



ALBERTA  
ENVIRONMENTAL APPEALS BOARD

August 23, 2022

**Via E-Mail**

Mr. Richard Harrison  
Wilson Laycraft  
#1601, 333 – 11 Avenue SW  
Calgary, AB T2R 1L9  
(*Counsel for the Appellants*)

Mr. James Zelazo  
CFO & Development Manager  
Mr. Jay Zelazo, CEO  
Badlands Recreation Development Corp.  
6761 Fairmont Drive SE  
Calgary, AB T2H 0X6  
(*Approval Holder*)

Ms. Nicole Hartman  
Mr. Paul Maas  
Alberta Justice and Solicitor General  
Environmental Law Section  
8th Floor, Oxbridge Place  
9820 – 106 Street  
Edmonton, AB T5K 2J6  
(*Counsel for the Director, Alberta  
Environment and Parks*)

Dear Gentlemen and Ms. Hartman:

**Re: Decision Letter\* - Badlands Recreation Development Corp./Water Act  
Approval No. 00406489-00-00/Our File Nos.: EAB 19-066-070, 074 & 081**

The Board acknowledges receipt of the attached letter from Mr. Harrison dated July 4, 2022.

This is the Board's decision regarding Mr. Harrison's request for a site visit. Mr. Harrison's request is granted, in part, subject to the terms and conditions detailed below.

Background

On June 17, 2022, Mr. Harrison wrote to the Board requesting a site visit. He stated:

"Our clients have submitted a substantial amount of visual information to the Board with respect to the Rosebud River Valley and the Approval Holder's property. A site visit would give the Board the benefit of seeing the approval site and surrounding environment first hand. ... Should the Board order a site visit, our clients would appreciate touring the Board on their land, which overlooks the approval holder's property."

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\* *McMillan et al. v. Director, South Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Badlands Recreation Development Corp (23 August 2022), Appeal Nos. 19-066-070, 074, and 081-ID5 (A.E.A.B.), 2022 ABEAB 34.*

On June 20, 2022, the Board acknowledged Mr. Harrison's request for a site visit, and requested that Mr. Zelazo and Ms. Hartman or Mr. Maas provide their comments in response to the request for a site visit.

On June 24, 2022, Ms. Hartman wrote to the Board stating that the Director does not oppose a site visit. However, she expressed concern about how a site visit would assist in the determination of the issue set for the hearing of the appeals, which is "Are the terms and conditions of the Approval adequate having regard to the potential environmental impacts of the Approval?" Ms. Hartman noted, as observed by Mr. Harrison, that the Parties have already provided extensive visual information to the Board. She noted: "Since the Board is in possession of these [visual] materials and has extensive experience in hearing appeals of complex matters without the need to attend the site in person, the Director is unclear as to why a site visit is necessary." She also expressed uncertainty about how a visit to neighbouring properties is relevant to an appeal of the Approval. Finally, she expressed the concern that "... a site visit may result in individual panel members interacting directly with the Appellants, the Approval Holder, and legal counsel outside of the hearing."

On June 24, 2022, Mr. Zelazo also wrote to the Board. He stated that, in his view, a site visit was not required. He also commented upon Mr. Harrison's observation that the Board already has a large amount of visual information before it. In his view, the evidence that has been submitted "... sufficiently describes the subject lands and provides ample details for the Board to properly assess the evidence." Mr. Zelazo also notes that the "... Board is not [an] evidence seeking body." Mr. Zelazo expresses concern that there would be significant logistical challenges to scheduling a site visit involving all of the Parties. He also indicated that a site visit would be time-consuming and costly. Finally, he stated, "Procedural fairness and the principles of natural justice are paramount and should be taken into account when considering and instigating a site visit by the Board."

In response to Ms. Hartman and Mr. Zelazo's responses, the Board asked Mr. Harrison if he would like to provide any final comments. On July 4, 2022, he replied, advising that the following are key issues at the hearing:

1. The proximity and reliance of the bank swallow colonies on the wetlands that are the subject of the Approval;
2. The proximity and reliance of the bank swallow colonies on other wetlands because once the wetlands that are subject of the Approval are filled, the bank swallows will rely on other wetlands for food;
3. Wetland classification;
4. The wetlands have been breached and partially drained;
5. The isolated location of the property; and
6. This region of Alberta is semi-arid.



According to Mr. Harrison, seeing the site in person will allow the Board to understand these key issues better. Finally, Mr. Harrison argues that pursuant to section 95(1) of the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12, the Board “has all the powers of a commissioner under the *Public Inquiries Act*,” and the Board should use these powers to address “... some of the contested facts that exist as between the parties.”

### Decision

Rule 12 of the Board’s Rules of Practice provides:

“Prior to proceeding to a hearing, or during a hearing, the Board may, at the request of a party or on its own motion, schedule a site visit. The Board will set the terms of reference for the site visit in advance and will notify all parties in writing of the site visit and terms of reference for it.”

The Board acknowledges the extensive visual evidence that the Parties have already filed for these appeals and expects that additional visual evidence will be filed in the lead-up to the hearing. In the Board’s view, a site visit will assist the Board in putting all of the visual evidence into context. Therefore, the Board grants Mr. Harrison’s request for a site visit.

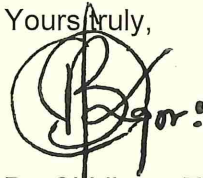
However, the Board agrees with the concerns expressed by Ms. Hartman and Mr. Zelazo that procedural fairness and natural justice of the hearing must be protected. The Board also notes Mr. Zelazo’s concerns with a site visit with all of the Parties being time-consuming and costly. Therefore, **the Board has decided to conduct a site visit of the area on its own, without the Parties in attendance and without entering onto private property.** The Board has previously conducted site visits in this manner and is of the view that this approach balances the interests of all the Parties.

