

**BOARD ORDER NO. MGB 060/11**

**FILE: AN08/HIGR/T-01**

**IN THE MATTER OF THE** *Municipal Government Act* being Chapter M-26 of the Revised Statutes of Alberta 2000 (Act).

**AND IN THE MATTER OF** an application by the Town of High River, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from the Municipal District of Foothills, No. 31.

**BEFORE:**

Members:

D. Thomas, Presiding Officer  
T. Golden, Member  
F. Wesseling, Member

Secretariat:

R. Duncan, Case Manager  
R. Shelton, Assistant Case Manager

**SUMMARY**

After careful examination of the submissions from the Town of High River, the Municipal District of Foothills, No. 31, affected landowners, and other interested parties, the Municipal Government Board (Board) makes the following recommendation for the reasons set out in the Board report, shown as Appendix D of this Board Order.

Recommendation

That the annexation be approved in accordance with the following:

The Lieutenant Governor in Council orders that

- (a) effective January 1, 2012, the land described in Appendix A and shown on the sketch in Appendix B is separated from the Municipal District of Foothills, No. 31 and annexed to the Town of High River,
- (b) any taxes owing to the Municipal District of Foothills, No. 31 at the end of December 31, 2011 in respect of the annexed lands are transferred to and become payable to the Town of High River together with any lawful penalties and costs levied in respect of those taxes, and the Town of High River upon collecting those taxes, penalties and costs must pay them to the Municipal District of Foothills, No. 31,

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- (c) the assessor for the Town of High River must assess, for the purpose of taxation in 2013 and subsequent years, the annexed land and the assessable improvements to it,

and makes the Order in Appendix C.

Dated at the City of Edmonton, in the Province of Alberta, 16<sup>th</sup> day of September 2011.

MUNICIPAL GOVERNMENT BOARD

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(SGD.) D. Thomas, Presiding Officer

**APPENDIX A**

**DETAILED DESCRIPTION OF THE LANDS SEPARATED FROM THE  
MUNICIPAL DISTRICT OF FOOTHILLS, NO. 31 AND ANNEXED TO  
THE TOWN OF HIGH RIVER**

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION TWO (2), TOWNSHIP NINETEEN (19), RANGE TWENTY-NINE (29) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE TOWN OF HIGH RIVER.

ALL THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION ELEVEN (11), TOWNSHIP NINETEEN (19), RANGE TWENTY-NINE (29) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE TOWN OF HIGH RIVER.

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION ELEVEN (11), TOWNSHIP NINETEEN (19), RANGE TWENTY-NINE (29) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 951 0994 AND INCLUDING ALL THAT LAND LYING SOUTH OF THE PROJECTION EAST OF THE SOUTH BOUNDARY OF PLAN 951 0994.

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION TWELVE (12), TOWNSHIP NINETEEN (19), RANGE TWENTY-NINE (29) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 741 0218 AND EXCLUDING ALL THAT PORTION OF THE NORTH-SOUTH ROAD ALLOWANCE ADJACENT TO THE WEST SIDE OF SAID QUARTER SECTION LYING NORTH OF THE PROJECTION WEST OF THE SOUTH BOUNDARY OF PLAN 741 0218

ALL THAT PORTION OF THE NORTHEAST QUARTER SECTION OF SECTION TWELVE (12), TOWNSHIP NINETEEN (19), RANGE TWENTY NINE (29) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF PLAN 311 LK AND EXCLUDING PLAN 7926 JK AND EXCLUDING THE NORTHERLY 1402.5 FEET LYING BETWEEN PLAN 7926 JK AND THE WEST BOUNDARY OF PLAN 881 0868.

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION SEVEN (7), TOWNSHIP NINETEEN (19), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE TOWN OF HIGH RIVER LYING SOUTH OF THE SOUTH BOUNDARY OF SECONDARY ROAD 543 AND EXCLUDING ALL THAT LAND LYING NORTH OF THE NORTH BOUNDARY OF LOT 5, PLAN 991 0247 AND EXCLUDING ALL THAT LAND LYING NORTH OF THE PROJECTION WEST OF NORTH BOUNDARY OF LOT 5, PLAN 991 0247.

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ALL THAT PORTION OF THE SOUTHWEST QUARTER OF SECTION SEVEN (7), TOWNSHIP NINETEEN (19), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN NOT WITHIN THE TOWN OF HIGH RIVER.

ALL THAT PORTION OF THE EAST HALF OF SECTION SEVEN (7), TOWNSHIP NINETEEN (19), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF SECONDARY ROAD 543.

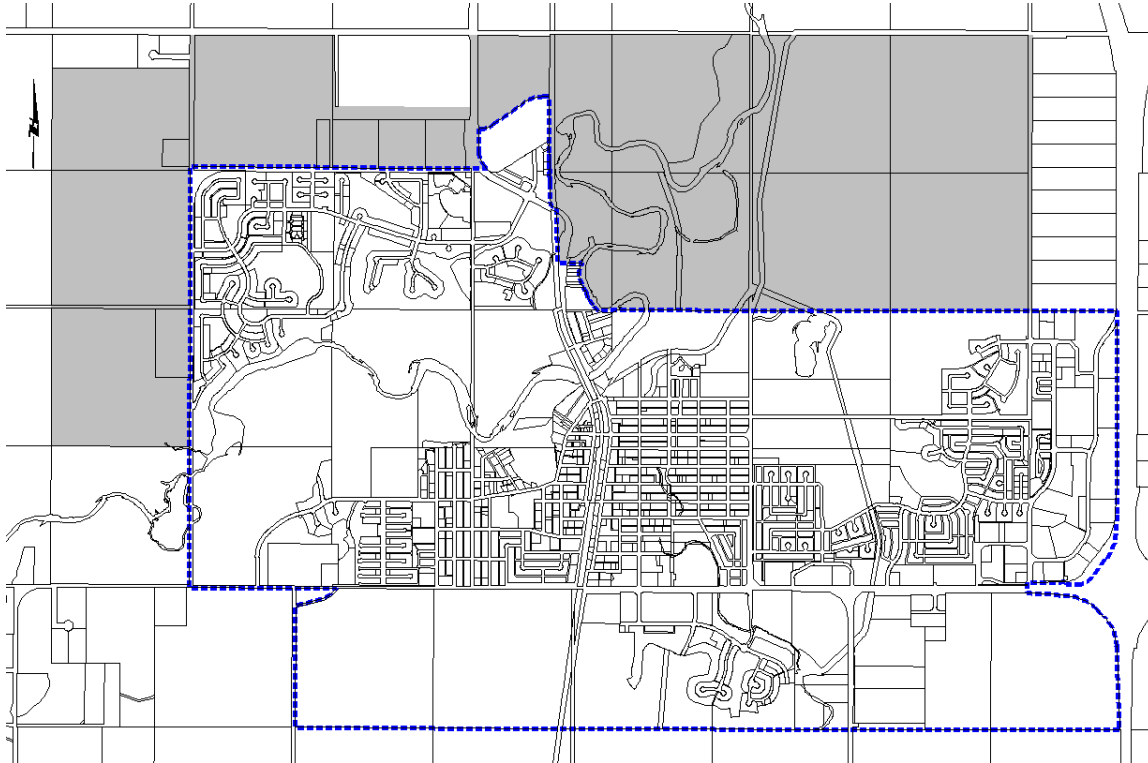
ALL THAT PORTION OF SECTION EIGHT (8), TOWNSHIP NINETEEN (19), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE SOUTH BOUNDARY OF SECONDARY ROAD 543.

ALL THAT PORTION OF THE WEST HALF OF SECTION NINE (9) TOWNSHIP NINETEEN (19), RANGE TWENTY-EIGHT (28) WEST OF THE FOURTH MERIDIAN LYING SOUTH OF THE PROJECTION WEST OF THE NORTH BOUNDARY OF PLAN 1604LK AND WEST OF THE PROJECTION SOUTH OF THE WEST BOUNDARY OF PLAN 1604LK.

FOR GREATER CERTAINTY, THE PORTIONS DESCRIBED ABOVE INCLUDE ALL INTERVENING ROAD ALLOWANCES, REGISTERED ROAD PLANS AND HIGHWAY PLAN RIGHTS-OF-WAY.

