



THE ALBERTA LAND STEWARDSHIP ACT: CERTAINTY OR UNCERTAINTY?

Article by Jenette Poschwatta-Yearsley and Adam Zelmer ♦

Introduction

For years, commentators have called upon the government to adopt a comprehensive land-use planning framework.¹ This call for a land-use framework was driven in part by the institutional fragmentation between government departments and the increasing cumulative effects of development on the landscape.² Many activities such as mining, forestry, energy development, agriculture, transportation, recreation and wildlife harvesting share the same land base. Resources such as water, air, oil and gas, wildlife, fish and forests are often regulated under separate legal and policy regimes. In December 2008, the Alberta Government responded by the release of a Land-use Framework (LUF).³

The government used a consultation process to develop the LUF. This process outlined the several necessary improvements to the land-use process in Alberta:⁴ (i) provincial leadership to provide clear direction; (ii) integration and co-ordination of provincial policies governing air, water and land; (iii) clearer definitions of roles and responsibilities for land-use decisions at the provincial, regional and local levels; (iv) improved processes to deal with conflicts between land users; (v) enhanced conservation and stewardship on both private and public lands to promote ecological sustainability; (vi) improved information sharing about the condition of the land and the effects of activities on the land; and (vii) increased consultation with First Nations and Métis communities, stakeholders and the public to ensure a fair opportunity to influence new policies and decisions. The government stated that the ideas and opinions of Albertans derived from the

consultation process played a “vital role in developing the framework”.⁵

The LUF outlines an approach to manage public and private lands and natural resources in Alberta. It also provides the policy blueprint from which Bill 36, the *Alberta Land Stewardship Act (ALSA)* was drafted.⁶ This article provides a brief overview of the strategies outlined in the LUF that were selected to achieve integration and coherence for Alberta’s land use with a special emphasis on the role of public participation. The second part of this article discusses how those strategies are incorporated, or not, into the *ALSA*. Ultimately this article concludes that the *ALSA* is legislation with enormous potential power. The specific changes that the *ALSA* will in fact bring about are more difficult to predict than might be expected due to the decidedly discretionary nature of its drafting.

The Land-use Framework

In the LUF, the Government of Alberta proposes seven basic strategies to improve land-use decision making in Alberta:⁷

1. Develop seven regional land-use plans based on seven new land-use regions

The purpose of regional plans is to integrate provincial policies, outline land-use objectives and provide the context for land-use decision-making at the regional level. They are to set regional objectives and to reflect the unique characteristics and



RÉSUMÉ

Le cadre de l'aménagement du territoire (Land Use Framework - LUF) esquisse une approche en matière d'aménagement des terres privées et publiques et des ressources naturelles en Alberta. Ce cadre dessine aussi le schéma politique qui a formé la base du Projet de loi 36, le Alberta Land Stewardship Act (ALSA). Cet article décrit brièvement les stratégies identifiées dans le LUF qui ont été choisies pour mieux intégrer et donner plus de cohérence à l'aménagement du territoire en Alberta, et examine en particulier le rôle de la participation du public. La deuxième partie de cet article examine dans quelle mesure ces stratégies ont été (ou n'ont pas été) incorporées dans la loi. En fin de compte, cet article conclut que l'ALSA est une loi qui offre beaucoup de potentiel. Il est toutefois difficile d'anticiper les changements spécifiques que la loi va véritablement effectuer, étant donné la nature extrêmement discrétionnaire de ses provisions.

priorities of the region. Under LUF, the regional plans will be binding on both municipalities and provincial government departments.

2. Create a Land-use Secretariat (Secretariat) and establish a Regional Advisory Council (RAC) for each region

The role of the Secretariat is to support Cabinet decision-making. The Secretariat will participate in the development of regional plans in consultation with the RACs, advise the RACs on policy matters, assist provincial departments, municipalities and local authorities with their roles under the regional plans, provide administrative infrastructure and support to RACs, and ensure the application of cumulative effects models in the regional plans.⁸

The primary role of RACs is to provide advice to, and receive direction from, Cabinet and to provide advice to the Secretariat on the development of the regional plans.⁹ Their mandate is to advise on the development of regional plans, provide advice on addressing trade-off decisions regarding land-use issues, and to advise and participate in public and stakeholder consultation for the planning process. The LUF states that the RACs will consist of members representing the range of perspectives and experience in the region who are able to appreciate the broad interests of the region and its place in the province. The members of the RACs will be appointed by the provincial government and will include representation from provincial and municipal governments, aboriginal communities, industry, nongovernment groups and other relevant planning bodies.

