

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

AND IN THE MATTER OF an application by the Town of Cochrane, in the Province of Alberta, to annex certain territory lying immediately adjacent thereto and thereby its separation from the Municipal District of Rocky View No. 44.

BEFORE THE MUNICIPAL GOVERNMENT BOARD

Members:

L. Lundgren, Presiding Officer
T. Robert, Member
G. Leadbeater, Member

Secretariat Advisor:

D. Hawthorne

After careful examination of the submissions from the Town of Cochrane (Town), the Municipal District of Rocky View No. 44 (MD), affected landowners, and other interested parties, the Municipal Government Board (MGB) makes the following recommendation for the reasons set out in the MGB's report, shown as Appendix D of this Board Order.

Recommendation

That the annexation be approved in accordance with the following:

The Lieutenant Governor in Council orders that

- (a) effective July 1, 2004, the land described in Appendix A and shown on the sketch in Appendix B is separated from the Municipal District of Rocky View No. 44 and annexed to the Town of Cochrane,
- (b) any taxes owing to the Municipal District of Rocky View No. 44 at the end of June 30, 2004 in respect of the annexed land are transferred to and become payable to the Town of Cochrane together with any lawful penalties and costs levied in respect of those taxes, and the Town of Cochrane upon collecting those taxes, penalties and costs must pay them to the Municipal District of Rocky View No. 44, and



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- (c) the assessor for the Town of Cochrane must assess, for the purpose of taxation in 2005 and subsequent years, the annexed land and the assessable improvements to it,

and makes the Order in Appendix C.

Dated at the City of Edmonton, in the Province of Alberta 20th day of August 2004.

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A handwritten signature in cursive script, appearing to read "L. Lundgren".

L. Lundgren, Presiding Officer

APPENDIX A

**DETAILED DESCRIPTION OF THE LANDS RECOMMENDED FOR
SEPARATION FROM THE MUNICIPAL DISTRICT OF ROCKY VIEW NO. 44
AND ANNEXED TO THE TOWN OF COCHRANE**

ALL THOSE PORTIONS OF THE SOUTHEAST QUARTER OF SECTION THIRTY-SIX (36), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING WEST OF THE RIGHT BANK OF THE BOW RIVER

ALL THOSE PORTIONS OF THE NORTH ONE-HALF OF SECTION TWENTY-FIVE (25), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING WEST OF THE RIGHT BANK OF THE BOW RIVER

THE SOUTHWEST QUARTER OF SECTION TWENTY-FIVE (25), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN INCLUDING ALL ADJACENT ROAD ALLOWANCES AND INTERSECTIONS

THE SOUTHEAST QUARTER AND THE WEST ONE-HALF OF SECTION TWENTY-SIX (26), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN INCLUDING ALL INTERVENING AND ADJACENT ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

SECTION TWENTY-SEVEN (27), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN INCLUDING ALL INTERVENING AND ADJACENT ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THOSE PORTIONS OF SECTION THIRTY-FOUR (34), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING SOUTH AND WEST OF THE LEFT BANK OF THE BOW RIVER, INCLUDING THE BOW RIVER AND ALL INTERVENING AND ADJACENT ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THAT PORTION OF THE NORTHEAST QUARTER OF SECTION THIRTY-THREE (33), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING EAST OF TOWERS TRAIL, INCLUDING ALL INTERVENING AND ADJACENT ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THOSE PORTIONS OF THE NORTH ONE-HALF OF SECTION THIRTY-THREE (33), TOWNSHIP TWENTY-FIVE (25), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING NORTH AND WEST OF PLAN 0013255, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THOSE PORTIONS OF THE NORTHEAST QUARTER OF SECTION FIVE (5), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING NORTH OF THE RIGHT BANK OF THE BOW RIVER, INCLUDING THE BOW RIVER, THE CANADIAN PACIFIC RAILWAY RIGHT-OF-WAY AND ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THOSE PORTIONS OF THE SOUTH ONE-HALF OF SECTION FOUR (4), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING SOUTH OF ROAD PLAN 467LK

ALL THAT PORTION OF SECTION NINE (9), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING NORTH OF THE HIGHWAY 1A RIGHT-OF-WAY, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

ALL THAT PORTION OF THE NORTHWEST QUARTER OF SECTION THREE (3), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING NORTH OF THE HIGHWAY 1A RIGHT-OF-WAY, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

SECTION TEN (10), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

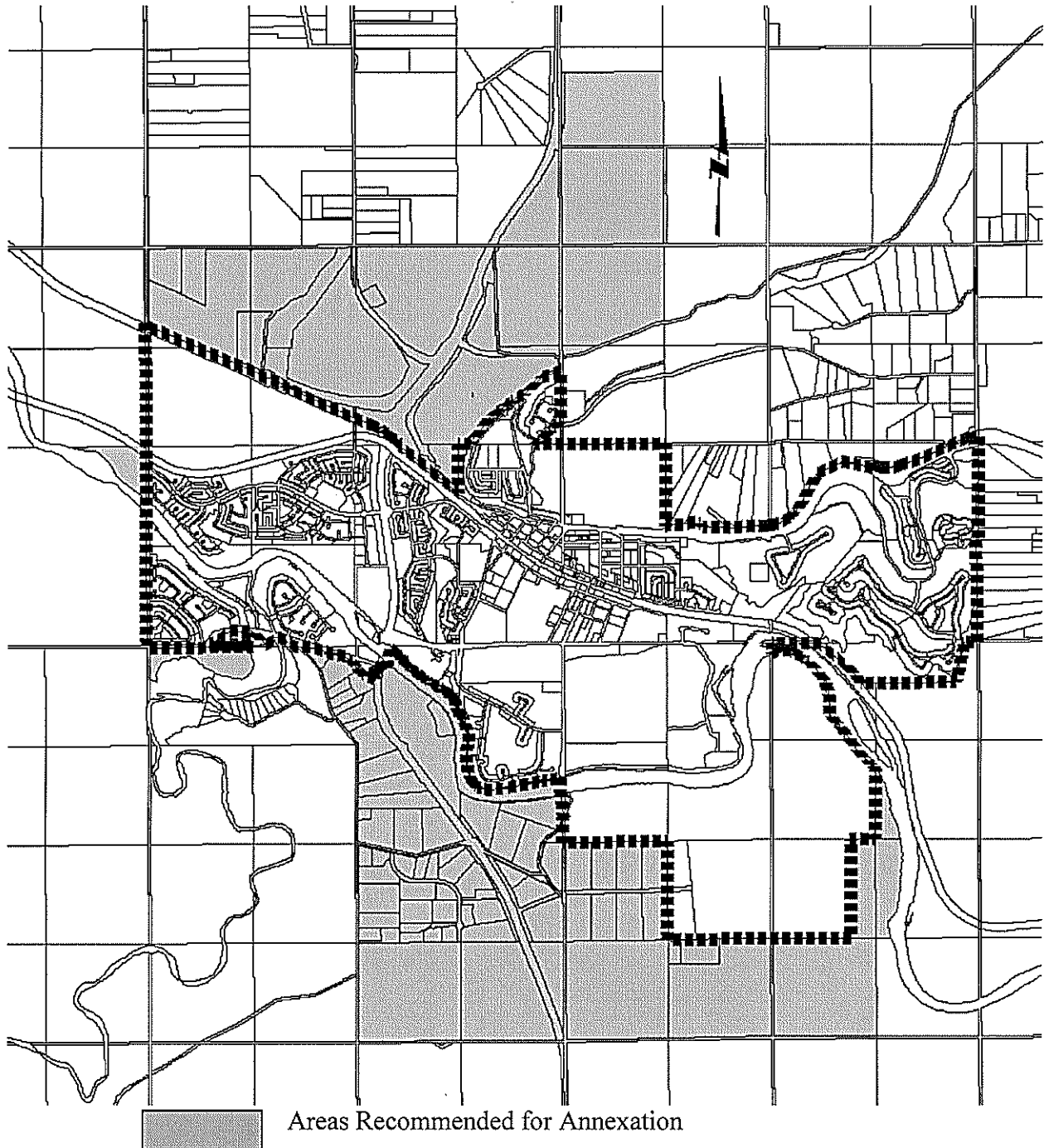
THE WEST ONE-HALF OF SECTION ELEVEN (11), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING NORTH OF RANCHE ROAD PLAN 646BM, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS BUT EXCLUDING RANCHE ROAD PLAN 646BM

THE WEST ONE-HALF OF SECTION FOURTEEN (14), TOWNSHIP TWENTY-SIX (26), RANGE FOUR (4), WEST OF THE FIFTH MERIDIAN LYING SOUTH OF PLAN 1364LK, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

THAT PORTION OF THE SOUTHEAST QUARTER OF SECTION FIFTEEN (15) LYING EAST OF THE WESTERLY RIGHT-OF-WAY OF HIGHWAY 22, INCLUDING ALL ADJACENT AND INTERVENING ROADS, ROAD ALLOWANCES, HIGHWAYS AND INTERSECTIONS

APPENDIX B

A SKETCH SHOWING THE GENERAL LOCATION OF THE AREAS RECOMMENDED FOR ANNEXATION TO THE TOWN OF COCHRANE



**APPENDIX C
ORDER**

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

2 Subject to section 3, for taxation purposes in 2005 and later years up to and including 2019, the annexed land and the assessable improvements to it

- (a) must be assessed by the Town of Cochrane on the same basis as if they had remained in the Municipal District of Rocky View No. 44, and
- (b) must be taxed by the Town of Cochrane in respect of each assessment class that applies to the annexed land and the assessable improvements to it using the municipal tax rate established by the Municipal District of Rocky View No. 44.

