



L A W Y E R S L L P

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*The Environmental Protection and
Enhancement Act: A Practical
Assessment of the EPEA, the
Municipal Government Act and the
Impact on Municipalities*

Alberta Municipalities Risk
Conference - May 2, 2025

The Environmental Protection and *Enhancement Act*, RSA 2000, c E-12 (the *EPEA*)

- Section 2: The Purpose of the Act
 - To support and promote the protection, enhancement and wise use of the environment, while recognizing:
 - Protection of the environment is essential to the integrity of ecosystems, human health, and the well-being of society
 - The need for Alberta's economic growth and prosperity in an environmentally responsible manner
 - The principle of sustainable development...



The Environmental Protection and Enhancement Act, RSA 2000, c E-12 (the EPEA)

- ▶ Section 1 (t): Definition of “environment”
- ▶ The components of the earth, including:
 - ▶ Air, land, and water;
 - ▶ All layers of the atmosphere
 - ▶ All organic and inorganic matter and living organisms
 - ▶ The interacting natural systems that include components referred to above



Rights and Responsibilities of Local Authorities under the *EPEA*

► “Local Authority” means (s. 1 (jj)):

- The corporation of a city, town, village, summer village, municipal district or specialized municipality;
- In the case of an improvement district, the Minister responsible for the Municipal Government Act (the “MGA”);
- A regional services commission under Part 15.1 of the MGA;
- A growth management board under Part 17.1 of the MGA

Rights and Responsibilities of Local Authorities under the *EPEA*

► Transfer of Administration (s. 18)

- The Minister may...transfer the administration of a provision of this Act to any person and may specify the terms and conditions under which, and subject to which, the transfer is made;
- Where the administration of a provision of this Act has been transferred to another person...and in the Minister's opinion that person is not properly administering the provision, the Minister may, after serving written notice on the person, cause any other person designated by the Minister to administer the provision.

► Local authority inspectors and Investigators (s. 27)

- Each local authority shall designate a sufficient number of inspectors and investigators to carry out the administration of provisions of this Act that are transferred to it...



Specific Implications for Local Authorities

- ▶ Waste on land owned by a local authority (s. 180)
- ▶ Environmental protection order to clean up unsightly property (s. 183)
- ▶ Liability of local authority for costs of cleaning up (s. 184)
- ▶ Collection of expenses as taxes (s. 185)
- ▶ Review of environmental protection order to clean up (s.186)
- ▶ Protection from liability (s. 220)
- ▶ Liability of public officials (s. 233)

A close-up photograph of a person's hand holding a green plastic bottle with a blue cap, positioned over a yellow recycling bin. The bottle is covered in condensation droplets. The background is a blurred green, suggesting an outdoor setting. The image is part of a presentation slide with a green geometric design on the right side.

Specific Obligations - Waste on Land Owned by a Local Authority (s. 180)

- ▶ No person shall dispose of waste on any land owned or administered by a local authority except:
- ▶ At a waste management facility constructed and operated in accordance with the Act
- ▶ Through a refuse disposal system established by a local authority
- ▶ In a container placed for the purpose of collecting waste
- ▶ By burning the waste:
 - ▶ In accordance with a permit, license or other consent issued by a local authority, or
 - ▶ Pursuant to an approval or registration under the Act
- ▶ Or
 - ▶ In any other manner specified in the regulations

Specific Obligations – Environmental Protection Order (s. 183)

- If an inspector or investigator considers any property when viewed from a highway to be unsightly property, the inspector or investigator may issue an environmental protection order to clean up the unsightly property.
- The environmental protection order shall be directed to the registered owner or the person in control of the subject property.
- The order may require the person to whom it is directed to do any or all of the following within a period of time specified in the order, which must not be more than 60 days from the date of the making of the order:
 - Remedy the condition of the property as directed in the order
 - Demolish or remove any waste causing or contributing to the unsightliness of the property
 - Construct anything to prevent the property from being visible from a highway
 - Do any other thing to remedy the unsightliness of the property