Under the LUF, neither the Secretariat nor the RACs have final decision-making capability. Cabinet retains final decision-making responsibility including oversight of the regional planning process, final determination of the content of regional plans, responsibility for integration of provincial land-use policies and the

implementation of the regional plans.¹⁰ The LUF specifically states that this responsibility “does not mean creating a heavy-handed, centralized bureaucracy in Edmonton” but that the Alberta government must provide the leadership that the local levels of government cannot.¹¹

3. Cumulative effects management will be used at the regional level to manage the impacts of development on land, water and air

Under LUF, regional plans will adopt a cumulative effects approach that addresses the impacts of existing and new activities.¹² Cumulative effects consider the combined impact of past, present and reasonably foreseeable human activities on the region's environment.¹³ As part of that process, the regional plans are to reflect the current understanding of environmental risks and socio-economic values in setting environmental objectives and managing within those objectives. Thresholds will be set so that the carrying capacity of the environment is not exceeded while also taking into account economic and social considerations.

4. Develop a strategy for conservation and stewardship on private and public lands

Both public and private lands provide public goods such as clean water and air, healthy habitat and riparian areas, abundant wild species and fisheries.¹⁴ Under LUF, new policies such as environmental goods and services; support for conservation easements and land trusts; “cluster development” through the transfer of development credits; and allowing land-trust tax credits to be sold to third parties will be developed to encourage stewardship and conservation.

5. Promote efficient use of land to reduce the footprint of human activities on Alberta's landscape



The LUF states that land is a limited non-renewable resource that should not be wasted; however, no specific policy commitments are outlined.¹⁵ The LUF simply states that the principle of reducing the footprint of human activities should guide all areas of land-use decision-making: urban and rural residential development, transportation and utility corridors, new areas zoned for industrial development, and agriculture.

6. Establish an information, monitoring and knowledge system to contribute to continuous improvement of land-use planning and decision-making

The planning process under LUF is dependent on access to accurate, relevant information to support land-use planning and decision-making.¹⁶ The focus is on greater collaboration and sharing of information between individuals and groups who have data and knowledge about the land. Under LUF, the government will collect the required information and create an integrated information system to ensure decision makers will have access to relevant information. The system will include regular monitoring, evaluation and reporting.

7. Inclusion of aboriginal peoples in land-use planning

In the LUF, the provincial government states it will strive for a meaningful balance that respects the constitutionally protected rights of aboriginal communities and the interests of all Albertans.¹⁷ In addition, the LUF states that government will continue to meet Alberta's legal duty to consult aboriginal communities whose constitutionally protected rights are potentially adversely impacted by development.¹⁸ The LUF encourages aboriginal peoples to participate in the development of the regional plans.

In summary, the LUF envisions a system where land-use objectives are developed on a regional basis through the tool of regional plans. The objectives are to take into account cumulative effects, promote conservation and stewardship, and to reduce the footprint of human activities. While the provincial government takes the leadership role and the final responsibility for the regional plans, it is anticipated that the views of different stakeholders and aboriginal peoples will be incorporated into the regional plans. The LUF strategies fall short of addressing the need for an improved consultation process with First Nations and Métis communities, stakeholders and the public in order to ensure a fair opportunity to influence new policies and decisions.

The first priority under the LUF was to develop legislation to support its implementation.¹⁹ The *Alberta Land Stewardship Act (ALSA)* received Royal Assent on June 4, 2009 and comes into force on Proclamation. The next portion of this article reviews the *ALSA* and analyzes whether it encompasses the strategies outlined in the LUF.

The Alberta Land Stewardship Act

Development of Regional Plans

The purpose of the *ALSA* is to: (a) provide a means for government to give direction and provide leadership in identifying economic, environmental and social objectives for Alberta; (b) provide a means for planning for the future in order to manage activities required to meet the reasonably foreseeable needs of Albertans including those of aboriginal peoples; and (c) create legislation and policy to enable sustainable development by responding to cumulative effects.²⁰

Under the *ALSA* the Lieutenant Governor in Council (LGIC) has the power to divide Alberta into different planning regions and to create a regional plan for each region.²¹ While the LUF specifies that seven new land-use regions will be developed, the *ALSA* is not specific. It does not require that all land in Alberta be incorporated into a regional planning area.

