

A big shout out to **Nature Canada** for their blog featuring the Rosebud River Valley

Nature Canada has provided a letter requesting a Joint Federal Provincial Environmental Review of the Badlands Racetrack project. Check out their blog and SEND THEIR LETTER!

<https://naturecanada.ca/news/blog/the-rosebud-river-valley-racetrack-for-gas-guzzlers-or-homes-for-bank-swallows/>

June 11, 2021

Re: Impact Assessments & Badlands Motorsport Development

To Whom It May Concern,

I writing to support the request for a Provincial Environmental Impact Assessment (EIA) including a complete and accurate Noise Impact Assessment (NIA) of the proposed Badlands Motorsports Resort in the Rosebud River Valley, a \$400M development 5 km away from the hamlet of Rosebud.

It is critical for the planning and future viability of Rosebud Centre of the Arts to accurately know the impact that this development will have on our operations.

Rosebud is an art village of less than 100 residents and is home to Rosebud Theatre which has an annual patronage of more than 35,000 people who come to the valley to be get away from the city and be enriched by nature, good food, and great theatre. The village is also home to Rosebud School of the Arts, a post-secondary theatre training institution boasting some of the highest professional employment rates of graduates in the country. Both parts of our organization have the quiet seclusion of the valley and the peaceful atmosphere as a core feature. In a given year we typically employ 16 – 20 fulltime staff, 25 – 30 parttime staff, and often contract dozens of theatre artists for our Rosebud Theatre seasons.

It is my understanding that the previous NIA completed over 10 years ago was based on inaccurate and now irrelevant source material and does not stand up to third party review. In fact, my understanding is that the scope of the development is now radically different than when the initial NIA was conducted.

A recent review conducted by dBA Noise Consultants out of Okotoks, Alberta, supports the assertion that the original NIA was rife with substantially incorrect conclusions in its predicted noise impact at many local residences including the hamlet of Rosebud. Rosebud Centre of the Arts and all the other businesses in town, as well as neighboring



landowners, need accurate scientific data to be able to gauge the full impact of what the Badlands Motorsport Development will mean to future economic viability in the hamlet of Rosebud.

I ask that a full Environmental Impact Assessment and Noise Impact Assessment are completed in an unbiased manner before the Badlands Motorsport Development is permitted to move forward.

Please feel free to contact me if you have any further questions.

Sincerely,



Paul Muir
Executive Director
paulm@rosebudtheatre.com

First name: Paul

Postal Code: T0J 2T0

Your Letter: Dear Director,

A racetrack development called The Badlands Motorsports Resort (BMR) has been approved by Kneehill County on that county's south margin, approximately 4 kilometers from the hamlet of Rosebud, a small artistic town with a world-renown theatre and theatre arts school. The proposed BMR development, which is subject to Provincial environmental assessment, was approved while gauging its environmental impact using a submitted collection of environmental impact reports, supplied by the developer, and which do NOT hold up to professional third-party review. These reports range from merely unqualified to biased, and in all cases irrelevant due the scope of the development changing (growing) post assessment.

I myself, am a retired professional noise consultant, having prepared hundreds of noise impact assessments (NIAs). I had the opportunity to review the NIA prepared for BMR at the time the development originally came before Kneehill County Council for approval. I deemed the NIA both rife with error and of a quality that did not stand up to third-party professional review. And in fact, in a recent such review, by dBA Noise Consultants, the submitted NIA report was again found substantially incorrect in its predicted noise impact at many local residences, and the hamlet of Rosebud.

The long and short of the matter is that the BMR development WILL severely (I would say catastrophically) impact the economic viability of the entire hamlet of Rosebud, of which the sole economic driver of the hamlet proper is the theatre and arts school. Heavily dependent on tourism by people from all over the province and beyond, the rich and peaceful environment which the theatre clientele value so dearly will be destroyed by the overbearing noise of the proposed development. An entire community will be gutted of its sole economic driver.

I ask that the province require the BMR development proponents to submit to a renewed environmental impact assessment process, so that suitability for approval or rejection, or mitigative requirements can be determined using legitimate, competently generated and unbiased data. I know that there are many other environmental issues related to this development, but I can best evaluate the NIA and know that it presents highly inaccurate noise level predictions. Please do not let this development proceed with a flawed environmental assessment process caused by dubious assessment data. Finally, as there is no noise ordinance to which the BMR development would be subject, I ask that the province reject the project, simply to protect the economic viability of Rosebud, a long established cultural jewel of Wheatland County. There are just so many environmental and local economic liabilities to this project that should preclude its approval.

