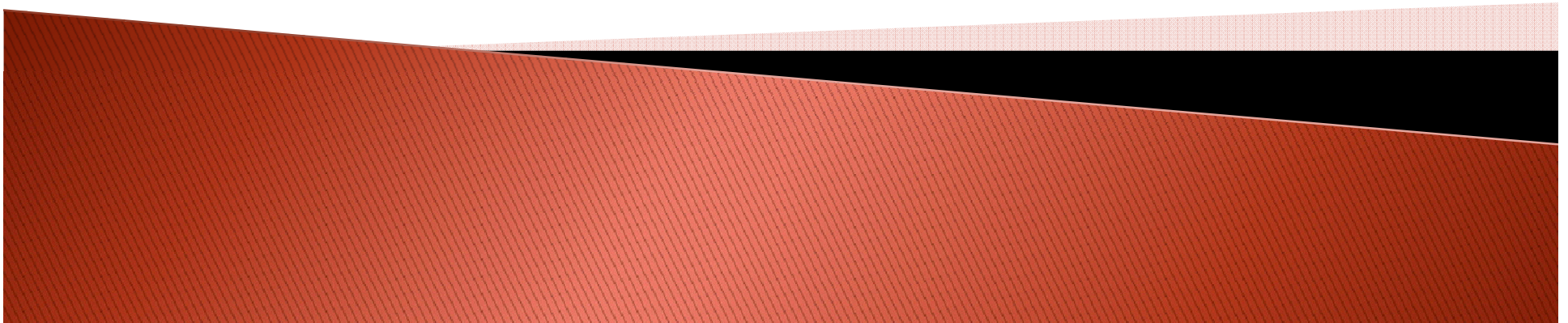


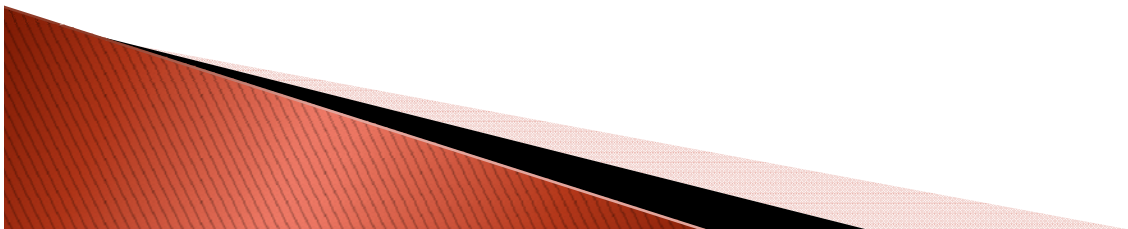
# **Public Participation at Key Stages in Alberta's Resource Development Process**

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November 19, 2010



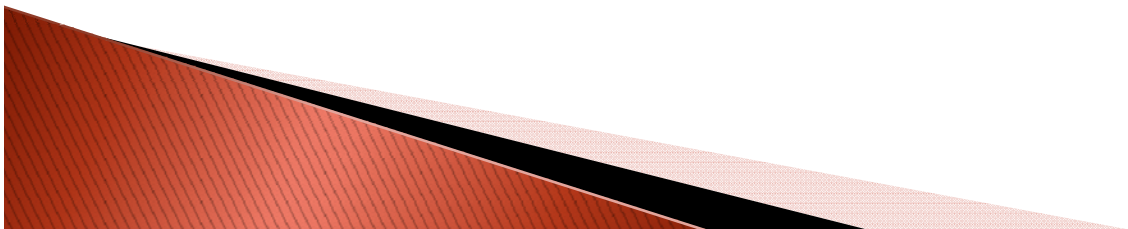
# Introduction – Key Questions

- ▶ What are the stages in the decision-making process for resource development in Alberta?
- ▶ How does the public participate at each stage of the process?



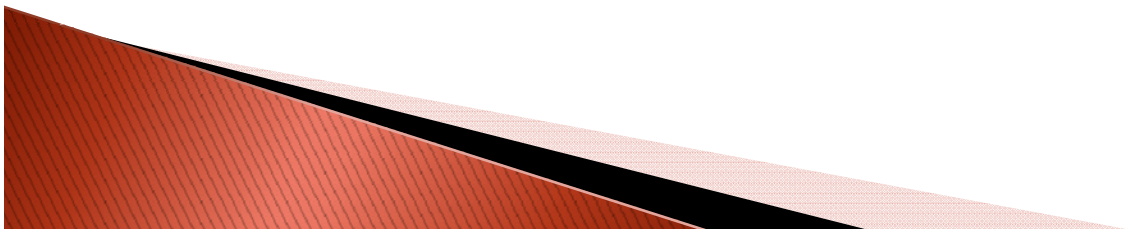
# Key stages of decision-making process for resource development

