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The Environmental Law Centre's Vision for Land Use Planning in Alberta

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Alberta's land base continues to be under significant pressure from increased industrial, commercial, residential and infrastructure development. The existing land use decision-making system, which allows decisions be made by separate, industry-based government sectors or by municipalities with little or no overall planning or consideration of the cumulative environmental and social impacts, has been recognized by Albertans and by the provincial government as unsustainable. As reported in previous editions of *News Brief*, the provincial government has been preparing a Land-Use Framework (LUF) as a broad strategy to address increasing land use conflicts in Alberta and to ensure that land use decisions are made in a more sustainable manner.[1]

This article articulates the Environmental Law Centre's (ELC) vision for an effective land use planning process that is appropriately inclusive and that is effective in creating a regulatory approvals system that results in sustainable land use decisions.

Vision

The ELC's vision for land use in Alberta is:

> Land use decisions are made in accordance with sound laws and policies that are protective of the environment and are implemented and effectively applied so to ensure the sustainability of Alberta's natural capital.

In order to realize this vision, the ELC considers that any land use decision-making processes implemented under the LUF umbrella must incorporate the following three components: (i) the establishment of provincial and regional level land use priorities based upon environmental, social and economic factors as well as corresponding thresholds and limits on development within regions; (ii) a dedicated piece of legislation, such as a *Land Use Planning Act,* to govern planning processes; and (iii) meaningful public participation at each stage of the land use planning process.

The establishment of provincial and regional land use priorities

Land use in Alberta must be guided by a long range, comprehensive vision and plan for the province as a whole. The vision and plan cannot be based merely on considerations of short-term economic gain, which has been the chief criterion for development to date. It must be based upon an expression of the long term environmental, social and economic values of Albertans as articulated through meaningful consultation by the government. These values together reflect the carrying capacity of the environment and the ability of Albertans to maintain a desired quality of life standard, broadly defined to include access to critical infrastructure like housing and health care, in the face of development.

The cumulative environmental and social impacts of industrial, residential and infrastructure development extend beyond the footprint of a single project or the boundaries of a single municipality. Accordingly, environmental, social and economic priorities must be developed on a regional or provincial scale to reflect the scope of potential impacts. Once provincial priorities are defined, corresponding provincial and regional thresholds and limits can be identified and incorporated into binding regional land use plans so that development occurs at a pace and place to best achieve those provincial priorities.

Creation of a *Land Use Planning Act*

Currently, land use decisions are made on a project-by-project basis by municipalities, industrial sector-based government departments and administrative delegates acting under authority of a number of separate pieces of legislation. This process has resulted in insufficient consideration of the regional and provincial cumulative impacts of such decision-making. A sustainable land use planning process must be implemented through the creation of a single overarching piece of legislation, a *Land Use Planning Act,* and through corresponding amendments to a number of existing pieces of legislation.

Such an *Act* should be not be the responsibility of a single government department, in the manner that the *Environmental Protection and Enhancement Act*, *Oil and Gas Conservation Act* and *Municipal Government Act* are administered by the departments of Environment, Energy and Municipal Affairs respectively. Rather, the *Land Use Planning Act* must be administered by the Cabinet and an administrative secretariat separately from individual line departments, all of which must be required to conform to the regional plans established under the *Land Use Planning Act* when making land use decisions in their individual sectors.

The stated purpose of the *Land Use Planning Act* must be to ensure that development of Alberta's land and resources occurs in the appropriate places and at the appropriate time and intensity to ensure that negative social and environmental cumulative effects are managed. In order to achieve its purpose, a *Land Use Planning Act* must:

- Set out the rules of the game for how planning decisions are made. This includes the identification of provincial economic, environmental and social priorities and corresponding regional thresholds and limits; the delineation of planning regions; and the creation of regional planning commissions. The Act must also set out the manner in which regional plans are created and how compliance with regional plans by local decision makers is enforced.

- Assign planning responsibilities amongst provincial, regional and local decision-making levels and create a clear hierarchy between decision makers. The hierarchy must require local decision-makers such as municipalities and provincial line departments like Alberta Energy to conform to regional plans created by the province.

