

BOARD ORDER: MGB M010-17

FILE: 15/IMD/002

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

AND IN THE MATTER OF AN INTERMUNICIPAL DISPUTE lodged by Town of Canmore v Municipal District of Bighorn No. 8.

CITATION: Town of Canmore v Municipal District of Bighorn No. 8 (re Bylaw 12/15, Dead Man’s Flats Area Structure Plan 2017 ABMGB 10

BEFORE:

Members:

- H. Kim, Presiding Officer
- D. Thomas, Member
- F. Wesseling, Member

Case Managers:

- C. Miller Reade
- R. Duncan

This is the decision of the Municipal Government Board (MGB) from a hearing held June 21 to 24, 2016, about a claim of detriment filed by the Town of Canmore (Canmore) after the adoption of the Dead Man’s Flats Area Structure Plan by the Municipal District of Bighorn (Bighorn).

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OVERVIEW

The MD of Bighorn adopted an Area Structure Plan (ASP) for vacant lands within Dead Man’s Flats to accommodate new development. Dead Man’s Flats is east of the Town of Canmore and north of Highway 1. Canmore believes that this ASP and its associated development will be detrimental to it, and has therefore filed an appeal under Section 690(1) of the *Act* which says:

If a municipality is of the opinion that a statutory plan or amendment or a land use bylaw or amendment adopted by an adjacent municipality has or may have a detrimental effect on it ... may...appeal the matter to the Municipal Government Board ...

Canmore alleges two main sources of detriment. First, it says the proposed development will reduce the effectiveness of a wildlife highway crossing point called “the G8 Underpass” just south-east of the ASP area. The reduction in effectiveness will disrupt wildlife’s use of habitat contrary to the objectives of the South Saskatchewan Regional Plan (SSRP) and associated planning documents. The disruption will also increase contact and conflict between humans and wildlife, and blunt the effect of Canmore’s investments in planning and infrastructure designed to reduce conflict, promote safety, protect diversity and ensure continuity of local habitat.

Second, Canmore alleges that the proposed development will hinder its efforts toward steep creek mitigation along Pigeon Creek, which flows through the ASP area to the Bow River. Canmore argues that approvals of any new plans may increase the cost of mitigation and jeopardize flood mitigation funding from the Province.

The MD of Bighorn disagrees with both these claims. First, it maintains the ASP incorporates mitigating features to reduce any negative impacts on wildlife and is in line with longstanding planning documents in both municipalities, including the SSRP. Second, it says steep creek mitigation will not be affected by the ASP, as the outlet for Pigeon Creek is in an area where

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development is not being proposed; further, the ASP and mitigation measures may be refined at future stages of planning and development.

The MGB found the ASP is not detrimental to Canmore on either of the grounds claimed. The Dead Man's Flats ASP may affect the functionality of the G8 Underpass for some species. However, it will not become a "plug in the system", since the G8 Underpass is merely one piece of a much greater migration system which includes multiple corridors and habitat patches and other underpasses.

The MGB also found the ASP complies with relevant planning documents, including the Bighorn MDP and the SSRP. The ASP complies with the Bighorn MDP by proposing lower impact light industrial development adjacent to the Bow Flats Habitat Patch and the G8 Underpass. The ASP is also sensitive to the conservation principles outlined in the SSRP.

The ASP continues a pattern of land use both in Dead Man's Flats and across Highway 1 in Canmore. Adjacent to the south entrance of the G8 Underpass in Canmore is existing development including the Thunderstone Quarry, the Kananaskis Gun Club and Banff Gate Condominiums. A new area structure plan, the Smith Creek ASP, is currently being drafted under a co-operative process between Canmore, Three Sisters Mountain Village and Thunderstone Quarries, resulting in a mixture of commercial and industrial uses. This overall pattern of planning is consistent with the high-level planning direction in the SSRP and the NRCB decision made for the Three Sisters Lands.

Both the ASP and the proposed Smith Creek ASP will likely increase the potential for interaction between humans and wildlife; thus, while the ASP may affect the functionality of the overpass, its functionality will face similar challenges from other planned development in the area. Similar mitigating measures are anticipated on both sides of Highway 1 - notably wildlife fencing which must be approved by Alberta Environment and Parks.

With respect to steep creek mitigation, the MGB finds the ASP is not detrimental since no development is planned for the North ASP where the creek is located, and steep creek mitigation plans are not yet mature. Likewise, the East ASP is a conceptual plan that can be adjusted. Accordingly, there remains sufficient planning flexibility to guard against a significant negative impact on steep creek mitigation.

In addition to submissions from Canmore and Bighorn, the MGB heard from QuantumPlace Developments and Stoney Nakoda Nations. The Stoney Nakoda Nations have filed an application for aboriginal title that covers much of South and Central Alberta, including Bighorn. They support Canmore's objection to the ASP on the grounds that disruption to the G8 Underpass will compromise adjacent corridors and habitat patches, which they allege will affect

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their hunting rights and traditional cultural practices; in addition, they objected to the absence of consultation prior to Bighorn's adoption of the ASP. As noted above, the MGB found the ASP would not have a significant effect on wildlife's use of corridors and habitat patches. Regardless, the MGB has no authority under Section 690 to order Bighorn to repeal or amend the ASP owing to lack of consultation with or to detriment to a third party.

TERMS USED IN THIS ORDER

This order uses various acronyms and terms, which are listed below for convenience.

Act – *The Municipal Government Act*, Chapter M-26 of the Revised Statutes of Alberta 2000.

Affected Party – a person other than the appellant or respondent municipality to whom the MGB grants status to participate in its proceedings under the Intermunicipal Dispute Procedure Rules. In this case, QuantumPlace Developments and Stoney Nations were added as affected parties in DL 004/16.

ARP – The Dead Man's Flats Area Redevelopment Plan adopted by the Municipal District of Bighorn as Bylaw 09/13.

ASP – The Dead Man's Flats Area Structure Plan adopted by the Municipal District of Bighorn as Bylaw 12/15, and the subject of this appeal. There are two areas in the ASP: the North ASP Area and the East ASP Area.

North ASP - The North ASP Area. It is comprised of the area south of the Bow River and north of the current built area of the Dead Man's Flats, River's Bend and Limestone Valley developments. The North ASP contains a decommissioned sewage lagoon.

East ASP – is the East ASP Area. The area encompasses all lands to the east of the Limestone Valley development, including the Industrial Triangle lands, a right of way, the nuisance grounds which is an old landfill site that has been capped but not reclaimed, the borrow pit and the ATCO station. It is adjacent to the north part of the G8 underpass.

ATCO Station –refers to an ATCO metering station northwest of the G8 Underpass and adjacent to Highway 1.

Bighorn – Municipal District of Bighorn No. 8.

BCEAG Guidelines – The Bow Corridor Environmental Advisory Group Guidelines adopted 1999 and revised in 2012.

Borrow Pit – area within Dead Man's Flats originally used as a source of fill for Highway 1. Currently owned by Bighorn and used to store materials for River's Bend and Limestone Valley Developments.

Canmore – Town of Canmore.

DIA – Development Impact Assessment - a report required by Canmore and Bighorn to assess the impacts of development.

Intermunicipal Dispute Procedure Rules or IMD rules – Procedure rules adopted by the Municipal Government Board under Section 523 of the *Act*, January 2013.

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G8 Underpass – a wildlife underpass under Highway 1 east of both Canmore and the Dead Man’s Flats ASP constructed after the G8 Summit in Kananaskis in 2002.

Land Exchange – A proposal to exchange the lands owned by Bighorn within the Dead Man’s Flats ASP lands for parcels of land on Highway 1A west of Exshaw owned by Alberta Environment and Parks. Although proposed, the land exchange was not approved by Alberta Environment and Parks.

Limestone Valley – a light industrial area east of River’s Bend Development

LUB – Land Use Bylaw

MDP – Municipal Development Plan

NRCB decision – A decision issued in 1992 by the NRCB, that guides development on the Three Sisters Lands. The decision is entitled Application 9103 for Three Sisters Golf Resorts Inc. Recreational and Tourism Project.

Pigeon Creek – A creek that passes through the hamlet of Dead Man’s Flats and the North ASP area. The North ASP area contains the outlet of Pigeon Creek where it empties into the Bow River.

QuantumPlace Developments – the development company responsible for the Three Sisters Lands and Thunderstone Quarry.

River’s Bend Development – a residential area east of Pigeon Creek

Stewart Creek ASP – an area structure plan on the Three Sisters Lands

Stewart Creek Underpass – a wildlife underpass under Highway 1 within the Stewart Creek ASP lands in Canmore. The underpass is approximately 1 km west of the G8 underpass.

Smith Creek ASP – a proposed area structure plan on the Three Sisters Lands

SSRP – the South Saskatchewan Regional Plan adopted September 2014

Steep Creek – a creek with slopes exceeding three percent

Stoney Nations – the Stoney Nakoda Nations -- Bearspaw, Chiniki and Wesley First Nations

Three Sisters Lands – the lands contained within the area of NRCB Application 9103, as described in Approval No. 3.

Thunderstone Quarry – an active rundle stone quarry south of Highway 1 on the Three Sisters Lands within the Smith Creek ASP lands

PART A: THE MEANING OF DETRIMENT IN A SECTION 690 APPEAL

[1] Section 690(5) requires the MGB to decide whether the bylaw provisions under appeal are detrimental to the appellant municipality. The MGB may dismiss the appeal if the provision is not detrimental, or order the adjacent municipality to amend or repeal the provision if of the opinion that the provision is detrimental.

[2] Although the *Act* and its regulations do not define detriment, previous MGB decisions have fleshed out the meaning of this term. While not bound by its previous decisions, the MGB prefers to interpret and apply the *Act* consistently; particularly, where there is no persuasive

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reason to depart from established meanings. The MGB's lead decision as to the meaning of detriment is *The City of Edmonton, the City of St. Albert, and the Town of Morinville v. Sturgeon County*, MGB 77/98 [Sturgeon]. That decision states as follows:

"The dictionary definition is straightforward enough. According to Webster's New World Dictionary, "detriment" means "damage, injury or harm" (or) "anything that causes damage or injury." This basic definition or something very similar to it seems to have been generally accepted by the parties involved in this dispute. Clearly, detriment portends serious results. In the context of land use, detriment may be caused by activities that produce noxious odours, excessive noise, air pollution or groundwater contamination that affects other lands far from the site of the offending use. For example, the smoke plume from a refinery stack may drift many miles on the prevailing winds, producing noxious effects over a wide area. Intensive development near the shore of a lake might affect the waters in a way that results in detriment to a summer village miles away on the far shore. These are examples of detriment caused by physical influences that are both causally direct and tangible, some of which are referred to as "nuisance" factors (page 44/84).

But detriment may be less tangible and more remote, such as that arising from haphazard development and fragmentation of land on the outskirts of a city or town, making future redevelopment at urban densities both difficult and costly. According to Professor F. Laux, the adverse impact "could also be social or economic, as when a major residential development in one municipality puts undue stress on recreational or other facilities provided by another". Similarly, the actions of one municipality in planning for its own development may create the potential for interference with the ability of a neighbouring municipality to plan effectively for future growth. In the present dispute before the Board, Edmonton and St. Albert have claimed that mere uncertainty arising from deficiencies in the County's MDP will result in detriment to them (page 44/84)."

[3] The Sturgeon decision also noted the invasive nature of the remedy under Section 690, which is not to be imposed lightly or in circumstances where detriment cannot be clearly identified or will not have a significant impact:

"If the Board is to exercise its power to reach into municipal bylaws and perform what amounts to legislative surgery by amending or repealing parts of them, it must be satisfied that the harm to be forestalled by so invasive a remedy is both reasonably likely to occur, and to have a significant impact on the appellant municipality should it occur (page 48/84; emphasis added).

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There is also a functional or evidentiary component to the Board's ability to direct an effective remedy under S.690. Simply put, the Board must have enough information before it, and of sufficient quality, to establish a reasonable likelihood of detriment. Where the condition complained of appears to raise only a mere possibility rather than a probability of detriment, or if the harm is impossible to identify with a reasonable degree of certainty, or may occur only in some far future, the detriment complained of may be said to be too remote (page 48/84)."

[4] Similar points were made in the MGB's decision in *Sunbreaker Cove v. Lacombe County*, MGB 007/11 [Sunbreaker Cove], with that MGB observing that there must be:

"evidence...of sufficient quantity and quality to convince the MGB that the detriment is both likely to occur and to have a significant impact (at para. 71)."

PART B: BACKGROUND

Overview of the ASP

[5] The ASP was intended to guide development of 29 hectares owned by Bighorn in the hamlet of Dead Man's Flats, located north and east of Canmore. Dead Man's Flats is accessed from the Trans-Canada Highway (Hwy 1) interchange which also accesses the easternmost portion of Canmore, including George Biggy Senior Road, Thunderstone Quarry, and the eastern most portion of the Three Sisters Lands that are subject to an order of the NRCB.

[6] The hamlet of Dead Man's Flats was traditionally used for highway commercial and tourist services on the west side of Pigeon Creek. Currently, the area includes a campground, highway commercial services, motels and residences. After the hamlet's sewage lagoon was decommissioned, water and sewer servicing was extended from Canmore. The servicing agreement between Canmore and Bighorn was based on the proposed land uses in the lands described in the Area Redevelopment Plan (ARP) area, and was expanded to include the River's Bend and Limestone Valley developments.