- ▶ Policy Development
- ▶ Land-use Planning
- ▶ Disposition of Mineral Rights
- ▶ Access to Surface Rights
- ▶ Environmental Impact Assessment
- ▶ Project Review and Approval
- ▶ Monitoring and Enforcement



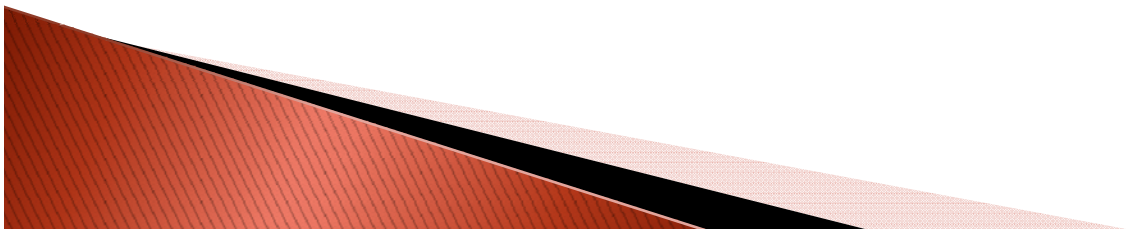
# Types of Public Participation

- ▶ Legislated vs non-legislated
- ▶ The “public” vs “stakeholders”
- ▶ Landowners vs the “public” at large
- ▶ Open houses vs round tables discussions



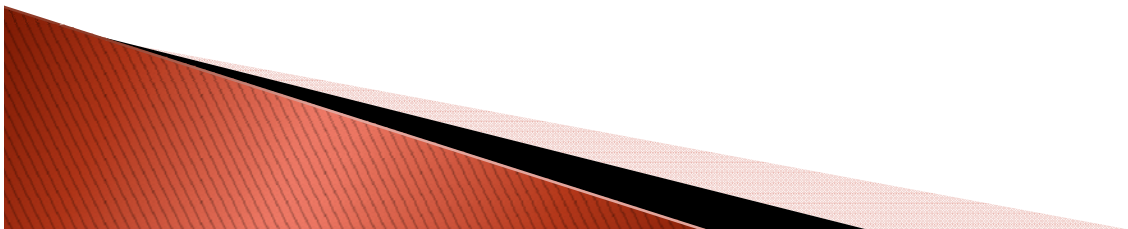
# Policy development

- ▶ Broad statements of government intent or direction (vision statements, objectives, strategies)
- ▶ Examples of land and resource policies:
  - *Alberta Forest Conservation Strategy* (1993-1997)
  - *Special Places 2000* (1995-1998)
  - *Water for Life: Alberta's Strategy for Sustainability* (2001-2003)
  - *Oil Sands Consultations* (2006-2007) (feeding into 2009 *Oil Sands Plan*?)
  - *Land-use Framework* (2006-2008)



# Policy development

- ▶ Public participation not legislated, *ad hoc* processes
- ▶ Public input: open houses, round tables, public presentations, written submissions
- ▶ Multi-stakeholders processes, eg. CASA, CEMA, RACs for regional plans
- ▶ Issues re:
  - rules of process (lack of specificity, transparency, inadequate resources, selection/role of participants)
  - outcomes (lack of government commitment, no regulatory backstop, “black box”)



# Land-Use Planning

- ▶ Translates strategic policies into specific decisions regarding certain landscapes: seven regional plans announced for Alberta

- ▶ *Alberta Land Stewardship Act (ALSA):*

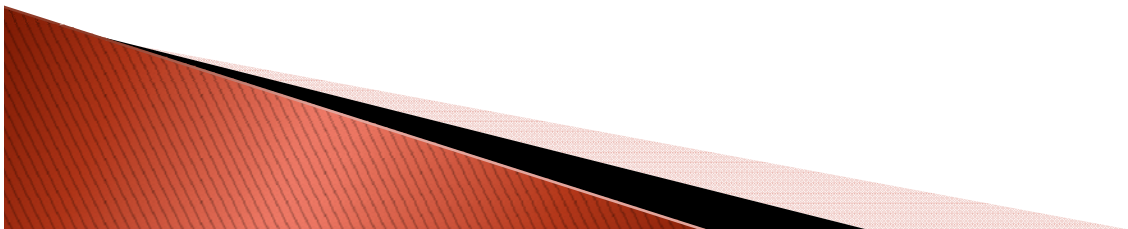
52 (1) The Lieutenant Governor in Council may establish a regional advisory council (RAC) for a planning region.