Secretariat and Regional Advisory Councils

The *ALSA* creates the Secretariat and provides for the creation of RACs.

Secretariat

Under *ALSA*, the Secretariat is headed by the stewardship commissioner, and is part of the public service of Alberta but is not part of any government department.²² The Secretariat is mandated with preparing (or directing the preparation) of regional plans, facilitating the implementation of the plans once they are developed, and with reviewing and monitoring their effectiveness and success once implemented.

Reviews of regional plans are required at least once every 10 years.²³ The Secretariat has the discretion to determine which regional plan(s) to review and the nature of that review.²⁴ The authority of the Secretariat is limited. The LGIC is not required to consider, or follow, the advice of the Secretariat.²⁵ The Secretariat, however, must perform any duties and comply with any protocols conferred on it by a regional plan or by the LGIC.²⁶





The *ALSA* gives the Secretariat the discretionary power to “facilitate” and “co-ordinate” the implementation of a regional plan, as well as to “assist” those who are affected by the regional plan in achieving its implementation, and to “facilitate” co-operation between different government departments.²⁷ In addition, the Secretariat may make recommendations to a local government to “encourage” or “ensure” regional plan objectives are achieved or maintained.²⁸

One way the Secretariat may “ensure” regional plan objectives are achieved or maintained is through the enforcement mechanism.²⁹ The Stewardship Commissioner has the authority to enforce a regional plan on her or his own or through a public complaint procedure. The complaint procedure allows any person who believes that a regional plan is not being complied with to make a written complaint to the Secretariat for review and investigation.³⁰ Government departments and local government bodies are required to co-operate in the investigation by the Secretariat.³¹ If the Secretariat is satisfied there is “clearly non-compliance” with a regional plan, the Stewardship Commissioner may, with or without a written report or recommendations, refer the matter back to the appropriate government Minister, department, or local government body that has jurisdiction. This complaint procedure is the only certain legislative role for the public within the *ALSA*.

The Stewardship Commissioner also has the option to apply to the Court of Queen’s Bench if there has been non-compliance with the *ALSA*, a regulation under the *ALSA*, or a regional plan.³² The ability to take a claim through the court system is limited to that of the Stewardship Commissioner. The *ALSA* expressly states that although regional plans are legally binding, this does not create or provide any person with a cause of action or a right or ability to bring an application or proceeding in or before any court or decision maker.³³

Regional Advisory Councils

The role of RACs in the *ALSA* is less clear. In contrast to the creation of the Secretariat, the LGIC may establish a RAC for a planning region.³⁴ The LGIC is not required to appoint a RAC prior to the development of a regional plan. The LGIC may make, implement or amend a regional plan even if no RAC exists for that region.³⁵

The role of the RACs under the *ALSA* is purely a consultative one. The LGIC is not required to consider, or follow, the advice of a RAC.³⁶ The *ALSA* does not require the LGIC to provide any reasons, written

or otherwise, if it disregards the advice of a RAC. The *ALSA* does not outline a purpose statement or mandate for the RACs and leaves the determination of their purpose to the LGIC at the outset of the regional planning process.³⁷ This approach is in contrast to the LUF that states that government will create a RAC for each region to provide advice to, and receive direction from, Cabinet.³⁸

The mechanism used to establish the purpose and mandate for an individual RAC is through the establishment of terms of reference.³⁹ This is an optional step for the LGIC. The terms of reference may outline procedural matters of a RAC. As well, it may outline the roles and responsibilities of members, the nature of the advice to be given and to whom the advice may be given.⁴⁰ In contrast, the LUF states that the government will provide terms of reference for regional plans.⁴¹ The LUF does not provide any detail on the content of the terms of reference.

The membership of the RAC is entirely at the discretion of the LGIC. Under *ALSA*, the LGIC may “appoint members of a regional advisory council, including individuals who are members of aboriginal peoples.”⁴² It does not establish any membership criteria or guidelines for the appointment to a RAC. In contrast, the LUF states that RACs will consist of “members representing the range of perspectives and experience in the region and who are able to appreciate the broad interest of the region and its place in the province.”⁴³ While the *ALSA* does not specifically contradict the LUF, it also does not guarantee a broad representation of interests in the RACs.⁴⁴

Regional Planning Process and Cumulative Effects

The LGIC has the power to establish different planning regions and their respective boundaries.⁴⁵ The LGIC also has unconstrained power to make, amend and implement regional plans for each planning region.⁴⁶ The LGIC does not need to consider or follow the advice of either the Secretariat or a RAC at any time.