Specific Obligations - Liability of Local Authority for Clean-up Costs (s. 184)

- ▶ When an environmental protection order is issued in respect of land located in a municipality, and the person to whom it is directed fails to comply with the order, the Director may direct the local authority of that municipality to perform any work required under the order.
- ▶ When expenses are incurred by a local authority for any work required as above, the local authority may serve a statement of the expenses, together with a demand for payment to the registered owner of the land, and on the occupant if the land is occupied.
- ▶ A copy of the statement of expenses and demand for payment shall be served on the council of a local authority in a case where the local authority is a city, town, village, summer village or municipal district or a settlement under the *Metis Settlements Act*.

Specific Obligations – Collection of Expenses as Taxes (s. 185)

- If the person on whom the statement of expenses and demand for payment are served fails to pay the amount set out in the statement within 30 days, the local authority may cause the amount paid by it to be placed on the tax roll as an additional tax against the land concerned and the amount may be collected in the same manner as taxes are collected.

Specific Obligations – Review of Environmental Protection Order (s. 186)

- Where an environmental protection order is issued under s. 183, the person to whom the order is directed may submit a request to the local authority of the municipality in which the property is located for a review of the order.
- A request for review must be made in writing within 21 days after the requestor receives the order.
- A request for review shall be heard by a committee appointed by
 - ...the counsel of the local authority where the land concerned is located in a municipality...this committee must include at least one elected member of the council
- The committee may confirm, rescind, or vary the order reviewed.

Specific Obligations - Protection from Liability (s. 220)

- ▶ No action for damages may be commenced against:
 - ▶ A person who is an employee, agent, or is under contract to the Government / Government agency
 - ▶ A person designated as an inspector or investigator
 - ▶ A person to whom the Minister has delegated a power, duty, or function under this Act
 - ▶ Any person...to whom the administration of a provision of this act has been transferred
 - ▶ A member of the Environmental Appeals Board
 - ▶ For anything done or not done by that person in good faith while carrying out that person's duties or exercising that person's powers under this Act including, without limitation, any failure to do something when that person has discretionary authority to do something but does not do it.



Specific Obligations – Liability of Public Officials (s. 233)

- ▶ Where a person who is acting under the direction of
 - ▶ A Minister of the Government
 - ▶ An official of the Government
 - ▶ A member of a council of a local authority, or
- ▶ The CAO or designated officer of a local authority

Commits an offence under this Act, that Minister, official, council member, or officer is also guilty of the offence and is liable for the punishment provided for the offence, if that person knew or ought reasonably to have known of the circumstances that constituted the commission of the offence...

- ▶ No person shall be convicted of an offence as detailed above if that person establishes on the balance of probabilities that the person took all reasonable steps to prevent the commission of the offence.

Environmental Assessments

Mandatory Activities, Exempted Activities, and Process

Environmental Assessments – Purpose

(s. 40) The purpose of the environmental assessment process is:

- To support the goals of environmental protection and sustainable development
- To integrate environmental protection and economic decisions at the earliest stages of planning an activity
- To predict the environmental, social, economic and cultural consequences of a proposed activity, and to assess plans to mitigate any adverse impacts
- To provide for the involvement of the public, proponents, the Government and Government agencies in the review of proposed activities



Environmental Assessment (Mandatory and Exempted Activities) Regulation, Alta Reg. 111/1993

- ▶ Schedule 1 – Mandatory Activities (i.e. Activities requiring an Environmental Assessment)
- ▶ Schedule 2 – Exempted Activities (i.e. Activities not requiring an Environmental Assessment)
- ▶ All other activities are discretionary – meaning the Minister can order an Environmental Assessment depending on the circumstances and purposes of the Assessments

Environmental Assessments – Mandatory Activities (Schedule 1)

The construction, operation, or reclamation of...