June 7, 2021

Dear Premier Kenney,

I am very opposed to the large scale, high speed, private racetrack in the Badlands Motorsports Development on the edge of Kneehill County for the following reasons.

This \$500M development which claims it will draw 320 000 people annually, and which has significantly expanded in size since it initiated the process in 2008, is now situated directly inside the Rosebud River valley. It proposes to build over existing natural wetlands that will require "remediation" to storm water ponds and are well inside a key wildlife corridor composed of precious riparian habitat.

One of this development's high speed tracks - it's longest - which is currently advertised as a "wide open space" that will "allow exhilarating speeds (300 km+) combined with skill testing twists and turns" is completely within the Rosebud River valley. It actually abuts the river, affects a well-established population of Bank Swallows (now 98% extirpated in Canada), precious eagle nesting sites, beaver lodges, significant moose and deer populations in addition to many other animal species that all river habitats support. The threatened ecological destruction of the Rosebud River Valley (28 identified special status species alone as identified by Dr. Geoff Holroyd) is significant, irreversible and truly legacy building should this development be permitted to proceed. The biology reports furnished by the biologist hired by Badlands Motorsports are, at the very least, questionable according to many reviews by very well respected biologists including those formerly with Environment Canada. Serious concerns remain significant for the loss of wetlands, "remediation" of others, vehicular/animal conflict, air and water pollution downstream from hard surfaces, noise effects on wildlife, light pollution effects on wildlife and the impact on dark sky qualities over the area including the community of Rosebud. These reports and the utter lack of third party scrutiny by Kneehill County needs further investigation immediately.

The proposed Badlands Motorsports development is situated on the most South-Western part of Kneehill County. It borders Wheatland County along the majority of its development area. It is a mere 4 KM away via the river valley from a primary rural arts jewel in the community of Rosebud where the Rosebud School of the Arts and the historic Rosebud Theatre operate. These institutions support the entire village, employ a great number of artists, teachers and staff from all over Alberta. The Rosebud Theatre has grown to attract up to 40 000 people a year for its dinner theatre, outdoor music/film festivals, its new art markets not to mention its peaceful, rural Alberta setting steeped in a rich history still on display in a village setting much like a smaller version of Heritage Park in Calgary, AB.

The threat to the economic vitality of this community should this development create significant noise issues of near constant whining - day and night all year long - from luxury vehicles and motorcycles speeding at 300km+/hr through the river valley cannot be lost to anyone. Despite the assurance apparently that a "drag strip" will not be included in Badlands Motorsport, the developers we've discovered have every intention of building one. This is wrong and would generate extreme amounts of noise in the 140 decibel range that can be heard throughout a very wide radius surrounding Badlands Motorsport Resort.

Any economic benefit for Kneehill County that has the potential to devastate the livelihoods of hundreds of people dependent on these arts institutions in quiet communities is entirely unacceptable and most certainly liable.

The noise study commissioned by Badlands Motorsport in 2009 is outdated given the significant change in the size of the development over the course of 12+ years. It was also assessed with parameters provided solely by the developer with no third party oversight and did not include the community of Rosebud or Wheatland County landowners. In addition to all of the legal challenges and costs incurred by Save The

Rosebud over the past decade, we are now undertaking a noise study of our own to demonstrate the serious inadequacies of the Badlands Motorsport's study.

Development of the Badlands Motorsport Raceway has occurred exclusively within Kneehill County despite the fact that the impacts of it are significant for the Wheatland County municipality, its rural residents and the rural arts village of Rosebud. 90% of the effects of this development impact people who have had been refused engagement in this development process. Despite Alberta's Inter-Municipal Plan, this development was deliberately excluded entirely from all notifications of development by Kneehill to Wheatland County and its residents throughout the entire process. The protection of all Albertans is what the Inter-Municipal Development Plan was designed to do and in this case it has completely failed to achieve that end.

