Environmental Appeal Board

Citation: *DeVito, Round, & Save Simms Creek Society v. Water Manager*, 2026 BCEAB 33

Appeal No.: EAB-WSA-26-A001

Decision Date: 2026-08-18

Method of Hearing: Conducted by way of written submissions concluding on April 10, 2026

Decision Type: Preliminary Decision on Standing

Panel: James Carwana, Panel Chair

Appealed Under: *Water Sustainability Act*, SBC 2014, c.15

Between:

Doreen DeVito, Barbara Round, Save Simms Creek Society

Appellants

And:

Water Manager

Respondent

And:

1366243 BC Ltd. (a.k.a. Westurban Developments)

Third Party

Appearing on Behalf of the Parties:

For the Appellants: Benjamin Isitt, Counsel

For the Respondent: Livia Meret and Brian Blunt, Counsel

For the Third Party: L. John Alexander and Carly Haynes, Counsel

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PRELIMINARY DECISION ON STANDING

INTRODUCTION

[1] The Appellants have filed a Notice of Appeal dated January 6, 2026, regarding the Respondent's decision to issue a change approval[1] for changes in respect of wetlands on the property of the Third Party (the "Change Approval"). In subsequent correspondence, the Respondent challenged the standing of the Appellants to appeal the Respondent's decision and the Board subsequently requested submissions on the issue of standing.

[2] The Appellants Ms. Round and Ms. DeVito rely on ss. 105(1)(b) and (d) of the *WSA* for standing, and also say they satisfy the test for standing under ss. 13(1)(a)(iv) and (b) of the *WSA*. The Save the Simms Creek Society states that it is no longer pursuing this appeal as a corporate party and states that it is withdrawing as a party under s. 17(1) of the *Administrative Tribunals Act*, SBC 2004, c. 45 (the "*ATA*"). The Respondent and Third Party take the position Ms. Round and Ms. DeVito do not have standing to appeal the Change Approval.

BACKGROUND

[3] The property which is the subject of the Change Approval is located at 1650 Galerno Road in Campbell River (the "Subject Property"). The Subject Property is 6.85 hectares, or approximately 737,328 square feet, in size. Simms Creek runs along the southern portion of the Subject Property.

[4] The Subject Property is designated as "Neighbourhood" in the Official Community Plan of the City of Campbell River, which is a designation intended to accommodate housing. The Third Party has been working on a multifamily residential development for the Subject Property since 2022 and has been involved in various application processes with the City of Campbell River towards that end.

[5] The Subject Property contains five mapped ephemeral wetland areas relating to the Change Approval, which are situated at different locations within the Subject Property and are of various sizes. The wetlands themselves are described as shallow and not providing significant water retention or storage volumes. The seasonal hydroperiod for the Subject Property varies significantly depending on the time of year, with varying water levels throughout the year. The primary water input for the wetlands is surface runoff,

[1] A change approval is an authorization granted under section 11 of the *Water Sustainability Act*, S.B.C. 2014, c. 15 (the "*WSA*"), which allows changes to be made in and about a "stream" as defined in the *WSA*, which includes a wetland. Such changes are generally prohibited under the *WSA*, subject to certain exceptions (including change approvals).

particularly from storm water. There is significantly less water entering the wetland areas during drier periods and they experience dry conditions in the summer.

[6] The Change Approval involves authorizing the relocation of the ephemeral wetlands within the Subject Property by infilling them and creating two constructed, offset wetlands. The five ephemeral wetland areas are, collectively, approximately 962.1 square meters in size, and the new offset wetland areas will be approximately 1,050.4 meters in size.

[7] Doreen DeVito is the owner of property at 1780 Galerno Road in Campbell River (the "DeVito Property"). The DeVito Property is in a southeast location in relation to the Subject Property. It does not border on the Subject Property as it is separated from the Subject Property by municipally owned parkland, which the Appellants describe as "a narrow municipally owned linear parcel north of Ms. DeVito's parcel."

[8] Barbara Round is an owner of property at 1556 Stag Road in Campbell River (the "Round Property"). The Round Property is to the north of the Subject Property and while the Round Property borders one area of the Subject Property, it does not border the ephemeral wetlands which are located within the Subject Property. The new offset wetland areas to be created will be located further away from the Round Property within the Subject Property, as compared to their previous location, and further to the south of the Round Property.

[9] The Respondent submitted evidence of Land Title records searches regarding the DeVito Property and the Round Property, including subdivision plans and other land records. The results of such searches indicate:

> i) the boundary of the DeVito Property is a surveyed boundary that goes along the boundary of a dedicated park area (dedicated to the City of Campbell River);
>
> ii) the DeVito Property is not bounded by a natural boundary;
>
> iii) the DeVito Property is separated from the natural boundary for Simms Creek by the Park area; and
>
> iv) there is no natural boundary shown between the Round Property and the Subject Property.

Events Leading to the Change Approval

[10] In March 2024, a Senior Project Manager within the Ministry of Water, Land and Resource Stewardship (the "Ministry") contacted representatives of the Third Party as well as their Qualified Environmental Professional, Corvidae Environmental Consulting Inc. (the "QEP"), to advise them of the requirement to submit a Change Approval application under s. 11 of the *WSA* for the Third Party's proposed development on the Subject Property.

