

Regional Planning Focus New for Alberta

Legislation Looks Beyond Project-Specific Issues and Outcomes

By Dufferin Harper

IN DECEMBER 2008, Alberta issued its Land Use Framework, which consisted of the following seven strategies:

- Develop seven regional land-use plans based on seven new land-use regions
- Create a land-use secretariat (Secretariat) and establish a Regional Advisory Council for each region
- Cumulative effects management will be used at the regional level to manage the impacts of development on land, water and air
- Develop a strategy for conservation and stewardship on private and public lands
- Promote efficient use of land to reduce the footprint of human activities on Alberta's landscape
- Establish an information, monitoring and knowledge system to contribute to continuous improvement of land-use planning and decision-making
- Inclusion of Aboriginal Peoples in land-use planning.

The Framework also sets out five immediate priorities, the first of which was to enact legislation to support the Framework. On October 1, 2009, Alberta proclaimed the *Land Stewardship Act* (LSA). The LSA provides the legal foundation for many of the strategies set out in the Framework and represents a fundamental shift in how the province addresses project development.

The purposes of the LSA are:

- to provide a means by which the government can give direction and provide leadership in identifying the objectives of the province of Alberta, including economic, environmental and social objectives;
- to provide a means to plan for the future, recognizing the need to manage activity to meet the reasonably foreseeable needs of current and future generations of Albertans, including Aboriginal Peoples; and
- to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events.



Under the LSA, the government may establish integrated planning regions. A regional plan can then be developed for each region.

The development of a regional plan is significant. Once adopted by the Province, a regional plan represents government policy for that region. Each regional plan will have the force of law and be tantamount to a regulation. In the event of an inconsistency between a regional plan and another regulation or regulatory instrument, (subject to limited exceptions), the regional plan will prevail.

Furthermore, each regional plan will be binding on all of the Province, local government bodies (i.e., municipalities), decision-makers (i.e., the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC)), and other persons operating within the region. Once a regional plan is adopted, all municipalities and other local government bodies, as well as decision-making bodies within the region or affected by the plan, must review their applicable regulatory instruments and ensure they are in compliance with the regional plan. If not in compliance, such entities must modify their applicable regulatory instruments to comply with the regional plan.

CONSERVATION TOOLS & COUNTERBALANCES

The LSA describes conservation and stewardship tools that can be used by the government in a regional plan. Those tools include: conservation easements; conservation directives; conservation offset programs; and development credits.

Conservation easements are voluntarily granted by registered landowners to qualified organizations (including the Province), for purposes of the protection, conservation and enhancement of: the environment; natural scenic or aesthetic values; agricultural lands; and other consistent uses.

Conservation directives are declarations set out in a regional plan that affect landowner rights within that region. Any landowner subjected to a conservation directive is entitled to apply for monetary compensation as a result of the enactment of that directive.

Conservation offset programs are beneficial programs that counterbalance the detrimental effect of an activity. The offset programs may include measures to minimize the impact of an activity and may include compensation for an activity such as replacing, providing, acquiring, using or extinguishing stewardship units. Stewardship units are units that will be

capable of being traded, exchanged, sold, leased and disposed of.

The extent and scope of conservation offset programs and stewardship units will be set out in regulations yet to be enacted. The concept of using counterbalancing offsets in Alberta in the environmental context is not unusual. The use of offsets is already well established in the context of wetlands. Alberta has had a long-standing policy involving the replacement of wetlands by other wetlands. The difficulty with the scenario set out in the LSA will be in the establishment of comparable stewardship units between disparate activities.

Development credits are described in the context of transfer development credit schemes (TDC schemes), which may be implemented to assist in the exchange of stewardship units. Once again, the regulations describing the extent and scope of TDC schemes have yet to be enacted and, at this time, the distinction between conservation offset programs and TDC schemes is unclear.

BROADER SWEEP FOR ASSESSMENT

The LSA sets out the criteria for the establishment of a regional advisory council for each planning region. It also establishes a

Secretariat with a mandate to oversee the implementation of, and amendments to, all regional plans. The Secretariat also has a mandate to investigate complaints in circumstances where a regional plan may or may not be complied with.

The enactment of the LSA represents a dramatic shift in how Alberta regulates development within the province. By moving to a regional planning-based scenario, projects will no longer be assessed solely on a project-by-project basis. Rather, projects will now be assessed both on issues specific to the proposed project as well as issues that are specific to a particular land-use region.

The impacts of this shift to regional land-use planning could be quite significant. For example, if a regional plan includes cumulative threshold levels for certain substances, project developers within that region will be required to address the cumulative effects of such substances and ensure that the cumulative thresholds are not exceeded.

Until all of the plans are developed, it is difficult to predict the threshold limits that each plan may contain. However, it is reasonable to assume that each of the seven regional plans will differ in scope and breadth and include different thresholds

(otherwise the same plan could have been applied to all of Alberta). To date, no regional plans have been adopted by the Province, although one of the first will likely be for the Lower Athabasca region.

The imposition of regional thresholds would be in addition to any cumulative effects requirements that must be addressed by project proponents in applying for provincial environmental assessment approval under the *Environmental Protection and Enhancement Act* (EPEA). The LSA actually contains an amendment to the EPEA confirming that the Minister or any director empowered under the EPEA must act in accordance with an applicable LSA regional plan.

What remains unclear is the juxtaposition of regional plans and their use of cumulative regional thresholds versus environmental assessment of a project. It remains to be seen if the use of regional plans will be in addition to, as opposed to an alternative to, environmental assessments. ■■

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