



A Companion to the
Environmental Law Centre's
**Regulatory Evaluation of Alberta's
Wetland Policy Implementation**

by **Brenda Heelan Powell**



The Environmental Law Centre (Alberta) Society

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Environmental Law Centre

W218, 91 University Campus NW, Edmonton, AB T6G 2H5

Telephone: (780) 424-5099 Fax: (780) 424-5133

Toll-free: 1-800-661-4238

Email: elc@elc.ab.ca Website: www.elc.ab.ca

Blog: <https://www.elc.ab.ca/blog/>

Facebook: <http://www.facebook.com/environmentallawcentre>

Twitter: https://twitter.com/ELC_Alberta

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1. Introduction

Wetlands are important from an ecological and management perspective, having been described as “Alberta’s keystone ecosystem and resource”.¹ Wetlands are found in all of Alberta’s biomes and are linked to its aquatic and terrestrial ecosystems, providing a wide range of functions and values.² Despite their immense ecological importance, “wetland loss over the last century has been substantial” with an estimated loss of 60 to 70% in the central and southern regions of the province.³

In response to these significant wetland losses, the provincial government first implemented a wetland policy with the goal of avoiding and mitigating wetland losses in 1993. Alberta’s initial wetland policy was the *Interim Wetland Management in the Settled Area of Alberta Policy*.⁴ There was also a draft policy called *Beyond Prairie Potholes: A Draft Policy for Managing Alberta’s Peatlands and Non-Settled Area Wetlands* developed by the Alberta Water Resources Commission in 1993.⁵ In 2013, the current *Alberta Wetland Policy* was adopted and took full effect in 2015.⁶ The current *Wetland Policy* aims to bring social benefits of wetlands to Albertans through the various environmental services and functions provided by wetlands including water storage, flood mitigation and maintenance of biodiversity.⁷

¹ David A. Locky, *Wetlands, Land Use and Policy: Alberta’s Keystone Ecosystem at a Crossroads* (2016) Green Paper presented at the Annual Conference of the Alberta Institute of Agrologists, Banff, Alberta.

² *Ibid.*

³ Shari Clare, *Wetlands Loss in Alberta: Identifying successes, barriers, and unintended outcomes of public policy*, Thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Doctor of Philosophy in Conservation Biology (Edmonton: 2013, University of Alberta)

⁴ Water Resources Commission, *Wetland Management in the Settled Area of Alberta: Interim Policy* (Edmonton: 1993, Government of Alberta) [*Interim Wetland Policy*]. For a brief history of wetland policy in Alberta, see Arlene Kwasniak, “The New Alberta Wetland Policy: White Area Wetlands, Just a Pawn in the Game?” (2013) AbLawg, online: <https://ablawg.ca/2013/09/17/the-new-alberta-wetland-policy-white-area-wetlands-just-a-pawn-in-the-game/>.

⁵ Alberta Water Resources Commission, *Beyond Prairie Potholes: A Draft Policy for Managing Alberta’s Peatlands and Non-Settled Area Wetlands* (Edmonton: 1993, Alberta Water Resources Commission).

⁶ Government of Alberta, *Alberta Wetland Policy* (Edmonton: 2013, Government of Alberta) [*Wetland Policy*].

⁷ For a discussion of the transition period between the *Interim Wetland Policy* and the current *Wetland Policy*, see *Brookman and Tulick v Director, South Saskatchewan Region, Alberta Environment and Parks, re: KGL Constructors, A Partnership* (24 November 2017), Appeal Nos. 17-047 and 17-050-R (AEAB).

Given it has been over 10 years since its adoption, a substantive review of the *Wetland Policy* is due. To this end, the ELC has undertaken an evaluation of regulatory decision-making and policy alignment. The ELC undertook to:

1. Identify and collect data and supporting information for the purpose of evaluating the efficacy of decisions made by Alberta Environment and Parks (AEPA) and the Alberta Energy Regulator (AER) regarding the implementation of the *Wetlands Policy*.
2. Assess regulatory decisions regarding wetland disturbance approval applications pursuant to the *Water Act* made by AEPA and the AER with respect to implementation of the mitigation hierarchy principles adopted in the *Wetlands Policy*.
3. Evaluate the effectiveness of the policy approach of the *Water Act* and *Wetland Policy*, particularly the key regulatory components and principles identified in the *Wetlands Policy*.
4. Provide law and policy reform recommendations in response to the results of the ELC evaluation.

This project was driven by the overall purpose of having a regulatory regime that meets the goals of the *Wetland Policy*, ensuring effective regulation and policy for the management and conservation of Alberta's wetlands.

This report is a background document and provides an overview of Alberta's wetland law and policy. The results of the ELC's evaluation and the resultant law and policy recommendations are found in the report entitled *Regulatory Evaluation of Alberta's Wetland Policy Implementation*.

2. An overview of the Water Act and its regulations

The provincial *Water Act* serves multiple purposes.⁸ Water ownership is set out in the Act, an approval system to regulate activities that may impact water is established, a licensing system is set out for the purposes of regulating diversion and use of water,⁹ and water management planning is enabled.

⁸ *Water Act*, RSA 2000, c W-3 at s 3.

⁹ The licensing and priority system for diversion and use of water is set out in Part 3 of the *Water Act*. Essentially, a water license must be obtained to divert and use water although there are some licensing exemptions for agricultural and domestic uses. The *Water Act* establishes a "first in time, first in time" (FITFIR) system of priority. In the event all licensed uses cannot be supported by a particular water source, then priority is given to the more senior licence-holders for their whole allocation. It is worth noting that preliminary certificates and temporary diversion licences may

The *Water Act* establishes that all water in the province is owned by the provincial Crown and that the right to divert and use water is vested in the provincial Crown.¹⁰ The definition of water includes surface and ground-water, and a water body is defined in the Act as:

any location where water flows or is present, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and includes but is not limited to wetlands and aquifers

but it does not include water bodies that are part of an irrigation works which is subject to a licence and which is owned by the licensee (unless the regulations specify that that location is included in the definition of water body).¹¹ There is no definition of “wetlands” in the *Water Act*.

Ownership of the beds and shores of a water body is addressed in the *Public Lands Act* (PLA).¹² The provincial Crown owns the beds and shores of all permanent and naturally occurring bodies of water, and all naturally occurring rivers, streams, watercourses and lakes.¹³ Thus, a piece of private land containing a wetland may mean that public land (in the form of beds and shores) is completely surrounded by private land. Of course, all water is also owned by the Crown.

In the context of wetland disturbance and conservation, the most relevant provisions are those relating to the approval system because wetland disturbance may require a *Water Act* approval (diversion and use of water is less likely to be an issue in the context of wetlands). Part 4 of the *Water Act* sets out the system for issuance of approvals for activities subject to the Act. An activity includes placing, constructing, operating, maintaining, removing or

also be issued under the *Water Act*. Under section 66 to 72, a preliminary certificate may be issued when a person applies for a water licence (other than a temporary diversion licence). A preliminary certificate is issued for a specified period of time and specifies conditions that must be met prior to issuance of a water licence. Once a licence is issued, the holder is subject to the terms and conditions of the licence and no longer has rights under the preliminary certificate. A temporary diversion licence may be issued for a specified period of time of one year or less although a temporary diversion licence may be reissued (see sections 62 to 65). Temporary diversion licences are often sought in conjunction with industrial activities that are regulated under other legislation.

¹⁰ *Water Act* at s. 3.

¹¹ *Ibid.* at s. 1(1).

¹² *Public Lands Act*, RSA 2000, c P-40 [PLA].

¹³ *Ibid.* at s. 3.

disturbing works; maintains, removing or disturbing ground, vegetation or other material; or carrying out any undertaking in or on land or water that:

- alters, may alter or may become capable of altering the flow or level of water temporarily or permanently (including drainage);
- changes, may change or may become capable of changing the location or direction of flow of water by drainage or otherwise;
- causes, may cause or may become capable of causing the siltation of water or erosion of any bed or shore of a water body; or
- causes, may cause or may become capable of causing an effect on the aquatic environment.¹⁴

An activity also includes altering the flow, direction of flow or level of water, or the location of water for the purposes of removing an ice jam, drainage, flood control, erosion control or channel realignment; drilling or reclaiming a water well or borehole; and anything defined in the regulation as an activity.¹⁵ When issuing a licence or approval under the *Water Act*, terms and conditions may be attached to regulate the diversion or use of water, or the activity.¹⁶

Further legislative detail is found in the *Water (Ministerial) Regulation* and the *Water (Offences and Penalties) Regulation* which have been promulgated under the *Water Act*.¹⁷ The *Water (Ministerial) Regulation* provides additional definitions for the purposes of the *Water Act* including supplementing the meaning of “activity”. This regulation also sets out certain diversion or works that are exempt from the licence requirement.¹⁸ As well, it specifies the various purposes for which a water licence may be issued including municipal, agricultural, irrigation, industrial and so on.¹⁹ Requirements for dam and water canal safety, and water wells and ground source heat exchange systems are also set out in the regulation.

¹⁴ *Water Act* at s. 1(1).

¹⁵ *Ibid.* at s. 1(1).

¹⁶ For example, see *Water Act* at ss. 18, 38 and 63.

¹⁷ *Water (Ministerial) Regulation*, AR 205/1998 and *Water (Offences and Penalties) Regulation*, AR 193/1998.

¹⁸ *Water (Ministerial) Regulation* at s. 5.

¹⁹ *Ibid.* at s. 11.

Importantly, the *Water (Ministerial) Regulation* also sets out those activities which are exempt from the requirement for an approval.²⁰ It is noteworthy that certain exemptions expressly do not apply where a wetland is impacted including activities related to crossings (such as bridges or culverts); landscaping; and drilling or reclaiming an exploratory test hole, shot hole or borehole; or activities related to dugouts. Recently, the Government of Alberta has indicated that legislative and policy changes may occur to allow drainage of wetlands on agricultural lands without requiring approvals.²¹ This may involve changes to the definition of wetlands or expansion of exempt activities, time will tell. It is also possible that consequent changes will be made to the *Wetland Policy*.

As well, some activities are exempt from the approval requirement if it meets the requirements of a Code of Practice and notice is provided to the Director.²² There are a variety of codes of practice currently in place including the *Code of Practice for Powerline Works Impacting Wetlands* and *Code of Practice for Wetland Replacement Works*.²³

The *Water (Offences and Penalties) Regulation* sets out the *Water Act*, Code of Practice and regulatory provisions for which non-compliance constitutes an offence, along with penalties. It also establishes a system of administrative penalties.

As mentioned above, the *Water Act* establishes a framework for water management planning. This includes a requirement to develop a provincial planning framework that includes an aquatic environment protection strategy and the opportunity for development of water management plans, including approved water management plans (which receive Cabinet approval).²⁴ As part of water management planning, the Minister may establish water guidelines, and the Director may establish water conservation objectives.²⁵

²⁰ *Ibid.* at ss 2.

²¹ See Joel Dryden, "Alberta lays out new wetlands rules after months of 'divisive' consultation: Industry pushed for drainage; environmental groups discouraged by plan" (December 15, 2025) CBC News online: <https://www.cbc.ca/news/canada/calgary/alberta-wetlands-prairie-potholes-policy-rj-sigurdson-rebecca-schulz-9.7013956>.

²² *Ibid.* at ss. 3 and 4.

²³ Water Codes of Practice, Government of Alberta website, online: <https://www.alberta.ca/water-codes-of-practice>.

²⁴ *Water Act* at Part 2, Division 1.

²⁵ *Ibid.* at ss 14 and 15.

The *Framework for Water Management Planning (WMP Framework)* was published in 2001 and includes the *Strategy for the Protection of the Aquatic Environment*.²⁶ The *WMP Framework* provides general guidance on how to prepare water management plans, whether to address a single issue within a water body or to provide comprehensive planning over a larger area such as a river basin. It applies to all types of water bodies including wetlands. An approved water management plan must be considered when making license and approval decisions.²⁷ In addition to the water management plans, the Director has established water conservation objectives for the Bow, Oldman, Red Deer and South Saskatchewan River Sub-Basins.²⁸

Other tools for water management are created by the *Water Act*. For instance, a Ministerial Order may be issued to direct that an activity, diversion of water, operation of a works for diversion of water, or a transfer of an allocation of water under a licence is not permitted on the grounds that it is not in the public interest.²⁹ A Ministerial Order may also be issued to reserve water not currently allocated to determine how the water should be used or for any other purpose (called a Crown reservation).³⁰ There are currently two water allocation orders in place:

²⁶ Government of Alberta, *Framework for Water Management Planning* (Edmonton: 2001, Government of Alberta) [WMP Framework].

²⁷ *WMP Framework* at 14. There are approved water management plans in place for the South Saskatchewan River Basin, Battle River, and Milk River: see Alberta Environment, *Approved Water Management Plan for the South Saskatchewan River Basin* (Alberta), (Edmonton: 2006, Government of Alberta); Alberta Government, *Approved Water Management Plan for the Battle River Basin* (Alberta) (Edmonton: 2014, Government of Alberta); and Alberta Environment and Protected Areas, *Approved Water Management Plan for the Milk River Basin* (Alberta) Phase One (Edmonton: 2024, Government of Alberta). Other water management plans, which have not been approved by Cabinet, include those for the Cold Lake-Beaver River, Wapiti River, Lesser Slave Basins, and Upper Highwood and Upper Little Bow watersheds: see Alberta Environment, *Cold Lake Beaver River Basin Water Management Plan* (Edmonton: 2006, Government of Alberta); Alberta Environment and Parks, *Wapiti River Water Management Plan* (Edmonton: 2020, Government of Alberta); Lesser Slave Lake Watershed Council, *Lesser Slave Integrated Watershed Management Plan* (High Prairie, AB: 2018, Lesser Slave Watershed Council), and Alberta Environment, *Water Management Plan for the Watersheds of the Upper Highwood and Upper Little Bow Rivers, Volume 1* (Edmonton: 2008, Government of Alberta) and Alberta Environment, *Water Management Plan for the Watersheds of the Upper Highwood and Upper Little Bow Rivers, Volume 2* (Edmonton: 2008, Government of Alberta).