[11] On July 8, 2024, the QEP submitted a s. 11 Change Approval application on behalf of the Third Party (the "Original Application") along with supporting materials, and on September 13, 2024, the QEP submitted an update to the Original Application (hereafter, collectively, the "Application") along with further supporting materials.

[12] During the time frame both before and after the Original Application, staff from the Ministry had meetings with the Third Party and the QEP and conducted site visits at the Subject Property, first with staff of the QEP on May 29, 2024, and later with staff of both the Third Party and QEP on August 7, 2024.

[13] There was subsequent correspondence about the Application, and there were further meetings, between Ministry staff and the Third Party and/or its qualified professionals. In addition, there were consultations with First Nations and other agencies such as the City of Campbell River, wherein Ministry staff received further information regarding the Application.

[14] In processing the Application for the Change Approval, the Ministry received the technical information on behalf of the Third Party and their qualified professionals, including hydrological and geotechnical assessments. These involved:

- 'Section 11 Application Report, Wetland Delineation and Offsetting Design for [the Subject Property]', prepared by the QEP and dated July 8, 2024;
- 'Environmental Management Plan for Galerno Rd Offsetting Wetland Restoration', prepared by the QEP and dated December 5, 2024;
- the QEP's June 19, 2025, Summary of Notes replying to an email from Ministry staff; and
- 'Wetland Design Plan for [the Subject Property]', prepared by –the QEP and dated July 2025, which also attached technical reports and information, including:

    i. Appendix A - Photos;

    ii. Appendix B- McElhanney June 27, 2025 Technical Memo and Design Drawings reviewing the proposed stormwater management plan and the design to mimic the pre-development hydrological condition of the area and McElhanney Environmental Offsetting Design Drawing;

    iii. Appendix C - Ryzuk Geotechnical's Report Dated June 3, 2022 with their geotechnical investigation of the site related to the proposed development.

[15] In addition to the above, Ministry staff member Patricia Halinowski prepared a technical report relating to the proposed changes in respect of the wetland areas on the Subject Property (the "Technical Report"). Ms. Halinowski is an Authorizations Specialist in the Ministry's West Coast Natural Resource Region and is also designated as a Habitat Officer and a Water Officer under the *WSA*. The Technical Report sets out the inquiries made to various agencies, including the City of Campbell River, about the proposed work

involved with the Change Approval, and the responses received, including that the City of Campbell River had no objection to the work involved with the Change Approval.

[16] After considering all the technical information submitted on behalf of the Third Party and their qualified professionals, as well as the Technical Report prepared by Ms. Halinowski, the Respondent made the July 29, 2025 decision to grant the application and to issue the Change Approval to the Third Party, which authorized them to infill the unnamed ephemeral wetlands on the Subject Property and create two offset wetlands on the Subject Property. The Change Approval indicated that the changes are to be made in accordance with the terms and conditions described in the Change Approval itself as well as those terms and conditions in the cover letter of the same date addressed to the Third Party which accompanied the Change Approval. Such conditions include obtaining all the necessary permits from the City of Campbell River in relation to the approved work.

Events Leading to the Notice of Appeal and the Application

[17] Prior to March 30, 2025, Ms. Round was aware of a possible section 11 application relating to the Subject Property. On March 30, 2025, she emailed Ministry employee Randy Reid to inquire about such an application, as she had received information in that regard from a Freedom of Information request she had made.

[18] Ms. Round's email was forwarded to Ms. Halinowski for a response. On April 1, 2025, Ms. Halinowski emailed Ms. Round to indicate that a *WSA* Section 11 application had been submitted and was currently under review.

[19] The next correspondence from Ms. Round was an October 17, 2025, email to Ms. Halinowski. Ms. Round indicated she had received further information subsequent to March 30, 2025, realized she had missed Ms. Halinowski's April 1, 2025 email, and requested further information about the Subject Property. There were further emails with information and questions from Ms. Round, and on December 9, 2025, Ms. Halinowski responded to the questions asked and information presented by Ms. Round. In her response, Ms. Halinowski indicated that the section 11 application had been granted, and notice of the application had not been required to be given to Ms. Round.

[20] In the Appellants' Notice of Appeal, they state that the primary ground of their appeal is that the Water Manager erred in issuing the Change Approval as the application did not conform to the Ministry's own policies, guidelines, and recommendations for avoiding adverse impacts on riparian habitat, under the *Riparian Areas Protection Regulation*, B.C. Reg. 178/2019.

[21] In response to the Board's request to provide submissions regarding the standing of the Appellants, all parties have filed submissions setting out their positions in detail. In addition to their submissions, the Appellants have filed Affidavits from Ms. Round and Ms. DeVito with Land Title documents, videos and photographs. The Respondent has filed Affidavits from the Respondent, Ms. Halinowski, Tiffany King-Campbell (a paralegal), and

Chelsea Ulrich (a legal assistant), with the materials considered in respect of the Change Approval and evidence from Land Title documents. The Third Party has filed an Affidavit from Matthew Fitzgerald, a director of real estate and director of development for the Third Party who is familiar with the Subject Property and has visited it dozens of times.

