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# **Spinning Wheels in the Castle: A Lost Decade for Sustainability in Southwestern Alberta**

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## Executive Summary

The Castle River area of southwestern Alberta embodies many of the province's finest features and defining characteristics. Natural resource development, agriculture, tourism and outdoor recreation are important land uses in this area. The Castle is also an ecologically significant part of the province, with biodiversity second only to Waterton Lakes National Park. Not surprisingly, land-use decisions in the Castle reflect a broad range of values and interests, not all of which are mutually consistent. Achieving sustainable development in the Castle is therefore a significant challenge.

This paper reviews a series of four important land-use decisions in the Castle over the past ten years. On this basis, several important themes regarding land and resource management in the area are highlighted. The paper then turns to recent and ongoing management initiatives, evaluating the extent to which the Government of Alberta has responded to the recommendations and conclusions that have emerged from the past decade of decision-making.

The first decision concerned a proposal to transform a small ski facility in the West Castle Valley into a four-season destination resort. This proposal was reviewed by Alberta's Natural Resources Conservation Board (NRCB or Board) in 1993. The NRCB's West Castle decision was a groundbreaking attempt to incorporate sustainability criteria into a project-specific environmental assessment. The Board reviewed the specific characteristics of the proposed project and placed this development within a broader regional context. Its analysis included a description of the environmental baseline, a detailed examination of the potential direct and indirect effects of the project, and an assessment of the existing regime for environmental and resource management in the Castle and across the broader Crown of the Continent ecosystem.

The Board concluded that the sustainability of regional ecosystems was at risk and that the project, as proposed, was not in the public interest. However, the NRCB indicated that it would approve the development if two conditions were met. The first condition was a reconfiguration of the physical footprint of the project in order to reduce direct impacts on wildlife movement in the West Castle Valley. The second condition was the establishment of a large protected area on approximately 800 square kilometres of surrounding public land. This latter condition, the Board stated, was essential to mitigate the project's contribution to regional cumulative effects and to address deficiencies in the existing management regime for the Castle. The review process for this particular proposal ended when the Alberta government decided not to create the protected area that was specified in the NRCB's second condition.

The second important decision in the Castle also concerned a proposal to establish a large protected area. The Castle was nominated under Special Places 2000, Alberta's protected

areas strategy, and a committee of local residents was charged with reviewing the nomination. The Castle Local Committee issued its report in 1997, recommending against protected area status for most of the Castle. Like the NRCB, however, the local committee felt compelled to consider broader management issues when assessing the specific proposal before it. As a result, its report included a set of specific proposals to enhance the existing management regime in the Castle.

The third decision examined in this paper is an approval of two sour gas wells and associated facilities that was granted by the Energy and Utilities Board (EUB) in 2000. While the EUB's Screwdriver Creek decision was in certain respects a routine approval following a contested hearing, the Board included a discussion of regional cumulative effects that was far from routine. This section of the decision report raised significant concerns about ecosystem sustainability in the Castle and also commented directly on the adequacy of the existing regime for land-use planning and resource management. Like the NRCB and the Castle Local Committee, the EUB offered recommendations to improve this regime.

The fourth important decision of the past decade concerned another proposal for residential, commercial and recreational development in the West Castle Valley. Although significant incremental development had occurred at the West Castle ski facility since 1996, the full proposal to develop Castle Mountain Resort was not reviewed by decision-makers until 2002. The Alberta government determined that the proposed development did not qualify as a 'mandatory' project under the *Environmental Protection and Enhancement Act* and declined to exercise its discretionary power to order a detailed environmental impact assessment report. As a result, the project was not subject to a comprehensive environmental assessment at the provincial level and the NRCB's public review process was not triggered. The only public hearing regarding the proposal was convened as part of the municipal approval process for the resort's area structure plan.

While a number of the participants in the municipal approval process raised concerns about regional cumulative effects and the likely impacts of the project on surrounding public lands, these issues were beyond the direct authority of the municipal council. As a result, the area structure plan for Castle Mountain Resort was approved without a systematic and public review of the issues that had been examined almost ten years earlier by the NRCB. The municipal council did, however, send a letter to Alberta's Minister of Sustainable Resource Development that expressed concern about the project's implications for wildlife habitat and movement in the Castle and called on the government to improve access management, particularly in relation to motorized recreation in the backcountry.

These four decision-making processes yielded three common themes regarding environmental and resource management in the Castle:

- Land-use issues in this area should be viewed from a regional and ecosystem-wide perspective, with particular attention to the cumulative environmental effects of a broad range of human activities;
- Important environmental values in the Castle are currently at risk due to incremental development and the increasing intensity of human activities; and
- There are fundamental deficiencies in Alberta's existing regime for environmental and resource management in the Castle – notably in the areas of land-use planning and access management.

The past decade of decision-making points clearly to the conclusion that the Castle is not being managed in a way that will ensure ecosystem sustainability. This record of decision-making also includes some specific proposals to correct deficiencies in the management regime.

The final sections of the paper examine four mechanisms that might be used to address regional cumulative effects and promote ecosystem sustainability in the Castle: (1) the *Castle River Sub-Regional Integrated Resource Plan*; (2) the *Castle River Access Management Plan*; (3) the process for developing a new forest management plan for the C5 Forest Management Unit; and (4) the Southern Alberta Sustainability Strategy. The record of the first two mechanisms is disappointing, since the Alberta government has shown little enthusiasm for updating and implementing these management tools in response to recommendations for changes over the past decade. The latter two initiatives have not yet reached completion, but neither of them is currently designed to implement integrated land-use planning and ecosystem-based management in the Castle.

The paper concludes that the Government of Alberta has yet to achieve sustainable resource and environmental management in the Castle. Despite the consistent findings and recommendations of a decade of decision-making and the government's broad policy commitment to sustainability, the needed improvements to the management regime have not been implemented. If the Alberta government is inclined to move forward on the recommendations of the NRCB, the Castle Local Committee, the EUB and the local municipal council, the Castle provides an ideal venue for putting its 'commitment' to sustainability into practice.



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## 1.0 Introduction

The challenges for land and resource management in the Castle River area of southwestern Alberta stem from an abundance of riches. Located in the Rocky Mountains and foothills between Waterton Lakes National Park and the Crownsnest Pass (see Map – Appendix 1), the Castle embodies many of Alberta’s finest features and defining characteristics. Economically important activities in the area include ranching, tourism and resource development. Several small communities and a scattering of rural residences have been established in and around the Castle. Outdoor recreation is a significant land use, thanks to majestic scenery, productive wildlife habitat, and the accessibility of the Castle to local residents and to the more than one million other Albertans who live within a radius of 250 kilometres. Biodiversity in this area is provincially significant, second only to that of Waterton Lakes National Park.<sup>1</sup> The Castle is also a vital north-south link in the Rocky Mountain ecosystem of western North America. Offering something to almost everyone, the Castle is a real-world laboratory for sustainable development.

Not surprisingly, the appropriate balance between economic, environmental and social values is a matter of considerable controversy in the Castle. Some stakeholders advocate significant restrictions on land use and resource development in the area, arguing that important environmental values and non-consumptive land uses are being compromised by an inexorable ‘death by a thousand cuts’. Others support the prevailing ‘multiple-use’ approach to land and resource management, which assumes that a broad range of human activities and ecological functions can be sustained, simultaneously and in perpetuity. As conflicts inevitably follow from increasing demands on a finite land base, the relationship between incremental development, cumulative environmental effects and overall land-use objectives has become a recurring focus of attention in the Castle. While concerns with this relationship permeate all aspects of land and resource management, they have been particularly visible in a series of project review processes that have occurred in the Castle over the past several decades.<sup>2</sup>

The intersection of project-specific and regional issues was the subject of a particularly high-profile public debate in 1993, when Alberta’s newly created Natural Resources Conservation Board (NRCB or Board) held four weeks of hearings on a proposal to transform a small-scale local ski facility in the West Castle Valley into a four-season

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<sup>1</sup>Government of Alberta, *Special Places: Alberta’s Rocky Mountain Natural Region* (July 1997) at 2. See also: Kevin Timoney, *The State of the Castle Wilderness Ecosystem and An Ecosystem Management Plan*, Report prepared for World Wildlife Fund, Alberta Office (11 February 2000).

<sup>2</sup>For a very useful summary of natural gas development in the Castle, see: J. Roger Creasey, *Cumulative Effects and the Wellsite Approval Process*, A Thesis Submitted to the Faculty of Graduate Studies in Partial Fulfillment of the Requirements for the Degree of Master of Science, Resources and the Environment Program, University of Calgary (December 1998) at 34-54.

destination resort. The NRCB's West Castle decision<sup>3</sup> laid bare the environmental and resource management challenges of the Castle, exploring the impacts of the proposed development through the lenses of ecosystem-based management, regional cumulative effects, and sustainable development.<sup>4</sup> The Board's innovative 'conditional approval' of the project and its comments on broader land-use issues left no doubt that, in its view, a new approach to managing human activities in the Castle was essential in order to make sustainable development a reality.

The decade since the NRCB's West Castle decision has seen continuing development and increasing human activity within the Castle, along with recurring conflicts over land and resource use. This paper examines key elements of this history, highlighting the continued resonance of several key conclusions from the West Castle decision in subsequent controversies over protected area designation, incremental energy development, and the expansion of ski facilities and associated infrastructure in the West Castle Valley. It also comments briefly on four regional management tools and initiatives: the *Castle River Sub-Regional Integrated Resource Plan*,<sup>5</sup> the *Castle River Access Management Plan*,<sup>6</sup> the forestry planning process for the C5 Forest Management Unit,<sup>7</sup> and the Southern Alberta Sustainability Strategy.<sup>8</sup> The paper concludes with specific recommendations for aligning project-specific and regional decision-making in the Castle with the Government of Alberta's commitment to "sustainable resource and environmental management."<sup>9</sup>

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<sup>3</sup>Natural Resources Conservation Board (NRCB), *Application to Construct Recreational and Tourism Facilities in the West Castle Valley, near Pincher Creek, Alberta*, Decision Report – Application #9201 (December 1993) [hereinafter "West Castle decision"].

<sup>4</sup>Steven Kennett, "The NRCB's West Castle Decision: Sustainable Development Decision-Making in Practice" (1994) 46 Resources 1.

<sup>5</sup>Alberta Energy and Natural Resources, *Integrated Resource Plan: Castle River Subregional Plan* (prepared in 1984, approved by the Alberta government in 1985) [hereinafter "*Castle IRP*"].

<sup>6</sup>Alberta Forestry, Lands and Wildlife, *Castle River Access Management Plan for Motorized Recreational Access, Project Summary Document, Final Draft* (December 1, 1992) [hereinafter "*Castle AMP Summary Document*"].

<sup>7</sup>See: [www3.gov.ab.ca/srd/regions/southwest/c5/index.html](http://www3.gov.ab.ca/srd/regions/southwest/c5/index.html).

<sup>8</sup>See: [www3.gov.ab.ca/env/regions/southern/strategy.html](http://www3.gov.ab.ca/env/regions/southern/strategy.html).

<sup>9</sup>Government of Alberta, *Alberta's Commitment to Sustainable Resource and Environmental Management* (March 1999). See also, Steven A. Kennett, "The Castle – A Litmus Test for Alberta's 'Commitment' to Sustainable Resource and Environmental Management" (2003) 83/84 Resources 1.

## 2.0 The NRCB's West Castle Decision

The NRCB's West Castle decision was a groundbreaking, controversial and ultimately unsuccessful attempt to incorporate sustainable development principles into land and resource management in the Castle. The Board's decision report was the culmination of a detailed project-specific environmental assessment that examined the social, economic and environmental implications of a major development proposal. It is also the most thorough discussion to date of broader land-use issues in the Castle, including the adequacy of the overall regime for environmental and resource management in the region.

The following discussion of this decision begins by describing the pre-existing facilities in the West Castle Valley, the proposal by Vacation Alberta Corporation (Vacation Alberta) to establish a four-season resort, and the NRCB's mandate and project review process. The paper then turns to the Board's assessment of the state of the regional ecosystem, the effects of the proposed project, and the adequacy land-use planning and resource management in the Castle. The Board's decision on the project application and the final outcome of process are summarized next. Finally, three principal conclusions from the NRCB's decision report are highlighted.

### 2.1 The Development Proposal

The Westcastle Park ski area was established in 1966 in a narrow mountain valley, 46 kilometres west of Pincher Creek, Alberta.<sup>10</sup> Although it attracted a loyal clientele from the surrounding region, the operation was economically precarious and its survival was due in large part to the volunteer efforts of local skiers. At the time of the NRCB hearing in 1993, the facility was owned by the Town of Pincher Creek and the Municipal District of Pincher Creek No. 9. It had been operated since 1985 by the Westcastle Development Authority.

Westcastle Park was a small-scale operation in 1993, consisting of 20 ski runs, three T-bar ski lifts, a day lodge, and an ancillary building. Daily capacity was about 900 skiers. There was no snow-making equipment and about half the terrain was rated as advanced or expert. The facilities were spread over about 36 hectares and included parking for approximately 550 cars. Forty mobile homes on leased lots were located adjacent to the ski hill. The application to the NRCB indicated that the existing facilities had deteriorated and required maintenance and updating.

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<sup>10</sup>This description summarizes information from the West Castle decision, *supra* note 3 at 1-1, 2-1 – 2-2.

The proposal to transform the Westcastle Park ski area into a four-season destination resort was spearheaded by Vacation Alberta, with the support of the Westcastle Development Authority. The key elements of this proposal were:<sup>11</sup>

- A significant increase in the terrain available for skiing, including the integration of new runs on Haig Ridge with existing and improved runs on Gravenstafel Ridge. This expansion also involved the addition of four new ski lifts, snow-making equipment, a new day lodge and related infrastructure. The expanded facility would accommodate about 3,200 skiers per day and provide a more balanced mix of terrain (i.e., more beginner and intermediate runs).
- The establishment of two 18-hole golf courses in the valley bottom, including a central clubhouse, driving range and maintenance buildings. The applicant estimated that these courses would draw, on average, about 400 golfers per day from May to mid-September.
- The development of the Westcastle village complex in the valley bottom. This complex was to include two 100-room hotels with restaurants, lounges, administrative offices, skier day-use areas, recreation facilities and space for commercial and retail operations. The village was also to include condominiums, apartment units, townhouses, parking spaces for recreational vehicles (R.V.s), staff housing and maintenance buildings. Its projected total capacity was 2,500 people. An artificial lake was also part of the plan, to provide a visual focus, recreational opportunities, and water storage for fire fighting and snow making.

The applicant anticipated acquiring an additional 131 acres of land from the province and spending approximately \$72.6 million. The four-season amenities and on-hill accommodation were identified as distinguishing features of the proposed project.

## 2.2 The NRCB's Project Review Process

The NRCB's project review was triggered when Alberta Environment ordered the preparation of an environmental impact assessment report for Vacation Alberta's proposal under section 8 of the *Land Surface Conservation and Reclamation Act*<sup>12</sup> (now incorporated into Part 2 of the *Environmental Protection and Enhancement Act*<sup>13</sup>).<sup>14</sup> With

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<sup>11</sup>*Ibid.* at 2-2 – 2-4.

<sup>12</sup>R.S.A. 1980, c. L-3.

<sup>13</sup>R.S.A. 2000, c. E-12.

<sup>14</sup>Letter to Mr. J.D. Mulholland, Vacation Alberta Corporation from Mr. Vance A. MacNichol, Deputy Minister, Alberta Environment (March 6, 1990).

this decision, the Westcastle Park expansion became a reviewable project under section 4 of the *Natural Resources Conservation Board Act*.<sup>15</sup> Reviewable projects may not be commenced until an approval has been granted by the NRCB and authorized by the provincial Cabinet.<sup>16</sup>

Vacation Alberta's proposal was submitted to the NRCB in December 1992 and was subsequently modified in response to requests from the Board for additional information. Public hearings were held between June 21 and July 19, 1993. The Board's decision report was issued in December 1993.

The NRCB's mandate is "to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinion, *the projects are in the public interest, having regard to the social and economic effects of the projects and the effect of the projects on the environment*".<sup>17</sup> The statutory language thus incorporates explicitly the three 'pillars' of sustainable development – environment, economy and society. On this basis, the NRCB has interpreted its 'public interest' test as requiring the evaluation of applications before it using criteria for 'sustainable development'.<sup>18</sup> The West Castle decision addressed these criteria in some detail.

The Board examined the justification and need for the project, the project's viability, the applicant's capability to implement the project, the proposed location and configuration, infrastructure implications, and the direct social, economic and environmental effects of the project.<sup>19</sup> All of these issues are standard fare for project-specific environmental assessment. In addition, however, the NRCB adopted a broader perspective on sustainable development.

Projects should be assessed, it stated, "in terms of the carrying capacity of the environment, as well as the additional impacts a project would have on existing conditions."<sup>20</sup> Furthermore, the Board affirmed that the "the sustainability of ecosystems is the proper frame of reference when assessing environmental impacts."<sup>21</sup>

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<sup>15</sup>R.S.A. 2000, c. N-3.

