

Alberta's Multiple Planning Paths: Future of Frustration or Function?

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What's the plan? This question has been posed often in recent months regarding the provincial government's response to Alberta's burgeoning economy and all that it has wrought. Part of the plan appears to be to pursue making a plan. The Government of Alberta, with its recent affinity for a "shared governance" model, is looking to multi-stakeholder processes and public input to generate the plans, the planning processes and the planning outcomes. The two main planning processes under way in Alberta are *Water for Life* (administered up by Alberta Environment)¹ and the Land Use Framework (administered by Alberta Sustainable Resource Development). This is further augmented by the proposal to introduce a regulatory framework to address the cumulative effects of development on the environment.²

The *Water for Life* strategy got out of the gate well ahead of the land use planning initiative. It has resulted in the establishment of the Alberta Water Council, a government advisory body, and several regionally based Watershed Planning and Advisory Councils (WPACs).³ The most advanced of the WPACs are those dealing with water management issues in the southern basins of Alberta.⁴ Water management plans are only part of the picture, as the mandate of WPACs includes the somewhat nebulous and undefined concept of "watershed planning". The legal impact of "watershed" management plans under current legislation is minimal, as no implementation or enforcement tools (either policy or regulatory) have been generated around these plans. Nevertheless, WPACs continue to pursue the development of watershed management plans and presumably these planning efforts will have some impact on how land use and activities impact the Province's water.

The Land Use Framework was mentioned in the throne speech in 2005 but only recently has the development of the framework been initiated.⁵ In particular, several stakeholder working groups recently concluded some work to provide advice to the province regarding a land use planning framework. The working groups were tasked with specific issues, including growth and resource management, planning and decision-making processes, conservation and stewardship, and monitoring and evaluation. It is currently unclear whether any specific regulatory planning mechanisms will be developed as part of the Land Use Framework process. As with watershed management plans, the implementation of land use plans (presuming such plans are developed) would occur in the absence of any enabling legislation.

This brings us to a third mechanism with potential impacts on planning. Alberta Environment has indicated the intent to develop a regulatory framework to address cumulative environmental affects on the environment. Here too, the Alberta government has consulted on the issue, with public comments on a discussion paper

around cumulative effects being submitted to the Department until the end of November 2007.

The discussion paper on the framework contemplates a region specific system of setting “environmental sustainability objectives” (ESOs) and “environmental sustainability strategies” (ESSs). The creation of these objectives would be through multi-stakeholder processes (such as the water management planning process contemplated in the *Water Act*) and would then have some impact on government and administrative decision-making. The determination of where these objectives and strategies would be put in place is unclear, as is the issue of whether decision-makers will be bound by the objectives and strategies.⁶

Will any of these tools provide a meaningful change to how business is conducted in Alberta? At this point, it is nearly impossible to say. None of these planning tools have elaborated on how implementation will occur, whether regulators will be bound by regional planning goals and whether a hierarchy of planning will be acknowledged throughout government. The various planning outcomes, whether a watershed management plan, a land use plan or an ESO, have a significant potential to be in conflict with each other and with other Government of Alberta policies. The policies that may be the source of conflict include Alberta Energy’s policy for resource development in the province, a policy for Alberta oilsands development, forestry policy and management, agricultural expansion policies and municipal planning policy at both the provincial and municipal levels. A lack of clarity reigns.

To use a metaphor, the province has created a series of braided trails that have as an end goal specific planning outcomes. No one knows where the trails lead or whether they will end at the same destination. Currently, it appears stakeholders are trusting that we will arrive together at camp. The fact that everyone is not on a single, well maintained trail has already been a source of frustration. Continuing to maintain multiple trails threatens to erode stakeholder commitment to these processes.

A clear articulation of how the land use planning process, watershed plans and other relevant government policy will be integrated is required. This includes articulating what aspects of the planning process will be binding, whether legislative changes will be forthcoming, and whether a hierarchy of planning tools will be recognized.

The proposed *Environmental Sustainability Act* may provide some answers but the framework described in the government’s discussion document, *Towards Environmental Sustainability: Proposed Regulatory Framework for Managing Environmental Cumulative Effects*,⁷ does little to resolve concerns regarding integration and enforceability of planning outcomes. It is time to indicate the planning path and how we plan to get to camp. Alternatively, bounding down the scree slope that leads off this planning mountain may look ever more appealing.

