



January 8, 2013

Our file: P-11-1044

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Attn.: Regional Planning

To the Land Use Secretariat,

RE: South Saskatchewan Regional Plan

Feedback on the Advice of the Regional Advisory Council

REVISED January 8, 2013
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THE EASTERN SLOPES

The Environmental Law Centre (ELC) is pleased to provide feedback on the RAC Advice and to make recommendations for the Eastern Slopes sub-region.

These recommendations supplement the ELC's comments on the RAC Advice dated April 30, 2012 (the "ELC Comments"). The ELC Comments continue to apply the entire South Saskatchewan Region.

- **The ELC's involvement in SSRP planning on the Eastern Slopes**

The ELC participated in the ENGO meeting with GOA personnel on November 21, 2012 in Canmore and the general stakeholder session on the same date. Thank you for these opportunities.

Since the TOR for the SSR was released, the ELC has been running its own outreach program concerning the application of the SSRP to the Eastern Slopes. The goals of this program were to identify concerns with the LUF, ALSA and the RAC Advice, explore how the SSRP could work on the Eastern Slopes and to enable the ELC to make its own recommendations for the sub-region.

ELC sought no consensus among stakeholders. The following recommendations are the ELC's alone.

Acronyms	
ALSA	Alberta Land Stewardship Act
AMP	Access Management Plan
BMP	Best Management Practice
CMA	Conservation Management Area
CEM	Cumulative Effect Management
EGS	Ecosystem Goods and Services
ELC	Environmental Law Centre
ESA	Environmentally Significant Area
ESP	Eastern Slopes Policy
GOA	Government of Alberta
ILM	Integrated Land Management
LUF	Land Use Framework
OHV	Off Highway Vehicle
PLAR	Public Lands Administration Regulation
PLUZ	Public Land Use Zone
RAC	Regional Advisory Council
RAC Advice	Advice of the Regional Advisory Council
SSR	South Saskatchewan Region
SSRP	South Saskatchewan Regional Plan
TOR	Terms of Reference for Developing the SSR
WPAC	Watershed Planning and Advisory Council

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WHAT WE HEARD

- **About the RAC Advice:**

We heard that “the RAC did not do its job”. These strong words came from a planner in attendance at the Canmore stakeholder session. These words were echoed repeatedly in the ELC outreach program, and most clearly from persons with planning credentials. It is likely that the RAC Advice does not meet the TOR on several matters of high priority for the Eastern Slopes.

We most frequently heard that the RAC Advice:

- Features aspirational, self-conflicting jargon;
- Simply reiterates the TOR and existing policy on many key matters;
- Would promote business as usual;
- Creates a scenario in which the best possible environmental outcome is the status quo;
- Does not set measurable outcomes or environmental goals;
- Does not set limits or thresholds on cumulative effects;
- Does not identify tradeoffs;
- Does not consider incompatible uses and intensity of use;
- Could enable anything, anywhere, anytime;
- Makes little distinction between generic natural resources and the unique ecological value;
- Waters down the watershed protection priority for the Eastern Slopes;
- Prioritizes the impact of water on development over the impact of development on water;
- Does not identify integrated networks of public and private lands of ecological value;
- Does not adequately address implementation measures and tools for CMAs; and
- Gives little consideration to legal and practical implementation challenges.

Two pieces of the RAC Advice stand out as receiving recurrent support:

- The general location of CMAs and the general nature of the biodiversity advice; and
- Prohibiting recreational use that does not respect the environment on public land, especially mud bogging and the use of OHVs in water bodies.

Overall, the RAC Advice is long on aspirations but short on how to achieve them.

- **About the Planning Process:**

Support for the LUF ideals is strong but trust in the government planning process is weak. Feelings of déjà vu are common.

Providing sufficiently deep consultations on a large planning exercise is a challenge. Local actors wonder if they will be under-heard in plan development yet overly-relied on for plan implementation.

Participants are struggling to understand what can be influenced. There are feelings that big decisions were made through the TOR and the RAC, neither of which provided for clear public participation. The RAC Workbook includes confusing questions that can pigeonhole respondents. For example:

- Respondents who agree that we should value more ecosystem services must agree that this is to pursue new markets.
- Respondents who agree that the Castle should be effectively managed must agree that it should not necessarily be made a park.

The role of the RAC as independent experts is not well understood or accepted. There are perceptions of a stakeholder exercise in which the environment was under represented. There was uncertainty around constituencies or processes for input. The RAC Advice is perceived by many to be a government position.

Indication that the Lower Athabasca Regional Plan (the “LARP”) may become the template for the SSRP is a concern. ELC respects the enormous challenge of regional planning but the SSR and Eastern Slopes are simply different. Much of the LARP is non-binding. The new conservation areas fell below the level of the RAC Advice. The ALSA Conservation Tools were not deployed. CEM frameworks were created for water quality, groundwater, and air quality but not for biodiversity and land disturbance. None of these features are amenable to the Eastern Slopes sub-region.

ELC RECOMMENDATIONS

The RAC Advice and the current state of the SSRP planning process reveal a significant need to explore “how” a regional plan could work on the Eastern Slopes in a very concrete way. This is a question that no one can fully answer, especially if the plan is to rely on novel Conservation and Stewardship tools. The ELC recommendations are intended to offer examples of potential policy directions and uses of conservation and stewardship tools. They are intended to provide a principled starting point for regional planners and the more focused planning exercise that needs to occur in the Eastern Slopes sub region.

#1: Restore the Land Use Framework.

The Eastern Slopes is the acid test for the entire LUF. If the SSRP can work for the Eastern Slopes then the LUF will work elsewhere. This is no accident if one considers where the LUF has been:

- The SSRP is one of only two plans prioritized in the LUF document. Two thirds of the SSRP priority is dedicated to the Eastern Slopes including the Cowboy Trail. The LUF states that the watershed and recreation priorities for the Eastern Slopes “should be confirmed, and sooner rather than later”. These priorities were confirmed in the TOR.
- The presence of the Eastern Slopes makes the SSRP the preferable template for planning the North Saskatchewan and Upper Athabasca Regions in particular.
- The return of the LUF to the Eastern Slopes could mark the convergence of land and water planning in Alberta. From its beginning, the LUF has been spurred by the momentum of countless “bottom-up” initiatives in the Eastern Slopes sub region. Some of these initiatives address cumulative effects in smaller sub-sub regions, while others address watershed planning and stewardship. The LUF has created a land use region based on watershed boundaries but it is perceived to be a “top down” exercise. The LUF could integrate land and water planning, but the approach demands a significant leap of faith.
- Support for the LUF was forthcoming because the LUF recognized that competition for land is stressing the finite capacity of the landscape and driving Alberta to a tipping point. The sustainable development challenges addressed in the LUF are basically the state of the world come to Alberta. This is a recognition that must be upheld.
- The international dimension of the LUF is real. Many of the cumulative effects on the inter-jurisdictional Crown of the Continent eco-region come from the Alberta side.¹ Alberta is currently lagging:
 - Behind British Columbia on regional plans and implementing designations;
 - Behind Montana on the creation of Conservation Easements, and
 - Behind the US Forest Service on addressing roads in public forests.

¹ Flathead Transboundary Network, *State of the Crown of the Continent Ecosystem, Transboundary Region*, (January, 1999).

- The Crown of the Continent Roundtable lists the major sub- regional initiatives for Alberta as the LUF, the citizens' Castle Park initiative, and conservation easements on the Waterton front.² The SSRP can go far towards enhancing Alberta's international environmental record.

