

NATURAL RESOURCES CONSERVATION BOARD

Calgary, Alberta

THREE SISTERS GOLF RESORTS INC.
RECREATIONAL AND TOURISM DEVELOPMENT
IN THE BOW-CANMORE CORRIDOR
- APPLICATION NO. 9103
9 March 1992

Report of Pre-Hearing

Meeting

1. INTRODUCTION

The Natural Resources Conservation Board Act (the Act) was proclaimed into law on 3 June 1991. It created a Board "...to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinion, the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment." The Act spells out certain types of projects that are subject to review and prohibits the commencement of a reviewable project unless the Natural Resources Conservation Board (NRCB), on application, has granted an approval for the project. Included in the Act as projects requiring approval are recreational or tourism projects "...to construct one or more facilities for recreational or tourism purposes for which an environmental impact assessment has been ordered".

Three Sisters Golf Resorts Inc. (Three Sisters) has proposed a recreational and tourism development consisting of golf courses, hotels, residential housing and commercial buildings on privately owned land in the Bow-Canmore Corridor. On 30 August 1990, Three Sisters was ordered under section 8(1) of the Land Surface Conservation and Reclamation Act to prepare an environmental impact assessment (EIA) for the project. A portion of the project, a golf course on lands described in the project proposal as Site C, was approved by Alberta Environment prior to 3 June 1991, the date on which the NRCB Act was proclaimed into law, and is now under construction. The remainder of the project was not approved prior to the effective date of the legislation and therefore Three Sisters is required to obtain NRCB approval prior to the commencement of construction.

Three Sisters filed an application with the NRCB for approval of the project on 9 October 1991. On 31 December 1991, the NRCB sent a "deficiency letter" to Three Sisters identifying additional material required to complete the application. That deficiency letter was prepared following independent review of the application by NRCB staff, and by Alberta Environment and other interested government departments.

The Board held a public pre-hearing meeting at the Canmore Lions Hall on 9 March 1992 to hear representations respecting certain aspects of the hearing to be held to consider the application. Those individuals or organizations that attended and participated in the meeting are listed in Appendix A.

The agenda items for the meeting were as follows:

1. The NRCB application review process.
2. The role of Alberta Environment with respect to the Three Sisters project.
3. The status of a study to summarize the availability of base-line data for the area.
4. Other possible applications for the Bow-Canmore Corridor.
5. The appropriate location and timing of the hearing and deadlines for filing submissions.
6. Requests from potential interveners to be considered as interveners eligible to receive intervener funding, and for advance funding. (Appendix B lists those parties requesting funds and the requested amounts).

Items 1 to 4 were primarily for information purposes. This report presents the Board's conclusions respecting certain of the matters considered at the meeting. It does not include in detail, all of the views presented by participants in the meeting, but the Board had regard for those views in reaching its conclusions. A transcript of the meeting is available for review at the Board's offices.

2. AVAILABILITY OF BASE-LINE DATA FOR THE AREA

Mr. Ron Peiluck of Scope Environmental Auditing Services Corporation attended the meeting and provided the Board and interested parties with a draft report cataloguing the available information base in and adjacent to the Bow-Canmore Corridor. Mr. Peiluck had been engaged to carry out the review and cataloguing of available data by the Honourable Ralph Klein, Minister of Environment. The locating and cataloguing of material is continuing, but the draft report identified over 500 sources of data. The final report is expected to be available from Alberta Environment by 31 March 1992.

The Board appreciates Mr. Peiluck's co-operation in attending the pre-hearing meeting and making available copies of his draft report. The extensive catalogue of data sources should be of assistance to all participants in the hearing.

3. OTHER POSSIBLE APPLICATIONS FOR THE BOW-CANMORE CORRIDOR

There has been considerable publicity in recent years regarding a number of possible developments in the Bow-Canmore Corridor. Some of these may be recreational or tourism projects for which an EIA has been ordered. The Board knows of three such projects which would require an approval from the NRCB. The projects are:

- C Mountain Meadows Golf Inc. for an 18-hole golf course within the Town of Canmore for which an EIA was ordered on 17 January 1991.
- C Georgetown Developments Inc. for a development adjacent to Harvey Heights which would include a 45-hole golf course, hotel, 500 condominiums, staff housing, and RV Park and for which an EIA was ordered 1 June 1988.
- C BHB Canmore Resorts Limited for an 18-hole golf course and RV Park in the Deadman Flats area for which an EIA was ordered 17 January 1991.

If the Board receives applications for these or other projects, it would see some advantage in considering them in the same time frame as its consideration of the Three Sisters application. However, the Board cannot force parties to bring forward applications at a particular time, nor can it unreasonably delay the consideration of a completed application because it believes there may be other applications forthcoming. The Board contacted the above mentioned parties and encouraged their presence at the meeting but none chose to participate.

The Board will continue to encourage the involvement of these parties in the Three Sisters application review process. If they, or other parties, bring forward applications at some future date after the Three Sisters application has been dealt with, the new applications will be assessed on the basis of the then existing circumstances in the area. Those circumstances will recognize the ultimate disposition of the Three Sisters application, and any other projects not requiring NRCB approval which may have proceeded.

The Board notes that there are other projects planned for the area for which the NRCB has no jurisdiction, or where the existence of NRCB jurisdiction is not known because no decision has yet been reached as to whether an EIA will be ordered. Projects in the former category include:

- C The previously mentioned Site C golf course of the Three Sisters project.
- C The Canmore Alpine Developments Co. (Hyatt) phase 1 development of a hotel and convention centre, 18-hole golf course, staff housing and residential sub-division. This phase was approved in 1990.
- C Several residential developments approved by the Town of Canmore which do not involve recreational or tourism facilities.

Projects in the latter category include:

- C Phase 2 of the Canmore Alpine Developments Co. (Hyatt) project which would likely include golf courses and residential housing.
- C A project by Kan-Can Resorts Limited to add 50 chalet units to the Alpine Resort Haven on Pigeon Mountain.

The Board, in assessing the Three Sisters application, will have appropriate regard for the likely effects of other projects in the area that are expected to proceed and for which it does not have jurisdiction.

4. THE LOCATION AND TIMING OF THE HEARING

All participants in the pre-hearing meeting who spoke to the matter agreed that the hearing should take place in Canmore. The Board believes that as a general principle, the hearing should take place in the region in which the project to be considered is proposed. An overriding consideration to this principle is the availability of a suitable facility large enough to accommodate interested parties who would wish to attend the hearing.

In the case of the Three Sisters application, the Board agrees that Canmore is the proper location for the hearing. Although there is some question as to whether the available hearing facilities would be large enough, the Board is confident that suitable arrangements can be made.

Three Sisters stated that its response to the Board's deficiency letter would be available by 13 March 1992. On this basis, and having regard for the public process followed in establishing the terms of reference for the EIA and preparing the application, and recognizing that the application was filed on 9 October 1991 and has been available since then, Three Sisters suggested that the hearing should take place in the second week of May 1992.

Neither the Town of Canmore nor the Canadian Parks Service took a position on the timing of the hearing, although the Town referred to the NRCB process as preceding its planning process. The School Division suggested that it should be prior to the close of schools at the end of June, and the M.D. of Bighorn indicated that it should either be completed before the municipal election in October, or held some 6 weeks after the new Municipal Council is in place. The Planning Commission said the hearing should take place after the Canmore General Municipal Plan was completed, which is expected to be in mid-August.

The Property Owners and Residents Association stated that the project is controversial and should be dealt with as soon as possible so that other related issues, such as highway redesign at Deadman's Flats, could be resolved.

The CPAWS Group said that a minimum of two months after the deficiency response and the Board's decision on funding was needed to prepare a submission, and the earliest date for a hearing would be the second week of June. The AWA Group suggested that the end of July was the earliest possible date, but it preferred the fall.

BowCord took the position that a minimum of three months was required after completion of the deficiency letter and finalizing of cost awards and any possible appeals. This would likely result in a hearing in September. The Women's Resource Centre agreed with the September date, indicating that three months was needed to prepare for the hearing, as did the University Women's Club of Calgary.