¹ (Edmonton: Alberta Environment, 2003), online: Alberta Environment <<http://www.waterforlife.gov.ab.ca>>.

² Alberta Environment, *Towards Environmental Sustainability: Proposed Regulatory Framework for Managing Environmental Cumulative Effects* (Edmonton: Government of Alberta, 2007) available online: Alberta Environment <http://environment.gov.ab.ca/cem/pubs/CEM_Framework.pdf>.

³ Some WPACs preceded *Water for Life*, notably the Bow River Basin Council and the Oldman Watershed Council (as it is now known).

⁴ The South Saskatchewan River Basin produced a water management plan that was subsequently approved by government last year. Alberta Environment, *Approved Water Management Plan for the South Saskatchewan River Basin (Alberta)* (August 2006), online: Alberta Environment <http://www3.gov.ab.ca/env/water/regions/ssrb/pdf/SSRB_Plan_Phase2.pdf >.

⁵ See 26th Legislature, 1st Session (2005) Alberta Hansard, March 2, 2005, at 9, online: Legislative Assembly of Alberta

<http://www.assembly.ab.ca/ISYS/LADDAR_files/docs/hansards/han/legislature_26/session_1/20050302_1500_01_han.pdf>. The Speech from the Throne referred to it as a "land-use management framework".

⁶ The ELC provided comments regarding the cumulative effects regulatory framework that can be viewed online at

<<http://www.elc.ab.ca/ims/client/upload/Comment%20on%20Proposed%20Regulatory%20Framework.pdf>>.

⁷ *Supra* note 2.

Comments on the articles in this issue may be sent to the editor at elc@elc.ab.ca.

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EUB Turns Down Energy Project

Intrepid Energy Corporation - Applications for Licences for Gas Wells, Pipelines and Facilities Tindastoll Field (30 October 2007), Decision 2007-080 (Alberta Energy and Utilities Board) Applications No. 1462172, 1486686, 1486688, 1491537, 1491541, 1493237, 1500670, 1507656, 1507707, and 1507722

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The Alberta Energy and Utilities Board (“EUB”) released a decision on October 30, 2007 rejecting applications by Intrepid Energy Corporation (“Intrepid”) to drill three natural gas wells and construct associated infrastructure.¹ The EUB rarely turns down energy applications, so when it does reject an application, it is interesting to see what factors contributed to the decision. In this case, the EUB’s decision to deny the applications was based on Intrepid’s poor public consultation, which led to an insufficient understanding of landowners’ concerns and alternative options for where the wells could be placed.

Background

Intrepid applied for licences to drill three natural gas wells, and approval to construct and operate three single well batteries with compressors and four pipelines. The development was proposed for an area 12 kilometres (“km”) northwest of Innisfail, Alberta. The EUB granted standing to the Christians and the Telfords who resided close to the proposed development. A number of other families as well as the Butte Action Committee provided written submissions to the EUB. The concerns raised at the hearing centered on the drilling of wells and placing of pipelines within an unconfined aquifer and a floodplain, as well as noise and visual impacts.

Two of the three well site locations were proposed for an area underlain by a shallow, unconfined sand and gravel aquifer. An unconfined aquifer is an aquifer in which the water surface is not restricted by impermeable material; as such, these aquifers are at greater risk of surface spills than confined aquifers that have impermeable material between them and the land surface. This unconfined aquifer covered about 7 km² and was used for drinking water by the Christians and Telfords. It is hydrologically connected to the Red Deer and Medicine Rivers. The Christians expressed concerns about the potential loss and contamination of their groundwater supply as a result of the drilling and operation of wells. Two of the proposed wells would also be located within a floodplain. The area was prone to frequent, regular floods as well as the potential for a more severe 1-in-100-year flood event. For these reasons, the Christians felt that this area was not suitable for oil and gas development.

Another unique aspect to this case was that the Telfords operated a dog breeding and kennel operation. They had specific concerns about the impact of gas development on their kennel and boarding operations.

