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Queen's Bench Of Alberta

JUDICIAL CENTRE

Calgary

PLAINTIFF

THREE SISTERS MOUNTAIN VILLAGE PROPERTIES LTD.

DEFENDANTS

TOWN OF CANMORE, JOHN BORROWMAN, ESMERALDA BOARD
 JEFFREY HILLSTAD, JOANNA MCCALLUM, KAREN MARTO,
 SANDFORD AND ROBERT SEELEY



DOCUMENT

STATEMENT OF CLAIM

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

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NOTICE TO THE DEFENDANT:

You are being sued. You are a Defendant. Go to the end of this document to see what you can do and when you must do it.

Statement of facts relied on:

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A. OVERVIEW

1. The within Action is brought by the Plaintiff, Three Sisters Mountain Village Properties Ltd. ("TSMV"), owner and developer of large tracts of land, situated within the southern boundaries of Defendant Town of Canmore ("Canmore") in the Province of Alberta. This land is locally known as "Three Sisters", hereinafter the "Three Sisters Land", and extends generally south of the TransCanada Highway, and north of a spectacular Rocky Mountain range, which land is more precisely described below.
2. The development of the Three Sisters Land, to accommodate for tourism and associated residential and commercial development, has for decades been the subject matter of public interest, ongoing consultation, resolved planning proposals, a municipal annexation, and most significantly, a binding conclusively determined development approval by an administrative board. The relevant history extends back to at least the late 1980s, and is summarized in this overview.
3. A municipal annexation in 1991 of the Three Sisters Land by Canmore accommodated for recreational and tourism development on the site, first proposed when the Three Sisters Land was within the jurisdiction of what is now the Municipal District of Bighorn No. 8.
4. In 1992, after extended hearings with comprehensive and fulsome participation by interested parties, including Canmore, and qualified experts, with respect to the Three Sisters Land, the Natural Resources Conservation Board ("NRCB"), under legislative authority, issued a "Decision Report 9103" and within it a "NRCB Order", dated November 1992.
5. The NRCB Decision Report 9103 was entitled "Application to Construct a Recreational and Tourism Project in the Town of Canmore, Alberta". The NRCB Order directed that such a project was in the public interest and approved, subject only to limited and narrow terms and conditions upon which Canmore, as the affected municipality, may have input. The NRCB Order left only reduced residual planning authority discretion to Canmore, restricted to specific matters.
6. The public interest as to the use and development of the Three Sisters Land has accordingly been conclusively determined for almost 30 years. The NRCB Order compels the support and the approval of Canmore for development proposals of the Three Sisters Land that are consistent with the NRCB Order. Notwithstanding, this development has stalled.
7. In September 2013, the Three Sisters Land and related assets were acquired by a numbered company, subsequently renamed "Three Sisters Mountain Village Properties Ltd.", the Plaintiff in the within proceedings. TSMV's objective was to work within the context of the NRCB Order with Canmore to plan and construct the remaining elements of a recreational, tourism, residential and commercial development project that would be consistent with the NRCB Order, and its vision

and mandate. TSMV elected to do so through detailed consultation with Canmore, by way of the preparation and presentation to Canmore of two area structure plans ("ASPs"), co-ordinated with Canmore to the extent that the NRCB Order left the municipality an opportunity to exercise discretion over some matters incidental to the approved concept.

8. In 2017, TSMV submitted for approval to Canmore Town Council ("Canmore Council" or "Council") an amendment to an existing ASP, for the development of a portion of the Three Sisters Land called the "Resort Centre ASP". Canmore Council, advising that it considered deliberations over distinct footprints with different planning considerations best split, refused first reading in May 2017, and peremptorily directed and compelled TSMV to go back to the drawing board, to prepare two ASPs, by namely a "Village ASP" and a "Smith Creek ASP", with details more satisfactory to Canmore. Specifically, Canmore Council sought an expanded "whole-property vision", with specific directed features, as a condition precedent to their consideration of TSMV's development proposal. TSMV withdrew, and re-engaged, over a three-year period with Canmore administration, and returned in 2021 with proposals in compliance with Canmore Council's direction.
9. Accordingly, from 2017 to the spring of 2021, TSMV incurred expense exceeding \$11,000,000, to prepare two distinct ASPs seeking approval for development on the Three Sisters Land, known as the "Three Sisters Village ASP" (hereinafter the "Village ASP" and the "Smith Creek ASP"). The ASPs were prepared according to the terms of reference of a Canmore administration report presented and approved by Canmore Council on or about October 2, 2018, which included a consensus as to the lands on which the ASPs were to be situated. The ASPs were presented to Canmore Council for approval in the spring of 2021.
10. Development application approvals in Canmore are amongst the matters addressed by Canmore administration, and Canmore's ultimate decision-making authority for ASPs, the Canmore Council. The Canmore Council is made up of an elected Mayor and six Councillors, which offices were occupied in 2021 by individuals all of whom are named as Defendants in this Action. Each is a public officer, who at all material times owed duties, including to the development applicant TSMV, on their own behalf and on behalf of Canmore, to lawfully exercise their public functions, including deliberation upon and determination of development proposal approvals.
11. In the spring of 2021, Canmore Council conducted and concluded a process by which the Smith Creek ASP (ASP determination April 27, 2021) and the Village ASP (ASP determination May 25, 2021), were rejected. As a consequence, TSMV was prevented from proceeding with NRCB-approved recreational and tourism development on the Three Sisters Land, effectively sterilizing it from development, and extinguishing opportunity for property use. Approvals of each of the ASPs were withheld on specious grounds.
12. Canmore Council, without giving adequate or any consideration to the consistency of the ASPs with the NRCB Order, determined that the Smith Creek ASP was premature. Canmore Council saddled the Village ASP with new conditions which addressed matters outside the scope of Canmore Council's legal authority as defined by the *Municipal Government Act*, RSA 2000, c. M-26, and associated regulations. These new conditions included undermining reconsiderations, wildlife corridor enhancement, and an obligated affordable housing component, rendering the Village ASP uneconomic and non-viable. Then, in any event, the Village ASP was denied, even having been so amended.

