



County of Stettler No. 6

Box 1270

6602 – 44 Avenue

Stettler, Alberta TOC 2L0

T: 403.742.4441 F: 403.742.1277

www.stettlercounty.ca

August 31, 2020

Scenic Sands Community Association
C/O Rob Pearce, President
Box 334
Erskine, AB TOC 1G0

SUBDIVISION AND DEVELOPMENT APPEAL BOARD DECISION

RE: Appeal of Development Permit Application DP 20014 – For Agriculture Supply Depot (within the NW 11-40-21-W4M)

SUMMARY OF APPEAL

This is an appeal of a development permit approval for an agriculture supply depot involving the outdoor storage of cement kiln dust that is sold and then applied to agricultural lands. The Appellant is appealing the approval of the use due to concerns about wind borne dust from the materials, potential impacts on surface and ground water, traffic on Range Road 21-2, and dust resulting from truck traffic. Notice of the appeal was provided to interested parties on July 31, 2020 and a hearing was held on August 19, 2020.

BACKGROUND OF THE APPLICATION

DP 20014 involves the development of a stockpile of cement kiln dust which would be distributed to individual landowners to be applied as a soil amendment to agricultural lands. The NW 11-40-21-W4M is designated “Agricultural District” under the Land Use Bylaw. The NW 11 is accessed from Range Road 21-2 and also has frontage along Township Road 40-2 (Getty Road).

The County's Land Use Bylaw lists “agriculture supply depot” as a discretionary use in the “Agricultural District (A).” The County's Municipal Planning Commission was the Development Authority for the application.

PRELIMINARY MATTERS

At the start of the hearing on August 19, 2020 the Appellant, Applicant and the Development Authority were given the opportunity to raise objections to the Board Members assigned to the hearing. No objections were raised.

MERIT HEARING

Summary of the Appellant's Submissions

The Appellant indicated that they filed their appeal due to concerns about potential impacts and limited information available about the possible implications of the proposed development. They indicated that they do not oppose development but wish to find out more and how it relates to their concerns.

The Appellant put their concerns into three categories. The first is the adequacy of storage of the cement kiln dust and the impact that dispersal of it in windy conditions may have on health, neighbours and Buffalo Lake. The second is the traffic impact based on the limited information that was available in the application to make an assessment. The third is the impact on Range Road 21-2 itself and whether the road can accommodate commercial traffic.

Relating to the first category, the Appellant pointed out that information they reviewed in the submissions by the Applicant and Development Authority noted silica as carcinogenic. They also noted that they do not know much about cement kiln dust in regards to its appearance, ability to travel in the wind, impacts on the lake and ground water or vegetation on surrounding lands. The Appellant indicated that if there are possible concerns then they should be addressed in the approval.

Relating to the second category, the Appellant pointed out that there is no information explaining how the amount of or type of expected traffic was determined, if the road can accommodate the increase, or how any concerns may be mitigated. This includes no information about dust control if Range Road 21-2 is reverted to a gravel road surface.

Relating to the third category, the Appellant indicated that many residents of Scenic Sands use Range Road 21-2 as their preferred route to reach Highway 601 as many live in Calgary as well as having a dwelling in Scenic Sands. The Appellant indicated that they do not support the decision to remove the paved surface of a portion of Range Road 21-2 and revert to a gravel surface. The Appellant indicated that Scenic Sands residents should not be made to travel on gravel road due to the proposed development.

Summary of the Development Authority's Submissions

The Development Authority indicated that approval was given as an "agriculture supply depot" as a discretionary use under the Agriculture District by the County Municipal Planning Commission. The proposed use involves the storage of cement kiln dust which is used for agricultural purposes. The Development Authority noted that the application was presented to MPC over several meetings to bring forward more information about cement kiln dust and the future status of Range Road 21-2. During the course of processing the application, County Council made a decision to change the road surface of part of Range Road 21-2 from paved surface to gravel.

The Development Authority indicated that the part of the NW 11 to be used as the agriculture storage depot is approximately 300 yards (274m) east of Range Road 21-2 near the southwest corner of the quarter section.

The Development Authority indicated that the need for any applicable approvals from Alberta Environment and Parks (AEP) is determined by AEP. The applicant is responsible for obtaining all other permits and authorizations regardless of the decision to approve by the County. Potential environmental concerns are addressed in the conditions attached to the decision. This includes meeting the regulatory requirements for storage and handling of cement kiln dust. It also includes requirements that no nuisance be caused beyond the boundaries of the NW 11. Further, the Development Authority indicated that if concerns arose they would view it as a breach of the approval and undertake the required enforcement action.