APPENDIX B

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS  
ANNEXED TO THE TOWN OF HIGH RIVER



Legend



Existing Town of High River Boundary



Annexation Area

**APPENDIX C**

**ORDER**

1 In this Order, “annexed land” means the land described in Appendix A and shown on the sketch in Appendix B.

2 For the purposes of taxation in 2012 and in each subsequent year up to and including 2026, the annexed land and the assessable improvements to it

- (a) must be assessed by the Town of High River on the same basis as if they had remained in the Municipal District of Foothills, No. 31, and
- (b) must be taxed by the Town of High River in respect of each assessment class that applies to the annexed land and the assessable improvements to it using the municipal property tax rate established by
  - (i) the Town of High River, or
  - (ii) the Municipal District of Foothills, No. 31,whichever is lower, for property of the same assessment class.

3 Where in any taxation year a portion of the annexed land

- (a) is redesignated at the request of or on behalf of the landowner under the Town of High River Land Use Bylaw, or
- (b) is connected to water or sanitary sewer services provided by the Town of High River,

section 2 ceases to apply at the end of that taxation year in respect of that portion of the annexed land and the assessable improvements to it.

4 After section 2 ceases to apply to the annexed land or any portion of it in a taxation year, the annexed land or portion and the assessable improvements to it must be assessed and taxed for the purposes of property taxes in the following year in the same manner as other property of the same assessment class in the Town of High River is assessed and taxed.

5 The Town of High River shall pay to the Municipal District of Foothills, No. 31

- (a) two hundred thousand dollars (\$200,000.00) on or before June 30, 2012,
- (b) two hundred thousand dollars (\$200,000.00) on or before June 30, 2013,
- (c) two hundred thousand dollars (\$200,000.00) on or before June 30, 2014, and
- (d) two hundred thousand dollars (\$200,000.00) on or before June 30, 2015.

**APPENDIX D**

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE  
MINISTER OF MUNICIPAL AFFAIRS  
RESPECTING THE TOWN OF HIGH RIVER PROPOSED ANNEXATION  
OF TERRITORY FROM THE MUNICIPAL DISTRICT OF FOOTHILLS**

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## **EXECUTIVE SUMMARY**

[1] The Town of High River (Town) is located in southwest Alberta, 37 kilometres south of Calgary, at the junction of Highway 2 and Highway 23. On March 8, 2011, the Municipal Government Board (Board) received an application from the Town to annex approximately 1,730 acres of land from the Municipal District of Foothills, No. 31 (MD). The purpose of the proposed annexation is to ensure the proper future growth and development of the Town, and to enable both municipalities to plan on a comprehensive and long term basis.

[2] Although the Town and the MD have endorsed the application, objections to the proposed annexation were filed with the Board from a number of subsurface mineral rights owners because of concerns regarding their future revenue. Objections were also received from several landowners adjacent to the Town who requested to be included as part of this annexation application. In addition, several affected landowners and/or members of the public were concerned about future development in flood-prone areas.

[3] In accordance with s. 120(3) of the *Municipal Government Act* (Act), the Board held a public hearing on May 25, 2011 to receive information, evidence, and argument regarding the annexation proposal. During the hearing, the Board received presentations from the Town, the MD, a number of landowners, and several members of the public.

## **Recommendation**

[4] After reviewing the submitted documentation and hearing from the Town, the MD, the affected landowners, and the public, the Board finds the annexation application to be reasonable. Therefore, the Board recommends the annexation of the land as requested by the Town, with an Effective Date of January 1, 2012.

## **Reasons**

[5] The Board is satisfied the Town effectively consulted with affected landowners, the public and affected agencies. The growth projections presented by the Town are logical and the amount of land that is being requested is realistic. Moreover, the servicing arrangements proposed by the Town are seen to be reasonable, as they have considered water capacity, wastewater servicing and storm water. The Town has also considered road maintenance and transportation as part of their servicing arrangements.

[6] The Board finds it would not be reasonable to include the landowners adjacent to the north boundary of the Town and the east boundary of the proposed annexation area in the present annexation. These lands are not included in the Urban Growth Area identified in the 2000 Inter-municipal Development Plan adopted by both municipalities. Moreover, there was no evidence to conclude that all the landowners wanted to be annexed by the Town. The Board accepts the Town's argument that, in order to ensure consistent planning and development, these lands should be included as one group. The Board also finds including the 3.8 acres of land to the



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southwest of the Town's boundary, owned by Mr. Harrison, would not be reasonable. Although it is recognized that this parcel of land is small, there is not enough evidence to demonstrate that the public was fully consulted concerning the inclusion of this land as part of the annexation.

[7] The Town has acknowledged that flooding in the proposed annexation area may be an issue and intends to develop outside this sensitive area. Furthermore, the Town has initiated a water resource sustainability study for the area, which will determine which parts of the proposed annexation area are prone to flooding.

[8] The Board accepts the Town's submission that, in the long term, the proposed annexation would most likely benefit the Town more than the MD. The Board concludes that compensation, in the form of \$800,000 paid in four equal installments over the course of four years, as agreed by the two municipalities, is reasonable. The Board places considerable weight on the fact that this compensation amount is the result of successful negotiations between the two municipalities.

[9] The Board finds the 15 year assessment and taxation condition transition period, where the landowners in the proposed annexation area will be taxed at the lower of the two municipalities' rate, is reasonable. Considerable credence is placed on the fact that this provision is the product of successful negotiations between the two municipalities. Additionally, a majority of the landowners in the proposed annexation area are in support of this provision.

[10] In relation to concerns raised by subsurface mineral rights owners, the Board notes that subsurface mineral rights are regulated by the ERCB and are not directly affected by a change in municipal jurisdiction. Moreover, mineral rights owners, as well as the surface landowners, have an opportunity to make their concerns known prior to the issuing of a subdivision, and/or development permit as well as amendments to any statutory plan and/or a Land Use Bylaw. The denial of the entire annexation application, or, alternatively, the exclusion of Section 8 from the annexation application, would mean that the standpoint of the surface landowners would be forfeit in order to accommodate the standpoint of the subsurface mineral rights owners. Furthermore, the Town's ability to achieve orderly, economical and beneficial development would be restricted. Growth of the Town into Section 8 is also reasonable from a servicing and geographic perspective. In addition, the Board finds there is not enough evidence to demonstrate that the proposed annexation would have a clear financial impact on these mineral rights. Furthermore, the Board finds it has no authority to award compensation to an individual as a result of the annexation.

[11] For these reasons, the Board finds the purpose of the annexation and amount of land being requested by the Town is reasonable and the concerns of affected landowners and the public have been given proper consideration.

## **Introduction**

[12] The Town of High River (Town) is located in southwest Alberta, 37 kilometres south of Calgary, at the junction of Highways 2 and 23. The Town is a major service center for the surrounding agriculture industry. The economy of the Town also benefits from vast deposits of natural gas and petroleum in close proximity to the municipality.

[13] On March 8, 2011, the Municipal Government Board (Board) received an application from the Town to annex approximately 1,730 acres of land from the Municipal District of Foothills, No. 31 (MD). The annexation application consists of a report, supporting material aimed at showing compliance with the *Municipal Government Act* (Act), and a certificate, which states the report accurately reflects the results of negotiations with respect to the annexation. The documentation indicates the purpose of the proposed annexation is to ensure the proper future growth and development of the Town, as well to enable both municipalities to plan on a comprehensive and long term basis.

[14] Although the Town and the MD have endorsed the annexation application, objections to the proposed annexation were filed with the Board from three distinct groups. A number of subsurface mineral rights owners objected to the proposed annexation because of concerns regarding future revenue. There were also objections from several landowners adjacent to the Town in the MD who requested their land be included as part of this annexation application. In addition, several affected landowners and/or members of the public were concerned about future development in flood-prone areas. In accordance with s. 120(3) of the Act, the Board held a public hearing on May 25, 2011, to receive information, evidence and argument regarding the annexation proposal.

[15] The following report outlines the role of the Board, provides an overview of the Town's annexation application, summarizes the public hearing held on May 25, 2011, and provides a recommendation to the Minister of Municipal Affairs regarding this matter.

## **Part I Role of the Board, the Minister and the Lieutenant Governor in Council**

[16] Pursuant to s. 116 of the Act, a municipality seeking annexation must initiate the process by giving written notice to the municipal authority from which the land is to be annexed, the Board and any other local authority the initiating municipality considers may be affected. The notice must describe the land proposed for annexation, set out the reasons for the proposed annexation and include proposals for consulting with the public and meeting with the landowners. Once the notice of intent to annex has been filed, the municipalities involved with the proposed annexation must negotiate in good faith. If the municipalities are unable to reach an agreement, they must attempt mediation to resolve any outstanding matters.

