

ALBERTA  
ENVIRONMENTAL APPEALS BOARD

Report and Recommendations

Date of Hearing – July 26, 2004

Date of Report and Recommendations – August 17, 2004

**IN THE MATTER OF** sections 91, 92, and 94 of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, and section 115 of the *Water Act*, R.S.A. 2000, c. W-3;

**-and-**

**IN THE MATTER OF** appeals filed by Barrie Nault and Victoria Mitchell with respect to *Water Act* Approval No. 00206657-00-00 issued to the Town of Canmore by the Director, Southern Region, Regional Services, Alberta Environment.

Cite as: *Nault and Mitchell v. Director, Southern Region, Regional Services, Alberta Environment*, re: *Town of Canmore* (17 August 2004) Appeal Nos. 04-019 and 04-020-R (A.E.A.B.).

**BEFORE:**

Frederick C. Fisher, Q.C., Vice-Chair.

**APPEARANCES:**

**Appellants:** Dr. Barrie Nault and Dr. Victoria Mitchell, assisted by Mr. Noble Shanks, Docken & Company.

**Director:** Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment, represented by Ms. Charlene Graham and Mr. Mark Greene, Alberta Justice.

**Approval Holder:** Town of Canmore, represented by Mr. Brian Evans, Q.C. and Mr. Craig J. Tomalty, Miller Thomson LLP.

**Intervenors:** Ms. Brenda and Mr. Brian McNeill; Ms. Janet Ewens, represented by Mr. Doug Ewens; Mr. Liam and Ms. Mary Christie; Mr. Elmer and Ms. Charlene Doell; Mr. Ken and Ms. Josie Bruce; Mr. Robert and Ms. Susan Iverach; Mr. Clark and Ms. Cathie Zentner; Mr. Gerald and Ms. Alison Hankins; Ms. Margo Pickard; Mr. Garth and Ms. Maureen Mitchell; Mr. Mike Fuller; Ms. Linda Hammell and Mr. Alistair Justason; Mr. James and Ms. Josephine Emmett; Mr. Graham and Ms. Linda McFarlane; Mr. Mike Ryer; Mr. Dave and Ms. Susan Schaus; Mr. Al and Ms. Nancy Bellstedt; BowKan Birders, represented by Mr. Cliff Hansen; Drs. John and Jean Parboosingh; Mr. James H. Pissott; Defenders of Wildlife Canada, represented by Mr. James H. Pissott; Mr. Mel Youngberg; Ms. Shelley Youngberg; Mr. Jack and Ms. Maureen Fair; Ms. Jeannette Bearss; Rundle Estate Corporation, represented by Mr. Gordon R. Meurin, Field Law and Mr. Donald Bester; Ms. Stacy Williams; Ms. Judith Maxwell; Ms. Donna and Mr. D.L. Monod; Mr. Cy and Ms. Carolann Johnson; Ms. Nancy Palmer; Mr. Jeffrey Yates; Mrs. Maia Egerton; Dr. Ray Egerton; Mr. Clifford and Ms. Patricia Anger; Mr. Jim and Ms. Wendy Anton; and Mr. Gary Jennings.

## EXECUTIVE SUMMARY

Alberta Environment issued an Approval under the *Water Act* to the Town of Canmore for the construction of a boat launch on the Bow River in the Town of Canmore.

The Environmental Appeals Board received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, who live near the proposed boat launch. Dr. Nault requested a Stay of the Approval pending the hearing of the appeals. The Board granted the Stay, which remains in place until the Minister's decision is released.

In response to the notice of the hearing, the Board received 45 intervenor requests (from 69 individuals and 3 organizations). The Board allowed 54 of the individual intervenors and the 3 organizations to provide written submissions to be considered at the hearing. The remaining intervenor requests (from 15 individuals) were denied as they do not live in the area of the project or their requests were filed late.

Many of the issues raised by Dr. Nault, Dr. Mitchell, and the intervenors were not within the Board's jurisdiction. These issues were either municipal planning matters or matters within the jurisdiction of Transport Canada or the federal Department of Fisheries and Oceans. Most notably Dr. Nault, Dr. Mitchell, and the intervenors were concerned that the boat launch would encourage motorized boats, particularly jet boats, to use this part of the Bow River. The Board confirmed it did not have jurisdiction to prevent the use of motorized boats in the river as that is the jurisdiction of Transport Canada. The Board's jurisdiction was limited to the construction of the proposed boat launch and not its intended use. The Board also confirmed that Alberta Environment did not have the jurisdiction to prevent the use of motorized boats in the river, and that Alberta Environment's jurisdiction was also limited to the construction of the proposed boat launch and not its intended use.

The Board determined that the construction of the boat launch would not have a detrimental effect on the environment, including the Bow River. It recommended that the Minister confirm the Approval, with a clause added to clarify that the width of each of the two boat launch ramps is not to exceed 4 metres. The addition of the clause is required to avoid any uncertainty in interpreting the Approval, which could have resulted from an error in the Town's application for the Approval.

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## I. BACKGROUND

[1] On June 9, 2004, the Director, Southern Region, Regional Services, Alberta Environment (the “Director”), issued *Water Act* Approval No. 00206657-00-00 (the “Approval”) to the Town of Canmore (the “Approval Holder”) authorizing the construction of a boat launch on the Bow River in the Town of Canmore, Alberta.

[2] On June 16, 2004, the Environmental Appeals Board (the “Board”) received Notices of Appeal from Dr. Barrie Nault and Dr. Victoria Mitchell, (the “Appellants”) appealing the Approval. Dr. Nault also requested a Stay of the Approval pending the resolution of the appeals.

[3] On June 16, 2004, the Board wrote to the Appellants, the Approval Holder, and the Director (collectively the “Parties”) acknowledging receipt of the Notices of Appeal and notifying the Approval Holder and the Director of the appeals and the Stay request. The Board also requested that the Director provide the Board with a copy of the records (the “Record”) relating to these appeals.

[4] In this letter, the Board also asked that Dr. Nault respond to a number of questions in relation to his Stay request.<sup>1</sup> The Board subsequently asked the other Parties for submissions in relation to the Stay request. The Parties provided their responses on June 22 and July 2, 2004.

[5] According to standard practice, the Board wrote to the Natural Resources Conservation Board and the Alberta Energy and Utilities Board asking whether this matter had been the subject of a hearing or review under their respective legislation. Both boards responded in the negative.

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<sup>1</sup> The Parties were asked to answer the following questions:

- “1. What are the serious concerns of Dr. Nault that should be heard by the Board?
2. Would Dr. Nault suffer irreparable harm if the Stay was refused?
3. Would Dr. Nault suffer greater harm if the Stay was refused pending a decision of the Board on his appeal, than the Town of Canmore would suffer from the granting of a Stay?
4. Would the overall public interest warrant a Stay?
5. Is Dr. Nault directly affected by Alberta Environment’s decision to issue the Approval to the Town of Canmore? This question is asked because the Board can only grant a Stay where it is requested by someone who is directly affected.”

[6] On July 6, 2004, the Board contacted the Parties, stating it had reviewed the submissions provided respecting the Stay request, and requested further information from Dr. Nault respecting his directly affected status, specifically the connection between the environmental impacts he is concerned with and the quiet enjoyment of his property. A temporary Stay was granted to allow the Board the opportunity to obtain the additional information from Dr. Nault. In the same letter, the Board also requested that the Parties address the directly affected status of Dr. Mitchell.

[7] On July 7, 2004, the Board granted an extension of the temporary Stay to provide the Approval Holder and the Director the opportunity to respond to the submissions of the Appellants. The Parties provided their written submissions between July 7 and July 9, 2004. On July 9, 2004, the Board notified the Parties that the temporary Stay was extended until midnight on July 11, 2004, to provide the Board sufficient time to review the submissions.

[8] On July 11, 2004, the Board wrote to the Parties, stating it had concluded that the Appellants were directly affected and that the Board would hear their appeals. The Board also decided to grant a Stay of the Approval until the conclusion of the appeals or unless otherwise directed by the Board. The Board scheduled the Hearing for July 23, 2004.

[9] On July 13, 2004, in response to requests from the Parties, the Board rescheduled the Hearing for July 26, 2004. The Board also rescheduled the deadline for written submissions for the Hearing.

[10] On July 13, 2004, the Board received a letter from the Appellants requesting files referred to in the Director's Record, including references from Fisheries and Oceans Canada and Alberta Sustainable Resource Development. On July 19, 2004, the Appellants wrote the Board asking that the Approval Holder be required to provide copies of reports it has regarding the site selection for the project and the reports completed by an Environmental Advisory Review Committee.

[11] On July 14, 2004, the Appellants wrote to the Board requesting an adjournment of the Hearing. The other Parties were asked to provide comments in response to the Appellants' request. The Board received the Approval Holder's and the Director's responses to the

adjournment request on July 16, 2004. The Approval Holder opposed the request and the Director took no position.

[12] On July 19, 2004, the Board notified the Parties the Hearing would proceed on July 26, 2004, as scheduled. With regard to the request for documents referred to in the Director's Record, the Board stated that it was not making a request for the additional information from the other agencies or the other Parties.

[13] On July 19, 2004, the Board received 41 intervenor requests from 62 individuals and 3 organizations. Two additional requests were received on July 20, 2004, an additional request was received on July 21, 2004, and a further request was received on July 22, 2004. (These additional four intervenor requests dealt with 7 individuals.) The Appellants and Director provided submissions regarding the intervenor requests on July 20 and 21, 2004.