The Trout Unlimited Group, the Federation of Alberta Naturalists, and the Bow Valley Naturalists supported a September or October date, indicating that certain field work was needed this summer to prepare for the hearing.

Earth First!, the Northern Light Society and an Unnamed Group of Individuals suggested a fall hearing date. Some of their reasons included the time needed to review environmental impacts, the need for the General Municipal Plan to be complete, and that the hearing should be after the October municipal election.

The Board has given careful consideration to the timing of the hearing. In doing so it has recognized that there has been considerable awareness of the Three Sisters project in the Canmore region for a lengthy period and that the application was filed on 9 October 1991. It notes that the response to the deficiency letter, although not available at the pre-hearing meeting, was filed on 13 March. It is undergoing independent review by NRCB staff, and by Alberta Environment and other government departments, and preliminary indications are that it is sufficiently complete to proceed to a hearing.

Additionally, the Board recognizes the Three Sisters project is controversial for the community and believes that an early resolution could be beneficial. The Board also has had regard for the calendar, and it recognizes the difficulty for members of the public and volunteer intervener groups to organize, prepare and participate in hearings during the months of July and August, when the school holidays occur.

With respect to the need for the Canmore General Municipal Plan to be completed prior to the hearing, the Board recognizes that there is need for co-ordination between its review process and the Town planning process. However, if the project is to proceed, the applicant must meet both the NRCB approval requirements and the local planning requirements. The Town referred to the NRCB process being "first", and the Board does not see significant reasons, in this case, to suggest that the General Municipal Plan should be finalized before the NRCB review. Additionally, the Board sees no connection between its legislated responsibilities and review process and the municipal elections scheduled for the fall. Also, having regard for the extensive data now before the Board, it does not at this time, see the need for additional significant field work by potential interveners.

The Board does agree with the many participants in the meeting that time is required to prepare for the hearing. This need must be balanced with the requirement for fairness to the applicant, who has requested a May hearing date, and all other relevant factors. Having regard for these matters, the Board believes a hearing in the latter half of June would be appropriate. It is therefore scheduling a hearing to begin in Canmore on 15 June 1992. This date is based on the release of this report on 20 March 1992, the assumption of prompt provision by the applicant of any funding advances which might be awarded, and confirmation that the response to the deficiency letter is sufficient to proceed to hearing.

The 15 June 1992 date will provide 12 full weeks from the release of this report to the hearing, compared to a statutory minimum of 30 days notice. The Board believes the time to the hearing will be adequate, but recognizes that the project is a major one and that the application and supporting data are substantial. Potential interveners will therefore have to organize and proceed with their work in an efficient manner. It was clear from the submissions for costs that organizational work is underway.

None of the participants in the hearing commented on appropriate dates for the filing of intervener submissions. The Board is setting a date of 8 June 1992 for the filing of such submissions.

The Board is enclosing with this report, for participants in the pre-hearing meeting, a copy of the Notice of Hearing. It will be distributed to other interested parties and be published in appropriate newspapers as soon as practical.

5. ELIGIBILITY FOR FUNDING OF THOSE MAKING REQUESTS

This section of the report summarizes the views of the participants in the meeting with respect to the eligibility of those requesting funds under the Act for the purpose of intervening in the review of the Three Sisters application. It also reports the Board's conclusions about the eligibility of each of those requesting funds and outlines the reasons the Board reached those conclusions.

The Board wishes to emphasize that its analysis and decisions set out in this section refer to the eligibility of interveners for funding. They do not in any way deal with the standing of interveners to appear at a hearing, to present evidence and to question other participants. In the opinion of the Board members of the public, or groups of members of the public, wishing to provide evidence about an application before the Board or to ask questions of an applicant, are entitled to do so. This can be accomplished by registering and participating in a public hearing. Having standing and participating in the Board's review of an application does not mean that a party would be automatically eligible to receive an award of funds to assist it in intervening. To be eligible the party would have to qualify under section 10(1) of the Act which states:

"Individuals or groups of individuals who, in the opinion of the Board, are or may be directly affected by a reviewable project are eligible to apply for funding under this section."

5.1 Views of the Participants

The organizations or individuals participating in the meeting have been identified in Appendix A. Not all of the participants in the meeting applied to the Board for an advance award of costs. Those that did apply are listed in Appendix B and are as follows:

Town of Canmore
Mount Rundle School Division
CPAWS Group
Bow Valley Women's Resource Centre
BowCord
AWA Group
Earth First!
Unnamed Group of Individuals
Bow Valley Naturalists
Trout Unlimited Group
Northern Light Society
P. Carson and J. Austin

Town of Canmore

The Town stated that anyone appearing before the NRCB who has as his or her legitimate stated and published goals, or stronger yet has a statutory mandate, the advancement of the social, economic, and general welfare of the public in relation to the reviewable project, is "directly affected". The Town indicated its directly affected status is due to its environmental concerns and the effect of the development on the Town. Further, the Town put forward the claim that, as a local planning authority having a statutory obligation under the Planning Act and specifically to achieve the purposes of the Planning Act, it is a directly affected group or individual.

Three Sisters agreed with the directly affected status of the Town and stated that the Town speaks for the people and therefore is a proper representative. Three Sisters stated that this intervener was in a position to assist the applicant in a reasonable manner. The Board review is the first step in the approval process and municipal planning is the second step. Hence, Three Sisters requested that the Board avoid duplication of costs as the Town would have to expend these funds in any event.

The Town responded by saying that it found the process difficult with the new legislation and is hoping to sort out what direction to take. It stated its willingness to provide assistance to the School Division by making available its advisors and particularly the consultant, Nichols Applied Management, which is studying the impact of rapid growth. It also responded to the Women's Resource Centre by saying that it would be willing to assist in addressing the issue of affordable housing. The Town pointed out that it is restricted in its efforts to act on behalf of various parties by its statutory responsibilities.

Mount Rundle School Division

The School Division stated that it is directly affected by the potential impact of the Three Sisters development since the directly related student influx is estimated at 2,200. Three affected areas would have to be addressed by the Division, facility costs and resulting debt load, teacher recruitment, and site needs. It claimed to be currently one of the three fastest growing School Divisions in the Province with a stated growth rate last year of 14 percent. The inclusion of the Three Sisters Development, it was stated, would increase this to a growth factor of 17 percent.

Three Sisters questioned why School Division matters are not being addressed by the municipal planning process rather than through intervention in the NRCB process. The response of the School Division was that the growth factors attributable to Three Sisters are not normal but unique and substantive. Three Sisters stated that even though these are real concerns, they should be dealt with by the Town within the Area Structure Plan where land would be allocated and set aside for this purpose.

CPAWS Group

The Canadian Parks and Wilderness Society, The Sierra Club of Western Canada (Alberta Group) and the Alpine Club of Canada prepared a joint application for eligibility. All of the groups indicated that they were directly affected for four reasons:

- C The proposed development could have impacts that are directly related to the interests and objectives of their societies;
- C All of the groups have a long-standing interest and involvement in public processes related to resource development, planning and conservation in the Bow-Canmore Corridor;
- C Members of each group are regular users (hiking, climbing, other field trips) of the Wind Valley and Wind Ridge areas; and
- C A number of their members are local residents of the Town of Canmore (Alpine Club-131; Sierra Club- 9) or of the Bow-Canmore Corridor (CPAWS - 270; Alpine Club - 251)

Further submissions with respect to eligibility status applied only to specific groups.

- C The National Headquarters of the Alpine Club of Canada is located on four acres in Canmore, and the National Club House is located on forty acres of land overlooking the Three Sisters site.
- C CPAWS and the Alpine Club were represented on Three Sisters' Technical Advisory Committee, which was formed to provide independent technical comments on the Environmental Impact Assessment. The invitation by Three Sisters to participate in this public committee was an implicit acknowledgment of their directly affected status.

It was the view of Three Sisters that the legitimate interests of CPAWS were properly restricted to parks by the nature of their mission. More generally, use of the land by members of the three organizations should not be grounds for considering them as 'directly affected'. The debate as to whether the lands in question should be set aside for wilderness preservation was concluded when the land was zoned for development. Development of the land was therefore the prerogative of Three Sisters and beyond the proper concerns of the CPAWS Group.