<sup>16</sup>*Ibid.*, ss. 5, 9.

<sup>17</sup>*Ibid.*, s. 2 (emphasis added). The NRCB process adds a public review to the existing regulatory regime for reviewable projects. Approval by the NRCB does not supercede the need for any other approvals, licenses or permits required by law. The Board does not have ongoing regulatory authority over the projects that it approves.

<sup>18</sup>West Castle decision, *supra* note 3 at 4-2, 5-20 – 5-22.

<sup>19</sup>*Ibid.* at 4-1 4-3.

<sup>20</sup>*Ibid.* at 5-20.

<sup>21</sup>*Ibid.* at 5-20.

Acknowledging that ecosystems are “convenient artifices,”<sup>22</sup> it affirmed the importance of a regional perspective:

“The Board has recognized ... that in order to determine the public interest, it must consider a project in the context of the region in which the project would be located and the cumulative effects to which the project may contribute in the region. Because societies, economies and ecosystems incorporate many components that are inter-related in a complex manner, the potential social, economic and environmental impacts of a project cannot be understood by considering only the effects of the project on its immediate locale. Projects have a wider impact and must be considered in light of the ‘baseline’ or background condition of the society, economy and environment of the regions in which the projects have significant impacts. In some cases such regions will be trans-jurisdictional.”<sup>23</sup>

This approach placed the NRCB squarely on the cutting edge of environmental assessment practice.

## 2.3 The NRCB’s Findings and Conclusions

The NRCB defined the broad regional context for Vacation Alberta’s proposed project as the Crown of the Continent Ecosystem.<sup>24</sup> Centred on Waterton Lakes and Glacier National Parks, this area includes surrounding land in Alberta, British Columbia and Montana, stretching from the Crowsnest Pass in the north to the southern boundary of the Bob Marshall Wilderness Area. The Board’s discussion also focused on the Castle area within this wider regional ecosystem. Its conclusions regarding the state of the ecosystem, the likely impacts of the project from an ecosystem perspective, and the mechanisms in place to manage land and resource use are summarized in the following sections.

### 2.3.1 *The State of the Ecosystem*

Establishing the ecological baseline was the first step in assessing the project in terms of ecosystem sustainability. On the basis of detailed evidence regarding regional land use and cumulative environmental effects, the Board concluded that “the ecological resources of the [project] area<sup>25</sup> may not be sustainable even with existing use, to say nothing of the risk to these resources if a permanent development were placed in the area along with

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<sup>22</sup>*Ibid.* at 9-70.

<sup>23</sup>*Ibid.* at 5-21.

<sup>24</sup>*Ibid.* at 9-70 - 9-71.

<sup>25</sup>The Board defined the “project area” as “the public lands in the entire Waterton-Castle area, north of Waterton Lakes National Park and west of Pincher Creek.” *Ibid.* at 5-21.

uncontrolled existing uses.”<sup>26</sup> It elaborated on the regional context for this finding as follows:

“Overall, the Board concludes that the combined effects of alienation and insularization have reduced the effective area of the Crown of the Continent regional ecosystem. At the same time, habitat fragmentation and the associated higher levels of disturbance have reduced habitat effectiveness for most of its larger species of animals. The Board, therefore, concludes that the cumulative effects of development and disturbance have led to a deterioration in the state of the regional ecosystem, both in quantitative and qualitative terms. By ‘deterioration’ the Board means a decrease in the probability that populations of species forming part of the ecosystem are sustainable in the long-term without management intervention. ... the Board concludes that the state of the Crown of the Continent Ecosystem is at risk of further deterioration if the level of use continues to increase. It may be at risk even if the present level of use continues.”<sup>27</sup>

The Board thus characterized the context for Vacation Alberta’s proposed project as a regional ecosystem where important environmental values were already compromised.

This regional context set the stage for an evaluation of the environmental baseline in the Castle. The Board found clear evidence that development had reduced the size of relatively undisturbed portions of the Castle and that wildlife habitat had been adversely affected. In particular, it noted that:

“Roads and trails have fragmented habitat, reduced habitat effectiveness and opened up large parts of the area to uncontrolled access. Other disturbances such as logging and cutting seismic lines have exacerbated the effects over shorter periods. The number of people using the area in various ways has increased and is still increasing. Evidence before the Board showed that many of those uses have not been controlled and that there have been substantial impacts on the environment. Both project supporters and opponents agreed that unless steps are taken to better control use of the area, environmental deterioration will continue. Many participants at the hearing therefore agreed that management of the area must be strengthened.”<sup>28</sup>

The Board also noted that this evidence of adverse ecological effects was regionally significant because “conservation of the Castle area is crucial to the state of the Crown Ecosystem and the greater chain of Rocky Mountain ecosystems by virtue of its strategic location.”<sup>29</sup> Summarizing the ecological baseline, the NRCB concluded that “the Crown of the Continent Ecosystem is at risk and ... the Castle area in particular has

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<sup>26</sup>*Ibid.* at 5-21.

<sup>27</sup>*Ibid.* at 9-72 – 9-73.

<sup>28</sup>*Ibid.* at 9-74.

<sup>29</sup>*Ibid.* at 9-74.

deteriorated.”<sup>30</sup> Given this context, it stated, “the public interest would not be served by allowing that deterioration to continue.”<sup>31</sup>

### **2.3.2 Effects of the Proposed Project**

The next step in the Board’s analysis was to consider Vacation Alberta’s proposed project in light of this ecological baseline and within the regional context. The Board began by noting that the project could have both direct and indirect effects on regional ecosystems.<sup>32</sup> Any blockage of movement by large carnivores through the West Castle Valley would be a direct effect, while indirect effects could include the facilitation of increased access to backcountry areas. The Board also distinguished between intermittent and permanent impacts: “Intermittent impacts tend to be less severe and can more easily be controlled, curtailed or reversed than impacts arising from the installation of permanent structures.”<sup>33</sup>

Participants in the Board’s hearings presented considerable evidence and arguments regarding the possible direct and indirect effects of a permanent resort complex within the West Castle Valley. While the West Castle decision report examined a broad range of these environmental effects, the discussion of impacts on wildlife – particularly large carnivores – raised some of the most significant issues. These issues are illustrated by the discussion of impacts on grizzly bears.

The NRCB found that grizzly bears are highly valued by most – but not all – members of the public and that this species is ecologically important as the top terrestrial predator in the food chain.<sup>34</sup> It also noted that the analysis of impacts on animals such as grizzly bears was applicable to other species with “similar ecological and behavioural characteristics.”<sup>35</sup> After examining the historical and current grizzly bear populations in the region and the threats to these populations, the Board considered evidence that the proposed project could result in increased direct mortality, the reduction, degradation or alienation of habitat, and the restriction of movements through the West Castle Valley.<sup>36</sup> Based on this evidence, including submissions from Vacation Alberta, the Board concluded that the effects of the project on grizzly bears “would be of high magnitude,

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<sup>30</sup>*Ibid.* at 9-75.

<sup>31</sup>*Ibid.* at 9-75.

<sup>32</sup>*Ibid.* at 9-3 – 9-4.

<sup>33</sup>*Ibid.* at 9-4.

<sup>34</sup>*Ibid.* at 9-25.

<sup>35</sup>*Ibid.* at 9-25.

<sup>36</sup>*Ibid.* at 9-28 – 9-29.

negative, long-term and regional in scope.”<sup>37</sup> In particular, the Board expressed concern about:

“... the probability that the proposed project could block the movement corridor along the West Castle Valley and, in particular, that this blockage could occur at a time when other movement corridors which may offer alternative routes for long distance travel are also subject to increasing levels of disturbance. The Board is concerned that the project could significantly accelerate the decline in the North American grizzly bear population south of the Crowsnest Pass and hasten its extirpation.”<sup>38</sup>

The risk that southern grizzly bear populations would become physically isolated and vulnerable to extirpation was, of course, a product of various factors. The principal concerns relating to Vacation Alberta’s project were the direct and indirect effects of increased summertime activity. The Board noted that, of the human activities affecting grizzly bear movement corridors, “*permanent occupied structures, permanent roads, and continuing off-road travel by motorized vehicles are the most disruptive impacts.*”<sup>39</sup> It was therefore concerned about both the project footprint within the narrowest part of the West Castle Valley and the project’s implications for levels of motorized backcountry recreation. Commenting on the latter point, the Board specifically stated that it “does not accept the Applicant’s suggestion that resort users might confine their activities to the recreational opportunities on the resort site”, concluding that they would also make substantial use of the surrounding public land.<sup>40</sup>

This analysis of the project’s expected impacts reinforced the Board’s concern with the cumulative effects of Vacation Alberta’s development in combination with other human activities in the Castle. The management of these effects thus became a central issue for the determination of whether or not this project was in the ‘public interest’, as defined using the Board’s vision of sustainable development.

### **2.3.3 Regional Land-Use Planning and Management**

The NRCB’s acknowledgement of “the intense demand for land use and access to public lands in the region by a great variety of users”<sup>41</sup> and its conclusion that the proposed project would contribute significantly to this demand<sup>42</sup> were the starting points for the

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<sup>37</sup>*Ibid.* at 9-29.

<sup>38</sup>*Ibid.* at 9-30.

<sup>39</sup>*Ibid.* at 9-32 (emphasis added).

<sup>40</sup>*Ibid.* at 9-75.

<sup>41</sup>*Ibid.* at 4-3.

<sup>42</sup>*Ibid.* at 10-1.

third component of its analysis. The Board stated simply that it could not “reach a determination of whether or not the proposed project is in the public interest without fairly detailed consideration of the land use planning and ongoing management structures for the area.”<sup>43</sup> This analysis focused particularly on the limitations of zoning as a management tool and the need to address the intensity of land use in planning and access management.

The concern with zoning arose primarily from the Board’s examination of the *Castle River Subregional Integrated Resource Plan (Castle IRP)*.<sup>44</sup> This plan establishes several land-use zones within the Castle-Carbondale Corridor Resource Management Area C, including a “Facility Zone” for the West Castle Ski Area.<sup>45</sup> Resource management objectives for this zone included the accommodation of future development of the ski facility, the promotion of year-round recreation and tourism, and the development of commercial services and facilities.<sup>46</sup> In principle, therefore, the proposed development appeared to be consistent with the applicable land-use plan.

The NRCB noted, however, that according to the *Castle IRP*, the “primary intent” for the Castle-Carbondale Corridor was to permit “a diverse range of intensive recreation opportunities that are *consistent with the maintenance of the natural environment*.”<sup>47</sup> Furthermore, the Facility Zone in the West Castle Valley is contiguous to three other land-use designations – Prime Protection, Critical Wildlife and General Recreation – each with its own set of objectives.<sup>48</sup> The troubling question was whether or not Vacation Alberta’s proposed project was compatible with the overall suite of land-use objectives for the West Castle Valley and the Castle as a whole.

This question led the Board to consider the usefulness of the zoning designations in the *Castle IRP*. While it concluded that “the proposed development complies with the zoning under the public land planning process”, the Board was evidently not prepared to rely solely on this crude management tool to determine project acceptability.<sup>49</sup> Its analysis suggested that the multitude of land-use objectives set out in the *Castle IRP* could not be achieved simultaneously, particularly if the four-season resort proposed by Vacation Alberta were added to the mix. This deficiency, the Board suggested, was symptomatic of a deeper problem:

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<sup>43</sup>*Ibid.* at 4-3.

<sup>44</sup>*Supra*, note 5.

<sup>45</sup>*Ibid.* at 52-55.

<sup>46</sup>*Ibid.* at 54-55.

<sup>47</sup>*Ibid.* at 52 (emphasis added); West Castle decision, *supra* note 3 at 10-10.

<sup>48</sup>*Castle IRP, ibid.* at 53; West Castle decision, *ibid.* at 10-5 – 10-10.

<sup>49</sup>West Castle decision, *ibid.* at 10-10.

“... the concept of integrated resource management set out in the *Eastern Slopes Policy* and other public lands planning and policy documents [e.g., the *Castle IRP*] may create unrealistic expectations by the public that we can ‘have it all,’ particularly where relatively small geographic areas are concerned. ... [T]he Board believes that it must be recognized that sustainable development may not be achievable unless integrated resource management is understood to mean that uses may be permitted, but in more discrete areas than have been available in the past; i.e., that certain areas may be designated for certain land uses only and other uses may be prohibited in the same areas in order to protect the natural resource.”<sup>50</sup>

As the Board noted, “the proliferation of different land use zones in a relatively compact geographical area of ecological value is the result of the tremendous pressure for use by numerous and varied groups of people.”<sup>51</sup> Alberta’s ‘multiple-use’ approach to public land management and the permissive land-use zoning exemplified by the *Castle IRP* may accommodate this pressure in the short term, but the underlying tensions remain. Given its interpretation of the ‘public interest’ mandate established by the *Natural Resources Conservation Board Act*, the Board clearly felt that it could not avoid confronting directly the tension between increasing human activity in the Castle and ecosystem sustainability.

The inadequacy of land-use zoning that relies simply on lists of permitted activities was linked to another important issue identified by the NRCB:

“... participants [in the hearing] almost unanimously agreed that the flora and fauna in ... this region are under stress and that some form of protection and special management is urgently required. The Board also noted that the long list of existing uses were generally acceptable to participants and particularly to the specific users, it was the *existing intensity of land use and the associated environmental impacts and cumulative effects that was cause for concern*. The general prognosis by some participants was that if the existing intensity of land use continued, that important ecological features could be lost.”<sup>52</sup>

While the *Castle IRP* provided guidance on the types of permitted activities, it was silent on question of what *intensity* of activity was acceptable. The ecological impacts of various land uses, however, are clearly a function of their intensity, as well as their type and location.<sup>53</sup>

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<sup>50</sup>*Ibid.* at 10-11.

<sup>51</sup>*Ibid.* at 10-10.

<sup>52</sup>*Ibid.* at 10-16 (emphasis added).

<sup>53</sup>This deficiency of Alberta’s IPRs has been discussed elsewhere. See, for example: Oswald Dias & Brian Chinery, “Addressing Cumulative Effects in Alberta: The Role of Integrated Resource Planning” in Alan J. Kennedy, ed., *Cumulative Effects Assessment in Canada: From Concept to Practice* (Calgary: Alberta Association of Professional Biologists, 1994) 303 at 312-316; Steven A. Kennett & Monique Ross, “In Search of Public Land Law in Alberta” (1998) 8 *Journal of Environmental Law and Practice* 131 at 154-159.

The *Castle IRP* was not the only management tool in the area exhibiting this shortcoming. The NRCB observed that the *Castle River Access Management Plan*:

“... dealt only with the location and use of access in winter or summer *but not with the intensity or management of the many uses*. The Board believes both these factors must be dealt with having more regard for environmental impacts and cumulative effects on the regional ecosystem before the plan can be finalized.”<sup>54</sup>

Looking at the overall control of land use in the region, the Board stated that “some existing land uses and zone boundaries may need to be modified for *maintenance of the natural environment*”<sup>55</sup> – the standard set by the *Castle IRP*.<sup>56</sup> The Board also recommended that “in the future, detailed attention be paid to *intensity of land use and the density of facilities within the whole area*.”<sup>57</sup>

The NRCB’s discussion of land and resource management in the Castle reflected its findings regarding threats to ecosystem sustainability in the region, the pattern and intensity of existing land uses, the implications of Vacation Alberta’s proposed project for surrounding public lands, and the failure of management tools such as the *Castle IRP* and the *Castle River Access Management Plan* to address intensity of land use. Its conclusion was unequivocal:

“In the Board’s view, appropriate land use controls would be essential to mitigate the significant adverse effects of locating the resort in such an ecologically important region, and are necessary *in any event* given the risk of environmental deterioration if pressures for existing uses continue to increase.”<sup>58</sup>

This conclusion was the basis for a key element of the Board’s ‘conditional approval’ of Vacation Alberta’s proposed project.

## 2.4 The NRCB Decision and the Alberta Government’s Response

The Board’s decision offered something to each of the principal protagonists at the hearing. It rejected the application as presented, but recommended approving the project

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<sup>54</sup>West Castle decision, *supra* note 3 at 10-15 (emphasis added).

<sup>55</sup>*Ibid.* at 10-20 (emphasis added).

<sup>56</sup>*Castle IRP*, *supra* note 5 at 52.

<sup>57</sup>West Castle decision, *supra* note 3 at 10-20 (emphasis added). Other comments on the importance of addressing the intensity of land use are found in the West Castle decision at 10-22 and 12-9.

<sup>58</sup>*Ibid.* at 9-75 – 9-76 (emphasis added).

if two conditions were met. These conditions addressed both project design and regional land management.

The first condition was a change in the project's physical footprint.<sup>59</sup> The Board specified that development should be restricted largely to the west side of the West Castle River and that the golf courses should be relocated to a site downstream of the main facilities. These changes were intended to mitigate somewhat the project's direct effects on wildlife movement by leaving one side of the valley undeveloped.