[14] On July 21, 2004, the Board notified the Parties of the status of the intervenors, stating the following intervenor applications were granted: Ms. Brenda and Mr. Brian McNeill; Ms. Janet Ewens, represented by Mr. Doug Ewens; Mr. Liam and Ms. Mary Christie; Mr. Elmer and Ms. Charlene Doell; Mr. Ken and Ms. Josie Bruce; Mr. Robert and Ms. Susan Iverach; Mr. Clark and Ms. Cathie Zentner; Mr. Gerald and Ms. Alison Hankins; Ms. Margo Pickard; Mr. Garth and Ms. Maureen Mitchell; Mr. Mike Fuller; Ms. Linda Hammell and Mr. Alistair Justason; Mr. James and Ms. Josephine Emmett; Mr. Graham and Ms. Linda McFarlane; Mr. Mike Ryer; Mr. Dave and Ms. Susan Schaus; Mr. Al and Ms. Nancy Bellstedt; BowKan Birders, represented by Ms. Cliff Hansen; Drs. John and Jean Parboosingh; Mr. James H. Pissott; Defenders of Wildlife Canada, represented by Mr. James H. Pissott; Mr. Mel Youngberg; Ms. Shelley Youngberg; Mr. Jack and Ms. Maureen Fair; Ms. Jeannette Bearss; Rundle Estate Corporation, represented by Mr. Gordon R. Meurin, Field Law and Mr. Donald Bester; Ms. Stacy Williams; Ms. Judith Maxwell; Ms. Donna and Mr. D.L. Monod; Mr. Cy and Ms. Carolann Johnson; Ms. Nancy Palmer; Mr. Jeffrey Yates; Mrs. Maia Egerton; Dr. Ray Egerton; Mr. Clifford and Ms. Patricia Anger; Mr. Jim and Ms. Wendy Anton, and Mr. Gary Jennings (collectively the "Intervenors").<sup>2</sup> The Board advised that the Intervenors would be permitted to participate by filing written submissions for consideration at the hearing.

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<sup>2</sup> Thirty seven intervenor applications, representing 54 individuals and the 3 organizations, were granted. Mr.

[15] The Hearing took place as scheduled on July 26, 2004, in Canmore, Alberta.

## II. WRITTEN SUBMISSIONS

### A. Appellants

1. Dr. Barrie Nault

[16] Essentially, Dr. Nault's concerns principally focused on the use of motorized boats in the Bow River in Canmore.

[17] Dr. Nault discussed the definition of the operation of a boat launch and stated that it is reasonable to take operation to mean "...the use of the boat launch by all manner of boats that are permitted and can be feasibly launched on the Bow River in Canmore, including those that require large boat trailers and trailer access to the river for launch."<sup>3</sup> He stated that this includes large rafts and some motorized boats as the use of motorized watercraft is not restricted in this area, and the Approval Holder intentionally provided unrestricted access to the boat launch.

[18] Dr. Nault stated that the conditions in the Approval all relate to the construction of the boat launch and not to the operation and use of the boat launch after construction. He argued the operation and use of the boat launch by various types of boats at the estimated volume of 25 trips per day could cause environmental impacts as listed in the definition of an activity in the *Water Act*. He argued assessments of the impacts should have been included as part of the review of the application, including a screening report on the need for an environmental impact assessment report under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 ("EPEA") or an environmental impact assessment report that included the impacts of operation and use of the boat launch as well as the construction. He argued the Director did not

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Gary Jennings was included as an intervenor on July 22, 2004 based on additional information that he provided. The intervenor requests of the following individuals were denied as they did not live in close proximity to the project or their request was filed late: Mr. Paul Forster; Mr. Frank Thirkettle; Mr. Doug and Ms. Donna McKown; Mr. Tim, Ms. Sherrill, Ms. Meaghan and Mr. Trevor McGuire; Mr. Alan Hobson; Dr. Ian and Ms. Robin Beddis; Mr. Frank and Ms. Barbara Dyrgas; and Mr. Donald and Ms. Mary Collinson.

<sup>3</sup> Dr. Barrie Nault's submission, dated July 22, 2004, at page 2.

take into account all of the relevant environmental circumstances such as the operation of the boat launch after construction.

[19] Dr. Nault argued there is a possible threat to the aquatic environment, human health, and to public safety that could arise from the daily use of the boat launch by 25 large boat trailers carrying multiple boats.

[20] He argued that maintenance activity would be required at least annually, but no conditions were specified in the Approval for maintenance. He argued if the Approval implied indefinite maintenance, then the Director's decision did not consider the conditions for maintenance and operation. He stated a gravel bar may form in the shallow part of the river directly in front of the boat launch, and maintenance would be required to excavate the bed of the river to make the boat launch functional. He argued if maintenance of this type was implied by the Approval and not foreseen by the Director, then the Approval should be cancelled under section 43(1)(a)(viii) of the *Water Act*.<sup>4</sup>

[21] Dr. Nault submitted there is precedent for the Board to consider the environmental impacts of the operation of the boat launch after it is constructed. He referred to an appeal filed in 1994 to the Municipal District of Big Horn Development Appeal Board (the "D.A.B.") in which the D.A.B. determined the access point to the water cannot be discussed without reference to the impacts associated with the commercial operation on the Bow River. The D.A.B. stated the water flows through lands upon which the municipality has planning jurisdiction and it can exercise its authority regarding land use. Dr. Nault argued the case is persuasive as it involved a similar project in a nearby location whose operation would have a negative environmental impact on the Bow River around the Canmore area.<sup>5</sup>

[22] Dr. Nault argued that an environmental impact assessment report under EPEA should have been completed, and given the uncertainty as to how the boat launch would be used

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<sup>4</sup> Section 43(1)(a)(viii) of the *Water Act* provides:

"The Director may suspend or cancel an approval on the Director's own initiative without the consent of the approval holder if the Director is of the opinion that a significant adverse effect on the aquatic environment, human health or public safety occurred, occurs or may occur that was not foreseeable at the time the approval was issued."

<sup>5</sup> See: Dr. Barrie Nault's submission, dated July 22, 2004, at page 5.

and operated and the lack of a local scientific study of the effects of different boat traffic, the precautionary principle indicates the appeals should be upheld.<sup>6</sup>

[23] Dr. Nault referred to the purposes of the *Water Act* and argued "...the Director failed to take comprehensive and responsive action in administering the [*Water*] *Act* by not investigating in greater rigor the environmental health and quality of life impacts of the project, by not requesting an economic analysis, by not requesting details on the use of the project, and by not providing – or examining whether an opportunity had been provided – for collective input."<sup>7</sup> He argued an environmental impact assessment would have satisfied these concerns. He stated the Director did not require or pursue sufficient information to comply with the purpose of the *Water Act*.

[24] Dr. Nault stated approximately 520 square metres of the bed, bank, and shore would be cleared of natural vegetation, which is larger than the Approval Holder's estimate of 333 square metres. He stated most of the area would become gravel roadway.

[25] Dr. Nault explained the area presently is natural vegetation with two footpaths to the riverbank, each about two feet wide. He stated the application is for two launch ramps each eight metres wide and extending up to two metres past the shore and into the bed of the Bow River, thereby covering about 345 square feet (32.05 square metres) of the bed of the Bow River.

[26] Dr. Nault stated the construction plan involves the removal of many trees that are over 12 meters high, as well as roadway construction to support large vehicles, the cementing of a winch pole base along the bank, grading of two boat launch ramps, a road across the dyke, and a turn-around area.

[27] Dr. Nault stated the Approval Holder chose to have unrestricted access to the river, and this would allow large boats and possibly motorized boats that have the potential to cause the greatest negative environmental impact to use the site. He argued the Director did not account for the use of these boats.

[28] Dr. Nault stated the Director did not request or generate information regarding the volume of boat launch traffic. He argued the estimates provided by the Approval Holder were

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<sup>6</sup> See: Dr. Barrie Nault's submission, dated July 22, 2004, at page 6.

<sup>7</sup> Dr. Barrie Nault's submission, dated July 22, 2004, at pages 7 to 8.

calculated on data taken based on the existing boat launch, which was a much smaller scale and there was no effective boat trailer access to the river. He stated there is uncertainty as to the volume and type of boats that will use the boat launch, and as there is likely to be a different mixture of boats using the boat launch, there is a potential to create a significant negative environmental impact that was not accounted for in the Approval process.

[29] Dr. Nault stated beaver, muskrat, deer, and elk feed on vegetation on the bank and shore of the proposed boat launch, and removing the vegetation would effectively eliminate the area for providing feed to these animals, and they would be forced to use other areas. He argued the area might be further degraded by traffic walking in and out of the boats and by human garbage.

[30] Dr. Nault argued 52.5 feet along the shore will be unavailable for bird species and amphibians that use the shoreline for feeding and nesting. He submitted these negative effects to wildlife are those related to construction, and the negative impacts, including collisions with wildlife, would rise when accounting for the operation and use of the boat launch by an increase in the volume and types of boat.

[31] Dr. Nault stated the large mammals travel in front of and through his property to and from the bed, bank, and shore of the proposed boat launch. He explained part of the quiet enjoyment and use of his property is observing wildlife from, and in close proximity to, his home. He argued the destruction of the vegetation in the area of the boat launch would interfere with the habits and health of the wildlife he enjoys, thereby reducing the quiet enjoyment he, and many residents in Canmore, obtain from their property and the proximate natural areas.

[32] Dr. Nault argued his quiet enjoyment and use would be further compromised by an increase in boat traffic, as increases in volume and a shift in the mixture of boats may threaten much of the wildlife in the area.

[33] Dr. Nault stated the boat launch infrastructure and vehicles entering and exiting the boat launch area would restrict access to trails used by residents of Canmore and many Albertans. He explained the access road between the launch area and the parking lot crosses the main walking trail, and "...there may be peak times when the traffic load of vehicles and trailers entering and removing boats from the river – and congesting the access road that crosses this

popular trail – will be continuous.”<sup>8</sup> He stated the additional traffic would interfere with those who use the trail to exercise and to obtain a measure of peace and tranquility. He argued the Director did not consider the negative impact the infrastructure and vehicle congestion would have on human health.

2. Dr. Victoria Mitchell

[34] Like Dr. Nault, Dr. Mitchell’s concerns principally focused on the use of motorized boats in the Bow River in Canmore.

[35] Dr. Mitchell argued the scale of the proposed boat launch far exceeds the need of replacing the previous boat launch and providing access to emergency watercraft. She stated she understood the need for emergency access but had rarely seen emergency vessels on the river. She argued a boat launch the size proposed would allow a wide range of marine vessels unrestricted access, which raises the question of use.

[36] Dr. Mitchell stated an environmental impact assessment that considered operation as well as construction would be prudent, and she did not see where commercial use of the boat launch was given proper consideration. She stated there was no study or assessment concerning the use of the facility by residents and visitors.

[37] Dr. Mitchell argued the Approval Holder’s estimation of 25 trips a day using the facility would impose a heavy burden on the bank and river. She stated the number of trips estimated might have been based on historical data and did not take into consideration the additional traffic that would be attracted to the site due to its easy river access. She submitted the negative impact on the aquatic environment, riverbank, human health, and public safety were not given adequate consideration in the Director’s decision.