ISSUES

[22] The issues to be addressed in this preliminary decision are as follows:

1. Do Ms. DeVito and Ms. Round, or either of them, have standing to appeal the Change Approval under section 105(1)(b) or(d) of the *WSA*?
2. Were Ms. DeVito and Ms. Round, or either of them, entitled to notice of the application for the Change Approval under section 13 of the *WSA*?

RELEVANT LEGISLATION

[23] The following portions of section 105 of the *WSA* are relevant to this appeal:

Appeals to appeal board

> 105 (1) Except as otherwise provided in this Act, an order resulting from an exercise of discretion of the comptroller, water manager or an engineer may be appealed to the appeal board by any of the following:
>
> ...
>
> (b) subject to subsection (2), an owner whose land is or is likely to be physically affected by the order;
>
> ...
>
> (d) the holder of an authorization, a riparian owner or an applicant for an authorization who considers that the holder's, owner's or applicant's rights are or will be prejudiced by the order.

[24] Section 13 of the *WSA* provides, in part, as follows:

Objections to applications and decision maker initiatives

13 (1) A decision maker must direct that an applicant for a licence, use approval or change approval, or for an amendment to any of them involving a change of works, give

notice of the application in accordance with section 117 [delivery and publication of documents and information] or the regulations to

> (a) any of the following whose rights the decision maker considers are likely to be detrimentally affected if the application is granted:
>
> ...
>
> (iv) a riparian owner, and
>
> (b) a land owner whose land is likely to be physically affected if the application is granted.

DISCUSSION AND ANALYSIS

1. Do the Appellants have standing to challenge the Change Approval?

Summary of the Appellants' Position

[25] The Appellants say the burden of proof is on an appellant to establish standing on a *prima facie* basis. They say this requires the appellant to show some evidence, beyond mere assertions but short of a balance of probabilities, demonstrating the appellant is entitled to standing in an appeal: *Gagne v. Sharpe*, 2014 BCSC 2077 ("*Gagne*"), at paragraph 58, and *Burnaby (City) v Environmental Appeal Board*, 2017 BCSC 2267, at paragraph 66. In that respect, the Appellants say the question of standing ought to be given a liberal interpretation and requiring them to demonstrate they have standing on the balance of probabilities is too rigorous a burden at this preliminary stage. The Appellants say the principles to be applied should be similar to those set out in *Gagne,* which dealt with whether a "person aggrieved" has standing under s. 100 of the *Environmental Management Act,* SBC 2003, c. 53.

[26] Turning to specific instances where the Board interpreted section 105(1)(d), the Appellants refer to *ʔakisq'nuk First Nation v Assistant Water Manager*, 2024 BCEAB 44 ("*ʔakisq'nuk First Nation*"), where the panel held that once an appellant has demonstrated they are a riparian owner, they need only subjectively establish that they consider their rights will be prejudiced by the order they seek to appeal. In terms of what a riparian owner is, the Appellants cite *Chief Kathi Dickie in her own right and on behalf of the members of the Fort Nelson First Nation v. Assistant Regional Water Manager*, 2012 BCEAB 17 ("*Chief Kathi Dickie*"), and say that the common law definition of a riparian owner is to be used such that a riparian owner "is a person who owns land through or past which a river runs."

[27] Regarding subsection 105(1)(b), the Appellants say an applicant must provide sufficient evidence to establish, on a *prima facie* basis, there is a reasonable likelihood of a physical effect to their land from the order sought to be appealed, referring to *Bruce Gibbons v. Assistant Water Manager*, 2018 BCEAB 10 ("*Gibbons*"). They further say it is the land itself which must be affected (rather than rights or entitlements relating to use of the land), and the test of whether the land "is or is likely to be" physically affected is an objective test.

[28] In applying the test for standing to the circumstances of the present case, the Appellants say they meet the requirements to establish standing.

[29] With respect to Ms. DeVito, the Appellants argue she is a riparian owner since Simms Creek runs past her property. The Appellants say Ms. DeVito considers her rights will be prejudiced by the Change Approval, since they say alteration of the wetlands involved will alter the hydrology of the Subject Property, which will then adversely impact the quantity and timing of water flow in Simms Creek, which will in turn heighten the risk to her property of adverse effects such as erosion, flooding, and slope failure. The Appellants also argue there are other adverse impacts on Ms. DeVito's rights as a riparian owner, including to her right to use and enjoy her land and to the economic value of her land. The Appellants further assert Ms. DeVito also satisfies the test for standing as a property owner under s. 105(1)(b) of the *WSA*.

[30] Regarding Ms. Round, the Appellants say Ms. Round is a landowner within the meaning of s. 105(1)(b) of the *WSA*. The Appellants argue there are reasonable grounds to conclude that her land is likely to be physically affected by the Change Approval because the wetlands on the Subject Property are approximately 24 feet from her property. They further say the Change Approval will heighten the risks of instability on her property due to a drawing down of the water table and the alteration of the wetland area in the immediate vicinity of her land.

