Wood Buffalo TRIBUNALS
Subdivision and Development Appeal Board

NOTICE OF DECISION

FILE NO.	**SDAB 2019-004 – Merit Hearing**
APPLICATION No.:	**2016-DP-00078 - REFUSAL**
DEVELOPMENT:	**New Industrial Development – Waste Management Facility**
LAND USE DESIGNATION:	**RD – Rural District**
LEGAL DESCRIPTION:	**NW and NE SEC 23-76-8 W4M** **NW SEC 24-76-8 W4M** **SW SEC 25-76-8 W4M** **SW & SE SEC 26-76-8 W4M**

IN THE MATTER OF AN APPEAL filed with the Regional Municipality of Wood Buffalo Subdivision and Development Appeal Board ("the Board") pursuant to sections 685 and 686 of the *Municipal Government Act*, R.S.A 2000, c. M-26 ("the *MGA*"), the Appeal Hearing was held on October 10, 11 and 12, 2019 in the Jubilee Centre, Council Chamber, 9909 Franklin Avenue, Fort McMurray, Alberta.

BETWEEN:

Secure Energy Service Inc. ("the Appellant") represented by B. Hunter, Fasken Martineau DuMoulin LLP, Counsel for the Appellant

-and-

The Regional Municipality of Wood Buffalo ("the Municipality") represented by C. Davis, Counsel with the Municipality

BEFORE:

A. McKenzie, Chair
S. Schaffer
R. Wells
A. Austin
T. Tupper

Administration:
S. Soutter, Clerk for the Subdivision and Development Appeal Board
G. Stewart-Palmer, Counsel for the Subdivision and Development Appeal Board

[1] This Appeal arises from the refusal of Development Permit No. 2016-DP-00078 for a "Waste Management Facility" at NW and NE SEC 23-76-8 W4M, NW SEC 24-76-8 W4M, SW SEC 25-76-8 W4M, and SW & SE SEC 26-76-8 W4M. The location is approximately 500 metres from the Hamlet of Conklin.

[2] Following the introduction of the Board, the Chair confirmed with the parties in attendance that there were no objections to the constitution of the Board.

[3] Board member Schaffer disclosed that he worked in the same building as the Alberta Health Services, Public Health contact referenced in the materials and does know her, but he does not work in Environmental Health, and has no information other than what is in the materials. Board member Wells advised that he had been employed by the Municipality from 2009 until 2013. During that time, he worked with Jeffrey O'Donnell who was then a manager for Rural and Aboriginal Affairs and who is currently the CEO of the Conklin Resources Development Advisory Committee, the Conklin Métis Local 193 and the Conklin Community Association (referred collectively in this decision as "CRDAC"). Board member Wells was the Director for Emergency Management for the Municipality. None of the persons in attendance had any issue with the participation in the hearing of Board member Schaffer or Board member Wells.

[4] The Board marked the exhibits as set out at the end of this decision.

[5] The appeal was filed in time, in accordance with section 686 of the *MGA*.

[6] The Board is satisfied that it has jurisdiction to deal with this matter. There were no objections to the proposed hearing process.

PRELIMINARY AND PROCEDURAL MATTERS

August 7, 2019 Preliminary Decision

[7] The Board held a preliminary hearing on July 31, 2019 to determine the dates for the merit hearing of the appeal and to set the dates for disclosure. Following submissions from Counsel for the Appellant, Counsel for the Municipality and Counsel for CRDAC, the Board issued a decision on the preliminary matter on August 7, 2019. In that decision, the Board set the hearing dates for October 10 and 11, 2019, with October 12, 2019 being reserved , should the parties not be able to finish their presentations on October 11, 2019. In addition, the Board provided for disclosure dates (see paragraph 10 of decision 2019-004) whereby the Appellant was to file its materials first, with the Municipality and the CRDAC to file in response and the Appellant having an opportunity to file rebuttal submissions. The Board was attempting to ensure a fair process for all persons. In addition, the disclosure dates were set so that there would be no last-minute evidence, which would then result in a possible request for an adjournment. The reasons for that decision are found in decision 2019-004.

October 6, 2019 Preliminary Decision

[8] On October 2, 2019, CRDAC requested the Board provide a ruling on the following issues:

a. Whether CRDAC was entitled to submit a PowerPoint presentation with the Board. The CRDAC October 4, 2019 letter states that the PowerPoint presentation would include information contained within the primary reports which CRDAC filed on September 13, 2019 and contain information in response to the Appellant's rebuttal materials filed September 27, 2019;

b. Whether CRDAC witnesses will be able to comment upon the rebuttal submission made by the Appellant in its Rebuttal submission of September 27, 2019.

[9] Following CRDAC's request, the Municipality submitted a request for a ruling on whether the Municipality was entitled to:

a. submit a PowerPoint presentation to the Board; and

b. present first a synopsis of the background, site maps, land use, etc. that led to the Decision of the Development Authority. The Municipality would reserve its response or argument regarding the appeal to speak again when those speaking against the appeal presented to the Board.

c. with respect to the order of presentations, the Municipality anticipated that order of presentations at the hearing would be in accordance with section 52 of the Subdivision and Development Appeal Board's Code of Conduct and Hearing Procedures.

[10] In response to CRDAC's request and the Municipality's request, the Appellant opposed the requests to put in PowerPoint presentations. The Appellant requested that, if PowerPoints are permitted, they be permitted with three conditions imposed:

a. All materials be provided three full days before the hearing starts (10 a.m., October 7, 2019);

b. CRDAC provide all new evidence by 10 a.m. October 7, 2019; and

c. The Board clarify whether further evidence from CRDAC witnesses Fortna, Wallis, Fennell and Olsgard is within the scope of the hearing.

[11] In an email to the Appellant dated October 6, 2019, the Municipality and CRDAC, the Board advised that it has reviewed all of the requests made. The Board was mindful of its obligations to provide procedural fairness for all parties and affected persons.

[12] The Board decided that it would not accept any PowerPoint presentations by CRDAC, the Municipality or the Appellant or any of their witnesses. The Board does not ordinarily convene a preliminary hearing to determine the timing of disclosure. This case provided unique circumstances. The Appellant anticipated providing voluminous materials. CRDAC hired a lawyer to make submissions, and also anticipated providing voluminous materials. As a result, the Board took the extraordinary step of convening a preliminary hearing on July 31, 2019 to receive submissions about the hearing date and to hear from the parties in regard to the timing of disclosure to provide fairness to all parties, and to eliminate as much as possible the risk of late filing with its attendant concerns about the impact of such late filing on procedural fairness. On August 12, 2019, the Board sent a letter to the Appellant and the Municipality as parties and to CRDAC as the representative of the affected persons (CRDAC, Conklin Métis Local 193 and Conklin Community Association) advising of those deadlines (August 30 – Appellant primary submission; September 13 – Municipality and CRDAC submissions; September 27 – Appellant's rebuttal). PowerPoint presentations could have been included with the materials filed them on their respective filing dates.

[13] In light of the Board's direction concerning disclosure, the Board was not prepared to accept any new PowerPoint presentations by the Appellant, the Municipality or CRDAC.

[14] The Board did not preclude affected persons who are not represented by Ms. Okoye who may wish to submit evidence. Should this arise, the Board would consider each request at the time and make a ruling at that time. The Board did not pre-judge whether any requests would be made, nor did it prejudge the outcomes of those requests in its preliminary ruling.

[15] The Municipality and CRDAC would be provided an opportunity to comment and to have their witnesses comment upon the rebuttal submissions contained in the Appellant's Rebuttal submission. However, they are not entitled to present new evidence (reports, etc.) but in accordance with the directions contained in [18] below.

[16] The Board notes that it has to provide procedural fairness to all parties. In doing so, it must weigh several competing interests: the right for all parties and affected persons to know the cases of the parties and affected persons; the need for finality in the submission of evidence (to prevent disclosure, rebuttal, sur-rebuttal, sur-surrebuttal, etc.); the recognition that the hearing is scheduled for two (or possibly three) days and that the Board must hear from the Appellant, the Municipality, CRDAC, as well as unrepresented affected persons who may come to the hearing.

[17] In weighing all of these interests, the Board concluded that it would provide the Municipality and affected persons the ability to speak to the information contained within the Appellants' Rebuttal submission but will not permit the Municipality or CRDAC to provide sur-rebuttal reports or information. The Board did consider this option but rejected it because then it would need to provide the Appellant the opportunity for sur-surrebuttal, which might have led to a never-ending cycle of requests for the right to respond to the "last word". The disclosure directions in its decision 2019-004 were an attempt to resolve this issue. CRDAC did not request a right of sur-rebuttal to the Board during the preliminary hearing held on July 31, 2019. As is common in judicial and quasi-judicial hearings, the responding parties can respond, but generally are not given the right for sur-rebuttal.

[18] The Board determined that the order of hearing would be:

a. Municipality evidence;

b. Appellant evidence;

c. Those wishing to speak in favour of the appeal – included affected persons;

d. Those wishing to speak against the appeal – starting with CRDAC, then other affected persons;

e. Final call to the gallery;

f. Appellant Rebuttal, if any;

g. Closing summaries – starting with CRDAC, then the Municipality, then the Appellant. Individual affected persons will not have an opportunity to provide summaries (which accords with the Board's standard practice).

[19] The Board repealed the Code of Conduct and Hearing Procedures referenced by the Municipality and now follows the Council Code of Conduct. However, the Board website sets out the order of speakers, starting with the Municipality. Since the webpage lists the Municipality as starting, it wishes to follow, as much as is possible, the order outlined on its webpage. However, in the unique circumstances of this case, and the large volume of materials filed by the Municipality and CRDAC, the Board is of the opinion that permitting the Appellant the opportunity to provide rebuttal is fair to all parties.

October 11, 2019 Procedural Decision #1

[20] At the start of CRDAC's evidence on October 11, 2019, Counsel for CRDAC advised the Board that she wished the Board to qualify her witnesses as experts. The Board asked the Appellant and the Municipality for their response to CRDAC's request for qualification of experts.

[21] Both the Appellant and the Municipality had no objections to the qualifications of the witnesses but submitted that it was not necessary to qualify the witnesses as experts. The Municipality advised that the Board is the master of its own procedure and could determine the weight it wished to give to their evidence.

[22] The Board determined that it would not qualify CRDAC's witnesses as experts. The Board has reviewed the witnesses' CVs and heard an overview of their qualifications. The Board was not provided with any rationale for the need to qualify the witnesses as experts. Although the procedure before other tribunals may be to qualify witnesses as experts, the Board's general process does not include the qualification of experts. In light of the Board's ability to place what it determines to be the appropriate weight on the evidence that it receives, the Board decided that it did not need to qualify the witnesses as experts and will set out in its reasons the weight that it placed on the witnesses' testimony in making its decision.

October 11, 2019 Procedural Decision #2

[23] On October 11, 2019, at the start of CRDAC's evidence, one of its witnesses, Dr. Fennell, attempted to refer to a PowerPoint presentation. The Board questioned Dr. Fennell to determine where in CRDAC's submissions the PowerPoint was located. The Board determined that the PowerPoint contained some information from the CRDAC submissions which had been submitted to the Board on September 13, 2019. However, it also contained new information which was not part of the CRDAC submissions. Dr. Fennell indicated that he was responding to the Appellant's Rebuttal submissions.

[24] The Appellant stated that the PowerPoint was a new PowerPoint, contrary to the ruling of the Board. Although the Appellant did not have an objection to it, provided there was nothing new in it, if the Board was going to accept the PowerPoint into evidence, it would need to rescind its earlier ruling. The Municipality agreed with the submissions of the Appellant.

