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A Guide to the Basics and What's New in Alberta's Municipal Legislation for Environmental Management

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List of Acronyms

Acronym	Description
ABCA	Alberta Court of Appeal
ACA	Alberta Community Partnerships
ALSA	*Alberta Land Stewardship Act*
Constitution	Canadian Constitution
EPEA	*Environmental Protection and Enhancement Act*
GMBs	Growth Management Boards
ICFs	Intermunicipal Collaboration Frameworks
LUF	*Alberta Land-use Framework*
LUPs	*Land Use Policies, 1996*
Mallet	James S. Mallet – Author, 2005
MGA	*Municipal Government Act*
MARAM	Municipal Risk Assessment and Management
Province	Alberta, Government of Alberta
RSC	Regional Service Commissions
RTRIAs	Red Tape Reduction Implementation Acts
SSRP	*South Saskatchewan Regional Plan, 2014-2024*
Tribunal	Land and Property Rights Tribunal

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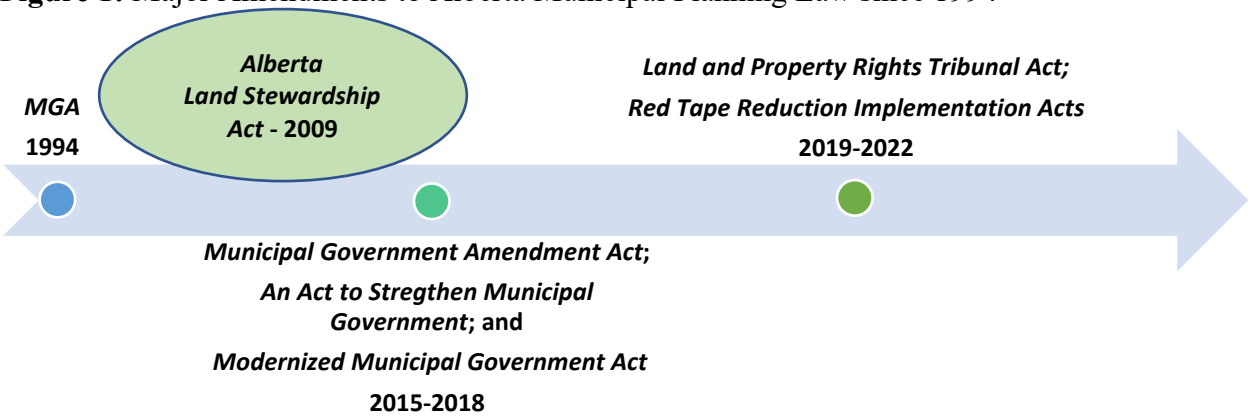
1.0 Purpose of this Guide

Alberta municipalities are facing greater environmental management risks and challenges than ever before, particularly in relation to climate impacts, greenhouse gas emissions, habitat protection and pollution. The magnitude of these risks and challenges is exacerbated by the limited scope and scale of municipal authority to take preventative, mitigative and responsive action when necessary. In 2005, James S. Mallet (Mallet) published *Municipal Powers, Land Use Planning, and the Environment: Understanding the Public's Role*.[1] Writing for the general public about opportunities for participation in local land-use decision-making processes and environmental management, Mallet shared that:

> Generally speaking, municipalities are not directly empowered to regulate or protect the environment. However, under the [*Municipal Government Act*] and other provincial statutes, they have broad powers to act and pass bylaws in hundreds of ways that directly or indirectly affect the environment. Municipalities can only exercise their power for municipal purposes, which are broadly stated by the Act: to govern effectively, provide public services and infrastructure, and develop and maintain healthy communities.[2]

Mallet's quote reflects the state of municipal authority in Alberta to regulate and control human activities in the environment as it was in 2005. However, significant amendments have been made to the *Municipal Government Act* (*MGA*)[3] since 2005 that affect municipal responsibilities for managing local impacts on the environment during construction and operation of servicing infrastructure, and during development of privately-owned land. New laws, such as the *Alberta Land Stewardship Act* (*ALSA*),[4] also emerged this century requiring municipal participation in local and regional systems for environmental management.

Figure 1: Major Amendments to Alberta Municipal Planning Law since 1994



[1] James. S. Mallet, *Municipal Powers, Land Use Planning, and the Environment: Understanding the Public's Role*, 2005, Environmental Law Centre, Edmonton, Alberta.
[2] *Ibid* at 3.
[3] *Municipal Government Act,* RSA 2000, c M-26 [*MGA*].
[4] *Alberta Land Stewardship Act*, SA 2009, c A-26.8 [*ALSA*].

Both the Canadian Institute of Resources Law and the Environmental Law Center have recently published citizen's guides to help the public participate in municipal and provincial land-use and environmental management decision-making processes.[5] Those documents are companions to this *Guide to the Basics and What's New in Municipal Legislation and Environmental Management* (this Guide). The public's critical role in articulating shared community values for environmental management, and participating in environmental assessment processes and land-use decision-making has, if anything, increased since 2005.[6]

The primary purpose of this Guide is to update the reader to recent changes regarding municipal purposes and municipal authority for environmental management on local and regional geopolitical scales. This Guide is not a rewrite of Mallet's 2005 paper, but a supplement that highlights emergent policy and regulatory change. The information in this Guide is presented in an 'iterative' fashion throughout because all aspects of municipal environmental management are interconnected. This Guide has five main objectives, as follows:

- First, to explain that municipalities have had 'general jurisdiction' to participate in local environmental management since 1994 when the *MGA* was first enacted;
- Second, to determine the extent to which two of the new municipal purposes under Part 1 of the *MGA* (Part 1) change or enhance municipal authority for environmental management;
- Third, to flesh out the extent to which Intermunicipal Collaboration Frameworks (ICFs) created pursuant to recently enacted Part 17.2 of the *MGA* (Part 17.2) affect municipal responsibilities for environmental management during construction, maintenance, and operation of municipal and intermunicipal servicing infrastructure;
- Fourth, to review several amendments in Part 17 of the *MGA* (Part 17) that enhance municipal authority to participate in environmental management during planning and development of privately-owned lands; and
- Fifth, where appropriate, to discuss changes to the *MGA* that may affect private landowner rights and public participation in land-use decision-making when and where environmental management is critical to issuing development permits and subdivision approvals.

2.0 Defining the Environment in the Municipal Context

The negative impacts on the environment associated with rapid urban growth and economic development, often associated with the oil and gas industry, are visible in many municipal landscapes in Alberta.

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[5] Judy Stewart, *A Citizen's Guide to Appearing Before Municipal Councils in Alberta*, Canadian Institute of Resources Law, University of Calgary, 2019 [Stewart, " A Citizen's Guide"]; and see also Judy Stewart, "Do Recent Amendments to Alberta's Municipal Government Act Enable Management of Surface Water Resources and Air Quality." Alta. L Rev 55 (2017) 1009 [Stewart. "Recent Amendments"]. See also Jason Unger, *A Guide to Public Participation in Environmental Decision-Making in Alberta*, Environmental Law Centre of Alberta, 2009.

[6] A.J. Sinclair, M. Doelle & R.B. Gibson, "Next generation impact assessment: Exploring the key components" (2022) 40(1) Impact Assessment and Project Appraisal, 3-19.

Major impacts occur during and after the construction of linear intermunicipal servicing infrastructure, and during the 'stripping and grading' and intensification of use on municipal and privately-owned lands, and include:

- loss of natural infrastructure such as wetlands, riparian lands, and ravine systems that store runoff and spring snowmelt for slow release of water over the summer and fall;
- loss of natural undulating landforms, such as 'knob and kettle' wetland formations (prairie potholes) and forested areas that store carbon and provide food, shade, and shelter for a variety of native flora and fauna; and
- loss of natural landscape connectivity affecting wildlife corridors and habitat for biodiversity.

There is no universal definition of the term "environment." Some statutes include a definition, and some do not. The "environment" is not defined in the *MGA*. However, according to a principle of statutory interpretation, "*statutes in pari materia"* [7] the definition of environment from the *Environmental Protection and Enhancement Act* (*EPEA*)[8] can be used when interpreting the term in the *MGA*.

> "Environment" means the components of the earth and includes
> (i) air, land and water,
> (ii) all layers of the atmosphere,
> (iii) all organic and inorganic matter and living organisms, and
> (iv) the interacting natural systems that include components referred to in subclauses (i) to (iii).[9]

Since 2005, limited provincial policy or institutional change has emerged to help municipalities understand their roles and responsibilities for environmental management at the local or regional geopolitical scales. This is especially true with respect to ecosystems or "the interacting natural systems"[10] described in *EPEA* subsection 1(t) (iv) above.

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[7] See Stewart, "Recent Amendments", *supra* note 5 at 1012:

> "Environment" is not defined in the MGA, although the term is used in both the pre-amendment and post-amendment contexts. Air, land, and water are the primary components of the environment, as the term is currently defined in the EPEA … The *statutes in pari materia* rule of statutory construction may be used to import the EPEA definition of environment into the MGA. In Black's Law Dictionary, *in pari materia* means: "On the same subject; relating to the same matter. It is a canon of construction that statutes that are *in pari materia* may be construed together, so that inconsistencies in one statute may be resolved by looking at another statute on the same subject.

See also: *R v Loxdale* (1758), 1 Burr 445, 97 ER 394 (KB (Eng)) at 395 and *Sharbern Holding Inc v Vancouver Airport Centre Ltd*, 2011 SCC 23 at para 117.

> Elsewhere, speaking for the Supreme Court of Canada, Justice Rothstein stated: Lord Mansfield explained this principle in *R. v. Loxdale* (1758), 1 Burr. 445, 97 E.R. 394, observing that "[w]here there are different statutes *in pari materia* though made at different times, or even expired, . . . they shall be taken and construed together . . . and as explanatory of each other" (p. 395). Estey J. provided a more modern explanation of this principle, and explained how "sometimes assistance in determining the meaning of [a] statute can be drawn from similar or comparable legislation within the jurisdiction or elsewhere" (*Nova, an Alberta Corp. v. Amoco Canada Petroleum Co.*, 1981 CanLII 211 (SCC), [1981] 2 SCR 437, at p. 448).

[8] *Environmental Protection and Enhancement Act*, RSA 2000, c E-12 [*EPEA*].

[9] *Ibid*, s 1(t).

[10] For a discussion of this conundrum, please refer to Judy Stewart, *A Citizen's Guide to Ecology and the Law in Alberta,* Canadian Institute of Resources Law, Occasional Paper #77, 2022, online:

3.0 Basics Regarding the MGA, Municipal Authority, and Environmental Management

A brief overview of municipal purposes, authorities, and responsibilities that the Alberta Legislature (Province) has delegated to municipalities provides the context for discussing recent amendments to the *MGA*. Although these basic matters of municipal jurisdiction and authority for environmental management were discussed in depth in Mallet's paper, there have been some significant changes since 2005.

3.1 Municipalities are not a level of government

The Canadian Constitution (Constitution)[11] provides for two "levels of government:" federal, and provincial.[12] As set out in Sections 91 and 92 of the Constitution, the federal and provincial governments have "exclusive decision-making authority" over enumerated "heads of power." However, no level of government has exclusive decision-making authority over the environment or environmental management. The federal and provincial governments have "overlapping jurisdiction and responsibilities" to regulate and control human activities that may directly or indirectly negatively impact the environment at respective geopolitical scales.[13]

As a general statement, Canadian provinces own the natural resources located within provincial boundaries. For example, the Alberta *Water Act* [14] clarifies that the "property in and the right to the diversion and use of all water in the province is vested in Her Majesty in right of Alberta except as provided for in the regulations."[15] It is irrelevant whether the water is found on provincially owned, municipally owned, or privately-owned lands within the Province.

The provinces also have exclusive jurisdiction over municipal governments. All Canadian municipalities are created through provincial or territorial statutes. In Alberta, the *MGA* is the provincial statute that enables formation, amalgamation and dissolution of Alberta municipal corporations.[16] In addition to the authority provided in the *MGA* and any other enactment,[17] Alberta municipalities have limited natural person powers.[18]

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https://cirl.ca/sites/default/files/Occasional%20Papers/Occasional%20Paper%20%23%2077.pdf. [Stewart, "Occasional Paper #77"]. Accessed on November 1, 2023.

[11] For a complete list of the legislation that is included in the Canadian Constitution, see *Constitution Act, 1982*, s 52(2), being Schedule B to the Canada Act 1982 (UK), 1982, c 11 [*Constitution*].

[12] *Ibid*. See sections 91 and 92.

[13] *Friends of the Oldman River Society v Canada (Minister of Transport),* 1992 CanLII 110 (SCC), [1992] 1 SCR 3.

[14] *Water Act*, RSA 2000, c W-6 [*Water Act*].

[15] *Ibid*, s 3.

[16] *MGA*, *supra* note 3, ss 76-112. In the *MGA*: a 'municipality' means:

> (i) a city, town, village, summer village, municipal district or specialized municipality, (ii) repealed 1995 c24 s2, (iii) a town under the *Parks Towns Act*, or (iv) a municipality formed by special Act, or, if the context requires, the geographical area within the boundaries of a municipality described in subclauses (i) to (iv).

[17] *MGA*, *supra* note 3:

> s. 1((j) "enactment" means (i) a n Act of the Legislature of Alberta and a regulation made under an Act of the Legislature of Alberta, and (ii) an Act of the Parliament of Canada and a statutory instrument made under an Act of the Parliament of Canada, but does not include a bylaw made by a council.

[18] *Ibid*, ss 4 and 6. See also ss.1(t) where "natural person powers" means the capacity, rights, powers and privileges of a natural person.'

However, municipalities are not a level or order of government, and they do not have "exclusive decision-making authority." Municipalities have delegated authority to achieve municipal purposes[19] and to provide local governance for the people and the lands within delineated geopolitical boundaries.[20] This includes any delegated authority to lead or participate in environmental management at local and regional scales.[21]

3.2 Municipal powers, capacity, bylaws, and risk assessment and management

As Mallet pointed out in 2005, municipal corporations have the powers and capacity[22] provided in the *MGA* and any other enactment. Municipal jurisdiction to manage components of the environment and ecosystems is not always obvious given the plethora of enactments, regulations, codes of practice and administrative guidelines that municipalities comply with and implement when acting within the boundaries of the municipality.

Generally speaking, elected municipal councils take action through simple resolutions of the majority of council, or through bylaws enacted at duly constituted regular or special meetings of council.[23] Municipalities must ensure that bylaws[24] are consistent with federal and provincial enactments or they may be found to be void to the extent of the inconsistency.[25] If a court rules that a bylaw or a provision therein is inconsistent with an enactment, the inconsistent provision or bylaw will be voided and treated as if it were never enacted.

Under Part 2, Section 7 of the *MGA* (Part 2), municipalities have "general jurisdiction" to pass and enforce bylaws for municipal purposes regarding the local matters listed below:

- the safety, health and welfare of people and the protection of people and property;
- people, activities and things in, on or near a public place or place that is open to the public;
- nuisances, including unsightly property;
- transport and transportation systems;
- businesses, business activities and persons engaged in business;
- services provided by or on behalf of the municipality;

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[19] *Constitution*, *supra* note 11, s 92(8): Municipal Institutions in the Province.

[20] Stewart, "Recent Amendments", *supra* note 5. Stewart explains the powers, duties, functions of Alberta municipalities regarding the environment.

[21] *MGA*, *supra* note 3:

> s. 1((j) "enactment" means (i) a n Act of the Legislature of Alberta and a regulation made under an Act of the Legislature of Alberta, and (ii) an Act of the Parliament of Canada and a statutory instrument made under an Act of the Parliament of Canada, but does not include a bylaw made by a council.

[22] *Ibid*, s 5:

> A municipality (a) has the powers given to it by this and other enactments (b) has the duties that are imposed on it by this and other enactments and those that the municipality imposes on itself as a matter of policy, and (c) has the functions that are described in this and other enactments.

[23] *Ibid*, ss 180 and 181.

[24] *Ibid,* Part 2: Bylaws. Municipal may make decisions by resolution or by bylaw. In some circumstances, municipalities must pass bylaws. In those cases, there are legislated processes that a municipality must follow. Bylaws must have three separate readings before enactment. All bylaws passed under Part 17 require the municipality to hold a public hearing before second reading of the bylaw. Properly enacted bylaws are enforceable in Alberta courts.

[25] *Ibid,* s 13.

- public utilities; and
- wild and domestic animals and activities in relation to them. [26]

Since 2001 and the Supreme Court of Canada (SCC) decision in *114957 Canada Ltée (Spraytech, Société darksome) v. Hudson (Town)* (*Spraytech*), [27] "health and welfare" bylaws, enacted under statutory authority similar to Part 2 of the *MGA*, have been utilized by Canadian municipalities to manage human activities that are known to have local environmental impacts.

