

# SMOKY LAKE COUNTY



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| <b>Title:</b> Natural Resource Extraction / Processing |                  | <b>Policy No:</b> 02-02       |
| <b>Section:</b> 61                                     | <b>Code:</b> P-R | <b>Page No.:</b> 1 of 15<br>E |

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| <b>Legislative Reference:</b> | Alberta Provincial Statutes<br>Land Use Bylaw and relevant Area Structure Plans |
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| <b>Purpose:</b> | To outline the procedures and requirements for applying for a Natural Resource Extraction/Processing Development Permit. |
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| <b>Policy Statement and Guidelines:</b>   |
| <p>1. STATEMENT:</p> <p>1.1 Development Permits are an important part of the Planning and Development process as they allow County administration to review a proposal and provide a response to the applicant on the proper course of action that must be taken to allow a development to proceed.</p> <p>1.2 Smoky Lake County wishes to establish land use patterns that accommodate natural resource extraction while minimizing potential conflict with nearby land uses and any negative environmental impact.</p> <p>1.3 The County also recognizes the necessity and benefits of aggregate extraction to sustain economic growth, build infrastructure and develop our local communities.</p> <p>2. DEFINITIONS:</p> <p>2.1 <b>Aggregate</b> means any sand, gravel, clay or marl that is excavated from a pit, whether in a processed or unprocessed form.</p> <p>2.2 <b>Class I Pit on Private Land</b> means:</p> <ul style="list-style-type: none"><li>• Over 5 hectares (12.5 acres) in size;</li><li>• Code of Practice requirements (Provincial registration and full-cost security); and</li><li>• Subject to Reclamation Certificate to be issued by Alberta Environment.</li></ul> <p>2.3 <b>Class II Pit on Private Land</b> means:</p> <ul style="list-style-type: none"><li>• Under 5 hectares (12.5 acres) in size;</li><li>• Subject to <i>Environmental Protection and Enforcement Act</i> enforcement; and</li><li>• Subject to Reclamation Certificate to be issued by Alberta Environment</li></ul> <p>2.4 <b>Development</b> means development as established in the County's <i>Land Use Bylaw</i></p> |

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### Policy Statement and Guidelines:

- 2.5 **Development Authority** means the persons established by the County's *Development Authority Bylaw* and appointed by Council.
- 2.6 **Extraction** includes the stripping and stockpiling of soil, overburden and aggregate materials and the transport of the said materials within the site.
- 2.7 **Hauling** means the transport of aggregate materials off-site through the local and/or provincial road network.
- 2.8 **Municipal Planning Commission** means the Municipal Planning Commission established by the County's *Municipal Planning Commission Bylaw* and appointed by Council.
- 2.9 **Nuisance** means something harmful, annoying, troublesome or inconvenient.
- 2.10 **Operator** means the private sector individual or company who has the authority, permit or approval to operate a sand and gravel pit.
- 2.11 **Overburden** means the rock, soil and geological materials in a pit overlying the area or point of economic interest (in this case, the aggregate materials) that does not include topsoil, subsoil, aggregate or reject.
- 2.12 **Pit** means an excavation in the surface made for the purpose of removing, opening up or probing sand, gravel, clay, marl, peat or any other substance, and includes associated infrastructure, but does not include a mine or quarry.
- 2.13 **Reclamation** means the restoration of the site in a manner that will return the land to its previous state and accommodate a designated future land use.
- 2.14 **Subdivision and Development Appeal Board** means the Subdivision and Development Appeal Board established by the County's *Subdivision and Development Appeal Board Bylaw* and appointed by Council.
3. **REQUIREMENTS:**
- 3.1 A Development Permit is required PRIOR to commencing any excavation on any land, for the purpose of natural resource extraction / processing.

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#### Policy Statement and Guidelines:

#### 4. PROCEDURES:

- 4.1 Development Permit Application Forms are available from the County office and the County website in accordance with *Policy 61-03: Application for Development Permit*.
- 4.2 A Development Permit Application must be completed, with supporting documentation, and submitted to the County office, accompanied by the appropriate fee as established in *Policy 61-11: Planning and Development Fees*.
- 4.3 All Applications must be in compliance with provincial regulations and in accordance with the Districts defined in Smoky Lake County's *Land Use Bylaw*.
- 4.4 Upon the Development Authority Officer's initial review and evaluation of the Application:
  - 4.4.1 Discretionary Uses  
The Development Authority Officer will prepare a report to be presented to the Municipal Planning Commission for a decision.
- 4.5 Upon approval of the Application by the Development Authority (the Municipal Planning Commission), the Application will be deemed **Conditionally Approved** and will be advertised in the local newspaper, notifying the public of a chance to appeal the decision of the Development Authority.
- 4.6 The Development Authority will issue a Development Permit if no appeal is filed after fourteen (14) days from the date of advertisement.
- 4.7 Upon approval of the Application, the Operator must enter into a Development Agreement (**Schedule "A": Development Agreement**) with Smoky Lake County and adhere to the provisions outlined within the Agreement, including, but not limited to:
  - Entering into a Haul Road Agreement; and
  - Providing a Reclamation Security Deposit for Class II Pits on Private Land. The Reclamation Security Deposit shall be made by cash, cheque or debit. The County will NOT accept an Irrevocable Letter of Credit as payment for a Reclamation Security Deposit.

