

**Canadian Institute of Resources Law
Institut canadien du droit des ressources**

**A Citizen's Guide to
Aggregate Extraction in Alberta**

Dr. Judy Stewart, LL.M. PhD.

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All enquiries should be addressed to:

The Executive Director
Canadian Institute of Resources Law
Murray Fraser Hall, Room 3353 (MFH 3353)
Faculty of Law
University of Calgary
Calgary, Alberta, Canada T2N 1N4
Telephone: (403) 220-3200
E-mail: cirl@ucalgary.ca
Website: www.cirl.ca

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Toute demande de renseignement doit être adressée au:

Directeur exécutif
Institut canadien du droit des ressources
Murray Fraser Hall, pièce 3353
Faculté de droit
L'Université de Calgary
Calgary, Alberta, Canada T2N 1N4
Téléphone: (403) 220-3200
Courriel: cirl@ucalgary.ca
Site Web: www.cirl.ca

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PREFACE

AGGREGATE includes sand, gravel, clay or marl extracted from under the surface of the ground or a “pit.” The social, economic, and environmental impacts of aggregate extraction from both public and private lands have attracted the attention of many stakeholders across Alberta for several years. Jurisdictional issues and the laws and regulations for approving and controlling aggregate extraction are complex, inconsistent, and sometimes even conflicting. As a result, the regulatory system for approving aggregate extraction is not well understood by many stakeholders, including municipalities and the general public.

As more aggregate extraction is approved in Alberta, especially on private lands adjacent to water bodies, citizens are questioning Alberta’s current legal and regulatory system. They want to understand what they can do to influence decision-making processes about the approval process. They want a say about where aggregate extraction will occur in their communities, how the pits will be operated, and how the land will be reclaimed for the most appropriate use once the aggregate has been removed.

The Government of Alberta’s (GOA) aggregate approval processes are under scrutiny. The GOA recently reviewed and updated some policies and administrative practices for approving aggregate extraction on both private and public lands. One directly affected citizen who lives near the Freeman River in northern Alberta recently launched an appeal of a Water Act approval to the Environmental Appeal Board because the approval was issued for an aggregate extraction pit lake and flood protection works near the river’s floodplain.¹

A Citizen’s Guide to Aggregate Extraction in Alberta (the Guide) will help citizens understand Alberta’s legal and regulatory system that controls the review of applications and approvals for aggregate extraction on both private and public lands. The Guide is intended to help members of the public influence and participate in decision-making processes about where aggregate extraction might be approved, and under what conditions. It will explain approval processes, and many of the policies, regulations, codes of practice, guidance documents, and administrative guidelines and directives used by regulators and applicants. However, please note that appeal processes are outside the scope of this document although they are mentioned throughout.

**Judy Stewart, LLM. PhD.
December, 2019**

¹ *Larsen v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: Lafarge Canada Inc.* (28 August 2018), Appeal No. 15-021-ID1 (A.E.A.B.) (Larsen). Larsen was found to be directly affected because of particular business interests. A hearing was held on April 30, 2019. The Board provided the Minister with its Report and Recommendations on May 30, 2019.

ABBREVIATIONS AND ACRONYMS

In this Citizen's Guide many phrases, laws and names have been abbreviated to acronyms to avoid lengthy repetitions. The acronyms appear on the left and the full name of the law, organization or phrase appears on the right. Acronyms are listed below in alphabetical order.

APLAB	Alberta Public Lands Appeal Board
GOA	Government of Alberta
Class 2 Guidelines	Environmental Protection Guidelines for Pits
Code	Code of Practice for Pits
CSDP	Comprehensive Site Development Plan
Directive	Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land
EPEA	Environmental Protection and Enhancement Act
Guide to the Code	Guide to the Code of Practice for Pits
PLA	Public Lands Act
PLAR	Public Lands Administration Regulation
SMC	Surface Materials Licence
SME	Surface Materials Exploration
SML	Surface Materials Lease

There are ways that you can influence municipal councils before they approve aggregate extraction operations in your community.

- ✓ *The first step is to learn as much as you can about aggregate and why it is important in our society.*
- ✓ *The second step is to participate in decision-making processes as a well-informed and engaged citizen.*

Unfortunately, there are few opportunities to influence provincial decision-makers before the registration of pits or dispositions of public land for aggregate extraction are issued to applicants.

HOW TO SEARCH FOR A LAW OR REGULATION ONLINE

Alberta Queen's Printer

All of Alberta's laws and regulations and codes of practice can be found online at the Alberta Queen's Printer, <http://www.qp.alberta.ca/>

Laws and regulations are listed alphabetically, so it is important to know the correct name of the legislation. Using the search option at the link above, a reader can locate all the laws, regulations and codes cited in this paper. Laws and regulations do change, so it is important to check the date of the last update. Documents provided by the Alberta Queen's Printer are copy written and therefore you need to respect instructions for downloading and using in your work.

CanLII Alberta

The CanLII Alberta link is <https://www.canlii.org/en/ab/>

CanLII provides a search engine for all Alberta laws, regulations, codes of practice, etc. It also provides reported court decisions about the legislation. Laws are listed alphabetically, and regulations and codes associated with each law are linked to the legislation. Laws and regulations do change, so it is important to check the date of the last update.

PRACTICE

Take a few moments to practice your online search skills using either of the links above to locate legislation and regulations. Practice until you are familiar with both systems.

Court cases that address particular laws and regulations can also be found through CanLII Alberta.

Try searching the laws, regulations and key words below:

- *Environmental Protection and Enhancement Act*
- *Approvals and Registrations Procedure Regulation*
- *Activities Designation Regulation*
- *Code of Practice for Pits*
- *Environmental Appeals Board*
- *Gravel pits*

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CHAPTER 1: THE PURPOSE OF THIS GUIDE

THE SOCIAL AND ENVIRONMENTAL IMPACTS of aggregate extraction on both public and private lands have attracted the attention of stakeholders across Alberta. Jurisdictional issues and laws and regulations for approving and controlling aggregate extraction operations are not well understood by many stakeholders, including municipalities and the general public.

As more aggregate extraction pits are approved in Alberta, especially on private lands adjacent to water bodies, citizens are questioning Alberta's current legal system.² They want to understand what they can do to influence decision-making processes for approving or permitting aggregate extraction development and pit operations, land reclamation, and the eventual end use of the lands once the aggregate has been removed.

A Citizen's Guide to Aggregate Extraction in Alberta (this Guide) will help citizens understand Alberta's legal system that regulates and controls aggregate extraction development and operations on private and public lands. This Guide is intended to inform members of the public so that they may influence and participate in decision-making processes regarding the locations and operations of aggregate extraction pits. It will explain some of the approval processes, policies, regulations, codes of practice, guidance documents, and administrative guidelines and directives used by regulators and operators. However, please note that while appeal processes that are only available to directly affected persons are mentioned throughout, the processes for appealing government decisions to approve aggregate development and operations are outside the scope of this Guide.

A helpful guidance document written by Jason Unger in 2009:

***“A Guide to Public Participation in
Environmental Decision-Making in Alberta”***

is available from the Environmental Law Center at

<http://elc.ab.ca/pub-archives/a-guide-to-public-participation-in-environmental-decision-making-in-alberta/>

It is a recommended reading for anyone using this Guide.

² Government of Alberta, “What We Heard: Stakeholder Feedback on the Sand and Gravel Program Review January – February 2017,” Released on October, 2017, online: <https://open.alberta.ca/dataset/b0d410a6-8236-4eb0-8f9f-2eaa390c70b2/resource/eeef1e7f-761e-4c59-abb4-0b3f44a910de/download/sandgravelstakeholderfeedback-oct2017.pdf>. Last accessed on June 1, 2019.

CHAPTER 2: AGGREGATE AND PITS

AGGREGATE includes sand, gravel, clay or marl extracted from a pit.³ Aggregate components are non-renewable natural resources in high demand in Alberta due to rapid population and economic growth associated with the oil and gas industry. Most Albertans are familiar with aggregate extraction pits that dot small urban centers and the rural countryside.

As society becomes more complex, the need for more aggregate to build homes, businesses, roads and facilities has spurred rapid expansion in the aggregate industry throughout the province. According to the Sand and Gravel Association of Alberta, the average Albertan uses between ten and fifteen tonnes of aggregate per year, or the equivalent of a full truckload.⁴

A **PIT** is defined in the *Environmental Protection and Enhancement Act* (EPEA)⁵ as “any opening in, excavation in or working of the surface or subsurface made for the purpose of removing sand, gravel, clay or marl and includes any associated infrastructure, but does not include a mine or quarry.”⁶ Pits are obviously not all the same size. However, any size of pit can be developed on private and public lands as long as the pit is developed according to the laws, regulations, codes, guidelines, administrative policies and directives provided in Alberta’s legal and regulatory system.

Aggregate components, like sand and gravel, are not considered “minerals” in Alberta’s legal system. As a result, pit operations are regulated through EPEA, while mine and quarry operations are regulated through the *Mines and Minerals Act*.⁷ The Government of Alberta (GOA)

³ See *Conservation and Reclamation Regulation*, AR 115/93 as amended (Conservation and Reclamation Regulation), s.1.1.2 (e): “Aggregate means any sand, gravel, clay, or marl that is excavated from a pit, whether in a processed or unprocessed form, but does not include reject.” Also see *Environmental Protection and Enhancement Act*, RSA 2000, cE-12, (EPEA), s.1(xx), definition: ‘pit.’

⁴ Alberta Sand and Gravel Association, “Aggregate 101,” online: <https://www.asga.ab.ca/resources-101.asp>. Last accessed on May 15, 2019.

⁵ EPEA, *supra* note 3.

⁶ EPEA, *supra* note 3, ss.1(xx). But, see the definition of a pit in the *Code of Practice for Pits*, September 1, 2004 (September 1, 2004 (made under EPEA as amended and Conservation and Reclamation Regulation as amended) (the Code), where “pit” means: “an opening or excavation in or working of the surface or subsurface for the purpose of removing any sand, gravel, clay, or marl, where the area of the pit and any associated infrastructure, including stockpiles, connected with the pit, is, or at any time was, **greater than or equal to 5 hectares (12.5 acres)**, but does not include: (i) a borrow excavation, (ii) a pit on public land, (iii) a pit, or a portion of a pit, where the surface or subsurface of the land has not been disturbed by pit operations since August 15, 1978, or (iv) a pit, or a portion of a pit, on which a waste management facility is operating or operated pursuant to a valid approval or registration under the Act. Also see the *Activities Designation Regulation*, AR 276/2003, with amendments up to and including AR 125/2017 (Activities Designation Regulation), where only pits of a certain size are considered “pits” for the purpose of that regulation: “pit” means an opening or excavation in or working of the surface or subsurface for the purpose of removing any sand, gravel, clay or marl, where the area of the pit and any associated infrastructure, including stockpiles, connected with the pit, is on or after November 1, **2004 greater than or equal to 5 hectares (12.5 acres)**, but does not include (i) a borrow excavation, (ii) a pit on public land, (iii) a pit, or a portion of a pit, where the surface or subsurface of the land has not been disturbed by pit operations since August 15, 1978, or (iv) a pit, or a portion of a pit, on which a waste management facility is operating or operated pursuant to a valid approval or registration under the Act.

⁷ *Mines and Minerals Act*, R.S.A. 2000, c. M-17, s 1(p) “minerals” means all naturally occurring minerals, and without restricting the generality of the foregoing, includes (i) gold, silver, uranium, platinum, pitchblende, radium, precious stones, copper, iron, tin, zinc, asbestos, salts, sulphur, petroleum, oil, asphalt, bituminous sands, oil sands,

owns all “minerals” as defined in the legislation, and this is acknowledged on most land titles where minerals and the right to work same are ‘excepted’ out of a landowner’s title.⁸

However, a private landowner owns the aggregate below the surface of his or her land, and Alberta’s *Law of Property Act*⁹ guarantees that a landowner may extract and sell his or her aggregate. However, as society has changed and has become much more complex over the years, the GOA has enacted laws and regulations requiring landowners to obtain ‘registrations’ for proposed aggregate extraction before certain size pits may be developed on private lands.