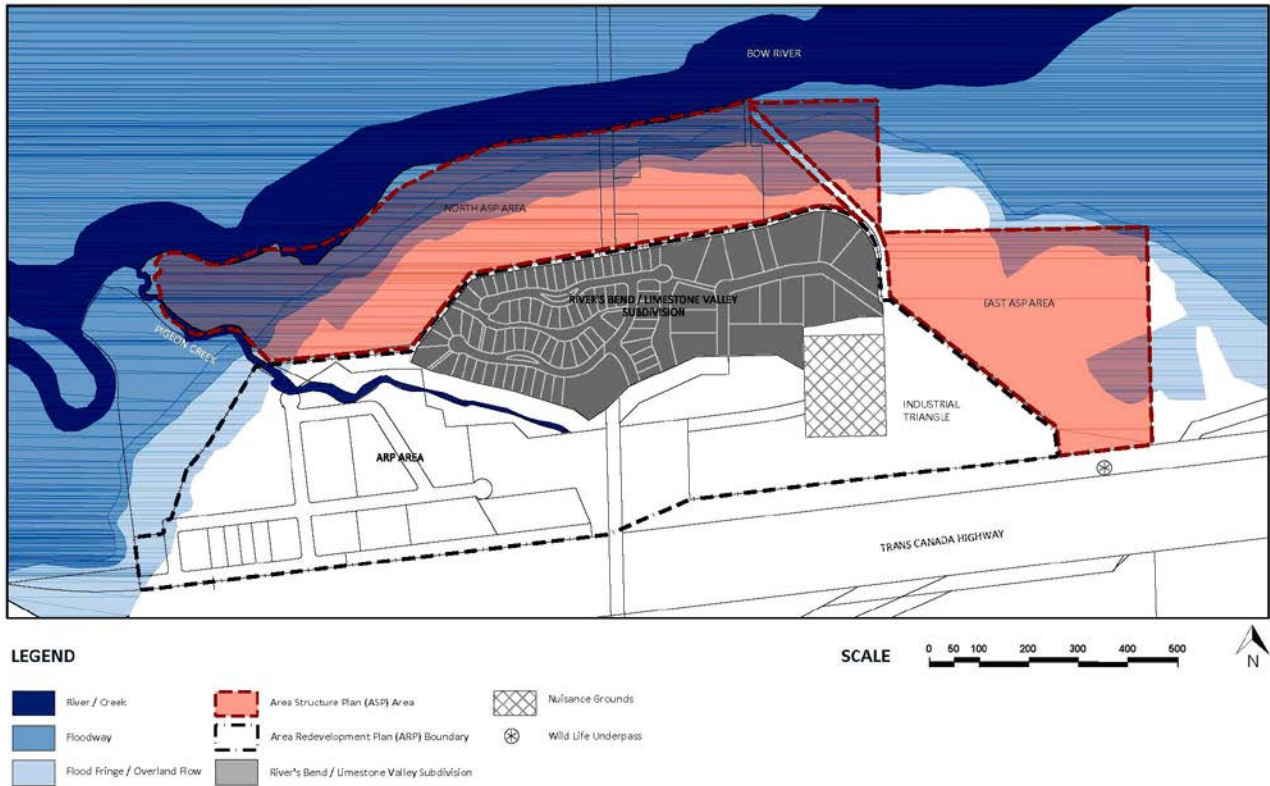


Figure 1: Development Constraints Map (Dead Man's Flats ASP)

[7] Separated from the balance of the hamlet by Pigeon Creek, River's Bend is a residential development and Limestone Valley is a light industrial development. Initial plans for these areas were approved in 2006, but initial site development did not begin until 2013.

[8] The ASP lands comprise two areas, one to the north of existing development in the hamlet to the Bow River (North ASP) and the second to the east of the River's Bend and Limestone Valley development (East ASP). The North ASP lands are vacant, but include the former sewage lagoon site. As shown in Figure A above, the majority of the lands contained within the North ASP are flood way and flood fringe areas. Due to these site constraints, there will be limited development in the North ASP. Wildlife exclusion fencing will be placed on the south boundary of the North ASP area to limit human and wildlife interactions and to protect the Bow Valley Habitat Patch.

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[9] The East ASP area includes approximately 10 hectares east of the River's Bend and Limestone Valley development, and east of an area known as the Industrial Triangle. Like Limestone Valley, the Industrial Triangle lands were designated for industrial uses due to both areas being adjacent to a nuisance ground (former landfill site). The East ASP is primarily vacant, treed land with an ATCO Gas Shed north of the G8 underpass. Both the shed "C" and the G8 Underpass "D" are shown on Figure 2 Adjacent Land Uses and Disturbances. In 2013, Bighorn reactivated an old borrow pit area in the west side of the lands for material storage for the River's Bend and Limestone Valley development. This area can be seen below the "B" on the aerial photo in Figure 2.

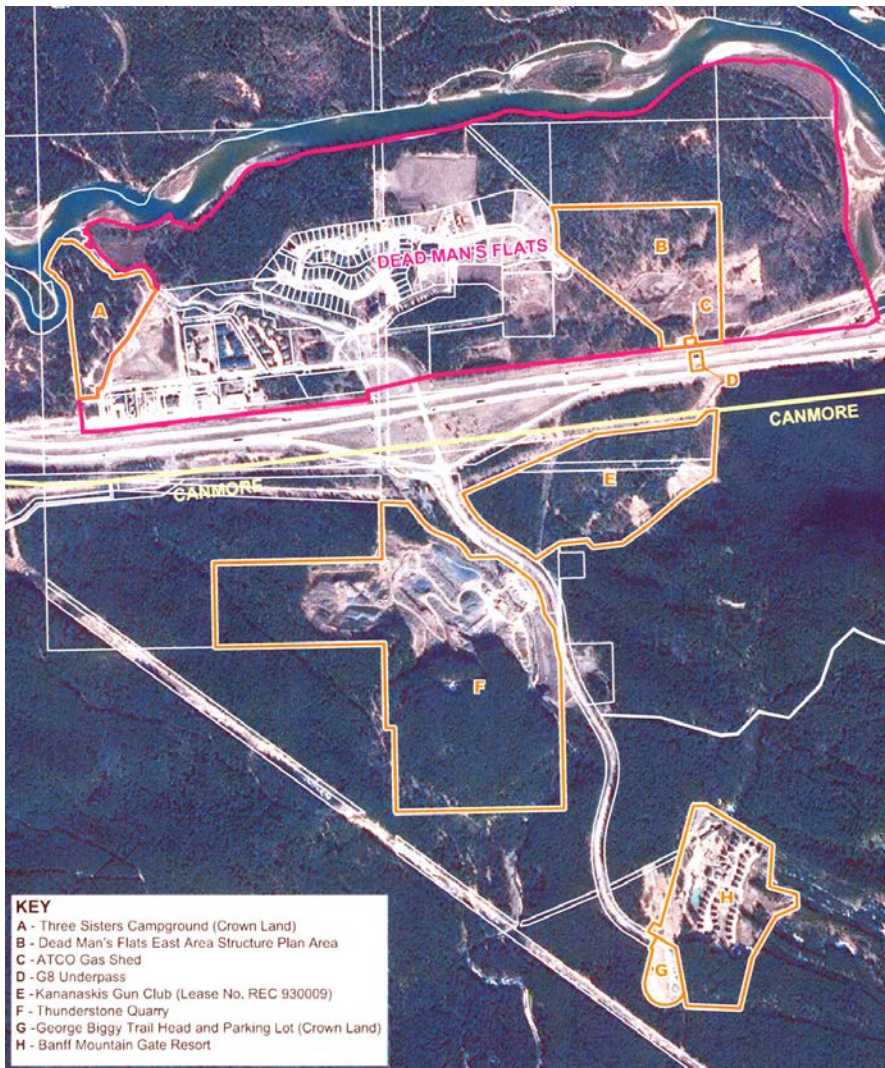


Figure 2: Adjacent Land Uses and Disturbances

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[10] After consultants prepared a biophysical assessment and a development impact assessment (DIA), Bighorn determined the East ASP is to be used for light industrial uses. Policies and requirements were included in the ASP to facilitate wildlife movement around the North and East ASP areas. A proposed plan was also prepared showing the location of lots, roadways and a dry pond in the East ASP area. The dry pond, intended for storm water management and as additional buffer for development, was placed north of the G8 Underpass. Except for the dry pond, wildlife exclusion fencing will enclose the balance of the East ASP area to limit the potential for human-animal interaction.

Adjacent Lands in Canmore

[11] The Dead Man's Flats interchange extends south into Canmore along George Biggy Senior Road, which provides access to three developments in Canmore – namely, Thunderstone Quarry, the Banff Gate Condominiums, and the Canmore Gun Club. These developments are depicted in Figure 2, Adjacent Land Uses and Disturbances. In addition, all of the lands west of George Biggy Senior Road and south of Highway 1 are designated in the Canmore MDP as a Future Planning Area.

[12] The Future Planning Area, shown below in the Conceptual Land Use Map from the Canmore Municipal Development Plan, 2016, (Figure Three) is the area approved in 1992 by the Natural Resources Conservation Board (NRCB) for development on the Three Sisters Lands. The Three Sisters Lands refer to an extensive area containing former coal mines in and around Canmore. The NRCB determined that these lands were suitable for development for residential, commercial, industrial and resort uses including hotels and golf courses; accordingly, it issued an approval with conditions and recommendations. One such recommendation was that wildlife movement to be maintained using a series of corridors and habitat patches, and guidelines be developed for land uses near the corridors and habitat patches. Since the NRCB decision, there have been a series of activities and studies to inform approvals and designations for development of the lands for those other uses while still allowing wildlife to use the land base.

[13] Currently, the Smith Creek ASP is being developed on the Future Planning Area lands in the area west of George Biggy Senior Road. A joint planning exercise between Canmore and QuantumPlace Developments, the Smith Creek ASP proposes commercial and industrial uses west of George Biggy Senior Road surrounding the Thunderstone Quarry lands, and a mixture of residential uses on the west portion of the lands.

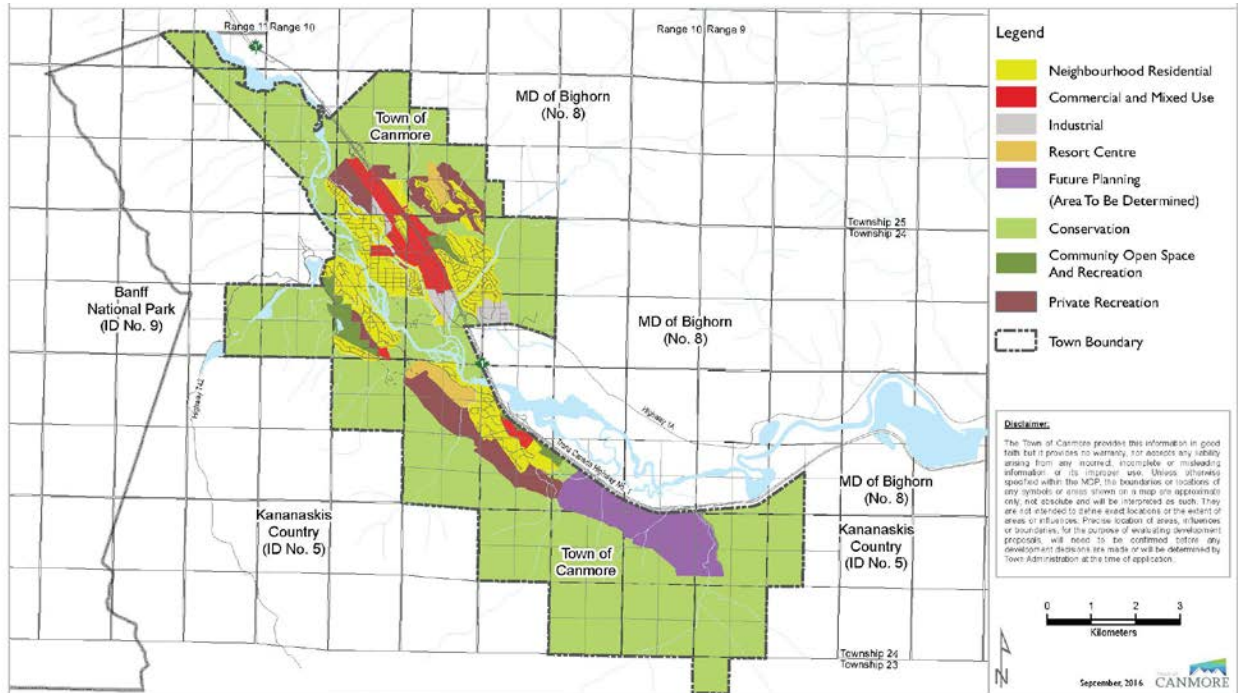


Figure 3: Canmore Municipal Development Plan 2016 – Conceptual Land Use

BCEAG Guidelines

[14] The NRCB decision included a recommendation for development of a wildlife habitat mitigation and enhancement program. As a result, the Bow Corridor Ecosystem Advisory Group created the Wildlife Corridor and Habitat Patch Guidelines for the Bow Valley (BCEAG Guidelines) in 1999. The Advisory Group included Canmore, Bighorn, the Town of Banff, the Alberta Government and Banff National Park. The BCEAG Guidelines excluded two areas within the Canmore, the Three Sisters Lands and Silvertip Lands, as approvals for these areas were granted before the development and adoption of the guidelines. In addition, under Section 618 of the *Act*, planning decisions on the Three Sisters Lands had to be consistent with the NRCB approval.

[15] In 2012, updated BCEAG Guidelines were developed and included in the implementation section of the South Saskatchewan Regional Plan (SSRP). While Canmore Council has adopted the 2012 Guidelines, Bighorn has continued to use the 1999 Guidelines. This decision uses the term BCEAG Guidelines to refer to the guidelines generally; where necessary, it specifies which version (the 1999 or the 2012) is being referenced.

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BCEAG Guidelines pertaining to Dead Man's Flats

[16] The BCEAG Guidelines show the hamlet of Dead Man's Flats as located on or adjacent to the Bow Flats Regional Habitat Patch. This habitat patch is on both sides of the Bow River, covering an area of approximately 11 square kilometers. There are undesignated wildlife corridors south of Hwy 1, where wildlife moves through the area from crown lands and national parks. The wildlife corridors were identified in the 1999 Guidelines as requiring further study. In the 2012 Guidelines, three corridors (Wind Valley, Pigeon Mountain and Dead Man's Flats) are identified, but undesignated, in the area of Dead Man's Flats. All three are awaiting approval under the *Wildlife Act* by Alberta Environment and Parks.