²⁸ Establishment of Bow River Sub-Basin Water Conservation Objectives (January 16, 2007); Establishment of Oldman River Sub-Basin Water Conservation Objectives (January 16, 2007); Establishment of Red Deer River Sub-Basin Water Conservation Objectives (January 16, 2007); and Establishment of South Saskatchewan River Sub-Basin Water Conservation Objectives (January 16, 2007).

²⁹ *Water Act* at s. 34.

³⁰ *Ibid.* at s. 35.

- Bow, Oldman and South Saskatchewan River Basin Water Allocation Order,³¹ and
- Oldman River Basin Water Allocation Order.³²

These allocation orders are supplemented by the *Water Allocation Policy for Closed River Basins in the South Saskatchewan River Basin*.³³

In addition to Ministerial Orders, pursuant to section 51(2) of the *Water Act*, the Government may hold a water licence for the diversion of water, the operation of a works, or to provide or maintain flow rates or water level requirements for the purposes of implementing a water conservation objective.

The *Water Act* also allows the Director to impose a water conservation holdback at the time a new licence is issued with respect to a transfer of a water allocation.³⁴ Up to 10% of the water allocation being transferred may be subject to a water conservation holdback in order to protect the aquatic environment or to implement a water conservation objective. The allocation that is withheld may remain in the natural water body to meet flow or water level requirements, may be reserved or added to an existing reservation, or be issued through a licence to the government under section 51(2) of the *Water Act*.

3. Alberta's *Wetland Policy*

The *Alberta Wetland Policy* was finalized in 2013 and is meant to “minimize the loss and degradation of wetlands, while allowing for continued growth and economic development in the province”.³⁵ As stated in the *Wetland Policy*, the goal is to “conserve, restore, protect, and manage Alberta’s wetlands to sustain the benefits they provide to the environment, society, and economy”.³⁶ In order to achieve this goal, the policy focuses on four outcomes:

³¹ *Bow, Oldman and South Saskatchewan River Basin Allocation Order*, AR 171/2007.

³² *Oldman River Basin Water Allocation Order*, AR 319/2003.

³³ Alberta Environment and Parks, *Water Allocation Policy for Closed River Basins in the South Saskatchewan River Basin* (August 30, 2006).

³⁴ *Water Act* at s. 83.

³⁵ *Wetland Policy* at 2. There are also some explanatory factsheets published by the Government of Alberta in 2014: *About the Alberta Wetland Policy*, *Assessing Wetlands in Alberta*, *Value of Wetlands in Alberta* and *Wetland Stewardship in Alberta*.

³⁶ *Ibid.* at 2.

1. Wetlands of the highest value are protected for the long-term benefit of all Albertans.
2. Wetlands and their benefits are conserved and restored in areas where losses have been high.
3. Wetlands are managed by avoiding, minimizing, and if necessary, replacing lost wetland value.
4. Wetland management considers regional context.³⁷

The *Wetland Policy* applies to natural wetlands including bogs, fens, swamps, marshes and shallow open water, and all restored natural wetlands and wetlands constructed for the purposes of wetland replacement.³⁸ Ephemeral water bodies are not subject to replacement requirements but are still subject to the *Water Act*.³⁹

The *Wetland Policy* adopts several key concepts and mechanisms: relative wetland value; wetland mitigation hierarchy; knowledge and information systems; performance measures, monitoring and reporting, and stewardship. These concepts and mechanisms are meant to be used to implement a provincial wetland management approach.

Relative Wetland Value

The relative wetland value concept is premised on the idea that wetlands are diverse in terms of form, function, use and distribution and therefore have differing value. Thus, wetlands are compared using common metrics from five functional groups: biodiversity and ecological health; water quality improvement; hydrologic function; human uses; and relative abundance (in a particular area). Based on the sum total of the metrics, a wetland is assigned a relative wetland value of high, moderate, moderately low or low.

Wetland Mitigation Hierarchy

The wetland mitigation hierarchy establishes a priority order for management actions to mitigate negative impacts on wetlands. The first priority is avoidance of impacts on wetlands. The second is minimization of impacts on wetlands where avoidance is not possible. The last priority is wetland replacement where avoidance and minimization efforts are not feasible or are ineffective. The use of the mitigation hierarchy is to be informed by relative wetland value and

³⁷ *Ibid.* at 2.

³⁸ *Ibid.* at 7.

³⁹ *Ibid.* at 7.

is guided by principles outlined in the *Wetland Policy*.⁴⁰ In addition, the avoidance and minimization steps of the mitigation hierarchy are guided by several principles, including:⁴¹

- wetlands of a higher relative value should require stronger evidence of effort to avoid impact than lower value wetlands;
- the project proponent must adequately demonstrate that alternative projects, designs and sites have been considered and ruled out;
- the process for evaluating feasible project alternatives must be fair, efficient and consistent taking into account environmental, social and economic considerations;
- “[m]inimization of adverse effects to a wetland refers to both direct and indirect effects on the physical area of the wetland, the relative value of the wetland, or a combination of both”;⁴² and
- minimization measures should remain functional as long as a project has reasonable potential to cause adverse effects and may require monitoring to evaluate outcomes.

If there is permanent wetland loss despite minimization efforts, wetland replacement will still be required.

The *Wetland Policy* sets out requirements for wetland replacement in the event that avoidance and minimization efforts do not prevent loss of wetlands.⁴³ Wetland replacement is considered only for residual (permanent) impacts and not for temporary losses. Wetland replacement may be either restorative (i.e. restoration, enhancement or construction of another wetland) or non-restorative (i.e. in-lieu fee payment as financial restitution for loss of the wetland). The funds arising from in-lieu fee payments may be used for restorative activities or for activities such as research, public education and outreach, or wetland securement for long-term conservation. There may be permittee-responsible replacement where the approval holder actively engages in restorative replacement in accordance with criteria and guidance set by the government.

Replacement requirements are calculated on the basis of wetland area lost and the relative value of that area using replacement ratios. According to the *Wetland Policy*, these ratios reflect three key considerations:

- A restored wetland is unlikely to achieve the same level of function as the natural wetland it replaces.

⁴⁰ *Ibid.* at 15.

⁴¹ *Ibid.* at 16 and 17.

⁴² *Ibid.* at 17.

⁴³ *Ibid.* at 18 to 20.

- A significant time lag is expected to occur between the moment a wetland is lost and the point at which a restored wetland achieves a reasonable level of function.
- Some proportion of restored wetlands is expected to fail over time.⁴⁴

Figure 1: The wetland replacement matrix from Alberta's Wetland Policy at 19.

| | | The Wetland Replacement Matrix | | | |
|-----------------------|-----|--------------------------------|--------|---------|--------|
| | | Value of Replacement Wetland | | | |
| Value of Lost Wetland | | D | C | B | A |
| | A | 8:1 | 4:1 | 2:1 | 1:1 |
| | B | 4:1 | 2:1 | 1:1 | 0.5:1 |
| | C | 2:1 | 1:1 | 0.5:1 | 0.25:1 |
| D | 1:1 | 0.5:1 | 0.25:1 | 0.125:1 | |

*Ratios are expressed as hectares of wetland

In cases of permittee-responsible replacement, the replacement value (A, B, C or D) must be demonstrated by the permittee.

In cases of in-lieu fee payments, the dark blue column (D value) applies. The cost of the in-lieu fee payment is determined by the average cost of wetland restoration work, the cost of monitoring success over the long term, the administrative fee, and average value of land within the area of the original wetland.

Knowledge and Information Systems

The *Wetland Policy* identifies several knowledge and information system needs. These are: a provincial wetland inventory, a provincial wetland value assessment system, a wetland value assessment tool, a wetland database and reporting tool, an inventory of wetland restoration opportunities, certification systems (for assessment specialist and restoration agencies), a repository of research priorities and needs, and an education and outreach program. Little information is provided about these systems in the Policy rather, these are highlighted as system needs that are to be developed.

⁴⁴ *Ibid.* at 19.

Monitoring and Reporting

Little information is provided in the Wetlands Policy around monitoring and reporting. The Policy indicates that performance measures will be developed and used to evaluate progress towards meeting policy goals and outcomes. As well, the policy and its implementation is meant to undergo regular review to reflect current provincial wetlands status and to reflect new scientific knowledge.

Stewardship

Similarly, little information is provided in the Wetlands Policy with respect to stewardship other than an indication that the government “will continue to work with landowners to advance wetland restoration, construction, and enhancement efforts”.⁴⁵

4. Other policy documents and guidelines

The provincial government has issued numerous policies, guidelines and other documents relating to wetlands. These can be classified into various categories: wetland identification and classification; mitigation and replacement requirements; and legislative and procedural guidance.

Wetland Identification and Classification

The *Alberta Wetland Classification System Guide* (AWCS Guide) sets out a standardized system for classification of wetlands throughout the province using a suite of criteria that includes Alberta’s environmental, geological and climatic characteristics.⁴⁶ There are five broad classes of wetlands: bogs, fens, marshes, shallow open waters and swamps. The wetland classes are divided into forms based on vegetation structure, and the forms are further divided into types based on biological, hydrologic or chemical attributes (i.e. salinity, water permanence and acidity/alkalinity). Both natural and anthropogenic disturbances may influence the classification of a wetland.

⁴⁵ *Ibid.* at 22.

⁴⁶ Alberta Environment and Sustainable Resource Development, *Alberta Wetland System Guide* (Edmonton: 2015, Government of Alberta) [AWCS Guide].

The *Alberta Wetland Identification and Delineation Directive* provides standards to enable consistent identification of wetland boundaries, area and assessments.⁴⁷ Project proponents are required to use this *Directive* to:

- identify and delineate ecological boundaries of wetlands that may be impacted by the proposed project;
- define the assessment area of the wetlands for the purposes of classification, relative value assessment and species surveys;
- digitize and submit spatial boundaries of the wetlands that will be impacted by the proposed project;
- inform and plan avoidance and minimization activities; and
- determine replacement ratio costs for wetland replacement if necessary.

As well, the *Directive* will be used for the broader goals of establishing setbacks from wetlands, land-use planning and conservation, wetland mapping and inventory, and scientific research and education.

Wetland delineation can be done using a variety of pathways depending on the general characteristics of the wetland:

- Pathway 1: simple desktop delineation
- Pathway 2: comprehensive desktop delineation
- Pathway 3: simple desktop delineation with field verification
- Pathway 4: field delineation only
- Pathway 5: comprehensive desktop delineation with field verification.

Four key questions guide the choice of delineation pathway. Firstly, does the wetland have straightforward and obvious ecological boundaries, or complex/indistinct ecological boundaries. Secondly, is the wetland typically saturated year-round with permanent wetland markers, or only periodically saturated with wetland markers not always visible. Thirdly, has the wetland been disturbed or not. Finally, is there high quality imagery of the wetland available or not. Detailed requirements for selecting imagery, field verification and other aspects of delineation are provided in the *Directive*.

The *Guide for Assessing Permanence of Wetland Basins* provides guidelines to be used to assess wetland permanence.⁴⁸ Permanence of a wetland is significant because the provincial Crown owns the beds and shores of permanent and naturally occurring wetlands. Although it aligns

⁴⁷ Alberta Environment and Parks, *Alberta Wetland Identification and Delineation Directive* (Edmonton: 2015, Government of Alberta).

⁴⁸ Alberta Environment and Parks, *Guide for Assessing Permanence of Wetland Basins* (Edmonton: 2016, Government of Alberta).

with the *Wetland Identification and Delineation Directive*, the *Guide* is not meant to be used to guide delineation of wetland boundaries.

The *Guide* indicates that assessment of permanence is generally undertaken when:

- An industrial or commercial land use is planned and wetlands that are likely to be affected are Crown owned. This will trigger a regulatory requirement under the PLA.
- Municipal planning requires that ownership of all lands subject to future development be known. A typical municipal requirement is that provincial interests (including Crown ownership of a body of water) be identified during subdivision and development processes (often during the Area Structure Plan or Neighbourhood Structure Plan stage).

The *Guide* clarifies that the Crown's ownership claim to beds and shores of a wetland are limited to wetlands that are "bodies of water", "naturally occurring" and "permanent". The *Guide* indicates that a wetland basin must be more than land that is simply wet, it must have a character and depth that supports open water and associated aquatic vegetation. In terms of permanence, the *Guide* indicates that the wetland must have persistent – but not necessarily perpetual or continuous – inundation (i.e. it may be dry from time to time due to low precipitation but still considered permanent).

The Alberta Wetland Classification System (AWCS) sets out several types of wetlands: ephemeral, temporary, seasonal, semi-permanent, permanent and intermittent. Wetlands that are classified as semi-permanent and permanent under the AWCS are likely to be considered permanent for ownership purposes and be claimed by the provincial Crown. However, a specific wetland's classification is not the determinant factor in whether the Crown will claim ownership because permanence is "determined by the long-term nature of the body of water" which requires review of the wetland's inundation characteristics historically.⁴⁹

The permanence assessment must be undertaken by a qualified assessment practitioner (the skill set of which is outlined in the *Guide*). The *Guide* provides detail on the process for assessing permanence of a wetland, considering things such as the current state of the wetland, the phase of the inundation cycle, deviations from the climate norm when interpreting aerial photography, correlating local climate data to aerial photography, and choosing landscape imagery. The *Guide* also sets out assessment submission and reporting requirements.

The *Alberta Wetland Mapping Standards and Guidelines* sets out a standard for wetland mapping and inventory development.⁵⁰ The intention is to promote consistency and improve data quality in wetland mapping at a provincial scale. In turn, the mapping and inventory will inform management decisions and implementation of the *Wetland Policy*. As well, consistent mapping

⁴⁹ *Ibid.* at 8.