(2) The LGC may a) appoint members of a RAC...

5(1) A regional plan may be made or amended whether or not

a) a regional advisory council has been appointed...

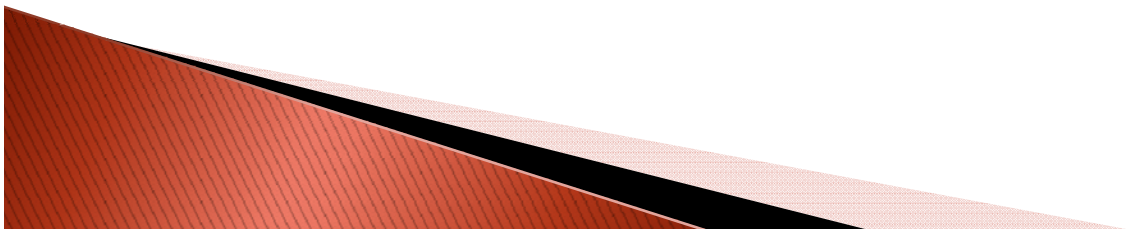
b) a regional advisory council ...has provided advice about a propose regional plan.... And irrespective of the advice given.....





# Land-Use Planning

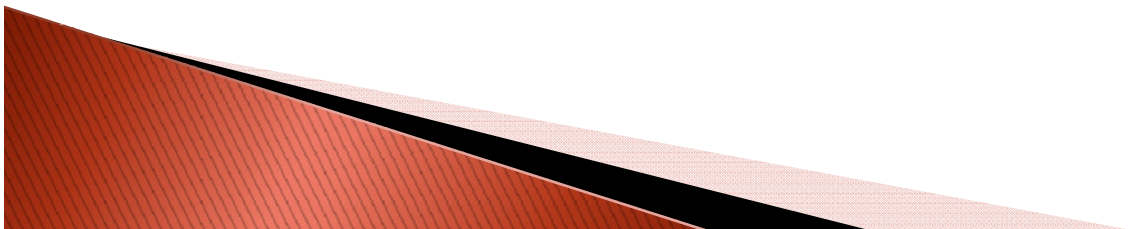
- ▶ Public participation?
  - legislated: RACs (discretionary appointment), no other public participation provisions in *ALSA*
  - non-legislated: “public” and “stakeholders” information and input sessions, questionnaires
    - before drafting the plan
    - on draft plan
- ▶ Potential issues: role of RACs? role of public?





# Mineral Rights Disposition

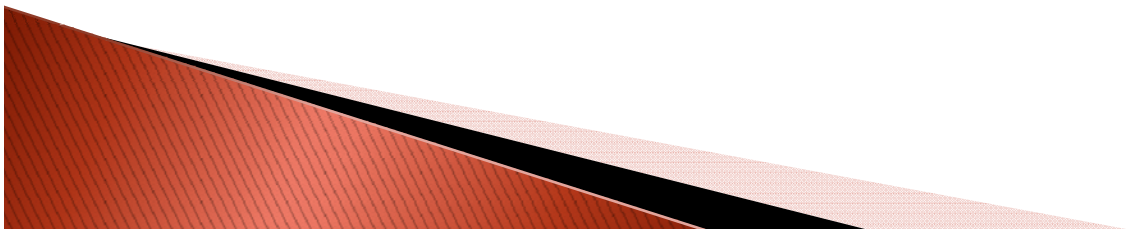
- ▶ Most mineral rights owned by the Crown
- ▶ Mineral rights issued by Minister of Energy under the *Mines and Minerals Act*
- ▶ Land-use Plan may limit issuance of mineral rights within a certain area
- ▶ Issuance of mineral rights creates property rights and expectations of development: a key component of the ERCB's assessment of the “need” for a well or facility



# Mineral Rights Disposition

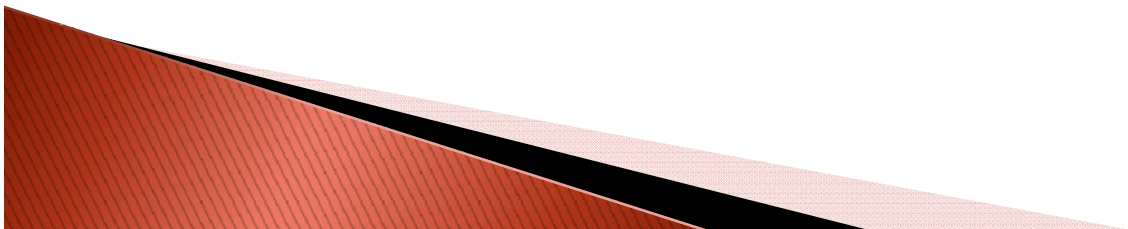
Public participation opportunities?

