RMA
RURAL MUNICIPALITIES
of ALBERTA

REPORT

RMA MEMBER COMMITTEE ON QUASI-JUDICIAL AGENCIES

November 2023

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> EXECUTIVE SUMMARY

The Government of Alberta (GOA) has created several quasi-judicial agencies to carry out regulatory functions on their behalf. Three of the agencies (Alberta Energy Regulator [AER], Alberta Utilities Commission [AUC], and Natural Resources Conservation Board [NRCB]) approve industrial projects commonly located in rural municipalities.

The Rural Municipalities of Alberta (RMA) has expressed concern with the lack of recognition the agencies have for municipal land use plans and input when approving projects in rural municipalities. As municipalities are the approval authority for nearly all other developments, quasi-judicial authority over oil and gas sites (AER), renewable energy projects (AUC), and confined feeding operations (NRCB) has led to cases of land use conflicts and unintended impacts after projects have been approved and built.

To better understand and consider solutions to this issue, the RMA formed a member committee. The committee undertook research, met with quasi-judicial agencies, and conducted a member survey. The committee learned that while the three agencies have different mandates and approval processes, all include barriers to municipal participation and consideration of municipal plans and perspectives.

As municipalities are responsible for land use planning, service delivery, infrastructure management, and other areas, the committee identified municipal impacts of this lack of input in areas such as land use, environment, reclamation / long-term liability, infrastructure strain, and municipal governance.

The committee developed five themes common to the agencies with impacts on municipalities:

- Theme 1: Public interest is not well-defined or reflected in quasi-judicial approval processes.
- Theme 2: Applicant engagement requirements do not reflect the importance of municipalities.
- Theme 3: The scope of approval processes are too narrow to adequately consider local input on cumulative effects, reclamation requirements, or broader land use impacts.
- Theme 4: Quasi-judicial agency approval processes are difficult for municipalities to access.
- Theme 5: Quasi-judicial agencies place tremendous trust in the companies they regulate.

Finally, the committee developed eight recommendations for the Government of Alberta and quasi-judicial agencies to consider to better integrate municipal input into their planning processes:

- Recommendation 1: That the GOA and quasi-judicial agencies work with stakeholders to develop an approach to integrating land use impact assessments and reclamation requirements into project approvals.
- Recommendation 2: That the GOA and quasi-judicial agencies work with stakeholders to develop a public interest evaluation framework to assess decision-making and engagement processes.
- Recommendation 3: That the GOA and quasi-judicial agencies work together and with stakeholders, including municipalities, to regularly adapt approval processes to industry changes.
- Recommendation 4: That both quasi-judicial agencies and applicants play a direct role in initial project engagement processes.
- Recommendation 5: That agencies review and redevelop current notification systems to better engage with municipalities at the onset of projects.
- Recommendation 6: That the AER, AUC, and NRCB collaborate to harmonize their respective engagement and approval processes as much as possible.
- Recommendation 7: That the AER and AUC adopt NRCB requirements related to aligning projects with municipal development plans.
- Recommendation 8: That municipalities have automatic status as directly affected parties and automatic standing at all hearings.

> 1. INTRODUCTION

Quasi-judicial agencies are arms-length organizations delegated by the Government of Alberta to perform regulatory functions on its behalf. For some quasi-judicial agencies, these delegated functions include approving development applications for projects within their mandated scope. As industries such as renewable energy, oil and gas and industrial agriculture are prevalent throughout Alberta's rural municipalities, it is crucial that quasi-judicial approvals of such developments take place through a public interest lens that considers project benefits and risks at both a local and provincewide level. While the *Municipal Government Act* assigns municipalities as responsible for local land use and development decisions, it also includes exceptions for certain development types by transferring approval responsibilities to quasi-judicial agencies.[1] In such cases, quasi-judicial agencies must ensure that municipal plans and perspectives are properly included and considered in their decision-making process, even if municipalities do not have the same legislated control that they have for other developments. Unfortunately, this is not currently the case.

Alberta's rural municipalities are proud of their unique role in supporting the province's industrial development by managing rural areas home to natural resources, as well as providing infrastructure and services relied upon by industry. The RMA's efforts to improve recognition of municipal concerns with project approvals is not to prevent development; in fact, it is just the opposite. By properly including municipal plans and perspectives in the project approval processes, quasi-judicial agencies can ensure that local project risks and impacts that may not be visible to themselves or the applicant are considered and mitigated, which will increase the likelihood that well planned projects will succeed and that truly poor project proposals with significant local risks are less likely to move forward.