[25] The Board noted that some of the information contained in the PowerPoint could not be located specifically within CRDAC's submissions. In its decision of October 6, 2019, the Board expressly indicated that it would not accept new information and would not accept PowerPoints that had not been disclosed in accordance with the timing set out in Board decision 2019-004. Since some of the information appeared to be new information and since the PowerPoint itself was not part of CRDAC's submission of September 13, 2019, the Board upheld its October 6, 2019 ruling and refused to admit the PowerPoint. The Board did permit Dr. Fennell to provide oral submissions in response to the Appellant's Rebuttal submission. The Board also notes that Mr. Fortna had a PowerPoint presentation. However, his PowerPoint Presentation contained only extracts from CRDAC's submissions (in essence extracts from his report) that were contained in the PowerPoint, so they could be more easily shown to the Board. There was no objection to Mr. Fortna's PowerPoint. The Board allowed this PowerPoint because it was only an extract from the report copied for the convenience of the Board.

[26] The Board notes that CRDAC made a specific request to submit a PowerPoint after its deadline for submissions under decision 2019-004 had passed, which the Board denied. The Board's rationale for the denial of that request was to attempt to provide to all parties a level playing field and not favour one party over another by allowing one to submit a late PowerPoint. CRDAC provided no justification for the need for a PowerPoint at this late stage of the hearing. Allowing a late PowerPoint would not be fair to the Appellant, or the Municipality, which both followed the directions of the Board with regard to the timing of their submissions.

JURISDICTIONAL MATTERS

[27] During the hearing and in the written materials, CRDAC referenced the need for aboriginal consultation under section 35 of the *Constitution Act*. The Appellant's submitted that the Board did not have jurisdiction in relation to consultation.

[28] The Board recognizes that it does not have jurisdiction to determine questions regarding the sufficiency of consultation.[1] In this decision, the Board is not addressing the question of the sufficiency of any consultation undertaken by the Appellant. However, during the hearing there was a significant amount of evidence about how various residents of Conklin used the land for the proposed development for the purposes of traditional aboriginal uses, such as berry picking, and the picking of certain plants (like rat root). The Board finds that the evidence of these uses is relevant to this hearing for two reasons. This evidence was used by the Board:

a. in determining the compliance of the proposed development with the provisions of the Municipality's Municipal Development Plan ("MDP"); and

b. to assess the compatibility of the proposed development with the neighbouring uses.

SUMMARY OF HEARING

[29] This Appeal is related to the refusal of Development Permit No. 2016-DP-00078 an application for a new industrial development – Waste Management Facility in the RD – Rural District on land legally described as NW and NE SEC 23-76-8 W4M, NW SEC 24-76-8 W4M. SW SEC 25-76-8 W4M, and SW & SE SEC 26-76-8 W4M (the "Site").

[30] The following is a brief summary of the oral and written evidence submitted to the Board. At the beginning of the hearing, the Board indicated that it had reviewed all the written submissions filed in advance of the hearing.

[1] *Kappo v. Subdivision and Development Appeal Board (Municipal District of Greenview No. 16)*, 2003 ABCA 146 and *Paul First Nation v. Parkland (County)*, 2006 ABCA 128.

Submission of the Municipality

[31] The Development Authority outlined the location of the proposed development, particularly in relation to the Conklin Area Structure Plan (the "Conklin ASP") referencing Attachment 1 and 4 of its submissions (Exhibit 11, page 11/220) and page 28/220). The proposed development is adjacent to the Conklin ASP plan area but does not overlap it. The proposed development is about 569 metres from the hamlet boundary and 2 kilometres from residential development along Poplar Drive. The lands are zoned RD (Rural District) and a waste management facility is a discretionary use in the district.

[32] The development permit application was received in March 2016 and was initially deemed incomplete because the lease agreement was not submitted with it. As the lands are owned by the Provincial Government, the lease was required. The application was put on hold until June 2018 to permit the Appellant time to provide the lease. The Development Authority circulated the application at that time, despite its being incomplete, to create efficiencies. The application was circulated to the adjacent landowners under section 24.2 of the *Land Use Bylaw 99/059* ("LUB") (Exhibit 11, page 18/220) and a summary of the comments were provided to the applicant. Those comments included concerns about:

a. Impact on neighbouring uses of the lands;

b. Noise;

c. Odour;

d. Dust;

e. Traffic; and

f. Impact on the water.

[33] The Development Authority requested that the Appellant conduct an open house and provide an environmental impact assessment ("EIA"). The open house was held May 2019 but the EIA was not submitted. The Development Authority refused the application in June 2019. In coming to its decision, the Development Authority took into account the fact that the use is a discretionary use, and the Development Authority considered the input from the feedback that it received. Under section 26.2 of the LUB (Exhibit 11, page 19/220) the Development Authority may refuse a permit application even if it meets the requirements of the LUB. The Development Authority can consider:

a. Any plans and policies affecting the lands;

b. The purpose statements of the district;

c. Location of the land and the development in the surroundings;

d. The compatibility of the development with other uses;

e. Merits of the development;

f. Access and transportation;

g. Circulation;

h. Impact on public transit system; and

i. Other planning matters.

[34] The Development Authority considered policy 1.4.1 of the MDP (Exhibit 11, page 203/220) which speaks to incompatibility. The Development Authority was of the view the proposed development was too close to Conklin (Exhibit 11, page 208/220). The Development Authority also considered the feedback from the community about the impact that the proposed development would have on their use of the lands for hunting, trapping and traditional uses. The position of the Development Authority was that even though a development might comply with section 22 of the LUB (Exhibit 11, page 15/220) does not imply an approval.

[35] Section 26.2 of the LUB provides that a Development Authority may request more information, and the Development Authority requested an EIA to understand the impacts of the proposed development, including impacts on air, vegetation, ground water, etc. since Christina Lake is the main source of water for Conklin. Policy 2.1.3 (Exhibit 11, page 204/220) permits the Development Authority to require EIAs to determine the impact of developments. In the absence of an EIA, the Development Authority was not satisfied that the community concerns and the MDP were addressed.

[36] The Development Authority also made submissions in response to the Appellant's reference to *Springfield Capital*. The Development Authority stated that it was not present to champion one side or another. It had a neutral position and wanted to ensure the materials which the Development Authority had in making its decision were before the Board. It confirmed that the hearing before the Board is *de novo*. The Board must consider section 687 of the *MGA* and the evidence presented and make its decision. It specifically referenced the following paragraph in *Springfield:*

> [20] That being said, development authorities have a legitimate role to play at development appeals. As Ontario Power Generation states at para. 55: "Canadian tribunals occupy many different roles in the various context in which they operate". Development authorities generally do not give extensive reasons for granting permits; normally the permit would just be issued, with or without conditions. Their participation during development appeals is influenced by that, and an appropriate explanation of the reasons behind the granting of the permit is not objectionable. Further, development appeals are not just conflicts between various citizens. There is a significant public policy element in planning decisions, and the development officer is entitled to make representations to the SDAB on the impact that any particular development will have on the community.

[37] The Development Authority also referenced sections 619 and 620 of the *MGA*. It submitted that section 619 was not applicable to this hearing. The position of the Development Authority in relation to section 620 was that if there was a condition from Alberta Environment and Parks that touched on an issue before this Board, that condition would prevail, but there was no evidence of such a condition being before the Board.

[38] The Development Authority responded to four points found in the Appellant's submissions:

a. The request for an EIA was improper or beyond the jurisdiction of the Development Authority

The Development Authority stated that the Board's authority is under section 687 of the *MGA*, and using a purposive analysis as suggested by *United Taxi*, the Board has flexibility to consider municipal purposes under section 3 of the *MGA* which include environmental matters. Relying upon *Spraytech*, the Development Authority argued that sections 3, 8(1), 617 and 640(2)(b) of the *MGA* allow a municipality to create a land use bylaw with conditions. Section 22.2 of the LUB (Exhibit 11, page 15/220) lists what a Development Authority may require to process an application. The EIA was meant to be an assessment or systemic analysis of potential impacts on natural and human environment at this location. Although the Appellant could have asked for more information, it chose to not provide it.

The correspondence regarding the request is found in the Appellant's submissions Exhibit 6, Tab 57, page 2119/269, Tab 58, page 2150/2693, Tab 59 and Tab 60.

b. CRDAC petition was improperly implemented for reasons of procedural fairness.

The Development Authority submitted that it received information and considered it as part of its review. However, the Board must determine the weight of the petition, and assess its value. There are varying municipal practices in regard to the redaction of personal information from information submitted to the Board. To the extent information comes from the proponent, there may be express or implied consent, and this Board does not make determinations of privacy.

c. The Development Authority misinterpreted letters from the First Nations which stated they had no issues with existing landfills

The Development Authority understood these were local businesses and did not give them great weight. The Board will have to assess whether these letters have weight.

d. Because LUB requirements were "satisfied", the MDP may have been irrelevant and should not be considered, and if it is, the development is in compliance.

Initially, the Development authority felt the application was not complete as authorization of land owner for approval of use was delayed. However, the Development Authority did endeavour to move forward with circulation even though it was waiting for information. With regard to the MDP, as a statutory plan under the *MGA*, the Board must be cognizant of section 687(3)(a.2) of the *MGA* which requires it to comply with any applicable statutory plans. Compliance means having cognizance of a plan, taking it into account in making a decision. If the language requires action, the Board must take action. If the language is permissive, then they are considerations which form part of the Board's evaluation.

The Development Authority stated that the proposed development is more than the 300 metres setback required under the Subdivision and Development Regulation and is about 500 metres from the hamlet area. The mere fact that the minimums are met does not necessarily mean that the uses are compatible. In relation to policy 5.1.2 of the MDP, the area may have cultural significance in a less technical way, and the community would speak to that issue as well as in relation to policy 5.1.3 of the MDP.

[39] In response to Board questions about MDP policy 1.4.1, the Development Authority stated that even though the policy does not have specific distances for setbacks, the Development Authority considers the community, the purpose statement of the district, the MDP, and assesses information including water courses, topography, statements of use of land and in the vicinity. These are all taken into consideration in totality in determining appropriateness to surrounding area and hamlet.

[40] The Development Authority confirmed that the waste transfer station and sewage lagoon are public facilities and serve the community.

[41] In its closing submissions, the Development Authority provided an overview of the Board's jurisdiction in section 687(3) of the *MGA* and advised that that it will be up to the Board to assess the evidence and come to a conclusion. It spoke to possible conditions, noting that of the draft conditions provided by the Development Authority, the Appellant questioned only four. It explained its rationale for the four conditions.

[42] Condition 19: One of the diagrams in evidence was a plan showing site plan and shades of green to orange – depth of landfill. If the depth gets to 30 metres, it may be levels which can transmit water. The applicant should provide a new application to justify why the depth is to exceed 20 metres

[43] Condition 20: Normally signs are a separate process. The Appellant has said there would be no public drop off and Alberta Environment and Parks ("AEP") would have separate requirements. Either the Development Authority conditions or AEP conditions should be applicable.

[44] Condition 21: It is up to the Board whether a landfill would have negative impact for community.

Submission In Favor Of the Appeal

[45] The Appellant spoke in favour of the appeal. As a preliminary matter, it raised its concerns in regard to the role of the Development Authority, which it felt went beyond the directions found in *Springfield.*

[46] Mr. Robert Clarke, Corporate Development Representative, Secure Energy Inc., advised that the Appellant has made three applications to AEP which applications address the impact on water courses, vegetation and mitigation measures. These materials are found at the Appellant's submissions at Tab 7, Tab 11 and Tab 12 and encompass more than 800 pages of materials. The Appellant has also addressed the aquatic effects and the effects on wildlife, as set out at Tabs 4 and 5 of their submissions.

[47] Mr. Clarke provided an overview of the Appellant's operations. He described the requirements for a site for a landfill, including the soil requirements and the economic requirements (close to markets, etc.). He described the site selection process, indicating that this site was the only one of nine sites which met their criteria. It has soil and subsurface conditions meeting AEP requirements. It is adjacent to Highway 881 which reduces the impact of road construction, is near existing infrastructure (CN Rail and roads). He outlined the noise impact study (Tabs 58 and 66) which indicate that there should not be a noise impact on the neighbours.