[38] Dr. Mitchell raised the issue of cumulative impacts resulting from the incremental replacement of riparian vegetation that were not taken into consideration in the Approval decision. She questioned what impact the construction and use of the boat launch would have on waterfowl and other species whose habitat is shrinking, particularly due to human development. She argued the boat launch would facilitate and encourage human visitation to the water’s edge,

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<sup>8</sup> Dr. Barrie Nault’s submission, dated July 22, 2004, at page 12.

which could be damaging to wildlife. Dr. Mitchell referred to the possible impacts the project would have to the harlequin ducks. She stated the number of watercraft on the river affects harlequin ducks, regardless whether the boats are motorized or not.

[39] Dr. Mitchell argued, "...there are volume threshold levels for non-motorized boat activity over which negative environmental impacts on riparian wildlife have been observed."<sup>9</sup> She submitted there was no consideration of the effect of the boat launch volume and activity on riparian wildlife.

[40] Dr. Mitchell submitted the increase in human traffic entering, exiting, and using the Bow River may increase soil erosion and siltation into the river. She stated the boat wake and propellers create turbulence that could erode the riverbank and shoreline, particularly if the bank and shore are primarily composed of dirt, as is the case with the stretch of the Bow River by the boat launch.

[41] Dr. Mitchell stated aquatic birds and amphibians are susceptible to boating activities, and the area of the Bow River where the proposed boat launch is to be constructed has several species listed as sensitive by Alberta Sustainable Resource Development. She explained the area is important habitat for trout and whitefish as well as for geese, loons, and several species of ducks. She expressed concern that increased boat traffic would adversely affect the protected areas in and around the Town of Canmore. According to Dr. Mitchell, the Director did not consider how the operation and use of the boat launch would adversely affect the aquatic environment.

[42] Dr. Mitchell raised issues regarding an abandoned coal mine located downstream from the proposed boat launch. She questioned as to what extent hydrocarbon contamination or acid mine drainage is seeping from the mine and flowing into the Bow River and what measures are in place to mitigate adverse environmental effects caused by boat wakes eroding the riverbank and causing more acid mine effluent to seep from the abandoned mine.

[43] Dr. Mitchell stated the majority of motorized personal watercraft use two-stroke engines. According to Dr. Mitchell, as part of normal engine use, 25 to 30 percent of the fuel used in these motors is discharged unburned into the water. She argued the Director did not

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<sup>9</sup> Dr. Victoria Mitchell's submission, dated July 22, 2004, at page 2.

consider the operation and use of the boat launch and therefore did not explore the potential negative effects of motorized watercraft.

[44] Dr. Mitchell stated the use of motorized watercraft could have a significant impact on noise pollution. She stated the width of the river at the proposed boat launch site is 70 metres. She explained the noise generated by a jet ski is between 85 and 105 decibels, and at 30 metres away, the level is 75 decibels. She stated there is a fluctuation of the loudness when the jet ski leaves the water, increasing the loudness by 15 decibels. She explained that nesting birds and waterfowl are especially affected by noise, adversely affecting the reproductive success of birds as they leave their eggs exposed to predators and thermal stress and by disrupting mating and feeding patterns of the birds. She recommended buffer zones be established and watercraft use near known bird breeding colonies be reduced whenever possible.

[45] Dr. Mitchell stated noise has a significant impact on human health. She explained, "...sounds in excess of 85 decibels (db) damage hearing, noise at less than 75 db has been linked to hypertension, and that at 65 db leads to stress, heart damage and depression."<sup>10</sup> She submitted residents by the river would be at high risk for acquiring noise-induced illnesses. According to Dr. Mitchell, the Director did not consider the negative effect of noise pollution in her decision.

[46] Dr. Mitchell argued any activity that affects water quality and habitat has the potential to affect fish populations by disturbing nesting, spawning, or feeding. She stated increased turbidity resulting from sediment re-suspension due to wave affects and propellers interferes with sight-based feeding, spawning, and egg success.

[47] Dr. Mitchell stated fish populations are affected by pollution associated with the fuel mixture used by marine engines, and therefore, the immediate and cumulative effects on the aquatic environment need to be understood.<sup>11</sup>

[48] Dr. Mitchell explained how sediment serves as a source and sink for contaminants, and with heavier motorized boat traffic, sediments are suspended in the water for more time, increasing shade conditions, reducing the photosynthetic capabilities of plants and

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<sup>10</sup> Dr. Victoria Mitchell's submission, dated July 22, 2004, at page 6.

<sup>11</sup> See: Dr. Victoria Mitchell's submission, dated July 22, 2004, at page 7.

algae, and contributing to habitat loss. She expressed concern that motorized boats transport non-native species from one water body to another, and remobilization of contaminants by propellers is detrimental to shallow water systems.

[49] Dr. Mitchell stated jet skis have the ability to operate in shallow water, thereby posing a serious threat to aquatic health as shallow and remote areas are most sensitive to water pollution.

[50] Dr. Mitchell stated gas emissions from marine engines are a significant source of air pollution as they emit hydrocarbons, substances known to adversely affect human health.

[51] Dr. Mitchell raised concerns regarding public safety. She stated multi-use conflicts and overcrowding pose a serious risk to public safety. She explained the support posts from the bridges 20 metres from the boat launch could cause poor visibility for vessels approaching or departing the boat launch. She also stated there is a beach area approximately 150 metres upstream from the site. She submitted the Director did not consider the negative environmental impact of motorized vessels on human health and public safety or the issue of visibility.

[52] Dr. Mitchell expressed concern the weight and volume of the traffic has the potential to compromise the integrity of the dyke, as the traffic has to cross the dyke to access the boat ramps. She stated this issue was not addressed.

## **B. Approval Holder**

[53] The Approval Holder explained the proposed boat launch is located approximately 20 metres downstream from the previous boat launch, which was decommissioned in 2002. It stated that the previous boat launch operated for decades without incident or complaints from nearby residents or provincial or federal agencies. The Approval Holder stated it sought input from members of the community regarding a new boat launch and then identified several alternate locations to consider.

[54] The Approval Holder stated the boat launch project was considered and debated during several council meetings from 2002 to 2004, all of which were open to the public. It referred to correspondence with residents and open houses that were held, and stated "...there

has been ample opportunity for residents to voice their concerns during the planning, design and approvals process. Had the Appellants (and intervenors) participated in that process, the Town questions whether this appeal and resulting hearing would have been necessary.”<sup>12</sup>

[55] The Approval Holder explained it had selected the location to avoid any possible adverse environmental impacts to the Bow River and the surrounding environment. It submitted the Approval was properly issued and the appeals should be dismissed.

[56] The Approval Holder argued the following issues raised by the Appellants do not fall within the Board’s jurisdiction and should be dismissed: the Appellants’ quiet enjoyment of their property; the impact on the Appellants’ recreational activities; the impact on the users of the walking trail that intersects the boat launch; traffic issues related to vehicles turning off Rundle Drive; property values; and noise and pollution concerns related to motorized watercraft. It stated the first five issues are land use planning issues, and the jurisdiction is vested with the Town’s council pursuant to the *Municipal Government Act*, R.S.A. 2000, c. M-26. It stated the planning concerns were considered and addressed in terms of the chosen location and design of the project. It explained the proposed access off Rundle Drive is not anticipated to cause any traffic or safety issues, as sight lines are satisfactory. The Approval Holder stated recreational users of the intersecting trail would not be adversely impacted by the modest traffic generated by the boat launch. It explained the concerns regarding property values are unfounded, as the proposed boat launch is approximately 20 metres farther away from the Appellants’ property than the former boat launch.

[57] With respect to the impact of motorized watercraft on the Bow River, the Appellant stated the regulation of motorized watercraft is governed by the federal *Canadian Shipping Act*, R.S.C. 1985, c.S-9, and *Small Vessel Regulations*, C.R.C. Vol. XVII, c. 1487, “...which contain detailed provisions concerning noise and pollution issues relative to small motorized watercraft.”<sup>13</sup> The Approval Holder further stated:

“...the Town notes for the record that it is opposed to the use of motorized watercraft on the Bow River and anticipates contacting the FDFO [federal Department of Fisheries and Oceans] (who has jurisdiction over the use of

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<sup>12</sup> Approval Holder’s submission, dated July 22, 2004, at pages 1 to 2.

<sup>13</sup> Approval Holder’s submission, dated July 22, 2004, at page 3.

motorized watercraft on navigable waterways such as the Bow River) to determine whether the Federal Government would implement appropriate restrictions regarding the use of motorized watercraft within the Town.”<sup>14</sup>

[58] The Approval Holder explained the proposed project contemplates the construction of two ramps that will be constructed entirely from the bank. The Approval Holder stated it decided to make two separate ramps to preserve existing vegetation as much as possible and to take advantage of the gaps in the vegetation. It explained a few bushes and small popular trees along the bank would be removed, salvaged, and replanted in an open area near the entrance to the parking area, but the large spruce trees would be preserved.

[59] The Approval Holder stated granular fill would be placed on either side of the dyke to achieve a suitable grade for boat trailer traffic, but in no way would the boat launch affect the operation of the flood protection dyke system. It stated clean cobble and gravel would be used on the Bow River side of the dyke, and all material would be similar to or coarser in size than the existing bank materials. The Approval Holder estimated 30 m<sup>2</sup> of the bed directly adjacent to the toe of the bank would be affected. It stated the “...toe of the proposed boat launch would extend up to two metres beyond the toe of the bank over the width of each of the two ramps ... the affected area is above the water line for much of the year.”<sup>15</sup>

[60] The Approval Holder explained a winch pole would be constructed and placed in the riverbed within five metres of the toe of the bank. It stated the winch pole would be untreated wood or steel with a precast concrete base. It continued:

“A two metre deep hole would be excavated on the gravel bar adjacent to the bank and afterwards, the base would be set into place. The balance of the excavation would be backfilled with excavated material to match the pre-construction ground levels and any excess material would be removed from the site. The installation of the winch pole is expected to take no more than two days. During construction, a backhoe may be required to rest on the gravel bar, but at the time of the construction, the gravel bar is expected to be fully above the water line. Installation of the winch pole is expected to temporarily disturb approximately 64 m<sup>2</sup> of the river bed. The winch pole, which would have a 0.3 metre diameter, would permanently occupy less than 0.1 m<sup>2</sup> of the bed.”<sup>16</sup>

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<sup>14</sup> Approval Holder’s submission, dated July 22, 2004, at page 3.