[17] At the conclusion of the negotiations and the consultation process, the initiating municipality must prepare a report. This report must include a list of issues that have been agreed to by the two municipalities and identify any issues the two municipalities have not been able to

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agree upon. If the municipalities were unable to negotiate an annexation agreement, the report must state what mediation attempts were undertaken or, if there was no mediation, give reasons why. The report must also include a description of the public and landowner consultation process as well as provide a summary of the views expressed during this process. The report is then signed by both municipalities. Should one of the municipalities not wish to sign the report, it has the option of including the reasons it did not sign.

[18] The report is then submitted to the Board. If the initiating municipality requests the Board to proceed, pursuant to s. 119, the report becomes the annexation application. If the Board is satisfied that the affected municipalities and public are generally in agreement, the Board notifies the parties of its findings and unless objections are filed with the Board by a specific date, the Board makes its recommendation to the Minister without holding a public hearing. If an objection is filed, the Board must conduct one or more public hearings.

[19] The Board has the authority to investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area. If a public hearing is held, the Board must allow any affected person to appear and make a submission. After hearing the evidence and submissions from the parties, the Board must prepare a written report of its findings and recommendations and send it to the Minister of Municipal Affairs (Minister). The Minister has the authority to accept in whole or in part or completely reject the findings and recommendations made by the Board. The Minister may bring a recommendation forward for consideration to the Lieutenant Governor in Council (LGC). After considering the recommendation, the LGC may order the annexation of land from the one municipality to the other.

## **Part II Annexation Application**

[20] Part II is divided into two sections. The first section presents the background to the annexation application, while the second section provides an overview of the application.

### **Background to the Application**

[21] The Town filed its notice of intent to annex, pursuant to s. 116 of the Act, with the Board, the MD, other municipal authorities, and interested parties on July 5, 2008. Following the undertaking of studies in the area, the High River Council (Town Council) resolved to proceed in sequential stages, applying to annex land to the northwest of the Town first and applying to annex land to the northeast of the Town second. Therefore, a new notice of intent to annex was issued on February 2, 2010, including only the northwest area. However, the Council was subsequently approached by surface landowners in the northeast area requesting there be a joint application including both the northwest and northeast areas. Due to this support from surface landowners in the northeast area, Town Council agreed to submit a joint application; therefore, an amended notice of intent was sent to the Board, the MD, and interested parties on June 3, 2010, which included the northwest area and the northeast area. The annexation application under review by the Board in this report relates to the June 3, 2011, notice of intent.

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[22] After negotiations with the MD and consultation with the public and landowners, the Town submitted its negotiation report to the Board on March 8, 2011, along with a request for the Board to proceed with the proposed annexation. Pursuant to s. 119 of the Act, the negotiation report then became the Town's annexation application.

#### **Application Overview**

[23] This section will provide an overview of the annexation application as provided by the Town. The overview has been broken down into five major sub-sections: application process, growth and the need for land, planning and development, environmental considerations, and financial impacts.

#### **Application Process**

[24] Under s. 117 of the Act, the municipal authorities from which the land is to be annexed must meet with the initiating municipal authority to discuss the proposal and negotiate in good faith. In order to comply with this section of the Act, the Town and the MD established an Annexation Negotiation Committee (Committee), consisting of representatives from both municipalities. The Committee played a key role in developing the annexation application, directing the staff managing the project, participating in the public engagement process, and negotiating a range of annexation-related matters. After effective negotiations between the two municipalities and extensive public consultation, the Annexation Agreement was successfully concluded and signed by both municipalities on March 7, 2011.

[25] The process of developing the Annexation Agreement complied with the Town's Municipal Development Plan (MDP), adopted in August of 2009. Policy 2.15.1.5 of the MDP requires landowners, the MD, and the Town to work together in developing an annexation strategy. In keeping with this requirement, the annexation application was the result of a cooperative effort involving these three stakeholders.

[26] The Town and the MD engaged in a lengthy public consultation process. The Town held an open house on June 25, 2008, which was advertised in the **High River Times**, a local newspaper circulating in the area. At this open house, the Town provided information concerning the proposed annexation and received feedback from interested parties. Participants seemed pleased with the concept of future residential growth and development. Many of the questions and concerns raised by affected landowners and the public related to flood mitigation, transportation issues and servicing arrangements. The Town took these concerns into consideration when developing the annexation application.

[27] The Town filed its notice of intent to annex on July 5, 2008, which included lands to the northwest and northeast of the Town's current boundary. However, following the completion of studies in the area, the Town resolved to proceed in sequential stages, applying to annex the northwest area first, then applying to annex the northeast area second. Therefore, a revised notice of intent was issued on February 2, 2010, which only included the northwest area. The Town

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proceeded to hold a general meeting for the landowners to the northeast of the Town on April 14, 2010, for which invitations were sent out to all landowners in the northeast area. The Town also held an open house on May 4, 2010, for landowners in the northwest and northeast areas, which was advertised in three local papers: the **Okotoks Western Wheel** on April 21, 2010, the **High River Town Crier** on April 27, 2010, and the **High River Times** on April 28, 2010. Through the consultation process, the surface landowners in the northeast area requested there be a joint application for both the northwest and northeast areas. In response to this request, a revised notice of intent was sent to the Board, the MD and interested parties on June 3, 2010, which included an application to annex both the northwest and northeast areas. The annexation application under review by the Board in this report relates to the June 3, 2010, notice of intent.

[28] On July 5, 2010, the Town held a non-statutory public hearing concerning the combined northwest and northeast proposed annexation. Notice of the hearing was sent out to annexation stakeholders and advertisements were placed in two local papers: the **High River Times**, on June 22, 2010, and the **High River Town Crier**, on June 22, 2010. Additionally, on October 7, 2010, the MD held a non-statutory public hearing concerning the combined northwest and northeast annexation. An advertisement was placed in the **Okotoks Western Wheel** and notifications were sent out to affected landowners. In addition, periodic annexation status updates were posted on the MD's website.

[29] All surface landowners within the proposed annexation territory agreed to the annexation moving forward; however, many landowners requested there be a tax transition period. Generally, the Town's mill rate is higher than the MD's mill rate, which means that landowners in the proposed annexation area would be taxed at a higher rate if the proposed annexation was approved. The Town took this issue into consideration, adding a 15 year transition period to the annexation application. The details of this provision of the application are outlined in the financial impact section. The majority of surface landowners in the proposed annexation area concurred with this time frame, except for Mr. and Mrs. Matwychuk-Goodman who advocated that the period be 30 years rather than 15 years.

[30] Two landowners adjacent to the northwest boundary of the proposed annexation area were asked if they wished to be included in the annexation application. Both parties decided it was not in their best interest at this time and requested to be excluded. The Town complied with this request and the proposed annexation application does not include these landowners.

[31] The landowners of country residential properties adjacent to the north boundary of the Town and the east boundary of the proposed annexation area were also consulted to determine if there was support for the inclusion of the area in the current application. Of the landowners who responded, 60% requested to be included and 40% requested not to be included. The Town concluded that, since all the landowners in this area were not in agreement, and since it would be reasonable from a planning perspective to include all properties in this area as a group, this area should not be included in the current application. The Town also noted that these lands are not included as a future Urban Growth Area in the 2000 Inter-municipal Development Plan (IDP) between the Town and the MD. The two municipalities established that the future use of these

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country residential properties will be considered in future updates to the IDP, which will be undertaken as a result of the annexation.

[32] Some landowners in the proposed annexation area made representations to the Municipal District of Foothills, No. 31 Council (MD Council), requesting road access and roadway maintenance serving their properties not be adversely affected as a result of the annexation. The Town acknowledged this concern and stated that it would provide services that are equal to, or better than, the services provided by the MD.

[33] Over the course of public consultation, several subsurface mineral rights owners expressed concern that the value of their mineral rights would be reduced by the annexation. The Town considered their perspective, but determined that compensation to mineral rights owners was not reasonable. The reasons for this conclusion are outlined in the financial impacts section. At the same time, the Town agreed to work cooperatively with members of the oil and gas industry who may wish to pursue petrochemical exploration within the proposed annexation area.

