

Court waves red flag on motor racing development approval

13 years of perseverance finally pays off for opponents as judge interrupts “misplaced project” in Alberta Badlands

Written for www.savetherosebud.ca – a grassroots initiative

ROSEBUD, ALBERTA – Above the Rosebud River Valley, the yellow and purple canola and flax fields give way to the clay cliff homes of nesting birds, wetlands, grasses and finger coulees formed during the last ice age.

For residents of a tiny Alberta community that have spent years shielding this critical Badlands ecosystem from a massive racetrack development—their unyielding effort often feels as old as the land itself.

But after 13 years of unified opposition from local landowners, businesses and naturalists, a court ruling has for now halted the proposed Badlands Motorsports Resort near Rosebud, marking a significant victory following an epic and tenacious struggle by the community.

In what some legal and environmental experts are calling both a “blockbuster” and “landmark” decision, the Court of King’s Bench quashed an Alberta Environment Appeals Board decision, and the corresponding decision from the Minister of Environment and Protected Areas, approving the modification and infilling of wetlands and construction of a stormwater management system as part of its plans to develop the nearly 500-acre proposed development.

Citing procedural unfairness, unreasonable decision-making, and a reasonable apprehension of bias by Alberta’s Environmental Appeals Board (EAB), the blunt and sometimes scathing judicial review ruling delivered by Justice Melanie R. Gaston sends the matter back to the EAB for a rehearing.

Voices finally heard

“We finally feel like our voices have been heard after being told all these years to ‘follow the process’ by all levels of government and then being frustrated when development decisions were being made with incomplete or incorrect information,” said Richard Clark, a fourth-generation dryland grain farmer who along with his wife Wendy are part of the landowner group spearheading opposition to the development.

“We hope this decision makes a difference for the ordinary person, who may not have the weight and resources of a community behind them like we do, to get a fair and complete hearing of their grievances to misplaced projects like this one.”

The Rosebud Valley is a pristine and important water system and series of wetlands and coulees that offers a sanctuary for a host of species, from bank swallows, prairie falcons, and songbirds to golden eagles, moose and deer.

Opponents say the proposed racetrack and resort development an hour northeast of Calgary and 25 minutes west of Drumheller, would destroy the rich biodiversity by forever changing the ecosystem of the valley.

They say it would introduce excessive noise and sensory disturbance that would drive away birds and animals as well as people from many parts of the province drawn to the region for its serenity and natural beauty.

Last prairie wildlife sanctuaries

Rick Skibsted, landowner and lead applicant in the judicial review *Skibsted v Alberta (Environment and Protected Areas)*, says he has hiked just about every part of the valley since he was a boy. He has hunted for fossils, done surveys on nesting raptors and threatened species. He even helped the Alberta Community Bat Program uncover one of the largest and most important hibernation areas for bats known in the province.

“I’m fortunate to have spent a lifetime here—I’ve seen almost every corner of this beautiful valley. A racetrack fits any river valley like a toilet fits in your living room,” said Skibsted, whose family settled on the land 117 years ago.

“Our river valleys are some of the last sanctuaries for prairie wildlife. They are backyards that belong to everybody and it’s critical that we take a stand to protect them for all Albertans to continue to enjoy.”

A study Skibsted participated in, along with other environmental experts just after the racetrack was first proposed, found 500 nesting pairs of bank swallows on the edge of the racetrack land, one of the many insectivores facing huge declines in the country and a threatened species under the Canada Species at Risk Act (SARA).

A significant part of the land the proposed racetrack would be situated on is classified as critical habitat for the bank swallow.

Further threat to rapidly declining insectivores

Despite the wetland mitigation plans put forth by the racetrack proponent, opponents fear the development will destroy these critical foraging sites for these rapidly diminishing insectivores.

Furthermore, foraging bank swallows have lousy collision detection systems, says Cliff Wallis, a professional wildlife biologist and Order of Canada Member, hired by opponents to review environmental evaluations put forward by the proponents.

Not surprisingly, the number one cause of mortality of bank swallows near roadways is collisions with vehicles.

The birds wouldn't have a chance against race cars, expected to reach speeds of close to 300 km/h, he said.

"It would be like a meat grinder," said Wallis, noting that bank swallow populations have declined more than 90% over the past 40 years.

"Anything that adds to that is a problem. And here we're talking about the potential for multiple significant collisions. The colonies are that close and they do feed over the area where those racetracks would go and the adjacent wetlands. They're darting back and forth."

"Unintelligible" and "unreasonable" decision-making

That's why a significant portion of the applicants' case focused on the EAB's failure to consider evidence that the project overlapped with critical habitat for the bank swallow. Justice Gaston found the Board's dismissal of this evidence on grounds that it does not have jurisdiction to consider federal SARA legislation was "unintelligible" and "unreasonable."