In *Spraytech*, the Town of Hudson, Quebec enacted a bylaw to prohibit local application of pesticides for aesthetic purposes, while still allowing pesticide application for businesses and other exempted users. The Quebec municipal statute at that time contained similar language to what is provided in the Part 2 of the *MGA* regarding general jurisdiction to pass bylaws. The pesticide company questioned the town's jurisdiction to pass the bylaw because the provincial government of Quebec already regulated pesticide application. Spraytech claimed the bylaw was inconsistent with the provincial law. In his reasoning, Mr. Justice Lebel, as he was then, stated:

> In the present case, the subject matter of the by-law lies within the ambit of normal local government activities. It concerns the use and protection of the local environment within the community. The regulation targets problems of use of land and property, and addresses neighbourhood concerns that have always been within the realm of local government activity.[28] (Emphasis added.)

However, long before *Spraytech*, local nuisance and community standards bylaws were regularly used by Alberta municipalities to control dust and smoke and to address emergent local environmental management issues. Since *Spraytech*, a number of new so-called 'environmental bylaws' have been enacted to protect the environment and the health and welfare of citizens; for example, by regulating and controlling harmful emissions from idling vehicles.[29]

When an Alberta court is asked to determine whether a municipality has authority to pass a bylaw to achieve a municipal purpose, such as maintaining a safe and viable community or fostering the well-being of the environment, Section 9 of Part 2 provides interpretative guidance, as follows:

> The power to pass bylaws under this Division (General Jurisdiction to Pass Bylaws) is stated in general terms to
>
> (a) give broad authority to councils and to respect their right to govern municipalities in whatever way the councils consider appropriate, within the jurisdiction given to them under this or any other enactment, and
> (b) **enhance the ability of councils to respond to present and future issues in their municipalities**.[30] (Emphasis added.)

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[26] *Ibid*, s 7. See s.12 that authorizes the process for agreement between municipalities re: bylaws.
[27] 2001 SCC 40 [*Spraytech*].
[28] *Ibid* at para 54.
[29] Town of Okotoks, Bylaw 18/15: *A Bylaw of the Town of Okotoks in the Province of Alberta to Regulate Vehicle Idling*, online: https://www.okotoks.ca/sites/default/files/2020-12/Bylaw%2018-15.pdf Accessed on November 1, 2022. A compilation of municipal environmental bylaws is being developed by the author for release in 2024.
[30] *MGA*, *supra* note 3, s 13.

Under Part 3 of the *MGA* (Part 3), municipalities also have delegated "special powers"[31] to pass bylaws and regulate and control a suite of public utilities within municipal boundaries.[32] Special bylaws enacted under the authority of Part 3 have authorized municipalities to address local environmental impacts of public utilities and servicing infrastructure since 1994 when the *MGA* was first enacted. If enacted for a new municipal purpose, such as fostering the well-being of the environment, such bylaws are well within the jurisdiction of municipal governments.

Public utilities include "systems or works used to provide" one or more of the following for public consumption, benefit, convenience, or use, as well as the thing that is provided for public consumption, benefit, convenience or use, [33] such as the water, fuel or electricity.

Construction, maintenance, and operation of most public utilities are regulated through *EPEA*, the *Water Act* and other provincial and federal enactments. All public utility systems are inextricably connected to landscapes or water within the municipality, and also impact the air, biodiversity, and ecosystem dynamics. As a result, public utilities may impact other municipalities both upstream and downstream from the municipality where they are constructed, maintained, and operated. Public utilities include complex systems for providing:

- water or steam;
- sewage disposal;
- public transportation operated by or on behalf of the municipality;
- irrigation;
- drainage;
- fuel;
- electric power;
- heat;
- waste management; and
- residential and commercial street lighting,

Roads, public transportation systems, and public utilities provided by (or on behalf of) municipalities under Part 3 are highly regulated "municipal assets" that are vulnerable to the effects of severe weather events arising from climate change. Although the effects of climate change were not contemplated when the *MGA* was enacted in 1994, Section 9 described above, provides broad authority for municipalities to respond to such emergent matters when developing municipal bylaws to regulate and control these complex systems.

Municipal asset risk assessment and management (MARAM) is not new and is practiced regularly across the country.[34] In Alberta, MARAM is required indirectly through mandates to include

[31] *Ibid*, Part 2 of the *MGA*.
[32] *Ibid*, ss 16 to 27.6. The Province has developed design standards for local roads and bridges that can be found on Government of Alberta, 'Local Road Bridges', online: https://www.alberta.ca/local-road-bridges.aspx. Accessed on January 3, 2022.
[33] *Ibid*, s 1(y) defines public utilities. See MGA, *supra* note 3, Part 2, Division 3: Public Utilities.
[34] See Federation of Canadian Municipalities, Government of Canada, Alberta Urban Municipalities Association & Rural Municipalities of Alberta, 'Risk: How Asset Management Can Help: Participant Workbook,' 2018, online:

municipal asset assessment reports as part of annual financial reports that must be submitted to the Minister of Municipal Affairs before May 1st each year.[35]

The municipal insurance system is a primary driver of MARAM in the face of increasing severe weather events, because some of the most expensive natural disasters in recent history have occurred in Alberta.[36] Tyler (2022)[37] suggests that municipal responsibility for MARAM is critical from an economic standpoint in the face of climate change, as follows:

> Specifically, the consequences of increasing frequency and intensity of extreme weather will directly affect land use, water supply, infrastructure performance, and related administrative costs, including insurance costs. These impacts of extreme temperatures, wildfire, flooding, and super cell wind and hail events will have direct and significant municipal costs. Risk assessment and asset management at the municipal level are increasingly an important part of municipal and inter-municipal governance because of its direct financial implications.[38]

Severe weather events associated with climate change have introduced uncertainty and larger risk of failure into increasingly complex and dynamic local and regional public utility systems.[39]

MARAM of municipal and intermunicipal servicing infrastructure may require municipalities to take an integrated systems approach to both local and regional environmental management. First, potential risks to environmental components, (such as local landscapes, natural infrastructure and water resources) caused by floods, drought, winds and hailstorms must be identified. Second, the vulnerability of local and regional scale public utilities and servicing infrastructure that is connected to those identified environmental components, must be assessed and managed.

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https://rmalberta.com/wp-content/uploads/2018/07/2018-05-16workbook-risk-PRESSbleeds.pdf. Accessed on December 31, 2021. This initiative is offered through the Municipal Asset Management Program, which is delivered by the Federation of Canadian Municipalities (FCM) and funded by the Government of Canada.

[35] See Alberta Municipalities Association, "Asset Management", online: https://www.abmunis.ca/advocacy-resources/infrastructure/asset-management. Accessed on January 3, 2021. Proper asset management is not just a good idea; it's a requirement. The Municipal Government Act requires every Alberta municipality to complete and submit annual audited financial statements to Municipal Affairs by May 1 of each year. The financial statements must be prepared in accordance with generally accepted accounting principles for municipal governments in Canada. Accounting standards set by the Public Sector Accounting Board (PSAB 3150) in 2009 require municipalities to record and report their non-provincial engineered public infrastructure (tangible capital assets) in those financial statements.

[36] Public Safety Canada, "The Canadian Disaster Database", online: https://www.publicsafety.gc.ca/cnt/rsrcs/cndn-dsstr-dtbs/index-en.aspx. Accessed on September 5, 2022.

[37] Mary Ellen Tyler, 'Climate Risk Assessment and Adaptation Considerations for Municipal Governance' which is scheduled for publication in 2023 through the AUMA and the School of Public Policy.

[38] *Ibid*.

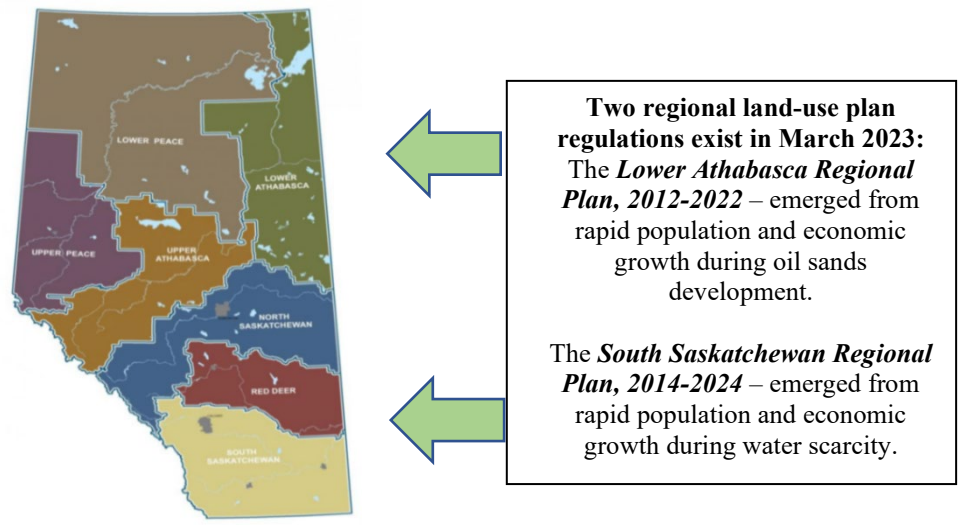
[39] *Ibid*.

4.0 Recent Changes to the *MGA* and the Introduction of *ALSA*

Like all other provincial legislation, the *MGA* was enacted and is amended from time to time by the Alberta Legislature. As was illustrated in Figure 1 above, many changes were made to the *MGA* in the last two decades.[40] New municipal purposes and responsibilities for managing local and regional scale impacts of human activities on environmental components (air, land, water, biodiversity, and ecosystems) were also formalized under the *ALSA*.

All municipal land-use decisions must comply with the *ALSA*[41] and any regional land-use plan[42] for the region (watershed) where the municipality is situated. For example, all decisions made by municipalities in the Calgary Metropolitan Area must comply with the *South Saskatchewan Regional Plan, 2014-2024* (SSRP).[43] Currently, there are only two regional land-use plans enacted by the Province, and both are due for a ten-year review.

Figure 2: Alberta's Seven Land-use Regions based on Watersheds



Source: Adapted from a Government of Alberta map of regional planning regions

Through *ALSA* and subsequent amendments to the *MGA*, the Province has delegated some additional authority to municipalities to enact bylaws and develop policies and programs to foster the "well-being of the environment."[44] City Charter legislation (Part 4.1 of the *MGA*) and

[40] Stewart, "A Citizen's Guide", *supra* note 5.
[41] *MGA*, *supra* note 3, s. 618.3.
[42] Government of Alberta, *South Saskatchewan Regional Plan 2014–2024* (amended May 2018), online: *Government of Alberta* https://open.alberta.ca/dataset/13ccde6d-34c9-45e4-8c67-6a251225ad33/resource/e643d015-3e53-4950-99e6-beb49c71b368/download/south-saskatchewan-regional-plan-2014-2024-may-2018.pdf [*SSRP*]. Accessed on December 18, 2021. Government of Alberta, *Lower Athabasca Regional Plan*, 2012 – 2022, 2012, online: https://landuse.alberta.ca/LandUse%20Documents/Lower%20Athabasca%20Regional%20Plan%202012-2022%20Approved%202012-08.pdf. [LARP]. Accessed on January 3, 2022.
[43] *SSRP*, *supra* note 42.
[44] Stewart, "Recent Amendments", *supra* note 5.

regulations,[45] and Part 17.1 of the *MGA* (Part 17.1) mandating two growth management boards (GMBs), are both new institutional arrangements affecting Edmonton and Calgary and their associated metropolitan areas. Through these changes, the big cities and associated metropolitan areas have been granted more authority to engage in environmental management. Using the authority granted in their respective Charter Regulations, Edmonton and Calgary have made significant investments into environmental management systems and climate change adaption programs.[46] The two mandated GMBs for the metropolitan areas include environmental management policies in their respective growth plans.

For the purpose of this Guide, relevant changes to the *MGA* are grouped in five broad categories, illustrated in Table 1 below.

Table 1: MGA Amendments affecting Municipal Environmental Management

Category	Part of MGA	Year of Amendments
Growth Management Boards (GMB) for Edmonton and Calgary Metropolitan Areas	Part 17.1	2013 with significant amendments in 2019.
City Charter legislation (2015) and regulations for Edmonton and Calgary (2018)	Part 4.1	2015-2018
New municipal purposes	Part 1	2016-2017
Intermunicipal collaboration frameworks (ICFs)	Part 17.2	2016 with significant amendments in 2020. ICF regulation was repealed.
Land use bylaw provisions **Section 640** **Section 664**	Part 17	2020-2022 Subsection 640(4) repealed and subsection 640(1.1) was added.

[45] See *City of Calgary Charter Regulation*, 40/2018, where s. 4 modifies MGA section 7 general jurisdiction to pass bylaws, as follows:

> **Modification of Act** 4(1) This section modifies the Act as it is to be read for the purposes of being applied to the city. (2) Section 7 of the Act is to be renumbered as section 7(1), and (a) in subsection (1), (i) the following is added after clause (h): **(**h.1) the well-being of the environment, including bylaws providing for the creation, implementation and management of programs respecting any or all of the following: (i) contaminated, vacant, derelict or under-utilized sites; (ii) climate change adaptation and greenhouse gas emission reduction; (iii) environmental conservation and stewardship; (iv) the protection of biodiversity and habitat; (v) the conservation and efficient use of energy; (vi) waste reduction, diversion, recycling and management. (Emphasis added.)

The *Edmonton City Charter Regulation* includes this same section 4.

[46] See City of Edmonton, 'ENVISO: Edmonton's Environmental Management System', online: https://www.edmonton.ca/city_government/environmental_stewardship/enviso-iso-14001-environmental-management. Accessed on November 27, 2022. See City of Edmonton, 'Climate Change Adaption and Resiliency Strategy,' online: https://www.edmonton.ca/city_government/city_vision_and_strategic_plan/climate-change-adaptation-strategy. Accessed on November 27, 2022. See City of Calgary, 'Envirosystem,' online: https://www.calgary.ca/environment/programs/envirosystem.html. Accessed on November 27, 2022. See City of Calgary, 'Calgary's Climate Strategy: Pathways to 2050' June 2022, online: https://www.calgary.ca/environment/climate/climate-strategy.html. Accessed on November 27, 2023.

In-depth discussion of City Charter Regulations and GMBs is outside the scope of this Guide, which focuses primarily on *MGA* amendments that affect environmental management in all Alberta municipalities wherever located in the Province. These amendments include:

- Two new municipal purposes under Part 1;
- ICFs under Part 17.2; and
- Recent amendments to Part 17, especially Section 640 regarding land-use bylaws, and Section 664 regarding environmental reserves and easements.

5.0 New Municipal Purposes

A 'preamble' was added to the *MGA* in 2016 through the *Modernized Municipal Government Act* (*MMGA*),[47] providing context statements for the various amendments that followed.

- Alberta's municipalities, governed by democratically elected officials, are established by the Province, and are empowered to provide responsible and accountable local governance in order to create and sustain safe and viable communities;
- Alberta's municipalities play an important role in Alberta's economic, environmental and social prosperity today and in the future;
- the Government of Alberta recognizes the importance of working together with Alberta's municipalities in a spirit of partnership to co-operatively and collaboratively advance the interests of Albertans generally; and
- the Government of Alberta recognizes that Alberta's municipalities have varying interests and capacity levels that require flexible approaches to support local, intermunicipal and regional needs.[48]

As noted in the Preamble, no two municipal corporations are exactly alike in that they have varying social-political attributes, landscapes, financial circumstances, and capacity levels. No matter how different they are in all these respects, Alberta municipal corporations may only exercise delegated authority for the municipal purposes provided in the *MGA*.

The purposes of Alberta municipalities were expanded following the Province's adoption of the *Land-Use Framework* (LUF) in 2008.[49] The subsequent enactment of the *ALSA* in 2009 to implement LUF was accompanied by the creation of two regional plan regulations and regional-scale surface water, air quality, and biodiversity management frameworks (environmental management frameworks).[50]

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[47] *Modernized Municipal Government Act*, SA 2016, c 24 [*MMGA*].

[48] *Ibid*, Preamble.

[49] Government of Alberta, *Land-use Framework,* 2008, online: https://landuse.alberta.ca/LandUse%20Documents/Land-use%20Framework%20-%202008-12.pdf [LUF].

[50] See "Environmental Management Frameworks for the South Saskatchewan Region" (July 2014), online: *Government of Alberta* https://open.alberta.ca/dataset/012b7c48-ada3-49d7-8de8-a378ef785078/resource/8c8ceb08-d138-417b-a7a7-3bd9ed3acb57/download/ssrp-environmentalmanamgementfs-jul21-2014.pdf [SSRP Frameworks].