The Board has attached two maps of the area surrounding the wetlands that are subject to the Approval and requests that the Parties annotate these maps with the locations they wish the Board to view during the site visit. The Parties are requested to ensure that the Board Members do not enter private property. However, the Parties are free to identify locations on private property that the Board can view from a public roadway. The annotations can include a narrative describing what that Board should expect to see and how it is significant to the appeals.

The Parties are requested to provide their annotated maps and commentary to the Board by **4:30 pm on Friday, August 26, 2022.** The Parties are then free to respond to the annotated maps and commentary of the other Parties by **noon on Wednesday, August 31, 2022.** The Board will then proceed to develop a compilation of maps and commentary and conduct its site visit.

Please do not hesitate to contact the Board if you have any questions. We can be reached toll-free by first dialing 310-0000 followed by 780-427-6569 for Valerie Myrmo, Registrar of Appeals, and 780-427-7002 for Denise Black, Board Secretary. We can also be contacted via e-mail at [valerie.myrmo@gov.ab.ca](mailto:valerie.myrmo@gov.ab.ca) and [denise.black@gov.ab.ca](mailto:denise.black@gov.ab.ca).

Yours truly,

A handwritten signature in black ink, appearing to read 'Chidinma Thompson', written over a circular stamp or logo.

Dr. Chidinma Thompson  
Board Chair

Att.

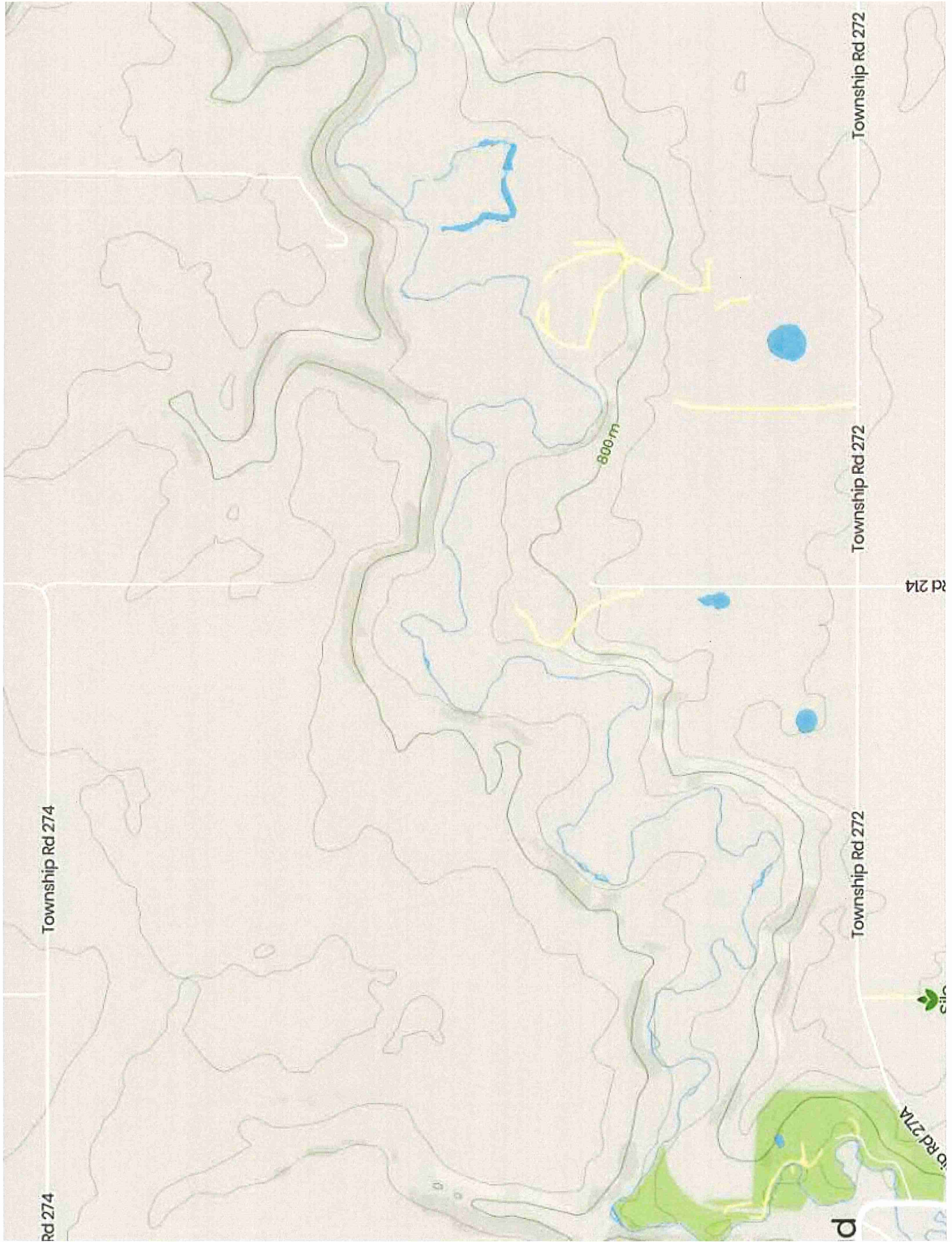
The information requested by the Environmental Appeals Board is necessary to allow the Board to perform its function. The information is collected under the authority of the *Freedom of Information and Protection of Privacy Act*, section 33(c). Section 33(c) provides that personal information may only be collected if that information relates directly to and is necessary for the processing of these appeals. The information you provide is a public record.

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