[17] A designated corridor - the Along Valley Corridor - extends along Hwy 1 and the Bow River, allowing wildlife to move from other habitat patches and through other corridors around Canmore, Harvie Heights and Dead Man's Flats. The BCEAG Guidelines recommend that corridors be wide, straight, and capable of connecting habitat patches, corridors and other features. They should also have good visibility and appropriate vegetation cover for different species, and allow for species to pass through the area. Finally, wildlife corridors should be free of human interaction.

[18] The BCEAG Guidelines contain best practices for development adjacent to regional habitat patches such as the Bow Flats Habitat Patch. The Guidelines suggest that any proposed development adjacent to a regional habitat patch should transition back from the habitat patch from low impact uses such as trails and golf courses, to medium impact uses such as light industrial, and finally to high impact uses such as residential. More vegetation coverage is suggested if development is to occur adjacent to the habitat patches. The BCEAG Guidelines define adjacent to a regional habitat patch as anything within 250 metres; they also recommend additional setbacks from the habitat patch for residential (20 meters) and local commercial (40 meters) uses.

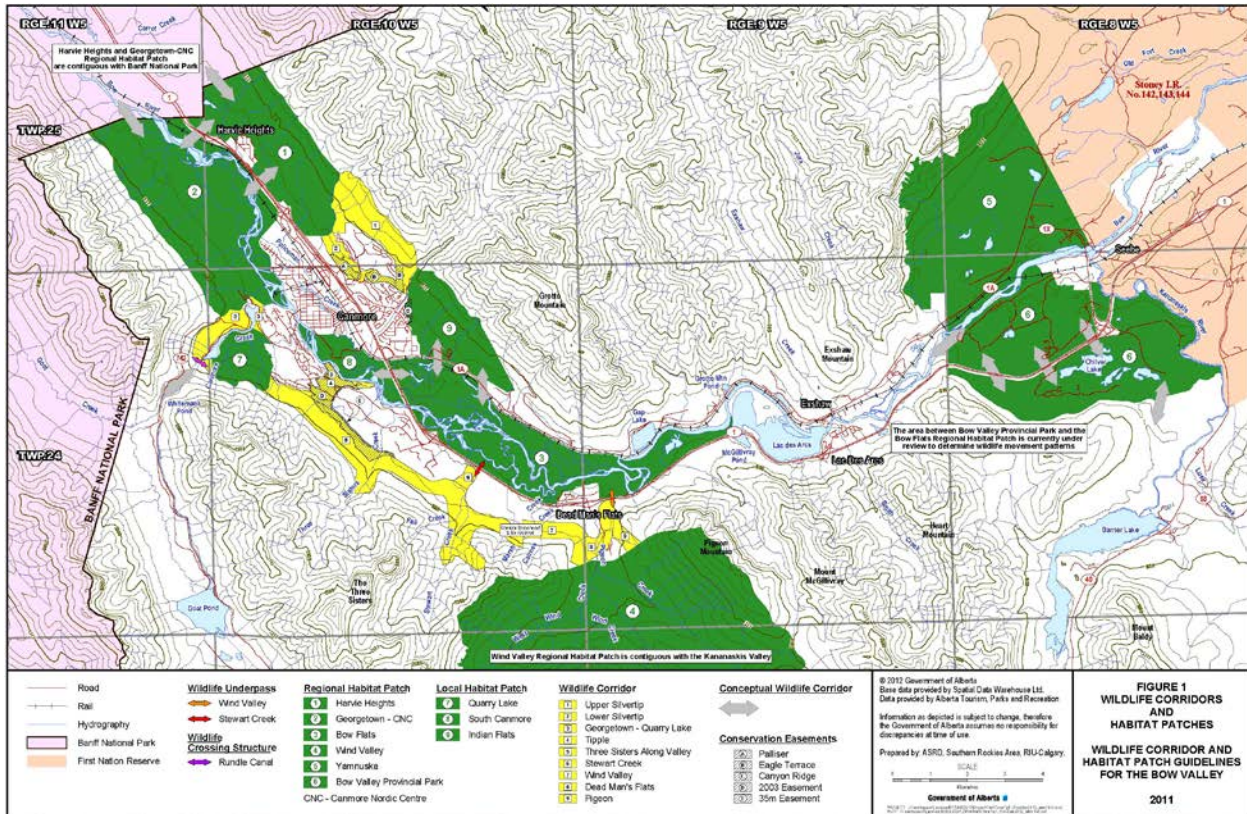


Figure 4: Wildlife Corridors and Habitat Patches in the Bow Valley

G8 Legacy Wildlife Underpass

[19] The G8 Underpass is located adjacent to the south east corner of hamlet of Dead Man’s Flats, as shown on Figure 1 and Figure 2. It connects extensive wildlife habitat areas (Wind Valley and Bow Flats) through to the Bow Flats Natural Area on the Bow River. Constructed as an environmental legacy project of the 2002 G8 Summit in Kananaskis, its location was established after completion of a wildlife corridor study. One of the primary reasons for locating the underpass at Dead Man’s Flats was that the highest incidence of animal-vehicle collisions resulting in wildlife mortality on Highway 1 east of Banff occurred in the 5.5 km area surrounding Dead Man’s Flats. In addition, the G8’s location was selected due to advantageous topography, good alignment with the wildlife corridor, and to avoid highway expansion and existing development in Dead Man’s Flats.

[20] Completed in 2005 at a cost of \$1.8 million, the G8 Underpass is comprised of two separate concrete bridge structures 15 metres wide which travel under the eastbound and westbound lanes of Hwy 1. Fencing along Hwy 1 directs wildlife to the underpass, and use is

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monitored with motion-activated cameras. There are open areas at both ends of the underpass; however, the north area contains an ATCO natural gas station (ATCO Station) in a fenced area just northwest of the opening and a recently reactivated borrow pit. As shown on Figure 2, the East ASP lands are adjacent to the north end of the G8 Underpass. There is also some development on the south side, including the Canmore Gun Club, the Banff Gate Resort, Thunderstone Quarry, and a parking area at the end of George Biggy Senior Drive.

Land Exchange

[21] In 2004, Bighorn and the Province of Alberta began discussing the possibility of exchanging the ASP lands for other provincially owned land elsewhere in Bighorn. Potential agreements in 2012 and 2014 did not receive Ministerial approval; as a result, Bighorn decided to proceed with an area structure plan.

Steep Creek Mitigation

[22] Much of the 2013 flood damage in Canmore resulted from steep creek flooding, where debris flows and floods from mountain creeks caused extensive downstream damage. Most flood mitigation in Canada has been for overland flooding and is hazard based; however, steep creek mitigation is risk-based, limiting the consequences of flooding by constructing control structures and diverting water and debris flow away from highways and infrastructure and buildings. Since 2013, Canmore and the Province have engaged in studies to determine appropriate mitigation for each of the creeks within Canmore. Pigeon Creek is in the early stages of steep creek mitigation studies. Mitigation on Pigeon Creek is important to both Canmore and Bighorn, because in 2013 the east access to Canmore from Highway 1 was the only route that remained open. While Pigeon Creek flooded, much of the debris remained upstream of the Highway and did not inundate the highway.

[23] Pigeon Creek flows from the west side of Pigeon Mountain, over a waterfall into a catchment pond above Thunderstone Quarry. From the pond, it flows through roadside ditches to culverts underneath Highway 1, finally flowing under the 2nd Avenue bridge in Dead Man's Flats on its way to the Bow River. Within Dead Man's Flats, there are residential and tourist developments on both banks of Pigeon Creek. The River's Bend and Limestone Valley developments and all the development proposed under the ASP use 2nd Avenue as their access. All of these developments are east of the 2nd Avenue Bridge, requiring a mitigation strategy for Pigeon Creek to ensure access in the event of a flood.

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PART C: ISSUES

[24] Canmore's statement of appeal listed 11 reasons for filing the intermunicipal dispute, as identified in DL 004/16. Based on the subsequent disclosure and submissions at the merit hearing, the MGB determined the dispute raises the following essential issues:

1. Will the ASP reduce the functionality of the G8 Underpass?
2. If so, will the reduction in functionality detrimentally affect Canmore?
In particular, will it affect:
 - a. Canmore's ability to plan, or
 - b. Canmore's operations.
3. Will the ASP cause detriment by impacting steep creek mitigation plans?
4. If the ASP has a detrimental effect, what is the appropriate remedy for Canmore or other affected parties?

ISSUE 1: Will the ASP reduce the functionality of the G8 Underpass?

Canmore's Position: Any development at the north entrance of the G8 Underpass will reduce its functionality.

[25] Two expert witnesses provided testimony with respect to the G8 Underpass and the potential implications of development contemplated in the ASP. The first, Mr. R. Lauzon, was retained by Canmore, and the second, Dr. B. Leeson, provided an independent report in this matter.

R. Lauzon – Matrix Solutions Inc.

[26] R. Lauzon is a professional biologist with 28 years' experience in environmental consulting; particularly, in the area of preparing environmental impact assessments and monitoring programs for conditions of approval in Alberta. An environmental consultant, Mr. Lauzon was retained by Canmore to provide a third party review of the ASP and the 2015 Development Impact Assessment (DIA) prepared by Golder Associates. This third party review (Matrix Report), prepared in April 2016, addressed five questions posed by Canmore:

1. Is it appropriate and reasonable to compare the impacts of the development in Dead Man's Flats to current conditions, given the recent borrow pit activity?
2. To what extent has the recent borrow pit activity reduced the utilization of the G8 wildlife underpass by indicator species?

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3. Does the DIA adequately address the impacts to functionality of the G8 wildlife underpass? If not how not?
4. How does the proposed development in DMF ASP's impact the viability of wildlife movement from a regional perspective?
5. Specifically, what is the potential impact on the viability of wildlife corridors on the south side of the Trans-Canada Highway as a result of reduced functionality of the G8 wildlife underpass?

[27] Mr. Lauzon explained that the DIA should have included borrow pit activity as a baseline disturbance, since impact assessments typically include such activities when investigating potential effects of a proposed project. However, the use of the borrow pit will cease in 2017, and the unknown timeline of ASP development makes it impossible to determine what baseline conditions will be before development. Given that much of the adjacent development in River's Bend and Limestone Valley is yet to be completed, the DIA underestimates impacts on wildlife habitat and movement, and neglects to assess the cumulative effects and the nature of the proposed development on the remaining habitat. Development in Dead Man's Flats increased significantly after the 2012 approval of River's Bend. Mr. Lauzon explained that it is not possible to quantify impact of the borrow pit activity due to the other human activity or anthropogenic disturbances, as well as natural factors such as the flood in 2013, regional population fluctuations for each species, traffic changes, and changing predator/prey dynamics.

[28] Nevertheless, camera data (2008 to 2015) shows a reduction in wildlife use at the G8 Underpass that was not seen at the Stewart Creek underpass to the west: from 2013 to 2015, overall wildlife activity dropped by 29% at the G8 Underpass but increased by 21% at the Stewart Creek underpass. The decrease in 2013 was followed by a slight increase, potentially due to wildlife becoming accustomed to the disturbance at north end of the G8 Underpass.

[29] Mr. Lauzon noted that when compared to the relevant sections of the Bighorn DIA Policy, the contents of this DIA do not comply with the policy nor do they comply with the 2012 Guidelines. For example, the DIA Policy states that reference should be made to the numerous existing studies, reports and guidelines used in the preparation of, or referred to, in the DIA, especially in the Bow Corridor. The DIA prepared for this ASP cites only three references and the wildlife impact section does not refer to them. The DIA appears to rely solely on professional opinion and proposed mitigation to promote wildlife movement and reduce conflict. In comparison, Mr. Lauzon noted the three pages of references cited in the Matrix report and the 14 pages of references in Golder Associates 2012 report "Proposed Wildlife Movement Corridors and the Three Sisters Mountain Village Properties: An Evaluation" prepared for PriceWaterhouseCoopers (Golder 2012) for submission to Canmore. The mitigations presented in the DIA were primarily for human-wildlife conflict and do not appear to maintain wildlife movement through the corridors, and specifically, the G8 underpass. The 2012 Guidelines state

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that a DIA requires a year of baseline data followed by three years of monitoring post-development. The DIA has no baseline data and the only monitoring suggested in the DIA relates to integrity of the wildlife fencing. The DIA does not mention monitoring wildlife use of the G8 Underpass or the Bow Flats Habitat Patch.

[30] Mr. Lauzon concluded that activity in River's Bend and Limestone Valley is already negatively impacting the functionality of the corridor, and development associated with the ASP will add cumulatively to the effect. The area along the Bow River is important for movement in the Bow Flats Habitat Patch, especially for carnivores. Any impact on local movement of carnivores is likely to compromise regional movement. The effects will vary by species, with bears and cougars likely impacted most due to their avoidance of humans, the narrowness of the unfenced area along the Bow River north of the North ASP, and the increased likelihood of human/wildlife interactions in that area; in contrast, coyotes adapt well to human development and are unlikely to be impacted at a regional scale. Deer and elk frequently use the area around Dead Man's Flats and are likely to be wary of humans and will increasingly avoid movement along the Bow River and the G8 Underpass if development for the ASP is approved and corridors are constricted. As a general principle in the BCEAG Guidelines, corridors should avoid cul-de-sacs, peninsulas, and doglegs that have the potential to trap animals or direct them out of the corridor and into development areas where conflict with humans may result. The ASP creates a dogleg at the north exit to the G8 Underpass where wildlife has to move around development.