FIGURE 1: Photo by Judy Stewart - Small Class 2 pit on private land near Winchell Lake



natural gas, coal, anhydrite, barite, bauxite, bentonite, diatomite, dolomite, epsomite, granite, gypsum, limestone, marble, mica, mirabilite, potash, quartz rock, rock phosphate, sandstone, serpentine, shale, slate, talc, thenardite, trona, volcanic ash, sand, gravel, clay and marl, but (ii) does not include (A) sand and gravel that belong to the owner of the surface of land under section 58 of the Law of Property Act, (B) clay and marl that belong to the owner of the surface of land under section 57 of the Law of Property Act, or (C) peat on the surface of land and peat obtained by stripping off the overburden, excavating from the surface, or otherwise recovered by surface operations. ⁸ *Land Titles Act*, R.S.A. 2000, c.L-4. Also, see EPEA *supra* note 3 where ss.1(ss) defines who is considered an owner of land: “with regard to land, [owner] means (i) the registered owner of the land, (ii) a purchaser of the land whose interest as a purchaser is shown on the certificate of title to that land, or (iii) a tenant or other person who is in lawful possession or occupation of the land.

⁹ *Law Property Act*, R.S.A. 2000, c. L-7, Part 7, s.57-58 provides that clay, marl, gravel and sand are not minerals for the purpose of Alberta’s *Mines and Minerals Act*, and the legislation further provides that: “(2) The owner of the surface of land is and is to be deemed at all times to have been the owner of and entitled to clay and marl and the sand and gravel on the surface of that land, and all clay and marl and sand and gravel obtained by stripping off the overburden or excavating from the surface, or otherwise recovered by surface operations.” A land owner also owns the peat found on or under his or her land, and peat is also not considered a mineral.

Even though both Class 1 and Class 2 pits may be developed on private land, the rules governing the development and operations of the different classes of pits are significantly different. The differences are depicted in **Table 1** below. Generally, Class 1 pits are 5 hectares or more in size and operators must apply for a “registration” from the GOA under EPEA. A registration may contain various conditions for pit development and operations over the lifetime of the pit, and there are five year reporting requirements for the duration of pit operations. Class 1 pit operators must comply with all other laws and regulations that apply to registered pits, including the Code of Practice for Pits (the Code) and the *Conservation and Reclamation Regulation*¹⁰ under EPEA. Many federal and other provincial laws and regulations also apply to Class 1 pit operations.

Generally, Class 2 pits are less than 5 hectares in size and are considered small pits. Operators do not need a registration under EPEA and do not have to comply with the Code. However, they must comply with the *Conservation and Reclamation Regulation*, the *Water Act*,¹¹ and any other relevant federal and provincial legislation. Both Class 1 and Class 2 pit operators must comply with regional land use plans, municipal statutory land use plans, and the municipal land use bylaw where they are located. Municipal health and safety bylaws also apply to pit operations, for example bylaws that control nuisances, noise, and dust control.

In contrast, aggregate found under the surface of ‘public land’ is owned by the GOA. Aggregate extraction operations from public land are regulated through EPEA and the *Public Lands Act* (PLA) and regulations.¹² The beds and shores of water bodies in Alberta are public lands under the PLA,¹³ and so it can become very difficult for citizens to wade through the legal and regulatory system when they want a say in where and how aggregate operations are approved adjacent to local water bodies.

All pits on private and public land are the same in two aspects:

- ***They are all subject to enforcement under EPEA; and***
- ***They all require a reclamation certificate form Alberta Environment and Parks in compliance with the Conservation and Reclamation Regulation, regardless of class.***

All pits on public lands must comply with the PLA and regulations. There is a rigorous online application process to obtain a disposition of public lands for surface materials exploration (SME) and surface materials leases (SML) or surface materials licenses (SMC). The *Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land* (the Directive)¹⁴ applies to the disposition of public land and pit approval processes. Pit development and operations on public land are also subject to the terms and conditions in the SML or SMC, as well as enforcement proceedings for non-compliance with EPEA and any other legislation.

¹⁰ Conservation and Reclamation Regulation, *supra* note 3.

¹¹ *Water Act*, R.S.A. 2000, c.W-3 (Water Act).

¹² *Public Lands Act*, R.S.A. 2000, c.P-40 (PLA).

¹³ *Ibid.*, s.3.

¹⁴ Government of Alberta: “Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land Aggregate Directive”, 2017 (the Directive), online: <https://open.alberta.ca/dataset/da3c4769-8ad3-4cc3-9a87-24133f62ff3d/resource/c58166e1-2777-4cb1-b861-37a3c26959a0/download/aggregateallocationdirective-sep01-2017.pdf>. Last accessed on July 1, 2019.

TABLE 1: The Differences between Class 1 and Class 2 Pits

CLASS 1	DETAILS	CLASS 2	DETAILS	DIFFERENCES
	900 in Alberta in June 2019		1,550 in Alberta in June 2019	600 more Class 2 pits
	5 hectares (12.4 acres) or more on private lands.		5 hectares (12.4 acres) or less on private lands.	Class 2 pits are smaller than 5 hectares. This includes the entire pit disturbance area over the lifetime of a pit, including roads, stockpiles or other temporary facilities.
	Operators must register with AEP before constructing, operating or reclaiming		Do not need to register a Class 2 pit with AEP.	Class 2 operators do not register with AEP.
	Must comply with the Code, ¹⁵ and their authorized activities plan.		Do not have to comply with the Code. <i>The Environmental Protection Guidelines for Pits</i> (Class 2 Guidelines) ¹⁶ apply.	Class 1 pits must comply with the Code while Class 2 follow Class 2 Guidelines.
	Must submit 5 year reports on operations.		Do not need to submit 5 year reports on operations.	Class 2 pit operators do not have the same reporting requirements
	Must conserve and reclaim the land in compliance with EPEA and Conservation and Reclamation Regulation.		Must conserve and reclaim the land in compliance with EPEA and Conservation and Reclamation Regulation.	No difference
	Must comply with the <i>Water Act</i> and all other relevant legislation where applicable.		Must comply with the <i>Water Act</i> and all other legislation where applicable.	No difference
	Must comply with regional land use plans, regional growth plans and all municipal land use plans, the land use bylaw and other municipal bylaws.		Must comply with regional land use plans, regional growth plans and all municipal land use plans, the land use bylaw and other municipal bylaws.	No difference

¹⁵ See the Code, *supra* note 6. A conflict between the terms and conditions in a registration and the Code is resolved in favour of the code.

¹⁶ Government of Alberta, 'Conservation and Reclamation Information Letter Environmental Protection Guidelines for Pits, November, 1996, online: <https://open.alberta.ca/dataset/86aaa9de-2ed6-426d-83ba-77b97bb6cae3/resource/da765acd-e31a-4f9c-9f49-ad9e3e72249d/download/enviroprotectionpits-il-1996.pdf> (Class 2 Guidelines). Last accessed on July 25, 2019.

CHAPTER 3: THE COMPLEX REGULATORY SYSTEM FOR AGGREGATE EXTRACTION

IN 2017 THE GOA HELD A SERIES OF STAKEHOLDER CONSULTATIONS¹⁷ to review the status of the regulatory system for approving aggregate extraction operations on both private and public lands in Alberta. **Figure 2** below is a systems diagram created by the GOA to illustrate the complexity of the system for regulating Class 1 pits on private lands. The map also identified regulatory gaps that existed. The figure is not intended to be readable in this Guide and is included only to illustrate the complexity of the regulatory system. In such a complex system, where do you start as a citizen when you learn that an application has been submitted to government officials to develop and operate a pit on private land in your community?

FIGURE 2: System diagram of regulation of Class 1 pits on private lands developed for GOA aggregate policy stakeholder consultations in Airdrie, spring 2017.

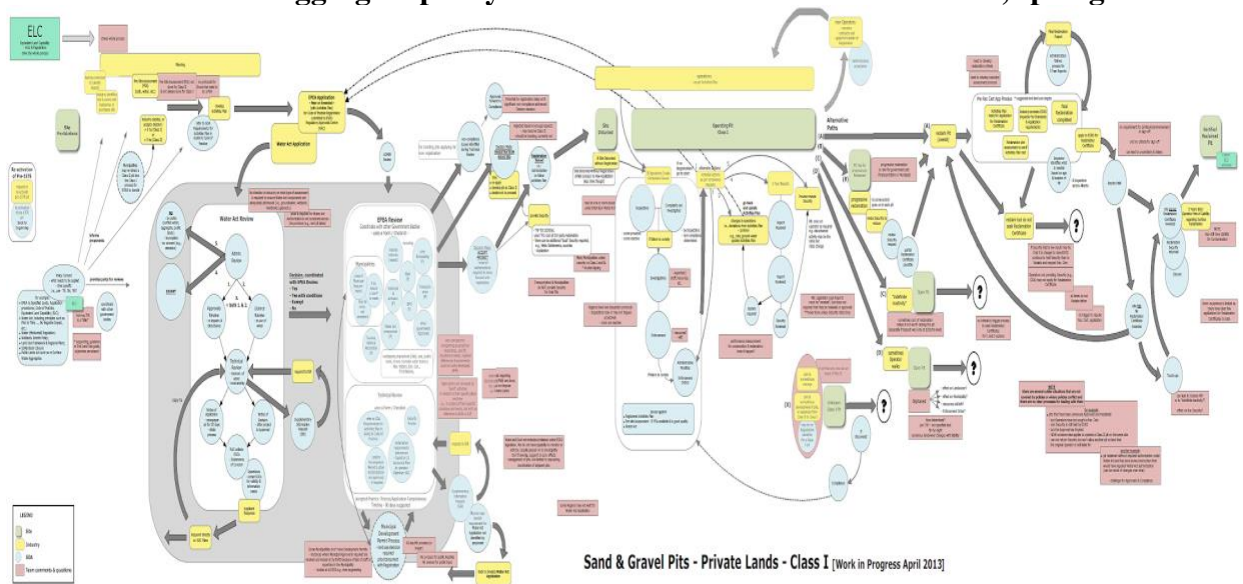
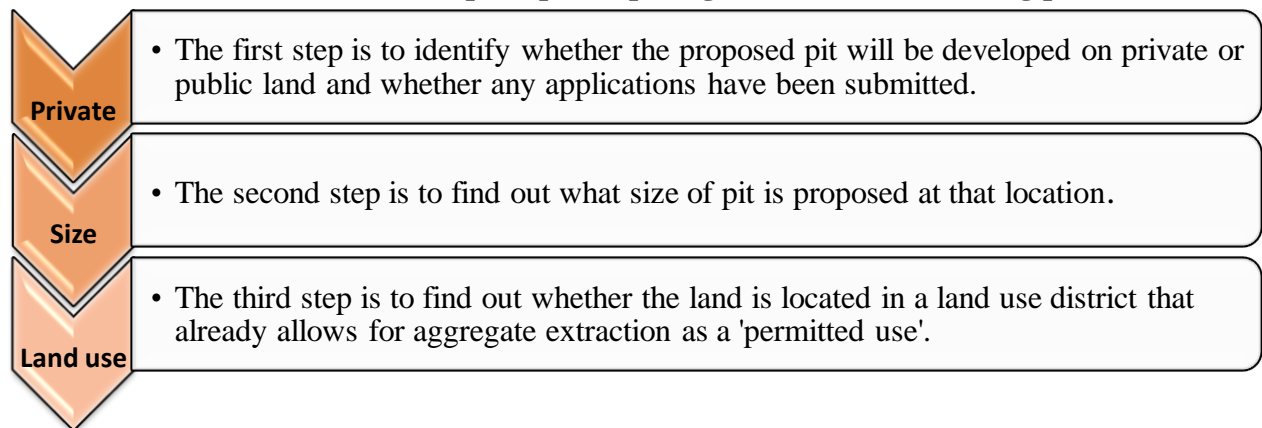


FIGURE 3: What are the first steps to participating in the decision-making process?



