

Provincial Conservation Laws

What are these?

Alberta's conservation laws are found in several pieces of legislation dealing with protected areas, regional planning and stewardship tools, and environmental law.

1. Protected Areas Legislation
These include *Wildlife Act*, the *Provincial Parks Act*, and the *Wilderness Areas, Ecological reserves, Natural Areas and Heritage Rangelands Act*.
2. Regional Planning and Stewardship Tools
This includes the *Alberta Land Stewardship Act (ALSA)*.
3. Environmental laws of general application
These include the *Environmental Protection and Enhancement Act (EPEA)*, the *Water Act* and the *Public Lands Act*.



Environmental Law Centre

A multitude of legislation deals with development of specific natural resources and may indirectly impact upon conservation efforts in Alberta. For instance, the *Agricultural Operation Practices Act (AOPA)* regulates agricultural operations including confined feeding operations (CFOs) which may influence municipal efforts to conserve natural infrastructure. Under AOPA, CFOs above a certain size threshold must obtain a permit from the Natural Resources Conservation Board (NRCB). A municipality may regulate any CFOs below the AOPA threshold and any other structures not specifically approved by the NRCB.¹ A municipality may also use municipal planning to limit CFOs to certain areas of the municipality; however, it is important to remember that a NRCB permit has priority over any municipal land use planning.²

How can municipalities use provincial conservation laws?

Municipalities have authority to make bylaws for municipal purposes which include fostering the well-being of the environment.³ If a municipal bylaw is inconsistent or conflicts with a provincial law, it has no effect to the extent of that inconsistency or conflict.⁴ A similar principle applies to inconsistencies and conflicts with federal law.⁵ However, this does not mean that a municipality cannot pass a bylaw

¹ [Government of Alberta, *Municipalities and the Agricultural Operations Practice Act \(AOPA\)*, Agdex 096-12 \(reprinted Sept 2014\)](#).

² *Municipal Government Act*, R.S.A. 2000, ch. M-26, s. 619.

³ Section 3 of the *Municipal Government Act* sets out municipal purposes. Sections 7 and 8 set out the jurisdiction and bylaw powers.

⁴ *Municipal Government Act*, s. 13.

⁵ This principle applies at common law, see *Multiple Access Ltd. v. McCutcheon*, [1982] 2 S.C.R. 161.

dealing with a matter addressed by provincial or federal law. A municipal bylaw can impose additional requirements (it just cannot create a conflict with or undermine the provincial or federal law).⁶

a) *Municipalities and Protected Areas*

Protected areas legislation, as the name suggests, enables land to be set aside for various degrees of protection against development and industrial activity. The *Wildlife Act* and its regulations, while primarily focused on the regulation of hunting activities, also allow land to be set aside for conservation purposes (such as habitat conservation areas and sanctuaries). A municipality may work with the provincial government to have land designated under one of these pieces of legislation.

Another potential avenue for protecting natural infrastructure is the *Historic Resources Act* which enables protection of historic resources including a “work of nature” with natural, scientific or esthetic interest. A municipality may designate a municipal historic resource or area.⁷

b) *Municipalities, Regional Planning and Stewardship Tools*

ALSA establishes a regional planning process for Alberta. Each regional plan contains a vision and set of objectives for that region, as well as rules of application and interpretation specifying which portions of the plan are enforceable as law and which portions are statements of public policy or direction without binding legal effect. The regional plans are typically augmented with environmental management frameworks which are meant to manage cumulative environmental effects on a regional level (for air and water). Sub-regional plans may also be developed to address specific issues within a region (such as caribou habitat).

A municipal government must ensure its land-use planning and decision-making complies with an applicable regional plan.ⁱ This means that decisions, statutory and non-statutory plans, and bylaws must comply with an applicable regional plan (as well as applicable environmental management frameworks and sub-regional plans). Where there is no applicable regional plan, the municipal government must abide by the provincial Land Use Policies.ⁱⁱ

ALSA also enables a variety of conservation and stewardship tools which may be used by a municipality to achieve conservation goals. These include conservation easements, conservation offsets, and transfer of development credit schemes.

c) *Municipalities and Environmental Laws of General Application*

Not surprisingly, the actions of municipalities are subject to general applicable environmental laws. In terms of efforts to conserve natural infrastructure, three areas are particularly relevant: public lands, water and contaminated lands.

Public Lands

⁶ *114957 Canada Ltee (Spraytech, Societe d'arrosage) v. Hudson (Town)*, [2001] 2 S.C.R. 241 which upheld a municipal bylaw dealing with pesticides despite there already being provincial and federal regulation.

⁷ *Historic Resources Act*, R.S.A. 2000, ch. H-9, ss. 26 and 27.

Public lands are managed and administered under the *Public Lands Act*. While “land” is often thought out in terms of the surface, the *Public Lands Act* also deals with those parts of the sub-surface which are owned by the province (i.e. most mines and minerals). The province may lease public lands for use or resource extraction, and those activities may be highly regulated. It is important to remember that under the MGA, a decision made by the Alberta Energy Regulator, the Alberta Utilities Commission, or the Natural Resources Conservation Board takes priority over municipal land-use planning and decisions.ⁱⁱⁱ This may impact upon municipal efforts to conserve natural infrastructure.

The *Public Lands Act* also allows for notations on public lands. Such notations identify management intention related to land and provide notice that consultation may be required prior to leasing the land for use or development. A municipality could seek to have notations attached to public lands within or adjacent to their boundaries.