<sup>15</sup> Approval Holder’s submission, dated July 22, 2004, at page 4.

<sup>16</sup> Approval Holder’s submission, dated July 22, 2004, at page 4.

[61] The Approval Holder stated the total area of disturbance is very small and is in an area where habitat is limited. It stated mitigation measures include constructing during low river flows, installing a siltation fence along the bank to prevent introducing sediment from the bank into the Bow River, areas subject to vehicle and pedestrian traffic would be graveled, and no traffic would be directed onto erodible soils or vegetation on the bank and shore.

[62] The Approval Holder stated several individuals with engineering and environmental expertise reviewed the application. It stated the River Engineering Section of Alberta Environment had no concerns with the proposed project and only mentioned the cobble and gravel fill will probably wash out during high flow events, but "...any eroding ramp material will have an 'insignificant' impact (on the Bow River)."<sup>17</sup> According to the Approval Holder, the wildlife biologist from Sustainable Resource Development had no concerns with the project, and the area fisheries biologist concluded there are no spawning areas at or adjacent to the site and any in-stream construction must follow the conditions set out by the *Water Act* and the federal Department of Fisheries and Oceans to ensure no net loss of fish habitat.

[63] The Approval Holder stated the federal Department of Fisheries and Oceans regulates the issue of fish habitat, and it determines whether a proposed project is likely to endanger fish habitat. The Approval Holder explained a fisheries resource and habitat assessment study was prepared as part of the approval process for the pedestrian bridge. According to the Approval Holder, the consultant preparing the report concluded, "...no fish habitat would be harmed in the construction of the pedestrian bridge."<sup>18</sup>

[64] The Approval Holder stated it applied to the federal Department of Fisheries and Oceans regarding the boat launch, and the Department of Fisheries and Oceans issued an approval, concluding that "...the proposed boat launch will not likely result in the harmful alteration, disruption or destruction of fish habitat, provided certain mitigation measures are adhered to...."<sup>19</sup>

[65] The Approval Holder argued the Approval was properly issued, as no evidence was provided to suggest the project would negatively impact fish and wildlife in the area or the

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<sup>17</sup> Approval Holder's submission, dated July 22, 2004, at page 5.

<sup>18</sup> Approval Holder's submission, dated July 22, 2004, at page 5.

Bow River generally, and none of the engineering or biology professionals who reviewed the project noted any concerns with the proposed design, layout, or location of the boat launch.

[66] The Approval Holder explained the conditions included in the Approval, as well as those outlined in the Department of Fisheries and Oceans approval, have been incorporated into the construction contracts.

[67] The Approval Holder submitted the Appellants' environmental concerns regarding the proposed boat launch are unfounded and without merit, as the location was carefully chosen to ensure there would be no environmental impacts on the Bow River and surrounding area.

[68] The Approval Holder stated the Appellants' concerns regarding pollution of the Bow River by motorized watercraft and placement of garbage on or near the boat launch site are unfounded and not proper considerations in these appeals, as neither the *Water Act* nor the Approval purport to regulate motorized watercraft or the use of the boat launch post-construction. The Approval Holder explained the issue of garbage has been addressed in the design of the boat launch, as garbage receptacles would be installed that would be routinely maintained and emptied.

[69] The Approval Holder stated the prospect of significant motorized watercraft use on the Bow River is limited, as that section of the river is generally unsuited for motorized watercraft due to its limited depth and the presence of rocks and snags.

[70] The Approval Holder submitted the Appellants' remaining concerns, including noise and traffic, are not proper considerations in these appeals and do not fall within the Board's jurisdiction.

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<sup>19</sup> Approval Holder's submission, dated July 22, 2004, at page 5.

**C. Director**

[71] The Director submitted the appeals should be dismissed and the Approval stand as issued.

[72] The Director explained the fisheries biologist with Sustainable Resource Development had no concerns with the project; he thought it was a good project, and the site selection was ideal for a boat launch as there are no spawning areas at or adjacent to the proposed site. She stated the River Engineering Branch of Alberta Environment had no concerns with the proposed project and had indicated "...some cobble/gravel fill will probably wash out during high flows (and require maintenance/replacement at that time) but the sediment load in the channel will be heavy during higher flows and the addition of any eroding ramp material will have an insignificant impact."<sup>20</sup> The Director stated she also contacted the wildlife biologist from Sustainable Resource Development to review the application, and he advised he had no concerns with the application.

[73] The Director stated she had received a letter from the federal Department of Fisheries and Oceans, indicating it had reviewed the proposal with a view to the potential for physical alteration of fish habitat due to the construction and operation of the proposed works, and it concluded the proposed project "...will not likely result in harmful alteration, disruption or destruction of fish habitat provided the 6 outlined measures are adhered to."<sup>21</sup>

[74] The Director stated she had received, but did not accept, Statements of Concern from the Appellants, as she did not find them directly affected by the proposed activity and various matters raised were not within the jurisdiction of the Director.

[75] The Director argued the concerns raised by the Appellants were either municipal issues, matters that fall under the jurisdiction of the federal Department of Fisheries and Oceans, Sustainable Resource Development, or Transport Canada (the Canadian Coast Guard), or fell under EPEA provisions.<sup>22</sup>

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<sup>20</sup> Director's submission, dated July 22, 2004, at paragraph 5.

<sup>21</sup> Director's submission, dated July 22, 2004, at paragraph 7.

<sup>22</sup> See: Director's submission, dated July 22, 2004, at paragraph 14.

[76] The Director stated the issue of boat usage and traffic on the Bow River is the jurisdiction of Transport Canada pursuant to the *Navigable Waters Protection Act*, R.S.C. 1985, c. N-22, the *Canada Shipping Act*, R.S.C. 1985, c. S-9, and corresponding regulations. She submitted Transport Canada is the proper regulator to contact to address the Appellants' main concern regarding the boat launch.

[77] The Director stated the issue of the destruction of fish habitat is the jurisdiction of the federal Department of Fisheries and Oceans under the *Fisheries Act*. She also stated the provincial department with the mandate of fisheries management, Sustainable Resource Development, indicated no spawning areas existed at the proposed boat launch location.

[78] The Director stated wildlife concerns are within the mandate of Sustainable Resource Development, and they had no concerns with the application. She argued the issues raised by the Appellants related more to land use of the area for a boat launch, which is a municipal planning matter.

[79] The Director argued the issue of noise pollution from boat traffic is clearly outside the mandate of the *Water Act*.

[80] The Director stated she conducted a detailed review and assessment of the application and the concerns raised. She explained there were no technical reasons which indicated the Approval should not be issued or that the project had to be re-designed or required special terms and conditions. She stated there were no reasons or concerns raised that warranted her refusing the application, and she had considered and responded to the Appellants' concerns appropriately.

[81] The Director advised the Board that if the Approval Holder needs to do repair or maintenance work on the boat launch, and the work meets the definition of an activity under the *Water Act*, then a further approval would be required.

[82] The Director stated Sustainable Resource Development provided the information regarding the restricted activity period for this stretch of the Bow River, and it was included as a condition in the Approval. She explained this is a standard condition in construction approvals to limit the time period when instream work can be done.

[83] The Director stated the works must be constructed in accordance with the plans and reports submitted with the application. She stated the Approval Holder is required to use silt fences during construction pursuant to the plans submitted and the conditions in the letter from the Department of Fisheries and Oceans.

[84] The Director stated she reviewed the technical information provided in the application and determined there were no issues under the *Water Act* with respect to the design of the boat launch that required any further consideration. She explained she also considered the concerns raised by the Statement of Concern filers that were related to the *Water Act*, even though they were not found directly affected.

[85] The Director referred to the concerns expressed by the Appellants regarding the public notice given. She explained that in response to their concerns, a second public notice of the application was done.

[86] In response to the Appellants' concerns regarding the potential erosion of the flood control dyke, the Director stated the concern was adequately addressed since the plan requires the addition of fill, not the removal of fill in the area of the dyke; the planned use of siltation fences during construction; condition 5 in the Approval regulates erosion and siltation during construction; and the Appellants' concern regarding erosion seems to relate more to the use of the boat launch once it is operational rather than a construction concern for the instream work.

[87] The Director submitted that none of the issues raised in the Notices of Appeal that relate to *Water Act* matters required her to add further terms and conditions to the Approval, nor did they require her to suspend or cancel the Approval.

[88] The Director explained the compliance of the Approval conditions is governed by section 40 of the *Water Act*, and failure to comply with the legislation can result in enforcement action.

[89] The Director stated she can regulate the disturbance to the water body during construction and would regulate the disturbance related to repair and maintenance work if required, but she does not regulate the public's use of the structure after it is built.

[90] The Director explained the Approval contains conditions "...which address siltation, time period of instream activities, limited construction area, prohibition of substances etc. during the term of the Approval."<sup>23</sup> She stated the application sets out the construction methods that will be followed and the Approval requires the work be done in accordance with the plans and reports submitted.

[91] In response to the Appellants' concern regarding water pollution arising from the use of the boat launch, the Director stated the substance release provisions of EPEA would be applicable.

[92] The Director submitted "...the consideration and protection of the bed, bank and shore, during construction of this structure, is ensured through the design of the structure, the construction methodologies, the terms and conditions of the Approval and the provisions of the *Water Act*."<sup>24</sup>

[93] The Director argued the Appellants did not mention "...the specific terms and conditions of the Approval, which ones are insufficient, or which need to be modified, deleted or added. They only request that the Approval be revoked."<sup>25</sup>

[94] The Director closed her arguments by stating:

"The majority of the concerns raised by the Appellants and Intervenors relate to the secondary activity i.e. boat driving which is ancillary to the existence of the structure once it is constructed. The primary relief which they seek is the prohibition of motorboat traffic on this reach of the Bow River. As previously indicated, the applicable regulator to 'grant this relief' is the federal Minister of Transportation."<sup>26</sup>

#### **D. Intervenors**

[95] The Board received submissions from the following Intervenors: Ms. Brenda and Mr. Brian McNeill; Ms. Janet Ewens; Mr. Elmer and Ms. Charlene Doell; Mr. Robert and Ms. Susan Iverach; Mr. Clark and Ms. Cathie Zentner; Ms. Margo Pickard; Ms. Linda Hammell and

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<sup>23</sup> Director's submission, dated July 22, 2004, at paragraph 46.

