

HEARING DATE: November 27, 2017
File No. 17-D-525

Notice of Decision of Subdivision and Development Appeal Board

INTRODUCTION

[1] The Development Authority of Parkland County (the "County") refused Permit Application No. 17-D-525 for a "Natural Resource Extraction/Processing (gravel extraction and processing) on 69 hectares (270.5 acres) at Plan 0022781, Block 2, Lot 1, within SW 25-51-3-W5 and SE 26-51-3-W5 (the "Site").

[2] Burnco Rock Products ("Burnco") appealed the refusal of the Development Permit application. Burnco is both the Applicant for the Development Permit and the Appellant in this appeal. In order to reduce confusion, the Board will refer to Burnco throughout this decision as the Appellant.

PRELIMINARY MATTERS

A. Board Members

[3] At the start of the hearing on November 27, 2017, the Board asked if anyone had an objection to the panel hearing the appeal. None of the persons in attendance had any objection to the members of the Board hearing the appeal.

B. Exhibits

[4] The Board marked the exhibits as set out at the end of this decision. At the beginning of the hearing, Mr. Kause indicated he wished to submit a document not previously submitted to the Board. None of the persons in attendance had any objection to the document being submitted, nor did anyone request an adjournment as a result of the submission of the document. The Board marked the new document as an exhibit, as indicated at the end of this decision.

C. Miscellaneous

[5] The appeal was filed in time, in accordance with Section 686 of the *Municipal Government Act*, R.S.A. 2000, c.M-26 (the "Act").

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

D. Preliminary Matters

[7] There were no preliminary matters raised at the beginning of the hearing.

DECISION OF THE SUBDIVISION AND DEVELOPMENT APPEAL BOARD

[8] The Board denies the appeal. The Development Permit is denied.

SUMMARY OF HEARING

[9] The following is a brief summary of the oral evidence heard by the Board. The Board has also reviewed all written submissions filed with the Board.

Development Authority

[10] The Site is located within the Agriculture/Nature Conservation (ANC) District. The use of Natural Resource Extraction/Processing is a discretionary use (Section 4.3.2 c of the Land Use Bylaw 2017-18). The current Land Use Bylaw was adopted on September 26, 2017. The Appellant made its application for development approval under the former Land Use Bylaw 20-2009. Under that bylaw (20-2009), the use of "Natural Resource Extraction/Processing" was also a discretionary use under s. 4.2.2. The Development Authority refused the application on October 30, 2017 and applied the terms of the Land Use Bylaw 2017-18.

[11] The development encompasses a total of 69 hectares (170.5 acres). The area is not located within 304.8 meters (1000 feet) of any multi parcel residential subdivision.

[12] The proposed use is to extract, process (including crushing) and reclaim the Site. The current use of the Site is agricultural. There are 3 watercourses bordering the Site: The Wabamun Creek; the Unnamed Creek (both of which drain into the North Saskatchewan River); and the North Saskatchewan River. The proposed pit boundaries are adjacent to and may intersect with a national Environmentally Significant Area (ESA) (page 130 of 979). The proposed operation would have wet pits. The average total excavation depth would be 9.1 meters. If approved, the Appellant will excavate gravel from the Site, in conjunction with its work on lands to the north which received approval under Development Permit 14-D-446. In total, the Site, plus the area to the north would result in a total affected area of 316.8 ha (782.8 acres).

[13] The Appellant is applying for authorizations from Alberta Environment and Parks (AEP), including Code of Practice registrations for pits, and approval under the Water Act. The life of the proposed pit will depend on market demand. Based on a hypothetical average extraction of 800,000 tons/year and the development area under consideration, in addition to the already approved area to the north, would result in the operation until approximately 2044. Final reclamation is estimated to be completed by 2046. Once reclaimed, the final landscape of the Site will consist of agricultural lands and 1 end pit lake.

[14] The Appellant proposes a 3 meter setback from adjacent properties and a 30 meter setback from Wabamun Creek and the Unnamed Creek and 50 to 80 meters from the North Saskatchewan River (page 8 of 979). The Development Authority provided information regarding hours of work and hauling (page 9 of 979) and information about the haul routes (page 9 of 979).

