mediation among the applicant and the directly affected parties,

(b) must give the directly affected parties a reasonable opportunity to review information relevant to the review,

(c) must give the directly affected parties a reasonable opportunity to furnish evidence and written submissions relevant to the review,

(d) may hold meetings and other proceedings with respect to the review,

(e) in the case of an approval or an amendment of an approval, may hold hearings,

(f) may make, or require the applicant to make, inquiries and investigations and prepare studies and reports,

(g) must have regard to, but is not bound by, the municipal development plan,

(h) may consider matters that would normally be considered if a development permit were being issued,

(h.1) must consider reports made by a practice review committee submitted at the review,

(i) must, in the case of an approval, consider how the proposed application would affect natural resources administered by ministries,

(j) must, in the case of an approval, consider any applicable written decision of the Environmental Appeals Board or the Director under the *Water Act* in respect of the subject-matter of the approval or registration and may consider any evidence that was before the Environmental Appeals Board or the Director under the *Water Act* in relation to that written decision, and

(k) must, in the case of an approval, consider the effects on the environment, the economy and the community and the appropriate use of land.

25(5) If a Board member participates in a mediation process under subsection (4)(a), that member may not participate in the review of the application.

25(6) On applying for a review, the applicant and any directly affected party may request that the decision referred to in the application be suspended until the application is heard, and the

Board may suspend the decision on the terms and conditions it prescribes or may refuse the request.

25(7) On holding a review the Board may

(a) grant an approval, registration or authorization or an amendment of an approval, registration or authorization on any terms and conditions that the Board considers appropriate, including the terms and conditions that a municipality could impose if the municipality were issuing a development permit,

(b) refuse to grant an approval, registration or authorization or an amendment of an approval, registration or authorization, or

(c) make any other disposition of the application that the Board considers to be appropriate.

25(8) The Board must provide a written copy of the decision under subsection (1)(a) or (7) to the directly affected parties and the persons and organizations who were determined, under section 20(8), not to be directly affected parties.

Amendment History
2001, c. 16, s. 5; 2003, c. 42, s. 6(10)(b); 2004, c. 14, s. 14

Currency
Alberta Current to Gazette Vol. 118:5, (March 15, 2022)

End of Document

TAB 5

NRCB | Natural Resources Conservation Board

BOARD DECISION

2022-02 / LA21033

Review of Decision Summary LA21033

Double H Feeders Ltd.

March 17, 2022

Table of Contents

The Board issues this decision under the authority of the *Agricultural Operations Practices Act* (AOPA), following the Board's review of Decision Summary LA21033 via a virtual hearing held on February 10, 2022.

1. BACKGROUND

Decision Summary LA21033 (Decision Summary), was issued by an NRCB approval officer on November 25, 2021, denying an application by Double H Feeders Ltd. (Double H Feeders) to construct two barns and increase chicken broiler numbers by 65,000 to a total of 120,000. The existing confined feeding operation (CFO) is owned and operated by Double H Feeders, and is located on NE 22-09-22 W4M, approximately 1.8 km northeast of the town of Coalhurst, Alberta (Town) in Lethbridge County (County).

For ease of reference within this document, the CFO site on NW 22-09-22 W4M proposed for **decommissioning** will be identified as the "west site", and the CFO site on NE 22-09-22 W4M proposed for expansion will be identified as the "east site".

> ***Note: CFO located on NW 22-09-22 W4M (west site) and capacity confirmation:*** *The Technical Document lists the one-time capacity of the west site as 50,000 broiler chickens. Given that the east site currently has a one-time capacity of 55,000 broiler chickens (Technical Document p. 2 of 32), the application to decommission the west site and to expand the east site to house a total of 120,000 broiler chickens represents a net capacity increase of 14% or 15,000 broiler chickens.*[1]

Pursuant to section 20(5) of the *Agricultural Operation Practices Act* (AOPA), a Request for Board Review (RFR) of the Decision Summary was filed by Double H Feeders within the 10-day filing deadline of December 16, 2021, established by AOPA. Under the authority of section 18(1) of the *Natural Resources Conservation Board Act*, a division of the Board (Board) consisting of Peter Woloshyn (chair), Sandi Roberts, L. Page Stuart, and Earl Graham was established to conduct the review.

The Board met on January 5, 2022. In its Decision Report RFR 2022-01 dated January 7, 2022, the Board advised that it had reviewed the RFR, determined that a review hearing was warranted, and that a one-day virtual hearing would be held. On January 10, 2022, a letter with the hearing details was sent to parties, advising that the hearing would use the Zoom platform, and would commence at 9:00 a.m. on February 10, 2022.

---

[1] The applicant asserted in both the Technical Document [p. 2 of 32] and the hearing [Hearing Transcript p. 83, 16-19] that the proposed expansion to the CFO on NE 22-09-22 W4M would result in a total increase of 5%; however, the Board notes that this calculated increase includes the capacity of a third Double H Feeders' site that is not a consideration in this application.

The Board identified the core issue for consideration at the hearing:

> ***Whether the Board should exercise its authority to approve the CFO expansion application, notwithstanding an inconsistency with the County's municipal development plan (MDP).***

The Board also identified a number of constituent elements that would contribute to its decision on that core issue (as listed on page 3 of Board Decision RFR 2022-01), and encouraged directly affected parties to consider these matters in their hearing submissions. These elements related to the following general areas:

- understanding municipal planning objectives
- the relevance of the Double H Feeders CFO located on NW 22-09-22 W4
- directly affected party concerns

Hearing submissions were received within the prescribed timelines from the Approval Officer/NRCB Field Services, Town of Coalhurst, Double H Feeders, County of Lethbridge, and Mr. Clifton. An additional filing request was made by Mr. Clifton after the January 27, 2022 hearing submission deadline, and was accepted in a preliminary decision issued by the Board on February 1, 2022. No rebuttals were received.

Parties to the review and their representatives are identified below:

Parties to the Review	Counsel/Representative
NRCB Field Services • Carina Weisbach, Approval Officer • Andy Cumming, Director, FS-Applications	Fiona Vance, Counsel
Double H Feeders Ltd.	Scott Van't Land, Operator
Lethbridge County	Hilary Janzen, Supervisor, Planning & Development
Town of Coalhurst	Diane Horvath, Town Planner
Mellissa Schmid	Mellissa Schmid
Mr. and Mrs. Bedster	Art Bedster
Mr. Clifton	Bryan Clifton

Bill Kennedy participated in the hearing as counsel for the Board. Additional staff support was provided by Laura Friend, Manager, Board Reviews; and Sylvia Kaminski and Carolyn Taylor, document management.

2. BOARD JURISDICTION

Where an approval application is appealed through the Board "request for review" process and the Board finds that a review is warranted, the Board's consideration of municipal development plans (MDPs) is addressed in AOPA section 25(4)(g):

> *25(4) In conducting a review the Board*
>
> > *(g) must have regard to, but is not bound by, the municipal development plan, . . .*

Although this affords clear discretion to the Board with respect to its consideration of MDPs, the Board is conscious of its responsibility to weigh carefully the planning objectives of municipal planning documents in relation to an application to develop or expand a CFO.

The Board has established that the following considerations are reasonable in a determination of whether a permit application is approved notwithstanding an inconsistency with the MDP presented as a CFO exclusion zone:[2]

- the municipal authority's rationale for establishing the relevant provision(s) in the municipal development plan,
- whether the relevant provision is reasonable and reflective of good planning,
- whether there is a direct link between the planning objectives and the establishment of the CFO exclusion zone, and
- whether the municipal development plan is in conflict with the AOPA objective of establishing common rules for the siting of CFOs across the province.

[2] 2011-04 Zealand Farms Ltd., 2016-01 Peters, 2017-08 Friesen & Warkentin

3. BOARD DELIBERATIONS ON THE MDP AND IDP

3.1 Hierarchy and Consideration of Municipal Statutory Planning Documents

The current *Municipal Government Act* (MGA) (Revised Statutes of Alberta 2000, Chapter M-26, current as of January 1, 2018) includes a clear hierarchy of municipal documents, where intermunicipal development plans (IDPs) prevail over conflicting provisions in municipal development plans (MDPs). In fact, IDPs are at the top of the hierarchy, while all other statutory plans relating to the area that an IDP covers must be consistent with the IDP:

> 632(4) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.

Nonetheless, the MGA section 638(1) describes the case where a conflict or inconsistency between an IDP and MDP exist:

> 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.

AOPA section 20(1) provides very specific language directing approval officers to determine whether an application is consistent with the **municipal development plan** land use provisions. AOPA is silent on intermunicipal development plans, and there is no consideration of how to proceed in the case of conflict between municipal planning documents.

Views of Field Services

In its hearing submission, and during questioning at the hearing, Field Services indicated that, based on AOPA, approval officers determine whether an application is consistent with land use provisions solely based on the MDP. It was Field Services' view that it must strictly follow the language in AOPA and, as a consequence, approval officers must determine whether an application is consistent with the MDP and only the MDP. It was the view of Field Services that no other municipal planning documents may be considered.

However, an exception to this practice has developed over time, through Board decisions, that directs approval officers to consider other municipal planning documents if, and only if, "the municipal development plan [strongly] cross-references other planning documents."

In this case, the approval officer evaluated application LA21033 in relation to the County of Lethbridge MDP, and then the County's Land Use Bylaw (LUB), given there was a clear intent in the MDP to adopt provisions from the LUB.

Views of the County of Lethbridge and the Town of Coalhurst

At the request of the Board, both the County of Lethbridge and the Town of Coalhurst provided written submissions in addition to participating in the hearing. Given their consistency of views and that each submission makes multiple references to the other municipality, comments are attributed to either the Town or the County or the "municipalities".

In the case of Double H Feeders, the Board notes the municipalities' comments regarding the "paramountcy of the IDP policies", which County representative Ms. Janzen addressed at the hearing:

> *"...we follow the Municipal Government Act with regards to the hierarchy of statutory plans. As per the Municipal Government Act, the Intermunicipal Development Plan prevails over the County's Municipal Development Plan....*
>
> *...we'd always presumed that the NRCB understood that IDPs prevailed. When we would receive the applications, referral applications, they always asked if there was any other statutory documents that would impact a proposal. And so we include Intermunicipal Development Plans frequently in our comments to the approval officer....*
>
> *...[As] the county, we try very hard to ensure that we're planning and working with our adjacent urban municipalities, so Intermunicipal Development Plans are very highly ranked in the county in terms of enforcement, and we rely heavily on them.... we do hope that the NRCB will reconsider how they view those higher-level statutory documents going forward."*

When questioned about which statutory document would prevail in a situation like Double H Feeders, where the MDP lists an exclusion zone and the IDP provision is more relaxed, Ms. Janzen agreed that the IDP would prevail, as if the MDP has been amended by that IDP provision [Hearing Transcript p. 165].

Views of the Board

During closing argument, Field Services referenced the Supreme Court of Canada's decision *Rizzo & Rizzo Shoes Ltd.*, 1998 1 S.C.R. 27, as a foundation for the modern approach to statutory interpretation which applies a "textual, contextual and purposive analysis of the statute or [the] provision in question". In consideration of the foregoing principle, the Board turned its mind to the hierarchy between the MDP, the IDP, and municipal land use planning documents.

Given section 638(1) of the MGA, the Board accepts that the IDP prevails over the MDP should an inconsistency between the two documents arise. The Board asserts that following the strict interpretation of AOPA and considering only the land use provisions found in municipal development plans (and not in intermunicipal development plans), has the potential to lead to an absurd outcome in the case where a conflict exists between and MDP and an IDP. Presumably it could also be the case where the MDP and IDP are generally consistent but the IDP provides more (or less) restrictive land use planning provisions related to the siting of CFOs.

Clearly, there is a need for approval officers to determine an application's consistency with planning provisions in both the MDP and IDP.

In the spirit of widely adopted statutory interpretation and common sense outcomes, the Board encourages Field Services to consider a more purposive approach to the interpretation of AOPA and its intent. It is the Board's view that AOPA intended approval officers to use what at the time was the highest order municipal planning document, the MDP. Recent changes to the MGA has changed the hierarchy of planning documents, and deference to land use provisions within the hierarchy of the municipal planning framework makes sense and is consistent with a purposive approach to interpreting AOPA. While speculative, presumably this situation exists only because AOPA has not been updated since the *Municipal Government Act* was amended in 2017 to include the revised hierarchy of municipal planning documents.

The Board suggests that in the future Field Services should also provide notice to municipalities identified in relevant IDPs.

3.2 Is the Application Consistent with the MDP?

In AOPA, section 20(1) directs approval officers to consider if an application is consistent with municipal development plan land use provisions, and to deny an approval application if it is found to be inconsistent with those provisions:

> *20(1) In considering an application for an approval or an amendment of an approval, an approval officer must consider whether the applicant meets the requirements of this Part and the regulations and whether the application is consistent with the municipal development plan land use provisions, and if in the opinion of the approval officer,*
>
> > *(a) the requirements are not met or there is an inconsistency with the municipal development plan land use provisions, the approval officer must deny the application, ...*

In Decision Summary LA21033, the approval officer noted the following subsections of section 6.6 "Confined Feeding Operations", 6.6.3 "Policies" in the MDP (emphasis added):

a) Urban Fringe

   I. "The County shall exclude the development of CFOs in the Urban Fringe land use districts."

d) Natural Resource and Conservation Board (NRCB)

   IV. CFOs "shall not be approved in the areas shown and designated on Figure 11B as exclusion areas".

   VI. The NRCB should consider the requirements and regulations as stipulated in the Lethbridge County Land Use Bylaw and Animal Control Bylaw, including the exclusion of confined feeding operations on parcels less than the specified sizes as specified in those bylaws.

Double H Feeders' east site CFO is located in the Urban Fringe zoning category identified on Figure 11B of the MDP. The approval officer interpreted the wording "shall exclude the

development of CFOs" as prohibiting both the establishment of new CFOs and the expansion of existing CFOs in the Urban Fringe land use districts.

The approval officer also identified that the east site is located in the special planning Area A referenced in section 6.9.2 "Special Planning Areas" of the MDP:

> As the Town of Coalhurst and the City of Lethbridge increase development pressures in Area A, this area will become a distinct development node due to limited access from the trade corridor and existing highway, as such, agricultural pursuits in this region may become financially and operationally challenging. CFO feeding operations will be discouraged in this area given the residential and commercial growth potential in this area.

As discussed earlier in this decision report, the approval officer evaluated application LA21033's consistency with the MDP and not the IDP. In that determination, the approval officer accepted that MDP sections 6.6.3(a) and (d)(VI) both provide "a clear intent to adopt provisions from the [Land Use Bylaw]", which identifies that the east site is zoned "Rural Urban Fringe" where CFOs are listed as a prohibited use.

The approval officer noted that the application met AOPA's technical requirements, but concluded that the application was "not consistent with Lethbridge County's municipal development plan land use provisions", denying the application in accordance with AOPA section 20(1).

In this case, the Board accepts the rationale for establishing the CFO exclusion zone in the MDP. As noted, the "Special Planning Areas" subsection 6.9.1 identifies that Special Area A "will become a distinct development node" and that "CFO feeding operations will be discouraged in this area given the residential and commercial growth potential in this area". The Board acknowledges that this provision is reasonable and reflective of good planning and that, given the proximity to the Town of Coalhurst, the objectives outlining the plan for a "distinct development node" appear to be consistent with County's listed objectives in the MDP section 6.1.2 to "direct land development to areas that are best suited to the prospective use."

The Board accepts that the MDP's CFO exclusion zone is clearly outlined, and that it includes the CFO east site that is proposed for expansion. In any event, the conclusion that the application is inconsistent with the County's MDP is uncontested.

Given that an IDP between Coalhurst and the County exists, but was not considered by the approval officer, the Board finds it necessary to look to that document for further clarification of relevant land use provisions.

3.3 Is the Application Consistent with the IDP between the County of Lethbridge and the Town of Coalhurst?

The following sections of the IDP address the development of new and existing CFOs in the "Intermunicipal Development Plan Confined Feeding Exclusion Area" (or Plan area), where the CFO west site is located:

> Livestock Operations (Confined Feeding Operations and Minor Livestock):

4.1.5 New confined feeding operations (CFOs) are not permitted to be established within the Intermunicipal Development Plan Confined Feeding Exclusion Area as illustrated on Map 11. Any existing CFO permit holders may be allowed to expand operations within the designated CFO Exclusion Area if it is to upgrade and modernize (within the requirements of the Agricultural Operation Practices Act and Regulations), demonstrating changes will reduce negative impacts (e.g. odours) to the rural and urban residents of the area, additional environmental protection will be considered, and comments from both the County and Town are received and considered by the NRCB.

4.1.8 Both councils recognize and acknowledge that existing confined feeding operations located within the Plan area will be allowed to continue to operate under acceptable operating practices and within the requirements of the Agricultural Operation Practices Act and Regulations.

The Board notes that while it is uncontested that application LA21033 is inconsistent with the land use provisions of the MDP, it is unclear to the Board whether the application is inconsistent with the relevant land use provisions of the IDP.

Views of Field Services

The Lethbridge County-Town of Coalhurst IDP (enacted in 2014 and prior to the most recent revisions of the MDP) was not specifically cross-referenced in the MDP and therefore, as per the guidance of NRCB Approval Policy section 8.2.3, the approval officer did not consider the land use provisions in the IDP.

Under AOPA, approval officers are instructed to disregard any land use provisions respecting "tests or conditions related to the construction of or the site for a confined feeding operation...." The Board heard from Field Services that section 4.1.5 of the IDP may be interpreted as a 'test or condition'. While Field Services made the reference outside of a permit decision (at the hearing), the Board respectfully disagrees with this interpretation. In this case, section 4.1.5 of the IDP allows for the expansion of a CFO if it is being modernized and will result in a reduction of nuisance impacts. This is not a direct replacement for AOPA standards or regulations; it is clearly a recognition that newer modern facilities are more likely than not to reduce nuisance impacts, and therefore may meet the planning objectives of the IDP. The Board recognizes that the analysis and discretion required by an approval officer to determine consistency with section 4.1.5 is challenging. However, in the Board's view, to disregard section 4.1.5 because it is a 'test or condition' is an overly simplistic interpretation in evaluating the spirit and intent of section 4.1.5 in the IDP.

Views of Double H Feeders

The applicant's RFR identified that "Double H Feeders Ltd. currently operates two broiler operations in the immediate vicinity of the Town of Coalhurst". The first site was described as "aging, and becoming obsolete and inefficient" and is located on NW 22-09-22 W4M "in an area designated 'Potential Grouped Country Residential' within the current Lethbridge County-Town

of Coalhurst IDP originally enacted in 2014". It is proposed by the applicant to be decommissioned. The second site is on NE 22-09-22 W4M, the location where Double H Feeders is "proposing to consolidate [its] production", "in an area designated 'Primarily Agricultural' within the same IDP", and would "enable [Double H Feeders] to continue production with barns built to accommodate modern practices and standards of efficiency."

The RFR includes a letter written by the applicant to the Town of Coalhurst with a submission date of March 31, 2021, that requests the Town's support. Within this letter, the applicant notes that the site on NE 22-09-22 W4M proposed for expansion "is located on Twp Rd 9-4 close to Hwy 25", and is farther from the Town than the site on NW 22-09-22 W4M, which is accessed via "Rge Rd 22-3, [a road that] has increasingly been used as an alternative access road to Coalhurst and is not ideal for truck traffic". The letter asserts that production "consolidated to a single site" would "[move] the barns further away from Coalhurst, and [remove] the associated truck traffic from Rge Rd 22-2".

During the hearing, Mr. Van't Land confirmed assertions made within his RFR and provided several examples of how the new proposed barns incorporate modern technology and have the potential to reduce nuisance impacts generated from the barns themselves.

Views of the County of Lethbridge and the Town of Coalhurst

The Board notes that both municipalities defer to the IDP's specific land use provisions for Planning Area 2, rather than the MDP's more general CFO exclusion zone identified in the Urban Fringe land use district. The IDP was negotiated between the two municipalities, among other reasons, for the purposes of promoting an "orderly and efficient development pattern within the Plan area that balances the long-range interests of the County and Town." [IDP p.5]. Both CFOs fall within Planning Area 2, with the west site located within sub-planning Area G which has been "identified for the future development of additional country residential uses". This was described as a "land use strategy decision . . . based on the current fragmentation of the lands and the existence of country residential uses in the immediate area". The IDP policies 3.4.5 and 3.4.6 identify the proposed location for expansion (east site) as suited for "agricultural uses", consistent with the "unfragmented, full quarter sections of land located on the periphery" of the plan area.

With respect to the two sites, "the County views the area as a whole" and the "the Town has historically viewed the two barn locations as one entire operation . . . under the control and direction of one landowner".

Within their submissions, the municipalities assessed the expansion of the east site relative to the policy objectives of the IDP (summarized below), and noted their support was contingent on the decommissioning of the current barn on the west site:

- *The Town acknowledges the existence of existing operations within the CFO exclusion area and agreed through the adoption of the IDP that expansions of CFO operations could be supported if the purpose was to upgrade to more modern operating premises and processes.*

- *The long-term development concept promotes the development of residential uses in the location of the existing barn and the discontinuation of a use that is not compatible with additional residential development supports the long term development strategy of both the Town and the County. The existing facility, which is in close proximity to the Town Boundary would be relocated further away from the corporate limits*
- *The IDP policy states that an expansion may be considered if it is to upgrade and modernize, demonstrating changes that will reduce the negative impacts to rural and urban residents of the area. By closing the older, less efficient operation in the NW 22-9-22-W4 and consolidating that operation to the NE22-9-22-W4 they are in the County's opinion reducing the negative impacts of the operation in the NW 22-9-22W4 on the town and adjacent residential acreages. The consolidation of the operation to the NE quarter allows them to modernize and improve their operations while still meeting the MDS requirements and improving a less than desirable situation next to the Town of Coalhurst. Both the Town of Coalhurst and Lethbridge County who are the parties of the IDP, are in agreement and supportive of the consolidation of the operation to the NE22-9-22-W4.*
- *Consideration was given to the proposed location of the new barn, which was east of the Town, and it was determined that the new location would be less likely to impact urban residences with any noise, odour or dust impacts that might be emitted from the operation as the location is down-wind of the prevailing west and north winds.*
- *The "Primarily Agricultural Land Use" area is regulated by the County's agricultural policies contained with the MDP and Land Use Bylaw and other policies of the IDP (See policy 3.4.5 of the IDP). Unlike some other areas of the IDP with the Town of Coalhurst, the NE 22-9-22-W4 is not identified for future town growth or country residential development.*

The County commented that "the current Lethbridge County MDP came into effect with the exclusion zones in 2010, and the IDP with the Town of Coalhurst and the applicable CFO policies and exclusion zone affecting the subject land was adopted later in 2014. A planned 2022 MDP revision will bring both statutory plans into conformity."

Views of the Board

The Board recognizes that municipal land use planning is a process established through the *Municipal Government Act*, and includes the public input of its constituents to establish a long term vision for a municipality. Nonetheless, a key intent of AOPA is to establish common rules across the province for the siting of confined feeding operations. The Board's assessment of whether to approve an application despite its inconsistency with an MDP is one undertaken with caution. It is with this consideration in mind that the Board assessed both the land use provisions of the MDP and IDP, and the related evidence provided by parties in their written submissions and at the hearing.

In examining the IDP between the Town of Coalhurst and Lethbridge County, the Board first notes Part 4 "General Land Use Policies", 4.1 "Agricultural Practices" – "Intent" states:

> "The County and Town both recognize that it is the jurisdiction of the Natural Resources Conservation Board (NRCB) to grant approvals and regulate confined feeding operations (CFOs). However, both municipalities agree it is desirable to specifically regulate intensive agricultural

> operations for the defined Plan area in an attempt to minimize potential nuisance and conflict between land uses, especially residential, and CFOs within the Intermunicipal Development Plan boundary."

Consistent with the evidence provided by the municipalities, the Board observes that the IDP does address existing confined feeding areas located within the IDP Confined Feeding Exclusion Area (or Plan area), and that existing CFOs "will be allowed to continue to operate", and "may be allowed to expand operations within the designated CFO Exclusion Area if it is to upgrade and modernize . . ."The Board observes that the municipalities were consistent in their support for expansion of the Double H Feeders east site if it is to "upgrade and modernize", and if Double H commits to decommission the west site. Further, the Board accepts that the test to satisfy this requirement is found in the language of the IDP section 4.1.5, which includes that a CFO "[demonstrates] changes [that] will reduce negative impacts (e.g., odours) to the rural and urban residents of the area", and that "additional environmental protection will be considered".

Mr. Van't Land described how he believed the consolidation of the two CFOs at the east site would upgrade and modernize the operations and reduce negative impacts to the rural and urban residents, explaining that the primary consideration of Double H Feeders to achieve modernization would be to "[take] the existing double-decker barns and [rebuild] them as a more appropriate model that is used primarily in broiler production today".

> "The primary concern we have there is the proximity to the town of Coalhurst and the number of neighbours that we have in close proximity to those barns... [The east site] is a whole quarter [of land] surrounded by more or less whole quarters [of land], and that's a more appropriate place for that kind of development [Hearing Transcript p. 210-211] .... It seems to suit the intent as we see it of the IDP, as far as future development, that the broiler operation [currently on the West Site] be moved further away from the town of Coalhurst [Hearing Transcript p. 215]."

The Board finds that the municipalities' views are consistent with these assertions, stating that the IDP policies 3.4.5 and 3.4.6 identify the proposed location for expansion (east site) as suited for "agricultural uses", given the "unfragmented, full quarter sections of land located on the periphery" of the plan area. As well, the intent of Double H Feeders to decommission the west site and expand the east site is consistent with the municipalities' stated "long-term development concept [that] promotes the development of residential uses in the location of the existing barn and the discontinuation of a use that is not compatible with additional residential development." Further, the County confirmed that the development of the east site which is designated as "Primarily Agriculture" would not conflict with the highway commercial and light industrial node slated for the area adjacent and northeast of the east site CFO [Hearing Transcript, p. 160].