[31] If the functionality of the G8 Underpass is compromised and wildlife movement across Hwy 1 is reduced, it will affect the corridor network to the south. Mr. Lauzon explained that wildlife will seek out other ways to cross the highway, which might put them at risk, or move into habitat where there is increased risk of mortality. The magnitude of these impacts will remain uncertain until the River's Bend development is complete and fully occupied, and wildlife in the area adapt movement patterns, and adjust or get used to people using the area.

Dr. B. Leeson – G8 Underpass Proponent and Project Manager

[32] Canmore's second expert witness, Dr. B. Leeson, was formerly the Senior Environmental Assessment Scientist with Canada's National Parks Agency. In August 2001, in advance of the 2002 G8 Summit, he was appointed Director of Environmental Affairs, to manage the potential for adverse impacts of thousands of personnel in the Kananaskis Valley for the Summit. He also was responsible for establishing the placement and managing the construction of the G8 Underpass, which was an Environmental Legacy Project. Dr. Leeson continues to participate in studies and monitoring projects in the Bow Valley, and regularly visiting the Wind Valley area, the G8 Underpass and the Bow Flats Habitat Patch.

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[33] After noticing a change in usage of the G8 Underpass, Dr. Leeson prepared a report in February 2014 to help all parties understand the history of the G8 Underpass and its purpose, reason for placement, and expectations for it, in view of the circumstances arising from the proposed ASP. The report was not prepared for Canmore; however, Dr. Leeson wanted the report to outline the reasons for the location of the underpass and the characteristics that contribute to its success.

[34] Dr. Leeson explained that the G8 Underpass is located in an area where wildlife has been crossing Hwy 1 for decades. The G8 Underpass was constructed to take advantage of a natural dip in the landscape. Despite the fencing that forces wildlife through a comparatively narrow opening, the approaches/departures on both sides are favourable for secure wildlife passage. Both sides of the G8 Underpass provide close cover for animals such as wolves, black bears and cougars that prefer concealing cover before committing to traverse the underpass, as well as large open areas for animals such as elk that prefer to see longer distances.

[35] The north side of the G8 Underpass is in the path of a preferred crossing site of the Bow River. On either side of the Bow River, there is extensive, good quality cover for wintering animals. After the 2013 flood obliterated the other crossing north of the sewage lagoon lands, elk began to use this crossing which was previously used by wolves. The river crossing north of the G8 Underpass is currently the only one in the area. A well-used wildlife trail parallels the south side of the Bow River allowing movement to favourable habitat both upstream and downstream. At the time of site selection for the G8 Underpass, there was little human activity in the area. Dr. Leeson explained that when there is little human activity there are fewer opportunities for wildlife encounters, and a decreased potential for habituation.

[36] Dr. Leeson stated that the G8 Underpass was located on the east side of Dead Man's Flats because, in 2003, the nearest residence was about 700 metres away and the hamlet's population was 30. This location was preferred, because previous studies in Banff National Park of its overpasses and underpasses showed unequivocally that a human - or anthropogenic presence - decreases the functionality of wildlife structures. While the corporate limits of Dead Man's Flats extended out to the area of the G8 Underpass in 2002, the area was undeveloped, and the proposed land exchange would ensure it remained in a natural state.

[37] Wildlife crossing data show wildlife quickly found the G8 Underpass shortly after its completion, and it continues to be heavily used. Dr. Leeson cited a study conducted to determine the effect the G8 Underpass had on wildlife/vehicle collisions. The study showed a drop in wildlife/vehicle collisions from a pre-construction average of 11.8 to a six-year annual average of 2.5 collisions post-construction. From a cost-to-society perspective, constructing the G8 Underpass to allow wildlife to avoid the highway, and reducing the annual average cost from these collisions by over 90%, from \$128,337 per year to an average of \$17,564 per year. Clearly,

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the G8 Underpass and fencing greatly reduces the threat of injury and death to humans and wild animals arising from wildlife/vehicle collisions. The G8 Underpass sustains wildlife by allowing it to move safely about and access habitats throughout ranging areas.

[38] In response to a question, Dr. Leeson explained the arc of approach or departure from a wildlife crossing structure is the area visible to the animal using the structure. The north side of the G8 Underpass - less the area of the fenced ATCO gas station - had a full 180 degrees. The proposed development would reduce that to a much smaller arc, which is not as favourable. Dr. Leeson believes human development in the area of the G8 Underpass reduces its functionality, because it takes away habitat and increases human activity. Bringing in more human activity would have a negative impact, but he stated that neither he nor anyone else could predict the degree of that impact.

Bighorn's Position: Mitigative measures can retain the functionality of the G8 Underpass

M. Jalkotzy – Director, Golder Associates

[39] Bighorn presented one expert witness to testify about the ASP's impact on the G8 Underpass. M. Jalkotzy is a senior wildlife ecologist and director with Golder Associates who has worked in the Bow Valley preparing impact assessments since 1979. He was one of the principal authors of two documents prepared for PriceWaterhouseCoopers for submission to Canmore for the Three Sisters Lands: the Golder 2012 Report and the Golder 2013 Report "2013 Environmental Impact Statement: Three Sisters Mountain Village Development Properties – Resort Centre, Stewart Creek and Sites 7/8 and 9" (Golder 2013). Mr. Jalkotzy stated that when Bighorn retained him in 2015 to prepare the DIA, he had recently completed Golder 2012 and Golder 2013 and did not feel it necessary to repeat all the references and citations in those two reports. The Bow Corridor is a widely studied area, and there is a great deal of data and many studies to review when preparing assessment reports.

[40] Mr. Jalkotzy explained that the area of the ASP is not part of a named wildlife corridor, but it is a movement route which maintains connection to the G8 Underpass within the Bow Flats Regional Habitat Patch. Current wildlife use of the East ASP area is affected by human activity or anthropogenic disturbances, such as frequent truck traffic associated with the borrow pit; however, these activities will cease in 2017 as they are associated with the development of the River's Bend and Limestone Valley subdivisions. The North ASP area along the Bow River is also an east-west wildlife movement route and the use of the area by wildlife would also be affected by development of the River's Bend and Limestone Valley subdivision. Mr. Jalkotzy explained that this activity likely reduces use of the area by species sensitive to human activities such as wolves, wolverines and grizzly bears. However, these species are absent or use the area to a lesser degree than species that have adapted to human use, such as elk, deer and black bears.

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[41] The DIA proposes several mitigations to reduce human-wildlife interaction associated with the development of the North and East ASP areas:

- A 2.5 m high wildlife fence along the boundary of the ASP area, designed with a flexible top to prevent access by climbing carnivores, and jump-outs to allow for removal of wildlife should they gain access inside the wildlife fence. Such fences have been found to allow fragmented habitats to be used by wildlife when they may not be used otherwise, and to conserve wildlife by easing the transition of animals from an area with natural vegetation to an area where there are roadways, buildings and other items of human use.
- Human use management, including:
 - Pedestrian gates through the wildlife fence along the North ASP area to allow human access to the Bow River but prevent wildlife access into the ASP area.
 - Restrictions on building placement and access for lots backing onto the wildlife movement area in the East ASP area as well as material/waste storage and lighting.
 - The East ASP area will have only one gate in the wildlife fence for municipal access to the stormwater pond.
 - Signage indicating wildlife in area and the effects of human disturbance on wildlife.
 - Public education regarding the importance of wildlife in the area and the effects of human disturbance and habituation on wildlife.
- Wildlife management, including:
 - Restrictions on the use of plants that attract wildlife.
 - Proper storage of food and food waste, proper design of garbage bins.
- Regular inspections of the wildlife fencing to assess damage from wildlife, humans and weather events.

Mr. Jalkotzy was of the opinion that, if the proposed mitigations were implemented, the current levels of wildlife movement should be maintained for the East ASP lands and the G8 Underpass as well as east to west movement across the North ASP lands, immediately south of the Bow River.

Affected Party Position -- QuantumPlace Developments: Wildlife exclusionary fencing is needed because human – wildlife interactions impact wildlife use of wildlife corridors, underpasses and habitat patches.

C. Ollenberger, Principal QuantumPlace Developments

[42] QuantumPlace Developments (QuantumPlace) is the agent for Three Sisters Mountain Village Properties and Thunderstone Quarries and is responsible for the planning and development of the remainder of the Three Sisters Lands. Mr. Ollenberger is a professional

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engineer and principal of QuantumPlace. He has worked for several years on various projects, plans and studies relating to the development of the Three Sisters Lands.

[43] Mr. Ollenberger explained that QuantumPlace originally filed for affected party status because Canmore's initial submissions suggested additional lands - potentially including Three Sisters Lands - would be needed to accommodate wildlife. However, having reviewed Canmore's submissions for this hearing, it is apparent Canmore objects to development near the G8 Underpass and the use of wildlife exclusion fencing as a mitigative measure.

[44] Mr. Ollenberger explained that Three Sisters Mountain Village Properties monitors wildlife in the Tipple and Along Valley- wildlife corridors and the Stewart Creek Underpass on Three Sisters Land to the west. He drew the MGB's attention to a spreadsheet containing the monitoring results for the most recent reporting period. It shows that activity in the wildlife corridors and underpass was equally split between humans and wildlife. Mr. Ollenberger reminded the MGB that they heard evidence from Mr. Lauzon, Dr. Leeson and Mr. Jalkotzy that where there is continued human use, wildlife use of corridors and habitat patches is reduced.

[45] Given these and other similar findings from monitoring stations, QuantumPlace is taking a proposal forward to Alberta Environment and Parks to install wildlife exclusion fencing on the south perimeter of the Three Sisters Lands. This wildlife exclusion fencing would be of the same type proposed in the ASP area to reduce the human-wildlife interaction, and to facilitate the movement of wildlife through the wildlife corridors across habitat patches and around Canmore.

[46] QuantumPlace supports use of such fencing, which it believes constitutes effective mitigation; to this end, it has submitted materials to Alberta Environment and Parks to approve use of fencing under the *Wildlife Act* for its development. QuantumPlace does not object to the ASP, but filed its submission to provide the MGB with evidence about the Smith Creek ASP and its experience with wildlife monitoring and fencing in the Bow Valley.

Affected Party Position -- Stoney Nations: Decreasing the functionality of the G8 Underpass will affect the ability to exercise Aboriginal and Treaty rights.

[47] Counsel for the Stoney Nations agreed with Canmore's position that the ASP will decrease the functionality of the G8 Underpass and compromise adjacent wildlife corridors and habitat patches. Stoney Nations are concerned that if the amount and type of wildlife were to change, there will be fewer animals of particular types available, which will affect the Stoney Nations ability to exercise their Aboriginal and treaty rights.

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Findings – Issue 1

1. Although wildlife fencing would most likely mitigate its impact, the proposed ASP will likely have a negative effect on the functionality of the G8 Underpass.
2. It is not possible to tell the magnitude or duration of the impact.

Reasons – Issue 1

[48] The MGB accepts the evidence of Canmore’s experts that distance between development and wildlife features - including corridors, habitat patches and underpasses - is most effective at reducing or eliminating human wildlife interaction. The MGB heard that location of the G8 Underpass was chosen because there would be little or no adjacent development, the crossing is near a natural migration route, with suitable vegetation and open sight lines. The ASP provides for development much closer to the G8 Underpass than currently exists, and may affect sight lines and vegetation on the north side of the highway.

[49] In addition, it is clear that additional development in the area of the underpass will most likely increase opportunities for human-wildlife interaction. Each of the biologists who testified stated that as human presence increases in habitat patches, corridors and underpasses, the use of these features by certain kinds of wildlife decreases – at least in the short term. In view of this evidence, the MGB concludes on a balance of probabilities that development associated with the ASP will reduce level of functionality of the G8 Underpass at least to some degree and for some species in comparison to no development.

[50] In reaching this conclusion, the MGB accepts it is not possible to predict to what extent human disturbance from the ASP would affect the G8 Underpass’s functionality. The comparison between wildlife use of the G8 Underpass and that of the Stewart Creek Underpass during development at Rivers Bend and Limestone Valley shows the difficulty of quantifying such effects. While these developments coincided with decreased use at the G8 Underpass (see Matrix Report p.8), the experts agree this data cannot be used to quantify the effect of the developments. The reason is that other variables also contributed to changes in use, including the 2013 flood, wildlife population fluctuations, and so on. In this connection, the MGB observes QuantumPlace’s camera data shows the increase in wildlife use at the Stewart Creek Underpass occurred despite equivalent use by humans.

[51] The expert witnesses also agreed that wildlife, or at least some species of wildlife, adapt to disturbances and that wildlife use may recover over time. Therefore it is not possible to predict the duration of the effect on wildlife use of the G8 Underpass. With respect to recovery, the witnesses stated no one could predict when the wildlife would adapt, nor which species would recover.

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[52] Finally, the MGB accepts the wildlife fencing proposed for the ASP will help reduce the potential for human/wildlife conflict and have a positive influence on functionality should development proceed. The wildlife fencing proposal would facilitate movement of animals around Canmore and Dead Man's Flats and deter human use of the corridors and habitat patch - though some degree of interaction will still occur. As noted by each of the witnesses, mitigation measures such as wildlife fencing must be submitted for approval to Alberta Environment and Parks under the *Wildlife Act*.

Implications for Detriment

[53] Although the MGB is satisfied the ASP will affect the functionality of the G8 Underpass, this finding does not necessarily imply Canmore will be detrimentally affected. Canmore argued that a detrimental impact on wildlife has a detrimental impact on Canmore, but the MGB does not consider this axiomatic. As noted earlier in this order, the MGB has interpreted detriment for the purposes of Section 690 broadly to include physical, social, or economic influences, or interference with the ability to plan for future growth. However, some link must still be shown between the ASP's impact on wildlife and a significant impact on Canmore to show detriment.

[54] In the context of this appeal, Canmore raised several potential sources of detriment that could result from increased human/wildlife conflict, including potential increase in animal/vehicle collisions, the cost of setting aside otherwise developable land for additional wildlife corridors, and approaches to development leading to uncertainty in planning. These sources fall broadly into two main categories. First, Canmore argues the anticipated reduction in the G8's functionality will affect wildlife corridors and habitat patches in a way that is inconsistent with regional planning arrangements. Second, it said the effects on wildlife movement will result in operational difficulties and increased costs to Canmore in managing human-wildlife interactions. These two matters are dealt with under Issues 2(a) and 2(b) below.