The Board cautioned, however, that ensuring connectivity of wildlife habitat within the Crown of the Continent Ecosystem required a coordinated approach to managing impacts on all three of the north-south wildlife corridors in the region that are subject to disturbance.<sup>60</sup> Furthermore, it recognized that the project would have significant indirect effects on the regional ecosystem that could not adequately be addressed through site-specific mitigation. It therefore recommended imposing stricter limits on the use of about 800 square kilometres of surrounding public land through the establishment of the Waterton-Castle Wildland Recreation Area (WCWRA).<sup>61</sup> This area, it stated, should "receive special status with the appropriate *legislative and regulatory protection* available within Alberta's existing regulatory framework."<sup>62</sup>

The West Castle decision provided considerable detail on the types of activities that should be permitted and prohibited within the WCWRA in order to protect environmental values in the Castle and throughout the broader Crown of the Continent Ecosystem.<sup>63</sup> Prohibited activities included motorized recreation, logging and mining. Exploration and development by the oil and gas industry was classified under the category of activities "that may not be entirely compatible with the intent of the land use zone" but that may be permitted "under *restricted conditions* for an important and justified need ... [and subject to] stricter controls than normal guidelines and land use regulations."<sup>64</sup>

The Board also suggested a new management structure for the WCRWA, reflecting its view that the numerous agencies and authorities with jurisdiction over land use and resource management in the region should be coordinated through "an integrated

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<sup>59</sup>*Ibid.* at 12-5 – 12-6.

<sup>60</sup>*Ibid.* at 9-32.

<sup>61</sup>*Ibid.* at 10-17 – 10-20.

<sup>62</sup>*Ibid.* at 12-8 (emphasis added).

<sup>63</sup>*Ibid.* at 10-22 – 10-27.

<sup>64</sup>*Ibid.* at 10-26 (emphasis in original).

management approach on both a strategic and a day-to-day level.”<sup>65</sup> According to the Board:

“... the existing management system was not designed to deliver the kind of ecosystem-based management that is and will be required to mitigate the potential adverse environmental effects of the proposed development through land use controls on surrounding lands and yet realize the economic potential of the proposed WCWRA. The Board accepts the evidence before it indicating that the WCWRA requires a holistic management perspective to ensure its long-term integrity.”<sup>66</sup>

This conclusion led the Board to recommend the establishment of a “delegated regulatory organization” to manage the WCWRA within parameters established by the Alberta government.<sup>67</sup> It also identified the need for formalized intergovernmental relationships with neighbouring jurisdictions to ensure ecosystem-based management across the transboundary Crown of the Continent Ecosystem. Recognizing that “strong leadership is required to turn the existing situation into a positive long-term opportunity”, the Board reiterated its view that “current efforts to accommodate all users are incompatible with long-term sustainable management for the ecosystem.”<sup>68</sup>

Finally, the Board addressed the risk that approval of Vacation Alberta’s project – even subject to these two conditions – would lead to further proposals for development in the West Castle Valley. While it did not propose a detailed strategy to address any subsequent applications, it recommended well-defined boundaries for the resort development and limits on land-use density in order to ensure that the project is not “the thin edge of the wedge” for future development.<sup>69</sup> It also recommended that no additional accommodation except for staff housing should be permitted in the resort area.

The NRCB’s decision report was a detailed and comprehensive assessment of Vacation Alberta’s proposal, but it was not the final stage of the approval process. The *Natural Resources Board Conservation Act* requires Cabinet authorization to implement NRCB decisions.<sup>70</sup> In this case, both Vacation Alberta and the Government of Alberta had to decide whether or not they were prepared to meet the conditions for approval set by the Board. While Vacation Alberta indicated that it would accept the project-specific conditions, government approval proved to be more problematic.

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<sup>65</sup>*Ibid.* at 11-1.

<sup>66</sup>*Ibid.* at 11-1.

<sup>67</sup>*Ibid.* at 11-5.

<sup>68</sup>*Ibid.* at 11-2.

<sup>69</sup>*Ibid.* at 12-9.

<sup>70</sup>*Supra* note 16.

The Alberta government waited a full year from the Board's decision before issuing a formal approval in December 1994.<sup>71</sup> At that time it also set in motion a process to finalize arrangements for the proposed WCWRA. A committee of local land users, the Castle River Consultation Group (CRCG), was established and given the mandate to report by June 15, 1995 on the implementation of a land-use strategy including a WCWRA "substantially similar in size and land uses to that recommended by the NRCB."<sup>72</sup>

What followed were contentious discussions among CRGC members, some of whom apparently advocated a vision for the Castle that was fundamentally inconsistent with the conditions for project approval laid down by the NRCB and the terms of reference of the CRCG. According to one participant in the process, several CRGC members – including representatives of off-road vehicle users and the forestry industry – consistently promoted the application of "a multiple use concept to what was intended to be a protected area."<sup>73</sup> When this approach failed to sway others on the CRCG, four members walked out of the process and lobbied the local member of the Legislative Assembly and the Minister of Environmental Protection to reverse the government's approval of the NRCB decision.<sup>74</sup>

A strategy of contesting the CRCG's terms of reference from within and then attempting to end-run the process through political lobbying could only succeed if Alberta government lacked commitment to the NRCB's conditional approval and to the integrity of the multi-stakeholder process that it had established to provide advice on implementation. If the break-away members of the CRCG in fact made this strategic calculation, there political astuteness was rewarded. On May 11, 1995, just over one month before the CRCG was due to report, the Minister of Environmental Protection Ty Lund arrived in Pincher Creek to announce that he was disbanding the CRCG and rescinding the government's approval of the NRCB's West Castle decision.<sup>75</sup> This about-face by Minister Lund apparently occurred without any consultation with the remaining eight members of the CRCG, who had been engaged – at the government's request – in four months of intensive, time-consuming and unpaid efforts to develop a consensus on implementing the NRCB's conditions for project approval.<sup>76</sup>

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<sup>71</sup>Government of Alberta, "News Release: December 7, 1994 – Cabinet Decision on West Castle".

<sup>72</sup>CRCG Terms of Reference, quoted in: Dave Sheppard, "Cabinet Scuttles NRCB Westcastle Report" *Environment Network News* (May/June 1995) at 23.

<sup>73</sup>Sheppard, *ibid.* at 23.

<sup>74</sup>*Ibid.* at 23.

<sup>75</sup>Government of Alberta, "News Release: May 11, 1995 – Government Withdraws Conditional Authorization of West Castle Resort".

<sup>76</sup>Sheppard, *supra* note 72 at 23.

The result, predictably, was to anger the project proponent, the supporters of an expanded ski facility in the West Castle Valley, and opponents of the project who had been prepared to accept the NRCB's conditional approval because it offered a reasonable prospect of meeting their broader environmental and land-use objectives for the Castle. News reports indicate that this anger was expressed in very direct language. The Mayor of Pincher Creek was quoted as saying that he wanted to "have a puke" when he heard Minister Lund's decision.<sup>77</sup> The president of Vacation Alberta remarked that it was difficult to believe that the Government of Alberta would kill a project supported by the local community, the developer, conservationists and skiers.<sup>78</sup> A prominent environmentalist commented that: "In one fell swoop, this flip-flop destroyed government credibility on a host of environmental issues, including local development, Special Places 2000 [Alberta's protected areas strategy], the Forest Conservation Strategy, and sustainable development in general."<sup>79</sup>

Reaction was not, of course, entirely negative. A published report states that the Alberta Fish and Game Association was supportive of Minister Lund.<sup>80</sup> Off-road vehicle users, the forestry sector and others whose activities would have been curtailed by the establishment of the WCWRA were, presumably, also pleased with the Minister's decision.

Minister Lund's announcement marked the demise of Vacation Alberta's proposal for a four-season resort in the West Castle Valley. Development at the Westcastle Park ski facility and land-use conflicts in the Castle continued, however, despite the failure of Vacation Alberta to secure approval for its project. Issues that dominated the NRCB process therefore remained front and centre in the Castle.

## 2.5 Summary of Key Conclusions

The NRCB's approach to project review was groundbreaking and controversial because it confronted directly the practical challenge of sustainable development. Having defined its 'public interest' mandate as requiring a careful analysis of regional land-use issues and cumulative environmental effects, the Board took the bold step of specifying significant changes in land management throughout the Castle as a precondition for approving a regionally significant project.

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<sup>77</sup>Vicki Barnett, "Westcastle failure bitter pill for town" *Calgary Herald* (14 May 1995) at 1.

<sup>78</sup>*Ibid.* at 1.

<sup>79</sup>Sheppard, *supra* note 72 at 23.

<sup>80</sup>Barnett, *supra* note 77 at 1.

The NRCB's conditional approval was designed to balance competing interests, permitting economic development and increased recreational activities at what the Board considered to be an acceptable environmental cost. Since fundamental values and interests were at stake, controversy was inevitable. Reasonable people can disagree about whether or not the approval of major development in the West Castle Valley, subject to land-use restrictions in the surrounding area, strikes the right balance between economic, social and environmental values. The vision of a large protected area in the Castle is compelling to many people, but not to everyone. Certain groups, notably the forest industry and off-road vehicle users, felt that their interests had been sacrificed in NRCB's attempt to reconcile recreational and residential development in the West Castle Valley with local and regional environmental concerns.

The NRCB's proposed trade-off between development and protection in the Castle was a lightning rod for debate surrounding the West Castle decision. This debate should not, however, obscure three important conclusions from the Board's analysis that are much less controversial. As the discussion in the following sections of this paper will show, these conclusions have been reiterated by other decision-makers over the past 10 years and have significant implications for land and resource management in the Castle.

The first conclusion was that land-use issues in the Castle should be viewed from a regional and ecosystem-based perspective. The NRCB recognized the multitude of demands on the Castle's land and resource base and clearly believed that a holistic approach to decision-making must be adopted in order to manage cumulative effects, maintain ecological values, and achieve sustainable development in the Castle and across the broader Crown of the Continent Ecosystem.

The second conclusion was that important environmental values in the Castle were at risk. The Board stated unequivocally that the regional ecosystem had already deteriorated. It also noted that permanent residential and commercial development and the proliferation of off-road vehicle use in the backcountry represented two of the most serious threats to wildlife habitat and movement corridors. The NRCB characterized human access in the Castle as "uncontrolled"<sup>81</sup> and recommended stricter regulation of land use, including improved access management, in order to ensure ecosystem sustainability.

The Board's third key conclusion was that fundamental deficiencies in the regime for land-use planning and resource management in the Castle required immediate attention. For example, the NRCB noted that both the *Castle IRP* and the *Castle River Access Management Plan* adopted spatial designations for permitted activities without adequate attention to the intensity of these activities and the risks associated with allowing incompatible land uses in close proximity to each other. It also commented on the

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<sup>81</sup>West Castle decision, *supra* note 3 at 5-21, 9-74.

inability of institutional arrangements in the Castle and surrounding areas to manage land and resource uses on an integrated basis. Whether or not significant development occurred in the West Castle Valley, the NRCB clearly believed that improved management of human activities in the Castle was essential.

These three conclusions, based on the expert evidence and detailed arguments presented during the public hearing process, were set out by the NRCB in its lengthy and carefully reasoned decision report. They clearly reflected not only the considered opinion of the Board, but also the views of many of the stakeholders who participated in the hearings. Nonetheless, the validity of these conclusions might be questioned on the grounds that they were simply the product of a single review process examining a particular proposal. The following sections of this paper demonstrate that the key elements of the NRCB's analysis and conclusions have been reiterated in relation to three other proposals for land and resource use in the Castle over the past decade.

### **3.0 Special Places 2000**

The NRCB's recommendation that the WCWRA be established as a large protected area in the Castle was a major reason why many opponents of Vacation Alberta's proposed project endorsed the Board's conditional approval. This recommendation also proved to be the flashpoint for opposition to the decision by interest groups that opposed increased land-use restrictions. While opponents of protection successfully torpedoed the WCWRA, the idea was revived when the Castle was nominated under Special Places 2000, the Alberta government's protected areas strategy.

#### **3.1 The Castle Nomination**

Special Places 2000 provided an opportunity for individual citizens and groups in Alberta to nominate areas that they considered worthy of protection.<sup>82</sup> The government established the multi-stakeholder Provincial Coordinating Committee to screen nominations and to provide advice on the process as a whole. Local committees were selected to review specific candidate sites. Final decision-making was in the hands of the Minister of Environmental Protection and the Cabinet.

In the Castle, both the nomination itself and the local review process were controversial from the outset, reflecting the political sensitivity of land-use issues in the region and the

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<sup>82</sup>Government of Alberta, *Special Places 2000: Alberta's Natural Heritage – Policy and Implementation Plan* (Edmonton: n.d.) (released on March 28, 1995).

many deficiencies of the government's "made in Alberta" approach to protected areas.<sup>83</sup> The battle lines were drawn when the Castle-Crown Wilderness Coalition, the environmental group that had nominated the Castle for protection, was excluded from the Castle Local Committee.<sup>84</sup> Sensing that the deck was stacked from the outset, this group then attempted unsuccessfully to withdraw the nomination. Despite the absence of stakeholder groups representing the environmental community, the Castle Local Committee completed its review and issued a report in July, 1997.<sup>85</sup>

### 3.2 The Report of the Castle Local Committee

The Castle Local Committee recommended against creating a large protected area, proposing instead the establishment of a 94 hectare Ecological Reserve in the West Castle Wetlands, adjacent to the ski area.<sup>86</sup> Two small Aboriginal sites were also identified for protection. The Alberta government's acceptance of these recommendations confirmed its unwillingness to prohibit or severely restrict land uses such as motorized off-road recreation and resource development throughout a significant part of the Castle. Given the fate of the NRCB's proposed WCWRA, this outcome was hardly a surprise.

The Castle Local Committee did not mince words in distancing itself from the West Castle decision. It summarily dismissed the NRCB's recommendations regarding the WCWRA as "unacceptable to the local communities", noting that the Castle River Consultation Group had been unable to reach consensus largely because of the requirement that it produce a solution substantially similar to the NRCB decision.<sup>87</sup> The committee also appeared to differ from the NRCB in its overall assessment of the state of the Castle ecosystem, stating that: "After more than a hundred years of human activities and utilization, the Castle has maintained its rich plant life and wildlife populations in conjunction with man."<sup>88</sup> This assertion contrasts markedly with NRCB's conclusion that the Castle ecosystem had deteriorated significantly and was continuing to deteriorate. Evaluating the Castle Local Committee's reasoning is difficult, however, since its report

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<sup>83</sup>For analysis of Special Places 2000, see: Steven A. Kennett, "Special Places 2000: Protecting the Status Quo" (1995) 50 Resources 1; Steven A. Kennett, "Special Places 2000: Lessons from the Whaleback and the Castle" (1998) 63 Resources 1.

<sup>84</sup>Ed Struzik, "Wild Castle environmental hot spot" in *The Edmonton Journal: Special Places Special Report* (reprinted from *The Edmonton Journal*, 15-25 February 1999) 13 at 14.

<sup>85</sup>Castle Local Committee, "A Living Document" – *Recommendations of the Castle Local Committee to the Minister of Environmental Protection on the Castle Candidate Area* (4 July 1997).

<sup>86</sup>*Ibid.* at 5, 8.

<sup>87</sup>*Ibid.* at 3.

<sup>88</sup>*Ibid.* at 2.

was brief and cited no scientific studies, expert opinion or other evidence to support its general observation regarding the Castle ecosystem.

At first glance, the report of the Castle Local Committee and the NRCB's West Castle decision seem diametrically opposed. A closer analysis, however, reveals some important similarities between the two documents. While its report differed from the NRCB's decision in emphasis and level of detail, the Castle Local Committee agreed that the Castle should be managed in an integrated fashion within a regional context, acknowledged that environmental values in the Castle were at risk, and concluded that the existing planning and management regime was inadequate.

Significantly, the Castle Local Committee referred to all three of these issues in the introduction to its recommendations:

"The Castle Local Committee recognizes that the Castle Candidate area is part of the larger Rocky Mountain Natural Region that extends both north and south of the Castle as well as further west into British Columbia. Within this context there are a variety of land management strategies that strive to protect land and resources. The prescriptions outlined in this recommendations section provide the necessary guidance for a management plan that will address the significance of the Castle area. Strict adherence to the recommendations when developing the management plan is necessary. Although only one small area (the West Castle Wetlands) qualifies under the special places mandate, *the committee is compelled to make recommendations for a sensitive multiple use management of the entire Castle area. The following recommendations provide a clear direction for enhancement of the multiple use management principles that will protect the unique combination of resources in the Castle.* Protection of the natural systems will continue and the long term goals of the community will be met."<sup>89</sup>

The Castle Local Committee thus recognized the regional context and the need to protect the area's "unique" attributes and "natural systems". To this end, it called for a new "management plan" to modify the prevailing multiple-use approach to managing land and resources in the Castle.