This is further supported by the municipalities' assertions that "the proposed location of the new barn . . . would be less likely to impact urban residences with any noise, odour or dust that might be emitted from the operation as the location is down-wind of the prevailing west and north winds".

With respect to reducing the net nuisance impacts through the consolidation of the barns, Mr. Van't Land described that in addition to the new more modern barn, the fans, vents, lighting, and the computer systems that operate them, will be new. He also identified that his "authorization" from the Alberta Chicken Producers requires him to participate in annual ammonia level audits, including monitoring the ammonia levels in the barn:

> "... one of the goals of the ventilation system is to keep that ammonia down to a healthy level for both the birds and the people that are in the barns. So I just wanted to say that that is something that we monitor and keep down deliberately. It's mostly for the health of the birds, but the side effect of that is there is not large amounts of ammonia coming out of the barn" [Hearing Transcript p. 198].

Directly affected party Ms. Schmid asked for clarification regarding the ammonia levels escaping the barn, expressing concerns that increasing ventilation to move air out of the barn could increase ammonia going "into the environment". Mr. Van't Land asserted that ammonia control is achieved by "managing the moisture level", and that the "interaction of the moisture and the manure and the microbes . . . generates the ammonia". He further described that by lowering the density of ammonia in the barn, the air ventilated to the outside would have a lower concentration of ammonia as well.

As described in section 4 "Directly Affected Party Concerns" of this document, the Board appreciates the concerns expressed by the directly affected parties that may experience nuisance impacts. However, AOPA's consideration of impacts is met through the application of required setbacks, as established by minimum separation requirements. As well, the Board accepts the operator's request for neighbours to "let [him] know" if they have concerns and that "if there's something that [Double H Feeders] can do to mitigate [the concern] . . . [it] will definitely do it" [Hearing Transcript p. 216]. As well, the Board accepts the County's assertion that it views the area "as a whole", and further, meets the Board's understanding that if net impacts between the two operations are reduced, the intent of the land use planning objectives have been met:

> "... an Intermunicipal Development Plan is not just the county, it is an agreement between the town and the county, we look at what's existing in the area, what are some possible best outcomes in terms of future development and planning. And so with regards to impacts, we're looking at, especially with confined feeding operations, does an existing operation if they want to expand, would it meet the minimum distance separation, which I do believe Mr. Van't Land's application does for the expansion. And then with the decommissioning, it was seen as a net benefit to the Coalhurst area given the country residential and the proximity to the town, and the fact that they would not be necessarily drastically increasing their feedlot numbers but they would have a marked improvement in terms of their – the modernization of the facility from their northwest operation to their northeast. [Hearing Transcript p. 152]"

The Board further agrees with the municipalities' assertions in their written submissions that consolidating the operations to the east site and "closing the older, less efficient operation" moves the impacts from the area slated for country residential development to an area "that is not identified for future town growth or country residential development". The Board also notes that with a denial of an expansion, there is no requirement for Double H Feeders to

abandon the west site, which would maintain the operation of older, outdated CFO facilities on land zoned for country residential.

Given that the land use provisions in the IDP are specific to expansion in the CFO exclusion zone, the Board concludes that the IDP is relevant in its determination. In reaching this conclusion the Board views the Double H Feeders application as generally consistent with IDP section 4.1.5. The Board finds that the net nuisance impacts are likely to be reduced through the decommissioning of the west barn and the expansion of the east barn. The Board notes that the net increased production is 14%; however, the Board finds that it is more likely than not that the reduced net impacts will offset the increased production. While section 4.1.5 leaves room for interpretation and judgement, the Board concludes that the abandonment of the west site in conjunction with the expansion at the east site using current technology, and Board imposed conditions, meets the planning objectives of the IDP. At a minimum, the Board finds that the Double H Feeders application meets the spirit of IDP section 4.1.5, and does not conflict with its overall planning objectives.

4. DIRECTLY AFFECTED PARTY (DAP) CONCERNS

The Board appreciates the thought, time, and effort that directly affected parties invested in their submissions about this application. The comments, hearing submissions, and hearing participation have been very helpful to the Board's understanding of potential effects on the local environment, economy, community and the appropriate use of land. The Board afforded significant deference to DAP concerns that were unrelated to the question of the application's consistency with the MDP or IDP. Deference was given since some DAP concerns could be associated with whether the proposed CFO met the modernization and nuisance mitigation objective in the IDP. Also, the approval officer did not consider DAP concerns, asserting in the decision summary "Because this application will be denied, I need not discuss these concerns any further."

What follows is a summary of the written and oral discussions and views of the Board for each.

4.1 Change to Surface Water Flow

Directly affected neighbours explained that within the past few years a drainage system has been constructed by Double H Feeders at the east site. They believe that the system could cause additional surface runoff and potential flooding of their properties.

In Decision Summary LA21033, the approval officer determined that construction of a surface water drainage system such as this is under Alberta Environment and Parks' (AEP) jurisdiction, and forwarded this concern to AEP for its information. AEP verified that an approval under the *Water Act* was not issued to authorize this activity and is currently under investigation.

Views of the Board

The Board agrees with the approval officer's determination that AEP is the appropriate authority to address this concern and recognizes that it is being managed by AEP through its ongoing compliance investigation. Therefore, the Board will not address this matter further.

4.2 Nutrient Management, Manure Application, and Contaminated Surface Water Runoff

Neighbours questioned whether Double H Feeders has access to enough land for manure application from the proposed expansion. In the Decision Summary, the approval officer commented that the expanded operation would meet AOPA's nutrient management requirements regarding land application of manure with the nutrient management plan provided. The Board notes that the nutrient management plan was verified by a certified crop advisor and is satisfied that this concern has been adequately considered by the approval officer.

Neighbours expressed concern about prolonged odours and contaminated surface runoff from manure, poultry medication residues, and barn cleaning agents. Further, manure is field applied and not incorporated.

Double H Feeders explained that it direct seeds its crops, therefore manure is not worked into the soil after it is field applied, which it believes meets AOPA requirements. It also described that animal based medications are used infrequently, and that barns are cleaned primarily by mechanical means including compressed air, thus the amount of cleaning water is minimal and mostly evaporates from the barn surfaces.

In Appendix C, point 2, of the Decision Summary, the approval officer discussed conditions to be potentially carried forward from Municipal Development Permit 98-189 if the Board decides to grant a permit for this proposal. The second condition of Permit 98-189 focuses on items which are pertinent to the topic of nutrient management and manure application. It consists of several parts:

- the amount of land that must be available for manure utilization,
- manure application on snow and/or frozen ground,
- manure incorporation with 48 hours of land spreading, and
- consideration for neighbouring residences and separation from residences for manure spreading.

The approval officer stated:

- The specific land base required for manure utilization in Permit 98-189 is redundant and should be replaced by AOPA and its regulations or a nutrient management plan.

- Regarding the requirement to not spread manure on snow and/or frozen ground, the approval officer commented that this too is redundant and should be replaced by the updated requirements of AOPA and its regulations.

Views of the Board

The Board is in agreement that land base requirements in Permit 98-189 are redundant, especially as this permit application is for an increase in the number of birds at the site, which will change the volume of manure and nutrients to be managed. The Board is also in agreement that AOPA's regulations make specific references to manure spreading on frozen ground redundant.

The approval officer suggested that the requirement in Permit 98-189 to incorporate manure within 48 hours of land spreading should be carried forward because it is more stringent than AOPA, which allows application of manure on directly seeded crops without incorporation. Double H Feeders stated it was unaware this condition was still in effect as it believes AOPA's present-day requirements are what it must follow. Double H Feeders asked the Board to consider rescinding this condition as it does not fit its current cropping practices. Neighbours asked the Board to retain the permit condition to alleviate their concerns about manure contaminated runoff and prolonged odours from manure application.

Double H Feeders did not include a request to amend its permit to remove the 48 hour manure incorporation condition in its application to expand the east site. Permit amendment applications allow directly affected parties to provide their comments about proposed amendments after receiving advance notice and prior to an approval officer issuing their

decision. No such notice on a permit amendment was given by Double H Feeders; as such the Board will not rule on the matter. Should Double H Feeders wish to continue its current practice of manure spreading on direct seeded land without incorporation, it must apply for and receive a permit amendment.

4.3 Odours, Health Concerns, and Quality of Life

Directly affected neighbours stated that there are occasions when odours from the existing poultry broiler operation at the east site, as well as from other nearby CFOs, affects their quality of life. Concerns were expressed about impacts on the health of the surrounding community due to the odours, and information was requested about CFO air quality monitoring requirements.

Double H Feeders commented it was not aware that neighbours had concerns about odours from their operation as no one has directly complained to it, nor has it been notified by the NRCB that a complaint had been lodged. It requested that neighbours let it know when odours are bothersome and it will endeavour to address the situation.

Views of the Board

AOPA does not mention or require air quality monitoring for CFOs. Instead, it employs a prescriptive regulatory framework, using tools such as minimum distance separation (MDS), in order to achieve a consistent, province-wide approach for siting CFOs. For the Double H Feeders' proposed expansion, the approval officer determined that it meets the required setbacks from all nearby residences. The Board understands that people residing beyond the MDS may intermittently experience odour impacts from the CFO, and that each individual has their own degree of tolerance for certain odours. Therefore, the Board also considers whether the potential impacts are typical of land uses for the area. During the hearing, both Lethbridge County and the Town of Coalhurst indicated that the location of the proposed expansion, on land designated as "primarily agricultural", is an appropriate use of land and meets their planning objectives.

For the above reasons, the Board has determined that odours from the proposed poultry broiler expansion should not unduly impact the health of the surrounding community or neighbours' quality of life. The Board appreciates that Double H Feeders is willing to work with neighbours to try to mitigate odour impacts. Additionally, neighbours can contact the NRCB 24 hour reporting line at 1-866-383-6722 when they believe that odours from the CFO are inappropriate for an agricultural area, and an NRCB inspector will follow up on the concern.

4.4 Impact on DAP Land Values

Directly affected neighbours stated that the proposed CFO expansion may reduce property values of the surrounding area.

Views of the Board

The Board has consistently stated that impact on property values is an issue that resides outside of AOPA legislation.

4.5 General Environmental Concerns and Environmental Impact Assessment (EIA)

Written submissions from neighbours included some general statements of concern relating to environmental impacts on the eco-system from CFOs.

Several references were made by one of the directly affected neighbours about an EIA, including a request from the party that they "would like disclosure from the NRCB regarding the Environmental Impact Assessment [that] outlines the long term impacts on air, water, land, and biodiversity".

Views of the Board

AOPA's Standards and Administration Regulation contains construction and operational requirements for livestock facilities that are intended to protect the environment. Before issuing permits, NRCB approval officers must ensure that all applicable requirements are met. NRCB inspectors verify that operators adhere to legislative requirements and permit conditions. If necessary, inspectors can initiate enforcement action in accordance with the NRCB Compliance and Enforcement Policy.

There are a number of EIA references in the *Natural Resources Conservation Board Act* and the Rules of Practice of the Natural Resources Conservation Board Regulation; however, those references all relate to the reviewable projects as identified in the *Natural Resources Conservation Board Act*. The Board has a distinct mandate under the AOPA legislative provisions, which is the relevant mandate to the Double H Feeders application. While AOPA does not require an EIA, the regulations effectively manage environmental risks and nuisance impacts that would be duplicative in an EIA.

5. CONSIDERATION OF PERMIT CONDITIONS

In addition to Board direction regarding permit conditions in the preceding section, the Board requires as conditions of approval the following:

1. In Decision Summary LA21033, Appendix C, the approval officer suggested potential new conditions and permit conditions that should be carried over from previous permits should the Board overturn the denial. The Board directs that the conditions outlined in Decision Summary LA21033, Appendix C, be included in the approval.

2. During the hearing, Double H Feeders stated that moving its operations from NW 22-09-22 W4M to NE 22-09-22 W4M would require a maximum time period of 5 weeks. During this time period, chicken broilers would be at both locations simultaneously. The Board directs that at no time shall the total number of chicken broilers between the two operations (NW 22-09-22 W4M and NE 22-09-22 W4M) exceed a population of 120,000.

3. Approval of the expansion at NE 22-09-22 W4M is contingent on the abandonment and return of the previous Municipal Development Permit 93-164 at NW 22-09-22 W4M. Double H Feeders consented to cancelling the permit associated with NW 22-09-22 should the application for expansion at NE 22-09-22 W4 be approved. Therefore, once the NW 22-09-22 W4M operation is fully depopulated, the CFO permit for NW 22-09-22 W4M is cancelled.

4. The County and the Town agreed that short term manure storage of solid manure on NW 22-09-22 W4M would be acceptable. While the Board is prepared to allow a degree of short term storage on NW 22 09-22 W4M, we believe that it should be more restrictive than the AOPA regulations. As such, the Board directs the approval officer to include a condition that short term storage of solid manure on NW 22-09-22 W4M (sourced only from NE 22-09-22 W4M) is allowed for a maximum cumulative time of 7 months over a 3 year period, regardless of the storage location on NW 22-09-22 W4M.

5. The Board recognizes that Double H Feeders may apply for a permit amendment to remove the existing (municipal permit imposed) 48 hour manure incorporation condition. Regardless, due to the proximity of NW 22-09-22 W4M to the Town, the Board requires that manure spread on this quarter be incorporated within 48 hours and it expects that this condition be upheld.

6. BOARD DECISION

For the reasons set out above, the Board hereby directs the approval officer to issue an approval (including Board imposed conditions) to Double H Feeders Ltd. to construct and operate a confined feeding operation as described in application LA21033.

DATED at EDMONTON, ALBERTA, this 17th day of March, 2022.

Original signed by:

Peter Woloshyn, Chair	Sandi Roberts
L. Page Stuart	Earl Graham

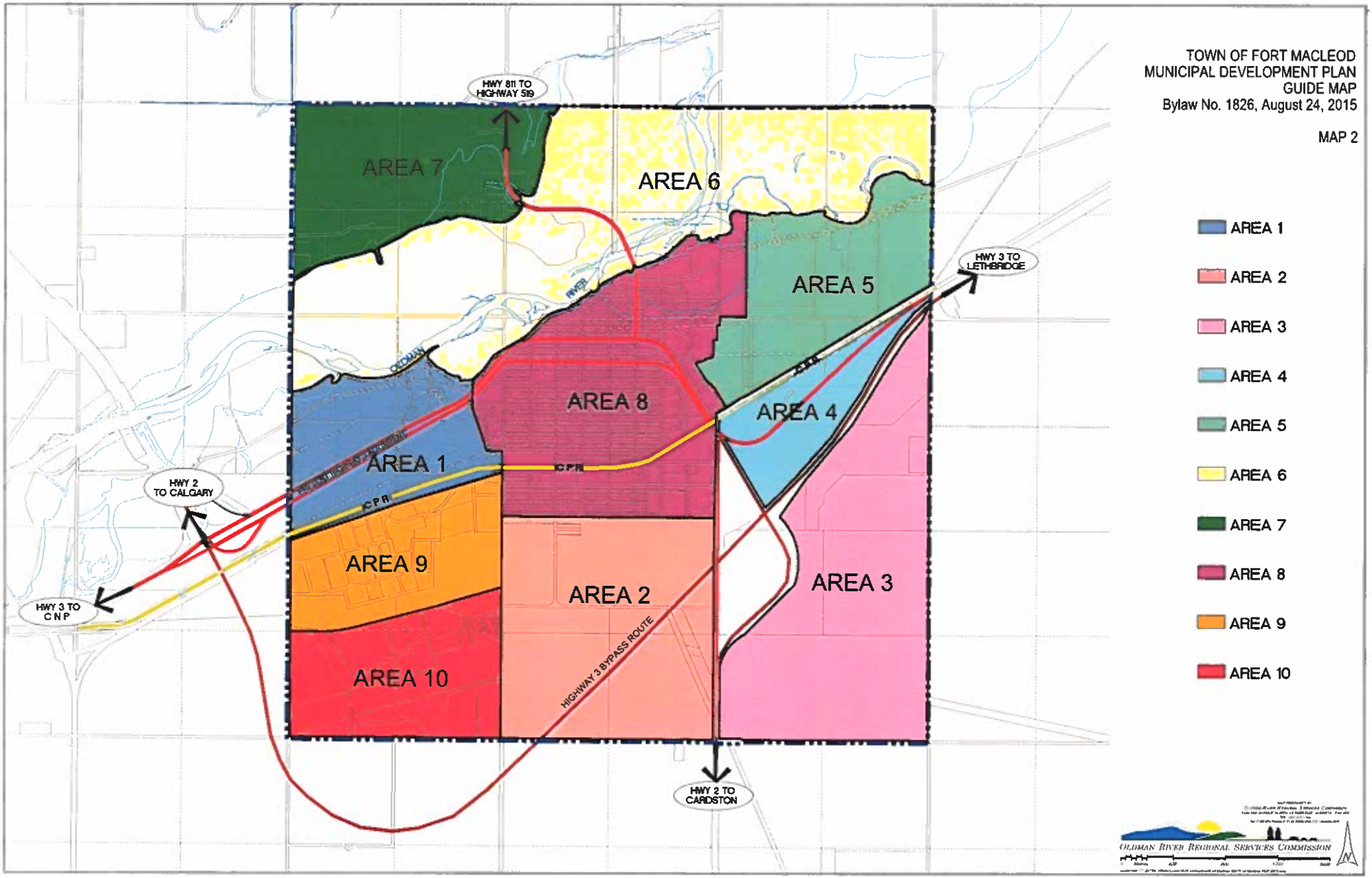
TAB 6

MUNICIPAL DEVELOPMENT PLAN

Bylaw No. 1826

TOWN OF FORT MACLEOD
MUNICIPAL DEVELOPMENT PLAN
GUIDE MAP
Bylaw No. 1826, August 24, 2015

MAP 2



OLDMAN RIVER REGIONAL SERVICES COMMISSION

PART 3: LAND USE STRATEGY

1.1 AREA 1

Area 1 is approximately 126 ha (313 acres) in size. It is located in the western portion of the community and is bounded by Lyndon Road to the north, residential development to the east, industrial lots to the south, and the Town boundary to the west.

The portion of land that is adjacent to the golf course has excellent potential for development of lower density estate style or country residential developments that have not been identified in other areas of the community. This type of development has the potential to create additional housing options for families who wish to make Fort Macleod their home.

The area of land south of the present Highway 3 alignment could be utilized for industrial and some complementary commercial uses. Presently, servicing is limited in Area 1, with an ongoing need to increase water pressure values to acceptable minimum standards. Overall, even with the looping of water infrastructure in the west part of the Town, pressures would remain relatively low for Area 1, especially with regard to minimum acceptable fire flows. This situation provides opportunities for alternative servicing options to be explored.

1.2 AREA 2

Area 2 is approximately 310 ha (767 acres) in size. It is located directly south of the CPR main-line and the existing built-up portion of the community, and extends to the south boundary of the community.

Presently, sewer and water services in this area are limited. The Infrastructure Master Plan indicates that the extension of servicing to this area is feasible and therefore continued urban development south of the built-up area of the Town is an excellent option for future growth. A mix of conventional residential and higher density residential development could be promoted adjacent to the existing residential lots on 9th Street as servicing becomes available. The continuation of the traditional grid system and existing road network hierarchy offers an excellent tie-in to the built-up area of the Town, while ensuring continued functionality of key collector and arterial routes. Light industrial uses that require small parcels of land could be encouraged to locate in the existing industrial lots in this area if the uses do not conflict with existing and future residential development. Low impact non-residential uses could be encouraged to locate on the land north of the proposed Highway 3 bypass route to provide buffering

for residential uses.

1.3 AREA 3

Area 3 is comprised of approximately 330 ha (815 acres) of land, is located in the southeast portion of the community and is bounded by Highway 2 to the west and Highway 3 to the northwest. Approximately 129.5 ha (320 acres) of land that were previously meant for the APSLETC are service with water and sewer connections, and provide an excellent opportunity for industrial and related development in the southeast of the Town.

Residential uses are not proposed in Area 3 given its distance from the built-up portion of the community, the existence of an old land fill site, and land owned by the Southern Alberta Drag Racing Association which makes this area less suitable for residential uses.

1.4 AREA 4

These lands comprise approximately 88 ha (217 acres) and are bounded by the CPR main-line to the north and Highway 3 to the south which provides a highly visible and accessible location for a variety of commercial uses. The current highway alignment does not allow access to this parcel, but the proposed Highway 3 relocation will provide opportunities for both access to the Canamex Corridor and subsequent development of the land. Benefits of this area include: visibility, access and proximity to the existing built-up area of town, and the serviced lands intended for industrial development to the south. Given the high level of impact this area could have on transportation, aesthetics and its role as the eastern gateway to Fort Macleod, an area structure plan or area redevelopment plan should be prepared for the lands.

1.5 AREA 5

Area 5 consists of approximately 211 ha (523 acres) of land and is located in the northeast portion of the community north of the CPR main-line. These lands are a priority area for residential development given the ease of extending services here. Proposed development should include a mix of residential accommodations including single detached, semi-detached and multi-unit dwellings. There is opportunity for neighbourhood commercial and other small-scale commercial uses

to locate adjacent to the north boundary of the railway, which could serve as a buffer to the surrounding residential uses. As development occurs there may be a need for an additional railway crossing to facilitate traffic flow to other parts of the community and to reduce the traffic volumes at existing crossings. Prior to any significant development occurring, an Area Structure Plan or similar strategic document should be prepared in order to identify potential development sites, future servicing needs, and transportation corridors.

1.6 AREA 6

Area 6 encompasses all lands within the floodway of the Oldman River, as identified by the Alberta Flood Hazard Identification Program's study of the Oldman River through Fort Macleod in November 1991.

This area should be captured entirely within the River Valley Lands – RVL land use district, allowing for land use district designations to be split within titled properties to reflect areas of individual parcels that may not be subject to flooding, as determined by the abovementioned study or any future studies that may be produced on behalf of or by the Town.

The priority for Area 6 should be the continued protection of landowners from flood damage to development, and the ongoing safety of landowners. Additionally, minimal development within this area will aid in minimizing the potential for improvements such as buildings and other structures to be caught in flood flows and cause damage to the river and pose a threat to water quality.

1.7 AREA 7

Area 7 encompasses approximately three quarter sections of land in the far northwest of the Town. While the majority of lands are within the Agriculture – A land use district, over 20 Country Residential – CR parcels have been subdivided in this area, and most have been developed on.

The continued use of the larger Agriculture – A parcels in Area 7 for cropping is encouraged as the most suitable use. However, the conversion of these lands to accommodate country residential subdivision and development in the past has fragmented previously whole quarter sections that have traditionally been used for agricultural

pursuits. To ensure a clear understanding of the lot layouts, servicing, and access to future development in this area, those landowners who wish redesignate their lands from Agriculture – AG to another land use, subdivide and develop, should be required to provide supporting comprehensive planning documents such as Area Structure Plans, Area Concept Plans, or Outline Plans.

The Town's Infrastructure Master Plan indicates that municipal water, sewer and wastewater would be very difficult to provide to Area 7. Therefore, Country Residential – CR lots created in this area would likely be required to provide services on-site, i.e. water wells and septic fields, or cisterns and pump-outs. As mentioned previously, transportation servicing may be of particular concern in this area, as the cost to maintain new roads that would be required to service future subdivision and development could become substantial if not properly planned.

1.8 AREA 8

Area 8 encompasses the majority of the existing urban development in the Town. Several parts of Area 8 will benefit from a more detailed level of planning and strategic direction in the context of new development, redevelopment and the enhancement of certain elements of the Town's built environment. The *2015 Municipal Development Plan Guide Map – Downtown (Map 3)* provides a visual reference to the parts of Area 8 identified as requiring more detailed planning and strategic direction, which include:

- The downtown

  The downtown, which encompasses the Provincial Historic Area, will benefit from a consistent approach to development aesthetics and the provision of high quality, accessible public space amenities. A Downtown Plan should be completed and implemented for this part of Area 8, in support of the direction provided for the downtown in the Town's Land Use Bylaw, and to capture desired changes as indicated by the citizens, i.e. a formalized central public space somewhere in the downtown, and a parking plan that identifies potential solutions to parking issues that may exist in this part of Town.

- The Provincial Historic Area

  The Provincial Historic Area will benefit from the outcomes of the Downtown Plan, and will require further scrutiny regarding development aesthetics and the design and delivery of historically accurate building facades, and public open space amenities. A development guidebook should be prepared in support of the direction provided for this part of Area 8 in the Town's Land Use Bylaw. Additionally, this area should be investigated for current fire suppression infrastructure and what level of work may be required to bring the level of fire suppression to an acceptable standard, with consideration for the age, massing and height of structures in this part of Fort Macleod.

- 15th Street between 1st Avenue and 5th Avenue

  This part of the built-up area of the Town includes a mix of residential, commercial and industrial parcels in close proximity to one another. While a mixture of land use districts and possible land uses is generally a positive, some instances, such as in this area, may result in conflict and negative impacts. For example, residential properties directly adjacent to industrial properties can result in nuisance to residences due to noise, outdoor storage, odour, vibration, or other elements of industrial land uses. Conversely, the development and expansion of industrial uses may be stymied by attempting to satisfy the concerns of residential neighbours, while attempting to carry out industrial processes.

  The area of 15th Street between 1st and 5th Avenues is an excellent context for a proactive planning exercise that identifies opportunities to alleviate potential and real conflict between land uses. The development of an Area Redevelopment Plan or similar strategic planning process will assist this area in transitioning to more compatible land uses in the future.

- Cemeteries

  The cemeteries that exist in the northeast corner of the built-up area of the Town, including the Union Cemetery and Holy Cross Cemetery, will continue to provide a final resting place in these locations. Future cemetery expansion for either cemetery should be focused in this specific area of Fort Macleod.