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| <b>Policy Statement and Guidelines:</b> |  |
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| 5                                       | <p><b>APPEALS:</b></p> <p>5.1 An appeal may be made where the Development Authority</p> <ul style="list-style-type: none"> <li>• Issues a Permit subject to conditions, or</li> <li>• Refuses or fails to issue a Permit within forty (40) days of receipt of the Application.</li> </ul> <p>5.2 The appeal period expires fourteen (14) days after the Decision of the Development Authority is advertised in accordance with Section 4.5 above.</p> <p>5.3 An appeal shall be made by serving a written Notice of Appeal with reasons and with the <b>Development Appeal Fee</b> established in accordance with <i>Policy Statement No. 61-11: Planning and Development Fees</i>, to the Secretary of the Subdivision and Development Appeal Board.</p> <p>5.4 A decision made by the Subdivision and Development Appeal Board is final and binding on all parties and persons subject only to an appeal upon a question of jurisdiction or law pursuant to the Act.</p> |
| 6                                       | <p><b>ENFORCEMENT:</b></p> <p>6.1 Where a Development Authority finds that a development or use of land or buildings is not in accordance with a Development Permit, the Development Authority may exercise the right to order compliance as outlined in Section 5 in the Smoky Lake County <i>Land Use Bylaw</i>.</p>   |
| 7                                       | <p><b>LAND USE BYLAW:</b></p> <p>7.1 For more information on application requirements, see <i>Section 2.7: Natural Resource Extraction Development Permit Requirements</i> and <i>Section 7.16: Natural Resource Extraction Industries</i>.</p>  |

|                 | <b>Date</b>           | <b>Resolution Number</b>             |
|-----------------|-----------------------|--------------------------------------|
| <b>Approved</b> | <b>March 27, 2008</b> | <b>Motion # 366-08 - Page # 8629</b> |
| <b>Amended</b>  | <b>May 28, 2015</b>   |                                      |
| <b>Amended</b>  |                       |                                      |

DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT made this \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

BETWEEN:

SMOKY LAKE COUNTY
a Municipal Corporation
Box 310
4612 McDougall Drive
Smoky Lake, Alberta T0A 3C0
Phone: 780-656-3730
(hereinafter called "the County")

OF THE FIRST PART

- AND -

Name

Mailing Address Phone Numbers: Residence Work Cellular

- AND -

Name

Mailing Address Phone Numbers: Residence Work Cellular

(hereinafter collectively called "the Developer")

OF THE SECOND PART

\*\*\*\*\*

WHEREAS, the County has granted a Development Permit for permission to extract aggregate from the lands legally described as:

Legal Description - Development Permit \_\_\_\_ (\_\_\_\_ acres)
(hereinafter referred to as "said lands")

AND WHEREAS a condition of the Development Permit required the developer to enter into a Development Agreement with the County prior to commencement of any operations of said lands as delineated attached hereto as Schedule A (Reclamation Plan).

**AND WHEREAS** the Developer has made application to the County for a Development Permit (hereinafter referred to as the "Permit) to conduct an aggregate extraction operation (hereinafter referred to as the "Development") on said Lands and the application has been approved by the County subject to certain conditions, one of which is the entering into of this Agreement on the terms and subject to the conditions set forth herein; and

**THE PARTIES** of this Agreement, in consideration of the promises and the mutual terms, covenants and conditions to be observed and performed by each party, agree as follows:

#### ARTICLE 1 - INTERPRETATION

1.1 Except where the context otherwise requires, the following expressions or words when used in this agreement shall have the following meanings:

- (a) "Adjacent Lands" shall mean those lands which share a contiguous common legal boundary with the Lands. This includes lands whose boundaries would otherwise be contiguous excepting for a natural or manmade feature, such as a river, water body or road.
- (b) "Construction" shall mean the disturbance of the natural grade of the Lands for any purpose.
- (c) "Council" shall mean the Council of Smoky Lake County as constituted from time to time.
- (d) "Extraction Area" shall mean each area within the boundary of the Lands for which a conditional development approval is obtained by the Developer.
- (e) "May" is an operative word meaning a choice is available, with no particular direction or guidance intended.
- (g) "Plans and Specifications" shall mean the plans and specifications approved by the County in the issuance of the Permit, including the requirements of Alberta Environmental Protection covering the design, operation and reclamation of the Development.
- (h) "Reclamation " shall mean the process of reconvertng disturbed land to its former or other productive uses.
- (i) "Stop Work Order" means an order issued pursuant to Section 645 of the *Municipal Government Act*.
- (j) "Shall" is an operative word which means, the action is obligatory.

ARTICLE 2 - COVENANTS OF THE DEVELOPER

- 2.1 Developer undertakes, warrants and agrees that the Developer shall not commence the Development or Construction on the Lands until such time as all of the following conditions shall have been satisfied:
- (a) The Developer shall have paid to the County all sums owing to the County pursuant to this agreement, including, Development Permit fees; and
  - (b) The Developer shall have obtained an Environmental Authorization for the Development on the Lands from Alberta Environment (if applicable).
  - (c) The Developer shall have complied with the provisions of **Paragraph 2.4** of this agreement.
  - (d) The Developer shall have complied with the provisions of **Paragraph 9.1** of this agreement.
- 2.2 The Developer acknowledges that the development and haul route are located in close proximity to residential dwellings.
- 2.3 The Developer shall cause the Development and all work associated with the Development to be conducted diligently, with reasonable dispatch in a good and workmanlike manner, according to the approved Plans and Specifications and so as to not cause more inconvenience to the other residents of the County than is necessary in the circumstances.
- 2.4 The Developer, its servants, agents and contractors shall do as little damage as possible in the operation of the Development and shall cause as little obstruction as possible to the movement of traffic and other works within the County during the operation of the Development. During the operation of the Development, haul truck traffic will be restricted to those routes identified and approved annually in the "**Haul Road Agreement**" pursuant to the Permit.
- 2.5 The Developer, at the sole cost and expense of the Developer, shall acquire such rights of way and easements within the said Lands and Adjacent Land as the County may deem necessary. The Developer, at the sole cost and expense of the Developer, shall arrange for the registration and filing of all easements and right-of-way plans at the Alberta Land Titles Office and shall, if required by the County, deliver registerable transfers of easements, rights-of-way plans, utility lots and easement plans to the County.
- 2.6 The Developer shall be liable for all damages sustained by the County and by any person or corporation by reason of such default and the Developer shall indemnify and save harmless County, its employees, officers, servants or agents against any claim for damages, expenses or costs arising there from and for which the County, its employees, officers, contractors, servants or agents is held liable in relation to this Agreement.

- 2.7 In the event the Developer shall default in the performance or the carrying out of the obligations and undertakings to be performed or carried out by the Developer under the terms of this agreement, the County shall be at liberty to either serve a Stop Work Order or to serve a Notice upon the Developer describing the default or to serve both a Stop Work Order and a Notice to the Developer describing the default. A Stop Work Order shall remain in place and in force until the default is cured. In the event a Notice is issued and the Developer shall fail to rectify or cure the default described in the said Notice within a period of THIRTY (30) DAYS from the date that the said Notice is served or is deemed to have been served upon the Developer pursuant to this agreement, the County shall be at liberty to rectify or cure the default described in the said Notice. In the event that weather or other physical conditions do not make it possible for the Developer to rectify or cure the default described in the said Notice within the said period of THIRTY (30) DAYS, the Developer may so notify the County and the said period of THIRTY (30) DAYS shall be extended by the number of days during which the said weather or other physical conditions exist.
- 2.8 The Developer shall take all proper steps to ensure that the Development conforms to all applicable bylaws, regulations or standards promulgated pursuant to the provisions of any statute, bylaw or regulation.
- 2.9 The Developer shall carry comprehensive liability insurance in such form and in the amount of TWO MILLION (\$2,000,000.00) DOLLARS OF LIABILITY for each parcel as shall meet the requirements of the County. The Developer, prior to the commencement of construction and operation of the Development, shall provide the County with a certified copy of such insurance. The Developer shall be at liberty to cancel liability insurance only upon the issuance of a Reclamation Certificate by Smoky Lake County.
- 2.10 The Developer shall at all times ensure that any work to be performed or carried out by the Developer pursuant to this agreement is properly marked with such warning signs and devices as shall be necessary to alert the public that the said development is taking place. The Developer, if requested by the County, shall supply and put up such additional warning signs and devices as the County shall deem necessary.
- 2.11 The Developer hereby grants and conveys unto the County the right, license, liberty, privilege and easement to enter upon the said lands from time to time for the purpose of carrying out such inspections of the Development pursuant to this agreement as the County shall deem necessary and for the purpose of enforcing the compliance by the Developer with the terms and conditions of this agreement.
- 2.12 The Developer shall be responsible for the repair and restoration of all damage caused by any third party in the operation of the Development.