The GOA's commitment to the LUF continues to be questioned. People continue to struggle with how *ALSA* might help them. These questions are the result of *ALSA* not fully implementing the LUF or the Conservation and Stewardship Tools. Those tasks have been left to regional plans and regulations that need not be made at all. The ELC has stated from the outset that *ALSA* provides for "broad discretion with little accountability".³ The amendments to *ALSA* have been criticized for promoting a "regulatory chill"⁴ concerning the pursuit of environmental objectives but they have not actually brought certainty to the property rights concerns.

The Report of the **Property Rights Task Force**⁵ is informative. The Task Force Report shows intense concern with centralized planning and local disempowerment. The Task Force Report cites concern with three statutes – the *Land Assembly Project Act*, *Electric Statutes Amendment Act*, and *ALSA*. *ALSA* is included but it is no unique villain. The Report shows a demand to address imbalances of power through meaningful consultation, access to the courts, and fair compensation. The Task Force Report only cites four landowner comments about the environment in total. All four landowner comments are in favor of increasing priority on the environment.

The ELC's view of the Task Force Report is that 'property rights vs. the environment' is not the core issue with *ALSA*. The best way to restore the LUF is to do what was always intended: set clear environmental objectives on par with other objectives, provide guidance to decision makers, and enable the use of the *ALSA* Conservation and Stewardship Tools.

Further amendments to *ALSA* are needed to fully address the concerns raised by the Property Rights Task force and the ELC. Until that happens, the SSRP must implement the LUF where *ALSA* fell short in a way that restores trust. This will require adopting principles of sustainable development that recognize natural limits, and enabling the use of Conservation and Stewardship Tools in accordance with those principles. The SSRP must coordinate and guide land uses without strictly imposing them on private land from the highest possible level. Ultimately the SSRP must fill the gaps that only a provincial statutory plan can fill.

² Major Sub-Regional Initiatives, Roundtable on the Crown of the Continent, <http://crownroundtable.org/initiatives.html>

³ Environmental Law Centre, *Backgrounder - Bill 36: Broad Discretion with Little Accountability* (May 1, 2009) http://www.elc.ab.ca/Content_Files/Files/Backgrounder_Broad_Discretion_with_little_accountability.pdf

⁴ Nigel Banks, *Regulatory chill, weak regional plans, and lots of jobs for lawyers: the proposed amendments to the Alberta Land Stewardship Act*, ABLawg.ca, (March 4, 2010), http://ablawg.ca/wp-content/uploads/2011/03/blog_nb_bill10_mar2011.pdf.

⁵ Report of the Property Rights Task Force: Engagement with Albertans (Government of Alberta, February 2012), http://justice.alberta.ca/programs_services/about_us/prao/assets/PropertyRightsTaskForce-Report.pdf. [Property Rights Task Force Report].

- **Where to begin:**

The SSRP should begin by returning to the LUF's first Guiding Principle of **sustainable development**. The RAC Advice promotes a derailment by proposing several Strategic Land-Use Principles that are not recognized tenets of sustainable development. In some cases they are the antithesis. One of the basic purpose of land use planning is to separate incompatible uses.

The attached document is the ELC's Core Environmental Principles document that interested GOA personnel at the ENGO session. This document elaborates on the principles in the ELC Comments. Please consider it part of the ELC's submissions.

The ELC's Core Environmental Principles have been addressed in varying degrees by international agreements, academic experts, legislative enactments and courts of law. These vetting processes establish credible principles of sustainable development.

The Core Principles need to be included in the SSRP, especially where they are lacking in *ALSA*.

With the right principles, the first SRRP need not be perfect or complete to succeed. *ALSA*'s provisions for 10 year review of regional plans help make regional planning the continuous exercise that it should be.

ELC Core Principles

- **Sustainability.**
- **Precautionary principle.**
- **Pollution prevention.**
- **Polluter pays.**
- **Cumulative impacts.**
- **Intergenerational equity.**
- **Public participation.**

#2: Create a Sub Regional Plan.

Currently there is a risk that the SSRP may not work for the Eastern Slopes. This is detrimental to the LUF as a whole.

The challenge of planning a vast region and ALSA's minimal requirements for regional plans predispose the SSRP to high level objective setting. The environmental management frameworks for surface water, air quality and groundwater identification will address broad regional environmental concerns.

On the Eastern Slopes, top cumulative effect issues include land disturbance and related impacts on biodiversity - the two missing frameworks. The top priorities for the Eastern Slopes under current policy are water supply and watershed protection, not water demand. In these ways the Eastern Slopes have more in common with other upland regions than they do with much of the SSR.

A leading authority on this exact issue is the World Watch Institute. The Institute frames sustainable development for mountain peoples and environments as a distinct matter that must be pursued on top of the universal priority of facing nature's limits.⁶ The Institute indicates that the term "mountains" is quite flexible. The Institute establishes that the key distinction is between the "uplands" and the "lowlands". The "uplands" and "lowlands" are integrally connected by the flow of resources, people, and water.

The best response may be an **Upland Sub Regional Plan**. This recommendation resembles the system of municipal development plans and area structure plans. The plan enabled by the statute sets policy objectives, guides decision makers with varying degrees of binding effect, and may identify priority areas for land conservation, but it rarely creates direct controls on land use. The subsequent plan provides details on anticipated local development, which may include public reserve lands and private easements. The subsequent plan is not enabled by the statute so it must be provided for in the first plan for it to be required.

⁶ Lester R. Brown et al, *The State of the World: A Worldwatch Institute Report on Progress Toward a Sustainable Society* (New York: WW Norton & Company, 1995).

- **How would a sub region advance the LUF?**

The SSRP must reconcile the LUF's claimed continuity from the Green Zone-White Zone designation and the Eastern Slopes Policy with the LUF's declaration that the old rules will no longer work.

An Upland Sub Regional Plan could:

- Demonstrate that the region's water tower is larger than the public land covered by the ESP;
- Demonstrate that this same land supports a unique ecosystem that warrants protection and produces significant EGS;
- Reconcile concerns with centralized planning with the need for strong policy and a coordinated response to land fragmentation. The Property Rights Task Force reveals concern with regional planning proceeding in advance of a policy to address agricultural land fragmentation. The ELC's understanding is that the LUF and regional plans were intended to be that policy. A sub regional plan would go far towards engaging local interests in a response to fragmentation and,
- Provide time to develop and pilot the incomplete *ALSA* tools:
 - Stewardship Units and Offsets; and
 - Conservation Directives.

The missing tools are part of the full response. They *ALSA* tools are intended to work together like a tool kit and may well have been created with the Eastern Slopes in mind. The current prospect of relying on conservation easements and public protected areas was possible prior to *ALSA* so is definitely not the complete response to the land use planning challenge on the Eastern Slopes. These recommendations provide examples for use of the full *ALSA* tool kit.

- **Geography of the sub region**

An upland sub region would generally include:

- Public lands under the ESP, which includes CMAs 6,7,8,9.
- Municipalities adjacent to public land under the ESP and most importantly to those CMA's.

A very small sub region might include one CMA and an adjacent municipality.

A medium sized sub region could run from Highway 3 to Highway 1.

A full ESP-based sub region could run from the Ghost to the Castle PLUZs and adjacent municipalities.

A very large sub region might extend to include the mountain municipalities and the Waterton front.