Meaningful public participation

It is critical that the provincial government establish appropriate procedures for meaningful public participation at multiple levels in the land use planning process. Participation must be at its broadest when provincial priorities are set and regional plans are prepared. As decision-making functions narrow down to the local level, larger landscape issues fall away

and the scope for public participation narrows accordingly. Public participation opportunities must be comprehensive, in that appropriate input is allowed at all stages; however, participation opportunities must not be duplicative. There is no need to revisit high level planning issues at the local decision-making level where a project application confirms to the regional plan in place.

Public participation opportunities under the *Land Use Planning Act* must include the ability to monitor compliance with regional plans and to trigger a review of a local land use decision by the regional planning commission or the courts. Regardless of the decision-making level considered, meaningful public participation requires that the decision-making process be transparent and that adequate financial and information resources are made available to facilitate participation.

Conclusion

The ELC's vision for a land use planning regime can only be achieved if the province takes strong leadership over the issue. Social and environmental impacts of land use are wider ranging than project or municipal boundaries and an overarching plan is necessary to ensure that Alberta's land and resources are managed in a sustainable way. Strong leadership is required to recognize and incorporate long term views and a wider range of values than just economic values into land use planning. Strong leadership is required to create an overarching *Land Use Planning Act* to impose enforceable limits on municipalities and individual provincial line departments like Alberta Energy.

The ELC hopes that the provincial government will show the leadership that is required in its implementation of the LUF.

[1] Dean Watt, "Initial Public Consultation Begins on Alberta Land Use Framework" (2006) 21:3 *Environmental Law Centre News Brief* 5, online: Environmental Law Centre <https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=988>; Dean Watt, "Action Update: Land Use Framework" (2007) 22:3 *Environmental Law Centre News Brief* 18-21, online: Environmental Law Centre <https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?ID=1082>.

Comments on these articles may be sent to the editor at elc@elc.ab.ca.

Fitting "The Public Interest" Into a Big Picture Plan for Alberta

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There has been much talk about "the need for a plan" or "the lack of a plan" in managing Alberta's growth. But how will "the public interest" fit into Alberta's plans, particularly the much-anticipated Land-Use Framework?

Currently, "the public interest" is determined by boards such as the Energy Resources Conservation Board (ERCB), which regulates fossil fuel projects, and the Natural Resources Conservation Board (NRCB), which regulates certain non-energy projects. If a hearing is triggered, both the ERCB and NRCB are required by law to determine whether a proposed project is in the public interest by taking into account the project's social, economic and environmental effects.[1] These Boards have been granted a great deal of discretion to decide whether an individual application, such as a single gas well or tourist resort, should go ahead because it is "in the public interest" for the resource to be developed.

It makes some sense that the ERCB and NRCB have public interest mandates, as they regulate developments which often occur on public land or involve the use of publicly owned resources.[2] Either way, "the public" is a vital component of what these Boards do and whether they approve or reject developments. Both Boards are meant to ensure, on the public's behalf, that our needs and well-being are considered and represented vis-à-vis natural resource development.

However, there are problems with the current approach; problems that have been exacerbated by our province's economic boom and the resulting growth pressures on our finite land base and water resources.

The first problem is that these Boards do not have a big picture plan for resource development. They are tasked with licensing projects on a case-by-case basis. This case-by-case approach is not terribly effective at dealing with the cumulative effects of thousands of human actions on the landscape.

The best example of this is in the oil sands. One oil sands mine has impacts that could be managed, but the cumulative impacts of all the mines in the Fort McMurray region are having significant effects on the land, environment and social infrastructure.
To put this a different way, as overall production from the oil sands increases, the intensity of greenhouse gases (GHGs) emitted and amounts of water consumed *per unit of output* can be reduced by incremental improvements to individual projects. However, these individual mitigation measures do not guarantee that the total amounts of GHGs emitted from all oil sands projects will not have significant impacts on our climate, nor that withdrawals of water from all oil sands projects will preserve in-stream flow needs or the health of our rivers. It is easy to exceed the overall environmental capacity for a region when no broader environmental objectives or thresholds have been set for that region.