The CPAWS Group noted that major deficiencies they had identified in the EIA were not questioned by the applicant. They rejected the suggestion that their interests and mandate were limited to park areas and disagreed with the suggestion that previous decisions of other government agencies with respect to policy matters limits the need for the NRCB to consider broader issues relative to the proposed development and about which they may have concerns.

BowCord

BowCord is a Canmore community group consisting of approximately 200 members, the majority of which are residents of the Bow-Canmore Corridor. Its objective is to ensure that planning in the corridor is conducted in an integrated and comprehensive manner based on an understanding of the area's natural resources and the needs of its citizens. BowCord members stated that they believe they will be directly affected by the Three Sisters project, both economically and socially. Members state that they are users of the existing infrastructure and that they will also be affected by changes in air quality, water quality and the environment.

It was the view of Three Sisters that BowCord is a forum for citizens of Canmore and the group does represent a small portion of the community. However, it was stated there are many such groups in the community and hence it is impossible for the applicant to fund them all as interveners. In addition it suggested that the studies proposed by BowCord are already being pursued by capable urban planning experts employed by the Town of Canmore.

BowCord responded that the fact there are many community groups which may wish to intervene in the hearing process was irrelevant. BowCord, it was stated, presents a unique perspective relating to quality of life issues. It identified plans to bring forward and present alternatives and viable options for consideration by utilizing experts and its own members in panel presentations. In BowCord's view the Town of Canmore cannot adequately present its perspectives.

AWA Group

The AWA Group is made up of the Alberta Wilderness Association, the Speak Up for Wildlife Foundation, and the Adventure Group Ltd. The AWA Group claimed to have 2600 members of which 90 per cent are Albertans. The AWA Group contended that wild areas are vital for the mental and physical well-being of citizens. Members and clients have used the Bow River, Bow Valley and Wind Valley consistently for decades for recreational use. Consequently, the Group stated that the Three Sisters project will affect the mental and physical well being of its members by withdrawing from their use vast amounts of one of the last wild accessible recreational areas in Southern Alberta. The Group also stated that the project will directly and negatively affect the economic viability of Adventure Group by impacting on water quality and diminishing the wilderness experience. This will have a direct impact on its nine seasonal employees. The Alberta Wilderness Association stated that it was asked to participate on a Three Sisters advisory committee but declined because to do so would be contrary to its philosophical position. In order to avoid duplication of efforts, the Group indicated a willingness to co-operate with other similarly minded groups such as the Bow Valley Naturalists, the Alberta Federation of Naturalists and Earth First! However, the AWA Group also believes that maintaining a diversity of opinion is necessary for the process.

Three Sisters responded that the AWA Group should not qualify since they are not based in this area and are interested in province-wide policy. It also stated that the Three Sisters area is already zoned for development whereas the AWA Group wishes to reopen the policy question of zoning. It does not believe this Group would provide any new useful information.

The AWA Group replied by strongly disagreeing with the applicant's definition of directly affected. They pointed out that the legislation is silent on the geographic and economic factors related to directly affected and contended that the power was left with the Board to give meaning to this term. They felt that the applicant's argument eradicates the Board's right to deal with environmental legislation.

They stated that they have 100 members who are residents of the Corridor and 50 who are residents of Canmore, but this should be irrelevant to the determination of directly affected status. In their view, the ecosystem is not restricted to private land and so the argument of Three Sisters that users of its private land might be trespassing is not relevant.

Earth First!

The representative for Earth First! identified himself as being part of a "movement with followers in Banff,

Canmore, the Bow Corridor and Calgary...". The Earth First! movement was said to advocate wilderness for its own sake, and the followers believe that a less anthropocentric viewpoint needs to be addressed in the upcoming hearing. It was stated that "Earth First is a grass-roots organization, or what you might call a disorganization. We have no president, no treasurer, no secretary. Really Earth First is just a movement that brings people together that feel the earth must come first in decisions of such magnitude, as this is our home, this planet."

In response to Earth First!, Three Sisters submitted that Earth First! is not an entity and had no substantive issues to raise relative to the hearing. Three Sisters further stated that the issues raised by this movement related to a general philosophy and not to the proposed project. In response, Earth First! stated that the onus is not on a group to show how they are "directly affected" and that the structure of an organization is not relevant to commitment.

Bow Valley Naturalists

The Bow Valley Naturalists identified themselves as a local society with a historic involvement in public planning issues and conservation initiatives in the Bow-Canmore Corridor dating back to 1971. The group stated that it has 98 members, 30 of whom are residents of the town of Canmore. The Bow Valley Naturalists stated

that they were participants in both the Public and Technical Advisory Committees organized by Three Sisters.

The Bow Valley Naturalists claimed that the activities of its members who are local residents would be affected by the proposed development as the affected lands are,

"...considered home and workplace for club members. These lands are important in a variety of ways to members' everyday lives and in their personal as well as collective enjoyment of nature. Thus, any development in the Bow Valley directly affects members' and their values."

Three Sisters responded that this group is local in nature and is concerned primarily with the public policy debate surrounding the appropriate land use zoning. It stated that the group should not be rewarded with intervenor status for what amounts to trespass on private property. Further, it was stated that the group has not provided any information to indicate that new studies are warranted. It also claimed that the Bow Valley Naturalists should be required to bring forward a detailed review of the deficiencies in the EIA prior to receiving any funding.

The Bow Valley Naturalists responded that insufficient work has been done to determine the full impact of the project. They responded in detail to the accusation of trespass, describing the permissions to gain access to the property that were granted by Three Sisters. They rejected the contention that the policy issue of zoning for the lands in question was settled once and for all, claiming that public policy is dynamic and can be changed.

Bow Valley Women's Resource Centre

The Women's Resource Centre stated that the local community based organization plays an advocacy role in addressing issues affecting women and children. The Centre's membership was identified as being largely comprised of residents from the town of Canmore and the Bow Valley near Canmore. It was further stated that volunteer services provided by the Centre such as a Food Bank, Drop-In Centre, "Women in Distress" Fund, and therapy, would likely be adversely affected by the proposed development. More generally, it was submitted that the membership of the Centre is "able directly to speak to the Project as it affects the women and children of the immediate and surrounding locale of the Project."

In response to a concern raised by Three Sisters, the Women's Resource Centre stated that the issue for the Board to decide is not a question of who is directly affected but rather who may be directly affected. It further stated that the interpretation of directly affected is in the hands of the Board. In considering the definition of 'directly affected,' social, economic and environmental affects should be given equal weight and should not be restricted to a consideration of how a group may be economically affected by a project. Representation was made regarding the Centre's inability to participate in the hearing process without an award of costs. The Centre also stated that no one else would speak up for or fund an intervention in the hearing process for their organization.

Trout Unlimited Group

The Trout Unlimited Group appeared at the meeting representing a group of concerned conservationists and anglers including the Upper Bow Valley Chapter of Trout Unlimited of Canada, the Upper Bow Valley Fish and Game Association, and Banff Fishing Unlimited, a guide service in the Canmore area. The representative for this organization emphasized the local nature of the organization with a membership of approximately 2,000 in Alberta of which "a minimum of 100" members "live, work and recreate in the corridor and would be directly affected by ... impacts on fisheries and fish habitat." The members of these organizations, it was stated, have concerns regarding the impact of the proposed development upon fish habitat and water quality, the aesthetics of the area, business opportunities, permanent access to waterways, and regulatory change. It was emphasized that new and relevant information would be available to the Board concerning a creel census analysis and an annotated bibliography regarding the aquatic impacts of golf course construction and maintenance.

In response to the submission of the Trout Unlimited Group, Three Sisters observed the quality of this potential intervenor's request noting that the application for funding specifically addressed issues relative to the proposed project. Three Sisters commended such a well focused approach to addressing how an intervenor may be directly affected; however, Three Sisters was not convinced that the Group had established that it was directly affected by the planned development.