13. Recreational and tourism development on the Three Sisters Land has, by the acts of the Defendants, been effectively deferred into perpetuity. Canmore Council's rejections of TSMV's ASPs were expressly justified by duplicitous rationale, intended to serve as a disingenuous guise, to thwart the binding determination in the NRCB Order as to the public interest governing the development and use of the Three Sisters Land.
14. The Defendants' deliberation on and disposition of the ASPs were taken in bad faith, and render them collectively liable to TSMV for abuse of power of public office, a cause of action also known as misfeasance of public office. The determinations preventing the Smith Creek ASP and the Village ASP from proceeding were *ultra vires*, and subject to a declaration of nullity (see Part J below).
15. Further, the conduct of the Defendants collectively render Canmore liable to TSMV in negligent misrepresentation (see Part K below), and in *de facto* expropriation (see Part L below).
16. In summary, the Defendants have effectively executed a scheme to perpetuate the present and ongoing use of the Three Sisters Land as, in effect, a privately owned public park, maintained at great expense by TSMV, for the use of some of Canmore's residents and visitors, in the face of the binding contrary determinations of the public interest declared years ago by the NRCB.
17. TSMV has sought recourse in law to rectify and remedy Canmore's unlawful dismissals of the ASPs through administrative appeal, by way of appeals brought before the Land and Property Rights Tribunal ("LPRT"), pursuant to the *Municipal Government Act*. The subsequent position taken by Canmore asserts that the LPRT lacks jurisdiction to hear any appeal of Canmore Council's determinations with respect to the ASPs. In the face of the obstacles to TSMV's rightful entitlement to develop the Three Sisters Land that have been unlawfully imposed by the Defendants, TSMV has also been compelled to seek remedy before this Court.
18. TSMV has suffered damages and losses by being deprived of reasonably anticipated profits as would have arisen from TSMV's reasonably anticipated municipally approved capacity to complete development, consistent with the long-mandated vision as to the public interest governing the use of the Three Sisters Land, directed by the NRCB Order, which damages and losses exceed \$150,000,000.
19. In addition, TSMV has suffered damages as a direct consequence of the Defendants' unlawful conduct, including but not limited to thrown away costs and expenses reasonably incurred in preparing the Smith Creek ASP and the Village ASP, since 2013 and particularly from 2016 to 2021, as referenced in para. 9 above, collectively exceeding \$11,000,000.
20. In addition, in the alternative, and in the event that, by way of future determinations at the LPRT or this Court, TSMV is held to be entitled to proceed with development of the Three Sisters Land, pursuant to the proposals set out in the Smith Creek ASP and the Village ASP, TSMV will have suffered damages arising from delay in development, in a sum to be determined.
21. Accordingly, aggregate compensatory damages are claimed in the within Action, as best as can be presently calculated, in the sum of \$161,000,000.00.

B. PARTIES

22. At all material times since its corporate registration on November 15, 2012, TSMV has maintained the status of a corporation duly registered under the laws of the Province of Alberta, and the *Business Corporations Act*, RSA 2000, c. B-9, with a registered office in the City of Calgary, in the Province of Alberta.
23. The Defendant Canmore was first incorporated as a Village on January 1, 1965, by the Province of Alberta under Ministerial Order No. 359, and subsequently designated as a Town on June 1, 1966, by O.C. 831/66, and has maintained its status as a Town under the *Municipal Government Act*, at all material times.
24. As particularized below, Canmore underwent subsequent annexations, and in particular an annexation of the Three Sisters Land, south-east of the then existing town centre, from the Municipal District of Bighorn No. 8 ("Bighorn MD"), and Improvement Districts No. 5 and No. 8, by Province of Alberta Order No. 19865, dated August 16, 1991, made effective on June 30, 1991.
25. The Defendant John Borrowman ("Borrowman" or "the Mayor"), was elected to the position of Mayor of Canmore, in a by-election in 2012, and then re-elected as Mayor of Canmore in general municipal elections held in October 2013 and October 2017, holding that office to October 22, 2021, and in that capacity participated in the deliberations and rejections of Smith Creek ASP and the Village ASP by Canmore Council on behalf of Canmore through to May 2021.
26. The Defendant Esme Comfort ("Comfort" or "Councillor #1"), has at all material times since October 2013 to October 22 2021, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.
27. The Defendant Jeffrey Hillstad ("Hillstad" or "Councillor #2"), has at all material times since October 2017, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.
28. The Defendant Karen Marra ("Marra" or "Councillor #3"), has at all material times since October 2017, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.
29. The Defendant Joanna McCallum ("McCallum" or "Councillor #4"), has at all material times since October 2010, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.
30. The Defendant Vi Sandford ("Sandford" or "Councillor #5"), has at all material times since June 2012 to October 22, 2021, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.

31. The Defendant Robert Seeley, ("Seeley" or "Councillor #6"), has at all material times since October 2013 to October 22, 2021, held the position of Councillor with Canmore, and in that capacity participated in the deliberations and rejections of the Smith Creek ASP and the Village ASP, by Canmore Council on behalf of Canmore, through to May 2021.
32. The Mayor and Councillors #1 to #6 sat collectively as Canmore Council, and in so doing constituted a municipal council convening to make determinations on behalf of Canmore, exercising the powers and duties delegated to municipal councils under the *Municipal Government Act*, Part 17.
33. Amongst the duties and powers vested in Canmore by statute, and exercised on its behalf by Canmore Council, included the establishment of an internal department to implement town governance, in this case Canmore administration, who were directed to receive, process, and coordinate development permit applications.
34. In addition, Canmore Council, under the same legislation, was vested with the duty and power to consider and adopt ASPs submitted to it for the purpose of proposing development on areas within a municipality, and to conduct an approval process for development instruments such as ASPs.
35. ASPs are typically brought forward to municipal councils, and are either adopted or made subject to other directions, by way of a bylaw procedure, as occurred in this case. The Smith Creek ASP and the Village ASP, identified above and described below, detailed through a combination of text, maps, and graphics the proposed location, land uses, municipal servicing infrastructure, parks, and land uses on the area for which they were proposed. The ASPs were submitted by TSMV for the approval of Canmore Council, on behalf of Canmore.

C. LANDS

36. The Three Sisters Land, referenced above, owned by TSMV, consists of a broad swath of property in the Province of Alberta, situated along the southwest edge of the TransCanada Highway, extending from its western edge, located inside the southern portions of the boundaries of Canmore, extending to its most easterly point, just south of Dead Man's Flats Junction, south and west of Thunderstone Quarry.
37. In preparing an overall development concept for the Three Sisters Land, TSMV resolved upon two separate, non-contiguous development approval areas, specifically the "Three Sisters Village" ("Village") situated at the northwestern end of the Three Sisters Land, and "Smith Creek", situated at the southeastern end of the Three Sisters Land.
38. In addition, between the boundaries of the Three Sisters Village and Smith Creek ASPs, in an area more centrally located on the Three Sisters Land, TSMV has initiated projects at various stages of development, including the Gateway at Three Sisters ("Gateway"). Some residential, commercial, and recreational, development and associated transportation infrastructure, is contained within the Three Sisters Land, including the planned Gateway development.
39. The location, and relative configuration, and scale of the Three Sisters Land, and the land upon which the Village ASP and the Smith Creek ASP are situated are set out in Appendices A, B and C of the within Statement of Claim.