Unfortunately, both the ERCB and NRCB have shied away from making broader planning pronouncements. In particular, the ERCB has said that its role is to provide for the "economic, orderly and efficient development" of the resource, not to discuss whether certain areas of the province should be off limits to oil and gas development or whether thresholds for a region have been met.[3] The consequence of this approach is that trade-offs among competing land uses are not made. Projects continue to be approved individually without consideration of the broader context in which they will operate or the larger environment that they will affect.

Another problem with the current system is that "the public" is not permitted to provide input into a host of decisions that are made before a project reaches the ERCB or the NRCB for approval. For example, there is no process for public input before subsurface oil and gas rights are leased to companies to develop the resource. Even though the province owns 81 percent of all the oil and gas in Alberta, Albertans do not have a voice when it comes to leasing these resources. Although over 60 percent of the land in this province is publicly owned, there are no opportunities for public input into the leasing of these lands for industrial development.

There may be an opportunity for public input later in the process once a project reaches the ERCB or NRCB for approval, but even this is not a guarantee that citizens will be heard. When development occurs on public lands, there may be no one living close enough to the project to be considered "directly and adversely affected" and trigger a hearing. If members of the public are excluded, the only voice heard by the Board is that of the industry operator that it regulates.

Given these systemic issues, should we be surprised that "the public interest" has become synonymous with economic or industry interests? Or that parties are frustrated and dissatisfied with ERCB and NRCB decisions because they do not see how their views are incorporated into either Board's public interest mandate?

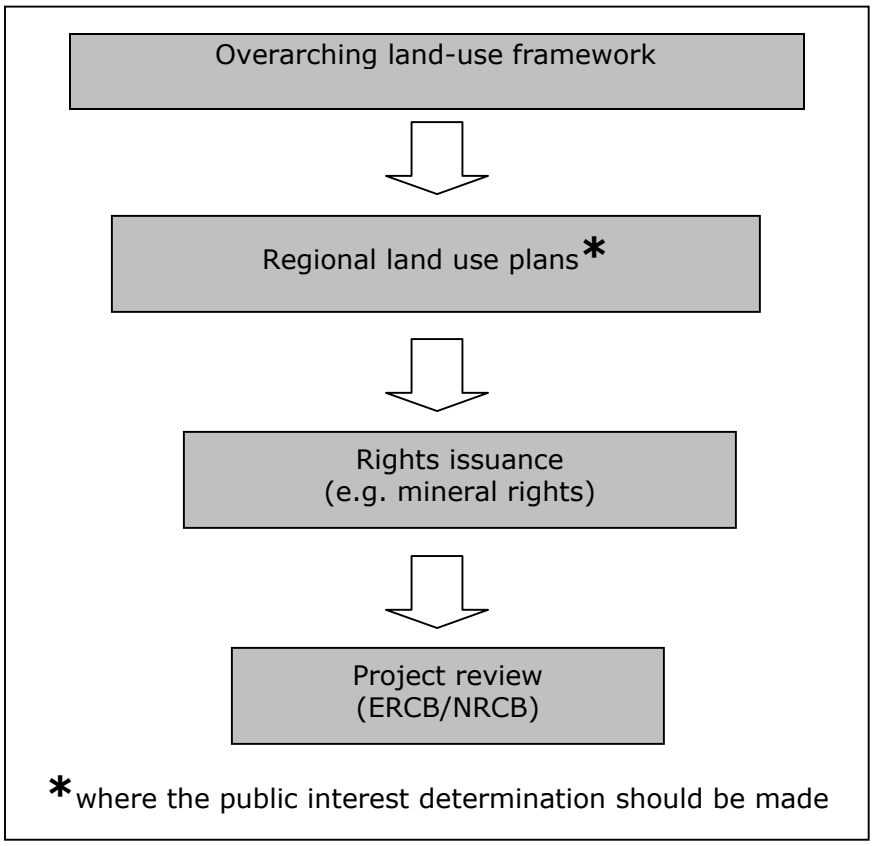
Of course, these Boards do not exist in a vacuum. Since "the public interest" is not defined in legislation, the only benchmark Boards have for determining what is in the public interest is in the general direction and vision of the government that appoints them. The province has made it clear that rapid development of Alberta's natural resources is a mainstay of its economic strategy.