Northern Light Society

The Northern Light Society identified its group as a coalition of individuals sharing common philosophical beliefs about the environment. The Society indicated that it does not have a specific membership designation. Its written submission referred to 300 members and its verbal submission referred to 356 members, the majority of which are residents of Calgary. The group indicated that members when in the Town of Canmore were affected by "...smoke and destruction of scenery as well as destruction of habitat for species..." The Society also argued that downstream members are threatened with the contamination of their water supply.

It was the view of Three Sisters that the Northern Light Society did not establish that it was directly affected, because its membership was based in Calgary.

The Northern Light Society indicated that development within the property would interact with the whole ecosystem and reiterated its argument that the development could contaminate downstream water supplies.

Phillip Carson/Julie Austin

Mr. Carson indicated that he and his family share a strong emotional attachment to the Three Sisters lands as a result of years of enjoyment of the natural environment and the wildlife there. They would suffer emotional pain as a direct effect of the destruction of that natural environment. Mr. Carson stated that the concept of 'directly affected' should not be restricted to the quantifiable, the analytical and the utilitarian: "An anthropocentric preoccupation with bottom line economics precludes the rights of the creatures and plants who can't make submissions on how they feel directly affected about the decision to bring in the bulldozers." By narrowly defining the meaning of directly affected, it was claimed that the Board may exclude the essence of what the public review process can aspire to.

Three Sisters stated that it did not understand the request of Mr. Carson and that it could not recommend intervenor status for this group.

Three Sisters

Specific objections raised by Three Sisters to requests for intervenor funding have been previously documented together with the intervenor's responses to those comments. This section of the Board's report is a summary of the applicant's general position regarding its consideration of issues dealing with the interpretation and

application of Section 10 of the Natural Resources Conservation Board Act.

In its submissions to the Board the applicant stated that the burden of proof is on the intervener to establish whether or not it is directly affected by the proposed development. Three Sisters then suggested a test for concluding whether or not an individual or group of individuals is 'directly affected'. The test as stated is as follows:

- C A threshold exists such that individuals (or groups) must show that they are or may be directly affected. This decision must be made prior to the Board considering any requests for funding.
- C The test of directly affected should be carefully examined for groups with special legal status (e.g., corporations or societies). Three Sisters believes that such entities can only act through and by way of legal means and for legal or statutory purposes. This includes resolutions following legal motions by and on behalf of the members which the group represents. Consequently, the applicant specifically asked that, for groups, the Board require as a prerequisite, an undertaking to file the proper corporate or group resolution with the NRCB.
- C If groups or individuals are successful in proving to the Board that they are or may be directly affected, then the party must comply with the NRCB Act and requirements for funding.
- C If the first three requirements are met, the Board must examine the purpose for which funding is sought. Funding must be reasonable and directly related to the submission. In some cases, the assistance of technical experts may be necessary. Where there are several interveners and where these concerns overlap, a position paper or some other specific document should be all that is needed to assist the Board in addressing the public interest requirement of the Act.

Three Sisters further stated that funding is not granted for individual rights' purposes: "it exists to support the preparing of necessary submissions of materials and information not presently available to the Board and to allow the Board to examine the public interest." Similarly, Three Sisters stated that, "to be awarded, funding should be directly linked to the NRCB process."

In addition to the previously mentioned matters, Three Sisters stated that the following was required to qualify as directly affected:

- C A direct injury or effect (or potential injury affecting a party).
- C The injury or effect upon a party must be traceable to the project. There must be an element of factual causation between the project and the effect upon the intervenor.
- C The injury or effect is not likely to be addressed or discussed by any other intervening party.

Conversely, the applicant would have the Board refuse to consider parties directly affected in the following cases:

- C The claims of potential intervenors are resting on the claims of third parties who would better represent their own views.
- C There are "generalized" or "common" concerns that are more properly dealt with on a global rather than an individual basis.
- C Intervenors fail to address the argument that projects which are developed on private land will not directly affect as many people as the same project built on public land.
- C Those groups which argue the appropriate use of the land (i.e., wilderness or development) is an issue before the Board. This policy issue is recognized by the applicant as having been decided by other government agencies and so is not properly before the Board: "In each of these policy debates, the appropriate use of these lands was argued and the public had input as provided by law."

Lastly, Three Sisters submitted that groups outside the Bow-Canmore Corridor are less affected than local groups, stating "Even if these outside intervenors have genuine interests in the issues in question, the presence of local parties or intervenors (e.g., Town of Canmore) provides a mechanism and assurance that the Board hears reasonable argument and gives effective treatment to the issues."

In regard to potentially directly affected groups within the Corridor, the applicant cautioned the Board to scrutinize those parties or groups for "overlap" because "Some groups situated adjacent to the proposed project are more suitable to act as intervenors, (e.g., the Town of Canmore, which the applicant admits is directly affected)." Consequently, the applicant believes that "Through the Town, the environment, social and economic issues will be addressed. The public interest will be clearly identified. Hence, other parties that, although located in the region, may still not be appropriate intervenors. Absent special circumstances, their additional involvement derogates from the efficacy of the Board's process and the fair examination of the Three Sisters project."

5.2 Decisions Regarding Eligibility

In assessing eligibility the Board believes there are two questions that must be addressed. The first is whether those requesting funds are "Individuals, or groups of individuals" as referred to in section 10(1) of the Act. The second is whether those individuals or groups of individuals "are or may be directly affected" by the proposed Three Sisters project. This is particularly important, recognizing that the NRCB is a new organization and this is the first occasion on which the Board is interpreting the relevant sections of the Act.

In legislation the word "person" is commonly used to denote human beings and human organizations including corporations, associations and other entities in which people formally band together. In the NRCB Act, the legislators appear to have avoided the use of the word "person" in section 10(1) which defines who may qualify as an eligible intervener:

"10(1) Individuals, or groups of individuals who, in the opinion of the Board, are or may be, directly affected by a reviewable project ...".

This is particularly interesting when it is noted that the legislators did not generally avoid the use of the word "person", and indeed it is used in subsection (2) of section 10:

"10(2) On the claim of a person eligible under subsection (1)...".

"Person" is also used in several other sections of the Act.

This situation has caused the Board to consider the legal distinction between the words "person" and "individual". "Person" is defined in the Alberta Interpretation Act (RSA 1980, 1-7 Section 25(p)):

"Person" includes a corporation and the heirs, executors, administrators or legal representatives of a person."

The word individual is not defined in the Alberta Interpretation Act nor is it used in legislation as often as is "person". "Individual" appears as a defined term in the Income Tax Act and is used in the Bankruptcy Act. In both, it is taken to mean a natural person as distinct from a corporation.

Having regard for the distinction between person and individual, the Board believes that the intention of the legislators in drafting the NRCB Act was to narrow the definition of those who may be eligible for intervener funding to include only individual (people) or groups of people who have in common the potential for being directly affected by a proposed project rather than shareholdings in a corporation. This narrowing of the definition may also have been intended to exclude existing "associations" that are somewhat corporate-like in structure, which were established before a particular project was proposed, and which have goals and objectives that are not specifically and exclusively related to a particular project or set of related projects. The use of the phrase "individuals, or groups of individuals" also appears intentional. If "individuals or groups" had been used instead of "individuals or groups of individuals", the appropriate interpretation of the phrase might have been any entity that may be directly affected. The use of the expression "groups of individuals" places the emphasis on the individuals rather than the group. In the Board's opinion this means that the initiative for an intervention should come from the individuals who may be directly affected and who belong to the group rather than from the group itself. The direct effects which may be anticipated should be direct effects on the individuals, their interests and activities rather than on the group and its objectives and activities. Where a group of individuals has been formed solely for the purpose of intervening in approval or regulatory processes governing a proposed project, this distinction is trivial, but where a group of individuals is making an intervention through the offices of an existing group formed for other purposes, the distinction may be significant and relevant to the determination of both eligibility and funding.