[15] The Development Authority determined the proposed pit to have a high risk from an environmental perspective for three reasons:

- a) The proposed development is immediately adjacent to and may intersect with a nationally significant Environmentally Significant Area as identified in the County's Environmental Conservation Master Plan. The ESA area has very high environmental sensitivities due to moderately erodible soils, high ground water sensitivity, and sensitive riparian areas. A portion of the North Saskatchewan River is a Class A waterbody for fish (page 10 of 979).
- b) The Appellant's studies acknowledge that in the event of a 1:50 year floor, the entire development area would be inundated by flood water. This is supported by historical information of a past flood event in the area.
- c) The application does not provide details related to specific mitigation measures addressing the flood risk associated with the subject lands.

[16] The County's Municipal Development Plan ("MDP"), Bylaw 2017-14, applies to the land. The Development Authority determined that the proposed development was not consistent with the

provisions of the MDP. Section 10, Figure 14 of the MDP identifies the Site as being located within a High Priority Landscape Area. Section 10.1.2 ("High Priority Landscapes") of the MDP states:

High Priority Landscapes are environmentally significant areas that require a careful approach to development..... Developments in these areas should address the following to the satisfaction of the County:

- i. integration with large natural ecosystem complexes and critical wildlife corridor linkages as identified in the County's Environmental Conservation Master Plan. Development Proposals that may impact these systems should consider and integrate these landscape features as part of development projects;
- ii. preservation of surface and ground water interactions and connectivity; and
- iii. cumulative effects at the watershed and broader landscape scale.

[17] The Development Authority's determination was that the application did not sufficiently address the above policies due to the high environmental risk and the lack of specific mitigation measures proposed (see page 12 of 979).

[18] The Site is not subject to an area structure plan.

[19] The Development Authority's position was that the development was inconsistent with the purpose of the ANC district since it did not adequately demonstrate sensitivity to the distinctive natural features nor would it protect water quality and quantity of that ecosystem during flood events. Further, it does not comply with section 12.12. 5 h) and i) of the Land Use Bylaw 2017-18 which requires the use to demonstrate due regard for the conservation of environmentally significant areas and water courses. Finally it does not comply with section 12.12.5.b) which requires the Development Authority to have due regard for the MDP provisions.

[20] The Development Authority provided possible conditions for the Board's consideration, should the Board decide to grant the appeal and allow the development permit. Those conditions included requiring the Appellant to provide a flood plan analysis and submit an emergency flood plan including flood mitigation measures (page 13 of 979 and pages 427 – 429 of 979).

[21] The Board asked the Development Authority to comment on the Appellant's assertion that Land Use Bylaw 20-2009 should apply, rather than Land Use Bylaw 2017-18. In response, the Development Authority advised that the use is discretionary in both Land Use Bylaws. The Development Authority advised that Land Use Bylaw 2017-18 contains a provision that complete applications for a development permit are to be processed in accordance with the Land Use Bylaw in effect on the date the application was deemed complete. However, their review indicated that they were to apply the new MDP when considering the application. Both Land Use Bylaws provide that natural resource extraction is a discretionary use. In the Development Authority's consideration, the outcome would be the same regardless of which bylaw was applied, because the purpose is more or less the same in both bylaws, and the regulations are essentially identical. The Development Authority said that the land use bylaw in effect at the time of the decision should be applied.

[22] In response to Board questions, the Development Authority indicated that the first consideration for a discretionary use is one of compatibility. In its determination, the Development Authority determined that there was a higher sensitivity in the district due to the policies within the MDP. The proposed use was not reasonably compatible, so the other details were not as important in the application.

Appellant - Burnco

[23] Four representatives spoke on behalf of the Appellant:

- a) Ulrich Scheidegger, Land and Resource Manager;
- b) Travis Coats, Land and Resource Manager;
- c) Christopher Stoesz, Senior Aquatic Biologist, Matrix Solutions; and
- d) Manas Shome, Practice Lead, Water Resources Engineering, Matrix Solutions.

[24] Burnco took the Board through its written presentation (pages 453 of 979 – 951 of 979).

[25] The Appellant provided an overview of the project advising that with the area covered by Development Permit 14-D-446 and the Site (shown at page 459 of 979), there is an estimated 20,000,000 t. of recoverable sand and gravel, for an expected project life of 25 years. The initial use is to extract aggregate which will be transported to the area covered by Development Permit 14-D-446 and then along Range Road 31 to Highway 627. The area is currently farmed with small stands of trees. The nearest residential neighbor is 1.2 kilometers to the northwest, and to 1.5 kilometers to the east and southeast.

[26] The Appellant is proposing 14 mining phase (page 461 of 979). In response to the Development Authority's recommendation to remove the area west of the unnamed creek, the Appellant advised that the removal of this area would result in the removal of about 80% of the land area covered by the development permit application and about 90% of the gravel in the Site.