1 See *Municipal Government Act*, s. 619.

In April 2023, the Rural Municipalities of Alberta (RMA) created the Quasi-Judicial Agencies Member Committee (QJAC) to better understand member concerns with the role, processes, and outcomes of land use and development decisions made by select provincial quasi-judicial agencies. RMA members have expressed concerns that some agencies inadequately assess a project's local impacts, that project engagement and hearing processes are not accessible to municipalities, and that the agencies are inconsistent in their decision-making processes, all of which put municipalities in a position of risk. RMA members have passed several recent resolutions describing inadequacies in quasi-judicial approval processes and calling for improvements. These include: [2]

- Resolution 9-22F: Renewable Energy Project Reclamation Requirements
- Resolution 21-22F: Loss of Agricultural Land to Renewable Energy Projects
- Resolution 6-22S: Responsiveness of Service Delivery by Quasi-independent Agencies in Alberta
- Resolution 7-20F: Amendments to *Municipal Government Act* Section 619
- Resolution 6-19F: Municipal Recourse for Solvent Companies Choosing Not to Pay Taxes
- Resolution 11-19F: Requirement for Municipal Authority Input on Energy Resource Development Projects
- Resolution 20-18F: Decommissioning Costs for Wind Energy Developments
- Resolution 6-18S: Wind Energy Regulations Required at Provincial Level
- Resolution 11-18S: Recycling of Solar Panels
- Resolution 7-11S: Natural Resources Conservation Board Approval Process

Based on the focus of the resolutions and ongoing concerns expressed by members, the QJAC examined three quasi-judicial agencies responsible for approving developments that are prevalent across rural Alberta. The agencies chosen were the:

- Alberta Energy Regulator (AER): Responsible for the regulation of oil, oil sands, natural gas, coal resources, geothermal, and brine-hosted mineral resources.
- Alberta Utilities Commission (AUC): Responsible for the regulation of electricity, natural gas, water and renewable power generation throughout the province. The AUC's approval of wind and solar projects is the focus of this report.
- Natural Resource Conservation Board (NRCB): Responsible for regulating confined feeding operations (CFOs) and major natural resource projects. The NRCB's approval of CFOs is the focus of this report.

2 The full resolutions can be accessed in the RMA Resolutions Database or in Appendix A.

The report features several sections:

- The **Committee Membership, Mandate and Process** section describes who was on the committee, what they were tasked with and how they went about developing the information in this report.
- The **Quasi-Judicial Agency Background** section provides a brief overview of the Alberta Energy Regulator, Alberta Utilities Commission and Natural Resources Conservation Board's mandates and project approval processes.
- The **Municipal Perspective** section examines why this issue is so important for Alberta's rural municipalities, and the local impacts of current approval processes.
- The **Key Themes** section summarizes the main issues heard by the committee.
- The **Recommendations** section includes several high-level recommendations for changes that can be made to better integrate municipal perspectives into quasi-judicial project approval processes.

The key themes developed by the committee are as follows:

- Theme 1: Public Interest is not well-defined by quasi-judicial agencies or reflected in quasi-judicial agency approval processes.
- Theme 2: Applicant engagement requirements do not reflect the importance of municipalities in the project approval process.
- Theme 3: The scope of approval processes are too narrow to adequately consider local input on cumulative effects, reclamation requirements, or broader land use impacts.
- Theme 4: Quasi-judicial agency approval processes are difficult for municipalities to access.
- Theme 5: Quasi-judicial agencies place tremendous trust in the companies they regulate.

The committee's recommendations are as follows:

- Recommendation 1: That the Government of Alberta and quasi-judicial agencies work with stakeholders to develop an approach to integrating land use impact assessments and reclamation requirements into all project approvals.
- Recommendation 2: That the Government of Alberta and quasi-judicial agencies work with stakeholders to develop a public interest evaluation framework to assess their decision-making and engagement processes.
- Recommendation 3: That the Government of Alberta and quasi-judicial agencies work together and with stakeholders, including municipalities, to regularly adapt approval processes to industry changes.
- Recommendation 4: That both quasi-judicial agencies and applicants play a direct role in initial project engagement processes.
- Recommendation 5: That agencies review and redevelop current notification systems to better engage with municipalities at the onset of projects.
- Recommendation 6: That the AER, AUC and NRCB collaborate to harmonize their respective engagement and approval processes as much as possible.
- Recommendation 7: That the AER and AUC adopt NRCB requirements related to aligning projects with municipal development plans.
- Recommendation 8: That municipalities have automatic status as directly affected parties and automatic standing at all hearings.