Running through many of the Castle Local Committee's recommendations is an implicit and sometimes explicit recognition that ecological values in the Castle are at risk. For example, it underlined the need for a careful, sensitive and timely approach to management based on accurate information because "there are limits to the impact that the Castle can sustain."<sup>90</sup> It therefore proposed a monitoring program "to ensure that positive results are realized and negative effects are reacted to firmly and quickly."<sup>91</sup> Furthermore, the committee recommended that, "in order to preserve the Castle, the entire Castle watershed must be addressed as one management area within which a wide

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<sup>89</sup>*Ibid.* at 4 (emphasis added).

<sup>90</sup>*Ibid.* at 12.

<sup>91</sup>*Ibid.* at 12.

variety of uses are accommodated.”<sup>92</sup> This change, the committee noted, would also facilitate “one-window management”.<sup>93</sup> The Castle Local Committee thus agreed with the NRCB that a more integrated approach to environmental and resource management was needed in the Castle.

Access management is another theme from the NRCB decision that was raised by the Castle Local Committee.<sup>94</sup> Noting that the provincial land manager “must have the necessary tools to redress situations including access and random camping,”<sup>95</sup> the committee urged the Alberta government to provide the funding and staff required to ensure implementation of the educational, enforcement, monitoring and engineering components of the *Castle River Access Management Plan*.<sup>96</sup> It also proposed that the access management be implemented through a Forest Land Use Zone regulation.<sup>97</sup>

The committee also recognized the need for “strict guidelines” to minimize the impact of industrial and commercial development.<sup>98</sup> Particular issues of concern were the proliferation of access routes for forestry and oil and gas operations and the potential future expansion of the ski resort in the West Castle Valley, notably the risk that residential and facility structures would conflict with wildlife corridors and user access. One of the committee’s “management principles” underlined the need to address multiple demands on the Castle’s resources by striking a balance “with particular emphasis on the retention of wildlife populations and the biodiversity in animal and vegetation populations.”<sup>99</sup>

Like the NRCB, the Castle Local Committee commented specifically on the inadequacy of the *Castle IRP*. The committee expressed particular concern “about the lack of commitment by Alberta Environmental Protection to keep the IRP or any plan current and ‘alive’.”<sup>100</sup> It therefore recommended that the *Castle IRP* be “legislated”, incorporating into law the boundaries and management strategies that it proposed for the Castle Special Management Area and including “direction for implementation, updating and monitoring.”<sup>101</sup> This proposal would result in a significant change from the *Castle*

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<sup>92</sup>*Ibid.* at 10.

<sup>93</sup>*Ibid.* at 10.

<sup>94</sup>*Ibid.* at 16-18.

<sup>95</sup>*Ibid.* at 15

<sup>96</sup>*Ibid.* at 16.

<sup>97</sup>*Ibid.* at 8.

<sup>98</sup>*Ibid.* at 18.

<sup>99</sup>*Ibid.* at 18.

<sup>100</sup>*Ibid.* at 12

<sup>101</sup>*Ibid.* at 8.

*IRP's* current status as a policy document that, according to its Preface, “has no legal status and is subject to revisions or review at the discretion of the Associate Minister of Public Lands and Wildlife”.<sup>102</sup>

In their reviews of the specific land-use proposals before them, both the NRCB and the Castle Local Committee felt compelled to examine overall land and resource management in the Castle. Taken as a whole, the report of the Castle Local Committee was more supportive of the *status quo* and less concerned with the need to restrict human activity in order to ensure ecosystem sustainability. The Board and the committee also differed on appropriateness of protected area designation for the Castle. Nonetheless, they both concluded that ‘multiple use’ management as practiced by the Government of Alberta was inadequate and that changes to the legal, policy and institutional framework were needed to address threats to ecological values in the Castle. More specifically, both the Castle Local Committee and the NRCB identified concerns with the *Castle IRP* and the access management regime.

## 4.0 The Energy and Utility Board’s Screwdriver Creek Decision

The relationship between incremental development and regional land-use issues in the Castle returned to centre stage in 2000, when the Alberta Energy and Utility Board (EUB) considered applications by Shell Canada Ltd. (Shell Canada) to drill four sour gas wells and to construct and operate associated pipelines and facilities in the Screwdriver Creek valley. Following objections to the applications from local land-owners, the EUB held a brief public hearing and issued a 14-page decision report that was, in many respects, a routine approval of a contested energy project.<sup>103</sup> Nonetheless, a key section of the EUB decision dealt with cumulative environmental effects. This section, which was far from routine, strongly reiterated the three key conclusions from the NRCB’s West Castle decision.

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<sup>102</sup>*Castle IRP*, *supra* note 5 at iii.

<sup>103</sup>Alberta Energy and Utilities Board (EUB), *Shell Canada Ltd., Application to Drill Four Critical Sour Gas Wells and Construct and Operate Related Pipeline and Facilities, Castle River Area*, Decision 2000-17, 8 March 2000.

## 4.1 The EUB's Views on Cumulative Effects and Regional Land-Use Issues

The EUB began its discussion of regional cumulative effects by summarizing the views of the applicant and the interveners. It noted Shell Canada's submission "that there were significant regional, cumulative environmental effects attributable to energy, agricultural, recreational, and residential development" and "it was possible that the biological thresholds for some species in the region were either being approached or may have been exceeded".<sup>104</sup> Shell argued, however, that the effects of its proposed project were sufficiently small that they would produce no measurable change in the environment and therefore would not contribute significantly to existing cumulative effects.

Intervenors agreed with Shell Canada that that regional cumulative effects were significant and that biological thresholds for the long-term viability of some species had been exceeded.<sup>105</sup> The intervenors did not, however, view Shell Canada's proposed project as insignificant from a regional perspective. Questions were also raised about ability of the existing management regime in the Castle to address cumulative effects. In particular, the Board highlighted a suggestion from intervenors that "a coordinated, integrated effort on behalf of the responsible land management agencies would be necessary to restore the ecological integrity of the local region back to an acceptable level."<sup>106</sup> Closing and reclaiming some roads, cut lines and trails was identified as a specific management strategy. One intervener indicated that, in his view, the existing access management plan could not be enforced effectively given the high density of access points in the region.<sup>107</sup>

Despite the recognition by all parties that cumulative effects were a major concern in the Castle, the EUB found that Shell Canada had complied with existing guidelines regarding cumulative effects assessment and that the incremental adverse effects of the proposed project would be small.<sup>108</sup> It therefore approved the applications. In so doing, however, the EUB commented directly on the adequacy of regional land-use planning and the implications of problems in this area for its evaluation of proposals for energy development.

The EUB's discussion of these issues presents, in two paragraphs, a striking indictment of the Government of Alberta's approach to land and resource management in the Castle and a remarkable admission of the limitations of the Board's own project review process.

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<sup>104</sup>*Ibid.* at 8.

<sup>105</sup>*Ibid.* at 9.

<sup>106</sup>*Ibid.* at 9.

<sup>107</sup>*Ibid.* at 9.

<sup>108</sup>*Ibid.* at 9.

This passage is among the most significant ever written by the EUB on land-use issues and it warrants close attention:

“Historically, the Board has turned to the regional IRP for guidance as to acceptable forms of activity and development, particularly on Crown lands. In this case, however, the Board notes that both the public and the industry participants took a common view that it was possible or even likely that the biological thresholds for at least some key species identified as important in the IRP may now have been exceeded in the region. This would appear to strongly suggest that the publicly available planning tools for the region may now be outdated and inadequate to address the current level of development. The Board also agrees with the position taken by the parties that, in the absence of threshold values against which to measure such ecological effects, it is difficult for an applicant, the public, or the Board to evaluate to what degree incremental impacts from new development would be acceptable. Nor is it possible to determine what mitigative actions, such as facility, road, or cut-line abandonment and reclamation in other portions of the region, might be used to reduce the cumulative effects to suitable levels.

For almost two decades the EUB has been directly involved in adjudicating conflicts in the Castle Crown region between proponents of new energy development and members of the public that believe that the ecological values of the region are at risk. The Board also expects that there will continue to be applications in this region for new energy development into the foreseeable future. The evidence provided at this hearing suggests that at least some of the predicted environmental effects may now be occurring, although clearly not only because of oil and gas development. In order to ensure that future energy development in the region continues to be environmentally acceptable, the Board strongly believes that additional evidence such as would be found in an updated integrated resource management strategy must be developed to confirm that the region’s environmental values are being adequately protected. Alternatively, work needs to be initiated in a timely fashion to create strategies to address the future cumulative effects of human activities, including energy development, in the Castle Crown region. The Board intends to raise this issue with the appropriate land management agencies to consider such an initiative for this region of the province. The Board expects that the energy industry would also be interested in participating in such an initiative in order to establish some certainty for future development.”<sup>109</sup>

These two paragraphs express clearly the EUB’s frustration as it confronted, yet again, the unenviable task of reviewing applications for incremental development in a region where chronic land-use conflicts and ongoing environmental degradation can be traced directly to the Alberta government’s failure to establish an effective framework for managing the cumulative impacts of human activities. This passage is particularly significant for two specific reasons.

First, it has potentially far-reaching implications for the EUB’s assessment of project applications in the Castle and other areas of Alberta where incremental oil and gas development is contributing to regional cumulative effects. The EUB, like the NRCB, has a statutory duty to consider whether each project that it reviews is “in the public interest, having regard to the social and economic effects of the project *and the effects of the*

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<sup>109</sup>*Ibid.* at 10.

*project on the environment.*”<sup>110</sup> Since the Board itself has now stated that it is “difficult” to evaluate the acceptability of incremental development and “not possible” to specify what mitigation measures would achieve suitable levels of cumulative effects, justifying the approval of new energy projects in the Castle under the EUB’s ‘public interest’ test may become increasingly challenging.

This passage from the Screwdriver Creek decision is also significant because it reiterates and elaborates on the three key conclusions from the NRCB’s West Castle decision:

- A regional and ecosystem-based perspective is essential when evaluating the acceptability of new development proposals in the Castle. Furthermore, managing the adverse environmental impacts of incremental development in this region requires an “integrated resource management strategy” or other initiatives that are capable of addressing the cumulative effects of a broad range of human activities.
- Important environmental values in the Castle are at risk. Both the EUB and the NRCB expressed concern that significant environmental degradation has occurred in the Castle and is continuing to occur as a result of increasingly intense development and human activity. The NRCB’s doubts regarding the sustainability of the regional ecosystem were mirrored in the EUB’s acknowledgement of concerns that biological thresholds for key species may already have been exceeded.
- The current planning and management tools – notably the *Castle IRP* – are outdated and cannot adequately address cumulative environmental effects. Both the NRCB and the EUB emphasized the need for attention to the intensity of development. This concern was explicit in the NRCB decision and implicit in the EUB’s appeal for guidance in the form of “biological thresholds” to supplement the zoning of activities under the *Castle IRP*. Furthermore, both boards agreed that cumulative effects cannot be managed on the project-by-project or sector-by-sector basis that is entrenched in ‘multiple-use’ management as currently practiced in the Castle. Consequently, they both recommended the establishment of mechanisms to achieve the integrated management of cumulative effects on a regional basis.

The Screwdriver Creek decision refers to the EUB’s involvement in almost two decades of land-use conflicts in the Castle and suggests that ongoing conflict and continuing environmental degradation are likely if current trends continue. It also contains an explicit request that provincial land management agencies take action to address these problems. Although the EUB did not refer to the NRCB’s West Castle decision, it might well have asked why there had been no significant progress on the regional land-use and

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<sup>110</sup>*Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, s. 3 (emphasis added).

environmental management issues that had been so thoroughly examined seven years earlier.

## 5.0 From Westcastle Park to Castle Mountain Resort

Continuing expansion of recreational, residential and commercial facilities in the West Castle Valley closes the circle on the past decade of land-use issues in the Castle. In 2002, the Council for the Municipal District of Pincher Creek (M.D. Council) approved an Area Structure Plan (ASP) for the ski facility, now renamed Castle Mountain Resort. The review of this proposal differed significantly from the NRCB process. Public hearings were short, limited in scope, and relatively informal. Furthermore, there is no decision report that summarizes the arguments and evidence considered by the M.D. Council or describes its findings and conclusions. Nonetheless, written submissions to the M.D. Council and a letter sent by the Reeve and Councilors to the Minister of Sustainable Resource Development provide a clear indication of the land-use concerns that were raised in connection with this development. Before turning to the approval of the ASP and related issues, the expansion of facilities in the West Castle Valley prior to 2002 warrants a brief discussion.

### 5.1 Incremental Facility Development

The extent of development at the Westcastle Park facility in 1993 was noted earlier in this paper.<sup>111</sup> The facility consisted of 20 ski runs served by three T-bar lifts, a small day lodge, an ancillary building and forty mobile homes. Although Vacation Alberta's proposal for a major development project failed to secure regulatory approval, incremental expansion of the facilities nonetheless occurred over the following ten years.

A summary of this development is found in the *Castle Mountain Resort ASP* that was submitted in 2002.<sup>112</sup> Additions to the facilities began in 1996, the year following the government's rejection of Vacation Alberta's proposal. Significant changes included the installation of two new chair lifts, resulting in expanded ski terrain, and the replacement of the day lodge with a new 12,000 square foot multi-purpose building that was rated by *Ski Canada* magazine in 2000 as Canada's best new day lodge. A three-story building with a ski-rental shop, commercial space and staff accommodation was also added to the

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<sup>111</sup>*Supra* note 10.

<sup>112</sup>*Castle Mountain Resort Area Structure Plan* (n.d.) at 8, 10-12 (available at: [www.castlemountainresort.com/insidecmr/ASP/asp-full.pdf](http://www.castlemountainresort.com/insidecmr/ASP/asp-full.pdf)) [hereinafter "*Castle Mountain Resort ASP*"].

site, along with a 1500 square foot restaurant and bar that is open throughout the ski season and on weekends during the summer and fall.

The trailer village was phased out, replaced by 55 residential leasehold lots developed in 1996. The ASP states that:

“This area was originally designed as a mobile home park to meet leasehold and development requirements. Subsequent development approvals have resulted in a majority of the housing being conventional wood-frame construction.”<sup>113</sup>

An additional 33 leasehold residential lots were developed for “conventional wood frame dwellings”, 31 of which were substantially complete in 2001.<sup>114</sup> This expansion brought the total to 88 building sites for permanent residential development at the foot of the ski hill. Accommodation was also available at approximately 50 recreational vehicle (R.V.) sites located along the south edge of the main parking lot. To service the commercial and residential facilities, an upgraded water system and a wastewater treatment system were installed.

Although this development was less extensive than the four-season resort proposed by Vacation Alberta, it nonetheless constituted a significant increase in facilities in the West Castle Valley. Permanent, four-season residential and commercial development was a reality in the West Castle Valley even before the ASP was reviewed by the M.D. Council in 2002, despite the concerns with the direct and indirect effects of this type of development that were raised by the NRCB. Furthermore, the incremental development that had been permitted 1996 provided the spring-board for the further expansion of facilities set out in the *Castle Mountain Resort ASP*.

## 5.2 The Castle Mountain Resort Area Structure Plan

The Executive Summary of the ASP states that Castle Mountain Resort is “a special community occupying an exceptional location in the Westcastle Valley” and that the ASP is intended “to outline a sustainable development plan for the community that is intended to ensure its viability for the next 10 to 20 years”.<sup>115</sup> The stated purpose of the residential community and associated commercial development is to provide the financial basis for a

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<sup>113</sup>*Ibid.* at 10.

<sup>114</sup>*Ibid.* at 11.

<sup>115</sup>*Castle Mountain Resort ASP Executive Summary*, at 3 (available at: [www.castlemountainresort.com/insidecmr/ASP/asp-summary.pdf](http://www.castlemountainresort.com/insidecmr/ASP/asp-summary.pdf)).

viable ski facility, intended primarily to serve the southern Alberta market. The development proposed for Castle Mountain Resort includes four key components.<sup>116</sup>

First, ski terrain will be expanded onto Haig Ridge, primarily to meet the needs of beginner, novice and intermediate visitors.<sup>117</sup> This expansion and the reconfiguration of other ski runs will include the addition of two more chairlifts. The ASP states that Castle Mountain Resort will aim to attract 100,000 skier visits per season, with a maximum of 2,400 skiers per day. The resort had approximately 62,000 skier visits in 1999-2000, 41,000 visits in 2000-2001 (due to poor snow conditions) and almost 60,000 visits in 2001-2002.<sup>118</sup>

Second, the ASP sets the total build-out for accommodation at Castle Mountain Resort as equivalent to 225 housing units (750-900 beds), including the pre-existing 88 units.<sup>119</sup> This accommodation will consist of “a lodge style hotel for the upper end market, a hostel for more affordable accommodation, and numerous multifamily housing units.”<sup>120</sup> The ASP notes that “Single-family units may also be included on an infill basis.”<sup>121</sup> Accommodation for some resort staff will also be provided. In addition to the permanent residential accommodation, the ASP includes “at least 50 stalls” for recreational vehicles (R.V.s), intended to provide “non-permanent seasonal, low cost accommodation for the resort”.<sup>122</sup> The ASP states that this facility “would continue to be seasonal, meaning that R.V. units would not have connections to water and sewer services.”<sup>123</sup> However, it anticipates the construction of a central building to serve the needs of R.V. users. This building would provide “toilet, shower, and possibly laundry, meeting area and kitchen-like facilities.”<sup>124</sup>

Third, the ASP states that “complementary base area facilities” will be required to meet skier needs given the expected increase in visitor use.<sup>125</sup> The list of commercial services and amenities includes restaurants, pubs and lounges, retail space, a recreational centre (hot tub, small pool and gym equipment), arcades and amusement facilities, personal

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<sup>116</sup>Castle Mountain Resort ASP, *supra* note 112 at 19-25.