[48] He stated that the site was partially cleared as part of the Fire Smart program (Exhibit 6, Tab 71) and that 15 ground monitoring wells have been drilled. The Appellant has obtained a MDL (miscellaneous lease and license of occupation for the access road), approval under the *Historic Resources Act* and a Roadside Development Permit. AEP will not issue approval under the *Environmental Protection and Enhancement Act* ("EPEA) without a municipal development permit. The Appellant has provided a detailed reclamation plan (Exhibit 5, page 564/2693). It has conducted consultation and the Alberta Consultation Office (ACO) has determined that the consultation was adequate (Exhibit 5, Tab 8). The Conklin Leadership has supported the Appellant (Exhibit 6, Tab 58, pages 2236/2693-2237/2693).

[49] He provided an overview of the application process which occurred from March 7, 2016 to April 18, 2019 with various municipal departments. The details of the process are found at Exhibit 6, Tabs 29 to 63 of the Appellant's submissions and comprise approximately 1,000 pages of materials. He advised that following the open house held by the Appellant, the results of the surveys conducted revealed 61% were in favour of the project.

[50] Mr. Mike Pitman, Manager of Regulatory and Environment, Secure Energy Inc., spoke to the EPEA application filed April 15, 2016 (Exhibit 5, Tab 12). He outlined the request for further information which was provided (Exhibit 5, page 1383/2693 and Tab 13). The final design was submitted in 2017 (Exhibit 6, Tab 17) and was deemed technically complete in Q2, 2017. The Water Act application was filed April 13, 2015 (Exhibit 5, Tab 11, page 716/2693) and following a request for further information, the Appellant submitted further information (Exhibit 5, Tab 14). The Water Act application was also deemed technically complete in Q2, 2017.

[51] Mr. Steve Smith of Tetra Tech spoke to the design of the facility. The cells require a liner system and leachate collection system and a surface water system to handle a 1:25 year rainfall event. The base design is accepted by AEP. It is designed with permeability to contain leakage of the clay liner that would otherwise migrate to the natural liner. Following the supplemental information request, the Appellant has designed to a higher standard, including a high-density geomembrane. This will be underlain by a geosynthetic clay liner. He outlined the performance standards which are three orders of magnitude more than the base design of AEP. See Exhibit 5, Tab 6, pages 448/2693 to 511/2693 and 1686/2693.

[52] He stated that there is an erosion control plan so there is no surface water on the site or leaving it. The water on site is to be retained in a retention pond, tested and will be released only if it meets the criteria. There will be a leachate collection system. He referenced the AEP standards and the design of the current system (set out at Exhibit 5, Tab 1, page 126/2693).

[53] Mr. Alastair Graham, Indigenous and Stakeholder Lead, Secure Energy Inc, stated that the Appellant is committed to building relationships. They take the concerns of CRDAC seriously. The Appellant requested consultation and has been engaged with CRDAC for four years. The details are set out at Tab 52 (Exhibit 6, page 1984/2693) and the response at Exhibit 6, Tab 58 (page 2266/2693). The Appellant has attempted to meet with CRDAC and is committed to dialogue and is willing to engage.

[54] The Appellant conducted two open houses and received feedback. It heard concerns about proximity and believes it can operate without disturbing neighbours. Their results conclude that the facility will not be seen, heard or smelled. Although not required to conduct these tests, it did so to address CRDAC concerns.

[55] A Class II facility is not a municipal facility where odours are often a concern. There should be no off-site odours. They had only one formal odour complaint with their other facilities which was actually at a third-party oilfield facility and the operator was able to eliminate the concerns. Should there be a problem, the residents can call the manager.

[56] With regard to leachate, it will be held in a tank and will be a small volume preventing stagnation, which can cause an odour.

[57] The Appellant conducted an air quality assessment after it heard of concerns about odours. The results were shared at the May 2018 open house. There should be no odours expected beyond 1,000 metres and should not be a nuisance for Conklin residents.

[58] There is good transportation access and it is a short distance to Highway 881, resulting in less traffic. More local truck transportation reduces costs and increases highway safety by decreasing the distances that trucks travel. The initial cells will be 2,400 metres to residences. The final cell will be 2000 metres from residences. The proposed development will be nearly four times the minimum setback required under the Subdivision and Development Regulation.

[59] In relation to a concern about adverse health impacts, the Appellant must meet provincial standards to protect the public environment and its employees. It has a robust health and safety program. (see Exhibit 5, Tab 7 for groundwater monitoring).

[60] In relation to traditional land use (see Exhibit 5, Tab 8), the Appellant has attempted to consult with CRDAC and to fund a traditional land use study. CRDAC did not accept the offer. There will be six full time positions and the Appellant invests in the communities in which it operates. It is prepared to share its annual AEP operating reports with the community and is prepared to discuss mitigation measures for traditional land uses, including planting a garden or creating another gathering place and harvesting rare plants before development.

[61] Mr. Bevan Howell, VP Corporate Development, Secure Energy Inc., spoke to the need for the proposed development and the benefits in terms of job creation. He advised that the Appellant invests in the communities in which it lives and works, supporting local initiatives, and youth. He spoke about the funding that it has provided for youth in the areas of education, health, sport and active lifestyle.

[62] In response to Board questions, the Appellant advised that it intended to operate from 7:00 a.m. to 7:00 p.m., as landfills operate best under daylight. However, there may be circumstances, such as road bans, where they would wish to change their operating hours. AEP also approves operating hours.

[63] The Appellant estimates approximately 15 to 20 trucks per day (which is 140,000 metric tonnes per year of waste). This is the average. The Appellant cannot guarantee the amounts as they are a third-party receiver of waste. The type of materials include waste from thermal SAG-D. It is black dirt by-product of oil production. There are trace levels of minerals, but it is non-hazardous. The Appellant also will accept drill cuttings. There is an operating plan which is approved by AEP. The waste is tested, and if it is hazardous, it is not accepted. A Class II landfill must submit an annual report which describes if waste has been rejected. If approved, the EPEA approval will require spring and fall monitoring of ground water wells. These are collected by third parties and tested in independent labs.

[64] The Appellant has an emergency response plan. The Appellant advised that there is a Class I and Class II landfill close to the Village of Ryley. They are closer than the proposed development to residences.

[65] The Appellant outlined the lifespan of each cell (2.5 years) and the expected duration of the landfill (25 years). It provided an overview of the Traffic Impact Assessment ("TIA").

[66] When asked about the impacts of the proposed development on traditional land uses (hunting, fishing, etc.), the Appellant advised it did not have a firm response but would like deeper and more meaningful engagement and would be willing to engage in a mutually agreeable way. The Appellant would establish a garden to support the use of the plants. It would harvest rare medicinal plants so they are not lost to users and would look to maintain trail networks.

[67] In its closing, the Appellant argued about the role of the Development Authority. It argued that it met the requirements of section 22 of the LUB and its application was complete. It argued that there was no authority to ask for an EIA. It submitted that the Board should not enforce or police environmental regulations (relying upon *Canadian Waste Services).* The Appellant argued that the information submitted exceeds the LUB requirements. The Appellant attempted to engage with CRDAC.

[68] There are no conflicts with the MDP and if there are, the LUB takes precedence over the plan. The site characteristics are appropriate and it more than meets the setback requirements in the Subdivision and Development Regulation. The design is appropriate and will be under AEP monitoring. There will be no odours. A TIA will be done under the AEP process. The noise impact will be less than existing noise. The project has benefits to the surrounding community.

[69] The Appellant noted that the Board is not a constitutional decision maker and cannot assess the sufficiency of consultation. It urged the Board to disregard the petition noting that the Board must indicate in its decision if the reports and petition are of any value.

Submission Opposed To The Appeal:

CRDAC

[70] CRDAC presented a number of speakers, which it wished to have qualified as experts. The Board provided its ruling (above). The speakers were not qualified as experts, although the Board recognized the experience of each of the speakers presented by CRDAC).

[71] The first was Jon Fennell, environmental scientist, hydrogeologist and water resource specialist (Exhibit 11 Tab 15 – CV). The Board's ruling in regard to his PowerPoint is outlined above at paragraphs [23] to [26].

[72] Dr. Fennel raised five concerns with regard to the proposed development:

a. The impact of the siting of the landfill for surface water features, including Birch Creek and its tributaries which are on the property to the east and the water systems, including fens and things of that nature which are ground water features and are surface water fed;

b. The impact of site preparation and land fill drainage controls on water balance. When the area is disturbed, it changes characteristics and can have implications.

c. The applicability of site and the requirements for landfills.

d. The long-term integrity of minor systems to isolate leachate over long term well into the future – hundreds of years. The containment systems may not last forever.

e. The efficacy or suitableness of ground water monitoring. The system is consistent with AEP requirements, but even though it may be consistent with requirements, there are risks associated with the design.

[73] The Board has provided only a very brief summary of Dr. Fennell's oral comments. The Board has reviewed his report which is found at Exhibit 11, Tab 14 (pages 239/546 to 249/546) as well as his oral evidence.

[74] Mr. Cliff Wallis, a professional biologist, (Exhibit 11 Tab 13 – CV), spoke to his report (Exhibit 11, Tab 12). He stated that there are still outstanding issues relating to impacts on wetlands and Class C watercourse A, as well as interpretations of locations of water course and impacts of future cells on headwaters on east side and on the ephemeral water courses B, C and D. He provided evidence about the nature of fens, swamps and watercourses. He challenged the conclusions of the Appellant in terms of their setbacks from water courses stating that the proposed development would be very close or over the water course. In his opinion, there would be direct and indirect impacts on the riparian and wetland vegetation and there would be impact to both surface and ground water. The proposed development does not comply with landfill standards including the mandatory requirements.

[75] Ms. Mandy Olsgard, a toxicologist and professional biologist, (Exhibit 11 Tab 17 – CV), spoke to her report (Exhibit 11, Tab 16). She has studied air contaminants and health risk. She stated that the air around Conklin is pretty good as compared to elsewhere since they do not receive the contaminants that other communities to the north do. She provided an overview of the wind speed and direction data at the air monitoring station in Conklin (Exhibit 11, page 290/546). The prevailing winds come from the southwest, which is where the Appellant's facility would be located. The Appellant did not do an air quality test, so the impact of the proposed development is unknown. There will be particulates from the roads. There is no safe threshold for particulates. There is no information about the dust generated from the landfill. Given the wind direction, whatever dust is created will have the potential more often than not to move into the community.

[76] She conducts a berry monitoring program. Her report (Exhibit 11, page 307/546) shows that the blueberry and cranberry quality is healthy and had lower concentrations of metals than those bought in a store. The berries are important to the local community who work with scientists to know the quality of the local berries.

[77] Mr. Rick Schippling and Mr. Johnson Kwan, professional planners, spoke to their report which commented about the compliance of the proposed development with the provisions of the MDP (Exhibit 11, Tab 11). They looked at two key questions: first, whether the proposed development complied with the statutory plans, and second, whether it would interfere with the amenities of the neighbouring area.

[78] They spoke to their report in detail. Their conclusion (Exhibit 11, page 202/546) was that the proposed development did not fit with the direction of the MDP, particularly policy 1.4.1 which provides that industrial and human settlements should not encroach on one another. Further policy 2.3 speaks to protecting water resources. There have been identified risks with the location, which could result in contamination during landfill operation or following closure, so there is non-compliance with policy 2.3. Finally, it does not fit with the policies to conserve culturally significant sites, particularly as the impacts on the traditional lifestyles appears unresolved. They also concluded that the proposed development is not consistent with the Conklin ASP, even though the lands were outside the ASP Plan area. The concerns include the potential impact to the environment. Although the land use is outside the Conklin ASP, the wetlands are connected. Christina Lake is a recreation area in the region. There have been risks identified by other experts. There are impacts on traditional land use. If there is future residential developments in the hamlet, it will be in close proximity. For context, 500 metres is two blocks in an urban context.