40. From approximately 2016 to 2021, TSMV prepared two ASPs, specifically the Village ASP and Smith Creek ASP, each of which captured the vision approved in the NRCB Order, as to the highest and best use of, and approved recreational and tourism development on, the Three Sisters Land.
41. The Village ASP set out a proposal to develop approximately 169 hectares, (418.0 acres), on a delineated property within the Three Sisters Land, more particularly described as portions of Area Plans 201 0793, and is generally located within property legally described as follows:

Section 16, 24-10-W5
Section 21, 24-10-W5
Section 22, 24-10-W5

in the Town of Canmore, in the Province of Alberta.

42. The Smith Creek ASP set out a proposal to develop approximately 154 hectares, (380.7 acres), on a delineated property within the Three Sisters Land, more particularly described as portions of Plans 941 0213 and 941 0214, and containing within it, portions of property (approx. 137 acres) on Crown land (approx. 57 acres) and on quarry land abutting Three Sisters Land, (Thunderstone Quarry, approx. 80 acres, a portion of NW Section 7, 24-9-W5 and NE Section 12, 24-10-W5, Areas N and S on Plan 001 0274), all more particularly described as Lot 3, Block 14, Plan 1510968, Areas R, Q, P, O, N and S on Plan 941 0213, and Areas J, K, M, L, F, on Plan 941 0214, and generally located within property legally described as follows:

Section 7, 24-9-W5
Section 11, 24-10-W5
Section 12, 24-10-W5
Section 14, 24-10-W5
Section 15, 24-10-W5

in the Town of Canmore, in the Province of Alberta.

D. 1991 ANNEXATION

43. The annexation in 1991 by Canmore of land, including the Three Sisters Land, from Bighorn MD and Improvement Districts No. 5 and No. 8 was initiated, and indeed expressly justified by the applicant Canmore, on the stated understanding and objective of facilitating the immediate development of the Three Sisters Land to accommodate for recreation and tourism, the very use subsequently approved by the NRCB, and eventually proposed for implementation by the TSMV ASPs.
44. Some history to the 1991 annexation is illustrative. In 1989, a corporation known as Three Sisters Golf Resorts Inc. ("TSGR") made application to Bighorn MD for approval to develop a portion of the Three Sisters Land for recreation and tourism purposes.
45. The development project for which TSGR sought approval included recreational uses such as golf courses, trails, parks, hotels, residential housing and commercial uses. Before that application was completed, Canmore and Bighorn MD engaged in communications which led Canmore, to apply to the provincial Local Authorities Board (the "LAB") to annex these lands to Canmore.

46. As part of that application, it was anticipated by Bighorn MD and Canmore that Canmore would give consideration to approving of the TSGR proposed development if the lands were annexed to Canmore, after the annexation was completed.
47. As a consequence, and with the consent and support of the Bighorn MD, Canmore petitioned the LAB to have these lands annexed to Canmore. The rationale for the proposed annexation was, as noted above, that Canmore had become the centre for renewed recreational and tourism activity in and around the Three Sisters Land, also referenced at that time as the "Bow Corridor" or "Bow River Corridor". Canmore submitted that, with such activities already in place, it would be better suited than a rural district to promote and service the anticipated growing recreational and tourism industry.
48. At all material times, Canmore clearly recognized and represented that the Three Sisters Land was a natural resource, the future use of which was to be guided by the broader public interest of all Albertans to be determined by processes and in forums distinct from those employed in conventional local municipal planning and development decisions. At the time of the annexation, Canmore's then Mayor acknowledged that these lands and their development, was of a broader provincial and national interest.
49. The LAB approved the annexation by Order dated August 16, 1991, Order No. 19865, (the "LAB Order"), to take effect as of June 30, 1991. The objective was reflected in the LAB Order, as follows:

Regional tourism development, Banff's development constraints, the natural setting and geographic location have all influenced the Town's emerging role as a recreational destination and regional service centre to the expanding recreational pursuits that encompass the whole of the Bow Corridor.

E. 1992 NRCB ORDER

50. Following annexation, the next step in the process to advance the development of the Three Sisters Land, was an application brought in 1992 by TSGR to the NRCB, for review and approval of their development proposals for the Three Sisters Land, which by virtue of being a "recreation or tourism project", qualified at that time as a "Reviewable Project" under the *National Resources Conservation Board Act*, RSA 1990, c. N-5.5, s. 4.
51. The legislative purpose of the *NRCB Act*, now cited with identical provisions to those in place in 1992, at *National Resources Conservation Board Act*, RSA 2000, c. N-3, s. 5.2, is as follows:

Purpose of Act

2. *The purpose of this Act is to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinion, the projects are in the public interest, having regard to the social and economic efforts of the projects and the efforts of the projects on the environment.*

52. As a consequence of this application by the TSGR, the NRCB initiated a hearing in March 1992; that hearing was held in Canmore. Canmore was at all material times an active participant in that hearing.
53. During the course of the hearing before the NRCB, Canmore provided evidence and made submissions. Its evidence, from the then Mayor in 1992, included the following:
- (a) The natural park in Banff, which is adjacent to Canmore, serves to give the area a worldwide focus and reputation;
 - (b) Canmore represents one of the few potentially developable areas between Alaska and the 49th parallel;
 - (c) Both Canmore and the province have recognized the tourism potential of the lands in question, as part of the overall provincial strategy to diversify the provincial economy by encouraging tourism;
 - (d) Canmore welcomes the approval of the project proposed by TSGR under the *NRCB Act* in furtherance of this objective; and
 - (e) Canmore is of the view that the hearing and a favourable decision from the NRCB will be valuable, in furtherance of the objectives of the Province and Canmore.
54. The role of Canmore and its position at the hearing was summarized by the NRCB as follows:
- (a) It is hoped that the hearing would prove to be valuable for "the Town of Canmore, the balance of the Bow Corridor communities, the Province of Alberta and ultimately, the environment"; and
 - (b) The "Town recognizes that change and evolution are a part of the ongoing planning process and that it will have responsibilities for good planning with respect to the development for many years to come if an approval is given by the NRCB".
55. Further illustrating that the Three Sisters Land, situated within the Bow River Corridor, was intended for the use, enjoyment, and benefit in the public interest for all Albertans, numerous other interests and parties, unrelated to Canmore, intervened and participated in the hearing. These included the:
- (a) Government of Canada;
 - (b) Calgary Regional Planning Commission;
 - (c) Government of Alberta - Alberta Tourism, Parks and Recreation;
 - (d) Government of Alberta - Municipal Affairs;
 - (e) MD of Bighorn; and
 - (f) Tourism Industry Association of Alberta.