- A pulp, paper, newsprint, or recycled fibre mill with a capacity of more than 100 tonnes per day;
- A quarry producing more than 45 000 tonnes per year;
- A dam greater than 15 metres in height when measured to the top of the dam
 - From the natural bed of the watercourse at the downstream toe of the dam, in the case of a dam across a watercourse, or
 - From the lowest elevation at the outside limit of the dam, in the case of a dam that is not across a watercourse;
- A water diversion structure and canals with a capacity greater than 15 cubic metres per second;
- A water reservoir with a capacity greater than 30 million cubic metres;
- A tourism facility that is expected to attract more than 250 000 visitors per year and will be immediately adjacent to an ecological reserve, a natural area or a wilderness area under the *Wilderness Areas, Ecological Reserves and Natural Areas Act*;
- A surface coal mine producing more than 45 000 tonnes per year;
- A coal processing plant within the meaning of the Coal Conservation Act;
- An oil sands mine;
- A commercial oil sands, heavy oil extraction, upgrading or processing plant producing more than 2000 cubic metres of crude bitumen or its derivatives per day;
- A thermal electrical power generating plant that uses non-gaseous fuel and has a capacity of 100 megawatts or greater;
- A hydroelectric power generating plant with a capacity of 100 megawatts or greater;

Environmental Assessments – Mandatory Activities (Schedule 1)

The construction, operation, or reclamation of...

- an oil refinery;
- An ethylene or ethylene derivative manufacturing plant;
- A benzene, ethyl benzene or styrene manufacturing plant;
- A sour gas processing plant that emits more than 2.8 tonnes of sulphur per day;
- A chlor-alkali manufacturing plant;
- A vinyl chloride or polyvinyl chloride manufacturing plant as defined in the *Air Emissions Regulation*;
- A formaldehyde manufacturing plant;
- A pesticide manufacturing plant;
- An explosives manufacturing plant;
- A cement or lime plant;
- A chemical fertilizer manufacturing plant;
- A steel mill with a coke oven;
- A hazardous waste incinerator that accepts hazardous waste from an off-site source;
- A landfill that accepts hazardous waste from an off-site source.

Environmental Assessments – Exempted Activities (Schedule 2)

The construction, operation, or reclamation of...

- A sweet gas processing plant that emits less than 384 kilograms of oxides of nitrogen per day;
- A plant, structure or thing
 - For the manufacture of ready-mixed concrete;
 - For the manufacture of containers as primary metal or metal products;
 - For the manufacture of tools or hardware as primary metal or metal products;
 - For the manufacture or processing of secondary food products, beverages or animal by-products;
 - For seed cleaning or forage drying;
 - For the manufacture of furniture, cabinets, structure members, boxes, pallets or containers from wood;
- A waterworks system that is subject to the Potable Water Regulation or a wastewater system that is subject to the Wastewater and Storm Drainage Regulation;
- A subsurface sewage disposal system;
- A pipeline with a length in kilometres times diameter in millimetres resulting in an index number of less than 2690;
- A transmission line;
- A sand, gravel, clay or marl pit that is less than 2 hectares (5 acres) in size;

Environmental Assessments – Exempted Activities (Schedule 2)

- The widening or realignment of an existing highway;
- The drilling or reclamation of a water well;
- The drilling or reclamation of a water observation well or monitoring borehole;
- The drilling, construction, operation or reclamation of an oil or gas well;
- The construction, operation or reclamation of a day use recreation site and associated facilities, a campground, a facility for the interpretation and study of the environment, a downhill skiing facility or a combined downhill and cross country skiing facility in a non-mountainous area;
- The maintenance and rehabilitation of a water management project, including a dyke, dam, weir, floodgate, breakwater, drain, groyne, ditch, basin, reservoir, canal, tunnel, bridge, culvert, crib, embankment, headwork, fishway, flume, aqueduct, pipe, pump or measuring weir;
- The construction, operation or reclamation of a plant, structure or thing for the generating of wind electric power or solar electric power, with a total nominal capacity not exceeding 1 megawatt.