<sup>24</sup> Director's submission, dated July 22, 2004, at paragraph 53.

<sup>25</sup> Director's submission, dated July 22, 2004, at paragraph 54.

<sup>26</sup> Director's submission, dated July 22, 2004, at paragraph 56.

Mr. Alistair Justason; Mr. James and Ms. Josephine Emmett; Mr. Mike Ryer; Mr. Dave and Ms. Susan Schaus; Mr. Al and Ms. Nancy Bellstedt; Drs. John and Jean Parboosingh; Mr. Mel Youngberg; Ms. Shelley Youngberg; Ms. Jeannette Berris; Mr. Donald Bester; Rundle Estate Corporation, represented by Mr. Gordon R. Meurin, Field Law; Ms. Nancy Palmer; Mr. Jeffrey Yates; Mr. Clifford and Ms. Patricia Anger.<sup>27</sup>

[96] In general, the Intervenors argued the amount of motorized boat traffic on the Bow River through Canmore would increase when the boat launch is constructed. They stated increased boat traffic would negatively affect local fish populations; increase noise pollution; cause bank erosion through wave action; affect large ungulates that use the river as a corridor; and disturb bird species. In addition, many Intervenors expressed concern regarding the possibility of water and soil pollution from gas and oil released by the motorized watercraft.

[97] A number of Intervenors raised the issue of public safety of the proposed development and the resultant increase in traffic volume. According to the Intervenors, riverside bike and walking trails will be bisected by the access road to the boat launch facility. Intervenors also raised the issue of increased human garbage on the site because of the increased human traffic.

[98] Some of the Intervenors argued property values would be affected by the increase in vehicular traffic and motorized watercraft.

[99] One Intervenor expressed concerns regarding the effects of the proposed project on wetland habitat for salamander and the flood control dyke.

### **III. ANALYSIS**

#### **A. Preliminary Motion by Intervenor**

[100] During the opening comments of the Board, Mr. Gordon R. Meurin, representing the Rundle Estate Corporation, made an application to have the Board reconsider its decision to have the Intervenors participate by written submission only. Mr. Meurin objected to the limited

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<sup>27</sup> The Intervenor submission filed by Mr. James H. Pissott on behalf of himself and the Defenders of Wildlife Canada was filed after the deadline. Therefore, for reasons stated below, the Board did not consider his submission.

amount of time to prepare the written submissions and argued that the residents of the Rundle Estate Corporation were closer to the project than the Appellants and should, therefore be allowed to make oral submissions at the Hearing.

[101] The Board denied Mr. Meurin's application. While the Board accepts that the residents of the Rundle Estate Corporation live closer to the project than the Appellants, in the Board's view the interests of the residents of the Rundle Estate Corporation are substantially similar to that of the Appellants, and therefore their concerns can properly be represented by the Appellants. This is demonstrated by the content of the Rundle Estate Corporation's submission, which puts forward similar concerns to that of the Appellants. Further, the Board notes that the project was advertised and the Rundle Estate Corporation did not file a Statement of Concern or a Notice of Appeal, which could have permitted them a greater role in the hearing. Finally, with respect to the short amount of time to prepare the written submissions, the Board notes that this was the result of the Stay granted at the request of Dr. Nault. Balancing the interests of all the Parties, including the Intervenors, the Board is of the view that the amount of time given to prepare the written submissions was appropriate.

**B. Late Filed Intervenor Submission**

[102] The Defenders of Wildlife Canada and Mr. James H. Pissott provided a written submission after the deadline for receiving Intervenors' submissions. The Board sets out deadlines to ensure the appeal process remains fair to all parties involved. Although the timelines were short, most of the Intervenors were able to provide their submissions on time. By adhering to the time limit, the Board remains fair to both the Parties and the Intervenors. Also, and equally important, the issues raised in the Intervenor request submitted by the Defenders of Wildlife and Mr. Pissott were similar to the other Intervenor requests. Based on this, the arguments this submission presented would, in all likelihood, be discussed by some if not all of the other Intervenors. Therefore, the Board rejected this submission.

**C. Jurisdictional Matters**

[103] Under section 36 of the *Water Act*, an approval is required for an activity. An “activity” is defined under section 1(1)(b) as:

“ ‘activity’ means

- (i) placing, constructing, operating, maintaining, removing or disturbing works, maintaining, removing or disturbing ground, vegetation or other material, or carrying out any undertaking, including but not limited to groundwater exploration, in or on any land, water or water body that
  - (A) alters, may alter or may become capable of altering the flow or level of water, whether temporarily or permanently, including but not limited to water in a water body, by any means, including drainage,
  - (B) changes, may change or may become capable of changing the location of water or the direction of flow of water, including water in a water body, by drainage or otherwise,
  - (C) causes, may cause or may become capable of causing the siltation of water or the erosion of any bed or shore of a water body, or
  - (D) causes, may cause or may become capable of causing an effect on the aquatic environment;
- (ii) altering the flow, direction of flow or level of water or changing the location of water for the purposes of removing an ice jam, drainage, flood control, erosion control or channel realignment or for a similar purpose;
- (iii) drilling or reclaiming a water well or borehole;
- (iv) anything defined as an activity in the regulations for the purposes of this Act

but does not include an activity described in subclause (i) or (ii) that is conducted by a licensee in a works that is owned by the licensee, unless specified in the regulations.”

[104] The Director in this case issued an Approval for the construction of a boat launch on the Bow River in the Town of Canmore. The boat launch is part of a series of developments that include a pedestrian bridge and pedestrian underpass, all of which are located adjacent to a bridge for vehicle traffic. The vehicle bridge is part of a major road in the area know as Rundle Drive. The pedestrian bridge and pedestrian underpass are part of a network of walking paths

(and dyke structures) that serve the residential areas on either side of the river. The proposed boat launch replaces a previous boat launch that was displaced by the construction of the pedestrian bridge. The pedestrian bridge was constructed to improve public safety so that pedestrians do not have to use the vehicle bridge. The new boat launch is to be constructed approximately 20 metres downstream from the previous site – 20 metres further away from the Appellants than the previous boat launch. The boat launch project itself includes a parking area, an access road off of Rundle Drive, an access road from the parking lot to the boat launch ramps, a turn-around area, a winch pole placed within five metres of the toe of the bank, and two boat launch ramps. The winch pole and the bottom end of the boat launch ramps are to be placed in the bed of the river. (This is the portion of the project that requires the Approval.) According to the Approval Holder, in deciding on the site for the boat launch, it completed an internal and external investigation. Based on the results of its investigations, the Approval Holder submitted an application with the Director. The Director reviewed the application and granted the Approval for the construction of the boat launch ramps and the installation of the winch pole at this location.

[105] The Director and Approval Holder addressed the question of the Board's jurisdiction in respect to a number of the issues raised by the Appellants. The Board confirms that its jurisdiction does not extend to all of the issues identified by the Appellants. Under the existing legislation, the Board has jurisdiction that is limited to reviewing the work to be done under the Approval and making a recommendation as to whether the Approval should be confirmed, reversed, or varied.<sup>28</sup>

[106] In their Notices of Appeal, and during the course of the Hearing, the Appellants and the Intervenors raised a number of issues that are not within the Board's jurisdiction, such as boat traffic in the Bow River. The Board's jurisdiction in these appeals is restricted to the construction of the proposed boat launch as authorized under the Approval and the effect, if any, that the construction may have on the environment. Specifically, the Approval authorizes the construction of the two boat ramps and the installation of the winch pole.

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<sup>28</sup> See : Sections 99 and 100 of EPEA.

[107] Issues such as the destruction of trees on the property owned by the Town of Canmore are not within the Board's jurisdiction. A property owner can do what he pleases on his property, subject to other applicable laws, regulations, and by-laws. Although those on adjoining properties may enjoy the aesthetics of the trees and other vegetation, it is still ultimately someone else's property, in this case, the Town of Canmore. Land use issues in the area, such as the use of a portion of the lands for a parking lot, are also the concerns of the Town of Canmore and cannot be considered by the Board in these circumstances.

[108] Issues such as a decrease in property values also are not within this Board's jurisdiction, and the Board cannot provide compensation to a party even if it found the Appellants' concerns valid. Though not relevant to our jurisdiction, the Board cannot see how the construction of a smaller boat launch, 20 metres farther from the Appellants' residence will affect their property values. They purchased the property knowing the previous boat launch was 100 metres away. Their arguments concerning an increase in the number of motorized boats affecting the use and enjoyment of their property is speculation, and any decrease in property value is also speculation. It is possible that a potential purchaser may view the boat launch as an amenity that actually increases property values.

[109] The issues of the parking area and access from Rundle Drive, plus any noise and traffic related to the boat launch site, are municipal planning issues and are not within the Board's jurisdiction. These are clearly municipal interests and should be raised with the Town of Canmore.

[110] The issues of increased trash at the site and in the Bow River from increased usage of the site are valid environmental concerns. The same is true with the issues of the increased risk of oil and gas spillage on the bank and shore and the release of hydrocarbons from the engines of motorized watercraft. However, these issues are regulated by Alberta Environment under EPEA, not the *Water Act*. Conceivably, these issues could fall within the Board's appellate jurisdiction under the *Substance Release Regulation*, Alta. Reg. 124/93 and the *Waste Control Regulation*, Alta. Reg. 192/96. There are mechanisms available under EPEA for individuals to report contraventions to Alberta Environment, and the Director has the authority to investigate the complaints and potentially take enforcement action, which in certain cases could come before this Board as an appeal. However, that is not the purpose of the appeals currently

before the Board. These appeals relate solely to the construction of the boat launch and the Approval issued under the *Water Act*. The issues of garbage release and hydrocarbon spills do not have to be considered when assessing the issuance of an Approval for the construction of the boat launch.

