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LEGAL COUNSEL

Our File Reference: 159554

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PLEASE REPLY TO CALGARY OFFICE

December 9, 2015

SENT BY E-MAIL

Municipal Government Board  
15th Floor, 10155 - 102 Street  
Edmonton, AB T2J 4L4

Dear Sir:

**Re: Section 690 Appeal by the Town of Canmore**

We are the solicitors for the Town of Canmore and, as such, enclose herewith a copy of the Notice of Appeal for Intermunicipal Disputes in accordance with Section 690 of the *Municipal Government Act* of Alberta.

As discussed with your office today, we will be sending the original of this Notice of Appeal along with the Statutory Declaration in due course.

Please advise whether you require anything further at this time with respect to this appeal.

Yours truly,



MICHAEL D. AASEN

MDA/tls

Encl.

cc client (via e-mail)

U:\Wdocs\159554\C0603592.DOCX

**Edmonton Office**

600 McLennan Ross Building  
12220 Stony Plain Road  
Edmonton, AB T5N 3Y4  
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**Municipal Government  
Board (MGB)**

**RETURN TO:**  
Municipal Government Board  
15"1 Floor Commerce Place 10155-102 Street  
Edmonton AB T5J 4L4  
Telephone: 780-427-4864 Fax: 780-427-0986  
Email: mabmail@Qov.ab.ca  
Web URL: http://www.mab.alberta.ca

**Notice of Appeal for  
Intermunicipal  
Dispute**

As per section 690(1) of the Municipal Government Act (Act), a municipality that

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

may appeal the matter to the Municipal Government Board. A statutory declaration indicating the status of mediation must accompany this Notice of Appeal. The Notice of Appeal and Statutory Declaration must be filed with the MGB within 30 days after the passing of the bylaw to adopt or amend the statutory plan or land use bylaw.

**Part 1 - General Information - Please Print**

**APPELLANT MUNICIPALITY**

Name of Municipality TOWN OF CANMORE		Telephone Number 403-678-1514	
Designated Contact Lisa de Soto		Position (e.g. C.A.O.) CAO	
Address (Street, P0 Box, RR) (Town/City/Village) 902 - 7th Avenue, Canmore		(Province) AB	(Postal Code) T1W 3K1
E-mail Address ldesoto@canmore.ca		Fax Number 403.678.1534	

**AGENT INFORMATION AND CERTIFICATION (if Appellant is Represented by a Lawyer/Agent)**

Name of Firm McLennan Ross LLP			
Designated Contact Aasen, Michael		(Last) (First)	Telephone (daytime) Number 403.303.1686
Address (Street, P0 Box, (Suite, Apartment) (Town/City/Village) RR) 1000, 350 - 7th Avenue SW, Calgary		(Province) AB	(Postal Code) T2P 3N9
E-mail Address maasen@mross.com		Fax Number 403.303.1687	

**ADJACENT MUNICIPALITY**

Name of Municipality Municipal District of Bighorn No. 8		Telephone Number 403.673.3611	
Designated Contact (e.g. C.A.O.) Dene Cooper, Reeve			
Address (Street, P0 Box, (Town/City/Village) RR) No. 2 Heart Mountain Drive, P.O. Box 310, Exshaw		(Province) AB	(Postal Code) T0L 2C0
E-mail Address bighorn@bighorn.ca		Fax Number 403.673.3895	

**Part 2 - Owner(s) of Land that is the Subject of the Appeal**

(If more than one owner, please attach list of the names and addresses of each landowner of any land that will be directly affected by this appeal)

Name (Last)	(First)	Telephone Number (daytime)	
Address (Street, PO Box, RR) (Suite, Apartment)		(Town/City/Village)	(Province) (Postal Code)
E-mail Address		Fax Number	

**Part 3 - Bylaw Information**

all to be completed)

Please indicate which bylaw is under appeal  
Bylaw 12/15, Dead Man's Flats Area Structure Plan


Date bylaw received second reading October 13, 2015	Date bylaw passed November 10, 2015
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Please attach a copy of the notice sent to the municipality prior to the second reading.