Environmental Assessments – Discretionary Requirements (s. 41 *EPEA*)

- Where any Director is of the opinion that the potential environmental impacts of a proposed activity warrant further consideration under the environmental assessment process, that Director may refer the proponent or the proposed activity to the Director who is designated for the purposes of sections 43 to 56 so that the proposed activity may be dealt with under section 44.

Environmental Assessments – The Process

- Initial Review by Director (s. 44)
- Whether Environmental Impact Assessment Report required (s. 45)
- Effect of a Statement of Concern (s. 46)
- Minister Ability to Order an Environmental Impact Assessment Report (s. 47)
- Terms of Reference (s. 48)
- Contents of an Environmental Impact Assessment Report (s. 49)
- Submission of Report (s. 50)
- Provision of Further Information (s. 51)
- Publication of Environmental Impact Assessment Report (s. 52)
- Powers of the Director (s. 53)
- Powers of the Minister (ss. 54 – 55)
- Register of Environmental Assessment Information (s. 56)
- Inter-jurisdictional agreements re: Environmental Assessment (s. 57)

Environmental Assessments – Initial Review by Director (s. 44)

- ▶ Where a proponent or proposed activity is referred to the Director...the Director shall:
 - ▶ If the proposed activity is a mandatory activity, direct the proponent...to prepare and submit an environmental impact assessment report...or
 - ▶ If the proposed activity is not a mandatory activity,
 - ▶ Make a decision that the potential environmental impacts of the proposed activity warrant further consideration under the environmental assessment process and require that further assessment of the proposed activity be undertaken, or
 - ▶ Make a decision that further assessment of the proposed activity is not required and, if it is an activity for which an approval or registration is required, advise the proponent that it may apply for the approval or registration.
- ▶ The Director may require a proponent to submit a disclosure document in the form and containing the information required by the Director to assist the Director in making a decision.

Environmental Assessments – Initial Review by Director (s. 44)

- ▶ In making a decision, the Director shall consider:
 - ▶ The location, size and nature of the proposed activity;
 - ▶ The complexity of the proposed activity and the technology to be employed;
 - ▶ Any concerns in respect of the proposed activity that have been expressed by the public of which the Director is aware;
 - ▶ The presence of other similar activities in the same general area;
 - ▶ Any other criteria established in the regulations;
 - ▶ Any other factors the Director considers to be relevant.
- ▶ The proponent shall provide notice of a decision of the Director in accordance with the regulations.
- ▶ Any person who is directly affected by a proposed activity that is the subject of a decision of the Director may, within 30 days after the last notice under subsection (5) or within any longer period allowed by the Director in the notice, submit a written statement of concern to the Director setting out the person's concerns with respect to the proposed activity.

Environmental Assessments – Whether a Report is Required (s. 45)

- ▶ Where the Director decides that further assessment of a proposed activity is required, the Director shall, in accordance with the regulations,
 - ▶ Prepare a screening report regarding the need for the preparation of an environmental impact assessment report, and
 - ▶ Decide whether preparation of an environmental impact assessment report is required.
- ▶ Where the Director decides that preparation of an environmental impact assessment report is not required, the Director
 - ▶ Shall advise the proponent of that fact
 - ▶ If the activity is one for which an approval or registration is required, shall advise the proponent that it may apply for the approval or registration, and
 - ▶ May refer any information on the potential environmental impacts of the proposed activity to the Director responsible for issuing the approval or registration.

Environmental Assessments – Whether a Report is Required (s. 45)

- ▶ Where the Director decides that preparation of an environmental impact assessment report is required, the Director shall by order in writing direct the proponent to prepare and submit the report in accordance with this Division.
- ▶ The Director shall provide notice of their decision regarding the preparation of an environmental impact assessment report in accordance with the regulations.