In the opinion of the Board, the intent of the legislators in section 10 of the Act was twofold. One objective was to assist the Board to ensure that it has before it relevant evidence about the possible beneficial and adverse effects of a project. The other was to make it possible for individual (people) or groups of individual people to intervene in the Board's process and, with the assistance of intervener funding, present their views in an effective manner. Having this and the preceding discussion in mind, the Board believes the legislators intentionally used the words "individual or groups of individuals" rather than the word "person" to exclude entities such as profit-making

corporations that have their own financial resources, and indeed, might be in competition with an applicant for market share, labour or resources. The same reasoning causes the Board to conclude that the legislators intended to exclude governments, government organizations and other publicly funded bodies that have access to financial resources through mechanisms other than intervener funding, whether or not they are legally "corporations".

Existing associations may have been intended to be excluded for similar reasons, but the Board believes that such organizations with members that may be directly affected should be eligible for costs to represent those members. The costs should be limited to representing the directly affected members and cover only aspects of the project that would affect such members.

Among those seeking intervener funding, there are two requests from organizations that the Board believes do not constitute individuals or groups of individuals as defined in the preceding discussion. Both the Town of Canmore and the Mount Rundle School Division are entities that exist and operate as public entities through Statute. The Board recognizes that each represent their respective electorate and may have decisions to make that are directly related to any general municipal plan that would incorporate the development proposed by Three Sisters. The Town of Canmore, in fact, will be acting in a decision-making role in its review and approval or disapproval of the general municipal and area structure plans that include the proposed project.

In addition, the Town of Canmore and the Mount Rundle School Division have access to statutory sources of funds raised by taxation. This access to funding was established to pay for planning and decision-making processes which are required by legislation as well as to finance their day-to-day operations. The Board believes both the Town and School Division are directly affected and that the information and opinion that the Town and School Division officials have as a result of their planning and operational responsibilities may be relevant to its review of the Three Sisters application. The Board encourages both parties to participate in the public hearing. However, the Board believes that the legislators, through the use of the words "individuals or groups of individuals", did not intend that costs should be awarded under the provisions of the NRCB Act to such bodies.

The Board recognizes that the question of the meaning of the words "individuals or groups of individuals" was not raised and discussed at the pre-hearing meeting, but arose during the Board's subsequent assessment of the funding requests. Having in mind the impact that the Board's conclusion has on the Town of Canmore and the School Division, the Board considered re-opening the meeting to specifically discuss this issue. It decided not to do so because the portion of the meeting dealing with costs was to consider requests for advance funding. The Act provides for the making of an advance where in the opinion of the Board it is reasonable to do so. The Board believes advances are primarily intended to allow individuals or groups of individuals, who do not have independent sources of funds, to retain necessary experts and legal assistance and prepare for a hearing. The award of costs would be finalized after the hearing and awarded costs not included in the advance would be provided to the intervener. The Board does not believe that organizations like the Town and School Division would require an advance to allow them to prepare to participate in a hearing. Therefore, even if the Board had concluded that they were individuals or group of individuals, it would not have awarded an advance of funds.

There is one other entity making a request for intervener costs that the Board believes may have difficulty in qualifying as an "individual or group of individuals". Mr. Fisher described Earth First! as a movement and declined to provide information about its "followers" or the means by which they collaborate to act collectively. The Board is not satisfied that a movement can be considered an individual or group of individuals under section 10(1) of the Act. Although the Board concluded that it had not seen or heard evidence to satisfy it that Earth First! is a group of individuals, it did decide to complete its review of Earth First!'s eligibility and determine whether or not Earth First! may be directly affected.

The written request from P. Carson and J. Austin was submitted to the Board from an address identified as "Green Central Station". There was nothing in the written request or in Mr. Carson's oral evidence to suggest that the request was made on behalf of Green Central Station. The Board therefore concluded that the request was from two individuals, Mr. Carson and Ms. Austin.

The Board believes that the remainder of those seeking intervener funding are individuals or groups of individuals, or that they represent individuals or groups of individuals, as required under section 10(1) of the Act. In making this determination the Board has treated CPAWS, the Sierra Club and the Alpine Club of Canada, as one group of interveners, the AWA and its affiliates as a second group, and Trout Unlimited and its associates as a third.

Three Sisters suggested that the Board require an undertaking of those seeking funding to file the proper corporate or group resolution with the NRCB authorizing intervention in the proceeding. The Board accepts that those who appeared were speaking for the identified groups. If Three Sisters wishes to have a filing of formal resolutions, the Board would be prepared to arrange for this to occur at the hearing.

Three Sisters also suggested that the involvement of the Town of Canmore as an intervener may remove the need for other groups to be involved. The Board accepts that the Town would be able to provide information to the Board that would assist in reaching its decision. It questions however, whether the Town would be able to represent the positions of the various and different groups of local residents who may be directly affected by the project.

Three Sisters expressed the opinion that small groups of individuals who may be affected and happen to be members of large organizations would be more efficiently represented by themselves than by those large organizations. By "efficiently" the Board takes Three Sisters to mean giving more specific attention to the potential direct effects to which the individuals may be subjected and at lesser cost. The Board does not intend to interfere in

the way individuals choose to be represented before it. Nevertheless the Board is conscious of the need for prudence in awarding costs that would be paid by applicants and it would normally take questions of efficiency of representation into account in determining the amount of costs awarded.

5.2.2 Whether Those Requesting Funds Are, or May be Directly Affected?

The next step in determining the eligibility of those seeking intervenor funding is to consider whether they are or may be directly affected by the proposed project as required under section 10(1) of the Act. The words "directly" and "affect" are in common usage and may be considered to retain their generally understood meanings when used in legislation. The meanings of these words most appropriate to the context appear to be:

"directly": "...following an uninterrupted chain of cause and effect".

"affect": "...produce (material) effect on...".

In the Board's view, in order to directly affect an individual or group of individuals a project would have to cause a detectable effect on it or them. Such an effect could be beneficial or injurious. For illustration only, direct effects might act upon an individual's or group of individual's bodies or health, sustenance, livelihood, property, or statutory rights. Because the Board will normally be reviewing applications for projects that have been proposed but not constructed, it will not be considering effects that have occurred but effects that might occur. The Board has considered this, and concluded that there must be evidence acceptable to a reasonable person that: 1) a chain of causality exists, 2) an effect would probably occur and 3) the effect would not be trivial, before a potential effect can be considered to have been established.

Three Sisters attempted to define what it referred to as a "closeness" test and the Board found this approach useful. A "closeness" test would examine whether or not there exists an uninterrupted chain of cause and effect between the proposed project and the individual or group of individuals requesting costs. Without such a chain, a direct effect could not occur. The Board accepts this reasoning and has adopted the demonstration of an uninterrupted chain of cause and effect as the major criterion to be considered in determining whether an individual or group of individuals may be directly affected.

In the case of individuals living within the vicinity of a proposed project, the demonstration of a chain of causality that could lead to direct effects on them would normally be easy to accomplish. Several of the participants at the meeting satisfied the Board that they may experience direct social, economic or environmental effects of the Three Sisters project because they reside in Canmore or within the Bow-Canmore Corridor. These include the Women's Resource Centre, BowCord, and an Unnamed Group of Individuals almost all of whom are residents of Canmore.

Several other participants seeking advance intervenor funding claimed a significant presence in the Canmore area through their membership. In the opinion of the Board these groups have established that they may be directly affected because a substantial number of their members, or a substantial number of members of one of their component organizations, live within Canmore or in the nearby Bow-Canmore Corridor. These participants include the CPAWS Group, the AWA Group, the Trout Unlimited Group and the Bow Valley Naturalists. Each of these groups indicated that they have members living within Canmore or the Bow-Canmore Corridor and that they would be speaking on behalf of those members. The Board is satisfied that those individuals living in Canmore or near the Three Sisters' lands may be subject to direct social and economic impacts from the type of development contemplated. The Board further concludes that the environmental effects of the project could directly affect such individuals.

The Board acknowledges that some of these potential intervenors presented additional evidence that was intended to establish that there may be direct effects that could occur on members not living in Canmore or the Bow-Canmore Corridor or on the participating organization itself. As indicated previously, the Board doubts that the legislation intended to include existing associations as "groups of individuals" except as it relates to representing specific members who are directly affected. Any costs provided to such groups would have to be for the purpose of representing directly affected members.

