

2022 Bill 201

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Third Session, 30th Legislature, 71 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 201**

## **EASTERN SLOPES PROTECTION ACT**

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MS NOTLEY

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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# **BILL 201**

2022

## **EASTERN SLOPES PROTECTION ACT**

*(Assented to \_\_\_\_\_, 2022)*

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

### **Definitions**

**1** In this Act

- (a) “approval” has the same meaning as in the *Responsible Energy Development Act*;
- (b) “Category 1 coal” means the coal located within the area classified in the Eastern Slopes coal classification map as Category 1;
- (c) “Category 2 coal” means the coal located within the area classified in the Eastern Slopes coal classification map as Category 2;
- (d) “Category 3 coal” means the coal located within the area classified in the Eastern Slopes coal classification map as Category 3;
- (e) “Category 4 coal” means the coal located within the area classified in the Eastern Slopes coal classification map as Category 4;
- (f) “coal activity or project” means an activity or project related to coal exploration, development or mining that requires an approval to be lawfully carried out;

- (g) “coal lease” means a coal lease issued under the *Mines and Minerals Act*;
- (h) “coal mine” has the same meaning as the definition of “mine” in the *Coal Conservation Act*;
- (i) “Coal Policy” means the Government of Alberta publication entitled “A Coal Development Policy for Alberta” dated June 15, 1976;
- (j) “coal processing plant” has the same meaning as in the *Coal Conservation Act*;
- (k) “Eastern Slopes” means the area shown and described in the Eastern Slopes coal classification map as the Eastern Slopes;
- (l) “Eastern Slopes coal classification map” means Map 2 of Appendix 2 of the Coal Policy, republished on May 2, 2017 by Resource Mapping and Analysis, Government of Alberta;
- (m) “enhanced regional plan” means a regional plan to which the requirements under section 6 of this Act apply;
- (n) “regional plan” has the same meaning as in the *Alberta Land Stewardship Act*;
- (o) “Regulator” means the Alberta Energy Regulator established under the *Responsible Energy Development Act*.

## **Purposes**

**2** The purposes of this Act are

- (a) to protect the critical watersheds, including the Oldman River watershed, and wildlife habitats of the Eastern Slopes from the irreparable damage that would result from coal exploration, development and mining,
- (b) to recognize the ecological, cultural, recreational, tourism and agricultural, including irrigation and agricultural processing, values and uses of the Eastern Slopes,
- (c) to respect and uphold Indigenous treaty rights, and other aboriginal rights, and Indigenous traditional activities within the Eastern Slopes, and

- (d) to preserve the Eastern Slopes for the benefit of current and future generations for ecological, cultural, recreational, tourism and agricultural values and uses.

### **Application**

**3** If a provision of this Act conflicts or is inconsistent with a provision of another enactment, the provision of this Act prevails to the extent of that conflict or inconsistency.

### **Prohibition in perpetuity – Category 1 coal and Category 2 coal**

**4(1)** Despite any provision in the *Mines and Minerals Act*, on the coming into force of this Act, all Category 1 coal and Category 2 coal are to be treated as withdrawn from disposition under the *Mines and Minerals Act*.

**(2)** Despite any power, duty or function conferred or provided under any enactment to the Regulator or a person acting on behalf of the Regulator, the Regulator or that person, as the case may be, must not exercise, nor attempt to exercise, that power nor perform that duty or function if doing so would enable, directly or indirectly, a person to carry out a coal activity or project within the area classified and shown as Category 1 or Category 2 in the Eastern Slopes coal classification map.

### **Conditional prohibition – Category 3 coal and Category 4 coal**

**5(1)** Despite any provision in the *Mines and Minerals Act*, on the coming into force of this Act, coal that is Category 3 coal or Category 4 coal is to be treated as withdrawn from disposition under the *Mines and Minerals Act* until the Regulator determines that all regulatory requirements set out, in accordance with section 6(2)(b), in the enhanced regional plan that applies to that coal are met.

