

PROJECT BACKGROUND



Environmental
Law Centre

A publication of the Environmental Law Centre (Alberta) Society

February 2016

Buying a Better Environment? Market-Based Instruments and the *Alberta Land Stewardship Act*

Can market-based instruments enabled by the *Alberta Land Stewardship Act* be used to benefit the environment?

In Alberta, the *Alberta Land Stewardship Act (ALSA)* enables the use of MBIs for conservation and stewardship purposes. However, while theoretically favorable to MBIs, there is limited practical experience with these tools in Alberta. **The goal of this project to advance the use of MBIs enabled in ALSA in a way that benefits the environment.** The ELC will identify the policies, regulations, or reforms needed to do so.

Throughout 2016, the ELC will conduct research and analysis of the legal barriers and opportunities for use of MBIs in Alberta. We will share our findings, concluding with a published report and recommendations. Our work for this project is guided by external experts in the field of conservation and stewardship using MBIs.

What are Market-Based Instruments?

Market-based instruments (MBIs) use the market and economic variables to provide incentives for the reduction or elimination of negative environmental impacts. The use of MBIs for environmental protection and management is increasing worldwide. While best known for targeting air emissions (particularly greenhouse gases), MBIs are and can be used to incentivize conservation and stewardship of land, water and biodiversity.



Native wildflowers in bloom

***Market Based
Instruments
and the
Alberta Land
Stewardship
Act***



Wetlands in southwest Alberta

The use of MBIs is directly promoted by several provisions of *ALSA*:

- Cabinet may support the **research and design** of MBIs to implement *ALSA* or regional plans, including by way of support for MBI pilot projects.
- **Transfer of development credits (TDCs)** redirect private land development away from less suitable areas into more suitable areas. A TDC scheme typically involves landowners in the suitable area buying development potential from landowners in the unsuitable area, which is then protected from future development.
- An **exchange** agency and **stewardship units** may be created. This foresees TDC schemes and/or offset programs involving the buying, selling or trading of units separate from the legal interests in land.
- **Conservation offsets** involve compensating for the negative environmental impacts of land use activities by producing positive environmental impacts elsewhere. Offsets may be voluntary or mandatory and are not necessarily used as MBIs.

Other economic instruments that might be possible under *ALSA* include payments for ecosystem services, cap and trade markets in land disturbance, and tax-based measures.

Current MBI Law and Policy in Alberta

The *Alberta Land Use Framework*, issued in 2008 provides high-level policy direction for the conservation and stewardship of both public and private lands. The main legislation for implementing this policy – *ALSA* – provides the legislative mandate for development of MBIs amongst a suite of other conservation tools. Using these tools will require the participation of non-government players including landowners, private industry, municipalities, and qualified non-government organizations.



Rough fescue

ALSA tools increase the options to protect conservation sites associated with MBIs, including conservation easements and conservation directives.

Conservation easements are voluntary agreements entered into by a landowner to restrict surface use which are registered on land title and enforceable against future landowners. [conservation easements are already widely used and you can learn more . . . <http://www.ce-alberta.ca/>]

Conservation directives are a new zoning tool that must be created through regional plans and provide rights to apply for compensation. [see the ELC's report on this little known tool here: <http://www.elc.ab.ca/media/103996/ConservationDirectivesELCRecommendations.pdf>]

For more on these ALSA conservation tools see: <https://landuse.alberta.ca/ConservationStewardship/ConservationStewardshipTools/Pages/default.aspx>

Does Alberta's Law and Policy Advance the Use of MBIs for Conservation and Stewardship?

Despite the policy direction provided by the *Alberta Land Use Framework* and the legislative mandate provided by *ALSA*, there are significant gaps in Alberta's law and policy which impeded the use of MBIs as conservation and stewardship tools. In particular:

- Guidance for the use of MBIs under *ALSA* was left to future policies and regulations (which are not yet developed).
- There is a lack of programs and administrative agencies to support and assist with the implementation of MBI programs.
- The other key function of *ALSA* – regional planning – creates a level of uncertainty around the use of MBIs. While MBIs can be used to implement regional plans, their use is not mandatory. On the other hand, MBIs can be used without regional plans being in place but there is little practical support in this regard.

Consequently, the use of MBIs as conservation and stewardship tools under *ALSA* has not progressed. While there are several MBI initiatives (including pilot projects) underway in Alberta, some are being driven by other policies such as the Wetlands Policy and implemented through legislation that was not designed to enable MBIs in the manner of *ALSA*.

Can MBIs Benefit the Environment?

There are some lofty environmental goals embraced by *ALSA*. For example, one stated purpose of the legislation is to “enable sustainable development by taking account of and responding to cumulative effects.” As well, the conservation tools enabled by *ALSA* have the “protection, conservation and enhancement of the environment, natural scenic or aesthetic values, or agricultural land or land for agricultural purposes” as their stated purpose.

This means that decisions on the design and use of MBIs under *ALSA* should be guided by recognized environmental principles to uphold the spirit of the law.

Unfortunately, clear articulation of specific environmental principles have been absent in the *ALSA* regional plans developed to date. Further, clear environmental principles are also lacking in other legislation through which MBIs may be implemented (including the *Water Act*, *Public Lands Act* and *Municipal Government Act*). The implication of a lack of guiding environmental principles is that environmental outcomes sought by the *Land Use Framework* will not be achieved.

What does an Environmentally Effective MBI look like?

An environmentally effective MBI will:

- be guided by environmental principles,
- have a sufficient policy and planning context, including clear objectives and directions for use,
- be supported with established programs and administrative structure,
- meet principles for best practice of MBI design; and
- clearly identify and address legal obstacles.

In order to advance the use of MBIs as conservation and stewardship tools in Alberta, our law and policy must meet the above criteria.

Interested in advancing the use of MBIs in Alberta?

The ELC is looking for Project Collaborators

Throughout 2016, the ELC is looking to:

- review the experiences with “pilot projects” using MBIs in Alberta,
- provide assistance to MBI projects,
- join working groups, core teams or advisory committees focused on legal issues with MBI usage, or
- share findings with municipalities, land trusts, conservation organizations, industry and government agencies.

All activities undertaken with collaborators must meet the ELC’s mandate to:

- act as an independent information service, and
- pursue environmental protection through law and policy.

As well, the collaborator’s work must involve the types of MBIs anticipated by *ALSA*.

Guiding Environmental Principles for MBI Design

Sustainable development which is “development that meets the needs of the present without compromising the ability of future generations to meet their own needs.”

Precautionary Principle which requires that “where there are threats of serious or irreversible damage, lack of full scientific certainty shall not be used as a reason for postponing cost-effective measures to prevent environmental degradation.”

Polluter Pays principle which means the costs of environmental impacts should be borne by the parties creating the impacts.

Other important principles to consider are ensuring sufficient public participation and pollution prevention.

About the Environmental Law Centre

The Environmental Law Centre (ELC) is a charity incorporated in 1982 to provide Albertans with information, education and law reform services in the area of environmental law.

Environmental Law Centre Program Team

Josephine Victoria Yam, Executive Director

Adam Driedzic, Staff Counsel

Brenda Heelan Powell, Staff Counsel

Jason Unger, Staff Counsel

Kara Tersen, Marketing and Fund Development Director

Project Contact

Adam Driedzic, Staff Counsel

adriedzic@elc.ab.ca

elc.ab.ca

(780) 424-5099 ext. 312

Watch the ELC blog and subscribe online to receive updates at

environmentallawcentre.wordpress.com

Photos courtesy: Kara Tersen