¹⁷ See note 2 concerning the stakeholder consultations.

TABLE 2: Example of legal considerations when a pit is proposed on private land

THE PROPOSED PIT IS:	LEGAL CONSIDERATIONS:
On private land	What laws apply? Any regulations, codes or guidelines?
Greater than 5 hectares in size	What laws apply? Any regulations, codes or guidelines?
Located in an agricultural or industrial land use district	Has an application been submitted to the municipality to re-designate the lands under the municipal land use bylaw? Is aggregate extraction a permitted or a discretionary use in the district?

- **FIRST**, you should find out whether the pit will be developed on private or public land.
- **SECOND**, you may want to determine if the GOA Regulatory Approvals Center has already issued a registration for the proposed pit and notified the municipality. In many cases, a landowner will have applied to the province for a registration to develop a pit before they apply to the municipality for land use under a municipal land use bylaw.
- **THIRD**, you should determine if the parcel of land that is being proposed for aggregate extraction contains or is adjacent to a water body.¹⁸ If so, the complexity of the regulatory system is compounded because the laws and regulations for diversion and use of water, and for activities that disturb water bodies come into play, including some federal laws.
- **FOURTH**, you should ask for a copy of the application for the proposed pit and all attachments that have become part of the public record. You may need to approach both the municipal planning department and staff at the Regulatory Approvals Center who process EPEA and *Water Act* applications. The applicant may also provide you with documents.

The process for applying for a disposition of public land for aggregate extraction is provided in the *Public Lands Administration Regulation (PLAR) Table A1: Alberta Environment and Parks*.^{19,20} Chapter 7 of this Guide explains in more detail the application processes for surface material dispositions on public land.

¹⁸ “water body” is defined in the *Water Act*, *supra*, note 11: s.1((ggg) “water body” means 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. It should be noted, however that when dealing with municipal governments, a “body of water” is defined differently and targets a sub-set of water bodies as defined above. The *Municipal Government Act*, R.S.S. 2000, c.M-26, (MGA) ss.1(1.2) defines a ‘body of water’ as follows: In this Act, a reference to a body of water is to be interpreted as a reference to (a) a permanent and naturally occurring water body, or (b) a naturally occurring river, stream, watercourse or lake.

¹⁹ Government of Alberta, “Public Lands Administration Regulation (PLAR) Table 1 Alberta Environment and Parks (AEP) PLAR Dispositions,” November 22, 2018, online: <https://open.alberta.ca/dataset/076d7248-c154-4460-8942-f665f9086f9d/resource/h35edeb9-d454-42d0-83c8-696c5c2c1551/download/plar-tablea1-nov22-2018.pdf>. See pages entitled: ‘Surface Materials.’ Last accessed on July 1, 2019.

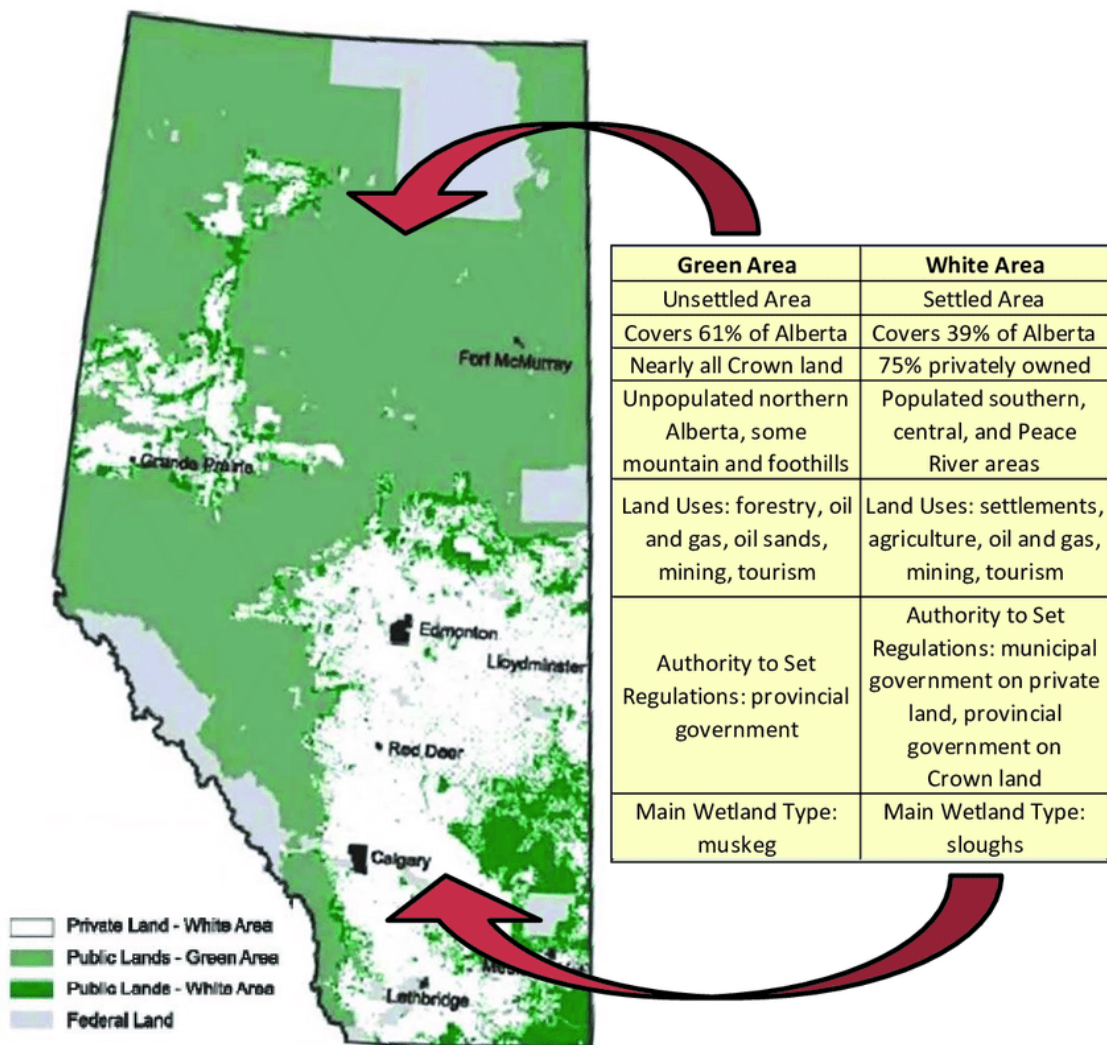
²⁰ Government of Alberta, *Public Lands Administration Regulation (PLAR)*, online: https://www.alberta.ca/public-lands-administration-regulation.aspx?utm_source=redirector Last Accessed July 11, 2019.

CHAPTER 4: LAWS THAT APPLY TO CLASS 1 PITS ON PRIVATE LAND

UNRAVELLING THE COMPLEX REGULATORY SYSTEM to determine which laws apply to an application to develop and operate a Class 1 pit on private land can seem difficult. However, all Class 1 pits are over 5 hectares in size and attract the same regulatory requirements. Class 1 pits are also exclusively found on private lands in the settled area of Alberta.

Many people are familiar with Alberta’s White Area (settled areas). **Figure 4** below explains the many differences between land-use considerations that come into play in the White Area compared to the Green Area or public lands.

FIGURE 4: Alberta’s Green Area and White Area with societal, geographical, land-use, and wetland attributes. Used with permission from David A. Locky.²¹



²¹ David A. Locky , *Wetlands, Land Use, and Policy: Alberta’s Keystone Ecosystem at a Crossroads*, Green Paper Presented at the Annual Conference of the Alberta Institute of Agrologists, Banff Alberta March 16, 2011, page 2.

Large Class 1 pits dot the country-side and are visible from space. Two Class 1 pits located in the Calgary Metropolitan Area are shown below. **Figures 5 and 6** are Google Earth Pro images of a large pit in Cochrane, Alberta. **Figures 7 and 8** are Google Earth Pro images of a large gravel pit in Rockyview County, north of Highway 1A. **Figure 5** shows that the Cochrane pit operates in an urban environment adjacent to the Bow River and a large residential area.

FIGURE 5: Google Earth Pro image of a Class 1 pit located in Cochrane, Alberta.



FIGURE 6: The larger context of the Class 1 pit in Cochrane.



NOTE: These pit operations were relocated to the lower bench by the river in 2019 to accommodate a residential development, a new bridge and a road.

In contrast, the Class 1 pit in Rockyview County is located in the countryside. While citizens may be concerned about pit operations in both locations, large pits in urban settings, like Cochrane, or adjacent to major cities or major watercourses, such as the Bow River, often attract more citizen concerns, ranging from incompatible use of residential roads and increased traffic, to dust, noise at decibel levels that disturbs sleep, and impacts on water quality and quantity.

FIGURE 7: Google Earth Pro image of part of a Class 1 pit in Rockyview County



FIGURE 8: The larger context of the Class 1 pit in Rockyview County



Table 3 below includes the most significant laws, regulations, codes and guidelines that apply to the development and operation of Class 1 pits.

TABLE 3: Important provincial and municipal laws, regulations, codes, guidelines and administrative policies that apply to Class 1 pits on private land

PROVINCIAL LAWS	REGULATIONS	CODES	GUIDES/ GUIDELINES	POLICIES
<i>Environmental Protection and Enhancement Act</i> (EPEA)	<ul style="list-style-type: none"> * Activities Designation Regulation²² * Approvals and Registrations Procedure Regulation²³, * Conservation and Reclamation Regulation²⁴ * Environmental Assessment (Mandatory and Exempted Activities) Regulation²⁵ * Environmental Assessment Regulation²⁶ * Wastewater and Storm Drainage (Ministerial) Regulation²⁷ * Wastewater and Storm Drainage Regulation²⁸ 	The Code of Practice for Pits	<p>A Guide to the Code of Practice for Pits, 2004²⁹</p> <p>1998 <i>Standard Methods for the Examination of Water and Wastewater</i>, 20th edition, published by the American Water Works Association,</p> <p>1996 <i>Methods Manual for Chemical Analysis of Water and Wastes</i>, published by Alberta Environment</p>	
<i>Alberta Land Stewardship Act</i> ³⁰ (ALSA)		Regional land use plans (e.g. South Saskatchewan Regional Plan (SSRP))	<ul style="list-style-type: none"> * Air Quality Management Frameworks * Water Quality Management Frameworks 	

²² *Activities Designation Regulation*, *supra* note 6.

²³ *Approvals and Registrations Procedure Regulation*, Alta Reg. 113/1993.

²⁴ *Conservation and Reclamation Regulation*, *supra* note 3.

²⁵ *Environmental Assessment (Mandatory and Exempted Activities) Regulation*, Alta Reg. 111/1993.

²⁶ *Environmental Assessment Regulation*, Alta Reg. 112/1993.

²⁷ *Wastewater and Storm Drainage (Ministerial) Regulation*, Alta Reg. 120/1993.

²⁸ *Wastewater and Storm Drainage Regulation*, Alta Reg. 119/1993.

²⁹ Government of Alberta, 'A Guide to the Code of Practice for Pits,' 2004, (the Guide to the Code) online: <https://open.alberta.ca/dataset/03ec9cc3-ecf7-4370-8af2-b20997b29428/resource/9993ab67-d62b-4392-96cb-b304139afc59/download/2004-guidecodepracticepits-2004.pdf>. Last accessed on July 14, 2019.