"The Board failed to provide any reasons to justify why, in the face of such evidence, it reached its conclusion that there was insufficient evidence of potential harm to the bank swallows," Gaston wrote.

Wallis called this a landmark ruling.

“It broadens what these types of panels have to consider,” he said. “So it’s not just applicable to this one instance. It means this is the sort of thing that is in the purview for panels to look at.”

Furthermore, the court found the EAB breached procedural fairness by favouring the developer’s evidence while Wallis was denied site access to challenge the developer’s wetland evaluation.

She also noted a “reasonable apprehension of bias” due to undocumented private conversations between the EAB’s general counsel and a representative of the developer. This lack of transparency, coupled with the EAB’s handling of the burden of proof was inconsistent and incoherent, she said. While the EAB placing the onus on the applicants to prove the approval was incorrect, it also placed the burden on Badlands to justify its application in certain instances. This inconsistency, coupled with the EAB’s application of an unreasonably high standard of proof, further undermined the fairness of the process and the entire legal process.

Albertans must have confidence in regulatory institutions

The case will now return to the EAB for a new hearing, with Justice Gaston emphasizing the need for the Board to address the issues raised in the judicial review and ensure a fair and impartial process.

The ruling highlights the importance of procedural fairness and transparency in administrative decision-making, said landowner Wendy Clark.

“It’s important to the people of this province that we have an Environmental Appeals Board that is truly doing the job the public and government expects them to do,” said Clark. She said she’s hopeful that all levels of government take note of this decision and make decisions that better consider the appropriateness of project location at the outset of a proposal.

“We’re very hopeful that in the future everybody can do better. We have to have confidence in these institutions. If we lose that confidence, we’ve lost the game.”

Despite the frustration, the significant sacrifices and time commitments put into fighting the development, Clark says it has brought the community closer together and introduced them to thousands of other interested Albertans who have joined their cause.

Racetrack would harm eco-tourism

The serenity of the valley draws many people to kayak, and canoe and explore the Rosebud River, activities that some fear would dry up due to the noise of a racetrack.

Calgary-based naturalist, photographer and guide Jon Groves, has guided nature enthusiasts, bird watchers and photographers through the Rosebud River Valley for almost 15 years.

He welcomed the court decision, saying the racetrack development would drive that business away because the species of prey these enthusiasts come to see and photograph would likely be gone he said.

“The sensory disturbance of the racetrack – just the sound, the noise and activity associated with cars in an active racetrack is just too much for certain raptors to tolerate,” he said.

“Car racing would be quite an impact to the senses of a bird of prey. There’s a pair of golden eagles that prey right near the proposed racetrack site. They would have zero tolerance for that.”

The acclaimed Rosebud Theatre & School of the Arts relies on the area’s natural beauty to draw tens of thousands of visitors annually to Alberta’s largest rural professional live theatre.

And while the board of directors of the theatre has not taken an official position for or against the racetrack, they have significant concerns about what the racetrack will do to the visitor experience.

“For people coming out here for dinner and theatre and to get away from the city, it’s the calm and the peace of this valley that is one of the big attractions,” said Paul Muir, executive director of the theatre, adding the theatre draws upwards of 35,000 people annually to the community.

“Even as it fits in complementary contrast to the Rockies. You can go out to Banff, but we all know Banff is a busy, crowded place most of the time. Whereas coming East of Calgary to Rosebud, it’s quiet. It’s still and you can hear all the birds. We would not want anything to disturb that.”

Muir says so many people who visit Rosebud see it as their theatre, they have a certain ownership of it, it's their special place to go. "We feel the onus and the responsibility to hold up our end of that. This valley belongs to all Albertans, so come enjoy it with us."

A call for sober second thought

Asked why local farmers stepped up for the community to spearhead the opposition, Wendy Clark simply said "Because the community asked us to."

"When you live in a rural area, community is big and we all have to play a part and do our job and when this came up, somebody had to step up and take care of it," she said, adding so many community members have donated time, significant funding and expertise to the fight.

Clark hopes the strident community opposition and the judicial review decision will give Kneehill County, which has provided county-level land-use approvals, some pause for sober second thought on the development.

"The mess they are going to make is permanent. It can't be restored. Should construction start and the project not proceed, the county would have a huge liability on its hands. This would not only be an environmental mess but a financial one too."

The Rosebud community has offered to purchase the racetrack land from the development proponent, providing a fair and equitable price to keep the valley intact.

Clark wonders whether that offer might sound more appealing now to the proponent in light of the court decision.

If not, she says the community will continue to stand its ground for as long as it takes.

"When we stepped up, do you think we thought we'd still be at this 13 years later? We certainly didn't."

"But the truth is, when you take on a job, you don't quit until you have succeeded."