> Building on existing Alberta government environmental policy, legislation and regulation, frameworks provide regional context for the long-term management of existing activities and for future development. . . A management framework: •

ALSA requires that all provincial and municipal land use decision-makers adhere to *ALSA* regulations and any environmental management frameworks put in place for the region. In regions where no regional plan or environmental management frameworks exist, municipalities must ensure that their planning and development activities and decisions are consistent with the provincial *Land Use Policies* (LUPs) [51] that have been in place since 1996.[52]

Prior to recent amendments, Alberta's municipalities only had three purposes. Currently, there are six purposes, as follows:

> (a) to provide good government,
> (a.1) to foster the well-being of the environment,
> (a.2) to foster the economic development of the municipality, (added in 2022 without public consultation)
> (b) to provide services, facilities or other things that, in the opinion of council, are necessary or desirable for all or a part of the municipality,
> (c) to develop and maintain safe and viable communities, and
> (d) to work collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services.[53] (Emphasis on new purposes relevant to this Guide.)

Fostering the well-being of the environment, and working collaboratively with neighbouring municipalities to plan, deliver and fund intermunicipal services are new municipal purposes amended into the *MGA* after extensive public consultation and debate in the Legislature.

Prior to these amendments, the environment *per se* was hardly mentioned in the *MGA*. In that regard, little has changed except for the broad purpose statement.

The meaning and intent of the new purpose to "foster the well-being of the environment" remains unclear.[54] Until the courts determine what municipalities must do to achieve this new purpose, or the Province provides specific regulations or policy directives, fostering the well-being of the environment may be narrowly interpreted by municipal governments during decision-making processes.

However, given the dramatic impact of severe weather events arising from changing climate patterns, such as the floods in Calgary in 2013 and the wildfires in northern Alberta, a major shift toward local and regional environmental management may emerge with voluntary input from

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identifies desired regional objectives, • identifies key indicators and regional threshold values, including triggers and limits, • sets the foundation for ongoing monitoring, • requires evaluation and reporting on results, and • provides for communication of the results to Albertans.

[51] Alberta Municipal Affairs, *Land Use Policies*, Order in Council, 522/96. November, 1996 [LUPS].

[52] See *MGA*, *supra* note 3 s 618.4(1):

> Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).

[53] *Ibid*, s 3.

[54] See Guy Greenaway & Jason Unger, (2019) 'To Foster the Well-Being of the Environment: Interpreting Alberta Municipalities' New Purpose, 'online: https://www.rockies.ca/files/reports/municipal_env_purpose.pdf. Also see Stewart "Recent Amendments", *supra* note 5 at 1035.

municipalities.[55] It is still too early to tell. Significant amendments to the *MGA* and regulations continue to be enacted.[56]

6.0 Intermunicipal Collaboration Frameworks (ICFs)

During land development, municipalities are responsible for ensuring that appropriate servicing infrastructure is constructed by landowners and developers at their own costs. When a Certificate of Construction Completion is accepted by a municipality for required infrastructure, such as a road or water pipeline, the municipality is acknowledging that the developer has met the conditions of the contractual arrangement in place. Typical 'development agreements' require a) that the land developer provide sufficient security upfront to complete the infrastructure if the developer defaults, and b) that the developer maintains the infrastructure for a number of years to ensure that there are no defects in the infrastructure. When the municipality issues a Final Acceptance Certificate to a land developer,[57] the municipality then becomes the owner of the infrastructure and the service provided, for example, a road, water reservoir, or sewer line that services a new subdivision or development. That infrastructure is then considered a public utility and municipal asset.

Municipal construction and operation of facilities and infrastructure for water treatment and distribution; wastewater collection, treatment and disposal; storm drainage collection, treatment and disposal; and waste collection and disposal systems are all regulated and controlled through the *EPEA* and *Water Act* regulations, codes of practice, and administrative guidelines.[58]

These systems for providing necessary public utilities to support the health and welfare of citizens and business operations are all complex, dynamic social-ecological systems where society's needs, for example for treated drinking water, are inextricably connected to local landscapes and water resources. Managing municipal and intermunicipal servicing infrastructure also requires managing these landscape features and water resources to sustain these social-ecological systems.[59]

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[55] But see Greenaway & Unger, *supra* notes 54 at 16:

> From the perspective of the 'holes' in this paper, more work needs to be done to clarify the environmental decision-making areas affected (or created) by this new purpose, and to offer pragmatic direction for municipalities with regard to implementation and available tools. However, that work prerequires a broader conversation amongst municipalities, offering the chance to come to some consensus on the presumed implications of this fundamental shift. After that, there will be a need for Alberta Municipal Affairs to offer high-level policy direction around this issue; not a prescriptive road map, but at least an indication of the routes that are dead-ends, and some sense of the intended ultimate destination..

[56] See the most recent *The Red Tape Reduction Statutes Amendment Act, 2022*, (formerly Bill 21) amends 15 pieces of legislation across 9 different ministries, supporting economic growth and job creation while saving Albertans time and money. Subsection 3(a.2) was added to the *MGA* through this Act.

[57] See City of Calgary, 'Urban Development Online Services,' online: https://www.calgary.ca/pda/pd/urban-development/urban-development-online-services.html. See also City of Calgary, Consulting Engineer's Field Services Guidelines (7th ed.), (2020), online: https://www.calgary.ca/pda/pd/urban-development/consulting-engineers-field-services-guide.html. Accessed on December 31, 2021.

[58] See EPEA, *supra* note 8, and the *Wastewater and Storm Drainage Regulation* (AR 119/93) and associated codes of practice.

[59] See Stewart, "Occasional Paper #77, *supra* note 10 at vii:

> In Alberta, as elsewhere in the world, complex, dynamic social-ecological systems (SES), where social and ecological systems have become inextricably connected, have emerged as a result of human activities in the

As Tyler[60] recently pointed out, municipal responsibilities for local environmental management have been delegated through the *MGA* and other enactments, such as *ALSA*, *EPEA* and the *Water Act*. However, landscapes, water resources, the air, and biodiversity are transboundary and trans-jurisdictional in nature. Tyler identified this problem, as follows:

> In compliance with Provincial policy, legislation and regulation related to oil and gas, and apart from taxation, municipal involvement with climate change and environment has been in land use planning, local service delivery, infrastructure, and public health and safety under the MGA/MMGA and other related Provincial legislation such as the Water Act. The delegated authority conferred to municipalities in dealing with these climate and environment issues is nonetheless complicated because air, water, and ecological systems do not spatially correspond to legal survey lines and generally function at spatial scales beyond individual municipal boundaries.[61]

This may be one reason why the other new municipal purpose requiring municipal collaboration to provide for these social-ecological systems for intermunicipal servicing has received concerted provincial attention. ICFs that force municipalities to collaboratively plan, deliver and fund intermunicipal services with their neighbours were recently mandated by the Province through Part 17.2. The purpose of Part 17.2 is to force development of ICFs among two or more adjacent municipalities for three strategic functions:

- to provide for the integrated and strategic planning, delivery and funding of intermunicipal services;
- to steward scarce resources efficiently in providing local services, and
- to ensure municipalities contribute funding to services that benefit their residents.'[62]

Regulation of ICFs is provided in Part 17.2.[63] The *Intermunicipal Collaboration Framework Regulation*[64] was enacted in 2017 to formalize ICFs and was repealed in 2020 as part of 'red tape reduction,' such that municipalities now have broad authority to provide a variety of intermunicipal servicing through ICFs.

For decades, contractual arrangements to jointly provide municipal servicing infrastructure have been authorized through Section 54 of the *MGA*, as follows:

> 54(1) A municipality may provide outside its municipal boundaries any service or thing that it provides within its municipal boundaries
> (a) in another municipality, <u>but only with the agreement</u> of the other municipality, and

ecosystem. A good example of a SES is an irrigation system with dams, reservoirs, water diversions, weirs, canals, pipes, spigots, and other irrigation infrastructure that deliver water to dry lands. Natural water bodies that supply water to an irrigation system no longer exist separately from human culture, social institutions, and physical infrastructure.

[60] Tyler, *supra* note 37.
[61] Tyler, *supra* note 37.
[62] See *MGA*, *supra* note 3, Part 17.2.
[63] *Ibid*, s 708.27.
[64] *Intermunicipal Collaboration Framework Regulation,* AR191/2017. (Repealed).

(b) in any other location within or adjoining Alberta, but only with the agreement of the authority whose jurisdiction includes the provision of the service or thing at that location. (Emphasis: contractual basis.)

As well, intermunicipal infrastructure development and servicing through regional servicing commissions (RSC), under Part 15.1 of the *MGA* (Part 15.1)[65] has been authorized for many years, although these provisions were significantly amended through the *Red Tape Reduction Implementation Act, 2020.*[66] Smaller municipalities without sufficient population, personnel, or financial resources to fulfil servicing requirements, such as water supply and wastewater treatment, must resolve to form and participate in an RSC.[67]

An RSC is a corporation governed by its own Board of Directors. Board members are appointed, and the chair of the commission designated in accordance with the commission's bylaws.[68] RSC bylaws provide details about how the construction of infrastructure and delivery systems for the services provided by the commission will be financed and maintained over time. Traditionally, RSCs have been subject to vigorous provincial oversight, and their formation required approval by Order of the Minister of Municipal Affairs (Minister).[69]

While ICFs are new institutional arrangements under the *MGA*, they are essentially contractual agreements that specify which municipal services will be provided by the municipal parties to the ICF. The existence of an ICF relating to a service constitutes agreement among the municipalities that are parties to the ICF.[70] ICFs describe how the municipality that builds the required infrastructure and maintains or operates the services will be compensated by the other parties.

ICFs must include a dispute resolution process.[71] As such, ICFs are independent contractual agreements with a built-in process to ensure that all contracting parties comply with the terms of the contract. If one municipality does not comply with the dispute resolution process, any other party to the ICF may apply to the Court of King's Bench for an order directing the municipality to comply.[72] The Minister of Municipal Affairs has broad authority to intervene to ensure compliance with a Court Order directing compliance with the dispute resolution process.[73]

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[65] *MGA*, *supra* note 3, s 602.02 and s 602.04. Also see ss 602.09(01):

> Each board must pass bylaws (a) respecting the provision of the commission's services; (b) respecting the administration of the commission; (c) respecting the process for changing the directors of the board and the chair of the commission and for setting the terms of office of the board and the chair; (d) respecting the process for adding or removing members; (e) respecting the fees to be charged by the commission for services provided to its customers or to any class of its customers; (f) respecting the disposal of assets by the commission; (g) respecting the process for disestablishment of the commission, including the treatment of assets and liabilities on disestablishment.

[66] SA 2020, c 25.

[67] *MGA, supra* note 3, see s. 602.02. Regional service commissions are created by order of the Minister of Municipal Affairs after the municipalities each pass a resolution agreeing to jointly form a commission.

[68] *Ibid*, s 602.06.

[69] *Ibid*, s 602.04.

[70] *Ibid*, s 708.29 (5).

[71] *MGA, supra* note 3.

[72] *Ibid*, s 708.43(1).

[73] *MGA, supra* note 3.

> If a municipality fails to comply with section 708.4(1), any other municipality that is or will be a party to the framework may apply to the Court of Queen's Bench for an order requiring that municipality to comply with section 708.4(1). (2) If

In addition to the authority granted to the Minister to ensure compliance with Court Orders and arbitration awards, Section 708.412 authorizes Ministerial Orders to 'further' the development of an ICF, and to order that municipalities adopt an ICF that is binding on the municipalities.[74]

While ICFs are intended to be contractual in nature, the *MGA* authorizes the Minister to ensure that ICFs are entered into and that the contractual terms are enforced. If there is a conflict or inconsistency between an order made by the Minister and an action taken by a municipality or a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.[75]

Mandatory ICFs are governed by similar rules as voluntary RSCs provided in Part 15.1, and the Province currently contributes to their creation and operation through the Alberta Community Partnerships (ACP) program.[76]

Municipalities that are participating in GMBs and developing growth plans are not required to develop ICFs with their neighbours. However, they may choose to do so, for example when the servicing infrastructure they want or need is shared with an adjacent municipality that is not a party to the growth plan, or when they want to provide intermunicipal services that are not addressed through the growth plan.

What is new about ICFs is that all municipalities will contribute funding to services that benefit their residents.[77] One municipality should not be expected to pay the full costs for building, operating and maintaining servicing infrastructure that benefits citizens in another community; nor

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the Minister considers that a municipality has not complied with a framework, the Minister may take any necessary measures to ensure that the municipality complies with the framework. (3) In subsection (2), all necessary measures includes, without limitation, an order by the Minister (a) suspending the authority of a council to make bylaws in respect of any matter specified in the order; (b) exercising bylaw-making authority in respect of all or any of the matters for which bylaw-making authority is suspended under clause (a); (c) removing a suspension of bylaw-making authority, with or without conditions; (d) withholding money otherwise payable by the Government to the municipality pending compliance with an order of the Minister; (e) repealing, amending and making policies and procedures with respect to the municipality; (f) suspending the authority of a development authority or subdivision authority and providing for a person to act in its place pending compliance with conditions specified in the order; (g) requiring or prohibiting any other action as necessary to ensure that the municipality complies with the framework.

[74] *Ibid*, s 708.412:

Minister may make orders 708.412(1) Despite this Division or any arbitration occurring under this Division, the Minister may at any time make any order the Minister considers appropriate to further the development of a framework among 2 or more municipalities to carry out the purpose of this Part, including, without limitation, an order establishing a framework that is binding on the municipalities. (2) If there is a conflict or inconsistency between an order made by the Minister under this section and an action taken by a municipality or a growth management board, the Minister's order prevails to the extent of the conflict or inconsistency.

[75] *Ibid*, s 708.412.

[76] Funding intermunicipal services through general revenues is now considered a municipal responsibility; however, the Province contributes to ICFs and intermunicipal servicing infrastructure development. The 2021/2022 budget for the ACP was **$25.4 million**. See Government of Alberta, 'Alberta Community Partnerships,' online: https://www.alberta.ca/alberta-community-partnership.aspx [ACP]. Accessed on December 30, 2021.

[77] See *MGA*, *supra* note 3, s. 708.29(1):

A framework must describe the services to be provided under it that benefit residents in more than one of the municipalities that are parties to the framework. (2) In developing the content of the framework required by subsection (1), the municipalities must identify which municipality is responsible for providing which services and outline how the services will be delivered and funded.

should the Province pick up the tab for these services. In the past, municipalities have relied on provincial funds to develop, maintain, and operate intermunicipal infrastructure necessary for municipal sustainability but not located wholly within one municipality's boundaries.

Mandated ICFs may actually provide additional municipal authority and responsibility for collaboration and collective action to address MARAM for intermunicipal servicing infrastructure in the face of increased severe weather events. Part 17.2 was recently amended through the *Red Tape Reduction Implementation Act, 2019,*[78] and the previous ICF regulation was repealed. The new provisions are now written in broad terms and do not specify which intermunicipal services must be provided through ICFs.[79] As well, through the *Intermunicipal Collaborative Framework Workbook: Resource Guide for Municipalities* (ICF Workbook),[80] the Province encourages municipalities to consider environmental protection and climate change adaption services (climate resiliency) in an ICF, as follows:

> Many topic areas are well suited to intermunicipal and/or regional collaboration and should be considered for inclusion and evaluation when preparing an ICF. For example, the ICF process is a good opportunity to simultaneously engage on areas, such as:
>
> - Land use planning
> - Economic development
> - **Environmental protection**
> - Agricultural preservation
> - **Climate resiliency,** etc.[81] (Emphasis added.)

Many ICFs were put in place in 2019 before the most recent amendments to Part 17.2 were enacted, and before the ICF Workbook was made available. Therefore, environmental protection and intermunicipal climate resiliency were not addressed in early adoption of ICFs. That is because the previous provisions that listed mandatory and discretionary matters to be included in ICFs did not include these matters.

While integrated systems for environmental management and climate change adaption programs are not required components in ICFs, Part 17.2 does not restrict municipalities from collaborating to provide them at the intermunicipal scale if the contracting municipalities agree.

As a final note on ICFs, unless the municipalities that are developing and maintaining an ICF allow for public participation, the general public does not participate in the development or negotiations involved in development of ICFs.

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78 *Red Tape Reduction Implementation Act, 2019,* SA 2019, c. 22 [*RTRIA 2019*].