[79] Mr. Peter Fortna, an historian, researcher and consultant, (Exhibit 11 Tab 20 – Report and CV), spoke to his report. He spoke with Conklin community members to prepare his report. He provided an overview of the history of the community and their use of the lands. He explained the site for the proposed development is used for hunting, fishing and berry picking and everyone goes out to pick. The hunting sites are sacred. Many of the people do not have cars, so the fact that the site is close enough to walk is very important. He stated regrown plants cannot be trusted and do not have the same potency once moved. At Exhibit 11, page 446/546, he has shown the location of oil and gas developments around Conklin. At Exhibit 11, page 442/546, he has shown the Conklin Métis gathering in relation to the proposed development. At Exhibit 11, page 464/546, he has shown the Conklin Métis traditional land use in relation to the project noting the high usage of the area identified for the proposed development. He spoke to berry picking and how it is important and cannot be replaced by a community garden.

[80] In their closing comments, CRDAC urged the Board to refuse the proposed development. It argued that there would be an environmental impact and the majority of the lands would be cleared by the Appellant. The proposed development does not comply with the MDP or the ASP. There is wide discretion to refuse the permit application. CRDAC referred to *Jatoi* stating that the impacts on the environment and the residents of Conklin should be considered by the Board. In relation to the petition, concerns that it was not clear what information was provided to community members before they signed the petition have been addressed. The Board heard evidence that the people who signed the petition understood the issues and opposed the development. The signers of the petition also referred to the proximity of the use to their residences and the impact on traditional land use. There is no legal basis for the Appellant's concern about minors signing the petition. The Appellant has no standing to raise the issue of the release of personal information. Those signing were informed that their information would be given to the municipality and agreed.

[81] The proposed development does not comply with the spirit or intent of the policies within the MDP (policies 1.4.1, 2.1.3, 2.3.2, 2.4.1 and 6.4.2) or Conklin ASP. CRDAC recapped the evidence arguing that its witnesses have shown the impact of the development and urged the Board to deny the appeal.

Individuals speaking in opposition to the Appeal

[82] Mr. John Cardinal spoke in opposition to the Appeal. He has a trap line near the proposed development site and wants to build a cabin along the trap line. He is concerned about odour and impacts on the water. He stated the noise and traffic will affect the hunting, trapping and harvesting of plants and berries.

[83] Mr. Jeffrey O'Donnell is a ratepayer and CEO of CRDAC. The people signing the petition consented to the disclosure of the information and the use of it. Conklin is not a Métis settlement and not a First Nation, so ACO did not direct the Appellant to conduct consultation with them. He affirmed what Mr. Fortna said about the impact of the proposed development on the traditional land uses for the proposed development area by residents of Conklin.

[84] Ms. Verna. Quintal-Janvier is a resident in Conklin. She opposes the application as the use is too close to the community and she is worried about the impact on the health and water quality and air quality. She harvests and practices cultural activities in the area. It is their way of life and has been passed on for generations. Any contamination of Christina Lake would have a negative impact on them. She is worried about the negative impact on their property values. She listed concerns about traffic safety due to the increased number of vehicles.

[85] Ms. Valerie Quintal is a resident of Conklin and on the Board of all three entities (Conklin Resources Development Advisory Committee, the Conklin Métis Local 193 and the Conklin Community Association). She opposes the development. The wild berries cannot be replaced by a community garden. She is concerned about health impacts since the residents live there 24 hours a day and not the 12 hours a day the workers would be at the landfill. She is concerned about depreciation in property values.

[86] Ms. Shirley Tremblay is a resident of Conklin and on the Board of Directors for CRDAC and a Métis Local member. She stated that Christina Lake is sacred and of significant importance. They have recently held a culture camp and blessed the surrounding lands. They pick berries in this area. She is opposed to the proposed development.

[87] Ms. Margaret Quintal is a resident of Conklin and is a Board member for all three entitles (CRDAC, Conklin Métis and the Community Association). She is concerned about the impact on water. She stated the berry picking and plants are part of their way of life and she wants to protect it. If the land is cleared, there will not be any picking. They have used the land for generations and if the area is lost, they will have no place to go. Putting a landfill near them is contrary to everything they have worked for, for example a new multiplex with youth programming. They live off the land, and eat fish, ducks, moose, blueberries and cranberries. They use medicinal plants. She does not want the food chain to be ruined and asks that the use go to a different site. She stated that Tervita, north of Conklin has an unpleasant odour

[88] Ms. Delores Pruden is a resident of Conklin. She has taken her children to pick better and medicinal plants. Her children have done the same. The landfill is too close. She wants her children to be healthy and is concerned about odours and problems with health.

[89] Ms. Violet Lockett is a resident of Conklin. She is a teacher of native studies and has taught children how to pick herbs and berries and to make things out of them. Removing this land will take away the learning area. She cannot go elsewhere to teach students.

[90] Ms. Yvonne McCallum is a resident of Conklin. She has lived off the land and has had a "bush lifestyle". It is the same lifestyle and she did not want it to be destroyed. A community garden could not replace what is there now. This is their tradition, health, culture and lifestyle. She is also concerned about the water and water quality.

[91] Ms. Gwen Letendre is a resident of Conklin and she stated her opposition on behalf of herself and Jennifer Cardinal, Wendy Desjarlais all residents of Conklin, who were not present. She felt it would destroy their community. The proposed development will have a negative impact on water and air.

[92] Mr. Ernie Desjarlais is a resident of Conklin and he stated his opposition to the proposed development.

[93] Ms. Elizabeth Desjarlais is a resident of Conklin. She gave evidence through Mr. Ernie Desjarlais translating for her. She opposes the proposed development. Her family hunted in Conklin.

[94] Ms. Martha Desjarlais is a resident of Conklin. She is opposed to the proposed development. She has hunted, picked berries and rat root.

[95] Mr. Shawn Janvier is a resident of Conklin and a member of the Chipewyan Prairie First Nation. He felt the proposed development would significantly affect First Nations' rights and there were many concerns including the loss of culturally important lands, water, odours, and human health concerns. There will be traditional uses which will be directly affected by the construction and it should not be permitted so close to Conklin.

[96] Mr. Tyson Adby is a resident of Conklin who is in Calgary studying to be a teacher. Conklin is beautiful due to what is around it. He felt there was a potential health impact and the lake is important to his community.

[97] Mr. Kevin Adby is a resident of Conklin and has the closest residence to the landfill site. He is a director of CRDAC and the Métis Local. He opposes the proposed development due to the loss of wilderness and the impact on his ability to trap and hunt. This area is prime land in use for plants and berries and he thought the water quality would be affected.

[98] Ms. Margie Quintal-Adby is a resident of Conklin. She opposes the proposed development. She uses the lands to pick herbs and berries. This is a good place for camping. She questioned what would happen if the water is polluted and the fish and trees are gone.

[99] Ms. Cherish Cunningham is a resident of Conklin and is opposed to the proposed development. She picks blueberries there and it is where they hunt, fish and have culture camps.

[100] Mr. Braden Quintal is a resident of Conklin and is opposed to the proposed development. His brother taught him to live off the land and he wants to teach his children to live off the land as his brother taught him.

[101] Ms. Tanis Robillard is a resident of Conklin. She agreed with all of the expert evidence presented. She was concerned about the possible negative impact on water quality and airborne pollutants. Generations of people have grown up respecting the land and practicing their culture and she wants to have the same opportunity.

[102] Ms. Velma Quintal-Nokohoo is a resident of Conklin. She is concerned about the project and its impact on harvesting plants and herbs. The area is home to small fur bearing animals. She stated she has to pass the Class II landfill in Janvier which smells. She is concerned about an increased amount of big trucks, accidents, spills, air pollutants, disappearance of wildlife and traditional harvesting areas being destroyed.

[103] Mr. Charles Nokohoo lives in Fort McMurray but wishes to retire to Conklin. He opposes the proposed development. He stated that the Class II landfill at Janvier stinks.

[104] Upon conclusion, the Chair asked the parties present, if they felt that they had had a fair opportunity to present their evidence. No issues were brought to the Board's attention regarding the ability of the parties to present their evidence.

FINDINGS OF FACT

[105] The Site is located at NW and NE SEC 23-76-8 W4M, NW SEC 24-76-8 W4M, SW SEC 25-76-8 W4M, and SW & SE SEC 26-76-8 W4M, Fort McMurray, Alberta.

[106] The Site is zoned Rural District (RD).

[107] The use applied for is "Waste Management Facility" and this use is discretionary in the Rural District under the Regional Municipality of Wood Buffalo's LUB.

[108] The proposed development is consistent with the applicable *Alberta Land Stewardship Act* ("ALSA") regional plan (Lower Athabasca).

[109] There is no evidence that the proposed development is inconsistent with any applicable land use policies.

[110] The proposed development is inconsistent with policy 1.4.1 of the Municipality's MDP, which is a statutory plan.

[111] The use is incompatible with the neighbouring uses.

[112] The alternatives offered by the Appellant to address the impact of the proposed development on the uses made of the lands upon which the proposed development will occur are not sufficient.

[113] The Appellant is an affected person.

[114] The speakers listed in paragraph [128] are affected persons, and the CRDAC is affected.

DECISION

[115] **It is the decision of the Subdivision and Development Appeal Board to uphold the decision of the Development Authority. The application for Development Permit No. 2016-DP-00078 is DENIED.**

REASONS

Jurisdiction

[116] The Board notes that its jurisdiction is found in section 687(3) of the *MGA*. In making this decision, the Board has examined the provisions of the LUB as well as considered the oral and written submissions made by the Development Authority and the Appellant and those speaking in favour of the appeal.

> ***687(3)*** *In determining an appeal, the subdivision and development appeal board*
> *(a) must act in accordance with any applicable ALSA regional plan;*
> *(a.1) must comply with any applicable land use policies;*
> *(a.2) subject to section 638, must comply with any applicable statutory plans;*
> *(a.3) subject to clauses (a.4) and (d), must comply with any Land Use Bylaw in effect;*
> *(a.4) must comply with the applicable requirements of the regulations under the Gaming, Liquor and Cannabis Act respecting the location of premises described in a cannabis licence and distances between those premises and other premises;*
> *(b) must have regard to but is not bound by the subdivision and development regulations;*
> *(c) may confirm, revoke or vary the order, decision or development permit or any condition attached to any of them or make or substitute an order, decision or permit of its own;*
> *(d) may make an order or decision or issue or confirm the issue of a development permit even though the proposed development does not comply with the Land Use Bylaw if, in its opinion,*
> *(i) the proposed development would not*
> *(A) unduly interfere with the amenities of the neighbourhood, or*
> *(B) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,*
> *and*
> *(ii) the proposed development conforms with the use prescribed for that land or building in the Land Use Bylaw.*

Role of the Development Authority

[117] At the beginning of its presentation, the Appellant argued that the Development Authority had exceeded the scope of its role as described in *Springfield*. The Board has considered those submissions and has reviewed paragraphs 18 to 21 of the *Springfield* case. The Board notes that in the *Springfield* case, the development authority argued about the standing of some of the parties, whether they appeared at prior hearings, whether they were represented by counsel, and whether their concerns should be taken seriously. In the present case, the Development Authority provided background about the application process, what it requested and when, and the factors that it used to make its decision, including considerations on the statutory plans. The Board does note that the Development Authority urged the Board to uphold the refusal.

[118] The Board is mindful of the direction at paragraph 20 of *Springfield.* The submissions of the Development Authority were neutral in tone here and provided the rationale for its actions and decision. There was a significant public policy element of this application. Having reviewed the role of the Development Authority in this hearing, the Board is of the view that it falls within the role that the Court has outlined.

Petition

[119] The Appellant argued that the petition which was presented to the Board had a number of significant concerns, including having personal information included, the lack of knowledge about what was before the signers and youth signing and stated the Board must provide its analysis about the weight it gave to this evidence in its decision.