**Part 4 - Reasons for Appeal**

Indicate the specific provisions appealed and the reasons you think they are detrimental (attach more pages as necessary).

See attached Schedule "A"

	December 9, 2015
Signature of Appellant OR Person Authorized to Act on Behalf of Appellant	Date

## **Schedule “A” to the Town of Canmore’s Notice of Appeal for Intermunicipal Dispute**

### **Part 4 – Reasons for Appeal**

1. The Town of Canmore (“Canmore”) opposes the Dead Man’s Flats (“DMF”) Area Structure Plan (“ASP”). If implemented, the ASP will significantly reduce the functionality of the G-8 Legacy Wildlife Underpass (“G-8 Underpass”) and the adjacent wildlife corridors and habitat patch. Canmore has invested heavily in the functionality of the wildlife corridors and would suffer significant environmental, economic and social detriment as a consequence.

#### **Environmental Impacts**

2. The G-8 Underpass connects the DMF/Pigeon Mountain Wildlife Corridor to the Bow Flats Regional Habitat Patch. It is a critical wildlife link between Kananaskis Country and Banff National Park. It also forms part of an international effort to provide landscape-level movement for wildlife as recognized in the South Saskatchewan Regional Plan.
3. The DMF ASP is located entirely within the Bow Flats Regional Habitat Patch. The location and extent of the Bow Flats Regional Habitat Patch was established by a set of Guidelines provided by the Bow Corridor Ecosystem Advisory Group (“BCEAG”) in 1999 (“Guidelines”). The Guidelines recognize the regional importance of the area. The G-8 Underpass and the wildlife corridors are the result of a 2002 BCEAG study commissioned by the Province of Alberta (“Study”).
4. The Guidelines and Study note that significant areas of undisturbed wildlife habitat must be maintained adjacent to the G-8 Underpass to allow for effective wildlife movement. The Borrow Pit activity on the north side of the G-8 Underpass (which commenced on a temporary basis in 2013) evidences the environmental fragility of the area. Draft data from Alberta Tourism, Parks and Recreation in 2015 states that the total number of wildlife crossings decreased from an average of 650 between 2008 and 2012, to 500 between 2012 and 2013, and to 200 in 2014. Canmore states that a similarly detrimental environmental impact will occur on a permanent basis if the DMF ASP is implemented.
5. The fencing and other wildlife mitigation measures proposed in the DMF ASP and the related Development Impact Assessment (“DIA”) are insufficient to reduce the ASP’s detrimental environmental impacts. It is the position of Canmore that in order to ensure the functionality of the wildlife corridors and the G-8 Underpass, it is imperative that the lands in question remain in an undeveloped and natural state.

#### **Financial Impacts**

##### **(a) Loss of developable land**

6. As recognized by Canmore’s Municipal Development Plan “Vision”, the surrounding natural environment is the primary source of economic activity for the community. To

this end, Canmore has protected hundreds of hectares of otherwise developable private lands in the Silvertip, Eagle Terrace and Three Sisters areas as wildlife corridors.

7. A 1992 Natural Resources Conservation Board (“NRCB”) decision approved development in the Pigeon Creek watershed area with the condition that functional wildlife corridors be established. The establishment of BCEAG and the creation of the Guidelines was the result of this NRCB decision. The successful protection of these corridors – and subsequent loss of developable land – was made possible by the joint commitment of Canmore, land owners, and the Province of Alberta to the Guidelines.
8. The lack of a functional DMF/Pigeon Mountain Wildlife Corridor underpass would have a significant fiscal impact on Canmore by reducing the assessed value of Canmore lands conditionally approved for development by the NRCB. **If the ASP is implemented, Canmore will be obliged to dedicate significant additional private lands to wildlife corridors and/or habitat patches to comply with the Guidelines and offset development in the ASP.** The assessed value of these forgone developable land would represent an opportunity cost to Canmore that would run into the millions of dollars.