Environmental Assessments – Statements of Concerns & Ministerial Orders (ss. 46 & 47)

- ▶ The Director shall, in accordance with the regulations, give due consideration to all statements of concern that have been submitted and shall not make a decision until the applicable period in s. 44(6) has expired.
- ▶ If the Minister is of the opinion that an environmental impact assessment report is necessary because of the nature of a proposed activity, the Minister may by order in writing direct the proponent to prepare and submit the report in accordance with this Division, notwithstanding that
 - ▶ The Director has not ordered an environmental impact assessment report, or
 - ▶ The proposed activity is the subject of an exemption under the regulations.

Environmental Assessments – Terms of Reference (s. 48)

- ▶ Where a proponent is required to prepare an environmental impact assessment report, the proponent shall prepare proposed terms of reference for the preparation of the report in accordance with requirements specified by the Director and shall submit the proposed terms of reference to the Director.
- ▶ The proponent shall provide notice of the proposed terms of reference and make them available in accordance with the regulations.
- ▶ After allowing what the Director considers to be a reasonable time for the receipt of comments in respect of the proposed terms of reference, and after giving due consideration to those comments, the Director shall issue final terms of reference for the preparation of the report to the proponent.
- ▶ The Director shall make the final terms of reference available in accordance with the regulations.

Environmental Assessments – Contents of the Report (s. 49)

- An environmental impact assessment report must be prepared in accordance with the final terms of reference issued by the Director and shall include the following information unless the Director provides otherwise:
 - A description of the proposed activity and an analysis of the need for the activity;
 - An analysis of the site selection procedure for the proposed activity, including a statement of the reasons why the proposed site was chosen and a consideration of alternative sites;
 - An identification of existing baseline environmental conditions and areas of major concern that should be considered;
 - A description of potential positive and negative environmental, social, economic and cultural impacts of the proposed activity, including cumulative, regional, temporal and spatial considerations;
 - An analysis of the significance of the potential impacts identified under clause (d);
 - The plans that have been or will be developed to mitigate the potential negative impacts identified under clause (d);
 - An identification of issues related to human health that should be considered;
 - A consideration of the alternatives to the proposed activity, including the alternative of not proceeding with the proposed activity;
 - The plans that have been or will be developed to monitor environmental impacts that are predicted to occur and the plans that have been or will be developed to monitor proposed mitigation measures;
 - The contingency plans that have been or will be developed in order to respond to unpredicted negative impacts;
 - The plans that have been or will be developed for waste minimization and recycling;
 - The manner in which the proponent intends to implement a program of public consultation in respect of the undertaking of the proposed activity and to present the results of that program;
 - The plans that have been or will be developed to minimize the production or the release into the environment of substances that may have an adverse effect;
 - The final terms of reference issued by the Director under section 48(3);
 - Any other information that the Director considers necessary to assess the proposed activity.

Environmental Assessments – Submission, Providing Additional Information, and Publication (ss. 50 – 52)

- The proponent shall submit the environmental impact assessment report to the Director for review.
- The Director may, at any time after receipt of an environmental impact assessment report, require the proponent to submit to the Director any additional information respecting the proposed activity that the Director considers necessary for the review of the proposed activity.
- The Director shall require the proponent to publish the environmental impact assessment report and otherwise make it available in accordance with the regulations.

Environmental Assessment – Powers of the Director (s. 53)

- ▶ Where in the opinion of the Director an environmental impact assessment report is complete, the Director shall
 - ▶ advise the Alberta Energy Regulator or the Alberta Utilities Commission, as the case may be, that the report is complete, in a case where the proposed activity is one in respect of which the approval of either body is required,
 - ▶ advise the Natural Resources Conservation Board that the report is complete, in a case where the proposed activity is a reviewable project within the meaning of the *Natural Resources Conservation Board Act*, or
 - ▶ in any other case, submit the environmental impact assessment report to the Minister together with any further information and any recommendations that the Director considers appropriate.