ARTICLE 3 – OPERATION AND SUPERVISION OF DEVELOPMENT

- 3.1 The County shall have the right to issue a Stop Work Order in the event that any work to be performed or carried out by the Developer under this agreement contravenes the provisions of any federal, provincial or municipal statute, regulation or bylaw, or if the system of work is dangerous or inimical to public safety or is likely to damage some existing public work in a manner not contemplated by this agreement. The County shall be at liberty to maintain the Stop Work Order until the contravention is corrected.

ARTICLE 4 - ARBITRATION

- 4.1 If any dispute or difference between the Developer and the County shall arise under this agreement, either party shall be at liberty to give the other notice of such dispute or difference and requiring that such dispute or difference be referred to arbitration.
- 4.2 If the parties are able to select and appoint a mutually satisfactory single arbitrator to settle such dispute, the dispute or difference shall be submitted to the single arbitrator and the single arbitrator shall make his award within THIRTY (30) DAYS of his appointment and the parties agree to be bound by the award of the single arbitrator and to share the costs of the arbitration proceedings equally.
- 4.3 In the event that a matter arising under **Paragraph 4.1** above is not settled in accordance with the provisions of **Paragraph 4.2**, then with respect to the dispute or difference, either party shall be entitled to give the other notice of such dispute and to demand arbitration thereof. Upon such notice and demand being given, each party shall at once appoint an arbitrator and those two arbitrators shall jointly select a third. If, within FOURTEEN (14) DAYS of the notice of the dispute and demand for arbitration, either party has failed to appoint an arbitrator, the opposing party may petition a Justice of the Court of Queen's Bench to appoint an arbitrator for the party in default and the person appointed by the said Justice shall be that party's arbitrator. If, within FOURTEEN (14) DAYS of the appointment of the two arbitrators they have failed to jointly select a third arbitrator, then either or both of the parties may petition such a Justice to appoint a third arbitrator. Following the selection or appointment of the third arbitrator, the three arbitrators shall, as soon as possible, embark upon the arbitration. They shall settle the rules of procedure for the arbitration proceedings and all rulings required to be made during the proceedings. The decision of the majority of the arbitrators upon the rules of the procedure or upon any ruling shall be final and binding upon them and the parties. The decision of the majority of the arbitrators upon the matters in dispute shall be final and binding upon all parties, and all costs of the arbitration shall be apportioned between the parties, or against either of them, as the majority of the arbitrators shall decide.
- 4.4 Provided however, it is understood and agreed that the foregoing provisions shall not authorize any reference to arbitration as to any matter or question which under this agreement, is expressly, or by implication required or permitted to be decided by The County or the Municipal Engineer or as to the grounds upon which, or the mode in which, any opinion may have been formed or discretion exercised by The County or the Municipal Engineer.

ARTICLE 5 - COMPLIANCE WITH LAW

- 5.1 The Developer shall at all times comply with all legislation, regulations and municipal by-laws and regulations relating to the Development by the Developer.
- 5.2 Where anything provided for herein cannot lawfully be done, without the approval or permission of any authority, person or board, the obligation to do it does not come into force until such approval or permission is obtained by the Developer.
- 5.3 If any provision hereof is contrary to law, the same shall be severed and the remainder of the agreement shall be of full force and effect.

ARTICLE 6 - LAW OF ALBERTA APPLICABLE

- 6.1 The validity and interpretation of this agreement, and of each clause and part hereof, shall be governed by the laws of the Province of Alberta.

ARTICLE 7 - FURTHER ASSURANCES

- 7.1 Both parties shall execute and deliver all further documents and assurances necessary to give effect to this agreement and to discharge the respective obligations of the parties.

ARTICLE 8 - WAIVER

- 8.1 A waiver by either party hereto of the strict performance by the other of any covenant or provision of this agreement shall not of itself constitute a waiver of any subsequent breach of such covenant or provisions or of any other covenant or provision of this agreement.

ARTICLE 9 – DEVELOPMENT PERMIT

- 9.1 Development Permit Conditions – Development Permit \_\_\_\_ - \_\_\_\_.