#### **(b) Costs of steep creek mitigation**

9. **The DIA acknowledges that long-term steep creek mitigation for Pigeon Creek is required but not included in the ASP.** Section 2.1.1 of the DIA further recognizes that “Long term mitigation plans for Pigeon Creek will be a joint project involving the MD of Bighorn and the Town of Canmore”. Canmore has had significant recent experience with the attendant costs of flood mitigation efforts. Though the costs to the MD of Bighorn (and possibly Canmore) for steep creek mitigation are currently unknown, they could ultimately prohibit development in the ASP. In any event, it is unreasonable to require Canmore to assume the economic cost of such mitigation efforts in order to further the tax assessment of the MD of Bighorn. As the requisite costs of steep creek mitigation on Canmore lands upstream of DMF could also be significant, it is unreasonable to require Canmore to assume this additional detrimental financial impact as well.

#### **(c) Costs of human/wildlife conflict**

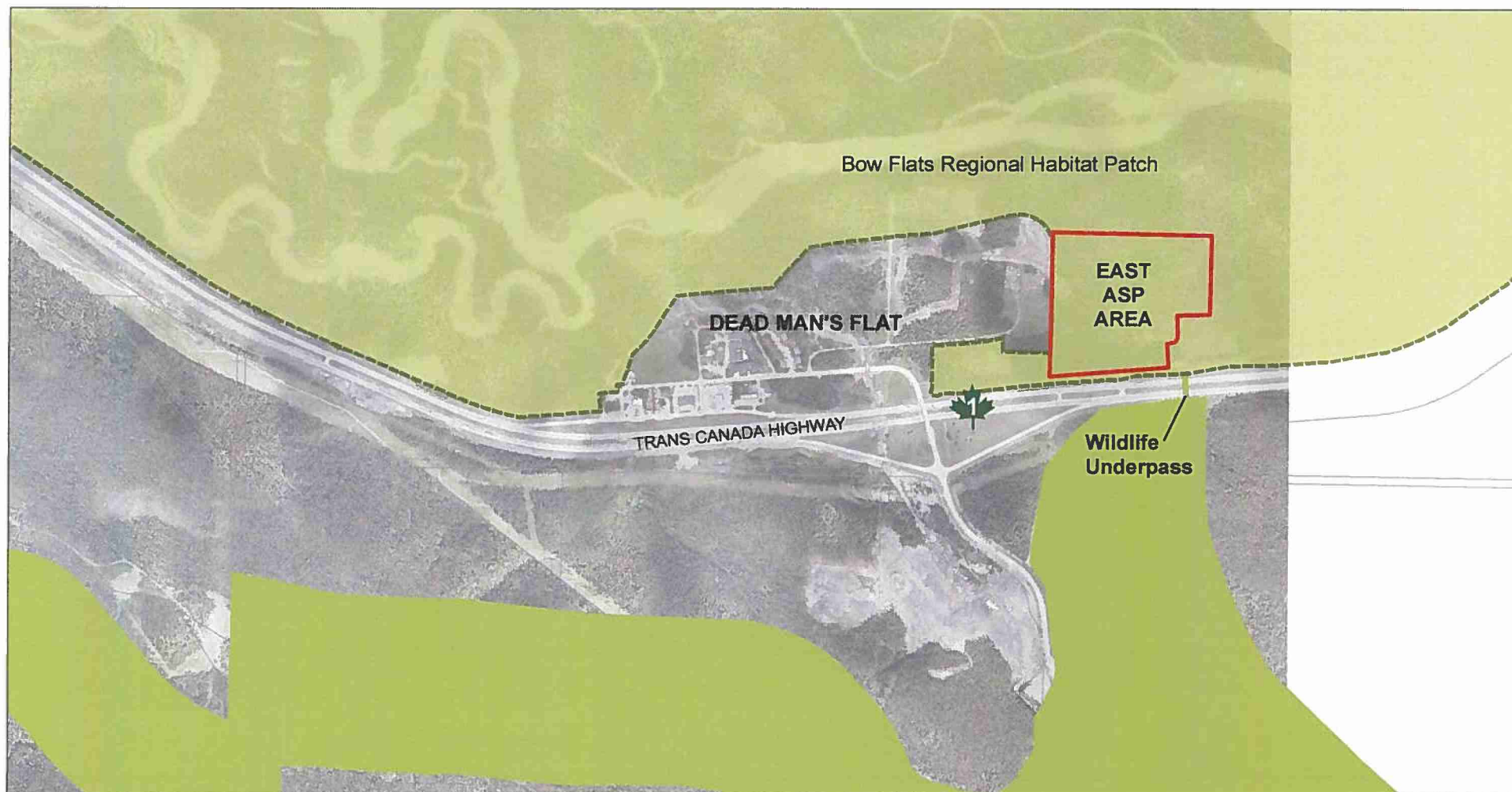
10. One of the primary purposes of the wildlife corridors and the G-8 Underpass is to allow large mammals to move safely around the communities of Canmore and DMF. **If the functionality of the wildlife corridors and/or the G-8 Underpass is compromised, Canmore will experience an increase in human/wildlife conflict and a corresponding increase in the social and financial liabilities arising therefrom.**