The release of the province's Land-Use Framework provides a key opportunity to incorporate the context missing from individual Board decisions. The Environmental Law Centre produced a brief entitled "*Roadmap For Reforming 'The Public Interest' for the ERCB and NRCB*,"[4] in February 2008 which outlines how the public interest mandates of the ERCB and NRCB can be incorporated into the Land-Use Framework,[5] which is touted as the big picture plan for land and resource use in the province.

As part of the Land-Use Framework, the ERCB and NRCB can be told that their public interest mandates include considering whether applications before the Boards are consistent with regional land use plans established under the provincial framework. Producing these land use plans prior to the licensing stage and binding the ERCB and NRCB to follow them ensures that the public interest is defined in terms of the applicable land use plan. This would constrain the Boards' discretion by providing a clear definition

of the public interest in the regional plans which should take into account broader temporal and spatial scales than individual hearings (see **Figure 1**).

Figure 1. Decision-making chain for natural resource development



A further benefit of this approach is that these land use plans could guide the allocation of subsurface mineral rights by the province. This is a key decision-making stage in the development of fossil fuels, as well as the leasing of public lands. Also, because these plans are based on broad spatial and temporal scales, they can potentially deal with the cumulative effects of many projects and activities occurring on the landscape; effects which cannot adequately be addressed in a project-specific licensing process before the ERCB or NRCB.

Our brief also recommends that meaningful public participation be included at each stage where major decisions about land use and resource development are made. This means giving the public the ability to challenge Board decisions that do not conform to land use plans. This also means broadening standing requirements and cost recovery at the ERCB and NRCB hearing stage to ensure that any member of the public who has a legitimate interest has the right to appear before these Boards and provide their views on resource development.

The regulation of Alberta's natural resources is at a crossroads and there are no easy fixes to our growth problems. Sweeping reforms are necessary to create a much-needed plan for land and resource development in Alberta. We also require decisive government leadership to give meaning to the public interest and set in place a real plan for Alberta's future.

[1] *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, s. 3; *Natural Resources Conservation Board Act*, R.S.A. 2000, c. N-3, s. 2.
[2] For example, in Alberta the provincial Crown owns about 60 percent of the province's land base; see Alberta Sustainable Resource Development, *Public Lands Operational Handbook* (Edmonton: Her Majesty The Queen In Right of Alberta, 2004) at 6. The provincial Crown owns about 81 percent of Alberta's minerals including oil, natural gas and coal; see Alberta Energy*, Business Plan 2007-2010* at 129. The provincial Crown also owns all surface and groundwater in the province; see *Water Act*, R.S.A. 2000, c. W-3, s. 3.
[3] For example, an ERCB executive stated that "[w]e as a regulatory body are not in a position to decide if development is (inherently) good and whether or not we should defer development"; see Michael Bruni, "Land-Use Conflicts Escalating, Solutions Urgently Needed" (April 1 - May 17, 2005) 16:4 *Enviroline* at 2.
[4] online: Environmental Law Centre <http://www.elc.ab.ca/ims/client/upload/Roadmap%20for%20Reforming%20The%20Public%20Interest.pdf>.
[5] See Jodie Hierlmeier, ""The Public Interest:" What Could It Mean For The ERCB and NRCB?" (2008) 23:1 *Environmental Law Centre News Brief* 1, online: Environmental Law Centre <https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?id=1118>.

Editor's Note

Land has become an increasingly prized commodity in Alberta. The higher demand and desire for use of the province's land base has become manifest in a variety of ways, including explosive growth in several municipalities, greater competition between different users for access to the same land, and increased expression of concerns by landowners who are potentially affected by proposed industrial activities. The provincial government's Land-Use Framework initiative offers significant opportunity for Albertans to influence the future course of land use planning and decision-making.