3(1) Section 2 ceases to apply to a portion of the annexed land and the assessable improvements to it in the taxation year immediately following the taxation year in which

- (a) the portion becomes a new parcel of land created as a result of subdivision or separation of title by registered plan of subdivision or by instrument or any other method that occurs at the request of, or on behalf of, the landowner,
- (b) the portion is redesignated, at the request of or on behalf of the landowner, under the Town of Cochrane Land Use Bylaw to a designation other than agricultural, country residential or urban reserve,
- (c) the portion is the subject of a local improvement project described in a local improvement by-law initiated by or with the support of the landowner pursuant to which the Town of Cochrane water and sewer services are made available to the land, or
- (d) the portion is connected to the water or sanitary sewer services provided by the Town of Cochrane.

(2) Notwithstanding subsection (1)(a), section 2 does not cease to apply in respect of

- (a) an existing farmstead within the annexed land,
- (b) one lot that is subdivided from a previously unsubdivided quarter section of the annexed land, or

- (c) any portion of the annexed land and the assessable improvements to it that are transferred from the landowner to a child of the landowner.

4 Section 2 continues to apply to the annexed land and the assessable improvements to it up to and including the year 2024 if

- (a) the person who was the landowner of the annexed land on December 16, 2002, or a person who inherits the annexed land or any portion of it from the landowner subsequent to that date, continues to own the land until 2024, and
- (b) none of the situations described in section 3(1) occur.

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

6 Not later than 6 months after the date this Order in Council is signed by the Lieutenant Governor in Council, the Municipal District of Rocky View No. 44 shall transfer to the Town of Cochrane all its interest in that portion of the northeast quarter of section 5, township 26, range 4, west of the fifth meridian that is contained within the limits of an island in the Bow River as shown on the Township Plan approved at Ottawa on August 22, 1892, containing 3 acres more or less.

7(1) The Town of Cochrane shall pay to the Municipal District of Rocky View No. 44 the sum of \$208,000 in Canadian money, as follows:

- (a) \$50,000 not later than 30 days after the date this Order in Council is signed by the Lieutenant Governor in Council;
- (b) \$50,000 not later than one year after the date this Order in Council is signed by the Lieutenant Governor in Council;
- (c) \$108,000 in accordance with subclause (i) or (ii), as follows:
 - (i) not later than 30 days after the date this Order in Council is signed by the Lieutenant Governor in Council, or
 - (ii) not later than 7 years after the date this Order in Council is signed by the Lieutenant Governor in Council.



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- (2) Where the Town of Cochrane elects to make the payment required under subsection (1)(c) in accordance with subclause (ii),
- (a) the first payment must be made within 30 days of the date the Order in Council is signed by the Lieutenant Governor in Council, and
 - (b) annual payments must be made on or before the anniversary of the first payment and must include interest calculated at the rate and in the manner used by the Alberta Capital Finance Authority.

APPENDIX D

**MUNICIPAL GOVERNMENT BOARD REPORT TO THE MINISTER OF
MUNICIPAL AFFAIRS RESPECTING THE TOWN OF COCHRANE
PROPOSED ANNEXATION OF TERRITORY FROM
THE MUNICIPAL DISTRICT OF ROCKY VIEW NO. 44**

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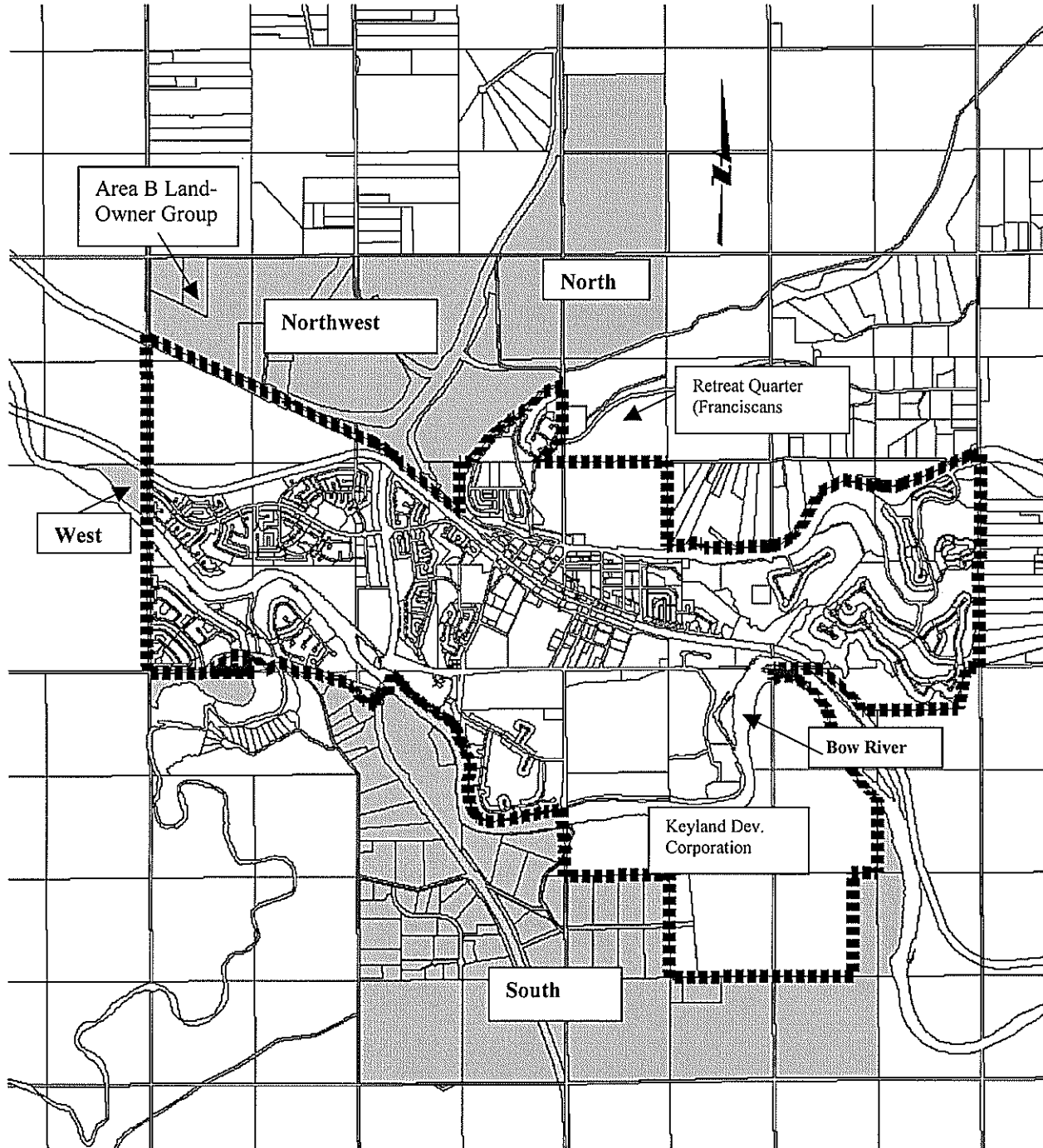
Executive Summary

In the annexation process the MGB is only a hearing and recommending body. The MGB, after hearing from the parties, prepares findings and recommendations for consideration by the Minister and the Lieutenant Governor in Council (LGC). The Minister and the LGC are not bound by the recommendations of the MGB.

General Background

The Town of Cochrane, with a population approximating 13,000, is a rapidly growing municipality situated approximately 15 miles northwest of Calgary at the intersection of Highway 1A and Highway 22. The Town has had a fluctuating growth rate since 1981 with an average annual growth in excess of 12%. With expectations of continuing rapid growth, the Town predicts a population in excess of 60,000 over the next 25 to 30 years.

The Town provided notification to the MGB, the MD and local authorities of its intent to annex certain lands from the MD. The Town and MD then entered into negotiations respecting the annexation. While continuing negotiations, the Town and the MD met with the owners of the lands considered for annexation, the other landowners not included in the annexation and conducted public meetings on the proposal. At the conclusion of the negotiations, the Town and the MD could not settle on some details of the proposal and entered into mediation. Mediation was successful resulting in an annexation agreement. The agreement, along with a report and other supporting documents, became the formal application for annexation. The annexation application filed by the Town proposes the annexation of areas identified in the report as west, northwest, north and south, shown on the following map.



Areas Applied For

West This triangular shaped area is located between the Bow River and the CP Railway right-of-way and comprises approximately 27 acres. Across the river to the southwest is the Stoney Indian Reservation. The Town intends that this area be developed for residential use to complement the existing residential use immediately adjacent and within the Town. There are no objections to the annexation of this area.

Northwest This area is located northwest of the intersection of Highway 1A and Highway 22, comprising approximately 510 acres. Approximately 388 acres is located near the bottom of the hill immediately north of Highway 1A and immediately west of Highway 22. The Town intends this area be used for a mixture of residential and institutional uses (Agricultural Society).

The balance of the area of 122 acres is located in the northwest corner of the annexation area and encompasses some large agricultural/country residential parcels. The Town and the MD have indicated that this area is projected to be used for non-residential purposes. Approximately one-half mile to the north is the Williams Energy extraction plant, while lands immediately adjacent to the northwest annexation area are farmland and large lot country residential. Due to the potential for the location of industrial uses, landowners and adjacent landowners, known as the "Area B Landowner Group" raised concerns about the future projected land uses, however, these landowners did not object to these lands being included within the Town.