A number of other issues include:

1. The expectation that Badlands Motorsports will secure \$18M+ from the Province of Alberta in tax payer money toward financing road construction and water pipeline costs. This is an entirely unacceptable use of public funds where significant, responsible, public economic benefit cannot be demonstrated without serious impact on local, existing and sustainable economic drivers such as those in the community of Rosebud. To have allowed this development to progress this far on the basis of reputed economic gain without a full economic impact analysis is also completely irresponsible of Kneehill County.
2. The irreversible development over existing areas of natural archaeological remains of a known Fall Blackfoot camp and early Alberta settlers of the Langlet Siding that will be lost forever once they are bulldozed and paved through. I do not understand to this day how compliance under the Alberta Water Act was given re: dispensation of archaeological significance to this development and feel further investigation here in full consult with indigenous Siksika Nation caretakers and all protectors of Treaty 7 territory is also required.
3. The strain on area emergency services for this kind of development will be significant considering Kneehill resources are located in Drumheller 32 KM away. Given the dangerous nature of high speed racing through "skill testing twists and turns" the potential consequences to ambulance and fire services in a neighbouring county trying to service over and above its own needs cannot be overstated. Despite agreements with Kneehill County are our volunteer firefighters in Rosebud only 4 KM away going to turn a blind eye when there is a call for help? I question how this is to be managed without serious service disruption and repercussions to the residents of Rosebud and Wheatland County.

I fully recognize that our precious, limited water resources are the key to life on the prairies. Protecting our watersheds and wild lands for future generations is a critical issue not only for environmental reasons but also for economic, tourism and agricultural purposes.

A whole community of farmers, artists, students and young, rural families already struggling to make ends meet with the downturn in the Alberta economy and COVID have proven their determination to protect this ecological and cultural treasure.

You yourself Premier Kenney made two back to back visits to our wonderful little art village in 2019 to take in a show.

Now imagine that day with the constant whine of race-cars and motorcycles going 300+km/hr only 4 KM from that peaceful, historic little arts village. Do you remember hearing all of our birdsong Premier Kenney? Rosebud is filled with wildlife - almost everyone notices our great variety of birds because they

hear them in so few other places. Imagine hundreds of luxury vehicles speeding instead through our 30KM zoned streets at the 70-80KM that they already do on their way to this new track. A racetrack to the racetrack so to speak. We have seniors with mobility issues, young students, a professional family with two children under 5 and a couple with grandkids who live right on that highway going through town. Imagine the Rosebud Theatre and the post-secondary institution that trains some of the best actors in Canada has to close because its artists can no longer live in the community and its visitors stop coming because of all the noise, unwelcome vehicle traffic and the mental distress that all that activity brings.

Please meet with the people of Save the Rosebud and hear their whole story. I implore you to follow up with decisive action, put a stop to this racetrack threat here in this particular location, and help ensure that the conservation goals and preservation of Alberta rural agricultural and arts heritage as showcased in the community of Rosebud will continue to be realized by the United Conservative Party of Alberta.

Please act now to save this important community-supported conservation effort in the beautiful Rosebud Valley and put a stop to the absurdity of allowing construction of a private commercial development of this type for the exclusive use of the wealthy.

I am not opposed to racetracks in general.

However any private, commercial development of this type is nothing short of a crime here in the river valley of Rosebud Alberta.

Sincerely,

Cheryl Taylor
Owen Key

WILSON LAYCRAFT

• BARRISTERS & SOLICITORS •

Richard E. Harrison*
Email: rharrison@wilcraft.com
Direct: 403.441.2257

Assistant: Anggi Chen
Email: achen@wilcraft.com
Direct: 403.476.0150

*Denotes Professional Corporation

Our File: 4099-002REH

Via Email: corinne.kristensen@gov.ab.ca
And Courier

May 5, 2021

Corinne Kristensen
Director, Regulatory Assurance Section
Alberta Environment and Parks
15th Floor Oxbridge Place
9820 – 106 Street
Edmonton, AB T5K 2J6

Dear Madam:

Re: Badlands Motorsports Resort Project

We are counsel for Richard Clark, Wendy Clark, Half-Diamond HC Limited, Rick Skibsted, Linda Skibsted and Spruce Coulee Farms Ltd. We write to request that you designate the Badlands Motorsports Resort Project (the “**Badlands Racetrack**”) for an environmental impact assessment under sections 41 or 43 of the *Environmental Protection and Enhancement Act* (“**EPEA**”).

The Rosebud River valley is an environmentally significant area and unique within the Province of Alberta. It is an ecologically preserved region within Alberta’s settled areas that supports designated species at risk, wetlands and natural water bodies untouched by surrounding development.

Our clients have placed conservation easements and received certificates of Federal Ecologically Sensitive Land on their valley lands to offer long term protections for the river valley. Others, including the Nature Conservancy, Western Sky Land Trust and Will Farms Ltd., have also protected lands within the Rosebud River valley. Those easements and protections recognize the unique character of the river valley in a region subject to intensive agricultural, oil and gas development.