PART 3: LAND USE STRATEGY

1.9 AREA 9

Area 9 is characterized almost entirely by industrial land use districts and subdivisions, with a small number of Public – P parcels interspersed throughout. Of 83 parcels within this area, 36 are developed or accommodate a use as a storage area, while the remaining 47 are unimproved as of the spring of 2015. A number of historic lot-line and access challenges continue to exist in Area 9.

While existing water and sewer are available in the area, not all titled lots are currently serviced or proximate to available servicing, with several of the westerly-most parcels some distance from existing piped infrastructure. The infrastructure Master Plan identifies a stormwater management facility in the form of a collection pond on the eastern boundary of this area. Further development in Area 9 will benefit the Town, but infrastructure and servicing will need to be thoughtfully planned for and provided in order to ensure the costs of provision do not outstrip the benefits of development.

Given the nature of Area 9, and the variety of interrelated matters that may affect future development, this area will benefit greatly from the preparation of a comprehensive plan such as an Area Structure Plan, Area Redevelopment Plan or Area Concept Plan.

1.10 AREA 10

The Fort Macleod Airport and associated Country Residential – CR parcels make up the majority of Area 10. While the airport provides a valuable service to the community, there is not currently a strategic planning document in place to guide the growth and development of the airport and surrounding country residential lots. Future growth and development of the airport and Area 10 in general will benefit from the formation of an Area Structure Plan, Area Concept Plan, or other suitable form of forward-looking process and outcome.

1.11 HIGHWAY REALIGNMENT

The future realignment of Highways 2 and 3 will have a significant impact on the appearance and function of the community, as the Town has long relied on the presence of the highway. In 2013 McElhanney Consulting Services Ltd. provided an updated functional planning study to the Alberta government, in support of the future alignment. The 2013 study, building on information from a similar process in

2008, identifies the most suitable routing for the bypass, which is shown on Maps 1 and 2. Regardless of the actual timing of the bypass construction, the realignment must be considered in the development of all short-term and long-term plans for the community, as the impact to the Town will be significant. Preparation for the eventual completion of the bypass ensures a proactive approach to future growth in the Town, and greater odds for positive impacts to Fort Macleod.

PART 4: GOALS, OBJECTIVES AND POLICIES

5.9 Future urban growth should be directed to areas with existing municipal infrastructure capacity, or to locations where infrastructure extensions can be made most efficiently.

5.10 All development shall be required to connect to the municipal sewer and water services unless it is demonstrated to the Subdivision and Development Authority that circumstances exist that make connection to Town infrastructure not reasonably achievable. The Subdivision and Development Authority may, at their discretion, require the submittal of evidence, prepared by a professional engineer, as proof that a development cannot reasonably connect to municipal infrastructure.

5.11 Council and the Subdivision and Development Authority should only allow new development in areas that can be easily serviced by both roads and proper utilities.

5.12 Any applications to redesignate agricultural land to another type of land use district shall be forwarded to the municipality's planning advisor for review and comment.

5.13 Future subdivision and development may be required to pay off-site levies pursuant to section 648 of the Municipal Government Act and any other development fees as required by Council.

5.14 Future subdivision and development shall be based on maintaining the functionality of the existing street hierarchy as outlined in Maps 4 and 5, by ensuring subdivision and development design accounts for the hierarchy of the street onto which it will require access.

Area 1 Policies

5.15 Prior to further subdivision and development, an Area Structure Plan, Area Concept Plan, Outline Plan, or Conceptual Design Scheme should be prepared for lands within Area 1.

5.16 The lands within Area 1 shall be required to be developed to a high standard, given the proximity of the lands to Highway 3.

5.17 Lands within Area 1 north of Highway 3 should be developed for low density residential purposes, with consideration for the visual impact the development will have on the western gateway of the Town.

5.18 Lands within Area 1 south of Highway 3 should be developed for commercial and light industrial purposes, with consideration for the visual impact that development will have on the western gateway of the Town, and the future residential development that may be situated directly north of the Highway.

Area 2 Policies

5.19 Area 2 should be encouraged as the first or one of the first areas to accommodate the subdivision and development of new urban areas of the Town.

5.20 The subdivision and development of undeveloped lands in Area 2 should benefit from the preparation of an Area Structure Plan.

5.21 Subdivision and development in Area 2 shall be sequenced properly; extending directly south from the built-up area of the Town with no undeveloped lands in between new urban development, and the built-up area.

5.22 Out of sequence development in Area 2 shall not be permitted.

Area 3 Policies

5.23 Area 3 should be developed primarily for industrial development and specifically business industrial development, with a limited amount of complementary wholesale commercial development.

5.24 The North half of Section 6, Township 9, Range 25 West of the 4th Meridian should be the first portion of Area 3 to develop.

Area 4 Policies

5.25 Area 4 should be developed primarily for highway commercial land uses that benefit from the high visibility provided by proximity to Highway 3, with consideration for the visual impact that development will have on the eastern gateway of the Town.

5.26 Subdivision and development in Area 4 should be sequenced properly; extending directly south from the built-up area of the Town with no undeveloped lands in between new urban development, and the built-up area.

5.27 Area 4 should benefit from the preparation of an Area Structure Plan, Area Concept Plan, Outline Plan, or Conceptual Design Scheme, prior to further subdivision and/or development.

Area 5 Policies

5.28 Area 5 should be encouraged as the first or one of the first areas to accommodate the subdivision and development of new urban areas of the Town.

5.29 The subdivision and development of undeveloped lands in Area 5 should benefit from the preparation of an Area Structure Plan.

5.30 Subdivision and development in Area 5 shall be sequenced properly; extending directly south from the built-up area of the Town with no undeveloped lands in between new urban development, and the built-up area.

5.31 Out of sequence development in Area 5 shall not be permitted.

Area 6 Policies

5.32 All lands within Area 6 that are not designated River Valley Lands – RVL as per the Land Use Bylaw, shall be redesignated those lands that may be the subject of a land use district redesignation to the Direct Control – DC land use district as per policy 5.33 below.

5.33 Should the extraction of gravel be proposed within any part of Area 6, the lands shall be required to be redesignated to the Direct Control – DC land use district.

5.34 Council and the Subdivision Approving Authority shall make all decisions on subdivision and development applications in Area 6 based on the minimization of damage to non-natural structures from flooding, the preservation of undeveloped lands for the purposes of protecting the identified floodway, and the safety of Town residents.

Area 7 Policies

5.35 The primary land uses in Area 7 shall continue to be agricultural cropping and country residential development.

5.36 The redesignation of lands from the Agriculture – A land use district, to the Country Residential – CR land use district, should be considered by Council only after an Area Structure Plan has been adopted by bylaw, or an Area Concept Plan has been approved by resolution, for the lands in question.

5.37 Future road networks required as a result of proposed subdivision and/or development shall be designed in such a way as to minimize the amount of road required for Area 7.

5.38 Endeavour-to-assist agreements may be used as a way of ensuring the original developer of new roads in Area 7 is fairly and equitably compensated, should another subdivision make use of a roadway built for a previous subdivision.

Area 8 Policies

5.39 A Downtown Plan shall be prepared for the Downtown Overlay Area as shown in Map 3, and as outlined by the Land Use Bylaw, by the end of 2017.

5.40 A Development Guide shall be prepared for the Provincial Historic Area by the end of 2017.

5.41 An Area Structure Plan or Area Redevelopment Plan shall be prepared for the 15th Street Area by the end of 2017.

5.42 Any and all planning processes that will produce adopted or approved statutory or non-statutory plans or guides within Area 8 shall include multiple interactive public engagement opportunities.

5.43 The Cemetery Area within Area 8 shall be maintained as the part of the Town considered most suitable for existing cemeteries and the future expansion of existing cemeteries.

Area 9 Policies

5.44 Area 9 shall continue to be developed for primarily industrial uses.

5.45 An Area Structure Plan, Area Redevelopment Plan, or Area Concept Plan should be prepared for Area 9 by the end of 2016.

Area 10 Policies

5.46 An Area Structure Plan or Area Concept Plan should be prepared, in support of the current and future use and development of the Fort Macleod Airport and associated uses and lands.

6.0 RESIDENTIAL DEVELOPMENT

Objectives:

- To ensure a diversity of housing types and serviced lots are available throughout the community that cater to all residents and housing needs.

- To ensure that an adequate amount of serviced residential land is available to meet future housing demand and that land is developed in an efficient and rational manner.

Policies:

6.1 All future residential development:

(a) shall comply with the objectives of this plan and the current Land Use Bylaw;

(b) should be directed to the areas of the municipality identified on Map 2 and indicated in the policies of Section 5 of this Part, as suitable for residential development;

(c) shall be evaluated as to its suitability by Council and/or the Subdivision and Development Authority.

6.2 Residential development programs and decisions should ensure:

(a) a choice of new residential neighbourhoods with provision for different housing types to cater to all housing needs and income levels of the public;

(b) safe, attractive residential environments secure from incompatible land uses and in conformity with the existing historic, natural and cultural quality of residential neighbourhoods;

(c) rational and economical extensions of existing municipal services.

6.3 Council should strive to achieve a proportionate increase in various multi-unit housing that caters to broad socio-economic and demographic groups.

6.4 Applications submitted for large-scale (multi-family) or multi-lot residential developments shall be evaluated on the basis as to how the proposal will affect the existing municipal infrastructure and servicing capacities prior to approval being granted. Residential subdivisions may be planned and developed in phases, which would take into consideration market demand and future servicing.

6.5 The Town should regularly monitor the vacancy rate and volume of building permits so that short term needs for serviced residential land can be further anticipated and subsequently addressed.

6.6 The Town shall undertake an infill strategy that identifies opportunities for developing new residences within the existing built-up area of the community.

6.7 The Town should attempt to increase local awareness of historical preservation grants available for residents to restore and improve houses that may be classified as historical.

7.0 COMMERCIAL DEVELOPMENT

Objectives:

- To strengthen the role of the downtown commercial areas and enhance their image.
- To expand and promote the commercial district as a vital component of the local economy.
- To establish sound planning polices and guidelines for commercial developments that protect existing developments and encourage new ones.

TAB 7

1994 CarswellAlta 7
Alberta Court of Queen's Bench

Parks West Mall Ltd. v. Hinton (Town)

1994 CarswellAlta 7, [1994] 3 W.W.R. 759, 148 A.R. 297, 15 Alta. L.R. (3d) 400, 19 M.P.L.R. (2d) 20, 44 A.C.W.S. (3d) 1288

Re MUNICIPAL GOVERNMENT ACT, Being CHAPTER M-26 of REVISED STATUTES OF ALBERTA, 1980, as amended and of PLANNING ACT, Being CHAPTER P-9 of REVISED STATUTES OF ALBERTA, 1980, as amended

Re APPLICATION FOR JUDICIAL REVIEW OF BYLAW 881-13 PASSED BY MUNICIPAL COUNCIL OF TOWN OF HINTON, APRIL 27, 1993 ("BYLAW")

PARKS WEST MALL LTD. and FOUR WINDS ENTERPRISES CORP. v. TOWN OF HINTON

P.L.J. Smith J.

Judgment: January 7, 1994
Docket: Doc. Edmonton 9303 10531

Counsel: *B.P. Kaliel*, for applicant.
L.J. Burgess, for respondent.

Subject: Public; Civil Practice and Procedure; Municipal

Related Abridgment Classifications

Administrative law

X Prerogative remedies
X.3 Mandamus
X.3.d Miscellaneous

Municipal law

XVI Zoning
XVI.6 Attacking validity of zoning by-laws
XVI.6.a Grounds
XVI.6.a.v Improper purpose

Municipal law

XVIII Planning appeal boards and tribunals
XVIII.3 Judicial review
XVIII.3.c Miscellaneous

Headnote

Municipal Law --- Zoning — Attacking validity of zoning by-laws — Grounds — Improper purpose

Municipal Law --- Practice and procedure before municipal planning authorities — Judicial review — General

Municipal law — By-laws and resolutions — Validity — Improper purpose — Municipal council's power to pass land use by-laws being limited by s. 2 of Planning Act to extent necessary for greater public interest — Public interest being interpreted with regard to effect of by-law on private land owner's prima facie right to use land as land owner wishes — By-law protecting community funds raised through town-owned bingo halls and limiting competition not meeting requirement under Planning Act.

Planning and zoning — Zoning — Zoning by-laws — Validity — Municipal council's power to pass land use by-laws being limited by s. 2 of Planning Act to extent necessary for greater public interest — Public interest being interpreted with regard to effect of by-law on private land owner's prima facie right to use land as land owner — By-law protecting community funds raised through town-owned bingo halls and limiting competition not meeting requirement under Planning Act.

Administrative law — Subordinate legislation — Remedies — Mandamus — Town council passing amending by-law after notification of developer's plans — Developer's application for development permit being denied as result of by-law — Court quashing amending by-law as being enacted for improper purpose — Mandamus to compel town to consider application for development permit not being available remedy as town functus in respect of application — Developer to be permitted to resubmit application for development permit.

The town council passed a by-law to amend a land use by-law. The amending by-law had the effect of limiting recreational development of a shopping centre in which the developer had applied for a development permit for a bingo hall. The developer applied to quash the amending

by-law and sought mandamus to compel the town to consider its application for a development permit.

Held:

Application allowed in part.

In order for the by-law to have been validly passed, the town must not have acted in bad faith or outside the limit of its powers. While the town had no prior intent to pass the amending by-law before it was notified of the developer's plans, and while it was clear that the economic interests of the developer had been and would be affected by the amendment, and while the town council moved in haste to implement the amendment and acted against the advice of its advisors in doing so, none of those factors was conclusive of the town council having acted in bad faith. There was no proof that any member of council was in a conflict of interest. However, while it was within the council's power to pass land use by-laws, that power was limited by s. 2 of the *Planning Act* which states that council may zone to the extent necessary for the greater public interest. The public interest must be interpreted within the context of the effect the exercise of such powers has on a private land owner's prima facie right to do whatever he or she wishes with the land. While on its face the by-law appeared to merely describe discretionary uses for land, the purpose of the amendment was to protect community funds raised through the town-owned bingo halls and to limit competition. That was not a permitted objective under s. 2. While mandamus was not available as the town was functus in respect of the application, the developer should be permitted to resubmit its application for a development permit.

Table of Authorities

Cases considered:

Cadillac Development Corp. v. Toronto (City) (1973), 1 O.R. (2d) 20, 39 D.L.R. (3d) 188 (H.C.) — *referred to*

Central Burnaby Citizens' & Ratepayers' Assn., Re (1956), 6 D.L.R. (2d) 511 (B.C.S.C.) — *considered*

Hollett v. Halifax (City) (1975), 13 N.S.R. (2d) 403, 66 D.L.R. (3d) 524 (C.A.) — *referred to*

Kuchma v. Tache (Rural Municipality), [1945] S.C.R. 234, [1945] 2 D.L.R. 13 — *considered*

Monarch Holdings Ltd. v. Oak Bay (District) (1977), 4 B.C.L.R. 67, 4 M.P.L.R. 147, 79 D.L.R. (3d) 59 (C.A.) — *referred to*

Old St. Boniface Residents Assn. Inc. v. Winnipeg (City) (1990), [1990] 3 S.C.R. 1170, [1991] 2 W.W.R. 145, 46 Admin. L.R. 161, 2 M.P.L.R. (2d) 217, 75 D.L.R. (4th) 385, 116 N.R. 46, 69 Man. R. (2d) 134 — *referred to*

Ottawa (City) v. Boyd Builders Ltd., [1965] S.C.R. 408, 50 D.L.R. (2d) 704 — *distinguished*

Save Richmond Farmland Society v. Richmond (Township) (1990), [1990] 3 S.C.R. 1213, [1991] 2 W.W.R. 178, 52 B.C.L.R. (2d) 145, 46 Admin. L.R. 264, 2 M.P.L.R. (2d) 288, 75 D.L.R. (4th) 425, 116 N.R. 68 — *referred to*

Texaco Canada Ltd. v. Oak Bay (City) (1969), 68 W.W.R. 373 (B.C.S.C.) [affirmed 72 W.W.R. 557 (B.C.C.A.)] — *referred to*

United Buildings Corp. v. Vancouver (City) (1914), 6 W.W.R. 1335, [1915] A.C. 345, 28 W.L.R. 787, 19 D.L.R. 97 (P.C.) — *considered*

Statutes considered:

Municipal Government Act, R.S.A. 1980, c. M-26

s. 108*considered*

s. 112*considered*

Planning Act, R.S.A. 1980, c. P-9

s. 2*considered*

Application to quash amendment to municipal by-law and for mandamus to compel town to consider application for development permit.

***P.L.J. Smith J.*:**

Summary

1 The Hinton Town Council passed a bylaw to amend a land use bylaw. The amendment was prompted by the Applicant's application for a development permit. The Applicant seeks to quash the amending bylaw and seeks mandamus to cause the Town to consider its application for building permit.

2 The purpose of the bylaw amendment was to limit competition. Council erred in using a land use power to effect a public interest objective not permitted by the *Planning Act*. The bylaw amendment had the effect of depriving a land owner of his rights for reasons unrelated to any planning objectives.

3 Therefore the bylaw is quashed. Mandamus is denied for procedural reasons.

Facts

4 The Applicants wanted to develop a bingo hall in their shopping centre in the Town of Hinton (the "Town"). On March 18, 1993, the Applicant discussed the proposed development with the Mayor of the Town by telephone. On March 22, 1993, the application for development permit was filed with the Town.

5 The existing land use bylaw which applied to the shopping centre provided for "... a wide range of retail commercial goods and services primarily within a shopping centre development ... " The bylaw included "indoor recreational establishments" as discretionary uses. The Applicant argued a bingo hall qualified as a discretionary use. There was no definition for "indoor recreational establishment".

6 On March 30, 1993, the Town Council gave first reading to the proposed amendment. The proposed amendment provided "indoor recreational establishment" does not include "... any facilities used or intended to be used in whole or in part for entertainment or amusement purposes such as concerts, theater, dances, bingo and similar functions which may only be allowed where specifically listed ..."

7 A public hearing was conducted on April 13, 1993. The bylaw amendment received second reading on that date. Third reading was April 27, 1993, thereby passing the bylaw amendment.

8 The Applicants were not notified at the time of their application of the proposed change. On April 1, 1993, they received notice of the public hearing.

9 On April 15, 1993, the Applicant had responded to all the Town's requirements to complete their application. On April 16, 1993, the Town notified the Applicant that their application hearing

date of April 22, 1993 was to be adjourned to April 29, 1993. On April 27, 1993, the bylaw amendment was passed. On April 29, 1993, the Applicant's application was denied on the basis of the amendment. There was an appeal to the Development Appeal Board. It too was denied. Then came this application to quash.

10 Council considered the reports of the Town administration and the Yellowhead Region Planning Commission.

11 The Town administration's report said:

> From a planning perspective, the only policy guidance that is in any way related to this matter in our General Municipal Plan is found on page 81, which states:
>
> > Issue: Recreation facilities and programs can be provided by both the private sector and the Town. This may result in wasted resources, and in most cases can place the private sector at a disadvantage. The Town wishes to minimize any overlap in the provision of recreational services while ensuring that Hinton and district residents have available as wide a range of opportunities as possible.
> >
> > POLICY: While recognizing that some overlap may be difficult to avoid because of efficiencies in delivery, the Town will generally not compete in recreational facility or program areas where the private sector can offer a similar service at a reasonable cost.
>
> Other planning considerations are parking, accessibility; with the community center bingo being more central to in town bingo players than the Parks West Mall, but Parks West Mall better for non local bingo players. Parking lot area and access onto arterial road systems are excellent in both locations.

12 The Town administration recommended against passing the bylaw amendment.

13 The Yellowhead Regional Planning Commission report said as to the term "indoor recreational establishment":

> First of all, the term was purposely left undefined ... to provide flexibility ... Secondly ... there does not appear to be any compelling planning argument (eg. concerns regarding parking, noise, compatibility with adjacent land uses, floor area requirements, hazard/ public safety, etc.) to specifically exclude from the definition ... concerts, theater, dance, bingo and other similar functions.

14 The Commission recommended against passing the bylaw amendment.

15 The Mayor is alleged to have acted in bad faith.

16 The Applicant swears in an affidavit that "... in a telephone conversation I had with the Mayor ... on March 18, 1993, he told me that he would do everything in his power to prevent a bingo hall being opened that would compete with the two existing bingo operations." The Mayor swears in his affidavit as to the content of the same telephone conversation, " ... in a telephone conversation ... I discussed the current situation with bingo in Hinton and the fact that funds were going to community groups from such bingos. I at that time advised ... that I was very sympathetic to community groups and would resist change that would put community dollars into the private sector. At no time in my discussions ... did I state that I would do everything in my power to prevent a bingo hall from being opened."

17 Further, in a taped press conference, the Mayor stated he was concerned about possible loss of community revenue if a competing bingo facility was launched.

18 It is also alleged a member of Council was in a conflict of interest position.

19 There are two existing bingo facilities in the Town. One is the Hinton Community Center. The Community Center is owned by the Town. It is leased by the Town to the Hinton Community Center Association which, in turn, leases the Community Center for a variety of events including bingos. The rents from the Community Center are collected by the Association for the financial benefit of the Town. Bingo revenues benefit the community groups which run bingos.

20 The president of the Association sits on Town Council.

Bylaw and Relevant Statute Law

21 The bylaw amendment:

> 1(a) That By-Law No. 881 of the Town of Hinton be and is hereby amended by adding the following to Section 6(1):
>
> "Indoor Recreational Establishment" means a facility located within an enclosed building for purposes of sporting, athletic, exercise and related activities but does not include any facilities used or intended to be used in whole or in part for entertainment or amusement purposes such as concerts, theatre, dances, bingos and similar functions which may only be allowed where specifically listed as a permitted or discretionary use in a land use district or as allowed by the Council in a direct control district.
>
> 1(b) In respect to Section 17(2)(g) of the Land Use Bylaw, the following be added:
>
> The authority of the Municipal Planning Commission to determine that a use is similar,

> both under this clause and where similar uses are listed as a discretionary use in a land use district, may not be exercised by the Municipal Planning Commission in any circumstances where this Bylaw provides that a particular use or class of particular uses must be specifically listed.

22 Sections 108 and 112 of the *Municipal Government Act*:

> 108 A by-law or resolution passed by a council in the exercise of any of the powers conferred and in accordance with this Act, and in good faith, is not open to question, nor shall it be quashed, set aside or declared invalid, either wholly or partly, on account of the unreasonableness or supposed unreasonableness of its provisions or any of them.
>
> 112 A council may pass by-laws that are considered expedient and are not contrary to this or any other Act,
>
> (*a*) for the peace, order and good government of the municipality,
>
> (*b*) for promoting the health, safety, morality and welfare thereof, and
>
> (*c*) for governing the proceedings of the council, the conduct of its members and the calling of meetings.

23 Section 2 of the *Planning Act*:

> 2 The purpose of this Act and the regulations is to provide means whereby plans and related measures may be prepared and adopted to
>
> > (*a*) achieve the orderly, economical and beneficial development and 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 in Alberta,
>
> without infringing on the rights of individuals except to the extent that is necessary for the greater public interest.

Decision

(a) Boyd Builders

24 The Applicant argues that the three-part test set out in *Ottawa (City) v. Boyd Builders Ltd.* (1965), 50 D.L.R. (2d) 704 (S.C.C.), should be applied in this case. I find *Boyd Builders* should be distinguished.

25 In *Boyd Builders*, the bylaw was not adopted as the law of the land. Therefore, on the date of the court hearing, there was a prima facie right to have the application for development permit considered by the municipality. From these circumstances came the three-part test of (a) clear prior intent, (b) good faith, and (c) dispatch. Clearly, the onus was on the municipality to prove all three parts of the test before the court would permit the extinguishing of the land owner's prima facie right to use the land as he wished within the bounds of the law. This heavy onus on the municipality makes sense in the situation where the law of the land does not yet prevent the planned development.

26 It is quite a different matter when a bylaw has been passed, when it is the law of the land.

27 First, I find the time for considering whether the prima facie case exists is the date of the court hearing, not the date of the application for development permit. The choice of this date is critical. Municipalities have the right to legislate in the public interest. Their attention is naturally directed to zoning issues through development efforts. If municipalities validly legislate before the Applicants get to court, the court should not be granting orders that fly in the face of that valid legislation. Therefore, applicants for development permits are placed in the position of having to race to court to gain the benefit of the *Boyd Builders* test. Municipalities gain the benefit of a more strict test if their rush to validly legislate beats the court challenge. *Monarch Holdings Ltd. v. Oak Bay (District)* (1977), 4 M.P.L.R. 147 (B.C.C.A.).

28 Second, to determine whether the bylaw was validly passed, the municipality must not have acted in bad faith or outside the limit of its powers. Other words have been used in the case law in place of the words "outside the limit of its powers". They are improper purpose, impropriety, improper conduct, and illegality. All of the facts in each case are relevant to the determination of these issues.

29 Third, the onus is on the Applicant for development permit. The law is presumed valid until shown otherwise.

(b) Bad Faith or Outside the Limit of its Powers

30 In the case at bar, there was no prior intent to amend the zoning bylaw. I find the telephone call notice of the intended application for development permit was the catalyst which prompted the Town to act. This is not in itself conclusive of bad faith or improper purpose (*Monarch*).

31 Further, it is clear the economic interests of the Applicant have been and will be affected

by the amendment. This also is not, in itself, conclusive of bad faith or improper purpose. *Texaco Canada Ltd. v. Oak Bay (City)* (1969), 68 W.W.R. 373 (B.C.S.C.).

32 Procedurally, the Council moved in haste to implement the amendment. It did not omit necessary steps. It held a public hearing. It adjourned the hearing of the application for development permit to permit the final passing of the amendment. Although the Town acted quickly and delayed the Applicant's application at a critical time, without more, the evidence is equivocal (*Monarch*).

33 The Council acted against the advice of their advisors. This also is not conclusive of bad faith or outside the limit of power. *Cadillac Development Corp. v. Toronto (City)* (1973), 1 O.R. (2d) 20 (H.C.).