⁵⁰ Alberta Environment and Parks, *Alberta Wetland Mapping Standards and Guidelines: Mapping Wetlands at an Inventory Scale* (Edmonton: 2020, Government of Alberta).

and inventory allows for monitoring and evaluation of landscape changes and informs regional or sub-regional land use planning.

Mitigation and Replacement Requirements

The *Alberta Wetland Mitigation Directive* is meant to “inform planning and decision-making to avoid and minimize negative impacts to wetlands and, where necessary, replace lost wetland area and value”.⁵¹ The Directive reiterates the mitigation hierarchy that is set out in the *Wetland Policy*. The highest priority is avoidance and project applicants must demonstrate a concerted effort to avoid wetland impacts. The greatest effort of avoidance is required for A-value wetlands (the highest value and least common wetlands).

The next step in the mitigation hierarchy is minimization, which is “reducing negative impacts on wetlands to the smallest practicable degree during the planning, design, construction, and operation stages of development, and when conducting “activities that may harm wetlands””.⁵² For the purposes of the Directive, minimization includes wetland reclamation. This means minimization may be accomplished by things like modifications to project activity, design or location; management practices or operating procedures; timing of construction and maintenance activities; or wetland reclamation.

In terms of minimization, there are some beneficial or best management practice documents for activities impacting wetlands that have been developed over the years (although not necessarily by the Government of Alberta). For instance, Canada’s Oil Sands Innovation Alliance (COSIA) published *In-Situ Oil Sands Shared Practices for Working in and Around Wetlands* in 2018.⁵³ This document provides a wetland practices toolbox for in-situ oil sands operations and explores techniques used in other sectors which may be applicable to oil sands operations. A variety of guidance documents have been developed for forestry operations by Ducks Unlimited Canada (with other organizations) including the *Operational Guide Forest Road Wetland Crossings*, the *Guiding Principles for Wetland Stewardship and*

⁵¹ Government of Alberta, *Alberta Wetland Mitigation Directive* (December 1, 2018) at 1. See also Government of Alberta, *Stepping Back from the Water: A Beneficial Management Practices guide for New Development Near Water Bodies in Alberta’s Settled Region* (Edmonton: 2012, Government of Alberta) which is focused on mitigating impacts on riparian areas (not wetlands per se) but does provide recommended, discretionary setbacks for new development adjacent to wetlands in the settled region only (but not for agriculture, timber, or oil and gas activities).

⁵² *Ibid.* at 4 (citing the *Wetland Policy*).

⁵³ Terry Osko, Clayton Gillies, and Matthew Pyper, *COSIA In-Situ Oil Sands Shared Practices for Working in and Around Wetlands* (Calgary: 2018, Canada’s Oil Sands Innovation Alliance).

Forest Management Practitioner Guide, and the *Practitioner Guide Wetland Best Management Practices for Forest Management Planning & Operations*.⁵⁴

In addition, the *Resource Roads and Wetlands: A Guide for Planning, Construction and Maintenance* was published in 2016 by Ducks Unlimited Canada and FPIInnovations.⁵⁵ A guidance document on roads was published by a predecessor to AEPA in 2000, although it simply indicates that the wetland policies ought to be considered and disturbance to water bodies ought to be minimized.⁵⁶

The Government of Alberta has published the *Beneficial Management Practices: Environmental Manual for Alberta Farmsteads* which includes a chapter on surface water.⁵⁷ It provides direction to applicable legislation and policy, and discusses the management of contaminated runoff and the use of constructed wetlands. It is also noted that, while not a Government of Alberta publication, the *Beneficial Management Practices for Renewable Energy Projects – Reducing the Footprint in Native Grassland, Parkland and Wetland Ecosystems* is referenced in the *Conservation and Reclamation Directive for Renewable Energy Operations* which lends authority to its recommendations.⁵⁸

Reclamation is part of the minimization step on the mitigation hierarchy. There are reclamation criteria set out for peatlands in the *Reclamation Criteria for Wellsites and Associated Facilities for Peatlands (Peatlands Reclamation Criteria)*.⁵⁹ Although these criteria are stated to apply to wellsites, access roads and associated facilities, these criteria are also referenced in the *Conservation and Reclamation Directive for Renewable Energy Operations* and the

⁵⁴ Ducks Unlimited Canada et al., *Operational Guide Forest Road Wetland Crossings, Version 1.0* (2014, Ducks Unlimited Canada) and Forest Management Wetland Stewardship Initiative, *Guiding Principles for Wetland Stewardship and Forest Management Practitioner Guide* (2018, Forest Management Wetland Stewardship Initiative), and Forest Management and Wetland Stewardship Initiative, *Practitioner Guide Wetland Best Management Practices for Forest Management Planning & Operations* (2019, Forest Management and Wetland Stewardship Initiative).

⁵⁵ Ducks Unlimited Canada and FPIInnovations, *Resource Roads and Wetlands: A Guide for Planning, Construction and Maintenance* (2016, FPIInnovations).

⁵⁶ Government of Alberta, C&R/IL/00-5, *Conservation and Reclamation Information Letter, Environmental Protection Guidelines for Roadways* (Edmonton: 2000, Government of Alberta).

⁵⁷ Alberta Agriculture and Forestry, *Beneficial Management Practices: Environmental Manual for Alberta Farmsteads* (Edmonton: 2018, Government of Alberta).

⁵⁸ *Beneficial Management Practices for Renewable Energy Projects – Reducing the Footprint in Native Grassland, Parkland and Wetland Ecosystems* (2017: Gramineae); and Alberta Environment and Parks, *Conservation and Reclamation Directive for Renewable Energy Operations* (Edmonton: 2018, Government of Alberta).

⁵⁹ Government of Alberta, *Reclamation Criteria for Wellsites and Associated Facilities for Peatlands* (Edmonton: 2017, Government of Alberta) [*Peatlands Reclamation Criteria*].

Requirement for Conservation and Reclamation Plans for Peat Operations in Alberta.⁶⁰ The *Peatlands Reclamation Criteria* set out the requirements for detailed site assessment reporting, sampling intensity, sampling on variable sites, variable scale assessment methodology, aerial assessments, landscape assessments, and vegetation assessments. While not intended as a construction guide, the *Peatlands Reclamation Criteria* provide that it is “hoped that construction techniques, such as clay pad installation, will evolve to support the re-establishment of a peatland type, in areas with specific land use objectives”.⁶¹ The reclamation criteria are designed to be used to evaluate whether a site has met or is on a trajectory to meet equivalent land capability standard as set in regulation. The *Peatlands Reclamation Criteria* acknowledge that there may be an additional need to meet specific requirements set by a municipality, public lands approval, land use plan, or by agreement.⁶²

The *Design guidelines for reclaiming pits, borrow pits and quarries to marsh complexes (Mineral Wetland Design Guidelines)* were released in early 2026 and take effect in September 2027.⁶³ The goal of the *Mineral Wetland Design Guidelines* is to have operators construct reclaimed mineral wetlands that as “self-sustaining, stable, and ecologically resilient”.⁶⁴ The *Mineral Wetland Design Guidelines* are meant to be used for projects where wetland avoidance was not possible and the operator intends to reclaim the site back to a wetland under the *Alberta Mitigation Directive*, to meet requirements to re-establish ecosystem functions under a public lands disposition, or on private lands to meet a landowner’s or municipal land use planning objective. The *Guidelines* may be voluntarily used for other activity types but does not apply to oil sands and coal surface mining operations, stormwater management facilities, opportunistic wetlands, offsite wetland replacement and wetland banking. The *Guidelines* set out the minimum design criteria for a proposed reclamation to mineral wetlands:

- incorporate to the degree possible, site-specific information collected during pre-disturbance site assessments and Wetland Assessment and Impact Report

⁶⁰ Government of Alberta, *Conservation and Reclamation Directive for Renewable Energy Operations* (Edmonton: 2018, Government of Alberta); and Government of Alberta, *Requirement for Conservation and Reclamation Plans for Peat Operations in Alberta* (Edmonton: 2016, Government of Alberta).

⁶¹ *Peatlands Reclamation Criteria* at i.

⁶² *Ibid.* at 6.

⁶³ Government of Alberta, *Design guidelines for reclaiming pits, borrow pits and quarries to marsh complexes* (Edmonton: 2026, Government of Alberta) at iii.

⁶⁴ Government of Alberta, *Design guidelines for reclaiming pits, borrow pits and quarries to marsh complexes* (Edmonton: 2026, Government of Alberta) [*Mineral Wetland Design Guidelines*] at iii.

- preparation;
- consider hydrology, landscape, soil and vegetation factors;
- incorporate management factors such as reclamation monitoring and adaptive management; and
- use of an integrated planning and designing approach to ensure all factors are considered and integrated before physical construction occurs.

As well, the *Mineral Wetland Design Guidelines* set minimum landscape design standards using proportion of wetland, water levels and slope for shallow open water, emergent and wet meadow, and swamp. Minimum design goals for vegetation are set for desirable species, undesirable species and species richness for emergent and wet meadows and for swamps. As well, minimum elements for monitoring activities and necessary mapping are outlined.

There is a significant amount of guidance for wetland reclamation on oil sands leases. The *Criteria and Indicators Framework for Oil Sands Mine Reclamation Certification*⁶⁵ includes wetland criteria such as the requirements that the reclaimed landscape incorporate watershed features including wetlands and include wetland traditional ecological plants. The Government of Alberta with the Cumulative Environmental Management Association also published the *Guideline for Wetland Establishment of Reclaimed Oil Sands Leases*.⁶⁶ There are also guides for in-situ reclamation in the oil sands region developed by Canada's Oil Sands Innovation Alliance (COSIA): *Reclaiming Aggregate and Borrow Excavations associated with EPEA Approvals to Water Bodies* and *Reclaiming In Situ Pads and Roads to Peatlands*.⁶⁷ Although meant to address reclamation on oil sands leases, these guidelines have been referenced in other Government of Alberta documents including the new *Mineral Wetland Design Guidelines*.⁶⁸

Reclamation guidelines also exist for peat operations and renewable energy operations: *Requirements for Conservation and Reclamation Plans for Peat Operations in Alberta* and

⁶⁵ *Criteria and Indicators Framework for Oil Sands Mine Reclamation Certification* (Edmonton: 2013, Government of Alberta).

⁶⁶ Government of Alberta and Cumulative Environmental Management Association, *Guideline for Wetland Establishment on Reclaimed Oil Sands Leases, Revised (2007) ed.* (Edmonton: 2007, Government of Alberta).

⁶⁷ CPP Environmental, *Guide for In Situ Reclamation in the Oil Sands Region of Alberta, Reclaiming Aggregate and Borrow Excavations Associated with EPEA Approvals to Water Bodies* (Calgary: 2017, Canada's Oil Sands Innovation Alliance) and CPP Environmental, *Guide for In Situ Reclamation in the Oil Sands Region of Alberta, Reclaiming In Situ Pads and Roads to Peatlands* (Calgary: 2017, Canada's Oil Sands Innovation Alliance).

⁶⁸ The design guidelines reference a third edition of the *Guideline for Wetland Establishment of Reclaimed Oil Sands Leases* (2014) but the ELC was unable to obtain a copy.

Conservation and Reclamation Directive for Renewable Energy Operations and the *Requirement for Conservation and Reclamation Plans for Peat Operations in Alberta*.⁶⁹ Both documents set out conservation and reclamation plan requirements with the goal of reclaiming land to equivalent land capability.

The last step in the mitigation hierarchy is replacement which is required when there is permanent loss of a wetland area. Replacement occurs either via permittee-responsible replacement or an in-lieu payment. Permittee-responsible replacement is achieved by either restoring a previously drained wetland or constructing a new wetland. The wetland replacement matrix is used to calculate the level of replacement required or the in-lieu payment, as applicable. Wetland replacement is prioritized, relative to the location of the lost wetland, in the following order:

- same municipality;
- same watershed or upstream of the municipal boundary where the municipality will derive ecosystem services;
- same relative wetland value assessment unit;
- same natural region;
- in areas with high historical wetland loss.

The *Directive for Permittee-Responsible Wetland Construction in Alberta (Wetland Construction Directive)* outlines the requirements for constructing wetlands including the process steps, plan requirements, and reporting requirements.⁷⁰ Wetland construction may be used as a replacement option where permanent wetland impacts cannot be avoided or minimized. New wetland areas may be created through re-contouring the topography of land, planning hydrology to establish and maintain certain water depths and to promote self-sustaining wetland plant communities, planting native upland and wetland species in appropriate water depths, incorporating wildlife habitat structure in or near the wetland, or incorporating human use features. Although an upland buffer around the constructed wetland is not included in the calculation of replacement area, it can increase the relative value of the wetland because buffers contribute to the overall function and health of a constructed wetland.

⁶⁹ Government of Alberta, *Requirements for Conservation and Reclamation Plans for Peat Operations in Alberta* (Edmonton: 2016, Government of Alberta), and Government of Alberta, *Conservation and Reclamation Directive for Renewable Energy Operations* (Edmonton: 2018, Government of Alberta); and Government of Alberta, *Requirement for Conservation and Reclamation Plans for Peat Operations in Alberta* (Edmonton: 2016, Government of Alberta).

⁷⁰ Alberta Environment and Parks, *Directive for Permittee-Responsible Wetland Construction in Alberta* (Edmonton: 2018, Government of Alberta) [*Wetland Construction Directive*]. Note that the Government of Alberta, *Alberta Wetland Restoration Directive* (Edmonton: 2016, Government of Alberta) has been archived and is out-of-date (even though references may still be made to it in other documents).