Environmental Assessment – Powers of the Minister (ss. 54 – 55)

- ▶ Where the Director submits an environmental assessment report to the Minister and the proposed activity is one in respect of which an approval, registration, or license, or an amendment to an approval, registration, or license is required, the Minister may advise the proponent that the proponent may apply for the appropriate approval, registration, license or amendment.
- ▶ Notwithstanding anything in this Act, the Minister may refer a proposed activity to the Lieutenant Governor in Council with the recommendation that the Lieutenant Governor in Council make an order prescribing the proposed activity as a reviewable project within the meaning of the *Natural Resources Conservation Board Act*.
- ▶ Where the Director submits an environmental impact assessment report to the Minister, the Minister may make any recommendations in respect of the proposed activity that the Minister considers necessary to any person, the Government, a Government agency, a government of another jurisdiction or an agency of that government that may be dealing with the proposed activity.

Environmental Assessments – Register of Assessment Information (s. 56)

- ▶ The Director shall establish and maintain in accordance with the regulations a register containing any documents and other information that the regulations require that are provided to the Director or created or issued by the Director under this Division.

Environmental Assessments – Inter-jurisdictional Agreements (s. 57)

- Where a federal or extra-provincial law contains provisions that operate for substantially the same purpose as corresponding provisions of this Division, the Minister may, with respect to a proposed activity that is governed in part by the laws of Alberta and in part by the laws of Canada or the other province or territory, enter into an agreement or arrangement with any Minister or agency of the Government of Canada or of the other province or territory for any or all of the following purposes:
 - to determine what aspects of the activity are governed by the laws of both jurisdictions;
 - to provide for the carrying out jointly by both jurisdictions of
 - the environmental assessment process, or any part of it, for the purposes of this Division, or
 - the provisions in any enactment of the other jurisdiction that operate for substantially the same purpose as this Division
 - to provide for the adoption by one or both jurisdictions, for the purposes of their environmental assessment requirements, of
 - all or part of the environmental assessment or review process of the other jurisdiction, and
 - reports and similar documents prepared by or under the authority of the laws of the other jurisdiction as part of the environmental assessment or review process of that jurisdiction.

Applying the *EPEA* in Conjunction with the *MGA*

We begin with – Section 3(a.1) of the *MGA*

“The purposes of a municipality are...to foster the well-being of the environment...”

Municipal Government Act – Environmental Reserve (s. 664)

- Subject to s. 663 and subsection (2), a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of
 - a swamp, gully, ravine, coulee or natural drainage course,
 - land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or
 - a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water
- A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:
 - to preserve the natural features of land referred to above;
 - to prevent pollution of the land or of the bed and shore of an adjacent body of water;
 - to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;
 - to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

Municipal Government Act – Environmental Reserve (s. 664)

- If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.
- The environmental reserve easement
 - Must identify which part of the parcel of land the easement applies to,
 - must require that land that is subject to the easement remain in a natural state as if it were owned by the municipality, whether or not the municipality has an interest in land that would be benefitted by the easement,
 - runs with the land on any disposition of the land,
 - constitutes an interest in land in the municipality, and
 - may be enforced by the municipality.

Municipal Government Act – Environmental Reserve (s. 664)

- An environmental reserve easement does not lapse by reason only of
 - Non-enforcement of it,
 - The use of the land that is the subject of the easement for a purpose that is inconsistent with the purposes of the easement, or
 - A change in the use of land that surrounds or is adjacent to the land that is the subject of the easement.
- When an easement is presented for registration under subsection (2), the Registrar must endorse a memorandum of the environmental reserve easement on any certificate of title relating to the land.
- Despite section 48(4) of the *Land Titles Act*, an easement registered under subsection (2) may be removed only pursuant to section 658(3.1).

Municipal Government Act – Environmental Reserve (s. 664)

- ▶ An environmental reserve easement is deemed to be a condition or covenant for the purposes of section 48(4) and (6) of the Land Titles Act.
- ▶ This section applies despite section 48 of the Land Titles Act.
- ▶ A caveat registered under this section prior to April 30, 1998 is deemed to be an environmental reserve easement registered under this section.