[34] As part of the consultation process, the Town communicated with the Board and consulted with a range of affected agencies. The municipality asked the following agencies to respond if they had any questions or concerns: Alberta Transportation, Alberta Environment, Calgary Health Services, Christ the Redeemer Catholic School Division, Foothills School Division, Town of Okotoks, ENMAX, ATCO, TELUS, Shaw Cablesystems, High River Agricultural Society, and Community Futures. The Town received return correspondence from several of these agencies. Alberta Transportation stated it had no objections to the proposed annexation in principle and/or favorable consideration by the Board. Alberta Environment acknowledged the receipt of the Town's communication to the Minister of Environment regarding the proposed annexation, but did not provide any comments. Alberta Energy recommended the Town include affected mineral lease holders as part of its public consultation process. The Town of Okotoks stated it supported the proposed annexation, as it understands the proposal is in compliance with the existing IDP between the MD and the Town. The Town of Okotoks went on to say the proposed annexation would support the Town's anticipated population growth over the next 28 to 30 years on lands which are designated as part of a future urban growth corridor within the IDP. Shaw Cablesystems stated it has no objection to the proposed plan.

### **Growth and the Need for Land**

[35] Through the Alberta Land Use Framework and the draft Calgary Metropolitan Plan (CMP), municipalities are encouraged to take a long term perspective when planning the future of their areas. The proposed annexation corresponds to this outlook. Based on historical growth rates, the existing undeveloped land within the Town will last for 12 to 13 years. The proposed annexation would provide the Town with developable land for additional 18 years of growth. In total, if the proposed annexation was approved, the Town would have enough developable land for the next 30 years.

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[36] The Town and the MD considered it reasonable for the Town to have a 30 year supply of developable land in order to facilitate logical, long term planning. The two municipalities have been jointly managing the future growth of the Town through the IDP, which was approved by both Councils in 2000. The current proposal would see the implementation of a substantial component of the IDP. The IDP indicates future Urban Growth Areas for the Town, which designate the areas to the north and south of the Town boundary, as it existed in 2000, for primarily residential growth and the area to the southeast of the Town for primarily industrial growth. The current application relates to the north area and is in compliance with the development plans for this area, as outlined in the IDP.

**Planning and Development**

[37] The land to be annexed does not have any pending significant changes in its servicing needs. Furthermore, the incremental costs of providing additional services to the properties being annexed is expected to be absorbed as part of the typical service growth pattern within the Town. Additionally, future changes in servicing within the annexation areas will be handled through acreage assessments on future development.

[38] In an effort to ensure the proposed annexation area is serviced in an efficient and fiscally responsible manner, the Town proposed to commence a detailed Growth Management Strategy (GMS) of the proposed annexation area and has engaged a consultant, ISL Engineering, to undertake this project. The GMS will identify needed infrastructure in the proposed annexation area and will categorize logical areas of future development. For each individual area, an Area Structure Plan (ASP) will be prepared to provide the detail necessary to guide future development.

[39] The Town will continue to maintain roadways and road access in the proposed annexation area to a standard equal to, or better than, that provided by the MD. The MD has policies in place for patching roads, surface replacement, weed control, drainage control and snow and ice removal and the Town will continue these maintenance programs. Additionally, the existing transportation services within the Town's current boundary can be extended into the annexation area in a fiscally prudent manner. The extension of Highway 543, between Highway 2 and Highway 2A, and the designed accesses to that road, will provide a skeletal transportation network for the northeast part of the annexation area.

[40] In an effort to ensure certainty, the Annexation Agreement outlines how land uses will be determined after the change in jurisdiction. The land within the proposed annexation area will continue to be governed by the MD's Land Use Bylaw (LUB) in place as of the Effective Date of annexation until such a time as the Town Council redesignates the land use of such land. Upon the Effective Date of Annexation, the MD will transfer all subdivision, planning and development files for the proposed annexation area to the Town. Any development or subdivision applications which are pending as of the Effective Date of Annexation will be managed as follows:

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- (1) on the Effective Date of Annexation, all existing development or subdivision files respecting lands located within the annexation area shall be transferred to the Town; and
- (2) development and subdivision applications will be evaluated by the Town on the basis of the existing MD Land Use Bylaw. However, the Town will administer circulations, timing and approval process pursuant to the Town's established procedures.

[41] The Town and MD signed a formal Memorandum of Understanding (MOU) on September 8, 2010, which reinforced a cooperative approach to planning in the region. The MOU acknowledged the importance of a joint approach to planning for future growth and servicing. The Annexation Agreement is the product of collaboration between the two municipalities with regards to planning for future growth and servicing in the area and is therefore in compliance with the MOU.

[42] In September 2010, the MD adopted an Industrial Area Structure Plan (IASP) for the land north of the proposed annexation area in the MD. The IASP requires joint planning with neighboring municipalities in order to ensure complimentary development. Therefore, the Town, the MD and the Town of Okotoks have struck a formal Partnership Agreement to oversee the successful implementation of the IASP. The Partnership Agreement provides for the cost sharing of new infrastructure as well as the sharing of revenues. The Annexation Agreement is in compliance with the IASP in regards to growth patterns and development plans. The GMS, undertaken by the Town, will consider the possibility of servicing extensions to the area covered by the IASP.

[43] As a result of the annexation application, the two municipalities recognized it will be necessary to review and update the existing IDP between the Town and the MD. Both municipalities have committed to undertake this work cooperatively and expect this project to commence in 2011.

**Environmental Considerations**

[44] As part of the background work undertaken by the Town, an environmental assessment study was commissioned for the land around its current boundary. The proposed annexation area includes the Highwood River Valley, which is a broad area comprising of the river channel and a series of braided channels and oxbows. The environmental assessment study demonstrated that the Highwood River Valley is a constraint for development due to the fact that it has flooded in the past, affecting the land in the surrounding area. The annexation application estimates the floodway area is 324 acres and the flood fringe is 22.5 acres.

[45] Due to the acknowledged sensitivity of this area, the two municipalities agree these lands must be carefully managed and protected from inappropriate development. While the LUBs of both municipalities place severe restrictions on development in river valleys, especially on floodway land, both municipalities agree a proactive approach is necessary, in conjunction with



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landowners, to ensure the lands are conserved for future generations. Therefore, the Annexation Agreement commits the Town and the MD to work jointly on the development of policies that will conserve this land and protect it from negative development. Furthermore, as part of the updated IDP, contemplated by the Town and the MD, the two municipalities have agreed to include a detailed analysis of the methods and opportunities to conserve this sensitive area in the proposed annexation area.

**Financial Impacts**

[46] As part of the negotiations between the Town and the MD, the financial impact of the proposed annexation on both municipalities was evaluated. For the MD, the annexation area generated approximately \$142,800 in tax revenue in 2009. This represented 0.7% of the MD's total municipal tax revenue for that year. The MD would lose this tax revenue perpetually if the annexation was approved; however, it would also no longer have to provide services to the proposed annexation area, which would lower expenditures.

[47] For the Town, the proposed annexation area would generate an additional \$128,100 in tax revenue. This would represent 1.5% of the total municipal tax revenue for the Town when compared to 2009 figures. Future development of the proposed annexation area is expected to be revenue neutral. As part of the Town's overall development plans, offsite levy rates will be applied to any new developments in the proposed annexation area, in order to ensure any future projects pay for themselves, leaving a neutral financial impact on the existing residents of the Town.

[48] The development of the annexation area could provide benefits to the Town in terms of enhancing the value of land within the existing municipality, which could spur future development. Therefore, the two municipalities agreed that the Town is likely to be the financial beneficiary of the proposed annexation in the long term. In recognition of this fact, a compensation package was negotiated between the two municipalities. Based on recent annexation decisions in the region and the Town's 2002 annexation, the two municipalities agreed the Town should compensate the MD \$550 per developable acre. Based on an approximate area of 1,450 acres, this would result in \$800,000 in compensation. Under the compensation arrangement in the Annexation Agreement, the Town will pay the MD a total of \$800,000 in four equal annual installments, to begin in the year following the Effective Date of the Annexation Order. Furthermore, if, during the initial transition period, the MD is assessed an Education Tax requisition on lands in the annexation territory for which the Town collects the revenue, the Town will remit the Education Tax collected on the said lands to the MD.

[49] Through the advice of the Town's lawyers, it was determined that compensation to subsurface mineral rights owners as a result of annexation would be inappropriate. The lawyers indicated that, in accordance with recent decisions of the Board, subsurface mineral rights, which are regulated by the Energy Resources Conservation Board (ERCB), are not directly affected by a change in municipal jurisdiction. Furthermore, it would be contrary to the provisions of the Act to provide compensation to mineral rights owners. S. 127(a) of the Act contemplates that

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municipal authorities may be required to enter into compensation arrangements with other municipalities as a result of an annexation; however, this section does not refer to individuals entering into compensation arrangements. Therefore, it is implied that compensation for individuals as a result of an annexation is not contemplated by the Act. For these reasons, the Annexation Agreement does not include compensation for the owners of subsurface mineral rights in the proposed annexation area.