> 2. COMMITTEE MEMBERSHIP, MANDATE, & PROCESS

MANDATE

The QJAC's terms of reference includes the following mandate:

> *The purpose of this committee is to provide a rural municipal perspective on the current processes of quasi-judicial boards in approving certain provincially regulated developments, the impacts of such developments on rural municipalities and other landowners, and the role (or lack thereof) of municipalities in such approval processes.*
>
> *The committee will seek local examples of how developments approved by quasi-judicial agencies have impacted municipalities and provide input into the project engagement and approval process from the perspective of municipalities. The committee will primarily focus on local, municipal examples that demonstrate the lack of involvement of rural municipalities in existing processes.*

COMMITTEE MEMBERS

To gather a province-wide perspective, the QJAC included an elected official representative from each of the RMA's five districts, as well as a Committee Chair. All committee participants applied independently with support from their municipalities and were selected by the RMA Board of Directors based on their knowledge of the issue and perspectives they bring to the committee. Staff from the RMA's External Relations and Advocacy Department provided administrative support to the QJAC.

Committee members included:

- Board Chair: Jason Schneider, RMA District 1 Director, Vulcan County
- District 1: Kelly Christman, County of Newell
- District 2: Brent Ramsay, Red Deer County
- District 3: Doug Drozd, County of Barrhead
- District 4: Tyler Airth, Big Lakes County
- District 5: Cindy Trautman, Camrose County

COMMITTEE PROCESS

The committee held five meetings from May to September 2023 and met with several stakeholders to better understand the approval processes involved with the AER, AUC, and NRCB. The committee gathered information at each meeting which contributed to the development of the final report.

To gather a wholesome perspective of the issue, the committee invited seven external delegations to engage in a discussions. The delegation included representatives from:

- Rocky View County
- Municipal District of Willow Creek
- Canadian Renewable Energy Association (CanREA)
- Brownlee LLP
- Alberta Energy Regulator
- Alberta Utilities Commission
- Natural Resources Conservation Board

In addition to the meetings with two member municipalities, the committee administered a member survey to better understand the position of the broader membership. The survey consisted of twenty-two questions related to municipal interactions with the AER, AUC, and NRCB. The committee received 25 responses with a fairly consistent distribution from all districts.

> 3. QUASI-JUDICIAL AGENCIES BACKGROUND

The three quasi-judicial agencies examined in the report are responsible for monitoring and overseeing various aspects of company performance and the life-cycle of projects. However, each agency's scope is different; each are based on legislation and regulations enacted by the Government of Alberta, which are then actioned by the agencies through the development of rules, policies, directives, or other operational frameworks. For example, while the AER undertakes ongoing monitoring of company financial performance and risk and uses this information to inform their approval of applications for new licenses or license transfers, the NRCB has a much lesser role in regulating the ongoing financial and regulatory performance of companies that operate developments under their regulatory scope; their focus is on the approval of individual developments and environmental compliance.

For this reason, the committee avoided evaluating the broad regulatory role and jurisdiction of each agency, and instead focused primarily on the process by which the regulators review and approve individual project applications. This includes:

- the role played in the application process by both the regulator and project applicant,
- the extent to which municipalities have an opportunity to participate in the application process and how their plans and perspectives are considered during the decision-making process,
- how routine approval requests can be referred to formal hearings, and
- other aspects that allow for a more direct comparison of commonalities and differences among the three regulators related to the approval of specific projects.

ALBERTA ENERGY REGULATOR

Authority and Regulatory Scope

The AER was created in 2013, following the passing of the *Responsible Energy Development Act* (REDA). The AER was formed to harmonize approvals and regulation of all energy projects under one entity and assumed responsibility for regulatory functions previously provided by the Energy Resources Conservation Board and Alberta Environment and Sustainable Resources Development.[3] The AER is responsible for the regulation of oil, oil sands, natural gas, coal resources, geothermal, and brine-hosted mineral resources. The mandate of the AER as outlined in the REDA is "to provide for the efficient, safe, orderly, and environmentally responsible development of energy resources and mineral resources in Alberta through the Regulator's regulatory activities." It also specifies that this includes regulation of the disposition and management of public lands, protection of the environment, and conservation, management, and allocation of water.

The AER has developed several rules and directives under the REDA to guide its operations, including application approval processes, requirements for public and stakeholder engagement, and the role of impacted parties (including municipalities) in the application process. In general, rules outline the processes which the AER itself must follow, while directives apply to companies that are regulated by the AER. This section focuses primarily on two documents:

- "Directive 056: Energy Development Applications and Schedules", which outlines the project engagement and approval process.
- The AER Rules of Practice, which outline considerations the AER must follow when determining whether a hearing is necessary on a given project, as well as the hearing process itself.