<sup>117</sup>*Ibid.* at 19-20.

<sup>118</sup>*Ibid.* at 12

<sup>119</sup>*Ibid.* at 20.

<sup>120</sup>Castle Mountain Resort ASP Executive Summary, *supra* note 115 at 3.

<sup>121</sup>*Ibid.* at 3.

<sup>122</sup>Castle Mountain Resort ASP, *supra* note 112 at 23.

<sup>123</sup>*Ibid.* at 23.

<sup>124</sup>*Ibid.* at 23.

<sup>125</sup>*Ibid.* at 21.

services, financial services (i.e., a bank machine), medical services, offices, meeting facilities, a day care, and a visitor information centre.<sup>126</sup>

Fourth, the ASP provides for a range of ancillary development.<sup>127</sup> For example, the day-use parking lot will be expanded to accommodate about 700 cars. Parking will also be provided in the core resort area and the residential compound. A new maintenance and storage compound will be developed and the water system will be improved in order to meet the requirements for domestic use, firefighting and snow-making.<sup>128</sup> The ASP notes, however, that the sewage system installed three years earlier “has sufficient capacity to handle the resort’s output for the build out anticipated under this plan.”<sup>129</sup>

Castle Mountain Resort has obvious similarities with the project proposed by Vacation Alberta. The two proposals are not, however, identical. The ASP identifies the “primary purpose” of Castle Mountain Resort as skiing,<sup>130</sup> in contrast to the four-season, multi-use concept that was explicit in Vacation Alberta’s proposal. It notes that “Winter activities are emphasized rather than a four-season resort development, minimizing impact on wildlife.”<sup>131</sup> The ASP also states that the proposal is for a “small scale development” that does not include “developing golf courses or other high impact summer uses.”<sup>132</sup>

The ASP identifies a range of other design features intended to address the environmental and wilderness concerns that were highlighted by the NRCB. These features include:

- Restricting development to the west side of the West Castle River in order to reduce possible conflicts with the wildlife movement corridor – a specific condition imposed by the NRCB for Vacation Alberta’s project;<sup>133</sup>
- Limiting housing and commercial development to existing titled land, thereby “maintaining a compact development footprint”;<sup>134</sup>
- Designing accommodation to meet mid-week demand, with peak demand to be met through accommodation in Pincher Creek and elsewhere in the region;<sup>135</sup>

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<sup>126</sup>*Ibid.* at 22

<sup>127</sup>*Ibid.* at 24-25.

<sup>128</sup>*Castle Mountain Resort ASP Executive Summary, supra* note 115 at 4.

<sup>129</sup>*Ibid.* at 4.

<sup>130</sup>*Castle Mountain Resort ASP, supra* note 112 at 34.

<sup>131</sup>*Ibid.* at 15.

<sup>132</sup>*Ibid.* at 6-7.

<sup>133</sup>*Ibid.* at 15.

<sup>134</sup>*Ibid.* at 15, 7.

- Minimizing snow making requirements;<sup>136</sup> and
- Guiding development by an “Environmental Management Plan” that will address “environmental issues relevant to the location and operation of the facilities.”<sup>137</sup>

The ASP thus presents Castle Mountain Resort as a modest development, focused on meeting the needs of skiers while avoiding the impacts on wildlife associated with golf courses.

The fact remains, however, that Castle Mountain Resort is a permanent residential and commercial “community” in the West Castle Valley. It is thus the type of development that was identified by NRCB as having – along with motorized recreation – the greatest potential for direct and indirect impacts on wildlife. As the NRCB noted in its discussion of Vacation Alberta’s proposal, owners of residential units in the West Castle Valley and visitors to the hotel, hostel and rental accommodation that make up the resort complex are likely make use of surrounding public lands, particularly in the summer.

The ASP does not discuss the issue of off-site impacts in any detail. Instead, it sets out a general position regarding public access to surrounding lands:

“Castle Mountain Resort recognizes the diversity of user groups in the region and their varying interests. While we believe that management and mitigation efforts throughout the area are important, we further believe that the area belongs to all Albertans and, therefore, access should not be denied to anyone who practices responsible use in keeping with the Access Management Plan.”<sup>138</sup>

The only other mention of access issues in the ASP is the statement that one of the proponent’s goals is to cooperate with other interest groups by “avoiding interference with access to adjacent areas.”<sup>139</sup>

The failure of the *Castle Mountain Resort ASP* to address the broader regional land-use issues, including the project’s potential to be a staging ground for increased motorized access to the backcountry, was in part a strategic decision by the proponents.<sup>140</sup> Having seen the divisiveness of the NRCB’s West Castle decision, they had no interest in alienating the well-organized off-road vehicle lobby in the region by suggesting

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<sup>135</sup>*Ibid.* at 15.

<sup>136</sup>*Ibid.* at 15

<sup>137</sup>*Ibid.* at 15.

<sup>138</sup>*Ibid.* at 18.

<sup>139</sup>*Ibid.* at 7.

<sup>140</sup>Confidential interviews.

restrictions on motorized backcountry recreation in the Castle as a means of mitigating the resort's contribution to cumulative environmental effects.

There was, however, an important legal consideration that allowed the ASP to avoid issues that had proven so problematic for Vacation Alberta. The ASP was prepared for a municipal planning process conducted by the M.D. Council pursuant to the *Municipal Government Act*.<sup>141</sup> While there was some debate – noted below – regarding the jurisdiction of the M.D. Council to take account of offsite impacts in its review of an ASP, responsibility for managing the surrounding public lands rests squarely with the Government of Alberta, not the Municipal District of Pincher Creek. This jurisdictional division helps to explain the limited scope of the ASP when compared with the environmental impact statement prepared by Vacation Alberta for the NRCB.<sup>142</sup> The important question, then, is whether or not broader regional land-use issues were factored into decision-making about Castle Mountain Resort.

### 5.3 Review of the Castle Mountain Resort ASP

Given the intense and public scrutiny of Vacation Alberta's proposal by the NRCB and the important site-specific and regional concerns identified in the West Castle decision, one might have expected a similar review process for any subsequent proposal to develop a four-season residential community and associated commercial facilities in West Castle Valley. At a minimum, it would seem logical for the approval of any such development to at least include a transparent and public evaluation of whether or not the NRCB's analysis and conclusions – including the mitigation measures that it established as conditions for approving Vacation Alberta's proposed project – continued to be relevant. In fact, the *Castle Mountain Resort ASP* was reviewed using two much more limited processes that did not require provincial and municipal decision-makers to conduct comprehensive environmental assessment hearings or to issue detailed explanations of how they reconciled the approval of this project with the NRCB's West Castle decision.

The initial review was conducted under the environmental assessment provisions of Alberta's *Environmental Protection and Enhancement Act* (EPEA).<sup>143</sup> The principal issue was whether or not a detailed environmental impact assessment (EIA) report should be ordered for the project. This decision was critically important for two reasons.

First, section 49 of EPEA sets out an extensive list of items to be addressed in an EIA report, including:

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<sup>141</sup>R.S.A. 2000, c. M-26, s. 633.

<sup>142</sup>Vacation Alberta, *Westcastle Expansion Environmental Impact Assessment* (1992).

<sup>143</sup>EPEA, *supra* note 13.

“(c) an identification of existing baseline environmental conditions and areas of major concern that should be considered;

(d) a description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity, *including cumulative regional, temporal and spatial considerations*;

(e) an analysis of the significance of the potential impacts under clause (d).”<sup>144</sup>

Preparation of an EIA report would therefore involve explicit consideration of the project’s potential impacts on surrounding public land.

This decision was also important because a determination by Alberta Environment that an EIA report was required would have brought the project under the jurisdiction the NRCB.<sup>145</sup> It would therefore have made public hearings very likely, providing interested parties with an opportunity to make detailed written and oral submissions on the types of regional land-use issues that had been considered in the West Castle decision. An NRCB review would also have had significant financial implications for the project proponent because of the environmental assessment work that would have been required and the cost of a hearing.

EPEA establishes two ways that an EIA report may be required. First, this level of review is “mandatory”<sup>146</sup> when a proposed recreational development will be located immediately adjacent to an ecological reserve, a natural area or a wilderness area designated under the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*<sup>147</sup> and if the project is expected to receive more than 250,000 visitor days per year.<sup>148</sup> Castle Mountain Resort satisfied the first condition, since it is adjacent to West Castle Wetlands Ecological Reserve. However, the ASP anticipated 100,000 annual visitor days by skiers,<sup>149</sup> and a submission to the M.D. Council by the proponent’s lawyer stated that an additional 50,000 non-skier visits each year were possible.<sup>150</sup> The proponent’s estimate of total visitation was thus significantly below the threshold for mandatory review under EPEA. Alberta Environment reviewed the development proposal and concluded that the

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<sup>144</sup>*Ibid.* at s. 49 (emphasis added).

<sup>145</sup>*Natural Resources Conservation Board Act*, *supra* note 115 at ss. 4, 1(h).

<sup>146</sup>*Ibid.* at s. 44(1)(a).

<sup>147</sup>R.S.A. 2000, c. W-9.

<sup>148</sup>*Environmental Assessment (Mandatory and Exempted Activities) Regulation*, A.R. 111/93, Schedule 1(f).

<sup>149</sup>*Castle Mountain Resort ASP*, *supra* note 112 at 20.

<sup>150</sup>Submission Paper to the Reeve and Council, Municipal District of Pincher Creek #9, from F. Murray Pritchard LL.B., Legal Counsel for Castle Mountain Resort Inc., Re Area Structure Plan (15 July 2002) at 4 [hereinafter “Pritchard Submission”].

expansion of Castle Mountain Resort was not a mandatory activity as defined in the *Environmental Assessment (Mandatory and Exempted Activities) Regulation*.<sup>151</sup>

The second route to an EIA report is a discretionary order by the designated Director under EPEA or by the Minister of the Environment.<sup>152</sup> The statutory language governing the exercise of this discretion is extremely broad. In response to a request from the Castle-Crown Wilderness Coalition, it appears that the Director of Regulatory Assurance at Alberta Environment, Ms. Jillian Flett, turned her mind to the question of whether or not she should exercise this discretion. A published report, citing documents subsequently obtained by the Castle-Crown Wilderness Coalition, indicates that there was considerable discussion among government officials regarding the need for an EIA report.<sup>153</sup> In the end, however, the Director decided that an EIA report would not be required. In a remarkable letter, Ms. Flett explained her reasons for this decision as follows:

“After consultation with staff in Sustainable Resource Development (SRD), I have determined that the potential impacts of the proposed development are manageable and can be dealt with through the Public Lands Act (Licence of Occupation) and EPEA approval processes, as well as, the public review of the Detailed Forest Management Plan (DFMP) for the C5 Forest Management Unit commencing this spring.”<sup>154</sup>

The letter does not elaborate on the “potential impacts” that Ms. Flett considered or on the standard or criteria that she was applying when she determined that these impacts were “manageable”.

The NRCB’s West Castle decision and the subsequent history of land-use issues in the Castle provide a detailed and authoritative documentation of the types of direct and indirect impacts that would likely be associated with the development of permanent residential and commercial facilities in the West Castle Valley. Given this record, it is difficult to understand the basis for Ms. Flett’s assertion that these impacts can be addressed through the Licence of Occupation issued under the *Public Lands Act*,<sup>155</sup> EPEA approval processes, and the review of the Detailed Forest Management Plan for the C5 Forest Management Unit.

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<sup>151</sup>Letter from Ms. Jillian Flett, Director, Regulatory Assurance Division, Alberta Environment to Mr. James Tweedie, Past President, Castle-Crown Wilderness Coalition, Re: Requirement for Castle Mountain Resort Inc. to Submit an Environmental Impact Assessment (EIA) Report (1 May 2002) [hereinafter “Flett Letter”] (on file with the author).

<sup>152</sup>EPEA, *supra* note 13 at ss. 43-47.

<sup>153</sup>Shari Narine, “Documents point to environmental assessment for Castle expansion” *Pincher Creek Echo* (20 May 2002) (available at: [www.pinchercreekecho.com/story.php?id=54063](http://www.pinchercreekecho.com/story.php?id=54063)).

<sup>154</sup>Flett Letter, *supra* note 151.

<sup>155</sup>R.S.A. 2000, c. P-40.

A Licence of Occupation (LOC) is an instrument, issued pursuant to a regulation under the *Public Lands Act*, that authorizes the holder “to use the licensed area for the purpose specified in the licence.”<sup>156</sup> LOCs are used primarily for the construction of access roads, although they may be issued for other uses of public land.<sup>157</sup> The key point is that LOCs are instruments that authorize specific uses of *public* land. The development of residential and commercial facilities at Castle Mountain Resort, however, is occurring on *private* land. This development is not, therefore, subject to terms and conditions set out in an LOC.

It appears that the only LOC relevant to Castle Mountain Resort is for the operation of the ski hills on the public land immediately adjacent to the resort’s residential and commercial hub.<sup>158</sup> While the use of these ski hills could have some impacts on wildlife in the area, the West Castle decision clearly showed that the principal concerns with the development as a whole were the size and location of the permanent ‘community’ in the valley and its implications for the use of large areas of surrounding public land, particularly off-road vehicle use in the summer. Furthermore, the NRCB and other decision-makers have emphasized the need for regional mitigation strategies to address cumulative environmental effects in the Castle. It is therefore difficult to imagine how the Alberta government could use the LOC for the ski hills at Castle Mountain Resort to address the principal direct and indirect impacts of locating a major residential and commercial community on private land in the West Castle Valley.

Ms. Flett’s letter also identifies EPEA approval processes as other mechanisms for dealing with the potential impacts of development at Castle Mountain Resort. Her letter states, however, that “the waterworks and wastewater systems related to the proposed residential development that are subject to approval under the EPEA are exempt from the environmental assessment process as defined in Part 2, Division 1 of the EPEA.” Ms. Flett stated, therefore, that she could not order an EIA report with respect to these aspects of the development. The letter from Ms. Flett does not indicate what other EPEA approvals will be required for Castle Mountain Resort. It is likely, however, that other approvals will follow the same pattern as approvals relating to water use. Individual approval processes for facilities or activities under EPEA are not designed to review the project’s overall impacts on surrounding public lands. Furthermore, it would be both difficult and arguably inappropriate to attach specific conditions to these approvals in an attempt to address these broader land-use issues.

The final mechanism that Ms. Flett identifies to deal with the impacts of expansion at Castle Mountain Resort is the process for developing a Forest Management Plan (FMP)

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<sup>156</sup>*Dispositions and Fees Regulation*, A.R. 54/2000, s. 67(1).

<sup>157</sup>Alberta Sustainable Resource Development, *Public Lands Operational Handbook – Working Draft* (July 2002) at 37 (available at: [www3.gov.ab.ca/srd/land/LAD/dl\\_li.html#plhandbook](http://www3.gov.ab.ca/srd/land/LAD/dl_li.html#plhandbook)).

<sup>158</sup>*Castle Mountain Resort ASP*, *supra* note 112 at 9.

for the C5 Forest Management Unit. This process is examined in some detail below.<sup>159</sup> That discussion shows that the terms of reference for the FMP suggest a sectoral orientation, focusing on timber management. A careful reading of the terms of reference indicates that the process for developing the FMP and the final products of this process are very unlikely to address in a meaningful way the challenges of cumulative effects management in the Castle and throughout the adjacent areas of public lands.

The decision not to order an EIA report, as explained in the letter from Ms. Flett, is thus difficult to reconcile with the principal conclusions from the NRCB's West Castle decision and the subsequent history of land use in the Castle. In particular, the mechanisms that she identifies as adequate for addressing the potential impacts of the proposed development do not seem well suited to the task at hand. This decision is the subject of an application for judicial review, initiated on behalf of the Castle-Crown Wilderness Coalition.<sup>160</sup>

The second mechanism for reviewing the proposed project was the M.D. Council's approval process for the *Castle Mountain Resort ASP*. The *Municipal Government Act*, the *Municipal Development Plan*<sup>161</sup> and the applicable land-use by-law<sup>162</sup> established the legal basis for this process and provided guidance on the scope of issues to be addressed. A key question for the M.D. Council was whether or not its review of the ASP should deal with potential impacts beyond the project footprint. In particular, it had to decide how to apply section 1(c) of the land-use by-law, which stated that one intent of the ski resort land use designation was to "Ensure that proposed development does not create undue environmental impact on surrounding land."<sup>163</sup> This issue was debated in the written submissions received by the Council and in the local press.<sup>164</sup>

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<sup>159</sup>*Infra*, Section 6.3.