[50] In order to minimize the taxation impacts on existing MD residents, the land and improvements in the Annexation Territory will continue to be assessed on a market value basis and taxed for a period of 15 years from the date of the annexation order at the lowest applicable mill rate of either the MD or the Town unless:

1. There is an approved change in zoning (designation) to a land use other than agricultural, urban reserve or their equivalents, whereupon the land will be taxed in accordance with the Town's taxation provisions starting in the next calendar year, or,
2. A parcel of land is connected to the Town's sewer or water services after the Effective Date of annexation, or,
3. A landowner requests their land and improvements be taxed in accordance with the Town's rates.

[51] On expiry of the 15 year period, all lands and improvements in the annexation territory that continue to be taxed at the MD's rates will convert to those of the Town in the next calendar year after the expiry of the 15 year term.

**Part III Public Hearing**

[52] As a result of objections from affected landowners and the public, and in accordance with s. 120(3) of the Act, the Board held a public hearing on May 25, 2011, to receive information, evidence and argument on the proposed annexation. The following provides a summary of the written and oral submissions received by the Board from the Town, the MD and the affected landowners/member of the public.

**Town Presentation**

[53] During the public hearing, the Town presented an overview of the annexation application and provided additional information concerning the annexation proposal.

**Application Process**

[54] The Town confirmed the negotiations between the two municipalities were successfully concluded and that there were no outstanding issues. Consultations with the affected landowners and the public were done in accordance with the Act. The two municipalities conducted a joint

open house on May 4, 2010, the Town conducted a public hearing on July 5, 2010 and the MD held an open house on October 7, 2010.

### **Growth and the Need for Land**

[55] The Town submitted the CMP and the *Alberta Land Stewardship Act* advocate planning for the long term, with a 50 year, or longer, perspective. Furthermore, both the Town Council and the MD Council are comfortable with a 30 year horizon for planning.

[56] The Town indicated that, after considering the historical growth rates of the municipality, it needs more land to accommodate future growth. The Town identified that its current population is around 12,000 and, according to the CMP, it will grow to a population of 31,138 in 30 years. Based on this projection, the Town will grow by 19,138 in the next 30 years. The Town argued that the areas available for residential development within the Town's current boundary could accommodate approximately 8,000 people. Using historical growth rates of development, this undeveloped land would last approximately 13 years. The Town stated it wants more land available for development in order to ensure effective planning. The proposed annexation area includes approximately 1,400 acres of developable land, half of which could be available for residential development. Assuming significant increases in density, this area would accommodate approximately 13,000 people, which would provide enough land for around 30 years of growth.

[57] The Town indicated that interest was expressed in expanding the annexation area negotiated by the two municipalities. Some of the owners of the land located adjacent to the north of the current Town boundary and east of the proposed annexation requested to be included as part of this annexation. The Town argued that, in order to allow for consistent planning and development, these properties should be annexed as a unit, rather than individually. Since there is disagreement between the landowners in this area over whether they want to be included in the application, the Town decided to leave them out of this current annexation. The owner of a 3.8 acre parcel of land adjacent to the southwest corner of the Town's current boundary also requested to be included after the annexation application had been developed. As the Town did not want to delay submitting the application, it advised the landowner to bring the matter to the MGB at the hearing. The Town submitted it would not be opposed to this land being included as part of the current application.

### **Planning and Development**

[58] The Town submitted that its consultants have determined that utility services can be effectively provided to the proposed annexation area. The Town has a water license for a population of between 30,000 - 35,000 people and would be able to provide water servicing to the entire area. However, although its current wastewater system can accommodate some future growth, the Town will need to expand the existing wastewater system once the population reaches around 16,000. Furthermore, according to the Town's engineers, five storm water ponds are also needed, in order to have storm water management for the entire Town. To address these

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issues, the Town stated that, if the annexation is approved, it will undertake a detailed GMS of the annexation lands to determine the most fiscally responsible way to service the proposed annexation area. It is expected the GMS will identify the details of needed infrastructure and will be completed in 2012.

[59] The Town contended that transportation and road services are feasible in the proposed annexation area. The Town's consultants have developed a conceptual transportation network for the annexation area. Moreover, the Town has agreed that it will continue to maintain the roads to the same standards as the MD.

[60] The Board was informed that the annexation was motivated by a joint desire for responsible, long term planning. The two municipalities adopted an IDP in 2000, which sets out how they will deal with planning matters adjacent to their shared boundary. The IDP indicates Urban Growth Areas in the region, which are suitable for future growth. The Town indicated that the proposed annexation area is part of the Urban Growth Areas, which demonstrates that this land is ideal for future growth.

[61] The MD has adopted an IASP for the land just north of the proposed annexation area. Joint planning between the Town and the MD is required in order to ensure a seamless transition between the northern boundary of the proposed annexation area and the area included in the IASP. Therefore, the Town, the MD and the Town of Okotoks have struck a formal Partnership Agreement to oversee the successful implementation of the IASP. The Town argued that this Annexation Agreement is in line with the IASP, as it will contribute to coordinated planning in the region.

**Environmental Considerations**

[62] The Town stated that an environmental assessment of the land around the Town was completed in 2009, which demonstrates that the Highwood River Valley is constrained for development. Approximately 324 acres are within the river's floodway and a further 23 acres are within the flood fringe. The Annexation Agreement commits the Town and the MD to develop policies for the area. In order to fulfill this commitment, the Town has engaged consultants to prepare a water resource sustainability study. This study will re-evaluate the floodway and flood fringe areas of the Town and the areas upstream and downstream, which would include the proposed annexation area. The study will also re-evaluate the development potential of areas adjacent to the river. The Town identified that the study is being directed by the Highwood River Advisory Committee, which is comprised of representatives of the Town, the MD and the general community.

**Financial Impacts**

[63] The Town specified that, generally, the costs of servicing the area will correspond to the revenue gained through property taxes; therefore, there will not be a significant financial impact on either municipality. However, the two municipalities agreed that the Town will most likely be

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the beneficiary of the annexation in the long term. The Town stated that the development of the annexation area could provide benefits to the Town in terms of enhancing the value of land within the existing municipality, which, in turn, could spur future development.

[64] In order to ensure the financial impact of the annexation on both municipalities is reasonable, the Committee recommended that the Town compensate the MD for lost municipal revenue. The agreed upon compensation is based on \$550 per developable acre. Since there are about 1,450 acres within the proposed annexation area, the two municipalities have agreed that compensation from the Town to the MD would be \$800,000, which is to be paid in equal installments over a four year period. The two municipalities have agreed that there are no special properties within the annexation area that would warrant changing this compensation amount.

[65] The Town submitted that the proposed annexation area will continue to be assessed on a market value basis and taxed for a period of 15 years from the date of the annexation order at the lowest applicable mill rate of either the MD or the Town unless there is a zoning change to a land use other than agricultural, urban reserve or their equivalents. The assessment and taxation conditions will also be removed if sewer or water services are subsequently provided to the lands or if the landowner requests to be taxed at the Town's rate. In addition, the Town requested an amendment to the assessment and taxation conditions so that only zoning changes initiated by the landowner would prompt the premature end of the 15 year transition period. Upon questioning from the Board, the Town clarified that the annexed area is to be assessed as if it remained in the MD for 15 years.

[66] Based on advice from its lawyers, the Town stated that compensation to subsurface mineral rights owners would be inappropriate. The Town argued that, in accordance with recent decisions of the Board, subsurface mineral rights, which are regulated by the ERCB, are not directly affected by a change in municipal jurisdiction. Therefore, the proposed annexation could not have a direct negative impact on subsurface mineral rights owners. Furthermore, the Town contended that the Board does not have the jurisdiction to make a determination respecting a claim for compensation to individual landowners as a result of the annexation. S. 127(a) of the Act only refers to municipal authorities being able to enter into compensation arrangements, not individuals. Therefore, it is implied that compensation for individuals as a result of an annexation is not contemplated by the Act. Accordingly, the Town stated that this agreement does not include any compensation for the owners of subsurface mineral rights in the proposed annexation territory.

**MD Presentation**

[67] During the hearing the MD identified that it supported the annexation application before the Board and was in agreement with the amount of land requested by Town. With regard to the residential properties adjacent to the north boundary of the Town and the east boundary of the proposed annexation area, the MD indicated that those properties are not included as part of the Urban Growth Area, as defined by the IDP and that the MD does not support these lands being annexed at this time. Concerning the request by the landowner adjacent to the southwest corner

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of the Town to be included in the current annexation application, the MD identified that it has not designated his land for any use. However, the Board was informed that the MD Council has stated it would not object if the Board included this land as part of this annexation.