The content of any individual regional plan is flexible. The only mandatory content requirement is that a regional plan must “describe a vision for the planning region, and state one or more objectives for the planning region.”⁴⁷ There is no requirement that the vision or the objective promote conservation or environmental protection. This is in contrast with the LUF which states that regional plans will adopt a cumulative effects approach that addresses the impacts of existing and new activities on the land.⁴⁸



The term “cumulative effect” is not defined separately in the *ALSA* but is part of the definition of “effect”.⁴⁹ In addition to cumulative effects, the term “effect” includes “any effect on the economy, the environment, a community, human health or safety, a species or an objective in a regional plan, regardless of the scale, nature, intensity, duration, frequency, probability or potential of the effect.” Although one of the stated purposes of the *ALSA* is to “enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events,” there is no requirement within the legislation for regional plans to address cumulative effects.⁵⁰

The LGIC has the power to add anything to a regional plan it considers necessary or appropriate to advance or implement the purposes of *ALSA*.⁵¹ In addition to the mandatory items of a vision and a single objective, a regional plan may include any of several other items. Some of these include: (i) policies designed to achieve or maintain the objectives for the planning region; (ii) thresholds and indicators; (iii) monitoring and assessment criteria; (iv) regulations; (v) law about what a local government body may enact as a regulatory instrument; (vi) management of the surface or subsurface of land or any natural resource; and (vii) authorization for expropriation including expropriation of mines and minerals.⁵² With reasonable notice, a regional plan may also, by express reference to a statutory consent or type or class of statutory consent, such as licenses or approvals, affect, amend or extinguish the statutory consent or the terms or conditions of the statutory consent.⁵³ What is interesting is that some of these items would seem to be necessary to have a functioning regional plan but are not mandatory while others are surprisingly far-reaching.

In contrast, the LUF outlines a list of items that must be included in a regional plan and does not discuss some of the other items listed in the *ALSA*.⁵⁴ For example, the LUF states a regional plan will reflect the vision of the LUF, define regional outcomes and provide a broad plan for land and natural resource use, align provincial strategies and policies at the regional level, consider input from various groups, determine specific trade-offs and define the cumulative effects management approach for the region.⁵⁵ The LUF does not mention far-reaching issues such as expropriation or extinguishing licences.

As discussed earlier, the *ALSA* provides a system for the enforcement of a regional plan. It also provides a mechanism, via the complaint procedure, for the public to participate in the enforcement process. There is no mechanism in the *ALSA* that gives the public the

right to participate in the development of a regional plan or to challenge the content of a plan. This structure is inconsistent with the LUF that states that regional plans *will* “consider the input from First Nations and Métis communities, stakeholders, and the public.”⁵⁶

Conservation and Stewardship Tools

One of the major components of the vision outlined by the LUF is the promotion and use of conservation and stewardship tools to help provide meaningful long-term environmental protection. Different tools were listed depending on whether the stewardship incentive involves private or public land. For private land, the LUF suggested transfer of development credits, land trusts and conservation easements, and other tools and market-based incentives.⁵⁷ The LUF listed tradable disturbance rights as an instrument for cumulative effects management on public lands.⁵⁸ Two tools — land conservation offsets, and lease-swapping and dealing with existing tenure rights in ecologically sensitive areas — were suggested as applicable for both public and private land.⁵⁹

The *ALSA* incorporates some but not all of these stewardship and conservation tools. The *ALSA* also introduces one tool not discussed in the LUF. The legislation outlines five primary tools: research and development, conservation easements, conservation directives, stewardship units and conservation off-sets, and transfer of development credits. Each of these tools is discussed in turn.

Research and Development

Under the *ALSA*, the LGIC may establish, support or participate in any program to carry out the purposes of the legislation. There is only one mandatory requirement. The LGIC must establish and support — through funding — any one or more of: conservation easements, conservation directives, or market-based instruments designed to support the protection, conservation, and enhancement of the environment, natural scenic or esthetic values, or agricultural land or land for agricultural purposes.⁶⁰ Once one of these initiatives receives support, there is no further requirement for the LGIC to take further action to promote conservation or stewardship under the *ALSA*.