Agreements Respecting an Environmental Reserve (s. 664.1)

- ▶ A municipality and an owner of a parcel of land may, before a subdivision approval application is made or after it is made but before it is decided, enter into a written agreement providing that the owner will or will not be required to provide any part of the parcel of land to the municipality as environmental reserve as a condition of subdivision approval; specifying the boundaries of that part if required.
- ▶ Where the agreement provides that the owner will not be required to provide any part of the parcel of land to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any part of the parcel as environmental reserve as a condition of approving a subdivision approval application.

Agreements Respecting an Environmental Reserve (s. 664.1)

- ▶ Where the agreement specifies the boundaries of the part of the parcel of land that the owner will be required to provide to the municipality as environmental reserve, the subdivision authority must not require the owner to provide any other part of the parcel as environmental reserve as a condition of approving a subdivision approval application.
- ▶ Subsections (3) and (4) do not apply on a subdivision approval application where either party to the agreement demonstrates that a material change affecting the parcel of land occurred after the agreement was made.

Municipal Government Act – Conservation Reserve (s. 664.2)

- ▶ A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land to the municipality as conservation reserve if
 - ▶ in the opinion of the subdivision authority, the land has environmentally significant features,
 - ▶ the land is not land that could be required to be provided as environmental reserve,
 - ▶ the purpose of taking the conservation reserve is to enable the municipality to protect and conserve the land, and
 - ▶ the taking of the land as conservation reserve is consistent with the municipality's municipal development plan and area structure plan.

Municipal Government Act – Conservation Reserve (s. 664.2)

- Within 30 days after the Registrar issues a new certificate of title for a conservation reserve, the municipality must pay compensation to the landowner in an amount equal to the market value of the land at the time the application for subdivision approval was received by the subdivision authority.
- If the municipality and the landowner disagree on the market value of the land, the matter must be determined by the Land and Property Rights Tribunal.

Municipal Government Act – Designation of Municipal Land (s. 665)

- ▶ A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as...environmental reserve [or] conservation reserve...
- ▶ On receipt of a copy of a bylaw under this section and the applicable fees, the Registrar must do all things necessary to give effect to the order, including cancelling the existing certificate of title and issuing a new certificate of title for each newly created parcel of land with the designation of
 - ▶ ...environmental reserve, which must be identified by a number suffixed by the letters “ER”,
 - ▶ conservation reserve, which must be identified by a number suffixed by the letters “CR”...

Case Law Decisions on *EPEA* and Local Authorities

Young v Red Deer County, 2022 ABKB 13

- ▶ Council issued a Land Use Bylaw amendment, which was challenged in court
- ▶ The concerned parcel was part of an Environmentally Significant Area; the amendment would allow future gravel pit development
- ▶ The Court held that there were issues of procedural unfairness in the public hearing process (Meetings were not being held during covid)
- ▶ Two of four environmental reports were withheld from council; those relied on by council were deficient
- ▶ Cited in: *Koester v. Wheatland County*, [2024] A.J. No. 261 reiterating the requirement for public hearings
- ▶ **Discussion**



Bow Valley Engage Society v. Alberta (Environmental Protection and Enhancement Act, Designated Director), 2025 ABKB 158

- ▶ This was a judicial review application brought by Bow Valley Engage Society and the Stoney Nakoda First Nations (Applicants) challenging a February 28, 2024 decision by the Designated Director under the *EPEA*. The Director had declined to initiate an environmental impact assessment (EIA) in relation to the Three Sisters Mountain Village and Smith Creek Area Structure Plans (ASPs), finding they were a continuation of a 1992 provincially approved project and therefore not a “proposed activity” under section 39(e) of *EPEA*.
- ▶ The application was dismissed due to the applicants not serving a relevant party. However, the Court also considered the merits of the application and concluded that, even if service had been properly effected, the Director’s decision was reasonable and consistent with *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65. The Director’s interpretation of “proposed activity” was reasonable in light of the 1992 approval by the Natural Resources Conservation Board (NRCB). As the ASPs fell within the scope of that original approval and the associated development had already commenced, the Director correctly found that the ASPs did not constitute a new “proposed activity” under *EPEA*.