The *Wetland Construction Directive* is to be used in conjunction with the *Alberta Guide to Wetland Construction in Stormwater Management Facilities (Guide to Wetland Construction)*.⁷¹ This document provides detailed guidance on how to construct a wetland habitat within a stormwater management facility. It sets out requirements for site assessment, design plans, construction, and monitoring and management of the constructed wetland. Design plans address matters such as basin topography, hydrology, plant communities, wildlife habitat features, and human use features. Furthermore, design considerations should support wetland functions related to hydrology, water quality improvement, biodiversity and human use.

In addition to the *Wetland Construction Directive* and the *Guide to Wetland Construction*, there is a *Code of Practice for Wetland Replacement Works (COP)*.⁷² By setting out detailed requirements in the COP, the need for a *Water Act* approval to conduct wetland restoration or construction activities is eliminated. The COP sets out standards and conditions for wetland replacement activities with which compliance is required.

Alberta Transportation Department has general design guidelines for constructed habitat wetlands specific to several natural regions: boreal forests, parkland and grasslands.⁷³ These documents “provide general design parameters for reclaiming planned borrow and aggregate excavations into constructed habitat wetlands” in each natural region.⁷⁴ It is noted in these documents that Alberta Transportation may use constructed habitat wetland sites to mitigate for wetland disturbance elsewhere as part of its Wetland Habitat Bank Initiative. The design criteria for constructed habitat wetlands are that they are self-sustaining and evolve as ecologically-functioning diverse aquatic ecosystems; are designed and constructed so that long-term maintenance and management is either minimal or not required; and are designed such that available stream flow or groundwater recharge maintains the wetland. The documents set wetland design parameters including extent of the littoral zone, depth, bottom contour, shoreline configuration, substrate composition, and revegetation. There are also parameters to address waterfowl requirements and habitat diversity. As well, certain reclamation practices are recommended to meet the design parameters.

These design guidelines are complemented by *Standard Monitoring Protocols for Evaluating Wetland Performance (sic) for Constructed 'Habitat' Wetlands* which provides criteria that can be used to monitor constructed habitat wetlands for their progression to ecologically functioning

⁷¹ Alberta Environment and Parks, *Alberta Guide to Wetland Construction in Stormwater Management Facilities* (Edmonton: 2018, Government of Alberta) [*Guide to Wetland Construction*].

⁷² *Code of Practice for Wetland Replacement Works* (December 23, 2020) [COP].

⁷³ Alberta Transportation, *General Design Guidelines for a Constructed 'Habitat' Wetland – Boreal Forest Natural Region* (Edmonton: 2014, Government of Alberta); Alberta Transportation, *General Design Guidelines for a Constructed 'Habitat' Wetland – Parkland Natural Region of Alberta* (Edmonton: 2014, Government of Alberta); and Alberta Transportation, *General Design Guidelines for a Constructed 'Habitat' Wetland – Grasslands Natural Region of Alberta* (Edmonton: 2014, Government of Alberta).

⁷⁴ Each of the Alberta Transportation *General Design Guidelines*, *ibid.* at 1.

wetlands.⁷⁵ In addition, the *Alberta Transportation Guidelines for Conducting Wetland Assessments to Meet Water Act Application Requirements* details Alberta Transportation's requirements for the core components of applications for a *Water Act* wetland disturbance approval.⁷⁶

Legislative and Procedural Guidance

The *Wetland Regulatory Requirements Guide* provides clarity around primary legislation and requirements that apply to wetlands and to activities in wetlands.⁷⁷ The *Guide* clarifies that a permanent impact on a wetland – such as draining or infilling – is a conversion of public land and therefore requires either obtaining ownership (via land exchange or land sale) or a disposition under the PLA. The *Guide* also provides direction regarding applications under the *Water Act* and PLA that may be required for activities in wetlands.

As well, there is a *Guide to Preparing a Complete Water Act Application for a Licence or an Approval*.⁷⁸ This guide provides application information for all types of *Water Act* approvals and licences, including approvals for wetland disturbance. This guide indicates that the onus is on an applicant to avoid temporary and permanent wetland impacts and to justify any unavoidable impacts. The wetland disturbance must be “mitigated or replaced by reclamation, permittee-responsible replacement, or a wetland replacement proposal, or a combination of mitigation and replacement strategies can be proposed”.⁷⁹ The application must also be accompanied by a Wetland Assessment Impact Form or Report.

The *Alberta Wetland Assessment and Impact Report Directive* outlines the pre-disturbance assessment and reporting requirements under the *Wetland Policy*.⁸⁰ There are two formats of wetland assessment: Wetland Assessment and Impact Form (WAIF) and Wetland Assessment and Impact Report (WAIR). The WAIF format is used in situations where an activity is short-term

⁷⁵ Alberta Transportation, *Standard Monitoring Protocols for Evaluating Wetland Performance (sic) for Constructed 'Habitat' Wetlands* (Edmonton: 2014, Government of Alberta). See also Mark Svenson, “Alberta Transportation's Wetland Habitat Compensation Program”, Water Technologies Symposium 2014 presentation slide-deck (2014) online: <https://www.esaa.org/wp-content/uploads/2015/01/WaterTech2014-p1.pdf>

⁷⁶ Alberta Transportation, *Alberta Transportation's Guidelines for Conducting Wetland Assessments to Meet Water Act Application Requirements* (Edmonton: 2014, Government of Alberta).

⁷⁷ Government of Alberta, *Wetland Regulatory Requirements Guide* (June 1, 2015).

⁷⁸ Government of Alberta, *Guide to Preparing a Complete Water Act Application for a Licence or an Approval* (Edmonton: 2024, Government of Alberta).

⁷⁹ *Ibid.* at 22.

⁸⁰ Alberta Environment and Parks, *Alberta Wetland Assessment and Impact Report Directive* (Edmonton: 2015, Government of Alberta).

and the site will be reclaimed to wetlands, or activities will have minimal permanent impacts. The WAIF is available online and must be authenticated by a qualified professional.⁸¹

The WAIR format is used for all other activities. The WAIR must include:

- general information about the proponent and the project;
- wetland identification, delineation and classification;
- results of the Alberta Wetland Rapid Evaluation Tool – Actual (ABWRET-A) for permanent impacts and Alberta Wetland Rapid Evaluation Tool – Desktop (ABWRET-D) for temporary impacts which will be used to calculate relative wetland value;
- species surveys;
- other surveys that may be required by the regulator such as water quality, local hydrology or hydro geology;
- description of impacts on wetlands including total footprint of the project, total number and area of assessed wetlands, temporary and permanent direct impacts, expected adverse effects on the aquatic environment, impacts on vegetation and wildlife, expected changes in wetland class and consideration of cumulative effects in the watershed; and
- proposed mitigation plan including information about wetland replacement.

Like a WAIF, a WAIR must be authenticated by a qualified professional.

The *Alberta Wetland Rapid Evaluation Tool – Actual (ABWRET-A) Guide* and the *Guide to the Alberta Wetland Rapid Evaluation Tool – Actual (ABWRET-A) for the Boreal and Foothills Natural Region (ABWRET-A) Guide* provide a standardized method to assess natural functions of a wetland to generate a score which is used, with other inputs, to assign a wetland value of A, B, C or D.⁸² The wetland value is used to inform planning and regulatory decisions, and to determine the replacement ratios (if required). Functions considered include hydrologic, water quality, ecological (habitat) and human use functions. The method uses on-site (actual) observations and off-site spatial data.

There is also a *Wetland Rapid Evaluation Tool - Desktop (ABWRET-D)* which is a desktop-based tool based on the ABWRET-A and used to estimate the value of a wetland relative to other wetlands in the province.⁸³ It uses statistical models for Boreal-Foothills and Parkland-Grassland Natural Regions to assign a wetland value of A, B, C or D to inform decisions by both Environment and Protected Areas and the Alberta Energy Regulator.

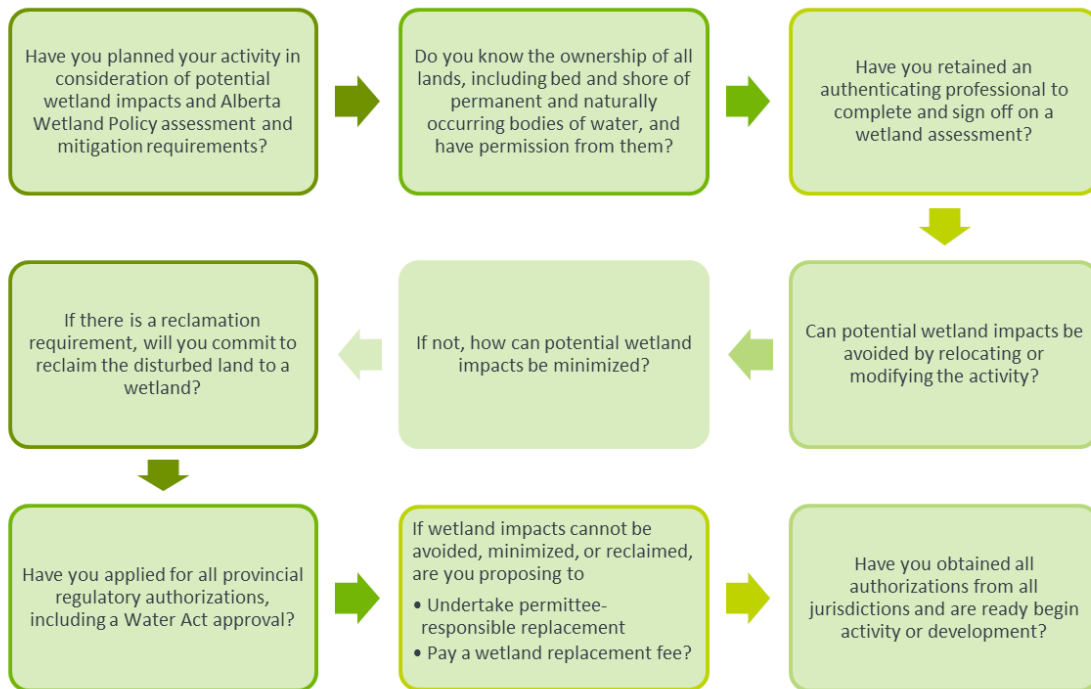
⁸¹ WAIF online: <https://cfr.forms.gov.ab.ca/Form/AEP11895>.

⁸² Alberta Environment and Parks, *Guide to the Alberta Wetland Rapid Evaluation Tool – Actual (ABWRET-A) for the Boreal and Foothills Natural Regions* (Edmonton: 2015, Government of Alberta) and Alberta Environment and Parks, *Guide to the Alberta Wetland Rapid Evaluation Tool – Actual (ABWRET-A) for the Boreal and Foothills Natural Regions* (Edmonton: 2016, Government of Alberta).

⁸³ Environment and Protected Areas, *Wetland Rapid Evaluation Tool – Desktop (ABWRET -D)* (Edmonton: 2023, Government of Alberta).

The ABWRET-D (i.e. desktop) tool is used for activities that require a Wetland Assessment and Impact Form (except those covered by a Code of Practice) whereas the ABWRET-A (i.e. actual, on-site) tool is use for activities that require a Wetland Assessment and Impact Report. This is meant to reduce assessment requirements for low-risk activities that only require the Wetland Assessment and Impact Form.

Figure 2: from Government of Alberta, Wetland Application Checklist (Edmonton: 2018, Government of Alberta)



The *Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta Standard* provides a competency guideline for authenticating professionals.⁸⁴ Authenticating professionals are involved in the preparation of a variety of documents required under the *Water Act* and the *Wetlands Policy*.

5. The *Water Act* decision-makers

A decision may be made to issue an approval to disturb wetlands either temporarily or permanently, and subject to certain conditions, under the *Water Act* by either AEPA or the AER. The AER makes *Water Act* decisions only for those projects that fall within its regulatory purview: oil, oil sands, natural gas, rock-hosted minerals, brine-hosted minerals,

⁸⁴ Alberta Government, *Professional Practice Standard: Professional Responsibilities in Completion and Assurance of Wetland Science, Design and Engineering Work in Alberta* (Edmonton: 2017, Government of Alberta).

and geothermal resources in Alberta.⁸⁵ The AEPA, a branch of the provincial government, is responsible for the balance of decisions under the *Water Act*. It should be noted that any one particular activity may require additional statutory authorizations under the *Water Act* or other pieces of legislation, and there may be more than one decision-maker involved as a result.

5.1 Alberta Environment and Protected Areas (AEPEA)

As discussed above, there are several policy and guideline documents that outline the requirements and procedures for obtaining a *Water Act* approval. Unless a matter falls within the AER's jurisdiction, then the *Water Act* decision will be made by AEPA in accordance with their procedures. The AEPA maintains an online Digital Regulatory Assurance System (DRAS), an Environmental Records Viewer, and an Authorization Viewer for *Water Act* licences and approvals.⁸⁶

5.2 Alberta Energy Regulator (AER)

The AER makes decisions pertaining to the exploration and extraction of oil, oil sands, natural gas, rock-hosted minerals, brine-hosted minerals, and geothermal resources in Alberta.⁸⁷ This includes making decisions around water, public lands, and the environment associated with these resource activities. Decisions made by the AER with respect to public lands are subject to the *Public Lands Act* (PLA) and the Master Schedule of Standards and Conditions (MSSC), discussed below, with the MSSC specifically identifying those decisions made by the AER. In addition, section 2.1 of the *Water Act* indicates that the act is to be read and applied in conjunction with the *Responsible Energy Development Act* (REDA) to the extent that the *Water Act* applies to energy resource activities as defined in REDA. In *Bulletin 2017-19*, the AER indicates that authorizations issued by it pursuant to the *Water Act*, PLA and EPEA that will have impacts on wetlands will be subject to conditions related to the *Alberta Wetland Policy*.⁸⁸

⁸⁵ *Responsible Energy Development Act*, SA 2012, c. R-17.3 [REDA] and *Mineral Resource Development Act*, SA 2021, c. M-16.8 [MRDA].