79 See *supra* note 76.

80 Stantec, Alberta Urban Municipalities Association, Rural Municipalities of Alberta & Alberta Municipal Affairs, *Intermunicipal Collaborative Framework Workbook: Resource Guide for Municipalities*, Version 3, 2020, (ICF Workbook) online: https://rmalberta.com/wp-content/uploads/2020/09/ICF-Workbook-Version-3-FINAL.pdfhttps://rmalberta.com/wp-content/uploads/2020/09/ICF-Workbook-Version-3-FINAL.pdf [ICF Workbook]. Accessed on December 31, 2021.

81 ICF Workbook, *supra* note 80 at 1.

7.0 Part 17: Municipal Planning and Development (Part 17)

The remainder of this Guide focuses on new or enhanced enabling provisions included in Part 17 through enactment of the *Red Tape Reduction Implementation Acts* (*RTRIAs*)[82] between 2019 and December 2022.[83] It should be noted that while the general public were meaningfully engaged in discussion of the *Modernized Municipal Government Act*[84] and incidental amendments made to the *MGA* between 2015 and 2018, similar public consultation did not precede the significant amendments made to the *MGA* through *RTRIAs* enacted between 2019 and 2022.

7.1 The Purpose of Part 17 and the new Tribunal

The purpose of Part 17 has not changed since 1994, and reads as follows:

> **Purpose of this Part**
>
> 617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted
> (a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and
> (b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,
>
> without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest. (Emphasis added.)

Traditionally, "improvements to the physical environment" were not intended to improve or foster the well-being of the environment as that term is defined in *EPEA*. "Improvements" were developments and buildings, as those terms are defined in Part 17. Improvements usually attracted property tax assessment.

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[82] For summaries of the RTRIAs, see Government of Alberta, 'Implementing Red Tape Reduction,' online: https://www.alberta.ca/implementing-red-tape-reduction.aspx#bill-21:

- *The Red Tape Reduction Statutes Amendment Act, 2022*, (formerly Bill 21) amends 15 pieces of legislation across 9 different ministries, supporting economic growth and job creation while saving Albertans time and money.
- The *Red Tape Reduction Implementation Act, 2021 (No. 2)* (formerly Bill 80) received royal assent on December 8, 2021 and updates 9 legislation items within the following themes: economic growth and job creation, smart regulation, and improving service delivery.
- The *Red Tape Reduction Implementation Act, 2021* (formerly Bill 62) received royal assent on June 21, 2021 and updates 8 sets of legislation within the following themes: economic growth and job creation, smart regulation, improving service delivery, digital transformation, and harmonization (the ability for jurisdictions to work better together).
- The *Red Tape Reduction Implementation Act, 2020 (No. 2)* (formerly Bill 48) received royal assent on December 9, 2020. Amendments were made to 12 pieces of legislation to cut red tape and make it easier for businesses to operate, including speeding up approval times and clarifying rules. Amendments also focused on digital transformation, creating jurisdictional harmonization and improving service delivery.
- The *Red Tape Reduction Implementation Act, 2020* (formerly Bill 22) received royal assent on July 23, 2020. Amendments were made to 14 pieces of legislation to promote job creation and support economic growth, expedite government approvals, eliminate outdated requirements, and reduce the administrative burden on municipalities.
- The *Red Tape Reduction Implementation Act, 2019* (formerly Bill 25) came into force December 5, 2019. It included changes to 11 pieces of legislation to reduce red tape, streamline overburdened processes and eliminate outdated rules.

[83] *Ibid*.

[84] *MMGA*, *supra* note 47.

Since 1994, the provincial government has provided no explanation regarding the difference between "the public interest" and the "overall greater public interest" with respect to infringing on the rights of individuals. However, the Alberta Court of Appeal (ABCA) and the Land and Property Rights Tribunal (Tribunal) have both provided insights into what the public interest may entail.

In 2002, prior to the significant amendments to the *MGA* that occurred between 2015 and 2018, the ABCA made the following observations concerning section 617 in *Love v. Flagstaff (County of) Subdivision and Development Appeal Board* (*Flagstaff*). [85]

> It is evident from a review of Part 17 of the *Act* that its purpose, or object, is to regulate the planning and development of land in Alberta in a manner as consistent as possible with community values. In so doing, it strikes an appropriate balance between the rights of property owners and the larger public interest inherent in the planned, orderly and safe development of lands. In this regard, s.617 contains an authoritative statement of legislative purpose and relevant community values.[86]

In an appeal to the now defunct Alberta Municipal Government Board (ABMGB) taking place after the amendments in 2019, *Whitby v. County of Wetaskiwin No. 10 (Subdivision Authority)* (*Whitby*), [87] the ABMGB said that the cost to the Appellant to fence lands to which an environmental reserve easement was to be registered as a condition of a subdivision approval was "necessary in order to 'maintain and improve the quality of the physical environment' now and into the future; protecting the creek is necessary for the overall greater public interest." The decision in *Whitby* reflects that judicial interpretation of "the physical environment" and "the overall greater public interest' may be changing, especially in the acknowledgement that it is in the overall greater public interest to protect water resources.

In the past two decades, the rights of property owners have emerged as significant matters to be protected during municipal land-use and subdivision decision-making processes through increased provincial governance and oversight. As a result, a new provincial institutional arrangement - the Tribunal - emerged between 2021 and 2022 to protect property rights and foster local economic development opportunities, while ensuring that agricultural lands and environmentally significant landscapes are conserved and managed during development.

Previously, disputes and appeals of decisions made by municipal development and subdivision authorities, and local Subdivision and Appeal Boards were made to the provincial Alberta ABMGB. The roles and duties of the ABMGB are now performed by the Tribunal, which was created in 2021 in accordance with the *Land and Property Rights Tribunal Act* (*LPRTA*).[88] The Tribunal's mandate and roles amalgamate those of the previous ABMGB, the Land Compensation Board, the Surface Rights Board and the New Home Buyer Protection Board.

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[85] 2002 ABCA 292 (CanLII) [*Flagstaff*]
[86] *Ibid* at para 23.
[87] 2019 ABMGB 44 (CanLII) [*Whitby*].
[88] *Law and Property Rights Tribunal Act,* SA 2020, c L-2.3 [*LPRTA*].

The Tribunal has significant decision-making powers and may confirm, vary, quash or substitute a decision of its own with respect to a decision, order or administrative penalty that is being appealed to the Tribunal under the existing legislation or the *LPRTA*.[89] The Tribunal may make rules respecting its practices and procedures in addition to the powers and duties given under legislation.[90] For example, when performing the subdivision appeals function under the *MGA*, the Tribunal applies the new LPRT S*ubdivision and Development Appeal Procedure Rules.*[91]

The Minister recommends the appointment of expert members and the Chair of the Tribunal to the Lieutenant Governor in Council, who then appoints them.[92] The Chair then appoints panels of members from a list of expert members who have also been appointed to hear disputes and appeals under different pieces of legislation, for example, the *MGA*.

If an affected landowner wishes to challenge a decision of the Tribunal, the standard of judicial review in the ABCA is reasonableness, [93] not correctness. This was clarified in the 2022 case of *Biernacki v. Alberta (Land and Property Rights Tribunal)* (*Biernacki*),[94] which followed the decision in *Moffat v. Edmonton (City) Police Service (Moffat)*.[95] In *Biernacki*, the ABCA discussed what constitutes a reasonableness review as presented in the *Moffat* decision, as follows:

> Reasonableness review is concerned with 'justification, intelligibility and transparency' in the decision-making process. Written reasons, where provided, are the 'primary mechanism by which administrative decision makers show that their decisions are reasonable.' A reasonable decision is one based on a 'rational chain of analysis' it being necessary to 'trace the decision maker's reasoning without encountering any fatal flaws in its overarching logic' such that one can be 'satisfied that 'there is [a] line of analysis within the given reasons that could reasonably lead the tribunal from the evidence before it to the conclusion at which it arrived' [citations omitted]'[96] (See also *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.)

It may be difficult for a person to challenge that a decision by the Tribunal was unreasonable, or that it did not follow a "rational chain of analysis" because the decision would be based on a particular set of facts and evidence put before the appeal body.

The amended *MGA* provides the general public with no new rights to appeal a planning and development decision to the Tribunal, because only certain parties have the right to appeal a development permit or a subdivision approval, and only under very limited circumstances.[97]

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[89] *Ibid*, s16.
[90] *LPRTA*, *supra* note 88, s 6.
[91] *LPRT Subdivision and Development Appeal Procedure Rules,* online: https://open.alberta.ca/dataset/e7938a28-0782-4294-8a54-ae0711e75055/resource/65dcd322-4906-4425-ac7e-7c7624c3d01d/download/ma-lprt-subdivision-development-appeal-procedure-rules-2021-10.pdf. [Tribunal Subdivision Rules]. Accessed on November 2, 2022.
[92] *LPRTA*, *supra* note, 87, s. 3.
[93] See *Biernacki v Alberta (Land and Property Rights Tribunal),* 2022 ABCA 56 [*Biernacki*].
[94] *Ibid*.
[95] *Moffat v Edmonton (City) Police Service*, 2021 ABCA 183 at para 71, [*Moffat*] citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65.
[96] *Moffat*, *supra* note 93 at 71.
[97] *MGA*, *supra* note 3, s 685. The applicant for a development permit and a person affected by the decision of the development authority may appeal. Whether a person is 'affected' is a matter of jurisdiction and is often determined

However, the Tribunal's rules of procedure allow for "intervenors" to an appeal, defined as:

> 'Intervenor' means (a) A municipality participating as an intervenor pursuant to section 508 of the Act, or (b) A person who has an interest that may be affected by an appeal but is not a party and whom the Tribunal permits to participate in its proceedings to the extent of that interest.[98]

For a recent example of the role played by intervenors in a municipal planning decision in the environmental management context, specifically wildlife corridors, see *Three Sisters Mountain Village Properties Ltd. v. Town of Canmore* heard by the Tribunal in 2022.[99] In that case, the intervenors were not individual members of the public: they were the Stoney Nakoda First Nation and a well-known environmental non-government organization with specific interests in the private lands that were proposed to be developed.

7.2 Part 17 and Alberta's White Area

In 1992 the *EPEA* had just been enacted, and the negative impacts of rapid urban growth and economic development on the environment were emerging as important provincial matters requiring oversight and specialized systems for management.

When the *MGA* was enacted in 1994, the responsibility for land-use planning and development of privately-owned lands in Alberta's White Area[100] was delegated to municipalities, for the most

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as a preliminary matter. If a person is not held to be affected then the appeal by that person does not proceed. See Frederick A. Laux - *Planning Law and Practice in Alberta* (3rd ed., looseleaf), (Edmonton: Juriliber, 2002), which in section 10.2(2) at page 10-15 states:

> Each case has to be judged on its individual merits to determine whether or not a person seeking to appeal has sufficient connection with, or particular interest in, a proposed development before it may be said that he is 'affected' within the meaning of the Act. Certainly, a person is affected if he owns property located sufficiently close to a proposed development so that it can be reasonably said that the development might adversely affect the use, enjoyment or amenities of this property. Tenants of such property should have status to appeal. A person whose interest might be purely financial is an 'affected' person as well, as in the case where a shopping centre operator seeks to appeal the issuance of a permit authorizing another shopping mall, and that new mall might prejudicially affect his business.
>
> Whether a person is affected sufficiently to be given status to appeal to a subdivision and development appeal board is a jurisdictional matter. In the absence of such status, an appeal board has no jurisdiction to entertain the appeal and, therefore, any resulting decision is a nullity.[77] Although the status of an appeal is a jurisdictional question, the board has the right and the duty to make a ruling on the point as a preliminary matter,[78] subject to a judicial review of such a ruling. Unless it is readily apparent on the face of the notice of appeal or other documents in the board's possession that the person seeking to appeal is a mere busybody, the board has no right to prejudge the validity of the appeal and reject it without hearing the appellant. [79] Moreover, in the course of deciding whether an appellant has standing, the board must base its decision on the circumstances of the case before it and cannot allow itself to be governed by past practice or by some general policy that it has formulated on the matter of status.[80]

For an example where Laux' discussion was followed see Calgary Subdivision and Development Appeal Board in SDAB2016-0022 (Re), 2016 CGYSDAB 22 (CanLII) at para. 8.

[98] Tribunal Subdivision Rules, *supra* note 91, s 1.6

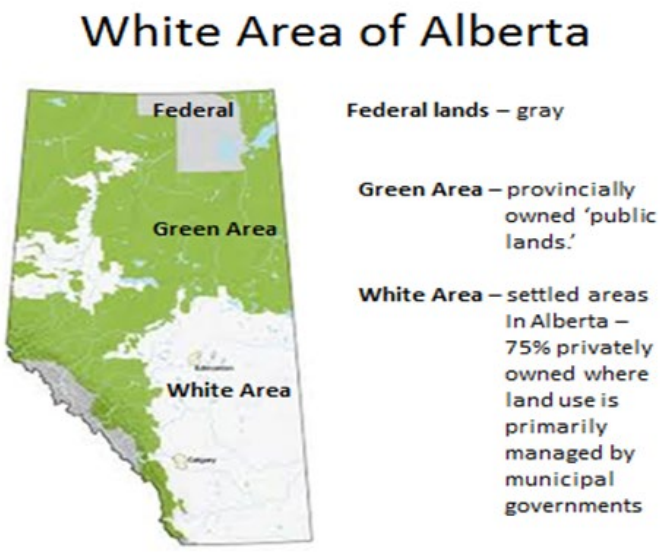
[99] *Three Sisters Mountain Village Properties Ltd. v Town of Canmore*, 2022 ABLPRT 671.

[100] The White Area of Alberta is the settled parts of the Province. These lands were first identified in 1948. 75% of lands in the White Area are privately owned. Public lands owned by the Province are 'the Green Area' of Alberta. First Nation Reserves are included in federal lands, but Band Councils have powers akin to municipalities.

part, to achieve the purpose of Part 17. The previous Alberta *Planning Act*[101] was repealed and planning and development provisions were incorporated into the MGA. These provisions changed very little until enactment of the *MMGA*, and subsequent amendments that continue under *RTRIAs*.

However, the Province retained the authority to regulate and control most natural resource diversion and extraction on private lands through provincial statutes and regulatory bodies, for example highways, pipelines, intensive livestock operations, forestry, mining, aggregate extraction, and extraction of oil and gas.[102] To this day, speaking in general terms, when applications are made and approvals granted for these "exempted" uses of privately-owned land, Part 17 municipal statutory plans and land use bylaws do not apply.[103] However, these provincially regulated human activities on private lands may have significant negative impacts on the environment at both local and regional scales if not properly managed.

Figure 3:White and Green Areas of Alberta



Source: Adapted from Government of Alberta, Agriculture and Forestry, 2015 General Boundary Information, Figure 1.

[101] *Planning Act*, RSA 1980, cP-40. (Repealed).

[102] *MGA*, *supra* note 3, ss 619 – 621 for land-uses in the environment that are exempt from application of Part 17 statutory plans and land use bylaw regulation.

[103] *Ibid*, s 618 and s 619. NRCB, ERCB, AER, AEUB or AUC means the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission.

> Section 619(1) A licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC prevails, in accordance with this section, over any statutory plan, land use bylaw, subdivision decision or development decision by a subdivision authority, development authority, subdivision and development appeal board, or the Land and Property Rights Tribunal or any other authorization under this Part. (2) When an application is received by a municipality for a statutory plan amendment, land use bylaw amendment, subdivision approval, development permit or other authorization under this Part and the application is consistent with a licence, permit, approval or other authorization granted by the NRCB, ERCB, AER, AEUB or AUC, the municipality must approve the application to the extent that it complies with the licence, permit, approval or other authorization granted under subsection (1).

7.3 Statutory Land-use Plans

Municipalities develop and enact four types of statutory "land-use' plans. These are:

- Intermunicipal Development Plans (IDP) with adjacent neighbours (mandatory);
- The Municipal Development Plan (MDP) for all lands within municipal boundaries (mandatory);
- Areas Structure Plans (ASP) for large landscapes that have not been developed (discretionary); and
- Area Redevelopment Plans (ARP) for developed areas of the municipality that need to be redeveloped in the future (discretionary).

7.3.1 Consistency and Hierarchy of Statutory Plans

Statutory plans must be consistent with one another and the municipality's land use bylaw (LUB). The LUB is the tool used by a municipality to implement council's LUPs as set out in statutory plans, such as any environmental conservation and management policies. In this Guide, amendments to the *MGA* affecting LUBs are discussed in detail at the end of this chapter.