Other considerations in setting the boundaries could include the RAC's Priority Surface Water Map and Groundwater Resource Map and the work of the WPACs. Ultimately, a sub-region should include adjacent public and private lands in the upper watersheds of the SSR.

- **Creating a sub region**

The SSRP should continue to provide guidance and direction to decision makers and other persons in any event. In some cases this direction should be binding. However, there are advantages to interest in being guided by a sub-regional plan on the part of land managers, municipalities, and landowners. Any 'coalition of the willing' would facilitate implementing the remainder of the ELC's recommendations. All of the remaining recommendations can be applied to smaller sub-regions.

The SSRP should include new TOR for the sub-region. The TOR should require that the sub-regional plan be created and incorporated into the SSRP, provide that *ALSA* Conservation and Stewardship tools may be established in the sub-regional plan, and provide a deadline for completion.

The prospect of a sub-regional plan must not be an excuse for delay, especially on actions that could be taken without the SSRP. Statutory designations of public land should occur in the initial SSRP.

#3: Prioritize Local Proposals.

ELC does not suggest that local knowledge is superior or that locals show consensus. On the contrary, local disputes over land uses or the merits of ALSA can be intense. There are simply established advantages to understanding local perspectives:

- Standardized development plans and practices can do disproportionate damage in upland environments because these environments and their human cultures are highly impacted by disturbance.⁷ The most successful plans and actions for the upland environment will be designed for that environment and will originate from the people who live there.⁸
- Social license for development requires recognizing that development disproportionately impacts the communities where it occurs. The local cost-benefit analysis is different. This is a tenet of industrial development but it could come to apply to municipal development.
- Local proposals might be strongest where the RAC Advice is weakest. The ELC's view in having attended multiple LUF planning sessions is that urban sessions gravitate towards high level policy jargon and rural sessions gravitate towards practical effect.

Types of local proposals that should inform the SSRP include:

- **Value studies:**⁹ Value studies can help set priorities and choose implementation tools. Value studies can show where upland and lowland priorities converge or diverge. They can help choose between regulation and MBIs. They may reveal where MBIs could bridge social divisions or create them.
- **Responses to Amenity Migration and residential sprawl:**¹⁰ Mountain regions in western North America have shown minimal action on amenity migration.¹¹ Culture values, municipal capacity challenges, and marginalization from the centres of power are creating barriers to effective responses. The result is a gap between local citizen desire for sustainable land use and official

⁷ *Ibid.*

⁸ *Ibid.*

⁹ An example submitted to the Land Use Secretariat is the Values and Voices Report of the Southern Foothills Community Stewardship Initiative. [the Values and Voices Report].

¹⁰ An example submitted to the Land Use Secretariat is the Recommendations of the Southern Alberta Land Trust Society. [The SALTS Recommendations].

¹¹ Laurence A. G. Moss, Amenity-led Change in Rural Towns and Regions, Amenity Migration Planning Capacity Building Workshop 1, Castlegar, BC 09-11 April, 2008.

approval of private development.¹² Rural actors are starting to show interest in “smart growth” approaches that delineate biologically productive land from development areas.¹³

- **Biodiversity conservation measures** that are driven by local desire to derive economic and social benefits from wildlife and wild places.¹⁴ Such initiatives frequently involve ENGOs providing technical assistance in developing community proposals that can be adopted into the framework of the larger jurisdiction.¹⁵
- **Cumulative Effect Studies and BMPs:**¹⁶ People who use the landscape are the most apt to be concerned with changes to land and water and to have experience (or an interest in learning) stewardship practices. Bottom up programs that produce a perceived local benefit to BMPs can surmount social barriers to cumulative effects management. Models like Cows and Fish demonstrate how it pays to do the right thing for the environment.

¹² *Ibid.*

¹³ *Ibid.*

¹⁴ State of the World, *supra* note 6.

¹⁵ Examples submitted to the Secretariat include the Values and Voices Report (*supra* note 9) and the Castle Special Place Citizens' Initiative Conceptual Proposal.

¹⁶ Examples include the work of the Southern Foothills Study, similar studies, and the work of the WPACs.

#4: Place Statutory Designations on Public Land.

The pursuit of environmental objectives in a public policy should begin with the sound management of public land and resources. This is a widespread expectation.

The SSRP should begin by protecting mountain headwaters. There is no indication that private conservation and stewardship in the foothills can compensate for loss of water supply function of the Forests Reserve and ESP lands.

The same inability to offset applies to water storage. The Alberta Meeting of the Rosenberg Forum states that “the ecosystem services provided by the upper watersheds cannot be replaced by engineered infrastructure”.¹⁷ The Oldman WPAC states that “Protecting water at its source, or before it arrives at our treatment facilities, is more ecologically and economically responsible and a preventative approach to water management”.¹⁸

The priorities of watershed protection and compatible recreation in the ESP have been affirmed by the LUF and the TOR. The RAC Advice is weaker as it resembles more of a reconciliation of the two priorities. None of the affirmations to date indicate the implementing measures.

The RAC was not asked to consider the ESP. This avoided the problem that the non-statutory nature of the ESP was a barrier to implementation.¹⁹

The Rosenberg Forum states that given Southern Alberta’s water scarcity,

“it may be wise to consider special upland designation for no other reason than watershed protection. In examining upland watershed protection options, it should be noted that while our mountain national parks are now considered valuable tourism resources, they were original purpose resided as much in water resource protection as in tourism promotion.”²⁰

In industrialized countries, mass tourism and recreation are fast overtaking the resource industries as the biggest threat to mountain communities and environments.²¹

¹⁷ Program Synopsys & Lessons for Canada & Alberta, Rosenberg International Forum on Water Policy, Forum V (Banff, Canada, September 6-11, 2006). [Rosenberg Forum].

¹⁸ Oldman Watershed Council, Priorities for the Oldman Watershed Goal Three: Manage and protect the integrity of headwaters and source waters.

¹⁹ Steven Kennett, *Spinning Wheels in the Castle: A lost decade for sustainability for Southern Alberta*, CIRL Occasional Paper #14, (Canadian Institute of Resources law, October, 2003). [A lost decade for sustainability].

²⁰ Rosenberg Forum, *supra* not 17.

²¹ State of the World, *supra* note 6.

The watershed and recreation priorities can conflict at two extremes of the spectrum:

- **“Intensive” tourism infrastructure** can approach an absurd scale. Controversy is growing over front country “visitor experience” infrastructure in the National Parks. Kananaskis Country has enabled major infrastructure, water withdrawals and impervious surfaces in the mountain reaches. The RAC Advice on developing “iconic tourist destinations” and infrastructure provides no indication of scale.
- **“Extensive” Recreation** by OHVs has been officially declared a top threat to US public forests and Western Canada is facing an increasingly comparable situation.²² Backcountry enforcement is lacking and difficult. Random camping in the mid country now involves thousands of motor vehicles with no amenities provided. The RAC Advice to end destructive recreation does not propose implementation measures.

The statutory nature of the SSRP itself can improve cumulative effects management in the headwaters but the SSRP does not have sufficient statutory priority to fully order the watershed and recreation priorities. Headwaters protection is also one area in which the 10 year reviewability of ALSA regional plans raises concern. The best prospect for headwaters protection may be for the SSRP to act as a platform to introduce statutory designations.

The SSRP should include statutory designations on CMAs 6,7,8, 9 and on all other public land covered by the water supply and forest vegetation conservation purposes of the *Forests Reserve Act*. This includes any areas of the Livingstone Range south of Kananaskis Country and north of Highway 3 that are not covered by CMAs.