[27] Page 461 of 979 provides an overview of the disturbed area. There will be 3 phases active at any one time. The red is the preparation phase. Yellow denotes where the gravel is being extracted, and green shows the area being reclaimed where the overburden will be placed from the red area. In total, there will be 12 ha of active area. There will be an end pit lake in SE 26 (page 462 of 979) which will be on lands owned by Mr. Erickson, who wishes to donate the land for a wildlife conservation area after the mining.

[28] The area covered by this development permit application and the area covered by Development Permit 14-D-446 are a key piece of the Appellant's Keephills development and were planned together, studied together and are to be executed together. The area covered by this development permit application is 30% of the total area which Burnco wishes to mine and develop. There will be significant expenditures because as part of Development Permit 14-D-446 the Appellant must upgrade the intersection at Highway 627. The Appellant needs to provide for the site development costs, and the investment in equipment. There is a total of \$20 Million in expenditures to get the entire area up and running (see page 463 of 979). For the Appellant, every acre and tonne is precious.

[29] The project will generate \$5 Million in community aggregate payments to the County (at current rates) (page 465 of 979).

[30] Aggregate is a non-renewable resource. Each person uses 12 tonnes of gravel per year and over 25 years, the need for aggregate totals 1.7 billion tonnes.

[31] The Appellant responded to the four reasons for the permit refusal. The Appellant stated that the proposed use is discretionary for ANC zoning. The goal is to "balance development with landscape connectivity, water quality and quantity, and other environmental considerations. The Appellant also referenced Policy 6.2 of the Provincial Land Use Policies (page 469 of 979). The project limits overlaid on the ESA mapping shows that the bulk of the overlap is where the Appellant will be reclaiming the pit and in the north along the tree stand (page 474 of 979). The Appellant referred to the Matrix Report which provided its Flood Risk Mitigation Recommendations which are the setbacks along the creeks and River, as well as backfilling as soon as material becomes available. The Appellant advised that the phasing and timing of the operations next to the river will ensure no active operations during peak season (June to July), and only mobile equipment will be on the Site, which can be moved at short notice. There will be no stockpiling of aggregate on the Site and fuel storage

will not occur on the Site. The Appellant referenced the Matrix Response to Supplemental Information Request from AER at page 476 of 979 which referenced setbacks.

[32] The Appellant provided information that the slope of the pit pond would be 1:10, which is very flat. It projected that there may be some small scale erosion but stated that they do not anticipate changes in terms of channel morphology.

[33] The Appellant outlined the mitigation measures to vegetation and wildlife, as set out at page 477 of 979. The Appellant advised that the North Saskatchewan River is a Class A habitat which is very sensitive. The two tributaries are also a Class A habitat. The Appellant recognized that Lake Sturgeon are very susceptible and have a complicated reproduction history. Matrix examined the potential impacts as a result of changes in base flow, temperature, sediment concentration, contaminant concentration and river accessibility. Matrix determined that there would be a low risk to the Lake Sturgeon and that changes to sedimentation concentration would be minimized by processes to control washing or dewatering.

[34] The Appellant provided examples of other locations it operates.

[35] The Appellant stated that with proper conditions, the environment can be protected. It highlighted the typical conditions, as set out at pages 484 of 979 to 485 of 979.

[36] The Board asked the Appellant about the condition proposed by the Development Authority concerning a flood plain study. The Board asked about what information the flood plain study would provide in addition to what has already been provided. The Appellant advised that it submitted the Matrix information as part of its application and was unclear as to what had not been addressed. The County's Biologist stated that it is within a 1:50 flood plain. The Appellant responded that if buffers are correct then it would pump out pits through the settling ponds when the water recedes.

[37] The Board asked about sedimentation in underground flows and was advised that there is a natural filter and the fines come out of suspension because the water does not travel quickly.

[38] In response to Board questions, the Appellant advised that it was seeking AEP and Water approval concurrently with municipal development approval, but cannot get AEP approval until municipal development approval is obtained. If it had known that AEP would not review the application without municipal approval, it would have started earlier.

Those speaking in favour of the Appellant:

Tracy Wright

[39] Ms. Wright is a board member of the Appellant, and is the wife of Scott Burns, the current owner. The Appellant is a company which has been in existence for 105 years, and Ms. Wright stressed that the mission, vision and value of the company is to treat themselves as the custodian of the land. When they move into a community, they do what they can to make the community better. They look for best practices and as technology improves, they improve their operations.