Public consultation

The main reason the EUB rejected these applications was because of Intrepid’s poor public consultation with the Christians and the Telfords. Intrepid’s consultation strategy

with the Christians failed on many fronts. For example, Intrepid had set as a precondition to meeting with the Christians that they sign a confirmation of non-objection prior to any discussions being held. The EUB found that this tactic "severely affected the potential for useful discussion to occur."² The EUB found that Intrepid failed to provide the Christians with site specific project plans, only generic ones, and failed to discuss alternative well site locations or additional measures to deal with the unique situation of the unconfined aquifer and the potential for flooding. Intrepid ignored the Christians' request for a three week hiatus from consultations to complete their farming operations and showed up unannounced at the Christians' farms to survey the wells. Intrepid also refused to meet with representatives of the Butte Action Committee, a local landowner group to which the Christians belong, even though the Committee had concerns specifically related to the aquifer.

With respect to the Telfords, the EUB found that Intrepid did not personally consult with the family with respect to using their driveway as a means of accessing one of the well sites. The EUB also found that Intrepid failed to consider the visual and noise impacts their operations would have on the Telfords' kennel operation.

Well site locations

As a result of Intrepid's poor consultation, the EUB found that the company did not understand the landowners' concerns and did not adequately consider other options or mitigative strategies. For example, the Christians and Telfords proposed that all three proposed wells could be directionally drilled from one pad location outside the aquifer. This would relieve their concerns with the potential impacts to the aquifer, would reduce surface facilities and pipelines, and would be at a sufficient distance from the Telfords' kennels to satisfy their concerns.

The EUB found that Intrepid failed to establish why its proposed locations were the most appropriate locations to develop reserves. It noted that Intrepid had not investigated the possibility of directional drilling. The EUB was not satisfied that Intrepid's proposed mitigation measures (such as installing a liner and conductor barrel) would be sufficient to protect the aquifer. The EUB also stated that "Intrepid failed to appreciate the scope and extent of flooding that regularly occurs at the two sites"³ and had no plan for how it would keep itself informed of flood conditions nor did it specify the conditions under which the wells would be shut in if a flood occurred.

Noise and visual impacts

The EUB found that the Intrepid's development could result in serious impacts on the Telfords' kennel and boarding operations due to increased traffic and noise levels. Alternative well locations could help alleviate these impacts as could other mitigative measures, such as walking into the sites. The EUB stated that "Intrepid either did not fully understand the Telfords' concerns and its potential impacts on the Telfords' operations, or Intrepid did not take these concerns seriously."⁴

Comment

This decision highlights the EUB's commitment to meaningful consultation not just with landowners but also with local landowner groups. The EUB has, on other occasions, turned down energy applications on the basis of poor consultation, so this situation is not entirely unique.⁵ What made this decision unique were the circumstances surrounding the location of the well sites in environmentally sensitive areas. As with

previous decisions, the EUB was careful not insulate these areas from future oil and gas development, but did indicate that mitigation measures would only be contemplated if "no reasonable alternative location outside the area of risk [was] available."⁶

¹ *Intrepid Energy Corporation - Applications for Licences for Gas Wells, Pipelines and Facilities Tindastoll Field* (30 October 2007), Decision 2007-080 (Alberta Energy and Utilities Board) Applications No. 1462172, 1486686, 1486688, 1491537, 1491541, 1493237, 1500670, 1507656, 1507707, and 1507722.

² *Ibid.* at 7-8.

³ *Ibid.* at 22.

⁴ *Ibid.* at 27.

⁵ See Keri Barringer, "Sour Gas Well Application Denied" (2004) 19:1 *Environmental Law Centre News Brief*, online: Environmental Law Centre <<https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=805>>; Cindy Chiasson, "EUB Rejects Sour Gas Well for Public Safety" (2001) 16:2 *Environmental Law Centre News Brief*, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=709>>; Shawn Denstedt, "EUB Demands More Effective Public Consultation" (2000) 15:2 *Environmental Law Centre News Brief*, online: Environmental Law Centre <<http://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=672>>.

⁶ *Supra* note 1 at 23.

Oil Sands Consultations Completed, Now What?