The Development Authority indicated that traffic related concerns due to hauling of materials are addressed in the condition requiring a road haul agreement. The road haul agreement becomes applicable when there are more than 5 round trips per day to the proposed development. The Development Authority also indicated that a traffic impact assessment was required if the traffic generated by the proposed development is higher than expected.

Summary of the Applicant's Submissions

The Applicant indicated that the material to be stored on site is cement kiln dust which is a byproduct of the process to create cement. It contains lime and may be referred to as hydrated lime. The main chemical component is calcium which is naturally occurring and water soluble. The calcium is the main ingredient that is used as a soil amendment to adjust the pH balance of agricultural soils.

Cement kiln dust is unique and the main supply will be the LaFarge cement plant in Exshaw, AB. The Applicant provided photos of the stockpile at the LaFarge plant indicating open storage and use of a front end loader to move the material. The location is beside a lake and close to the community of Exshaw and no environmental problems have been caused. The Applicant supplied certificates of

analysis prepared by A&L Canada Laboratories of samples from the LaFarge stockpile in July 2019. The certificates indicate that the sample analyzed met the regulations regarding the amount of heavy metals. The Applicant indicated that it is not a hazardous material. The silica content is the material that comes up as a carcinogen similar to what is found in dust, sand, clay and other natural materials.

The Applicant indicated that they had been contacted by Alberta Environment and Parks (AEP) in response to an inquiry about a stockpile on their land. AEP visited the site and verbally confirmed that they have no concerns with the materials and that it is not subject to regulations from AEP.

The Applicant indicated that the material would be transported to their site by end dump trucks and arrives in the form of large lumps due to the moisture and silica in the material. It is similar to wet, hard packed sand. The Applicant would crush and screen the lumps to create particles similar to grains of sand. This process creates dust similar to dried clay when disturbed. The material would then be applied to agricultural lands as needed during the fall. It is applied to the soil surface and rainwater slowly draws it into the soil. The leachate moves slowly with most of the calcium found in the top 6-12 inches of the soil. There is a low chance of leaching into the ground water or into surface water bodies.

The Applicant indicated that earlier trials with the storing and crushing of the materials at a different location resulted in concerns about dust and hours of operation. This was mainly caused by heavy vehicle traffic over the material and drying on the road. Adding some clay to the mixture assisted with reducing the amount of dust generated. From this experience, the Applicant indicated the dust plume could extend 40 to 50 yards (36.5m to 45.7m) but with windy conditions could be as much as 100 yards (91.4m). Wind deposited materials will dissolve in water and enhance plant growth on lawns and vegetation that comes in contact with the material.

The Applicant indicated that traffic to the site of the proposed development is expected to average less than 2 trucks per day over a year. This is based on up to 5,000 tonnes of materials coming from Exshaw at 2 to 3 loads per day at sporadic times over the year to build up the stockpile and up to 120 loads leaving the site over a 40 to 45 day period during fall application.

The Applicant expressed concern with the current road ban that is applied to Range Road 21-2. The 75% ban means twice as many truck trips are needed and this already causes issues for moving agricultural produce from his fields in an economic way. The Applicant indicated that the construction quality of the road is the main problem and the paved surface put in years ago was not going to last long under current use by agriculture and recreational vehicles.

The Applicant clarified that the intended location of the agriculture supply depot is in the south to southwest part of the NW 11-40-21-W4M. It will use the existing field

access/wellsite access on Range Road 21-2 to reach a level area that is approximately 250m east of the west parcel boundary and 50m north of the south parcel boundary. The area is approximately 3 acres (1.21 ha) in size with hilly land surrounding it and mature vegetation to the west. The Applicant indicated they will remove the topsoil and create a level clay base to support truck movement and for the placement of the stockpile.

Summary of the Other Party's Submissions

A formal submission was not made by the one other party participating in the appeal proceedings and representing Ol'Macdonalds resort. Through opportunity for questions, the other party expressed concern about the decision to remove part of the paved surface of Range Road 21-2 with no consultation with other affected users of the road. They noted that the paved surface was a requirement of their development to address concerns about dust generated by recreational vehicles on gravel roads.