North This 680 acre area lies north of Highway 1A, east of Highway 22 and comprises a varied landscape as it rises up the big hill. Approximately 510 acres are intended for residential development in the northerly portion of the annexation area on the flat land behind the big hill. To the southwest of this future residential area is a 20-acre site scheduled for a new middle school. Immediately south of the school site is a 136-acre area formerly known as the Western Heritage Centre. This area is now called the Cochrane Ranche House and is being renovated and redeveloped as the Town's new municipal complex. The Town's present boundary is located immediately east of the Ranche House area and encompasses a built-up residential area at the top of the hill with views overlooking the Town and the Bow Valley. Immediately east of this area is a quarter section known as the "Retreat Quarter" owned by the Franciscans of Western Canada.

While the "Retreat Quarter" formed part of the lands subject to the Town's growth study, the Town did not include the quarter section in the annexation application due to objections from country residential landowners to the east and southwest of

this quarter section. The Franciscans of Western Canada requested the MGB recommend that the "Retreat Quarter" be included in the annexation.

South Approximately 1813 acres of land comprise the southern annexation area lying south of the Bow River and straddling Highway 22. The Town intends that the majority of this area be used for residential purposes with some commercial, industrial and institutional development on either side of Highway 22. There is a significant number of large country residential lots in this area requiring an urban overlay plan be prepared before urban redevelopment can proceed. The main issue surrounding this annexation area involves access from Highway 22 east through River Heights, past a new high school and into an area owned by Keyland Development Corporation that is currently within the Town.

An adjacent landowner, Keyland Development Corporation, with land already in the Town raised concerns regarding access issues related to the lands already in the Town and which are common to the access issues and traffic control on the road access to the new high school.

Objections/Concerns/Requests

Following the filing of the official annexation application, the MGB received objections to the annexation from landowners outside the annexation areas and concerns about provisions of the annexation agreement between the Town and the MD from landowners within the annexation area. In the case of the latter, these objections did not oppose the change in boundaries but rather raised concerns about certain clauses in the annexation agreement between the Town and the MD.

The MGB also received a request to have a quarter section included in the annexation from the Franciscan Brothers.

Opportunity For Additional Input

As a result of the objections, concerns and requests, the MGB conducted an informal meeting with the municipalities and the complaining parties with the intent to provide all parties the opportunity to better understand each other's position. This pre-hearing meeting provided all parties with an additional opportunity to better understand the annexation proposals and for the municipalities to understand the concerns being raised. As a result of this meeting some of the parties withdrew their concerns, however, a few issues still remained unresolved to all parties' satisfaction. These concerns involved primarily the content of clauses in the annexation agreement and were not an objection to the proposed boundaries in the annexation application.

- The Area B Landowners Group raised concerns regarding the projected future land uses for the northwest area and various statements in the annexation agreement, which in the view of the Group would be prejudicial to future planning of the area.
- Keyland Development Corporation did not object to the annexation boundaries but objected to the provisions in the annexation agreement which, in their view, were prejudicial to the resolution of future access and future road closure considerations.

The third major issue which arose was the request of a few landowners to have additional lands included in the annexation.

The MGB gave the municipalities additional time to determine if they could resolve the concerns related to these clauses in the annexation agreement. The municipalities informed the MGB that they would not be taking any further action to resolve these concerns and more specifically would not be considering any adjustments to the annexation agreement.

As a result, on May 20, 2004 the MGB conducted a public hearing in order to hear further details of the concerns and legal arguments about the role of the MGB in making recommendations to the Minister. The arguments centered on the MGB's authority to alter or delete certain provisions in the annexation agreement and the MGB's authority to consider adding lands that were not part of the annexation application.

Recommendation

After reviewing all the written and oral submissions, the MGB recommends that the annexation be approved as applied for and the Franciscan Retreat Quarter not be included in the annexation. The MGB also recommends that the disputed clauses in the annexation agreement not be included in the annexation order.

Reasons

General

The minimal amount of land currently available for development within the current boundaries combined with the rapid growth experienced by the Town, justify the reasons for annexation as stated in the Town's annexation application. In addition, the economic and population projections result in a demonstrated need for additional lands to be brought within the jurisdiction of the Town.

The lands included within the recommendation are logical extensions of established developed areas and maximize the utilization of the existing capacity of major infrastructure as well as

provide for the extension of the transportation system to meet the projected growth on both sides of the River.

The annexation is supported by the Intermunicipal Development Plan adopted by both municipalities, as well as the 2001 Growth Study conducted by the Town. The thrust for inter-municipal co-operation envisioned by the Act and the Provincial Land Use Policies is well demonstrated in this annexation proposal through the IDP and the annexation agreement.

There are three main issues in this annexation proposal.

1. The request by the Area B Landowners Group to delete the provisions within the annexation agreement, which makes reference to certain projected land use in the northwest area.
2. The request by Keyland Development Corporation that the MGB delete certain provisions within Section 2 of the annexation agreement which referenced how certain road and access issues will be addressed within the Town.
3. The request by the Franciscans to include the Retreat quarter section in the annexation.

Neither of these first two issues are objections to the proposed annexation. In fact neither the Area B Landowners nor Keyland Development Corporation objected to the proposed boundaries in the annexation application. The MGB places considerable weight on this fact in recommending that all the proposed areas be annexed to the Town. This fact, in combination with the need for these lands to accommodate future growth, the ability to service these lands and the logical extension of urban development patterns convinced the MGB to recommend these lands be annexed.

The Area B Landowner Group requested the MGB to direct that a specific clause in the annexation agreement, which references the future consideration of non-residential land uses in the area be eliminated. The landowners were of the opinion that this clause would prejudice any future planning efforts. The Act provides significant mechanisms for the preparation of plans and input by landowners into the ultimate plan making for an area. However, the Act designates the local municipality as the sole authority to decide these land use matters. The MGB was satisfied that future detailed planning will address the juxtaposition and interface between residential and non-residential land uses with the required opportunity for landowner input. In fact the landowners themselves could initiate these processes. These planning processes must be completed within the principles of natural justice. If any issue arises as to prejudgement of land use designations these matters can be dealt with through appropriate legal mechanisms. In examining this issue from a provincial perspective and from the perspective of a change in municipal boundaries, the specific issue of the interface between residential and non-residential land uses is a local one. As well, this issue of the juxtaposition of residential and non-residential land uses would not change if the lands remained in the rural municipality, therefore, the greater

public interest is best served by these lands being included within the Town as indicated by the various supporting documents.

Keyland also raises a similar issue of fettering of municipal discretion related to certain clauses in the annexation agreement which reference solutions to local transportation issues. Again, Keyland does not object to the change in the municipal boundaries but asks the MGB to direct that an agreement between two local bodies be changed. The MGB observed that if the south annexation area remains in the rural municipality the local transportation issues still exist and the exclusion of this area from the annexation does not solve the local transportation and associated planning issues. Transportation planning within the existing Town boundaries and future annexation areas is subject to the requirements of the Act and subject to the mandatory public input and appeal processes. These processes must be undertaken with the full observation of the principles of natural justice and if any of these processes become subject to a legal challenge of fettering of discretion there exists appropriate legal processes to address these matters through the Courts.

In summary, the Area B Landowner Group supports the inclusion of their area within the Town and Keyland Development Corporation does not argue the location of the proposed boundary. The MGB finds that the issues raised by these two parties relate to an agreement between the municipalities. Neither the MGB, the Minister nor Lieutenant Governor in Council have the ability to alter the annexation agreement. The agreement is between two independent natural persons who have been given powers under the Act to enter into agreements. However, the MGB does caution the affected municipalities that the substance of these agreements cannot fetter the due processes required under the Act. As a result, the MGB does not recommend that these clauses be included in the annexation order.

Considering the need for the lands and the logical extension of servicing, as well as the position of Keyland and the Area B Landowner Group that they do not object to the lands being in the Town, the MGB is convinced that including the lands in the annexation better meets the greater public interest.

Challenges to the validity of the agreement and its provisions would be a matter properly before the Court. The Province is not a party to the agreement and the annexation Order in Council does not include the disputed conditions that are included in Section 2 of the agreement. The MGB was not convinced by the arguments of the parties that it would serve the greater public interest to recommend excluding the south area and the northwest area until the local planning concerns were resolved.

Exclusion of the Franciscan Retreat Quarter

Inclusion of the Franciscan quarter section in the Town's annexation was originally part of the Town's notification of its intent to make an annexation application, however, and more

importantly was not included in the formal application pursuant to Section 119 of The Act. The reasons given by the Town for the rejection were that a number of area landowners objected to the inclusion due to transportation (traffic volume) and environmental concerns. While the MGB understands the logic of including the Retreat quarter section, the MGB is of the opinion that annexation is premature until all the issues in the surrounding community (Town and MD) have been resolved. In any event, the MGB has determined that it cannot recommend inclusion of this quarter section as it was not part of the Town's application. The issue of inclusion of lands not in an annexation application filed pursuant to Section 119 of the Act was canvassed, fully debated and considered in the recent Red Deer annexation. For the purposes of brevity of this report, the MGB does not repeat the arguments and rationale leading to the conclusion that the MGB is not in a position to recommend the inclusion of lands not included in the application for annexation pursuant to Section 119 of the Act.