Conservation Easements

The *ALSA* creates a conservation easement which allows private property owners to set aside some of their land for certain defined purposes. A landowner may grant a conservation easement to a qualified organization for any, or all of their land.⁶¹ The easement may be granted for the protection,





conservation and enhancement of the environment, natural scenic or esthetic values, agricultural land or land for agricultural purposes. The land may also be used for recreation, open space, environmental education, or for research and scientific studies of natural ecosystems provided that these secondary uses are consistent with the purpose of the easement.⁶²

A conservation easement constitutes an interest in land that can be registered at Land Titles.⁶³ Once registered, the easement runs with the land. Whether registered or not, an easement may be modified or terminated by one of two methods.⁶⁴ The first is by agreement between the grantor and the grantee. The second method is by an order of the Designated Minister if the Designated Minister considers that it is in the public interest to modify or terminate the conservation easement. The legislation does not define “public interest” or provide any suggestion as to what factors the Designated Minister should consider in that determination.

The *ALSA* provides private landowners with a tool that allows them the opportunity to designate their land for conservation purposes. This right is limited by the government’s ability to amend or terminate the easement.

Conservation Directives

The *ALSA* also creates conservation directives. This is a tool that is not discussed in the LUF. A regional plan may permanently protect, conserve, manage, and enhance environmental, natural scenic, esthetic or agricultural values by means of a conservation directive expressly declared within that regional plan.⁶⁵ It must precisely identify the purpose and nature of the protection being afforded to the land and the parcels of land that are the subject of the directive. Unlike conservation easements, conservation directives are not interests in land.

A conservation directive is the expropriation of land through a regional plan. This is allowed under s. 9(2) (h) of the *ALSA*. The title holder of the land affected by the conservation directive is entitled to apply for compensation.⁶⁶ “Title holder” includes owners, those with an interest in the land, those in possession or occupation and in the case of Crown land, the person shown on the “records of the department administering the lands as having an estate or interest in the land.”⁶⁷ It does not include the holder of a disposition, unit agreement or contract under the *Mines and Minerals Act*.⁶⁸

Stewardship Units

The *ALSA* contains no description of a stewardship unit but it is clear that it provides a mechanism that the LGIC could use to establish a market-based incentive system. The *ALSA* simply provides several enabling provisions that allow the LGIC to create an exchange and the necessary stewardship units for trading.⁶⁹ The LGIC has the authority to make regulations respecting the creation, issuance, and attributes of stewardship units, their management, sale, trading, disposition and exchange, and also regarding their modification and extinguishment. It is clear that the stewardship units do not, and may not constitute an interest in land.⁷⁰ The LUF does not specifically address stewardship units; however, it is clear that it anticipated the use of market-based incentives to promote conservation.

Conservation Off-set Programs

The LUF states that land conservation offsets are compensatory actions to address biodiversity or natural value loss arising from development on both public and private lands. Compensation mechanisms include restitution for any damage to the environment through replacement, restoration, or compensation for impacted landscapes.⁷¹

The *ALSA* translates this purpose by including the aforementioned aspects under its definition of “counterbalance”.⁷² The *ALSA* gives the LGIC extensive authority to make regulations to counterbalance the effect of an activity. For example, regulations can be used to minimize the impact of an activity by limiting the magnitude or degree of the activity or to rectify or reduce an adverse effect by repairing, rehabilitating, restoring or reclaiming land.⁷³ The authority allows for the use of stewardship units to achieve counterbalancing objectives. Regulation can “establish, certify, credit or accredit anything that is suitable as a stewardship unit to counterbalance an activity.”⁷⁴ There is full authority under the *ALSA* to create a conservation offset program but the legislation does not elaborate when or how this tool might be used to compensate for impacted landscapes.