[68] The MD stated that comprehensive planning is important and that the proposed annexation is in line with the IDP. Moreover, the MD is pleased that the Town has committed to maintain the roads in the proposed annexation to the same level they are currently maintained by the MD. The MD is also pleased that storm water management and flooding issues were addressed by the Town during the negotiation process. It was confirmed that the MD is committed to ensuring the safety of the public and the protection of the river. It was noted that a livestock operation is located to the west of the Town. During the negotiations the MD took steps to ensure the Town understood the legislation surrounding this livestock operation. The MD indicated that the operators of the livestock facility were consulted and gave their consent to the proposed annexation.

**Landowner/Public Submissions**

**Anne Gilchrist**

[69] In both written and oral submissions, Anne Gilchrist stated that she has concerns regarding the proposed annexation. Ms. Gilchrist lives in the southwest corner of the Town. She indicated that there was flooding in the proposed annexation area in 2005 and 2008; therefore, it is likely these areas will flood in the future. She was concerned that, if flooding occurred in the future, more provincial tax dollars would be spent to compensate the Town for flood damage. Therefore, she urged the Town not to designate the floodway or flood fringe for development. She noted that the map used by the Town to establish the floodplain is from 1992 and is, consequently, out of date. In addition, since the flood pattern is always changing it is difficult to predict where flooding will occur in the future. Due to these concerns, Ms. Gilchrist argued development should wait until the ongoing flood study is completed.

**Ken Harrison**

[70] In both written and oral submissions, Ken Harrison stated that he is opposed to the annexation because he wants his land to be included in the application. Mr. Harrison owns 3.8 acres of land in the MD, bordering the southwest corner of the Town. This land was not included in the 2002 annexation. He identified that his land is bordered by the Town on two sides and the annexation of his property would square off the Town's boundary. He also stated that he wants to be able to access services on his land in the future. His request to be annexed was received by the Town outside the public consultation period, so the Town suggested he make his request directly to the Board. Mr. Harrison indicated that the Town did not want to delay the process for other landowners by including him in the annexation application.

**Jim Mulholland**

[71] In his written submissions, Jim Mulholland stated he owns land in the MD, to the north of the Town and to the east of the proposed annexation area. Mr. Mulholland requested that his land be included in the proposed annexation. He stated that it would be in his interest, and in the interest of his business, the New Holland Dealership, which occupies his property, to be part of the Town. He argued that his land is already adjacent to the existing Town boundary, which makes the annexation of his lands easy to accomplish without affecting any other surrounding property. In addition, his business would provide the Town with access to increased services. He indicated that he is willing to work with the Town on the issue of road access to the properties in his area. Additionally, he contended that he is also interested in moving his business to the east of the property, adjacent to Highway 2, in order to be more visible from the Highway.

[72] In an oral submission, Mr. Mulholland argued that it makes good planning sense to include his property, and the properties around him, in the annexation application because Highway 2 makes a logical boundary for the Town. He pointed out that there has been ongoing water drainage issues in the area ever since development occurred to the south. Mr. Mulholland was concerned that, in the future, he will be surrounded by development, which will make it difficult to address these drainage concerns.

**Joseph and Sandra Matwychuk-Goodman**

[73] Joseph and Sandra Matwychuk-Goodman own land in the proposed annexation area. In written submissions, Mr. and Mrs. Matwychuk-Goodman argued, since the annexation envisions a 30 to 50 year growth plan, the assessment and taxation provisions of the MD should apply to the proposed annexation area for 30 years. They stated that this would allow them to continue with their farming operations. In addition, they illustrated that part of their land is currently zoned as Rural Industrial. They requested that a similar zoning be considered once their land is under the Town's jurisdiction. Mr. and Mrs. Matwychuk-Goodman consented to the annexation of their lands into the Town.

[74] In an oral submission, Mr. Matwychuk-Goodman elaborated on the reasons a 30-year taxation transition period would be fair. He contended that 15 years is too short because it is difficult to predict how much infrastructure will be constructed on the land to be annexed in that time; therefore, a longer timeframe is required. Furthermore, he reaffirmed his request that his land currently zoned as Rural Industrial remain unchanged if the proposed annexation is approved.

**Suzanne Higgins**

[75] In a written submission, Suzanne Higgins stated that she objects to the annexation as presently proposed and wished to make an oral presentation at the hearing on May 25, 2011.

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[76] Ms. Higgins gave an oral submission at the hearing on behalf of Nan Pernal, Jan Martin, Robert Lawson, Darrell Lawson, Don Edey (Executor of the Bernice Edey estate) and Delbert Edey (Executor of the Norman Edey estate). Ms. Higgins stated that she owns the subsurface mineral rights to three quarters of Section 8, which is included in the proposed annexation area and that she augments her retirement income through leasing her mineral rights. She contended that the annexation would have a negative impact on those mineral rights because once development occurs in the proposed annexation area her mineral rights will not be attractive to energy companies. She argued that the Board should reject the annexation proposal. Alternatively, if the Board decided to allow the annexation, the Board should either exclude Section 8 from the annexation, or compensate the mineral rights owners for their loss.

**Kristi Beunder**

[77] Kristi Beunder, of Longview Planning and Design gave both written and oral submissions. Ms. Beunder represented the Spitzee Landowner Group (SLG), which includes landowners from the northwest of the proposed annexation area. Ms. Beunder submitted that the SLG fully endorses the annexation of their lands by the Town. She indicated that the SLG is aware of flooding concerns and is confident that the pending study on flooding in the area will help refine development plans for the future. In addition, Ms. Beunder contended that the northwest area can be effectively serviced and that the Effective Date of annexation should be January 1, 2011.

**Art Cox**

[78] Art Cox owns land in the MD to the north of the Town and to the east of the proposed annexation area. In oral submissions, Mr. Cox requested that his land be included in the proposed annexation area. He contended that several of the landowners in his area are also interested in being annexed; however, they were not given the option to be annexed. He stated that his property borders Highway 2 and that he would like to see frontage development along this Highway. Furthermore, he indicated that surface water flows off the Highway onto the properties in his area, which is an issue that would need to be addressed regardless of whether these lands remain in the MD or join the Town.

**Delbert Edey**

[79] In a written submission, Delbert Edey indicated that his family has an interest in a portion of the subsurface mineral rights located within the proposed annexation area. Mr. Edey contended that, if the annexation was allowed, it would be unlikely that his family would be able to lease those rights to energy companies. He highlighted that most of the mineral rights holders in the area are on pensions and the income from their mineral rights is important. Additionally, he argued that the growth study used by the Town was undertaken before the economic downturn in Alberta; therefore, the population projections will not be reached for 40 to 50 years. As such, this annexation amounts to land banking and should not be allowed. Furthermore, he indicated that his family was never contacted as to the annexation proposal and were, therefore,



never consulted. As a result, he argued that the mineral rights owners in the proposed annexation area should be given time to obtain appropriate legal advice.

**Jeanne S. Martin**

[80] In a written submission, Jeanne S. Martin stated that she is concerned about the proposed annexation. Mrs. Martin and her cousin, Nan Pernal, own mineral rights to the northeast quarter of Section 8, Township 19, Range 28, West of the Fourth Meridian. Her cousin, Suzanne Higgins, owns rights to three quarters of Section 8. She emphasized that her relatives cultivated the land and contributed to the province and the country. She stated that she is opposed to the annexation of Section 8 because, once the annexation occurs, her mineral rights will become unattractive to energy companies and, therefore, the value of her mineral rights would be sterilized. Therefore, she requested that either Section 8 not be included in the proposed annexation or, prior to any urban development, due consideration and compensation be given to the mineral rights owners of Section 8.

**Nan B. Pernal**

[81] In a written submission, Nan B. Pernal indicated that she is opposed to the annexation of Section 8, Township 19, Range 28, West of the Fourth Meridian because the mineral rights under this section would become sterilized. Ms. Pernal stated that three members of her family own mineral rights to Section 8 and they have received considerable remuneration over the years from leasing those mineral rights. Mrs. Pernal asked that either Section 8 not be included in the proposed annexation or, prior to any urban development, due consideration and compensation be given to the mineral rights owners of Section 8.

**Denny Anderson**

[82] In an oral submission, Denny Anderson expressed concern over potential flooding in the proposed annexation area. He argued that nothing in the Annexation Agreement states that development will not occur until the ongoing flood study is completed. He contended that no development should occur in the flood area and the flood fringe until this study is completed.