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In 2006, the Alberta government appointed the Oil Sands Multi-Stakeholder Committee (the "MSC") to review how oil sands development has proceeded in Alberta and to make recommendations for *how it should* proceed in the future. The 19-member MSC included representatives from the Government of Alberta, Government of Canada, the oil sands industry, First Nations and Métis, municipal government and environmental organizations. An earlier edition of *News Brief* reviewed the MSC process and summarized the Environmental Law Centre's submissions made during this process.¹

The MSC's final report was released to the public on July 25, 2007.² This article provides an overview of the final report and the response (or non-response) of the federal and provincial governments to the report.

Final report

The MSC developed 120 recommendations for action relating to all aspects of oil sands development including the rights of First Nations and Métis peoples, quality of life issues, royalties, governance and a healthy environment. The MSC reached consensus on 96 recommendations.

Some examples of the consensus recommendations focused on the vision of "ensur[ing] a healthy environment" were:³

- create and implement comprehensive regional planning and management systems for the Athabasca, Peace River and Cold Lake oil sands areas and for regions impacted by existing and proposed upgraders;
- work with neighboring jurisdictions and the federal government to ensure cumulative assessment is done and transboundary issues are managed;
- conduct regional cumulative environmental impact assessments of current and planned oil sands development, with one component to consider being the assessment of the value of ecosystem goods and services; and
- require comprehensive reclamation and mitigation plans from the onset of development that include milestones, and establish and enforce penalties if operators fail to meet identified milestones.

The MSC report included 24 non-consensus recommendations, most of which related to environmental issues. Some of the critical issues that the MSC failed to reach consensus on were:⁴

- recommendations aimed at controlling the pace and scale of development, such as:
 - declaring a moratorium on new oil sands development (no new leases, no new approvals) until environmental limits have been identified and infrastructure and labour concerns have been addressed;
 - suspending the granting of new water withdrawal licenses until a watershed management plan and a water conservation objective are implemented for the Athabasca River, and placing absolute limits on water withdrawals during low flows;
 - establishing a limit on the cumulative amount of land that can be disturbed at any one time in each of the oil sands areas;
- implementing interim precautionary based environmental and emission thresholds based on the best information currently available, to be updated or replaced as new information is obtained and better management tools are developed;
- setting greenhouse gas targets that will cap emissions for the oil sands industry and lead to reductions consistent with Canada's international agreements;
- establishing an interconnected network of protected areas and corridors; and
- eliminating the term "directly affected" from legislation to facilitate broader public input.

The biggest disappointment with the MSC's final report is that the committee's consensus recommendations failed to directly address the quintessential issue: the pace and scale of oil sands development. Up to this point, the Alberta government has not adjusted its policies and processes to recognize that the pace and scale of the oil sands makes them qualitatively different from other developments.⁵ Second in size only to

Saudi Arabia's reserves, the oil sands deposits represent an area larger than the state of Florida, and twice the size of the province of New Brunswick. Annual oil production has surpassed 1 million barrels per day (bbl/d), and it is anticipated that this production could triple to 3 million bbl/d by 2020 and even exceed 5 million bbl/d by 2030.⁶ Considering that the oil sands is the largest industrial development in the world, and is also experiencing tremendous growth, it is absolutely essential that the government have a plan in place to ensure that growth occurs in a way which is responsible and results in the greatest long-term benefit to the citizens of Alberta as owners of the oil sands resource.

Government's response

The final report was submitted to the Government of Alberta on June 30, 2007, to be reviewed by the Ministers of Energy, Environment and Sustainable Resource Development ("SRD"). At the time of writing, the Ministers had not yet formally responded to either the consensus or non-consensus recommendations of the MSC. Alberta Environment has set up an Oil Sands Management Division to deal with cumulative impacts of oil sands development. Alberta Environment has also indicated that it will be overhauling its approvals system to "define and implement environmental outcomes that address the regional cumulative impact of multiple developments on air, water, land and biodiversity."⁷ However, it has not yet been announced how or if these initiatives will fulfill the MSC's recommendations.