A photograph of a person's lower body and hand, walking on a paved surface. The person is wearing khaki cargo pants and a brown beaded bracelet. They are holding a white plastic shopping bag in their right hand. The background is slightly blurred, showing a dark vehicle.

Responsible Plastic Use Coalition v. Canada (Environment and Climate Change), 2023 FC 1511

- ▶ The Federal Government's labelling of all Plastic Manufactured Items (PMI) as toxic was both unreasonable and unconstitutional.
 - ▶ Discussion
- ▶ *Canadian Plastic Bag Association v Victoria (City), 2019 BCCA 254*
 - ▶ Upon petition by an environmental organization, the City of Victoria passed a by-law prohibiting stores from providing or selling plastic bags.
 - ▶ In BC, where the “pith and substance” of a by-law is protection of the environment, approval of the Minister is required.

Edmonton River Valley Conservation Coalition Society v Council of the City of Edmonton, 2022 ABQB 11, Further decision re; costs found at 2022 ABQB 263

- ▶ Judicial review of a decision to amend bylaws impacting River Valley development, in order to develop a solar farm
- ▶ Court held that, while financial benefits may have been given priority over environmental considerations, these factors do not have to be weighed equally
 - ▶ 2025 Update: *still relevant law* – bylaws were preserved



- ▶ The kīsikāw pīsim solar farm now provides almost half of the electricity needed to power the E.L. Smith Water Treatment Plant and its water treatment and distribution processes.
- ▶ The plant provides 60% of the drinking water for Edmonton and more than 90 surrounding communities.
- ▶ Commissioned in fall 2022, the solar farm is made up of:
 - ▶ 30,350 solar panels on 51 acres of land, for a total of 13.6 megawatts of generation capacity.
 - ▶ A micro-grid system where excess energy is stored in batteries. This allows us to optimize our electricity use and helps to make the plant more resilient.

Heggelund v Grande Prairie (County No. 1)

Intermunicipal Subdivision and Development

Appeal Board, 2019 ABCA 284

- Appeal of land rezoning for development of a motocross facility
- Court considered s. 617 of the MGA concerning development and patterns of human settlement
- Appellant's noise concerns were addressed by the ISDAB
- Environmental concerns were ill- defined
- ISDAB has a broad discretion to consider evidence, but such evidence must be of some probative value

Edmonton (City) Library Board v. Edmonton (City), [2021] A.J. No. 1454

- ▶ Dealt with questions of proximity of cannabis dispensaries (was there evidence to demonstrate specific distances? Court needs to answer in the affirmative to allow the appeal.)
- ▶ Citing *Heggelund* for s. 688(3) of the MGA "...the Library must demonstrate that the appeal involves a question of law or jurisdiction of sufficient importance to merit a further appeal, and that the appeal will have a reasonable chance of success..."
- ▶ *Heggelund v Grande Prairie (County No. 1) Intermunicipal Subdivision and Development Appeal Board*, 2019 ABCA 28
 - ▶ Appeal of land rezoning for development of a motocross facility
 - ▶ Court considered s. 617 of the MGA concerning development and patterns of human settlement
 - ▶ Appellant's noise concerns were addressed by the ISDAB
 - ▶ Environmental concerns were ill- defined
 - ▶ ISDAB has a broad discretion to consider evidence, but such evidence must be of some probative value
- ▶ **Discussion**

- ▶ 80 the SDAB recognized that any concerns about possible nuisance issues - and it expressly found no evidence that the cannabis store would "create" nuisance issues - would be mitigated by the presence of a branch of the EPS in close proximity to, and on the same site as, the proposed cannabis store. It also noted that there were several "adult-oriented" uses next to the public library which "arguably have more of an impact" than the proposed cannabis store across 118th Avenue.

Please feel free to contact us with questions:

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