ISSUE 2(a): If there is a reduction in functionality of the G8 Underpass, does it affect Canmore's ability to plan?

Canmore's Position: The ASP is detrimental to Canmore's ability to plan as it is not consistent with the BCEAG Guidelines, the SSRP, and Bighorn's MDP.

A. Fish – Manager of Planning, Town of Canmore

[55] Mr. Fish explained the history of the NRCB decision on Three Sisters and its implications for planning initiatives in Canmore, the creation of the BCEAG Guidelines and site selection for the G8 Underpass.

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[56] Mr. Fish explained the planning processes of Canmore and Bighorn both include the BCEAG Guidelines in their respective MDPs. The Guidelines require a concept plan for each land use proposal, followed by the completion of studies and a development impact assessment (DIA) to assess the concept plan using the BCEAG Guidelines.

[57] Canmore has a strong commitment to the BCEAG Guidelines. If Canmore determines a proposal is inconsistent with the BCEAG Guidelines, Council will not approve it. The BCEAG Guidelines are embedded in Canmore's statutory plans, guiding planning activities and informing Council's decisions. Mr. Fish explained that wildlife corridors are designated in the Land Use Bylaw as Wildlands Conservation District, a very restrictive land use designation with few uses beyond wildlife corridor. By designating the corridors, Canmore is effectively prohibiting them from use for recreation.

[58] Mr. Fish conceded the BCEAG Guidelines do not actually apply to the two areas within Canmore that contain most of its undeveloped lands - the Three Sisters Lands and the Silvertip Lands; however, the Guidelines are still consulted for these areas. Mr. Fish also acknowledged the BCEAG Guidelines are a recommendation rather than a condition of the NRCB approval on the Three Sisters Lands. The approval required lands set aside for wildlife corridors remain as undeveloped as possible. His understanding is that Alberta Environment and Parks - which designates and approves wildlife corridors and patches under the *Wildlife Act* - refers to the BCEAG Guidelines when making its decisions. However, the wildlife corridors south of Highway 1 identified in the BCEAG Guidelines as feeding into the G8 Underpass have not been officially designated.

Compliance with SSRP

[59] Mr. Fish stated that the implementation section of the SSRP includes the 2012 Guidelines. While the implementation section is not part of the SSRP's regulatory component, the Guidelines should still inform development. In Mr. Fish's view, the ASP does not comply with either the 1999 or 2012 Guidelines, because it introduces development into an area adjacent to a regional habitat patch and impacts an important connector, the G8 Underpass. Since the ASP doesn't comply with the 2012 Guidelines, it doesn't comply with the SSRP either.

[60] Mr. Fish agreed that Canmore has approved some developments within existing corridors to allow some human use management projects – for example, a dog park and waste transfer site. However, both these proposals were compared to the 2012 Guidelines before Canmore Council approved them; in contrast, the ASP conflicts with the principle of minimizing human use in sensitive areas; particularly, where they abut development.

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Why ASP is detrimental

[61] Mr. Fish explained that the BCEAG Guidelines show three wildlife corridors - Wind Valley, Pigeon and Dead Man's Flats - converging on the south side of Highway 1. The corridors connect the Wind Valley Regional Habitat Patch with the Bow Flats Habitat Patch through the G8 Underpass. The G8 Underpass is a constriction, but development close to the north entrance to the G8 Underpass will cause a further constriction. In particular, the fencing proposed on the north side of the storm pond adds a setback, but also creates a dogleg. The BCEAG Guidelines recommend wildlife corridors be short, straight, wide, and have as little human use as possible. The fencing around the proposed storm pond north of the G8 Underpass is not consistent with these recommendations.

[62] In response to questions, Mr. Fish described the existing land uses in the area south of Highway 1 in Canmore. He indicated there are a few developments, but the majority of the adjacent lands are undeveloped, with a wildlife fence that directs wildlife to the G8 Underpass.

[63] Finally, Mr. Fish understands the G8 Underpass is located on the east rather than the west side of Dead Man's Flats, because the ASP lands were designated for Tourism and Recreation and not intended for development. While there is an ARP for land west of the utility right of way, it does not extend into the ASP lands.

J. Borrowman – Mayor of Canmore

[64] Mayor Borrowman reiterated the ASP would allow development adjacent to a regional habitat patch and constrict the movement of wildlife immediately north of the G8 Underpass. In contrast, Canmore's MDP emphasizes the importance of maintaining, improving and extending the natural area, based on habitat protections and low intensity development.

[65] Mayor Borrowman understood Bighorn was frustrated when the Province did not accept the most recent land exchange proposal. However, Canmore finds Bighorn's subsequent decision to adopt the ASP is equally frustrating, because the ASP is inconsistent with the 2012 Guidelines and both municipalities generally work well together.

Bighorn's Position: The ASP is consistent with the BCEAG Guidelines, the Bighorn MDP and the SSRP, and does not impact Canmore's planning.

R. Ellis – Director of Planning, MD of Bighorn

[66] Mr. Ellis, Bighorn's Director of Planning, confirmed the ASP complies with the SSRP and includes a statement of compliance, as required under the *Alberta Land Stewardship Act*

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(ALSA). He noted the SSRP does not make adherence to the 2012 Guidelines mandatory, since it references them in the Implementation section rather than the Regulatory section.

Consistency of ASP with MDP and BCEAG Guidelines

[67] Even though the BCEAG Guidelines are not mandatory, the Bighorn 2012 MDP requires any development proposal to consider the 1999 Guidelines. Bighorn has not adopted the 2012 version, because they do not vary substantially from 1999, and because Bighorn was awaiting a decision on the land exchange. When the land exchange did not proceed, Bighorn Council directed administration to proceed with the ASP.

[68] Policy 11.3.7 of Bighorn's 2012 MDP states the eastern part of the hamlet shall be used for light industrial uses, because these are more compatible with wildlife. The light industrial use, as well as the placement of wildlife exclusion fencing on the east boundary of the East ASP and on the north boundary of the Rivers Bend development, will keep animals moving through the area while limiting the amount of human/animal interaction.

[69] The MDP also required a DIA to evaluate uses that could occur on the North and East ASP lands, establish proper land uses. In Mr. Ellis' view, this approach to development is consistent with the principles in both sets of BCEAG Guidelines. Furthermore, Mr. Ellis stated that the process for developing lands in Bighorn is that a concept plan is prepared first, followed by a DIA, then an ASP, which is similar to the process in Canmore.

How ASP lands are characterised in BCEAG Guidelines

[70] Mr. Ellis explained the ASP is located on lands that are part of, or adjacent to, the Bow Flats Regional Habitat Patch. The BCEAG Guidelines characterize habitat patches as regional or local. The size of the habitat patch is reflective of its use as a grazing, hunting, wintering, or a calving area. Regional habitat patches are extensive - over 10 square kilometres in size - allowing for wildlife movement through and around the patch. The ASP is adjacent to a habitat patch - not a wildlife corridor - so the relevant width to consider in the BCEAG guidelines is that of a habitat patch.

[71] The ASP proposes light industrial uses, which will have the least impact on the habitat patch and limited opportunity for human and wildlife interactions. Mr. Ellis acknowledged the DIA prepared in 2004 for the River's Bend Development by Golder recommended a minimum of a 180 metre setback from the reclaimed sewage lagoon to the Bow River. If the ASP proceeds, that distance could be reduced, since sports fields could be developed on that area.

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How studies were prepared for ASP

[72] Mr. Ellis stated that Bighorn chose to do an ASP and a DIA in order to guide and define future development of the lands. Bighorn could have pursued planning and development of the lands by simply redistricting the property for light industrial uses. If the DIA, or the tabletop analysis prepared by McElhanney had determined no development should occur on the lands, then Bighorn would not have proceeded with the ASP. Mr. Ellis explained that despite the ASP and the DIA, Bighorn could still require future studies including a new DIA for all or part of the lands. He also advised that the parcel layout, location and extent of the dry pond could be changed.

How the ASP lands are districted in Bighorn's Land Use Bylaw

[73] In 1994, the ASP lands were designated in the land use bylaw for a variety of uses including single detached residential and a host of other tourism and commercial uses. Areas north of the G8 Underpass had been designated for various uses from 1988. Currently, the ASP lands are designated as Recreation "R" or Public Service "P". Mr. Ellis explained that uses in the Recreation district are relatively straightforward, but uses within Public Service allow a variety of public services from parks to extended medical facilities. Uses within River's Bend and Limestone Valley developments complement the light industrial uses proposed in the East ASP. If the ASP is to be pursued, studies such as a DIA, traffic impact assessment and other work is required to redistrict the lands to light industrial and other uses.

Affected Party Position -- QuantumPlace Developments: The ASP has no impact on planning in Canmore.

J. Karpat, Professional Planner, QuantumPlace

[74] Ms. Karpat, a planner employed by QuantumPlace, provided evidence about the Smith Creek ASP being developed for the Three Sisters Lands in the area referred in the 1998 NRCB decision as Sites 7, 8 and 9. The Smith Creek ASP is being developed in collaboration with Canmore and will plan for the eastern most portion of the lands approved by the NRCB. These lands are located across Highway 1 from the hamlet of Dead Man's Flats. Ms. Karpat explained that the Smith Creek ASP will include commercial and industrial uses adjacent to the Thunderstone Quarry, and an additional wildlife underpass within the plan area.

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How the ASP relates to the Smith Creek ASP

[75] Ms. Karpat explained that there is a citizen advisory group working with QuantumPlace and the Town of Canmore on the Smith Creek ASP. QuantumPlace's proposal for the wildlife exclusionary fencing had been discussed with the citizen advisory group. The group is aware that an approval by Alberta Environment and Parks under the *Wildlife Act* is required for the fencing proposal. As explained by Mr. Ollenberger, Mr. Jalkotzy and Dr. Leeson, the wildlife exclusionary fencing for the Three Sisters Lands is the same fencing being proposed by Bighorn to surround the East and North ASP areas. In response to a question, Ms. Karpat explained that QuantumPlace supports the position of Bighorn in this dispute. The wildlife exclusion fencing proposed in the ASP is consistent with what is being proposed in Smith Creek ASP, and will create a continuous fence guiding animals through the area.

Affected Party Position -- Stoney Nations: The ASP is not consistent with planning documents including the SSRP and the BCEAG Guidelines.

Stoney Nations has been involved with planning initiatives around Banff and Canmore. They support Canmore's position that the ASP is not consistent with BCEAG Guidelines, nor is it consistent with the SSRP.

Findings – Issue 2(a)

3. The ASP is consistent with the Bighorn MDP, the 1999 BCEAG Guidelines, and the SSRP.
4. The MDP, reflecting the 1999 BCEAG Guidelines, suggests light industrial uses are appropriate for this area of Dead Man's Flats.
5. The light industrial uses in the ASP continue a pattern of commercial and industrial uses that occur, or are proposed, near the south entrance of the G8 Underpass in Canmore.
6. The decrease in functionality of the G8 Underpass from the ASP will not adversely affect Canmore's ability to plan.

Reasons – Issue 2(a)

Bighorn's MDP

[76] One of Canmore's arguments is that it suffers detriment, because the ASP is not consistent with Bighorn's MDP. There is little to support this argument. The MGB accepts Mr. Ellis' testimony that Bighorn prepared the ASP based on recommendations in the DIA as required under the MDP. This process is broadly similar to Canmore's. Although Canmore may have preferred the DIA to include additional recommendations to facilitate wildlife movement

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and habitat connectivity, there is nothing in the MDP to require such recommendations, and the ASP is reflective of MDP policies intended to minimize impact of development on wildlife.

[77] More specifically, the MGB observes MDP Policy 11.3.3 requires development to proceed in a balanced fashion to incorporate highway commercial, light industrial, residential, and open space uses; in addition, Policy 11.3.7 requires the eastern part of the Hamlet to be reserved for light industrial uses that are more compatible with the adjacent wildlife habitat. The ASP appears consistent with these general policies. While the uses intended for the ASP do not currently reflect the Tourism and Recreation designation shown for the relevant area in the MDP, the MGB heard Bighorn intends to amend the MDP to reflect the intended light industrial uses for East ASP. This course of action reflects standard practice, and there is no reason to believe that the change in use is inconsistent with existing or planned uses on the south side of Highway 1 in Canmore, as discussed in more detail below.

Smith Creek

[78] The MGB finds the ASP continues a land use pattern that includes current development around George Biggy Drive, Thunderstone Quarry, and the future land uses in the Smith Creek ASP. The current development south of Highway 1, described earlier in this order includes the Banff Gate Condominium, a hiking trail and parking area, the gun club, and the Thunderstone Quarry. All of the development and all of the uses are proposed to be contained within wildlife fencing, which is intended to facilitate the movement of animals through the area. In all cases, the planned development relies on fencing to reduce human-wildlife interactions.

[79] If the ASP doesn't proceed, there will still be development on the south side of Highway 1 in Canmore, as the use of the Three Sisters and Thunderstone Quarry lands was approved by the NRCB.

BCEAG Guidelines

[80] Canmore argued that the ASP is detrimental because it does not comply with the BCEAG Guidelines, whereas Canmore strives to be consistent with these Guidelines. Once again, the MGB cannot accept this argument for several reasons. First, as noted by many participants in this hearing, the BCEAG Guidelines do not apply to the Three Sisters Lands in Canmore south of Highway 1, because these lands are subject to the 1992 NRCB order. Thus, although Canmore's current practice is to consider the BCEAG Guidelines in its planning process, they only apply to a minority of lands in Canmore. In the MGB's view, it is unrealistic to insist on strict compliance with policy guidelines north of the highway to ensure planning is consistent with adjacent lands where the Guidelines do not apply.