⁸⁶ Digital Regulatory Assurance System online: <https://www.alberta.ca/digital-regulatory-assurance-system>; environmental records viewer online: <https://geospatial.alberta.ca/erv/>; and authorization viewer online: <https://avw.alberta.ca/ApprovalViewer.aspx>.

⁸⁷ REDA and MRDA.

⁸⁸ Alberta Energy Regulator, *Bulletin 2017-19: New Authorizations Process to Implement the Alberta Wetland Policy* (November 1, 2017). See also Alberta Energy Regulator, *Frequently Asked Questions: Alberta Wetland Policy Implementation* (Calgary: 2018, Alberta Energy Regulator).

The AER's *Manual 018: OneStop Public Lands Application Manual*⁸⁹ outlines considerations when preparing public land disposition applications and notifications for the AER's OneStop system and includes some references to wetlands. In section 3.7 of *Manual 018*, it is stated that "applicants should avoid impacts to water bodies, watercourses, and wetlands" when planning activities and apply appropriate setbacks as provided in *Pre-Application Requirements for Formal Dispositions*.⁹⁰ As well, an applicant must determine permanency of the water body, watercourse or wetland because the Crown owns the beds and shores of permanent and naturally occurring bodies of water.⁹¹ Specifically, in section 3.7.3, *Manual 018* states that if a proposed activity impacts a wetland, then the applicant must "determine the requirements under the *Alberta Wetland Policy*" although a wetland is considered impacted regardless of whether or not it is subject to the *Alberta Wetland Policy*.⁹²

The AER has issued four specified enactment directions (SEDs) which address conservation and reclamation matters relating to:

- enhanced recovery in situ oil sands and heavy oil processing plants and oil production sites (SED01);
- well sites and associated facilities (SED02);
- mineable oil sands sites (SED03); and
- pipelines (SED04).⁹³

The SEDs do not set out specific reclamation requirements for wetlands but rather wetlands are mentioned as one of the environmental features to be considered in terms of

⁸⁹ Alberta Energy Regulator, *Manual 18: OneStop Public Lands Application Manual* (Calgary: 2024, Alberta Energy Regulator) [*Manual 018*]. There is also a quick reference guide available online: https://static.aer.ca/prd/documents/onestop/QRG_CompletingWaterActApplication_Wetland.pdf. See also AER's process flowchart to determine applicability of the *Wetland Policy* titled the *Decision Process for Alberta Wetland Policy Submissions* available online: <https://static.aer.ca/prd/documents/bulletins/DecisionProcessAlbertaWetlandPolicyApplicability.pdf>.

⁹⁰ *Manual 018* at 18. See also Government of Alberta, *Pre-Application Requirements for Formal Dispositions* (Edmonton: 2024, Government of Alberta).

⁹¹ *Manual 018* at 18.

⁹² *Ibid.* at 19.

⁹³ Alberta Energy Regulator, *Specified Enactment Direction 001: Direction for Conservation and Reclamation Submissions under an Environmental Protection and Enhancement Act Approval for Enhanced Recovery in Situ Oil Sands and Heavy Oil Processing Plants and Oil Production Sites* (February 2016); Alberta Energy Regulator, *Specified Enactment Direction 002: Application Submission Requirements and Guidance for Reclamation Certificate and Well Sites and Associated Facilities* (July 2025); Alberta Energy Regulator, *Specified Enactment Direction 003: Direction for Conservation and Reclamation Submissions under an Environmental Protection and Enhancement Act Approval for Mineable Oil Sands Sites* (December 2018); and Alberta Energy Regulator, *Specified Enactment Direction 004: Pipeline Conservation and Reclamation Approvals under the Environmental Protection and Enhancement Act* (July 2025). Note there is a fifth specified enactment direction which addresses liability for rock-hosted mines: Alberta Energy Regulator, *Specified Enactment Direction 005: Rock-Hosted Mine Liability Process* (November 2025).

conservation and reclamation submissions (although SED04 does specify some wetland mitigation measures for pipelines). The legal standard for reclamation is found in the *Conservation and Reclamation Regulation* under EPEA: return the land to an equivalent land capability.⁹⁴ The equivalent land capability standard does not require that the pre-disturbance state be fully restored rather that "the ability of the land to support various land uses after conservation and reclamation is similar to the ability that existed prior to an activity being conducted on the land, but that the individual land uses will not necessarily be identical".⁹⁵

The SED01 addresses enhanced recovery in situ oil sands and heavy oil processing plants and oil production sites. It is divided into four parts: project-level conservation; reclamation and closure plan; pre-disturbance assessment information; conservation and construction plan; and annual conservation and reclamation report requirements. With respect to wetlands, pre-disturbance information must identify wetlands. Information must be provided around avoidance of wetlands and measures to mitigate wetland impacts. Closure targets for wetland restoration must be identified and permanent changes such as conversion of wetlands to upland or fen to marsh must be described.

The SED02, which addresses reclamation certificate application requirements for well sites and associated facilities, simply indicates that information regarding the area of wetland disturbed and reclaimed should be included as part of a reclamation certificate application.

The SED03, which addresses end of life mine closure plans, mine reclamation plans, and annual reclamation progress tracking reports for mineable oils sands sites. Mine closure plans must provide the location, spatial extent, and type of wetlands targeted on tailing deposits, as well explaining why the wetlands are equivalent to locally common boreal forest wetlands and how they will support a range of land uses. In addition, the closure plan, mine reclamation plan and reclamation progress tracking report must address wetlands in the context of surface water and groundwater, reclamation material management, revegetation, biodiversity, and reclamation outcomes (i.e. targeted wetland class).

The SED04 sets out information requirements for pipeline approval application under EPEA in addition to requirements for postconstruction reclamation. On the approval application side, the proposed route for the pipeline must be described and justified including a discussion of wetlands. As well, an approval application must provide pre-disturbance information including identification and delineation of wetlands, information on potential project effects on wetlands, and implement the mitigation measure of stockpiling topsoil

⁹⁴ *Conservation and Reclamation Regulation*, AR 115/93 at 2.

⁹⁵ *Ibid.* at 1(e).

and wetland soils separately. SED04 states that all riparian and wetland areas must be stabilized and revegetated on the project site.⁹⁶

The AER has made comments on wetlands in some written decisions. For instance, in *MEG Energy Corp v Grand Rapids Pipeline GP Ltd*, the AER considered an application for a pipeline that would cross 279 wetlands, mostly adjacent to existing linear disturbances that also impacted those same wetlands.⁹⁷ The AER stated:

The panel recognizes that wetlands may provide habitat for species of special conservation concern and be more sensitive to disturbance than other terrestrial habitats. The panel acknowledges that desktop reviews and aerial reconnaissance by themselves are inadequate to completely identify the potential impacts and appropriate mitigation measures for those wetlands that did not receive field assessments. Desktop reviews are largely based on past observations and registered occurrences and, therefore, may not accurately reflect the presence or absence of these species in areas previously not investigated.⁹⁸

Ultimately, the AER approved the pipeline but with the condition that the operator provide a post-construction reclamation assessment that includes monitoring of wetland hydrological function on the grounds that isolated and open cut crossings of wetlands require confirmation of reclamation success. It should be noted that this decision predates the current *Wetland Policy* and, at the time, AEPA still made *Water Act* decisions for all types of applications (not the AER).⁹⁹

In a subsequent decision for the same pipeline, the AER considered whether the operator had complied with conditions pertaining to route selection.¹⁰⁰ These conditions required the operator to select a superior route and provide alternative routing, along a comparison of the two and information regarding stakeholder concerns. The AER held a public hearing to determine if the superior route had indeed been selected (thus, meeting the conditions at issue). In the course of its decision, the AER listed several criteria used in evaluating pipeline routes: one criterion is minimization of the number of watercourse and wetland crossings.¹⁰¹ However, the AER pointed out a route is not necessarily superior because it has

⁹⁶ SED04 at 22.

⁹⁷ *MEG Energy Corp v Grand Rapids Pipeline GP Ltd*, 2014 ABAER 012 (CanLii).

⁹⁸ *Ibid.* at para. 245.

⁹⁹ *Ibid.* at para. 248 and 249.

¹⁰⁰ *Grand Rapids Pipeline GP Ltd, Consideration of Grand Rapids' Compliance with Conditions 12 and 23 of Decision 2014-012*, 2015 ABAER 004 (CanLii).

¹⁰¹ *Ibid.* at para. 47.

fewer crossings, the role or ecological value of the particular waterbodies may be a more important consideration. Further, where a wetland cannot be avoided, it is important to ensure appropriate mitigation measures are taken to minimize adverse effects. As stated by the AER: in selecting a superior route “consider the nature and significance of the different watercourses and wetlands to be crossed and the potential for residual effects after mitigation measures are implemented”.¹⁰² Ultimately, the AER found all proposed routes were similar in terms of watercourse and wetland impacts.

As with applications made to the AEPA, the policy and guideline documents that outline the requirements and procedures for obtaining a *Water Act* approval apply to applications made to the AER. An application for a wetland disturbance approval made to the AER must include a description of the wetland (class and delineation), information around the mitigation hierarchy (avoidance, minimization and replacement), and indicate whether there will be permanent or temporary impacts to wetlands. The AER maintains the OneStop Application Query Tool which can be searched to find *Water Act* applications made to the AER, along with supporting information such as application documents.¹⁰³

5.3 Regulatory Reviews and Appeals of *Water Act* decisions

For decisions made by the AER, the process for regulatory appeal of certain decisions is set out in REDA.¹⁰⁴ Appealable decisions include those made by the AER which would otherwise be subject to appeal under section 115 of the *Water Act* (discussed further below). These regulatory appeals are heard by the AER. In addition, sections 42 to 44 of REDA allow the regulator in its sole discretion to reconsider a decision it has made and to confirm, vary, suspend or revoke that decision. Appeals may also be made to the Court of Appeal, with permission by the Court, on questions of jurisdiction or law.¹⁰⁵

For decisions made by AEPA, Part 9 of the *Water Act* provides a process for appeal to the Alberta Environmental Appeals Board (AEAB) in the circumstances described in section 115. Section 115 provides that a notice of appeal may be submitted, where an approval is issued or amended, by the approval holder, a person who previously submitted a statement of concern with respect to that approval, or by a person directly affected (if the requirement to provide notice of the application was waived and not provided). The same applies to a

¹⁰² *Ibid.* at para. 112.

¹⁰³ OneStop Application Query Tool, online: <https://www1.aer.ca/pubdocs/#/application-query>.

¹⁰⁴ REDA at ss. 36 to 41.

¹⁰⁵ REDA at s. 45.

decision to approve or amend a preliminary certificate or a water licence. In addition, an enforcement order or administrative penalty may be appealed by the person submit to the order or penalty. There are also a few limited exceptions to these broad appeal categories listed in section 115 of the *Water Act*. It is important to note that, depending upon the type of decision being appealed, the notice of appeal may need to be submitted within 7 days of the decision but in many cases, there is a 30 day period for appeal.¹⁰⁶ As well, depending upon the particular subsection of section 115 which the appeal is based on, the AEAB may make the final decision or it may make a report and recommendations to the Minister of Environment and Protected Areas who makes the final decision.¹⁰⁷

It is important to note that standing to bring a matter before the AEAB can be an issue because a party must be able to meet the directly affected test. Public interest concerns are often not sufficient to meet this test. As an example, in *Stewart et al.*, several people including a watershed stewardship group appealed the issuance of a *Water Act* approval to disturb and fill wetlands.¹⁰⁸ The AEAB held that the appellants lacked standing because they had limited access to the wetlands which were located on private lands. The AEAB found that public interest matters were not sufficient to grant standing, there needs to be a specific interest in the particular wetlands, not just a general environmental benefit from their continued existence. To be granted standing, a person must be able to demonstrate a tangible connection between the impact on the resource and their personal interest.

In another decision – *Alexander* – a person appealed *Water Act* approvals issued to the Town of Blackfalds allowing construction and operation of a stormwater management works, modification of two wetlands at Lacombe Lake, construction and maintenance of a linear wetland system, and construction and operation of a proposed NW Storm Trunk.¹⁰⁹ The appellant was a user and property owner at the lake, and raised several environmental concerns about impacts on the lake that would be caused by loss of the wetlands. In this instance, the AEAB determined that the appellant did have standing due to their direct connection to the lake.

¹⁰⁶ *Water Act* at 116.

¹⁰⁷ *Environmental Protection and Enhancement Act*, RSA 2000, c. E-12 [EPEA] at ss. 98 to 100. Final decision is made by the AEAB for appeals based on *Water Act* s. 115(1)(j), (l) or (q). A report and recommendations is made for appeals based on *Water Act* s. 115(1)(a) to (i), (k), (m) to (p) and (r).

¹⁰⁸ *Stewart et al v Director, Southern Region, Regional Services, Alberta Environment, re: Green Drop* (22 May 2008), Appeal Nos 07-136, 137, & 138-D (AEAB), 2008 ABEAB 20 (CanLii).

¹⁰⁹ *Alexander v Director, Red Deer-North Saskatchewan Region, Operations Division, Alberta Environment and Parks, re: Town of Blackfalds* (18 July 2022), Appeal Nos. 20-013-014-ID4 (AEAB), 2022 ABEAB 41.

There have been several cases where issuance of *Water Act* approvals impacting wetlands have been appealed to the AEAB. For instance, in *Hanson and Lindbergh*, there was consideration of the type of information required to explain why a wetland cannot be avoided as required by policy (note in this case, not even the *Interim Wetland Policy* was in place yet but there was a *Provincial Wetland Restoration/Compensation Guide* that adopted the mitigation hierarchy).¹¹⁰ The approval was issued to the County of St. Paul in connection to a road based on an application that did not consider avoidance, only wetland compensation. The AESRD (AEPA's predecessor) did not request supporting information around avoidance. The approval-holder indicated that it could not avoid the wetland because of the location of its right-of-way but the AEAB stated that the mere fact that the County has a right-of-way is not a valid environmental consideration that negates the need to consider avoidance. There must be an explanation or technical reason for the lack of avoidance of the wetland. As such, the AEAB recommended that the decision to issue an approval be reversed and that a new application be submitted with appropriate information around avoidance.