34 The onus is on the Applicant to prove the Mayor was biased. Because the Council was performing a legislative function, its members are entitled to represent their perceived views of their constituents' interests, to express those views and to act upon them, provided they have not prejudged the issue to the extent that any representations to the contrary would be futile. *Old St. Boniface Residents Assn. v. Winnipeg (City)* (1990), 75 D.L.R. (4th) 385 [[1991] 2 W.W.R. 145] (S.C.C.), and *Save Richmond Farm Society v. Richmond (Township)* (1990), 75 D.L.R. (4th) 425 [[1991] 2 W.W.R. 178] (S.C.C.).

35 In the case at bar, the evidence conflicts. I find a closed mind of the Mayor is not proven.

36 I find, also, that the alleged conflict of interest of the council member is not proven. As president of the Hinton Community Center Association and as a council member that person's duty is to act in the best interests of the Town.

37 The test for bad faith is not the presence of corrupt motive. *Hollett v. Halifax (City)* (1975), 66 D.L.R. (3d) 524 (N.S.C.A.). None existed in the case at bar. On the contrary, the Mayor was frank about his wishes. Further, I see no evidence to convince me that Council was acting other than honestly.

38 However, good faith requires more than honesty. For good faith to be proven Council must have acted honestly and within the limit of its power. It is the second part of the test that causes me concern.

39 Clearly, it is within Council's power to pass land use bylaws and thereby plan. This power is limited. Council's power is limited by s. 2 of the *Planning Act* which states Council may zone to the "extent necessary for the greater public interest".

40 On the question of public interest, Brown J. in *Re Central Burnaby Citizens' & Ratepayers' Assn.* (1956), 6 D.L.R. (2d) 511 (B.C.S.C.), at p. 518 quotes Estey J. in *Kuchma v. Tache (Rural Municipality)* (1945), 2 D.L.R. 13 (S.C.C.):

> Upon the question of public interest, Courts have recognized that the municipal council, familiar with local conditions, is in the best position of all parties to determine what is or is not in the public interest and have refused to interfere with its decision unless good and sufficient reason be established.

Later in the same judgment (pp. 518-19), Brown J. quotes Clement J. who said in *United Buildings Corp. v. Vancouver (City)* (1914), 19 D.L.R. 97 [6 W.W.R. 1335] (P.C.):

> They were entitled to use their corporate powers to carry out what they honestly considered was a good bargain for the city. They may be ... all wrong; but self-government, it has been said, involves the right to make mistakes.

41 Unlike the case at bar, Kuchma and United Buildings are highway closing cases. In Alberta, highway closings are regulated by the *Municipal Government Act* and therefore subject to ss. 108 and 112 of that Act. They involve Council legislating on the use of public property.

42 In the case at bar, the powers exercised by the Town were the powers conferred on it by the *Planning Act*. Those powers are granted to give municipalities the right to interfere with a private land owner's prima facie right to do as he wishes with his land, subject to public interest. The public interest must be interpreted in this context.

43 There is no question that a land use bylaw can be passed to describe discretionary uses. On its face, this bylaw amendment appears to do just that. However, I find the purpose of the bylaw amendment was to protect community funds and to limit competition. I have the Mayor's own words to support this conclusion. In addition, the planning advisors saw no planning purpose to the proposed amendment. Indeed, it is mentioned that such recreational establishments are found in shopping centres in other parts of Alberta. Further, the bylaw itself, although not discriminatory on its face, allows recreational establishments where specifically listed. Counsel suggested this escape clause is indicative of Council's intent to proceed by way of an interim solution which will be fine tuned later. I prefer my conclusion as to the purpose of the bylaw amendment. Last, opponents to the proposed development largely represented beneficiaries of the community run bingo association who were concerned about keeping the bingo business, and thereby their earnings, at the Hinton Community Center. Proponents of the proposed development represented that the Town had the resources to support another bingo hall and, further, that there were community groups who wanted more fund raising facilities. Once again, I see the emphasis on money concerns.

44 The real issue then is whether the protection of community funds and the limiting of competition is a permissible objective for the land use bylaw amendment which took place in this case. I find that it is not.

45 In so concluding, I consider s. 2 of the *Planning Act* which sets out in subs. (*a*) and (*b*) the objectives of planning. I also consider the historical right of the land owner to use his private property subject to the legislated rights of public officials. Section 2 of the *Planning Act* also

makes reference to this right. I accept that the public interest objectives of Council in the planning context encompass a broader range of considerations than those made by Council's planning advisors. However, Council is still limited by the *Planning Act* which focuses on patterns of human settlement and by its own General Municipal Plan. The plan advocates a balance between minimizing overlap of recreational services and a general attitude of non-competition. The bylaw is not saved by s. 108 or s. 112 of the *Municipal Government Act*. I therefore find Council acted outside the limit of its powers.

46 For this reason, the bylaw is quashed.

(c) Mandamus

47 The Applicant's application for development permit has been considered by the Town. The appeal route has been exhausted. The Town is functus. I decline to order mandamus.

48 However, I direct the Applicant shall be at liberty to resubmit its application for development permit to the Town, if it wishes, in the same form in which it was previously submitted.

(d) Order Disqualifying

49 The order sought disqualifying the Mayor and the other council member from considering the application is dismissed for reasons previously given.

(e) Costs

50 Costs are granted to the Applicant. If necessary, quantum may be spoken to.

Conclusion

51 The bylaw is quashed. Mandamus is denied. Leave is granted to the Applicant to resubmit its application for development permit in the same form as previously submitted. The order sought disqualifying certain Council members is denied. Costs are granted to the Applicant.

Application allowed in part.

TAB 8

1999 ABQB 59
Alberta Court of Queen's Bench

698114 Alberta Ltd. v. Banff (Town)

1999 CarswellAlta 67, 1999 ABQB 59, [1999] A.J. No. 101, 238 A.R. 391, 50 M.P.L.R. (2d) 170

In the Matter of the Municipal Government Act; S.A. 1984, c. M-26-1 and Amendments thereto

In the Matter of bylaw No. 167-1 of the Town of Banff

In the Matter of Part 56 of the Rules of Court

In the Matter of Development Permit 90DP08

698114 Alberta Ltd., Applicant and The Town of Banff, Respondent

Medhurst J.

Judgment: January 28, 1999
Docket: Calgary 9801-09713

Counsel: *Robert Kambeitz*, for the Applicant.
Sheila Mcnaughtan and *D.R. Noel*, for the Respondent.

Subject: Public; Municipal

Related Abridgment Classifications

Municipal law
X Attacks on by-laws and resolutions
X.1 Grounds
X.1.k Miscellaneous

Municipal law
XV Development control
XV.4 Development permits
XV.4.b Jurisdiction and powers
XV.4.b.i Issuing authority

Municipal law
XVI Zoning
XVI.6 Attacking validity of zoning by-laws
XVI.6.a Grounds

XVI.6.a.ii Discrimination

Municipal law
XVI Zoning
XVI.6 Attacking validity of zoning by-laws
XVI.6.a Grounds
XVI.6.a.iv Uncertainty

Headnote

Municipal law --- Zoning — Attacking validity of zoning by-laws — Grounds — Discrimination
Town's land use by-law instituting random allotment system for authorizing commercial development in certain zone — By-law not vague nor unlawfully discriminatory — By-law properly controlling development and use of land — Municipal Government Act, S.A. 1994, c. M-26.1, s. 640(1), (2), (4).

Municipal law --- Development control — Development permit — Practice and procedure on application for development permit
Compelling issuance — Mandamus — Law relevant to consideration of mandamus application was that in force at time of court application — Applicant's development permit application did not conform with town's land use by-law — Town having no statutory duty to issue permit under s. 642(1) of Municipal Government Act — Municipal Government Act, S.A. 1994, c. M-26.1, s. 642(1).

The applicant applied for a development permit from the respondent town in order to construct a hotel. The applicant's development permit and subdivision application was not thoroughly considered by the town. The town returned the application and fees indicating that the application was incomplete. The town also advised that the application did not conform to its temporary commercial development freeze by-law and that the applicant had no real prospect of obtaining a permit. The town adopted a new land use by-law and a new municipal development plan. The land use by-law regulated land development by instituting a random allotment system for commercial development for various districts. The applicant commenced three separate applications seeking a declaration that the development freeze, land use and municipal development plan by-laws were void on various grounds, mandamus to compel the town to receive and consider its development permit application and the issuance of the development permit.

Held: The applications were dismissed.

The development permit application did not conform with the town's land use by-law, which was the by-law in force at the time of the court application. The town had no statutory duty to issue the development permit under s. 642(1) of the *Municipal Government Act*. The town did consider the application to the extent that it determined that the application had no reasonable prospect of success.

The town had legal authority under s. 640(1) to enact the land use by-law and the random

allotment system it imposed as it did regulate and control the development of land. The broad powers of regulation and control outlined in s. 640(1) provided the town with legal authority to create its allotment system. The by-law was not void for uncertainty. The intent of the by-law was clear. The by-law was also not unlawfully discriminatory. Subsection 640(4) provided direct legislative authority for municipalities to treat districts differently regarding floor area and building size.

Table of Authorities

Cases considered by *Medhurst J.*:

Cambridge Leaseholds Ltd. v. Toronto (City), [1973] 3 O.R. 378, 37 D.L.R. (3d) 43 (Ont. Div. Ct.) — considered

Canadian Petrofina Ltd. v. Martin, [1959] S.C.R. 453, 18 D.L.R. (2d) 761 (S.C.C.) — referred to

Fountainhead Fun Centre Ltd. v. Montreal (Ville), (sub nom. *Montreal (Ville) v. Arcade Amusements Inc.)* [1985] 1 S.C.R. 368, 18 D.L.R. (4th) 161, 29 M.P.L.R. 220, (sub nom. *Arcade Amusements Inc. v. Montreal (Ville))* 58 N.R. 339 (S.C.C.) — considered

Madison Development Corp. v. St. Albert (Town), [1975] 6 W.W.R. 345 (Alta. S.C.) — referred to

Monarch Holdings Ltd. v. Oak Bay (District) (1977), 4 B.C.L.R. 67, 79 D.L.R. (3d) 59, 4 M.P.L.R. 147 (B.C. C.A.) — considered

North Vancouver Shops Regulation By-law, Re, [1972] 2 W.W.R. 625, 24 D.L.R. (3d) 305 (B.C. S.C.) — considered

North Vancouver Shops Regulation By-law, Re (1972), [1973] 1 W.W.R. 192, 30 D.L.R. (3d) 768n (B.C. C.A.) — referred to

Ottawa (City) v. Boyd Builders Ltd., [1965] S.C.R. 408, 50 D.L.R. (2d) 704 (S.C.C.) — considered

Parks West Mall Ltd. v. Hinton (Town), 15 Alta. L.R. (3d) 400, 148 A.R. 297, 19 M.P.L.R. (2d) 20, [1994] 3 W.W.R. 759 (Alta. Q.B.) — referred to

Spiers v. Toronto (Township), [1956] O.W.N. 427, 4 D.L.R. (2d) 330 (Ont. H.C.) — referred to

Toronto (City) Roman Catholic Separate School Board v. Toronto (City) (1925), (sub nom. *Toronto (City) v. Toronto (City) Roman Catholic Separate School Board)* [1926] A.C. 81, (sub nom. *Toronto (City) v. Toronto (City) Roman Catholic Separate School Board)* [1925] 3 D.L.R. 880 (Ontario P.C.) — referred to

Upper Canada Estates Ltd. v. MacNicol, [1931] O.R. 465, [1931] 4 D.L.R. 459 (Ont. S.C.)

— referred to

Upper Canada Estates Ltd. v. MacNicol, 41 O.W.N. 92, [1932] 2 D.L.R. 528 (Ont. C.A.) — referred to

Statutes considered:

Municipal Government Act, S.A. 1994, c. M-26.1
Generally — considered

Pt. 17, Div. 5 [en. 1995, c. 24, s. 95] — considered

s. 640(1) — considered

s. 640(2) — considered

s. 640(2)(a) — referred to

s. 640(2)(b)(i) — considered

s. 640(4) [en. 1995, c. 24, s. 95] — considered

s. 640(4)(b) [en. 1995, c. 24, s. 95] — considered

s. 642(1) — considered

Parks Towns Act, S.A. 1989, c. P-1.5
Generally — considered

APPLICATIONS for declaration that by-laws void and for mandamus compelling town to consider and review development permit application and to issue development permit.

***Medhurst J.*:**

A. Introduction

1 These reasons for decision relate to three separate applications that were heard together and were brought before the court by 698114 Alberta Ltd. ("Applicant"). In summary, the applications seek, first, a declaration by the court that the Town of Banff ("the Town") Bylaws 167-1, 31-2, and 31-3 are void, and, second, an order in the nature of mandamus compelling the Town to receive and consider on its merits an application by the Applicant for, and to issue, a development permit to develop certain lands within the Town of Banff. At the outset of the application, the Town's Manager of Planning and Development, Randall McKay, and the Town's Municipal Planning Commission were added by consent as Respondents to the mandamus application.

B. Background Facts

2 The Applicant has been the registered owner of a leasehold interest in three contiguous parcels of land totalling 5.5 acres in the "Pinewoods" district of the Town of Banff since it obtained title to the land from a previous owner on May 1, 1997. The Applicant hopes to construct a hotel on the land and on June 29, 1998 it applied for a development permit (and subdivision, if necessary) to do so. The application purported to be a request for an extension of Development Permit 90DP08, which was approved by the Town in May 1991 and in general terms approved the construction of a hotel on the land subject to certain conditions. The time for construction under this permit was extended from time to time, and the last extension expired in May, 1996, well before the Applicant obtained title to the land.

3 The Applicant's development permit and subdivision application filed June 29, 1998 was not thoroughly considered by the Town. It returned the application and application fees on July 7, 1998, and the Applicant received this letter on July 15, 1998. The letter indicated that the application was not complete, and, even if it had been complete, no Development Permit could be issued unless the application complied with the Town's Bylaw 167-2. The letter indicated that, in the circumstances, the Applicant's development permit application would not meet the requirements of Bylaw 167-2 and that the fees were returned because there was no real prospect of obtaining a permit. This curtailed the Applicant's ability to develop its Pinewoods property, and it therefore seeks an order of mandamus to compel the Town to properly consider its development permit and subdivision application.

4 The Town of Banff is a unique municipality located within the Province of Alberta and also within the boundaries of Banff National Park. It is created pursuant to the "Town of Banff Incorporation Agreement" entered into between the Government of Canada and the Government of Alberta. The agreement establishes the Town as a municipal corporation pursuant to the provincial *Parks Towns Act*, S.A. 1989, c.P-1.5, and subject to provincial laws. It also provides for continuing jurisdiction of Canada in respect of matters dealing with finance and property. Of particular interest is Article 5.5 of the agreement dealing with planning functions, where it is specifically provided that any statutory plan or land use by-law, or any repeal or amendment thereto, does not become effective until it has been approved by the Federal Minister.

5 In the spring of 1997 the Town was considering a revision to its Municipal Development Plan (the "Banff Community Plan") and its Land Use Bylaw 31-1. The former represented the intent, philosophy, and objectives of the Town regarding, *inter alia*, commercial land use and development, while the latter outlined the districts within the Town, the development permit application process, and the development criteria within each district. To accomplish the desired changes, the Town passed two series of bylaws. First, it passed a series of bylaws instituting a temporary freeze on commercial development throughout the Town. Second, during this freeze, it passed bylaws relating to the substance of the desired changes to the Banff Community Plan and a replacement for Land Use Bylaw 31-1.

6 The Town's effort began in March, 1997, when it passed Bylaw 146, amending Bylaw

31-1, which in effect imposed a freeze on commercial development throughout the Town with minor exceptions for existing developments. Bylaw 146 became effective when approved by the Federal Minister of Heritage on March 12, 1997, and under its provisions would remain effective until December 31, 1997. The Bylaw 146 freeze was continued with Bylaw 167, which was effective from December 23, 1997 until May 30, 1998. Similarly, the Town passed Bylaw 167-1 in late May, 1998 (which was not approved by the Federal Minister until June 24, 1998) to extend the commercial development freeze until June 30, 1998. Finally, Bylaw 167-2, which became effective on June 30, 1998, only one day after the Applicant made its development permit and subdivision application, extended the commercial freeze until December 31, 1998. All of these bylaws were intended to be temporary in nature until the Town had finalized the Banff Community Plan and its new land use bylaw strategy.

7 In May, 1998, the Town adopted the new Land Use Bylaw 31-2, which was to replace Bylaw 31-1 and was designed to implement the concepts of the new Banff Community Plan adopted in Bylaw 172. Bylaw 31-2, *inter alia*, further restricted the development criteria in the Pinewoods district and provided for an annual lottery to regulate commercial development. However, the Federal Minister declined to approve Bylaws 172 and 31-2 because they did not sufficiently limit commercial growth. The Town made further revisions to the Banff Community Plan and the new land use bylaw, and, in September, 1998, the Town passed Bylaw 172-1 and Land Use Bylaw 31-3 to incorporate these revisions. On December 11, 1998, shortly before these applications came before the court, the Federal Minister of Heritage approved Bylaws 172-1 and 31-3. The new Banff Community Plan and land use bylaw strategy were then effective.

C. Issues

8 The main issues in these applications are:

1. Is the Applicant entitled to an order in the nature of mandamus?
2. Should any of the impugned bylaws be declared void?

D. Analysis

1. The Mandamus Application

a. Entitlement to mandamus generally.

9 An order in the nature of mandamus is a discretionary remedy, and for it to be considered the Applicant must establish that the Respondents had a statutory duty, without discretion, to do something that was not done: *Madison Development Corp. v. St. Albert (Town)*, [1975] 6 W.W.R. 345 (Alta. S.C.). The Applicant asserts that this duty is found in s.642(1) of the *Municipal Government Act*, S.A. 1994, c.M-26.1, which discusses development permit applications for permitted uses (as set out in s.640(2)(b)(i)). It states:

> 642(1) Where a person applies for a development permit in respect of a development provided for by a land use bylaw pursuant to section 640(2)(b)(i), the development authority must, if the application otherwise conforms to the land use bylaw, issue a development permit with or without conditions as provided for in the land use bylaw. [Emphasis added.]

The Applicant argues that s.642(1) imposes a statutory obligation upon the Town to, at least, consider its development permit application, and, if the application conforms to the land use bylaws, to issue a development permit. That is, the Applicant seeks an order compelling the Respondents to receive, consider, and approve their permit application.

10 For this argument to succeed, the Applicant must show that its development permit and subdivision application fell within s.642(1), and in particular that the application conformed to the relevant land use bylaw. If they can establish this, then an order in the nature of mandamus as requested would properly follow. However, the Applicant's argument hinges on their submission that it is the bylaws existing at the time of filing the development permit application that the application must "otherwise conform to" under s.642(1). I address this issue below.

b. The relevant point in time to assess the bylaws.

11 The main issue here is whether the filing of a development permit and subdivision application crystallizes rights such that it must be dealt with under the existing law at the time it was filed, or whether the appropriate law is that in existence at the time of the court application.

12 The Applicant relies on the Supreme Court of Canada decision in *Ottawa (City) v. Boyd Builders Ltd.*, [1965] S.C.R. 408 (S.C.C.) for the proposition that it is entitled to have its application for a development permit considered according to the law as it existed when its application was delivered to the Town. I do not agree with this interpretation. Spence J.'s decision in *Boyd Builders Ltd.* has been the topic of much judicial comment. For example, in *Monarch Holdings Ltd. v. Oak Bay (District)* (1977), 79 D.L.R. (3d) 59 (B.C. C.A.), McIntyre J.A., representing the majority, noted previous authority and distinguished *Boyd Builders Ltd.* to its facts, at p. 74:

> The *Boyd* case is distinguishable from the case at Bar and its application must be limited to the situation in Ontario or other provinces where zoning by-laws require approval, after passage by municipal councils, by an external approving authority. Section 30(9) of *The Planning Act*, R.S.O. 1960, c.296, then in force in the province of Ontario required approval of the zoning by-law by the Municipal Board before it became effective. Therefore, when the application for a mandatory order was made, while the by-law had been passed by the council, it had not been approved by the Municipal Board and had not become part of the "law of the land". Herein lies the main point of distinction between *Boyd* and the case at Bar. Here the Court was faced with a by-law which, on its face, had been regularly passed and which had become part of the "law of the land" when the decision had to be made on

> the question of mandamus. [Emphasis added.]

13 The Applicant also relied on *Cambridge Leaseholds Ltd. v. Toronto (City)* (1973), 37 D.L.R. (3d) 43, [1973] 3 O.R. 378 (Ont. Div. Ct.). This decision does not help the Applicant because it also interprets *Boyd Builders Ltd.* as being limited to an adjournment application. Therefore, *Boyd Builders Ltd.* says that if a by-law has been passed but is not in force because it has not yet been approved by an external approving authority, then the municipality can seek an adjournment of an application for mandamus until they have an opportunity to seek the external authority's approval, but the onus is on the municipality to show the three prerequisites outlined in that case. This may have been the situation in the case at bar if the Town had sought an adjournment of the Applicant's mandamus application and if the bylaws in question had not yet been approved by the Federal Minister of Heritage. However, this is not the case here. The Town has not sought an adjournment, and the bylaws in question were approved by the external approving authority before these applications were before the court and they have therefore become the "law of the land". *Boyd Builders Ltd.* does not apply here.

14 The law relevant to the consideration of the mandamus application is that in force at the time of the court application. In *Monarch Holdings, supra*, McIntyre J.A. presents a concise analysis of *Toronto (City) Roman Catholic Separate School Board v. Toronto (City)* (1925), [1926] A.C. 81, [1925] 3 D.L.R. 880 (Ontario P.C.), *Upper Canada Estates Ltd. v. MacNicol*, [1931] O.R. 465, [1931] 4 D.L.R. 459 (Ont. S.C.); affirmed (1932), 41 O.W.N. 92, [1932] 2 D.L.R. 528 (Ont. C.A.), *Spiers v. Toronto (Township)*, [1956] O.W.N. 427, 4 D.L.R. (2d) 330 (Ont. H.C.), and *Canadian Petrofina Ltd. v. Martin*, [1959] S.C.R. 453 (S.C.C.), all which accept that it is the "law of the land" at the time of the court hearing that is relevant. McIntyre J.A. begins the analysis with a discussion of the nature of a landowners' rights versus the statutory rights of municipal corporations, at p. 75:

> The weight of authority supports the view that the prima facie right of a landowner to do what he will with his land can be defeated by a by-law passed in good faith by a municipal council. The Courts have long recognized that inherent in the power to zone and rezone properties is the power to affect rights adversely and to make differing regulations in differing districts or areas within a municipality. It is inevitable that proprietary rights will suffer from time to time and that restrictions will be imposed which fetter the ordinary use of land. This alone, however will not justify the quashing of a by-law and much less the issue of a mandamus directing municipal officers to act in direct contradiction of a by-law.

15 The rule that the relevant law is that existing at the time of the court hearing has been recently applied in Alberta in *Parks West Mall Ltd. v. Hinton (Town)* (1994), 15 Alta. L.R. (3d) 400 (Alta. Q.B.). Having said this, it is necessary to determine what the "law of the land" was at the time of the court application, as it related to the Town of Banff land use bylaws, before I determine whether the Applicant is entitled to mandamus.

c. The relevant bylaws in existence in the case at bar.

16 The parties are correct in that Bylaw 31-2 has never been approved by the Minister and has therefore never been in force.

17 Bylaws 167-1 and 31-1 were both in effect on June 29, 1998 when the Applicant applied for the development permit. However, on June 30, 1998, the Town passed Bylaw 167-2, which replaced Bylaw 167-1. Both Bylaws 167-2 and 31-1 were repealed on December 11, 1998 when Bylaw 31-3 and the new Banff Community Plan (adopted via Bylaw 172-1) was approved by the Federal Minister of Heritage. Thus, on its face, the relevant land use bylaw to the Applicant's development permit and subdivision application is Bylaw 31-3.

d. The merits of the application for mandamus.

18 I have concluded that Bylaw 31-3 is the relevant land use bylaw in existence at the time of the court application, and that this is the bylaw that the Application must "otherwise conform to" to establish that the Town has not fulfilled its statutory obligation under s.642(1), and to show that it is entitled to an order in the nature of mandamus.

19 The Applicant's June 29, 1998 development permit application purported to be an extension of Development Permit 90-DP-8, which expired in 1996. It was not an "extension" of Development Permit 90-DP-8 in the sense that it would have continued the permit as if it never expired. Rather, the June 29, 1998 application was a fresh development permit application seeking to obtain the advantageous conditions and terms of the then expired Development Permit 90-DP-8.

20 Bylaw 31-3 changed the way the Town deals with commercial development. Under the new system, landowners proposing developments of a certain size must apply for and receive a development allotment for a parcel of land before a development permit can be issued. If demand for the allotments exceeds the yearly amount of allotments available, the allotments are issued randomly. Once a developer has an allotment it can then apply for a development permit, which still must conform to the specific development restrictions of the particular district outlined in the bylaw. Section 9.0.0 says:

> Unless otherwise provided in these regulations, no Development Permit for a commercial use shall be issued except where a valid commercial use development allotment exists for the parcel. Any Development Permit issued for a commercial use shall not authorize development of gross floor area in excess of the applicable commercial use development allotment. [Emphasis added.]

21 Clearly the Applicant could not be issued a development permit under its June 29, 1998 development permit application because, *inter alia*, the Applicant has not received a valid development allotment.

22 I conclude that the mandamus application should be dismissed. The Applicant's development permit application does not conform with Bylaw 31-3, which is the relevant bylaw

under s.642(1). Therefore, the Respondents had no statutory duty to issue a development permit. The Applicant also requests that the Respondents be compelled to at least give proper consideration to their application. While it is not clear that s.642(1) also mandates that the Respondents must do this, I would suggest that they did consider the application to the extent that they established that it had no reasonable prospect of success. I am not going to order them to accept application fees and consider a futile application that, if granted, would be contrary to the law.