Our clients are concerned by the potential for the Badlands Racetrack to cause environmental damage to this significant river valley. The Badlands Racetrack is a contemplated automotive racetrack, full service recreational resort and residential community. The development will include recreational, commercial and residential components. The project proponent is Badlands Recreation Development Corp.

Our clients submit that the Badlands Racetrack should be required to undergo an environmental impact assessment pursuant to Part 2 of the *EPEA* based on the following criteria, derived from section 44(3) of *EPEA*:

1. The location, size and nature of the proposed activity: If built, the Badlands Racetrack would be by far the largest tourism and recreation project in Kneehill County as well as the adjacent Wheatland County. It is proposed to be situated on 425 acres and contemplates drawing at least 326,870 visitors per year;
2. The complexity of the proposed activity and the technology to be employed in it: The Badlands Racetrack is massive in scale. The purpose of the Badlands Racetrack is to draw car racing enthusiasts. The proposed project includes elements beyond a racetrack, including extensive commercial and retail space, restaurant, banquet and conference facilities, a driver education school, automotive repair garage, a multi-storey car storage building with 770 parking bays, a hotel and clubhouse and a condo apartment complex. In addition to the infrastructure required to service at least 326,870 annual visitors, the project also plans a complex storm water management system and the modification and infilling of 5 wetlands;
3. Concerns in respect of the proposed activity that have been expressed by the public: The Badlands Racetrack is to be constructed on lands designated as environmentally significant by Kneehill County and is to be located directly adjacent to colonies of bank swallows, designated as 'threatened' under the *Species at Risk Act*. The lands are also used by the little brown myotis, listed as 'endangered' under the *Species at Risk Act*. The Badlands Racetrack has been opposed by members of the public, including our clients because of such environmental concerns;
4. Presence of other similar activities in the same general area: As noted above, this project is unique to the region. The only comparable tourism development is the Royal Tyrrell Museum, approximately 36 km northeast of the proposed site; and
5. Other factors considered relevant: There is large scale opposition to this project within the region. The project sits on the boundary of Kneehill and Wheatland Counties, limiting the ability for residences to make submissions in the development approval process. To date, regulatory consideration of the environmental aspects of the project have been limited to consideration of certain *Water Act* issues, as described below. No regulatory review has

been conducted with respect to the public interest aspects of the project, including the broader environmental concerns that have been raised by the public.

The Alberta Environmental Appeals Board (the “**EAB**”) is currently reviewing Approval No. 00406489-00-00 (the “**Approval**”). The Approval allows the infilling and modification of 5 wetlands and the construction of a storm water management system on the project site. The hearing into the Approval by the EAB has yet to be scheduled.

Our clients submit that the proposed hearing into the Approval by the EAB is insufficient to appropriately identify the environmental impacts of the Badlands Racetrack because the EAB’s jurisdiction is narrowly focused on the wetlands subject to the Approval. It is due to this limited jurisdiction that our clients submit you ought to require an environmental impact assessment of the Badlands Racetrack.

Details of the above concerns are set out below.

Supporting Material

Enclosed to this letter is the following supporting material, offered in support of our clients’ submission that the Director ought to designate the Badlands Racetrack for an environmental impact assessment under sections 41 or 43:

1. Photographs and videos of the project site and surrounding Rosebud River valley;
2. Badlands Motorsports Resort Project Overview and Status, January 7, 2021 (the “**Project Overview**”);
3. Approval No. 00406489-00-00 with appended reports;
4. Area Structure Plan, June 2013 (relevant excerpts);
5. Environmental Impact Assessment and Environmental Protection Plan for the Badlands Motorsports Resort Near Rosebud Alberta, February 19, 2015 (“**2015 EIA**”);
6. Economic Viability of Badlands Recreation Development Corp., BDO Canada LLP, October 21, 2020 (the “**BDO Report**”);
7. Map indicating the location of bank swallow colonies;
8. Map indicating the location of draft bank swallow critical habitat in the Rosebud River valley; and
9. Badlands Motorsports Resort: Wetland and Biodiversity Considerations, October 2020 (the “**Cottonwood Report**”).

Reference to these documents is made below.

Location, Size and Nature of the Proposed Activity

The Badlands Racetrack is a tourism and recreation development, with supporting infrastructure, such as condominiums and service stations. The Project Overview contains an adequate description of the project.

The first component of the project is a new road along Range Roads 212, 213 and Township Road 280. That new road will cross at least 3 water bodies made up of coulees, creeks and watercourses. The new road will then descend into the Rosebud River valley, replacing an existing single lane gravel road. Figure 8 on page 11 of the Project Overview outlines the new road and that the project area includes land in two counties: Wheatland County and Kneehill County.