Earth First!, Northern Light and Mr. Carson and Ms. Austin did not satisfy the Board that they had members who are, or in the latter case, that they themselves are, resident in Canmore or the Bow-Canmore Corridor. The Board therefore examined other evidence and arguments put forward by these participants and by Three Sisters that might establish or refute the existence of an uninterrupted chain of cause and effect between the proposed project and the participants and assist in determining whether or not they are directly affected.

Northern Light stated that some of its members had been affected when in Canmore by smoke and visual impacts originating on Three Sisters property. In the opinion of the Board this statement is not sufficient to establish a direct effect or a potential direct effect of the proposed Three Sisters development on the members of Northern Light.

Northern Light also argued that chemicals used on the golf courses proposed by Three Sisters could enter the Bow River, contaminate its waters, and affect members of Northern Light resident in Calgary, some of whom obtain their domestic drinking water supply from the Bow River. In the opinion of the Board, Northern Light did not establish that the probable entry of agricultural chemicals used on the proposed golf course into the Bow River and their downstream consequences would be sufficient to have a direct effect on residents of Calgary.

Earth First! claimed that, as a movement advocating "wilderness for its own sake" and speaking from a "Deep Ecology" viewpoint, it could be directly affected by the proposed project. As explained in section 5.2.1 of this report, the Board believes that the direct effects referred to in section 10(1) of the Act must be on individuals rather than on the organization itself. In particular, the beliefs and philosophical goals of an organization are not likely to be directly affected by any project. Similarly, in normal circumstances activities undertaken by a group to advocate or promote its beliefs and philosophy are not likely to be directly affected by a project. The Board concludes that Earth First!'s advocacy of "wilderness for its own sake" and "Deep Ecology" would not be directly affected by the project.

Earth First! also suggested that its advocacy of "Deep Ecology" and the wildlife experts that it would engage if it were to secure intervener funding would both make significant and unique contributions to the evidence and argument placed before the Board. As the Board has indicated earlier in this report, it believes that one of the objectives of the legislators in section 10 of the Act was to assist the Board in ensuring that relevant evidence is placed before it. The Board notes that wildlife experts engaged by other interveners, by the applicant and by the Board itself will be contributing to its review of the application. The Board does not believe that further experts would add unique evidence with respect to wildlife and therefore cannot justify an award of funds to ensure that such evidence is brought before it.

The conclusion of the Board, therefore, setting aside the matter of whether or not Earth First! is a group of individuals, is that Earth First! has neither provided evidence that it may be directly affected by the Three Sisters project, nor that it would provide evidence otherwise unavailable to the Board. The Board does not consider Earth First! eligible for an award of intervener costs.

Mr. Carson on behalf of himself and Ms. Austin argued that the proposed project would have an emotional impact, not only on the people of Canmore but on the province in general, and an emotional impact as well as a physical one on animals resident in the area to be developed. He suggested that debate should not be restricted to: "...the quantifiable, analytical and the utilitarian" and requested funds to make a video tape that would document emotional impacts of the proposed project. The Board accepts that the project will have emotional impacts but it does not agree that it is necessary to make a video tape in order to bring these to the attention of the Board. The matter could be addressed in oral evidence. For these reasons, and because these individuals did not demonstrate that they live in immediate proximity to the proposed project or would otherwise be directly affected, the Board declines to award an advance of intervener funding to Mr. Carson and Ms. Austin.

5.2.3 Summary Respecting Eligibility For Intervener Funding

The Board finds the Women's Resource Centre, BowCord, the CPAWS Group, the AWA Group, the Bow Valley Naturalists, the Trout Unlimited Group and the Unnamed Group of Individuals eligible under section 10(1) of the Act for intervener funding.

The Board has determined that the Town of Canmore and the Mount Rundle School Division are ineligible

because they are not individuals or groups of individuals as required under Section 10(1).

The Board concludes that Northern Light and Mr. Carson and Ms. Austin have not provided evidence to satisfy it that they may be directly affected by the proposed Three Sisters project, and that Earth First! has not provided evidence to satisfy the Board that it is an individual or group of individuals or that it may be directly affected by the proposed project.

6. REQUESTS FOR ADVANCE FUNDING

In the preceding section, the Board concluded that seven of the parties that participated in the pre-hearing meeting and requested advances are eligible to apply for funding in accordance with section 10(1) of the Act. This section of the report summarizes the requests by these seven parties. It also gives the Board's decisions respecting the requests and supporting reasons.

6.1 Requests of Those Eligible For Funding

Women's Resource Centre

The Women's Resource Centre submitted a budget totalling \$41,880 and requested an advance of \$23,700. The funds would be used to retain experts and legal advisors. Included would be an expert to determine the effect the proposed project would have on housing in Canmore, particularly related to single family homes. The Centre would also engage a community impact expert to address the social and economic effects of the project on women and children.

BowCord

BowCord submitted a total budget of \$61,525 and requested a \$15,000 advance. They would retain an economist and urban planner to examine the socio-economic impacts of the proposed project on the citizens of Canmore. BowCord would also retain a legal advisor to assist in the presentation of its intervention.

CPAWS Group

This Group requested an advance of \$65,400, as part of a total budget of \$109,020. The funds would be used to retain legal counsel and environmental consultants to investigate a number of deficiencies identified by the Group in the data provided by the applicant. Experts would be retained to consider the effects of the project on grizzly bears, black bears, wolves, sheep and elk, and the status of large carnivores. The Group would also retain a water-quality expert. It would evaluate much of the submitted data and do field verification of its completeness.

AWA Group

This Group submitted a total budget of \$92,635 and asked for an advance of one-third, \$30,880. The Group plans to retain legal counsel and environmental, economic and tourism consultants to address the loss of critical wildlife habitat; displacement and impact on mammals, birds, reptiles, amphibians and fish; water quality impairment; impact on recreation usage; and the effectiveness of mitigative measures. Experts would include a fisheries biologist, a wildlife biologist, an aquatic toxicologist/biologist, a tourism and recreation consultant, and a recreation wildland economist.

Bow Valley Naturalists

The Bow Valley Naturalists asked for an advance of \$39,933, the full amount of the submitted budget. The funds would be used to retain an environmental consultant to investigate ecological integrity losses, natural

processes, wildlife habitat and the loss thereof, and the biological diversity of the area affected by the project.

Trout Unlimited Group

The Trout Unlimited Group asked for a \$7,800 advance, and submitted a budget totalling \$8,640. It proposes to retain an environmental consultant with fisheries expertise to provide a literature review and commentary of the potential impacts of the proposed project's golf course development on the aquatic environment.

Unnamed Group of Individuals

This Group requested a total of \$60,000, of which one half would be provided as an advance. The Group indicated that it would use the funds to prepare and present evidence in the form of oral and written submissions and audio visual demonstrations showing the change and impact on the life-style, heritage, culture and fabric of the community, in the event that the proposed project is approved.

Comments From Three Sisters

Three Sisters' comments with respect to the amount of funding requested and the proposed use were minimal, perhaps because it took the position that many of the groups did not qualify for intervenor funding. In general, it was the position of Three Sisters that:

- C the applicant should not fund or assist proponents to duplicate or clone the planning process;
- C the intervenors should review and use the Bow-Corridor Annotated Bibliography prepared for Alberta Environment which "requires and allows in a very positive sense all intervenors to reduce their costs, undoubtedly eliminate most if not all of their research";
- C intervenors should not be funded for paid outside technical consultants to the extent that the various organizations have those people within their membership; and
- C each intervenor should be required to read each item that is available and new studies should not be easily encouraged.

The applicant also encouraged the Board to adopt a specific test, not a general one, when approaching the matter of advance funding or costs. It asked the Board to consider whether the study costs or consultants' and legal fees requested by an intervenor are related to the directly affected purpose for which the intervention was made.

In addition to the above, the applicant requested that the Board create, where at all feasible, a mechanism to distribute costs to future applicants, citing the long-term beneficial nature of the information that will be obtained during the hearing.