³⁰ *Alberta Land Stewardship Act*, R.S.A. 2009, c.A-26.8 (ALSA).

<i>Water Act</i>	Water (Ministerial) Regulation ³¹		Guide to <i>Water Act</i> Authorizations Required for Dugouts, Borrow Pits and other Types of Pits/ Excavations	Implementation Plan and FAQs for the Guide to <i>Water Act</i> Authorizations Required for Dugouts, Borrow Pits and other types of Pits/ Excavations ³⁷
		Code of Practice for Watercourse Crossings ³²	Guide to the code of practice for watercourse crossings, including guidelines for complying with the code of practice ³⁴	Surface Water Body Aggregate Policy.
		Code of Practice for Outfall Structures on Water Bodies ³³	Environmental Approvals System (Onestop) ³⁵ 'Initiate new <i>Water Act</i> application Excavation User Guide.' ³⁶	Alberta Wetland Policy ³⁸ and implementation tools

³¹ *Water (Ministerial) Regulation*, Alta Reg. 205/98.

³² Government of Alberta, "Code of Practice for Watercourse Crossings," online: http://www.qp.alberta.ca/1266.cfm?page=crossing.cfm&leg_type=Codes&isbncIn=9780779771707. Last accessed on July 10, 2019.

³³ Government of Alberta, "Code of Practice for Outfall Structures on Water Bodies", online: http://www.qp.alberta.ca/1266.cfm?page=OUTFALL.cfm&leg_type=Codes&isbncIn=9780779771691. Last accessed on July 10, 2019.

³⁴ Government of Alberta, "Guide to the code of practice for watercourse crossings, including guidelines for complying with the code of practice", online: <https://open.alberta.ca/dataset/7f60e27f-d9ca-4215-aaae-9adec610974b/resource/f1dfd81c-4bb9-4ff7-a547-4d702870d32c/download/2001-watercoursecrossingsguide-apr2001.pdf>. Last accessed on July 10, 2019.

³⁵ Government of Alberta, 'Environmental Approvals System (Onestop)' online: <https://www.alberta.ca/environmental-approvals-system-onestop.aspx>. Last accessed on July 29, 2019.

³⁶ Government of Alberta, 'Initiate New Water Act Application Excavation Quick Reference Guide' (Initiate Quick Reference Guide), online: <https://www.alberta.ca/assets/documents/eas-water-act-excavation-guide.pdf>. Last accessed on July 29, 2019.

³⁷ Government of Alberta, "Implementation Plan and FAQs for the Guide to Water Act Authorizations Required for Dugouts, Borrow Pits and other types of Pits/Excavations", online: <https://open.alberta.ca/dataset/8a79a195-ef4e-482d-8842-4e906f84919b/resource/d09cf308-9e6c-4d62-8e43-d6556446390e/download/implementationplanfaqswateract-jun30-2016.pdf> (Administrative Policy) Last accessed June 20, 2019.

³⁸ Government of Alberta, "Alberta Wetland Policy", 2013, online: <https://open.alberta.ca/dataset/5250f98b-2e1e-43e7-947f-62c14747e3b3/resource/43677a60-3503-4509-acfd-6918e8b8ec0a/download/6249018-2013-alberta-wetland-policy-2013-09.pdf>. Last accessed June 12, 2019.

<i>Historical Resources Act</i>			Alberta Culture, Surface Materials Historical Resources Act Compliance ³⁹	Alberta Culture’s Listing of Historic Resources ⁴⁰
<i>Wildlife Act</i>			Wildlife Land Use Guidelines	Alberta’s Strategy for Managing Species at Risk (2009-2014) ⁴¹

MUNICIPAL LAW	MUNICIPAL BYLAWS AND LEVIES	CODES	REGIONAL AND MUNICIPAL PLANS	MUNICIPAL POLICIES
Municipal Government Act	Land Use Bylaw; Health and Safety Bylaws; other bylaws. <i>Community Aggregate Payment Levy Regulation (CAP)</i> . ⁴²	Building Codes; Safety Codes, Fire Codes, etc.	Regional Land Use Plans; Regional Growth Plans; Intermunicipal Development Plans; Municipal Development Plans; Area Structure Plans; Area Redevelopment Plans; Master Drainage Plans.	Municipal sustainability and growth policies. Municipal storm drainage management plans for specific parts of the community.

TABLE 4: Some federal laws that apply to aggregate extraction operations in Alberta

FEDERAL LAWS	CONTROLS DISTURBANCE OR DISTRUCTION OF
<i>Canadian Environmental Assessment Act</i>	Environmental components and habitat
<i>Migratory Birds Convention Act, 1994</i>	Habitat
<i>Species at Risk Act (SARA)</i>	Habitat
<i>Fisheries Act</i>	Habitat
<i>Navigable Water Protection Act</i>	Navigability of water bodies

³⁹ Government of Alberta, ‘Surface Materials Historical Resources Act Compliance’, July 1, 2014, online: <https://open.alberta.ca/publications/surface-materials-historical-resources-act-compliance>. Last accessed on July 19, 2019.

⁴⁰ Alberta Culture, ‘Listing of Historic Resources’, June 2019 edition, online: <https://open.alberta.ca/dataset/de0245f6-e476-4cee-8969-c280df18b828/resource/ad443a52-724e-4f32-aac5-043f5e3fa665/download/historic-resources-2019-06.pdf>. Last accessed on July 19, 2019.

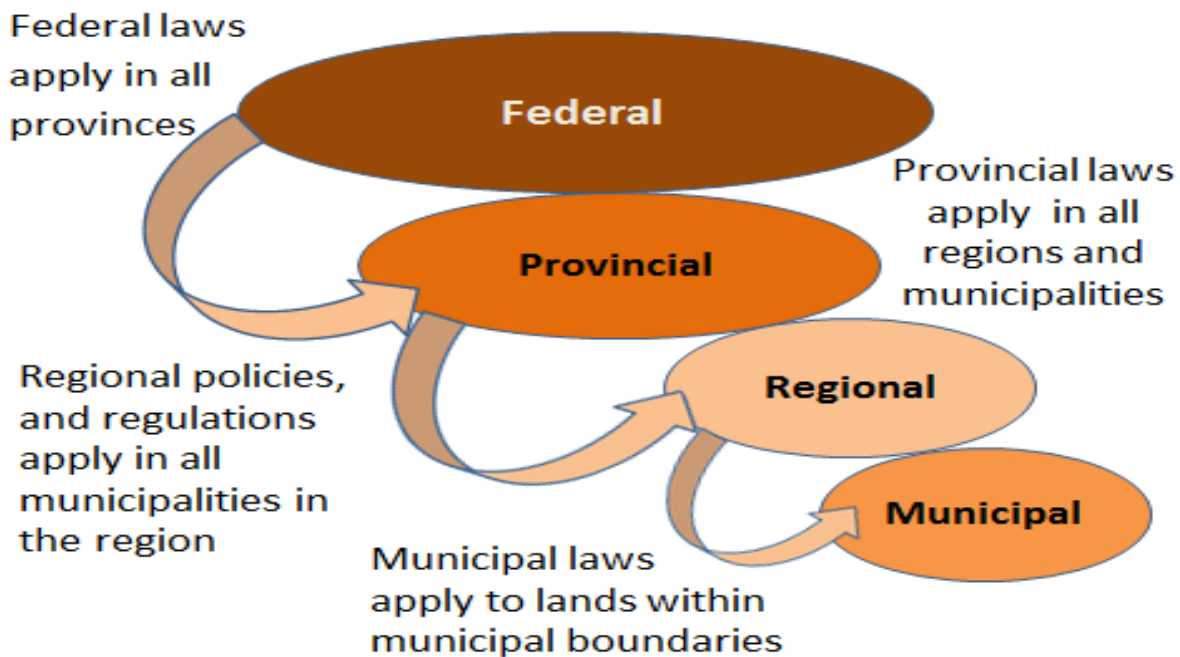
⁴¹ Government of Alberta, “Alberta’s Strategy for Managing Species at Risk (2009-2014)”, online: <https://open.alberta.ca/dataset/5d53e131-0608-431c-8827-5e25d5e4c278/resource/29be46df-88fa-4de1-9e70-ebca53b19a32/download/albertas-strategy-management-species-risk-2009-2014.pdf>. Last accessed on July 10, 2019.

⁴² *Community Aggregate Payment Regulation*, Alta Reg. 263/2005.

Having a basic understanding of the complexity of the legal and regulatory system is critical to effectively influencing government decision-making processes for approving aggregate extraction applications. For example, if a proposed pit is adjacent to a water body that contains fish, then federal laws will apply along with provincial laws for regulating the disturbance or destruction of critical fish habitat. As wetlands provide critical habitat for migratory birds and many species at risk, federal laws apply if a proposed pit will affect protected wetland habitat.

Figure 9 below illustrates the hierarchy and interconnection between the legal and regulatory systems at the federal, provincial, regional and local scales. Since the advent of the *Alberta Land Stewardship Act*⁴³ and regional land use plan regulations, the review of an application for aggregate extraction on private lands where a water body or navigable waters will be disturbed or negatively impacted may attract federal, provincial, regional, intermunicipal, and local regulations, codes, guidelines and policies and procedures. Further, if a regional land use plan is in place for the proposed pit location, for example the South Saskatchewan Regional Plan⁴⁴ or the Lower Athabasca Regional Plan,⁴⁵ you will need to read the plan to find the GOA’s regional land use policies for aggregate extraction in that region.

FIGURE 9: Hierarchy and application of federal, provincial, regional and municipal laws



⁴³ ALSA, *supra* note30.

⁴⁴ Government of Alberta, ‘South Saskatchewan Regional Plan, 2014-2024’, 2017 amended edition, online: <https://open.alberta.ca/dataset/460ac866-4416-4d77-a25a-a02fab85a6ec/resource/8261ce03-aa0f-4621-8e2d-c610a72ac37c/download/south-saskatchewan-regional-plan-2014-2024-february-2017.pdf>. Last accessed on July 20, 2019.

⁴⁵ Government of Alberta, ‘Lower Athabasca Regional Plan, 2012-2022’, online: <https://open.alberta.ca/dataset/37eab675-19fe-43fd-aff-001e2c0be67f/resource/a063e2df-f5a6-4bbd-978c-165cc25148a2/download/5866779-2012-08-lower-athabasca-regional-plan-2012-2022.pdf>. Last accessed on July 30, 2019.

FIGURE 10: Laws that apply in the scenario where an application is made for a registration to extract gravel from private land within the Bow River floodplain.



Scenario:

Application for a registration for gravel extraction on private land along Bow River floodplain where two wetlands will be disturbed that are habitat for wildlife, migratory birds and species at risk. The Bow is navigable and supports fish.

FIGURE 11: Photo by Judy Stewart: A gravel stockpile pit near Winchell Lake, Alberta



CHAPTER 5: APPLYING FOR A REGISTRATION OF A CLASS 1 PIT ON PRIVATE LAND

APPLYING FOR A REGISTRATION FROM THE GOA to develop and operate a Class 1 pit on private land is a complex process. The first step is for the pit operator to fill out the “Code of Practice for Pits Registration Form,” which is Schedule 1 of the Code. The form submission to the Regulatory Approvals Center must be in the correct format,⁴⁶ and must be accompanied by an ‘Activities Plan,’ which is required in Schedule 2 of the Code. The GOA provides an ‘Electronic Documents Submission Protocol’⁴⁷ for online applications and the *Approvals and Registrations Procedure Regulation*⁴⁸ applies. If the pit operator is not the landowner, the operator must also submit proof of landowner consent or the application will be refused.