[31] The Appellants say Ms. Round's property is located on a steep slope and within the City of Campbell River's Hazardous Conditions Development Permit Area under the City's Official Community Plan. The Appellants rely on the City's Steep Slopes Regulatory Update about the need to follow the City's requirements in relation to the area which states: "Any work on a steep slope has to follow the requirements of the Hazard [sic.] Conditions Development Permit Area in the City of Campbell River Official Community Plan. This includes work on/around the slope itself and all land within 20 metres of the crest and the toe of the slope (also known as the "buffer area")."

[32] Ms. Round submits the evidence she has tendered is sufficient to allow the Board to decide this preliminary issue, she should not have to submit expert evidence regarding the impact on her land, and access to justice considerations support granting her standing.

Summary of the Respondent's Position

[33] The Respondent notes that the burden of proof to establish standing is on the person seeking standing and the test to be met is that under s. 105 of the *WSA*.

[34] Regarding s. 105(1)(d), the Respondent says that a property must adjoin or abut a river, stream, or lake for it to be a riparian property, and cites the findings in *Chief Kathie Dickie* and *Mackenzie v Harken Towing Co. Ltd.*, 2025 BCSC 2493 (CanLII) ("*Mackenzie*") in support of that proposition. In *Mackenzie*, the BC Supreme Court at paragraph 56 specifically stated that a riparian property is one that adjoins a river, stream or lake, and quoted from a textbook on water law to the following effect:

> The owner of land adjoining a river, stream or lake has certain rights respecting the water therein whether or not he owns the bed.' These rights arise from his ownership of the bank, and from the Latin word for bank, *ripa*, they derive their name of riparian rights. The owner is similarly referred to as a riparian owner.

[35] Turning to s. 105(1)(b), the Respondent says the Appellants are required to establish on a *prima facie* basis that they are the owners of land that is or is likely to be physically affected by the Change Approval. In that respect, the Respondent asserts that the Appellants must provide sufficient evidence to convince the Board that their appeal is based on more than mere assertions.

[36] In applying the law to the facts, the Respondent says neither Ms. DeVito nor Ms. Round are riparian owners within the meaning of s. 105(1)(d) of the *WSA*. Contrary to Ms. DeVito's claim, the Respondent says she does not own land that abuts or adjoins the wetland areas on the Subject Property or to Simms Creek.

[37] The Respondent notes that it is the wetlands on the Subject Property which are the subject "stream" under the *WSA* and the subject of the Change Approval. In that respect, it is clear neither Ms. DeVito nor Ms. Round owns land that abuts or adjoins the wetlands.

[38] With respect to Simms Creek, the Respondent says the park area lies between the DeVito Property and Simms Creek and the *ripa*, or riparian land, is the city-owned park not the DeVito Property. The Respondent further points to the Land Title searches showing the boundary between the DeVito Property and the park area is a surveyed boundary, not a natural boundary. In terms of the Round Property, it is separated from Simms Creek by the Subject Property, and in any event the Respondent notes that Ms. Round has not claimed to be a riparian owner.

[39] Turning to section 105(1)(b), the Respondent says the wetlands are located entirely within the Subject Property so there is no obvious physical effect on the Appellants' properties. The Respondent says the Appellants have made mere assertions about physical effects on their properties and have not provided sufficient evidence of such physical effects in order to satisfy the test for standing.

[40] With respect to Ms. DeVito, the Respondent says her claims of heightened risks to her property from matters such as erosion or slope failure are purely speculative and are without an adequate, or any, evidentiary basis. The Respondent further says that the speculative effects put forward of any such matters would relate to the park land bordering Simms Creek and not to Ms. DeVito's property. The Respondent notes that Ms. DeVito did not have an evidentiary basis for her appeal when she filed it, and her appeal was based only on information from Ms. Round. In terms of the allegations about the economic value of Ms. DeVito's property, the Respondent says that such claims have not been considered as a physical effect under the s. 105 of the *WSA*.

[41] With respect to Ms. Round, the Respondent notes that while the Appellants refer to the City of Campbell River's Hazardous Conditions Development Permit Area, they have not established where the steep slope is located or where it is in comparison to the wetland. Although the Appellants also allege there will be a heightened risks of slope failure and instability on Ms. Round's property as a result of the Change Approval, the Respondent notes that the Technical Report prepared by Ministry staff includes the summary of referrals to two staff members of the City of Campbell River. Both referrals make no mention of concerns with respect to the steep slope issues referenced by Ms. Round, and note no objections were received from the City regarding the wetland infill and compensation work.

Summary of the Third Party's Position

[42] The Third Party agrees with the Respondent's arguments on the law.

[43] Regarding section 105(1)(d), the Third Party says that neither of the Appellants are riparian owners. The Third Party says that to be a riparian owner, the surface of one's land must be in contact with a natural watercourse or body of water, and neither the DeVito Property nor the Round Property meet that requirement. Specifically in terms of Ms. DeVito's property, the Third Party argues the existence of the dedicated park between her property and the Subject Property, as indicated on the land title documents and the map attached to Ms. DeVito's Affidavit, is entirely determinative of this point.

