

2011 Bill 10

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Fourth Session, 27th Legislature, 60 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 10**

**ALBERTA LAND STEWARDSHIP AMENDMENT ACT, 2011**

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THE MINISTER OF SUSTAINABLE RESOURCE DEVELOPMENT

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 10

2011

### ALBERTA LAND STEWARDSHIP AMENDMENT ACT, 2011

(Assented to \_\_\_\_\_, 2011)

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

**Amends SA 2009 cA-26.8**

**1 The *Alberta Land Stewardship Act* is amended by this Act.**

**2 Section 1 is repealed and the following is substituted:**

**Purposes of Act**

**1(1)** In carrying out the purposes of this Act as specified in subsection (2), the Government must respect the property and other rights of individuals and must not infringe on those rights except with due process of law and to the extent necessary for the overall greater public interest.

**(2)** The purposes of this Act are

- (a) to provide a means by which the Government can give direction and provide leadership in identifying the objectives of the Province of Alberta, including economic, environmental and social objectives;
- (b) to provide a means to plan for the future, recognizing the need to manage activity to meet the reasonably foreseeable needs of current and future generations of Albertans, including aboriginal peoples;

## Explanatory Notes

**1** Amends chapter A-26.8 of the Statutes of Alberta, 2009.

**2** Section 1 presently reads:

*1 The purposes of this Act are*

- (a) to provide a means by which the Government can give direction and provide leadership in identifying the objectives of the Province of Alberta, including economic, environmental and social objectives;*
- (b) to provide a means to plan for the future, recognizing the need to manage activity to meet the reasonably foreseeable needs of current and future generations of Albertans, including aboriginal peoples;*
- (c) to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events.*

- (c) to provide for the co-ordination of decisions by decision-makers concerning land, species, human settlement, natural resources and the environment;
- (d) to create legislation and policy that enable sustainable development by taking account of and responding to the cumulative effect of human endeavour and other events.

**3 Section 2 is amended**

**(a) by renumbering it as section 2(1);**

**(b) in subsection (1)**

**(i) in clause (aa) by adding “, subject to subsection (2),” after “means”;**

**(ii) in clause (cc) by striking out “as the Stewardship Minister” and substituting “as the Minister”;**

**(c) by adding the following after subsection (1):**

**(2)** For greater clarification, the definition of statutory consent does not include any permit, licence, registration, approval, authorization, disposition, certificate, allocation, agreement or instrument issued under or authorized by

- (a) the *Land Titles Act*,
- (b) the *Personal Property Security Act*,
- (c) the *Vital Statistics Act*,
- (d) the *Wills Act*,
- (e) the *Cemeteries Act*,
- (f) the *Marriage Act*,
- (g) the *Traffic Safety Act*, or
- (h) any enactment prescribed by the regulations.

**3** Section 2(aa) and (cc) presently read:

*2 In this Act,*

- (aa) “statutory consent” means a permit, licence, registration, approval, authorization, disposition, certificate, allocation, agreement or instrument issued under or authorized by an enactment or regulatory instrument;*
- (cc) “Stewardship Minister” means the Minister designated under section 16 of the Government Organization Act as the Stewardship Minister responsible for all or part of this Act;*

**(3)** Nothing in this Act, a regulation under this Act or a regional plan is to be interpreted as limiting, reducing, restricting or otherwise affecting the compensation payable or rights to compensation provided for under any other enactment or in law or equity.

**4 Section 4(1) is amended by striking out “The” and substituting “Subject to section 5, the”.**

**5 Section 5 is repealed and the following is substituted:**

**Consultation required**

**5** Before a regional plan is made or amended, the Stewardship Minister must

- (a) ensure that appropriate public consultation with respect to the proposed regional plan or amendment has been carried out, and present a report of the findings of such consultation to the Executive Council, and
- (b) lay before the Legislative Assembly the proposed regional plan or amendment.