[120] CRDAC argued that the Appellant had no standing to challenge the release of personal information, and that there was consent (either express or implied) to the release of the information to the Board. Further, CRDAC argued that some of those signing the petition were before the Board and clarified what was presented to the signers.

[121] The Development Authority suggested that it was up to the Board to assess what weight it would give to the petition.

[122] The Board notes that it is not charged with determining breaches of the *Freedom of Information and Protection of Privacy Act.* So, if there is personal information which has been disclosed without the consent of the signers, it is for another tribunal to make that assessment.

[123] The Board has considered all of the submissions in relation to the petition. The Board is not bound by the strict rules of evidence and can consider the evidence it determines is relevant and give it appropriate weight. The Board has noted the concerns listed in the petition. However, it has attributed little weight to the document itself.

[124] The concerns that are listed in the petition were also repeated by the affected persons who came before the Board and gave oral evidence. The Board favours the oral evidence of the speakers which outlines the impact of the proposed development. In the face of direct oral evidence before it, the Board has given the petition little weight, as a pale reflection of the oral evidence presented by speakers before the Board. In making this decision, the Board is not precluding a circumstance where it might accord more weight to a petition, but on the facts of this case, the Board is of the view that the oral evidence should be preferred.

Nature of the Hearing

[125] CRDAC provided the Board with a copy of the *Edith Lake* decision and argued that the proceedings before the Board are *de novo.* Neither the Appellant or the Municipality took issue with this comment. The Board recognizes that this hearing is *de novo*. In making its decision, the Board has considered the actions of the Municipality. However, the Board has focused on its jurisdiction under section 687(3) of the *MGA*, as set out in paragraph [116] above, taking into account all of the evidence and argument presented to it.

Affected Persons

[126] The first question the Board must determine is whether the Appellant is affected. The appeal was filed on behalf of the Appellant, Secure Energy Service Inc. The Board finds that the Appellant is the applicant for the development permit and as such is affected by the appeal.

[127] The Board heard from a number of speakers in opposition to the appeal. The Board indicated that it in the interests of time, the Board would hear from them, and in its decision, it would determine if they were affected. If the Board determined they were affected, the Board would then place the appropriate weight on their evidence.

[128] The Board heard from the speakers below. The table below sets out the name of the speaker, and how they stated they were affected by the Development.

	Name of Speaker	How they stated they were affected
1.	John Cardinal	Has a trapline and wishes to build a cabin
2.	Jeffrey O'Donnell	Ratepayer of Conklin and CEO of CRDAC, whose mandate is to engage the people of Conklin
3.	Verna Quintal-Janvier	Resident in Conklin
4.	Valerie Quintal	Resident in Conklin and Director on Board of CRDAC
5.	Shirley Tremblay	Resident in Conklin and Director on Board of CRDAC
6.	Margaret Quintal	Resident in Conklin and Director on Board of CRDAC and Métis Local 193
7.	Delores Pruden	Resident in Conklin
8.	Violet Lockett	Resident in Conklin, teaches children how to pick herbs and berries on affected lands
9.	Yvonne McCallum	Resident in Conklin, Elected Elder of CRDAC
10.	Gwen Letendre	Resident in Conklin
11.	Ernie Desjarlais	Resident in Conklin
12.	Elizabeth Desjarlais	Resident in Conklin
13.	Martha Desjarlais	Resident in Conklin, picks herbs on affected lands
14.	Shawn Janvier	Resident in Conklin
15.	Tyson Adby	Resident in Conklin
16.	Kevin Adby	Resident in Conklin
17.	Margie Quintal-Adby	Resident in Conklin, picks berries on affected lands
18.	Cherish Cunningham	Resident in Conklin

	Name of Speaker	How they stated they were affected
19.	Braden Quintal	Resident in Conklin
20.	Tanis Robillard	Resident in Conklin
21.	Velma Quintal-Nokohoo	Resident in Conklin
22.	Charles William Nokohoo	Wishes to retire into Conklin

[129] The Board notes that all of the speakers, but one live in Conklin. The last speaker wished to move into Conklin upon his retirement. Due to the fact that they live in Conklin, and due to the proximity of Conklin to the location of the proposed development, the Board finds that all of the speakers are affected persons.

[130] The Board also finds that CRDAC – encompassing the three entities as outlined in paragraph [7] – is an affected person. The evidence was that CRDAC works with the residents of Conklin. The Board heard no objections to the participation of CRDAC in the appeal. Due to the functions that CRDAC provides for the Conklin residents, the Board finds that these groups are also affected.

[131] The Board notes that although it found Mr. Nokohoo an affected person, given Mr. Nokohoo's less direct connection to Conklin, it has given his evidence lesser weight than that of the other speakers.

ALSA Regional Plan

[132] The Board notes that it must act in accordance with any applicable ALSA regional plan. The Board notes that there is an applicable regional plan: the Lower Athabasca Regional Plan ("LARP"). The Appellant provided no evidence in relation to the compliance of the proposed development with this plan. CRDAC argued that the Wallis report, particularly at pages 212-220, the regional plan was addressed and that it recommended reducing the environmental impacts by minimizing the footprint. Further that the environmental elements are echoed in the Municipality's MDP. The Municipality confirmed that there is a regional plan but stated that there was no evidence about its applicability to the proposed development.

[133] The Board has reviewed the referenced portion of the Wallis report. Page 211/546 of CRDAC's submissions references a portion of the LARP

> The LARP will make integrated land management between all industrial operators on public land a necessary element of doing business. This will result in better co-ordination of industrial activities, such as shared road networks and infrastructure on public lands; reducing land disturbance of the productive forest land base and minimizing timber shortfalls; and reducing environmental impacts through minimizing the extent and duration of land disturbance footprint.

[134] That excerpt from the Wallis report (Exhibit 11, page 211/546) does reference the LARP about environmental considerations. When the Board reviews the above passage, it has

noted that Mr. Wallace has noted that the LARP provides "strategic direction". He has not indicated that the proposed development is contrary to the LARP.

[135] The Board notes that the comments in Mr. Wallis' report address environmental considerations, and the Board accepts that this falls within the scope of what Mr. Wallis indicated that he would speak to. However, the above quote also references the need for integrated lands management with the result of better coordination of industrial activities, such as shared road networks and infrastructure on public lands and reducing land disturbance on productive forest land base. The evidence before the Board was that the site for the proposed development included a portion of lands which had already been cleared of its trees. The Board finds the inclusion of these cleared lands within the proposed development site is compliance with the goal of the LARP referenced above to "reduce land disturbance of the productive forest land base". Further, the evidence was that the proposed development would be located close to Highway 881 resulting in shared road networks, and a reduction of the impact.

[136] The Board can only conclude from the absence of significant evidence in relation to the LARP that the proposed development complies with any applicable regional plan because there is no evidence to the contrary and the evidence referenced in paragraph [135] shows compliance with the regional plan.

Land Use Policies

[137] The Board notes that it must act in accordance with any applicable land use policies.

[138] In its submissions, the Municipality did indicate that the plans provide high level direction, but not specific input into development. However, the Board heard no evidence in regard to the compliance of the proposed development with the land use policies.

[139] The Board can only conclude from the absence of information that the development complies with any applicable land use policies because there is no evidence to the contrary.

Statutory Plans

[140] The Municipality's MDP is a statutory plan which is applicable to the proposed development.

[141] The direction in section 687(3)(a.2) of the *MGA*, is that the Board must comply with any applicable statutory plan. The use of the word "must" indicates that the Board is required to refuse the appeal if it finds that the proposed development is contrary to the MDP.

[142] The Board heard evidence from Mr. Schippling and Mr. Kwan, former employees of the Municipality. The Board notes that although they gave evidence about the compliance of the proposed development with the MDP, this is the "ultimate question" – it is the Board which will have to determine the compliance of the proposed development with the provisions of the MDP.

[143] CRDAC argued that the proposed development did not comply with the provisions of the MDP. The Board does not propose to restate their written or oral testimony in the reasons,

as this evidence is succinctly presented in CRDAC's written submissions at Exhibit 11, Tab 11, pages 194/546 to 208/546.

[144] The Appellant argued that the proposed development was consistent with the provisions of the MDP. As above, the Board does not propose to restate the written or oral testimony in the reasons, as this evidence is succinctly presented in the Appellant's written submissions at Exhibit 13, paragraphs 19-29 and 41-61.

[145] In light of section 687(3)(a.2) of the *MGA*, the Board must determine if the proposed development complies with the MDP. Thus, it falls to the Board to examine each of the cited policies from the MDP and to make a determination as to whether the proposed development is or is not compliant with that policy.

[146] The first cited policy is 1.4.1 which states:

> Regulate incompatible land uses near human settlements
>
> The region is home to many types of industrial developments that are deemed to be incompatible with residential development. These developments include facilities related to oil sands operations and sour gas facilities. Through proactive land use planning and consideration of provincial regulatory guidelines, these facilities will be located away from current and future residential development. Conversely, the Municipality will strive to minimize the encroachment of residential development on non-compatible industrial development. The Municipality will work to prevent the development of incompatible industrial operations inside or in close proximity to the region's communities.

[147] The Appellant argues that this policy applies only to oil sands operations and sour gas facilities and since it is neither of these two uses the policy does not apply. The Board notes that the appellant has not referenced the whole phrase. The first two sentences state:

> The region is home to **many types of industrial developments that are deemed to be incompatible with residential development. These developments include** facilities related to oil sands operations and sour gas facilities. (emphasis added)

[148] The Board reads these sentences purposively to mean that there may be industrial developments (which may include those related to oil sands operations and sour gas facilities) and those industrial developments are not compatible with residential developments.

[149] The Board notes that this proposed development is an industrial development, thus falling within the main description in policy 1.4.1 of the MDP. The Board also notes that the proposed development is a use that is related to oil sands operations or sour gas facilities because the evidence is that this Class II landfill is to receive waste from oil sands operations. The Board does not accept the Appellant's argument that policy 1.4.1. is limited to only oil sands operations and sour gas facilities as such a conclusion is contrary to both a plain reading and a purposive interpretation of policy 1.4.1.

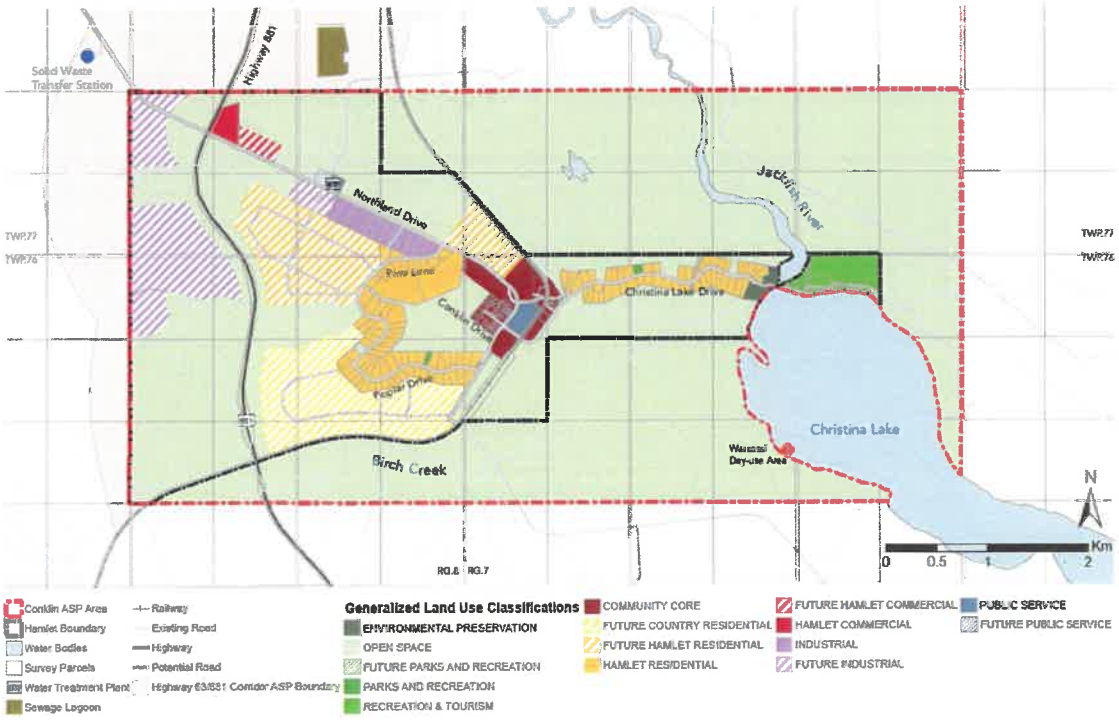
[150] The Appellant also argued that this policy requires the consideration of provincial regulatory guidelines and therefore, having met the setback distances in the Subdivision and Development Regulation, it has complied with the policy. The evidence before the Board was that the proposed development would meet the setback distances in the Subdivision and Development Regulation and the Board finds so as a fact.