Conclusion

The MGB recommends that all the lands as applied for in the official annexation application be approved for annexation.

Part I Introduction

The Town is located at the intersection of Highway 1A and Highway 22, approximately 15 miles northwest of the City of Calgary. Although Highway 1 to Banff is several miles south of the present Town boundary, tourism has become an important economic factor in the Town's business plan. To some degree, the Town serves as a bedroom community for Calgary, however, there are a significant number of industrial and commercial employment generators within or very near the Town.

From 1981 to 2001, the Town's average annual growth rate was 12.2%. In 2001 the population had reached 12,200 persons. Based on historical growth and economic cycles, the Town projects a population of 60,000 persons within the next 25 to 30 years. As a result of the growth study and in recognition of the historical growth pattern, the Town filed with the appropriate authorities notification pursuant to section 116 of the Act, of its intent to annex 4450 acres of territory. Following public consultation and negotiations with the MD, the Town filed the formal application for the annexation of 3030 acres of territory.

The Town encompasses a dramatic landscape, bisected to the north and south by the Bow River, CP Railway and Highway 1A and bisected to the east and west by Highway 22. The renowned big hill is located on the north side of Highway 1A and forms a northern backdrop for the Town. Part of the Town is located and developed on top of the hill, however the majority of the Town and built up areas are located in the flats between Highway 1A and the Bow River. The areas proposed for annexation are generally described as follows.

West

This triangular shaped area is located between the Bow River and the CP Railway right-of-way and comprises approximately 27 acres. Across the river to the southwest is the Stoney Indian Reservation. The Town intends this area for residential use as an extension to the existing Town residential development immediately east and built-out. This is not a controversial annexation area.

Northwest

This area is located northwest of the intersection of Highway 1A and Highway 22, comprising approximately 510 acres. Approximately 388 acres is located near the bottom of the hill immediately north of Highway 1A and immediately west of Highway 22. The Town intends this area be used for a mixture of residential and institutional uses (Agricultural Society).

The balance of the area of 122 acres is located in the northwest corner of the annexation area and encompasses some large agricultural/country residential parcels. The Town and the MD have indicated that this area is generally scheduled to be used for non-residential purposes. Approximately one-half mile to the north is the Williams Energy extraction plant, while lands immediately adjacent to the northwest annexation area are farmland and large lot country residential. Due to the potential for the location of industrial uses, the future planning of this area has become a point of dispute from the present landowners and adjacent landowners, known as the "Area B Landowner Group".

North

This 680 acre area lies north of Highway 1A, east of Highway 22 and comprises a varied landscape as it rises up the big hill. Approximately 510 acres are intended for residential development in the northerly portion of the annexation area on the flat land behind the big hill. To the southwest of this future residential area is a 20-acre site scheduled for a new middle school. Immediately south of the school site is a 136-acre area formerly known as the Western Heritage Centre. This area is now called the Cochrane Rancho House and is being renovated and redeveloped as the Town's new municipal complex. The Town's present boundary is located immediately east of the Rancho House area and encompasses a built-up residential area at the top of the hill with views overlooking the Town and the Bow Valley. Immediately east of this area is a quarter section known as the "Retreat Quarter" owned by the Franciscans of Western Canada.

While the "Retreat Quarter" formed part of the lands subject to the Town's growth study, the Town did not include the quarter section in the annexation application due to objections from country residential landowners to the east and southeast of this quarter section. The Franciscans of Western Canada requested the MGB recommend that the "Retreat Quarter" be included in the annexation. This request became an issue for the MGB.

South

Approximately 1813 acres of land comprise the southern annexation area lying south of the Bow River and straddling Highway 22. The Town intends that the majority of this area be used for residential purposes with some commercial, industrial and institutional development on either side of Highway 22. There are a significant number of large lot country residential lots in this area requiring an urban overlay plan be prepared before urban redevelopment can proceed. The main issue surrounding this annexation area involves access from Highway 22 east through River Heights, past a new high school and into an area owned by Keyland Development Corporation which is currently within the Town. The Keyland land is presently subject to a major urban subdivision approved by the Town. The controversial issue regarding this area involves the construction of a bridge over the Bow River to alleviate the access and traffic concerns associated with River Heights Drive and Highway 22.

Part II Role of the MGB, the Minister and the Lieutenant Governor in Council

A municipality seeking annexation must first initiate the process by giving written notice of the proposal to the municipal authority from which the land is to be annexed, the MGB and any local authority considered to be affected by the proposal. The notice must describe the land proposed for annexation, set out the reasons for annexation and include proposals for consulting with the public and meeting with the landowners. Once notice has been given to the other municipality, the municipalities must negotiate in good faith and if agreement cannot be reached the municipalities must attempt mediation to resolve the outstanding matters.

At the conclusion of the negotiations, the initiating municipality must prepare a report describing the results of the negotiations. The report must include a list of matters agreed to, as well as a list of matters in which there is no agreement. If no agreement, the report must state what the mediation attempts that were undertaken or, if no mediation, reasons must be provided. The report must also include a description of the public consultation process and the views expressed during this process. The report is then signed by both municipalities and if not, the municipality that did not sign must provide their reasons for not signing.

The report is then submitted to the MGB and it becomes the application for annexation. If the MGB is satisfied that the affected municipalities and public are generally in agreement, the MGB notifies the parties of its findings and unless there are objections to the annexation filed with the MGB by a specific date, the MGB will make its recommendation to the Minister without holding a public hearing.

If the MGB finds that there is no general agreement, the MGB must notify the parties of its finding and conduct one or more public hearings. The MGB only has authority to hear from the affected parties of an annexation proposal, then it must make findings and provide a

recommendation to the Minister and the LGC. The Minister and the LGC have the authority to accept in whole or in part or completely reject the findings and recommendations of this report.

Part III Annexation Application

In January 2002 the Town filed notification of their intent to annex certain lands from the MD. The notification included a growth study wherein the Town analyzed its historical growth patterns relative to the economic cycles and population growth of the Calgary metropolitan region. Upon determining the expected population over the next 25 years, the Town defined its projected land requirement for residential, industrial, commercial and other related land uses. With a defined growth area, the Town evaluated the servicing needs and the implications for costs associated with those needs considering the unique topographical nature of the Town's surrounding landscape.

Following the filing of notification, the Town initiated negotiations with the MD and embarked on a public consultation process and interviews with affected landowners. During the public consultation process, the Town and the MD also attempted negotiations for an annexation agreement. Following mediation, the municipalities signed an annexation agreement and in October of 2003 submitted its formal annexation application with the MGB.

The Public Consultation Process

- On March 5, 2002, the MD conducted a public information session whereby the Town presented its annexation case and interested landowners made presentations to representatives of both municipalities.
- On October 30, 2002, the joint negotiation committee held a public Town Hall meeting to receive input on the proposed annexation. All affected landowners and adjacent landowners received notification of the meeting and an explanation of the annexation negotiations with the MD.
- On February 4 and May 27, 2003, the negotiating committee issued a media release providing an update on the annexation project. Both municipalities also provided periodic information on their respective websites.
- On June 12, 2003, the joint negotiating committee conducted a public open house to advise affected landowners, adjacent landowners and any other interested party of the results of negotiations between the municipalities. At this stage, the municipal councils had endorsed, in principle, the recommendations of the committee.
- On June 25, 2003, the joint negotiating committee conducted four separate interviews with those affected landowners that had indicated concerns about the annexation in general or about details of the agreement reached between the municipalities.
- On August 13 and September 24, 2003, the joint negotiating committee issued additional media releases providing final updates and details on the proposed annexation.

The Annexation Agreement with the Municipal District of Rocky View

As a result of the agreement and public consultation, the amount of land the Town originally intended to annex was reduced from 4450 acres to 3030 acres. The reduction, in total acreage, included the exclusion of the "Retreat Quarter" from the north annexation area.

The agreement has been compiled in three sections and Schedules A, B and C, with sections 1 and 3 outlining conditions of annexation requested for inclusion in the Order in Council. Section 2 of the annexation agreement provides information about the potential for revenue sharing and future joint planning for the annexation areas. The municipalities specifically requested that the MGB only consider the appropriate portions of sections 1 and 3 of the agreement for the purpose of approving the annexation, while section 2 has been provided to the MGB as background information demonstrating the intent of the municipalities for ongoing cooperation in areas of mutual interest.

Sections 1 and 3

These two sections refer to the transfer of information and responsibility once annexation is approved. A number of these matters are automatic requirements of the Act such as the transfer of records and the continuation of various by-laws and, therefore, do not need to be included in the Order in Council. However, the municipalities have agreed to certain assessment, taxation and compensation provisions as the result of landowner and MD concerns.

For example, the municipalities have agreed that assessment and taxation in the annexation areas continue as if the land remained in the MD for a period of 15 years, unless land is redesignated or subdivided at the request of the landowner, or the landowner initiates a local improvement to extend the Town's water and sewer services, or lands are actually connected to the Town's water and sewer services. There is another provision extending the assessment and taxation condition another five years if a ratepayer was an owner of land on December 16, 2002 and continues to own the land at the end of the 15 year period, without having subdivided, redesignated or connected to water and sewer services. Another feature of Section 1 of the agreement requires the transfer to Cochrane of an MD owned island in the Bow River. Further, the Town has agreed to pay the MD a total of \$100,000 for loss of tax revenue over the next two years and the payment of \$108,000 for improvements the MD provided for the Gas Plant road in the northwest annexation area.