Transfer of Development Credit Schemes

The LUF states that the transfer of development credits is a tool that allows for economic development on private lands but directs it away from specific landscapes.⁷⁵ The *ALSA* contains no description of the purpose behind a transfer of development credits scheme (TDC scheme). A TDC scheme may be established by a regional plan or a local authority with approval of the LGIC.⁷⁶



Under *ALSA*, the TDC scheme must comply with a number of factors. For example it must: (i) have as its purpose the same purposes and principles as a conservation easement; (ii) specifically identify each parcel of land in the TDC scheme; (iii) identify the terms and conditions of the stewardship unit to be used under the TDC scheme; and (iv) designate area(s) of land as a development area and the applicable terms for that development.⁷⁷

In summary, the *ALSA* provides for several conservation tools but only two – conservation easements and conservation directives – are fully functioning under the legislation. Only time will tell whether the regional plans will rely on conservation directives or whether they will promote the development of one of the other tools as part of the balancing of development and conservation.

Remaining Strategies

The LUF outlines three strategies that are not specifically addressed in the *ALSA*. The first, to reduce the footprint of human activities on Alberta's landscape is not well developed in the LUF and does not appear in any form in the *ALSA*. The second strategy, to establish an information, monitoring and knowledge system to contribute to continuous improvement of land-use planning and decision-making is addressed in various ways in the *ALSA*. Although not required, a regional plan may include requirements for gathering information and for establishing monitoring systems.⁷⁸ The Secretariat has the responsibility to co-ordinate information, monitoring and reporting functions to support the regional plans.⁷⁹

The third strategy – the inclusion of aboriginal peoples in land-use planning is addressed in two places. The first is that one of the purposes of the *ALSA* is to provide a means to plan for the reasonably foreseeable needs of current and future generations of Albertans, including aboriginal peoples.⁸⁰ Second, aboriginal peoples are specifically mentioned as persons that the LGIC may appoint to a RAC.⁸¹ This is inadequate to meet the constitutionally protected rights of aboriginal peoples. The LUF goes further in outlining the required steps to meet the obligation on the province to consult.⁸²

Legal Nature of Regional Plans and Scope of Legislation

The *ALSA* states that a regional plan is an expression of the public policy of the government and, as a result, the LGIC has “exclusive and final jurisdiction

over its contents”.⁸³ The discretion afforded the LGIC throughout the *ALSA* is explained by this subsection. This is consistent with the LUF which states that although Albertans can expect municipalities and the provincial government ministries to act in a way that is consistent with regional plans, these plans are approved by the LGIC which makes them government policies and they cannot be appealed.⁸⁴

Interestingly, regional plans are also legislative instruments and, for the purposes of any other enactment, are considered to be regulations.⁸⁵ Unless a regional plan provides otherwise, it is binding on the Crown, local government bodies, decision-makers, and all other persons.⁸⁶

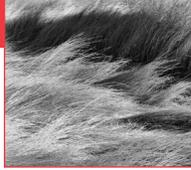
After a regional plan is made, every local government body and decision-making body is required to review all of its regulatory instruments and decide what, if any, new regulatory instruments or changes to existing regulatory instruments are required for compliance with the regional plan.⁸⁷ Every local government body and decision-making body is then required to make the changes required to comply with the regional plan and to file a statutory declaration with the Secretariat that the review has been completed and that there is compliance.

The *ALSA* and the regional plans have far reaching effects through the conflict resolution clauses.⁸⁸ If there is a conflict or inconsistency between a regional plan and a regulation of another Act or any other regulatory instrument, the regional plan prevails. If there is a conflict or inconsistency between a regional Plan and an Act, the Act will prevail. If, however, there is a conflict between any other Act and the *ALSA*, the *ALSA* will prevail.

Conclusions

Most of the goals and policies outlined in the LUF have translated themselves in some form into the *ALSA*; however, the vast majority are optional or discretionary. The LGIC retains essentially unconstrained power to independently create, amend, and implement the planning regions and regional plans. Although the LUF specifies that the framework will not create a heavy-handed centralized bureaucracy that appears to be what is created by the *ALSA*. The discretionary nature of the legislation limits the public's ability to participate in the development of the regional plans. There is no right or mechanism in the legislation for the public to contribute to, or to challenge, the content of a regional plan. The right to participate in the complaint procedure appears to





be a toothless right without the ability to influence the regional plans themselves. The structure of the ALSA makes it very difficult to predict the outcome of the legislation on actual land use planning. With few guiding principles and mandatory requirements, the ALSA only adds to the uncertainty surrounding land use in the province.

- ◆ Jenette Poschwatta-Yearsley is a Research Associate with the Canadian Institute of Resources Law, jposchw@ucalgary.ca. Adam Zelmer is a 2nd year student with the Faculty of Law University of Calgary. Research for this article was funded by a grant from the Alberta Law Foundation.