Designations are most needed where none currently exist.

ELC understands that the parks legislation may be reviewed and new designations available for use in regional plans. Any designations used in the SSRP should be based on merit in ordering and upholding the watershed and recreation priorities. Alberta currently has four designations that can help order and uphold the watershed and recreation priorities by providing for a level of user infrastructure on natural landscapes. The most suitable existing designations include:

- Wildland Parks;
- Heritage Rangelands;
- PLUZs; and
- ALSA Conservation Directives.

²² Eos Research and Consulting, *Review of Strategies and Tools For Access Management* (Foothills Landscape Management Forum, February 2009). [Access Management].

All four of the above designations should be used in the SSRP.

ELC does not expect any designation to settle intense user disputes. Some recreational user conflicts in Alberta may be more acrimonious than in other jurisdictions facing the same issues.²³ Studies of the outcome of regional planning in high conflict areas of BC indicate that disputes continued but that participants still valued the planning process.

Two priority considerations in choosing designations should be:

- **The purpose of the statute and its effect on the mandate of the land manager.** The mandate of the land manager primarily flows from statutes and the SSRP can only prevail over regulations, not statutes.
- **Jurisdiction over consents and the effect on certainty of consents.** This will determine the extent to which cumulative effects management and ALSA measures such as rescinding consents would be required on top of the designations in order to address the intensity of use. The greatest uncertainty for all users is no designation at all.

Wildland Parks:

Wildland Parks are highly suitable designations for CMAs in mountain forests and headwaters. The statute provides a clear mandate to preserve and protect and to facilitate outdoor recreation.²⁴ Disposition holders are prohibited from allowing conditions that may be injurious to any watershed or water body in the vicinity.²⁵ Certainty is high as jurisdiction over consents is near unitary and applications must consider the purpose of the statute.²⁶

Heritage Rangelands:

Heritage Rangelands are highly suitable for CMAs in foothills grasslands and headwaters. The purpose of the designation is preservation and protection using grazing to maintain the grassland ecology.²⁷ The preamble (though not the provisions) provides a goal of preserving natural beauty from industrial

²³ *Ibid.*

²⁴ *Provincial Parks Act*, RSA 2000, Chapter P-35, s.3.

²⁵ *Provincial Parks (Dispositions) Regulation*, Alta Reg 241/1977, section 8(j)(ii).

²⁶ Wildland Park general disposition scheme:

- Grazing may be permitted continue in Forest Reserves for majority Canadian shareholders resident in Alberta;
- Grazing consents that are denied under parks legislation may be sought under the Forests Reserves Act;
- OHV on pre-existing customary trails only;
- Commercial Forestry prohibited;
- Minerals Grandfathered.

²⁷ *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*, RSA 2000, c. w-9., s.4.1 [WAERNAHRA].

development.²⁸ Certainty is moderate as jurisdiction over consents remains divided and cancellations of non-compatible consents are to occur “as far as practicable” and “as soon as possible”.²⁹ Grazing is certain because having no grazing would frustrate the statute but specific consents are not certain.³⁰

Public Land Use Zones (PLUZ)

PLUZs are not inherently suitable for CMAs. The statute provides no watershed, recreation or biodiversity purpose. The statute largely functions to grant dispositions and access to public lands.³¹ PLUZs are incorporated into the *PLAR*. PLUZs and the *PLAR* are an administrative response to the current need to manage public use of vacant public lands.

Certainty of consents is low. Multiple agencies grant consents and the single energy regulator may take over access consents from the land manager. Cumulative effects management and action on consents under *ALSA* may be required.

Any PLUZ can cease to be vacant land. This occurred in the Castle PLUZ during the SSR planning process causing the RAC Advice for the Castle CMA to be smaller than the pre-existing Castle PLUZ. PLUZs are inherently transient.

PLUZs are well suited to mixed use areas of lower ecological significance. PLUZs have demonstrated success in situations where there is no existing designation and one is needed PLUZs have received positive independent review for use in managing OHV use.³² PLUZs are not required to focus on OHV use and are very flexible in their ability to separate uses by area or season.³³ The success of PLUZs at controlling users may be affected by the pattern of prior disturbances under non-statutory plans.

²⁸ *Ibid.*

²⁹ *Ibid.* section 7.2

³⁰ Heritage Rangeland general disposition scheme:

- Grazing consents not brought under the Heritage Rangeland legislation;
- OHV on existing trails with further regulations not in force;
- Commercial Forestry Prohibited;
- Minerals Grandfathered.

³¹ *Public Lands Act*, RSA 2000, c P-40.

³² Access Management, *supra* note 22.

³³ The Bighorn Backcountry in the North Saskatchewan Region is an example.

The SSRP could increase the value of PLUZs for upholding the watershed and recreation priorities by:

- Making recreational end use a top consideration at the disturbance planning stage. This might involve:
 - Planning disturbances to avoid future recreational use or assist reclamation;
 - Denying disturbances that would cause recreation management challenges; or,
 - Planning disturbances with the intention of recreational end use. (Building industry roads in ways that would create environmentally sustainable recreational trails).
- Requiring that all PLUZs and AMPs meet the baseline *PLAR* prohibition on OHV use in water bodies.³⁴ PLUZs prevail over the general *PLAR* provisions and therefore can permit impacts that would be prohibited on undesignated land.
- Requiring that all PLUZs prohibit mud bogging as per the RAC Advice. The *PLAR* only prohibits motorized use of permanent water bodies, not ephemeral water bodies.
- Providing direction as to when permits under *PLAR* will be required for rallies, gatherings, and commercial recreational trail use. The RAC Advice to require authorization for rallies and races is sound. The *PLAR* can help implement this type of advice. .
- Using Conservation Directives to add to the purposes of the PLUZ.

Conservation Directives

Conservation Directives have significant potential for use on undesignated public land. Examples include:

- Reconciling environmental protection and property rights by providing direction on specific uses while allowing consents to continue;
- Protecting undesignated land that has received little attention to date but where future threats are foreseeable;
- Breaking stalemates between users over statutory designations;
- Providing direction to multiple regulators with respect to an area of land;

³⁴ *Public Lands Administration Regulation*, Alta Reg 187/2011, section 43(a)(iii).

- Assisting with co-management between departments;
- Setting limits on linear disturbance; and
- Countering rushes for land and resources in advance of sub-regional plan completion.

Policy on Conservation Directives should be developed in advance of the Sub Regional Plan. Given the above potential, it may be worth piloting a Conservation Directive on public land in the SSRP itself. Piloting Conservation Directives on public land is the best way to avoid titleholders.

Delegated Administrative Organization (DAO):

ELC understands that a DAO has been deliberated in GOA and was to be a possible outcome of the LARP. There is a good argument for a DAO to manage recreational trails across lands under different management.³⁵

- The SSRP cannot prevail over the divergent mandates of the land managers.
- Recreational stewardship groups face liability and insurance barriers beyond the SSRP.

A DAO with a mandate to design, build, manage, close and reclaim trails could address the demand for environmentally sustainable recreation trails while meeting the need to set limits on linear disturbance.

³⁵ An example is the proposal of the Alberta Off-Highway Vehicle Association (2009).

#5: Set Limits on Linear Disturbance.

Mountain ecosystems are highly vulnerable to soil and vegetation disturbance.

A recognized failure of the ESP was a zoning system that simply listed permitted activities but did not address the intensity of use.³⁶ Dense linear disturbances are a bane to responsible public land users, land managers, adjacent landowners and the environment. This is especially true where resource management plans gave little thought to recreational end use.