56. The NRCB issued and released its Decision Report 9103 in November 1992. It granted the approval sought by TSGR in the application, with some modifications. The approval contemplated that there could, in certain circumstances and for specific purposes, be a future and continuing role for Canmore. Those specific purposes are set out in Appendix C-2, Approval No. 3 (the "NRCB Order"). The NRCB Order allowed for changes to be made within the Decision Report 9103 at the approved project, provided that the changes be approved by Canmore. The text of Approval No. 3 was later authorized by the Lieutenant Governor in Council of the Province of Alberta, through O.C. 8/93, on January 6, 1993. At all material times, Canmore acknowledged that it could not act in violation of or contrary to a condition of the NRCB Order.
57. In 1993 and 1994, TSGR gave consideration to its development plans for the Three Sisters Land, first presented to Bighorn MD in 1989, now in the context of the 1991 Annexation and 1992 NRCB Order. The NRCB Order provided development approvals restricted to portions of the Three Sisters Land located north of areas nearer to the base of the bordering mountain range, known as "Wind Valley", upon which some of TSGR's development had been proposed. TSGR relocated the proposed development area on the Three Sisters Land northward to exclude development on Wind Valley, and through the submission of the 1994 "Implementation Plan" sought clarification from the NRCB that amended plans were now geographically resituated, consistent with the NRCB Order. The NRCB expressly directed that the Implementation Plan was consistent with the NRCB Order.

F. PUBLIC INTEREST

58. As a consequence, by virtue of the annexation and the NRCB Order, the Three Sisters Land became impressed with a defined and binding public interest, for all Albertans, not just the residents of Canmore, as contemplated and codified in the *Municipal Government Act*, RSA 2000, c. M-26, s. 619(1). Accordingly, Canmore, its Council, including the Mayor, in fulfilling whatever remaining role was to be performed by Canmore or Council, were required to be guided by that binding public interest. In effect, Canmore is in a position akin to and in the nature of acting as a trustee of these lands, as to how they are to be developed, consistent with the NRCB Order, to and for the public interest and for the benefit of all Albertans.
59. In recognition of its obligations, the following is the text of a publication by Canmore, in May 2021, of its obligations arising from the annexation and NRCB Order, as understood by Canmore, its Mayor, and Councillors:

Considering how the Town originally annexed these lands from the MD of Bighorn for the purpose of development the "no development" alternative is not an alternative currently being considered by Council. Understanding this and that the land owner has rights to pursue development, Council is considering what type of development is best for these lands and the future of Canmore.

60. Firstly, the Canmore Council thereby conceded that the "no development" alternative was not an alternative under consideration, but thereafter addressed and determined the fate of the TSMV ASPs so as to secure effectively the "no development" result, outside existing development. This publication makes plain that Canmore Council had actual knowledge of the predetermined,

approved, and binding entitlement of TSMV to develop the Three Sisters Land. Nonetheless, Canmore initiated and undertook contrary and unlawful steps to thwart the entitlement.

61. Secondly, the publication speaks particularly as to the mindset and approach taken by Canmore and Council in relation to the hearing of the TSMV applications in 2021. Having stopped development, Canmore Council assumed for itself to consider "what type of development is best for these lands and the future of Canmore."
62. In fact, the NRCB had determined, nearly 30 years earlier, what "type of development is best for these lands", which took into account that the Three Sisters Land was situated within Canmore. That determination was for the NRCB to decide and declare in 1992, and not for Canmore or its Council to unilaterally and unlawfully reconsider in 2021. The NRCB Order had already done so: the "recreational or tourism project", under consideration as directed by the *NRCB Act*, was approved.
63. Canmore was an active participant in the process which led to the Order of the NRCB. By unilaterally taking upon themselves, in April and May 2021, the perceived opportunity to reconsider the "type of development" that suited the conclusively pre-determined public interest, Canmore, the Mayor and the Councillors intentionally and/or recklessly acted unlawfully, and outside their jurisdiction, when they knew or ought to have known of the damages to be suffered by TSMV as a result.

G. TSMV EFFORTS TO DEVELOP THE THREE SISTERS LAND

64. TSMV acquired the Three Sisters Land in September 2013 by way of Court approved sale. Since then, and particularly since 2017 at a cost of more than \$11,000,000, TSMV has made substantial and continuing efforts to plan and prepare for the development of the Three Sisters Land, in a manner consistent with and in accordance with the guiding and governing principles reflected in the NRCB Order.
65. Not unlike the parties that owned these lands prior to TSMV, including TSGR, TSMV has continuously been met with resistance from Canmore. Up until 2013, years of effort were committed to securing passage of an ASP seeking municipal approval for the development of a commercial residential and resort development on the Three Sisters Land, by PriceWaterhouseCoopers Inc. ("PWC"), the receiver/manager appointed by creditors, including HSBC, of prior Three Sisters Land owners. PWC noted Canmore's obstructionist opposition to the ASP proposal, and the non-viable Canmore counter-proposals to post-ASP denial, which reduced by almost half the development area. PWC withdrew and abandoned its ASP.
66. The resistance of Canmore to TSMV's efforts to develop the Three Sisters Land since acquisition has occurred, at least in part, as a consequence of Canmore's assertions that it could, notwithstanding representations made at and conditions of annexation, and a binding administrative finding, effectively redetermine the "type of development best suited for these lands", as part of, and in the best interests of the future of Canmore.
67. The extent and degree of that resistance has been unwarranted, unlawful, and beyond the legitimate circumscribed interests and entitlement of Canmore. At all material times, Canmore and Canmore Council understood the paramountcy of the NRCB Order, and that Canmore was required to take into consideration the interests of all Albertans. Canmore Council was not

entitled to make a determination to favour the exclusive immediate interests of parties opposed to the predetermined development entitlements described in, and consistent and compliant with, the 1992 NRCB Order.

68. TSMV has, at all material times, made every reasonable attempt to see that the Three Sisters Land is developed in accordance with the objectives set, and approved as determined, by the NRCB. The Three Sisters Land is effectively the only remaining developable land within the jurisdiction of Canmore available to meet these objectives, and fulfill the vision of the Bighorn MD, Canmore and the Province, in the interests of all Albertans.
69. The goals and objectives, and indeed the public interest, identified over 30 years ago are now even more pressing and critical than anticipated in 1991 and 1992. Since then, the population of Alberta, and its major cities has increased dramatically. In addition, Alberta has become increasingly more attractive to greater numbers of tourists from around the world. As predicted, tourism has become a major industry for Alberta, benefitting all Albertans.