#### **Social Impacts**

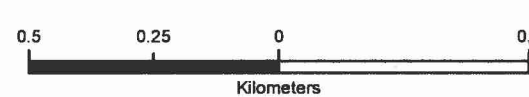
11. **Canmore takes pride in its environmental actions. Maintaining regional wildlife connectivity, ecological integrity and biodiversity have become core values to Canmore’s identity. It has recognized and acknowledged that there are geographic and ecological limits in the Bow Valley, and that these limits must be considered in discussions regarding land use in the area.** Accordingly, a significant impairment to the functionality of the wildlife corridors and/or the G-8 Underpass will have a detrimental impact on the

Town's sense of self and its Strategic Plan Goal to ensure that Canmore's Natural Environment remains viable for wildlife.

## Dead Man's Flats Area Structure Plan and Bow Flats Regional Habitat Patch



-  East ASP
-  Habitat Patch
-  Wildlife Corridor



Scale 1:15,000

**Municipal Government  
Board (MGB)**

RETURN TO:  
Municipal Government Board  
15"1 Floor Commerce Place 10155-102 Street  
Edmonton AB T5J 4L4  
Telephone: 780-427-4864 Fax: 780-427-0986  
Email: mabmail@Gov.ab.ca  
Web URL: http://www.mab.alberta.ca

**Statutory Declaration  
(Intermunicipal Dispute  
Appeal)**

I, Lisa de Soto of Canmore, Alberta DO SOLEMNLY DECLARE THAT:  
(Name)

1. The Town of Canmore wishes to file an Appeal with the  
(Appellant Municipality)  
Municipal Government Board concerning Bylaw 12/15 of the Municipal District of Bighorn No. 8,  
(Bylaw provision under appeal)

2. I am the Chief Administrative Officer of the Town of Canmore, and that  
(Position) (Appellant Municipality)

3. (Please choose one of the following)

(a) Mediation with (adjacent municipality) was not undertaken ☒

(b) Mediation was undertaken but was not successful ☐

(c) Mediation is ongoing and the appeal is being filed to preserve the right of appeal ☐

4. And further, the reasons why mediation was either not undertaken or not successful are as follows in  
Attachment "A" (please tick N/A if option (c) was selected). ☐ N/A

**AND I MAKE THIS SOLEMN DECLARATION CONSCIENTIOUSLY BELIEVING IT TO BE TRUE AND  
KNOWING THAT IT IS OF THE SAME FORCE AND EFFECT AS IF MADE UNDER OATH.**



(Signature of Appellant OR  
Person Authorized to Act on Behalf of Appellant)

Lisa de Soto

(Print Name)

DECLARED BEFORE ME AT AT the Town of Canmore )  
in the Province of Alberta, this 9 day )  
of December, 2015 )

  
(Commissioner for Oaths)

(Print Name)

Lisa de Soto

(Expiry Date of Commission)

**SUZETTE CARDINAL**

Appointee # 0697979

Expiry Date: March 13, 2016

## Attachment "A"

Despite the request of the Town of Canmore, the Municipal District of Bighorn No. 8 has declined to participate in mediation.