23 I note that the Applicant has also challenged the validity of Bylaw 31-3 on three grounds, which I discuss later in these reasons. In case I am wrong in my finding below that Bylaw 31-3 is valid, I wish to point out that even if Bylaw 31-3 were declared invalid it would not change the result of the application for mandamus. Bylaw 31-3 repealed Bylaw 167-2's commercial development freeze. If Bylaw 31-3 is void, then Bylaw 167-2 would still be the "law of the land" until it became ineffective on December 31, 1998. Accordingly, Bylaw 167-2 would still have been in force as of the date of the court application on December 17, 1998. It is clear on its face that the Applicant's development permit application does not conform with the strict restrictions of Bylaw 167-2, and the Applicant has not challenged the validity of Bylaw 167-2. Thus, the Respondents would not be under a statutory duty to consider and issue a development permit that is clearly contrary to the land use bylaw, and the application for mandamus would rightly be dismissed in this situation as well.

2. The Applications To Declare Certain Bylaws Invalid.

24 While the mandamus application is dismissed in any event, the Applicant also seeks declarations that Bylaws 167-1, 31-2, and 31-3 are void. I do not need to make declarations on the validity of the contents of Bylaws 167-1 or 31-2 because they are no longer in force and the issue of their validity is now moot. However, Bylaw 31-3 remains in force, and I will address the three arguments forwarded by the Applicant that suggest it is void: that the Town does not have legal authority to pass Bylaw 31-3, that it is uncertain, and that it unlawfully discriminates against the Applicant.

a. Lack of legal authority.

25 The Applicant argues that there is nothing in Division 5 of Part 17 of the *Municipal Government Act* which specifically authorizes the inclusion in a land use bylaw the kind of commercial growth management regulations that are set out in s.9 of Bylaw 31-3. It argues that this legislation does not authorize the lottery created in s.9. I disagree. Section 640(1) of the *Municipal Government Act* states:

> 640(1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality.

26 Given the wording of this section, it can be said that a "land use bylaw may ... regulate

and control ... the development of land." The allotment system provided under Bylaw 31-3 is quite logically the regulation and control of the development of the land within the Town pursuant to a new philosophy of commercial development control. Section 640(1) is distinct from s.640(2) and the s.640(2) requirements relating to development permits. Bylaw 31-3 still meets the requirements under s.640(2): it divides the municipality into districts, prescribes the permitted or discretionary uses, and establishes the means by which decisions will be made regarding development permits. However, in addition to this, the Town has decided to further regulate land development by instituting a random allotment system. While this is not specifically authorized by the *Municipal Government Act*, the broad powers of regulation and control outlined in s.640(1) provide the Town with legal authority to create such a system.

b. Uncertainty.

27 The Applicant argues that Bylaw 31-3 is void for uncertainty, and in particular points out several provisions of s.9 that it claims are too vague to be legal. When words in a bylaw are challenged as uncertain, the "Courts have to determine each time whether the true meaning of the by-law in question can be understood by the persons to whom it applies": *Fountainhead Fun Centre Ltd. v. Montreal (Ville)* (1985), 18 D.L.R. (4th) 161 (S.C.C.).

28 The intent of s.9 of Bylaw 31-3 is clear. The Town wishes to limit commercial growth to a certain amount to preserve the future of its unique municipality. A finite amount of commercial growth will be allowed in total, and a finite amount of commercial growth will be allowed each year. With these restrictions in place, development in the Town will likely be highly competitive. Section 9 intends to deal with high demand for development allotments by utilizing a random draw. Once a developer has a development allotment under this system, they are entitled to apply for a permit, provided that it still meets the district-specific development permit requirements outlined in Bylaw 31-3. The intent of the bylaw is clear, not vague.

29 The Applicant points out what it contends are inconsistencies and meaningless provisions in s.9 of the Bylaw. I have considered these arguments, and, in my opinion, these are merely questions of interpretation and construction that can be resolved in the appropriate case by taking the clear intent of the bylaw into consideration. Difficulty of interpretation does not make a bylaw void. Beetz J., in *Montreal (Ville)*, *supra*, cited with approval the following passage from *Re North Vancouver Shops Regulation By-law*, [1972] 2 W.W.R. 625 (B.C. S.C.); affirmed (1972), [1973] 1 W.W.R. 192 (B.C. C.A.):

> In my view the wording objected to in the by-law before me does not have that quality of vagueness and uncertainty which is such as to render the by-law invalid in part or in whole. It may be that the by-law here will occasion some difficulty of interpretation. But difficulty of interpretation is not to be confused with vagueness and uncertainty to the point of invalidity. [Emphasis added.]

30 This is the case here. Bylaw 31-3 may present some difficulties of interpretation and

construction, but that does not, in these circumstances, render it invalid due to vagueness. While the outcome of the random draw may be uncertain, the machinery governing the lottery is understandable by those who are affected by it.

c. Unlawful Discrimination.

31 Finally, the Applicant attacks Bylaw 31-3 on the ground that it unlawfully discriminates against the Applicant and its lands. First, it argues that Bylaw 31-3 reduces the floor-area ratio requirement in the Pinewoods district more than in other districts where hotels are a permitted use. Second, it argues that the random-draw system in the bylaw improperly discriminates between small and medium-to-large developments in that the small developments are excluded from the random draw.

32 In *Montreal (Ville)* , *supra*, Beetz J. reiterated the general rule governing discriminatory bylaws, at p. 188:

> The rule that the power to make by-laws does not include that of enacting discriminatory provisions unless the enabling legislation provides the contrary has been observed from time immemorial in British and Canadian public law. It has been and still is applied in municipal law.

33 The question is whether the Town is empowered by legislation to draw the distinctions drawn by Bylaw 31-3.

34 The framework of the *Municipal Government Act*, as it relates to land use bylaws, compels municipalities to divide its areas into districts under s.640(2)(a), and then under s.640(4) provides:

> 640(4) Without restricting the generality of subsection (1), a land use bylaw may provide for one or more of the following matters, either generally or with respect to any district or part of a district established pursuant to subsection (2)(a):
>
> [...]
>
> (b) the ground area, floor area, height, size and location of buildings; [...]
>
> [Emphasis added.]

35 This is direct legislative authority for municipalities to treat districts differently regarding the floor area and size requirements of buildings. This is a necessary and fundamental aspect of municipal law, and this is precisely what Bylaw 31-3 does both with respect to the floor-area ratios and the size of developments. First, the floor-area ratio requirement applies equally to all Pinewoods district developers wishing to develop a permitted use (which now includes

apartment housing). Second, the size distinction under s.9 is a general size distinction which is also provided for under this section. Bylaw 31-3 is not void because it is unlawfully discriminatory.

E. Conclusion

36 As I outlined earlier, these reasons relate to three separate applications by the Applicant. For the reasons outlined above I have come to the following conclusions. With respect to Action 9801-09713, I do not need to declare Bylaw 167-1 void, for it is no longer in force. I also decline to give an order in the nature of mandamus, for the Applicant's development permit and subdivision application was handled properly according to the law of the land at the time of the court application. I note that the Applicant can now apply for a development allotment under Bylaw 31-3. With respect to Action 9801-10117, I do not need to declare Bylaw 31-2 void, for it has never been in force due to the lack of appropriate Ministerial approval. I need not further address the content of Bylaw 31-2. Finally, relating to Action 9801-15140, I find that Land Use Bylaw 31-3 is a valid bylaw and the application to declare it invalid is dismissed. The Town has legal authority to enact such bylaws, and Bylaw 31-3 is neither uncertain nor unlawfully discriminatory.

37 The Respondent is entitled to costs.

Applications dismissed.

TAB 9

2000 ABCA 117
Alberta Court of Appeal

Bouchard v. Subdivision & Development Appeal Board of Canmore

2000 CarswellAlta 359, 2000 ABCA 117, 10 M.P.L.R. (3d) 36, 225 W.A.C. 342, 261 A.R. 342, 96 A.C.W.S. (3d) 1061

In the Matter of the *Municipal Government Act*, c. M-26.1, as Amended, and Regulations

In the Matter of the Appeal of Kimberley Bouchard and Jacques Bouchard, Concerning the Order of the Subdivision and Development Appeal Board of the Town of Canmore Dated May 15, 1998, Appeal No. 98-05, File No. DP97-191

Kimberley Bouchard and Jacques Bouchard, Appellants and The Subdivision and Development Appeal Board of Canmore and the Town of Canmore, Respondents

Fraser C.J.A., Picard, Wittmann JJ.A.

Judgment: February 29, 2000
Docket: Calgary Appeal 98-17821

Counsel: *K.H. Davidson*, for Appellants.
R. Kambeitz, for Respondents.

Subject: Public; Municipal

Related Abridgment Classifications

Municipal law

XV Development control
XV.4 Development permits
XV.4.b Jurisdiction and powers
XV.4.b.ii Development appeal board

Headnote

Municipal law --- Development control — Development permits — Jurisdiction and powers — Development appeal board

Developers' application for permit to construct new school was denied by board — Rehearing ordered by court because board had improperly met with town representative before making decision — New by-law was passed between board's initial hearing and subsequent hearing that changed zoning — As result of amendment, developers proposed that land use, construction of school, be changed from discretionary use to prohibited one — At rehearing board denied application on sole ground that new by-law applied and that proposed development was prohibited use — Developers appealed board's decision to apply new by-law on rehearing — Appeal dismissed — Developers' rights to development permit under old by-law had not crystallized to point where that right could be raised to defeat operation of new by-law — Under old by-law, proposed use was discretionary use only — Developers had no absolute entitlement to issuance of development permit — Developers were not in position of landowner who had absolute right to development permit — No evidence of bad faith existed — New by-law applied to rehearing.

Table of Authorities

Cases considered by *Fraser C.J.A.*:

Canadian Petrofina Ltd. v. Martin, [1959] S.C.R. 453, 18 D.L.R. (2d) 761 (S.C.C.) — referred to

Ottawa (City) v. Boyd Builders Ltd., [1965] S.C.R. 408, 50 D.L.R. (2d) 704 (S.C.C.) — referred to

APPEAL from decision of Subdivision and Development Appeal Board dismissing application for development permit.

***Fraser C.J.A.* (for the court):**

1 This is an appeal from a decision made by the Subdivision and Development Appeal Board of Canmore [Board] at a rehearing ordered by this Court.

2 The Bouchards originally applied to the Town of Canmore [Town] for a Development

Permit for construction of a new school. The development officer refused the application. On appeal to the Board, the Board also refused the application. Then, between the time of the Board's initial hearing on this application and the subsequent rehearing, the Town passed a bylaw amending the Land Use Bylaw [new bylaw]. The new bylaw changed the zoning of the lands in question, as well as other lands, to Wild Lands Conservation District. The effect of this amendment was to change the Bouchards' proposed land use (construction of a school) from a discretionary one to a prohibited one.

3 Some time later, by consent of the parties, this Court ordered a rehearing by the Board because the Board had, during the first hearing, improperly met with a representative of the Town before making its decision. That rehearing was held and the Board issued an order dismissing the Bouchards' application on the sole ground that the new bylaw applied and under that new bylaw, the proposed development was now a prohibited use. The Bouchards now appeal the Board's decision to apply the new bylaw instead of the bylaw as it existed at the time of the first hearing.

4 Leave was granted to appeal the Board's decision at rehearing on this question:

> Did the Board commit an error of law or jurisdiction in finding that amended Municipal District of Big Horn No. 8 Land Use Bylaw No. 1996, as amended on October 28, 1997, applied and not the bylaw as it existed at the time of the appellants' first appearance before the Board on May 20, 1997, in light of the fact that the Board had been ordered by the Court of Appeal to rehear the appeal which was the subject of the May 20, 1997 hearing?

The issue, therefore, simply stated is this: Did the new bylaw govern the Bouchards' rights on rehearing?

5 The Bouchards argue that the rights and duties of the parties should have been decided in accordance with their status during the first hearing because the rehearing was a continuation of that first hearing. The Town and the Board assert that the matter should be decided by the law in force at the time of the rehearing and accordingly, on this basis, the new bylaw governed.

6 There is no doubt that this Court ordered a rehearing of the subject application and that this rehearing was grounded in the procedural unfairness of the original hearing. As noted, the key question is which bylaw governed the rehearing: the old one or the new one. Another way of formulating this question is to ask whether the Bouchards had secured "rights" under the old bylaw which had crystallized or materialized to the point where any adjudication by the Board on rehearing should have been made under the substantive provisions of the old bylaw, and not the new bylaw.

7 It is clear that an application for a development permit does not create vested rights in the face of a bylaw passed in good faith and in furtherance of legitimate planning objectives. But, it is argued, the Bouchards are in a different position. They are not mere applicants, but rather applicants whose procedural rights were breached when a representative of the Town wrongly

sat in on the *in camera* deliberations of the Board. Thus, according to the Bouchards, the dispute here is between the Bouchards' right to procedural fairness, on the one hand, and the Town's right to re-zone lands in the public interest, on the other.

8 In our view, the Bouchards' position *vis-à-vis* development of the subject leasehold lands had not reached the stage where it could be said that their right to a development permit under the old bylaw had crystallized to the point where that right could be raised to defeat the operation of the new bylaw.

9 It must first be pointed out that this case does not involve any assertion of bad faith on the Town's part in passing the new bylaw.

10 Further, we note that the Bouchards had no absolute entitlement to the issuance of a development permit under the old bylaw. Their proposed use of the subject lands, namely, as a school, was, as mentioned, a discretionary use only under the old bylaw. Thus, it cannot be said that the Bouchards are in the position of a landowner who had an absolute right to a development permit; that permit was denied; and a later bylaw was passed while the earlier decision was being appealed.

11 We do not find it necessary to determine the scope of the rights which a landowner may have in that position. Whatever remedy to which that landowner would be entitled (and *quaere* whether the landowner could compel issuance of a development permit in these circumstances given the Supreme Court of Canada's decisions in *Canadian Petrofina Ltd. v. Martin*, [1959] S.C.R. 453 (S.C.C.) and *Ottawa (City) v. Boyd Builders Ltd.*, [1965] S.C.R. 408 (S.C.C.)), that is not the case under consideration here. The Bouchards had no such entitlement. Thus, in our view, absent any evidence of bad faith, the new bylaw properly applied at the rehearing of the Bouchards' development application.

12 In the result, the answer to the question on which leave was granted, namely, did the Board commit an error in applying the new bylaw to the rehearing, is No.

13 For these reasons, the appeal is dismissed.

Appeal dismissed.

TAB 10

Most Negative Treatment: Distinguished
Most Recent Distinguished: Neufeld v. Mountain View (County) | 2014 ABQB 443, 2014 CarswellAlta 1341, 243 A.C.W.S. (3d) 1011, 26 M.P.L.R. (5th) 184, 9 Alta. L.R. (6th) 255, 592 A.R. 364, [2014] A.W.L.D. 4143, [2014] A.W.L.D. 4144 | (Alta. Q.B., Jul 22, 2014)

1965 CarswellOnt 66
Supreme Court of Canada

Ottawa (City) v. Boyd Builders Ltd.

1965 CarswellOnt 66, [1965] S.C.R. 408, 50 D.L.R. (2d) 704

The Corporation of the City of Ottawa and Michael C. Instance, Acting Building Inspector for the said City of Ottawa and Maxwell C. Taylor, Building Inspector for the said City of Ottawa (Respondents), Appellants and Boyd Builders Limited (Applicant), Respondent

Cartwright, Abbott, Martland, Judson and Spence JJ.

Judgment: February 16, 1965
Judgment: February 17, 1965
Judgment: March 18, 1965

Proceedings: On appeal from the Court of Appeal for Ontario

Counsel: *R.D. Jennings, Q.C.*, for the appellants.
G.F. Henderson, Q.C., and *K. Radnoff*, for the respondent.

Subject: Contracts

Related Abridgment Classifications

Construction law
I Statutory regulation
I.1 Building permits
I.1.e Compelling issuance
I.1.e.vi Stay of order

Headnote

Construction Law --- Statutory regulation — Building permits — Compelling issuance — Discretion to grant or adjourn

Use permitted by by-law for 26 years — Application for permit for apartments — By-law amended 10 days later — Absence of notice — Planning Act, R.S.O. 1960, c. 296, s. 30(9) — Municipal Act, R.S.O. 1960, c. 249, s. 277(1).

Appellant corporation bought two adjacent parcels of land for the purposes of building apartments. The proposed use was permitted by a zoning by-law passed in 1936, and by a comprehensive zoning by-law passed in 1963, before the purchases. The corporation applied to the building inspector for a building permit, and submitted plans that but for minor details complied in full with the city's requirements. The residents of the area petitioned the Planning Board, and, 10 days after the filing of the application by the corporation the 1963 by-law was amended, without notice to the corporation, to prevent the erection of apartments. The city applied to the Municipal Board for approval of the amendment, and the corporation applied for an order of mandamus directing the issue of a building permit. The application was adjourned sine die to enable the Municipal Board to approve the by-law. On appeal from the order granting the adjournment, held, the appeal should be allowed. (1) For a period of 26 years the lands in question could be used for apartments, and this was confirmed by the city in 1963; the corporation therefore had a prima facie right to a building permit of the kind applied for. The passage of the amendment at such short notice, without giving the corporation a chance to be heard, was clear evidence of bad faith. (2) The city could not argue that the amendment was merely rectifying a mistake: it should know the scope of its own by-laws. The corporation did know the scope of the by-law and in good faith regulated its activity in accordance therewith. On further appeal, held, the appeal should be dismissed. By virtue of s. 30(9) of the Planning Act, the by-law in question did not come into effect until approved by the Municipal Board. Since the application for a building permit and the application for mandamus ordering the issue of the permit were filed before the Municipal Board validated the by-law, there was no valid by-law in existence prohibiting the issue of a permit. The prima facie right of applicant could be defeated only if the municipality proved that there existed a clear plan for zoning the area and that it was in order to effect this plan that the by-law was passed. This appellant had failed to demonstrate. Despite s. 277(1) of the Municipal Act, which provided for an application to quash the by-law, applicant for the building permit, who had a prima facie right to the permit, was entitled to obtain the mandatory order when the municipality failed to show that a clear zoning plan was in existence.

The judgment of the Court was delivered by *Spence J.*:

1 This is an appeal from the judgment of the Court of Appeal for Ontario[1] dated April 23, 1964, which allowed an appeal from the order of Mr. Justice Schatz. By that latter order, Mr. Justice Schatz had adjourned, pending the hearing of the appellants' application for approval by the Ontario Municipal Board, an application by Boyd Builders Limited for a mandatory order requiring the City of Ottawa and its building inspector to issue a building permit as to certain lands on Sherwood Drive in the city upon which it was proposed to erect an apartment house.

2 Roach J.A., giving judgment in the Court of Appeal, upon recital of the facts some of

which will be referred to hereafter, held that the application for the mandatory order should not have been adjourned and that upon the facts the applicant Boyd Builders Limited had a *prima facie* right to be granted a building permit and that the municipality was not acting in good faith and impartially when it enacted by-law 311/63 thus defeating the applicant's *prima facie* right.

3 An owner has a *prima facie* right to utilize his own property in whatever manner he deems fit subject only to the rights of surrounding owners, *e.g.*, nuisance, etc. This *prima facie* right may be defeated or superseded by rezoning if three prerequisites are established by the municipality, (a) a clear intent to restrict or zone existing before the application by the owner for a building permit, (b) that council has proceeded in good faith, and (c) that council has proceeded with dispatch.

4 Counsel for the appellants in this Court advanced a proposition which he states was fully argued in the Court of Appeal but which is not reflected in any way in the reasons of Roach J.A. giving the judgment of that Court. This argument is that the Courts in Ontario lack power to grant the mandatory order and for the following reasons. The *Municipal Act*, in s. 277(1) provided a definite procedure for an application by way of originating motion to quash a by-law. The *Planning Act* in s. 30 provides in subs. (9) for approval of a zoning by-law by the Municipal Board and that the by-law would only be effective upon such approval. Mr. Jennings argued that the by-law was not illegal on its face and it could only be quashed because of bad faith or discrimination *established in an application to quash*. Mr. Jennings further submitted that the applicant had two courses available to it. It could make an application to the Court to quash or it could allow the application for approval required by s. 30(9) of *The Planning* Act to go before the Municipal Board and there appear to oppose. Counsel pointed out the provisions of *The Ontario Municipal Board Act*, particularly ss. 33 to 37, 53, 56, and 92 to 95, submitted that the Legislature had selected the Municipal Board to determine exclusively whether the by-law should be brought into effect and, *inter alia*, to decide all questions of fact including good faith.

5 I am of the opinion that the approach of the Court of Appeal for Ontario is a sound one. Under the provisions of s. 30(9) of *The Planning Act* the by-law is not in effect unless and until approved by the Municipal Board. Therefore, when Boyd Builders Limited made application for a building permit and later when refused made application for a mandatory order that a building permit be issued, there was no valid by-law in existence prohibiting the grant of such permit. Therefore, Boyd Builders Limited had a *prima facie* right to the permit and upon its refusal a *prima facie* right to a mandatory order that it should be granted. This *prima facie* right may only be defeated if the municipality demonstrates that it has in existence a clear plan for zoning the neighbourhood with which it is proceeding in good faith and with dispatch.

6 I see no necessity for the applicant for the permit taking on itself the task of proceeding to quash the by-law. It may well be that the by-law applies to a very large area and, of course, the building permit would apply to only a part thereof. It may be that in so far as the balance of the area is concerned, there is a valid plan of rezoning and that so far as the owners of such balance of the area are concerned council is proceeding in good faith and with dispatch.

7 What the applicant seeks in these proceedings is the enforcement of his common law

right, and that common law right should be viewed as of the date of the filing of its application for a permit subject to the common law right being superseded in the fashion I have outlined by events which may occur even after the date of the filing of the application for a permit and before the application for a mandatory order.

8 The series of cases in Ontario included examples both where the by-law, although non-existent at the time of the application for the permit was in existence at the time of the hearing of the application for a *mandamus*, and others where the by-laws were not in existence at such later date. Some of the applications for *mandamus* had been granted and some have been refused. Some have been refused and the matter adjourned even when no by-law existed at the time of the hearing of the application for *mandamus*: *Re Marckity et al. and the Town of Fort Erie and Burger*[2]. There are other cases and frequent cases where the by-law had been enacted between the date of the application for a building permit and the date of the hearing of the application for *mandamus* which followed the refusal of the permit, and where the *mandamus* had been granted. It is true that most of these cases are decisions of single judges, *e.g., Re Bridgman and City of Toronto et al.*[3], *Re Greene and City of Ottawa*[4], *Re Beaver Lumber Co. Ltd. and Township of London*[5], *Re Skyway Drive-In Theatres Ltd. and Township of London*[6], *Re Cooksville Co. Ltd. and Township of York et al.*[7] There were, however, several in the Court of Appeal. Although *Hammond v. City of Hamilton*[8] is a case where there had not yet been a by-law enacted at the time of hearing the application for *mandamus*, the proposition there enunciated and particularly that set out by Roach J.A. at p. 221, has been adopted both by single court judges and by the Court of Appeal in cases where a by-law was enacted during the intervening period: *Sun Oil Co. Ltd. v. Town of Whitby*[9], *Re Markham Developments Ltd. and Township of Scarborough*[10]. These are cases where the *prima facie* right of the applicant to have a building permit has been held by the Court not to have been superseded because the municipality has not fulfilled the three requirements outlined by Roach J.A. in *Hammond v. Hamilton, supra*.

9 I, therefore, am of the opinion that despite the provisions of *The Municipal Act* and *The Planning Act*, the applicant Boyd Builders Limited having, at the date when it filed its application for a building permit, the *prima facie* right to have that permit granted, could insist upon the hearing of the application for *mandamus* that the municipality manifest that it had a clear zoning plan upon which it was proceeding in good faith and with dispatch. In so far as the previous sentence puts the onus upon the municipality, I agree with counsel for the respondent that such is the effect of *Sun Oil v. Whitby, supra*, and the judgment of LeBel J. in *Bolton v. Munro et al.*[11] The judgment of this Court in *Kuchma v. Rural Municipality of Tache*[12], and that of the Appellate Division in *Re Howard and City of Toronto*[13], fixing the onus upon the applicant should be confined to the situation where the applicant seeks to quash a by-law. There, the applicant is in a position of a plaintiff and has the onus, and particularly has the onus of proving bad faith. On the other hand, where the applicant seeks a *mandamus* to which he has a *prima facie* right and the municipality seeking to defeat that *prima facie* right, alleges, *inter alia*, its good faith the onus should be on it to establish such good faith. However, in the particular case, I am of the opinion that onus is quite unimportant. The facts are not in dispute. For 26 years, these lands stood without building restrictions. They had been restricted by by-law 8214 passed in 1936 and then that restriction was removed by amending by-law 8255

of the same year. The property stood unaffected by building restrictions from July 1936 to March 1963. A general zoning by-law, No. 68/63, was then enacted which provided that the lands in question here should be zoned R-5, a zoning category permitting the erection of apartments. Section 112 of that by-law provided that notwithstanding its enactment, when areas were covered by other by-laws set out in the schedule, the zoning provided by such other by-laws should remain in effect. The aforesaid by-law 8214 was set out in the schedule. That by-law, of course, must be considered in its amended form, *i.e.*, that the lands here in question were excepted therefrom by 8255, so that the result of the general zoning by-law was to zone these lands as R-5. There was produced upon the hearing of the appeal, one of the zoning maps which formed part of the said by-law 68/63 which map indicated in heavy dark print the zoning designation R-5 immediately over the lands in question.

10 In these circumstances, Boyd Builders Limited inquired carefully as to the restrictions covering the property and were correctly assured by municipal officers that the lands were zoned to permit apartment houses. Acting on that assurance, Boyd Builders Limited took options and have since completed the purchase of two pieces of land at a total cost of about $60,000 then immediately instructed its architects to draft plans for an apartment house and by the agency of the architects, on September 9, 1963, submitted an application for a building permit. Apart from certain minor modifications, these plans were such as would justify the granting of a building permit and the acting building inspector, the appellant Instance, admitted that if he had not been instructed to refuse the permit he would have granted one on September 19, 1963. He did not do so, however, because upon it becoming known that the application had been made for such permit surrounding residents raised a clamour, the Ottawa Planning Board met on September 18, 1963, considered the objections of these surrounding property owners, and recommended that the lands in question be rezoned in such a fashion as to prohibit the building of apartment houses. No notice of this meeting of the Ottawa Planning Board was given to any representative of Boyd Builders Limited and no officer of that company had knowledge of it.