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[81] Second, the MGB finds the ASP to be consistent with the planning principles in the 1999 BCEAG Guidelines referenced in its MDP. As noted earlier, Bighorn proceeded responsibly by preparing a DIA (as recommended in both the 2012 and the 1999 Guidelines) to identify measures such as fencing to mitigate human-wildlife interaction from development associated with the proposed ASP.

[82] Third, the MGB does not accept Canmore's argument that inconsistencies between the ASP and specific requirements in the updated 2012 version represent detriment to Canmore. It is true that the 2012 Guidelines contain more detailed requirements for habitat patches and wildlife corridors than appear in the 1999 version. However, not all of the recommendations necessarily apply to the ASP. For example, the recommendations applicable to wildlife corridors would not apply, since the ASP is within or adjacent to a habitat patch (Bow Flats), which is not a wildlife corridor. The corridors identified in the guidelines (Dead Man's Flats, Pigeon, and Wind Valley) are all south of Highway 1.

[83] Fourth, while both the 2012 and 1999 Guidelines suggest measures to promote conservation, specific circumstances may make some of their recommendations unfeasible. If considered as part of a corridor, the G8 underpass itself is a ready example of such a case, since its 15 m width is nowhere near the 2012 Guidelines' recommended wildlife corridors width of 350 m. Similarly, given the 2012 Guidelines' new size requirements for regional and local habitat patches, the Bow Flats Habitat Patch would no longer qualify as a regional patch. In general, while both versions of the Guidelines incorporate laudable conservation goals, neither are mandatory planning documents. Their recommendations must be considered and adapted for realistic application within the context of local circumstances and constraints.

[84] In this respect, the MGB notes that while the standards in the 2012 Guidelines are more specific than those in the 1999 Guidelines, both documents are inspired by the same conservation principles. As with many other planning documents, the expectation is not for uniform application of specific standards in all cases; rather, each municipality is expected to consider the standards and apply the underlying principles to suit the municipality's particular circumstances. The expectation is similar to that stated in *Sturgeon* about principles in the Land Use Policies:

The Land Use Policies do not appear to anticipate that each municipality will address the conservation of Agricultural Land in the same manner, but rather that each municipality is encouraged to design mechanisms suitable to its individual needs.

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SSRP

[85] Canmore argued the ASP's inconsistency with specific recommendations in the 2012 BCEAG Guidelines also violates the SSRP, which referentially incorporates them. Once again, the MGB cannot accept this argument. To begin with - as noted in *Wheatland v Kneehill*, MGB 016/15 - the MGB's role is to determine whether another municipality's bylaw causes detriment rather than to assess consistency with regional plans - a task the *Alberta Land Stewardship Act* assigns to the Land Use Secretariat. However, to the extent that inconsistency with an ALSA plan may cause detriment - for example, by introducing planning uncertainty - the MGB sees no inconsistency in this case for the reasons explained below.

[86] The SSRP's only reference to the 2012 BCEAG Guidelines occurs at page 57 in Section 3.0 - Biodiversity and Ecosystems:

Maintaining connectivity through the major Bow Valley and Crowsnest Pass Corridors is also important. Information gained from reports such as the Bow Corridor Ecosystem Advisory Group report, the Wildlife Corridor and Habitat Patch Guidelines for the Bow Valley 2012 and the Highway 3 Transportation Corridor Project will contribute to developing transportation plans for maintaining wildlife connectivity in the region.

[87] Section 3.0 pertains to Alberta Transportation's functional plans for Highway 1 - not to statutory plans such as the ASP. Section 3.0 also occurs in the implementation portion of the SSRP, which the Plan states specifically "are not intended to have binding legal effect" (page 8; see also page 160). As such, it is a policy guideline rather than a mandatory requirement, and while the recommendations in the 2012 Guidelines are worthy of consideration, the MGB does not consider them mandatory requirements.

[88] Future plans under the SSRP may well incorporate more recommendations about habitat connectivity to assist species recovery and genetic diversity. For example, Strategies 3.1 and 3.2 recommend completion of a Biodiversity Management Framework and a Linear Footprint Management Plan for public lands. Unfortunately, neither of these documents is yet complete, so their recommendations are not available. Bighorn's ASP takes at least some account of connectivity as well as human-wildlife interaction through the mitigation measures proposed, and the MGB sees it as consistent with the overall SSRP policies and objectives.

[89] The MGB observes that Bighorn is cooperating with Canmore and other affected parties in developing plans that achieve SSRP objectives. In this respect, the MGB heard Canmore and Bighorn meet regularly to discuss municipal planning issues. There is no evidence that

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coordination and cooperation is not occurring; rather, Canmore and Bighorn simply disagree about the adoption of the ASP.

No detriment to Canmore

[90] In summary, while a great deal of information was provided about the importance of maintaining functionality of the G8 Underpass, the MGB finds the ASP is consistent with planning in the area, including the SSRP. In the MGB's view, there is no link between the proposed development of the ASP and detriment to Canmore with respect to current development or future planning.

ISSUE 2(b) If there is a reduction in the functionality of the G8 Underpass, will it impact Canmore's operations?

Canmore's Position: The ASP will increase Canmore's cost to manage wildlife and wildlife-human interactions.

L. de Soto, Chief Administrative Officer for Canmore

[91] Canmore's Chief Administrative Officer, Ms. L. de Soto, argued that the ASP would impact Canmore's operations, resulting in additional cost. Ms. de Soto described measures undertaken to reduce wildlife/human conflict arising from Canmore's location surrounded by natural lands and protected parks. The most relevant to this appeal is the WildSmart initiative. Started in 2005, WildSmart incorporates the reality of living with wildlife with systems to ensure human and wildlife safety in the Bow Valley. Measures introduced through this program included:

- Eliminating curbside garbage collection in favour of a central bear-proof system.
- Working with BCEAG to establish ground rules for development in or near wildlife corridors or habitat patches.
- Adopting local bylaws to minimize animal attractants such as imposing restrictions on bird feeders, vegetation and landscaping, backyard composting and location of pet foods.
- Creating a Human Use Management Program which is a system of education and planning to ensure safe human recreation.

Financial Implications of Human/Wildlife Conflicts

[92] The direct financial impact to Canmore to manage human/wildlife conflicts is substantial: The investment in the bear-proof garbage bin system was over \$2.6 million; the Human Use Management Program and ongoing initiatives of that report are \$50,000 per year; the WildSmart

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initiative is approximately \$60,000 per year; removing animal attractant bushes costs around \$10,000 per year. Eliminating wildlife attractants and education is a significant investment, and establishing and maintaining wildlife corridors is vital to the success of these measures.

Societal Implications of Human/Wildlife Conflicts

[93] Canmore residents believe strongly that wild animals should be able to navigate safely around the community. Ms. de Soto explained that every development decision in the last two decades has been scrutinized very closely, not only by wildlife experts who live and work in the community but also residents who are concerned about safety issues. Uncertainty leads Canmore residents to demand further studies about the movement of wildlife before any development can be approved, resulting in significant opportunity cost to Canmore. The cost of wildlife impact studies is also significant.

A. Fish, Manager of Planning for Canmore

[94] As noted earlier, Mr. Fish indicated the ASP is inconsistent with policies in the BCEAG Guidelines designed to minimize wildlife-human interaction. He said this inconsistency undermines Canmore's own effort to protect and preserve the wildlife corridors and habitat patches.

Mayor John Borrowman – Mayor of Canmore

[95] J. Borrowman provided a history of Canmore's transition from coal mining to urban development resulting from the Three Sisters decision. He stated the surrounding natural environment is now the primary source of economic activity for Canmore. Maintaining regional wildlife connectivity, ecological integrity and biodiversity have become core values to Canmore's identity. These values are reflected in both Canmore's Municipal Development Plan and Mining the Future, a vision statement that encourages population growth and economic development. The goal of these documents and others, such as the Human Use Management Plan is to learn how to share the valley with wildlife, humans and animals and to create ways that wildlife, particularly larger predators, can move through and around Canmore.

Canmore's Specific Concern with the ASP

[96] Mayor Borrowman expressed concern that if reduced functionality at the G8 underpass forces wildlife in different directions, Canmore will be forced to devise new systems and mitigation measures to manage the change in migration patterns.

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Bighorn's Position: The ASP will not affect Canmore's operations.

R. Ellis, Director of Planning for Bighorn

[97] Mr. Ellis reiterated that for many years, Bighorn's planning objectives have been to achieve a well-balanced community through comprehensive hamlet development that includes commercial and industrial development and is also compatible with wildlife. In keeping with that goal, the East ASP area was designated for light industrial uses as these are most compatible with wildlife. The East ASP is a continuation of Hamlet Industrial uses in the Limestone Valley area. While the last census put the hamlet population at 71 people, Mr. Ellis believes that with the completion of the River's Bend and other developments, the population will be about 200, but none of the additional residences will be located in the East ASP.

Studies prepared for the ASP

[98] Bighorn commissioned the DIA and associated studies to determine if development should occur on the lands and if mitigations were needed. McElhanney's studies (including the biophysical assessment) were tabletop reviews, while Golder prepared the more extensive DIA. Golder's body of work on the Three Sisters wildlife corridors shows Golder has the expertise to advise if the ASP lands should be developed. Golder's recommendation was that development could proceed with fencing; if the recommendation had been for no development, Bighorn would have abided by that decision. Mr. Ellis clarified that Bighorn will require a more detailed DIA before any development proceeds in the East ASP lands.

Fencing of other lands within the Hamlet

[99] Mr. Ellis explained that wildlife fencing is required, but not yet constructed, on the north boundary of the River's Bend and Limestone Valley developments. Wildlife exclusionary fencing is proposed, resulting in the development in Dead Man's Flats being separated from the habitat patch, and allowing animals to move around the habitat patch and access to the Bow River.

J. Schmidt, Project Manager, McElhanney

Process for completing studies and developing policies for the ASP

[100] Mr. Schmidt is a planner who McElhanney employed as project manager for the ASP. Bighorn retained McElhanney to set the ASP terms of reference, undertake several scientific studies which resulted in the Development Constraints Summary Report (Constraints Report),

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and finally to draft the ASP. Mr. Schmidt explained Bighorn's directions to McElhanney were to look at all options on the lands, including suitability for development.

Report Findings

[101] Combining the findings of the Constraints Report and Flood Hazard Tool, the North ASP area was shown to be unsuitable for development as it was comprised of flood fringe and flood way. The East ASP lands were recommended for light industrial development, consistent with Bighorn's relevant planning documents.

[102] Mr. Schmidt explained the light industrial uses proposed for the East ASP will result in less human-animal interaction, in part because the hours of activity in a light industrial area do not conflict with dawn or dusk when wildlife is most active. Mr. Schmidt explained that development permit conditions (such as operating hours, fencing and screening, lighting) can be imposed on future development within the East ASP to further limit the human-wildlife interactions or impacts.

How the ASP addresses human-wildlife interaction

[103] Under Policy 7.1 General Policies for the ASP Lands, one of the stated objectives is "To minimize potential for wildlife /human conflicts in the ASP area". This objective is supported by four policies that include wildlife exclusion fencing and human and wildlife use management controls. Mr. Schmidt explained that the ASP's subdivision layout is conceptual and was added at Bighorn's request. The dry pond's location in the SE corner was intended to provide additional space for animal movement, further separating the G8 Underpass from human activities. Mr. Schmidt noted that together, the area of the dry pond and Highway 1 right of way create a separation of about 160 metres from the G8 Underpass outlet to the proposed wildlife fencing north of the dry pond. The location, size and orientation for the dry pond parcel can still change, since the layout is conceptual.

[104] Mr. Schmidt conceded the findings of the biophysical overview include two statements that are not reflected in the ASP. The statements were:

- "Maintain the approach area to the underpass and the corridor connecting the north and south sides of the underpass is critical if wildlife is not going to be impacted beyond current levels" and
- "Constraining the area further by development and fencing will increase human and wildlife interactions significantly over current levels."

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Mr. Schmidt confirmed that these statements did not appear in the materials presented to the public. When asked whether McElhanney's 2008 recommendations for the River's Bend development were followed in this ASP, Mr. Schmitt indicated since there will be no development in the North ASP Lands, the North ASP maintains the recommended 180 metre setback from the Bow River. He also conceded the recommendation to reclaim sewage lagoon to help animals move along the river has not yet been fulfilled, and that residents of the hamlet might request these lands be used for recreational uses.

Findings – 2(b)

7. Both Canmore and Bighorn have developed wildlife and human use management practices.
8. The evidence does not link the reduced functionality of the G8 Underpass to increased animal activity within Canmore, nor to a significant increase in Canmore's costs to manage human-wildlife interaction.

Reasons – 2(b)

[105] Canmore argued that reduced functionality of the G8 Underpass would deflect animals from their habitual migration patterns, thus increasing wildlife-human contact in Canmore along with associated management costs. However, the evidence does not support this conclusion.

[106] First, mitigation measures, including wildlife fencing, have been proposed for the ASP to prevent significant increases in human/wildlife conflict. Similar fencing along Hwy 1 has been effective to reduce animal/vehicle collisions. Dr. Leeson's report noted that, starting in 1984, wildlife underpasses and fencing constructed in Banff National Park reduced vehicle-caused mortality by 96% for elk and deer and 80% for all wildlife. All species of wildlife were finding and using the wildlife crossing structures to traverse the highway safely after the fences were installed. More fencing is proposed on the south side of the Highway to direct wildlife away from development in Canmore and toward the G8 underpass. While some species will probably use the G8 Underpass less as development proceeds in the area, there is no reason to believe this change will cause wildlife to breach the proposed fencing around Canmore to cause increased human-wildlife contact in Canmore.