Role of Regulator

The AER has limited involvement in the initial project engagement and approval process. Directive 056 places complete responsibility on the project applicant to undertake and report on engagement with impacted stakeholders.

The AER's involvement becomes much more direct if a statement of concern is filed by a "person who believes the person may be directly and adversely affected by an application."[4] A statement of concern is a document that is intended to formally capture a person's opposition to a project application, and must include an explanation of why a person considers themselves directly and adversely affected by the project, the nature of their objection, and the outcomes of the application that the person advocates.[5]

When the AER receives a statement of concern, this may indicate that the initial applicant-led engagement process has identified objections or concerns with the project that may require more direct agency involvement in the form of a hearing. The AER is allowed broad powers to disregard all or some of a statement of concern for many reasons, including if, in their opinion, the person has not demonstrated why they are directly and adversely

3 Now called Alberta Environment and Protected Areas.

4 *Responsible Energy Development Act*, s. 32.

5 AER Rules of Practice, s. 6(1).

affected, the statement of concern is not filed in time, a decision was made prior to the statement of concern being received, it is beyond the scope of the application, it relates to a government policy decision, is frivolous, without merit, or too vague.[6]

In most cases, a statement of concern that the AER deems valid will trigger a hearing. However, the AER has several other factors that they may consider. Firstly, the AER may hold a hearing even if a statement of concern has not been filed for reasons such as possible adverse effects on the environment or the aquatic environment. More notable for the committee's work is the fact that the AER can also choose to not hold a hearing if a valid statement of concern is received for several reasons, including whether the objection raised in the statement of concern has been resolved to the AER's satisfaction and whether the applicant or person filing the statement of concern have attempted to resolve the objection outside the formal process.[7]

While persons are required to file a statement of concern within 30 days of the public notice of the application,[8] the AER may approve applications without waiting for the 30-day period to elapse. Reasons include if an application is "routine" as defined in directive 056,[9] the project has minimal or no adverse impacts on the environment (in the AER's opinion), applications for amendments to licences under a variety of acts, and others.

Role of Applicant

The AER process requires the project applicant to undertake and report on engagement with impacted stakeholders as a condition of project approval. Applicants must develop and implement a "participant involvement program" (PIP) prior to submitting a formal application to the AER. A PIP should include a process for developing and distributing the applicant's information package and required AER documentation, responding to questions and concerns, discussing options, alternatives and mitigating measures, and seeking confirmation of non-objection.

Directive 056 also states that

> *the public is strongly encouraged to participate in ongoing issue identification, problem solving, and planning with respect to local energy developments. Early involvement in informal discussions with industry may lead to greater influence on project planning and mitigation of impacts. The public is also expected to be sensitive to the timing constraints on the applicant.*[10]

6 AER Rules of Practice, ss. 6.2(1) and 6.2(2).

7 AER's satisfaction and whether the applicant or person filing the statement of concern have attempted to resolve the objection outside the formal process.

8 AER Rules of Practice, s. 5.3.

9 A "routine application" is defined in Appendix 1 of Directive 056 as "one where the applicant met all requirements (including participant involvement), there are no outstanding public or industry concerns, and regulatory variances have been obtained." It is fair to question how the AER can be confident that an application is "routine" if they have not allowed the public the full 30 days to submit a statement of concern.

10 AER Directive 056, s. 3.1.

It is interesting to consider the expectations this places on the public, most of whom are likely unfamiliar with the process and would be reliant on applicants to provide them an opportunity to participate in issue identification, problem solving, etc.

The directive includes thresholds and requirements for what members of the public must be involved in a PIP and how the applicant must interact with each[11]. Public / landowner involvement is based on their distance from various project types, while the directive states:

> *...local authorities and the AER play an important part in the plan for orderly land use and should be involved at an early stage in planning an energy development and participant involvement program. Additionally, local authorities, AER staff, and the applicant's previous knowledge of the area may help identify needs in the community.*[12]

Specific involvement requirements fall into two categories: "notification" and "personal consultation and confirmation of non-objection." Parties falling into each are usually based on the distance a property is located from a specific type of development. In all project types, local authorities are either included in the "notification" category or not included at all.