This issue of *News Brief* focuses on land use matters. This is in part due to the greater emergence of these issues in Alberta, but also reflects the Environmental Law Centre's emphasis on land use planning and decision-making as one of the strategic objectives under our current strategic plan. Other strategic objectives include: information and education; watershed and aquatic ecosystem protection; cumulative environmental impact assessment; public participation; and greenhouse gas emissions regulation. A subsequent 2008 *News Brief* will centre on greenhouse gases.

We hope you will find these topic-specific issues useful and thought-provoking, and look forward to receiving your comments at elc@elc.ab.ca.

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Strathcona County's View of Capital Region Planning

By Glen Lawrence
Councillor, Ward 7
representing Strathcona County Mayor and Council

There is a great deal of pride and sense of community within Strathcona County.

Both longtime residents and newcomers enjoy the friendly people and special places that make up this urban and rural municipality. However, we are increasingly concerned about the direction we're seeing in regard to the future of Strathcona County within the Capital Region.

The issue centres on a proposal prepared for the Government of Alberta. It is called the "Capital Region Integrated Growth Management Plan". You might also hear it referred to as the "Radke report." This project was announced in June 2007 by Premier Ed Stelmach.

In December 2007, the Province announced its intention to implement the recommendations of the Radke report, which was commissioned to address regional cooperation and industrial development in the region. No one was able to define the problem, if indeed there was a problem, as no one in government bothered to consult with either industry or other municipalities.

Radke recommended the formation of a regional board consisting of one representative from each of the 25 surrounding municipalities in spite of provincial government assurances that this is not a new level of government. The board will have the power to make binding decisions within the municipality and to access taxes. Those sound like governmental powers to me. The report itself is more fluff than fact. For those of us with better things to do than trying to figure it out, here's how it will affect us.

The first impact will be financial. Notwithstanding provincial denials, expect an increase in municipal taxes. The regional board will have the ability to seek funding through requisition. If the regional board votes in favor of cost shared expenditures, it will have the Province make the requisition from the member municipalities. Whether one chooses to call this a requisition or a tax, it amounts to the same thing: monies will be confiscated from the municipalities and used somewhere else by someone else. To maintain service levels, municipalities will have to raise taxes. I am baffled how the Province can insist that there will be no difference in cost. The Industrial Heartland understands this very well. A tax increase is going to hit them the hardest.

Based on numbers in the Radke report, projections state the new Regional Board could cost Strathcona County between $592 million and $1.48 billion over the next 10 years. That money would go to fund $19.6 billion in infrastructure needs in the region. Of that total, $7.4 billion would be the responsibility of the municipalities. That means hundreds of millions of dollars of infrastructure needed in Strathcona County and the Industrial Heartland would not be in the plan.

The second impact will be regional planning. The Board will have the authority to make sweeping land use decisions within the municipalities if, in its sole opinion, an issue is regional. To a developer, the least this will mean is that any application will have to pass two bureaucracies for a decision. Land owners near municipal boundaries can almost certainly expect to see their lands effectively frozen to future development.

All of this could mean a regional landfill, paid for by our taxes. It could mean high voltage power lines or high pressure pipelines through our urban service area in opposition to our wishes. It could mean a LRT line from Edmonton to Leduc instead of a recreational facility in our County.

The municipalities are encouraged to reach consensus; however, voting is provided to break deadlocks. No one seems to have explained to the author that consensus backed by a binding vote is not consensus. This failure to understand simple concepts is one of the many frustrating things about Radke's report.

The new board creates significant uncertainty for Strathcona County and the Capital Region as a whole. The board has binding decision making powers and can requisition money through the Province from local municipalities. We also know that under the voting system, the City of Edmonton alone has the power to veto or control decisions for the region.

Plans for the Capital Region and the new board present the most significant issue to face our community in a number of years. Nevertheless, we are committed to building on the success of the Capital Region.