<sup>160</sup>Narine, *supra* note 153. See, Castle-Crown Wilderness Coalition (Applicant) and Jillian Flett, Director of Regulatory Assurance Division, Alberta Environment and Lorne Taylor, Minister of the Environment (Respondents), Originating Notice, Application for Judicial Review (17 October 2002) (available at: [www.ccwc.ab.ca/ccwcbref/ReportsandDocs.html/OriginatingNoticeJR.pdf](http://www.ccwc.ab.ca/ccwcbref/ReportsandDocs.html/OriginatingNoticeJR.pdf)).

<sup>161</sup>Bylaw No. 997, October 1997.

<sup>162</sup>*Municipal District of Pincher Creek No. 9 Land Use Bylaw 1003-98*, cited in Pritchard Submission, *supra* note 150 at 1, 3.

<sup>163</sup>Cited in Pritchard Submission, *ibid.* at 3. This provision is now included in *Municipal District of Pincher Creek No. 9 Land Use Bylaw 1050-02*, Ski Resort – SR, s. 1(c) at 121 (available at: [www.mdpinchercreek.ab.ca](http://www.mdpinchercreek.ab.ca)).

<sup>164</sup>See: Shari Narine, "Larger picture needs viewing" *Pincher Creek Echo*, Editorial (30 July 2002) (available at: [www.pinchercreekecho.com/story.php?id=53777](http://www.pinchercreekecho.com/story.php?id=53777)); Shari Narine, "Support, caution urged for CMR expansion" *Pincher Creek Echo* (30 July 2002) (available at: [www.pinchercreekecho.com/story.php?id=53772](http://www.pinchercreekecho.com/story.php?id=53772)).

A submission by legal counsel for the proponent argued that the M.D. Council's mandate should be relatively narrowly defined and that hearings on the application should not be allowed to become "an environmental hearing or a review of current land use legislation."<sup>165</sup> Potential environmental impacts on public land were, he suggested, a matter of provincial government responsibility and should not be revisited in the M.D. Council's review of the ASP.<sup>166</sup> Opponents of the project argued that the M.D. Council should take account of the broader effects of the project, particularly with reference to the concerns identified in the NRCB's West Castle decision.<sup>167</sup>

The M.D. Council's review of the ASP did not involve the type of public hearings – with expert testimony and opportunities for cross-examination – that were conducted by the NRCB. Nonetheless, interested members of the public had the opportunity to make written submissions and oral presentations regarding the ASP.<sup>168</sup> Many of the written submissions, both for and against the ASP, addressed the broader issues that the proponent had suggested were outside of M.D. Council's jurisdiction.<sup>169</sup>

Supporters of the ASP made the case for a local ski facility, primarily on recreational and economic grounds. Some of their submissions also highlighted differences between Castle Mountain Resort and Vacation Alberta's proposal. Others attacked the NRCB process and conclusions. A few project supporters acknowledged concerns with regional land-use issues, but argued that the provincial government should assume responsibility for these matters and that any deficiencies in provincial land and resource management did not justify rejecting the ASP and risking the closure of the ski facility.<sup>170</sup>

Opponents of the project objected strongly to the ASP on the grounds that it would authorize a further expansion of four-season residences, commercial accommodation and related facilities in the West Castle Valley.<sup>171</sup> A related concern was that the establishment of a residential and commercial community in the valley would create a strong constituency for future development, based on arguments that further expansion of facilities is necessary to protect investments and maintain recreational opportunities.<sup>172</sup>

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<sup>165</sup>Pritchard Submission, *supra* note 150 at 5.

<sup>166</sup>*Ibid.* at 4.

<sup>167</sup>See, for example, *Submission of the Castle-Crown Wilderness Coalition to the Reeve and Council of the Municipal District of Pincher Creek in the matter of the approval of Castle Mountain Resort Inc. Area Structure Plan, July 2002* (17 July 2002) [hereinafter "CCWC Submission"].

<sup>168</sup>These submissions are on file at the office of the Municipal District of Pincher Creek No. 9. The following summary is based upon a review of these submissions.

<sup>169</sup>See, Narine, "Larger picture needs viewing", *supra* note 164.

<sup>170</sup>See, for example, the submission from Dr. and Mrs. David I. Balfour (23 July 2002) at 4.

<sup>171</sup>CCWC Submission, *supra* note 167.

<sup>172</sup>See, for example, the submission from Gordon Peterson (13 July 2002) at 2.

Citing the land-use issues identified by the NRCB and the unfulfilled conditions that it has established for Vacation Alberta's proposed project, opponents argued that development of this scale remained unacceptable despite the site-specific design features and mitigation measures incorporated into the *Castle Mountain Resort ASP*.

The NRCB's West Castle decision was the benchmark for many submissions that highlighted regional land-use issues. A particularly good illustration is the letter and supporting material filed by Waterton Lakes National Park (WLNP).<sup>173</sup> This letter noted that activities in the Castle area can adversely affect wildlife populations shared with WLNP and that these effects were documented in the NRCB review of "a similar development proposal" in 1993.<sup>174</sup> The submission elaborated as follows:

"With the exception of golf course development, the current Area Structure Plan proposes similar land uses to the Vacation Alberta proposal, in terms of residential and commercial development. Although the proposal is focused on seasonal winter use, our experience is that the preferred use will quickly gravitate to year round use given the substantial residential and infrastructure development that is proposed. As such, it is likely that the potential impacts on large carnivores will be similar to the conclusions found in the NRCB report. Even before the NRCB Review, consultants hired by the developer (Vacation Alberta) noted that 'the cumulative effects of habitat loss and direct mortality to grizzly bear in the West Castle Valley as a result of the proposed development will likely cause a significant and permanent decline in the size and distribution of the regional bear population' and that '...no significant mitigation of impacts is possible'."<sup>175</sup>

Acknowledging that the provincial government has primary responsibility for the broader environmental effects, WLNP asked the Council "to endorse the NRCB Review as the most current and relevant assessment to the Area Structure Plan."<sup>176</sup>

The specific concerns of WLNP were essentially unchanged from 1993. The submission enumerates several of these, stating that:

- "It is highly likely that the proposed development and increased use will negatively impact habitat and wildlife populations that are shared amongst Waterton Lakes National Park, the Provinces of Alberta and British Columbia and the United States of America."<sup>177</sup>
- This development "will facilitate additional development and backcountry use in the Castle beyond the winter ski season" and these impacts "cannot be mitigated

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<sup>173</sup>Submission from Mr. Peter Lamb, Superintendent, Waterton Lakes National Park (19 July 2002).

<sup>174</sup>*Ibid.* at 1.

<sup>175</sup>*Ibid.* at 1.

<sup>176</sup>*Ibid.* at 1-2.

<sup>177</sup>*Ibid.* at 2.

by the Municipal District given the management responsibility for public lands in the Castle rests with the Province of Alberta.”<sup>178</sup>

- “There remains uncertainty with respect to the potential for future development and increased human activities at both the Castle Mountain Resort and within the Castle area. This uncertainty suggests that the potential for additional cumulative impact, even beyond the current proposal, is likely.”<sup>179</sup>

The letter also included as an appendix the WLNP submission to the NRCB on Vacation Alberta’s application,<sup>180</sup> a further indication that the principal federal land manager in the area viewed both projects as raising the same fundamental issues.

WLNP was one of many interested organizations, groups and individuals that expressed their views on the *Castle Mountain Resort ASP* by making written submissions to the M.D. Council. However, the provincial government department with primary responsibility for managing public lands in the Castle was not among them. Officials from Alberta Sustainable Resource Development (SRD) did meet on several occasions with representatives of the Municipal District, but they apparently felt that a formal written submission was not needed.<sup>181</sup> As a result, the public record relating to the M.D. Council’s decision on the ASP does not include SRD’s response to concerns about off-site impacts or its views on the mitigation measures that might be taken to address them.

The Alberta government is not, however, entirely absent from the record. The department responsible for managing the West Castle Wetlands Ecological Reserve, the 94 hectare protected area adjacent to Castle Mountain Resort, submitted a two-page letter. Alberta Community Development noted that “it is likely that the increased use of the site during both winter and summer seasons will have some impacts on this protected area.”<sup>182</sup> Under the heading “Traffic/OHV [off-highway vehicle] User Impacts”, the submission elaborated as follows:

“While the plan indicates that proposed expansion is designed for seasonal winter use as opposed to four seasons use, the scope of residential development indicated in the plan will undoubtedly result in increased summer use as well. There may be an impact on the plant and animal species in the Ecological Reserve from either mortality on the access road and from road

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<sup>178</sup>*Ibid.* at 2.

<sup>179</sup>*Ibid.* at 2.

<sup>180</sup>Bill R. Dolan, *An Intervener Submission to the Natural Conservation Board of Alberta on behalf of Environment Canada relating to Application #9201 by Vacation Alberta Corporation Recreational and Tourism Development, Westcastle-Pincher Creek Area* (June 1993).

<sup>181</sup>Confidential interviews.

<sup>182</sup>Submission from Cliff Thesen, Manager, Parks and Protected Areas, Lethbridge Management Area, Alberta Community Development (11 July 2002) at 1.

dust generated by vehicle traffic. In addition, snowmobile activity in the Ecological Reserve could have detrimental ecological effects.”<sup>183</sup>

Interestingly, Alberta Community Development did not recommend any management actions by the provincial government to address these concerns. Instead, it proposed that money from the proponent’s Environment Fund be used to complete a biophysical inventory of the Ecological Reserve, support the completion of a management plan for this protected area, and support monitoring and mitigation of traffic and other user impacts on the wetlands.

## 5.4 Approval of the Castle Mountain Resort ASP

There is no doubt that the M.D. Council was in an unenviable position as it considered the *Castle Mountain Resort ASP*. Faced with a controversial development proposal that raised significant regional land-use issues, the M.D. Council arguably lacked the expertise, time, financial resources and clearly defined legal mandate that were needed to undertake a project review of the type conducted ten years earlier by the NRCB. The municipal Reeve and Councilors found themselves dealing not only with intense political pressure from both sides of the debate, but also with questions about the legality and appropriateness of opening the scope of their deliberations to the broader set of land-use issues.<sup>184</sup> As a practical matter, even if the M.D. Council did consider these issues it had few options to address them. A decision that the development as proposed was not in the broader public interest could only be implemented effectively through a refusal to approve the ASP, an outcome that was seen as entailing some significant legal and political risks. Not surprisingly, the M.D. Council approved the ASP for the Castle Mountain Resort.<sup>185</sup>

Before issuing this approval, however, the M.D. Council communicated its concerns in a letter to the Honourable Mike Cardinal, Minister of Sustainable Resource Development. The letter stated that the Reeve and Councilors were “generally in favor of the proposed improvement to this important recreational and tourist destination”, but that they were concerned about “the impact the expansion will have on the environment in the surrounding public lands.”<sup>186</sup> Noting that both the NRCB’s West Castle decision and the

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<sup>183</sup>*Ibid.* at 2.

<sup>184</sup>Narine, *supra* note 164.

<sup>185</sup>Shari Narine, “Castle plan given nod” *Pincher Creek Echo* (17 September 2002) (available at: [www.pinchercreekecho.com/story.php?id=53819](http://www.pinchercreekecho.com/story.php?id=53819)).

<sup>186</sup>Letter to the Honourable Mike Cardinal from the Reeve and Councilors of the M.D. of Pincher Creek, *Re: Proposed Development at Castle Mountain Ski Resort* (3 July 2002) at 1 (on file with the author).

EUB's Screwdriver Creek decision had "expressed concern over the sustainability of the ecosystem in the Castle area", the Reeve and Councilors stated that:

"Our specific concern relates to the potential for increased wildlife disruption resulting from *virtually unabated off road vehicle access and random camping* in the Castle River area. We believe that the expansion at Castle Mountain Resort will increase this type of use. It is our perception, after consultation with staff from Sustainable Resources [SRD] and Waterton Lakes National Park as well as representatives of various environmental groups, that access by motorized vehicles is the single most significant deterrent to sustainable wildlife habitat and movement in the area."<sup>187</sup>

Ten years after the NRCB thoroughly documented the risks of an increase in "uncontrolled" access associated with Vacation Alberta's proposal, the elected representatives of the Municipal District of Pincher Creek reiterated the same concerns in relation to Castle Mountain Resort.

Since the *Castle River Access Management Plan* was under review, the letter concluded by recommending the following six changes to the plan:

1. Significantly reduce or eliminate the summertime motorized access to the back country
2. Implement better control of winter snowmobile access
3. Install signs to direct and control motorized vehicle access
4. Strengthen the education component of the Access Management Plan
5. Step up enforcement of the Access Management Plan
6. Restrict camping to designated campgrounds".<sup>188</sup>

The Reeve and Councilors noted that these changes would have both ecological and esthetic benefits, including reduced erosion, improved grazing, and less harassment of livestock. They concluded by expressing the hope "that these changes will facilitate increased overall access by Albertans without destroying the natural setting they come to enjoy."<sup>189</sup>

This letter resulted in discussions between the M.D. Council and officials from SRD and in a tour of the region by Minister Cardinal.<sup>190</sup> It appears, however, that the Minister did

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<sup>187</sup>*Ibid.* at 1 (emphasis added).

<sup>188</sup>*Ibid.* at 2.

<sup>189</sup>*Ibid.* at 2.

<sup>190</sup>Confidential interviews.

not issue a written response that addressed the specific recommendations contained in the letter.<sup>191</sup>

## 5.5 Summary

The establishment of a four-season residential and commercial development at Castle Mountain Resort constitutes a significant increase in the human footprint at the heart of the Castle ecosystem. The expansion of facilities since 1996 and the formal approval of the ASP in 2002 have paved the way for a major development that resembles in important respects the project that ultimately failed to secure NRCB and government approval between 1993 and 1995. Castle Mountain Resort, as currently envisioned, is a somewhat scaled-down version of Vacation Alberta's original proposal and it has incorporated site-specific mitigation measures recommended by the NRCB. Nonetheless, the NRCB clearly viewed site-specific measures, by themselves, as insufficient to address the risks that Vacation Alberta's proposed project entailed for the Castle ecosystem. As indicated in WLNP's submission to the M.D. Council, Castle Mountain Resort creates many of the same risks.

The Alberta government rejected the WCWRA as set out by the NRCB and again closed the door on a large protected area in the Castle during the Special Places 2000 process. One of the two principal conditions that the NRCB established for Vacation Alberta's proposed four-season development was thus never implemented. The Government of Alberta then permitted the transformation of Westcastle Park into Castle Mountain Resort through a series of incremental facility approvals and a municipal planning process that avoided a systematic and public examination of regional land-use issues and the implications of this development for cumulative effects and ecosystem sustainability in the Castle.

In the absence of a large protected area in the Castle along the lines of the WCWRA, the obvious question to ask is whether or not the Government of Alberta has taken other steps to ensure ecosystem sustainability, manage regional cumulative effects, and address deficiencies in land and resource management in the Castle. More specifically, has the government responded to the specific concerns that were documented in the NRCB's West Castle decision, the report of the Castle Local Committee, the EUB's Screwdriver Creek decision, submissions by interveners during the municipal review of the Castle Mountain Resort ASP, and the letter to Minister Cardinal from the M.D. Council?

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<sup>191</sup>Confidential interviews.

## 6.0 The State of Regional Land-Use Initiatives in the Castle

The designation of a large protected area in an ecologically significant region such as the Castle is one tool for addressing threats to ecosystem sustainability, but it may not be the only option. As noted earlier, the Castle Local Committee established under Special Places 2000 argued for enhanced and “sensitive” multiple use management and recommended a number of changes to the *Castle IRP* and to other aspects of the management regime. The EUB’s Screwdriver Creek decision also identified deficiencies in the *Castle IRP* and argued that integrated resource management, including explicit biological thresholds, was needed to ensure that incremental development in the Castle was environmentally acceptable. Finally, the M.D. Council focused particularly on access management as a means of addressing the cumulative impacts of human activity on wildlife habitat and movement.

The following sections evaluate the extent to which the Government of Alberta has pursued options other than protected areas designation in order to address concerns with public land management and ecosystem sustainability in the Castle. Four aspects of the management regime will be briefly reviewed. Two of these, the *Castle IRP* and the *Castle River Access Management Plan*, have been in existence for some time and have been referred to throughout this paper. The other two initiatives have yet to yield final products. One is the forest management planning process for the C5 Forest Management Unit, an area that includes the Castle. The second process is the Southern Alberta Sustainability Strategy, an ambitious examination of land-use issues across a large area of Alberta.

### 6.1 The Castle River Sub-Regional Integrated Resource Plan

The *Castle IRP* is the most comprehensive and detailed source of guidance regarding the management of public land and resources in the Castle. Approved in 1985, the *Castle IRP* embodies a ‘multiple-use’ approach to management, relies primarily on land-use zoning, and explicitly states that it has “no legal status”.<sup>192</sup> It thus bears the hallmarks of the Eastern Slopes Policy, as revised in 1984.<sup>193</sup> It also exhibits many of the general

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<sup>192</sup>*Castle IRP*, *supra* note 5 at iii.