[151] However, policy 1.4.1 also states:

> Through proactive land use planning and consideration of provincial regulatory guidelines, these facilities will be located away from current and future residential development.

[152] The Board interprets policy 1.4.1 as having two aspects: the provincial regulatory guidelines (addressed in paragraph [150] above) and "proactive land use planning". The Board finds that the inclusion of the words "proactive land use planning" is an indication that the Board should consider the planning aspects of the proposed development, and not just whether it complies with the setback distances set out in the Regulation.

[153] Therefore, the Board turns to the planning aspects, here – the evidence about proximity. Those speaking in opposition to the proposed development argued that it was "too close" to the existing residences in their hamlet. The Board also notes that the wording speaks to future land uses. The Board has examined Map 11 of the Conklin ASP (Conklin Generalized Land Use Concept Map) (Exhibit 12, page 208/220) which is set out below for ease of reference.



[154] The Conklin ASP earmarks land south and west of the existing residences for future country residential. The location of the future country residential development brings it even closer to the proposed development.

[155] As discussed below in paragraphs [197] to [216], the Board has considered the compatibility of the proposed development. Based on the evidence of the impact of the proposed development on the uses, the Board has concluded that the proposed development is an industrial development that is not compatible with the pre-existing and future residential uses in Conklin.

[156] For the reasons above, the Board's conclusion is that the proposed development is not in compliance with policy 1.4.1.

[157] The second cited policy is 2.3.2 which states:

> Protect and enhance water quality
>
> Water quality must support the needs of residents and the local environment. Protecting the region's aquatic resources can be achieved through land use controls, by managing discharges and outlets, and controlling pollution in water bodies. Acting within its jurisdictional responsibilities, the Municipality will meet or surpass all regulatory requirements for water discharges and pollution controls and support water quality monitoring and reporting programs in water bodies. Working with the Province and industry, the Municipality will also promote public awareness to prevent pollutant discharges into water bodies

[158] CRDAC argued that this policy requires continued access to clean water. In reliance upon Dr. Fennell's report, Messrs. Schippling and Kwan argue that because there will be some long-term risk of contamination of local groundwater, and connected surface water bodies, there is non-compliance with this policy. By contrast, the Appellant argues that the proposed development is in compliance because the Appellant is working with AEP in respect of its Water Act approvals and has provided the Municipality with information pertaining to its water quality monitoring and reporting.

[159] There is no question that having access to clean water is important. This policy recognizes that the Municipality has a role, but by its wording recognizes that the Province also has a role. The evidence before the Board was that the Appellant has made an application to AEP for Water Act approvals. The Board finds that the proposed development is in compliance with this policy given the Appellant's recognition of the need to obtain the appropriate approvals and making its application. The Appellant presented evidence that it has designed the water containment system that is well beyond the regulatory requirements. The Board accepts this as fact.

[160] The third cited policy is Direction 2.4 which states:

> Responsible Waste Management
>
> Effectively dealing with different forms of waste—solid waste, wastewater, and waste heat—can add to increased efficiency, create new economic opportunities, and extend the capacity of infrastructure by minimizing impacts on landfills and treatment facilities. Where waste is managed, it can be done in an environmentally responsible and cost-effective manner. To date, some successful advances have been made in terms of recycling and reduction of solid waste, although opportunities exist to divert more waste from landfills in the future. In many cases, what is discarded as waste still retains some residual economic potential or can be used as an energy source. The re-use of grey water and effluent and the potential for harnessing energy from waste heat present new opportunities for collaboration and innovation

[161] The Board accepts that this policy applies to the proposed development. However, it contains no specific regulatory provisions which would limit the proposed development and its terms are precatory. Since there is nothing directory about the policy, the Board finds that the proposed development is in compliance with this policy.

[162] The Appellants cite policy 3.1.2, 3.1.3, 3.4.1 and 3.4.3. All of these policies (which the Board will not set out below) deal with the economic benefits that the proposed development, if approved, would bring.

[163] The Board agrees with the Appellant that CRDAC did not provide any specific comments upon these provisions of the MDP which deal with "Economic Resilience".

[164] Having reviewed the policies referenced in paragraph [162], the Board finds that the proposed development complies with them. If approved, the proposed development would create job opportunities. The proposed development would support local small businesses. The proposed development would encourage local expertise and support labour force development.

[165] The Board accepts the Appellant's submissions that the Appellant complies with the policies referenced at paragraph [162] above.

[166] The next cited policy is 5.1.2 which states:

> 5.1.2 Conserve areas of cultural and historic significance
>
> Heritage sites, historical buildings, and culturally significant areas connect residents and visitors to the region's rich legacy. In some cases, areas of historical significance including archaeological and paleontological sites can be used for educational, interpretive, or scientific purposes. The Municipality will support the efforts of heritage, First Nations, and Métis groups in their efforts to develop inventories and other tools to help conserve traditional lands, historic sites, heritage buildings, and cultural artifacts.

[167] The Appellant argued that it complied with the policy 5.1.2 because it had received an Historical Resources Act approval confirming there were no historical resource value notations identified on the parcels. The affected persons did not provide specific comments on policy 5.1.2.

[168] In reviewing the policy, the Board notes that policy 5.1.2 indicates a role between the Municipality and the "First Nations, and Métis groups in their efforts to develop inventories and other tools to help conserve traditional lands, historic sites, heritage buildings, and cultural artifacts," this policy does not appear to be applicable to the Appellant. This policy does not speak to development. As such, the Board finds that there are no mandatory terms in it that specifically address the proposed development.

[169] To the extent that the Appellant has obtained a Historic Resources permit, the Board accepts that there is no inconsistency of the proposed development with this policy. However, the Board acknowledges that the Conklin residents were not engaged on the approval.

[170] The next cited policy is 5.1.3 which states:

> 5.1.3 Support traditional lifestyles
>
> Traditional lifestyles such as hunting, fishing, trapping, and plant collecting are valued among Métis and First Nations and communities throughout the region. The Municipality will continue to respect traditional and historic uses of the natural environment as a fundamental element of the region's cultural identity. The Municipality will support efforts to identify and conserve culturally significant areas such as berry patches and plant-collecting sites to ensure traditional lifestyles can continue to be practiced throughout the region.

[171] In assessing policy 5.1.3, the Board notes that this policy speaks to the role of the Municipality to support efforts to "identify and conserve" lands. There was no evidence that a list of such culturally significant areas had been created. Had there been such a list, there would be clarity for both the Appellant, as well as the Board. The Board would urge the creation of such a list, so that development proponents would be able to determine if an area is culturally significant in advance of spending time and money on preliminary work for a development.

[172] The Board has examined the terms of policy 5.1.3. The question is what the clause means. The first sentence is a statement, providing no direction regarding development. The second sentence also provides little direction concerning development, indicating only that the Municipality is to respect traditional and historic uses of the natural environment. The third sentence speaks to the role of the Municipality to identify and conserve culturally significant areas. As indicated above, there is no evidence before the Board of a list of municipally-identified culturally significant areas. The Board reads this policy as requiring the Municipality to first identify the culturally significant areas, and then to conserve those identified areas. In the absence of evidence of a municipally recognized culturally significant area, the Board is not prepared to find that this policy has been contravened.

[173] The Board notes that the Appellant has argued that it complied with policy 5.1.3 because the Aboriginal Consultation Office (ACO) confirmed that it recommended to AEP that the Appellant's consultation was adequate.[2] However, the Board notes that the evidence before it was that the Conklin residents were not consulted because they are not First Nations. While the Board accepts the evidence about the ACO's intention, the issue of ACO approval is only one factor for the Board to examine.

[174] The Board notes the evidence of affected persons who spoke to the use of the lands on which the proposed development is to occur for berry picking and medicinal plant use. The Board will address this evidence when the Board considers the compatibility of the proposed use.

[175] The next cited policy is 6.4.2 which states:

> 6.4.2 Foster a relationship of mutual respect with Métis
> Métis people provide an historic and cultural dimension to the region. The Municipality will help foster a relationship of mutual respect with Métis as joint sponsors of regional development initiatives and will work toward a heightened engagement of Métis people in municipal decision-making and service delivery processes. The Municipality will continue to acknowledge Treaty and Aboriginal rights declared in the Constitution Act, 1982.

[176] The affected persons argue that they have not been treated with respect, because their concerns have not been addressed and the site was chosen without their input. They have argued that it is a culturally important site, and that the use is in conflict with this policy.

[177] The Board notes that the language of policy 6.4.2 speaks to the Municipality's role in engagement with Métis people. The Board finds that the wording of this policy does not speak to particular developments, nor does it contain any specific direction in relation to how the Board is to assess the proposed development. In the absence of specific direction in this provision, the Board has no basis to conclude that the proposed development does not conform with its provisions. The Board notes that the affected persons feel that they were not treated in a respectful manner by the Appellant, but on the wording of this policy, the requirement lies with the Municipality to assist in the fostering of relationships. It is the Municipality which is to work toward engagement with Métis people in the municipal decision making and service delivery. The wording of this policy does not refer to development proponents. On a purposive interpretation of the policy, the Board cannot read its wording as containing such an obligation.

[2] As an aside the Board notes that paragraph 2 of its Rebuttal Submissions, the Appellant has argued that CRDAC's concerns are outside the scope of this hearing as they are in relation to consultation with Indigenous communities. However, at paragraph 27 of those Rebuttal Submissions, the Appellant appears to be asking the Board to rely upon confirmation from the ACO that it recommended to AEP that Secure's consultation was adequate.

MDP and LUB

[178] The Appellant argued that the LUB is to prevail over the MDP (see paragraph 29 of its Rebuttal Submissions, Exhibit 13). In light of the Board's finding, there may not be a need to address this issue. For the sake of completeness, the Board will address the Appellant's argument.

[179] The Board notes that there is no conflict between the MDP and the LUB. This is not a situation where the MDP compels what the LUB prohibits. It would be possible for the proposed development to proceed, provided that it met the provisions of the MDP and the LUB.

[180] The Appellant states "the primary document to be scrutinized is the LUB and not the statutory plan" (see paragraph 29 of its rebuttal submissions). The Board does not disagree with this statement. The Board does examine the provisions of the LUB, and the compatibility of the proposed development with neighbouring uses below. However, even if the provisions of the LUB were the primary document, section 687(3)(a.2) of the *MGA* makes it clear that the LUB is not the *only* document to be reviewed.

[181] Moreover, in the Board's review of the excerpt from *Planning Law and Practice in Alberta,* the Board understands that municipal development plans may not be "intended to regulate in any definitive way". However, that general statement must be examined in light of the specific wording of the municipal development plan in question. In this case, the Board has reviewed the wording of the MDP, and has found that there are no policies with exception to policy1.41 which would, on the wording of the policies and the evidence before the Board, cause the Board to deny the permit.