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Land Use Planning: What the Fish Have to Say About It

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When one considers ecosystem health it is impossible to separate water from land. Indeed, land use is often dictated by water availability and may be curtailed in times of water scarcity. Therefore, when talking about land use and planning it is necessary to talk about water and watersheds. More specifically, what aquatic species might have to say about Alberta's Land-Use Framework is one matter that must be considered. In turn, this raises the thorny issue of constitutional jurisdiction over environmental impacts and suggests that the province alone will not dictate the question of land use policy.

Land use planning is largely thought of as a solely provincial affair and yet the constitutional jurisdiction over fisheries, migratory birds, species at risk, and undoubtedly the soon to be litigated issue of greenhouse gases, clearly broadens the lens of assessing land use planning to include federal legislation and policy requirements. Despite this constitutional reality most parties, with the exception of environmental advocates (and undoubtedly many members of the public), appear to be attempting to isolate the federal government's role in land use decisions. However, the existing and contemplated federal statutes reflect the federal government's role in land use. The fish do have a say; the question is whether anyone will listen.

To illustrate this point one need only consider the recent case of *Pembina Institute for Appropriate Development v. Attorney General of Canada*[1] (the Kearl Lake decision) that involved a challenge of the federal-provincial joint panel review of an oil sands project under the *Canadian Environmental Assessment Act*[2] (CEAA). The environmental assessment was triggered by the requirement to obtain an authorization from the Department of Fisheries and Oceans to destroy fish habitat pursuant to the *Fisheries Act*. The Court found that the joint panel had failed to adequately outline how the proposed mitigation measures would address the question of significant adverse effects considering that the greenhouse gas emissions were intensity based, i.e., that overall emissions of greenhouse gases would still increase. The matter was remitted back to the panel to provide its reasoning. As a result of the decision, the Department of Fisheries and Oceans revoked the previously issued authorization that is required prior to the project proceeding, as it considered the authorization a nullity.

The government's revocation decision was subsequently challenged in *Imperial Oil Resources Ventures Limited v. Canada (Fisheries and Oceans).*[3] The Court found that the authorization was indeed a nullity as the approval of the Governor in Council, being based on a flawed joint panel report, was issued without jurisdiction.[4]

The implication of this decision is that the role of federal bodies, triggered by the water-based concern of fish habitat, could significantly impact land use decisions. This realization is hardly new. From riparian set backs to dams, the *Fisheries Act* has historically had significant impacts on land use decisions as long as it has been enforced. The fact remains that the *Fisheries Act* is one of the nation's most protective pieces of

legislation for water bodies. Through the operation of CEAA, a statute that has received relatively narrow judicial interpretation, the *Fisheries Act* remains one of the most important pieces of legislation for considering integration of water and land use planning, as illustrated by the Kearl Lake decision.

The importance of the *Fisheries Act* in both protecting water bodies and triggering broader environmental assessments is agreeable to many environmental advocates across Alberta who see gaps in the provincial environmental protection and planning legislation. However, to industry and the provincial government it is a reality that may not always sit well. The fact that the federal government may touch the brake where the province wishes not to is a spectre that has elicited significant constitutional rhetoric in the past.

Industry and provincial government lobbies cover all of the federal environmental protection legislation, from the *Fisheries Act*, to the *Migratory Birds Convention Act*, *Species at Risk Act*, and proposed regulation of greenhouse gases. Typically the lobbying involves public messaging about "efficiency", which many environmental advocates see as a euphemism for "approval friendly", involving less legal triggers which may result in legal challenges.

These lobbies have garnered, albeit indirectly, broader support for a diminished role for the federal government that raises concerns that important federal fisheries protection will take a second seat to provincial land use decisions. In this regard the Kearl Lake joint panel and the federal government itself may have effectively created a diminished role for the federal government in land use issues.