Notes

1. See, for example: S. Kennett *et al.*, *Managing Alberta's Energy Futures at the Landscape Scale*, Paper No. 18 of the Alberta Energy Future's Project (Calgary: Institute of Sustainable Energy, Environment and Economy, University of Calgary, 2006); S. Kennett, *Integrated Landscape Management in Canada: Getting from Here to There*, Occasional Paper #17 (Calgary: Canadian Institute of Resources Law, 2006); and R. Lang, ed., *Integrated Approaches to Resource Planning and Management* (Calgary: University of Calgary Press, 1986).
2. Kennett, *Integrated Landscape Management*, *ibid.* at 20.
3. Alberta, Dept. of Sustainable Resource Development, *Land-Use Framework* (Alberta: December 2008), online: <http://www.assembly.ab.ca/lao/library/egovdocs/2008/alsrd/172020.pdf>.
4. *Ibid.* at 8.
5. *Ibid.* at 8 and 17.
6. *Bill 36: Alberta Land Stewardship Act (ALSA)*, online: http://www.assembly.ab.ca/net/index.aspx?p=bills_status&selectbill=036; *Alberta Land Stewardship Act*, S.A. 2009, c. A-26.8.
7. LUF, *supra* note 3 at 19-21.
8. *Ibid.* at 29.
9. *Ibid.*
10. *Ibid.*
11. *Ibid.* at 19.
12. *Ibid.* at 20.
13. *Ibid.* at 30.
14. *Ibid.* at 3.
15. *Ibid.* at 20.
16. *Ibid.* at 4 and 20.
17. *Ibid.* at 21.
18. *Ibid.* at 41.
19. *Ibid.* at 43.
20. ALSA, s. 1.
21. *Ibid.*, ss. 3-4.
22. *Ibid.*, ss. 57-63. The Land Use Secretariat is currently headed by Assistant Deputy Minister Morris Seiferling. Alberta, Dept. of Sustainable Resource Development, *LUF Quarterly — Land-use Framework Progress Report* (Alberta: September 8, 2009) at 2 (unnumbered), online: <http://landuse.alberta.ca/>.
23. ALSA, s. 6(1).
24. *Ibid.*, s. 6(2).
25. *Ibid.*, s. 5(1)(c).
26. *Ibid.*, s. 63(1).
27. *Ibid.*, s. 59(a)(b).
28. *Ibid.*, s. 61(b).
29. There is another enforcement mechanism within the ALSA. A regional plan may specify when the contravention or non-compliance of one of its provisions constitutes an offence. It may also specify the fine, penalty or any other enforcement mechanism in another enactment that applies to the contravention of or non-compliance with a provision in a regional plan, *ibid.*, s. 9(3).
30. *Ibid.*, s. 62.
31. *Ibid.*, s. 62(2).
32. *Ibid.*, s. 18(1).
33. *Ibid.*, s. 15(3).
34. *Ibid.*, ss. 52-56.
35. *Ibid.*, s. 5(1).
36. *Ibid.*
37. *Ibid.*, s. 53(1).
38. LUF, *supra* note 3 at 29.
39. ALSA, s. 53.
40. The terms of reference for the Lower Athabasca RAC was announced on July 31, 2009, online: <http://alberta.ca/home/NewsFrame.cfm?ReleaseID=/acn/200907/26612CD3958CB-9C97-9331-88A000FD0B430A2E.html>. It outlines what the RAC may advise on (at 6), what it may not advise on (at 7). The advice given by the RAC is to be consistent with 3 guidelines: (i) that the land base should be managed to support economic development as the primary, but not sole priority; (ii) three development scenarios (based on oil sands growth) are to look at cumulative effects; and (iii) options are to be developed to address potential forest land shortfalls (at 12). The terms of reference are available online: <http://www.landuse.alberta.ca/RegionalPlans/LowerAthabasca/Default.aspx>.
41. LUF, *supra* note 3 at 29.
42. ALSA, s. 52(2)(a).
43. LUF, *supra* note 3 at 29.