11 At the meeting of council on the very next day, September 19, 1963, the report of this Planning Board was considered and approved and by-law 311/63 making the recommended variations in the zoning was given three readings. The meeting took place in the evening and again no notice whatsoever was given to Boyd Builders Limited of the intention to consider and rezone at such meeting, nor did any officer of Boyd Builders have any knowledge of it.

12 Immediately thereafter, again, on the next day, September 20, 1963, an application was forwarded to the Municipal Board for the approval of the hastily enacted by-law, 311/63. Although the City Clerk swears that he forwarded notice of such application for approval to "all owners of property in the City of Ottawa within the area affected by by-law 311/63, and within 300 feet of such area", no such notice was received by the officers of Boyd Builders Limited. An officer of Boyd Builders Limited, however, heard of the enactment of this by-law and attending the municipal offices confirmed that fact. Boyd Builders Limited, therefore, prepared its application for the issue of *mandamus*. The application is dated September 30, 1963, and is supported by the affidavits of Joseph Liff sworn on September 27, 1963, and various affidavits of Ernest B. Colbert, the president, some sworn also on that date. On October 2, 1963, both

H.M. MacFarland, an officer in the City Clerk's department, Mr. Hastey, the City Clerk, and W.J. Robertson, the secretary of the Ottawa Planning Board, refused to permit the applicant's representative to scrutinize or take copies of the minutes of either the meeting of the Planning Board or of council.

13 In my view, a most telling circumstance occurred on September 19, 1963, when Mr. Colbert, the president of the respondent, conferred with the City Solicitor, Mr. Hambling, and delivered to him a letter of that date composed by his solicitor. Mr. Hambling conferred with Mr. McLean of the Building Inspector's office, and advised Mr. McLean that in his opinion a building permit could be issued. Nevertheless, Mr. McLean and Mr. Instance, the acting building inspector, refused to issue a permit because they had been instructed not to do so. Mr. Instance in the course of the cross-examination upon his affidavit, admitted that if by-law 311/63 had not been enacted on September 19th and he had not received instructions from the Board of Control to withhold issuing a building permit he would have done so on that latter date.

14 The relevant cases may be summarized by stating the most important *indicia* of good faith in these matters are frankness and impartiality.

15 With respect, upon the circumstances outlined above, I adopt the conclusion of Roach J.A. in the Court of Appeal when he said:

> When on March 22, 1963, the City passed its zoning By-law 68/63 it did not thereby prohibit the erection of an apartment building thereon; indeed it expressly permitted it. Accordingly when the appellant filed its application for the building permit it had a *prima facie* right to it. Up until then the Municipal Council had not manifested any intention of varying the then existing restrictions. In passing By-law 311/63 the Council was not acting in good faith. It passed that by-law for the express purpose of defeating appellant's *prima facie* right to the permit. It yielded to the protests of some of the other owners in the immediate neighbourhood for whom the Planning Board was "sympathetic". It passed that by-law without any opportunity having been given to the appellant, which was so vitally interested, to make any representations concerning it. Everything that was done to defeat the appellant's *prima facie* right was done behind its back for the obvious purpose of avoiding embarrassment that the appellant's protestations on its own behalf might cause. *It is difficult to think of any stronger evidence of bad faith.*

(The italicizing is my own).

16 I am, therefore, of the opinion that the appellant failed to manifest that it was proceeding on a pre-existing clear intention to restrict the lands in question and was acting in good faith in so doing.

17 One further matter should be referred to. The interesting question was proposed that if this appeal were dismissed and therefore the building inspector, in accordance with the judgment of the Court of Appeal, were required to and did issue the necessary building permit, and if hereafter the Ontario Municipal Board approved the by-law, No. 311/63, then such

approval would date back to the date of the by-law, *i.e.*, September 19, 1963, and the result would be that the building inspector had been required by the court order to grant a building permit contrary to the provisions of the city by-law and moreover such permit might well be vain as the by-law, by virtue of s. 30(1)(ii) of *The Planning Act*, R.S.O. 1960, c. 296, as amended, would not only prohibit the erection of the building but its use. There are two answers to such a submission. Firstly, it would not be expected that the Ontario Municipal Board would take such a course in light of the fact that on November 8, 1963, that board made an order directing that no further step should be taken in respect to the application for approval of the said by-law pending the final determination of Boyd Builders Limited application for a mandatory order. Therefore, one would expect the said Ontario Municipal Board to make no order approving the by-law in respect of the lands in question after the mandatory order requiring the issue of the building permit had been made by the Court of Appeal and confirmed by this Court. Secondly, the respondent here expresses willingness to stand by the position that once that mandatory order has become final its position is protected by the provisions of s. 30(7)(*b*) of *The Planning Act*.

18 For these reasons, and for those given by Roach J.A., I would dismiss the appeal with costs.

Appeal dismissed with costs.

Solicitors of record:
Solicitor for the appellants: *D.V. Hambling*, Ottawa.
Solicitors for the respondent: *Soloway, Wright, Houston, Galligan & McKimm*, Ottawa.

Footnotes

1 [1964] 2 O.R. 269, 45 D.L.R. (2d) 211.

2 [1951] O.W.N. 836.

3 [1951] O.R. 489.

4 [1951] O.W.N. 674.

5 [1951] O.W.N. 23.

6 [1947] O.W.N. 489.

7 [1953] O.W.N. 849.

8 [1954] O.R. 209.

9 [1957] O.W.N. 362.

10 [1954] O.W.N. 81.

11 [1953] O.W.N. 53.

12 [1945] S.C.R. 234.

13 (1928), 61 O.L.R. 563.

TAB 11

Most Negative Treatment: Distinguished
Most Recent Distinguished: Bengston v. Alberta (Natural Resources Conservation Board) | 2003 ABCA 173, 2003 CarswellAlta 775, 1 C.E.L.R. (3d) 172, 14 Alta. L.R. (4th) 256, 123 A.C.W.S. (3d) 584, [2003] A.J. No. 692, 330 A.R. 81, 299 W.A.C. 81 | (Alta. C.A., May 29, 2003)

2002 ABCA 292
Alberta Court of Appeal

Love v. Flagstaff (County) Subdivision & Development Appeal Board

2002 CarswellAlta 1598, 2002 ABCA 292, [2002] A.J. No. 1516, [2003] 4 W.W.R. 591, [2003] A.W.L.D. 78, 118 A.C.W.S. (3d) 737, 222 D.L.R. (4th) 538, 284 W.A.C. 261, 317 A.R. 261, 35 M.P.L.R. (3d) 1, 8 Alta. L.R. (4th) 52

IN THE MATTER OF SECTION 688 OF THE MUNICIPAL GOVERNMENT ACT, S.A. 1994, c. M-26.1, AS AMENDED; AND IN THE MATTER OF THE DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY DATED AUGUST 8, 2000;

BARRY LOVE (Appellant) and THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY and FLAGSTAFF COUNTY (Respondents)

IN THE MATTER OF SECTION 688 OF THE MUNICIPAL GOVERNMENT ACT, S.A. 1994, c. M-26.1, AS AMENDED; AND

IN THE MATTER OF THE DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY DATED AUGUST 8, 2000;

PAUL ALDERDICE (Appellant) and THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD OF FLAGSTAFF COUNTY and FLAGSTAFF COUNTY (Respondents)

Fraser C.J.A., Russell, Fruman JJ.A.

Heard: November 27, 2002
Judgment: December 9, 2002
Docket: Edmonton Appeal 0003-0393AC, 0003-0394AC

Counsel: *E.J. Kindrake*, *I.L. Wachowicz*, for Appellants, Barry Love, Paul Alderdice
W.W. Barclay, for Respondent, Subdivision and Development Appeal Board of Flagstaff County
T.D. Marriott, for Respondent, Flagstaff County

F.A. Laux, Q.C., W.W. Shores, for Respondent, Taiwan Sugar Corporation, DGH Engineering Ltd.

Subject: Public; Municipal

Related Abridgment Classifications

Administrative law

IV Standard of review
IV.2 Correctness

Civil practice and procedure

XXIV Costs
XXIV.16 General considerations on taxation or assessment
XXIV.16.b Tariff

Municipal law

XV Development control
XV.4 Development permits
XV.4.c Judicial review
XV.4.c.iv Compelling permit issuance

Statutes

II Interpretation
II.6 Particular words
II.6.e Miscellaneous

Headnote

Municipal law --- Development control — Development permits — Judicial review — Compelling permit issuance

Landowner's right to residential permitted use application becomes sufficiently acquired right on date it is filed, and it cannot be defeated by later-filed intensive animal operation (IAO) discretionary application — Date of filing was disclosed on application — As subject IAO application had not achieved proposed status under by-law on date of filing of single family permitted use applications, development authority was required to issue permits — Denial of permitted use application because of subsequent filing of discretionary use application would be inequitable.

Statutes --- Interpretation — Particular words — Miscellaneous words

Landowner's right to residential permitted use application becomes sufficiently acquired right on date it is filed, and it cannot be defeated by later-filed intensive animal operation (IAO) discretionary application — Construction of residence was prohibited within minimum distance separation from existing or proposed IAO — As subject IAO application had not achieved proposed status under by-law on date of filing of single family permitted use applications, development authority was required to issue permits — IAO becomes "proposed" within meaning of relevant section of by-law as of date permit is issued.

Certain lands were zoned agricultural under the land use by-law of the county, which permitted all forms of agriculture and a single family dwelling. The landowners each applied for a development permit to construct a single family residential dwelling on their respective lands. The applications were filed prior to an incomplete application by the corporate landowner being filed for an intensive animal operation (IAO) permit. The development authority denied the landowners' applications on the basis that the dwellings would be too close to a "proposed" IAO, and would breach the by-law requirement of a minimum setback for the siting of dwellings near an IAO. The landowners' appeals to the development appeal board were denied. The landowners were granted leave to appeal the board's decision.

Held: The appeals were allowed.

Per Fraser C.J.A. (Fruman J.A. concurring): The standard of review for the interpretation of a land use by-law by a subdivision and development appeal board is correctness. The by-law does not define when an IAO becomes "proposed" for its purposes. A purposive and contextual approach to interpretation of the by-law was applied. The planning and development of land in the province is to be balanced with the rights of property owners and the larger public interest. An IAO becomes "proposed" for purposes of the by-law on the permit issue date.

If an IAO developer acquired a site too small to accommodate the required buffer zone, then the minimum distance separation (MDS) would be met out of the lands of neighbouring landowners. The rights of landowners will not be encroached upon without clearer statutory language. An IAO was only a discretionary use, and there was no assurance that an application for a permit would ever be successful. Finding that an IAO achieves "proposed" status on the permit issue date provides the required degree of certainty and predictability. It also promotes the orderly and economic development of land. Conflict arose because the sites acquired for IAO near the landowners' lands did not permit the developer to fully meet the MDS requirements on its own lands. The landowners' rights were sufficiently concretized at the time the applications for single family residential permitted use were filed that they could not be defeated by the later, competing discretionary use application. The development authority was

required to issue the single family permitted use permits.

Per Russell J.A. (dissenting): The meaning of "proposed" must be determined in the context of the relevant section of the land use by-law, considering the scheme, object and purpose of the by-law. The objective of the by-law in regulating and controlling the use and development of land in the county is largely achieved by providing a system for balancing competing land uses. Compelling developers to purchase the entire MDS themselves could significantly impact the economic viability of any potential IAO, which would be inconsistent with the county's development plan with its emphasis on agriculture. An IAO is considered distinct from extensive agriculture. "Proposed" in the by-law refers to an IAO for which a development permit application has been submitted, whether or not it is complete. The development appeal board did not err in its interpretation of "proposed". Neither the Municipal Government Act or the by-law expressly directs a development authority or development appeal board to consider only those facts in existence at the time a development permit application is filed. Such a right cannot be implied. The grant of such a right would overstep statutory interpretation and amount to judicial legislation. A change in facts invokes the same principle as a change in the applicable law would. The appeal should be dismissed.

Table of Authorities

Cases considered by *Fraser C.J.A.*:

Bouchard v. Canmore (Subdivision & Development Appeal Board), 2000 ABCA 117, 2000 CarswellAlta 359, 10 M.P.L.R. (3d) 36, 261 A.R. 342, 225 W.A.C. 342 (Alta. C.A.) — considered

Chrumka v. Calgary (Development Appeal Board), 16 Alta. L.R. (2d) 328, 18 M.P.L.R. 95, 130 D.L.R. (3d) 61, 33 A.R. 233, 1981 CarswellAlta 78 (Alta. C.A.) — considered

Friends of the Oldman River Society v. Canada (Minister of Transport), [1992] 2 W.W.R. 193, [1992] 1 S.C.R. 3, 3 Admin. L.R. (2d) 1, 7 C.E.L.R. (N.S.) 1, 84 Alta. L.R. (2d) 129, 88 D.L.R. (4th) 1, 132 N.R. 321, 48 F.T.R. 160, 1992 CarswellNat 649, 1992 CarswellNat 1313 (S.C.C.) — considered

Good v. Jacob Y. Shantz Son & Co. (1911), 23 O.L.R. 544 (Ont. C.A.) — considered

Harvie v. Alberta, 16 Alta. L.R. (2d) 222, 128 D.L.R. (3d) 316, 31 A.R. 612, 1981 CarswellAlta 67 (Alta. C.A.) — considered

Ottawa (City) v. Boyd Builders Ltd., [1965] S.C.R. 408, 50 D.L.R. (2d) 704, 1965 CarswellOnt 66 (S.C.C.) — referred to

Parks West Mall Ltd. v. Hinton (Town), 15 Alta. L.R. (3d) 400, 148 A.R. 297, 19 M.P.L.R. (2d) 20, [1994] 3 W.W.R. 759, 1994 CarswellAlta 7 (Alta. Q.B.) — considered

Smith's Field Manor Development Ltd. v. Halifax (City), 37 M.P.L.R. 22, 83 N.S.R. (2d) 29, 210 A.P.R. 29, 48 D.L.R. (4th) 144, 1988 CarswellNS 67 (N.S. C.A.) — referred to

500630 Alberta Ltd. v. Sandy Beach (Summer Village), 31 M.P.L.R. (2d) 306, 181 A.R. 154, 116 W.A.C. 154, 1996 CarswellAlta 156 (Alta. C.A.) — considered

698114 Alberta Ltd. v. Banff (Town), 2000 ABCA 237, 2000 CarswellAlta 887, 81 Alta. L.R. (3d) 201, [2000] 10 W.W.R. 413, 190 D.L.R. (4th) 353, 14 M.P.L.R. (3d) 16, 266 A.R. 70, 228 W.A.C. 70 (Alta. C.A.) — considered

Cases considered by *Russell J.A.*:

Bell ExpressVu Ltd. Partnership v. Rex, 2002 SCC 42, 2002 CarswellBC 851, 2002 CarswellBC 852, 100 B.C.L.R. (3d) 1, [2002] 5 W.W.R. 1, 212 D.L.R. (4th) 1, 287 N.R. 248, 18 C.P.R. (4th) 289, 166 B.C.A.C. 1, 271 W.A.C. 1, 93 C.R.R. (2d) 189 (S.C.C.) — considered

Bouchard v. Canmore (Subdivision & Development Appeal Board), 2000 ABCA 117, 2000 CarswellAlta 359, 10 M.P.L.R. (3d) 36, 261 A.R. 342, 225 W.A.C. 342 (Alta. C.A.) — considered

Burnco Rock Products Ltd. v. Rocky View (Municipal District) No. 44, 2000 CarswellAlta 412, 11 M.P.L.R. (3d) 109, 80 Alta. L.R. (3d) 24, 261 A.R. 148, 225 W.A.C. 148 (Alta. C.A.) — referred to

Parks West Mall Ltd. v. Hinton (Town), 15 Alta. L.R. (3d) 400, 148 A.R. 297, 19 M.P.L.R. (2d) 20, [1994] 3 W.W.R. 759, 1994 CarswellAlta 7 (Alta. Q.B.) — considered

Schindler v. Western Bank Ltd. (1976), [1977] 1 Ch. 1 (Eng. C.A.) — considered

698114 Alberta Ltd. v. Banff (Town), 2000 ABCA 237, 2000 CarswellAlta 887, 81 Alta. L.R. (3d) 201, [2000] 10 W.W.R. 413, 190 D.L.R. (4th) 353, 14 M.P.L.R. (3d) 16, 266 A.R. 70, 228 W.A.C. 70 (Alta. C.A.) — considered

Statutes considered by *Fraser C.J.A.*:

Municipal Government Act, R.S.A. 2000, c. M-26
Generally — referred to

Pt. 17 — referred to

s. 617 — referred to

s. 622(1) — referred to

s. 622(3) — referred to

s. 624(1) — referred to

s. 632 — referred to

s. 638 — referred to

s. 639 — referred to

s. 639.1 [en. R.S.A. 2000, c. 21 (Supp.), s. 5] — referred to

s. 642(1) — considered

s. 643(1) — referred to

Statutes considered by *Russell J.A.*:

Canadian Charter of Rights and Freedoms, Part I of the Constitution Act, 1982, being Schedule B to the Canada Act 1982 (U.K.), 1982, c. 11
Generally — referred to

Municipal Government Act, R.S.A. 2000, c. M-26
Generally — referred to

s. 617 — considered

s. 643(1) — referred to

Words and phrases considered

proposed

Under [the relevant section of the land use by-law] "proposed" is used in contradistinction to an "existing" [intensive animal operation (IAO)]. The distinction relates to the physical state of the IAO, and not to its planning status on the relevant date.

APPEALS from decision of subdivision and development appeal board to refuse permits for residential development.

Fraser C.J.A.:

I. INTRODUCTION

1 These two appeals arise out of the refusal by the Subdivision and Development Appeal Board of Flagstaff County (SDAB) to grant a residential development permit to the appellants, Barry Love (Love) and Paul Alderdice (Alderdice). These appeals were heard together with a related appeal, *Goodrich v. Flagstaff (County of) Subdivision & Development Appeal Board.* Taiwan Sugar Corporation (Taiwan Sugar) and DGH Engineering were respondents in that appeal. While not added as parties to these appeals, they have participated as respondents throughout with the consent of the parties.

2 All three appeals were heard together because they are effectively linked to each other, concerning as they do competing development applications for lands in the County of Flagstaff (County). On one side are Love and Alderdice. Love seeks to construct a single family home on a quarter section of land he owns (Love Lands) and Alderdice, as agent for Joseph Bebee, seeks to construct a single family home on a quarter section of land owned by Bebee

(Alderdice Lands). On the other side of the development divide is Taiwan Sugar which seeks to develop an intensive animal operation (IAO) on five different quarter sections in the County (IAO Lands), two quarters of which are adjacent to the Love Lands and Alderdice Lands (IAO Lands).

II. BACKGROUND FACTS

3 The Love Lands, Alderdice Lands and IAO Lands are all zoned Agricultural (A) District under the Land Use Bylaw of Flagstaff County, Bylaw No. 03/00 (22 March 2000) (*Bylaw*). Under s.6.2.1.1 of the *Bylaw*, "all forms of extensive agriculture and forestry, including a single family dwelling or a manufactured home" are permitted uses. By contrast, an IAO is a discretionary use only: s.6.2.1.2.

4 Love and Alderdice each applied to the development authority (DA) designated by the County under s.624(1) of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (*Act*) for a development permit to build a single family residential dwelling on their respective lands — a permitted use. When the Love and Alderdice applications were filed, Taiwan Sugar had not yet applied for an IAO development permit on the IAO. By the date on which the Love and Alderdice applications were denied, Taiwan Sugar had filed an incomplete IAO application. That application was not finally complete until more than 2 1/2 months after the initial filing.

5 The DA denied both the Love and Alderdice applications on the same basis, namely that the dwelling each wished to build would be too close to a "proposed" intensive animal operation, that is the Taiwan Sugar IAO, and thus in breach of s.6.1.7.3 of the *Bylaw*.

6 These appeals turn therefore on the interpretation of the following critical provisions of s.6.1.7.3 of the *Bylaw* mandating a minimum setback for the siting of dwellings near an IAO:

> For the siting of a dwelling in close proximity to an intensive animal operation (whether existing or proposed), the dwelling, if a permitted use, must be located at least the minimum distance prescribed in the Code of Practice.

7 The Code of Practice is defined in s.1.3.9 of the *Bylaw* as the Code of Practice for the Safe and Economic Handling of Animal Manures published by Alberta Agriculture, Food and Rural Development in 1995, together with the modifications to that Code, published by Alberta Agriculture, Food, and Rural Development in 1999 (collectively the *Code*). As stated in s.1 of the *Code*, it "outlines a two part approach to reduce rural conflicts through proper land use siting and animal manure management." The first method is to maintain a "minimum distance separation" (MDS) between an IAO and its neighbours as explained in s.3 of the *Code*:

> Separation between intensive livestock facilities and neighbours can compensate for normal odour production, thereby reducing potential nuisance conflicts. The MDS applies reciprocally for the siting of either the odour source (intensive livestock operation) and/or

the neighbouring landowner (neighbour).

8 The *Code* contains detailed tables prescribing the applicable MDS which varies depending on the size and type of IAO. The *Code* does not expressly address who is to be responsible for providing the required MDS buffer zone when there are competing applications for a residence and an IAO on adjacent lands. In this case, the sites Taiwan Sugar selected adjacent to the Love Lands and the Alderdice Lands are not large enough to absorb the buffer zone. In fact, given the size and type of Taiwan Sugar's IAO, were Love and Alderdice required to provide the buffer zone out of their lands, there would be nowhere on the Love Lands or the Alderdice Lands that a residence could be built.

9 With respect to the *Bylaw* and the required MDS buffer zone, there is evidence that the County, unlike, for example, Ponoka County, elected not to impose the obligation for meeting the MDS solely on the IAO developer: Ponoka No. 3 (County) Bylaws, Land Use Bylaw No. 5-97-A, s.10.4.2 (1997). While the *Bylaw* does not expressly specify who is to provide this buffer zone — the IAO developer or neighbouring landowners — it is implicit in the *Bylaw* that an IAO developer may include the lands of adjacent landowners, in whole or in part, in determining whether it has met the required MDS. And this may be done even when it precludes adjacent landowners using the portion of their lands that falls in the MDS for future residential permitted uses. As the County's jurisdiction to enact this aspect of the *Bylaw* is not before us, this decision assumes the validity of s.6.1.7.3.

10 A summary of the relevant sequence of events in 2000 follows.

January 21	Taiwan Sugar approached the County regarding its plans.
March 15	Taiwan Sugar advised the County of proposed sites for the IAO.
March 23	The public was advised of the IAO sites.
April 11	Taiwan Sugar held public consultations regarding the IAO.
April 20	Love submitted a residential development permit application to the DA.
April 25	Alderdice submitted a residential development permit application to the DA.
April 27	Taiwan Sugar submitted an incomplete IAO development permit application to the DA.
May 5	Taiwan Sugar submitted further information in support of its IAO application.
May 30	Love's application was refused.
June 5	Alderdice's application was refused.
June 9	Love filed a notice of appeal with the SDAB.
June 16	Alderdice filed a notice of appeal with the SDAB.
July 17	Taiwan Sugar's IAO application was finally complete.
July 25	SDAB heard the Love and Alderdice appeals together.
August 8	SDAB denied both appeals.
September 8	Taiwan Sugar was granted a development permit for the IAO.
September	Several County residents appealed the DA's grant of the IAO permit.

November 2	Love and Alderdice were granted leave to appeal the SDAB decision.
November 27	SDAB, with slight modifications, denied the appeals on the IAO permit.

11 The SDAB denied the Love and Alderdice appeals on the basis that the homes they wanted to build would be too close to Taiwan Sugar's "proposed" IAO. In its view, a "proposed" IAO under s.6.1.7.3 meant something less than an "approved" one. In deciding what that something less might be, the SDAB concluded that the steps taken by Taiwan Sugar prior to filing an IAO application coupled with the filing of a formal application made the IAO a "proposed" one on the date on which Taiwan Sugar first filed its IAO application.

12 The SDAB then concluded that the relevant date for deciding whether a residential permitted use was sited the required distance from an IAO was not the date on which the permitted use application had been filed but the date on which the DA made its decision on the application. Accordingly, on this reasoning, since Taiwan Sugar's IAO was "proposed" on the date that the DA decided both the Love and Alderdice applications, and since neither home met the required MDS, the SDAB determined that both applications were properly refused.

III. STANDARD OF REVIEW AND ISSUES

13 The standard of review for the interpretation of a land use bylaw by a subdivision and development appeal board is correctness: *Harvie v. Alberta* (1981), 31 A.R. 612 (Alta. C.A.); *Chrumka v. Calgary (Development Appeal Board)* (1981), 33 A.R. 233 (Alta. C.A.); *500630 Alberta Ltd. v. Sandy Beach (Summer Village)* (1996), 181 A.R. 154 (Alta. C.A.).

14 This Court granted leave to appeal the SDAB decision on the Love and Alderdice appeals on the following ground:

> Did the Subdivision and Development Appeal Board of Flagstaff County err in law in its interpretation of the word "proposed" as found in Section 6.1.7.3 of the Flagstaff County Land Use *Bylaw* No. 03/00?

15 This question raises two distinct issues, both of which must be addressed in order to properly answer this question:

> 1. When does an IAO become "proposed" for purposes of s.6.1.7.3 of the *Bylaw*; and
>
> 2. What is the relevant date to determine whether a permitted use residential dwelling meets the MDS under the *Bylaw* — the date of filing the application or some later date?