The joint panel's rationale for their Kearl Lake decision was provided on May 6, 2008 in *Kearl Oil Sands Project Addendum to EUB Decision 2007-013: Additional rationale for the joint review panel's conclusions on air emissions*[5] and seems to reflect an approach of significant deference to the provincial government, notwithstanding the joint government responsibility to determine whether the project is likely to have significant adverse effects and whether these effects might be mitigated. The panel stated:[6]

> While the Joint Panel acknowledges that the projected GHG emissions of 40 kg of CO_{2e} per barrel for the Project represent considerable GHG emissions, there was very little evidence before the Joint Panel to suggest that this release will result in significant adverse environmental effect. To the contrary, it was the evidence of AENV that it may require Imperial to reach its stated GHG intensity target of 40 kg of CO_{2e} per barrel in any EPEA approval granted for the Project. The Joint Panel finds that it must give AENV's endorsement of the target significant weight in its consideration of the adverse environmental effects of the Project given AENV's role as the provincial agency responsible for establishing, monitoring and enforcing emission standards.

In deferring in this way, the joint review panel has essentially adopted the view that the province would not approve a significant adverse effect, a conclusion or assumption that is dubious at best. Indeed, the premise behind environmental assessments is to assess impacts of a project. While the mitigation measures put in place to respond to an impact are relevant to justifying allowing an impact, the conditions in an approval itself do not act to indicate the severity of an impact on the environment.

Similarly, the Government of Canada apparently wishes to alter how fisheries impacts are regulated and whether broader environmental assessments are required. Bill C-32, *An Act respecting the sustainable development of Canada's seacoast and inland fisheries*, proposes amending aspects of its harmful alteration, disruption and destruction of habitat provisions in such a way that avoidance of triggering CEAA appears to be a likely outcome.[7]

While the provincial government and some Albertans may see a federal role in land use planning as an affront to provincial sovereignty, it remains a constitutional reality. The fact remains that the federal *Fisheries Act* is one of the most protective pieces of legislation and Alberta's Land-Use Framework will be truly progressive if it adopts a similar approach to environmental impacts. The idea behind the *Fisheries Act* is to have sustainable fish populations in the future. Similarly, the Land-Use Framework must aim to sustain all natural resources. For this reason the fish will have much to say about how the Land-Use Framework evolves. It remains to be seen how much the federal government will back up their voice.

[1] 2008 F.C. 302. This case was discussed in the previous issue of *News Brief*, Dean Watt, "Oil Sands Appeal Provides Little Clarity", (2008) 23:1 *Environmental Law Centre News Brief* at 8-12, online: Environmental Law Centre <https://www.elc.ab.ca/publications/NewsBriefDetails.cfm?id=1119>.
[2] S.C. 1992, c. 37.
[3] 2008 F.C. 598.
[4] *Ibid.* at paras. 6-7.
[5] Available online: Canadian Environmental Assessment Registry, http://www.ceaa-acee.gc.ca/050/DocHTMLContainer_e.cfm?DocumentId=26766.
[6] *Ibid*.
[7] In particular section 59(2)(b) of the Bill anticipates certain activities to be authorized by way of regulation. These regulated activities would likely be excluded as triggers of CEAA and rely solely on the conditions of the regulation to guide the activity. While this addresses the efficiency issues that plague the Department of Fisheries and Oceans in relation to the multitude of more minor projects, it removes significant powers of participation and oversight that CEAA provides. It also appears likely that cumulative effects assessment would not occur for regulated activities under section 59(2)(b).

BC Provides Notice of Subsurface Mineral Sales to Surface Owners

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British Columbia (BC) has taken a first step towards integrating subsurface and surface rights by notifying surface owners in northeastern BC when subsurface mineral rights are leased under private property.[1] This step is noteworthy because the integration of subsurface and surface issues is one of the major challenges facing Alberta's Land-Use Framework.