6.2 Board Decisions Regarding Advance Funding

Prior to dealing with the individual requests for advance funding there are a number of general issues which the Board believes it should comment on. Additionally, there are two major issues which affect several of the requests for funding and which the Board believes it should deal with separately, thus setting the stage for consideration of the individual requests. One relates to the matter of cost awards for legal assistance to intervenors. The other is the matter of co-ordination of effort among intervenors, particularly as related to cost awards for expert assistance.

6.2.1 General Issues

The Board in this section of the report is dealing with requests for advance funding. It believes that funding advances are not intended to cover the entire amount the Board might ultimately award as costs. The purpose is to ensure that eligible interveners have sufficient funds to retain experts and for other expenditures necessary to prepare for a hearing. The Board would not expect to include in advances costs to cover the attendance at hearings, witness fees, and other similar items. These would be included, as appropriate, in the final cost awards.

The requests for advances that the Board is dealing with are based on proposed budgets that were submitted, in varying degrees of detail, by participants in the pre-hearing meeting. The Board is providing its views on those budgets, along with its decisions regarding advance funding, in order to give participants direction as to those costs that are likely to be recognized in the final cost awards. It is emphasized however, that the final cost awards will be made, on application, following the hearing. At that time, on the basis of what actually transpires at the hearing, the Board may make cost awards against the proponent for an amount greater or less than provided for in this report. In the event that an ultimate award does not equal or exceed the amount of an advance, the intervener would be required to return the portion of the advance not awarded.

The Board also emphasizes that in considering advance funding requests it is providing only for those portions of an interveners' preparation and hearing work for which it believes the proponent for the project should provide costs. In general, the Board anticipates that this would be confined to work necessary to assess potential direct effects on individuals or groups of individuals and which would not needlessly duplicate work done by other interveners. This does not preclude interveners from doing other more extensive work in connection with the hearing. The Board knows that interveners in hearings typically do provide considerable time and effort on a voluntary basis for which they do not receive funding. The Board believes it is reasonable to expect such an effort, as a component of self-funding by interveners. It also recognizes that some interveners may have other sources of funding that may be used to assist in the preparation and presentation of interventions.

Three Sisters suggested at the meeting that there should be some mechanism for spreading intervener costs to others, such as potential future applicants, who might benefit from the work done by interveners at an earlier hearing. The Board questions the need for such a mechanism, which would be extremely difficult in any case, because it believes that only those expenditures by interveners which relate to the specific application before the Board should be covered by cost awards. Consideration of matters not specific to a particular application, such as broad policy, would not likely qualify for costs from the applicant.

As a final general issue, any advance funding award made by the Board is subject to the intervener satisfying the Board that it has adequate controls in place for the expenditure of the funds.

6.2.2 Legal Assistance

Four of the parties eligible for costs provided for legal assistance in their budgets. This amounted to a total of about \$154,000, slightly more than one-half of their total proposed budgets. The Board recognizes the potential value of interveners being represented by counsel but is concerned at the pattern suggested by the previously mentioned budget data.

The Board has no objection to interveners being represented by counsel and indeed sees many benefits of such representation. However, it believes that cost awards should only cover legal costs for those hearings which are legally complex, and then, the costs should only cover those functions that require legal expertise. This would include advising on legal matters, ensuring that the submission is legally proper, and preparing those portions of the submission that deal with legal issues.

In certain situations, other functions that are sometimes handled by counsel may be handled by others in a more cost-effective manner. These might include organizing the submission, preparing much of it, and engaging experts. This is particularly the case if the intervener is a well-established group with an executive including members who have some applicable experience. There are also situations where the presence of counsel for a particular intervener may not be required throughout the entire hearing. In some circumstances, at least the technical

questions may be put to an applicant or other interveners by technical experts. (The Board itself intends to generally follow that pattern.) Where an intervention is not legally complex, the individual intervener, members of the executive of a group, or a technical expert, may be in a position to make any closing or summary statements.

The Board recognizes that where counsel is not engaged with the intention of using others in that role, such as technical experts, funding for those purposes may have to be increased.

With respect to the four parties seeking legal costs for the Three Sisters hearing, the Board recognizes that the proceeding may be somewhat complex, each of the parties represents one or more individuals, and also that the NRCB is a new organization and therefore very few have experience appearing before it. The Board is therefore prepared to provide funding for legal counsel for each of the four parties, but somewhat reduced from the amounts requested. For the Women's Resource Centre, BowCord, and the AWA Group, the Board will recognize \$18,000 each for legal costs. For the CPAWS Group, because it is representing three distinctly different organizations, at least two of which might be eligible for intervener costs, the Board is prepared to recognize \$22,000 for legal assistance.

6.2.3 Coordination of Effort Among Intervenors

The Funding For Eligible Intervenors' Regulation provides for the Board, in making advance funding or cost awards, to consider "whether the interest was adequately represented by other intervenors" and "whether the eligible intervener attempted to bring related interests together and pool resources". The Board believes these are important considerations. It recognizes the effort made prior to the meeting by some participants, and the expressed willingness during the meeting to go further towards pooling resources.

There are two particular areas where the Board believes further co-ordination of effort would be appropriate. Both are related to funding for experts and the Board has incorporated such coordination into its conclusions regarding intervener costs. The first is in the environmental area. The CPAWS Group budget for environmental experts totalled some \$31,280. The AWA Group, Bow Valley Naturalists and the Trout Unlimited Group, requested \$49,360, \$39,933 and \$6,140 respectively, for environmental experts.

Both the AWA and Trout Unlimited Groups requested funds for a fish biologist. Both the CPAWS and AWA Groups included a wildlife biologist in their budgets, and some expert expenditures related to water quality and possible aquatic effects. Some, particularly the Bow Valley Naturalists, did not identify specific areas of expertise but included funds for environmental specialists.

Several of the parties indicated that they were prepared to further coordinate efforts with others, but expressed a reluctance to do so where there was considerable difference in their overall views of the project. The Board recognizes the reasons for this reluctance, but does believe there is some scope for coordination of technical experts even in such cases. In the Board's view, a technical expert can be engaged to assess a particular part of an application. The results of that assessment can then be interpreted and used differently by different intervenors. Expert assistance may be needed by each intervener for the interpretation, but the total cost should be less than if different experts each made both an assessment and interpretation.

The Board does not intend to identify specific areas and require pooling of resources in those areas, but it has reduced the environmental expert budget it is prepared to recognize for these parties. It will leave the manner in which further coordination takes place to the individual parties. It has also had regard in its decision that costs should be provided only to deal with direct effects on "individuals or groups of individuals."

The Board is prepared to provide for \$6,140 as requested by the Trout Unlimited Group. It will also provide for \$28,000 in the environmental budget for the CPAWS Group. Having regard for the apparent overlap between the AWA Group and others, and other relevant aspects of the budget, the Board is reducing the environmental component of the AWA Group to \$22,000. It also considered reducing the Bow Valley Naturalists budget to \$22,000, but recognizing that they did not include legal assistance in their request, is providing for \$32,000. As indicated previously, the Board believes that many technical experts are familiar with hearing processes and can fill

a portion of the role typically played by counsel.

Social and economic expertise is the second area where the Board believes there is room for further co-ordination among parties. It is prepared to provide the approximately \$17,000 requested by the Women's Resource Centre, and the approximately \$28,000 requested by BowCord, recognizing that they are locally based organizations for which these issues are very important, and also that they are not engaging environmental experts. The Board is reducing the request of the AWA Group for economic experts from some \$19,275, to \$10,000. It believes further co-ordination is possible, particularly with BowCord, and notes that the AWA Group indicated that it was prepared to consider such an effort.

The Board again wishes to emphasize that in making provision for these costs, it is assuming that the effort of experts covered by costs will be focused on the direct effects on those individuals whose inclusion or membership in the various groups are the reason for the group being considered as directly affected. The Board intends to ensure that this was the case, when finalizing the cost awards following the hearing.

6.2.4 Funding Advances

The following are the Board's conclusions with respect to the requests for advance funding by the seven parties eligible for costs. They reflect the issues dealt with and conclusions of sections 6.2.2 and 6.2.3, and also have regard for the magnitude of the proposed project and its potential effects, and all other matters which the Board considers relevant.