There are no substantial objections or concerns regarding these sections of the agreement.

Schedule A

Schedule A of the annexation agreement legally describes the lands agreed to be annexed.

There are concerns about these descriptions from landowners wanting to be included in the annexation but were not included in the application made to the MGB. This relates mainly to the "Retreat Quarter" as requested by the Franciscans of Western Canada.

Section 2 of the Agreement

This section of the agreement establishes several areas of mutual interest

1. Mutual Cooperation

The MD agrees to provide reasonable information and service to the Town, at no expense to the Town, for the purpose of achieving approval of the annexation proposal.

2. Intermunicipal Roadways

The MD agrees to continue limiting vehicular traffic on Retreat Road to emergency vehicles only. The MD also agrees to transfer drawings and remaining funds in relation to the upgrade of the 4th Avenue bridge. The municipalities also agree that they may adopt road maintenance agreements on certain roads for reimbursement of the actual costs associated with services provided to one municipality by the other municipality.

3. Southridge Area Structure Plan Access and River Heights Drive

Southridge is located in the southeasterly annexation area and the only physical access to the site is from Highway 22 then east along River Heights Drive. Even though River Heights Drive will be annexed by the Town, the Town has agreed to limit the use of River Heights Drive and provide an alternate means of access through the construction of a new bridge over the Bow River.

This provision has caused concern for the Keyland Development Corporation owning and developing lands already within the Town located between the Southridge area and the Bow River.

4. Intermunicipal Planning

For River Heights in the south annexation area adjacent to Highway 22 (so called Area A), the MD and the Town have agreed to be full partners in the development and adoption of an area structure plan. The MD's main interest is to address the movement of gravel trucks along River Heights Drive and to identify the timing of changes to the use of River Heights Drive. These provisions have also caused concern for Keyland Development Corporation.

For Horse Creek, in the northwest annexation area (so called Area B), the MD and the Town have agreed that joint planning will occur on an equal basis for the adoption of an intermunicipal development plan, area structure plan or an amendment to the existing intermunicipal development plan. The municipalities have also agreed that plans for a portion of the area will facilitate urban scale, non-residential development, plans to extend water and sewer services into agreed areas and plans that will result in the development of commercial and industrial land uses that will complement existing land uses in both municipalities (i.e.: Williams Energy Extraction Plant north of Area B). Note: the identification of Area B includes land on both sides of the annexation boundary. With respect to administration of development in this area, the municipalities have agreed to establish a joint subdivision and development authority and a joint subdivision and development appeal board. These provisions have caused concern and objection for landowners within Area B.

5. Revenue Sharing

The municipalities have agreed to establish a net revenue sharing agreement for future development in Area B (northwest annexation area). While details of such an agreement need to be worked out, the idea is that the agreement is intended to be in effect in perpetuity but will incorporate exit clauses for an opt-out based on defined circumstances.

Other features of Section 2 of the agreement include general planning provisions, an agreement to investigate and define future details of the provision of water and sewer services to certain areas remaining in the MD, the provision of emergency services in the annexation areas, and dispute resolution provisions.

Part IV Landowner Issues

During negotiations, the municipalities made amendments to the draft annexation agreement in order to address some of the concerns identified by the landowners. However, seven landowners and one landowner group were not satisfied with the annexation application and submitted objections to the MGB. The complaining landowners and their respective issues fall into three general categories and are identified below.

Category 1

Area B Landowner Group (Northwest Annexation Area)

Concern was submitted by Judy Sydenham, Bill Bancroft, Roger and Roberta Young, Marvin Laye, Gordon Lackey and Scott Jeffrey. The group is not opposed to the location of the annexation boundary but objects to Section 2 of the agreement reached between the municipalities. The group maintains that the agreement predetermines future land use without due process of public hearings. The group does not want industrial and commercial development

in their area. The group requests the MGB strike those provisions in Section 2 of the annexation agreement that purport to pre-determine future land use.

Stockmen's Memorial Foundation

The Foundation wishes to locate their facility on the Agricultural Society land in the lower part of Area B and want to be assured sewer services are available. After the MGB pre-hearing meeting this objection was resolved.

Keyland Development Corporation (South Annexation Area)

Keyland opposes Section 2 of the annexation agreement where restrictions on road use for River Heights Drive and the requirement for a bridge over the river prejudice Keyland's development of its land south of the Bow River. Keyland maintains that by agreeing to Section 2, Cochrane has abrogated its authority given under the Act to control development and transportation systems under its jurisdiction.

Category 2

Franciscans of Western Canada (near the North Annexation Area)

The Franciscans object to the annexation boundaries not including the "Retreat Quarter". The Franciscans maintain that it is a logical inclusion that can be serviced by the Town. The Franciscans wish to sell this quarter and move its facility to other lands owned in the immediate area. These lands were not included in the formal annexation application of the Town.

Dana Boothby (northeast of the North Annexation Area)

Mr. Boothby is willing to have six of his quarter sections included in the annexation in order to provide the Town with easily developed serviceable land for the future. These lands were not included in the formal annexation application of the Town.

Category 3 (These landowners are not within an annexation area)

Vivian and Richard Pharis (east of the north annexation area)

The Pharis's raised concern about the environment and the handling of environmental issues in the Big Hill Springs coulee. They were also concerned about the potential inclusion of the "Retreat Quarter" in the annexation.

Bob Carman (northeast of the Northwest annexation area near "Area B")

Mr. Carman does not want future industrial land uses located within view of his country residential parcel. This relates to the concern of the Area B landowner group about pre-determination of industrial and commercial land uses outlined in Section 2 of the annexation agreement.

Allan Powell (located west of the South Annexation Area)

Mr. Powell is concerned that the Town is not able to administrate the type of growth envisaged in the proposed annexation. Mr. Powel has concerns about water supply and sewage disposal.

Part V The MGB Process and Public Hearing

Chronology of Events and Process

Based on the information provided in the completed annexation application submitted by the Town in October of 2003, the MGB decided there was general agreement with the proposal. In accordance with the Act, the MGB caused an advertisement to be published in a local newspaper advising of its finding and inviting any affected party to submit objections by November 28, 2003. The MGB also directed that all directly affected landowners be notified by mail with the same information.

Before the November 28, 2003 deadline the MGB received six of the seven objections or concerns shown above. The complaint from Keyland Development Corporation came in February 2004, long after the deadline but is shown as a landowner having an issue because the MGB ended up going to a public hearing where Keyland was able to make its submission as an affected party.

Due to the nature of the objections received on or before November 28, 2003, the MGB decided to conduct a meeting with the concerned parties as part of its investigation and analysis of the annexation proposal. The meeting was convened in Cochrane on January 9, 2004 and the MGB discussed each of the concerns with the individual complainants. The MGB outlined its view that it could not delete or change provisions in an agreement between two municipalities, nor would it be likely that it would recommend land be included in an annexation when that land was not part of the annexation application before the MGB. The MGB did indicate that it could recommend altering the proposed boundaries by excluding certain land from the annexation and conceded that such a change would have an effect on the agreement.

Following the January 9, 2004 meeting, the MGB requested the municipalities consider amending Section 2 of the annexation agreement by deleting certain provisions referring to

future land use in Horsecreek plan in the northwest annexation area. The MGB also wrote to the other parties in attendance at the meeting and asked if they were satisfied the explanations given.

At the end of February, 2004 the Town and the MD advised the MGB that they were not prepared to amend Section 2 of the annexation agreement. The MGB also received letters from the Area B Landowner Group, Bob Carman and the Franciscans of Western Canada, stating they were not satisfied with the explanations given at the January 9, 2004 meeting and wished to proceed to a public hearing.

As three of the objections were maintained, and with the receipt of the objection from Keyland Development Corporation, the MGB proceeded to public hearing in accordance with the requirements of the Act. The public hearing was held on May 20, 2004 in the Town.

The Public Hearing

At the commencement of the hearing the Town and the MD raised preliminary issues regarding the status of parties to make submissions. The Town and the MD stated that Keyland Development Corporation should not have standing to make submissions to the MGB because their objections were submitted long after the deadline date for objections originally established by the MGB. The Town and the MD also stated that the Area B Landowners Group and Keyland should not have standing because the issues raised in their objections do not relate to the location of annexation boundaries, rather to Section 2 of the annexation agreement which is not before the MGB and is a private agreement between the municipalities. Further, the MD stated that the Franciscans should not have standing to make submissions to the MGB because the "Retreat Quarter" was not part of the annexation application and, therefore, the request is not properly before the MGB.

On the preliminary issues, the MGB ruled that it would hear from all parties affected by the annexation including Keyland, the Area B Landowner Group and the Franciscans. The MGB stated that it was conducting a public hearing and had provided specific notice to all the affected parties and advertised in the local newspaper that a public hearing would be conducted. The MGB stated that it would decide whether or not the issues raised by Keyland, the Area B Landowner Group, the Franciscans and any others claiming to be affected, are issues related to the annexation application or issues that the MGB can consider pertinent to the recommendation it is mandated to make. With respect to the late objection by Keyland, the MGB noted that if no other objections had been submitted before the deadline, Keyland would not have standing to insist on a public hearing. However, a public hearing was required pursuant to Section 120 of the Act, and Section 120(3)(b) requires that all affected persons be given an opportunity to be heard at this public hearing.