Similar to Alberta, the provincial Crown owns most of BC's mineral resources, including those under private property. The province may lease the mineral tenure[2] to private companies through a competitive auction. Starting in April 2008, registered landowners in northeastern BC are notified by mail five to six weeks prior to the mineral tenure auction. The landowner receives a package including:[3]

- a letter clarifying the purpose and evaluation process regarding the upcoming auction, including any caveats[4] on the mineral tenure;
- a map of the parcel(s) for auction;
- a link to Petroleum Titles Online, BC's searchable database of tenure leases;
- a copy of the booklet *Oil and Gas Development and You: Information for Landowners,* which explains BC's mineral tenure process and landowners' rights; and
- a questionnaire for landowners to voluntarily identify current land uses and any special features the company should be aware of when planning its resource recovery.

Following every mineral auction, the province mails the landowner a letter identifying the successful bidder or lack thereof if the mineral tenure has not been sold.

The purpose of the notification is to engage landowners about potential oil and gas development early in the process, prior to exploration and development activities.[5] To be clear: the program is notification only; it does not ensure that the landowner has input into the tenure process or any caveats attached to the mineral tenure.[6]

The program operates in northeastern BC, which is the heart of the province's energy boom, and will continue until July 18, 2009 when the program will be re-evaluated.

In contrast with BC, Alberta treats subsurface mineral tenure completely separately from surface issues. Mineral tenure is leased to the highest bidder with no public input into the process. Notices of the parcels to be auctioned off are published on Alberta Energy's website and in paper copy eight weeks prior to the auction but there is no direct notice to potentially affected surface landowners, nor is there any procedure for comment or consultation prior to the mineral auction.[7] Surface impacts are dealt with later in the

development process when the company seeks approval from the Energy Resources Conservation Board to build its requisite wells, pipelines or other surface structures.

Alberta's Land-Use Framework will have to address coordination of subsurface and surface rights. Although the BC notification system does not provide a perfect solution to this issue, it offers an initial step in recognizing that the issuance of subsurface oil and gas rights influences surface impacts.

[1] The landowner notification program is not currently entrenched in BC law; it is a policy decision that is a part of the BC Energy Plan. See British Columbia's Ministry of Energy, Mines and Petroleum Resources, "Oil and Gas Landowner Notification Program" online: Ministry of Energy, Mines and Petroleum Resources <http://www.gov.bc.ca/empr/popt/oil_and_gas_lnp1.html>.

[2] Tenure" refers to a time-limited ownership of the subsurface rights.

[3] See British Columbia's Ministry of Energy, Mines and Petroleum Resources, "Oil and Gas Landowner Notification Program FAQs" online: Ministry of Energy, Mines and Petroleum Resources <http://www.gov.bc.ca/empr/popt/oil_and_gas_lnp2.html#faq2.1>.

[4] Caveats are development conditions placed on a mineral tenure to address community or environmental concerns identified by BC's local governments, First Nations and government agencies.

[5] The issuance of mineral tenure does not guarantee there will be exploration or development activity on the property. For example, development may not occur for a variety of technical or economic reasons, or industry may access the resources from a site adjacent to the property using directional drilling techniques. If surface access is required from a landowner's property, industry must first negotiate and complete a surface lease agreement with the landowner.

[6] Currently, only local governments, government agencies and First Nations in BC are given the opportunity to provide input into caveats before a parcel is included in the monthly tenure auction. Further, the BC government is developing new guidelines to determine areas that require special or enhanced management practices consideration prior to being auctioned. See British Columbia's Ministry of Energy, Mines and Petroleum Resources, *The BC Energy Plan* at 36-37, online: BC Energy Plan <http://www.energyplan.gov.bc.ca/PDF/BC_Energy_Plan.pdf>.

[7] For further information on Alberta's mineral tenure process, see Michael Wenig & Michael Quinn, "Integrating the Alberta Oil and Gas Tenure Regime With Landscape Objectives: One Step Toward Managing Cumulative Effects" in H. Epp, ed., *Access Management: Policy to Practice* (Proceedings of the conference presented to the Alberta Society of Professional Biologists in Calgary, March 18-19, 2003) (Edmonton, Alberta Society of Professional Biologists, 2004); see also Nickie Vlavianos, "Public Participation and the Disposition of Oil and Gas Rights in Alberta" (2007) 17 J.E.L.P. 205.