[111] The Appellants referred to the increase of motorized watercraft because of the boat launch. What the boat launch will be used for is not the Board's jurisdiction, whether it is used for rafts, canoes, or jet-skis. The use of the launch has nothing to do with the Approval issued, which only addresses the construction of the boat launch. The argument advanced by the Appellants – that the Board should cancel the Approval for the boat launch because they object to the use of the boat launch by certain types of boat – is like arguing that the Board should cancel the approval for a manufacturing plant because the Appellants are opposed to the product that the plant manufactures. In the context of EPEA (the legislation that governs approvals for certain type of plants), the Board's jurisdiction is to determine whether the construction, operation, and reclamation of the plant can be done in an environmentally responsible manner. The Board does not have the jurisdiction to determine the suitability of the product being produced by the plant.

[112] The Appellants and most of the Intervenors expressed concerns regarding motorized watercraft using the part of the Bow River that flows through Canmore. The Approval Holder stated that, should the Appellants pursue a ban of motorized watercrafts on this stretch of the river, it would probably support their efforts. However, the application must be made to the proper federal authorities and not Alberta Environment. Navigable waters and the use of those waters, which includes the Bow River, are within federal jurisdiction. The operation of motorized watercraft on the Bow River is not within the jurisdiction of the Alberta Environment, the Director, or this Board. The federal government determines speed rates and what types of watercraft are permitted on a watercourse, and if the Appellants are concerned with the present designation, they should contact Transport Canada and the federal Department of Fisheries and Oceans.

[113] The Appellants raised concerns regarding the interaction between vehicles and pedestrians on the footpath. These are land use issues beyond the jurisdiction of the Director and, in these circumstances, this Board.

[114] The Appellants questioned whether traffic would affect the existing dyke. Although the issue of the dyke is not before the Board in these appeals, the Board notes the Approval Holder has designed the access road to go over the dyke without breaching the dyke. The approach is being built at right angles to the dyke to ensure a proper intersection, allowing for better visibility for vehicular and pedestrian traffic.

[115] Therefore, the only issue before the Board in these appeals is whether the Approval for the construction of the proposed boat launch was properly issued.

**D. Was the Approval Properly Issued?**

1. Approval Process

[116] As stated, the Board's jurisdiction in these appeals is restricted to the construction of the proposed boat launch as authorized under the Approval and the effect that the construction may have on the environment.

[117] The Director explained the assessment that she undertook of the application pursuant to section 38 of the *Water Act* and determined there was the potential of a disturbance to a water body. She determined that an approval was necessary as the activity, namely the construction of the boat launch, could release substances (cause siltation) into a water body. She stated that she had analyzed the application to determine whether an approval was also required for the operation of the boat launch, but decided that the operation was the moving of boats in and out of the water and that such operation did not fit into the definition of an activity. The Board agrees with the Director's analysis.

[118] The Board does not believe, based on the definition of an activity in the *Water Act*, that an approval is required to operate the boat launch as described. Although conceivably it could be argued, and the Appellants did raise the issue, that placing a boat in the water could cause siltation or erosion, the Board does not believe the intent of the legislation is to require an approval for every site where a boat is launched or siltation or erosion could occur. If that were so, every person walking along the shore or every private individual putting his boat into the water would require an approval. The Board does not believe that was the intention of the *Water Act*.

[119] During her testimony, the Director compared the construction and operation of a dam with the construction and operation of the boat launch. Both the dam and boat launch sit in or against the water. The structure of the dam does operate – it has floodgates and other structures that control the flow of water that operate and require an approval to operate. (The Board notes that in some cases such operational clauses may also be included in a licence, if there is an allocation of water that goes along with the dam.) A boat launch, such as the one authorized by this Approval, has nothing that actually operates; it just merely exists. The use of the boat launch does not control or affect the flow or path of the river. The boat launch essentially becomes part of the shoreline along the river. What needs to be controlled and what may cause an impact on the river is the construction of the boat launch, which is why the Approval is required.

[120] The pedestrian underpass was constructed and required an approval, as it also affected the bed, bank, and shore of the Bow River. The pilings holding the pedestrian bridge, which was constructed pursuant to a Code of Practice, also sit in the water, but have no operational value other than to support the bridge. The underpass and the bridge do not operate, and it is logical that no approval is required for the on-going operation of the footbridge or the underpass.

[121] The Appellants wanted the Director to control who uses the boat launch - specifically they did not want motorized watercraft using the site. Just like it is not in the Director's jurisdiction to control who uses the bridge and underpass, the Director does not have the jurisdiction to control who uses the boat launch. It is the Approval Holder that controls who may or may not use the site, subject to whatever limitations may be put in place by the appropriate federal authorities.

[122] Therefore, it is reasonable for the Director to have differentiated between the actual construction of the boat launch and the use of the facility. The Board agrees with the Director's decision to limit the Approval to the actual construction of the boat launch ramps and winch pole as these are the parts of the project that have the ability to impact the watercourse.

2. Environmental Impact Assessment

[123] The Appellants argued that an environmental impact assessment (“EIA”) should have been completed before granting the Approval. One of the purposes of an EIA, as stated in section 40 of EPEA, is “...to predict the environmental, social, economic and cultural consequences of a proposed activity and to assess plans to mitigate any adverse impacts resulting from the proposed activity.” Using this principle as a basis, those projects that have environmental, social, economic, and cultural consequences that can be predicted do not usually require an EIA.

[124] An EIA is usually required for large projects with significant environmental impacts or projects in which the impacts are unknown. The *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta. Reg. 111/93, specifies those projects that require an EIA. Examples of the types of projects requiring an EIA include water diversion projects with a capacity greater than 15 cubic metres per second, a dam greater than 15 metres in height, and tourism facilities that are expected to attract more than 250,000 visitors per year. The *Environmental Assessment (Mandatory and Exempted Activities) Regulation* also includes activities that are exempt from requiring an EIA. The construction of a boat launch is not listed anywhere in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*.

[125] The Approval Holder stated its willingness to pursue an application with federal authorities to restrict boat traffic on the river. As part of the process, and under the *Canadian Environmental Assessment Act*, R.S.C. 1985, c. C-15.2, it is possible that some form of environmental impact assessment may be required, but this is not relevant for the purposes of issuing the Approval in question before this Board. The Appellants expressed concern that the Director had not required an EIA to be undertaken. The Director under the *Water Act* does not have the authority to order an EIA. What the Director can do is to refer the application to the director responsible for making the decisions regarding an EIA.<sup>29</sup> The legislation clearly states the projects that require an EIA to be completed are either mandatory or discretionary. A boat launch of the magnitude included in the Approval does not fall into the categories requiring a mandatory EIA. The Board also believes that the Director’s decision *not* to refer the application

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<sup>29</sup> See: Part 2 of EPEA.

to the director responsible for making decisions regarding EIAs (for a determination as to whether the project should be screened in as discretionary) was correct. Generally, if the Director refers an application to the EIA director, it is for a project where the environmental impacts are unknown or uncertain. The effects of a boat launch are known; it is an activity that is commonly undertaken. For such a small activity, there was no reason for the Director to request that an EIA be considered.

[126] The construction of a boat launch involving two ramps, each four metres wide, and the installation of a winch pole is, comparatively, a small project. Although the environmental concerns raised by the Appellants and the Intervenors are valid, the impacts of a boat ramp this size are known. As is the case with the winch pole. There is nothing in the design of the project as proposed that is unique, and any affects the project may have on the environment are predictable and, in the Board's view in this case, minimal.

[127] The Board notes, in particular, that the boat launch is being constructed in a comparatively urban area (compared to other reaches of the river in the area), where there is already a number of disturbances. The area is generally surrounded by homes, and there is a major roadway, a vehicle bridge, an extensive network of walking paths (and dyke structures), a pedestrian bridge and pedestrian underpass, and an existing parking lot. In the Board's view, the construction of the boat launch at this location, concentrating the disturbances of the shoreline in one area, is an environmentally preferable choice to locating the boat launch in another more environmentally pristine area. In the Board's view, by locating the boat launch in this location the overall impact on the environment is reduced.

### 3. Coal Mine

[128] In her submission, Dr. Mitchell referred to the "tipple area" near an abandoned coal mine downstream of the proposed boat launch. She expressed concerns that wave action from the motorized watercraft would create waves that would erode the bank and shore, increasing the instability of the tipple area, and possibly increasing the release of acid mine drainage into the river. These arguments are pure speculation. No evidence was provided to demonstrate the boat launch would actually or even likely impact the tipple area.

[129] Even if the construction of the boat launch increases boat traffic, it is not within the purview of the Director to control boat access. The Appellants were unable to provide pertinent data to show motorized watercraft use would increase because of the construction of the boat launch. Such an increase is speculation. There are already at least two boat launch sites on the Bow River in the area at which boats, including motorized boats, can access the river. Even with these access points, there is little motorized boat traffic on the upper portion of the river. No evidence was provided the two current boat launch sites had any effect on the seepage from the tipple area during the past two years, and none of the evidence provided any indication there would be an affect even if the boat launch increased motorized watercraft traffic.

#### 4. Boat Traffic

[130] Currently, there is little motorized boat traffic on the section of the Bow River that runs through Canmore. The Appellants argued the boat launch would cause an increase in the number of motorized boats on the river, resulting in an increase in erosion and other environmental effects. According to the Appellants' expert, Mr. Thomas Boag, there would have to be 3 to 4 jet boats going at speed every hour to cause an effect on the bed, bank, and shores of the river. Mr. Boag stated there would be little if any consequence if 10 motorized watercraft used the river in a year. Based on the Appellants' calculation of 14 boat trips per day on the river, including non-motorized as well as motorized watercraft, there would have to be an increase of at least 10 motorized boats per day, or nearly double the current total boat usage, to cause an effect and then all of the boats using the facility would have to be jet boats.<sup>30</sup> The Appellants could only recall 2 to 4 motorized boats on the river per summer over the last three years. When looking at that rate, which is well below 1 boat per day, the increase in boat traffic would have to increase over 2400 percent, well above the 290 percent increase referred to in the Appellants' submission when discussing the City of Calgary's experience.<sup>31</sup> There was also no information on how the access points have changed, if at all, within the City of Calgary that would account for the increase in boat traffic.

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<sup>30</sup> If an 8-hour day is presumed, with 3 boats per day, this results in 24 boats daily.

<sup>31</sup> In her oral submission, Dr. Mitchell referred to a conversation she had with employees at the City of Calgary, who stated there had been approximately a 290 percent increase in the amount of motorized traffic on the river in the past few years.