Matthew Erickson

[40] He lives south west of Stony Plain and owns land included on in the Site. After reclamation he and his wife will donate their lands to an environmental reserve, so the area will always be attractive. County residents are drawn to the area. The end use will be a natural area, and as a result, he supports the Appellant's appeal. There is no justification for the large buffer requested by the County.

Albert Wagner

[41] He lives north of Stony Plain, but farms land with his brother. He owns the property next to the property under appeal, and actively farms part of the Site. The Site has been attractive to those

with little regard for private property or the North Saskatchewan River. The gravel extraction will make the lands a more family friendly site. Denying the appeal will not reduce the traffic in the County, and the demand for gravel will be filled from trucks coming from further west. If the appeal is granted, it will free an otherwise trapped resource. Denying the appeal will result in a higher cost of construction of roads and buildings. The project will create employment in the County.

Mel Kause

[42] He has lived at the intersection of Highway 627 and Range Road 31 since 1972. His wife's family owned the land before them. There is a need for employment in the area and this project would give people an opportunity to move forward. The Appellant has good projects throughout Alberta and they look after the environment. There is a need for aggregate. He and his wife are in favour of the appeal.

Those speaking in opposition to the Appeal:

Shirley Charlton

[43] Ms. Charlton lives directly across from the project. She had questions about the road closure being spoken about on Development Permit 14-D-446 and she was unaware of the time change to 6 am for operations. She supported the refusal of the Development Permit.

Lynne Scheideman

[44] Ms. Scheideman lives immediately adjacent. She has two houses on her residential property and she rents land within the immediate parcels that are used for cattle. They have lived on their land for over 30 years. She is opposed to the development and the sterilization of her land, the impacts on health, safety and the quality of life.

[45] She emailed Mr. Scheidegger in response to the Appellant's circulation and advised that she was opposed to the proposed development. She advised the board that the ESA material shows that the ESA extends beyond what was shown in the Appellant's materials. She stated the proposed use is not compatible with her land. The end pit lake is approximately 250 acres, which is very large. The supporting reports provided by the Appellants combine the areas for Development Permit 14-D-446 and 17-D-525. Although the Appellants sought two different permits, the details are not separated. The effects of each one are not separated out. There should be independent reports. In terms of the noise impacts, the Appellant's statement said that it would comply with the County's bylaw. The County's bylaw sets the noise limit lower than what the Appellant has proposed.

[46] Ms. Scheideman asked the Board whether the Appellant's pits flooded in 2013 and whether there was any equipment there. The Appellant advised that it had pits in Edmonton and Calgary that did flood in 2013. She stated that there have been flood events in the past that have flooded pits in extraction areas. Her concern was for the impact on the sturgeon. The pit in question has no bank. Most of the land is lower than the bank. The Lake Sturgeon is a significant species. The area is a national ESA.

FINDINGS OF FACT

[47] The Site is 69 hectares (170.5 acres) located at Plan 0022781, Block 2, Lot 1, within SW 25-51-3-W5 and SE 26-51-3-W5.

[48] The Site was zoned as Agriculture/Nature Conservation (ANC) District under Parkland County Land Use Bylaw 20-2009 and is zoned Agriculture/Nature Conservation (ANC) District under Parkland County Land Use Bylaw 2017-18.

[49] The use of Natural Resource Extraction/Processing is a discretionary use in Parkland County Land Use Bylaw 20-2009, as amended and under Parkland County Land Use Bylaw 2017-18.

- [50] The Appellants are affected persons.
- [51] Those speaking in favour of the appeal are affected persons.
- [52] Those speaking in opposition to the appeal are affected persons.
- [53] The proposed development does not comply with section 10 of the County's MDP 2017-14 nor with section 12.12.5 of the County's LUB 2017-18.
- [54] The proposed use is not compatible with neighbouring uses.
- [55] The Development Permit application does not contain details related to specific mitigation measures that would address the flood risk associated with the Site and does not contain emergency flood procedures to be enacted in the event of an extreme flood event.

REASONS

[56] The Board notes that its jurisdiction is found in Section 687(3) of the Municipal Government Act. In making this decision, the Board has examined the provisions of the County's Land Use Bylaw 2009-20, and 2017-18 and has reviewed the County's Municipal Development Plan 2017-14. The Board has also considered the oral and written submissions made by the Appellant, those speaking in favour of the appeal, and those speaking in opposition to the appeal.