The RAC Advice on land management in the headwaters falls short of making ILM a regulatory requirement. ILM has also proven limited in its ability to address recreational disturbance. Recreational user preferences and disturbance suitability are different and are not well addressed by the classic example of coordinating forestry and minerals disturbance.

Capping total linear disturbance could:

- Allow multiple uses to continue.
- Break stalemates over choice of designations as any designation can be supplemented with limits on intensity of disturbance.
- Improve PLUZs for watershed protection and recreational use under the oversight of a DAO.

Any CEM framework for land disturbance should be in the regulatory details part of the SSRP.

The details should:

- Set geographic boundaries, for example one CMA, PLUZ or Conservation Directive area.
- Identify decision makers that are bound by the disturbance limit including all agencies with power to approve disturbances.
- Alternatively, in a PLUZ, it might be possible to apply a framework to the requests of recreational users for trail designation and reclamation.

³⁶ A Lost Decade for Sustainability, *supra* note 19.

- Set a measurable indicator, for example linear disturbance density of square kilometer.
- Set tiers against which to monitor increasing disturbance, including a baseline, intermediate tiers, and a threshold. Clarify whether setting tiers involves any integration of science, societal valuation and specific landscape context.³⁷ A frequently cited threshold is the level of linear disturbance required to maintain species at risk. Numbers may be drawn from species habitat designation and recovery plans under the Alberta *Wildlife Act* or federal *Species at Risk Act* or independent science.
- Start with reclamation if necessary to stay under the threshold.
- Provide for government monitoring, as a key to CEM success.

Actions to prohibit, regulate, or control disturbance could include: refusal of consents to projects or surface access; amended approvals; or Conservation Directives.

Obligations could be on one user, the entire sector, or all users of a CEM area. Obligations at tiers below the threshold might include disturbance minimization or mitigation or BMPs. Obligations at the threshold could include: reclamation or ecological restoration, mandatory ILM or making use of existing disturbances, or acquiring a disturbance permit from another user. Trading could involve use of stewardship units (described below with respect to EGS).

Any Offsets must be strictly controlled. Offsets that allow real disturbances to increase inside the CEM framework area should be prohibited. This includes mere disturbance levies that do not fund equivalent reclamation in the same area, especially any levy at less than the cost of real offset.

³⁷O2 Planning+Design INC., *Ecosystem Goods and Services Southern Alberta, A Framework for assessing natural assets and condition*, (Submitted to Alberta Environment, February 2, 2009).

#6: Make Place Based Regulations.

The RAC was not asked to comment on existing statutes and regulations. The number of administrative notations and directives related to the Eastern Slopes indicate that different operating practices are warranted. The SSRP should guide regulators in this area. It may be desirable for the SSRP to make regulations for some land uses that are already regulated. Place-based regulations have been used in the US National Forests and may be appropriate for the Eastern Slopes.

It is worth reimagining the role of forestry on the Eastern Slopes. The Regional Profile and the RAC's resource maps indicate low forestry value compared to the watershed, recreational, and biodiversity values. Mountain environments around the world are seeing a need to shift from commercial logging to community forestry and landscape management.³⁸

The barrier is Alberta's dated and conflicting forest legislation. The water supply and conservation of forest vegetation purposes of the *Forest Reserves Act* are frustrated by the disposition system under the *Forests Act*. Government and company forest managers have very little mandate to manage the forest for any EGS other than wood. Efforts have been made to follow sustainable forestry management principles and to create disposition-specific operating ground rules but this does not compare to regulations that would uphold the statutory purpose of the forest. Opposition to logging gets misinterpreted as an attack on the provincial industry when it is a localized concern. Enabling forest managers to manage the Forest Reserves for non-timber values might require an expensive legislative overhaul for one challenged corner of the industry when the legislation might be adequate elsewhere.

The SSRP could create place-based forestry regulations that prevail over the *Forests Act* regulations. Existing dispositions under the *Forests Act* could continue but the regulatory regime would change. Regulations could provide operating practices based on species needs, adjust timber dues and provide for more transparency and public participation in forestry planning.

This is a case where the "band-aid" solution might be the best one. It is fast and cheap and lets people keep working. It could create a regulatory environment that helps operators qualify for market certification. The door to future MBIs will be opened if EGS can accumulate over the set temporal and geographic boundaries of a forestry disposition. The 10 year review of the SSRP could include a review of disposition holders. Evidence of performance can be used to adjust the place-based regulations in the second SSRP.

³⁸ State of the World, *supra* note 6.

#7: Create Networks of Public and Private Conservation Land.

The CMAs will work best with conservation and stewardship of adjacent lands. This holds true no matter what measures are used to implement the CMA. The established response to ‘doughnut hole’ public protected areas is to create networks of conservation and stewardship land.³⁹

The CMAs are often bounded by private land. Where these landscapes are well managed it is hard to see where the property boundaries are. Some proposed CMAs are less well protected and managed than much private land in the Sub-Region.

Networks of public and private land should be sought around CMAs #6,7, 8, and 9.

- **Identifying potential network lands:**

The RAC Advice did not identify any private land. The ELC recognizes that there is opposition to provincial designations of private lands and especially to strict zoning. Options could include:

- Mere designation, with municipal plans and bylaws to continue unaffected and provincial regulatory decisions to continue unaffected.
- A “dominant land use” designation in which proposed activities would be assessed based on their ability to co-exist with a declared dominant use.⁴⁰
- A model resembling the British Columbia Agricultural Land Reserve (ALR). The ALR began as strict zoning but currently includes a formal process to seek exclusion of land from the reserve. The impact of exclusion is a known subject of debate.
- Conservation Directives (see below).

Any of the above examples could provide guidance and direction to decision makers without strict zoning.

³⁹ *Ibid.*

⁴⁰ SALTS Recommendations, *supra* note 10.

Identifying private lands of conservation value could:

- Provide guidance to regulators and approval agencies that conservation and stewardship on those lands is directed at the objectives of the SSRP.
- Provide guidance to the Land Trust Grant Program and the Alberta Land Stewardship Fund for priority funding areas.
- Identify where incentives for conservation and stewardship should be directed.
- Create “sending areas” for TDC schemes. Pre-identification would add assurance that a subsequently proposed scheme has conservation merit.
- Allow for conservation easements to be created in ways that reflect SSRP objectives, which could provide durability to the easement if it is challenged.

Initial identification could be made through:

- Conservation zoning that already exists in municipal plans and land use bylaws;
- Conservation mapping that has been done by municipalities and NGOs;
- Species at risk habitat designations and recovery plans;
- Environmentally Significant Areas.

Any identifications should be included in the Sub Regional Plan, or if appropriate, in the SSRP.

- **Building networks of public and private conservation lands.**

Establishing conservation lands provides an opportunity to set and pursue clear environmental objectives. The area of land conserved is one option for a quantifiable objective. Area of land is often a consideration for conservation funders.

Land conservation objectives can be pursued through reciprocity. Reciprocity is the most basic MBI. It has the potential to demonstrate the features of good MBIs.

Good MBIs are:

- ✓ Simple
- ✓ Transparent
- ✓ Participatory
- ✓ Produce real environmental outcomes.

Reciprocating conservation donations can encourage further identifications and donations.

A public-private partnership challenge has been central to promoting conservation and stewardship in Montana.⁴¹

1. Put a statutory designation on public lands next to donated easements.

Conservation Easements are voluntary relinquishments of private property rights that will advance public priorities in the SSRP. This sacrifice deserves recognition.