[107] Second, the MGB heard that other underpasses - existing and planned - will most likely accommodate changes in use at the G8 Underpass to minimize human-wildlife interaction. As noted by Jalkotzy, the G8 Underpass will not be a "plug in the system" should development proceed in the ASP area. The G8 Underpass is merely one piece of a greater migration system including multiple corridors and Habitat Patches, and there are many more important ways that wildlife moves through the area than the G8. The Bow Valley Habitat Patch forms part of the

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system, which as Jalkotzy described as “larger protected areas, such as Kananaskis Country and Banff National Park including the Along Valley Corridor and the wildlife corridor that has not been designated between Wind Valley Habitat Patch and the other broad mountain valleys further west.”

[108] Similarly, the expert evidence from Lauzon, Dr. Leeson and Jalkotzy is that wildlife in the area fluctuates due to various factors, including other nearby development, changes in human population, and natural changes in wildlife populations. Animals will also adapt their use of the corridors, underpasses and habitat patches as human use increases in and around Canmore. Dr. Leeson explained that, after the completion of the G8 Underpass, wildlife quickly found and used it and different species used the crossing based on whether they were predators or prey.

[109] Specifically, Dr. Leeson explained that wildlife travel patterns had changed as a result of the 2013 flood. Elk previously used a river crossing north of the former sewage lagoon, after the 2013 flood washed out the crossing, elk shifted east, and began to use a crossing that was formerly favoured by wolves. Jalkotzy also noted “Wildlife will not have an issue finding or entering or leaving that corridor as a result of...a restriction in the potential movement area coming from the underpass.”

[110] The MGB had regard for Dr. Leeson’s evidence that highway collisions decreased following construction of the G8 Underpass in 2005. Intuitively, one might expect collisions to increase again if the functionality of the underpass is affected; however, the evidence does not support this intuition. While data shows recent activity at the Borrow Pit adjacent to the G8 coincided with reduced use by wildlife, there was no evidence of a corresponding increase in highway collisions or of a significant increase in human-wildlife interaction within Canmore – though there was a simultaneous increase in use of the Stewart Creek Underpass further west.

[111] In summary, the reality is that there is and will be additional development within Canmore that will reflect the light industrial uses proposed in the ASP, including proposals for industrial commercial development adjacent to Thunderstone Quarry and within the Smith Creek ASP. Thus, human use is expected to increase around the G8 Underpass regardless of the ASP. In this context, the MGB sees no negative impact owing to reduced functionality of the G8 underpass, and any potential effects on wildlife are too remote to be considered detrimental. In short, the evidence does not support a finding that there will be an increase in demand or a need for additional resources for Canmore’s WildSmart programs should this ASP be developed. As indicated in *Sturgeon*, and *Wheatland*, the harm to the municipality must be likely to occur, have significant impact, and be specific, probable, and causally linked to the planned development. These criteria are not fulfilled here.

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ISSUE 3: Will the ASP cause detriment by impacting steep creek flood mitigation plans?

Canmore's Position: Development of the ASP will compromise the ability to get funding for mitigation projects and increase costs of mitigation.

A. Estarte, Manager of Engineering for Canmore

[112] Mr. Estarte is a professional engineer employed by Canmore as Manager of Engineering. He provided background information about steep creek mitigation as well as specific information about mitigation efforts and associated costs for Pigeon Creek, which runs north through Thunderstone Quarry, under Highway 1 and through Dead Man's Flats to the Bow River.

[113] Mr. Estarte explained that steep creeks, including Pigeon Creek, have slopes exceeding three percent. During flood events, like the 2013 flood, water, sediment and wood are delivered down into the catchment area, creating a large debris field and an alluvial fan. Pigeon Creek has a large catchment area; it also has a large alluvial fan where it meets the Bow River. Even moderate amounts of water can deposit a significant amount of debris and sediment.

[114] During the 2013 floods, the east access from Highway 1 was the only functioning access route into Canmore. The east access to Canmore is within the debris area for Pigeon Creek, so Canmore has an interest in related steep creek mitigation plans. Both Canmore and Bighorn underestimated the scale of debris and damage from 2013, and are now undertaking studies to determine appropriate mitigation measures and whether Pigeon Creek is a high risk area.

[115] Canmore has prepared draft long term active mitigation plans for Pigeon Creek in consultation with Bighorn. Active mitigation is physical mitigation and management of water and debris, and includes risk and hazard assessments. Canmore is concerned these plans may be affected by Bighorn's adoption of the ASP and its proposed land uses.

[116] In particular, adopting a new ASP may affect eligibility for provincial funding from Environment and Parks, since Mr. Estarte believes provincial funding for mitigation projects is more readily available if there is no new development. In addition the proposed uses may also increase the costs of necessary mitigation measures. Mr. Estarte clarified that River's Bend would be considered new development, although the relevant ASP was approved in 2006, construction did not begin until 2013; therefore, funding from Environment and Parks may already be jeopardized. More development will jeopardize it even further.

[117] Mr. Estarte drew parallels between mitigation efforts on Pigeon Creek and Cougar Creek, which runs through Canmore to the west. To date, over \$15 million has been spent on studies, remediation and mitigation on Cougar Creek. Eventually \$40 million will need to be spent on

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Cougar Creek. Like Cougar Creek, Pigeon Creek needs to manage sediment and develop catchment facilities. Their design will depend on studies that consider new developments in Dead Man's Flats and in Canmore. Appropriate design will also require discussion between Canmore, Bighorn, Environment and Parks, and Transportation.

[118] To date, Alpinfra has completed a draft risk assessment and mitigation scheme for Pigeon Creek catchment area which included the gun club lease area, Banff Gate Resort and the Thunderstone Quarry area. One option (Option B) requires a sediment pond below the waterfall by the Thunderstone Quarry, and diversion of water both east to the G8 underpass and west to a ditch system alongside Hwy 1. The cost estimates for mitigation are between \$8 and \$15 million depending on the option chosen, but cost sharing has not been established.

[119] Canmore submitted a second draft study from BCE Engineering, "Pigeon Creek Debris Flood Risk Assessment". It is dated May 30, 2016 and is the latest step in steep creek mitigation and flood hazard assessment for the Pigeon Creek. The Alpinfra and BCE Engineering studies were completed to support an application for funding from Environment and Parks. These plans would not have considered the ASP, since only current developments were included. If the ASP proceeds, the plans would have to be reworked which will add cost and delay implementation.

Bighorn's Position: The ASP will not affect Pigeon Creek's steep creek mitigation plans.

D. Mather, Flood Recovery Director for Bighorn

[120] Bighorn retained Mr. Mather to administer Bighorn's flood recovery programs after the 2013 flood. Mr. Mather explained Bighorn's perspective as to mitigation plans and measures for Pigeon Creek. In his view, the ASP will not affect steep creek mitigation, because Pigeon Creek is located in the North ASP lands, where there will be limited or no development.

[121] Mr. Mather explained that flood mitigation planning on Pigeon Creek consists of both short and long-term plans, for which the municipalities share responsibility: Bighorn is responsible for the short term mitigation plan and its implementation, while Canmore is responsible for long term mitigation strategies. Proceeding with long term mitigation strategies will depend on many factors, including whether agreement between the parties can be reached, the cost of proposed options, complexity of the mitigation strategy, and approval from provincial regulators. There is no guarantee a long term mitigation plan will be implemented if developed.

[122] Bighorn's flood recovery has included three programs: Disaster Recovery; Flood Recovery and Erosion; and Community Resilience. The first phase, Disaster Recovery, encompassed 4 million dollars for bridge repair, utilities and other social service and community projects. The Flood Recovery and Erosion involved 14 million dollars for 11 projects and

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included Pigeon Creek's short term mitigation. The third program, Community Resilience, is for larger projects with longer term implications, and would include the Pigeon Creek steep creek mitigation program.

[123] Mr. Mather explained that in 2013, flooding on Pigeon Creek resulted in silt and debris filling all the culverts on Hwy 1. The source of much of the debris was Thunderstone Quarry, as its buildings, pallets and rocks were washed toward the highway when Pigeon Creek flooded the quarry. All the streets in the hamlet of Dead Man's Flats were filled with silt and debris, and the bridge over Pigeon Creek was washed out. Bighorn created berms to divert water and materials toward the Bow River; however, some of the condominiums were impacted. After 2013, Bighorn's short term mitigation plans included straightening and channelling Pigeon Creek; however, area residents appealed this plan to the Alberta Environmental Appeal Board, which determined the creek should be restored to its original bed. As a result, the long term mitigation plans will need to change to manage additional debris flows.

[124] The steep creek mitigation for Pigeon Creek is part of the province's Community Resilience Program and requires approval under the *Water Act*. Under this program, long term mitigation projects are cost shared, with the Province paying 90% of capital costs up to \$3 million, plus 70% of capital costs thereafter. Applicants are then responsible for maintenance and operation costs.

[125] Canmore prepared a cost estimate in early June to reflect Alpinfra's steep creek mitigation project, but Bighorn's Council had not yet considered it at the time of this hearing. Mr. Mather explained that as well as the features that Mr. Estarte described, there will be a weir on the pond that to manage flow at 55 cubic meters per second, which is the maximum load for Alberta Transportation's culverts, and meets the guidelines for a 1:100 storm event.

Findings – Issue 3

9. The ASP is unlikely to impact steep creek mitigation on Pigeon Creek.

Reasons – Issue 3

[126] Canmore has two main concerns about steep creek mitigation: first, that additional approvals will affect availability of provincial funding for steep creek mitigation; second, that new development may increase the cost of mitigation measures that have already been identified or that may be identified as necessary by future studies. The MGB sees little in the evidence before it to substantiate either of these concerns.

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[127] With respect to the question of funding, Canmore pointed to no specific provincial policy or other documentation to clarify the Environment and Parks' funding criteria for steep creek mitigation, or how they would relate specifically to approval of the ASP. Further, neither Mr. Estarte nor Mr. Mather could confirm funding would be available in any case, because of oversubscription of the program and new development at River's Bend. Lastly, if it is true that approval of new plans will affect provincial funding, then one would expect the adjacent Smith Creek ASP to have a similar effect once finalized and approved by Canmore.

[128] With respect to the cost of mitigation measures, the MGB again finds the ASP is not likely a significant concern. First, and most obviously, the Pigeon Creek runs through the North ASP area, where no development is planned because of flood risk. Mitigation measures will therefore be unaffected by development in the North ASP.

[129] Secondly, the steep creek mitigation plans are at a very preliminary stage. While options have been identified in the Alpinfra report, a decision on the mitigation plans is still outstanding, and there is as yet no implementation strategy or a timetable. The MGB understands Canmore has indicated a preference for "Option B" in the Alpinfra report, which diverts water through the G8 Underpass; however, other parties including Bighorn, Alberta Transportation and Alberta Environment and Parks still need to be consulted. As both Mr. Estarte and Mr. Mather noted, Alberta Environment and Parks will also need to approve steep creek mitigation plans after further review.

[130] Thirdly, the development scheme proposed in the East ASP is conceptual, and as such can be adjusted once mitigation plans are approved. Therefore, ASP can be still be amended to harmonize mitigation and development in the hamlet. Accordingly, the MGB finds approval of the ASP leaves sufficient planning flexibility to ensure it will not have a significant negative impact on steep creek mitigation.

ISSUE 4: If the ASP has a detrimental effect, what is the appropriate remedy for Canmore or other affected parties?

[131] The MGB has found the ASP does not have a detrimental effect on Canmore for the purposes of Section 690. Accordingly, there is no need to order Bighorn to amend its bylaw from that perspective. Similarly, QuantumPlace Developments made no allegation of detriment, instead proved the MGB with information as to wildlife corridors and mitigation measures in the Bow Valley and the role of Alberta Environment and Parks.

[132] Stoney Nakoda Nations argue, however, that the MGB retains authority to repeal or order changes to aspects of the ASP that are detrimental to them. This question is considered below.

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Affected Party Position – Stoney Nakoda Nations: The ASP’s effect on wildlife and Bighorn’s failure to consult are detrimental to Stoney Nakoda Nations.

[133] Stoney Nakoda Nations argue that while Section 690 of the *Act* requires the MGB to determine if there is detriment to the appellant municipality, the MGB also has broad authority under Sections 499(4) and 690(5) of the *Act* to order any terms and conditions to ensure that an ASP does not unjustifiably infringe rights of adjacent municipalities or individuals.

[134] The MGB granted Stoney Nations affected party status because it found the ASP will affect the continuous and on-going exercise of the Stoney Nations' hunting and cultural practices, noting that the *Act* does not limit the persons whom it may choose to hear. It would be illogical and misleading to grant intervener or affected party status, but not to consider an appropriate remedy within its jurisdiction. The Stoney Nations have legitimate expectations that the MGB will take into consideration their rights and, if appropriate, grant a remedy.

[135] Stoney Nakoda Nations advance two general sources of detriment. First, they argue that any effect on wildlife inevitably affects their treaty and hunting rights and closely related traditional cultural practices protected under Section 35(1) of the *Canadian Charter of Rights and Freedoms*. In this regard, they rely on Canmore's evidence about the reduced functionality of the G8 Underpass and its effect on wildlife arising from the ASP; in addition, they introduced affidavit evidence from Mr. W. Snow, Consultation Manager for the Stoney Nakoda Nations, and Mr. L. Wesley, a member of the Stoney Nakota Nations with deep knowledge of traditional hunting and cultural practices. Their affidavits explain many aspects relating to the importance of wildlife and hunting to traditional practices, and to the Aboriginal and treaty rights claimed for the eastern slopes of the Rocky Mountains and the Foothills area, as well as the history of the area in general.

[136] The second alleged source of detriment is that the ASP or, in the alternative, the decision of the MGB in this matter, triggers the duty to consult. This procedural duty arises when the Crown has knowledge, real or constructive, of the potential existence of the Aboriginal right or title and contemplates conduct that might adversely affect it. Municipalities are creatures of statute and as a third order of government, are the “Crown”. Given that Bighorn did not fulfil the duty to consult before implementing of the ASP, the MGB can remedy this deficiency by ordering the ASP to be repealed or amended following proper consultation.