IV. ANALYSIS

A. WHEN DOES AN IAO BECOME "PROPOSED" UNDER S.6.1.7.3?

16 Once an IAO has been constructed, it can no longer be "proposed" for any purpose. The question which must be answered therefore is at what stage prior to completion of an IAO does it become "proposed" for purposes of s.6.1.7.3 of the *Bylaw*.

17 Although the *Bylaw* does not define when this "proposed" status is achieved, a number of possibilities exist ranging from the date on which the IAO is only a "twinkle in the eye" of the developer — "proposed" only in its mind and to itself — to the date on which a development permit for the IAO becomes final and binding on all parties. No one suggested that a "proposed" IAO for purposes of s.6.1.7.3 included its conception stage and thus, the time spectrum range covers the following alternative options:

> 1. the date a developer publicly exhibits a serious intention to develop an IAO (option 1, sometimes called the "serious intention date");
>
> 2. the date a developer files an incomplete application for an IAO development permit (option 2, sometimes called the "incomplete application date");
>
> 3. the date a developer files a complete application, that is one containing all required information to allow the DA to determine if the IAO meets the *Bylaw* (option 3, sometimes called the "complete application date");
>
> 4. the date a development permit first issues for the IAO (option 4, sometimes called the "permit issue date"); and
>
> 5. the date a development permit becomes final and binding on the parties, including, if applicable, exhaustion of all appeals (option 5, sometimes called the "permit effective date").

18 Love and Alderdice contend that an IAO becomes "proposed" for purposes of the *Bylaw* on the date it has been approved and a permit issued (either option 4 or 5 above) or alternatively, the date on which a complete development application has been submitted (option 3). Taiwan Sugar argues that it is the date on which a reasonable person would believe that a serious intention to develop an IAO has been demonstrated by the developer (option 1) or alternatively the date on which an IAO development permit application is first filed, no matter how incomplete (option 2).

19 In interpreting the *Bylaw*, the purposive and contextual approach repeatedly endorsed by the Supreme Court of Canada and set out in E.A. Driedger, *Construction of Statutes*, 2nd ed. (Toronto: Butterworths, 1983) at 87 applies:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.[As cited with approval in ***Re Rizzo & Rizzo Shoes*** [1998] 1 S.C.R. 27; *Bell ExpressVu Limited Partnership v. Rex* (2002) 212 D.L.R. (4th) 1 (S.C.C.).]

20 The purposive approach to statutory interpretation requires that a court assess legislation in light of its purpose since legislative intent, the object of the interpretive exercise, is directly linked to legislative purpose. As a result, as explained in R. Sullivan, *Driedger on the Construction of Statutes*, 3rd ed. (Toronto: Butterworths, 1994) at 35:

> Other things being equal, interpretations that are consistent with or promote legislative purpose should be preferred and interpretations that defeat or undermine legislative purpose should be avoided.

21 The contextual approach rests on a simple, but highly compelling, foundation. "The meaning of a word depends on the context in which it has been used": *Ibid* at 193. Therefore, any attempt to deduce legislative intent behind a challenged word or phrase cannot be undertaken in a vacuum. The words chosen must be assessed in the entire context in which they have been used. Thus, it must be emphasized that the issue here is not what the solitary word "proposed" means in isolation but when an IAO becomes "proposed" for purposes of s.6.1.7.3.

22 The starting point for the analysis must be the legislative scheme of which the *Bylaw* forms a part. The *Bylaw*, enacted by the County as required by ss.639 and 639.1 of the *Act*, constitutes one piece of the legislative planning puzzle governing the development and use of lands in the County. Other relevant pieces include Part 17 of the *Act* itself, the Land Use Policies established by the Lieutenant Governor in Council pursuant to ss.622(1) of the *Act* as O/C 522/96 (*Land Use Policies*), the County's Municipal Development Plan established pursuant to s.632 of the *Act* [Flagstaff County, Bylaw No.02/00, Municipal Development Plan (12 April, 2000)] (*Plan*) and the *Code*. The presumption of coherence presumes that the legislative framework is rational, logical, coherent and internally consistent: *Friends of the Oldman River Society v. Canada (Minister of Transport)*, [1992] 1 S.C.R. 3 (S.C.C.).

23 It is evident from a review of Part 17 of the *Act* that its purpose, or object, is to regulate the planning and development of land in Alberta in a manner as consistent as possible with community values. In so doing, it strikes an appropriate balance between the rights of property owners and the larger public interest inherent in the planned, orderly and safe development of lands. In this regard, s.617 contains an authoritative statement of legislative purpose and relevant community values:

> 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 it is necessary for the overall greater public interest.

24 These objectives are carried forward into both the *Plan* and the *Bylaw*. The *Plan* identifies as its goal encouraging "environmentally sound, sustainable agricultural and other forms of economic development, while conserving and enhancing the County's rural character." The *Bylaw* provides in critical part in s.1.2 that its purpose is to "regulate and control the use and development of land and buildings within the municipality to achieve the orderly and economic development of land".

25 While the *Land Use Policies* focus on matters of public policy, not law, and are by their nature therefore general in scope, they nevertheless provide a policy framework for land use bylaws and municipal plans. Indeed, both the *Plan* and the *Bylaw* must be consistent with the *Land Use Policies*: s.622(3) of the *Act*. The *Land Use Policies* provide in s.4.0.2 which is part of the general section dealing with land use patterns that:

> Municipalities are encouraged to establish land use patterns which embody the principles of sustainable development, thereby contributing to a healthy environment, a healthy economy and a high quality of life.

26 These values — orderly and economic development, preservation of quality of life and the environment, respect for individual rights, and recognition of the limited extent to which the overall public interest may legitimately override individual rights — are critical components in planning law and practice in Alberta, and thus highly relevant to the interpretation of the *Bylaw*.

27 Central to these values is the need for certainty and predictability in planning law. Although expropriation of private property is permitted for the public, not private, good in clearly defined and limited circumstances, private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective. Who would invest in land with no clear indication as to the use to which it could be put? Hence the importance of land use bylaws which clearly define the specific uses for property and any limits on them.

28 The need for predictability is equally imperative. The public must have confidence that the rules governing land use will be applied fairly and equally. This is as important to the individual landowner as it is to the corporate developer. Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community's collective interest.

29 The fundamental principle of consistency in the application of the law is a reflection of both these needs. The same factual situation should produce the same legal result. To do so requires that it be certain. The corollary of this is that if legislation is uncertain, it runs the risk of being declared void for uncertainty in whole or in part. As explained by Garrow, J.A. in *Good v. Jacob Y. Shantz Son & Co.* (1911), 23 O.L.R. 544 (Ont. C.A.) at 552:

> It is a general principle of legislation, at which superior legislatures aim, and by which inferior bodies clothed with legislative powers, such as ... municipal councils ... are bound, that all laws shall be definite in form and equal and uniform in operation, in order that the subject may not fall into legislative traps or be made the subject of caprice or of favouritism — in other words, he must be able to look with reasonable effect before he leaps.

30 There is another critical contextual feature to this interpretive exercise. The question of what constitutes a "proposed" IAO under s.6.1.7.3 arises in only one context — a conflict between an application for a residential development permit and an IAO not yet built. Typically, in the rural part of the County, potential problems would arise where a landowner seeks to develop a single family home on a quarter section since single family homes are permitted uses in every zoning category in the County but one. Thus, the conflict, if there is to be one, will, in the majority of cases, be between a single family residential permitted use and a discretionary IAO use.

31 Applying the purposive and contextual analysis, I have concluded that an IAO becomes "proposed" for purposes of s.6.1.7.3 on the permit issue date (option 4). There are several reasons for this.

32 First, to adopt an interpretation permitting an IAO to achieve "proposed" status prior to the permit issue date would run afoul of a principle firmly entrenched in the legislative planning scheme in effect in Alberta — respect for individual property rights. The *Act* explicitly recognizes the preeminence of individual rights in planning law in Alberta. While these rights are subject to a clearly circumscribed overriding exception in favour of the greater public interest, nowhere is it suggested that individual rights should be overridden for a private interest.

33 This respect for individual property rights is a statutory affirmation of a basic common law principle. As explained by Cote, P.A. in *The Interpretation of Legislation in Canada*, *supra*,

at 482:

> "Anglo-Canadian jurisprudence has traditionally recognized, as a fundamental freedom, the right of the individual to the enjoyment of property and the right not to be deprived thereof, or any interest therein, save by due process of law." To this right corresponds a principle of interpretation: encroachments on the enjoyment of property should be interpreted rigorously and strictly.

34 Here, the scheme and object of the *Act* reveal a legislative intention not only to expressly protect individual rights but to permit those rights to be eroded only in favour of a public interest and only to the extent necessary for the overall public interest. See s.617, *supra*. It follows therefore that encroachments on individual rights, especially by private parties, should be strictly construed.

35 Concerns about encroachments on property rights are exacerbated where, as here, the *Bylaw* permits neighbouring landowners to bear all or part of the MDS requirement. If an IAO developer acquires a site too small to accommodate the required buffer zone, then the MDS setback requirements must instead be met out of the lands of neighbouring landowners. Given the respect accorded to individual rights under the *Act* and the potentially serious sterilizing effect that these MDS setback requirements would have on neighbouring lands, it would take much clearer statutory language to strip a landowner of residential development rights, especially permitted use residential rights, in favour of a discretionary use IAO project before its permit issue date.

36 Further, strictly interpreting encroachments on the enjoyment of property minimizes conflict, whether that be conflict between the state (as represented by the County) and its citizens or amongst the citizens themselves. This is in keeping with one of the underlying rationales of planning law, namely to avoid pitting neighbour against neighbour by imposing on all parties clearly defined reciprocal rights and obligations. The legislative scheme here is designed to promote harmony, not create litigation. Accordingly, given the priority accorded to individual rights under Alberta planning law, where possible, planning laws should be interpreted in a manner consistent with what I would characterize as the "good neighbour policy". That includes respecting individual rights by interpreting encroachments on property rights rigorously and strictly especially where the encroachment is in favour of a private interest.

37 Second, it must be remembered that an IAO is only a discretionary use. Thus, there is no assurance that an application for an IAO permit will ever be successful. If an IAO could become "proposed" for purposes of s.6.1.7.3 prior to its permit issue date, this would effectively freeze permitted use residential development on nearby lands falling within the MDS for what could be a lengthy period in favour of an IAO project that might never be approved. This too militates in favour of a restrictive interpretation as to when "proposed" IAO status for purposes of s.6.1.7.3 is achieved.

38 Third, finding that an IAO achieves "proposed" status on the permit issue date also provides the required degree of certainty and predictability. This is an extremely weighty consideration since using any earlier date — the serious intention date, the incomplete application date or the complete application date — is replete with problems fatal to these possible interpretations.

39 Taiwan Sugar contends that the serious intention date should apply. Under the test it suggests, an IAO would be "proposed" on the date by which circumstances were such that a reasonable person would believe that a developer had a serious intent to develop an IAO. In its view, a publicly announced project would meet this test. But the most critical failing of this approach would be the inability of a landowner intent on developing land nearby an announced IAO to predict whether a stated intention would ever lead to a development proposal, much less a filed application, never mind an approved one. In the meantime, the landowner's ability to develop land he or she owns for a permitted single family residential use in conjunction with their extensive farming operation would at best be compromised and at worst, prevented altogether. This cannot be.

40 Moreover, the phrase "serious intention" is vague and subject to arbitrary application. A serious intention is not a proposal for anything unless and until steps are taken to proceed with the stated intention. To what extent would the suggested plan need to be developed? Would complete details on obvious issues such as size, site locations, and methods of resolving water and other environmental issues need to be disclosed? And to whom and at what time? And more fundamentally, how would one determine when and if the "serious intention" ever crystallized into a concrete proposal? Finally, if one were to accept that an IAO could reach "proposed" status before the developer even filed an application, how would one determine whether the project had been abandoned? For these reasons alone, this interpretation cannot be sustained.

41 Nor would using either the incomplete application date or the complete application date provide the required degree of certainty. Although the filing date for each would be ascertainable, there would be no way of knowing with certainty when the project was abandoned. Under the *Bylaw*, there is no requirement mandating the DA to make a decision on an application within a specific period of time. Under s.3.4.15, if the DA does not do so within 40 days, the application shall be deemed refused after the expiry of that time period. But this is at the option of the applicant and the applicant alone as the following key part of this section makes clear:

> An application for a development permit shall, at the option of the applicant, be deemed to be refused when a decision thereon is not made by the Development Authority within forty (40) days after receipt of the application by the Development Authority.

42 Further, there does not appear to be any ability on the part of a nearby landowner to

compel the DA to make a decision following the expiry of the 40 day period or to seek an order declaring that the IAO application has been refused simply because of the lapse of the 40 day period. Instead, it appears that the extension of the 40 day period is a matter requiring only the concurrence of the DA and the applicant. What this would mean therefore is that if the DA did not make a decision on an IAO within the 40 day period because it was, for example, waiting for additional required information — never to be provided — there would be no objective means of determining when the project had been abandoned.

43 Thus, an IAO development permit application could simply languish for an indeterminate period into the future, long after the IAO developer had abandoned any intention of proceeding with the IAO. Since nearby landowners would be precluded from developing single family permitted use housing on their lands in the interim, an interpretation which led to this result (as either the use of the incomplete application date or the complete application date would do), ought to be rejected.

44 It is no answer to say that these problems could be avoided by a landowner's seeking an order of mandamus compelling the County to make a decision on an IAO application. The County and IAO developer might well be engaged in prolonged and protracted negotiations over conditions, additional information, plans, etc. with no end in sight, thereby precluding the securing of any such order even though ultimately the project is abandoned. Even if this were not so, it would be unreasonable, given the statutory planning regime, to impose on a landowner otherwise entitled to a residential permitted use permit an obligation to try to establish that an IAO project had in fact been abandoned. The legislation does not contemplate forcing this heavy financial and legal obligation onto the party with the least information relating to the IAO application and the least control over it and there can be no justification for judicially imposing it on neighbouring landowners.

45 Fourth, the disputed words themselves and the context in which they are used in s.6.1.7.3 are consistent with the view that the required "proposed" status is achieved on the permit issue date. Under s.6.1.7.3, "proposed" is used in contradistinction to an "existing" IAO. The distinction relates to the physical state of the IAO, and not to its planning status on the relevant date. It must be remembered that even when a permit has been issued for an IAO, the IAO is "proposed" unless and until it is actually built. If the approved development is not commenced within 12 months from the date of the issue of the permit, and carried out with "reasonable diligence", the permit is deemed to be void, unless an extension is granted: s.3.6.6 of the *Bylaw*. This means that "proposed" and "approved" are not mutually exclusive terms. Accordingly, it does not follow that "proposed" must mean something less than "approved" for purposes of s.6.1.7.3.

46 It is true that there are other sections of the *Bylaw* in which the word "proposed" refers to a development for which a development permit application has been received by the DA. But one cannot simply find the same word — proposed — in other sections of the *Bylaw* and conclude that it has the same meaning when used in s.6.1.7.3. While the word "proposed" is sprinkled throughout the *Bylaw*, it is used elsewhere in the context of a "proposed development", that is one in respect of which a development permit application has been filed.

But in s.6.1.7.3, the words used are not the same, the reference instead being to an "intensive animal operation (whether existing or proposed)", and they are used in an entirely different context.

47 Fifth, concluding that an IAO achieves "proposed" status under s.6.1.7.3 on the permit issue date best promotes one of the key objectives of the planning legislation, the orderly and economic development of land. The orderly development of land militates in favour of an interpretation of the *Bylaw* which avoids the repeated filing of unnecessary development applications, whether by an IAO developer or an adjacent landowner. Much is made of the fact that Love and Alderdice filed their permit applications shortly after the public meetings, but it is equally noteworthy that Taiwan Sugar filed its initial application, an incomplete one, shortly after the Love and Alderdice filings.

48 If a "proposed" IAO meant one in respect of which an application had been filed, no matter how incomplete, then this would encourage the filing of inadequate IAO applications at an early stage — and possibly repeatedly — in an effort to defeat potentially competing permitted uses. In turn, this would lead to its own uncertainties and promote the same action by adjacent landowners. These landowners would be tempted to file repeated development applications to protect against the risk of an IAO being built nearby on a site inadequate to meet the MDS requirements and thereby freezing the use of their lands for residential purposes. This result cannot have been intended.

49 Not only would this be unduly costly to the applicants (in terms of filing fees and lost time), and the County (in terms of processing of the permits), it runs counter to the philosophy of recent amendments to planning legislation in Alberta designed to reduce "red tape" and costs and could not help but have a negative impact on overall productivity. This is not in the wider community interest.

50 Using the permit issue date as the date on which "proposed" status is achieved for purposes of s.6.1.7.3 avoids the prospect of multiple filings. There would be no need on the part of individual landowners to apply for residential development permits early and repeatedly to protect their legitimate permitted use rights since a permit could be successfully applied for at any time prior to an IAO's permit issue date. It would also avoid preemptive filings by an IAO developer intending to include part of its neighbours lands in the calculation of the required MDS since there would be nothing to be gained by these filings.

51 Further, s.3.4.8 also militates against using the incomplete application date as the date on which the IAO achieves "proposed" status. Under this section, the DA may return the application to an applicant for further details and in such event, the application is "deemed to not have been submitted". To treat an IAO project as "proposed" for purposes of s.6.1.7.3 even though in the end the IAO application might be returned and treated as not submitted would be illogical.

52 Under s.3.4.4 of the *Bylaw*, an IAO developer is mandated to provide certain required information in an IAO application. However, under s.3.4.9:

> The Development Authority may make a decision on an application for a development permit notwithstanding that any information required or requested has not been submitted.

53 This being so, it has been argued that the DA's ability to issue a conditional IAO development approval means that "proposed" status can be achieved before the IAO developer has provided all information required under the *Bylaw*, that is on the incomplete application date. But this looks at matters the wrong way round. The point is not whether the permit issue date may occur before all required information is filed; it is whether the permit issue date has been achieved. Even assuming therefore that an IAO permit could be issued without all information required under this section (and quaere whether this is so), what would make the IAO project a "proposed" one for purposes of s.6.1.7.3 would not be the filing of an incomplete permit application, but rather the issuance of a development permit.

54 It was suggested that the emphasis the County places on agriculture lends added weight to the argument that an IAO should be treated as "proposed" the moment a development application is filed, no matter how incomplete. However, this argument assumes that in a competition between a single family residential permitted use and an IAO that it is only the IAO which satisfies the emphasis on agriculture in the *Bylaw* and the *Plan*. This is clearly wrong. Section 6.2.1 of the *Bylaw* states that the purpose of the Agricultural District is to "provide land where all forms of agriculture can be carried on without interference by other, incompatible land uses." The very first permitted use is "all forms of extensive agriculture and forestry, including a single family dwelling or a manufactured home." [Emphasis added.] The second is "single family dwellings and manufactured homes, on a sole residential parcel subdivided out of a quarter section ...." [Emphasis added.]

55 Why is this so? The answer lies in part in the history of Alberta. The quarter section of land with the family home has been one of the fundamental building blocks of farming life in rural Alberta. As such, it has been an integral component in the orderly and economic development of land in this province. Further, providing that a single family home is a permitted use on a farm quarter and on a parcel subdivided out of a farm quarter also recognizes the inter-generational needs of extended farm families. Had the County wanted to demolish this foundational structure, and grant IAO's preferential treatment, it was certainly free to do so. It has not. Instead, the County has expressly provided that use of land for a single family residence in conjunction with a farming operation or on a parcel subdivided out of agricultural land are permitted uses under the *Bylaw* while an IAO is merely a discretionary use.

56 Consequently, one does not need evidence of the importance of a residence on any particular quarter section. The County's decision to make the construction of the single family home a permitted use is sufficient evidence of legislative intent whether or not this settlement pattern continues today. Thus, there is no merit to an argument premised on the assumption that an IAO on land zoned Agricultural (A) District trumps use of agricultural lands for single family homes in conjunction with an extensive farming operation. In fact, policy considerations explicitly tilt in favour of the residential permitted use.

57 It follows that I do not agree with the proposition that an IAO is entitled to priority on the basis it benefits the community economically as a whole. So too do other forms of extensive agriculture, including the residences associated with them. This is not a case where the County has elected to exclude all forms of agriculture other than IAO's. Instead, the *Bylaw* specifically contemplates a variety of uses for land zoned Agricultural (A) District.

58 Sixth, concluding that an IAO becomes "proposed" on the permit issue date best avoids inequitable results. The legality or merit of the County's decision to allow an IAO developer to include adjacent lands in the calculation of whether it meets the required MDS is not before us. However, Taiwan Sugar argues that if the serious intention test is not adopted, then when an IAO developer goes through the public consultation process encouraged by s.1.12 of the *Plan*, landowners near identified selected sites could easily defeat a project by filing an application for a development permit for a residence within the mandated setback area. It opposes the use of any date after the incomplete application date for the same reason, namely that this is not fair.

59 However, there is nothing unfair or improper in neighbouring landowners filing residential permitted use applications on lands nearby a publicly disclosed IAO site. The County has set its priorities under the *Bylaw;* declared the permitted uses, including single family homes on agricultural lands; and encouraged anyone seeking a discretionary IAO permit to enter into a public consultation process. The very existence of that process reflects an intention that neighbouring landowners have the opportunity to consider and exercise whatever rights attach to their lands prior to the issuance of an IAO permit. In essence, the legislative scheme requires them to choose a right or lose a right.

60 It must be remembered that the conflict here has arisen because the sites acquired for the IAO near the Love Lands and the Alderdice Lands do not permit the IAO developer to fully meet the MDS requirements on its own lands. One method an IAO developer can use to ensure that its project goes forward is to acquire a sufficiently large block of land to fully meet the MDS requirements without relying on neighbouring property. Thus, an IAO developer can easily eliminate any risk of its plans being defeated by competing residential permitted use applications by the simple expedient of acquiring a large enough site to satisfy the MDS requirements out of its own lands.

61 If this imposes too great an economic cost on an IAO developer, there is another method it can use to minimize the risk of its plans being defeated by competing residential permitted use applications. That is to consult with neighbouring landowners. One consequence of this judgment is that it will provide certainty and eliminate races to file competing development applications. IAO developers, who are required to consult before applying for a permit, are not in a position to conceal an IAO proposal. The IAO developers can now reasonably anticipate that adjacent property owners whose lands may be negatively affected by the MDS requirements may well file residential permitted use applications to protect their future development rights. These applications will have priority over competing IAO applications until the permit issue date. Thus, IAO developers who have not acquired sites

large enough to absorb the entire MDS out of their lands may wish to engage in economic negotiations with adjacent property owners with a view to compensating them for the loss of their future right to construct a residence.

62 As for the proposition that an IAO developer may be required to deal with a number of landowners, there is a simple answer to this. The *Bylaw* does not prevent an IAO from being constructed on a number of contiguous quarter sections of land. A developer can either choose a number of sites physically isolated from each other or select contiguous sections of land, and deal with the consequences that flow from that voluntary choice. Additionally, it is not in the public interest to sterilize large tracts of land for residential purposes when this could be avoided by an IAO developer's building on a larger, contiguous site.

63 This raises another related point. In urban areas, planning bylaws typically contemplate an extensive and wide range of land uses with different rules for each. For example, land for residential use might be zoned in specific locations for particular uses, such as single family homes, townhouses, and high rise apartments. The same holds true for other zoning categories such as commercial and industrial uses. But to date in rural Alberta, there has been little attempt to distinguish amongst various kinds of agricultural uses. One possible way of reducing the potential for conflict arising from the competing demands of rural landowners and IAO developers would be to limit IAO's to specific designated areas. However, the question whether such an approach would be beneficial falls squarely within the legislative, and not the judicial, role.

64 Finally, I turn to why the permit issue date is to be preferred over the permit effective date. A permit does not come into effect until 14 days after its publication date (s.3.6.1), or if appealed, until expiry of all appeal periods (s.3.6.2). It could be argued that unless and until the permit comes into effect, a discretionary IAO ought not to defeat a permitted use application filed at any time before the permit becomes final. However, once an IAO permit has been issued, the equities change as between an IAO developer and adjacent landowners. At that point, a permit has been issued which is to come into full effect on expiry of certain statutory periods. Meanwhile, the neighbouring landowner has elected not to file any competing permitted use applications prior to that date. Thus, to allow a residential permitted use application filed after the permit issue date to defeat the IAO in these circumstances would not be reasonable. At this stage, the appeal process governs.

65 Accordingly, for these reasons, I have concluded that an IAO becomes "proposed" for purposes of s.6.1.7.3 on the permit issue date. There must be a practical, fair, easily-administered and certain cut-off date and the permit issue date qualifies on all grounds. In the end, it is this interpretation which best conforms with the spirit and intent of the *Act*, the *Policies*, the *Plan* and the *Bylaw*.

B. RELEVANT DATE FOR ASSESSING PERMITTED USE APPLICATIONS

66 I now turn to the second issue to be resolved. This concerns the date on which the Love

and Alderdice applications ought to have been assessed for compliance with s.6.1.7.3 of the *Bylaw*. At issue here is the question of acquired rights: at the time an application for a single family residential permitted use is filed, are the rights of the applicant sufficiently concretized that those rights cannot be defeated by a later, competing discretionary use application? I have concluded that they are.

67 Given my conclusion on this issue, it is in one sense unnecessary to have definitively decided the date by which an IAO becomes "proposed" for purposes of s.6.1.7.3. It would be enough to determine that as long as an IAO does not become "proposed" by the serious intention date (option 1), the DA is required to issue the residential permits to Love and Alderdice. However, to eliminate option 1 required an analysis of the first issue in detail. In addition, in any event, many of the interpretive factors affecting the first issue have equal application to the second.

68 Taiwan Sugar maintains that filing an application for a permit does not crystallize any rights. It points to the line of cases concluding that permitted use applications may be defeated by changes in the law, arguing that this same principle should apply to what they characterize as a change in the facts. The argument reduces to this. If a change in the law can defeat an application for a permitted use, then it follows that a change in facts should be able to do so too.