- ▶ Notices of public offerings published
- ▶ No direct notification of surface landowners
- ▶ No public input



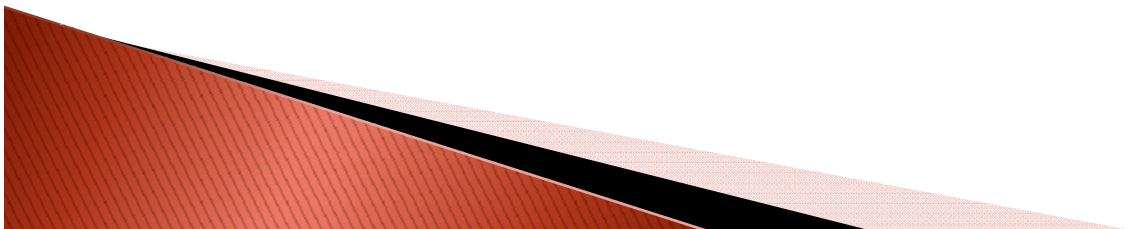
# Access to Surface – Public Lands

- ▶ Leases or licences issued by government under the *Public Lands Act*
- ▶ May establish terms and conditions
- ▶ Public participation?
  - No public input
  - Consent required from other disposition holders (eg. grazing leases, forest management agreement holders)



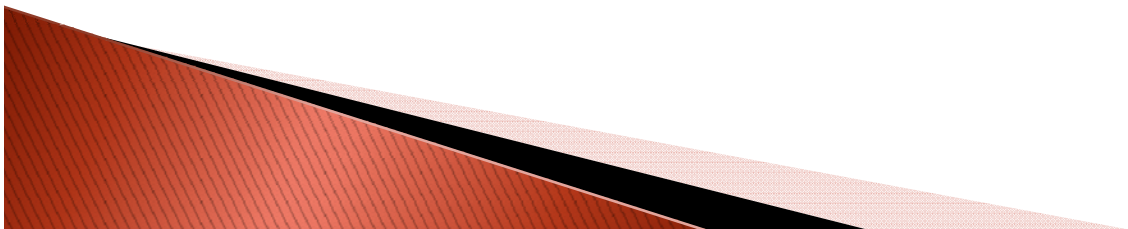
# Access to Surface – Private Lands

- ▶ *Surface Rights Act*
- ▶ Consent required from landowner
- ▶ Surface Rights Board (SRB) can issue a right of entry order, sets landowner compensation
- ▶ In case of disagreement, SRB may hold a hearing
- ▶ No public input



# Environmental Impact Assessment

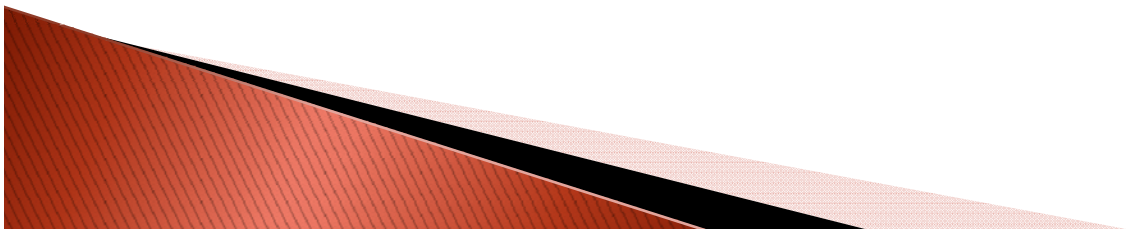
- ▶ Part 2 of the *Environmental Protection and Enhancement Act (EPEA)*
- ▶ Purpose of EIA: review and mitigate potential environmental, social, economic and cultural impacts of a proposed activity
- ▶ Some projects have a mandatory assessments, others are exempt, others may be assessed at the discretion of the Director