Conklin ASP

[182] The Board heard evidence about the Conklin ASP and whether the proposed development complied with its terms. The Board has determined that the Conklin ASP plan area does not include the area for the proposed development. The proposed development area is just south of the ASP plan area (see Municipality's submissions, Exhibit 12, Attachment 1, page 11/220). Since the proposed development area is not within the Conklin ASP Plan area, the Board concludes that the Conklin ASP does not apply to the proposed development area lands. As a result, the Board will not make a determination as to whether the proposed development complies with the Conklin ASP, as that is not a relevant consideration.

[183] Although the Board did not need to consider whether the proposed development complied with the provisions of the Conklin ASP, the Board did examine it to determine future land use patterns (as set out in paragraphs [153] and [154] above).

Completeness of the Application

[184] In its submissions, both the Municipality and the Appellant provided evidence about the history of the application process, and the efforts that the Appellant had made to provide information requested by the Municipality. The Municipality advised that it had requested a copy of the Lease Agreement between the Appellant and the Province for the application to be deemed complete, and that this was provided to the Municipality in 2018. The Board accepts that the Municipality deemed the Development Permit application complete on September 21, 2018.

[185] However, the evidence was that subsequently the Municipality required the Appellant:

a. to provide an EIA to better understand the impacts of the proposed development, requested on December 10, 2018; and

b. an Open House to be conducted by Secure Energy Services Inc. in the community. The Open House took place on May 15, 2019 and a summary of the event was provided by Secure Energy Inc. on May 17, 2019.

[186] The Board heard evidence about the Municipality's request for the EIA and during the hearing the Municipality clarified that it was looking for a general commentary about the impact of this development on the environment. The Appellant argued that environmental matters should be dealt with by the Province under its processes for approval under the *EPEA* and the *Water Act*. The Board accepts that the Development Authority was within its authority under section 22.2(o) of the LUB to request an EIA. However, the Board was not convinced that the Development Authority was clear in what it was expecting in the EIA from the Appellant at the time of the request.

[187] The Appellant's position is that the Municipality was not entitled to ask for the EIA. Its position was that this Board cannot be a tribunal addressing environmental facts and relied upon *Patricia Hills v. Parkland* and *Canadian Waste Services v. Edmonton.*

[188] The Board has considered whether it has jurisdiction to address environmental matters. The Board reviewed the two cases referenced. In *Patricia Hills,* the Court concluded that boards are able to consider environment matters. This case was decided before the change to section 3 of the *MGA,* which now provides that one purpose of a municipality is to "foster the well-being of the environment", which supports a conclusion that the Board can consider environmental matters. The Board notes that the *Canadian Waste Services* case dealt with a direct control district, where the jurisdiction of the Board is more limited.

[189] The Appellant also argued that there was no further information to be provided that it had not already provided.

[190] The Board is of the view that it does have the authority to consider environmental matters, and to determine if an EIA is required. In this case, though, the Board is not convinced that anything turns on whether the Appellant provided an EIA. The issues concerning the impact on the environment would have been addressed by AEP in its consideration of the various approvals required for the operation of the waste management facility. The issues in this case do not turn on specific technical details to be considered by AEP. Rather, the Board focused on the land use considerations, which are set out below.

Land Use District

[191] The Site is zoned as RD Rural District. There is no dispute between the parties that the Site is located within this District.

Nature of Use

[192] Waste Management Facility is a discretionary use in the RD Rural District as set out in section 11.6.3 of the LUB.

[193] The Appellant has applied for a Waste Management Facility. The definition of Waste Management Facility is set out below:

> WASTE MANAGEMENT FACILITY means a sanitary landfill, modified sanitary landfill, hazardous waste management facility or dry waste site approved or registered pursuant to the Environmental Protection and Enhancement Act for the processing, treatment, storing, recycling or landfilling municipal, hazardous or industrial waste, but does not include an automobile wrecker.

[194] Waste Management Facility is a discretionary use in the RD Rural District as set out in section 11.6.3 of the LUB.

[195] All of the parties agree that the proposed use is a discretionary use. Therefore, as referenced in *Rossdale Community League (1974) v. Edmonton (Subdivision and Development Appeal Board),* 2009 ABCA 261, the Board must assess the compatibility of the use applied for with the neighbouring uses.

> [14] *The object and purpose of a discretionary use is to allow the development authority to assess the particular type and character of the use involved, including its intensity and its compatibility with adjacent uses.*

Compatibility of Proposed Use

[196] In examining the question of compatibility, the Board considered the evidence and argument presented to it. The issues regarding compatibility were:

a. Impact on neighbouring uses of the lands;

b. Noise;

c. Odour;

d. Dust;

e. Traffic; and

f. Impact on the water.

Impact on Land Uses

[197] Before the Board, the Municipality acknowledged that the test for the Board is to determine the compatibility of the proposed use. The Board must assess the particular type and character of the use involved (Class II Landfill) including its intensity and its compatibility with adjacent uses.

[198] The Appellant agreed that the test is compatibility and referred the Board to the *Willow Creek v. Jatoi* case, in particular paragraph 8. The Appellant argued that the province has provided guidance for the assessment of the proposed development and this should provide guidance for the Board.

> [8] Because the proposed use of the property is a discretionary use of land, the planning authority can refuse to issue the permit if the refusal serves a proper planning objective. As stated at page 6-6 of F. A. Laux, *Planning Law and Practice in Alberta, 2d ed.* (Toronto: Carswell, 1996):
>
> Unlike permitted uses, which were adjudged by council at the time of adopting the bylaw as being unquestionably appropriate for the district, the listed discretionary uses, while generally appropriate for the district, are those that are of such a nature that they may or may not be reasonably compatible with neighbouring uses, depending upon the circumstances.

[199] The Board has also noted paragraph 10 of *Willow Creek v. Jatoi*:

> [10] The people of a community may assert their interests in the nature and character of their community and how the community should develop. The Board is specifically empowered by s. 687 of the Act to weigh the interests of community members against an applicant's interest. Several members of the community expressed strong feelings against the proposed development. Their concerns included safety and misuse of private property by patrons of the restaurant. It was reasonable for the Board to infer that off-premise alcohol problems would result from the presence of a retail liquor outlet. The Board drew reasonable inferences based on known facts.

[200] Although there was little argument about the application of compatibility, the Board notes that *Jatoi,* which was referenced by the Appellant, speaks to a Board looking to the impact that the use of a parcel would have outside that parcel.

[201] The Board infers from the *Jatoi* case that the Board can look to the impact that the use of the proposed development site would have on the affected persons' use of that land.

[202] The evidence of the Appellant was that it had not had an opportunity to consult with CRDAC, although it remained open to do so. It was willing to establish a berry patch elsewhere and to allow plants to be moved before the site was cleared. It argued that the Board should be guided by provincial authorities' review. The Board must consider compatibility, which is the test outlined by the Court of Appeal.

[203] The overwhelming evidence of those who spoke in opposition to the appeal was that they used the lands on which the proposed development would be located for berry picking, medicinal plant picking and cultural camping, as well as for trapping and hunting. The report of Mr. Fortna was the synthesis of his discussions with residents and the impact on their traditional land uses in the area. CRDAC and almost all of those persons who spoke in opposition to the appeal stated that they used the lands on which the proposed development was to be located for berry picking and for the collection of plants which were used for traditional medicines, such as rat root. There was also evidence that the lands were used for camps and other uses at which children were taught traditional skills. This evidence from Conklin residents was supported by the evidence of Mr. Fortna, whose report is found at Tab 20 of CRDAC's materials, Exhibit 11, pages 397/546 to 502/546. The Board finds as a fact that the area in which the proposed development would be conducted is an area used for berry picking and for the collection of plants used for traditional medicines and for other cultural events, like camps, etc. The Board also finds as a fact that the subject lands are one of, or is, the last areas in the community that is accessible by foot from Conklin for these uses.

[204] CRDAC and the persons who spoke indicated that the proposed development would affect their ability to continue to use the lands as they had done as part of their culture. The Board took particular note of the map at Tab 11, page 464/546 which showed the Conklin Métis traditional land use in relation to the proposed project. This evidence was not controverted during the hearing. The Board accepts this evidence and makes a finding of fact in this regard.

[205] Should the Board approve the proposed development, the entire development area of approximately 204 acres, would no longer be able to be used for berry picking or plant collecting. The Board infers that the Appellant acknowledges this because it agreed to support a new berry and plant patch in another location.

[206] As indicated above, the Board is aware that it is not a constitutional decision maker. It cannot assess the sufficiency of consultation, nor does it attempt to do so. However, this Board can and must assess the compatibility of the proposed development on the uses which the affected persons have made of this land.

[207] Therefore, the question here is whether the landfill is compatible with the uses to which the affected persons have made of the lands, and which the evidence was had occurred for a significant length of time on these lands, and which the evidence shows is still occurring now. The evidence of a number of the affected persons was that they wished to continue their use of these lands and to continue this use with their children or grandchildren.

[208] The evidence before the Board was that the lands would be cleared for development to proceed. The Appellant acknowledged that this would destroy the plants, because it confirmed that it would plant a community garden to replace the loss. Further, it indicated it would permit time for the special or medicinal plants to be harvested to be moved before the lands were affected. There would be no need to do this if the plants were going to remain.

[209] The evidence was that medicinal plants, once moved, were of little value as their potency was less and they were less robust. This evidence was not controverted.

[210] There were 21 people who provided evidence to the Board of the impact on their uses of the lands. Many spoke to their use of the lands and the negative impact that the destruction of this land would have on them. Mr. Fortna gave evidence that this land was important because many people do not have cars, so land which is close is particularly important. The Board notes that the proximity of the lands to the residents of Conklin makes the lands accessible, so the loss of these lands accessible by foot would have a significant impact on the affected persons.

[211] The Board recognizes that the Appellant has attempted to discuss the impacts of the proposed development with residents of Conklin, including members of the CRDAC. The Board also recognizes that the Appellant has offered substitutions (the community garden, alternate camp locations).

[212] However, the Board is persuaded by the evidence from the affected persons that the proposed development is not compatible with the current use of the lands for the land uses, particularly picking berries and medicinal plants. Once the lands are cleared, these uses will be negatively affected and may be destroyed. Putting a landfill onto these lands is not compatible with their continued use for berry picking or medicinal plant gathering. The Board does not find the alternatives offered by the Appellant to be sufficient.

[213] The Board notes that there was evidence about the impact on hunting and trapping. The evidence of the impact on trapping was equivocal. Mr. Cardinal, who works a trapline in the area, spoke against the appeal, but the Appellant stated (Exhibit 4, page 18, paragraph 31(d) that Mr. Lovelace, who has a trapping area, did not express a concern with the proposed development. The Board accepts that two trappers can have different opinions on whether the proposed development will have an impact on them. However, divergent nature of the evidence did not assist the Board in its assessment of compatibility. The evidence of Mr. Cardinal and Mr. Lovelace was less specific and clear how the hunting and trapping would be affected by the landfill. Therefore, in assessing the question of compatibility in relation to uses of the lands, the Board relied heavily on the clear and specific evidence about berry picking and plant gathering, and less on the evidence concerning hunting and trapping, although it gave some weight to this evidence.

[214] In addition, the Board notes that the proposed development is:

a. within approximately 500 metres of the boundary of the Conklin ASP;

b. within 2 kilometres of the existing residences in Conklin; and

c. within less than 2 kilometres of the future county residential development set out in Map 11 of the Conklin ASP.

[215] The Board has examined the question of the proximity in its analysis of policy 1.4.1 of the Municipality's MDP. It now turns to an assessment of the proximity in relation to the test for compatibility.

[216] The Board notes that the proposed development meets the setback distances in the Subdivision and Development Regulation. However, meeting the setbacks in the regulation does not, in and of itself, address the question of compatibility. The Board notes that the setbacks in the Regulation are somewhat "quantitative" in nature. There is specified distance set out for setbacks (450 metres). One can easily measure if the setback distance has been met.