The Activities Plan must include detailed drawings and proposals for how the pit will be constructed, how the pit will be operated for the term of the registration, and how the land will be reclaimed after the aggregate has been removed. If an operator wants to make changes to the Activities Plan after the pit has received a registration, all proposed changes must be submitted to the Regulatory Approvals Center before any activity that deviates from the original Activities Plan may occur. In addition to the application form and Activities Plan, the applicant must provide a ‘Security Estimate’ calculated at the rate of \$250.00/acre as prescribed in Schedule 3 of the Code.

The *Guide to the Code of Practice for Pits* (Guide to the Code)⁴⁹ is a useful document to help citizens understand the information requirements for obtaining a registration for a Class 1 pit. **Figure 11** below illustrates a modified Flowchart of Registration Application Review Process⁵⁰ from the Guide to the Code. **Please note that there is no GOA public consultation process** required prior to the regulator issuing a registration. Notice of the registration is only provided to the municipality where the pit will be located after the registration is issued.

If a *Water Act* approval is required for a Class 1 pit, that application may be done online through the GOA’s Environmental Approvals System (EAS), Onestop.⁵¹ The GOA offers training programs to applicants about how to use the Onestop system.⁵² A Quick Reference Guide⁵³ is also available to help an applicant understand how to fill in an application for a pit or excavation, which provides step by step data entry instructions. Reviewing those documents and application processes will help citizens to understand how an application for a *Water Act* approval unfolds, and to learn more about required studies and information that must accompany an application.

⁴⁶ Government of Alberta, ‘Acceptable Formats for EPEA Approval and Code of Practice Records and Submission Coordinates Formatting manual,’ 2019, online <https://www.alberta.ca/assets/documents/ep-epea-approval-acceptable-formats.pdf> . Last accessed on July 20, 2019.

⁴⁷ Government of Alberta, ‘Environmental Protection and Enhancement Act and Codes of Practice Electronic Documentation Submissions Protocol,’ online: <https://www.alberta.ca/assets/documents/ep-epea-approvals-codes-of-practice-electronic-documentation-submission-protocol.pdf> . Last accessed on July 30, 2019.

⁴⁸ See note 23.

⁴⁹ See note 29.

⁵⁰ See the Guide to the Code, *supra* note 29, at page 15.

⁵¹ Onestop, *supra* note 35.

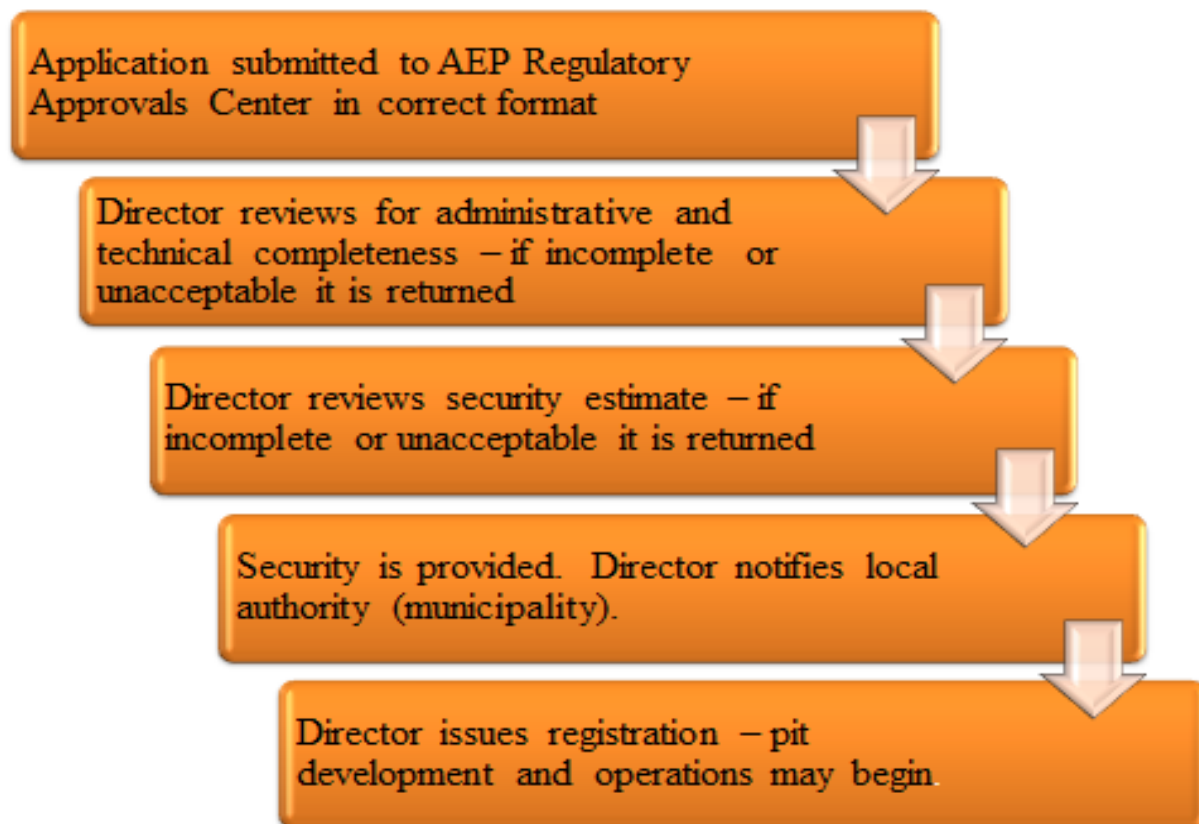
⁵² Government of Alberta, “Training: Water Act Approvals - Environmental Approvals System OneStop,” online: <https://www.eventbrite.ca/e/training-water-act-approvals-environmental-approvals-system-onestop-registration-53661423763>. Last accessed on July 20, 2019.

⁵³ Initiate Quick Reference Guide, *supra* note 36.

An application for an approval under the *Water Act* does require public notice, and any party who is directly affected by the *Water Act* application may file a Statement of Concern with the GOA decision-maker. During the application review process the GOA will consider the information provided in the Statement of Concern by a directly affected person.⁵⁴

The filed Statement of Concern also performs a gatekeeper function to appeal an approval to the Alberta Environmental Appeal Board.⁵⁵ A directly affected person who submits a Statement of Concern may also file a Notice of Appeal to the Environmental Appeal Board if the decision-maker under the *Water Act* issues an approval for an activity and the directly affected person disagrees with that decision. Further information regarding how to launch or participate in appeals before the Environmental Appeal Board is outside the scope of this guide.

FIGURE 12: Regulatory Approvals: Registration Application Review Process



⁵⁴ *Water Act*, *supra* note 11, and see s.109: ‘Statement of Concern’, and s.115: ‘Notice of Appeal’.

⁵⁵ 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 050-R (A.E.A.B.) (2017 AEAB 13). The Environmental Appeal Board explained the gatekeeper function of the Statement of Concern and Notice of Appeal.

CHAPTER 6: LAWS THAT APPLY TO OPERATING CLASS 2 PITS ON PRIVATE LAND

THERE ARE ABOUT 1,550 CLASS 2 PITS currently operating in Alberta. Class 2 pits are only found on private land and are less than 5 hectares (12.4 acres) in size. Because smaller pits are often created by the landowner to meet his or her needs or to provide sand and gravel to the local community where they are situated, they attract less provincial regulation than Class 1 pits. As noted in **Table 1** above, Class 2 pit operators do not have to register the pit with the GOA Regulatory Approvals Center.

Of course, a Class 2 pit operator must comply with all federal and provincial laws that apply in the circumstances. For example, if water will be diverted or used, and if Class 2 pit operations will disturb a water body, then applications will have to be made under the *Water Act* for a water license and an approval. No matter how small the pit these authorizations must be in place before a pit operation may begin. A Class 2 pit operator must also ensure that the proposed pit complies with the *Conservation and Reclamation Regulation* under EPEA.

A Class 2 pit operator must follow the guidance found in *The Environmental Protection Guidelines for Pits* (Class 2 Guidelines),⁵⁶ which reflect best management practices for pits from 1996 when the guidelines were written. Since 1996, society has become much more complex and the number of Class 2 pits has increased. That is one of the reasons why the GOA recently sought public consultation about the regulatory system for aggregate extraction on private lands.⁵⁷ However, although a great deal of new direction has been provided to regulate operations for Class 1 pits, the regulatory system for Class 2 pits has changed very little.

Smaller pits attract closer public scrutiny at the municipal scale. When a landowner or pit operator applies to the local municipality for a land use redesignation, or for a development permit for a Class 2 pit, municipal planning and development law, and local protocols and practices come to the forefront. For example, an applicant will often be required to provide a comprehensive site development plan (CSDP) and demonstrate that he or she has informed adjacent landowners of the CSDP and proposed reclamation when the aggregate has been removed. Often an adjacent landowner will only hear about a proposal for a Class 2 pit when the applicant holds a community ‘open house’ to inform the community about what is being proposed. The information provided at the open house usually follows many weeks of discussion between the local development authority and the landowner or pit operator but is preliminary in design and used to obtain feedback from the local community. The open house is not a formal process and you may not be notified if you are not an adjacent landowner.

Municipal planning and development laws, and local policies and processes for land use redesignation or for approving a development permit are the same for Class 1 and Class 2 pits. **Chapter 7** explains how the municipal decision-making process unfolds and provides some suggestions for how citizens may have a say in the conditions of approval imposed on a development permit and influence a municipal decision about whether to permit an aggregate extraction pit in their community.

⁵⁶ See Class 2 Guidelines, *supra* note 16.

⁵⁷ See note 2.

CHAPTER 7: APPLYING TO A MUNICIPAL GOVERNMENT FOR LAND USE DESIGNATION OR FOR A DEVELOPMENT PERMIT FOR A CLASS 1 OR A CLASS 2 PIT

APPLYING TO A MUNICIPAL GOVERNMENT FOR LAND USE DESIGNATION OR FOR A DEVELOPMENT PERMIT to develop and operate an aggregate extraction pit on private land can be cumbersome. According to a provincial webpage entitled “Rural Disputes-Surface Material Extraction Pits,”⁵⁸ municipal councils have a significant role to play in approving aggregate extraction operations on private land within municipal boundaries because they issue development permits.

In making their decision about whether to approve aggregate extraction within municipal boundaries, councils must comply with all federal and provincial enactments, Part 17 of the *Municipal Government Act*, the *Alberta Land Use Policies*,⁵⁹ intermunicipal development plans, the municipality’s policies and statutory plans, and the land use bylaw. First and foremost, the council must be satisfied that the land is suitable for the proposed aggregate extraction. This is a complex decision-making process.

Where a regional land use plan is in place under ALSA,⁶⁰ such as the SSRP, applications for aggregate extraction must be consistent with the policies and regulatory provisions in the regional plan. For example, the SSRP contains specific provincial policies describing what municipalities are expected to consider when issuing development permits for aggregate extraction operations on private land.

The location of the proposed pit may also be within a regional growth management planning area, and as the decision-making authority for a participating municipality your council may be required to comply with aggregate extraction policies included in a regional growth plan.

Municipal planning departments regularly receive applications to develop and operate aggregate extraction pits within their boundaries. Applications are processed in accordance with the specific municipality’s land use bylaw and statutory plans, such as any applicable intermunicipal development plan, the municipal development plan, and any applicable area structure plan or redevelopment plan.

Every municipality has its own application process and administrative protocols that are provided in the municipality’s land use bylaw. For example, Mountainview County has issued a brochure entitled “Aggregate Extraction/Processing”⁶¹ to help landowners submit a development permit application for aggregate extraction in that municipality. The brochure describes study requirements that must be submitted along with the comprehensive site development plan (CSDP).