KEY FINDINGS OF FACT

The Board makes the following key findings of fact:

1. The subject lands for the development permit is designated "Agricultural District (A)" in the County's Land Use Bylaw and "agriculture supply depot" is a discretionary use in this district.
2. The proposed use of the land under DP 20014 meets the definition of "agriculture supply depot" in the County's Land Use Bylaw.
3. The intended location for the agriculture supply depot is a 3 acre (1.21 ha) site in the southwest part of the NW 11 that is 250m east of the west boundary of the NW 11 and 50m north of the south boundary of the NW 11.
4. Based on the air photos supplied by the Development Authority, the Board finds that the distance to the nearest existing residence from the location of the agriculture supply depot in the NW 11 is greater than 500m.
5. Based on the information supplied by the Appellant, the area proposed for the agriculture supply depot is at least 1.5 kilometers away from Buffalo Lake and at least 1.0 kilometer away from the south boundary of the Scenic Sands subdivision.
6. The Applicant is the owner of the SW 11 which is the adjacent land closest to the proposed location of the agriculture supply depot in the NW 11.

7. The certificate of analysis for the materials from the Exshaw stockpile indicate that the Exshaw supply of cement kiln dust does not contain materials that are considered hazardous or exceed regulations relating to heavy metals.
8. The presence of silica in cement kiln dust, common in many materials that may cause dust, requires appropriate handling to mitigate the risks of exposure through inhalation or skin contact.
9. Cement kiln dust can be carried by the wind and be deposited on lands beyond the location where it is stored.
10. The expected traffic from the proposed use is dependent on the volume of material stockpiled and the amount shipped to end users each fall. Based on the information from the Applicant, the peak traffic will be in the fall during which 120 round trips may be made over a 40-45 day period.
11. The decision to change the surface of part of Range Road 21-2 was made by County Council.

DECISION

The Board **APPROVES** the use and development of an “agriculture supply depot” on the NW11-40-21-W4M subject to the following terms and conditions:

1. The part of the NW 11-40-21-W4M that may be used as an agriculture supply depot shall:
 - a. be located in the area 250m east of the west boundary of the NW 11 and 50m north of the south boundary of the NW 11;
 - b. occupy an area no larger than 1.22 hectares for the stockpile of cement kiln dust and a working area near the stockpile with the area of the driveway connecting the stockpile and working area to Range Road 21-2 not counted as part of the 1.22 hectares;
 - c. have no more than 5,000 tonnes of cement kiln dust stored on site at any given time; and
 - d. be accessed by vehicle traffic from Range Road 21-2.
2. A development permit shall not be issued and the use shall not be commenced until all conditions that must be satisfied prior to commencing the use have been met or fulfilled. All those conditions of a continuing or ongoing nature must be met for as long as the use is present on the site.
3. Prior to use and development of the site for the agriculture supply depot, the Applicant shall provide, at their cost, a letter prepared and signed by a qualified professional along with supporting sampling and testing by an accredited lab that:

- a. identifies the nature of the product that is being brought to and stored on the site;
- b. indicates the appropriate handling and storage requirements for the product that is brought to and stored on the site; and
- c. if necessary, identifies measures that the applicant must take to mitigate any public safety risks to the satisfaction of the County of Stettler.

Based on the information provided by the letter and sampling and testing described above, the Applicant shall provide a materials safety data sheet to the County of Stettler and shall undertake any of the measures needed to mitigate public safety risks prior to the use and development of agriculture supply depot.

After three years of the agriculture supply depot commencing on the site, and every three years thereafter, the Applicant shall provide updated materials based on the above described requirements and adjust measures needed to mitigate public safety risks accordingly.

4. The approach/access to the property must be in conformance with the specifications of the County of Stettler including, if necessary, installation of an appropriately sized culvert.
5. All hauling of materials to and from the site involving five (5) round trips in a 24 hour period shall require a Road Use Agreement to be in place with the County of Stettler prior to the haul commencing. The person or company responsible for the haul shall enter into, and comply with the terms and conditions of, a Road Use Agreement satisfactory to the County and made pursuant to County Policy PS 5.1. The Road Use Agreement may contain provisions related to the selection of routes, impact on roads and bridges, time of hauling, and the management of nuisances relating to dust, noise and vibration and similar items.
6. The agriculture supply depot shall not create a nuisance by way of dust, noise, vibration, odours, smoke, glare, heat or electrical or radio disturbance detectable beyond the property boundary, or excessive traffic or anything dangerous or of an objectionable nature, in the opinion of the Development Officer.

Further, the Board instructs the Development Authority to issue a development permit in accordance with the Board's decision on the application.