687(3) In determining an appeal, the subdivision and development appeal board

- (a) must act in accordance with any applicable ALSA regional plan;*
- (a.1) must comply with any applicable land use policies;*
- (a.2) subject to section 638, must comply with any applicable statutory plans;*
- (a.3) subject to clause (d), must comply with any land use bylaw in effect;*
- (b) must have regard to but is not bound by the subdivision and development regulations;*
- (c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
- (d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the land use bylaw if, in its opinion,*
 - (i) the proposed development would not*
 - (A) unduly interfere with the amenities of the neighbourhood, or*
 - (B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
 - and*
 - (ii) the proposed development conforms with the use prescribed for that land or building in the land use bylaw.*

Appellant and Affected Person

[57] The Appellant, Burnco, was the applicant for the development permit and has appealed the refusal. As such, it is clearly affected by the decision. This reasoning also applies to Ms. Wright, who is affected by the decision.

[58] Those speaking in favour of the appeal are owners of the land upon which the proposed development is to occur, and are affected.

[59] Shirley Charlton lives on property which is near the development site. Lynne Scheideman lives near the proposed development. Due to their proximity to the development, the Board finds those speaking in opposition to the appeal are affected by the proposed development.

Which Bylaw Applies?

[60] In its notice of appeal, the Appellant has argued that its application should be subject to the regulations in place at the time it filed its application for development approval (which is Land Use Bylaw 20-2009), and not the Land Use Bylaw in place at the time that Board heard the appeal (which is Land Use Bylaw 2017-18).

[61] The Board specifically asked the Development Authority about this point. The Development Authority advised the Board that the provisions of Land Use Bylaw 2017-18 have provisions dealing with which bylaw applies. The Development Authority's position was that the use is discretionary in both the old and new Land Use Bylaws. The regulations are very similar. However, the County's new MDP applies, regardless of the Land Use Bylaw. The Development Authority's view is that the result would have been the same, regardless of which Land Use Bylaw was used. The Appellant did not address this point in its oral submissions and did not reply to the Development Authority's submissions on this point. The Appellant only mentioned this point in its written materials in its notice of appeal (page 5 of 979).

[62] The Board examined Land Use Bylaw 2017-18. Section 1.4 of Land Use Bylaw 2017-18 expressly repeals Land Use Bylaw 20-2009. Section 1.6 deals with "applications in progress". This section provides that a complete application is to be processed in accordance with the Land Use Bylaw in effect on the date the application was deemed complete.

1.4 Previous Bylaws

Parkland County Land Use Bylaw No 20-2009 is hereby repealed.

1.6 Applications in Progress

1. A complete application for a subdivision approval or development permit received prior to the effective date of this Bylaw shall be processed in accordance with the Land Use Bylaw in effect on the date the application was deemed complete.

[63] The case law on this point¹ provides that the land use bylaw in place at the time of the hearing of the Board is the one that applies.

[64] The Board has further examined the provisions of the two bylaws and has confirmed that the use Natural Resource Extraction/Processing is discretionary in both bylaws. The Board has examined the provisions of section 12.12 in both bylaws. There are some slight wording differences between the wording in the first subsections. However, they are not material for this decision, since the deal with a development in or near a multi-residential subdivision (which is not applicable in this matter) and the need for provincial approval (which is applicable, but the fact that the numbering has changed is immaterial). Section 12.12.3 of Land Use Bylaw 20-2009 and section 12.12.5 of Land Use Bylaw 2017-18, which set out the considerations for the Development Authority, are identical. Therefore, regardless of which Land Use Bylaw is applied, the considerations for the Board are the same. The Board has also examined the statement of purpose in each of the Land Use Bylaws in section 4.3.1. The purpose of the section in Land Use Bylaw 20-2009 was:

4.3.1. To protect areas with distinctive natural features and/or resources, such as the North Saskatchewan and Pembina River valleys, Atim Creek / Big Lake floodplain, and other areas with comparable natural features and/or resources, while providing opportunity for compatible agricultural and non-agricultural land uses.

[65] In comparison the wording of the purpose of the section in Land Use Bylaw 2017-18 is:

4.3.1 The purpose of this district is:

¹ *Bouchard v. Canmore (Town of) Subdivision and Development Appeal Board*, 2000 ABCA 117 at para 11.

- To accommodate development that is sensitive to areas with distinctive natural features, and natural resources;
- Balance development with landscape connectivity, water quality and quantity, and other environmental considerations; and
- Provide opportunities for compatible agricultural and supportive land uses.