[44] Regarding section 105(1)(b), the Third Party says that the question of whether land "is or is likely to be" physically affected is an objective test. It is an appellant's land which must be physically affected, and it must be affected by the appealed decision. In other words, it is the appealed decision which must be shown to be the cause of such physical effect and not, for example, matters relating to the City of Campbell River bylaws which regulate many of the Appellants' concerns, including slope failure and erosion. In that regard, the Third Party argues the Appellants must provide sufficient evidence to establish, on a *prima facie* basis, there is a reasonable likelihood of physical impact on their properties due to the Change Approval and asserts the Appellants have not offered any explanation regarding the manner in which the appealed decision will likely cause their land to be physically impacted.

[45] The Third Party argues there will be no physical effect on the DeVito Property as no new water will be added to or removed from Simms Creek and the Third Party will not be undertaking any alterations anywhere near the Simms Creek stream channel itself. With respect to Ms. Round's property, the Third Party says her property will not be physically affected by the wetlands work since there will be no change in the water flow in the vicinity of the slope below the Round Property, and no water will be permanently subtracted or added to the Subject Property.

[46] Regarding the assertions about the Round Property being within the City of Campbell River's Hazardous Conditions Development Permit Area and the attendant potential of slope failure, the Third Party notes permits will be required relating to steep slope and environmental development matters in accordance with the guidelines in the City of Campbell River Official Plan. The Third Party further notes the City of Campbell River Works and Services Bylaw #3948/2024, adopted in June 2024, will regulate all aspects of slope stability and drainage control associated with the proposed development, including the incorporation of design criteria which will require that there to be no impact on any slope stability in relation to the Round Property.

[47] In conclusion, the Third Party argues that the Appellants concerns are outside of the scope of the Water Manager's jurisdiction and it is the City of Campbell River bylaws which regulate many of the issues that give rise to the Appellants' concerns, including slope failure, erosion, and post development flows, all of which are irrelevant to the Change Approval and are beyond the Board's jurisdiction.

Summary of the Appellants' Reply

[48] The Appellants say their submissions and evidence set out reasonable concerns describing how their lands will likely be affected by the Change Approval and rely on the Board's reasons in *Joanne McClusky v. Assistant Regional Water Manager,* 2005 BCEAB 19, to indicate that this is sufficient to satisfy the preliminary issue of standing in this proceeding.

[49] Regarding the DeVito Property, the Appellants say Ms. DeVito's understanding of the physical characteristics of her land is that her northerly property boundary overlaps the right bank (the *ripa*) of Simms Creek, firmly establishing her as a riparian owner within the common law definition. The Appellants take issue with the evidence from the Land Title records and say it is not based on a site visit or the actual physical characteristics of the park area. The Appellants argue that the legal test on this preliminary issue of standing is the low bar of establishing a *prima facie* case, which is below the balance of probabilities standard, and assert that they have met that test.

[50] Regarding the Round Property, the Appellants say there will be adverse physical effects on the Round Property due to the infilling of the wetlands, including physical effects on the steep slope and the heightened risk of slope failure. The Appellants note that Ms. Round deposes the wetlands slated for infilling and removal are only 24 feet from

her property line, and much closer to the toe of the steep slope. They further say that Ministry reviewers identified deficiencies in the accuracy of the Third Party's mapping and delineation of the wetland boundaries and features in the Third Party's initial application materials, and say that the wetlands may be considerably closer to the Round Property than the maps suggest.

[51] The Appellants assert the Respondent failed to consider that the new wetland area, which they identify as located a considerable distance southeast of the Round Property, does not compensate for adverse physical effects on the Round Property, and say the Respondent erred in failing to consider the adverse physical effects from infilling the five wetland areas on the Subject Property.

Panel's Findings

[52] I begin with the notice received from the Appellants about the withdrawal of the appeal by the Save the Simms Creek Society. The Board's Manual at paragraph 15.0 provides:

> According to section 17(1) of the Administrative Tribunals Act, once the appellant advises the Board that all or part of the appeal is withdrawn, the Board must accept it and order that all or part of the appeal is, accordingly, dismissed.

[53] Thus, in accordance with s. 17(1) of the *ATA*, I order that the appeal by the Save the Simms Creek Society is dismissed.

[54] I turn now to the appeals by Ms. DeVito and Ms. Round. In examining the claims for standing by Ms. DeVito and Ms. Round, I will apply the following legal principles:

- The burden of proof to establish standing is on an applicant (*Gagne*, at para. 58 and *O'Toole v. British Columbia (Director, Environmental Management Act)*, 2017 BCEAB 8 ("*O'Toole*") at paras 73-76).
- Under section 105(1)(d) of the *WSA*, an appellant must be a "riparian owner," established on an objective basis.
- In order for an individual to be a "riparian owner", the property that person owns must adjoin or abut the body of water involved, as set out in the common law (*Mackenzie*, at paragraph 56). In other words, being a riparian property owner in general does not grant general standing to appeal orders under the *WSA*, and the property of the riparian owner must be riparian to the body of water that is the subject of the appealed order in order to appeal the order under section 105(1)(d) of the *WSA*.
- A riparian owner under section 105(1)(d) of the *WSA* need only show that they consider that their rights will be prejudiced in order to qualify for standing and,

in that regard, the test has a subjective element (*ʔakisq'nuk First Nation*, para. 51).