⁵⁸ Government of Alberta, ‘Rural Disputes – Surface Materials Extraction Pits,’ (Rural Disputes) online: <https://www.alberta.ca/rural-disputes-surface-material-extraction-pits.aspx>. Last accessed July 2, 2019.

⁵⁹ Alberta Municipal Affairs, ‘*Alberta Land Use Policies*’, 1996, online: <http://www.municipalaffairs.alberta.ca/documents/ms/landusepoliciesmga.pdf>. Last accessed on July 29, 2019.

⁶⁰ ALSA, *supra* note 43.

⁶¹ Mountainview County, ‘Aggregate Extraction Processing,’ online: http://www.mountainviewcounty.com/sites/default/files/doc/Aggregate_Extraction_Processing.pdf. Last accessed on August 2, 2019.

It explains how the decision-making process unfolds once the application is deemed complete by the development authority. A CSDP is a common municipal planning requirement that must be submitted along with an application for a development permit for aggregate extraction on private land in Alberta municipalities.

Another helpful document that provides a typical process for applying for a development permit in Alberta was developed by Lac la Biche County, entitled: *Development Information Package, 2015*.⁶² While this document is tailored for the County of Lac la Biche and reflects the county's land use bylaw provisions, it provides flowcharts, timelines and many insights into Alberta's municipal planning and development law as well as the county's administrative policies and practices.

In many municipalities aggregate extraction is always listed in the land use bylaw as a 'discretionary use' in all land use districts. That means that an application for a development permit to develop and operate a pit will only be issued after review by the municipality's development authority. The development authority has discretion to refuse to issue a development permit or may approve the development permit but impose strict conditions.

When aggregate extraction is a 'permitted use' in a land use district, for example a 'natural resources extraction' land use district, as long as an application meets all the criteria in the land use bylaw for that district the application will be approved. The development authority will still be able to impose conditions of approval, but cannot refuse to issue the development permit if aggregate extraction is a permitted use. Therefore, if the parcel of land that is subject to an application for a Class 1 pit is already designated for aggregation extraction as a 'permitted use,' there will be less opportunity for citizens or affected people to have a say in conditions of approval.

Conditions of approval on a development permit for aggregate extraction operations are specific to each applicant and each municipality. These conditions often arise from best management practices and community values. Sometimes, conditions arise to mitigate concerns expressed by residents and adjacent landowners during a required public hearing process. For example, if the land is not located in a land use district that already allows for aggregate extraction, the applicant must apply for land use designation (zoning), and redistricting attracts a mandatory public hearing. Some of the most common concerns heard at public hearings for land use designation for the purpose of aggregate extraction are as follows:

- incompatibility with adjacent land uses;
- impact on surface and groundwater quality and quantity;
- impact on local drainage systems;
- hours of operation;
- noise;
- dust and especially, Particulate Matter 2.5;
- impact on health due to deteriorating air quality;
- aesthetics;
- proposed haul routes that compete with exiting traffic, such as school bus traffic; and

⁶² Lac La Biche County, 'Development Information Process, 2015,' online: <https://www.laclabichedcounty.com/home/showdocument?id=2596>. Last accessed on July 30, 2019.

- increased traffic due to industrialization and employment in the area.

Conditions imposed by municipal councils on aggregate extraction operators must be consistent with federal and provincial laws and regulations, codes, guidelines and directives, and in the case of a Class 1 registration, the local conditions must be consistent with those imposed by the provincial government in the registration. A local government can impose higher standards than those imposed by the province to achieve local community requirements, especially in circumstances where there may already be existing aggregate extraction or other commercial operations that have cumulative impacts on the local social, economic, and ecologic systems.

It may be helpful to read a Notice of Decision from the Parkland County Subdivision and Development Appeal Board Hearing in 2017⁶³ to understand the complex issues that are commonly addressed by municipal councils when asked to approve aggregate extraction on private land adjacent to a water body. This appeal was filed by the Applicants for the Development Permit, because the application was deemed to be refused by the Development Authority when a decision was not rendered within forty days from the date that the development authority received the application. In Alberta, an applicant can appeal a deemed refusal to the local subdivision and development appeal board and that body can make a decision on behalf of the municipality and this is what occurred in that case.

It should be noted that Alberta Transportation and the municipality where a proposed pit will be located are not required to obtain a development permit for their own aggregate extraction pits and operations. However, some municipalities may require that operators of Crown land SME, SML and SMC obtain a development permit for aggregate extraction within their boundaries because they want to make sure that they address common concerns of adjacent landowners, such as haul routes, hours of operations, noise, dust and traffic patterns. Chapter 10 of this Guide explores how you may wish to participate and try to influence decision-making processes about aggregate extraction in your community.

A helpful guidance document written by Judy Stewart in 2018:

***“A Citizen’s Guide to Appearing
Before Municipal Councils in Alberta”***

is available from the Canadian Institute of Resources Law, at

[https://live-cirl.ucalgary.ca/sites/default/files/Occasional Papers/Occasional Paper %2367.pdf](https://live-cirl.ucalgary.ca/sites/default/files/Occasional%20Papers/Occasional%20Paper%202367.pdf)

is recommended reading for anyone using this Guide.

⁶³ Parkland County, Subdivision and Development Appeal Board, ‘Notice of Decision of Subdivision and Development Appeal Board May 1, 2017’, online: <https://www.parklandcounty.com/en/county-office/resources/SDAB-Minutes/2017-05-12---SDAB-Decision-17-D-097.pdf>. Last accessed on July 15, 2019.

CHAPTER 8: A NOTE ABOUT THE COMMUNITY AGGREGATE PAYMENT LEVY (CAP LEVY)

The CAP Levy was implemented to build positive relationships between aggregate companies and local residents by delivering tangible community benefits through funding directly back to the local community. There is no legislated requirement on how the funds are used. In some communities, the public is unaware of the contributions local operators make into the CAP Levy.

Some examples of possible CAP projects include maintenance on shared roads, new public facilities (seniors' centres, skating rinks, playgrounds/parks, etc.), bylaw officer training, noise monitoring, or a collaborative aggregate advisory committee.

The type of initiatives may depend on the amount that is collected. In Sturgeon County, the CAP Levy was used to create a water monitoring program with 21 monitoring wells that test for water quality and quantity on an ongoing basis.⁶⁴

During 2017 public consultations, some citizens criticized their municipal governments for approving aggregate extraction in their communities in exchange for the Cap Levy that goes into municipal general revenues. Some believed that the Cap Levy should be used to mitigate harm experienced by adjacent landowners who live and work next to the pits, and others want it to be used to continuously monitor air and water quality. Some preferred that all CAP Levy revenues be used to maintain haul routes. Others believed that the CAP Levy was too little. Still others maintained that the levy unduly influenced local decision-makers to approve aggregate extraction, even when residents were opposed to the development of pits for public health and scientific reasons.⁶⁵

Community Aggregate Payment Levy

Municipalities have the option of imposing a Community Aggregate Payment (CAP) Levy to help finance community benefits and offset community impacts from pit operations.

Under the provincial CAP Levy Regulation, a municipality may establish a levy for sand and gravel operators based on the tonnage of sand and gravel shipped.

The municipality may set the rate, but it cannot exceed the provincial maximum of \$0.40 per tonne.

Approximately half of Alberta's municipalities have a CAP Levy in place.

Excerpt from: Government of Alberta, 'Rural Disputes-Surface Materials Extraction Pits.'

⁶⁴ Rural Disputes, *supra* note 58.

⁶⁵ See note 2. These are from notes taken by the author of this Guide at the Airdrie consultation in 2017.

CHAPTER 9: LAWS THAT APPLY TO PITS ON PUBLIC LANDS

THERE ARE APPROXIMATELY 1,734 SURFACE MATERIAL LEASES operating on public land in Alberta. According to the provincial webpage, ‘Surface Materials Applications,’⁶⁶ the GOA made some changes between 2017 and 2018 in how it will review applications to explore for and extract aggregate from public lands. The GOA now has step by step instructions for applicants in the form of a ‘user guide,’⁶⁷ explaining how to use the online Electronic Dispositions System (EDS). The EDS can be used to request an ‘Aggregate Land Review’ (ALR) that precedes an application. There are many, many guidelines, directives and acronyms to get used to when using the EDS and trying to understand applications for public land dispositions for aggregate extraction!

➤ STEP ONE: APPLY FOR AN AGGREGATE LAND REVIEW

If an applicant wants to apply for a SME, a SML or a SMC, the first step is submitting a request for an Aggregate Land Review. If the Aggregate Land Review process is successful the GOA will issue the applicant an ALR identification number that will be used throughout the disposition application process, for example for a SML. The ALR number remains in effect for 45 days from the date of issue.

The ALR has many specific study and information requests.⁶⁸ For example, if an applicant answers yes to either of these questions, then specific studies and reports are required:

11. *Does this application impact wetlands? If “Yes” is selected, the user will have the option to attach either a Wetland Assessment Impact Report (WAIR) or a Wetland Assessment Impact Form (WAIF) as this becomes an optional attachment. Only one of the two can be attached and not both.*
12. *Indicate if lands located are within the 1:100-year flood plain. You may opt to include some remarks in the field below, which is relevant to your ALR application.*⁶⁹

The ALR helps the GOA reviewer to determine if the parcel of public land proposed for aggregate extraction is suitable for the purpose. It also helps GOA staff identify which of three potential public land allocation processes is best under the circumstances:

- a. tender;
- b. public pit; or
- c. an over 80 acres ‘bonus bid.’⁷⁰

⁶⁶ Government of Alberta, ‘Surface Materials Applications - Announcements’, online: <https://www.alberta.ca/surface-material-applications.aspx>. Last accessed on July 2, 2019.

⁶⁷ Government of Alberta, ‘Electronic Disposition System – Aggregate Land Review Request User Guide,’ January, 2019, (EDS User Guide) online: <https://www.alberta.ca/assets/documents/ep-eds-aggregate-land-review-request-user-guide.pdf>

Last accessed on July 20, 2019. An Aggregate Land Review is a process and is not a regulation under PLAR. It is used by GOA staff to ensure that the subject land is suitable for aggregate extraction.

⁶⁸ Ibid.

⁶⁹ EDS User Guide, *supra* note 66 at page 13.

⁷⁰ Government of Alberta, ‘Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land Questions and Answers’ 2017, online: <https://open.alberta.ca/dataset/da3c4769-8ad3-4cc3-9a87-24133f62ff3d/resource/0936d00e-fbfd-46be-90a5-826199b7b5e2/download/aggregateallocationdirectiveqa-sep01-2017.pdf>.

In the *PLAR Formal Dispositions Directive*,⁷¹ the GOA explains the differences between leases, licenses, agreements, permits and authorizations that may be granted as formal dispositions under the *Public Lands Act*. These descriptions are worth reading to help citizens understand the different rights and interests to public land that may be granted under different circumstances and for different users. For example, while a lease grants exclusive use of public land by the lessee, a license does not grant exclusive use by the license holder. For example, in accordance with PLAR, SMC dispositions may only be granted for one year and are not assignable.⁷²

GOA staff also use the ALR process to identify public land that may be habitat for species at risk under the federal *Species at Risk Act* (SARA), for example to comply with the *Emergency Order for the Protection of the Greater Sage-Grouse* that came into force on February 18, 2014.⁷³

➤ **STEP 2: SUBMIT THE FORMAL DISPOSITION APPLICATION**

An applicant for a formal disposition of public land for surface material extraction does not need to comply with the Code of Practice for Pits. Instead, pit operators who apply for a disposition to develop any size pit on public land must adhere to *Guidelines for Acquiring Surface Material Disposition on Public Land* (Guidelines for Public Lands).⁷⁴ These guidelines reflect regulatory provisions in the *Public Land Administrative Regulation* (PLAR).⁷⁵

A pit operator must apply for a formal disposition of public land and usually seeks a disposition for SME before applying for a SML. The process for submitting a formal disposition application is outlined in a 2018 document entitled: *Public Lands Formal Disposition Application Process*.⁷⁶ This process is consistent with the *PLAR Formal Dispositions Directive*⁷⁷ that was put in place in January 2014. This directive provides GOA staff with internal operational policy that ensures all applications for formal dispositions of public land for whatever purpose are received, processed and decided upon in a fair and consistent manner throughout the province. The Directive follows the ‘PLAR Approvals and Authorizations Administrative Procedures’⁷⁸ policy document that was released in January 2014 to provide consistent guidance to all GOA staff that receive and process applications for dispositions.