In *Landrex Hunter Ridge*, *Water Act* approvals allowing filling of several wetlands were issued on the conditions that a wetland replacement fee of \$1.2 million be paid.¹¹¹ The approval-holder challenged the amount of the replacement fee on the grounds that the wetland was of a lower relative value than that attributed by AEPA and was actually smaller (it appeared larger due to anthropogenic impacts). Ultimately, the AEAB did find that the replacement fee should be lowered to reflect a lower relative value but that the size determination should stand. In making its decision, the AEAB made several comments around anthropogenic impacts and natural wetlands:

- there is no definition of a "natural wetland" in the *Water Act*, the *Water (Ministerial) Regulation* or in the *Wetland Policy*;
- the Alberta Wetland Assessment and Impact Report Directives "cite human activity and impact on the wetland as a consideration in the overall assessment of the wetland but do not provide for a natural wetland to be changed to a non-natural wetland due to human impact"¹¹²

¹¹⁰ *Hanson and Lindbergh v Director, Northern Region, Operations Division, Alberta Environment and Sustainable Resource Development, re: County of St. Paul* (20 February 2014), Appeal Nos 13-005 and 006-R (AEAB), 2014 ABEAB 4 (CanLii).

¹¹¹ *Landrex Hunter Ridge Inc v Director, Red Deer-North Saskatchewan Region, Regulatory Assurance Division, Alberta Environment and Parks*, (28 October 2021), Appeal No 20-22-R (AEAB), 2021 ABEAB 26 (CanLii).

¹¹² *Ibid.* at para. 77.

- “natural” refers to the wetland’s origin rather than its present condition, a natural wetland is one that is formed without human interference; and
- “[w]etlands that are human-made, other than wetlands that are restored and constructed as replacement wetlands, are not “natural””.¹¹³

The AEAB also set out several principles for evaluating wetlands impacted by anthropogenic activities.¹¹⁴ Firstly, wetlands affected by an AEPA approved modification under the *Water Act* should be assessed with the impacts of the modification considered as a natural feature of the wetland. Secondly, wetlands that have been affected by unauthorized disturbances should not be assessed until the disturbances are addressed by AEPA compliance or, alternatively, the assessment should consider what the wetlands would have been without the unauthorized disturbances. In this case, the Board found no evidence that the wetland in question was not natural even though it has been impacted historically by human activities and those impacts may influence its relative value category.

In *Landrex Hunter Ridge*, the AEAB noted that there is a distinct difference between what is required for the beds and shores to be vested in the Crown versus the requirements for a water body to be classified as a wetland. This point was confirmed in *JimCo Farming Inc.*¹¹⁵ In *JimCo*, an enforcement order issued under the *Water Act* – related to draining and backfilling multiple wetland areas - was appealed. The appellant argued that because the wetlands were ephemeral, they could not be claimed by the Crown and therefore they could do what they wanted with the wetlands. The AEAB confirmed that whether a wetland is ephemeral or permanent and whether it is subject to a Crown claim is irrelevant to the determination of whether it is an activity under the *Water Act*. An approval is still required to prevent harm to others and to the aquatic environment.

There are several decisions related to the proposed Badlands Motorsports Resort (BMR) in Rosebud, Alberta. In this case, *Water Act* approvals were issued to allow infilling of two wetlands, modification of three wetlands and construction and operation of a stormwater management project.¹¹⁶ The AEAB decision in *McMillan et al.* resulted in a variation of the

¹¹³ *Ibid.* at para. 78.

¹¹⁴ *Ibid.* at para. 81.

¹¹⁵ *Jim Gerber and JimCo Farming Inc v Director, Compliance Manager, North Region – Capital District, Regulatory Assurance Division, Alberta Environment and Protected Areas* (21 December 2022), Appeal Nos. 21-023 and 21-024-R, 2022 ABEAB 39.

¹¹⁶ *McMillan et al v Director, South Saskatchewan region, Operations Division, Alberta Environment and Protected Areas, re: Badlands Recreation Development Corp* (28 March 2024), Appeal Nos 19-066-070, 074 & 081-R (AEAB), 2024 ABEAB 7 [*McMillan et al.* decision]. See also *Andrew Reiffenstein et al v Director, South Saskatchewan Region,*

approvals that were issued (this was an instance in which the final decision was made by the Minister).¹¹⁷ In this case, the AEAB held a *de novo* hearing on the wetlands issues in order to consider all evidence and submissions by the parties. On the issue of avoidance, the AEAB held that there is not a unified legal test for determining whether there has been sufficient avoidance. Rather, application of the mitigation hierarchy arises in the context of a specific *Water Act* licence or approval where the guiding principles of the *Wetland Policy* and the requirements of the *Mitigation Directive* are applied. The AEAB stated that the onus is on the approval holder to demonstrate avoidance of the wetland (identified as “Wetland 2” in the application materials) as impractical and that alternative designs were considered and ruled out for justifiable reasons.

The project proponent argued avoidance of Wetland 2 was not possible because it would involve cutting into a steep slope causing destabilization. This rationale was based on the opinion of a biologist even though it was a geotechnical matter. There was no evidence to show how destabilization would have impacted development and whether there were steps to reduce the instability or mitigate the impacts. As such, the AEAB found that there was not sufficient evidence to demonstrate avoidance of Wetland 2 was impractical or not feasible as per the *Wetland Policy*, and that there was not sufficient evidence to demonstrate avoidance in accordance with the *Mitigation Directive*. Ultimately, the AEAB varied the approvals because the initial approval application did not provide sufficient evidence to demonstrate avoidance of Wetland 2 in accordance with the *Wetland Policy* or *Mitigation Directive*. Either there must be evidence to show avoidance of Wetland 2 is impractical or that aspect of the project must be redesigned. As well, the AEAB determined that the approvals should be varied to allow activities to proceed on the other wetlands but with different terms and conditions. The Minister of Environment and Protected Areas varied the approvals as recommended by the AEAB including adding requirements that the approval-holder submit a Wetland Monitoring Program Proposal for specified wetlands and that the approval-holder provide an avoidance report documenting why wetland 2 cannot be avoided.¹¹⁸

Operations Division, Alberta Environment and Parks (28 April 2020), Appeal Nos 19-059-085-IDI (AEAB), 2020 AEAB 16 (CanLii) which determined standing of appellants.

¹¹⁷ *McMillan et al. decision, ibid.*

¹¹⁸ Under section 100 of EPEA, the AEAB makes a report to the Minister and the Minister may “confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could make”. That is, the AEAB appeal process has two stages: hearing and recommendations by the AEAB, and decision by the Minister.

The *McMillan et al.* decision made by the AEAB was subsequently appealed to the Court of King's Bench with the applicants seeking to have the AEAB's report quashed and have the matter remitted back to the AEAB (as was the Minister's decision to vary the approvals as per the AEAB's report).¹¹⁹ Ultimately, the Court decided to quash the decision and the matter was sent back to the AEAB.

The appellants raised several grounds for judicial review: failing to consider evidence relating to a species at risk, misinterpreting and misapplying the precautionary principle, fettering of discretion, imposing the onus to demonstrate that the approval should be reversed or varied on the appellants, reasonable apprehension of bias and breaching procedural fairness. With respect to wetlands, the Court addressed the fact that the wetlands affected by the approvals overlap with critical habitat identified in the recovery strategy for the Bank Swallow. The Court stated:

The content of the Recovery Strategy paired with the other evidence filed by the Applicants was relevant to the issue of the impact of the Approval on wildlife and specifically species at risk. The Board's failure to grapple with this evidence rendered its decision unreasonable.

[80] On this application for judicial review, the Director agreed with the Applicants that a critical habitat designation was a relevant consideration for the Director and the Board but argued that it was not a factor determinative of whether to grant an Approval. Thus, it argued, the Board's failure to consider critical habitat does not warrant a remedy. While it may be that critical habitat designation is not a determinative factor, the Board's failure to consider this factor at all was unreasonable. Ultimately it is for the Board to decide what to do with the evidence that the wetlands affected by the Approval and the critical habitat identified in the Recovery Strategy overlap, and to provide justified, transparent and intelligible reasons about how this evidence does or does not impact the issues the Board set for itself.

[81] That the designation as critical habitat is a relevant consideration before the Board is also entirely consistent with the Alberta Wetland Policy. The Applicants and the Director agreed that the Alberta Wetland Policy, while not a binding piece of legislation, was a guiding document for the exercise of the Director's discretion. The Alberta Wetland Policy directs that proponents may be required to avoid or minimize adverse effects on wetlands taking into consideration wetland-dependent threatened species under *SARA*. The Director's January 8, 2020 approval statement says that the Director considered the Alberta Wetland Policy. To the extent there must be an

¹¹⁹ *Skibsted v Alberta (Environment and Protected Areas)*, 2026 ABKB 98 [*Skibsted* decision].

express connection between the director's decision-making authority and SARA, the Wetland Policy provides that connection.¹²⁰

The Court concluded that the AEAB unreasonably disregarded relevant evidence and that this alone was sufficient grounds to remit the matter back to the AEAB (although the Court addressed the other grounds raised as well).

The Court also provided interesting comments on decision-making under the *Water Act* respecting wetland disturbance approvals. The appellants argued that the AEAB had fettered its discretion by not considering the economic viability of the project as a whole. In response the Court stated:

The *Water Act* and the *EPEA* limit the Board's authority to consider only the effects flowing from what the Approval authorizes. The Approval does not authorize construction and operation of a racetrack. The Approval authorizes Badlands to fill in two wetlands, modify wetlands, and construct, operate and carry out maintenance of a stormwater management system... The Director did not approve the entirety of the project. All the Approval provides is that Badlands will not be in contravention of the *Water Act* if Badlands fills in wetlands, modifies wetlands, or constructs and maintains a stormwater management system.¹²¹

The Court concluded that economic viability was not a relevant consideration for the wetland disturbance approvals. In other words, when considering whether or not to issue a wetland disturbance issue, matters related to the project as a whole such as economic viability are not a relevant consideration. Only effects associated with the wetland disturbance itself ought to be considered.

The issue of procedural fairness arose in the context of wetland value assessment. The Court noted that the appellants had made several requests for access to the site in order to collect data and respond to the proponent's WAIR report but that this access was denied. As such, the appellants were unable to introduce site-specific evidence to support their assertion that the proponent's data was inaccurate. The Court concluded that it was procedurally unfair for the AEAB to place an onus on the appellants to produce site-specific data for a site to which they were denied access. Furthermore, the Court found that the

¹²⁰ *Ibid.* at para. 79 to 81.

¹²¹ *Ibid.* at para. 104 to 105.

evidence was that a change in wetland value could have an impact on the Director's decision on avoidance.

6. Wetlands and public land dispositions

Alberta Forestry and Parks is the government department primarily responsible for the administration and management of provincial public lands. The AER also has authority to make decisions around public land dispositions insofar as they relate to oil, oil sands, natural gas, coal, rock-hosted minerals, brine-hosted minerals and geothermal resources. These decisions are made pursuant to *Public Lands Act* (PLA) and the *Public Lands Administration Regulation* (PLAR), and may have relevance to wetlands (although these decisions do not directly allow for wetland disturbance as approvals issued under the *Water Act* may). It should be noted that there is a process to appeal certain public land decisions to the Alberta Public Lands Appeal Board (PLAB).¹²²

Public land use decisions include broad management decisions such as designating protected areas and public land use zones (PLUZs) and making Crown Land Reservations (CLRs). They also include decisions around issuance of dispositions under the PLA which control rights of access, surface rights and subsurface rights on public lands. Although numerous important land-use decisions on public lands are made by the government, written decisions are not issued rather evidence of decisions being made is found in the issuance of dispositions,¹²³ protected areas being established, CLRs being placed on public land, and so forth.

Under the PLAR, certain areas of the province may be declared Public Land Use Zones (PLUZs).¹²⁴ PLUZs are intended to "both facilitate and regulate recreational activity, first specifying a range of available recreational opportunities, then identifying any limitations on them."¹²⁵ Unless otherwise specified for an individual PLUZ, a variety of activities are prohibited within a PLUZ: use of off-highway vehicles (OHVs) or snow vehicles; camping, horse use and OHVs use within 100m of a lakeshore; landing helicopters on a lake or within 200m of the shore; motor boats; and camping or having a fire within 1km of a designated

¹²² PLA at Part 7 and *Public Lands Administration Regulation*, AR 187/2011 [PLAR] at Part 10.

¹²³ Disposition mapping data (tied to the Alberta Township System) is available via Altalis, online: <https://www.altalis.com/map?gid=106>.

¹²⁴ PLAR at s. 178 and Sched. 4.

¹²⁵ Guy Greenaway, *PLUZ's and PNT's: Opportunities and Limitations for Nature Conservation* (Calgary: Miistakis Institute, 2019).

recreation area.¹²⁶ Essentially, PLUZs place limitations on the use of public lands that would otherwise be considered vacant public lands subject to few use restrictions.

As well, under section 18(c) of the PLA, the Minister may attach CLRs to public lands for management and decision-making purposes. The use of CLRs replaces land use reservations and notations previously used to help manage public lands in Alberta.¹²⁷ A CLR outlines the rules, restrictions, and regulatory processes applicable to a particular piece of public land and may be used to reflect the management intent set out in a regional plan, integrated resource plan, or other policy documents. A CLR is required to identify its purposes and reasons, as well as the management intent, actions (specific requirement to achieve the management intent), and sectors of land users to which the specified actions apply.