Once Badlands Racetrack deposits funds to pay for the new road it anticipates applying for development permits to construct three racetracks, parking lots, paddocks, a skidpad, terraces, hotel, housing and condominiums. Figure 13 on page 22 of the Project Overview contains a description of the anticipated development.

The proposed activity and construction sit in marked contrast to the current state of the river valley. Figure 7 on page 10 of the Project Overview provides a view of the valley as it currently stands. Additional photographs and videos included also provide a visual overview of the current state of the project site.

The Badlands Racetrack is incompatible with the current natural setting of the project site. Both the location of the project and the sheer scale of the project are such that an environmental impact assessment is warranted in this case. The scale of disruption to the Rosebud River valley is significant.

Complexity of the Proposed Activity and Technology Employed by It

The Badlands Racetrack contemplates a significant hydrology change to the immediate region. The proposed storm water management system that was designed and is appended to the Approval will infill 2 wetlands, repurpose 3 others and alter the current course of water on the site and in the Rosebud River valley.

Although the hydrological issues are being addressed by the EAB, the advanced technical nature of the storm water management system demonstrates the need for a more complete environmental impact assessment process.

It is, however, the complexity of the Badlands Racetrack that truly militates in favour of an assessment. As noted above, the project is a significant undertaking in an otherwise undeveloped region. Additional planned infrastructure includes the following amenities: gas station, car wash, automotive service and repair centre, automotive showroom, food court, race control tower, 28km water line, classrooms, security station, nurse room and a theatre presentation area. Those amenities are all noted in the Area Structure Plan.

The need for an environmental impact assessment is framed by the piecemeal approach in which various bodies have or will have to review the Badlands Racetrack. The 2015 EIA references a

Noise Impact Assessment, Historical Resource Impact Assessment, Stormwater Management Plan, Transportation Impact Assessment and Access Road Plan. No regulator is considering the cumulative impact of all these various assessments; instead each regulatory body is focusing on a distinct aspect contained within each of these assessments and reports.

Our clients are concerned that the full scale and complexity of this project, and its impacts upon the surrounding environment and communities, are not being addressed. It is through the environmental impact assessment process that those concerns will be properly reviewed by you.

Concerns in Respect of the Proposed Activity that have been Expressed by the Public

There has been a significant amount of public engagement in the Badlands Racetrack. That public engagement has focused on the environmental consequences resulting from the project and has manifested itself in the following activities:

- Over 400 letters to the Premier and the Honourable Ministers of Environment and Parks, Municipal Affairs and Environment and Climate Change Canada;
- 57 Statements of Concern submitted to Alberta Environment and Parks' Director Todd Aasen, who granted the Approval;
- Our clients, and others, appealed the Approval to the EAB. Seven parties have currently been granted standing by the EAB. The EAB is considering an application to grant a further nine parties standing; and
- Our clients, and others, have commenced proceedings in Federal Court Action No. T-716-20 to obtain various remedies related to the bank swallow which has colonies directly adjacent to the project site.

The primary areas of concern with the Badlands Racetrack are environmental.

The Badlands Racetrack site is to be located directly adjacent to several colonies of bank swallows. The project site located in the Rosebud River valley is deemed critical habitat in draft mapping produced by Environment and Climate Change Canada ("ECCC"). We refer you to the enclosed mapping produced by ECCC with respect to the project site and its proximity to the bank swallow colonies.

Our clients have also expressed concerns about the impact the Badlands Racetrack will have on other species of special concern located within the project vicinity. Commencing at page 16, the Cottonwood Report outlines the various species of special concern and their proximity to the project site. They include the prairie falcon, short eared owl, garter snake, sora and the little brown myotis.

In total, there are 82 species that inhabit the Rosebud River valley, 26 of which are provincially listed and 14 of which are federally listed. Dr. Geoff Holroyd performed a field site visit in 2013 and found 61 species of birds in 2 brief surveys, 20 of which were listed as sensitive in Alberta and 7 of which are listed nationally by COSEWIC. All those species benefit from the habitat on the project site.

The site itself is classified as an environmentally significant area by Kneehill County. Again, we refer you to page 10 of the Cottonwood Report which details the significant nature of the land upon which the Badlands Racetrack is contemplated. The project site was granted an ESA-2 (high) category by Summit Environmental Consultants in 2010.