The need for consistency between statutory plans was recently clarified in Section 638, as follows:

> **Consistency of plans**
>
> 638(1) A municipal development plan must be consistent with any intermunicipal development plan in respect of land that is identified in both the municipal development plan and the intermunicipal development plan.
> (2) An area structure plan and an area redevelopment plan must be consistent with
> (a) any intermunicipal development plan in respect of land that is identified in both the area structure plan or area redevelopment plan, as applicable, and the intermunicipal development plan, and
> (b) any municipal development plan.
> (3) An intermunicipal development plan prevails to the extent of any conflict or inconsistency between
> (a) a municipal development plan, an area structure plan or an area redevelopment plan, and
> (b) the intermunicipal development plan
> in respect of the development of the land to which the conflicting or inconsistent plans apply.
> (4) A municipal development plan prevails to the extent of any conflict or inconsistency between
> (a) an area structure plan or an area redevelopment plan, and
> (b) the municipal development plan.

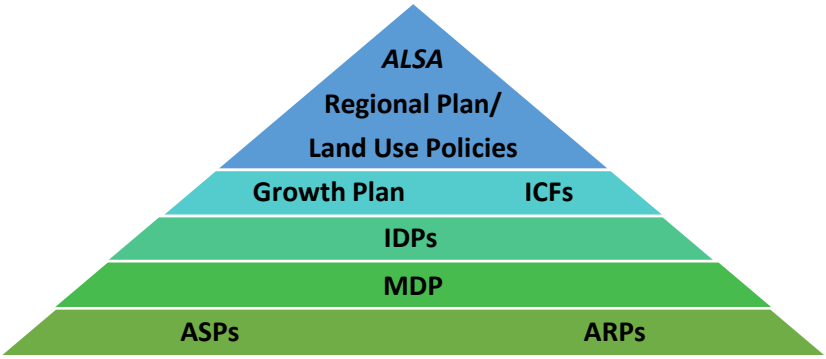
Section 638 seems to promote a 'hierarchy' of municipal statutory planning documents. However, while *ALSA* regional plans and the LUPs are at the apex of the hierarchy, as illustrated in Figure 4 below, any applicable growth plan under Part 17.1, and ICF under Part 17.2 take precedence over a municipality's statutory plans described in Section 638.

Figure 4 illustrates that there is **usually** only one *ALSA* regional plan or set of LUPs affecting a municipality, while there could be a growth plan, one or more ICFs, one or more IDPs, one MDP,

and many ASPs and ARPs. In the Calgary and Edmonton Metropolitan Areas, Figure 4 succinctly presents the complexity of land-use planning documents that development and subdivision authorities must refer to when reviewing and approving applications.

There are also several other municipal environmental management policy documents and plans, such as Master Drainage Plans and wetland conservation plans, plus federal and provincial regulations and codes of practice that must be considered by development and subdivision authorities when reviewing applications for development permits and subdivision approvals.

Figure 4: Hierarchy of Alberta Municipal Land-Use Planning Documents



A council is not bound by any of the policies in statutory plans,[104] but is bound by the provisions in a LUB. However, a council can easily amend a LUB provision at any time following a public hearing, whereas amendments to statutory plans can take considerable time to prepare before being put before council and the public hearing process. Statutory plan preparation usually attracts considerable public engagement before a final draft is provided to council for enactment.

7.3.2 Publicly Accessible List of Policy Documents

In 2016, the Province provided a new tool in Part 17 to help landowners, developers, and the general public understand the many land-use policy documents that a municipality uses when decision-making and approving development permits and plans of subdivision. Section 638.2 of the *MGA* requires that every municipality provide a list of all policy documents that the municipality has adopted that may be used during planning and development decision-making. As examples, a municipality may have a Transportation Plan, a Master Drainage Plan, and riparian land and wetland policies. These policies may protect natural infrastructure and environmentally significant landscapes when linear servicing infrastructure and land is being developed, or when land is being subdivided. These policy documents are usually referenced in the IDP and the municipality's statutory plans, and may be attached as schedules to the LUB.

[104] *MGA*, *supra* note 3, s 637.

The municipality must keep the list current and make it publicly accessible on the municipality's official website.[105] The listing (and accessible links) to these policies and plans allows citizens to be better informed and participate more effectively in land-use decision-making processes.

7.3.3 IDPs and the Environment

A recent amendment to the *MGA*, subsection 631(8)(v) requires that councils address the environment in IDPs.[106] Previously, councils had discretion whether to address environmental matters in an IDP. However, in March 2023, a municipal council still has discretion to address environmental matters in the MDP, ASPs and ARPs. This inconsistency between the requirement to address the environment in an IDP but not in other statutory plans could be a regulatory oversight given the new municipal purpose of fostering the well-being of the environment.

7.3.4 ASPs and Section 633(1) of the MGA

Section 633(1) explains that the purpose of an ASP is to provide "a framework for subsequent subdivision and development of an area of land." For a landowner to subdivide a parcel, an ASP is usually required for the lands where the parcel is located.

The ASP is a tool that many municipalities use to identify and protect environmentally significant landscapes from potential negative impacts of future development. ASPs are also used to set council policy concerning the use of "reserves" that may be required to be dedicated to the municipality at the time of land subdivision.[107] New and amended reserve provisions affect both "environmental reserves," lands that may be required to be dedicated to a municipality at the time of land subdivision, and new "conservation reserves," which are lands for which a municipality must pay the market value to the landowner or developer when a plan of subdivision is approved.

In this Guide, "subdivision of land and reserves" are discussed in detail below in this chapter. The Province has provided municipalities with new or significantly increased authority to conserve and manage environmentally significant landscapes located within their boundaries when lands are subdivided, and these provisions require detailed discussion.

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[105] *MGA*, *supra* note 3, s 638.2:

> **Listing and publishing of policies**
> 638.2(1) Every municipality must compile and keep updated a list of any policies that may be considered in making decisions under this Part (a) that have been approved by council by resolution or bylaw, or (b) that have been made by a body or person to whom powers, duties or functions are delegated under section 203 or 209, and that do not form part of a bylaw made under this Part. (2) The municipality must publish the following on the municipality's website: (a) the list of the policies referred to in subsection (1); (b) the policies described in subsection (1); (c) a summary of the policies described in subsection (1) and of how they relate to each other and how they relate to any statutory plans and bylaws passed in accordance with this Part; (d) any documents incorporated by reference in any bylaws passed in accordance with this Part.
> (3) A development authority, subdivision authority, subdivision and development appeal board, the Land and Property Rights Tribunal or a court shall not have regard to any policy approved by a council or by a person or body referred to in subsection (1)(b) unless the policy is set out in the list prepared and maintained under subsection (1) and published in accordance with subsection (2).

[106] *See MGA, supra* note 3, s 631(8)(v).

[107] *See Ibid,* s 633(2)(b). Policies for reserves are usually addressed in MDPs, but policies **may be** refined as a council sees fit for the specific landscapes identified in an ASP.

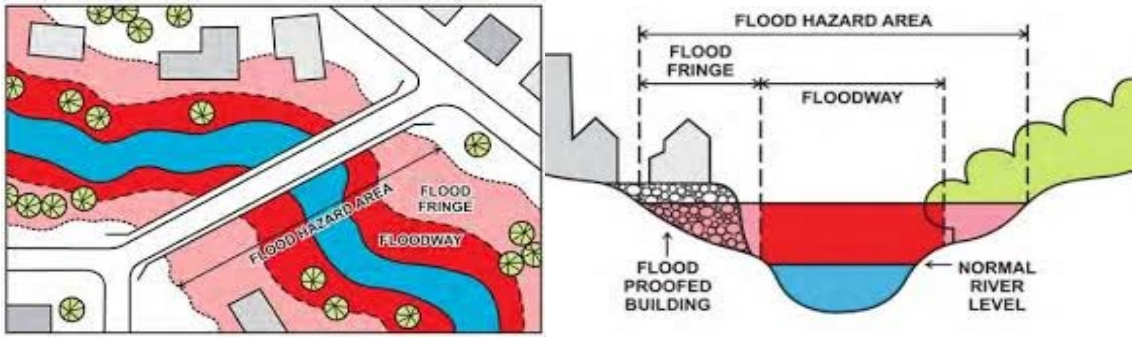
7.3.5 Flood Hazard Areas and Section 693.1

Most municipalities already use statutory plans and LUB provisions to restrict development in provincially identified "flood hazard areas." Development is usually not permitted in a "floodway," but can be permitted on a discretionary basis in the "flood fringe."

Development and buildings in the "flood fringe' are usually allowed at the discretion of the municipal development authority if "floodproofed." Floodproofing is designed to certain standards by qualified engineers. None of the terms in quotation marks are defined in the *MGA*, or any other enactment, but have arisen through provincial flood hazard area identification and mapping.

Currently, mapped flood hazard areas are based on a 1:100-year flood standard, which means there is a 1% change that the identified lands will flood in any given year.[108] See Figure 5 below for the flood hazard area identification approach that has been in use in Alberta since the 1970s.[109] However, the Province recently adjusted how it identifies and maps flood hazard areas, floodways, and flood fringes. Lands that were previously identified as being within the flood fringe that are known to be "at a higher risk of flooding" are now identified and mapped as such adjacent to the floodway. New flood hazard area maps include similar floodway and flood fringe areas as identified previously, but new maps also identify flood fringe areas known to be subject to overland flow; where the known risk of flooding is greater, and where the risk of flooding is under review.[110]

Figure 5: 1970s Identification of Flood Hazard Area Illustrating 'Floodproofed' Building



Source: Government of Alberta, Flood Hazard Identification Program

In addition, in new flood hazard maps, recently flooded areas are identified to help municipalities manage risks in excess of the 1:100-year floods standard.[111] Flood hazard area maps may also

[108] See Government of Alberta, 'A new approach to mapping floodways in Alberta', 2021, online: https://open.alberta.ca/dataset/269b99f1-ba1e-46eb-b048-c27b8dfeb636/resource/1ba942c5-ade6-43ae-9101-e53098642d10/download/aep-new-approach-mapping-floodways-in-alberta-2021-09.pdf. [Flood Risk Mapping]. Accessed on January 3, 2022.
[109] Government of Alberta, Flood Hazard Identification Program, online: https://open.alberta.ca/dataset/9745c78a-2660-4467-a108-2ba4b887b9fa/resource/ad7f9be9-8d16-44e1-b674-17bebda4a91a/download/fh-identificationprogram-dec10-2014.pdf. Accessed on January 3, 2022.
[110] See Government of Alberta, "Alberta Floods,' online: https://floods.alberta.ca/ Accessed on January 3, 2022.
[111] See Flood Risk Mapping, *supra* note 108.

identify areas at risk for 1:200-year floods and 1:500-year floods.[112] Municipal planners, landowners, developers, and the general public can go online at floodsalberta.ca to find the particular parcel for which an application for development or subdivision has been submitted and identify the flood hazards specific to that parcel.

This may encourage municipalities to restrict development, and buildings in newly mapped flood hazard areas where the lands have recently flooded or where a higher risk of flooding has been identified. New or amended MDPs, ASPs and ARPs might include these newly identified areas and provide local municipal development policies to further restrict some types of development in these areas.

While Section 693.1 of the *MGA* authorizes the Province to make regulations to control, regulate or prohibit "any use or development of land that is located in a floodway" within a municipality, including "specifying the types of developments that are authorized in a floodway," to date, no such regulations have been enacted.

As well, pursuant to Section 96 of the *Water Act*, new municipal infrastructure built in provincially identified and mapped flood hazard areas may not qualify for provincial disaster relief.[113] In March 2023, Section 96 of the *Water Act* has not been used as a tool to discourage municipalities from developing water treatment and wastewater treatment facilities and servicing infrastructure in known flood hazard areas. This tool may be used in the future, given recent major costly flooding events in Alberta and the need to adapt to unpredictable severe weather events arising from changing weather patterns.

7.4 Subdivision of Land, and Reserves

In Alberta, a private property owner has no inherent right to subdivide his or her land, and must apply to the municipality in which the land is located to have a plan of subdivision approved. Plans of subdivision may be simple and result in two lots being created from a parent parcel (first parcel out for a homestead), or they may be complex, resulting in new neighbourhoods with many roads, public utilities, schools, parks and playgrounds, storm drainage collection and treatment facilities,

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[112] For detailed maps and information on the new approach for mapping flood hazard areas in Alberta see, Government of Alberta, 'New Floodway Mapping Approach Fact Sheet – September 2021, online: https://open.alberta.ca/dataset/269b99f1-ba1e-46eb-b048-c27b8dfeb636/resource/1ba942c5-ade6-43ae-9101-e53098642d10/download/aep-new-approach-mapping-floodways-in-alberta-2021-09.pdf. Accessed on November 27, 2022.

[113] *Water Act*, *supra* note 14, s 96.

Flood risk areas 96(1) If the Minister is of the opinion that there is or may be a risk to human life or property as a result of flooding, the Minister may designate, subject to the regulations, (a) any area of land in the Province as a flood risk area, either generally or on an interim basis, and (b) specify any acceptable land uses with respect to the flood risk area. (2) If the Minister has made a designation under subsection (1)(a), subject to the regulations, (a) new Government works or undertakings must not be located or carried out, (b) Government financial assistance must not be given to any person who engages in a use other than a use specified under subsection (1)(b), and (c) money and services and Government disaster assistance programs may be restricted with respect to flood damage, in the designated flood risk area after the designation has been made, except as specified in the designation or the regulations. (3) The Minister must consult with the local authority that is responsible for a proposed flood risk area before making a designation under subsection (1). (4) For the purposes of subsection (3), "local authority" does not include a local authority as defined in section 1(1)(ee)(vi) to (ix).

and social services and institutions, such as fire stations and libraries. Complex plans of subdivision may propose combinations of commercial, industrial, and residential buildings.

Municipal approvals of plans of subdivision reflect municipal environmental conservation and management policies set out in statutory plans. As well, it is during the subdivision approval process that environmentally significant lands are assessed to ensure that the lands are suitable for the intended uses proposed in the plan of subdivision.[114]

7.4.1 Subdivision is a Complex Process

Subdividing land is a complex process, which may be expensive and time-consuming. Most landowners of large parcels of previously undeveloped land (sometimes referred to as greenfields) may require assistance from consultants with specialized skills and knowledge necessary to complete a subdivision application and meet with the municipal subdivision authority.

No two subdivision applications are exactly the same, because no two parcels of land are identical. Every large undeveloped landscape has some environmental and social considerations that must be considered, such as bodies of water, topography, soils, vegetation, fragmentation of agricultural lands and preservation of historical resources. To compound these "social-ecological" complexity issues, each municipality has different application requirements that must be fulfilled before the application will be deemed "complete" for review and consideration pending approval by the local subdivision authority.

7.4.2 Part 17: Division 7: Subdivision of Land

Subdivision of land is highly regulated and controlled through Part 17: Division 7: Subdivision of Land. The following is a breakdown of the provisions:

- Section 652 provides that subdivision of land requires an approval by the municipal subdivision authority and lists several exemptions from that general rule.

- Sections 653 and 653.1 provide application requirements and processes. All subdivision applications must be made in accordance with the subdivision and development regulations, and must include a proposed plan of subdivision.[115] In 2022, through the latest *RTRIA*, the *Subdivision and Development Regulation*[116] was repealed and replaced with the *Matters Related to Subdivision and Development Regulation*. [117]

Once a subdivision application is deemed complete, the subdivision authority must (a) give a copy of the application to government departments, persons and local authorities required by the subdivision and development regulations, and (b) give notice of the application to owners of

[114] See *Matters Related to Subdivision and Development Regulation* Alta Reg 84/2022 [*MRSDR*].
[115] *MGA*, *supra* note 3, ss 653(1).
[116] *Subdivision and Development Regulation* Alta Reg 43/2002. (Repealed.)
[117] See *MRSDR, supra* note 114.

adjacent land. However, "a subdivision authority is not required to give notice to owners of adjacent lands if the land that is the subject of the application is contained *within an area structure plan* or a *conceptual scheme* and a public hearing has been held with respect to that plan or scheme.'[118] (Emphasis added.)

- Section 654 provisions regulate approval processes and timelines. A subdivision authority may approve or refuse an application for subdivision approval, and must not approve an application for subdivision unless:

> 654(1) …. (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, for the purpose for which the subdivision is intended; (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2) any land use bylaw that affects the land proposed to be subdivided, (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.[119]
>
> (2) A subdivision authority **may approve** an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion, (a) the proposed subdivision would not (i) unduly interfere with the amenities of the neighbourhood, or (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land, and (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.[120] (Emphasis added.)

Development Authorities who process subdivision applications must ensure that the land proposed to be subdivided and developed is suitable for the intended purpose, whether that is for parks, schools, public utility lots or commercial, industrial, and residential buildings.[121] These provisions are often cited in appeals when a decision is made to allow subdivision and development on environmentally significant landscapes because the lands may not be suitable for the proposed land-use. For example, lands that are known to flood may not be appropriate locations for residential or industrial developments where significant flooding or slumping may threaten lives and livelihoods and cause environmental spills or damages.