<sup>193</sup>Government of Alberta, *A Policy for Resource Management of the Eastern Slopes, Revised 1984* (Edmonton: 1984).

deficiencies of Alberta's IRPs. These deficiencies have been documented elsewhere and will not be reviewed here in detail.<sup>194</sup>

The previous sections of this paper highlighted several specific concerns with the *Castle IRP*. The NRCB's West Castle decision stated that multiple-use management as reflected in the IRP creates the illusion that "we can have it all", notably by permitting incompatible uses within close proximity to each other.<sup>195</sup> The Board expressed concern about the failure to address intensity of land-use in the IRP and concluded that this document could not be relied upon to ensure that land-use in the Castle was consistent with ecosystem sustainability. The Castle Local Committee criticized the Alberta government for failing to keep the plan 'alive' and recommended that land-use planning in the Castle be legislated.<sup>196</sup> The EUB's Screwdriver Creek decision also criticized the *Castle IRP*, noting evidence that the IRP is "outdated and inadequate to address the current level of development" and calling for a new integrated resource management strategy that includes threshold values against which to measure ecological effects.<sup>197</sup>

Given the generally recognized problems with Alberta's IRPs and this record of specific criticisms and suggestions relating to the *Castle IRP*, a systematic review and revision of this plan would seem to be a logical step as the Alberta government continues to consider proposals for incremental development in the Castle. In fact, the *Castle IRP* explicitly provided for comprehensive and public five-year reviews to assess and update the plan,<sup>198</sup> but these regular reviews did not occur.<sup>199</sup> Since the IRP has no legal status and the planning process itself lacks a detailed statutory framework, there is no legal mechanism to hold decision-makers accountable for implementing this important procedural element of land-use planning in the Castle.

A review of the *Castle IRP* was initiated, however, following the report of the Castle Local Committee in 1997. A revised draft was circulated for comment in 2001, but a new plan was not in place when the *Castle Mountain Resort ASP* received approval in 2002. In fact, as of October 2003 – more than 6 years after the Castle Local Committee criticized the Alberta government for its failure to keep the plan current – a revised IRP has still not emerged from Alberta's Department of Sustainable Resource Development. The expansion Castle Mountain Resort and the ongoing approval of energy projects in the Castle are thus proceeding in a context where the key regional planning document is

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<sup>194</sup>Dias & Chinery, *supra* note 53 at 312-316; Creasey, *supra* note 2 at 78-80; Kennett & Ross, *supra* note 53 at 154-159.

<sup>195</sup>*Supra* note 50.

<sup>196</sup>*Supra* notes 100, 101.

<sup>197</sup>*Supra* note 109.

<sup>198</sup>*Castle IRP*, *supra* note 5 at 91.

<sup>199</sup>Confidential interviews.

18 years old and had been severely criticized by key decision-makers and other stakeholders for at least the past decade.

A revised *Castle IRP* will, of course, make a useful contribution to land and resource management only if it addresses the principal substantive and procedural concerns identified over the past decade. Substantively, the plan should focus directly on the intensity of human activity as well as on its location, notably by including biological thresholds as recommended by the EUB. One would also expect that a new IRP would reflect the NRCB's conclusion that existing zoning and lists of permitted activities should be revisited in order to ensure ecosystem sustainability. In terms of the IRP process, a firm commitment to integrated planning would be demonstrated by the legal entrenchment of the IRP as recommended by the Castle Local Committee, including a clear requirement for the periodic, comprehensive and public review and updating of the plan.

## 6.2 The Castle River Access Management Plan

Concerns with access management in the Castle have been consistently and forcefully expressed over the past decade. In 1993, the NRCB referred to human activities in the area as “uncontrolled”.<sup>200</sup> The Special Places 2000 local committee affirmed in 1997 that tools were needed “to redress situations including access and random camping” in the Castle.<sup>201</sup> In 2002, the M.D. Council characterized motorized access and random camping in the Castle as “virtually unabated” and identified these activities as the single most significant threat to wildlife habitat and movement in the area.<sup>202</sup> The principal mechanism for addressing access issues has been the *Castle River Access Management Plan (Castle AMP)*.<sup>203</sup> A brief review of its origins sets the stage for assessing this management tool.

The *Castle AMP* has a long history.<sup>204</sup> Work on this document began in 1986, following completion of the *Castle IRP*, when the Alberta Forest Service initiated data collection and internal discussions. A multi-stakeholder working group was established in 1998 to develop the AMP. Completion of the first draft in 1989 was followed in 1990 by public meetings. The working group continued to meet into 1991, with a second set of public meetings held in the spring of 1992. The working group ratified the final version of the AMP in May 1992.

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<sup>200</sup>*Supra* notes 26, 28.

<sup>201</sup>*Supra* note 95.

<sup>202</sup>*Supra* note 187.

<sup>203</sup>See: *Castle AMP Summary Document*, *supra* note 6.

<sup>204</sup>*Ibid.* at 10-13.

In December 1992, the Alberta Forest Service issued the Castle River Access Management Plan for Motorized Recreational Access, Project Summary Document – Final Draft (Castle AMP Summary Document).<sup>205</sup> This document describes the regional context, the process for developing the Castle AMP, and the route and trail classification system. It also includes general recommendations for implementing access management. Several key elements of this document warrant mention.

The *Castle AMP Summary Document* begins by succinctly describing access management issues in the Castle:

“Since the late 1800s an increasingly dense network of trails and roads has been created by industrial and recreational activities. Use of the trails and roads by an increasing number of motorized recreational vehicles has resulted in negative impacts on wildlife populations and environmental damage such as soil erosion.”<sup>206</sup>

Motorized recreation was thus clearly recognized as a significant threat to the Castle ecosystem by 1992.

The primary response to this threat, as outlined in the *Castle AMP Summary Document*, was a mapped and classified route and trail system.<sup>207</sup> Designated trails were identified as open to off-highway vehicles (OHVs) and were indicated on a map of the area. Trails where motorized access was not permitted were also identified. The *Castle AMP Summary Document* stated, however, that “it is not possible to identify and map all roads and trails in the subregion.”<sup>208</sup> As a result, the intent of the *Castle AMP* is that roads and trails “that have not been identified, mapped or signed will be classified and considered as unavailable for motorized recreational use.”<sup>209</sup> It appears that the *Castle AMP* continues to operate under the assumption that OHV users who encounter an un-signed road or trail will treat it closed to public access.<sup>210</sup>

The *Castle AMP Summary Document* also includes numerous recommendations for implementation, grouped under the headings of education, enforcement, engineering, and evaluation.<sup>211</sup> Two of these recommendations are particularly noteworthy in light of the subsequent history of the *Castle AMP*. The first is a categorical statement that implementation of the *Castle AMP* “will require the enactment of appropriate regulatory

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<sup>205</sup>*Ibid.*

<sup>206</sup>*Ibid.* at ii.

<sup>207</sup>*Ibid.* at 7-9.

<sup>208</sup>*Ibid.* at 18.

<sup>209</sup>*Ibid.* at 18.

<sup>210</sup>Confidential interviews.

<sup>211</sup>*Castle AMP Summary Document, supra* note 6 at 16-23.

mechanisms to help ensure the long-term viability of the plan and the realization of recreational and resource management objectives within the subregion.”<sup>212</sup> Second, *Castle AMP Summary Document* recommends a review of the Castle AMP two years after its implementation and periodically thereafter. It also states that district staff from the Alberta Forest service will “monitor motorized recreational use levels to determine the effectiveness of the access management plan.”<sup>213</sup>

While the release of the *Castle AMP Summary Document* in 1992 marked the end of a six-year policy development process that had included considerable direct public participation, access management was still not a reality in the Castle. The *Castle AMP* was not implemented until 1996, and then only on a ‘voluntary’ basis.<sup>214</sup> No steps were taken at that time to establish the regulatory mechanisms that, according to the *Castle AMP Summary Document*, were required for effective implementation.

A legal basis for enforcing the *Castle AMP* was finally established in 1988 through a Forest Land Use Zone Regulation.<sup>215</sup> This brief instrument confirms that the operation of OHVs in the Castle is permitted only “in areas or on trails that have been designated for that purpose by signs or notices posted in the Zone, or by the written instructions of a forest officer.”<sup>216</sup> As of October 2003, the Alberta government has yet to make public any of the periodic and systematic evaluations of its implementation of the *Castle AMP* that were recommended in the *Castle AMP Summary Document*. It is therefore impossible to determine from government sources whether or not the establishment of a legal basis for the *Castle AMP* has been backed by effective monitoring and enforcement.

There are, however, reasons to doubt the effectiveness of the *Castle AMP*. As noted earlier in this paper, the M.D. Council, Waterton Lakes National Park and Alberta Community Development all expressed concern about access management in connection with the approval of the *Castle Mountain Resort ASP*. Environmental organizations also continue to identify major ecological problems associated with road and trail development, OHV use and random camping in the Castle.<sup>217</sup> Seventeen years after

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<sup>212</sup>*Ibid.* at 17.

<sup>213</sup>*Ibid.* at 23.

<sup>214</sup>Alberta Environment, *Castle Education Strategy Survey, Castle Special Management Area* (15 December 2000) at 1 (available at: [www.castlealberta.org/castleab/Surveysummary.pdf](http://www.castlealberta.org/castleab/Surveysummary.pdf)).

<sup>215</sup>*Castle Special Management Area Forest Land Use Zone Regulation*, A.R. 49/98.

<sup>216</sup>*Ibid.*, s. 4(2).

<sup>217</sup>See, for example, David H. Sheppard, Gary Parkstrom, and Jennifer C. Taylor, *Bringing It Back: A Restoration Framework for the Castle Wilderness*, Report prepared for the Castle-Crown Wilderness Coalition (May 2002) at 14-41 (available at: [www.cwc.ab.ca/cwcbref/ReportsandDocs.html/BRINGING\\_IT\\_BACK.pdf](http://www.cwc.ab.ca/cwcbref/ReportsandDocs.html/BRINGING_IT_BACK.pdf)); Canadian Parks and Wilderness Society, *Castle Wilderness – Threats – Off-Road Vehicles*, at [www.castlewilderness.ca/offroadvehicles.html](http://www.castlewilderness.ca/offroadvehicles.html).

access management process was initiated, seven years after the *Castle AMP* was implemented, and five years after it received legal status, there remains widespread concern in some government agencies and among a broad range of stakeholders that the Government of Alberta is still not effectively managing motorized recreation on public land in the Castle.<sup>218</sup>

### 6.3 C5 Forest Management Planning

Forestry in the C5 Forest Management Unit, a 3,522 square kilometre area of public land in southwestern Alberta that includes the Castle, is carried out pursuant to a forest management plan (FMP). Since the term of the current 20-year FMP for the area will end in 2006, Alberta's Department of Sustainable Resource Development (SRD) has launched a process to develop a new plan. Terms of Reference for this process were released in April 2002.<sup>219</sup>

Preparation of the C5 FMP provides another opportunity for the Government of Alberta to address important land-use issues in the Castle and the broader Crown of the Continent ecosystem. The Terms of Reference are, however, ambiguous and ultimately disappointing from this perspective. While they define the land-use issues broadly and identify the need for an integrated approach to environmental and resource management, the details of the planning process and its intended outcomes suggest that the new FMP will likely have a relatively narrow, sectoral orientation that reflects SRD's particular mandate and interests.

The Terms of Reference begin with an introductory section that highlights key themes identified earlier in this paper. Noting land-use challenges in the area, the Introduction affirms that:

“Public pressure, recent Energy and Utilities Board hearings and other large scale planning reviews (e.g. NRCB report for Vacation Alberta) have indicated that new approaches and a comprehensive land management strategy that minimizes impacts and ensures sustainability must be developed and implemented.”<sup>220</sup>

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<sup>218</sup>Confidential interviews.

<sup>219</sup>Alberta Sustainable Resource Development, Southwest Region, *C5 Forest Management Unit Forest Management Plan, Terms of Reference, April 8, 2002* (available at: [www3.gov.ab.ca/srd/regions/southwest/c5/pdf/C5\\_Terms\\_of\\_Reference\\_Apr\\_17\\_02.pdf](http://www3.gov.ab.ca/srd/regions/southwest/c5/pdf/C5_Terms_of_Reference_Apr_17_02.pdf)) [hereinafter “C5 FMP Terms of Reference”].

<sup>220</sup>*Ibid.* at 5.

The Introduction refers specifically to the “high profile” of the Castle, but states that “any land use planning strategy must consider and take into account the entire [C5] area plus consider its management implications on adjacent management areas.”<sup>221</sup>

The discussion of objectives for the FMP begins with sweeping language, but rapidly moves to a very narrow focus. The Terms of Reference state that: “The pressures and demands on this landscape are immense; they can only be expected to grow as populations increase, and with them the demands for recreation and natural resources.”<sup>222</sup> In this context, the overall goal of the C5 FMP is:

“... to define a desired future forest state for the C5 management unit that demonstrates sustainability of the forest ecosystems, diverse social and economic benefits, today and tomorrow, through operational forest management systems and adaptive management.”<sup>223</sup>

This goal is further refined through a statement of four purposes, beginning with the identification of “goals that define the preferred future forest state and the objectives and targets (operational activities) required to manage the forest area on a sustainable forest management basis.”<sup>224</sup> The second purpose is to “Recognize resource values, uses, and activities, including Aboriginal uses, on the landscape within the framework of the Alberta Advantage.”<sup>225</sup>

These very general purposes are, however, followed by a much narrower definition of what the FMP will actually accomplish. At this point, the sectoral orientation of the C5 FMP process becomes evident. The third and fourth purposes in the Terms of Reference are as follows:

- “Identify sustainable timber harvest levels, or Annual Allowable Cut (AAC) for a period equivalent to two forest rotations” and
- “Provide the context for the development of Regional Timber Harvest Planning and Operating Ground Rules that are to be produced before 2006.”

Despite the broad definition of issues and factors to be ‘identified’ and ‘recognized’, the final product of the C5 FMP process in terms of its operational effect will apparently consist primarily, if not exclusively, of AAC calculations and operational planning for timber harvesting. It is far from clear how these sectoral management tools will be integrated with other land and resource uses in the area to yield the “preferred future

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<sup>221</sup>*Ibid.* at 5.

<sup>222</sup>*Ibid.* at 5.

<sup>223</sup>*Ibid.* at 5.

<sup>224</sup>*Ibid.* at 6.

<sup>225</sup>*Ibid.* at 6.

forest”, assuming that this forest is to reflect the multiple demands on the forested land base in the area.

The tension between the broad definition of issues and the much more limited scope of final products runs throughout the Terms of Reference. The “Issues Overview” highlights numerous significant challenges, beginning with the need for “Coordinated Landscape Planning”<sup>226</sup> The particular focus of this first topic is access management:

“All activities from recreation to industrial development require access. However, access also leaves a major footprint on the landscape that can affect the other resource users’ opportunities and requirements from that same landscape (timber sustainability, wildlife habitat, recreation values, livestock management, etc.). Access management needs to focus on minimizing the amount and footprint of access required. Access must also be coordinated with other stakeholders in order to optimize new and existing road developments. There is also a need to look at access rights (industrial and public) and establish criteria regarding long-term and short-term access and secure legislative support for restricting some access activities in a manner similar to the Castle Sub-regional Integrated Resource Plan, for the entire C5 management unit.”<sup>227</sup>

Although one might question how effectively *Castle River IRP* addresses access issues, this passage at least recognizes the access management problem in the Castle and surrounding area and the need to address the causes and consequences of this problem in an integrated manner.

Other elements of the “Issues Overview” highlight similar general problems. The discussion of biodiversity and wildlife habitat notes that the C5 Forest Management Unit is part of a broader transboundary landscape and comments that “Connectivity of habitats both within the planning area and between it and other areas is critical for the management of large carnivores such as grizzly bears and wolves.”<sup>228</sup> “Oil and gas exploration and development” is also identified as a key issue.<sup>229</sup> The Terms of Reference suggest that new technology and high gas prices may spur increased activity in this sector and that “Access, aesthetics, wildlife habitat impacts and the impacts on other stakeholders must all be considered.”<sup>230</sup> Coalbed methane development is mentioned as another potential source of impacts. As a final example, the “Issues Overview” states that recreation “puts extreme demands on the landscape” and that “The most obvious impacts are those from off highway vehicle activity (erosion, sedimentation, damage to vegetation etc.) and random camping (damage to vegetation, human waste, garbage, etc.).”<sup>231</sup> The

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<sup>226</sup>*Ibid.* at 10.

<sup>227</sup>*Ibid.* at 10.

<sup>228</sup>*Ibid.* at 10

<sup>229</sup>*Ibid.* at 11.

<sup>230</sup>*Ibid.* at 11.

<sup>231</sup>*Ibid.* at 11.