(INSERT CONDITIONS)

ARTICLE 10 - NOTICES

10.1 Any notice required by one party to be given to the other shall be given at the following address:

SMOKY LAKE COUNTY  
Box 310  
4612 McDougall Drive  
Smoky Lake, Alberta T0A 3C0

any notice, demand or request given to the Developer shall be well and mailed by prepaid registered mail addressed to the Developer at:

Registered Landowner: \_\_\_\_\_  
Address: \_\_\_\_\_

or at such place as the Developer may from time to time in writing designate.

10.2 Any notice or request delivered shall be deemed to have been given or served on the date of delivery. Any notice or request if sent by mail shall, be deemed to have been given or served THREE (3) BUSINESS DAYS after the same has been posted as aforesaid. In the event of a disruption of normal postal service any notice required pursuant to the terms of this agreement shall be deemed to be sufficiently served or given if delivered by hand to either party at the address set out above.

ARTICLE 11 - NON-ASSIGNABILITY OF AGREEMENT

11.1 This Agreement shall not be assignable by the Developer without the written approval of the County, which approval the County, in its sole and unfettered discretion shall be at liberty to withhold.

11.2 This Agreement is binding on the heirs, executors, successors and assigns of the parties hereto.

ARTICLE 12 - OTHER MISCELLANEOUS CLAUSES

12.1 The Developer may, at its sole expense:

- a) erect and maintain directional signs, safety signs, use of engine retarder brakes signs for the development without obtaining a separate development permit for the signs. The signs shall be removed by the Developer upon the expiry of the Development Permit. The signs shall comply with The Manual of Uniform Traffic Control Devices for Canada (MUTCDC), published by the Transportation Association of Canada (TAC).
- b) locate and construct a sales office within a Development Area without obtaining a separate development permit for that office. This office shall be removed by the Developer upon the expiry of the Development Permit.

IN WITNESS WHEREOF the parties hereto have affixed their corporate seals by the hands of their proper officers in that behalf the day and year first above written.

SMOKY LAKE COUNTY

\_\_\_\_\_  
Chief Administrative Officer

\_\_\_\_\_  
WITNESS

}

\_\_\_\_\_  
Registered Landowner

\_\_\_\_\_  
WITNESS

}

\_\_\_\_\_  
Agent / Developer (if Applicable)

AFFIDAVIT OF ATTESTATION OF AN INSTRUMENT
FORM 31
LAND TITLES ACT
SECTIONS 155 AND 156

CANADA ) I, \_\_\_\_\_,
PROVINCE OF ALBERTA ) of the Smoky Lake County,
TO WIT: ) in the Province of Alberta,
) MAKE OATH AND SAY:

- 1. THAT I was personally present and did see \_\_\_\_\_, named in the within instrument, on the basis of the identification provided to me, duly sign and execute the same for the purpose named therein;
2. THAT the instrument was executed at the Smoky Lake County, Alberta and that I am the subscribing witness thereto;
3. THAT I believe the person(s), whose signature(s) I witnessed, is (are) at least eighteen (18) years of age.

Sworn before me at the Smoky Lake County, in )
the Province of Alberta )
this \_\_\_ day of \_\_\_\_\_, 20\_\_ )
) \_\_\_\_\_
)
)
)
)
)
)
A Commissioner for Oaths in and for the )
Province of Alberta )

AFFIDAVIT OF EXECUTION

(\*\*Use only if not a Corporation signing under Seal.)

|                     |   |                             |
|---------------------|---|-----------------------------|
| CANADA              | ) | I, _____,                   |
| PROVINCE OF ALBERTA | ) | of the Smoky Lake County,   |
| TO WIT:             | ) | in the Province of Alberta, |
|                     | ) | MAKE OATH AND SAY:          |

4. THAT I was personally present and did see \_\_\_\_\_, named in the within instrument, on the basis of the identification provided to me, duly sign and execute the same for the purpose named therein;
5. THAT the instrument was executed at the Smoky Lake County, Alberta and that I am the subscribing witness thereto;
6. THAT I believe \_\_\_\_\_, whose signature(s) I witnessed, is/are at least eighteen (18) years of age.

|  |   |       |
|--|---|-------|
| Sworn before me at the Smoky Lake County, in | ) |       |
| the Province of Alberta                      | ) |       |
| this ____ day of _____, 20__                 | ) |       |
|  | ) | _____ |
| _____  | ) |       |
| A Commissioner for Oaths in and for the      | ) |       |
| Province of Alberta                          | ) |       |

SCHEDULE A – RECLAMATION PLAN  
DEVELOPMENT PERMIT \_\_\_\_-\_\_\_\_

(ATTACH COPY OF RECLAMATION PLAN)