Following the ruling on the preliminary issues, the Town proceeded to provide the MGB with an overview of the proposed annexation as described in the background of this report. The MGB then proceeded to hear from the affected parties.

The Area B Landowner Group

This group fully supports the location of the annexation boundaries, however the group objects to part 14 of Section 2 of the annexation agreement and requests the MGB delete those provisions in the agreement that influence and pre-determine future land use for part of the area. The most offensive provisions to the group are as follows.

"14.2 Area B Horse Creek Road Non-Residential Area

- (a) For the purposes of Clause 14.2 herein, joint planning means that both municipalities shall be involved as equal partners in the preparation of joint Terms of Reference for the preparation, adoption, and implementation of a separate intermunicipal development plan, area structure plans, or an amendment to the ICP, as referenced in Clause 14.5 herein, for the lands shown as Area B on Schedule "B" and generally described as:
 - (i) Blocks 1 and 2 on Plan 2292JK, Blocks 3 and 4 on Plan 901 0954, and that portion of the remainder of the North Half of Section 9, Township 26, Range 4, west of the 5th Meridian, which generally lies to the north of Lots 5 and 6 on Plan 901 0954, all within the North Half of Section 9, in Township 26, Range 4, West of the 5th Meridian;
 - (ii) the Southwest Quarter of Section 16 and the westerly 32.38 hectares (80 acres) within the Southeast Quarter of Section 16, all within township 26, Range 4, West of the 5th Meridian;

NOTE: The final boundaries of Area B will be determined through technical studies and intermunicipal development plan, area structure plans, or an amendment to the IDP process;

- (b) The intermunicipal development plan, area structure plans, or IDP amendment shall facilitate urban scale, non-residential development;
- (h) The intermunicipal development plan, area structure plans or IDP amendment shall include policies that:
 - (i) Cochrane shall provide urban standard water and sewer services from Cochrane or a mutually agreed to alternate source to all parts of Area B;
 - (ii) result in the development of commercial/industrial land uses that complement existing land uses in Rocky View and Cochrane."

Note: Area B is defined as a planning area that includes land that will remain in the MD and land in the northwest annexation area.

The group explained to the MGB that pre-determination of non-residential land uses within Area B is outside the normal statutory planning process and will fetter the discretion of future Councils to consider any proposed statutory plan, amendment to a plan or amendment to the land use bylaw. The group also maintains that the decision to establish Area B as a joint inter-municipal planning area through a confidential mediation process was decision that did not provide supporting reasons to the directly affected landowners, and did not provide the affected landowners to offer informed input. The group underlined the direction in the Provincial Land Use Policies that all planning matters should allow meaningful participation by residents, landowners, community groups, municipal service providers and other stakeholder. The confidential mediation process has not respected this Land Use Policy.

Bob Carman

Mr. Carman is opposed to the northwest annexation area (Area B) because of the proposed future industrial and commercial development already agreed to between the Town and the MD. Mr. Carman maintains that this type of development will destroy the property values of existing upscale country residential development that will look out over the industrial areas. The Williams Energy Extraction plant already brings in unwanted traffic and unwanted visual pollution to the area.

Three other landowners came forward in support of the position of the Area B Landowner Group and Mr. Carman.

The Franciscans of Western Canada

The solicitor for the Franciscans advised that they do not object to the annexation proposal or the conditions requested to be included in the Order in Council. The sole objection of the Franciscans is that the proposal excludes the "Retreat Quarter" owned by the Franciscans. The Franciscans note that if the proposed annexation boundaries are approved, the "Retreat Quarter" would be bounded on the west, north and south by the Town. The Franciscans plan to close the "Retreat House" within the next couple of years due to water problems and the need for redevelopment of the facility. If the Franciscans decide to maintain a presence in the area, they would construct new facilities on other land owned in the vicinity but away from the areas that will be developed to urban standards to the north, west and south. The reasons for the request are as follows.

- (a) In order that a comprehensive Area Structure Plan (ASP) can be completed, it would be necessary to ensure that the Franciscan land be comprehensively planned as a contiguous

parcel under one jurisdiction. It would not be possible to provide an ASP simultaneously within two jurisdictions due to the different, competing interest of each municipality.

- (b) By having the ASP completed under one jurisdiction, and then subsequently obtaining land use redesignation and subdivision, the Franciscans would be able to ensure an orderly and sustainable development.
- (c) Cochrane's own cemetery is located on the "Retreat Quarter". There would be a jurisdictional benefit to Cochrane if its own cemetery were within its own boundaries.
- (d) There is no engineering or planning reason why this land could not be annexed into Cochrane and such physical reasoning is supported by the following:
 - (i) The lands are immediately adjacent to already subdivision and developed lands within the Town;
 - (ii) The lands are immediately accessible from at least two separate roadways;
 - (iii) With improvements, the lands are easily serviceable from water and wastewater utilities within the Town.

Valerie Doenz

The Doenz land is located east of the "Retreat Quarter" on Retreat Road and the owners are requesting that their eight-acre parcel be included in the proposed annexation for the following reasons.

- (a) Retreat road would fall under one governing jurisdiction instead of both municipalities.
- (b) Improved municipal services including bylaw enforcement and policing.
- (c) Improved access to services such as recreation, library and recycling operations.

Two other landowners came forward in support of the Franciscan's request for inclusion.

Keyland Development Corporation

Although Keyland owns and is developing land already within the Town, it submits it is affected by the proposed annexation due to parts 13 and 14 in Section 2 of the annexation agreement. Keyland does not specifically object to the location of the proposed annexation boundary but does question the need for the south annexation area considering that 700 acres presently within the Town is scheduled for residential development.

Having stated this, the main objection of Keyland surrounds the question of access from Highway 22 and the use of River Heights Drive and the use of joint planning documents to facilitate future subdivision and development.

Keyland maintains that key elements in the annexation agreement fetters the discretion of future Town councils to decide on the use and location of its own roads. Specifically, part 13.3 of the agreement states that Cochrane shall restrict South Ridge construction traffic on River Heights Drive to the transportation of large construction vehicles by permit, until the relevant road use conditions set out in the River Heights Area Structure Plan have been met.

Keyland claims that parts 13 and 14 of the annexation agreement are "ultra vires" because Keyland has common law and statutory rights to use a public road (River Heights Drive) in order to accommodate its own development. Further, Keyland should not be subject to paying for a bridge over the Bow River in order to provide alternate access to the whole area. Therefore Keyland suggests that the MGB has authority to delete provisions in the annexation agreement, and request parts 13 and 14 be deleted.

St. Mary's Church

The Church land is located on River Heights Drive and the Church is anxious to proceed with construction. The Church purchased the land four to five years ago and have been promised a quick annexation in order to acquire the necessary permits and services from the Town. The Church encouraged the MGB to complete its recommendation as soon as possible.

Part VI Legal Arguments on the MGB's Authority

The MGB requested the interested parties make submissions on key questions regarding the MGB's authority when formulating its recommendation to the Minister. The questions are as follows:

1. Does the MGB have authority to recommend altering the provisions of an annexation agreement?
2. Does the MGB have authority to declare whether or not the annexation agreement is valid or legal in whole or in part?
3. Does the MGB have authority to amend the annexation proposal by including land that was not part of the annexation application.

The Town's Position

1. On question 1, the Town takes the position that the MGB and the Lieutenant Governor in Council have the authority to approve an annexation on terms that are different than those contained in an annexation agreement. In this case, the pertinent terms of annexation are contained in Sections 1 and 3 of the agreement. The provisions of section 2 of the agreement are not provisions related to an annexation Order in Council.
2. On question 2, the Town takes the position that the MGB does not have authority to alter any or all of an annexation agreement between two municipalities. Section 2 of the annexation agreement deals with matters that are extraneous to annexation, and it is not for the MGB to determine the validity or legality of section 2 of the agreement. While the MGB's recommendation can override sections 1 and 3 of the agreement, the agreement and provisions therein would be a matter for the Courts to decide.
3. On question 3, the Town takes the position that landowners requesting inclusion of their territory into an annexation are not initiating an application for annexation but requesting the annexation application be amended. The Town is of the opinion that the MGB has authority to recommend altering or varying the boundaries to include additional land that is contiguous to the Town. Since the Lieutenant Governor in Council can make such an alteration, it follows that the MGB can make such a recommendation.

The MD's Position

1. On question 1, the MD takes the position that the MGB has no authority to deal with Section 2 of the annexation agreement because the Section 2 provisions do not deal with the actual annexation and are not intended to be included in the annexation Order.
2. On question 2, the MD submits that the MGB may make recommendation of its own with respect to the conditions of annexation, but the MGB has no authority to alter or vary any or all of the annexation agreement.
3. On question 3, the MD submits that the MGB does not have authority to hear the request of the Franciscans to be included in the annexation. The MD is of the opinion that such a request constitutes an application for annexation and the Act does not contemplate that individual landowners can make such applications.

The Area B Landowners Group

The group did not bring forward legal arguments on the questions.

The Franciscan's Position

The Franciscan's did not put forward a position on questions 1 or 2 but responded to question 3.

The Franciscans maintain that its request does not represent a private annexation application. The Franciscans are making submissions to the MGB about its request and such submissions are provided for in a public hearing setting established through the Act. The Act establishes that the MGB is a guardian of the public interest and may decide that the public interest is best served by recommending that the annexation proceed as requested by the municipalities, by recommending more land be included or by recommending less land be included. If the MGB did not have such powers in making recommendation, then it would merely be a superfluous rubber stamp body.