The 2015 EIA that was produced for the Badlands Racetrack on February 19, 2015, a copy of which is enclosed, does not meet the standard required under the *EPEA*. For example, the assessment only contains one mention of the bank swallows (under the heading ‘incidental observations’) that frequent the site. There is no consideration of the economic or social impacts of the Badlands Racetrack. The environmental considerations focus solely on mitigating specific concerns related to constructing the project.

The 2015 EIA also fails to protect wildlife corridors. The Badlands Racetrack proposes fencing the project site to prevent animals from entering the project site, the result of which will inhibit wildlife corridors into and along the river valley.

The scope of the 2015 EIA was to answer the Direct Control District 4 Bylaw. The 2015 EIA was “submitted to the subdivision and development authorities in form and substance satisfactory to the county at its sole discretion”.

The scope of the review as it currently stands is too narrow to properly address the impact the Badlands Racetrack will have. Specifically, it does not meet the requirement of section 49 of the *EPEA*.

Another environmental concern with the project is the level of noise generated by the Badlands Racetrack. The site is currently void of noise generating activity. The current land use framework in the vicinity is agricultural, requiring minimal noise disturbances at all times of the year.

There is no further opportunity to examine the noise impact assessment which our clients claim is deficient. The Hamlet of Rosebud has its own economic considerations, including a theatre and school of the arts. Its tourism relies upon the quiet atmosphere offered by the Rosebud River valley.

Finally, our clients have expressed concerns over the alleged economic impacts related to the Badlands Racetrack. They commissioned BDO to conduct a report into the project’s economic viability. The results of the October 21, 2020 BDO Report indicate that the project will not generate market returns due, primarily, to the high capital costs associated with the project.

Presence of Other Similar Activities in the Same General Area

There are no other projects of this type or magnitude anywhere in Southern Alberta. There is another racetrack currently under construction in Carstairs, Alberta.

Other tourist and recreational amenities exist in Southern Alberta, however there are none within the general area of the Badlands Racetrack. The closest is the Royal Tyrrell Museum, located 36km from the project site. The City of Calgary is 121km from the project site.

The uniquely isolated location of the Badlands Racetrack is a significant basis upon which an environmental impact assessment ought to be required.

Other Factors Considered Relevant

Other factors relevant to requiring an environmental impact assessment are as follows:

1. The narrow jurisdictional scope offered by each administrative tribunal;
2. The location of the project site in both Kneehill and Wheatland Counties; and
3. The deficient environmental reviews that have taken place to date.

The first factor is relevant because each administrative decision concerning the Badlands Racetrack has applied a narrow jurisdictional focus. For example:

- Alberta Environment and Parks and the EAB have limited their review of the project to the modification and infilling of 5 wetlands and the construction of the storm water management system, as contemplated by the *Water Act* application that was submitted by the project proponent;
- Kneehill County has limited its environmental review to considerations required by its Direct Control District 4 bylaw; and
- The Federal Court process is focussed solely on protections to bank swallows under the *Species at Risk Act*.

Reviewing the environmental impact assessment prepared for Kneehill County evidences a limited scope of review and only scratches the surface of the above captioned questions.

The expanded scope of an environmental impact assessment would capture considerations that remain unaddressed by current environmental reviews, such as (section 49 of the *EPEA*):

- The need for the Badlands Racetrack;
- Mitigation measures undertaken by the project proponent during construction and operation;
- Plans to monitor ongoing environmental impacts, including all special status species and especially those endangered or threatened;
- Public consultations to gather local knowledge of hydrology, wildlife, and historical and paleontological resources;
- Access to emergency services from this remote site;
- Site restoration;
- The site selection for the Badlands Racetrack, and whether there are more suitable sites for the project;
- Establishing baseline conditions for the project;

- Analyzing the potential positive and negative environmental, social, economic and cultural impacts of the project;
- Identifying concerns related to human health, including noise disturbances to nearby communities, impact on the Rosebud River as a source of water and the safety of racetrack vehicles using country roads to access the project site;
- Consideration of alternatives to the Badlands Racetrack;
- Contingency plans related to unpredicted negative impacts, such as oil spills from service stations and vehicles;
- Environmental impacts for the access road descending into the valley and coming within meters of the river.
- Proposed public consultations undertaken by the project proponent; and
- Plans to control the release of substances, such as gasoline, oil, washer fluid and effluent, from entering the Rosebud River.

Of most import is the determination of whether the Badlands Racetrack's economic benefits outweigh the considerable environmental impacts associated with the project.