Recognition can come from a statutory designation that benefits the easement donor.

A **Heritage Rangeland** should be created where the easement donor is a rancher or member of the ranching community.⁴² The Heritage Rangeland will provide security for the ranching operation and protection from incompatible activities on adjacent land.

In cases of “soft easement” donations, (discussed below), a Conservation Directive on public land could allow a working landscape to continue for the easement donor. The Conservation Directive could provide the public with a form of protected area and a regulatory backstop on stewardship MBIs. (Discussed below).

Other designations might be appropriate for easements donated by developers, industrial landowners or forest landowners. Parks and PLUZs could be responsive to easement donations in cases where increased recreational use is anticipated, for example an easement donated by a tourism developer.

2. Incentivize private conservation adjacent to public land that receives a statutory designation.

Adjacency to public land can enhance the benefits of private land ownership. The **Property Rights Task Force Report** discusses how statutory consents are part of the value of private land. Adjacency to public land can also cause the landowner to become endowed with EGS. Private development adjacent to parks and protected areas causes fragmentation and reduces ecological functioning. The SSRP should prioritize such lands for funding and incentives for private conservation.

⁴¹ The leading example is the Blackfoot Challenge, <http://blackfootchallenge.org/Articles/> .

⁴² SALTs Recommendations, *supra* note 10.

The ELC proposes a series of options for landowners of which conservation easements are only one:

Option 1: Conservation Easements:

Conservation easements are a preferred means to meet environmental goals due to their statutory purposes and legal enforceability. Easements are needed to provide merit to TDC schemes (below).

The SSRP should not overly rely on easements simply because easements are fully enabled. Easements are of long or perpetual duration. The reduction in market value persists but so do the ongoing costs for monitoring, stewardship and possibly enforcement. Grants may only cover initial costs. MBIs for EGS that could support stewardship are not well developed.

Legal challenges to remove easements are foreseeable. Litigation over private conservation is in Western Canada is recent and likely increasing.⁴³

Policy Guidance and regulatory details to incentivize conservation easements in the SSRP:

- Any Conservation Easement donated in reciprocity for the creation of new statutory designations on public land in the SSRP should be funded by the Land Trust Grant Program and should receive priority funding for stewardship.
- The SSRP could create a municipal tax category for conservation easements by prevailing over the *Municipal Government Act* regulations and municipal bylaws.⁴⁴ Opportunities for municipalities to recover lost revenue might be available if the easement was created as part of a TDC (below).
- The SSRP can provide policy guidance for the use of conservation easements for agriculture if the intention is to conserve farmland (likely crop agriculture). The ELC has provided the Secretariat with a Report on a Proposed Policy Direction.⁴⁵

⁴³ *Nature Conservancy of Canada v Mattus*, 2011 SKCA 135; *Strathcona (County) v. Allan*, 2006 ABCA 129; *Willman v. Ducks Unlimited (Canada)*, 2005 MBCA 13; *Keller v. Municipal District of Bighorn No. 8*, 2010 ABQB 362; *Prairie Crocus Ranching Coalition Society v. Cardston (County of)*, 2002 ABQB 160.

⁴⁴ *Matters Relating to Assessment and Taxation Regulation*, Alta Reg 220/2004.

⁴⁵ Environmental Law Centre and Miistakis Institute, *Conservation Easements for Agriculture In Alberta*, a Report on a Proposed Policy Direction (submitted to the Land Use Secretariat, March 2012).

Option 2: Lease of private land to the Crown for use as a protected area.

- **Heritage Rangeland** on private land by agreement: ⁴⁶Heritage Rangelands may be placed on “public land, or land in respect of which the Minister has entered into an agreement that gives the Crown the right to designate it as a heritage rangeland”⁴⁷. The creation of any Heritage Rangeland requires public notice.⁴⁸ Landowners should be aware that there will be notice of their intention and the possibility of public hearings.
- **Wild land Park** on private land by agreement⁴⁹. The Parks Minister administers “land purchased, expropriated or otherwise acquired (including land leased to the Crown)”.⁵⁰ Cabinet may “designate land that is owned by or leased to the Crown” as a provincial park.⁵¹

These above two types of agreements might help overcome barriers to easement creation:

- Ongoing payments could address the ongoing costs of monitoring and stewardship.
- Short durations and clear termination dates could encourage donations. A more committing donation might follow from the trial.
- The private land would receive protection from minerals extraction at a level that is only provided by the Park or Rangeland.
- Provincial parks are exempted from municipal taxation under the *Municipal Government Act*.⁵²

The SSRP should provide direction to supplement the very brief provisions of the above statutes if possible. The ELC is not aware of examples of the above arrangements and the potential to overcome barriers to private conservation is clear.

Option 3: Sale of Private land to the Crown for use as Heritage Rangeland or Wildland Park.

The ELC understands that this tool has been used on the Eastern Slopes in the past.

⁴⁶ WAERNAHRA, *supra* note 27, s.4.1

⁴⁷ *Ibid.*, s.4.1

⁴⁸ *Ibid.*, s.4.2

⁴⁹ *Provincial Parks Act*, 5.1.

⁵⁰ *Ibid.*, 5.1

⁵¹ *Ibid.*, 6(1).

⁵² *Municipal Government Act*, RSA 2000, c M-26, section 298(k).

Option 4: Conservation Directives on Private Land.

The ELC is not advocating for use of Conservation Directives on private land in advance of policy for their use. Such policy should definitely be developed however. The Conservation Directive is intended to interact with the other *ALSA* tools. Lack of clarity around the use of a coercive tool is a barrier to acceptance. Clear policy should be created on duration and termination of Conservation Directives and on the compensation metrics and transparency of compensation schemes. Time to develop policy on Conservation Directives is a significant advantage to creating a Sub-Regional plan.

Conservation Directives could address barriers to private conservation donations because they are legally binding and require precise purposes but they are very flexible on what those purposes are.

Possibilities include:

- Conservation Directive as a ‘soft easement’ in favor of the Crown with financial compensation. The Conservation Directive could, for practical purposes, be a consensual encoding of negotiated terms. The Directive could be of limited duration and provide for termination. It could allow for surface activities or it could restrict minerals activities. If development potential of the land is affected then the titleholder may apply for compensation. Conservation Directives could provide the landowner with security from fluctuating market prices which would incentivize holding off on development. A more committing donation could follow from the Conservation Directive trial period.
- Conservation Directive for dispute settlement and creation of certainty: Conservation directives might be a flexible dispute resolution tool compared to litigation. Conservation Directives might assist where a binding “conservation and development” settlement would maximize property value for development and maximize conservation potential. There may be situations when a municipality and a developer may be willing to subject their dispute or their negotiated agreement to the imposition of the Crown. An example would be where a developer and the municipality are seeking certainty of development potential but that development potential is subject to provincial government decisions on water, environment or wildlife. Conservation Directives could assist in settling disputes that involve adjacent public and private land because the tool can apply to both lands. Conservation Directives could be used to backstop easements that are intended to be created in association with TDCs or development settlements.
- Conservation Directive as a regulatory backstop to stewardship MBIs. (See below).

- **Supporting Transfer of Development Credit (TDC) Schemes**

The SSRP should pursue TDCs for the Eastern Slopes with enthusiasm. The Miistakis Institute finds that TDCs are useful when development is imminent and that acceptance of TDCs is enhanced in “areas with strong property rights movements and perceived self-image of self-reliance.”⁵³ This aptly describes the situation at hand. TDCs have proven success in other jurisdictions and there are precedents in Alberta in relevant municipalities.