[66] Although there are some slight differences in the words, the Board is of the view that the purpose is essentially the same – to protect the areas with special natural features, while providing an opportunity for development. Having reviewed the terms of both Land Use Bylaws, the Board agrees with the submissions of the Development Authority that there is no real difference between the two bylaws in regard to this application. As a result, the Board will rely upon and apply the provisions of Land Use Bylaw 2017-18.

Land Use District

[67] The Site is zoned as Agriculture/Nature Conservation (ANC) District (section 4.3.2 c).

Nature of Use

[68] The use of Natural Resource Extraction/Processing is a discretionary use in Parkland County Land Use Bylaw 20-2009, as amended and Land Use Bylaw 2017-18. Therefore, as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board)*, 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

[14] The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.

[69] In its submissions, the Development Authority stated that it considered the compatibility of the development and found that it was not compatible.

[70] Section 12.12.3 of Land Use Bylaw 20-2009 and 12.12.5 of Land Use Bylaw 2017-18 (page 439 of 979) include several considerations for the Development Authority to consider in deciding to approve a new or renewal aggregate extraction use. Those considerations include:

- a) the purpose of this Bylaw and the general purpose of the district in which the development is located and the future use of the site as proposed in a reclamation plan;
- b) the provisions of the Municipal Development Plan and any relevant statutory plan;
- c) relevant guidelines prepared by Alberta Environment and their comments on applications made for provincial approval;
- d) the desirability to utilize the aggregate resource as a regional benefit;
- e) conservation of topsoil for agricultural use on this or another site;
- f) conservation of designated historical resources;
- g) conservation of trees and maintenance of habitat;
- h) conservation of environmentally significant and sensitive areas, including areas identified in the Environmental Conservation Plan;
- i) conservation of watercourses; and
- j) the safety and potential nuisance effect(s) on adjacent properties, including both operation and hauling activities.

A. Purpose of Bylaw, General Purpose of the District in Which the Development is Located and the Future Use of the Site After Reclamation

[71] As set out in paragraph [65] above, the purpose of the ANC- Agriculture/Nature Conservation District is:

The purpose of this district is:

- To accommodate development that is sensitive to areas with distinctive natural features, and natural resources;
- Balance development with landscape connectivity, water quality and quantity, and other environmental considerations; and
- Provide opportunities for compatible agricultural and supportive land uses.

[72] The ANC District seeks to balance development opportunities against the need to protect sensitive areas. The Board notes that this area is a nationally important ESA. While all ESA areas are important, the fact that this ESA is of national significance suggests to the Board that it should carefully scrutinize the application to ensure that the proposed development is “sensitive to areas with distinct natural features.” The proposed use of the land following reclamation will be an end pit lake and agriculture. In its consideration, the Board notes that the end use seems sensitive to the nationally important ESA. The Board, however, must consider the potential impact of the use, which the Appellant has estimated will last for 25 years before the Site is fully reclaimed. The question is what impact might the proposed development have over those 25 years and would the possible impacts affect compatibility?

B. Municipal Development Plan and ASP

[73] Section 12.12.5.b of the Land Use Bylaw indicates that the Board must “have additional due regard” for the provisions of the MDP. This language is less strict than the words of Section 687 in the Act. Section 687 requires the board to comply with the land use policies and statutory plans. In order to comply with both requirements, the Board must determine if the development complies with the MDP.

[74] The Board accepts the evidence of the Development Authority that there is no applicable area structure plan for the Site. Therefore, the Board does not need to consider this aspect of section 12.12.5.b and section 687 any further.

[75] However, under section 687, the Board is compelled to comply with the provisions of the County’s MDP, which is Bylaw 2017-14. The MDP defines “High Priority Landscapes” as:

High Priority Landscapes are characterized by overlapping features of ecological importance including multiple Environmentally Significant Areas (ESAs) of various significance, wetland complexes, biodiversity hotspots and landscape connectivity, sensitive surface and groundwater features, and sensitive landforms. High priority landscapes are ecologically complex and form a system that requires careful consideration to ensure their continued ecological function and the range of benefits provided by these landscapes are maintained (page 445 of 979).