[137] The Stoney Nations acknowledge the MGB does not have the authority under section 10(d) of the *Administrative Procedures and Jurisdiction Act* to determine constitutional rights; however, determining whether there is a potential infringement of Aboriginal or treaty rights does not necessarily require the determination of those rights. The Stoney Nations' submissions rely on substantive Aboriginal and treaty rights only, such as the Treaty No. 7 right to hunt. The

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MGB must comply with and uphold all rights enshrined under the Constitution and, therefore, must consider the Stoney Nations' Aboriginal and Treaty rights. The MGB's decision must also be consistent with international law – in particular, the United Nations Declaration on the Rights of Indigenous Peoples. This document reaffirms a commitment to build on a positive and productive relationship with first nations.

Bighorn's Position: The MGB has no authority to order a change to the ASP based on detriment to a third party.

[138] Bighorn argues that Section 690 provides a municipality the right to appeal if it is of the opinion that a statutory plan or amendment or a land use bylaw or amendment of an adjacent municipality has or may have a detrimental effect on it. There is no provision in the *Act* that gives the MGB authority to find detriment to persons or entities other than a municipality or to expand the definition of "municipality" in the *Act*.

[139] In prior decisions, the MGB has found its authority is limited to considering only whether a municipality will suffer detriment. The Stoney Nations now ask the MGB to expand its jurisdiction to consider direct detriment to the Stoney Nations on the basis of the MGB's broad authority to impose any terms and conditions in amending or repealing the ASP granted by Section 499(4) and Section 690(5) of the *Act*. While Section 499(4) provides the MGB may include terms and conditions in its decision, such terms and conditions are necessarily constrained by the MGB's limited authority to consider detriment only to an adjacent municipality, and cannot use its authority under Section 499(4) to expand its jurisdiction beyond that granted by Section 690.

[140] Bighorn notes that the MGB is not listed as a decision maker with authority to determine questions of constitutional law under the *Designation of Constitutional Decision Makers Regulation*. However, even if the MGB does have jurisdiction to consider constitutional issues, there is no authority to support the assertion that enactment of the ASP triggered a duty to consult. The *Act* does not delegate any aspect of the Crown's duty to consult to municipalities, and the Supreme Court of Canada has held that while the Crown may delegate procedural aspects of consultation, the "ultimate legal responsibility for consultation and accommodation rests with the Crown. The honour of the Crown cannot be delegated." *Haida Nation v. British Columbia (Minister of Forests)*, 2004 SCC 73.

[141] Bighorn concludes that the case law - together with the MGB's governing statutes and regulations - show the MGB does not have jurisdiction to consider or remedy any detrimental effect on the Stoney Nations, nor to determine the scope or applicability of the Aboriginal and Treaty rights claimed by the Stoney Nations in their submissions.

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Findings - Issue 4

10. The MGB has no authority to widen its enquiry to determine detriment to third parties independent of detriment to the appellant municipality.

Reasons - Issue 4

[142] The MGB observes that the Stoney Nations' concerns about detrimental effects on hunting and treaty rights are contingent on a finding that adjacent wildlife corridors and habitat patches are compromised by reduced functionality of the G8 underpass. As explained earlier in this order, the MGB has found that while the functionality of the G8 underpass may be affected to some extent, this effect will not have a significant impact on the effectiveness the adjacent wildlife corridors and patches. Accordingly, the ASP will not significantly affect the wellbeing of wildlife in the eastern slopes of the Rocky Mountains and or the Foothills area.

[143] The MGB understands the Stoney Nations' concerns about whether the ASP meets constitutional and procedural requirements, including any requirements for consultation which may exist. Submissions made in this regard highlight the importance of ensuring the Stoney Nations have meaningful input to provincial planning policy for the area. However, provincial planning policy is outlined within the framework of ALSA and the SSRP, and the submissions do not suggest consultation has not taken place in that context. Further, as noted by Bighorn, the authorities presented to the MGB do not establish consultation is required before adoption of municipal level planning bylaws such as the ASP – apart, of course, from the usual mechanisms for public input such as public hearings before Council required by the *Act*.

[144] In view of these observations, the MGB sees nothing to support a finding of detriment to the Stoney Nakoda Nations on either of the grounds proposed. Having said this, the MGB's views on these points are of limited practical importance, since the *Act* does not authorize it to order changes to bylaws to remedy detriment to affected third parties independent of detriment to the appellant municipality. In this regard, the MGB observes its authority stems from Section 690(5) of the *Act*, which says:

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

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

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[145] The plain wording of this section restricts the MGB to considering whether the plan or amendment is detrimental to the municipality that made the appeal. Should the MGB find detriment to the municipality, it may order the offending municipality to amend or repeal the provision to remedy the detriment. The MGB's decisions and orders in this regard are subject to the regional plans, including the SSRP.

[146] It was argued that by granting Stoney Nations affected party status under its Procedure Rules, the MGB expanded its jurisdiction to remedy detriment to the Stoney Nations. The MGB does not entirely agree with this characterization. The *Act* gives the MGB authority to order changes to bylaws it finds detrimental to an adjacent municipality. The condition that triggers the MGB's authority to order such changes is detriment to an appellant municipality rather than to an affected third party. Once triggered, the MGB strives to exercise its authority in a way that is also sensitive to the interests of those who may be affected by its orders. To this end, Section 690(2) requires the MGB to hear from any owners of the land under appeal. The MGB Procedure Rules adopted under Section 523 of the *Act* give the MGB discretion to grant other third parties who may be affected by its potential orders an appropriate opportunity for input.

[147] In this case, the MGB granted Stoney Nations affected third party status based on their claim that the ASP would have a negative effect on the exercise of their hunting and cultural practices related to the land and wildlife. In granting this status, the MGB anticipated evidence in this area might shed light on Canmore's own claim of detriment, which also relates to the effects of the ASP on wildlife and the functionality of the G8 Underpass. Further, if the MGB were to conclude the ASP must be amended or repealed to avoid detriment to Canmore, submissions from Stoney Nations would help it to craft an appropriate remedy sensitive to their interests.

[148] The preceding comments are consistent with the MGB's decision in *Wheatland* (MGB 031/14). In the context of that case, the MGB examined the *Act* and the Intermunicipal Dispute Procedure Rules and determined that the wording in Section 690 does not allow the MGB to expand the issues under appeal beyond those filed by the affected municipality. The procedural rights granted under the Rules do not expand the scope of Section 690 to establish rights to substantive relief for affected third parties – nor has the MGB ever expressed or implied any such intent. While the MGB has power to add terms and conditions to at least some of its orders, it is unclear how this power could allow it to expand its authority beyond the limitations of Section 690.

[149] As stressed by Bighorn, the MGB is prohibited from determining questions of constitutional law by Section 11 of the *Administrative Procedures and Jurisdiction Act*, which says:

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11) Notwithstanding any other enactment, a decision maker has no jurisdiction to determine a question of law unless a regulation made under Section 16 has conferred jurisdiction on that decision maker to do so.

[150] This prohibition need not prevent consideration of protected interests to help guide the MGB's choice of an appropriate order should it find a bylaw is detrimental to an appellant municipality; however, Section 690 is not the appropriate avenue for affected third parties to request repeal or amendment of bylaws to remedy perceived constitutional deficiencies independent of detriment to the principal parties. Such challenges should be brought before the courts or tribunals designated to deal with them. The *Act* includes specific provisions to challenge bylaws on procedural and other grounds directly in the Court of Queen's Bench under Part 13, Division 3 of the *Act*.

PART D: DECISION

[151] As the MGB could not find detriment on the issues raised by Canmore in Part C, this dispute is dismissed.

[152] No costs to any party.

Dated at the City of Edmonton, in the Province of Alberta, this 1st day of March, 2017.

MUNICIPAL GOVERNMENT BOARD

(SGD) H. Kim, Presiding Officer

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APPENDIX "A"

PERSONS WHO MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

NAME	CAPACITY
M. Aasen	Solicitor, Town of Canmore
M. Baldasaro	Solicitor, Town of Canmore
J. Borrowman	Witness, Town of Canmore
L. de Soto	Witness, Town of Canmore
A. Fish	Witness, Town of Canmore
A. Esarte	Witness, Town of Canmore
R. Lauzon	Witness, Town of Canmore
B. Leeson	Witness, Town of Canmore
D. King	Solicitor, Municipal District of Bighorn
J. Buttuls	Solicitor, Municipal District of Bighorn
R. Ellis	Witness, Municipal District of Bighorn
J. Schmidt	Witness, Municipal District of Bighorn
M. Jalkotzy	Witness, Municipal District of Bighorn
D. Mather	Witness, Municipal District of Bighorn
D. Rae	Solicitor, Stoney Nakoda Nations
L. Carter	Student at Law, Stoney Nakoda Nations
T. Bardsley	Solicitor, QuantumPlace Developments
C. Ollenberger	Witness, QuantumPlace Developments
J. Karpat	Witness, QuantumPlace Developments

APPENDIX "B"

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

NO.	ITEM
1A	Town of Canmore (Canmore) Appeal and Statutory Declaration
2R	Municipal District of Bighorn (Bighorn) Landowner Listing
3	Potential Preliminary Hearing Dates Email Exchange
4R	Bighorn Response and Statutory Declaration
5S	Stoney Nakoda Nations – Request for Affected Party Status
6Q	QuantumPlace Developments for Three Sisters Mountain Village, and Thunderstone Quarries Ltd – Request for Affected Party Status

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7Q	Prehearing submission (Powerpoint) from QuantumPlace Developments
8A	Potential Evidence Exchange and Hearing Dates, Canmore
9S	Withdrawal notice for Stoney Nakoda Development Corporation for consideration as an Affected Party
10A	Canmore Legal Argument
11R	Bighorn Legal Argument
12R	Bighorn Book of Materials
13S	Stoney Nakoda Nation Legal Argument and Materials
14S	Stoney Nakoda Book of Materials
15Q	QuantumPlace Submission
16R	Bighorn Rebuttal Submission and Supporting Materials
17A	Canmore Rebuttal Submission and Supporting Materials

APPENDIX "C"

DOCUMENTS RECEIVED AT THE HEARING.

NO.	ITEM
18R	Powerpoint presentation, J. Schmidt
19	--submissions of Bighorn added to 11R and 12R----
20S	Written Summary for Stoney Nakoda
21Q	Wildlife Movement Statistics – QuantumPlace
22Q	Map of Development Zones for Three Sisters – Quantum Place

APPENDIX "D"

DOCUMENTS RECEIVED AFTER THE HEARING.

NO.	ITEM
23-28	Transcripts of Hearing

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APPENDIX "E"

LEGISLATION

The Act contains key provisions that apply to the MGB when it has an intermunicipal dispute filed with it under section 690. While the following list may not be exhaustive, some key provisions are reproduced below:

Municipal Government Act

Part 12, Section 488 sets out the jurisdiction of the MGB.

488(1) The Board has jurisdiction

- (a) to hear complaints about assessments for linear property,*
- (b) to hear any complaint relating to the amount set by the Minister under Part 9 as the equalized assessment for a municipality,*
- (c) repealed 2009 c29 s34,*
- (d) to decide disputes between a management body and a municipality or between 2 or more management bodies, referred to it by the Minister under the Alberta Housing Act,*
- (e) to inquire into and make recommendations about any matter referred to it by the Lieutenant Governor in Council or the Minister,*
- (f) to deal with annexations in accordance with Part 4,*
- (g) to decide disputes involving regional services commissions under section 602.15,*
- (h) to hear appeals pursuant to section 619,*
- (i) to hear appeals from subdivision decisions pursuant to section 678(2)(a), and*
- (j) to decide intermunicipal disputes pursuant to Section 690.*

(2) The Board must hold a hearing under Division 2 of this Part in respect of the matters set out in subsection (1)(a) and (b).

(3) Sections 495 to 498, 501 to 504 and 507 apply when the Board holds a hearing to decide a dispute or hear an appeal referred to in subsection (1)(g) to (j).

Section 499 was cited during the hearing. This section applies to assessment matters heard by the MGB but is replicated for reference.

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499(1) *On concluding a hearing, the Board may make any of the following decisions:*

- (a) make a change with respect to any matter referred to in section 492(1), if the hearing relates to a complaint about an assessment for linear property;*
- (b) make a change to any equalized assessment, if the hearing relates to an equalized assessment;*
- (c) decide that no change to an equalized assessment or an assessment roll is required.*

(2) *The Board must dismiss a complaint that was not made within the proper time or that does not comply with section 491(1), (2) or (3).*

(3) *The Board must not alter*

- (a) any assessment of linear property that has been prepared correctly in accordance with the regulations, and*
- (b) any equalized assessment that is fair and equitable, taking into consideration equalized assessments in similar municipalities.*

(4) *The Board may, in its decision,*

- (a) include terms and conditions, and*
- (b) make the decision effective on a future date or for a limited time.*

Section 617 is a guiding principle from which municipal planning documents are derived and land use decisions made. Intermunicipal dispute decisions must comply with the philosophy expressed in 617.

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

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

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

Section 690 and 691 govern the process and procedure for intermunicipal disputes. In addition to these sections, the MGB has also developed Intermunicipal Dispute Procedure Rules. Adopted under Section 523, these procedure rules are intended to describe procedures and processes used by the MGB in processing and deciding on an intermunicipal dispute.

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Section 690 Intermunicipal disputes

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

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

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

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

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

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

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

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

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

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

(b) order the adjacent municipality to amend or repeal the provision if it is of the opinion that the provision is detrimental.

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

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

(b) if the Board has decided that the provision is to be repealed, deemed to be of no effect and not to form part of the statutory plan or land use bylaw from and after the date of the decision.

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

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

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

691 Board hearing

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

(a) commence a hearing within 60 days after receiving the notice of appeal or a later time to which all parties agree, and

(b) give a written decision within 30 days after concluding the hearing.

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