H. ASP PREPARATION 2016-2021

70. In 2016, in pursuit of its continuing efforts to develop its lands, TSMV made an application to Canmore to amend an existing ASP for a portion of the Three Sisters Land known as "Three Sisters Village." In mid-2017, Council rejected that application, before it was even heard. In doing so, it advised TSMV that it required TSMV to first make application for an ASP for the remaining portion of the Three Sisters Land, including lands known as both the "Village" area and the "Smith Creek" area, before its application for Three Sisters Village would or could be considered. As a result, TSMV proceeded to develop an ASP for Smith Creek, to be presented concurrently with a revised Village ASP. The revised ASP was substantively an amendment to the existing Village ASP, with changes directed by Canmore administration, although Canmore refused to acknowledge it was altered or amended, but instead designated it as new. In doing so, as part of the process, TSMV regularly and continuously consulted with Canmore administration, in an effort to ensure that its proposed ASP for the Three Sisters Village area, by then subject to such extensive amendment as to effectively be a new ASP, would be not only consistent and compliant with the NRCB Order, but would also meet the legitimate concerns and interests of Canmore.
71. In the course of this process, over a period of approximately three years, and at a cost incurred of over \$11,000,000 by the last quarter of 2020, TSMV concluded that it had developed ASP drafts such that they could then be submitted to Canmore Council for approval. The Canmore administration's role in that process was to evaluate the proposals, and how they fit in with Canmore's internal guiding planning documents. By the time that the ASP drafts and amendments were submitted to Canmore Council for approval, TSMV was given to believe by Canmore administration that it had addressed any and all of the significant and meaningful concerns or requirements of Canmore, as communicated to TSMV by Canmore administration. The only remaining concern of any substance expressed by Canmore administration was the scope of the development.
72. Accordingly, in December 2020, TSMV filed its applications to approve both the Smith Creek ASP, and the Village ASP. The latter application had been delayed by more than three years, solely as a result of Canmore Council's directive referred to above, that the entirety of the development proposals be submitted by TSMV be considered at the same time. From 2017 to 2020, TSMV had

responded to input from Canmore's administration, altering the Village ASP to address Canmore's Municipal Development Plan (2016) and Integrated Transportation Plan (2017) (collectively the "Municipal Guiding Documents", or "MDP/ITP"), regarding affordable housing features and climate and transportation initiatives.

73. Canmore administration knew and understood that TSMV and its consultants had spent several years preparing the ASPs and associated technical reports. Given the extensive work, efforts and co-ordination with Canmore administration, and regular public communication with Canmore Council, TSMV understandably and reasonably expected that its applications would be approved by Canmore Council.
74. By the time that TSMV filed its Village ASP and Smith Creek ASP applications, the amount of land within the Three Sisters Land boundaries contemplated for development was considerably less than that which had been approved by the NRCB in 1992. To the extent that those changes may have altered the scope of the approval, TSMV was at all times cognizant of the need to obtain the approval of Canmore, as specified in the approval granted by the NRCB.
75. As part of the approval process, on February 9, 2021, Canmore Council gave first reading to both the Smith Creek ASP and the Village ASP, and then held a public hearing from March 9 through March 17, 2021. During the course of that hearing, a number of persons made submissions as to the applications then before Canmore Council. Many of these presentations were from persons promoting their own interests, and who had no justifiable basis upon which to provide submissions to be applied as factors in a revisited consideration of the use best suiting the "public interest" of the Three Sisters Land. The vast majority of the submissions pertained to wildlife corridors and undermining matters which were outside Canmore Council's jurisdiction. Notwithstanding this, public hearing contributors were permitted to intervene, and voice opposition to the applications.
76. Representatives of TSMV, including the President of TSMV, provided evidence and commentary at the hearings as to the ASPs for which it was seeking approval. In addition, Canmore administration personnel who had either worked with or consulted with TSMV during the period of 2017 through March 2021, were provided information by TSMV to satisfy the requests of Canmore Council. Canmore administration expressed no concerns of significance with, or disapproval of, the proposed Smith Creek ASP, or the "new" Village ASP.
77. Further, following TSMV's response to their questions about the compliance and consistency of the ASPs to the NRCB Order, neither Canmore administration, nor the Mayor nor the Councillors, ever suggested that either of the ASPs were not consistent, or were incompatible or non-compliant, with the 1992 NRCB Order. Topics addressed included the function of the proposed Village Resort, and its fiscal impact and integration and relationship with downtown Canmore and the rest of the town. Together, TSMV and Canmore administration came to a consensus about acceptable public and private recreation facilities, implementation strategies, phasing of infrastructure and mitigation works, and the overall consistency of the ASPs with the MDP/ITP. At the conclusion of the hearing, members of Canmore Council were given the opportunity to question TSMV. They did; their questions were answered.

I. CANMORE REJECTS ASPs

1. Fate of Smith Creek ASP

78. TSMV comprehensively addressed and accommodated for the specific directions given to TSMV by Canmore from 2017 forward, as referred to above. Notwithstanding, on April 27, 2021 after seven days of public hearings, Canmore Council summarily dismissed the Smith Creek ASP application, put forward in Bylaw 2021-06. It did so purportedly on the basis, quite incongruously after 30 years, that it was "premature" to even then consider use of the Smith Creek portion of the Three Sisters Land. It was this same Canmore Council that had directed TSMV, three years earlier, to advance the Smith Creek ASP, concurrently and coupled with the Village ASP, advising that no development approval would be considered other than in this way. Such justification on the basis of alleged prematurity, used by Canmore to explain its rejection of the Smith Creek ASP, can be concluded to be a façade or subterfuge, intended to mask the intended unlawful maintenance of a *status quo* acceptable to the Defendants, and some Canmore residents. Canmore Council intended to stop development, describing its decision as possibly temporary, when it was surely aimed at being permanent. Canmore effectively imposed what is known as a "development freeze" over the lands proposed for development in the Smith Creek ASP, effectively sterilizing it, without legitimate planning purposes.
79. Over a period of more than three years, in the course of numerous communications with TSMV, and its consultants, Canmore administration personnel gave assurances, and made representations to TSMV, that both the draft Smith Creek ASP and the Village ASP would be given careful consideration and review. Accordingly, TSMV created and developed ASPs which met, and in fact exceeded, the terms and spirit of NRCB Order, and in turn the resolved objectives of the Bighorn MD, Canmore, and the Province as reflected in the 1991 LAB Order effecting annexation of the Three Sisters Land to Canmore. In short, the ASPs disclosed plans which would have brought to fruition the public interest of the Three Sisters Land for recreation and tourism, in a manner approved by the NRCB.
80. TSMV took into account the recommendations and suggestions of Canmore administration and Canmore Council. It relied upon the guidance and representations of Canmore administration, concluding that the ASPs for which it was seeking approval would have an enhanced, indeed maximized, opportunity for favourable consideration by Canmore Council. That reliance was completely understandable and to be expected, particularly in the context of the NRCB Order.
81. Canmore is estopped from resiling from its guidance, and these representations and assurances, communicated to TSMV by Canmore administration. Canmore administration had a duty to ensure that these representations were being made with care and diligence. It also had a duty to ensure that the implementation of the public interest was a matter of priority. The economic consequences to TSMV of Canmore's failure to honour these representations are significant, and were reasonably foreseeable by the Defendants, collectively and individually.