[76] Policy 10.0 of the MDP identifies as an objective: “To protect, preserve and/or enhance the County’s High Priority Landscapes, Environmentally Significant Areas and other natural features through effective and appropriate conservation and management practices; One Parkland; Powerfully Connected.” The Site is a High Priority Landscape area (page 447 of 979). Section 10.1.1.c.iii. requires a Flood Hazard Study if all or part of a development site is located within the floodplain of a watercourse or water body. Section 10.1.2 provides that development in a High Priority landscape should address the following to the satisfaction of the County:

- a) Integration with large natural ecosystem complexes and critical wildlife corridor linkages as identified in the County’s Environmental Conservation master Plan. Development Proposals that may impact these systems should consider and integrate these landscape features as part of development projects;
- b) Preservation of surface and ground water interaction and connectivity; and

c) Cumulative effects at the watershed and broader landscape scale.

[77] The Matrix Report dated May 7, 2014 confirms that the "mining area will be inundated during the flood events associated with 1 in 50 and as such, the 1 in 100 year return periods" (section 4.3 at page 690 of 979). It goes on to state that the estimated water levels for a 1:50 year flood would be 669.0 and for 1:100 flood 669.7. Section 6 (page 692 of 979) states: "Potential changes in flow patterns across the vegetative bar Vegetated Bar (Figure 3) could significantly alter the flow patterns and increase potential bank erosion along the southeast boundary of the mine area, immediately downstream of the mouth of Wabamun Creek." The section also states: "...however, this is a low section of bank that would be overtopped during larger events such as the 1986 flood and as such, has a higher potential for bank erosion."

[78] The Appellant's mitigation strategy to address this issue is found at page 22 of 979 and page 694 of 979, and is to provide a minimum buffer of between 30 to 80 meters, for the various creeks and water bodies and to backfill as soon as possible. However, the Board has examined very carefully the map found at page 701 of 979 of the materials which identifies the buffer setbacks as proposed by the Appellant, and also lists the elevations. The Board notes that the entire development area is at 665.0. Therefore, it appears to the Board that in the event of a 1:50 flood, the entire development area would be under 4 meters of water. This point has been noted by Louise Versteeg, County Biologist (see page 963 of 979). In the event of a 1:100 flood, the entire development area would be under 4.7 meters of water. The Appellant did not address the elevations of the Site in its oral presentation, nor did it indicate in its oral or written submissions how a setback of 30 to 80 meters would address the flood impact, when the entire area will be under at least 4 meters of water.

[79] The Board notes the national importance of the ESA and the significance of this area to Lake Sturgeon, which was admitted by the Appellant. In light of such a significant area, the Board has carefully examined and considered whether the Appellant has addressed the three considerations found at Section 10.1.2 of the MDP. The Board has also given careful consideration to the possibility of imposing the condition as proposed by the Development Authority at condition 2b (page 427 of 979) to assess whether the imposition of such a condition would alleviate the Board's concerns that the Appellant has not adequately addressed specific flood mitigation measures to prevent inundation of the mine site and has not provided emergency flood procedures.

[80] Having given this matter careful consideration, the Board is of the view that the imposition of the condition 2b is not sufficient. The Appellant has 105 years of experience operating gravel extraction operations, and has had experience in Parkland County. Although the Appellant indicated it was not aware of the reasons for the refusal, the Board rejects this assertion. The Development Permit refusal states that the proposed development "would pose a high environmental risk" (emphasis in the original). It also states:

- The applicant's studies acknowledge that in the event of a 1:50 year floor [sic] event, the entirety of the proposed development would be inundated by flood water. This is also supported by historical information of a past flood event in the area.
- The application proposes ongoing operational measures to minimize potential impacts to water quality, fish and fish habitat and other sensitive environmental features; however, the application does not provide details related to specific mitigation measures that would address the flood risk associated with the subject lands. (pages 424 and 455 of 979)

[81] These same concerns are set out in the Development Authority's report (see pages 7 of 979 to 13 of 979). The Development Authority's concerns have not changed from the date of refusal to its submission to this Board.

[82] The practical difficulty with the imposition of such a condition is that the Board does not have this information before it to make its decision to approve the development. It is not certain what would be included in the study or the plan, and the Board cannot judge now, in the absence of any information, whether these would be acceptable. The Board notes that the Appellant has had this land under consideration for development since some time in 2014 (some of the reports submitted by the Appellant are dated 2014 – see for example page 688 of 979). The application does not address the concerns relating to the MDP to the satisfaction of the Board and since the Board must comply with the MDP, the application must fail. In light of this determination, the Board has not considered the other conditions suggested by the Development Authority. Even if those conditions were to be imposed, they cannot overcome this deficiency in the application and the information before the Board.