The fact that the project straddles two jurisdictions, Wheatland and Kneehill Counties, further militates in favour of an environmental impact assessment. Taxation benefits associated with the project will vest in favour of Kneehill County, while both counties share the environmental concerns associated with the project. Further, adjacent landowners are principally in Wheatland County, a fact that has precluded voting participation in reviews conducted by Kneehill County.

An impact assessment required by your office could address this disparity.

Finally, the environmental reviews conducted to date are deficient given the project's impact. Little consideration as given to species at risk and no consideration was given to weighing the environmental impacts of the project against the economic benefits of the project.

Applicable Statutory Scheme

The project is tantamount to a 'mandatory activity' as that term is defined in section 39(c) of the *EPEA*. The defined mandatory activity most applicable to the Badlands Racetrack is as follows:

(f) a tourism facility that is expected to attract more than 250 000 visitors per year and will be immediately adjacent to an ecological reserve, a natural area or a wilderness area under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*;

The Badlands Racetrack exceeds the 250,000 visitors per year threshold. Page 30 and 41 of the Project Overview contains the following figures:

1,200 occupants/day for 200 days per year (April 15 – October 31)
238 residents on site throughout the year

Our clients have excluded from consideration winter users. The winter users contemplated by the project includes the following user groups: cross country ski and snowshoe trails, snowmobile trails, the clubhouse, police driver education and public driver education (page 42 of the Project Overview). There is also no plan to restrict the number of visitors.

Using the numbers provided by the project proponent, there will be 326,870 visitors per year. As noted above, this figure excludes winter visitors.

Where the Badlands Racetrack does not meet the threshold is that it is not “immediately adjacent to an ecological reserve, a natural area or a wilderness area under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*”. However, our clients note the following facts demonstrate analogous environmental circumstances:

- The project is on a municipally designated environmentally significant area and the valley itself is a nationally designated environmentally significant area;
- Pre-contact and pioneer historical resources;
- Significant amount of development on undisturbed land;
- There are several species at risk, noted above, that use the project site; and
- The valley portion of the project is on undisturbed land.

While the Badlands Racetrack does not meet the express threshold of a mandatory activity, you may still exercise your discretion under sections 41 and 43 of the *EPEA* to require an environmental impact assessment to be completed. Should you exercise your discretion accordingly, there is a mandatory initial review required pursuant to section 44(1)(b) of the *EPEA*:

Initial review by Director

44(1) Where a proponent or a proposed activity is referred to the Director under section 41, where the Director gives a notice under section 43 or where a proponent on the proponent’s own initiative consults with the Director in respect of the application of this Division to a proposed activity, the Director shall,

...

- (b) if the proposed activity is not a mandatory activity,
 - (i) make a decision that the potential environmental impacts of the proposed activity warrant further consideration under the environmental assessment process and require that further assessment of the proposed activity be undertaken, or
 - (ii) make a decision that further assessment of the proposed activity is not required and, if it is an activity for which an approval or registration is required, advise the proponent that it may apply for the approval or registration.

Applying sections 41, 43 and 44(1)(b), you have the discretion to consider whether to require an environmental impact assessment of the Badlands Racetrack. That discretion must be applied in accordance with the purpose sections of the *EPEA*:

Purpose of Act

2 The purpose of this Act is to support and promote the protection, enhancement and wise use of the environment while recognizing the following:

- (a) the protection of the environment is essential to the integrity of ecosystems and human health and to the well-being of society;
- (b) the need for Alberta's economic growth and prosperity in an environmentally responsible manner and the need to integrate environmental protection and economic decisions in the earliest stages of planning;
- (c) the principle of sustainable development, which ensures that the use of resources and the environment today does not impair prospects for their use by future generations;
- (d) the importance of preventing and mitigating the environmental impact of development and of government policies, programs and decisions;
- (e) the need for Government leadership in areas of environmental research, technology and protection standards;
- (f) the shared responsibility of all Alberta citizens for ensuring the protection, enhancement and wise use of the environment through individual actions;
- (g) the opportunities made available through this Act for citizens to provide advice on decisions affecting the environment;
- (h) the responsibility to work co-operatively with governments of other jurisdictions to prevent and minimize transboundary environmental impacts;
- (i) the responsibility of polluters to pay for the costs of their actions;
- (j) the important role of comprehensive and responsive action in administering this Act.

...