The federal government has also been silent on its response to the MSC report. To give the federal government a push, environmental groups have petitioned the Federal Commissioner of Environment and Sustainable Development requesting an official response from the Government of Canada regarding recommendations made by the MSC.⁸ Recommendations regarding greenhouse gas pollution and global warming, air pollution, the Athabasca River and its fishery, environmental assessment, and First Nations consultation and accommodation are included in the petition.

Conclusion

Members of the general public, environmental organizations, First Nation groups and others invested considerable time and energy in the MSC process; we do not want to see this time and energy go to waste. The ELC urges both the federal and Alberta governments to respond to the MSC's report and to address not only the consensus recommendations but also the non-consensus recommendations.⁹ Considering the pace and scale of oil sands development, time is of the essence. It is essential that the government step up to the task of managing this resource in a proactive way with a definitive plan to manage growth. If the government fails to respond to the MSC report, it does not bode well for other government consultation processes. Many people, including environmental groups, may simply choose not to participate in further government consultations if their participation does not translate into action by government.

¹ See (2007) 22:2 of *Environmental Law Centre News Brief*, online: Environmental Law Centre <<https://www.elc.ab.ca/publications/newsbrief.cfm>>.

² Government of Alberta, *Oil Sands Consultations – Multistakeholder Committee Final Report* (30 June 2007), online: Oil Sands Consultations <http://www.oilsandsconsultations.gov.ab.ca/docs/FinalReport_MSCReport-lowres-july24.pdf> [*MSC Final Report*]. There was also a separate final report produced as part of the parallel Aboriginal oil sands consultation process; see Government of Alberta, *Oil Sands Consultations – Aboriginal*

Consultation Final Report (30 June 2007), online: Oil Sands Consultations <http://www.oilsandsconsultations.gov.ab.ca/docs/FinalReport_AboriginalReport-lowres-july4.pdf>.

³ *MSC Final Report*, *ibid.* at 18, 19 and 22.

⁴ *Ibid.* at 19-21 and 30.

⁵ See World Wildlife Fund, "Submission to the Oil Sands Consultation Process – Phase II" (23 April 2007), online: Oil Sands Consultations <http://www.oilsandsconsultations.gov.ab.ca/SubmissionsP2/All_Submissions_to_date/WWF_Robert_Powell_Calgary.pdf>.

⁶ Alberta Energy, "Oil Sands" online: Alberta Energy <<http://www.energy.gov.ab.ca/89.asp>>.

⁷ Alberta Environment, *Business Plan 2007-10* (19 April 2007) at 147, online: Alberta Finance Budget 2007 <<http://www.finance.gov.ab.ca/publications/budget/budget2007/envir.pdf>>.

⁸ Pembina Institute and Prairie Acid Rain Coalition (petitioners), "Impact of oil sands development in Alberta," Petition No. 215, online: Office of the Auditor General of Canada <<http://www.oag-bvg.gc.ca/domino/petitions.nsf/viewE1.0?openview&count=1000>>.

⁹ It should be noted that the MSC report includes detailed views of certain committee members explaining why they agreed or disagreed with the non-consensus recommendations, see *supra* note 1 at 31-51.

EUB Updates its Eastern Slopes Policy and Proposes Pilot Project

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Eastern Slopes Policy Update

On October 19, 2007, the Alberta Energy and Utilities Board ("EUB") released an update to its 1993 Eastern Slopes Policy, officially titled *Information Letter (IL) 93-09*.¹ The original *IL 93-09* was developed by the former Energy Resources Conservation Board (the predecessor board to the EUB) to set out some special requirements to deal with cumulative effects associated with oil and gas development in the southern portions of the Eastern Slopes, an ecologically sensitive area along Alberta's foothills. Four key points of the original *IL 93-09* were:

- an expectation of open and early public consultation with interested parties;
- the requirement to submit development plans at each major stage of development (i.e. initial pool delineation, subsequent delineation and pool development) which show all of the operator's present and proposed oil and gas infrastructure plans;
- the requirement to carry out an environmental assessment; and
- an expectation that operators would consolidate their plans and activities with other operators to the greatest degree practical to reduce area impacts.