- Section 105(1)(b) of the *WSA* provides that an applicant must be an owner of land.
- To establish standing under section 105(1)(b), an applicant need not provide definitive proof that their land is, or is likely to be, physically affected by the order sought to be appealed, but must provide sufficient evidence to establish, on a *prima facie* basis, that their land is likely to be physically affected by the order they seek to appeal.
- The test under section 105(1)(b) is not that there may be a physical effect to the appellant's land, but that the appellant's land "is likely to be physically affected by the order." Thus, even on a *prima facie* standard, the burden is on a person seeking standing to disclose sufficient evidence to allow the Board to reasonably conclude, on an objective basis, that the appellant's land is or, in the future, is likely to be, physically affected. Such evidence must be beyond mere assertions, but short of proof on a balance of probabilities.
- The effects of a decision on an appellant's land must be physical in nature as set out in section 105(1)(b). Assertions pertaining to economic effects or other intangible implications of a decision are insufficient, even on a *prima facie* basis, to establish an individual has standing under section 105(1)(b) of the *WSA*.

[55] In examining the Appellants' submissions as previously set out, I have considered the relevant evidence presented by all the parties which pertains to the physical relationship between the DeVito and Round Properties, the wetlands, and the Subject Property. I accept the evidence in the affidavit of Matthew Fitzgerald, filed on behalf of the Third Party, pertaining to the physical relationship between the DeVito and Round Properties with the Subject Property, the wetlands, the park in the area, and Simms Creek, as well as his evidence regarding the nature and size of the wetlands. Mr. Fitzgerald is familiar with the Subject Property, has visited it dozens of times, has been the director of real estate and director of development for the Third Party since 2021, and has experience working as a planner with the City of Campbell River.

The DeVito Property

[56] To begin, I find Ms. DeVito is not a riparian owner under section 105(1)(d) of the *WSA* with respect to the wetlands which are the subject of the Change Approval. The DeVito Property does not abut or adjoin the wetlands, nor will the planned offset wetlands abut or adjoin the DeVito Property. As previously set out, a riparian property must be riparian in respect of the body of water that is the subject of the appealed order under the *WSA*.

[57] Having said that, as the Appellants assert Simms Creek will be affected by the Change Approval, I will nevertheless consider whether the DeVito Property is riparian with regard to Simms Creek. In that respect, I find that the DeVito Property is not riparian for the following reasons:

i) I accept the evidence from the Land Title searches conducted on behalf of the Respondent which indicate that:

   (a) the boundary of the DeVito Property is a surveyed boundary that goes along the boundary of a dedicated park area (dedicated to the City of Campbell River);

   (b) the DeVito Property is not bounded by a natural boundary; and

   (c) the DeVito Property is separated from Simms Creek by the park area and does not abut or adjoin Simms Creek.

ii) I find from an examination of the parcel map BC search, which is attached as Exhibit B to the affidavit of Ms. DeVito, that it shows parkland north of the DeVito Property between Simms Creek and the DeVito Property, such that there is parkland separating the DeVito Property and Simms Creek.

[58] Thus, I find the test under section 105(1)(d), relied upon by the Appellants in respect of the DeVito Property, does not apply and I find Ms. DeVito does not have standing under section 105(1)(d) of the *WSA*.

[59] In terms of the test under section 105(1)(b), I find it has not been established, on a *prima facie* basis, that the DeVito Property is or is likely to be physically affected by the Change Approval. I agree with the Respondent and Third Party that Ms. DeVito's claims of heightened risks to her property from matters such as erosion or slope failure are simply assertions made without an adequate evidentiary basis to support them.

[60] I find that the Appellants' claim is that there will be an indirect effect on the DeVito Property due to the wetlands' relocation. The Appellants' argument is not that the wetlands' relocation will directly affect the DeVito Property, but that the wetlands relocation will allegedly affect the hydrology of the Subject Property, which will then allegedly affect Simms Creek, which will then allegedly cause adverse physical effects to the DeVito Property. However, I find there is an insufficient basis to infer that the hydrology of the Subject Property will be affected with all of the work being done to maintain post-development flows to pre-development conditions, or that there will subsequently be a cascade of causation affecting Simms Creek and the DeVito Property. I find the Appellants' claim in respect of the DeVito Property to be remote and speculative and find that the Appellants have not provided sufficient evidence to establish, on a *prima facie* basis, that the DeVito Property is likely to be physically affected by the Change Approval as set out in section 105(1)(b) of the *WSA*.

[61] In terms of the allegations about the economic value of the DeVito Property, I agree with the Respondent that such claims are not physical effects under section

105(1)(b) of the *WSA* and therefore do not provide for standing under section 105(1)(b) of the *WSA*, even if there was sufficient evidence for such claims.