TDCs might help offset losses to municipal tax revenue created by a tax category for conservation easements. The smart growth development in TDC “receiving areas” could ease infrastructure burdens and revitalize towns to promote local business development.

Priority areas for TDCs should include private lands of high conservation value adjacent to public land so that TDCs are used to build the network lands. TDCs can also be used to retain open space between towns that are seeking to retain a distinct character.⁵⁴ This could have significant value on the Cowboy Trail or where adjacent municipalities exhibit different development patterns.

Barriers to TDCs:

ALSA provides the basic components of TDC schemes but not guidance or direction on use of TDCs.

All TDCs must comply with ALSA.⁵⁵ The Alberta Court of Queen’s Bench has held that ALSA has occupied the field of TDCs.⁵⁶ ALSA provides significant details that must be complied with and it enables further TDC regulations that TDC proponents would have to interpret.

TDCs require a demand for development credits. The absence of sufficiently restrictive zoning can create barriers to TDCs.

There may be a ‘critical mass’ factor in pursuing TDCs. TDCs require shared perceptions of benefits from municipalities, landowners and developers that would participate in a proposed scheme. TDCs must be described in municipal plans and bylaws unless the SSRP provides for the TDC scheme. This might create a planning burden that municipalities and developers may not seek to incur. If a TDC is successful, however, it will encourage more TDCs. The circumstantial requirements to create TDCs will be lowest at the front end of TDC usage but may improve significantly.

⁵³ Miistakis Institute, *The Canadian Experience with Transfer of Development Credits* (March, 2009).

⁵⁴ *Ibid.*

⁵⁵ ALSA, section 48(1).

⁵⁶ *Keller v. Municipal District of Bighorn No. 8*, 2010 ABQB 362.

Policy Guidance and Regulatory Details in the SSRP to overcome barriers to TDC usage:

- The SSRP should generally function as a support program for proponents of TDC programs.
- TDCs established in pursuit of outcomes under the SSRP should be required to be sealed with conservation easements. The SSRP should include regulations that require conservation easements as the satisfactory form of protection for TDC schemes.⁵⁷
- The SSRP may need to assist in the creation of a zoning environment that creates a demand for development credits.
- Municipalities that are independently pursuing trading schemes would benefit from notice that they have come under *ALSA*.
- TDC “sending areas” (the conservation lands) should be established by the SSRP or by municipalities with guidance from the SSRP. Sending areas should not be established by the developers alone. TDCs proposals from developer-led ASP processes should not be subject to scrutiny. The ELC has previously identified that ASP process as the area of municipal planning most in need of reform.⁵⁸ In some cases it may be preferable for the SSRP to provide for the TDC.
- SSRP should provide capacity support to municipalities and land trusts seeking to run TDC programs. Assistance could come through *ALSA* funding for pilot MBI research and design.⁵⁹

⁵⁷ *ALSA* s.50(1).

⁵⁸ James S. Mallet, *Municipal Powers, Land Use Planning, and the Environment: Understanding the Public's Role*, (Environmental Law Centre, 2005), http://www.elc.ab.ca/Content_Files/Files/MunicipalPowersLandUsePlanning.pdf.

⁵⁹ *ALSA*, sections 23-27.

#8: Fund Stewardship with Accountability.

The SSRP should provide capacity support and financial incentives for private land stewardship. Easements in particular may require stewardship in perpetuity.

Public funding for private stewardship could simply be provided through the Alberta Land Stewardship Fund without the SSRP. The Stewardship Fund is not restricted by regulation to the Land Trust Grant Program.

The possibility that the SSRP could be implemented using MBIs created by the ALSA Conservation and Stewardship Tools warrants a deeper discussion than was provided by the RAC Advice.

The ELC proposes scrutiny of possible programs that would:

- Rely on private stewardship to pursue objectives of the SSRP; or,
- Fund private stewardship through MBIs for EGS.

The need to research, develop, and pilot meritorious stewardship programs is a significant argument in favor of creating a Sub Regional plan.

- **Reliance on Private Stewardship**

It might be possible to set stewardship objectives in the SSRP. Examples include area of land under stewardship BMPs or increase in EGS under stewardship BMPs.

The RAC Advice for managing CMAs –using BMPs, MBIs, “integration” and “management intentions” -- may be questionable with respect to public land but it could be quite appropriate for adjacent private land.

It is not entirely clear where stewardship is carried out by a landowner or by an industry. There would be overlap with respect to ranching, grazing, farming or private forestry. For example, a ranching operation may consist of deeded lands and leased lands. The operation has property interests in adjacent public and private lands and may steward both lands.

If the stewardship is carried out in a private landowner capacity, then it might not be good policy to fund land uses that occur anyway in order to discourage land uses that could be legitimately regulated.

If the stewardship is carried out in relation to industry operations, then BMPs are questionable proxies for regulations in any situations where the regulations should be requiring better practices.

The general rule is that private parties who receive statutory recognition to manage public resources are subject to regulatory oversight.

Options to explore could include:

- **BMPs established by ALSA regulation:** BMPs could be drawn from local studies or proposals to establish local acceptance. BMPs could be those developed by multistakeholder organizations. Voluntary compliance with the BMP Regulation would provide for funding from the Stewardship Fund.
- **Conservation Directive** that is in fact an expression of Stewardship Intention. Meeting the terms of the Conservation Directive would provide funding from the Stewardship Fund.
- **The Market for Ecosystem Goods and Services (EGS)**

The RAC Advice in favor of MBIs and new markets for EGS lacks clarity as to what these MBIs or markets might be. The Property **Rights Task Force Report** considers a landowner request to be compensated for EGS.⁶⁰ From these two brief comments, it is possible to imagine an MBI through which markets for EGS provide financial incentives or compensation for stewardship.

Markets for EGS are not expressly provided for in *ALSA*. *ALSA* is the obvious legislative platform for such initiatives, however. New markets for EGS might require new recognition of property interests in the EGS that are to be traded on the market. Without statutory recognition, there are few property rights in EGS that can be disposed of on the market simply by virtue of EGS being produced on private land or on public land for which consents have been granted. MBIs that involve financial compensation would likely require statutory enablement through the *ALSA* Stewardship Unit tool. *ALSA* has enabled the existence of “stewardship units, offsets and counterbalancing” but it has not fully created an MBI for stewardship. The MBI would require more regulations and possibly the creation of administrative structures to oversee trading.

A Stewardship Unit and Offset program can be legitimate if well-conceived and strictly controlled.

ELC is aware of two possible options:

⁶⁰ Task Force Report, *supra* note 5.

The “Upstream” EGS Market:

The RAC Advice to manage CMAs using MBIs implies a market of actors who degrade EGS in the CMA.

If the RAC Advice is for agriculture and forestry industries operating in the CMA to be full players in an EGS market then this may require legislative changes beyond the SSRP.⁶¹ Aboriginal rights to use the CMA area could create barriers to MBIs involving the production of offsets on public land.⁶²

The more likely scheme would be that industries that degrade EGS and can bear the regulatory burden would be required to offset by funding stewardship. A possible scenario would be offsets for impact on biodiversity caused by habitat disturbance in the CMA.