C. Guidelines for Alberta Environment

[83] The Board heard no argument in relation to this point. The Board accepts the Appellant's submissions that it is concurrently applying to Alberta Environment. However, this factor does not overcome the above deficiency.

D. Desirability to Utilize the Aggregate

[84] The Board accepts the evidence of the Appellant in regard to the need for aggregate both now and in the future. While there is a need for aggregate, the purpose of the ANC District is to weigh the desires of the developer with the need to protect environmentally sensitive and significant areas.

E. Conservation of Top Soil

[85] The Board accepts the evidence of the Appellant that it would conserve top soil for the reclamation.

F. Conservation of Designated Historical Resources

[86] The Board did not hear any evidence that there were designated historical resources in the Site.

G. Conservation of Trees and Maintenance of Habitat

[87] The Board accepts the evidence of the Appellant that it will attempt to keep the tree stands at the north of the development area within the buffer zones along the 3 water bodies.

H. Conservation of Environmentally Significant and Sensitive Areas

[88] The Board is of the view that this has been addressed by its discussion under B. dealing with the County's MDP. For the reasons above, the Board does not accept that the Appellant has adequately addressed the impact due to flooding and has not provided emergency flood procedures to be enacted in the event of an extreme flood event, and that this would have an impact on the nationally important environmentally significant area.

I. Conservation of Watercourses

[89] The Board is of the view that this has been addressed by its discussion under B. dealing with the County's MDP. For the reasons above, the Board does not accept that the Appellant has adequately addressed the impact due to flooding, and has not provided emergency flood procedures to be enacted in the event of an extreme flood event and that this would have an impact on the watercourses, which are recognized as environmentally significant areas of national significance.

J. Safety and Potential Nuisance

[90] The Board heard the Appellant's submissions in relation to noise and dust. The Board does not need to make a decision on these points due to the Board's determination of the non-compliance of the application with the County's MDP.

[91] In its above analysis, the Board has considered the items found in section 687(3) – the compliance of the development permit application with the County's MDP. However, the Board must also review the provincial Land Use Policies. The Board notices the goal of Policy 6.2 is "to contribute to the efficient use of Alberta's non-renewable resources". Policy 6.2.4 of the Provincial Land Use policies states:

In addressing resource development, municipalities are expected to, within the scope of their jurisdiction, utilize mitigative measures to minimize possible negative impacts on surrounding areas and land uses.

[92] For the reasons set out above, the Board has determined that the mitigative measures by way of imposing conditions as identified by the Development Authority will not adequately address the concerns arising regarding this use and the possible impacts the use may have on this nationally important, environmentally significant area. The Appellant did not suggest any measures other than the ones set out in its written application and materials. As set out above, the Board does not accept that a setback, even as far as 80 meters, is effective when the entire area could be under 4 meters of water in a 1:50 year flood. The Appellant did not provide any other mitigation measures, nor provide any details of how they would address a flood event, other than to suggest they would wait for it to end, and then pump out the pits and start working. The Board does not accept that such a proposal is adequate in light of the importance of this area to Lake Sturgeon and in light of its national significance as an environmentally significant area.

Issued this 11th day of December, 2017 for the Parkland County Subdivision and Development Appeal Board.



SDAB CLERK

Phyllis Kobasiuk, Chair
Subdivision and Development Appeal Board

This decision may be appealed to the Court of Appeal of Alberta on a question of law or jurisdiction, pursuant to Section 688 of the Municipal Government Act, R.S.A. 2000, c.M-26. This section requires an application for leave to be filed with the Court of Appeal of Alberta within 30 days of receipt of this decision.

APPENDIX "A"
REPRESENTATIONS

PERSON APPEARING

1. Craig Thomas, Manager, Development Planning
2. Feinan Long, Development Planner
3. Louise Versteeg, County Biologist
4. Ulrich Scheidegger, Burnco, Land and Resource Manager
5. Travis Coats, Burnco, Land and Resource Manager
6. Christopher Stoesz, Senior Aquatic Biologist, Matrix Solutions
7. Manas Shome, Practice Lead, Water Resources Engineering, Matrix Solutions
8. Tracy Wright, Burnco
9. Albert Wagner
10. Matthew Erickson
11. Shirley Charlton
12. Lynne Scheideman

APPENDIX "B"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

Exhibit	Description	Date	Pages
1.	Agenda Package Table of Contents and Agenda and materials	November 27, 2017	1-979
2.	Submission of Mr. Kause	November 27, 2017	