⁷¹ Government of Alberta, ‘PLAR Formal Dispositions Directive’, online: <https://open.alberta.ca/dataset/abb5e024-2988-4ea5-b65e-b0568335d30f/resource/d7a64e63-ff3c-4e55-b355-010b0c4d87a7/download/2014-plar-formal-disposition-directive-jan-30-2014.pdf> at page 6. Last accessed July 15, 2019.

⁷² PLAR, *supra* note 20, s.108 and s.109.

⁷³ See Government of Alberta, ‘Electronic Disposition System Overview,’ online: <https://www.alberta.ca/electronic-disposition-system-overview.aspx>. Last visited on July 20, 2019. Also see *Species at Risk Act* (S.C. 2002, c. 29).

⁷⁴ Government of Alberta, ‘Guidelines for Acquiring Surface Material Dispositions on Public Land,’ 2008 edition, online: <https://open.alberta.ca/dataset/1eb8d00a-3e87-45a9-8fc8-6da6e93776a5/resource/cad87fda-c373-467c-a065-324f738498e3/download/2008-guidelinesurfacedispositionspublicland.pdf>. Last visited on July 25, 2019.

⁷⁵ Government of Alberta, ‘Public Land Dispositions’ (Public Land Dispositions), online: <https://www.alberta.ca/public-lands-dispositions.aspx>. Last visited on July 10, 2019.

⁷⁶ Government of Alberta, ‘Public Lands Formal Disposition Application Process,’ online: <https://open.alberta.ca/dataset/b876aa29-a13a-4643-aa24-fb1a9c578715/resource/e4cc713f-0a95-4f49-96ea-cd5a12c4ea2c/download/plformaldispappprocess-apr19-2018.pdf>. Last accessed July 15, 2019.

⁷⁷ PLAR Formal Dispositions Directive, *supra* note 71.

⁷⁸ Government of Alberta, ‘PLAR Approvals and Authorizations Administrative Procedures,’ January 30, 2014, online: <https://open.alberta.ca/dataset/84c136e7-fb84-412d-bf5d-92035671e735/resource/da9bb00e-8364-4a5a-b528-372b24f8955a/download/approvalsauthorizationsprocedures-jan2014.pdf>. Last accessed on July 15, 2019.

Applying for a disposition of public land for any purpose attracts a four-step process as outlined in *Public Land Dispositions*,⁷⁹ an online submission service for applicants. The second step described in that service is entitled: *Submitting Your Formal Disposition Application*.⁸⁰

While applications for SMLs must be submitted through the EDS system,⁸¹ applications for SME and SMC are not submitted through EDS. According to the GOA, these applications are:

[S]ubmitted partially as a paper application with all the required documentation, and should be submitted by e-mail instead of through EDS. A digital plan is still required for these dispositions. Application requirements are the same for paper applications and for applications submitted through EDS.⁸²

Applicants must pay a non-refundable application fee when they submit their formal disposition application, and the GOA cautions that if the application is incomplete, the non-refundable fee is forfeited. The non-refundable application fee ensures that complete applications are submitted.

➤ STEP 3: APPLICATION REVIEW AND NOTICE OF DECISION

In 2014, the GOA issued the *PLAR Approvals Directive*,⁸³ which provides internal operational procedures that must be followed by GOA staff when reviewing any application for disposition of public land. When reviewing formal applications for dispositions for aggregate the GOA uses the formalized ‘*Process for the issuance and maintenance of applications/amendments and dispositions for surface material (excluding peat) operations on public land.*’⁸⁴ This document describes how GOA staff review an application for technical and administrative completeness and make a decision whether to approve after reviewing the merits of the application and documents submitted. The process includes circulation to other government departments. After the formal review is complete, GOA staff will notify the applicant of the decision.

The *Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use on Public Land*⁸⁵ and the more recent *Alberta Aggregate (Sand and Gravel) Allocation Directive for*

⁷⁹ Public Land Dispositions, *supra* note 75.

⁸⁰ Government of Alberta, ‘*Submitting Your Formal Disposition Application*,’ online: <https://www.alberta.ca/submitting-your-formal-disposition-application.aspx>. Last accessed on July 15, 2019.

⁸¹ See note 74 at page 21.

⁸² See Public Lands Formal Disposition Application Process *supra* note 76.

⁸³ Government of Alberta, *PLAR Approval Directive*, online: <https://open.alberta.ca/dataset/245a3ace-ab0d-416f-bbe5-9bf1da408c96/resource/0bbc0410-dcfe-4068-aa09-1c8c6f0052dd/download/2014-plar-approvals-directive-jan-30-2014.pdf>. Last accessed on July 15, 2019.

⁸⁴ Government of Alberta, ‘*Process for the issuance and maintenance of applications/amendments and dispositions for surface material (excluding peat) operations on public land.*’ online: <https://open.alberta.ca/dataset/process-for-issuance-and-maintenance-for-surface-material-excluding-peat-operations-on-public-land/resource/3d0a4932-3ef4-4f1c-9753-c329c6f4b184>. Last accessed on July 29, 2019.

⁸⁵ Government of Alberta, ‘*Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use on Public Land*,’ (Aggregate Allocation Policy) online: <https://open.alberta.ca/publications/aggregate-allocation-policy-for-commercial-use-on-public-land>. Last accessed on July 29, 2019.

Commercial Use on Public Land ⁸⁶ (2017) are internal administrative documents used by GOA staff to allocate sand and gravel extraction on public land for commercial purposes.

Key principles underlying the allocation policy and the directive are as follows:

Principles:

1. Allocation decisions must align with regional and sub-regional plans, and/or locally developed land allocation strategies that are consistent with such plans and this Directive.
2. Allocation decisions must respect and integrate with other relevant land management policies, identified areas of sensitivity, and registered interests within the Crown Land Registry (e.g., Protective Notations, sensitive fish and wildlife zones, etc.).
3. Allocation decisions must consider cumulative impacts.
4. Allocation decisions will be made in the public interest.⁸⁷

➤ **STEP 4: DISPOSITION MANAGEMENT**

After the formal disposition of land has been granted, the GOA has several requirements that a disposition holder must comply with for the duration of the exploration, lease or license for surface material extraction. These requirements can be found on the GOA website, *Public Lands Dispositions – Disposition Management*.⁸⁸

A disposition holder cannot mortgage, assign, transfer or sublease a disposition without the approval of the Director in accordance with section 43 of the *Public Lands Act*.⁸⁹

CHAPTER 10: PUBLIC INFLUENCE AND PARTICIPATION IN DECISION-MAKING PROCESSES

HAVING A SAY IN DECISION-MAKING PROCESSES for where and how aggregate extraction operations will occur in your community is not a simple process. The opportunities for citizens to participate are very limited, especially in the provincial decision-making arena. For example, as noted earlier, the public is not notified and there are no opportunities for the public to have a say about an application for a registration for developing and operating a Class 1 aggregate extraction pit on private land.

If a person files a Statement of Concern or a Notice of Appeal of the Director's decision to issue a *Water Act* approval for an activity associated with a registration, the person must be able to prove that he or she is directly affected by the decision in order to be heard by the Environmental Appeal Board. Proving you are directly affected is very difficult unless you are an adjacent landowner or will suffer physical or economic harm as a result of the approval.

⁸⁶ Directive, *supra* note 14.

⁸⁷ Directive, *supra* note 14 at page 1.

⁸⁸ Government of Alberta, 'Public Lands Dispositions – Disposition Management Post-Issuance,' online: <https://www.alberta.ca/disposition-management-post-issuance.aspx>. Last accessed on July 15, 2019.

⁸⁹ PLA, *supra* note 12, s.43.

Since 2009, the PLA and PLAR enable and provide for appeals of dispositions for SME, SML and SMC on public land, but only to a limited class of people. For example, other than the applicant, only persons who can prove that they are directly and adversely affected by the disposition may file a notice of appeal to the Alberta Public Lands Appeal Board (APLAB). The PLAR, s.212, provides who can appeal a decision by a Director under the PLA, as follows:

Who may appeal:

212 (1) The following persons have standing to appeal a **prescribed decision**:

- (a) a person to whom the decision was given;
- (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.

(2) A person referred to in subsection (1)(a) or (b) is a prescribed person for the purposes of section 121 of the Act.

Only a ‘prescribed decision’ can be appealed as set out in section 211 of PLAR. Notices of Appeal are submitted to the APLAB and must be filed within the prescribed time period. As stated by the APLAB in *Trost v. Director, Provincial Approvals Section, Alberta Environment and Parks*, 2018 (Trost)⁹⁰ it is difficult for adjacent landowners to learn about a disposition and file a Notice of Appeal within the required filing period:

[14] The Board recognizes there is minimal opportunity for nearby landowners to become involved in the disposition application process until the appeal process, and participation can only occur if the landowner is aware a disposition has been granted. The legislation does not require public notice of a disposition application, making it difficult to know when a disposition is granted.

[15] Although the Board sees the limitations in the legislation related to public participation, the Board must make its decision based on the legislation and the rules of natural justice and fairness.

In *Trost*, the first the appellant heard of the two dispositions at an open house for a municipal development permit, and in one case that was 4 years after the disposition had been granted by the GOA.

APLAB is a relatively new institution and board decisions since 2013 can be found online at <https://ext.aep.alberta.ca/lands/alberta-public-lands-appeal-board/Pages/decisions-of-the-board.aspx>. **Table 5** below summarizes appeals listed on the webpage that were addressed by the APLAB between April 25, 2018 and August 2019. You will note that most appeals were filed by applicants and not by concerned citizens.

The information in **Table 5** will give you a better understanding of the types of dispositions and authorizations that the GOA may issue under the PLA to different user groups, and how applications for SME, SML and SMC are processed, issued or refused. The appeals that involved refusals of SME, SML and SMC are highlighted for ease of reference. The APLAB process provides for mediation between the GOA and appellants. In the appeals listed

⁹⁰ *Trost v. Director, Provincial Approvals Section, Alberta Environment and Parks, re: Tor Land Resource Inc. and 541466 Alberta Ltd.* (7 June 2018), Appeal Nos. 17-0038-0039-D (A.P.L.A.B.) (Trost at paras. 14 and 15).

in **Table 5**, it is worth noting that after mediation a disposition was often issued to the applicant that included the conditions negotiated during mediation.

You may also keep track of ‘Hearing Announcements’ on the APLAB website at: <https://ext.aep.alberta.ca/lands/alberta-public-lands-appeal-board/Pages/hearing-announcements.aspx>.