Purpose of environmental assessment process

40 The purpose of the environmental assessment process is

- (a) to support the goals of environmental protection and sustainable development,
- (b) to integrate environmental protection and economic decisions at the earliest stages of planning an activity,
- (c) 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, and
- (d) to provide for the involvement of the public, proponents, the Government and Government agencies in the review of proposed activities.

In *Castle-Crown Wilderness Coalition v. Alberta (Director of Regulatory Assurance Division, Alberta Environment)*, the Court held that your consideration had to be framed by the express purposes of the *EPEA*, as set out above:

[55] Outside the mandatory/exempt regime the Director enjoys a wide discretion. However, that discretion is not unlimited. First, because a decision not to require an EIA is tantamount to approval of the project (it is subject only to the Minister's overriding discretion) she must always keep in mind the general purposes of the *EPEA* as expressed in s. 2. A fair summation of this provision is that it requires balancing significant environmental concerns with general economic well being and social needs of the Province of Alberta. None of environmental concerns, economic benefits or social development is an invariable trump card. By its very nature balancing of factors will mean that sometimes one factor will gain ascendancy and sometimes another. In some cases environmental concerns may receive

less attention because the economic and social benefits outweigh the deleterious environmental effect(s). In other instances economic advantages may be lost entirely because the impact on the environment measured against the economic advantage is greater. In some cases compromises may be possible which address both environmental effects and economic or social advantages associated with the proposed development. Some cases will be close calls so that the ascendancy of more than one factor could be reasonable. In such instances, on the standard of review, the Director's decision should not be disturbed regardless of which side she came down on.

[56] Although s. 40 of the *EPEA*, which deals with the purpose of the environmental assessment process, is more focussed, it nevertheless continues the theme that the overall purpose of the *EPEA* is to balance environmental, economic and social concerns. All the provisions of this section of the *EPEA* engage this duality. They speak of goals of environmental protection and sustainable development, of integrating environmental protection and economic decisions, of predicting environmental, social, economic and cultural consequences of a proposed activity and of providing for involvement by the public, proponents, government, and government agencies.

[57] Finally, when making a decision on an activity that is neither exempt nor mandatory, the Director is required, under s.44(3), to consider the location, size and nature of the proposed activity, its complexity and technology to be employed in it, concerns of the public that she is aware of, the presence of other similar activities in the general area, criteria established in the regulations and any other factor the Director considers to be relevant...

When applying your discretion to consider an environmental impact assessment for the Badlands Racetrack, care ought to be taken to applying the factors set out above and in section 44(3). This project is unique, like the Rosebud River valley is unique. There is no other administrative process reviewing this project in a fashion that melds project economics with environmental impacts. Those environmental impacts are significant and require an environmental impact assessment.

The purpose of the *EPEA* is to afford protection to the environment and to ensure that projects that proceed in the face of environmental degradation will see a return in economic benefits. You are the only authority that can weigh these concerns as they pertain to the entire project, not just the limited scope of one aspect associated with the project, like the *Water Act* approval. In so doing, you will be acting in conformity with the express provisions in the *EPEA*.

Conclusion

There are strong indicators that the Badlands Racetrack will have significant adverse environmental effects that you, as Director, should consider in exercising your discretion to require an environmental assessment of the project under sections 41 or 43 of the *EPEA*. These effects include environmental, cultural, social and economic impacts. There is currently no process available that requires consideration of all these effects as they flow from the Badlands Racetrack.

Requiring the Badlands Racetrack to proceed with an environmental impact assessment falls within the express purposes of section 2 and 40 of the *EPEA*. When applying those provisions, care ought to be taken to considering the fact that, although this project falls just short of a

mandatory designation in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, it shares the fundamental aspects of tourism projects which would be considered an activity for which an EIA would be mandatory, given the large number of anticipated visitors and because it would be situated on land designated as environmentally significant by Kneehill County and others.

Given all these factors and the potential impacts of this project on cultural, economic and environmental factors, you ought to employ your discretionary authority provided in sections 41 and 43 of the *EPEA* and require that the Badlands Racetrack undergo an environmental impact assessment.

Should you have any questions on any of the foregoing, or you would like to discuss the foregoing, our office and clients would be amenable to communication.

Yours very truly,

WILSON LAYCRAFT



Richard E. Harrison
Barrister & Solicitor

Cc: Bruce Brander, counsel for Badlands Recreation Development Corp. (via Email)
Gilbert VanNes, General Counsel, Alberta Environmental Appeals Board (via Email)
The Honourable Jason Nixon, Minister of Environment and Parks (via Email)
Nicole Hartman and Paul Maas, Counsel with Alberta Justice (via Email)