The land-use planning provisions of the MGA do not apply to designated public lands in a municipal district or specialized municipality.⁸ This suggests that public lands within a municipality that are not so designated can be subject to municipal planning. Similarly, so long as the public lands are within municipal boundaries, municipal bylaws could apply. Again, this comes with the caveat that such planning could not conflict or undermine any provincial management of the lands. Most likely this would be used to address “gaps” in provincial regulation of public lands.

Water

Generally speaking, issues of water quality are addressed by EPEA and issues of water usage (licenses) are addressed by the *Water Act*. Municipalities may hold water licences under the *Water Act* to allow diversion of water for municipal purposes. There are also federal laws – such as the *Fisheries Act* – which deal with water.

However, the MGA also contains provisions relevant to water management within a municipality. A municipality has the ***direction, control and management of bodies of water within its boundaries***.^{iv} A body of water is defined as a permanent and naturally occurring water body OR a naturally occurring river, stream, watercourse or lake.^v Despite this authority, the province is the owner of water and the beds and shores of bodies of water located in a municipality (and elsewhere throughout Alberta).^{vi}

The direction, control and management of bodies of water can be a central aspect of conserving natural infrastructure. A municipality can engage in land use planning activities around water (including requiring environmental or conservation reserves). A municipality can pass bylaws regulating and protecting surface water within the municipality. Municipalities can also develop policies to manage bodies of water with biodiversity and ecosystem health in mind (such as Edmonton and Calgary have done with their respective wetland policies).

Contaminated Sites

The EPEA has provisions dealing with contaminated lands.^{vii} Any municipality can work with the provincial government to address contaminated sites within their boundaries and, in doing, may result in protection of natural infrastructure from further impacts arising from contamination.

⁸ MGA, s. 618(2)(b) and *Crown Land Area Designation Regulation*, A.R. 239/2003.

As charter cities,^{viii} Edmonton and Calgary have specific authority to make bylaws for the creation, implementation and management of programs for contaminated, vacant, derelict or under-utilized sites. However, all municipalities can take steps to address contaminated sites through their bylaw, planning or taxation powers. For instance, a municipality can use its planning powers to regulate and redevelop contaminated sites. This can be augmented with municipal tax incentives designed to incentivize clean-up of contaminated sites.⁹ Increasingly, success has been gained with revitalizing contaminated lands using natural infrastructure or even turning it into natural infrastructure.¹⁰

How can they help maintain natural infrastructure?

As can be seen, there is a variety of legislation that impacts upon conservation in Alberta. In some cases, this legislation provides direct tools to municipalities for conservation (for example, ALSA stewardship tools, control and management of bodies of water under MGA, designation of municipal historic resources and areas). In other cases, a municipality can work together with the province to achieve conservation of natural infrastructure (for example, seeking designations under the *Wildlife Act* or notations under the *Public Lands Act*, addressing contaminated lands).

Municipalities should remember that, in the event a person is seeking an approval or licence for an activity that may impact upon the municipality, participation in the related process may be a possibility.

Resources

[Environmental Law Centre, *Municipalities and Environmental Law Part 2: Municipal Management of Water Bodies* \(2018\)](#)

[Environmental Law Centre, *Municipalities and Environmental Law Part 4: Municipalities and Brownfields* \(2018\)](#)

[Cameron Jefferies and Erin Sawyer, *Subsidiarity in Action: Effective Biodiversity Conservation and Municipal Innovation* \(Edmonton: Alberta Land Institute, 2019\)](#)

[Land Use Planning Hub](#) (information on ALSA and regional plans)

[AUMA and AMSC, *Municipal Planning Hub, Version 2* \(January 2017\)](#)

[Alberta Water License Viewer](#)

[Environmental Law Centre, *Habitat Law in Alberta: Executive Summary* \(Edmonton: Environmental Law Centre, 2019\)](#)

[Rebecca Kauffman, *Habitat Law in Alberta Volume 1: The State of Habitat Laws in Alberta* \(Edmonton: Environmental Law Centre, 2019\)](#)

⁹ MGA, 364.1.

¹⁰ Christopher A. DeSousa, *Turning Brownfields into green space in the City of Toronto* (2003) 62(4) *Landscape and Urban Planning* 181.

Legislation

[*Agricultural Operation Practices Act*, R.S.A. 2000, ch. A-7](#)

[*Alberta Land Stewardship Act*, S.A. 2009, ch. A-26.8](#)

[*Environmental Protection and Enhancement Act*, R.S.A. 2000, ch. E-12](#)

[*Public Lands Act*, R.S.A. 2000, ch. P-40](#)

[*Historic Resources Act*, R.S.A. 2000, ch. H-9](#)

[*Water Act*, R.S.A. 2000, ch. W-3](#)

[*Wildlife Act*, R.S.A. 2000, ch. W-10](#)

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ⁱ ALSA, s. 20 and MGA, ss. 619, 622, 630.2, 638.1, 639.1, 655, 692, 708.06 and 708.15.

ⁱⁱ MGA, s. 622.

ⁱⁱⁱ MGA, s. 619.

^{iv} MGA, s. 60.

^v MGA, s. 1(1.2).

^{vi} Public Lands Act, s. 3: the province owns the beds and shores of (1) all permanent and naturally occurring bodies of water and (2) all naturally occurring rivers, streams, watercourses and lakes.

^{vii} EPEA, Part 5, Division 2.

^{viii} *City of Edmonton Charter, 2018 Regulation*, A.R. 39/2018 and *City of Calgary, 2018 Regulation*, A.R. 40/2018.