**6 Section 8(2) is amended by adding the following after clause (g):**

- (h) make different provision for
- (i) different parts of a planning region, or for different objectives, policies, activities or effects in a planning region;

**4** Section 4(1) presently reads:

*4(1) The Lieutenant Governor in Council may make or amend regional plans for planning regions.*

**5** Section 5 presently reads:

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

*(a) a regional advisory council has been appointed for a planning region to which a regional plan or an amendment to a regional plan applies;*

*(b) a regional advisory council or other person has provided advice about a proposed regional plan or an amendment to a regional plan and irrespective of the advice given and irrespective of whether or not the advice was considered or followed;*

*(c) the secretariat has provided advice with respect to a regional plan or an amendment to a regional plan and irrespective of the advice given and irrespective of whether or not the advice was considered or followed.*

*(2) The Lieutenant Governor in Council may repeal a regional plan.*

**6** Section 8(2) presently reads:

*(2) A regional plan may*

*(a) include policies designed to achieve or maintain the objectives for the planning region;*

- (ii) different classes of effect arising from an activity in a planning region;
- (i) manage an activity, effect, cause of an effect or person outside a planning region until a regional plan comes into force with respect to the matter or person;
- (j) specify that it applies for a stated or described period of time;
- (k) provide for an exclusion from, exception to or exemption from its legal effect;
- (l) specify whether, in whole or in part, it is specific or general in its application;
- (m) delegate and authorize subdelegation of any authority under the regional plan, except authority
  - (i) to make a regional plan or amend a regional plan, or to make or adopt rules under a regional plan, or
  - (ii) to approve, adopt or incorporate a subregional plan or issue-specific plan as part of a regional plan, or to adopt or incorporate a plan, agreement or arrangement as part of a regional plan, or to amend any of them.

**7 Section 9(2)(f) is repealed.**



- (b) *set or provide for one or more thresholds for the purpose of achieving or maintaining an objective for the planning region;*
- (c) *name, describe or specify indicators to determine or to assist in determining whether an objective or policy in the regional plan has been, is being or will be achieved or maintained and whether policies in the regional plan are working;*
- (d) *describe or specify the monitoring required of thresholds, indicators and policies, who will do the monitoring and when, and to whom the monitoring will be reported;*
- (e) *describe or specify the times and means by which, and by whom, an assessment or analysis will be conducted to determine if the objectives or policies for the planning region have been, are being or will be achieved or maintained;*
- (f) *describe or specify the actions or measures or the nature of the actions or measures to be taken to achieve or maintain the objectives and policies in the regional plan, and by whom they are to be taken or co-ordinated, if*
  - (i) *an adverse trend or an adverse effect occurs;*
  - (ii) *an objective or policy is or might be in jeopardy or a threshold is or might be exceeded or jeopardized;*
  - (iii) *an objective or policy has not been achieved or maintained, is not being achieved or maintained, or might not be achieved or maintained;*
- (g) *describe and convey to a person named in the regional plan authority to achieve or maintain an objective or policy, which may include delegating authority under any enactment or regulatory instrument to the person named.*

**7** Section 9(2) presently reads in part:

- (2) *Without limiting subsection (1), a regional plan may*
  - (f) *with respect to a planning region, make, as part of the regional plan, law about matters in respect of which a local government body may enact a regulatory instrument;*

**8 Section 11 is amended**

**(a) in subsection (1) by striking out “extinguish” and substituting “rescind”;**

**(b) in subsection (2)**

**(i) by striking out “and” at the end of clause (a);**

**(ii) in clause (b) by striking out “consent holder” and substituting “holder of the statutory consent”;**

**(iii) by adding “and” at the end of clause (b) and by adding the following after clause (b):**

(c) give reasonable notice to the holder of the statutory consent of any proposed compensation and the mechanism by which compensation will be determined under any applicable enactment in respect of any effect on or amendment or rescission of the statutory consent.