[217] However, the Board is of the view that compatibility requires a more qualitative analysis. Therefore, the Board is of the opinion that it can, and should, assess the question of proximity, even though the setback distances in the Regulation are met.

[218] The question for the Board is whether having a 204-acre landfill within approximately 500 metres of the Conklin ASP boundaries, and within 2 kilometres of the existing residences (and less for the future country residential area in the hamlet) is compatible.

[219] The evidence of a number of the affected persons was that the proposed use is too close. The Appellant's response was that the proposed development meets the setback distances, and no further analysis is required.

[220] The Board is of the view that this is a significant development (204 acres), which will be 500 metres from the hamlet boundaries. The development will be undertaken for 25 years. The proposed development is a large area (over a quarter section of total area), and the duration is significant. This is not a short-term development which may be annoying, but which will quickly cease. Twenty-five years is a generation of time.

[221] The Appellant argued that the presence of landfills near the Village of Ryley is an indicator that the Board should find this proposed development compatible. In this vein, the Appellant put forward the presence of the landfill south of Fort McMurray which was a comparable distance to the proposed development. The Board did consider these two examples.

[222] However, the Board did not find these examples persuasive on the question of whether this proposed development was compatible near the hamlet of Conklin. First, the Board must make a determination based upon the evidence that is before it. The location of other landfills in other locations is not determinative of whether this landfill in this location is compatible.

[223] Further, even assuming that the location of other landfills near other centres has some weight in whether the Board should find proposed development compatible, the Board would have to weigh how and on what evidence those landfills were found to be compatible in their locations. The Board did not receive any evidence regarding the development approval process for those two sites. The evidence only related to the distance between those landfills and the urban centres. There was no evidence presented about whether the development approving authority made findings of compatibility in relation to their proximity to residential uses.

[224] For the above reasons, the Board finds that the proximity to the hamlet also results in an incompatibility.

Noise

[225] Those speaking in opposition to the appeal expressed concern about the noise which the proposed development would generate. Although concerns were raised, there was no specific evidence brought forward by those speaking in opposition to the appeal.

[226] By contrast, the Appellant provided a noise study (Tab 68 of its submission, pages 2629/2693 to 2671/2693). That report indicated that the noise levels were estimated to be in compliance with Rule 012 and Directive 038 Permissible Sound Level Limits and that the noise would be less than the estimated background noise at a distance of 1.5 km from the proposed development. The Report concluded that there were no negative impacts anticipated at the nearest existing residences.

[227] The Board has had regard for the concerns of those in opposition. It preferred the evidence of the Appellant in regard to the question of how much noise would be generated by the proposed development because the question of the amount of noise generated has been studied by GHD, a firm of engineers, using provincial guidelines. The Board prefers the quantitative analysis done by the Appellant over the anecdotal evidence presented by those speaking in opposition to the appeal. Further, the Board notes that there is to be a treed buffer between the proposed site which should mitigate the noise.

[228] Based on the evidence provided, the Board finds that the proposed development is compatible from a noise perspective.

Odour

[229] Those speaking in opposition to the appeal expressed concern about the odour which the proposed development would generate and referenced the odour from the Janvier landfill. No further evidence was provided about Janvier, but the Board understands that the landfill at Janvier accepts general waste and is not a facility accepted a limited waste stream, such as the proposed development.

[230] The Appellant provided evidence that the leachate is to be tanked and disposed of and there will be no tailings pond creating a smell. It also provided an Odour Impact Assessment (Exhibit 6, Tab 67 of its submission, pages 2604/2693 to 2619/2693). That report indicated that there would be odour expected, but it is not expected to be a concern for those living up to 2 kilometres away.

[231] The Board noted the concerns of those in opposition. It preferred the evidence of the Appellant in regard to the question of how much odour would be generated by the proposed development because the Appellant conducted a study which supported its submission that the impact of odour would be minimal. The study was conducted by a firm of engineers and the Board prefers the quantitative analysis done by the Appellant over the anecdotal evidence presented by those speaking in opposition to the appeal. Also, the Board notes that this proposed development is for a limited waste stream, and therefore is not comparable to the Janvier landfill, which has a broader waste stream. Further, the Board had no evidence to compare what was occurring at Janvier, as compared to the proposed development. While the Board accepts that there may be odour coming from the Janvier site, the development at Janvier is not before the Board. Further, in the absence of specific details relating to Janvier, there is insufficient evidence for the Board to draw comparisons to the proposed development site, except as noted above, on the general basis that the two have different waste streams.

[232] Based on the evidence provided, the Board finds that the proposed development is compatible from an odour perspective.

Dust

[233] The evidence of Ms. Olsgard set out the prevailing winds and she stated that the Appellant had not provided a report dealing with dust impact. Further, she had a report which outlined the current "health" of the berries – that they had less concentrations of metals than store-bought berries. Her evidence was not controverted by the Appellant.

[234] The Board accepts her evidence that the prevailing winds blow to Conklin, so that whatever might arise from the development would blow to Conklin. However, there is no evidence to indicate what level of impact the proposed development would have on the dust levels or on the quality of the berries.

[235] For other developments which may cause dust, conditions have been imposed which require the proponent to decrease dust levels. The same might be possible here. However, in light of the Board's conclusion to deny the appeal, the Board will not outline possible conditions as they would have no value in this decision. Should the Appellant apply again for approval, it would be up to the Development Authority considering that application to consider this question.

Traffic

[236] The affected persons raised concerns about the impact of traffic, including a concern about increased traffic and traffic safety. These concerns were general in nature. However, the Appellant had not yet conducted a TIA, and it would be doing so as part of the AEP process. As indicated in paragraph [235], traffic impacts in other matters have been addressed by way of condition. However, in light of the Board's conclusion to deny the appeal, the Board will not outline possible conditions as they would have no value in this decision. Should the Appellant apply again for approval, it would be up to the development authority considering that application to consider this question

Impact on Water

[237] The evidence of the Appellant provided by Mr. Smith of Tetra Tech was that the design of the proposed landfill exceeded the base standards required by AEP. The evidence was also that AEP accepted the Appellant's Water Act application as complete but would not process it until the Appellant received a development permit from the Municipality. Moreover, the evidence was that AEP would have an ongoing role in the monitoring of the Appellant's operation of the land fill.

[238] The Board has reviewed carefully the evidence provided by the Appellant and CRDAC. The Board is of the view that the concerns raised by CRDAC were somewhat speculative in nature. They raised conjectures about the future. For example, the concern was raised that the liner might or would degrade over time. However, this timeframe was well into the future. The Board is not equipped to assess whether the standards imposed for the construction of landfills have sufficiently considered the future contingencies. The question is whether there is information that the proposed development does not meet the current standards. The evidence before the Board was that the standards meet or exceeded AEP standards.

[239] Another concern raised was leakage might not be caught and would go into the water system. While the Board understands the concern, this too would require the Board to assess the design sufficiency. These concerns fall directly within the mandate of AEP when it would review and assess the Appellant's applications under EPEA and the Water Act.

[240] While the Board is sympathetic to the concerns about the possible impacts on the water, including the liner degradation or leakage, the concerns are somewhat speculative, and the concerns would be better raised before the AEP for its consideration as it is an expert body which can assess the design specifications against the requirements. In light of the Board's conclusion about the lack of compliance with the MDP and the conclusion set out in paragraphs [197] to [212] about the compatibility with traditional land uses, the Board does not need to come to a definitive conclusion on this point.

[241] The decision of the Subdivision and Development Appeal Board is final and binding on all parties, subject only to appeal to the Court of Appeal under section 688 of the *Municipal Government Act*, R.S.A 2000, c. M-26

Dated at the Regional Municipality of Wood Buffalo in the Province of Alberta, this 22nd day of November 2019.

CHAIR:
Alex McKenzie

APPENDIX "A"
DOCUMENTS RECEIVED AND CONSIDERED BY THE SDAB:

EXHIBIT NO.	**ITEM**	**DATE FILED**
	Subject Area Map	**2019-07-22**
1.	Notice of Appeal (8 pages)	2019-07-05
2.	Development No. 2016-DP-00078 Permit Decision (6 pages)	2019-08-21
3.	Preliminary Hearing Decision (6 pages)	2019-08-07
4.	Appellant's Synopsis of Evidence (39 pages)	2019-08-31
5.	Appellant's Submission Volume 1, Tabs 1-16 (Pages 1-1399)	2019-08-31
6.	Appellant's Submission Volume 2, Tabs 17-71 (Pages 1400 – 2693)	2019-08-31
7.	Written Submission – N. Hueser, Director, Draper Residents Society of the Clearwater River Valley (1 page)	2019-09-05
8.	Written Submission – A. Baumann, President/CAO, White Swan Environmental Ltd.(1 page)	2019-09-11
9.	Written Submission – Bob Galbraith & Linda Novak (1 page)	2019-09-11
10.	Conklin Resource Development Advisory Committee, Conklin Métis Local 193, and Conklin Community Association Synopsis of Evidence (27 pages)	2019-09-12
11.	Conklin Resource Development Advisory Committee, Conklin Métis Local 193, and Conklin Community Association's Submission (546 pages)	2019-09-12
12.	Municipality's Submission (220 pages)	2019-09-13
13.	Appellant's Rebuttal Submission (47 pages)	2019-09-27
14.	RMWB List of Authorities *United Taxi Drivers' Fellowship of Southern Alberta v. Calgary (City)*, [2004] 1 S.C.R. 485, 2004	2019-10-10
15.	*Edith Lake Services Ltd. v. Edmonton (City)*, 1981 ABCA 328 *Baron Real Estate Investments Ltd. v. Edmonton (Subdivision and Development Appeal Board),* 2018 ABCA 67 *Jatoi v. Willow Creek (Municipal District No. 26) Subdivision and Development Appeal Board,* 2000 ABCA 83	2019-10-12
16.	*Fuhr v. Parkland (County)*, 2018 ABCA 442 *Fort Chipewyan Métis Nation of Alberta Local #125 v. Alberta*, 2016 ABQB 713	2019-10-12

APPENDIX "B"
REPRESENTATIONS

	PERSON APPEARING	CAPACITY
1.	Chris Davis	Counsel for the Regional Municipality of Wood Buffalo
2.	Isela Contreras-Dogbe	Supervisor and Development Officer, Planning and Development Regional Municipality of Wood Buffalo
3.	Brenden Hunter	Fasken Martineau DuMoulin LLP, Counsel for the Appellant
4.	Robert Clarke	Corporate Development Representative, Secure Energy Inc.
5.	Mike Pitman	Manager of Regulatory and Environment, Secure Energy Inc.
6.	Steve Smith	Tetra Tech
7.	Alastair Graham,	Indigenous and Stakeholder Lead, Secure Energy Inc.
8.	Bevan Howell	VP Corporate Development, Secure Energy Inc.
9.	Ifeoma Okoye	Akroyd LLP, Counsel to Conklin Resources Development Advisory Committee, the Conklin Métis Local 193 and the Conklin Community Association
10.	Jon Fennell	
11.	Cliff Wallis	
12.	Mandy Olsgard	
13.	Rick Schippling	
14.	Johnson Kwan	
15.	Peter Fortna	
16.	Jeffrey O'Donnell	Conklin resident and CEO of CRDAC
17.	John Cardinal	
18.	Verna Quintal-Janvier	
19.	Valerie Quintal	
20.	Shirley Tremblay	
21.	Margaret Quintal	
22.	Delores Pruden	
23.	Violet Lockett	
24.	Yvonne McCallum	
25.	Gwen Letendre	
26.	Elizabeth Desjarlais	
27.	Ernie Desjarlais	
28.	Martha Desjarlais	
29.	Shawn Janvier	
30.	Tyson Adby	
31.	Kevin Adby	
32.	Margie Quintal-Adby	
33.	Cherish Cunningham	
34.	Braden Quintal	
35.	Tanis Robillard	
36.	Velma Quintal-Nokohoo	
37.	Charles William Nokohoo	