**(2)** Despite any power, duty or function conferred on or provided under any enactment to the Regulator or a person acting on behalf of the Regulator, the Regulator or that person, as the case may be, must not exercise, nor attempt to exercise, that power nor perform that duty or function if doing so would enable, directly or indirectly, a person to carry out a coal activity or project within the area classified and shown as Category 3 or Category 4 in the Eastern Slopes coal classification map until an enhanced regional plan is made and remains in effect for those lands.

### **Enhanced regional plan required for Eastern Slopes**

**6(1)** For the purpose of the application of section 5(a) of the *Alberta Land Stewardship Act* to a regional plan made in respect of any area within the Eastern Slopes, the reference to appropriate public consultation in that section means at least the following:

- (a) enhanced consultation with Indigenous governments and Indigenous peoples for a period of not less than six months;
- (b) consideration, and if consent is granted collection and inclusion, of traditional ecological knowledge for the purpose of making the regional plan;
- (c) the provision of adequate translation services to facilitate the participation of Indigenous elders and communities;
- (d) consultation with residents of the Eastern Slopes, all Albertans, affected municipalities, ranchers, farmers, agricultural, tourism and recreational businesses, and representatives of other affected industry and economic sectors, for a period of not less than six months.

**(2)** In addition to the elements required under section 8 of the *Alberta Land Stewardship Act*, a regional plan made in respect of any area within the Eastern Slopes must set out the following:

- (a) the areas that are designated as
  - (i) a protected or conserved area, or
  - (ii) an area within which coal exploration, development or mining activities may be permitted to be carried out;
- (b) for each designated area referred to in clause (a)
  - (i) the statutory prohibitions in respect of land use, linear disturbance and coal exploration, development and mining activities that should apply to that area, and
  - (ii) the regulatory requirements in respect of water use and allocations that should apply to that area to ensure the protection of the waters within that area and the use and enjoyment of those waters by current and future generations;
- (c) a detailed cumulative effects framework for the entire area subject to the regional plan that considers the impacts of all coal exploration, development and mining activities within that area, and which includes specific indicators, limits and triggers for water, land and air;
- (d) the establishment of an advisory panel consisting of subject-matter experts in environmental regulatory measures and monitoring, specifically experts who are knowledgeable about the

Eastern Slopes, to provide advice during the making of the regional plan.

(3) The Lieutenant Governor in Council must, within 12 months of the day on which a regional plan is made in respect of any area within the Eastern Slopes

- (a) determine the subregions of the area that are subject to the regional plan based on reasonable linear disturbance limits, and
- (b) make a subregional plan for each subregion that meets the same requirements, with necessary modifications, that apply under the *Alberta Land Stewardship Act* and this Act to the regional plan.

**Transitional – cancellation of certain leases**

**7(1)** A coal lease for Category 1 coal or Category 2 coal that is valid on the day immediately before this Act comes into force is cancelled on the day that this Act comes into force unless the holder of the coal lease holds a valid approval for a coal processing plant or coal mine that is actively operating on the property that is subject to the lease.

(2) A coal lease for Category 3 coal or Category 4 coal that is valid on the day immediately before this Act comes into force is cancelled on the day that this Act comes into force unless

- (a) the coal lease was issued before May 1, 2020, and
- (b) the holder of that coal lease holds a valid approval for a coal processing plant or coal mine that is actively operating on the property that is subject to the lease.

**Transitional – cancellation of certain approvals**

**8** An approval in relation to Category 1 coal, Category 2 coal, Category 3 coal or Category 4 coal that is valid on the day immediately before this Act comes into force is cancelled on the day that this Act comes into force unless the approval is for a coal processing plant or coal mine that is actively operating.

**Transitional – no cause of action due to cancellation**

**9(1)** The cancellation of a coal lease under section 7 or an approval under section 8 does not

- (a) create a cause of action nor provide any person with a right to claim damages or relief in law or equity, including claiming declaratory or injunctive relief, from any court, and

(b) confer jurisdiction on any court to grant to any person damages or relief in relation to the cancellation of that coal lease or approval, as the case may be.

(2) For greater certainty, nothing in this Act is intended to cancel or limit a right under the *Mines and Minerals Act* to apply for, or be granted, compensation in relation to the cancellation of a coal lease.