In 2023, the government issued a procedures guide which sets out a variety of acceptable purposes and reasons which are to be identified in a CLR.¹²⁸ Purposes relevant to native wetland and waters conservation and protection include land management, land use plans, parks or protected areas, range management, and unique site features. There are a variety of subcategories that relate to wetland and water including fish and wildlife resources, land management, land use plans, park or protected areas, range management, and unique site features. The land management subcategory specifically includes wetland and water conservation as a reason for a CLR, particularly to identify “areas of native wetland and waters within the province that require protection for conservation objectives”.¹²⁹

A disposition of public land allows a person to obtain an interest in Crown land. Dispositions include grazing dispositions (leases, licences, permits, and head tax permits), mineral surface leases, surface material dispositions and licences of occupation. Where dispositions are issued by the AER or by Alberta Forestry and Parks, the *Master Schedule of Standards and Conditions* (MSSC) identifies conditions that apply to formal disposition applications approved under the PLA.¹³⁰

The key mechanisms used to integrate wetland and water considerations into public land dispositions are the CLR system and the MSSC system. The document entitled *Pre-*

¹²⁶ PLAR at ss. 181-186.

¹²⁷ Ministry of Forestry, Parks and Tourism, *Land Use Reservations Program Procedures Guide* (Edmonton: 2023, Government of Alberta) [*Procedures Guide*] at 7. See also Gerry Haeckel and Nikki Zwaga (Environment and Parks), *Land Use Reservation Program Directive* (Edmonton: 2022, Government of Alberta).

¹²⁸ *Procedures Guide, ibid.*

¹²⁹ *Ibid.* at 26.

¹³⁰ *Master Schedule of Standards and Conditions* (Edmonton: Government of Alberta, 2024) [MSSC]; online: <https://open.alberta.ca/publications/master-schedule-of-standards-and-conditions>.

*application requirements for formal dispositions*¹³¹ explains the operation of both CLR and the MSSC - as well as alignment to land use planning and considerations for resources such as water bodies and species at risk – when applying for a public land disposition. This document applies only to disposition applications made for authorizations granted under the PLA and the *Mines and Minerals Act* (i.e. applications considered by the Ministry of Forests and Parks and by the AER).

Applicants are encouraged to identify CLR early in their planning process in order to select an appropriate location for their proposed activity (this can be done with a land use reservations report). The proponent must follow any actions related to the applicable sector specified in the CLR. A CLR may require specific actions to be taken including:¹³²

- Where an approved plan is identified by the CLR, reviewing the plan and ensuring activity aligns with the plan.
- Where there are established conditions indicated by the CLR, crown land activities adhere to the MSSC and the applicant must plan their activity accordingly.
- A CLR indication that there will be no surface dispositions means applicants from identified sectors would be prohibited from making an application (and if they do so, the application will be rejected or refused).
- A site assessment CLR identifies sectors that are required to complete a site assessment.

A CLR may include other required actions such as requiring clearance, notification or referral to the reservation holder. The reservation holder is required to review the proposed activity and if there are “valid concerns regarding impacts of the proposed activity on the reservation”,¹³³ then the proponent must work with the reservation holder to address those concerns. If a resolution cannot be reached, the proponent may choose to either not submit their application or to submit their application along with mitigation efforts and concerns to be assessed by the regulatory agency. At the time of application, the regulatory agency will identify any relevant CLR and require all actions specified to be addressed before the application proceeds (hence, the recommendation for a proponent to identify and address CLR prior to application).

¹³¹ Forestry and Parks, *Pre-application for formal dispositions* (Edmonton: 2024, Government of Alberta).

¹³² *Ibid.* at 14 to 15.

¹³³ *Ibid.* at 15.

The MSSC identifies conditions that apply to activities that fall under the PLA, the *Parks Act*, and the *Mines and Minerals Act*.¹³⁴ Regulatory bodies reference the MSSC “when reviewing applications and selecting conditions when a decision is made to issue approvals, authorizations, or formal dispositions”.¹³⁵ Standard and condition selection is determined by disposition type, purpose/activity type, risk ranking (if applicable), and supporting spatial layers (if applicable). Standards and conditions in the MSSC related to wetlands and water include:¹³⁶

- 1400: prohibition from conducting activities on the bed and shore of all water bodies;
- 1401: no construction of activities within 15m of temporary wetlands or ephemeral watercourses;
- 1402 and 1403: water body setbacks ranging from 45 to 100m;
- 1418: construct activity, conduct operations and reclaim any disturbed land in accordance with the approved WAIR or WAIF; and
- 1425 and 1436: do not interrupt natural drainage including ephemeral wetlands and fens.

The MSSC also sets out standards and conditions relating to endangered plants and certain wildlife that may be relevant to particular wetland areas.

The MSSC outlines approval standards and conditions which become incorporated into public land dispositions, authorizations and approvals. Approval standards must be followed unless a proponent successfully submitted a non-standard application (the proponent must provide justification as to why the approval standard cannot be followed, and alternate mitigation to address the intent of the approval standard or justification as to why mitigation is not possible). Conditions are not negotiable and must be adhered to.

In addition to the approval standards and conditions set out in the MSSC, Appendix A of the *Pre-application requirements for formal dispositions*¹³⁷ sets out desired outcomes and best management practices associated with the various categories of standards and conditions. These categories include land management, vegetation, integrated use on agriculture and grazing lands, rangeland management, a variety of species at risk, and wetland and water and parkland natural regions. Within each category, a variety of desired outcomes are identified, along with best management practices. The outcomes and best

¹³⁴ *Parks Act*, RSA 2000, c. P-35 and *Mines and Minerals Act*, RSA 2000, c. M-17.

¹³⁵ MSSC at 11.

¹³⁶ MSSC conditions 1400 to 1436 list standards and conditions related to watercourses and waterbodies.

¹³⁷ Forestry and Parks, *Pre-application for formal dispositions* (Edmonton: 2024, Government of Alberta).

management practices most relevant to wetland and waters are found in the wetland and water and parkland natural region category.¹³⁸

The desired outcomes and best management practices are meant to provide additional context in terms of planning and operational expectations. In particular, if a non-standard application is being made, the proponent must address the relevant desired outcomes, ensuring that they can still be achieved as identified in the proponent's proposed mitigation (failure to do so may result in the refusal of the application). The best management practices should be followed in planning and siting of the proposed activity, following the best management practices increases the chances of a successful application.

The Alberta Court of Kings Bench provides guidance on the disposition process under the PLA in its *Gordeyville v Saddle Hills Target Sport Association* decision.¹³⁹ In this case, a PLA disposition was issued to Saddle Hills Target Sports Association (SHTSA) and was appealed to the Public Lands Appeal Board (PLAB) by Gordeyville. The Director's decision was upheld by the PLAB and was confirmed by the Minister via ministerial order. Gordeyville then sought a King's Bench order to quash the Director's decision and the Minister's decision, or to remit the decision back to the PLAB for reconsideration. The Court quashed the Minister's decision and ordered that the matter be remitted for reconsideration by the PLAB.

The Court found that the LAT Report identified that the land intersected a special access area and the presence of a small wetland, and indicated a wildlife survey was required but that the Director did not seek input from a wetland specialist and wildlife biologist before issuing the disposition (although the Director did seek input from both, no response was received and it was assumed no response meant no concerns). The Court held it was unreasonable not to obtain a response from the wetland specialist and wildlife biologist. Furthermore, adequate investigations were required in deciding whether the lands were suitable for the proposed activity and there was no evidence as to why a wildlife survey was not required. The Court stated:

The cumulative effect of the absence of public consultations, input from a Wetland Specialist and Wildlife Biologist, Wildlife Survey, reclamation plan and the presumption that the Wetland Specialist and Wildlife Biologist would have communicated any concerns renders the file incomplete. While there may not be an obligation to obtain any specific information, the LAT Report

¹³⁸ *Ibid.* at 37

¹³⁹ *Gordeyville v Saddle Hills Target Sports Association*, 2024 ABKB 649 (CanLii).

listed numerous issues that were overlooked. Looking at the evidence, it is difficult to determine on what basis the Director determined the lands were suitable.¹⁴⁰

The Court held that the PLAB's decision was not reasonable when it found that:

- the director reasonably exercised her discretion when decided not to seek input of a wetland specialist and wildlife biologist;
- the director reasonably exercised discretion by presuming that a wetland specialist and wildlife biologist would have communicated if there were any concerns and that silence was a positive response;
- the director reasonably exercised discretion when she decided a wildlife survey was not needed even though the LAT Report recommended one; and
- the Director's file was complete and that all records considered in making the decision were produced

Finally, the Court held there was a breach of duty of procedural fairness because reports submitted by concerned parties were not considered. As such, the Court ordered the matter be reconsidered by the PLAB on all issues that the Court found to be unreasonable and to admit the reports that were not previously considered.

7. Wetlands and the role of municipalities

Municipal authority is set out in the *Municipal Government Act* (MGA).¹⁴¹ Particularly relevant to wetlands conservation and protection are MGA provisions relating to water and to land-use planning and development. For the purposes of the MGA, a body of water refers to:

- (a) a permanent and naturally occurring water body, or
- (b) a naturally occurring river, stream, watercourse or lake.¹⁴²

Section 60 of the MGA states that:

¹⁴⁰ *Ibid.* at para. 54.

¹⁴¹ *Municipal Government Act*, RSA 2000, c. M-26 [MGA].

¹⁴² MGA at s. 1(1.2).

Subject to any other enactment, a municipality has the direction, control and management of the bodies of water within the municipality, including the air space above and the ground below.¹⁴³

The definition of “body of water” in the MGA means that a municipality has control and management of wetlands that are permanent and naturally occurring. Recall that the provincial *Guide for Assessing Permanence of Wetland Basins* describes permanent wetlands as those with a “persistent inundation period but need not be perpetually or continuously inundated”.¹⁴⁴ Given the role of both the provincial and federal governments in managing water, there is some uncertainty around the operation of section 60 of the MGA. The following conclusion has been reached by Dr. Judy Stewart:

Finally, I conclude that s. 60 authorizes Alberta municipalities to enact municipal water body management bylaws and prepare water body management plans to manage human activities that may impact natural water bodies such as wetlands. Such bylaws and plans must be enacted and adopted for municipal purposes and address environmental matters of a local nature within municipal boundaries. The only limitation on such municipal action is that bylaws and plans must be consistent with provincial and federal laws, regulations, and statutory instruments.¹⁴⁵

Aside from section 60 of the MGA, municipalities also have a legislated purpose to “foster the well-being of the environment”, authority to require environmental and conservation reserves, and land-use planning and decision-making authority.¹⁴⁶ These provisions could be relied upon by a municipality to undertake measures for the protection and conservation of wetlands within its boundaries.

Parts 17, 17.1 and 17.2 of the MGA specifically address land-use planning and decision-making by municipalities. All municipalities are required to prepare Municipal Development Plans (MDPs) which, among other things, may address environmental matters within the municipality.¹⁴⁷ In addition, every municipality must prepare a Land Use Bylaw (LUB) which regulates and controls the development of land and buildings within the municipality, including through the establishment of municipal zoning.¹⁴⁸ There are other

¹⁴³ MGA at s. 60.

¹⁴⁴ Government of Alberta, *Guide for Assessing Permanence of Wetland Basins* (Edmonton: 2016, Government of Alberta) at 5.

¹⁴⁵ Judy Stewart, “Municipal “Direction, Control and Management” of Local Wetlands and Associated Riparian Lands: Section 60 of Alberta’s Municipal Government Act”, (2009) 47:1 ALR 73 at 76.

¹⁴⁶ MGA at 3(a.1), 664 to 664.2, and Part 17.

¹⁴⁷ MGA at 632.

¹⁴⁸ MGA at 640.

plans, both statutory and non-statutory, that may be adopted by a municipality. It should be acknowledged that municipal plans may be changed and that they may be overridden by statutory authorizations issued by Alberta's regulatory bodies (the AER, AUC and NRCB).¹⁴⁹

As part of the subdivision process, municipalities have authority to require environmental reserves or conservation reserves, or to enter environmental reserve easements.¹⁵⁰ An environmental reserve may be taken where, among other things, there is a swamp or natural drainage course, or land abutting the bed and shore of any body of water for the purpose of preventing pollution or providing public access. An environmental reserve easement may be entered into as an alternative to an environmental easement thereby allowing the landowner to maintain ownership of the land covered by the easement (rather than having that land taken by the municipality as a reserve).¹⁵¹ If the land cannot be required to be provided as an environmental reserve but there is land with environmentally significant features that the municipality wishes to conserve and protect, a conservation reserve may be required.¹⁵²

It is not unusual for municipalities to develop non-statutory plans or policies addressing wetland protection and conservation within the municipality. For example, the City of Edmonton has *Guidelines for Determining Environmental Reserve (ER) Dedication for Wetlands and Other Water Bodies*.¹⁵³ These guidelines are used for determining an appropriate buffer zone for wetlands and other water bodies with respect to lands to be dedicated as an environmental reserve. Considerations include boundary determinations, the need for flood protection, identification of unstable lands, and needs for public access. For pollution prevention purposes a minimum buffer of 30m from the wetland boundary should be used.

Another example is the *Calgary Wetland Conservation Plan*.¹⁵⁴ One of the goals of the plan is to ensure no net loss of Calgary wetlands by "promoting their conservation and/or mitigation within areas of future urban development and within transportation and utility corridors".¹⁵⁵ The plan indicates that the development approval process will adopt the

¹⁴⁹ MGA at 619.

¹⁵⁰ MGA at 664 and 664.2. See also Judy Stewart, *CIRL Occasional Paper #80: A Guide to the Basics and What's New in Alberta's Municipal Legislation for Environmental Management* (Calgary: 2023, Canadian Institute of Resources Law).

¹⁵¹ MGA at 664.

¹⁵² MGA at 664.2.

¹⁵³ City of Edmonton, *Guidelines for Determining Environmental Reserve (ER) Dedication for Wetlands and Other Water Bodies* (Edmonton: 2007, City of Edmonton). See also, City of Edmonton, *Background Report: Rationale for Guidelines for ER Dedication for Wetlands and Other Water Bodies* (Edmonton: 2006, City of Edmonton).