The step to update and clarify *IL 93-09* stemmed from a 2006 decision² where the EUB considered requests for standing by neighbouring residents, landowner groups, the municipal district and environmental organizations on a licence to drill an exploratory sweet gas well within an area of the Eastern Slopes subject to *IL 93-09*. In the hearing,

a number of participants expressed concerns about the application of the *IL* to the well, specifically related to the breadth of consultation that was required of the operator and the absence of a comprehensive development plan. In the end, the EUB denied standing to all the parties involved in the hearing because no individual or organization was considered "directly and adversely affected"³ and granted the well licence; the EUB also resolved to clarify parts of the *IL 93-09* relating to requirements for development plans and environmental assessments, and the breadth of public consultation.

With respect to development plans, the updated *IL 93-09* states that an operator must prepare a development plan. The level of detail included in the plan will vary depending on the stage of development but some type of plan is always required. If the project is only in the initial pool delineation stage and a complete development plan is not possible, an operator must provide conceptual information about potential impacts. In all other cases, a development plan must consider pooling efforts, long-term development (such as the possibility of future wells and infrastructure in the area), how existing infrastructure can be used, maps showing all existing and potential development as well as other "economically significant" land uses, and the timing of subsurface development. The updated *IL 93-09* also states that an operator must carry out an environmental assessment that considers site-specific ecological needs. Again, the level of detail in the environmental assessment can vary depending on the size and location of the development.

The updated *IL 93-09* also clarifies that, despite the language encouraging broad consultation, the *IL* does not broaden the consultation requirements set out by the EUB in its directives.⁴ There is also no requirement to hold a hearing. Although the updated *IL 93-09* states that all applications in the *IL* area will be filed as non-routine applications, this statement alone does not guarantee that a hearing will be held. Non-routine applications are more rigorously checked by EUB staff than routine applications; however, this does not guarantee that those living in the Eastern Slopes will be considered "directly and adversely affected" so as to trigger a hearing.

In order to address consultation issues, the EUB proposed a pilot project to "engage residents, industry operators, the local municipal districts and Alberta Sustainable Resource Development" (the latter department manages public lands in the province) with the goal of developing recommendations for how oil and gas development will occur in the Eastern Slopes.

Pilot projects

The Eastern Slopes is one of four such pilot projects undertaken by the EUB. Other areas where similar pilot projects have been initiated include the Battle Lake area, Carstairs and Aberdeen (near Innisfail). Each pilot project came up with recommendations specific to its region, but they all follow the same basic formula. The pilots are based upon forming a "working team" consisting of residents from the community (which represent community concerns), industry representations, EUB staff, county representatives and other relevant groups such as environmental groups or landowner organizations. The working group develops recommendations to help address some particular concerns in the area.

For example, one of the key concerns in the Battle Lake area is the effect of oil and gas development on the spring-fed Battle Lake, which is a relatively undisturbed watershed.⁵ The Battle Lake pilot recommended that further disturbances within 100 metres of surface water features, the steep slopes that parallel Battle Lake and designated natural areas in the watershed be avoided where feasible. The pilot also categorized land areas based on their environmental sensitivity, recommended that licensing applications in the most sensitive areas ("Tier I lands") be automatically filed as non-routine applications, and recommended best practices for areas not designated as Tier I lands.⁶

In Carstairs and Aberdeen, the concerns focused on prospective coalbed methane development ("CBM") and the impacts on agricultural lands in the areas. In Carstairs, the pilot recommended that an early consultation protocol and a best practices protocol be implemented.⁷ In Aberdeen, the pilot recommended that a single oil and gas development plan be created for the area and that the EUB Red Deer Field Centre implement an audit program to determine casing and cementing integrity of CBM wells.⁸ The Eastern Slopes pilot should follow the same formula as these other pilot projects in establishing a working team and recommendations. The EUB plans to hold an initial public meeting in Chain Lakes in early December 2007 with the goal of having recommendations in place for the Eastern Slopes by spring 2008.

Comments

These pilots are certainly useful ways in which to engage communities and encourage early consultation and best practices. Personal interaction with EUB staff and industry is sorely needed after the public scandals that have rocked the EUB in recent months and the compounding land-use conflicts that are occurring with the oil and gas industry. However, the updated *IL 93-09* and pilot project are not a cure-all for addressing the fundamental problems and tensions in the Eastern Slopes.