REASONS FOR DECISION

The Board is satisfied that the material intended to be stored on site and then distributed is cement kiln dust and that the initial supplier will be the Lafarge stockpile in Exshaw, AB. As this type of material is relatively new as a soil amendment, the Board agrees with the Development Authority's precautionary approach to requiring confirmation of the nature of the materials and any associated handling and safety requirements. To this end, the Board reaffirms the requirement for confirmatory sampling and adds a requirement for an accompanying letter to explain, preferably in plain spoken language, any safety and handling requirements that may be required. This enables appropriate information to be made available to County staff, in particular emergency responders. Finally, as the nature of each batch of cement kiln dust appears to change periodically, the Board is of the view that regular ongoing confirmation, and if necessary adjustment to mitigation measures, is appropriate.

The Board notes, based on the evidence given by the Applicant, that Alberta Environment and Parks does not require an approval from them for the cement kiln dust at this point in time. Alberta Environment and Parks is responsible for management of impacts on the natural environment under Provincial legislation and has the regulatory authority to require approvals, if needed in the future, and ability to address any unauthorized impacts on the environment. Approval of the use by the County does not remove any obligation of the Applicant to comply with Provincial legislative requirements.

The Board is of the view that the location in the NW 11 proposed for the stockpile is appropriate and the approval is specific to the area that was described by the Applicant. The intensity of the use is also important to confirm and this is addressed through requirements relating to maximum land area for the agriculture supply depot and maximum volume of materials.

With the location of the agriculture supply depot specifically identified, the Board is of the view that there is sufficient buffer around the proposed stockpile location to enable the Applicant to manage the effect of wind on the stockpile. To the west there is a 250m buffer in comparison to the 90m to 100m distance that previous experience suggests that cement kiln dust may be carried by the wind. To the north and east the buffer is substantially greater. While the buffer to the south is only 50m, the abutting property is also owned by the Applicant. All of the buffer space around the site is owned by the Applicant and does not impose on another property owner. Further, the closest existing residence is more than 500m distant from the location of the agriculture supply depot.

While there is substantial buffer around the location of the agriculture supply depot, the Board is of the view that the general condition related to any perceived nuisances beyond the parcel boundaries should be retained.

The Board is satisfied that the specific location of the agriculture supply depot, and the general condition relating to nuisance factors extending beyond the parcel boundaries, does not warrant restrictions on the time of operation. For this reason, the Board has removed the Development Authority's condition restricting the days of the week and time of day that the operation may occur.

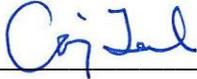
Traffic generation is relative to the intensity of the approved use. In this case it is the maximum volume that may be stockpiled at any given time. The Development Authority did not specify a meaningful reason for requiring a traffic impact assessment. In the view of the Board, the added traffic from the agriculture supply depot, based on a volume of 5,000 tonnes of materials at any one time and a 6-7 week period of annual application does not generate a significant amount of traffic to warrant a traffic impact assessment in relation to the daily traffic that the road is meant to handle. Further, specific concerns, such as intersection improvements, or purpose for the assessment were not identified to assist with the preparation of a traffic impact assessment. The Board has removed the requirement to prepare a traffic impact assessment for these reasons.

The Board is of the view that the County requirement for a road haul agreement should be applied to this use. The Road Use Agreement process is an effective tool in addressing the potential impacts of heavy truck traffic on residences and properties along a haul route. It offers a means of managing noise and traffic impacts by being able to restrict days and hours of operation. It offers a means of repairing damage to the road surface for the benefit of other users of the road. It offers a means of managing dust created by the heavy traffic through consideration of weather conditions (calm or windy, dry or raining) and time of year (winter versus summer) in which the haul is occurring.

In regards to the decision to change the road surface of part of Range Road 21-2, the Board finds that this issue is outside their scope of authority. County Council is the decision making authority regarding how County roads are constructed and these decisions are not subject to appeal to the SDAB. For this reason the Board's decision does not address the future nature of the road surface.

CLOSING

This decision can be appealed to the Court of Appeal on a question of law or jurisdiction. If you wish to appeal this decision you must follow the procedure found in Section 688 of the Municipal Government Act which requires an application for leave to appeal to be filed and served within 30 days of this decision.