**Town Response to the Landowners/Public**

[83] In response to landowner/public concerns over potential development in the floodplain, the Town stated the proposed annexation does not mean development will occur in these areas. There is no formal agreement over how the land will be used. The Town indicated that a planning process will be carried out before any development is approved for the proposed annexation area. In addition, if the flood study demonstrates the need to reconsider a certain development plan, the Town will do so.

[84] In response to Mr. Harrison's request to be included in the proposed annexation area, the Town indicated it did not object to the inclusion of this land.

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[85] In response to the landowners to the north of the Town and to the east of the proposed annexation area, who wish to be included in the current annexation application, the Town argued that the entire area should be considered for annexation as one unit. The Town stated that it held a meeting in 2008 to see how many landowners in this area wanted to be included in the annexation application. Of the individuals who attended that meeting, 60% supported being included and 40% opposed being included. Due to this variance of opinion, the Town decided not to include these lands in the current application. Furthermore, the Town submitted that these lands are not included in the current IDP as part of the Urban Growth Area; however, they will be considered for inclusion in the new IDP, which is underway. Additionally, the Town contended that access issues with regards to these lands would have to be considered if these lands were to be part of a future annexation application.

[86] In response to Mr. and Mrs. Matwychuk-Goodman, the Town stated that the current zoning of their property will not change automatically if the annexation is approved. In regards to their concern over the taxation provisions, the Town argued that the administration costs associated with only allowing Mr. and Mrs. Matwychuk-Goodman to have a 30 year period would be too high; therefore, if the Board allows Mr. and Mrs. Matwychuk-Goodman to be taxed at the MD rates for 30 years then the rest of the landowners in the proposed annexation area should be given the same timeframe. However, the Town argued that a 30 year taxation period would be too long.

[87] In response to the concerns raised by mineral rights owners, the Town stated that subsurface mineral rights, which are regulated by the ERCB, are not directly affected by a change in municipal jurisdiction. Therefore, the proposed annexation could not have a direct negative impact on subsurface mineral rights owners. The Town also indicated that the Act contemplates compensation to municipalities, not to individuals.

**MD Response to Landowners and/or the Public**

[88] The MD did not provide any additional comments.

**Part V Board Recommendation**

[89] After reviewing the submitted documentation and hearing from the Town, the MD, the affected landowners, and the general public, the Board finds the annexation application to be reasonable. Therefore, the Board recommends the annexation of the land identified in the Town's annexation application with an effective date of January 1, 2012. The Board also recommends the approval of the conditions requested in the annexation application, with the amendment that only zoning changes initiated by the landowner will trigger the premature expiration of the 15 year taxation transition period.

**Part VI Reasons**

**Annexation Process**

[90] S. 117 of the Act requires the municipal authorities from which the land is to be annexed to meet with the initiating municipal authority to discuss the proposal and negotiate in good faith. The Town and the MD complied with this requirement of the Act as there was effective negotiation between the two municipalities and the annexation application was signed by both municipalities. This clearly demonstrates the negotiation process was complete and effective. The Board emphasizes the importance of negotiations and mediation as a method to ensure cooperation and efficiency in all annexation applications.

[91] The Board is satisfied the Town effectively consulted with affected landowners and the public. The Town held several public meetings regarding the proposed annexation and advertised for those meetings in a reasonable and timely manner. Although not required to do so, the MD also held a public meeting and supplied information concerning the proposed annexation on its website, in an attempt to create awareness of the Town's proposed annexation.

[92] The Town has been responsive to concerns from affected landowners regarding the proposed annexation. In order to accommodate the landowners in the northeast area of the proposed annexation area, who asked to be included in the application, the Town revised its notice of intent to include this area. The Town also responded to concerns from affected landowners over the tax provisions by including a 15 year transition period in the annexation application. During this transition period landowners in the proposed annexation area will be taxed at the lower of the two municipalities' rates, unless certain set circumstances are met. In addition, at the request of two landowners to the northwest of the proposed annexation area, the Town did not include these two properties in the annexation application. The Board finds that this consultation and, in turn, accommodation by the Town demonstrates the open and comprehensive character of the public consultation process.

[93] The consultation process described by the Town clearly demonstrates that opportunities were available for the landowners adjacent to the north border of the Town and the east border of the proposed annexation area to request their land be included in the annexation. Moreover, the Town asked the landowners in the area if they were in favour of being annexed. Since there was no consensus from these landowners, it was reasonable for the Town to not include these lands as part of the annexation application. As both municipalities conducted numerous public consultation activities, the Board also concludes that Mr. Harrison, the owner of 3.8 acres of land to the southwest of the Town, was given sufficient opportunity to voice his desire to be annexed prior to the submission of the annexation application by the Town.

[94] The Board accepts that the Town effectively consulted with affected agencies including: Alberta Transportation, Alberta Environment, Calgary Health Services, Christ the Redeemer Catholic School Division, Foothills School Division, Town of Okotoks, ENMAX, ATCO, TELUS, Shaw Cablesystems, High River Agricultural Society, and Community Futures. In

particular, correspondence from Alberta Transportation identified that it has no objections to the proposed annexation in principle. In response to a recommendation by Alberta Energy, the Town include affected mineral lease holders as part of its public consultation process. The Board notes that the Town held several public meetings and advertised for those meetings in public forums, inviting all members of the public, including mineral rights holders, to participate in the consultation process.

### **Growth and the Need for Land**

[95] The Board acknowledges that the CMP and the *Alberta Land Stewardship Act* encourage long term planning. In addition, the two municipalities are in agreement that a 30 year horizon for planning is reasonable. It is typical for an urban municipality to maintain a 30 year land inventory within its boundary so that the municipality can plan future growth. As a result, the Board finds the 30 year time horizon contemplated by the annexation application is appropriate.

[96] The Board accepts the growth projections presented by the Town and is satisfied the amount of land requested by the Town is reasonable. The CMP establishes that the Town's population will grow substantially over the next 30 years. Evidence provided by the Town demonstrates the existing undeveloped land within the its boundary will last for 12-13 years. The proposed annexation area would give the Town enough land for a reasonable period of time in order to ensure long-term, practical planning.

### **Planning and Development**

[97] The Board finds that the Town will be able to service the proposed annexation area in an effective and efficient manner. Servicing arrangements proposed by the Town are reasonable, as they have considered water capacity, wastewater servicing and storm water. Additionally, the GMS, which will be undertaken by the Town if the annexation is approved, will identify needed infrastructure in the annexation area in greater detail. The ASPs, which will be undertaken for each development area within the annexation area, will provide the coordination and structure necessary to guide future planning. Therefore, the Board accepts that the GMS and, in turn, the ASPs will ensure efficient servicing and structured development.

[98] The Board finds that the Town has considered road maintenance and transportation as part of its servicing arrangements. The Town stated it will continue to maintain roadways and road access in the proposed annexation area to a standard equal to, or better than, that provided by the MD. The Board concludes that existing transportation services within the Town's current boundary can be extended into the proposed annexation area in a fiscally prudent manner. The Board accepts the Town's submission that the extension of Highway 543, between Highway 2 and Highway 2A, and the designed accesses to that road, provide a skeletal transportation network for the northeast part of the proposed annexation area, which will make future transportation needs easier to accommodate. In addition, the ASPs, resulting from the GMS, will help ensure efficient and measured development of roads in the proposed annexation area. In relation to transportation, the Board determines that any concerns Alberta Transportation may

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have regarding Highways in or adjacent to the proposed annexation area can be addressed at future planning levels.

[99] The Board acknowledges the commitment by the Town at the hearing that zoning in the proposed annexation area will not change as a result of the annexation. The Annexation Agreement states the land within the proposed annexation area will continue to be governed by the MD's LUB in place as of the effective date of annexation until such a time as the Town Council redesignates the use of such land. Moreover, s. 135(1)(d) of the Act states "bylaws and resolutions of the old municipal authority that apply specifically to the areas of land continue to apply to it until repealed or others are made in their place by the new municipal authority." The Board notes that any change to the land use in the annexation area would require the Town to amend its LUB. This would require the Town to conduct a public hearing and give notice in accordance with s. 606 of the Act. The public consultation process required by the Act would afford the landowners and the public an opportunity to bring forward their concerns regarding changes to a LUB and/or any other statutory plan.