2. Fate of Village ASP

82. Following the conclusion of the public hearings on April 27, 2021 Canmore Council addressed the Village ASP, put forward in Bylaw 2021-05, and determined that it would require of TSMV a number of substantial amendments to the Village ASP as presented. These late-received amendments concerned issues that had been largely addressed, having been previously identified

by Canmore administration and resolved with TSMV. Canmore Council knew that the amendments would have the effect of rendering the development of the Village lands uneconomic. The imposition of the amendments were intended to stop development, firstly by introducing insurmountable new conditions to the Village ASP, and then by subsequently expressly defeating Bylaw 2021-05 in any event.

83. After TSMV voiced serious and significant concerns about the amendments, Canmore Council postponed consideration of third reading of Bylaw 2021-05 to May 25, 2021. At that time, Canmore Council altered the terms of some of the amendments, and introduced new amendments, all of which still rendered the development as uneconomic.
84. The subject-matter of the amendments included provisions relating to wildlife, affordable housing, and indigenous consultation, all of which were all matters addressed conclusively at the NRCB, and which are within the exclusive legislative jurisdiction of the Province of Alberta. That fact was at all material times well known to Canmore and Canmore Council.
85. As a result of comments made by members of Canmore Council during the hearing process, it became apparent that it did not intend to comply with its duty of fair process owed to TSMV, would not fulfil its legal obligation to implement the public interest identified and defined by the NRCB. Rather, Canmore Council preferred the interests of some residents and property owners in Canmore, who may have found privately financed nearby undeveloped parkland to their personal benefit.
86. Specifically, Canmore Council's deliberations clearly indicated its continuing intent to impose upon TSMV a requirement that any approval would be conditional upon the dedication of a significant portion of ASP land to affordable housing, which would drastically altered the economics of the development. Canmore Council was aware that it had no right or entitlement in law to do so.
87. As a consequence, as with the Smith Creek ASP, the Village ASP was emphatically rejected by Canmore, having been defeated even after the directed late amendments. Both the compelled amendments to the Village ASP, and its subsequent defeat, were determinations outside the jurisdiction left to Canmore following the 1992 NRCB Order.

J. MISFEASANCE IN PUBLIC OFFICE

88. TSMV asserts that the Defendants are liable to TSMV for its provable losses and damages identified herein, in the cause of action of misfeasance of public office.
89. The law recognizes that municipalities, through the acts of their elected officials and administration, possess a power to significantly affect the lives and livelihoods of their residents and property owners, particularly through the exercise of public functions in land expropriation, zoning, and the issuance (or non-issuance) of development approvals. When a municipality, or its servants, abuse their power in public office, referred to as "misfeasance" in public office, a municipality may be directly or vicariously liable for damages flowing from such misconduct.
90. In deliberating upon, and determining to refuse to approve, the Village ASP and Smith Creek ASP, the Defendant Mayor and Councillors were acting in their capacity as "public officers", and servants of the Defendant Canmore, exercising a "public function" as defined in law.

91. In executing this public function, the Defendants collectively acted with full knowledge of the legal entitlement of TSMV to develop the Three Sisters Land as set out in the NRCB Order and in the Smith Creek ASP and the Village ASP, and accordingly, by rejecting the approval of the ASPs, acted with improper purpose, and ultimately with intent to injure TSMV.
92. The Defendants collectively performed their public function with the knowledge that the dismissal or rejection of the ASPs, or more accurately their disingenuous dismissal by way of purported determination of prematurity (Smith Creek ASP), and outright dismissal following numerous directed amendments (Village ASP), were outside their power to act, given the entitlements of TSMV conveyed in the 1992 NRCB Order.
93. The Defendants knew, or ought to have known, that the dispositions of the Village ASP and Smith Creek ASP in this way would probably, or be likely to, cause significant injury and damage TSMV, and in fact such dispositions have done so.
94. The Defendants Canmore, the Mayor, and Councillors, in refusing to approve the Smith Creek ASP by determining it to be premature, and subsequently refusing to approve the Village ASP, acted dishonestly, maliciously, and with ill-intent as against TSMV.
95. The Defendants exercised their public functions with respect to the Village ASP and Smith Creek ASP with actual knowledge of unlawful conduct, or with subjective recklessness as to whether the determinations were unlawful, and further with knowledge that such determinations were likely to cause harm. Alternatively, the improper exercise of these public functions was conducted with wilful blindness as to the consequences of this misconduct.
96. The Defendants' collective exercise of their public function, with respect to both the Village ASP and Smith Creek ASP, was taken up with motives and objectives other than within the proper scope of the legitimate residual planning process left to Canmore by the NRCB. Their actions were contrary to the restrictions that the Defendants knew or ought to have known were imposed upon their discretion by the annexation and the NRCB Order. The Defendants were divested of much of the planning authority normally available for exercise by and on behalf of a municipality. They were collectively motivated by reasoning and purposes "foreign" to and outside the residual planning authority left with Canmore.
97. As a result, TSMV has incurred losses and damages, for which they are entitled indemnity as against the Defendants, as particularized below.
98. The public interest governing the use of the Three Sisters Land is determined: the NRCB Order has identified the Three Sisters Land for recreational or tourism purposes. The Defendants misconceived this public interest, in dismissing the Village ASP and Smith Creek ASP so as to effectively maintain the Three Sisters Land at the *status quo*, in their natural state. In so doing, the conduct of the Defendant was not *bona fides*, and collectively the Defendants' conduct constitutes bad faith, rendering them subject to a determination of liability in favour of TSMV, not only for compensatory general damages for indemnity, costs associated with the preparation and submission of the Village ASP and Smith Creek ASP, and deprived or delayed reasonably anticipated profits arising from development, but in addition an award in aggravated and/or punitive damages, mandated by a finding of conduct grossly inconsistent with the obligations of public office.