[131] The Appellants' expert, Mr. Boag, stated during his testimony there has been no change in the amount of environmental damage that has occurred in the lower Bow River than what has occurred along the river within Canmore. As to the effect of boat use on the fisheries, the Mr. Boag stated there has been no impact on the fisheries in the lower Bow River where there is considerably more boat traffic and use of the river than what occurs in the upper Bow River by Canmore.

[132] The Appellants' expert, Mr. Boag, also did not believe pollution from the motorized boats was a concern. The Board accepts the testimony of Mr. Boag in this regard. His evidence was reasonable and he appeared to be non-biased. (The Board notes that he owns and operates a number of jet boats.)

[133] The Board notes the large number of citizens from the Town of Canmore that attended the Hearing, which the Board estimates at one point to be in the excess of 100 people. It is the Approval Holder that must be approached with respect to land use issues within the Town's limits, and the attendance sent a clear message to the Approval Holder regarding the use of the proposed boat launch for motorized watercraft. The Approval Holder stated its intention of seeking a ban of motorized boats on the part of the Bow River within the Town of Canmore's limits and has indicated it will be contacting Transport Canada to pursue the matter. The Approval Holder also stated it is investigating how it can enact a by-law that would be enforceable to limit access to the boat launch to non-motorized watercraft. Though these matters are outside our jurisdiction, the Board encourages the Approval Holder to pursue these options.

## 5. Environmental Concerns

[134] The Appellants raised the issues of siltation, erosion, and impact on wildlife and aquatic habitat. However, no evidence was brought forward, even from the Appellants' own expert, that the construction of the boat launch would have an effect on the bed, bank, and shore of the river or to the environment.

[135] As part of the review process undertaken with this application, the Director forwarded the application to Sustainable Resources Development to review for any potential impact on wildlife and fish habitat. They responded to the Director that they had no concerns

regarding the construction of the boat launch, and no evidence was provided in the submissions to contradict the conclusions reached by Sustainable Resource Development. It is reasonable for the Director to contact the other provincial regulators with the relevant expertise to review a file. The Appellants argued that more information should have been provided with Sustainable Resource Development's response to the Director. Although information explaining the basis of their decision may be interesting, it likely would not ultimately affect the Director's decision. The people with the expertise regarding wildlife and fish habitat stated they had no concerns and it is reasonable that the Director relied on their assessment.

[136] The Appellants wanted more information regarding the basis on which the federal Department of Fisheries and Oceans had made its assessment of the project. The Appellants' witness had the opportunity to speak with Mr. Evans, the writer of the letter to the Approval Holder from the Department of Fisheries and Oceans, when he made a site visit. This would have been the prime opportunity to ask questions regarding the basis of Mr. Evans' decision that he could foresee no problems with the proposed boat launch.

[137] No concrete evidence was presented that elk and other wildlife in the area would be disturbed by a boat launch at the proposed site. As stated, the boat launch is being constructed in a comparatively urban area. The wildlife have become accustomed to the disturbances created by the urban environment, and the existence of the boat launch, particularly one of this size, should have little impact on the wildlife in the area beyond that of the current disturbances.

[138] The Approval Holder designed the boat launch to mitigate the loss of vegetation. It stated it was saving as many of the large trees as possible and built the boat launch around the area of the older coniferous trees. Most of the vegetation that will be removed includes smaller bushes and deciduous trees. Even those trees that have to be removed will be salvaged. Most developments will create some type of impact, but the Board acknowledges the efforts of the Approval Holder to minimize any affects the project may have on the aesthetics and wildlife habitat of the area.

[139] The Appellants' expert, Mr. Boag, stated the loading and unloading of passengers from the boats would have a negligible effect on the environment. He stated the major problem

is irresponsible people. The Board agrees with his assessment. Although it is difficult to control human behaviour, the Board anticipates the Approval Holder will take whatever means it has available to control the disruption and destruction of the environment surrounding the boat launch, including taking steps to control litter and the discharge of oil and gasoline into the river.

[140] The principle environmental concerns of the Appellants were the effects of the project on the natural surroundings and the wildlife in the area. Considering the location of the project, it is the Board's view that the overall impact will be negligible. There is already a large footprint on the environment in the area considering there is a major roadway and a vehicle bridge, as well as a pedestrian bridge, pedestrian underpass, walking paths, and a large number of homes. The impact on the wildlife from the boat launch, compared to the impact that currently exists, is negligible. In fact, as stated, in the Board's view, by constructing the boat launch in this location, where other disturbances already exist, the overall impact on the environment is reduced.

#### 6. Public Safety

[141] The Appellants argued the Director should have considered public safety issues before issuing the Approval. They referred to the pilings for the bridge interfering with boaters' field of vision, thereby increasing the risk of accidents. The regulating bodies, in this case Navigation Canada, had no concerns regarding the location of the proposed boat launch and issues such as public safety on the waters is their jurisdiction.

[142] The location of the project is relevant to the Director. However, no evidence was presented to demonstrate any concern as to the location of the boat launch. The proposed site is only 20 metres from a previous boat launch, and it is in an area where there are other disturbances, including a pedestrian underpass and bridge and residential development. As stated, it was a prudent decision of the Approval Holder to confine such disturbances to one area along the Bow River and contain the extent of the environmental impacts to a small area.

7. Cases Law

[143] The Appellants argued two previous cases set precedents for the Board to consider. The municipal planning board decision dealt with municipal planning issues, not environmental issues. The discretion of the planning board is broader and can extend to consider the effects the use of the project would have within the community. The Municipal District of Big Horn Development Appeal Board decision discusses the lands through which the water flows being under the jurisdiction of the municipality for planning purposes. The Approval Holder in the case before the Board stated it intends to pursue restrictions on the river and create a by-law. It stated it had difficulties in its previous applications, but it was more hopeful now that it had control of the lands where the boat launch is to be built. This would coincide with the court's decision in the Big Horn decision of having the authority to regulate land use on land under the municipality's control. The case, however, is not relevant the Board's consideration of these appeals.

[144] The Appellants also referred to a case previously decided by this Board, *Court*.<sup>32</sup> In the *Court* case, the Board was looking at the cumulative environmental effects of allowing another gravel pit operation in the same area as two previously existing pits. An analysis of cumulative effects requires the Director to look at the existing environment into which the project would be placed, and to determine if the project would have an additive effect on the present conditions.

[145] With respect, the cumulative effects analysis referred to in the *Court* case does not support the Appellants' position. The Appellants used their interpretation of *Court* to argue the construction of the boat launch would allow more motorized watercraft to access the river, which in turn will increase the wave effect, which in turn would cause more erosion, which finally could increase the risk of pollution. The type of cumulative effects referred to in the *Court* case deals with similar types of activities in the area and not the type of interactions described by the Appellants.

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<sup>32</sup> *Court v. Director, Bow Region, Regional Services, Alberta Environment, re: Lafarge Canada Inc.* (31 August 2002), Appeal No. 01-096-D (A.E.A.B.) ("*Court*"). See also: *Court v. Alberta (Director, Bow Region, Regional Services, Alberta Environment)* (2003), 1 C.E.L.R. (3d) 134, 2 Admin. L.R. (4d) 71 (Alta. Q.B.).

[146] In the case presently before the Board, there will be no effect or at most a minimal effect on the environment. Therefore, the cumulative effects, if any, will be negligible. The boat is being built in a comparatively urban environment. The Approval Holder plans to minimize the loss of vegetation. The proposed project will affect a smaller area on the bed, bank, and shore than the previous boat launch site. If it is not adding any effect to the environment, the effect cannot be cumulative.

## 8. The Approval

[147] The Approval Holder must comply with all of the conditions within the Approval, as well as those specified by the federal Department of Fisheries and Oceans. The Department of Fisheries and Oceans, in its letter to the Approval Holder, stated:

“Based on this information, DFO concludes that the proposed works will not likely result in the harmful alteration, disruption or destruction of fish habitat, provided the following mitigation measures are adhered to:

1. No instream activity should be conducted between September 1 and April 30, of any year.
2. Every reasonable effort should be made to minimize the duration of instream work within the proposed schedule of construction. Construction should be halted during periods of heavy rain.
3. If the excavation needs to be dewatered then the water should be released into a well-vegetated area or settling basin and not directly into any watercourse.
4. Temporary and permanent erosion and sediment control measures to minimize introduction of sediment from the right-of-way both during and after construction should be implemented.
5. All spoil materials should be disposed above the high water mark and located such that they do not re-enter any watercourse.
6. Cleaning, refueling and servicing of equipment should be conducted at least 100 m away from the water and appropriate precautions should be taken to ensure that deleterious substances do not enter any watercourse.”<sup>33</sup>

[148] The issues the Board considered in these appeals were the concerns expressed regarding the impact of the project on the environment, including the effects on wildlife and the

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<sup>33</sup> Letter from Fisheries and Oceans Canada to AMEC, dated June 8, 2004, Director’s Record at Tab 5.

fish habitat and the potential for erosion and siltation. The Board believes all the concerns raised have been adequately dealt with in the Approval. The conditions included in the Approval demonstrate the Director did consider the environmental effects that could occur because of the construction of the boat launch and the issues raised by the Appellants and the Intervenors. For example, with respect to the issue of erosion, the Director included condition 5.<sup>34</sup> Condition 3 is a general condition to protect the site, both land and water, by limiting the area where the activity can occur.<sup>35</sup> With respect to the Appellants' concerns regarding the potential for pollution entering the water, the Director included conditions 4 and 7 to protect the Bow River from the possibility of contamination during the construction of the boat launch.<sup>36</sup> Conditions 6 and 9 protect fish habitat, another issue raised by the Appellants and Intervenors.<sup>37</sup> When viewed together, the conditions in the Approval cover the relevant areas of concern expressed in these appeals, and the Approval Holder must comply with all of the conditions.

[149] There is no reason to believe the Approval Holder will not abide by the terms of the Approval, and if the conditions are contravened, the Director has authority under the *Water Act* to take appropriate measures, including issuing orders to ensure compliance.

[150] A concern that the Board does have is the June 7, 2004 letter from the Director to the Appellants.<sup>38</sup> In it, she stated:

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<sup>34</sup> Condition 5 states:  
“5. The approval holder shall prevent siltation and erosion of the water body resulting from the activity.”

<sup>35</sup> Condition 3 provides:  
“3. The approval holder shall confine the activity to the work area designated on the plans or to areas as prescribed in the approval.”