While the updated *IL* requires applications to be filed as non-routine, this does not guarantee that those living in the Eastern Slopes will be considered "directly and adversely affected" so as to trigger a hearing. In this way, the updated *IL 93-09* does nothing to address the situation faced by residents and landowner organizations in the 2006 EUB decision where no person or group was granted standing and no hearing was triggered. The consultation distances, particularly for sweet gas wells, remain very small which means that it is likely that no one will live close enough to the well to be considered "directly and adversely" affected, even in the Eastern Slopes.

Further, the EUB has been clear in stating that these pilots will not deal with large policy issues or broad questions on whether oil and gas development should occur within a specific area. In other words, the Eastern Slopes pilot will not address whether the rights to the minerals should be sold under these lands or evaluate whether these lands are appropriate for oil and gas development at all.⁹ Because these pilot projects cannot tackle these fundamental issues, residents and community groups may always be somewhat disappointed in the outcome.

To be effective, these pilots should engage the department of Energy, which is responsible for issuing the mineral rights in the province. The pilots should also provide some clear tie-in with the provincial Land-Use Framework, which purports to be the process for determining where and when development will occur within the province.¹⁰

¹ EUB Bulletin 2007-05, *Clarification of Informational Letter (IL) 93-09: Oil and Gas Development Eastern Slopes (Southern Portion)*, 19 October 2007.

² *Decision on Requests for Consideration of Standing Respecting a Well Licence Application by Compton Petroleum Corporation Eastern Slopes Area* (8 June 2006), Decision 2006-052, (Alberta Energy and Utilities Board) Application 1423649.

³ The EUB found that the residents closest to the proposed well site did not exhibit the potential for being directly and adversely affected due to the well's distance from their homes (i.e., they were outside the consultation distances set out by the EUB in its directives), the well's lower elevation and an intervening hill. Landowner groups were denied standing because none of their members lived close enough to the well. Their broader concerns regarding future development were considered by the EUB to be irrelevant to the application. The municipal district was denied standing on the grounds that it could address some of its concerns through its own authority and that more general concerns regarding future development could be raised with the operator. Lastly, the EUB denied standing to environmental organizations because it did not believe that the organizations would be affected to any greater or lesser degree than any member of the public.

⁴ See EUB *Directive 56: Energy Development Applications and Schedules*, Tables 5.1, 6.1, 7.1, EUB online: <<http://www.eub.gov.ab.ca/bbs/documents/directives/directive056.pdf>>.

⁵ See Jodie Hierlmeier, "EUB Supports Watershed Planning in Battle Lake" (2006) 21:3 *Environmental Law Centre News Brief* 9, online: Environmental Law Centre <<https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=990>>.

⁶ See EUB Bulletin 2007-08, *Application Requirements for Battle Lake Area and Revised Edition of Directive 056: Energy Development Application and Schedules*, (17 April 2007); see also EUB, *Battle Lake Watershed Development Planning Pilot Project* (December 2006), online: EUB <http://www.eub.ca/docs/new/project/land/BattleLakeReport_Overview_200612.pdf>.

⁷ See EUB, *EUB Land Challenge Initiative: Carstairs Township 30-28W4M Pilot Project* (January 2007) online: EUB <http://www.eub.ca/docs/new/project/land/Carstairs_SummaryReport_200702.pdf>.

⁸ See EUB, *EUB Land Challenge Initiative: Aberdeen Township Pilot Project* (January 2007) online: EUB <http://www.eub.ca/docs/new/project/land/Carstairs_LandChallengeReport_200702.pdf>.

⁹ *Supra* note 1.

¹⁰ For further information on land use see Dean Watt, "Action Update: Land Use Framework" (2007) 22:3 *Environmental Law Centre News Brief* 18, online: Environmental Law Centre <<https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=1082>>.

The Environmental Law Centre, through its library, is hosting an assortment of documents related to oil sands royalty rates, made available to Dr. Martha Kostuch by the Department of Energy under the *Freedom of Information and Protection of Privacy Act*. The materials can be reviewed by the public during the ELC's regular office hours. For further information, contact the ELC library at 780-424-5099 or 1-800-661-4238 (toll-free).