[100] The Board finds it would not be reasonable to include the landowners adjacent to the north boundary of the Town and the east boundary of the proposed annexation area in the present annexation. These lands are not included in the Urban Growth Area identified in the current IDP. Moreover, there was no evidence to conclude that all the landowners wanted to be annexed by the Town. The Board accepts the Town's argument that, in order to ensure consistent planning and development, these lands should be included as one group. Therefore, the Town's decision to exclude the area from the current application was justified. The Board acknowledges that these lands may be marked as an Urban Growth Area in the updated IDP, which is forthcoming; therefore, this area may be suited to be included in a future application for annexation once the new IDP is completed. The drainage issues identified by the landowners is something that could be considered by the IDP, but would be best dealt with during the subdivision and development process.

[101] The Board also finds including the 3.8 acres of land to the southwest of the Town's boundary, owned by Mr. Harrison, would not be reasonable. The two municipalities undertook a public consultation process that included public hearings and open houses. These activities were published in the local newspapers. The public attending these open houses and meetings relied on the information provide to help form their opinions and shape their input. The municipalities used this input to influence the negotiation of such things as the annexation area and the amount of compensation. The Board recognizes this is a small parcel of land; however, there is not enough evidence to demonstrate that the public was fully consulted concerning the inclusion of this land as part of the annexation.

[102] The Board finds the annexation application is in compliance with a number of regional partnerships concerning planning and development. The IDP between the two municipalities designates the proposed annexation area as an Urban Growth Area; therefore, the Town's aspirations to develop the proposed annexation area have been clearly articulated and made public. Furthermore, the Board accepts the Town's submission that the proposed annexation is in

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line with the IASP, which contemplates coordinated planning for the region. The GMS, undertaken by the Town for the proposed annexation area, will identify the possibility of servicing extensions to the industrial area to the north, which demonstrates that the two municipalities have considered how the proposed annexation can compliment and support the IASP. Additionally, the Board notes that the MOU signed by the Town and the MD in 2010 acknowledged the importance of a joint approach to planning for future growth. The Board finds that the proposed annexation complements the MOU, since it is a negotiated agreement between the two municipalities, which addresses both growth and planning.

[103] The Board acknowledges the MD's concerns over livestock operations in the area and accepts the MD's submission that this issue was addressed through the negotiation process.

**Environmental Considerations**

[104] The Board notes the concerns from affected landowners and/or the public regarding potential flooding in the proposed annexation area. Flooding concerns must be taken seriously in order to ensure safe and viable development and in order to safeguard the environment; however, it is clear that the Town takes the safety of the public and the maintenance of the environment seriously. The Town has acknowledged the issue and intends to develop outside this sensitive area. Furthermore, the Town has initiated a water resource sustainability study for the area, which will determine which parts of the proposed annexation area are prone to flooding. This will help ensure development in the proposed annexation area is safe and environmentally sound. The Board also notes that this study is directed by the Highwood River Advisory Committee, including representatives from the Town, the MD and the general community, which will ensure intermunicipal communication and cooperation and facilitate communications with the public.

**Financial Impact**

[105] The Board finds the proposed annexation will have a small financial impact on both municipalities. Although the MD will lose tax revenue through the proposed annexation, it will no longer have to service those lands. Conversely, the Town will gain tax revenue; however, it will have to provide services to the proposed annexation area. That said, the Board accepts the Town's submission that, in the long term, the proposed annexation would most likely benefit the Town more than the MD. The Board acknowledges that the proposed annexation could enhance the value of land within the Town, which could spur more development and lead to financial gain for the municipality.

[106] In light of this potential long term benefit, the Board finds that the amount of compensation being proposed is appropriate. The Board concludes that \$800,000 paid in four equal installments over the course of four years, as agreed by the two municipalities, is reasonable. The Board emphasizes the importance of negotiation between municipalities, as required under the Act and therefore places considerable weight on the fact that this compensation amount is the result of successful negotiations between the two municipalities.

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[107] The Board finds the 15 year assessment and taxation condition transition period, where the landowners in the proposed annexation area will be taxed at the lower of the two municipalities' rate, is reasonable. Once more, the Board acknowledges the importance of negotiations between municipalities as a central aspect of the annexation process; therefore, considerable credence is placed on the fact that this provision is the product of successful negotiations between the two municipalities. It is also recognized that a majority of the landowners in the proposed annexation area are in support of this provision, which adds to its credibility. As the suggested 15 year transition period is the upper end of the period generally recommended by the Board in the past, the Board concludes that the 15 year transition timeframe is more acceptable than the 30 year period suggested by one landowner.

[108] The Board notes that the Town has requested an amendment to the Annexation Agreement so that only zoning changes initiated by a landowner would trigger the early expiration of the 15 year transition period. The Board finds this amendment to be reasonable as it would be unfair for the 15 year transition period to be ended prematurely by a mechanism outside the landowner's control. The Board also accepts the oral submission from the Town that the annexed area is to be assessed as if it remained in the MD while the assessment and taxation conditions are in effect.

[109] In relation to concerns raised by subsurface mineral rights owners, the Board notes that subsurface mineral rights are regulated by the ERCB and are not directly affected by a change in municipal jurisdiction. The Board acknowledges that land use intensification can occur regardless of whether the lands in question are located in a rural or urban municipality. Mineral rights owners, as well as the surface landowners, have an opportunity to make their concerns known prior to the issuing of a subdivision, and/or development permit as well as amendments to any statutory plan and/or a Land Use Bylaw. Additionally, the Town has agreed to work cooperatively with members of the oil and gas industry who may wish to pursue petrochemical exploration within the annexation area, which demonstrates a readiness on the part of the Town to ensure that the rights of subsurface mineral rights owners are not adversely affected in the future.

[110] The Board notes that three proposals were brought forward by subsurface mineral rights owners regarding the proposed annexation because they believe the proposed annexation would infringe upon their rights. The first submission was that the entire annexation application be denied. Alternatively, if the proposed annexation is allowed, it was tendered that Section 8 be excluded from the proposed annexation area. Lastly, if Section 8 was included in the proposed annexation area, it was suggested that compensation be given to the mineral rights owners of Section 8 in lieu of its exclusion. The Board has considered each of these submissions in turn.

[111] In relation to the proposition that the entire annexation application be denied, the Board notes that the surface landowners in the proposed annexation area are in favour of the annexation. Moreover, the Town has clearly demonstrated the need for additional lands within its boundary. Consequently, the denial of the entire annexation application would mean that the standpoint of the surface landowners would be forfeit in order to accommodate the standpoint of

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the subsurface mineral rights owners. Furthermore, the Town's ability to achieve orderly, economical and beneficial development would be restricted. In addition, the Board finds there is not enough evidence to demonstrate that the proposed annexation would have a clear financial impact on these mineral rights. The Board emphasizes that annexations only involve a change in municipal jurisdiction and that land use is not necessarily affected by an annexation.

[112] In relation to the proposal that Section 8 be excluded from the proposed annexation area, the Board notes that the surface landowners in Section 8 are in favour of the proposed annexation. The Board finds growth of the Town into Section 8 is reasonable from a servicing and geographic perspective. Again, this proposal would mean that the standpoint of the surface landowners in Section 8 would be sacrificed in order to accommodate the request of the mineral rights owners. Once more, the Board finds that there is not enough evidence to demonstrate that the proposed annexation would have a clear financial impact on the owners of those mineral rights. Therefore, the Board determines Section 8 should not be excluded from the current application.

[113] In relation to the proposal that compensation be awarded to individual mineral rights owners in lieu of the exclusion of Section 8 from the proposed annexation area, the Board finds it has no authority to award compensation to an individual as a result of the annexation. S. 127(a) of the Act states that an order to annex land to a municipal authority may "require a municipal authority to pay compensation to another municipal authority." Since the Act clearly refers to compensation within the context of a transfer between two municipalities, the Board finds that it does not have jurisdiction to consider whether compensation should be awarded to an individual. Additionally, even if the Board had jurisdiction to award compensation, the Board emphasizes that mineral rights are not directly affected by a change in municipal jurisdiction and, therefore, compensation would not be reasonable.

[114] The Board finds the effective date for the annexation should be January 1, 2012. An effective date of January 11, 2011 would be too remote, which could create administrative difficulties for both municipalities when it comes to taxation. In addition, having the annexation take effect in the middle of the tax year could also create administrative complexity. Therefore, the Board determines it is reasonable for the annexation order to take effect on January 1, 2012.

**Summary**

[115] The Board finds that the purpose of the annexation and amount of land being requested by the Town is reasonable and that the concerns of affected landowners and the public have been given proper consideration.