**(c) by adding the following after subsection (2):**

**(3)** Notwithstanding subsection (1), a regional plan may not affect, amend or rescind

(a) a development permit or an approval in respect of a development, or

(b) an approval for which no development permit is required under a land use bylaw

under Part 17 of the *Municipal Government Act* where the development has progressed to the installation of improvements on the relevant land at the time the regional plan comes into force.

**9 Section 12 is repealed.**

**8** Section 11 presently reads:

*11(1) For the purpose of achieving or maintaining an objective or a policy of a regional plan, a regional plan may, by express reference to a statutory consent or type or class of statutory consent, affect, amend or extinguish the statutory consent or the terms or conditions of the statutory consent.*

*(2) Before a regional plan includes a provision described in subsection (1), a Designated Minister must*

- (a) give reasonable notice to the holder of the statutory consent of the objective or policy in the regional plan that the express reference under subsection (1) is intended to achieve or maintain, and*
- (b) provide an opportunity for the consent holder to propose an alternative means or measures of achieving or maintaining the policy or objective without an express reference referred to in subsection (1), including, if appropriate, within a regulatory negotiation process referred to in section 9(2)(j).*

**9** Section 12 presently reads:

*12(1) A regional plan*

- (a) may make different provision for*

**10 Section 13 is amended by adding the following after subsection (2):**

**(2.1)** Notwithstanding subsection (2), a regional plan may provide rules of application and interpretation, including specifying which parts of the regional plan are enforceable as law and which parts of the regional plan are statements of public policy or a direction of the Government that is not intended to have binding legal effect.

**11 Section 15(1)(d) is amended by adding “subject to section 15.1,” before “all other persons”.**

- (i) *different parts of the planning region, or for different objectives, policies, activities or effects in a planning region;*
- (ii) *different classes of effect arising from an activity in the planning region;*
- (b) *may manage an activity, effect, cause of an effect or person outside a planning region until a regional plan comes into force with respect to the matter or person;*
- (c) *applies all the time unless the regional plan says it applies for a stated or described period of time or provides for an exclusion, exception or exemption;*
- (d) *may be specific or general in its application.*

*(2) The Lieutenant Governor in Council may, in a regional plan, delegate and authorize subdelegation of any authority under the regional plan except authority*

- (a) *to make a regional plan or amend a regional plan, or to make or adopt rules under a regional plan, or*
- (b) *to approve, adopt or incorporate a subregional plan or issue-specific plan as part of a regional plan, or to adopt or incorporate a plan, agreement or arrangement as part of a regional plan, or to amend any of them.*

**10** Section 13(2) presently reads:

*(2) Regional plans are legislative instruments and, for the purposes of any other enactment, are considered to be regulations.*

**11** Section 15(1) presently reads:

*15(1) Except to the extent that a regional plan provides otherwise, a regional plan binds*

**12 The following is added after section 15:**

**Variance**

**15.1(1)** A title holder may apply to the Stewardship Minister for a variance in respect of any restriction, limitation or requirement regarding a land area or subsisting land use, or both, under a regional plan as it affects the title holder.

**(2)** The Stewardship Minister may, by order, grant a variance despite the regional plan if the Stewardship Minister is of the opinion that

- (a) the proposed variance is consistent with the purposes of this Act,
- (b) the proposed variance is not likely to diminish the spirit and intent of the regional plan, and
- (c) refusal to grant the proposed variance would result in unreasonable hardship to the applicant without an offsetting benefit to the overall public interest.

**(3)** The Stewardship Minister may stay the application for a proposed variance for not more than one year if, in the Stewardship Minister's opinion, a proposed amendment to the regional plan will render the variance unnecessary.

**(4)** The Stewardship Minister may impose any terms and conditions that the Stewardship Minister considers appropriate with respect to any variance granted under this section.