44. Two RACs have been established at the time of this article. The Lower Athabasca RAC and the South Saskatchewan RAC. The RAC for the South Saskatchewan was announced on May 13, 2009 and consists of 17 members. The membership of the RAC can be found online: <http://www.landuse.alberta.ca/RegionalPlans/SouthSaskatchewan/RegionalAdvisoryCouncil.aspx>. The Lower Athabasca RAC was announced on December 19, 2008. The membership of the RAC can be found online: <http://www.alberta.ca/acn/200812/250325077DCA0-9DBB-B78C-62D8CB4065D98526.html>.
45. *ALSA*, s. 3(1).
46. *Ibid.*, s. 4(1). Regional plans may also authorize and include sub-regional or issue-specific plans, which function as more localized and precise plans as part of the larger regional plan, *ibid.*, s. 10(1)(a).
47. *Ibid.*, s. 8(1)(a)(b). The first purpose of *ALSA* states that the Government will use the Act to identify the objectives of the Province of Alberta, including economic, environmental and social objectives, *ibid.*, s. 1(a).
48. LUF, *supra* note 3 at 20.
49. *ALSA*, s. 2(h).
50. *Ibid.*, s. 1(c).
51. *Ibid.*, s. 9(1).
52. *Ibid.*, ss. 8(2) and s. 9(1)(2).
53. *Ibid.*, s. 11.
54. LUF, *supra* note 3 at 26.
55. *Ibid.*
56. LUF at 26.
57. *Ibid.* at 33-34. Transfer development credits direct development away from specific landscapes allows and allow the owners of both developed and undeveloped land to share equitably in the financial benefits of the developed lands. A land trust is a non-profit, charitable organization that has as one of its core activities the acquisition of land or interests in land (i.e. conservation easements) for the purpose of conservation.
58. *Ibid.* at 34. The purpose of tradable disturbance rights is to minimize the overall disturbance footprint on the land, permitting the trading of 'land disturbance' in a co-ordinated market.
59. *Ibid.* at 34. Land conservation offsets are compensatory actions such as restitution for damage to the environment through replacement, restoration, or compensation for impacted landscapes. Lease swapping would include incentives to encourage the expeditious removal of industrial activities or hydrocarbon resources from legislated protected areas or lands with high conservation value.
60. *ALSA*, s. 25. This support may include funding or cost-sharing initiatives.
61. *Ibid.*, s. 29. A qualified organization is defined as the government, a government agency, a local government body, or a corporation that has as one of its goals acquiring the land for purposes that are substantially the same as any of the purposes for which a conservation easement may be granted, has as part of its constitution that upon the corporation winding up it will transfer all conservation to another qualified organization, and is a registered charity, *ibid.* s. 28.
62. *Ibid.*, s. 29.
63. *Ibid.*, ss. 32-33.
64. *Ibid.*, s. 31.
65. *Ibid.*, s. 37.
66. *Ibid.*, s. 36. The requirements for application are found in s. 38.
67. *Ibid.*, s. 2(gg).
68. Other than the declaration of a conservation directive in regional plan, none of the remainder of provisions dealing with directives affects municipal authority for planning and development under Part 17 of the *Municipal Government Act*, s. 43.
69. *Ibid.*, ss. 45-46.
70. *Ibid.*, s. 46(2).
71. LUF, *supra* note 3 at 34.
72. *ALSA*, s. 47(2).
73. *Ibid.*, s. 47(2)(b)(c).
74. *Ibid.*, s. 47(3)(c).
75. LUF, *supra* note 3 at 33.
76. *ALSA*, s. 48.
77. *Ibid.*, s. 48.
78. *Ibid.*, s. 8.
79. *Ibid.*, ss. 60-61.
80. *Ibid.*, s. 1(b).
81. *Ibid.*, s.52(2)(a).
82. LUF, *supra* note 3 at 41 which references meaningful consultation through *The Government of Alberta's First Nations Consultation Policy on Land Management and Resource Development*.
83. *ALSA*, s. 13(1).
84. LUF, *supra* note 3 at 27.
85. *ALSA*, s. 13(2). They are required to be published in the Gazette and come into force on publication or at a later date if specified in the Plan, *ibid.*, s. 13(3).
86. *Ibid.*, s.15(1).
87. *Ibid.*, ss. 20-21.
88. *Ibid.*, s.17. Regional plans do not prevail over General Council Policy made under s. 226 of the *Metis Settlements Act*.



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Telephone: 403.220.3200 Facsimile: 403.282.6182 E-mail: cirl@ucalgary.ca
Website: www.cirl.ca



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