The purpose and function of the MGB is to provide the Minister with the benefit of objective advice as to the public interest. Section 124 of the Act directs the MGB to recommend the extent of the annexation as to whether land should be annexed to a municipality and under what terms. To the Franciscans, this means that the MGB has power to make recommendations in order to fulfill its mandate, and those recommendation can include the addition of land not part of the annexation application. Only the Lieutenant Governor in Council has the power to decide whether or not those lands should be included.

Keyland Development Corporation's Legal Position

Keyland maintains that Articles 13 and 14 of the annexation agreement between the Town and the MD illegally fetters the statutory discretion of the Town of Cochrane. Keyland references three recent decisions of the Supreme Court of Canada: Nova Scotia (Workers Compensation Board) v. Martin, Nova Scotia (Workers Compensation Board) v. Laseur and Paul v. British Columbia which deal with Charter rights issues and which, in the opinion of Keyland, stand for the proposition that boards and tribunals must hear, consider and determine constitutional arguments and must determine legal issues in respect of matters before them.

Keyland submits that its rights have been negatively impacted by Articles 13 and 14 in the annexation agreement. Keyland objects to any conditions of the annexation order which affirm Articles 13 and 14 of the annexation agreement. Keyland suggests that Section 124 of the Act allows the MGB to recommend terms, conditions or other things, which the MGB considers necessary or desirable to implement the annexation.

Part VII Framework for the Recommendation

Intermunicipal Development Plan

The Town and the MD have entered into an Intermunicipal Development Plan (IDP) in order to address issues of mutual interest within both municipalities. While the IDP does not specifically

identify lands for annexation or specific future land uses, the IDP focuses on future intermunicipal planning and cooperation. The IDP examines the methods on providing input for future growth, future servicing and transportation corridors and facilities to protect logical sewer and storm water catchments areas, drainage courses, wetlands and open space.

2001 Growth Study

Due to the historical and unprecedented growth pattern, the Town undertook a growth study to identify the best growth strategy considering the unique geography of the Town and the challenging provision for transportation and municipal services. The Town looked not only to its needs for residential land, but its needs and the strategic locations required for commercial, industrial and institutional land uses.

The MGB finds that although the Growth Study examines lands in addition to the lands in this annexation proposal, this annexation represents a strategic approach to accommodating urban development within the context of joint municipal co-operation, a logical extension of services, consideration of the environmental characteristics of the lands, and the short term and longer term needs of the community.

Annexation Agreement

The annexation agreement does not reflect the boundaries used for the Town's growth review. However, the agreement reflects that both municipalities were able to find compromises for growth direction, the location of new town boundaries and the sharing of services, planning strategies and other related inter-municipal information.

Legislation

The Municipal Government Act – The Annexation Part

Upon receipt of a complete annexation application, section 120 of the Act requires the MGB determine whether or not there is general agreement with the proposal. In the Town's case, the MGB determined there was not general agreement with the proposal owing to objections raised and concerns raised by affected landowners.

When there is not general agreement with the proposal, section 121 of the Act requires the MGB to conduct a public hearing and directs the MGB to investigate, analyze and make findings of fact about the annexation, including the probable effect on local authorities and on the residents of an area.

Section 123 of the Act requires the MGB to prepare a written report of its findings and recommendations and send the report to the Minister of Municipal Affairs. The Act directs that the report be prepared after considering the representations made to it.

Section 123 also requires the MGB to consider the principles, standards and criteria on annexation established under section 76 of the Act. There are no applicable principles, standards and criteria adopted pursuant to the Act, therefore, the MGB looks to the scheme of the Act, the Provincial Land Use Policies and past MGB decisions.

Section 124 of the Act requires that the MGB's report to the Minister set out a recommendation as to whether the land should be annexed, and if it is recommending annexation, a description of the land to be annexed and whether there should be revenue sharing and any terms, conditions and other things the MGB considers necessary or desirable to implement the annexation. Section 124 also states that if the MGB does not recommend land be annexed that the report be provided to all local authorities who may be affected by the annexation recommendation.

As previously mentioned, there are no detailed criteria for evaluating annexation proposals, however, a few broad themes are consistently expressed in Division 6 of the Act to which the MGB must give consideration in their deliberations on the Cochrane annexation proposals. These key themes include a significant emphasis on consultation with affected authorities, municipalities and landowners. Significant in this theme is the consultation and participation encouraged with landowners. Another major theme is the significant emphasis on an agreement or mediated solution between the affected municipalities; however, the emphasis on agreement between municipalities is not to the point of being the sole or determinative factor in a proposal. The MGB concludes that the Act purposefully sets broad parameters to ensure that the best interests of the municipalities, local authorities, landowners and the general public will be fully explored.

In order to investigate, analyze and make findings about the annexation, the MGB must test the evidence and information in order to determine if the annexation is logical and beneficial and to determine the probable effect on local authorities and the residents of the area. Because there are no principles, standards or criteria to test the proposal, the MGB has turned to the Planning Part of the Act and the Provincial Land Use Policies for guidance.

In this specific proposal the MGB finds that the two municipalities were able to achieve a level of intermunicipal co-operation through the use of a third party mediator. While the process of public consultation was adequate, a number of landowners inside and outside the annexation areas were not satisfied with the process or with the eventual outcome. Having stated this it is important to note that the annexation agreement recognizes landowner concerns about property assessment and taxation over the coming years.

The Planning Part of the Act

In the MGB's opinion, land use matters involved in annexation must be viewed in light of section 617 of the Act. Section 617 states that the purpose of the planning part of the Act is to provide a means whereby plans and related matters may be prepared and adopted to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and to maintain and improve the quality of the physical environment with which patterns of human settlement are situated in Alberta, without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest. The Planning Part of the Act encourages the use of various levels of plans to support the orderly future development.

The MGB finds that this annexation is supported by the various levels of plans anticipated in the Planning Act. The proposed annexation is rationalized in the MDP and the IDP and supported by various servicing plans.

The Alberta Land Use Policies

These policies do not make reference to annexation of territory from one municipality to another, however, the policies encourage intermunicipal planning and cooperation, which are exercises directly related to annexation issues.

Some of the key policies relative to the MGB's review are:

- 1 Section 2.0 of the Land Use Policies direct that planning activities are to be carried out in a fair, open, considerate and equitable manner. The policy goes on to say that municipalities are expected to allow meaningful participation in the planning process by residents, landowners, community groups, interest groups, municipal service providers and other stakeholders.
- 2 Section 3.0 of the Land Use Policies fosters co-operation and co-ordination between neighbouring municipalities. In particular, adjoining municipalities are encouraged to co-operate in the planning of future land uses in the vicinity of their adjoining boundaries in a manner that does not inhibit or preclude appropriate long-term land use. Accordingly, the municipalities are encouraged to jointly prepare and adopt intermunicipal development plans.
- 3 Section 4.0 of the Policies foster the establishment of land use patterns which make efficient use of land, infrastructure, public services and public facilities which promote resource conservation, enhance economic development activities, minimize environmental impact, protect significant natural environments and contribute to the development of healthy, safe and viable communities.

- 4 Within section 4 of the Land Use Policies, policy number 3 encourages municipalities to establish land use patterns that contribute to a wide range of economic development opportunities, thereby enhancing local employment possibilities and promoting a healthy and stable economy.

Overall, the MGB finds that this proposed annexation meets the policy directives contained in the Provincial Land Use Policies. The planning processes used to support this annexation have provided limited communication for the landowners, however, the emphasis on intermunicipal co-operation is clear and evident in this annexation. The IDP provides strategic direction and support for this annexation proposal. The proposed annexation also provides for the logical extension services with the cost efficient and effective use of existing services within a framework of accommodating development.

Part VIII Findings, Key Alternatives, Recommendation and Reasons

The MGB, after reviewing all the written and oral submissions, determines the following findings related to the Cochrane annexation proposal.

Findings

1. The Town is a rapidly growing community with expected rapid future growth. The population projections and projected land needs are unchallenged and appear reasonable.
2. The lands included within the annexation agreement fully considers the impact on the efficient, effective and economical use of existing services.
3. The Franciscan lands were part of the notification of the intent to annex filed by the Town but were not part of the application for annexation before the MGB.
4. The Doenz lands were not part of the notification of the intent to annex filed by the Town and were not part of the application for annexation before the MGB.
5. Section 2 of the annexation agreement is background information for the MGB but does not form part of any Provincial interest for consideration by the Minister, Cabinet or the Lieutenant Governor in Council.

Key Alternatives

The Minister and LGC are neither bound by the recommendation of the MGB nor by the annexation agreement reached between the Town and the MD. Based on the information and evidence supplied by all the parties, the MGB sees four major alternatives available for consideration by the Minister and LGC.

Alternative 1 Annexation Approval According to the Annexation Application and Agreement

Based on the 2001 Growth Study and the general principles established in the Intermunicipal Development Plan, the two municipalities mediated an annexation agreement to provide the residential, industrial, commercial and institution land for the next 15 to 20 years. The agreement took into account the input of the most affected landowners and the general public. It is the annexation that flows from this agreement that the MGB is recommending.