**(5)** The Stewardship Minister shall publish any variance granted under this section in Part I of The Alberta Gazette.

- (a) *the Crown,*
- (b) *local government bodies,*
- (c) *decision-makers, and*
- (d) *all other persons.*

**12** Provision added authorizing the Stewardship Minister to issue variances.

(6) Any application for a variance and any variance granted under this section must be made publicly available in their entirety by the secretariat in accordance with the regulations.

(7) A variance under this section is neither an interest in land nor any other type of property.

(8) The Lieutenant Governor in Council may make regulations

- (a) respecting the form and manner of making applications to the Stewardship Minister under this section;
- (b) respecting fees that may be charged for an application under this section;
- (c) establishing rules regarding the granting, effect and repeal of orders made under this section;
- (d) respecting the manner in which applications and variances are to be made publicly available.

**13 The heading to Division 2 of Part 2 is amended by striking out “and Compensation” and substituting “, Compensation and Review”.**

**14 Section 19 is repealed and the following is substituted:**

**Compensation**

**19** A person has a right to compensation by reason of this Act, a regulation under this Act, a regional plan or anything done under a regional plan

- (a) as provided for under section 19.1,
- (b) as provided for under Part 3, Division 3, or
- (c) as provided for under another enactment.

**Right to compensation for compensable taking**

**19.1(1)** In this section,



**13** The heading to Division 2 of Part 2 presently reads:

*Division 2  
The Court and Compensation*

**14** Section 19 presently reads:

*19 No person has a right to compensation by reason of this Act, a regulation under this Act, a regional plan or anything done in or under a regional plan except either*

*(a) as expressly provided for under Part 3, Division 3, or*

*(b) as provided for under another enactment.*

- (a) “compensable taking” means the diminution or abrogation of a property right, title or interest giving rise to compensation in law or equity;
- (b) “private land” means land that is owned by a person other than
  - (i) the Crown in right of Alberta or of Canada or their agents, or
  - (ii) a municipality;
- (c) “registered owner” means a person registered in a land titles office as the owner of an estate in fee simple in private land or freehold minerals.

**(2)** If, as a direct result of a regional plan or an amendment to a regional plan, a registered owner has suffered a compensable taking in respect of the registered owner’s private land or freehold minerals, the registered owner may, within 12 months from the date that the regional plan or amendment comes into force, apply to the Crown for compensation in accordance with the regulations.

**(3)** If after 60 days from the date of an application under subsection (2) one or both of the following matters remain in dispute, the registered owner or the Crown may apply to the Compensation Board, in accordance with the regulations, for the Compensation Board to determine those matters:

- (a) whether the registered owner has suffered a compensable taking;
- (b) if the registered owner has suffered a compensable taking, the amount of any compensation payable in respect of the compensable taking.

**(4)** If, on application under subsection (3), the Compensation Board determines that the registered owner has suffered a compensable taking, the Compensation Board must, subject to the regulations, determine the amount of compensation on the same basis as if the registered owner’s private land or freehold minerals were the subject of a conservation directive under Part 3, Division 3, and that Division and the regulations made under



that Division respecting the determination of compensation payable, and hearings and procedures, including interest, costs and appeals, apply in the same manner as if the registered owner's private land or freehold minerals were the subject of a conservation directive.

**(5)** Section 42 applies to any determination of the Compensation Board under this section.

**(6)** Notwithstanding subsection (3), the registered owner may apply to the Court of Queen's Bench for the Court to determine the matters in dispute, and, subject to the regulations, the provisions of this Act and the regulations respecting the determination by the Compensation Board of compensation payable apply with all necessary modifications to the proceedings before the Court.

**(7)** If a registered owner brings an application under subsection (6), any application to or proceedings before the Compensation Board under this section in respect of the same dispute are discontinued.

**(8)** The Crown is liable to pay any compensation payable under this section to a registered owner.

**(9)** Nothing in this section gives a person a right to compensation

- (a) for anything done by a decision-maker under Part 17 of the *Municipal Government Act*, or
- (b) as a result of the operation or application of any provisions of that Part.