TABLE 5: Alberta Public Lands Appeal Board decisions between April 25, 2018 and August 1, 2019

Appellant Name Appeal Number	Date	Disposition	Outcome of Appeal	Board decision/ discontinuance
Kalinski No. 17-0028-CD	July 2, 2019	Refusal of License of Occupation (DOC) – Decision on costs	Costs denied applicant	Report: Both parties were partially successful
South Shepard Communities Inc. No. 18-0011-R	June 28, 2019	Refusal of DOC for a residential community.	DOC issued	Parties negotiated an agreement. Discontinuance
Kerr Appeal No. 18-0021	June 3, 2019	Refusal of DOC	Appeal withdrawn	Discontinuance
Rothwell No. 18-0014 Appellant was not the applicant – lived near the shore	June 3, 2019	Refused a grant of Temporary Field Authorization (TFA) for shoreline improvements	Mediation Appeal withdrawn	Discontinuance
Mainline Construction (2014) Ltd. No. 18-0017	May 15, 2019	Refusal of surface materials exploration (SME)	Mediation Appeal withdrawn	Discontinuance
Novatrix Energy Group Corp No. 18-0018	May 7, 2019	Refusal of SME	Appeal withdrawn	Discontinuance
1505440 Alberta Ltd. No. 18-0016	April 30, 2019	Refusal of SME	Mediation Appeal withdrawn	Discontinuance
MB Crushing Systems ULC No. 18-0023-DL1	April 1, 2019	Penalty for extraction of gravel from public land without authorization: \$247,236.31	Decision of the Board – stay granted until appeal heard	No harm incurred if penalty is stayed until the appeal is heard
Rothwell No. 18-0014-DOC See decision June 3, 2019	February 15, 2019	Stay of TFA until appeal is heard	Stay granted	Decision was to stay the approval for shoreline improvements until the appeal was heard

MacArthur No. 18-0010-R	January 21, 2019	Penalty issued for grazing cattle without authorization	Mediation Appeal withdrawn	Discontinuance Penalty reduced from \$4,000 to \$650
Tim Kalinski re: Alvin Bancarz No. 17-0028-R	December 20, 2018	Kalinski appealed to request access to needed portions of the Bancarz DLO for operation of his SML.	Appeal in favour of appellant	Decision for appellant – Bancarz had to allow access
Global Mat Ltd. No. 18-0008-R	November 19, 2018	Refusal of appellant’s request to decrease the size of the FGL to allow for a SML and DLO.	Mediation Appeal withdrawn	Discontinuance SML and DLO were issued
1657492 Alberta Ltd. No. 18-0006-R	November 19, 2018	Refusal of SML	Mediation Appeal withdrawn	Discontinuance SML issued
Sam Kalinski, Independent Industries Ltd. No. 18-0001	October 19, 2018	Refusal of SML	Mediation Appeal withdrawn	Discontinuance
Matthew Kalinski, 1798471 Alberta Ltd. No. 18-0003	October 19, 2018	Refusal of SML	Mediation Appeal withdrawn	Discontinuance
Jessica Brennan No. 18-0004	October 19, 2018	Refusal of SML	Mediation Appeal withdrawn	Discontinuance
Elisha Kalinski, Big Easy Ventures Ltd. No. 18-0005	October 19, 2018	Refusal of SML and DOC	Mediation Appeal withdrawn	Discontinuance
Jade Oilfield Maintenance Company, Russell Dolanz and Cindy Dolanz No. 18-0009	October 11, 2018	Appeal of Enforcement Order Re: entering, occupying, damaging public land without authorization	Mediation Appeal withdrew	Discontinuance
E. Construction Ltd. No 17-0043 D	October 9, 2018	Refusal of a request for an aggregate land review	Found for appellant	Appeal to proceed
Athabasca Minerals Incorporated No. 18-0007-D	September 14, 2018	Tender Not an appealable decision	Board did not have jurisdiction	Dismissed the appeal
Gionet et al. 17-0014-0016-D	September 4, 2018	Appeal of penalties in amount of \$2.1 million – asked for an extension to appeal period	Board found against the appellant	Dismissed the appeal
Reda Enterprises Ltd. No, 18-0022-D	August 29, 2018	Refusal of SME–asked for an extension to appeal period	Board found against the appellant	Dismissed the appeal

1657492 Alberta et al.	August 14, 2018	Refusals of affiliated SML and surface material license (SMC) re 80 acre rule*	Combined a number of appeals	Appeals will be heard
614 Alberta Corporation v. All Peace Asphalt Ltd. and County of Grande Prairie No. 16-0026-RD	July 4, 2018	Road use of DLO of aggregate company	New facts were brought forward	Board will reconsider its decision
Inshore Developments Ltd No. 16-0023-RD	May 30, 2018 Reconsidered on June 30, 2018	Refusal of DLO	Procedural error by GOA staff	Board reconsidered its report
Trost re: Tor Land Resource Inc. and 541466 Alberta Ltd, Nos.17-0038-0039-D	June 7, 2018	Appeals filed late by an adjacent landowner regarding SMLs	No reasonable excuse for not filing on time	Appeal dismissed
Conklin Aggregates Ltd. No. 17-0010-R	June 5, 2018	Road use agreement refusal of a DOC over a grazing lease	No procedural error	Board upheld the refusal
Vos No. 17-0012-ID1	May 10, 2018	Refusal of Land disposition request	Board had jurisdiction	Appeal is validly before the Board
1657492 Alberta Ltd., 1798471 Alberta Ltd., and Big Easy Ventures Ltd. Nos. 17-0025-0027-ID1	April 25, 2018	Refusal of SML	Asked for a stay of refusal	Board dismissed appeals as the appellants were asking for an injunction

*The “80-Acre Rule” is taken from the Alberta Aggregate (Sand and Gravel) Allocation Policy for Commercial Use of Public Land (Aggregate Policy).⁹¹ The rule prohibits an applicant from obtaining a surface material disposition where the applicant is “affiliated” with other disposition holders, such that the total of the surface material dispositions held by the applicant and the affiliates would be over 80 acres. In the case of an SME, the prohibition applies if the total is over 320 acres.

If you want a say in where aggregate extraction operations are located in your community, there are several opportunities for public participation provided to you through Part 17 of the *Municipal Government Act*.

➤ **Municipal statutory planning processes**

As a citizen you may participate in municipal development plan and area structure plan consultations regarding where aggregate might be best located in your community.

➤ **Open Houses**

Operators will sometimes offer community open houses where you can give them informal input on their proposed pit and operations, including haul routes.

⁹¹ Aggregate Allocation Policy, *supra* note 85.

➤ **Public Hearings**

Your council will conduct a public hearing for required land use bylaw amendments to allow for aggregate extraction in a land use district where this use was not previously contemplated.

➤ **Appeals**

Adjacent landowners and those who can prove that they are ‘affected’ by the issuance of a development permit are able to appeal the issuance of the development permit to the local subdivision and development appeal board. Every municipality has such an appeal board and you can discover more about your local board through the municipality’s website. For example, to access Rockyview County’s subdivision and development appeal board and learn how to appeal, see: <https://www.rockyview.ca/Government/BoardsCommittees/SubdivisionDevelopmentAppealBoard.aspx>

Whether you participate in open houses put on by operators, public hearings before councils, or appeal decisions made by local or provincial decision-makers, you need to be well informed about the proposed aggregate extraction operations and the potential impacts they may have on your health, quality of life or property. Sometimes you will need to contact subject matter experts, such as lawyers, engineers and hydrologists to help you understand the issues. Consultants are very expensive and the costs of appeal processes can be a deterrent to filing an appeal in order to have your say.

If you do decide to participate in any of these opportunities before your local council or an operator, please refer to “*A Citizen’s Guide to Appearing Before Municipal Councils in Alberta*” that can be downloaded from the Canadian Institute of Resources Law at [https://live-cirl.ucalgary.ca/sites/default/files/Occasional Papers/Occasional Paper %2367.pdf](https://live-cirl.ucalgary.ca/sites/default/files/Occasional%20Papers/Occasional%20Paper%202367.pdf)

CHAPTER 11: CONCLUSION

THIS GUIDE IS INTENDED TO HELP CITIZENS understand Alberta’s legal system that regulates and controls aggregate extraction development and operations on private and public lands so that they may participate in and influence decision-making processes about the location and operation of aggregate extraction pits.

This Guide introduced you to some of the laws, policies, regulations, codes of practice, guidance documents, and administrative guidelines and directives used by regulators and operators that may provide background as to how decisions are made about aggregate operations in Alberta

The regulatory system is complex and difficult to negotiate and understand in order to have a say and influence decision-making. As well, there are limited opportunities for you to make submissions or appear before provincial decision-makers to have a say in pit registrations on private land, or dispositions of public lands for aggregate extraction. However, you may want to provide municipal decision-makers with submissions outlining your concerns about where pits should be located in your community, and other operational aspects, such as noise attenuation, reasonable hours of operation, dust control and storm drainage management. In many

municipalities, councils rely on citizens to provide them with shared community values and performance objectives when regulating aggregate extraction as a local industry.

The recent *Larsen* appeal⁹² is a good example of how one directly affected citizen who lives near the Freeman River in northern Alberta had a say and influenced the conditions of an approval for an end pit lake and flood protection works associated with a registered Class I pit near the river floodplain. Mr. Larsen, with generous help and financial support from scientists and other experts launched an appeal of a *Water Act* approval to the Environmental Appeal Board.⁹³ The issues that the Environmental Appeal Board agreed to hear on appeal were as follows:

1. *Will the construction and maintenance of the end pit lake and river flood protection works, as allowed under the Approval, impact surface water quality and quantity, including but not limited to the Freeman River and the end pit lake itself, and the aquatic resources in the Freeman River?*
2. *Will the construction and maintenance of the end pit lake and river flood protection works and the mining operations impact groundwater quantity and quality?*
3. *Are the terms and conditions of the Approval reasonable to protect the surface and groundwater in the area and the aquatic environment in the Freeman River?* ⁹⁴

The Environmental Appeal Board did not have jurisdiction to address any of the matters raised by the Appellant about the GOA's decision to issue a registration for the pit in that location.

After hearing from the parties to the appeal, the Environmental Appeal Board recommended to the Minister of Environment and Parks that the *Water Act* approval be varied with several conditions to address the issues addressed on appeal, as follows:

- a) The Approval Holder be required to monitor the end pit lake for seasonal thermal stratification, for five years after the closure of the Phelan Pit and prior to the issuance of a reclamation certificate, and address any indication of seasonal thermal stratification to the satisfaction of the Director;
- (b) the Approval Holder be required to conduct geochemical testing of overburden material to be used in construction of the end pit lake, and address any contaminants or trace elements that are likely to be mobile, to the satisfaction of the Director;
- (c) the Approval Holder be ordered to submit the Monitoring Program Proposal to the Director as required by the Approval, within six months of the Minister's Order; and
- (d) the Approval Holder be required to conduct a study regarding extending flood control measures to the northwest of the Project with the upstream erosion hazard area, taking into account historical evidence of water incursions, and submit the study to the Director who will determine to what extent the flood control measures need to be extended.⁹⁵

⁹² *Larsen v. Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: Lafarge Canada Inc.* (28 August 2018), Appeal No. 15-021-ID1 (A.E.A.B.) (Larsen). Larsen was found to be directly affected because of particular business interests. A hearing was held on April 30, 2019. The Board provided the Minister with its Report and Recommendations on May 30, 2019.

⁹³ *Ibid.*

⁹⁴ *Ibid.*

⁹⁵ From the Final Decision of the Environmental Appeal Board in *Larsen*, *supra* note 1. See Ministerial Order Ministerial Order Respecting Environmental Appeals Board Appeal No. 15-021, Jason Nixon, July 3, 2019.

The Ministerial Order that was issued on July 3, 2019 with respect to the Larsen appeal reflected the recommendations of the Environmental Appeal Board. In this way, one concerned citizen was able to influence some aspects of the aggregate extraction operations in his community and perhaps better protect the water quality and quantity in the Freeman River. However, Mr. Larsen invested significant time, energy and financial resources into the appeal process to have his say.

The key to successfully influencing your council or other government decision-makers about the location of aggregate extraction development and operations is to be well-informed and to provide reasonable alternatives and solutions to problems that you can foresee. By providing you with a glimpse into the regulatory system for approving aggregate extraction in Alberta, this Guide may inform you as you pursue your objectives as a concerned citizen and participant in decision-making.