[62] Thus, I find that Ms. DeVito does not have standing to appeal the Change Approval under section 105(1)(b) of the *WSA*.

The Round Property

[63] The Appellants' assert Ms. Round has standing under section 105(1)(b) of the *WSA*. In that respect, I find the Appellants' arguments as to how the Round Property is likely to be physically affected by the Change Approval may be summarized as follows:

i) the location of part of the current wetlands is approximately 24 feet away from the property boundary of the Round Property, and the Change Approval would adversely affect the Round Property because it is alleged changes in the water table of the wetlands would affect the Round Property;

ii) the new offset wetlands do not compensate for the adverse effects from infilling the current wetlands because the new wetlands are located a considerable distance from the Round Property;

iii) there were deficiencies noted in the accuracy of the original mapping and delineation of the wetland areas by those on behalf of the Third Party, which may affect the accuracy of the wetlands measurements; and

iv) the Round Property and the wetlands are within the municipally-regulated City of Campbell River Hazardous Conditions Permit Area, and infilling the wetlands could lead to the risk of slope failure which could affect the Round Property.

[64] I will review each of these arguments in turn.

[65] Dealing with the first argument regarding the location of the wetlands in relation to the Round Property and the alleged effect on the water table, I find the wetlands are located in five separate areas of the Subject Property, some of which are a significant distance from the Round Property. In that respect, I find that the measurements relied upon by the Appellants for the distance from the Round Property boundary to the wetlands are not applicable to all the wetland areas. There is, however, one relatively small area of the wetlands south of the Round Property consisting of two small wetland depressions which are of shallow depth and appear to be located at or about the location put forward by Ms. Round. The total of both portions of this small wetland area is approximately 85 square meters or 915 square feet in size, constituting less than 10% of the wetlands area, and is a very small portion of the entire Subject Property. I further accept the evidence describing this area as not naturally formed and that the water level in these wetlands changes significantly depending on the season.

[66] In terms of the alleged effect of changes in the water table due to the approved work, I find that the Appellants have not provided sufficient evidence to establish, on a

prima facie basis, that there are likely to be physical effects on the Round Property resultant from work authorized by the Change Approval due to the location of that small wetland area (or any of the other wetland areas), and the effect, if any, on the water table. I find this for three reasons.

[67] First, I find the Appellants have not provided sufficient evidence to establish, on a *prima facie* basis, that the wetlands and their location are currently affecting the Round Property from which to infer the Round Property is likely to be physically affected by the Change Approval.

[68] Second, the work authorized by the Change Approval requires that the necessary permits from other agencies concerned be in place prior to the commencement of such work. The evidence indicates that the City of Campbell River has a form of development permit and environmental permit that need to be approved prior to any land alteration or development occurring on the site, including the wetland infill work, as well as municipal regulations relating to geotechnical and slope stability matters. In the circumstances, I find there is an insufficient basis to infer that there will likely be any physical effects on the Round Property due to an alleged effect on the water table, or otherwise, resultant from the location of the wetlands and the work authorized by the Change Approval.

[69] Third, as previously noted, the wetland areas are ephemeral, and experience dry conditions in the summer, with varying degrees of water in the spring, late fall, and winter. The evidence does not establish that the water level changes which have been occurring in the wetlands throughout the year, and the corresponding dry conditions, have affected the Round Property. Although the Appellants allege a risk of slope failure and instability due to drawing down the water table, they have not provided sufficient evidence to support that the variations in the water table which have been occurring, and particularly with the dry conditions experienced by the wetlands in summer, have had such effects. I find the allegations by the Appellants that there will be changes to water table which will affect the Round Property are mere assertions, and do not establish, on a *prima facie* basis, a likely physical effect on the Round Property.

[70] The second argument regarding the Round Property relates to the Appellants' allegation that the new wetlands and their design will not compensate for or alleviate the physical effects on the Round Property from infilling the current wetlands. I find there is insufficient evidence to support such an assertion, and further find there is an insufficient basis to infer such physical effects on the Round Property are likely as the evidence presented establishes that significant steps have been taken to ensure that moving the wetlands within the Subject Property, and the related infilling, will not be destabilizing and will not produce adverse effects on the Round Property. The hydrological systems in relation to the new wetlands are designed to mimic the hydrological conditions present before the changes authorized by the Change Approval are made and are further designed to appropriately regulate the flow of water into the offset wetlands. Again, I find the Appellants have not established, on a *prima facie* basis, that the Round Property will be, or is likely to be, physically affected by the Change Approval.

[71] The third argument is based on the Appellants' allegation about deficiencies in the accuracy of the Third Party's mapping and delineation of the wetlands in the Third Party's original wetland design plan. I find that staff from the Ministry verified the area of the delineated wetlands and confirmed their boundaries with site visits after reviewing the mapping at issue. I also accept the evidence in Mr. Fitzgerald's affidavit setting out the size and location of the wetlands. I therefore conclude that the Appellants have not provided sufficient evidence to support this argument.