99. Accordingly, the Mayor and Councillors deliberated upon and disposed of the Smith Creek ASP and the Village ASP without good faith, and accordingly neither they nor Canmore are entitled to statutory immunity for these actions, as set out in the *Municipal Government Act*, s. 535. The failure to approve the Smith Creek ASP and Village ASP were acts so markedly inconsistent with the legislative context that a Court cannot reasonably conclude that they were performed in good faith.
100. In addition, in having addressed and made determinations to effectively reject the Smith Creek ASP and Village ASP, and in fact by so doing unlawfully giving reconsideration to already determined public interest, defined and proclaimed by the NRCB Order, the Defendants collectively acted without jurisdiction, and *ultra vires* their residual planning authority, and TSMV is entitled to a declaration that these determinations were a nullity.
101. The conduct of the Mayor and Councillors attracts a finding of liability on behalf of Canmore. The performance of their public functions, including the deliberation over TSMV's ASP development applications, were specifically intended to injure a person, or class of persons, conducted for "improper purpose", or alternatively were executed with knowledge that they were absent the power to act, and likely to injure the Plaintiff.

K. NEGLIGENCE MISREPRESENTATION

102. TSMV asserts that the Defendants are liable to TSMV, for its provable losses and damages identified herein, in the cause of action of negligent misrepresentation.
103. TSMV states that by virtue of the Annexation, the NRCB Order, and statutory schemes including the *Municipal Government Act*, Canmore owed a duty of care to TSMV, the owner of the Three Sisters Land, there being a sufficiently close and direct imposed statutory relationship, and proximity, upon which to found such a duty.
104. Further, in the interactions between Canmore and TSMV, from approximately 2016 to 2021, as TSMV prepared the Smith Creek ASP and Village ASP applications, a further secondary ground upon which to found legal proximity was established. A close, direct, dependent, and reliant relationship was formed between Canmore and TSMV, as TSMV crafted its ASP applications in frequent and detailed consultation with Canmore.
105. From 2016 to 2021, Canmore administration guided TSMV, as referenced above, with communications as to the form and details of the ASPs under preparation that would satisfy Canmore, on those matters within the limited residual planning jurisdiction left to the municipality in the NRCB Order, in which public interest had been declared and the recreational and tourism project approved.
106. Canmore could reasonably foresee that TSMV would rely upon its representations, and that TSMV would incur losses if the representations were inaccurate, incomplete, or an incorrect direction to TSMV received, in their capacity as a developer seeking final approval from a municipality.
107. TSMV was drawn to rely upon express or implied representations from Canmore that the Smith Creek ASP and Village ASP, in the form and content in which they were finalized, were with the benefit of the directions of Canmore administration likely to be satisfactory to the Canmore

Council, to such extent that Canmore would accordingly properly exercise its limited residual planning approval jurisdiction. Such, as it turned out, was untrue.

108. The significant losses sustained by TSMV, both by way of the deprived value of their investment and the costs incurred in preparation of the ASPs, and lost profit or net revenue arising from the deprived opportunity to develop the Three Sisters Land, suffered when the Smith Creek ASP and the Village ASP were rejected by Canmore Council, were foreseeable.
109. In communicating the misrepresentations noted above to TSMV, members of Canmore administration were acting in their capacity as "municipal officers" in the performance of their functions, but were doing so without "good faith" so as to disentitle Canmore to claims of statutory immunity for vicarious liability of the acts of its municipal officers pursuant to the *Municipal Government Act*, s. 535.

L. DE FACTO EXPROPRIATION

110. TSMV asserts that the Defendants are liable to TSMV, for its provable losses and damages identified herein, in the cause of action of *de facto* expropriation, sometimes described in other jurisdictions as "indirect" or "disguised" expropriation.
111. The net effect of the determinations of the applications made by the Defendants, which have prevented TSMV from proceeding with the development of the projects identified in the Smith Creek ASP and the Village ASP, is such as to, for all practical purposes, result in the following:
 - (a) the acquisition by Canmore of a beneficial interest in the property of TSMV, that is those portions of the Three Sisters Land upon which the Smith Creek ASP and Village ASP were to be situated; and
 - (b) the removal, to the deprivation of TSMV, of all reasonable uses of the property.

1. Acquisition

112. The unique features of the Three Sisters Land, and that property upon which the Smith Creek ASP and Village ASP were planned within it, presently provide Canmore residents with opportunity to engage in mountain recreation on undeveloped land via trespassing. TSMV's land and assets have incurred damage as a result. When proposed development is defeated, and any residual uses are rendered unavailable to the landowner TSMV, this is effectively a *de facto* confiscation of the land in favour of Canmore, for the benefit of its residents, effected by the sterilization flowing from the rejection of the ASPs.
113. The Three Sisters Land abuts existing residential, commercial, recreational, and industrial development, all along its expanse, a swath of land extending for over seven kilometers southeast of the central townsite. Entry points into the Three Sisters Land in general, and in particular into the land upon which the Smith Creek ASP and Village ASP were planned, are literally innumerable. Such entry points are largely unmarked, and extend from municipal pathways that infiltrate or are adjacent to the Three Sisters Land. Predominantly, no notice is provided to pedestrians, cyclists and/or vehicle owners of their freely exercised entry and egress from TSMV private property.

114. Due to increased trespassing activity on 2020 and 2021, arising from COVID-19 pandemic outdoor activity increase and the likely impact of a newly implemented Kananaskis Conservation Pass, TSMV has begun to install private property signs and closed trails. These works have suffered significant vandalism and abuses. The Three Sisters Land has now been effectively permanently and indefinitely occupied by Canmore.
115. In summary, TSMV has been largely unable to effectively regulate unsupervised access and egress. Only by development of the lands would TSMV be in a position, practically, to exercise and fulfil their beneficial interest in the property. Without opportunity to develop, and the effective enforcement of the *status quo* by the rejection of the Smith Creek ASP and Village ASP, a confiscatory "acquisition", in effect and in fact, has been perpetrated by Canmore, on behalf of the municipality for the benefit of its residents.
116. Canmore's means of acquisition of the lands upon which the Village ASP and the Smith Creek ASP are situated has a relevant history. In 1998, Canmore passed a land use designation governing the subject-matter lands, specifically "Direct Control 1-98", or "DC 1-98". Under DC 1-98, any development of these lands thereafter required Canmore Council's ASP approval. By imposing this condition precedent to future development of the Three Sisters Land, Canmore restricted the discretion that present and future Canmore Councils might otherwise have to exercise discretion not to require an ASP approval prior to development. In so doing, Canmore took control of the Three Sisters Land, as an aspect of its perpetration of its eventual property acquisition.