Alternative 2 Annexation Approval with the Inclusion of the Franciscan Land

The major drawback with approving the annexation of the Franciscan land is that this proposal had been considered by both the Town and the MD and rejected due, in part, to objections from adjacent and area landowners and possibly other reasons kept confidential as a result of the mediation process. According to the evidence, it would be logical to include these lands from a technical perspective as they are adjacent to a built up urban residential area in the Town, can be readily serviced and are surrounded on three sides by the Town. The MGB is of the view that it does not have the authority or mandate to recommend these lands be included because they were not included in the annexation application. The objections for inclusion of these lands were heard during the public consultation process and excluded before the application was made. If they were to be included now, the adjacent and area landowners would not have had the opportunity to make their views known.

Alternative 3 Annexation Approval with the Exclusion of the Northwest and South Areas

Firstly, the MGB does not accept the argument of the parties that the MGB itself has any authority to order a change to an agreement executed by two municipalities given natural person powers under the Act. Thus the alternative is to consider not recommending that the lands in the Northwest Area or the South area be included in the annexation. Considering that the Area B Landowners and Keyland do not object to the annexation boundaries as proposed and that the objections are focused on local planning and transportation issues of which the Act supplies opportunity for local input, the MGB sees more damage or harm created for the objecting parties and the municipalities if it were to recommend that the areas not be annexed as a result of the local issues raised. Therefore, the MGB does not see this alternative as being reasonable.

MGB Recommendation

The MGB recommends the annexation be implemented in accordance with the Town's application pursuant to Section 119 of the Act and based on Sections 1 and 3 of the annexation agreement between the Town and the MD. The mediated agreement has as its basis, the 2001 Growth Study and Intermunicipal Development Plan demonstrating the mutual interests and cooperative schemes established between the two municipalities.

Reasons

Rationale for Annexation

The minimal amount of land currently available for development within the current boundaries combined with the rapid growth experienced by the Town, justify the reasons for annexation as stated in the Town's annexation application. In addition, the economic and population projections result in a demonstrated need for additional lands to be brought within the jurisdiction of the Town.

The lands included within the recommendation are logical extensions of established developed areas and maximize the utilization of the existing capacity of major infrastructure as well as provide for the extension of the transportation system to meet the projected growth on both sides of the River.

The annexation is supported by the Intermunicipal Development Plan adopted by both municipalities, as well as the 2001 Growth Study conducted by the Town. The thrust for intermunicipal co-operation envisioned by the Act and the Provincial Land Use Policies is well demonstrated in this annexation proposal through the IDP and the annexation agreement.

General Concerns Raised

During the annexation process several concerns were raised which the MGB is satisfied have been resolved or can be resolved in the processes following annexation of the subject lands. The concerns raised by Mr. Powell regarding environmental issues related to water and sewer were resolved prior to the hearing at the information meeting between the MGB, the municipalities and affected landowners. The explanation of the Town's system of water supply and sewage disposal satisfied the issues raised prior to the hearing and these concerns were not further raised at the hearing. As well, the Stockmen's Memorial Foundation, after receiving an explanation of the process at the pre-hearing meeting regarding how their facility could be connected to water and sewer, did not have any objections or concerns regarding the annexation.

The MGB is satisfied that the environmental issues raised by Vivian and Richard Pharis regarding development in Big Valley Springs coulee will be adequately addressed by the planning and development policies, rules and regulations contained in the Town's various land use planning documents and bylaws.

Role of the MGB Related to the Addition of Land not Applied for by the Initiating Municipality

It is important for the MGB to underline its mandate with respect to annexation applications. The MGB does not decide the proposed annexation. The MGB simply makes a recommendation to

the Minister of Municipal Affairs and Lieutenant Governor in Council. In considering annexation proposals, the MGB is required to investigate and analyze the proposal in the formal annexation application, but the MGB is not authorized to consider annexation proposals which have not been initiated by a municipality. Section 119 of the Act limits the annexation application to those lands submitted by the initiating municipality. In this specific case, lands asked to be included by various parties during the hearing and prior to the hearing were not part of the initiating municipality's annexation application. This annexation report prepared by the MGB is prepared and presented to the Minister and Lieutenant Governor in Council based on the lands included in the annexation application submitted by the Town pursuant to Section 119 of the Act. These additional lands were not part of the application.

In addition, a proposal to include land in an annexation is an annexation proposal that did not have the benefit of full public consultation prior to the MGB hearing, since it had been excluded from the application. The request for additional land to be included has not had the full benefit of review by all interested parties as have the other lands included within the Town's official application.

Although the Lieutenant Governor in Council, on recommendation of the Minister, may proceed to annex lands without an MGB report pursuant to Section 126, this annexation is subject to an MGB report and thus the origin of the lands to be included are limited to those filed in the application.

Role of the MGB Related to the Annexation Agreement

In accordance with the legal authorities provided by Keyland and the requirement to hear from affected parties the MGB did hear from all parties on all the matters they wished to bring forward. However, it is also important to note that the MGB is not authorized to become an adjudicator of the mediation process held between the two municipalities, nor it is authorized to adjudicate the provisions of annexation agreements between municipal corporations. The annexation sections of the Act do not purport to offer an appeal from any party on an agreement reached by two municipalities to the MGB. The MGB can find no specific authority to carry out this request. The MGB contrasts its limited authority under the annexation sections of the Act, sections 112 to section 128 to the authority provided to the MGB when considering an intermunicipal dispute pursuant to sections 690 to 691. Within the authority of the MGB to consider and decide intermunicipal disputes the MGB is given clear authority to order a local municipality to amend or repeal all or part of a local bylaw that is found to be detrimental to an adjoining municipality.

In the absence of such specific authority related to annexation agreements the MGB has only one option to consider, that is, are the lands subject of the annexation reasonable and suitable for annexation and should they be recommended to be included. In this specific case, the MGB finds that it is in the greater public interest to include the subject lands. As well, the parties (Area B

Landowner Group and Keyland Developments) raising concerns related to the annexation agreement do not object to the change in boundaries, they object only to certain specific clauses in the annexation agreement between the two municipalities.

The MGB does not accept the argument of Keyland that a directive to amend the annexation agreement is a condition necessary or desirable to implement the annexation pursuant to Section 124 of the Act. The issues raised by Keyland and Area B Landowner Group still exist whether the lands are annexed or not. As stated in other parts of this report, the matters raised by the parties relate to terms in the annexation agreement which involve local planning and transportation issues which have specific mandatory processes outlined in Part 3 and Part 17 of the Act. Closures of municipal roads are subject to the required due process outline in Part 3 of the Act. The Act makes the adoption of plans, planning approvals solely at the discretion of the local municipality. These local planning approvals are not subject to any appeal to the MGB, to the Minister or to Lieutenant Governor in Council.

Even if it can be determined that Section 124 does provide board authority, the MGB is reluctant to recommended that a provincial directive be issued to direct action on a specific local planning or transportation matter considering the nature and scheme of the Act to give municipalities ever increasing local autonomy. The scheme of the Act provides for local decision making and actions on a whole variety of municipal matters. The rights of landowners are protected in this scheme by the requirement for a variety of due processes required by the Act and by common law. Should a municipality breach any of these provisions then it is subject to the remedies available through the courts. Indeed Alberta Justice has advised the MGB that conditions of annexation in an Order in Council must be decisive through the direction of a mandatory action with a known result. Therefore, it is not appropriate to add conditions of annexation into an Order in Council that would require the LGC to manage on a daily basis the intermunicipal affairs of the two municipalities.

As well, these specific disputed clauses are not being recommended to be included in the annexation order to the Minister or the Lieutenant Governor in Council. Secondly the MGB is not recommending the adoption and acceptance of the annexation agreement. The MGB has only used the annexation agreement along with other supporting documents to determine if the annexation is reasonable and what conditions should be recommended as being required and desirable to implement the annexation.

As stated earlier, the only conditions being recommended for consideration to the Minister and the Lieutenant Governor in Council are those conditions which relate to financial compensation between the initiating municipality and the responding municipality and any resultant tax conditions needed to execute the annexation from a provincial perspective.

Although the MGB does recognize the overall scheme of the Act which provides significant authority and powers of local municipalities to act as autonomous bodies and to enter into

agreements, the MGB does acknowledge and has advised the subject municipalities that they are ill advised to include any clauses in an agreement which could or would draw attention to the natural justice principle of fettering discretion in relation to an action in the Act which has a prescribed process to follow and which allows for landowner and public input. Any conclusion regarding a municipal action, which may fetter discretion is in the view of the MGB purely a legal matter and would be within the domain of the courts to decide. The MGB is not prepared to comment on this matter further.

During the course of the pre-hearing meetings and the hearings the MGB observed that although the two municipalities did provide opportunities for landowner and public input to the annexation process, there still appeared to exist confusion and a lack of understanding as to what was in the annexation agreement which would or could affect individual property owners. In the future it would be advisable that the municipalities take additional time and effort to discuss the implications, responses and remedies with affected landowners.

Summary

The MGB has considered all the information and submissions of the municipalities and the affected persons and has not limited any of the submissions or the content of the matter presented by the parties. To the contrary, the MGB solicited the views of the parties regarding its authority with respect to recommending the addition of lands and with respect to the MGB's role related to the annexation agreement.

The MGB is satisfied that there is a demonstrated need for the subject lands, the annexation is a logical extension of existing patterns of development and servicing, that existing servicing capacities are efficiently utilized, that mechanisms are in place with any related environmental issues and that the Town is in a position to administratively deal with the expected growth and manage the financial impacts. In addition, the MGB acknowledges the efforts of the two municipalities to develop a co-operative approach to the change in boundaries for the Town.

The MGB recommends that the conditions attached to the annexation order be limited to matters of financial compensation and tax considerations.