Any offset scheme must be strictly controlled. There are multiple concerns:

- The ELC has no indication that private stewardship in the foothills can compensate for lost watershed value of mountain forests and headwaters. If the foothills are already high EGS producers then increase in yield is not certain.
- Much land of high ecological value on the Eastern Slopes cannot be restored and even reclamation is difficult. This is the case with the fescue foothills. Such land must be excluded from any offset schemes.
- True counterbalancing requires reclamation and restoration. Even a conservation easement does not offset a land disturbance or a loss of EGS because it protects what already exists.

Reliance on mere stewardship levies would likely not meet the ELC’s Core Principles or the features of good MBIs. For example, an MBI for EGS modeled after the compliance options in the provincial GHG program would be certain to cause a net loss of EGS because paying levies into a fund is cheaper than purchasing real offsets. Upstream MBIs of this nature could be:

- Complex;
- Non-transparent;
- Non-participatory; and
- Produce a negative environmental outcome.

⁶¹ For details, the Land Use Secretariat may wish to access the ELC’s briefing notes and final report to the Institute of Agriculture, Forestry, and the Environment (IAFE). [Unpublished].

⁶² *Ibid.*

The “Downstream” EGS Market

An alternative is a market for consumption of EGS produced on the stewarded land, such as wildlife or water.⁶³ The prospect of a downstream EGS market is fairly undeveloped in the TOR or the RAC Advice. A downstream EGS market for water supply in particular would pre-empt the public discussion on water markets generally.

An ill-conceived downstream MBI could exacerbate environmental inequities.

However, it is possible for a downstream MBI to meet the test for good MBIs. For example, if each school student has one Stewardship Unit a year and the class helps a rancher restore a creek, then the MBI is:

- ✓ Simple;
- ✓ Transparent;
- ✓ Participatory, and;
- ✓ Produces real environmental outcomes.

A downstream EGS market might be premature for the SSRP but it may warrant research and development and pilot projects in relation to a sub-regional plan.

Consider the regulatory costs savings

Steering MBIs towards desired objectives and preventing perverse outcomes requires significant regulation of the market. ALSA has left much to regulations in regional plans. These regulations would need to fully enable the Stewardship Unit tool and possibly create a regulatory backstop in the form of BMP regulations or Conservation Directives. New administrative structures may be required as contemplated by the provision for an Exchange.

An MBI for EGS could have the unintended consequence of creating burdens on the sector that is supposed to be incentivized. There would be requirements to accredit, monitor and report on offsets.

The ELC recommendations are generally in favor of prioritizing public land conservation and headwaters protection followed by incentives for multiple private land conservation options. Stewardship is part of the picture and clarity could be created through a sub-regional plan. Until that clarity exists, it may be simply be preferable to incentivize private stewardship through capacity support and transparent public funding for new projects that can be accounted for.

⁶³ See, for example, the Values and Voices Report, supra note 9.



If MBIs for stewardship are to be developed then it is worth considering basic reciprocity. A public-private stewardship partnership could begin with reciprocal BMPs by private and public land managers. It could begin with in-kind support for stewardship. Small pilot projects may be preferable, and if successful, could potentially bridge social divisions.

#9: Protect Conservation and Stewardship Value from Minerals Externalities.

Oil and Gas is not the bad guy on the Eastern Slopes. It is part of the heritage and it will help plan for the future under *ALSA*. The Cowboy Trail is full of symbols of social license for the industry.

The unfortunate fact is that minerals activities can create externalities that reduce the conservation value of easements and limit the potential of MBIs for EGS. The Property Rights Task Force is clear that the industry is a leading landowner concern on the provincial scale. Concerns include the industry's record of environmental stewardship.

The LUF recognized that surface and subsurface activities are not well coordinated. The RAC Advice does not assist in coordination because energy development is the only major land use for which the RAC provides no area designation whatsoever. This is inconsistent with the RAC's resource maps which show no special value to energy resources on the Eastern Slopes in comparison to high water, recreation and wildlife values.

There should be areas on the Eastern Slopes where minerals activity is prohibited or cannot occur. Identification of lands of high conservation value should be identified before mineral leasing to the extent possible. Lease swapping should be pursued.

The following are options where leases exist:

Protection for Conservation Easements:

The SSRP should enhance the ability of easement holders and the landowner to prohibit or limit the impact of minerals activities on easements.

Direction from the SSRP to protect easements should be binding on the regulator. The SSRP should provide the regulator with indications of the public interest in conservation lands or an indication of how those lands meet the objectives of the SSRP. It should require the regulator to state the impact of these findings on the approval decision.

Possible impacts on the decision could include:

- Not licensing hydrocarbon activities at all.
- Refusing a specific project.
- Imposing conditions for a project.
- Imposing higher disturbance, abandonment, and reclamation standards.
- Making directives that if not complied with would see suspension or cancellation of approval.
- Maintaining the value of conservation easements by further means.

Clear direction to the regulator on the protection of conservation easements can help alleviate a significant concern with the representation of conservation easements in regulatory proceedings. Reliance on easements by the SSRP would create a public interest in the easement beyond the interests of the landowner and the land trust. The landowner and the land trust have a legitimate right to settle their private grievances so there is need for a mechanism to ensure that the public interest will be represented and considered.

Protection for lands under Stewardship:

The SSRP should provide direction to the regulator for protecting lands under stewardship.

The RAC Advice on higher standards for surface access in CMAs should be extended to cover private lands that have been identified in the SSRP, or where the landowner is pursuing compliance with BMP regulations or Conservation Directives. These should be binding considerations for the regulator.

Direction concerning lands under stewardship needs to be clear because there may be no regulatory interventions. Surface rent will pay more than the market for EGS for some time. There may be no conservation easements to trigger interventions by land trusts. Stewards in the area might be denied standing on projects that do not occur on their land even though the project would impact EGS stewarded by the community. The onus is on the SSRP to protect the emerging EGS market if it is to rely on MBIs in any way.

If there is intention for the regulated forestry and agriculture industries to become full players in an EGS market then SSRP planners need to recognize that minerals activity is the elephant in that room as well. ILM may need to become a regulated practice or it is possible that stewardship units and offsets being built up in one sector will be damaged by multiple overlapping uses.

#10: Commit Resources to Implementation.

Two of the most frequently heard comments in the ELC's outreach program were disdain for shelf policies and fear of implementation burdens. The ESP was ultimately felled by inadequate funding. Too much has gone in to the SSRP to allow that.

It is worth considering that:

- Environmental monitoring is already outsourced.
- Enforcement on public land is already lacking.
- CEM will require new monitoring and enforcement that really must be done by government.
- Any new DAOs would need seed funding.
- Any market for EGS in agriculture or forestry might require legislative changes.
- Municipalities are already capacity challenged before TDC schemes or conservation tax incentives.
- Land trusts are often small charities with big responsibilities.
- Stewardship groups are often stretched.
- Volunteers on public land face liability and insurance barriers to doing too much.
- The RAC Advice favors MBIs that would require research, development and opportunity costs.

If the SSRP is to be anything other than business as usual, then implementation will require a significant commitment of public funding. Fortunately a dollar goes a long way in the Eastern Slopes. The investment of resources by all sectors into the LUF to date suggests that the GOA's contribution will be more than matched. Please consider providing a clear budget lines for the SSRP that reflect the real costs of implementation. It might be the most important part of the plan.

The ELC thanks the Land Use Secretariat for this opportunity to provide input on the RAC Advice and to make recommendations for the SSRP. ELC would be pleased to meet with the Secretariat and to provide further assistance in development of the draft SSRP if the opportunity exists.

Sincerely,

Adam Driedzic
Staff Counsel