Terms of Reference for the C5 FMP thus affirm, once again, that ecological values in the Castle are currently at risk and that a more integrated approach is needed to manage human activities effectively.

The Terms of Reference also state that the FMP will be framed “in such a manner that it is compatible and aligned with the Canadian Standards Association (CSA) Sustainable Forest Management (SMF) system for certification.”<sup>232</sup> While certification “will not be sought immediately, adherence to as much of the structure, concepts and philosophy of CSA SFM is viewed as appropriate for the C5 FMP.”<sup>233</sup> Reference is also made to a report of the Canadian Council of Forest Ministers on *Criteria and Indicators of Sustainable Forest Management in Canada*.<sup>234</sup> In an area such as the Castle, where multiple demands on the land base are creating significant cumulative effects, it seems unlikely that the goal of sustainable forest management can be achieved without an integrated framework for planning and regulating the full suite of significant human land uses. Given the references to SFM certification and the complex regional land-use issues identified in the Terms of Reference, one would expect a well-developed strategy to fit the FMP within this type of integrated framework. In fact, the enumeration of specific tasks to be accomplished within the planning process suggests, once again, a purely sectoral focus.

Appendix 3 of the Terms of Reference is entitled “Project Tasks”.<sup>235</sup> The principal topic addressed is “Timber Supply Analysis”, including the choice of models, land base determination, growth and yield, and the identification of spatial themes. (i.e., FireSmart initiatives, recreation, wildlife).<sup>236</sup> “Public Involvement”, another key task, is described as consisting primarily of hiring a facilitator, convening an advisory group, and holding open houses and workshops.<sup>237</sup> The only other task described in Appendix 3 is the process for “Text Development”.<sup>238</sup> Given the broad definition of issues in the Terms of Reference, it is remarkable that the list of project tasks does not include detailed attention to landscape-level issues and to the development of an integrated approach to environmental and resource management for the CF Forest Management Unit. If the focus of effort in preparing the CF FMP will, in practice, be largely confined to timber supply and the spatial distribution of harvesting, how are the broader issues to be factored into the planning process?

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<sup>232</sup>*Ibid.* at 6, 12.

<sup>233</sup>*Ibid.* at 6.

<sup>234</sup>*Ibid.* at 5.

<sup>235</sup>*Ibid.* at 21-22.

<sup>236</sup>*Ibid.* at 21.

<sup>237</sup>*Ibid.* at 21.

<sup>238</sup>*Ibid.* at 22.

The Terms of Reference for the C5 FMP provide no convincing answer to this question. Nowhere are mechanisms described that would enable or require the integration of forest management planning with decision-making regarding oil and gas operations, tourism development, recreational activity, the management of transboundary wildlife populations, and the numerous other activities affecting the landscape. There is no indication of how, for example, the C5 FMP will ensure that the creation of additional access through forestry operations will be planned or managed in an integrated fashion with the existing and future networks of oil and gas roads and OHV trails. In fact, one searches in vain for any explanation of *how* the C5 forest management planning process will take a truly integrated approach to land-use issues.

Given the dominance of narrow sectoral mandates and institutional ‘silos’ within the Government of Alberta, transforming the C5 FMP into a mechanism that is capable of addressing the broader land-use issues identified in the Terms of Reference would undoubtedly require vision, leadership and a willingness to engage in genuine interdepartmental and interagency cooperation. Although this approach would be consistent with official government policy,<sup>239</sup> the conditions within SRD and other departments of the Alberta government may still not be conducive to applying it to the FMP. Nonetheless, the Terms of Reference could at least have indicated how this sectoral process might contribute to the eventual implementation of a more comprehensive and integrated management of public land and resources within the C5 area.

The relationship between the C5 FMP and other integrative mechanisms or land-use initiatives is, however, dealt with in a very cursory manner. IRPs warrant hardly a mention.<sup>240</sup> There no discussion of interdepartmental or interagency cooperation, although “technical” input from other land and resource managers may be requested on an ‘as needed’ basis.<sup>241</sup> EUB hearings are mentioned in passing in the Introduction,<sup>242</sup> but there is no indication that SRD will use the C5 FMP to follow up on the EUB’s specific invitation, in the Screwdriver Creek decision, to address cumulative effects and the need for biological thresholds to guide management decisions in the Castle. The Terms of Reference do, however, include a brief reference to a recent land-use initiative in southern Alberta that reflects the government’s stated interest in integrated resource management (IRM).

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<sup>239</sup> *Alberta’s Commitment to Sustainable Resource and Environmental Management*, *supra* note 9.

<sup>240</sup> C5 FMP Terms of Reference, *supra* note 219 at 2, 7.

<sup>241</sup> Project management and the planning team are entirely from SRD. The involvement of other departments and agencies is referred to only in relation to “Technical Support”. *Ibid.* at 14-16.

<sup>242</sup> *Supra* note 220.

The Southern Alberta Sustainability Strategy (SASS), which is still under development, will be discussed briefly below. It is instructive, however, to note how this broader IRM initiative is dealt with in the Terms of Reference:

“The C5 FMP will be linked to the IRM initiative. Clearly operational directions must align with existing legislation and policy positions. In some cases evolving processes that may change policy or legislation may be carried out in parallel. This is the case with the C5 FMP and the Provincial IRM initiative. It is imperative that these processes are not contradictory (*sic*) and in fact are complementary, *with the IRM providing strategic and the C5 FMP providing operational direction*. It is recognized that in developing a FMP following Provincial forest management guidelines for preparation of FMPs, there is a need to look beyond yearly operational activities. This is the case for timber supply and could also be the case for access development planning. To ensure coordination between these operational and strategic initiatives a liaison between the writing team and IRM administrators will be established.”<sup>243</sup>

This passage leaves much to the imagination about how the embryonic IRM initiative in southern Alberta will provide “strategic” direction to the C5 FMP.

According to the time line in the Terms of Reference, the FMP will be sent out in draft form for public review in 2003, revised later in that year, approved at the Director level by July 2004, and signed off by January 2005.<sup>244</sup> Even if there is some slippage in these time lines, it seems probable that a 20 year timber management plan for an area including the Castle will be signed, sealed and delivered by the Department of Sustainable Resource Development before the government’s IRM initiative – which is led by Alberta Environment – is able to generate specific land-use objectives for southern Alberta. Once the C5 FMP is in place, the only remaining integrative mechanism may be the adjustment of timber allocations and harvest planning during FMP implementation in order to reflect a broader IRM perspective. The likelihood of meaningful accommodation of other interests and values at that stage is difficult to access.

## 6.4 Southern Alberta Sustainability Strategy

The Southern Alberta Sustainability Strategy (SASS)<sup>245</sup> is one component of a broader initiative intended to reinvent and reinvigorate IRM in Alberta.<sup>246</sup> Its origins can be

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<sup>243</sup>*Ibid.* at 6 (emphasis added).

<sup>244</sup>*Ibid.* at 18.

<sup>245</sup>See: [www3.gov.ab.ca/env/regions/southern/strategy.html](http://www3.gov.ab.ca/env/regions/southern/strategy.html).

<sup>246</sup>Information on the Government of Alberta’s IRM initiative is available at: [www3.gov.ab.ca/env/irm.html](http://www3.gov.ab.ca/env/irm.html). For commentary, see: Steven A. Kennett, *Integrated Resource Management in Alberta: Past, Present and Benchmarks for the Future*, CIRL Occasional Paper #11 (Calgary: Canadian Institute of Resources Law, 2002); Steven A. Kennett, “Reinventing Integrated Resource Management in Alberta: Bold New Initiative or ‘Déjà Vu All Over Again?’” (2002) 77 *Resources* at 1.

traced to the policy direction established by *Alberta's Commitment to Sustainable Resource and Environmental Management*, which includes several references to the need for IRM.<sup>247</sup> Responsibility for promoting this broad vision was given to a small group within Alberta Environment, which has focused its efforts largely on the development of 'regional strategies'. SASS represents an ambitious extension of the IRM initiative to a large area of southern Alberta.

As of the fall of 2003, it is still too early to assess the progress of SASS and its likely impact on environmental and resource management in the Castle and other areas of southern Alberta. Phase 1 of SASS "will appraise the current state of the region, identify a vision, goals, and principles for sustainable development, make policy recommendations and identify the key issues that need to be addressed and in what order of priority."<sup>248</sup> Data collection, modeling, the development of future land-use scenarios, and the public review of this information are important elements of Phase 1. While this effort to assemble, interpret and distribute information and to identify broad policy directions could make a useful contribution to laying the groundwork for IRM in southern Alberta, SASS is not yet a regional planning process or a fully developed management strategy.

It remains unclear how the information and insight accumulated through the first phase of SASS will be translated into land-use plans or landscape objectives and how these plans and objectives, in turn, will influence the multitude of sectoral and regional decision-making processes that allocate rights in public land and resources, review and approve projects, and regulate the many human activities affecting the Castle. The Alberta government's IRM initiative will have to evolve significantly if SASS is provide the framework and impetus for action that is required to address the specific land-use issues that were documented in the NRCB's West Castle decision and have been reiterated over the past decade by the Castle Local Committee, the EUB, the M.D. Council of Pincher Creek, and the numerous other stakeholders concerned with ecosystem sustainability in the Castle.

## 7.0 Conclusion

The past decade of debate and decision-making on land and resource use in the Castle has highlighted the challenges of managing human activities in this region of Alberta. These challenges reflect, in part, deep-rooted differences in values and interests among stakeholder groups and members of the public. Some positions across this spectrum of opinion may be difficult, if not impossible, to reconcile. This paper has shown, however,

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<sup>247</sup>*Supra* note 9 at 4, 6-8.

<sup>248</sup>Alberta Environment, "What is the Southern Alberta Sustainability Strategy?", *supra* note 245.

that there is a significant convergence of evidence and informed opinion on four key points:

1. The Castle is an environmentally significant area where important ecological attributes are at risk, if not already significantly degraded, by current levels of human activity.
2. Maintaining and restoring ecosystem sustainability in the Castle requires attention to cumulative environmental effects at the local and regional levels. For example, the appropriateness of individual land uses – whether residential and commercial development, energy projects or protected areas designation – cannot be assessed without reference to the regional context. Furthermore, addressing cumulative effects and achieving landscape-level objectives requires an integrated management response to the full suite of land and resource uses.
3. Alberta's current legal, policy and institutional framework for land and resource management is inadequate to address land-use conflicts and cumulative environmental effects in the Castle. In particular, deficiencies at the level of land-use policy and planning – notably in the *Castle IRP* – have made it difficult or impossible to ensure ecosystem sustainability in the face of increasing pressure for incremental development. Many of these deficiencies can be traced to the Alberta government's 'multiple-use' vision for the Castle, which attempts to satisfy simultaneously a very broad range of land uses and values within a relatively small and ecologically important area. The absence of a solid legal and institutional basis for IRM is another fundamental problem.<sup>249</sup> Specific deficiencies in the *Castle IRP* include a zoning system that permits potentially inconsistent land-uses within close proximity to each other, the failure to address the intensity of development and human activity, and the absence of biological or land-use thresholds to guide decision-makers
4. Inadequate access management in the Castle represents a long-standing and growing threat to ecological values, particularly as industrial and recreational development continues and as the number of individuals participating in motorized backcountry recreation continues to grow.

These themes suggest some common ground in terms of priorities for action, beginning with the need to make integrated land and resource management in the Castle a reality. Any further incremental development in the Castle should occur within a regional planning and management framework that addresses cumulative effects and enables decision-makers to assess the significance of proposed projects and to identify appropriate mitigation measures. Initiatives such as the C5 FMP should also be

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<sup>249</sup>For a discussion of this issue, see: Kennett, *supra* note 246; Kennett & Ross, *supra* note 53.

embedded in an integrated regional framework, rather than proceeding with resource allocation decisions on a narrow, sectoral basis.

Substantive and procedural changes are needed to strengthen land-use planning and access management, which are generally recognized as essential tools for setting and achieving landscape-level objectives. In particular, limits or thresholds are needed to supplement land-use zoning, thereby providing a basis for managing the intensity of land-use in the Castle. Once in place, land-use plans should be systematically reviewed and updated on a regular basis in order to address changing circumstances and emerging issues. Finally, access management should be significantly improved, notably by providing the resources that are needed to implement and enforce an access management plan that protects key ecological, aesthetic and recreational values.

While implementing these changes would not immediately resolve fundamental conflicts of values and interests, it would provide a framework for setting landscape-level objectives and making land-use decisions are consistent with a vision of sustainability that includes the long-term maintenance of important ecological values in the Castle. It would also be consistent with the policy direction set out in *Alberta's Commitment to Sustainable Resource and Environmental Management*. Unfortunately, the record of the past decade suggests that the Alberta government is content to spin its wheels on the implementation of sustainable management in the Castle, while allowing incremental development and OHV use to increase the human footprint in the area and further degrade local and regional ecosystems.

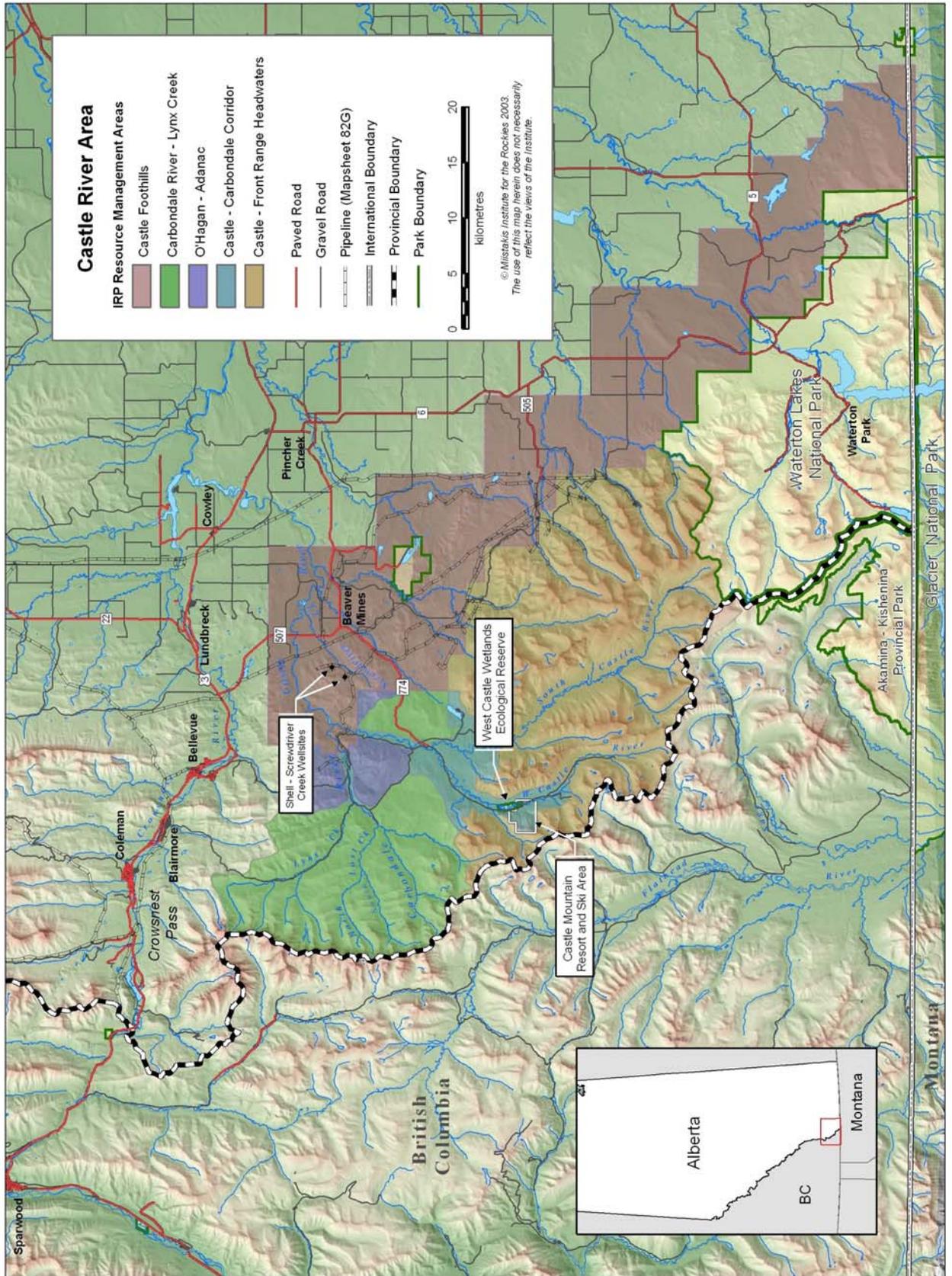
The path forward for legal, institutional and policy reform is clear from the conclusions and recommendations of the NRCB, the Special Places local committee, the EUB, and the M.D. Council. If the Government of Alberta is inclined to follow this advice, the Castle provides an ideal venue for implementing integrated resource management and demonstrating that its 'commitment' to sustainability is more than empty rhetoric.



## **Appendix 1:**

### **Map of the Castle and Surrounding Area**







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