Craig Teal, RPP MCIP
Chair, Subdivision and Development Appeal Board

APPENDIX "A"

PARTIES WHO ATTENDED, MADE SUBMISSIONS, OR GAVE EVIDENCE AT THE HEARING:

Name	Capacity
Craig Teal	Subdivision and Development Appeal Board Chairperson
Blake Chapman	Subdivision and Development Appeal Board Member
Erick Osterud	Subdivision and Development Appeal Board Member
Andrew Brysiuk	Subdivision and Development Appeal Board Clerk
Rich Fitzgerald	Development Authority
Jacinta Donovan	Development Authority
Yvette Cassidy	Development Authority
Dale Anderson	Applicant
Bev Anderson	Applicant
Corrine Cruickshank	Appellant
Lana Moskaluk	Appellant
Jean MacDonald	Other Party in Support of the Appeal

Appendix “B”

EXHIBITS RECEIVED PRIOR TO THE HEARING AND MADE AVAILABLE AUGUST 14, 2020 TITLED *AUGUST 19, 2020 SUBDIVISION AND DEVELOPMENT APPEAL BOARD HEARING PACKAGE*

Exhibit	Description	Pg. #
A.	July 31, 2020 Notice of Appeal Hearing	3-10
B.	August 10, 2020 Memo from Jacinta Donovan to the Subdivision and Development Appeal Board	11-13
C.	Development Permit 20014 Application	14-20
D.	Receipt of Payment for DP 20014	21
E.	April 29, 2020 Municipal Planning Commission Development Officer’s Report	22-26
F.	May 26, 2020 Email from Applicant to Jacinta Donovan	27-28
G.	Lehigh Hanson, Safety Data Sheet, Sand and Gravel	29-38
H.	Lafarge, Safety Data Sheet, Sand and Gravel	39-45
I.	Graymont, Safety Data Sheet, High Calcium Hydrated Lime	46-52
J.	May 27, 2020 Municipal Planning Commission Development Officer’s Report	53-58
K.	June 24, 2020 Municipal Planning Commission Development Officer’s Report	59-64
L.	A & L Canada Laboratories Inc. CKD Certificate of Analysis Report No. C17307-70024	65-66
M.	Lafarge, Safety Data Sheet, Hydrated Lime	67-77
N.	June 29, 2020 Applicant’s Notice of Decision RE: DP 20014	78-82
O.	June 29, 2020 Adjacent Landowner’s Notice of Decision RE: DP 20014	83-87
P.	Adjacent Land Owner Contact Information	88
Q.	Aerial View of Subject Property	89
R.	July 2, 2020 Newspaper Advertisement	90
S.	July 16, 2020 Email from Jacinta Donovan to Applicant RE: AEP Authorization	91
T.	Environmental Protection and Enhancement Act, Activities Designation Regulation AR 276/2003 amended to 125/2017	92-141
U.	July 17, 2020 9:32am Email from Applicant to Jacinta Donovan RE: Lime Crushing Authorization	142
V.	July 17, 2020 10:39am Email from Jacinta Donovan to Applicant RE: Lime Crushing Authorizations	143
W.	July 17, 2020 12:13pm Email from Applicant to Jacinta Donovan RE: Lime Crushing Authorization	144-145
X.	July 23, 2020 Email from Applicant to Jacinta Donovan RE: CKd	146
Y.	Lafarge, Safety Data Sheet, Hydrated Lime	147-157
Z.	Lafarge Samples Taken in 19 th March 2015	158

AA.	July 20, 2020 Letter from Scenic Sands Community Association RE: Concerns with Proposed Agricultural Supply Depot	159-160
BB.	July 14, 2020 Letter from Anna Sherriff RE: Concerns with Proposed Agricultural Supply Depot	161
CC.	July 22, 2020 Letter from Jean MacDonald RE: Concerns with Proposed Agricultural Supply Depot	162-163
DD.	Brief of the Applicant RE: DP 20014	164

Appendix "C"

EXHIBITS RECEIVED AT THE HEARING

Exhibit	Description	Pages
EE.	CKD Application & Cost Map, Field SW 11	1
FF.	CKD Application & Cost Map, Field NW 11	1
GG.	A & L Canada Laboratories Inc. CKD Program, Certificate of Analysis Report No. C19205-70002	12
HH.	Photos (3) of Exshaw CKD Pile	3
II.	Bureau Veritas Certificate of Analysis, COC # M073541	14
JJ.	Lafarge Exshaw CKD Lime Maximum Allowable Application Rates 2020 CFIA Application	1
KK.	Lafarge Exshaw CKD Lime Lab Test Results Summary	1