<sup>36</sup> Conditions 4 and 7 state:  
“4. The approval holder shall not deposit any substance that will adversely affect the water body. ...  
7. The approval holder shall ensure that all refuelling of equipment is conducted in a manner to prevent fuel from entering the water body.”

<sup>37</sup> Conditions 6 and 9 state:  
“6. The approval holder shall not conduct activities in the waterbody between September 1 and April 30 unless the water body is dry. ...  
9. The approval holder shall only use materials that are non-toxic to fish, for construction of pilings and other structural members that may come into contact with water.”

<sup>38</sup> See: Director's Record at Tab 6.

- “(a) Fish habitat considerations are the jurisdiction of the Department of Fisheries and Oceans Canada (DFO) and not Alberta Environment under the *Water Act*.
- (b) The effect on wildlife is the jurisdiction of Alberta Sustainable Resources and not Alberta Environment under the *Water Act*. However, Alberta Environment has been advised by Alberta Sustainable Resources that they have no concerns with the construction of the proposed launch.”

[151] Under the *Water Act*, the Director must consider whether an activity has an effect on the aquatic environment. As stated, an activity is defined as “...placing, constructing, operating, maintaining, removing or disturbing works, maintaining, removing or disturbing ground, vegetation or other material, or carrying out any undertaking, including but not limited to groundwater exploration, in or on any land, water or water body that causes, may cause or may become capable of causing an effect on the aquatic environment.” Fish live in an aquatic environment, and it is only logical that part of the Director’s analysis into the effects on the aquatic environment would include the effects on fish and fish habitat. The same is true for wildlife and wildlife habitat as these components of the environment are interconnected to the aquatic environment. The Board believes that it is an overstatement to say that the Director has no jurisdiction to consider fish, fish habitat, wildlife, and wildlife habitat because other agencies have the main responsibility. In the Board’s view, if the Director issued an approval in which she failed to consider the impact of an approval on these parts of the aquatic environment, her decision would not have taken relevant considerations into account.

[152] That being said, and after hearing and reading the evidence and arguments presented, the Board believes the Director did in fact take these matters into account in making her decision. Her letter of June 7, 2004 appears to be an oversimplified description of the approval process that was, in fact, properly undertaken. Further, the Board does not believe the construction of the boat launch will have an effect on the aquatic environment, including fish, fish habitat, wildlife, and wildlife habitat, and the Director has taken sufficient precautionary steps in the conditions in the Approval to protect the environment in this case.

[153] The Appellants did not provide any comments regarding the conditions in the Approval and did not provide any recommendations on how the conditions could be varied to more effectively address their concerns. The Appellants only argued the Approval should be reversed in its entirety or that the Director should have included conditions restricting the use of

the boat launch. As stated before, the Board cannot restrict the use of the boat launch any more than it can restrict the use of the pedestrian bridge and underpass. The Board does not agree that the Approval should be reversed as the construction and the existence of the boat launch will have a minimal effect on the environmental.

9. Conclusion

[154] The Board found the Appellants directly affected, but that there will be minimal environmental impacts resulting from the construction of the proposed boat launch, which is the subject of these appeals. The Appellants raised a valid question regarding the size of the boat launch ramps at the river's edge. The consultant for the Approval Holder admitted there was an error in its report with respect to the width of the boat launch ramps. The Approval Holder and the consultant agreed there would be two ramps built, each with a maximum width of four metres. Based on these measurements, the area of impact, specifically the area of the boat launch actually abutting the river's edge is less than the area of the launch that existed previously. As no evidence was provided to show the construction of the boat launch would have any environmental effects, the Board recommends the Approval be confirmed.

[155] To avoid confusion in the Approval as a result of the error in the consultant's report, and to reassure the Appellants and the Intervenors, the Board will recommend to the Minister that the Approval be varied to expressly state that the Approval allows for the construction of the boat launch as presented in the plan to Alberta Environment as part of the application, and which includes two boat launch ramps, each with a maximum width of four metres.

#### **IV. RECOMMENDATIONS**

[156] The Board finds that with respect to the principle concern of the Appellants and the Intervenors, being the use of the boat launch by motorized watercraft such as jet boats, Alberta Environment, the Director, and therefore the Board, have no jurisdiction to address this issue. It is the federal government, more specifically Transport Canada, that has the authority to control whether motorized watercraft are allowed to use this portion of the river.

[157] The Board has found the Approval as issued adequately protects the environment during the construction of the proposed boat launch. The operation of the boat launch does not fall within the definition of an activity under the *Water Act* and does not require an approval. Therefore, subject to the change suggested below, the Board will be recommending that the Approval be confirmed.

[158] The Board finds that due to an error in a report, the terms of the Approval are unclear with respect to the authorized width of the boat launch ramps. Therefore, the Board recommends that *Water Act* Approval No. 00206657-00-00 issued to the Town of Canmore be confirmed with a clarification clause added stating that the width of each of the boat launch ramps shall be no greater than 4 metres.

[159] Attached for the Minister's consideration is a draft Ministerial Order implementing these recommendations.

[160] Finally, with respect to sections 100(2) and 103 of the Act, the Board recommends that copies of this Report and Recommendations and any decision by the Minister be sent to the following parties:

1. Dr. Barrie Nault;
2. Dr. Victoria Mitchell;
3. Mr. Noble Shanks, Docken & Company;
4. Mr. Brian Evans, Q.C. and Mr. Craig J. Tomalty, Miller Thomson, on behalf of the Town of Canmore;
5. Ms. Charlene Graham, Alberta Justice on behalf of Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment;
6. Ms. Brenda and Mr. Brian McNeill;
7. Mr. Doug Ewens representing Ms. Janet Ewens;
8. Mr. Liam and Ms. Mary Christie;
9. Mr. Elmer and Ms. Charlene Doell;
10. Mr. Ken and Ms. Josie Bruce;
11. Mr. Robert and Ms. Susan Iverach;
12. Mr. Clark and Ms. Cathie Zentner;

13. Mr. Gerald and Ms. Alison Hankins;
14. Ms. Margo Pickard;
15. Mr. Garth and Ms. Maureen Mitchell;
16. Mr. Mike Fuller;
17. Ms. Linda Hammell and Mr. Alistair Justason;
18. Mr. James and Ms. Josephine Emmett;
19. Mr. Graham and Ms. Linda McFarlane;
20. Mr. Mike Ryer;
21. Mr. Dave and Ms. Susan Schaus;
22. Mr. Al and Ms. Nancy Bellstedt;
23. Mr. Cliff Hansen, representing BowKan Birders;
24. Drs. John and Jean Parboosingh;
25. Mr. James H. Pissott, representing himself and Defenders of Wildlife Canada;
26. Mr. Mel Youngberg;
27. Ms. Shelley Youngberg;
28. Mr. Jack and Ms. Maureen Fair;
29. Ms. Jeannette Bearss;
30. Mr. Gordon R. Meurin, Field Law, representing Rundle Estate Corporation;
31. Mr. Donald Bester, representing Rundle Estate Corporation;
32. Ms. Stacy Williams;
33. Ms. Judith Maxwell;
34. Ms. Donna and Mr. D.L. Monod;
35. Mr. Cy and Ms. Carolann Johnson;
36. Ms. Nancy Palmer;
37. Mr. Jeffrey Yates;
38. Mrs. Maia Egerton;
39. Dr. Ray Egerton;
40. Mr. Clifford and Ms. Patricia Anger;
41. Mr. Jim and Ms. Wendy Anton; and
42. Mr. Gary Jennings.

**V. COSTS**

[161] Before the close of the hearing, the Board received notice from the Appellants and the Approval Holder that they may wish to make an application for costs. The Board requests that any applications for costs be provided to the Board within two weeks of the date of the Minister's Order with respect to this Report and Recommendations. The Board will then provide the other Parties with an opportunity to respond to any such applications before making its decision.

Dated on August 17, 2004, at Edmonton, Alberta.

*“original signed by”*

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Frederick Fisher, Q.C.  
Vice-Chair

## VI. Draft Ministerial Order

### Ministerial Order

/2004

*Environmental Protection and Enhancement Act*

R.S.A. 2000, c. E-12.

*Water Act*

R.S.A. 2000, c. W-3.

### Order Respecting Environmental Appeals Board Appeal Nos. 04-019 and 04-020

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 04-019 and 04-020.

Dated at the City of Edmonton, in the Province of Alberta this \_\_\_\_ day of \_\_\_\_\_, 2004.

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Honourable Dr. Lorne Taylor  
Minister of Environment

Draft Appendix

With respect to the decision of Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment (the “Director”), to issue Approval No. 00206657-00-00 (the “Approval”) dated June 9, 2004, under the *Water Act*, to the Town of Canmore, I, Dr. Lorne Taylor, Minister of Environment:

1. Order that the decision of the Director to issue the Approval is confirmed, subject to the following provisions.
2. Order that the Approval be varied by adding immediately after condition 2 the following:
  - “2.1 The approval holder shall ensure each of the two individual boat launch ramps do not exceed 4 metres in width.”

ALBERTA ENVIRONMENT  
*Office of the Minister*

**Ministerial Order  
16/2004**

*Environmental Protection and Enhancement Act*  
R.S.A. 2000, c. E-12.

*Water Act*  
R.S.A. 2000, c. W-3.

**Order Respecting Environmental Appeals Board  
Appeal Nos. 04-019 and 04-020**

I, Dr. Lorne Taylor, Minister of Environment, pursuant to section 100 of the *Environmental Protection and Enhancement Act*, make the order in the attached Appendix, being an Order Respecting Environmental Appeals Board Appeal Nos. 04-019 and 04-020.

Dated at the City of Edmonton, in the Province of Alberta this 24th day of August, 2004.

*“original signed by”*

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Honourable Dr. Lorne Taylor  
Minister of Environment

## **Appendix**

With respect to the decision of Ms. May Mah-Paulsen, Director, Southern Region, Regional Services, Alberta Environment (the “Director”), to issue Approval No. 00206657-00-00 (the “Approval”) dated June 9, 2004, under the *Water Act*, to the Town of Canmore, I, Dr. Lorne Taylor, Minister of Environment:

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  - “2.1 The approval holder shall ensure each of the two individual boat launch ramps do not exceed 4 metres in width.”