Traditionally, protecting development and buildings from environmentally hazardous conditions has been the primary consideration when determining suitability, while protecting the environment may have been considered as a secondary, incidental matter. However, since enactment of the new purpose of fostering the well-being of the environment, this may be changing.

- Section 655 addresses the myriad of conditions that a subdivision authority may impose as part of a subdivision approval, including contractual agreements with the municipality to provide servicing infrastructure. Plans of subdivision for large parcels reflect negotiated

[118] *MGA*, *supra* note 3, s 653(4.1)
[119] *Ibid*, s 654(1).
[120] *Ibid*, s 654(2).
[121] See *MRSDR*, *supra* note 114.

development agreements[122] that land developers enter with municipalities for the provision of lands and infrastructure for public utilities, parks and playgrounds, schools and some social services.
- Section 656 provides when and how decisions on subdivision applications are to be processed and made.
- Section 657 provides for registration of a plan of subdivision at the Land Titles Office.
- Section 658 provides for cancellation of a plan of subdivision.
- Section 659 applies to collection of taxes in arrears on a parcel where a plan of subdivision plan has been cancelled.
- Section 660 addresses how to register a cancelled plan of subdivision at the Land Titles Office.

7.4.3 Conceptual Plans and Outline Plans

Some larger municipalities require that a landowner or developer provide more detailed plans prior to subdivision approval, but these "conceptual schemes,"[123] "outline plans" and "neighbourhood plans" are not considered statutory plans. These plans must be consistent with the MDP, the ASP and any ARP in place for the subject lands**.**

Plans of subdivision and conceptual schemes, as defined in the *MGA*, require that a public hearing be held before adoption by council. Some municipalities seek public input well before the public hearing. These detailed plans reflect policies set out within the hierarchy of land-use planning documents, the requirements of the LUB, and the location of required public utilities and servicing infrastructure required for the subdivision. If invited to participate, the general public may help the municipality to develop policies to be included in these plans to ensure that environmentally significant landscapes are conserved and managed when the lands are developed in the future.

At its discretion, if so warranted, subdivision authorities have authority to require that the developer address specific environmental management issues in these detailed plans, such as:

- scientifically determined building development setbacks from floodplains and water bodies, and from development hazards, such as steep slopes and lands subject to subsidence;

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[122] For a good discussion of development agreements and the usual components of a development agreement, see City of Calgary, 'Development Agreements', online: https://www.calgary.ca/development/agreements.htmlDevelopment agreements. Accessed on January 5, 2023.

> Large development areas normally undertaken by private developers require a Development Agreement (DA) between The City and the developer. A DA is a legal contract for all residential, industrial and commercial developments. It sets out the terms and conditions under which development of the lands are to take place within the city, including the responsibility to construct public facilities and associated financial obligations.

[123] See *MGA*, *supra* note 3, s 653(6.1):

> "conceptual scheme" means a conceptual scheme adopted by the municipality that (i) relates a subdivision application to the future subdivision and development of adjacent areas, and (ii) has been referred to the persons to whom the subdivision authority must send a copy of the complete application for subdivision pursuant to the subdivision and development regulations.

- use of low impact development technology and infrastructure to keep as much storm drainage onsite as possible, such as sufficient depth of soils, bioswales, and xeriscape green spaces;
- alternative energy sources to supplement traditional electricity and natural gas supplies; and
- the location and design of constructed wetlands and storm drainage collection and treatment facilities that will eventually become municipal assets.

Plans of subdivision must adhere to provisions of the *MGA*, all municipal statutory plans, and the LUB. In addition, plans of subdivision must comply with the *Matters Related to Subdivision and Development Regulation*.[124] However, the actual regulation and control of land-use in a subdivision would occur at the time of development when a development authority applies LUB provisions when approving an application for a development permit.

7.4.4 Land for Roads and Public Utilities

When an application is made to subdivide a large previously undeveloped parcel, the municipality may require that certain lands be dedicated to the municipality for roads and public utility lots. There are no costs paid by the municipality for these lands. Plans of subdivision indicate the locations on the parcel that will be provided for these purposes. Water pipelines, wastewater and storm drainage systems, constructed wetlands, pathways and serviced school sites are developed by the developer at the developer's cost.

As mentioned earlier, it is only after the municipality issues a Final Acceptance Certificate (FAC) to the developer that the municipal corporation becomes the owner of the infrastructure and the services provided in new subdivisions. After the FAC is issued, the municipality must operate and maintain the systems as valuable municipal assets. Therefore, if the general public want to work towards conserving and managing environmentally significant landscapes, they may want to participate in determining where public utility lots are to be located in large subdivisions. Public utility lots are usually linear in design, which may impede natural flows of water, air, and biodiversity that do not follow straight lines.

Improperly constructed or poorly maintained private septic systems can also have negative environmental impacts on land and water, and landowners who propose private septic systems during subdivision approval processes can pose environmental issues for municipal subdivision authorities. In 2015, in the *Private Sewage Disposal Systems Regulation* (*PSDSR*),[125] the Province ensured that municipalities were empowered to "make bylaws restricting the type of systems recognized in the Alberta Private Sewage Systems Standard of Practice in force that can be constructed or used in new installations of private sewage disposal systems."[126]

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[124] *MRSDR*, *supra* note 114.
[125] Alta Reg. 226/1997 [*PSDSR*].
[126] Alta Reg. 196/215, s 4.

In 2022, in the reasons for decision in *Hoogland v. County of Wetaskiwin No. 10 (Subdivision Authority) (Hoogland),*[127] the Tribunal reviewed these matters and determined that compliance with the *PSDSR* was in the public interest and an appropriate condition to be included in the conditional subdivision approval granted to Hoogland, as follows:

> [26] The LPRT understands the Appellant's point that new development is not intended at this time; however, there is nothing in the legislation to prevent conditions requiring compliance of existing sewage systems at time of subdivision – even in cases where new development is not anticipated. Such conditions are also contemplated in the County's application materials – for example, the LPRT notes the application form states clearly there may be a requirement for inspection and compliance of existing sewage systems (see pp 15 and 16 of Exhibit 1).
>
> [27] A review of the documents provided shows there may be features near the sewage systems that could be negatively affected by improper discharge, including a well and a wetland/watercourse. In addition, it would appear that at least one of the setbacks from property line to discharge point does not meet current the standard of 90 m. While these circumstances do not necessarily mean upgrades to the existing septic systems will be required, they suggest an inspection is prudent to ensure proper operation.
>
> [28] Under these circumstances, the LPRT does not accept the Appellant's argument that the disputed conditions are too onerous and not in the public interest. Improper sewage disposal poses risks to human health and the environment. Inspection and preparation of an RPR to ensure compliance with the *Regulation* is not unduly onerous and will allow any defects to be remedied. As such, the LPRT finds the conditions regarding sewage disposal imposed by the SA are necessary to ensure the site is suitable for its intended purpose.[128]

Hoogland is noteworthy because it addresses the subdivision authority's need to ensure that the site is suitable for the intended purpose, and that it is in the public interest that subdivided properties are in compliance with the *PSDSR* when adjacent water resources may become polluted.

7.4.5 Reserves

7.4.5.1 Municipal and School Reserves

In addition to lands for roads and public utilities, a subdivision landowner or developer may be required to provide, at no cost to the municipality, lands that would otherwise be developable as "municipal reserves" for parks and playgrounds, and "municipal and school reserves" for schools.

Municipal reserves and municipal and school reserves provide opportunities for a municipality to foster the well-being of the environment when entering into development agreements that address where schools and parks and playgrounds will be constructed, especially when they are adjacent to other lands dedicated to the municipality as "environmental reserves." Locating municipal reserves and school playgrounds adjacent to environmental reserves may provide extension of much needed green space that offer learning and recreational activities if access and use of adjacent environmental reserves are appropriately managed.

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[127] 2022 ABLPRT 1409 (CanLII) [*Hoogland*].
[128] *Ibid* at paras 26-28.

When a plan of subdivision is registered at Alberta Land Titles, all reserves become the property of the municipal corporation. In some circumstances, municipalities are authorized to accept money in lieu of lands for municipal reserves and municipal and school reserves, and the money is usually used to provide for similar land uses elsewhere in the municipality, such as public parks, green spaces, and schools.

7.4.5.2 Environmental Reserves and Easements

Lands that are considered hazardous to develop for the reasons set out in Section 664(1) of the *MGA* may be required to be dedicated to the municipality as environmental reserves, again at no cost to the municipality. These lands are usually associated with ravines; coulees and steep slopes that are unstable; drainage courses and riparian lands adjacent to surface water bodies; or swampy or low-lying lands where slumping and flooding may become issues. A municipality is not authorized to accept money in lieu of environmental reserves, and there are specific rules for how municipalities may use and dispose of environmental reserves.[129]

Environmental reserve provisions remained unchanged from 1994 until the enactment of Section 115 of the *MMGA* in 2016. Prior to these amendments, municipal implementation of Section 664 attracted many municipal Subdivision and Development Appeal Board, ABMGB, and ABCA challenges because the municipality was not required to compensate the landowner for these land dedications. For example, land developers challenged municipal authority to require dedication of lands when a municipality required strips of land adjacent to the beds and shores of bodies of water that exceeded the mandatory 6 metre width, and when a municipality required these strips adjacent to water bodies for any other than the two previously listed purposes: to mitigate against pollution and to provide public access.[130] Then, protecting the environment *per se* was not a legitimate purpose for requiring the dedication of strips or riparian land adjacent to a body of water.

The significant amendments in 2016 enabled a subdivision authority to require that a developer dedicate environmental reserves for new purposes[131] that are set out in broad general terms. The two original purposes for requiring the dedication of strips or riparian land adjacent to the beds and shores of bodies of water were repealed and replaced with a list of four purposes that apply to all environmental reserve dedications, not just the controversial strips. Section 664, subsections 1, 1.1, 1.2 and 2 now read, as follows:

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[129] *MGA, supra* note 3, s 671 and s 674.1, re: use and disposal of environmental reserves. For a concise and comprehensive review of environmental reserve and environmental reserve easements, see Environmental Law Centre, *Environmental Reserves and Environmental Reserve Easements: A discussion of regulatory context and application*, A Community Conserve Project, April 2021 (with updates in July 2021): online: https://www.communityconserve.ca/wp-content/uploads/2021/07/ER-and-ERE-_July2update_Formatted.pdf [ELC]. Accessed on January 4, 2023.

[130] See Stewart, "Recent Amendments", *supra* note 5 at 30-32.

[131] *MGA*, *supra* note 3, s 664(1.1).

Environmental reserve

664(1) Subject to section 663 and subsection (2), a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

(a) a swamp, gully, ravine, coulee or natural drainage course,
(b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or
(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

(a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;
(b) to prevent pollution of the land or of the bed and shore of an adjacent body of water; on or adjacent to the land;
(c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;
(d) to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsection (1.1) (b) and (c), 'bed and shore' means the natural bed and shore as determined under the *Surveys Act*.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.[132]

Over the past 5 years, several interesting and noteworthy appeals of conditional subdivision approvals have been heard by the ABMGB and the Tribunal regarding the new provisions in Section 664. The wording used in the ABMGB and Tribunal's reasons for decisions in these cases are quoted in entirety when discussing these important decisions below to illustrate emerging interpretation of the law.

Under the amended legislation, the 6 metre (or much wider) strips may be required to be dedicated for two additional purposes, including the broadly stated purpose "to preserve the natural features of land" referred to in subsections (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved.

In two recent Tribunal decisions the width of environmental reserve strips adjacent to bodies of water were under review. In the 2022 decision *Loov v County of Wetaskiwin No. 10 (Subdivision Authority)* (*Loov*),[133] the Tribunal found that, "in the absence of further studies or technical analysis to support a wider buffer in this case, the LPRT finds 6 m strikes an appropriate balance

[132] *MGA*, *supra* note 3, ss 664(1), (1.1), and (2).
[133] 2022 ABLPRT 1403 (CanLII) [*Loov*].

between the Appellant's rights as an individual landowner and the public interest in preserving the wetlands."[134] This decision also clarified that a municipality must ensure that appropriate biophysical and environmental studies and technical analysis are required when the municipality wishes to require wider environmental reserve strips than the mandated 6 meters from the bed and shore of bodies of water.

Certainly, Section 664 mandates that environmental reserve strips adjacent to a body of water must be at least 6 meters in width. This was discussed in the 2019 appeal to the ABMGB, *Brit Enterprises Ltd. v. Lac Ste. Anne County (Subdivision Authority)*.[135] The ABMGB required compliance with Section 664 as a condition of subdivision approval. The subdivision authority had approved a 3 meter environmental reserve easement from the top of bank, however, the ABMGB amended the condition of approval requiring an environmental reserve easement of 3 meters from the top of bank or 6 meters from the bed and shore, whichever was greater.[136] Both the subdivision authority and the appellant agreed to the easement, which was upheld by the ABMGB because an "ERE is appropriate and meets the intent of the Act, LUB, and Alberta Environment's Stepping Back from the Water Guideline."[137] The ABMGB also required an appropriate setback from the bed and shore to be determined by an Alberta Land Surveyor.[138]

As noted by the author in a previous document, "these substantive changes to the [environmental reserve] provisions illustrate provincial direction to municipalities to conserve and manage bodies of water as defined, and other surface water resources and environmentally significant features at the local scale, especially during subdivision approval processes."[139] The recent ABMGB and Tribunal subdivision appeal decisions above and below seem to support that conclusion. Both appeal bodies seem to be carefully interpreting the exact wording of the provisions.

However, the new definition of a body of water may confound the Tribunal in the future and impose new restrictions on what lands may be required to be dedicated as environmental reserves. The *MMGA* introduced a definition of "body of water" that may limit the authority of municipal councils to regulate and control the use of water resources found on private land.[140] The definition included in the *MGA* mirrors the definition of body of water found in the *Public Lands Act*,[141] 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.[142]

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[134] *Ibid* at para. 45.
[135] 2019 ABMGB 33 (CanLII) [*Brit*].
[136] *Ibid* at para 27.
[137] *Ibid* at para 28.
[138] *Ibid* at para 29.
[139] Stewart, "Recent Amendments", *supra* note 5 at 32.
[140] Stewart 2017, *supra* note 5 at pp. 1037-1039. Also see ELC, *supra* note 129.
[141] *Public Lands Act*, RSA 2000, c.P-40 [*PLA*].
[142] *MGA*, *supra* note 3, s 1.2.

Seasonal wetlands, bogs and fens and other water resources such as groundwater seeps are not permanent, in that they do not have a bed and shore and water may only be present for a few months of the year. There are also numerous bodies of water that may be human-made and therefore not considered to be "naturally occurring."[143] Prior to this amendment, municipalities had broader discretion to prohibit or regulate and control development and buildings adjacent to any water body on private lands. The *Water Act* defines "water body" broadly, and includes most water resources whether they are permanent and naturally occurring, excepting out some irrigation works.

In 2020, in *Copperstone Developments Joint Venture v Sturgeon County (Subdivision Authority)* (*Copperstone*),[144] the ABMGB interpreted both subsection 664(1)(b); the purposes listed in Section 664(1.1); and Section 664(2) regarding environmental reserve easements as alternatives to environmental reserves. The applicant for a subdivision approval wanted to carve out a residential parcel from an agricultural holding where a large "remnant" parcel would remain agricultural. The ABMGB had to determine whether the conditions imposed by Sturgeon County's subdivision authority in the conditional subdivision approval were appropriate. One of the conditions was a requirement to provide an environmental reserve easement as provided for in Section 664(2).

One problem identified by the ABMGB was that the county had not specified the purpose for which the environmental reserve easement was being requested. Another issue was that Sturgeon County referred to the lands that were subject to flooding as "low-lying areas." All reference to low-lying areas in the *MGA* that had previously been included in Section 640(4)(l) were removed when the entire subsection 640(4) was repealed in 2020 through *Red Tape Reduction Implementation Act 2020*.[145] In the past, low-lying areas often referred to seasonal or ephemeral wetlands where water was only present during snowmelt or during high precipitation events.[146] The ABMGB stated, as follows:

> [56] In addition, section 664(2) clarifies the specific purposes for which a municipality can require dedication of ER or ERE – for example, to preserve natural features, prevent pollution of land, ensure access to land adjacent to a water body, or prevent the risk of injury and damage to property.
>
> [57] The wetland referred to in the condition is likely the wet portion of land toward the centre of the remnant parcel evident from the photographs in evidence; however, it is unclear if the purpose of the condition is to protect it and/or adjacent land from pollution, to ensure future access, to prevent dangers arising from development near land that may be subject to flooding, or a combination of all of these factors. Nor is it clear what criteria the surveyor should use to identify low-lying/undevelopable lands.
>
> [58] The extent of the lands required for ER/ERE will likely depend the purpose for which they are required and the type of development anticipated. While it is reasonable for the SA to specify ER/ERE in relation the bed and shore of a body of water and have a surveyor identify where the bed and shore is, it is the SA who should determine the purpose of the ER/ERE and the extent of the lands to be taken based on the survey results. Similarly, although the condition makes a vague reference to

[143] See ELC, *supra* note 129 for a discussion of the new definition of body of water,
[144] 2020 ABMGB 23 (CanLII) [*Copperstone*].
[145] 2020 c39, s 10(28).
[146] See Stewart, "Recent Amendments", *supra* note 5.