Women's Resource Centre

The budget submitted by the Women's Resource Centre totalled almost \$42,000, and it requested an advance of \$23,700. The Board is prepared to recognize a total of \$17,000 for expert assistance to deal with possible social effects of the proposed project. This results in a total of \$35,000 when combined with the \$18,000 the Board is prepared to recognize for legal assistance. The Board will direct Three Sisters to provide an advance of \$23,700, the requested amount, to Ms. Danielson's firm, in trust, for disbursement and formal accounting on behalf of the Women's Resource Centre.

BowCord

BowCord submitted a budget of over \$61,000 and requested a \$15,000 advance. The Board is prepared to recognize \$28,000 for expert assistance regarding economic impacts and urban planning, and \$18,000 for legal assistance. This totals \$46,000, and the Board will direct an advance of \$15,000, as requested, to Mr. McAvity's firm, in trust, for disbursement and formal accounting on behalf of BowCord.

CPAWS Group

The CPAWS Group budget totalled some \$109,000, and it requested an advance of \$65,400. As indicated in the preceding sections, the Board is prepared to recognize \$28,000 for expert environmental assistance, and \$22,000 for legal assistance, for a total of \$50,000. It will direct an advance of \$30,000 to Mr. Locke's firm, in trust, for disbursement and formal accounting on behalf of the CPAWS Group. This is less than requested, and has been scaled down because the Board is only prepared to recognize approximately one-half of the total budget submitted by the Group.

AWA Group

The AWA Group requested an advance of \$30,880, and submitted a budget of over \$92,000. As set out in the earlier sections, the Board is prepared to recognize expert assistance of \$10,000 respecting economic matters, \$22,000 for environmental effects, and \$18,000 for legal assistance. This results in a total budget of \$50,000, of

which the Board is prepared to direct a \$20,000 advance, to be made to Mr. Phillips' firm, in trust, for disbursement and formal accounting on behalf of the AWA Group.

Bow Valley Naturalists

The Bow Valley Naturalists requested an advance of \$39,933, the total amount referred to in its budget submission. The Board is prepared to recognize \$22,000 for environmental specialists, and an additional \$10,000 to cover extra costs which might otherwise have been handled by counsel. It is prepared to direct an advance of \$20,000, which should be adequate to enable the organization to prepare and present its submission. The advance is to be made upon the Bow Valley Naturalists providing written information to the Board on how the expenditure of funds will be controlled.

Trout Unlimited Group

The Board is prepared to recognize the \$6,140 requested by Trout Unlimited for a fisheries biologist. The remainder of the request, \$2,500, was for expenditures related to attendance at the hearing which the Board is not dealing with at this time. It will direct an advance of \$4,000 for this group. The advance is to be made upon the Trout Unlimited Group providing written information to the Board on how the expenditure of funds will be controlled.

Unnamed Group of Individuals

A group of 60 individuals, almost all from Canmore, submitted copies of a petition-like form letter requesting funding. The letter stated that the Group intended to "...present evidence to the Board in the form of oral and written submissions and audio visual demonstrations showing the change of impact on our life style, heritage, culture and the very fabric of our community, in the event that this proposed application is approved". The letter stated that the Group was applying for an award of costs in the sum of \$60,000 to assist in the preparation and presentation of the intervention. A spokesperson at the meeting further requested an advance of \$30,000, but did not provide additional details regarding the intended submission.

As indicated in section 5, the Board believes that this Group would be considered an eligible intervener as defined in Section 10(1) of the Act. The Board is not, on the basis of the submission, able to adequately assess what the funding would be used for, whether experts would be engaged or whether the issues to be addressed would be of potential assistance. For that reason, the Board is not prepared at this time to recognize any aspects of the submitted budget or to direct an advance for funding.

7. SUMMARY OF CONCLUSIONS

The Board has scheduled a hearing for Canmore to begin on 15 June 1992. The date for the filing of intervener submissions is 8 June 1992.

The Board is directing Three Sisters to make the advances set out in the following table.

Eligible Intervener	Total Costs	
	Recognized In Section 6	Funding Advance
Women's Resource Centre	\$35,000	\$23,700
BowCord	\$46,000	\$15,000
CPAWS Group	\$50,000	\$30,000
AWA Group	\$50,000	\$20,000
Bow Valley Naturalists	\$32,000	\$20,000
Trout Unlimited Group	\$ 6,140	\$ 4,000

DATED at Calgary, Alberta this 19th day of March 1992.

NATURAL RESOURCES CONSERVATION BOARD

THIS IS AN ELECTRONIC COPY OF THE ORIGINAL REPORT WHICH CONTAINED THE BOARD MEMBERS SIGNATURES.

G. J. DeSorcy
Chairman

G. A. Yarranton
Vice Chairman

C. H. Weir
Board Member

APPENDIX A

PRE-HEARING MEETING PARTICIPANTS

CANMORE, 9 MARCH 1992
Participants
(Abbreviations Used in Report)
Three Sisters Golf Resorts Inc.
(Three Sisters)
W. Tilleman
R. Melchin

Alberta Environment
R. Stone

Town of Canmore
T. Bosse

Municipal District of Bighorn
(M.D.of Bighorn)
S. Paul

Mount Rundle School Division
(School Division)
B. Callaghan
J. Vanderlee

Calgary Regional Planning Commission
(Planning Commission)
I. Robinson
J. Rusling

Canadian Parks Service
G. Irwin

Three Sisters Property Owners and Residents Association
(Property Owners and Residents Association)
I. Freels

continued...

PRE-HEARING MEETING PARTICIPANTS

Participants

(Abbreviations Used in Report)

The Canadian Parks and Wilderness Society

The Alpine Club of Canada

The Sierra Club of Western Canada (Alberta Group)

(CPAWS Group)

H. Locke

G. Thompson

J. Haverson

M. Scott-Brown

Bow Corridor Organization for Responsible Development

(BowCord)

E. McAvity

Bow Valley Women's Resource Centre

(Women's Resource Centre)

V. Danielson

A. Wilson

Alberta Wilderness Association

Speak Up for Wildlife Foundation

Adventure Group Ltd.

(AWA Group)

J. Phillips

H. Prus

Earth First!

R. Fisher

Unnamed Group of Individuals

R. Fisher

Bow Valley Naturalists

M. McIvor

P. Duck

Federation of Alberta Naturalists

D. Stiles

continued...

PRE-HEARING MEETING PARTICIPANTS

Participants

(Abbreviations Used in Report)

Upper Bow Valley Chapter of Trout Unlimited of Canada

Upper Bow Valley Fish and Game Association

Banff Fishing Unlimited

(Trout Unlimited Group)

G. Szabo

Northern Light Society

(Northern Light)

P. Abramowicz

C. Saunders

P. Carson and J. Austin

P. Carson

University Women's Club of Calgary

(University Women's Club)

S. Miller

Natural Resources Conservation Board Staff

W. Kennedy

J. Ingram

P. Cleary

R. Powell

A. van Roodselaar

J. McKee

APPENDIX B

LISTING OF FUNDING REQUESTS

CANMORE, 9 MARCH 1992

Intervener	Total Request	Advance Request
Town of Canmore	\$174,553	Note 1.
Mt. Rundle School Division	\$ 20,000	Note 1.
CPAWS Group	\$108,480	\$65,400
Bow Valley Womens' Resource Centre	\$ 41,880	\$23,700
BowCord	\$ 61,525	\$15,000
AWA Group	\$ 92,635	\$30,880
Earth First!	\$100,000	\$50,000
Unnamed Group of Individuals	\$ 60,000	\$30,000
Bow Valley Naturalists	\$ 39,933	\$39,933
Trout Unlimited Group	\$ 8,640	\$ 7,800
Northern Light Society	\$ 75,000	Note 1.
P. Carson and J. Austin	\$ 60,000	Note 1.
	<u>\$842,646</u>	
<u>\$262,713</u>		

Note 1 - Although a request for funding was recieved, no amount of advance funding was specified.