**(10)** The Lieutenant Governor in Council may make regulations

- (a) respecting the form and manner of making applications to the Crown, the Compensation Board or the Court of Queen's Bench under this section;
- (b) respecting the application or modification of Part 3, Division 3, and the regulations made under that



Division, in respect of applications to the Compensation Board or the Court of Queen's Bench under this section.

**Request for review of regional plan**

**19.2(1)** A person who is directly and adversely affected by a regional plan or an amendment to a regional plan may, within 12 months from the date the regional plan or amendment affecting the person comes into force, request a review of the regional plan or amendment affecting the person in accordance with the regulations.

**(2)** On receiving a request under subsection (1), the Stewardship Minister must establish a panel to conduct a review of the regional plan or amendment and report the results of the review and any recommendations to the Stewardship Minister.

**(3)** On receiving a report and any recommendations under subsection (2), the Stewardship Minister must present the report and recommendations to the Executive Council.

**(4)** Any request for a review and any report and recommendations under this section must be made publicly available in their entirety by the secretariat in accordance with the regulations.

**(5)** The Lieutenant Governor in Council may make regulations

- (a) respecting requests for a review under subsection (1);
- (b) respecting the establishment of panels under subsection (2), including, without limitation, regulations respecting the appointment, powers, duties and remuneration of panel members;
- (c) respecting the form and manner in which reports and recommendations of a panel must be provided to the Stewardship Minister;
- (d) respecting the manner in which requests for a review and reports and recommendations under this section are to be made publicly available.



**15 Section 43(1)(a) is repealed.**

**16 Section 57 is amended**

- (a) in subsection (1) by adding “, whose powers, duties and functions under this Act, the regulations and regional plans are subject to any directives of the Stewardship Minister under section 57.1” after “commissioner”;**
- (b) by repealing subsection (3).**

**17 The following is added after section 57:**

**Directives**

**57.1** The Stewardship Minister may, by order, issue directives that the secretariat and the stewardship commissioner must follow in carrying out their powers, duties and functions under this Act, the regulations and regional plans.

**18 Section 66 is amended by adding the following after clause (g):**

- (h) prescribing enactments for the purposes of section 2(2)(h).**



**15** Section 43(1)(a) presently reads:

*43(1) The Lieutenant Governor in Council may make regulations*

- (a) defining “injurious affection” for the purpose of section 39(3)(b);*

**16** Section 57 presently reads:

*57(1) There is established, as part of the public service of Alberta but not as part of a government department, a secretariat to be known as the Land Use Secretariat, headed by the stewardship commissioner.*

*(2) In accordance with the Public Service Act, there must be appointed a person to the position of stewardship commissioner and other employees as are required to administer the business and affairs of the secretariat.*

*(3) The stewardship commissioner has, with respect to the secretariat, all the authority and responsibility of a deputy head under*

- (a) the Public Service Act,*
- (b) the Financial Administration Act, and*
- (c) every other enactment under which a deputy head has a power, duty or responsibility.*

**17** Provision added authorizing the Stewardship Minister to issue directives.

**18** Section 66 presently reads:

*66 The Lieutenant Governor in Council may make regulations*



- (a) *designating a person or entity as a local government body, or exempting a local government body, for the purposes of the definition of local government body;*
- (b) *exempting an entity from the definition of decision-making body;*
- (c) *designating an instrument as a regulatory instrument for the purposes of the definition of regulatory instrument or exempting an instrument described in that definition from the definition;*
- (d) *prescribing or authorizing the stewardship commissioner to prescribe the form of statutory declarations required under this Act or the regulations and the nature and contents of other forms that may be required;*
- (e) *respecting matters that may be included in a regional plan;*
- (f) *designating an order establishing a regional advisory council under section 7 of the Government Organization Act before this section comes into force as an order in council establishing a regional advisory council under section 52, with or without modifications;*
- (g) *defining any word or expression used but not defined in this Act.*