> the *Surveys Act*, it is not clear what criteria the surveyor must follow when determining the extent of the 'low lying/undevelopable areas.'
>
> [59] With the above considerations in mind, the MGB finds the ERE condition under appeal does not adequately specify the land required for ERE, and leaves too much of the SA's discretion to be exercised by the surveyor. Therefore, the condition is not appropriate. In addition, the MGB finds it more appropriate in this case to defer taking ER or ERE until plans for development on the remnant parcel become clearer. If and when future subdivision occurs, there will be an opportunity to require further studies to determine the extent of the wetlands or other qualifying features and the extent of the land to be taken as ER or ERE, having regard for the anticipated development and the purposes specified in section 664(2).[147]

In *Copperstone*, the Tribunal referred to deferred reserve caveats that are often placed on the large remnant agricultural parcel when a subdivision is approved to carve out a residential parcel. In 2021, in the subdivision appeal to the Tribunal in *Bowen v. Beaver County* (*Bowen*),[148] the Tribunal stated that deferred reserve caveats are preferred as an alternative to environmental reserve easements on the remnant parcel, as follows:

> There is a drainage course running through the remaining parcel, which may require the registration of environmental reserve or an environmental reserve easement in the future. The deferred reserve caveat allows time to determine the need for registration of environmental reserve or an environmental reserve easement if and when future development is considered. Therefore, the registration of a deferred reserve caveat on the balance of the property is appropriate.[149]

Until there is further provincial direction regarding Section 664, or the ABCA is asked to examine the nuances of the amended legislation, the Tribunal will continue to decide when it is appropriate for subdivision authorities to require dedication of environmental reserves or to provide environmental reserve easements during subdivision approval processes on a case-by-case basis.

As well, Section 664 is "subject to Section 663," a provision that seems to be often overlooked by the general public when they are participating in land-use planning and development decision-making processes. Section 663 describes that environmental reserves and environmental reserve easements may not be required to be dedicated, when:

- one lot is to be created from a quarter section of land;
- land is to be subdivided into lots of 16 hectares or more and is to be used only for agricultural purposes;
- the land to be subdivided is 0.8 hectares or less; or
- reserve land, environmental reserve easement, or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part of the former Act.

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[147] *Copperstone*, *supra* note 143 at paras 56-59.
[148] 2021 ABLPRT 697 (CanLII) [*Bowen*].
[149] *Ibid* at para 29

These exceptions to application of Section 664 were discussed in the ABMGB decision of *Murphy v County of Two Hills No. 21 (Subdivision Authority),* (*Murphy*)[150] with an interesting conclusion. The ABMGB conditionally approved a subdivision to create a large, irregular first parcel out of a quarter section of land for residential use in the County of Two Hills. In its reasons, the Board stated that:

> All parties agree the proposed parcel is the first lot to be subdivided from the subject quarter section. Therefore, section 663(a) applies and neither the MGB nor the SA can require reserve land. Since section 664 regarding environmental reserves is subject to 663, environmental reserves cannot be required as a condition of subdivision. The MGB observes that the definition of reserves in section 616(z) incudes ER and not ERE. Therefore, ERE could be required as a condition of subdivision if the parties agree and prefer ERE to a restrictive covenant. [151]

The decision in *Murphy* clarified that when a residential parcel is carved out of a quarter section, reserves cannot be required to be dedicated from the carved-out parcel. However, based on the definition of reserves, the ABMGB differentiated between environmental reserves and environmental reserve easements, allowing that dedication of an environmental reserve easement on the residential parcel was a valid condition of subdivision approval. However, if the landowner were to propose that the parent parcel be further subdivided in the future, the municipality would be entitled to require reserves from the lands proposed to be subdivided at that time. The easement, which "runs with the land" would remain in place on the residential parcel.

The Board in *Murphy* also made several statements in the reasons that demonstrate how the LUPs are applied in ABMGB decisions when the rights of landowners are to be balanced with protecting the environment in the public interest, as follows:

> Protecting the slope and creek with the restrictive covenant or ERE aligns with Goal 5 of the Provincial LUP, which is "to contribute to the maintenance and enhancement of a healthy natural environment". Further, the use of the restrictive covenant or ERE is in line with the policies of section 5.0, which describes when there is subdivision and development near ravines, valleys and streams or land that may be prone to erosion or subsidence, mitigative measures are to be used to minimize possible negative impacts. The MGB determined the restrictive covenant or ERE are both appropriate tools to achieve "orderly, economical and beneficial development" while maintaining the quality of the physical environment and ensuring an adequate balance between individual rights and public interest as contemplated in section 617 of the *Act.*[152]

In 2020, the application of subsection 663(b) was again before the ABMGB in *Ward v. County of Barrhead No 11. (Subdivision Authority)* (*Ward*).[153] In *Ward*, the ABMGB reviewed Section 663(b) to determine if the County of Barrhead was entitled to require dedication of environmental

[150] 2019 ABMGB 50 (CanLII) [*Murphy*].
[151] *Ibid* at para 34.
[152] *Ibid* at para 39.
[153] 2020 ABMGB 44 (CanLII)[*Ward*] at paras 28-30.

reserves or environmental reserve easements when approving a subdivision application. The Board's reasoning on this issue follows:

> [28] … The MGB observes 663(b) is an exception to the SA's [subdivision authority] broad power to take municipal, school, and environmental reserves referred to under section 661(a.1) and (b) of the *Act*. The specific wording of 663(b) states the exception applies when the land in question is to subdivided into **lots** of 16 ha or more. The Legislature's use of the plural "lots" suggests all the resulting lots, including both the remainder and the lot(s) to be separated from it, must be greater than 16 ha for the exception to apply. If the Legislature had intended otherwise, it would have said reserves are not to be taken on any "lot" greater than 16 ha. This interpretation is also consistent with the rest of 663(b), which says the exception applies if land to be subdivided is used **only** for agricultural purposes. The logical inference is that the exception does not necessarily apply when land is subdivided so some of it can be used for non-agricultural uses such as CR [Country Residential].
>
> [29] Accordingly, the MGB concludes 663 (b) of the *Act* is intended to apply to situations where an agricultural parcel is divided into two or more relatively large agricultural parcels. This interpretation is consistent with many previous MGB decisions, where reserves have been taken on large remainder parcels (see for example: *Hamill v Red Deer County 2017* ABMGB 45, and *Mattheis v Town of Drumheller* 2018 ABMGB 25).[154]
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> [30] In this case, all the parties have agreed to ERE rather than ER. The MGB also agrees ERE is appropriate, since the purpose is to protect the wetland rather than allow public access. The guidelines supplied by the SA suggest a 10 metre strip would provide sufficient protection, and the MGB accepts this amount as reasonable to achieve the desired objective.[155]

In 2021, legal nuances regarding environmental reserves and environmental reserve easements were again reviewed on an appeal from an applicant who wanted to subdivide agricultural lands. in *Cormie v Parkland County* (*Cormie*),[156] the Tribunal reviewed the conditionally approved subdivision by Parkland County. The applicant appealed the condition "relating to the survey of the two wetland areas in the west part of the subject property, requesting its deletion."[157] In the Tribunal's reasons several interesting legal interpretations arose concerning Sections 663 and 664, including that "taking ER [environmental reserve] or an ERE [environmental reserve easement] at this time could constrain the design of any future multi-lot subdivision."

> [38] Section 664(2) envisions an ERE as an alternative to an ER, but nonetheless meeting all of the pre-conditions of an ER as listed in s. 664(1). In this case, no studies or analyses have been prepared to determine the extent of ER that may be required. Further, s. 664(2) also requires an ERE to be agreed to by both the landowner and the municipality prior to the subdivision decision. In this case, the municipality has not provided consent.
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> [39] Taking ER or an ERE at this time could constrain the design of any future multi-lot subdivision. Given that Environmental, Municipal and School Reserves are only taken once, the appropriate amount and location of other applicable reserve allocations may change depending on the final design

[154] *Ibid* at paras 28-30.
[155] *Ward, supra* note 153.
[156] 2021 ABLPRT 484 (CanLII) [*Cormie*].
[157] *Ibid.*

> of the subdivision. Studies (e.g., a biophysical impact assessment) will also be needed determine the appropriate width of any ER or ERE, having regard for other reserve requirements and the long term plan for the area.
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> [40] Given the above considerations, the LPRT finds dedication of ER or ERE is premature until final design and studies are complete. In this regard, the LPRT observes MDP Policy 7.1.5 of the MDP requires a Biophysical Impact Assessment where a proposed subdivision or development is located adjacent to or within an environmentally sensitive area. MDP Policy 7.1.6 also requires multi-residential developments to provide for public gathering spaces such as park and open spaces, which will also be guided by thoughtful allocation of reserves identified in light of final design.
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> [41] In summary, while ERE would help protect the waterbodies, surveying them now will provide an interim measure of protection and will also help guide interim decisions about planning and development until the long term plan and necessary studies have been completed to determine an appropriate amount of ER /ERE.[158]

Environmental reserves become property of the municipality where they are located when the plan of subdivision is registered at the Land Titles Office. A municipality is not authorized to accept money in lieu of environmental reserves. According to Section 671(1), an environmental reserve must be left in its natural state or used as a public park.[159] However, the municipality may follow prescribed procedures to enact a bylaw to change the use or boundaries of an environmental reserve. Second reading of such a bylaw must not occur until a public hearing is held.

Regulating and controlling public access and use of municipally owned environmental reserves can be a contentious matter. Some municipalities enact environmental reserve bylaws under Section 7, general jurisdiction to enact bylaws. Environmental reserve bylaws set out when and how members of the public can access and use these landscapes. Some human activities may be prohibited, for example tree cutting and using dirt bikes and off-highway vehicles that damage and pollute the land and water. Some activities may be regulated and controlled through the requirements to obtain permits, such as camping or hosting community events. Other activities may be permitted, such as hiking and birdwatching on designated trails.

A good example of the arduous process of trying to enact a specific environmental reserve bylaw is Lac La Biche County's attempt[160] to conserve and protect their environmental reserve strips around lakes in the county from unauthorized and inappropriate public use. When the lands adjacent to the lakes were subdivided, the county had regularly required that environmental reserves be created adjacent to the bed and shore. In order to access the lakes, owners of properties in lakeshore subdivisions were directed to community access points and boat launches. The council worked with the public for over three years to understand their wants and needs, compromising in many ways before producing a final draft of the bylaw: the bylaw may still be in draft form. The

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[158] *Ibid* at paras 38-41.
[159] *MGA*, *supra* note 3, s 671.1.
[160] See Lac La Biche County, 'Bylaw 20-036,' (Draft), online: https://www.laclabichecounty.com/Home/DownloadDocument?docId=d9cc1fdc-220d-456a-937a-e865a0fc88da. Accessed on January 5, 2023.

property owners in lakeside subdivisions could not understand that environmental reserves are municipally-owned lands that they had no right to use (and abuse).

Dedicated environmental reserve parcels are often used by municipalities for other municipal purposes, such as public parks and recreational facilities, as well as for pathways, and water and wastewater treatment and distribution systems, even though the environmental reserve parcels were originally considered undevelopable lands. Many municipalities do not restrict public access on these environmentally significant or hazardous lands. In recent subdivision appeals before the ABMGB and the Tribunal, registration of environmental reserve easements seemed to be environmentally beneficial because the landowner retained title to the lands and was able to restrict public access, which in turn ensured that these lands are protected from inappropriate public land-uses, such as recreational off-highway vehicles.[161]

Environmental reserve easements[162] arise when the municipality (through the subdivision authority) and the landowner agree that instead of transferring ownership of the land that would

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[161] See *Hutchinson v Municipal District of Wainwright No. 61 (Subdivision Authority),* 2020 ABMGB 11 (CanLII) para 37:

> Although ER is sometimes required to ensure public access (section 664(1.1)(c)), that purpose less important in this case given the location of the subject land and the sensitive natural features adjacent to the Lake. In contrast, ERE will allow the applicant to retain ownership and control access to ensure the land remains in its natural state. The MGB understands the Appellant is mindful of appropriate setbacks; however, registering ERE on title will ensure future landowners are also aware of the requirements.

Also of note, the 2022 LPRT decision in *Wiebe v County of Grande Prairie No. 1 (Subdivision Authority)*, 2022 ABLPRT 223 (CanLII), paras 37- 39, where the LPRT reasoned that:

> [37] Collectively, these provisions and policies reinforce the need to designate the ravine as ER or ERE to protect its environmentally sensitive nature. The LPRT understands the Appellant would prefer not to dedicate any land as ER or ERE and that the Appellant has been a good steward of the Ravine and its natural state. However, ownership will inevitably change over the long term; since dedication as ER and ERE runs with the land, they offer permanent protection.
>
> [38] With respect to the choice between ER or ERE, the LPRT notes ERE leaves title in the hands of the Appellant, and as such may be considered less intrusive. Like ER, ERE will also reduce the cash in lieu required, since the requirement will not apply to the dedicated lands. The LPRT also respects the County's preference to reduce maintenance obligations and potential liability associated with ER. With all of these considerations in mind, the LPRT finds it appropriate to require designation of the ravine land as ERE.
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> [39] The SA requested that the Appellant be required to retain a surveyor to delineate the ERE, and to enter an agreement to keep the lands in their natural state. In the LPRT's view, neither of these requirements are onerous

See also *Hebert v Sturgeon County (Subdivision Authority),* 2020 ABMGB 6 (CanLII) at para 27:

> [27] The SA's recommended condition regarding ERE left the decision of what land would be identified as ERE to the surveyor, the MGB altered the wording to be more specific and in line with the section 664 of the *Act* "*a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water*". The provision of 6 metres on either side of the Creek will help prevent pollution and preserve the shore and banks of the Creek. The Appellant agreed at the hearing to allow an ERE, which will leave the Appellant with title to the land in question, but still protect the Creek. The ERE provision complies with policy 4.2.2 of the MDP regarding protecting lands as ERE when public access is not required. Goal 5 of the Land Use Policies *"To contribute to the maintenance and enhancement of a healthy natural environment"* is complied with as the Creek will be protected and remains in its natural state. Further, Policy 2 of Goal 5 encourages the use of mitigative measures when subdivision is near natural features such as Creeks. ERE is a suitable way in this case to minimize negative impacts of the subdivision and possible future development near the Creek.

However, see *Whitby v County of Wetaskiwin No. 10 (Subdivision Authority),* 2019 ABMGB 44 (CanLII), at para 16 where the County preferred to require dedication of ER rather than enter into and ERE. In that case, the MGB determined that the cost to the Appellant was necessary in order to "maintain and improve the quality of the physical environment" now and into the future; protecting the creek is necessary for the overall greater public interest.

[162] See *MGA*, *supra* note 3, s. 664(2): See also Alberta Land Titles and Surveys, Procedures Manual: Environmental Reserve Easements', online: https://www.servicealberta.ca/pdf/ltmanual/ERE-1.pdf. Accessed on January 3. 2023.

otherwise be dedicated to the municipality as environmental reserve, the landowner will register an environmental reserve easement on the subject lands in favour of the municipality.[163] Municipalities enforce environment reserve easements that run with the land on disposition.[164]

Since 2016, Section 644(2) clarifies that environmental reserve easements are to be registered on a private title to the benefit of the municipality "for the protection and enhancement of the environment." Both before and after the *MMGA* amendments, municipalities, such as Lac la Biche County noted above, tended to require environmental reserve dedication without considering environmental reserve easements as a first option.