# Environmental Impact Assessment

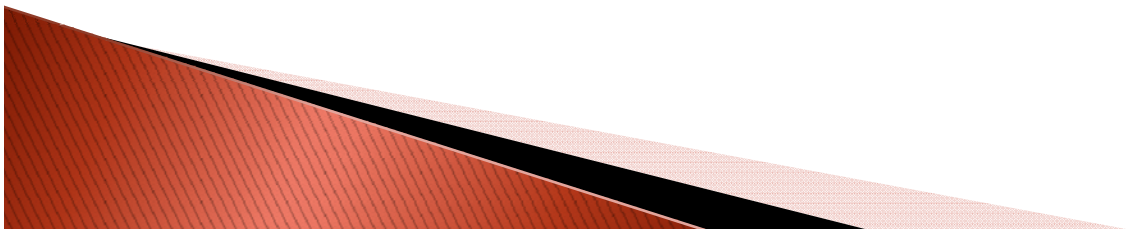
## ► Public participation?

- Decision whether or not to order an EIA report: “directly affected” persons can submit written statements of concern to Director
- Terms of reference of EIA report: public can comment on proposed terms
- Final EIA report available to the public : statements of concerns by “directly affected” persons
- Online register of information related to EIA kept by Alberta Environment



# Project review and approval

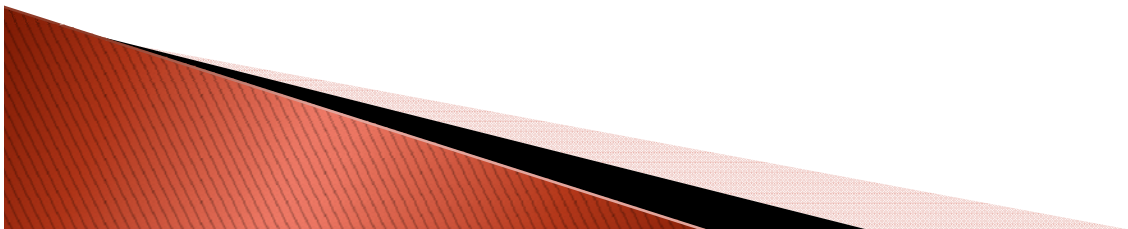
- ▶ Three regulatory boards review and approve applications for energy and resource development: ERCB, AUC, NRCB
- ▶ The boards approve projects that are in the ‘public interest’
- ▶ The boards may allow public hearings to be held





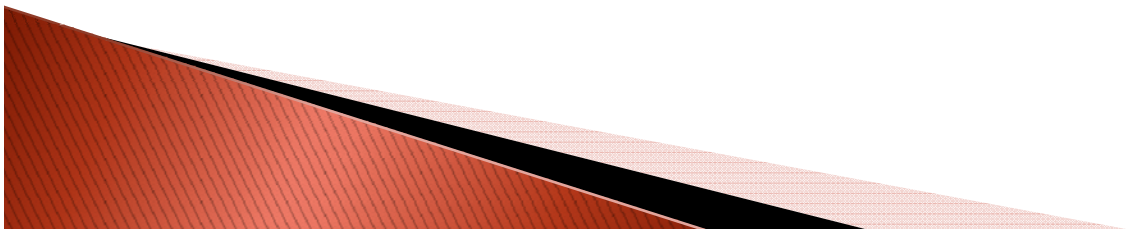
# Project review and approval

- ▶ Public consultation?
  - Consultation of affected stakeholders by project proponents: not “public consultation”
  - Public hearings in front of regulatory boards, allowing other “interveners” to participate
- ▶ Two issues in relation to public hearings:
  - Standing: whether an affected person can trigger a public hearing
  - Interveners’ costs: whether a person qualifies to obtain costs when participating in public hearings
- ▶ How do the Boards define the “public interest”?



# Monitoring and Enforcement

- ▶ *ALSA:*
  - no judicial review of regional plans
  - no opportunities for the public to appeal any aspect of the plans
  - only complaints to the head of Land-Use Secretariat that a plan is not complied with
- ▶ *Surface Rights Act:*
  - Dispute resolution by the Surface Rights Board
- ▶ Review of implementation of approvals: limited opportunities



# Questions arising from overview of public participation opportunities

- ▶ How much public participation should be mandated by legislation?
- ▶ How does Alberta's approach to public participation reflect the criteria of effective public participation, ie
  - who is allowed to participate?
  - is there appropriate access (financial, information, knowledge)?
  - are the rules of the process clear and accepted by all?
  - is there accountability and transparency of the process?
  - are the outcomes acceptable? is the government committed?
- ▶ Where on Arnstein's "ladder" do the various processes fit?