¹⁵⁴ City of Calgary, *Calgary Wetland Conservation Plan* (Calgary: 2004, City of Calgary).

¹⁵⁵ *Ibid.* at 6.

mitigation hierarchy. That is, avoidance will be prioritized, and the next priority will be minimization and mitigation of unavoidable development impacts. The lowest priority mitigation may occur via restoration of disturbed wetlands, enhancement of wetland within the same watershed, wetland creation within the same watershed, or compensation banking for enhancement or creation within the same watershed (these mitigation activities are listed in highest to lowest priority). These same mitigation activities may occur outside the watershed of the affected wetland (but have even lower priority).

8. Wetlands and other provincial decision-makers

When it comes to *Water Act* approvals, the primary decision-makers are the AEPA and the AER. These are the decisions which this ELC project analyzes. However, it is worth having a sense of the broader environmental regulatory landscape to better understand the place of *Water Act* approvals in relation to wetlands.

A particular activity may require issuance of statutory authorizations under more than one piece of legislation. This means, while the decision to issue or not issue a *Water Act* approval allowing disturbance of a wetland is made either by the AEPA or AER, decisions around other aspects of a particular activity may be made by other provincial decisionmakers such as the Alberta Utilities Commission (AUC), the Natural Resources Conservation Board (NRCB) or the Land and Property Rights Tribunal (LPRT).

8.1 Alberta Utilities Commission

The AUC regulates natural gas, electric and water utilities, as well as renewable power generation.¹⁵⁹ While the AUC does not make the decision to issue or not issue a *Water Act* approval allowing disturbance of wetlands, the presence of wetlands may still play a role in AUC decision-making. The AUC's *Rule 007*¹⁵⁶ sets out the application requirements when seeking authorization for the construction, alteration, operation and connection of power plants, hydro developments, substations, transmission lines, energy storage facilities, industrial system designations and gas utility pipelines. *Rule 007* includes requirements to provide information identifying specific ecosystem components, including the presence of wetlands.

AUC's consideration of this information can be seen in its *Springbrook Solar Project* decision.¹⁵⁷ The AUC noted:

¹⁵⁶ AUC, *Rule 007: Facility Applications* (November 6, 2025).

¹⁵⁷ Alberta Utilities Commission, *Decision 26893-D01-2022: Saturn Power Inc., Springbrook Solar Project* (July 8, 2022).

Saturn Power anticipates the removal of three seasonal and two temporary wetlands resulting in a total of 1.33 hectares of seasonal wetlands being removed. Saturn Power is required to receive *Water Act* approval for removal of these wetlands. Another seasonal graminoid marsh will have its 100-metre setback infringed upon by the project. Saturn Power has committed to alternative mitigation methods to reduce impacts to wetland and wildlife within the 100-metre setback. Given the high risk to wetland and wetland habitats, the Commission has determined that the alternative mitigation methods will be included as a condition of approval

Similarly, in its *Vauxhall Solar Farm* decision, the AUC considered evidence around wetlands noting that the setbacks for five wetlands would be impacted but that mitigation measures committed to by the operator would reduce the risk to wetland habitats.¹⁵⁸

The relationship between the AEPA (previously, AEP) and AUC roles, in the context of wind power applications, is described by the AUC in its *Buffalo Plains Wind Farm* decision:¹⁵⁹

137. AEP and the Commission have regulatory authority over various aspects of approving, constructing and operating wind power plants in Alberta. AEP is a government department responsible for the overall management and regulation of wildlife in Alberta. It establishes regulatory standards and guidelines that apply to wind farm projects. The existence of regulatory standards and guidelines, and a proponent's adherence to these standards, are important elements for the Commission to consider in deciding whether potential adverse effects of a project are acceptable.

138. The relationship between the Commission and AEP is set out in Rule 001, Rule 007 and a document entitled Roles and Responsibilities of Alberta Environment and Parks and the Alberta Utilities Commission. Rule 007 requires applicants for wind energy projects to file with the Commission the renewable energy referral report issued by AEP. This is one of several application requirements relating to the environmental effects of a project, including the requirement to provide an environmental evaluation conducted or overseen by someone with appropriate experience and expertise. Given its overall authority for managing and regulating wildlife, the methodology used in conducting an environmental evaluation is generally informed by applicable AEP standards and guidelines.

...

¹⁵⁸ Alberta Utilities Commission, *Decision 27077-D01-2022: Solar Krafte Utilities Inc., Vauxhall Solar Farm* (December 16, 2022).

¹⁵⁹ Alberta Utilities Commission, *Decision 26214-D01-2022: Buffalo Plains Wind Farm Inc., Buffalo Plains Wind Farm* (February 10, 2022) at 27 to 28.

141. The Commission considers referral reports to be valuable because they come from independent wildlife professionals with experience assessing the environmental impacts of wind energy projects in Alberta. However, referral reports are not the only evidence considered by the Commission, and the conclusions in a referral report are not determinative of the Commission's decisions. Rather, the issuance of a referral report by AEP represents a single step in a process that involves both applicant witnesses and interveners at various stages.

In the *Buffalo Plains Wind Farm* decision, the AUC specifically considered whether the impacts on wetlands were acceptable (in the context of its decision to issue authorization for the wind farm). Ultimately, the AUC was satisfied that the project's impacts on wetlands could be mitigated and therefore were acceptable.

In its *Eastervale Solar* decision, the AUC denied a project on the grounds it was not in the public interest due to environmental impacts (primarily extensive impacts to wetlands).¹⁶⁰ This decision considered an application to build a solar power plant, substation and storage facility which would result in 55 wetland setback infringements, 23 of which would be directly impacted by project infrastructure. The AUC found that the applicant had not made a reasonable effort to meet the objectives of the *Wildlife Directive for Solar Energy Projects* and did not have a sufficient regard for the individual features of the affected wetlands such as the type and classification of the wetlands. While the AUC stated that the *Wildlife Directive* does not have force of law, adherence to its standards is an important consideration in assessing whether a project is in the public interest. Furthermore, the AUC found that a blanket reliance on cultivation is not sufficient reason for not adhering to wetland setback standards, stating that proponents must "apply a more nuanced and site-specific approach when contemplating impacts to wetlands".¹⁶¹

8.2 Natural Resources Conservation Board

The NRCB reviews and makes decisions around major natural resource projects that require an environmental impact assessment under the EPEA, as well as confined feeding operations.⁶⁰ Natural resource projects include those involving forestry, water management, and recreation. As with the AUC, the decision to issue a *Water Act* approval to disturb wetlands is not made by the NRCB but impacts on wetlands may play a role in the NRCB's decision-making process. For example, in its *Springbank Off-Stream Reservoir Project* decision, the NRCB noted that "wetlands are critical habitat for a number of plant and animal

¹⁶⁰ AUC Decision 28847-D01-2025, *Eastervale Solar Inc., Eastervale Solar + Energy Storage Project* (February 19, 2025).

¹⁶¹ *Ibid.* at para. 32.

species of management concern as well as plant species of traditional use”.¹⁶² The NRCB goes on to say that:

It is the Board’s understanding that wetland loss during construction will need to be offset under the Alberta Wetland Policy. The Board recognizes that post-flood scenarios will create additional losses in wetlands or changes in wetland function. The Board’s understanding is that these losses will also require offsetting under the Alberta Wetland Policy. While offsetting may not be the ideal solution, in the Board’s opinion the time to offset against future loss is during the early phases of the Project. Given the Project’s proximity to Calgary and ongoing development in the region, opportunities for offsetting in the local area will likely decline over time. The Board encourages [Alberta Transportation], in concert with Alberta Environment and Parks, to develop and implement an offset plan for all wetlands that are likely to be lost during the life of the Project.¹⁶³

Ultimately, the NRCB concluded that the “reduction in risk to the human community through flood mitigation outweigh the harms visited on the plant and wetland communities within the project development area”.¹⁶⁴ Thus, the project was approved despite impacts on wetlands.

8.3 Land and Property Rights Tribunal

The LPRT hears and makes decisions related to land use planning, development, right of entry, compensation, assessment and new home warranty matters associated with private lands.⁶¹ In a decision considering several appeals from a decision of the Parkland County Development Authority respecting a development permit to expand a gravel pit, the LPRT commented on its role in considering wetland impacts.¹⁶⁵

Concerns around impacts to several wetlands, including permanent loss of wetlands, were raised. The LPRT stated:

Wetland disturbance is regulated by the province. Permits and oversight are provided by AEPA. It is not economically feasible for the Applicant to restore the wetlands as part of final reclamation, and compensation is being made for the wetlands as per the Wetland policy. Wetland removal is a reality for numerous forms of development.

¹⁶² Natural Resources Conservation Board, *Decision NR 2021-01: Springbank Off-Stream Reservoir Project* (June 22, 2021) at 126.

¹⁶³ *Ibid.* at 127.

¹⁶⁴ *Ibid.* at 127.

¹⁶⁵ *Tremblay v Parkland County (Development Authority)*, 2023 ABLPRT 178 (CanLii).

The photo provided on progressive reclamation was included to illustrate the progressive nature of operations at this site. Reclamation requirements are addressed as part of the Activity Plan under the Code of Practice of Pits. As part of its authorization, a bond is provided to AEPA to ensure site reclamation is completed in accordance with approved plans.¹⁶⁶

It concluded that the environmental concerns are more appropriately addressed in the AEPA approval process (which in this case was still underway) which is also subject to an appeal process.

However, the LPRT has upheld conditions and environmental reserve requirements imposed by a subdivision authority in relation to wetlands.¹⁶⁷ For instance, in *Loov*, a landowner appealed the subdivision authority's conditions to require dedication of an environmental reserve encompassing a wetland and a 10 metre buffer, as well conditions around demarcation of the wetland.¹⁶⁸ Although the LPRT modified the buffer to be 6 metres, the conditions were otherwise upheld. This illustrates that the presence of wetlands plays a role in municipal planning decisions and in appeals made to the LPRT, although the ultimate decision to allow disturbance of a wetland via a *Water Act* approval lies with EPEA or the AER (as appropriate to the type of development).

9. Regional planning binds Alberta's regulatory decision-makers

Section 4.1 of the *Water Act* indicates that actions taken under the Act by the Minister or Director must be in accordance with any regional planning under the *Alberta Land Stewardship Act* (ALSA).¹⁶⁹ As such, a brief overview of ALSA regional planning is provided.

For the purposes of regional planning, the province is divided into 7 land-use planning regions based around major watersheds. Once a regional plan is completed, all public and private land in that region is subject to the regional plan. As part of the regional plan

¹⁶⁶ *Ibid.* at para. 36.

¹⁶⁷ *Kirk v Thorhild County (Development Authority)*, 2024 ABLPRT 252 (CanLii); *Stocker v County of Vermilion River (Subdivision Authority)*, 2025 ABLPRT 257 (CanLii); *M. Marston v Clearwater County (Subdivision Authority)*, 2023 ABLPRT 299 (CanLii); *Fraser v Rocky View County (Subdivision Authority)*, 2024 ABLRPT 170 (CanLii); and *Bonin v County of Parrhead No. 11 (Subdivision Authority)*, 2019 ABMGB 10 (CanLii).

¹⁶⁸ *Loov v County of Wetaskiwin No. 10 (Subdivision Authority)*, 2022 ABLPRT 1403 (CanLii).

¹⁶⁹ *Alberta Land Stewardship Act*, SA 2009, C. A-26.8 [ALSA].

implementation, environmental management frameworks are developed and sub-regional plans may also be developed to address local or issue-specific matters.

A regional plan consists of three parts: the strategic plan, the implementation plan and the regulatory details. The strategic plan provides the vision and desired outcomes for the region and the implementation plan includes regional objectives, strategies and actions to be undertaken to achieve the regional vision and outcomes. The regulatory details enable achievement of the strategic direction, strategies and actions. The regulatory details of a regional plan are legally binding whereas the strategic and implementation plans are just statements of policy to guide decision-makers.

The regulatory details of a regional plan could impose specific, legally enforceable restrictions and requirements relevant to wetlands and water in the region. In addition, restrictions on land could be imposed under a regional plan by expressly declaring a conservation directive¹⁷⁰ to “permanently protect, conserve, manage and enhance environmental, natural scenic, esthetic or agricultural values”.¹⁷¹ To date, no conservation directives have been made.

Only two regional plans are in place: the *South Saskatchewan Regional Plan* (SSRP) and the *Lower Athabasca Regional Plan* (LARP).¹⁷² Although mentioned throughout the SSRP, there are no clear objectives set out in the plan regarding wetlands. The SSRP indicates that the government is committed to increasing knowledge and mapping of wetlands including an update to the existing wetland inventory (but there is no timeline or clear objective set). It is also indicated that one strategy is to promote private land voluntary conservation actions on a variety of land types including wetlands. As part of planning around water and watersheds, the SSRP states that municipalities are expected to “identify and consider the values of significant water resources and other water features such as ... wetlands... within their boundaries”.¹⁷³

The LARP also references wetlands without setting clear objectives around conservation or protection. The LARP indicates that the *Wetland Policy* is in development and will provide clear, consistent guidance for the management of wetlands. It also indicates that a progressive reclamation strategy will be implemented that will provide mechanisms to

¹⁷⁰ ALSA at Part 3, Division 3.

¹⁷¹ *Ibid.* at s. 37.

¹⁷² Alberta Government, *South Saskatchewan Regional Plan* (Edmonton: 2018, Government of Alberta) [SSRP] and Alberta Government, *Lower Athabasca Regional Plan* (Edmonton: 2012, Government of Alberta) [LARP].

¹⁷³ SSRP at 112.

"define, measure and report on the return to equivalent capability – the objective for reclamation – including the return to a suite of acceptable land uses, such as ... wetlands".¹⁷⁴

¹⁷⁴ LARP at 46.