7.4.5.3 Conservation Reserves

Following the adoption of the LUF, and enactment of *ALSA*, in 2016, the Province amended the *MGA* to enable municipalities to require that certain lands be sold to a municipality at the time of land subdivision as "conservation reserves," as long as the landowner agreed.[165] Conservation reserves are different from lands that may be required to be dedicated to the municipality as environmental reserves.[166] However, the Province has not clarified the types of "environmentally significant features" that could be purchased as conservation reserves at the time of subdivision. They may or may not be the same features as those identified by the Province as "*environmentally significant areas*" in different parts of the Province.[167]

Unlike environmental reserves, the municipality must reach an agreement with the landowner and pay market value for the lands to be transferred. Conservation reserves are not free for the taking. Once transferred to the municipality, conservation reserves must be maintained by the municipality in their natural state.[168]

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[163] See *Murphy*, *supra* note 150.

[164] See ELC, *supra* note 129.

[165] *MGA*, *supra* note 3, s 661.1**:**

> The owner of a parcel of land that is the subject of a proposed subdivision must provide to a municipality land for conservation reserve as required by the subdivision authority pursuant to this Division.

[166] *Ibid*.

> 664.2(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land to the municipality as conservation reserve if
>
> (a) in the opinion of the subdivision authority, the land has environmentally significant features,
>
> (b) the land is not land that could be required to be provided as environmental reserve,
>
> (c) the purpose of taking the conservation reserve is to enable the municipality to protect and conserve the land, and
>
> (d) the taking of the land as conservation reserve is consistent with the municipality's municipal development plan and area structure plan.
>
> (2) Within 30 days after the Registrar issues a new certificate of title under section 665(2) for a conservation reserve, the municipality must pay compensation to the landowner in an amount equal to the market value of the land at the time the application for subdivision approval was received by the subdivision authority.
>
> (3) If the municipality and the landowner disagree on the market value of the land, the matter must be determined by the Land and Property Rights Tribunal.

[167] ArcGIS, 'Alberta- Environmentally Significant Areas,' online: https://www.arcgis.com/home/item.html?id=ee24f800bee94b6aa1634ad1f41c10dc Accessed on January 2, 2023.

[168] *MGA*, *supra* note 3, s 664.1(1)

Land developers of large parcels of undeveloped agricultural lands have a reasonable expectation that the lands they purchase within a municipality will be able to be developed unless the municipality has earmarked the lands as public utility lots and reserves in the IDP, MDP, ASP or ARP. Therefore, to avoid surprise at the subdivision application stage, conservation reserves need to be identified and mapped as valuable and environmentally significant features[169] in statutory plans well before a landowner or developer applies for subdivision approval.

As lands owned by the municipality after the subdivision plan is registered at the Land Titles Office, public access and recreational activities on conservation reserves will likely become a problem unless the municipality enacts a conservation reserve bylaw that manages public access and land-uses. As noted by the author in a previous paper:[170]

> Conservation easements under ALSA seem to be better tools to achieve conservation of environmentally significant features because, as voluntary arrangements between a landowner and a municipality as the easement holder, the lands will be stewarded to a higher standard by the landowner who can restrict public access. Municipalities have not always been the best stewards of environmentally significant features. For example, municipalities do not adequately control human access, do not manage invasive species, and often use these landscapes for dog parks, and other inappropriate human uses. Across the province, ER parcels (which represent some of the most environmentally significant features in Alberta) are regularly used for roads, pathways, dog parks, water and wastewater treatment facilities, recreational facilities, recreational vehicle campgrounds, and so on.[171]

It should be noted that lands designated as conservation reserves may be disposed of if "all of the features referred to in Section 664.2(1)(a) are wholly or substantially destroyed by fire, flood or another event beyond the municipality's control with the result that, in the opinion of council, there is no remaining purpose in protecting or conserving the land."[172] This may become a regulatory loophole in the future.

Conservation reserves also signal that the Province intends for municipalities to conserve and manage local environmentally significant features. The *MMGA* amendments enabling and regulating City Charters, GMBs, ICFs, and the mandatory environmental consideration in IDPs also suggest that the Province has granted broad municipal authority for environmental management at both the local and regional scales. [173]

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[169] *MGA*, *supra* note 3, ss 664.2(1)(b).
[170] Stewart, "Recent Amendments", *supra* note 5.
[171] *Ibid* at 1043.
[172] *MGA*, *supra* note 3, s 664.2(1).
[173] Stewart, "Recent Amendments", *supra* note 5 at 1042-1043.

7.5 Land Use Bylaws

All municipalities must have a LUB,[174] and it must be consistent with the *ALSA*. Through the *Red Tape Reduction Implementation Act, 2020,* Section 640(1.1) was amended into the *MGA* and clarifies that a LUB may prohibit or regulate and control the use and development of land and buildings in a municipality.

All lands within municipal boundaries must be included in a land-use district that allows for at least one permitted use, and any number of discretionary uses. This was clarified in the ABCA decision in *Edmonton (City of) Library Board v Edmonton (City of*) (*Edmonton Library*),[175] where Chief Justice Fraser made several observations regarding land use bylaws, as follows:

> [33] The *MGA* establishes how municipalities can achieve these broad objectives. That includes creating statutory plans and land use bylaws in planning growth within their regions. Land use bylaws establish development standards so that everyone understands, at least broadly, the uses to which land can be put and the limits of those uses. The rules are predictable, and there is an expectation they will be applied fairly and equally.
>
> [34] A land use bylaw "may prohibit or regulate and control the use and development of land and buildings in a municipality ": s 640(1.1) of the MGA. Among other things, a land use bylaw must set out the permitted uses and the discretionary uses of land or buildings: s 640(2)(b) of the MGA. A development permit *must* be issued if the proposed development is for a permitted use and otherwise complies with the land use bylaw: s 642(1) of the MGA. If the proposed development is for a permitted use that does *not* comply with all the requirements of the land use bylaw, the developer can apply to an appeal board for a variance of the bylaw requirements.

Edmonton Library followed the 2002 ABCA decision in *Flagstaff*,[176] where the ABCA stated that:

> Land use bylaws establish development standards so that everyone understands, at least broadly, the uses to which land can be put and the limits of those uses. The rules are predictable, and there is an expectation they will be applied fairly and equally.[177]

In *Flagstaff*, the ABCA also provided significant commentary about the need for the judiciary to balance individual rights and the public interest when asked to interpret a municipality's LUB, as follows:

> [26] These values – orderly and economic development, preservation of quality of life and the environment, respect for individual rights, and recognition of the limited extent to which the overall public interest may legitimately override individual rights – are critical components in planning law and practice in Alberta, and thus highly relevant to the interpretation of the *Bylaw*.

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[174] *MGA*, *supra* note 3, s 640.
[175] 2021 ABCA 355 (CanLII) [*Edmonton Library*].
[176] *Flagstaff*, *supra* note 85.
[177] *Ibid* at para 25.

> [27] Central to these values is the need for certainty and predictability in planning law. Although expropriation of private property is permitted for the public, not private, good in clearly defined and limited circumstances, private ownership of land remains one of the fundamental elements of our Parliamentary democracy. Without certainty, the economical development of land would be an unachievable objective. Who would invest in land with no clear indication as to the use to which it could be put? Hence the importance of land use bylaws which clearly define the specific uses for property and any limits on them.
>
> [28] The need for predictability is equally imperative. The public must have confidence that the rules governing land use will be applied fairly and equally. This is as important to the individual landowner as it is to the corporate developer. Without this, few would wish to invest capital in an asset the value of which might tomorrow prove relatively worthless. This is not in the community's collective interest.
>
> [29] The fundamental principle of consistency in the application of the law is a reflection of both these needs. The same factual situation should produce the same legal result. To do so requires that it be certain. The corollary of this is that if legislation is uncertain, it runs the risk of being declared void for uncertainty in whole or in part. As explained by Garrow, J.A. in *Re Good and Jacob Y. Shantz Son and Company Ltd.* (1911) 23 O.L.R. 544 (C.A.) at 552…[178]

As explained below, recent amendments made to Section 640 of the *MGA* through the *Red Tape Reduction Implementation Act*[179] provide much broader municipal authority to regulate land-use within municipal boundaries through LUBs.

Prior to these amendments, subsection 640(4) of the *MGA*, enabled, among other specific things, municipal regulation of the development of buildings within certain distances of water bodies and low-lying areas, usually by requiring building development setbacks. These setbacks from bodies of water protected riparian lands and wetlands from inappropriate land uses. In 2020, Section 640(4) was repealed in its entirety and replaced with subsection 640(1.1) (c) that provides much broader authority (without limitation) for "regulating the development of buildings," as follows:

> 640(1) Every municipality must pass a land use bylaw. (No change here.)
>
> (1.1) A land use bylaw may prohibit or regulate and control the use and development of land and buildings in a municipality, including, **without limitation**, by
> (a) imposing design standards,
> (b) determining population density,
> (c) regulating the development of buildings,
> (d) providing for the protection of agricultural land, and
> (e) providing for any other matter council considers necessary to regulate land use within the municipality. (Emphasis added.)

The inclusion of the new clause (1.1) (e) provides broad municipal authority for all municipal councils in Alberta to regulate the development of buildings on any parcel of land within the boundaries of the municipality. Building is broadly defined in Part 17, to include "anything

[178] *Ibid* at paras 27-29.
[179] *RTRIA 2019*, *supra* note 78. See *MGA*, *supra* note 3, s 640(1.1).

constructed or placed on, in, over or under land, but does not include a highway or road or a bridge that forms part of a highway or road." Therefore, any municipal council in Alberta might include general regulations in the LUB to restrict the development of buildings in flood risk areas, riparian lands and wetlands, steep slopes, and other environmentally significant landscapes.

A rural municipality might restrict any development of buildings adjacent to forested areas or large grasslands to ameliorate the consequences of wildfires. Many municipalities already address these issues through environmental protection "overlays" that apply in all land-use districts affected by the overlay policies and regulations.[180]

Of note, a municipality does not have to own the land to impose building and development restrictions and require appropriate building setbacks from environmentally significant landscapes located on privately-owned parcels. It should also be noted that the broad municipal authority granted through subsection 640(1.1) is in addition to the provisions in Part 17 for subdivision of land, environmental reserves, or conservation reserves.

Since 2019, the Alberta Court of Appeal has ruled in a number of decisions regarding Section 640(1.1)[181] In *893440 Alberta Ltd (Garage 104) v Edmonton (City)*, the city's subdivision and development appeal board had upheld the subdivision authority's refusal of an application to build a sign. The ABCA upheld the decision of the appeal board and confirmed that Section 640(1.1) "may prohibit or regulate and control the use and development of land and buildings in a municipality."[182]

For examples of the broad authority for a municipality to use LUB provisions to prohibit or regulate and control the development of buildings to conserve and manage the environment, private landowners and developers might be required:

- to leave appropriate development and building development setbacks, so that sufficient room is provided adjacent to rivers and surface bodies of water to allow them to flood: this would mean restricting development, or development of buildings, in identified flood hazard areas; and
- to leave urban forests in their natural state rather than be used as public parks or as public access points through wildlife corridors and critical wildlife habitat; and
- to provide appropriate amounts of topsoil and landscaping materials to absorb and manage both the rate of flow and the quantity of storm drainage leaving the site, and thereby protect receiving bodies of water from undue erosion, and excessive sedimentation.

[180] See City of Edmonton, Zoning Bylaw, section 811: *North Saskatchewan River Valley and Ravine System Protection Overlay,* online: https://webdocs.edmonton.ca/infraplan/zoningbylaw/ZoningBylaw/Part2/Overlays/811_North_Saskatchewan_River_Valley_and_Ravine_System_Protection_Overlay.htm. Accessed on January 5, 2023. Appendix 1 is the overlay map that has been updated to June 2020.
[181] See 2021 ABCA 98.
[182] *Ibid* at para 11.

Some municipalities already require that all new development and redevelopment use low impact development strategies[183] using natural green infrastructure to manage storm drainage onsite rather than allowing it to be removed as quickly as possible through grey infrastructure like curbs, gutters, and pipes.[184] Low impact development strategies use storm drainage as a municipal asset rather than treating it as a liability.

Land use bylaw provisions may also be used to ensure that a municipality's climate change adaption program is considered by the development and subdivision authorities before approval of development permits and plans of subdivision.

One land use practice that might be changed to demonstrate adaption to climate change is a requirement to obtain a development permit before any stripping and grading of land might occur. Currently, stripping and grading of land in preparation for development does not require a development permit in some Alberta municipalities, and by the time a development permit is granted, all natural green infrastructure associated with the site has already been removed. The opportunity for managing natural infrastructure for the resiliency it provides during severe weather events is lost. Unfortunately, in March 2023, few LUBs in Alberta consider climate change adaption as a matter to be considered before, during, and after land use planning and development occur, although this is changing.[185]

Members of the general public who wish to participate in developing climate change adaption plans and programs in their municipalities will likely be sought out to provide critical community values regarding the conservation and management of environmentally significant features.[186]

8.0 Conclusion

The primary purpose of this Guide is to update the reader to recent changes regarding municipal authority for environmental management at the local and regional geopolitical scales. With the emergence of changing weather patterns and the unpredictability of increasingly severe weather events, municipalities need to participate in environmental management to prevent and mitigate against environmental risk, and respond appropriately during crises.

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[183] See Alberta Low Impact Development Partnership, "Land Development and Landscapes in Harmony," online: https://www.alidp.org/ (ALIDP). Accessed on January 3, 2022. Also see City of Calgary, "Low Impact Development," online: https://www.calgary.ca/uep/water/watersheds-and-rivers/erosion-and-sediment-control/low-impact-development.html. Accessed on January 3, 2022.

[184] *Ibid*.

[185] Tyler, *supra* note 37.

[186] See Federation of Canadian Municipalities, "Municipalities for Climate Innovation Program (2017-2022)," online: https://fcm.ca/en/programs/municipalities-climate-innovation-program. Accessed on January 10, 2023. Also see Municipal Climate Change Adaption Center, 'Real Savings. Real Change,' online: https://mccac.ca/. Accessed on January 10, 2023.

Alberta municipalities have moved beyond the tradition of protecting developments and buildings from so-called environmental hazards, and have entered a new era where they must foster the well-being of the environment as a fundamental municipal purpose. Municipal authority and responsibility to conserve and manage the environment in the overall greater public interest during land-use decision-making processes will remain top of mind for municipal councils and administrators, as well as the general public.

This Guide was written with citizens, landowners, developers, and municipal councils and their planning staff in mind. Since 2018, municipal development and subdivision authorities continue to grapple with interpretation of new provisions in Part 17 as they update statutory plans, and review and approve development permits and subdivision approvals.

Members of municipal councils and their advisors may want to learn more about their authority and responsibilities for local and regional scale environmental management, and have a look at how the ABCA and the Tribunal are interpreting the new provisions. Landowners and developers also want to understand municipal authority to participate in environmental management at the local and regional geopolitical scales. They may want to understand how recent amendments to the *MGA* may have enhanced or added municipal authority for environmental management during land-use decision-making processes.

Members of the general public sometimes need more information to participate effectively in municipal planning and development decision-making processes, especially when potential negative impacts on the environment will be considered. This Guide may help the public to prepare for participation and understand the nuances of municipal planning law and the environment.

Where appropriate, this Guide includes incidental discussion of changes to the *MGA* that may affect private landowner rights and the ability of the public to participate in land-use decision-making and local processes for environmental management. The public continue to play a critical role in establishing shared community values and land-use policies that are reflected in a municipality's statutory plans, the LUB and other municipal bylaws.

There are no new rights to appeal granted to members of the general public, but most municipal councils are providing for some type of public consultation when developing statutory plans or when amending the LUB. It is up to council to ensure that public participation is meaningful and acted upon during decision-making processes to ensure that the overall greater public interest is being served.

The significant amendments in Part 17, particularly Sections 640(1.1) and 664 and the ABCA and the Tribunal's recent interpretation of those sections were examined. The reasoning in those decisions indicates that municipal development and subdivision authorities are well within their jurisdiction when they impose conditions on development permits and subdivision approvals that conserve and manage land and water resources located on privately-owned lands. Protecting water and natural resources located on privately-owned lands is in the overall greater public interest. These provincial policy considerations were articulated in the LUPs in 1996 and are set out in *ALSA* regional plans.

The Tribunal and the ABCA will likely continue to examine the wording of new provisions in the *MGA*, especially Part 17, to ensure that the rights of private property owners are protected during municipal land-use and development decisions. However, they will balance those rights with the need to conserve and manage the environment in the overall greater public interest.

ICFs were discussed to demonstrate that municipal authority and responsibility for environmental management has been enhanced when municipalities are collaborating during construction, maintenance, and operation of municipal and intermunicipal servicing infrastructure. It is encouraging that neighbouring municipalities are free to use an ICF to address environmental protection and climate resiliency at the regional scale.

Likely, further amendments to the *MGA* will continue, and perhaps the Province will ensure that all municipalities, not just Alberta's big cities, have the general jurisdiction to address environmental protection and climate resiliency through Section 7 bylaws.