2. Deprivation of TSMV of Reasonable Uses

117. The unique features of the Three Sisters Land, and its determined highest and best use for recreation and tourism, and the associated public interest, have all been determinatively recognized and established by the NRCB. To have the implementation of this vision now blocked, unlawfully, by Canmore, is to effectively remove all "reasonable uses" of the property, to which TSMV might otherwise have the capacity to pursue.
118. The Three Sisters Land, and in particular the land within it upon which the Smith Creek ASP and the Village ASP were proposed, has been left with notional uses, if any, and without economic value.
119. Canmore has left TSMV without an avenue to pursue the reasonable expectations it may have as to the use of the Three Sisters Land, and has denied to TSMV an owner's fundamental right of exclusive possession.
120. Canmore has exercised its decision-making authority over the Smith Creek ASP and the Village ASP, and has avoided the statutory compensation scheme of a direct expropriation, while securing indirectly the same result.
121. Canmore's decision-making authority over the Smith Creek ASP and Village ASP is limited to the manner in which a recreational or tourism project, and associated development, is to be implemented.
122. In summary, in rejecting the Smith Creek ASP and the Village ASP, Canmore has strayed beyond the bounds of their lawful authority, motivated by the impugned purposes noted above. An improperly motivated *de facto* expropriation has resulted, by the acquisition of a beneficial

interest in the Three Sisters Land for itself and its residents. All alternative reasonable uses of the property that TSMV might otherwise have initiated have been removed, and Canmore is accordingly liable to TSMV in *de facto* expropriation.

M. LITIGATION JURISDICTION

123. Following Canmore's failure to approve the Smith Creek ASP and the Village ASP, TSMV initiated the following legal steps, to seek redress, amongst them:

(a) Re Smith Creek ASP

On July 12, 2021, TSMV filed an Appeal, before the Land and Property Rights Tribunal (LPRT), challenging Canmore's failure to approve Bylaw 2021-06, pursuant to the *Municipal Government Act*, s. 619.

(b) Re Village ASP

On August 9, 2021, TSMV filed an Appeal, before the LPRT, challenging Canmore's failure to approve Bylaw 2021-05, pursuant to the *Municipal Government Act*, s. 619.

hereinafter referred to as the "s. 619 Appeals".

124. Canmore has taken the position, in both of the s. 619 Appeals noted above, that the LPRT is without jurisdiction to hear the Appeals, on the basis that:

(a) The NRCB Order, dated in November 1992, and approved by the Lieutenant Governor in Council on January 6, 1993, precedes the enactment of s. 619(1), which Canmore argues was not intended to have retroactive effect.

(b) Neither the Smith Creek ASP nor the Village ASP are "an application...to amend a statutory plan or land use bylaw", within the meaning of s. 619(5), and accordingly the rights of appeal extended in s. 619 do not extend to TSMV.

125. Prior to the issuance of the s. 619 Appeals, TSMV proposed to Canmore on May 26, 2021, that a mediation be convened to resolve the issues identified in the Smith Creek ASP and Village ASP Appeals, pursuant to s. 619(5)(b), to which Canmore advised that it was unwilling to attempt to use mediation to resolve the disputes.

126. Accordingly, to facilitate the most efficient means of identifying and resolving the real issues in dispute between the parties, and seek redress, TSMV has been compelled to issue the within action, in part as Canmore has disputed TSMV's entitlement to other legal avenues to challenge the dismissal of the Smith Creek ASP and the Village ASP.

N. DAMAGES

127. Canmore's failure to approve the Smith Creek ASP and the Village ASP has rendered it virtually impossible, unfeasible and uneconomic to develop the Three Sisters Land as approved by the 1992 NRCB Order, or at all.

128. The unlawful conduct of Canmore, and the Mayor and Councillors 1-6, and Canmore administration, for which Canmore is legally responsible, has resulted directly in TSMV having sustained losses and damages, recoverable as against the Defendants, in the following sums:
- (a) Deprivation of reasonably anticipated lost net revenue profits, by way of opportunity cost, for the failure to initiate and complete the development of the projects proposed in the Smith Creek ASP and Village ASP, in the projected sum of \$150,000,000.00.
 - (b) Expenses reasonably incurred in the preparation of the Smith Creek ASP and the Village ASP, from 2016 to 2021, in the sum of \$11,000,000.00.

Remedy Sought:

129. Wherefore the Plaintiff claims:
- (a) Judgment as against the Defendants, jointly and severally, for damages in the sum of \$161,000,000.00;
 - (b) In the alternative, a declaration that Canmore's failure to approve the Smith Creek ASP, Bylaw 2021-06, on April 27, 2021, was *ultra vires* the jurisdiction of Canmore, and a nullity;
 - (c) In the alternative, a declaration that Canmore's failure to approve the Village ASP, Bylaw 2021-05, on May 25, 2021, was *ultra vires* the jurisdiction of Canmore, and a nullity;
 - (d) In the alternative, a declaration that the Plaintiff is entitled to a rehearing by Canmore of the Smith Creek ASP, and consideration of the immediate approval, without conditions, of the Smith Creek ASP, as presented to Canmore Council for first reading on February 9, 2021, and rejected on April 27, 2021;
 - (e) In the alternative, a declaration that the Plaintiff is entitled to a rehearing by Canmore of the Village ASP, and consideration of the immediate approval, without conditions, of the Village ASP, in its form as initially presented to Canmore Council for first reading on February 9, 2021, before amendments introduced between first reading and then rejected on third reading on May 25, 2021;
 - (f) In the alternative, damages in a sum to be proven at the trial of this matter, arising from the delay and extra expense incurred by the Plaintiff by being deprived of the timely opportunity to develop the Three Sisters Land;
 - (g) Punitive/aggravated/exemplary damages in bad faith, of \$1,000,000.00;
 - (h) Interest pursuant to the *Judgment Interest Act*, RSA 2000, c. J-1;
 - (i) Such further and other relief and remedies as counsel may advise and as this Honourable Court may deem meet as just and appropriate; and
 - (j) Costs, on a full indemnity basis.

NOTICE TO THE DEFENDANT

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the clerk of the Court of Queen's Bench at Calgary, Alberta, AND serving your Statement of Defence or a Demand for Notice on the address for service of the Plaintiff.

WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.