[72] The fourth argument relates to the Appellants' concern that the Round Property is within the municipally-regulated City of Campbell River Hazardous Conditions Permit Area and there is a risk of slope failure which could affect the Round Property as a result. In the present case, the work at issue is the work authorized under the Change Approval and the question is whether such work is likely to affect the Round Property. Under the *WSA*, the Appellants must therefore provide sufficient evidence, on a *prima facie* basis, that it is the changes relating to the wetlands authorized under the Change Approval which will likely result in physical effects on the Round Property.

[73] In considering this matter I note that work in this area is not prohibited, but is allowed as long as the requirements of the City of Campbell River are followed for such work. I find it cannot be inferred that such work will not meet the requirements of the City of Campbell River for work in the area, and in the present case, the work authorized under the Change Approval requires compliance with the local bylaws and obtaining the required permits before the work can begin. This would include meeting the requirements of the City of Campbell River and obtaining permits from the City for work within the City of Campbell River Hazardous Conditions Permit Area regarding geotechnical and slope stability matters.

[74] In the circumstances, I find there is not a sufficient basis to infer that there will likely be a physical effect on the Round Property due to the area of the work authorized by the Change Approval. I further find sufficient evidence is required, on a *prima facie* basis, to support the Appellants' argument that the location of the City of Campbell River Hazardous Conditions Permit Area means there is, or there is likely to be, an adverse physical effect on the Round Property and that such evidence has not been provided.

[75] Thus, for the reasons set out, I find the Appellants have not provided sufficient evidence, on a *prima facie* basis, that there are likely to be physical effects on the Round Property resultant from the work authorized by the Change Approval and the Appellants have not satisfied the test for standing under section 105(1)(b) of the *WSA* in respect of the Round Property.

[76] In addition to the above submissions of the Appellants, reference is also made to the *Riparian Areas Protection Regulation* in their Notice of Appeal. With respect to matters covered under that *Regulation*, it is the local government which supervises riparian development approval and the evidence indicates that the Third Party has been involved in submitting a riparian assessment report to the City of Campbell River regarding its

development proposal. While the *Riparian Areas Protection Regulation* regulates some matters within the riparian areas of a stream, it is not relevant to a determination whether an individual, who is not a riparian owner under section 105(1)(d) of the *WSA* or a landowner falling under section 105(1)(b) of the *WSA*, has standing under the *WSA* to appeal a decision.

[77] While I recognize that access to justice is an important consideration, so is the legislation governing the Board. In that respect, the BC Supreme Court in *Gagne* at paragraph 77 recognized the "Board's jurisdiction is limited by the terms of its enabling legislation and it can only grant standing to a person falling within the terms of its governing legislation." Further on that point, the Court also stated at paragraph 77 "that the Board is different from a court because as a creature of statute it has no inherent jurisdiction to grant standing to persons or groups on either a public interest or genuine interest basis."

[78] Regarding the authorities cited by the Appellants in cases where the standing was based on wording dealing with a "person aggrieved" under the *Environmental Management Act*, I find the jurisdictional tests under section 105(1)(b) and (d) of the *WSA* to be different, and section 105(1)(b) in particular to be of narrower scope than the "person aggrieved" test. The section 105(1)(b) test relates only to the property of the applicant for standing, requires physical effects to the property, and requires it "likely" that the property be physically affected by the order.

2. Were Ms. DeVito and Ms. Round entitled to notice of the application for the Change Approval under section 13 of the *WSA*?

[79] The Appellants argue Ms. DeVito and Ms. Round fall within the class of persons who must be given notice of a change approval under ss. 13(1)(a)(iv) and (b) of the *WSA* due to their property rights as previously described. They therefore argue the Water Manager breached the duty owned to Ms. DeVito and Ms. Round to give them notice of the Third Party's Change Approval application.

[80] The Respondent argues Section 105 of the *WSA* mirrors the objector classes in s. 13 of the *WSA*. Accordingly, since none of the Appellants are entitled to standing to appeal under s. 105 of the *WSA*, the Respondent says the Appellants were also not entitled to notice or standing under section 13.

[81] In their Reply, the Appellants assert that the Respondent's failure to provide notification to Ms. Round under s. 13 of the *WSA* was unreasonable in light of all of the issues involved with the Round Property.

[82] I agree with the Respondent that the relevant criteria for standing under section 13 of the *WSA* mirror those under section 105 of the *WSA*. Having found that the Appellants are not entitled to standing under section 105, I find there was no error in not providing them with notice under section 13 of the *WSA*.

DECISION

[83] I find the Appellants do not have standing to appeal the Change Approval under section 105(1)(b) or (d) of the *WSA* and were not entitled to notice under s. 13 of the *WSA*. After having granted them the opportunity to make submissions on these issues and having found them to lack the standing to have appealed, I dismiss the appeal under section 31(1)(a) of the *ATA*.

[84] In reaching my decision, I have considered all of the submissions and relevant evidence provided by the parties, whether specifically referenced in my reasons or not.

"James Carwana"

James Carwana, Panel Chair
Environmental Appeal Board