69 In my view, the appropriate date for determining whether a single family permitted use application meets the required MDS is the date on which the application is filed, regardless of when that assessment might occur and a decision follow. In the case of Love and Alderdice, their respective applications preceded even the incomplete application date. Thus, even were I wrong in concluding that an IAO becomes "proposed" for purpose of s.6.1.7.3 on the permit issue date, and it were determined that the applicable date should be the complete application date or the incomplete application date, Love and Alderdice would remain entitled to the issuance of the requested single family residential development permits.

70 I begin with the context in which this particular issue arises. Permitted uses have been a central part of the legislative planning scheme in Alberta since 1929. In 1957, the concept of a conditional (now called "discretionary") use, as opposed to a permitted use, was first introduced in Alberta: See F. Laux, *Planning Law and Practice in Alberta*, 3rd ed. (Edmonton: Juriliber, 2002) at 1-35. That distinction remains in effect today. Permitted uses are those to which an applicant is entitled as of right providing that the proposed development otherwise meets the requirements of the *Bylaw*. The "as of right" entitlement is clear from s.642(1) of the *Act*:

> When a person applies for a development permit in respect of a development [for a permitted use], the development authority must, if the application otherwise conforms to the land use Bylaw, issue a development permit with or without conditions as provided for in the land use Bylaw. [Emphasis added.]

71 The theory underlying permitted uses has been well-explained by Laux in *Planning Law and Practice in Alberta*, *supra*, at 6-3:

> ... as a matter of good planning, within a given district, one or more uses may be identified that are so clearly appropriate in that district, and so compatible with one another that they demand no special consideration. Therefore, such uses ought to be approved as a matter of course no matter where they are located in the district, provided that the development standards set out in the Bylaw are also met.

72 As noted, under s.642(1) of the *Act*, the development authority "must" grant a permit when a person applies for a permitted use that conforms to the *Bylaw*. The operative word is must. In these appeals, there was no suggestion that the Love and Alderdice applications for residential housing permits were turned down on any basis other than an alleged non-compliance with s.6.1.7.3. But for the alleged non-compliance with the MDS, the residential permit applications complied with the *Bylaw*: see AB 87.

73 It is true that any permitted use acquired rights are not absolute, notwithstanding s.642(1) of the *Act*. They may well be defeated by a change in the law occurring before a decision is made on the application. Since s.643(1) of the *Act* provides that a change in a land use Bylaw does not affect the validity of a permit granted on or before the change, this has been interpreted to mean that a permit application may be defeated by a change in the law that occurs between the date of filing of the application and the final decision on the application: *698114 Alberta Ltd. v. Banff (Town)* (2000), 190 D.L.R. (4th) 353 (Alta. C.A.); *Parks West Mall Ltd. v. Hinton (Town)* (1994), 148 A.R. 297 (Alta. Q.B.); *Bouchard v. Canmore (Subdivision & Development Appeal Board)* (2000), 261 A.R. 342 (Alta. C.A.). Thus, the law in effect at the time that the decision is made is usually the operative law.

74 But there are exceptions even to this rule: *Ottawa (City) v. Boyd Builders Ltd.*, [1965] S.C.R. 408 (S.C.C.); *Smith's Field Manor Development Ltd. v. Halifax (City)* (1988), 48 D.L.R. (4th) 144 (N.S. C.A.). Hence, it does not follow that no rights are acquired under any circumstances on filing of a permitted use application. Indeed, this Court expressly left open the question of whether a Bylaw change post-dating an application for a permitted use will defeat that permitted use: ***Bouchard***, *supra*.

75 In any event, even assuming for the moment that a change in the law made following the filing of an application for a permitted use defeated that application, I do not agree that this reasoning applies to a change in facts relating to lands other than those which are the subject of the permitted use application.

76 The only alleged change of fact in these appeals is that Taiwan Sugar filed an application for an IAO discretionary use after Love and Alderdice had filed their permitted use applications. Indeed, it is debatable whether this is properly characterized as a change in facts

or simply a competing development application. Even assuming the former, to focus on a change in facts which occurs on another site after the filing of a permitted use application would invert the entire permitted use planning process. When an application is filed for a permitted use, the focus is to be on the facts relating to that permitted use application, not on facts arising later in relation to competing discretionary use applications on other sites.

77 Nor is there any evident policy reason for eroding permitted use rights in these circumstances. The statutory scheme itself recognizes not only the importance of individual rights but also the superior position granted to those applying for a permitted use, as opposed to a discretionary one. Therefore, to allow a permitted use right to be defeated by a later-filed competing discretionary use would be inconsistent with the present statutory planning regime.

78 There is another reason for not accepting this argument. Because consistency in the application of the law is an underlying principle of the rule of law, an interpretation of the *Bylaw* that permits inconsistency should be rejected. If two land development applications that are identical on their merits result in different dispositions for no defensible reason, the orderly and economic development of land would be affected. Yet this could happen if a permitted use application could be defeated by a change in facts resulting from a later-filed development permit application on adjacent lands. If the development authority deferred consideration of the permitted use application in one case, but not in the other, the results of the two applications would be different. A development authority ought not to be placed in the position in which the timing of its decision on an application affects the outcome or creates inconsistent rulings.

79 Perhaps most important is that it would be inequitable for a permitted use application to be denied because of a discretionary use application filed subsequent to the permitted use application where the discretionary use application might never be approved. Where the IAO is not subsequently approved, one cannot simply unwind the past rejection of a permitted use application and restore the applicant to the position he or she was in. Indeed, if a permitted use applicant were unsuccessful on the basis of a pending, but subsequently unapproved IAO, the permitted use applicant could not make an application for another 6 months unless the DA, in the exercise of its sole discretion, agreed otherwise: s.3.4.12 of the *Bylaw*. Applicants could therefore find themselves in the position where the DA did not permit the filing of a new permitted use application prior to the expiry of the 6 month period because the DA was awaiting the filing of a new IAO application on nearby lands.

80 These consequences, demonstrating the very real dangers of differential treatment, underscore why as between a residential permitted use applicant and a subsequent IAO discretionary use applicant, the rights of the permitted use applicant crystallize as of the date of the filing of the permitted use application. Put into the lexicon of planning law, on the date a residential permitted use application is filed in conformity with the *Bylaw*, the applicant's potential right becomes a sufficiently acquired right that it cannot be defeated by a later-filed IAO discretionary use application on the basis of the MDS requirement.

81 Nor should there be any difficulty in ascertaining the relevant facts as of the date of filing of the residential permitted use application. After all, they must be disclosed in the application

itself. In this regard, the Love and Alderdice applications were both complete on the day of filing and in compliance with the *Bylaw*. Since the subject IAO had not achieved "proposed" status under s.6.1.7.3 on the date of filing of the Love and Alderdice single family permitted use applications, the DA was required to issue the single family residential permitted use permits.

82 Therefore, I allow the appeal, reverse the decision of the SDAB and direct the DA to issue to Love and Alderdice the permits to which they are entitled for the construction of the requested single family residential dwellings.

Fruman J.A.:
I concur.

Russell J.A.:

83 The relevant facts, the decision below, and the applicable standard of review are as set out in the Reasons for Judgment of Fraser, C.J.A.

GROUND OF APPEAL

84 Leave to appeal was granted on the following ground:

> Did the Subdivision and Development Appeal Board of Flagstaff County err in law in its interpretation of the word "proposed" as found in Section 6.1.7.3 of the Flagstaff County Land Use Bylaw No. 03/00 (LUB)?

85 The appellants assert that two issues are raised by this ground of appeal: (1) the meaning of the term "proposed" in s. 6.7.1.3 of the LUB, and (2) the relevant time for determining whether an intensive animal operation (IAO) has achieved that status. Although the ground of appeal does not expressly include the second issue, no one has objected to its consideration and all parties have provided argument on it. Accordingly, I will assume that it is an element of the ground of appeal for which leave was granted.

ANALYSIS

What does "proposed" mean?

86 Section 6.1.7.3 of the LUB prohibits construction of a residence within the minimum distance separation distance from an IAO, "either existing or proposed".

87 The appellants submit that a "proposed" IAO is either one which has been approved but not yet constructed, or one for which a complete development application has been submitted.

They argue that these definitions provide the certainty to which an applicant for a permitted use permit is entitled. In their view, the SDAB erred in holding, in effect, that the developer need only submit an incomplete application to render the development "proposed".

88 In response, the developer contends that an IAO is "proposed" when a reasonable person would believe that a serious intention to develop has been shown.

89 Given the significance of this term for both landowners and IAO developers, it is unfortunate that the LUB does not provide a definition.

90 The Supreme Court recently reiterated its preferred approach to statutory interpretation in *Bell ExpressVu Ltd. Partnership v. Rex*, 2002 SCC 42, 212 D.L.R. (4th) 1 (S.C.C.) at para. 26, citing E.A. Driedger, *Construction of Statutes,*2nd ed (Toronto: Butterworths, 1983) at 87:

> Today there is only one principle or approach, namely, the words of an Act are to be read in their entire context and in their grammatical and ordinary sense harmoniously with the scheme of the Act, the object of the Act, and the intention of Parliament.

91 Hence, the meaning of "proposed" must be determined in the context of s. 6.1.7.3 and the LUB as a whole, considering the scheme, object and purpose of the LUB. The object and purpose of the *Municipal Development Plan*, County of Flagstaff, Bylaw No. 02/00 (Plan) and aspects of the *Municipal Government Act*, R.S.A. 2000, c. M-26 (Act) are also relevant to this inquiry as they form part of the legislative scheme in which a development permit application will be assessed.

92 The word "proposed" is used in s. 6.1.7.3 as an alternative to "existing". This suggests that a proposed operation is one for which construction has not yet begun.

93 The word "proposed" is used elsewhere in the LUB in a context which indicates that it there refers to a development for which an application has been submitted, but no permit has yet been issued: s. 3.4.4, 3.4.8, 3.4.13, 3.4.14. This might suggest that the same interpretation should be given to s. 6.1.7.3. But it does not clarify the degree to which an application should be complete, for a development to be "proposed".

94 One might expect other provisions of the LUB to assist in that regard. However, s. 3.4.4 requires an IAO application to include "all relevant information necessary to allow the Development Authority to determine if the proposed development will meet the guidelines of the Code of Practice". Section 3.4.8 provides that if the application does not contain sufficient information, the development authority may return it, in which case it is deemed not to have been received. Those provisions suggest a complete application is required. But s. 3.4.9 specifically authorizes the Development Authority to make decisions on such applications, suggesting that the development retains proposed status even though the application itself is deficient. That broad discretion permits an incomplete application to be rejected or approved. It

follows that little weight can be placed on these provisions in interpreting the LUB.

95 One of the purposes of the LUB, as set out in s. 1.2, is to regulate and control the use and development of the County's land, to ensure orderly and economic development. This objective is largely achieved by providing a system for balancing competing land uses. In striking that balance, the LUB emphasizes the import of agriculture in the Agricultural District in which IAOs may be located. The preamble to the relevant district regulations reads:

> The purpose of the Agricultural District is to provide land where all forms of agriculture can be carried on without interference by other, incompatible land uses. The Development Authority may, at his discretion, refuse to issue a development permit for any land use which may limit or restrict existing or proposed agricultural operations in the vicinity.
>
> LUB s. 6.2.1

96 Arguably a narrow definition of the term"proposed" might undermine this purpose. Neighbouring landowners could defeat an IAO, which is planned but not yet "proposed", by rushing to obtain residential permits for land within the prescribed minimum distance separation from the IAO at the first hint of such a development. This possibility is exacerbated by the Plan's direction, in s. 1.12, that developers should seek local support for an IAO before submitting a development permit application, thus alerting neighbours to the proposal, and providing them the opportunity to take evasive action. In this case, both applications for residential development permits were filed within days following the public consultation conducted by the developer.

97 The emphasis placed on agriculture in the LUB is consistent with the Plan, which states that:

> Agriculture and providing services to the agricultural community are regarded as the most important forms of development in Flagstaff County....
>
> [A]griculture is viewed as the priority use when affected by competing land uses in most of the County....
>
> In that agricultural activities have priority in most of the County, the intent of this Plan is that no legitimate activity related to the production of food which meets Provincial and/or municipal requirements should be curtailed solely because of the objections of nearby non-farming landowners or residents....
>
> s.1.0, Statement of Intent

The Plan also reflects the role intensive agriculture is to play in the Agricultural Use Area. It includes amongst its objectives "the rational diversification and intensification of agricultural

activities": s. 1.0, Objectives. It considers the primary uses of the Agricultural Use Area to be extensive agriculture and IAOs: s. 1.3.

98 In her Reasons for Judgment, Fraser C.J.A. contends that residential land use, in conjunction with extensive agriculture, satisfies this emphasis on agriculture. However, the development of a residence in conjunction with a farming operation is only one of two forms of residential development which are permitted uses in the area; the other is a single family dwelling on a residential parcel subdivided from a quarter section and unrelated to farming activities. Further, while rural Alberta may have developed in a pattern of quarter sections of land, each equipped with a family home, there is no evidence before this court to suggest that this settlement pattern remains today, in a time of ever increasing mechanization. Nor is there evidence that the ability to develop a home on each quarter section is necessary to accommodate inter-generational farm families. In any event, interpretation of a bylaw involves consideration of the object and intention of the legislative scheme, as inferred from the relevant legislation itself. I do not infer from that legislation that these policy considerations form part of its object or intention.

99 The legislative scheme of the Act is also relevant to this inquiry. Section 617 states that one of the purposes of the Act, and bylaws thereunder, is to achieve orderly, economical and beneficial development without infringing on the rights of individuals except to the extent necessary in the overall public interest. This reflects an intention to protect the capacity of property owners to develop their land as they see fit, subject to compromise for the pubic good.

100 While IAO developers will generally be private entities, the development of IAOs serves the public interest, as they provide an economic benefit to the community as a whole. The Plan's emphasis of the importance of agriculture is motivated, at least in part, by economics. The Plan seeks to "promote economic diversification so that all residents may enjoy optimum working and living standards" and sees "agriculture and agricultural services as continuing to be a major economic force in the community": Goal. The Plan refers to "providing an environment that will benefit the agricultural community and economy": s. 1.0, Statement of Intent. It seeks to ensure that "agriculture remains an integral and viable component of the regional economy": s. 1.0, Objectives. Indeed, given the obvious nuisance factors associated with IAOs, it is hard to imagine why an IAO would ever be tolerated by a community, if not for its potential for positive economic impact.

101 If "proposed" status is not achieved until late in the application process, neighbouring landowners may easily defeat the project by obtaining residential development permits. However, Fraser C.J.A. suggests that potential IAO's may avoid this conflict by the simple expedient of purchasing the entire minimum distance separation (MDS) area or by negotiating rights over it. This approach suggests that incursion onto private rights is not necessary, as required in s. 617. However, MDS areas are sizable. In the current case, the IAO is spread over five quarter sections. The MDS area for each of those quarters runs onto at least the eight surrounding quarter sections. Adopting Fraser C.J.A.'s approach would require acquisition or negotiation with respect to either all or part of the 40 quarter sections which surround the

parcels marked for development. The developer's ability to purchase only the specific portions of the neighbouring sections which comprise the MDS area would be dependent upon subdivision approval from the County. A larger IAO would involve an even larger MDS area. This approach would significantly impact the economic viability of any potential IAO operation, depriving the community of the economic benefits associated with the intensification of agriculture. This would be inconsistent with the Plan's emphasis on agriculture as a key economic force in the County. Accordingly, while s. 617 contemplates preservation of private interests, the greater public good weighs against an interpretation of "proposed" that would render the County economically unfriendly to IAOs.

102 The distinction the Act draws between permitted and discretionary uses is also relevant. These concepts are defined in both the Act and the LUB. A permitted use is one for which a permit must be granted if bylaws are complied with. As the name suggests, a discretionary use is one for which there is no imperative to grant a permit. This distinction reflects the principle underlying permitted uses:

> that, as a matter of good planning, within a given district, one or more uses may be identified that are so clearly appropriate in that district, and so compatible with one another that they demand no special consideration. Therefore, such uses ought to be approved as a matter of course no matter where they are located in the district, provided that the development standards set out in the bylaw are also met.
>
> F.A. Laux, *Planning Law and Practice in Alberta*, 3rd ed., looseleaf (Edmonton: Juriliber, 2002) at 6-3, cited with approval in *Burnco Rock Products Ltd. v. Rocky View (Municipal District) No. 44* (2000), 261 A.R. 148 (Alta. C.A.) at para. 13

103 Most dwellings in the relevant district, including those under consideration in this matter, will be permitted uses. Extensive agriculture is also a permitted use under s. 6.2.1.1.a. However, an IAO is merely a discretionary use. While agriculture is a priority in the County, an IAO is considered distinct from extensive agriculture, and subordinate in its suitability for the district. This militates against an overly broad interpretation of "proposed".

104 While permitted uses are given planning priority, their approval is subject to compliance with the relevant bylaws. The question of statutory interpretation raised in this appeal will determine whether the applicants' prospective residences comply with the LUB. Given that compliance with the bylaw is the central issue here, and permitted use permits are available only when bylaws are complied with, I do not place significant weight on the permitted nature of a residence. The County is entitled, through its bylaws, to place restrictions on permitted uses. It follows that inclusion of a particular type of development, in a list of permitted uses, does not mandate an interpretive approach that minimizes any restrictions the County has chosen to impose on such developments.

105 The permitted/discretionary dichotomy, and the imperative to approve permitted uses subject to compliance with bylaws, support an interpretation of "proposed" that will provide

certainty as to when that status is achieved. The greater the uncertainty on this point, the more approval of a residential development permit application might depend on an exercise of discretion by the Development Authority. This would tend to blur the distinction between a permitted use and a discretionary use.

106 The developer equates the word "proposed" with incompleteness. It contends that a project is "proposed" when a reasonable person would have no doubt that a serious intention to develop has been displayed even though no application is filed. But such a test promotes uncertainty. Would public consultation constitute a proposal or a mere testing of the waters? If "proposed" status may arise prior to the filing of an application, to whom must the development be proposed? How and when would serious intent be crystallized? How would any abandonment of that intent be determined?

107 On the other hand, the appellants' proposal, that a complete IAO development permit application must be submitted to be "proposed," cannot be rationalized with s. 3.4.9. That section provides the development authority with discretionary power to decide an application despite the absence of required or requested information. According to that section, approval may be given to an IAO development permit application, even if it is incomplete. So there is no point at which the application can be objectively determined to be complete. Hence the standard of completeness does not assist in the interpretation of the word "proposed".

108 In contrast, the decision of the SDAB that a development becomes "proposed" once a development permit application is submitted to the County provides a more objective and tangible touchstone.

109 In her Reasons for Judgment, Fraser C.J.A. raises the question of how one could know with certainty when a filed IAO development permit had been abandoned. Neither the LUB nor the Act provide a mechanism for neighbouring landowners to compel the Development Authority to either decide or return a development permit application. She reasons that an application might remain filed and incomplete indefinitely if the applicant does not exercise his or her option to deem the application denied. However, the Development Authority is obliged to "receive, consider and decide on all applications": LUB s. 3.4.7. While the LUB does not provide a specific time frame for carrying out this duty, the Development Authority could not fail to act indefinitely. A neighbouring landowner, wishing to obtain a residential development permit, could seek an order of mandamus compelling the Development Authority to discharge its duty to decide the application. Accordingly, if an IAO is proposed as of the date an application is filed, an unannounced abandonment of that application could not indefinitely prevent a residential development from proceeding.

110 Fraser C.J.A. also considers the prospect of numerous, repeated, development permit applications if an IAO becomes "proposed" upon the filling of an incomplete application. In such circumstances, an IAO developer might be motivated to file an application at the earliest possible time. However, under s. 3.4.1. LUB, only owners, or agents of owners, can apply for development permits. Thus a developer must either already be a landowner, or must acquire ownership or agency status, before applying for a permit. This would deter speculative

applications. Further, a developer who submits an incomplete application runs the risk that it will either be returned under s. 3.4.8 or simply refused. In the latter case, the Development Authority could decline to accept a further application for 6 months: 3.4.12. So while a developer might be motivated to move quickly to file even an incomplete application, there are limitations on the extent to which this can be done and the benefits to be achieved.

111 Moreover, the prospect of repeated IAO applications would only arise if an IAO permit was issued, but no development commenced within a 12 month period, resulting in the permit becoming void under s. 3.6.6 LUB. Few commercial enterprises would intentionally indefinitely postpone commencement of operations on potential revenue generating property. Further, it is unlikely that a Development Authority, answerable to an elected municipal council, would repeatedly grant permits for an unpopular IAO, construction of which was unreasonably delayed.

112 The prospect of repeated residential development permits exists irrespective of when an IAO becomes "proposed". If an IAO is deemed to be "proposed" early in the planning process, landowners may be inclined to obtain residential development permits to ensure that, in the event an IAO project is announced in their area, they will retain the ability to develop a residence on their land. If an IAO does not become "proposed" until later in the planning process, landowners could wait until an IAO project is announced before seeking a development permit. But, in any event, if an IAO does not become proposed until it is approved, landowners may nonetheless be motivated to apply for a residential permit to block the project.

113 Fraser C.J.A. concludes that an interpretation of the term "proposed" that might foster multiple applications for permits cannot have been intended as it could give rise to undue costs to landowners and IAO developers, increase in the County's workload, and run contrary to an intention to reduce red tape and costs.

114 But if landowners choose to file development applications for the sole purpose of defeating the intended operation of the LUB, it is not unreasonable to expect them to bear the financial cost and inconvenience involved. If the County does experience an increased workload, it could adopt a fee structure that would discourage repeat applications.

115 The LUB was intended to provide a scheme to prioritize residential permits and IAO permits. Regardless of how that scheme is interpreted, landowners and IAO developers are motivated to file permit applications as early as possible. From a policy perspective, it may be desirable to choose the option that minimizes administrative costs. One may even find a statutory intention to maintain costs at a reasonable level. But in the absence of evidence of any increase in administrative costs inconsistent with the intention of the legislative scheme, or evidence as to which interpretation would create the greatest cost impact, I am unwilling to attribute any weight to this factor.

116 Fraser C.J.A. also considers the inequities of a developer being permitted to set up an IAO on a parcel of land too small to encompass the entire prescribed MDS. However, the issue

before us concerns the meaning of "proposed" in the context of the objects and intention of the legislative scheme. Section 6.1.7.3 of the LUB reflects a clear choice by the Council of Flagstaff County not to require an IAO developer to purchase the entire MDS area. The validity of that provision is not before us. Nor is the fairness of the Council's choice to enact it.

117 Considering the context surrounding the use of "proposed" in s. 6.1.7.3, its use elsewhere in the LUB, the emphasis placed on agriculture in the District, and the significance of agriculture in area economy, as well as the need for certainty with respect to limitations on permitted uses, the appellants' arguments cannot prevail. I conclude that "proposed" in s. 6.1.7.3 refers to an IAO for which a development permit application has been submitted to the County, whether or not it is complete.

118 It follows that, in my view, the SDAB did not err in its interpretation of "proposed".

What is the relevant time for determining whether an IAO has achieved "proposed" status?

119 The appellants argue that the development authority should have made its decision on their residential development permit applications on the basis of facts that existed at the time those applications were filed. They submit that this approach provides the degree of certainty to which a permitted use applicant is entitled. Since the application for the IAO development permit had not been made at the time the residential applications were submitted, they maintain that should foreclose any entitlement to an IAO development permit.

120 However, the SDAB and developer maintain that filing an application for a permit does not crystallize any rights. They suggest that a change in facts should invoke the same principle as a change in the applicable law. They rely on authorities interpreting section 643(1) of the Act. That section does not allow a change in the land use bylaw to affect the validity of a permit granted on or before the change. This has been interpreted to mean a permit application may be defeated by a change in law that occurs between the filing of the application and the final decision thereon: *698114 Alberta Ltd. v. Banff (Town)* (2000), 190 D.L.R. (4th) 353 (Alta. C.A.); *Parks West Mall Ltd. v. Hinton (Town)* (1994), 148 A.R. 297 (Alta. Q.B.); *Bouchard v. Canmore (Subdivision & Development Appeal Board)* (2000), 261 A.R. 342 (Alta. C.A.); Laux, *supra*, at 9-14.

121 Neither the Act nor the LUB expressly directs a development authority or SDAB to consider only those facts in existence at the time a development permit application is filed. Nor have the appellants pointed to any provisions from which this could be inferred. The legislative scheme is silent on the question and the appellants, in effect, ask this court to read into the scheme a right to have their applications decided as of the date of filing.

122 In non-*Charter* cases, a court's jurisdiction to read words into a statute is limited:

> It is one thing to put in or take out words to express more clearly what the legislature did say, or must from its own words be presumed to have said by implication; it is quite another matter to amend a statute to make it say something it does not say, or to make it say what is conjectured the legislature could have said or would have said if a particular situation had been before it.
>
> Driedger, *supra*, at 101.

123 In *Schindler v. Western Bank Ltd.* (1976), [1977] 1 Ch. 1 (Eng. C.A.), at 18, Scarman L.J. considered the relevant distinction in the following terms:

> ... our courts do have the duty of giving effect to the intention of Parliament, if it be possible, even though the process requires a strained construction of the language used or the insertion of some words in order to do so.... The line between judicial legislation, which our law does not permit, and judicial interpretation in a way best designed to give effect to the intention of Parliament is not an easy one to draw. Suffice it to say that before our courts can imply words into a statute the statutory intention must be plain and the insertion not too big, or too much at variance with the language in fact used by the legislature.

124 The legislative scheme does not expressly provide that a permitted use application must be assessed on the basis of facts in existence at the time of filing. Nor can such a right be implied. There may be compelling policy considerations which suggest that, had the legislators turned their minds to this issue, they would have granted the right asserted by the appellants. However, in the absence of discernable legislative intent, the grant of such a right oversteps statutory interpretation and amounts to judicial legislation.

CONCLUSION

125 I would dismiss the appeal.

Appeals allowed.