Notification is, not surprisingly, a relatively limited form of engagement in which the applicant is required to share relevant project information but not required to interact directly. The applicant may share information with those in the "notification" category by written correspondence. Upon receiving the project information, the notified party does have some ability to engage in further discussions with the applicant. If the notified party indicates that it would prefer personal consultation, the applicant must respond by providing a representative with knowledge of the application to answer questions in person or by telephone. The applicant is required to allow notified parties 14 days to review the information package and request further discussion before considering their notification requirements complete.[13]

While notification requires no direct contact between the applicant and notified person unless requested, the personal consultation and confirmation of nonobjection process requires applicants to conduct face-to-face or telephone conversations with impacted persons and answer any questions that the person may have. Through this process, applicants are also required to confirm nonobjection verbally or in writing and must keep a log of the dates that consultation and non-objection occurred. If a person does not confirm nonobjection, the applicant must note this in their application to the AER.[14]It should be noted that although the AER Rules of Practice do not specifically address circumstances in which a person does not confirm nonobjection but also does not file a

11 AER Directive 056, Table 3.

12 AER Directive 056, s. 3.2.

13 AER Directive 056, s. 3.2.2.

14 AER Directive 056, s. 3.3.1.

statement of concern, the AER is authorized to hold a hearing for any reason they consider appropriate, which could presumably include a person's refusal to confirm nonobjection.[15]

Directive 056 also places expectations on both the applicant and any persons objecting to the project to utilize alternative dispute resolution prior to entering the AER's formal hearing process. The AER Rules of Practice empower the AER to convene a dispute resolution process and determine who is to participate. It also empowers the AER to determine the nature of the dispute resolution process, which includes facilitation or mediation by the AER or a hearing commissioner, and even binding alternative dispute resolution, although both parties must agree to this process. [16]

Municipal Involvement

Municipalities have limited recognition in the current AER project approval process. As mentioned, Directive 056 does include municipalities (referred to as local authorities) as requiring notification for several project types. No project types include municipalities in the "personal consultation and confirmation of nonobjection" category. RMA members have shared frustrations with the AER notification system, as the AER does not list the host municipality when publicly posting project applications, so municipalities are forced to rely on land location information to determine where projects are located if they do not receive direct notification from applicants.

The AER Rules of Practice make no reference to municipalities in relation to the requirements for AER to consider statements of concern or the hearing process. Municipal input is received and considered in the same manner as that of all other persons. There is no specific reference to the AER having an option to hold a hearing if a development is in contravention of municipal bylaws or plans, or even that the AER or applicant must review those plans.

Hearing Process

Anyone wishing to participate in the hearing can file a request with the AER. The request must either reference the person's statement of concern or explain why they did not issue a statement of concern but still wish to participate. The AER has full discretion to refuse a request to participate on grounds similar to rejecting statements of concern, including in the case of a group or association, if it is not demonstrated that "a majority of the persons in the group or association may be directly and adversely affected by the decision of the Regulator on the application."[17] While the AER may consider municipal planning documents within a hearing, municipalities are required to follow the same requests for standing as all other persons and the AER has full discretion to reject municipal standing requests or consideration of municipal plans as a determining factor in project approvals even if municipalities are able to participate.

The AER has complete control over the nature of participation, including whether participants will join in-person, make a written submission, and the scope of their involvement. All participants are required to provide a written submission summarizing their position prior to appearing. Municipalities can request to join the hearing as a participant and make written submissions explaining their concerns in the matter, however it is not guaranteed that they will be heard.

15 AER Rules of Practice, s. 7(j).

16 AER Rules of Practice, ss. 7.6 – 7.9.

17 AER Rules of Practice, s. 9(3)(c).

The AER also has a wide range of other tools to determine the hearing process, including sending information requests to participants, holding pre-meetings or technical meetings, setting time limits on various aspects of the hearing, determining whether the hearing is in person or virtual. The AER is required to make a decision on an application within 90 days of the conclusion of a hearing. [18]

ALBERTA UTILITIES COMMISSION

Authority and Regulatory Scope

The AUC was established in 2008 under the *Alberta Utilities Commission Act* (AUCA). Previously, utility projects were regulated by the Alberta Energy and Utilities Board, which was divided into two separate entities: the AUC and the Energy Resources Conservation Board. The AUC and is responsible for the regulation of electricity, natural gas, water and renewable power generation throughout the province. The AUC's mandate as outlined in the *Alberta Utilities Commission Act* is to regulate Alberta's utility sector in a manner that is fair, responsible, and in the public interest. The act gives the AUC broad powers to carry out this mandate, including the power to hold hearings, make rules, issue orders, set rates, enforce compliance, and investigate complaints.

The AUC has developed several rules, regulations, policies, and directives that guide their operations and reflect their mandate. These documents expand on the broad mandate provided in the *Alberta Utilities Commission Act*, providing more specific guidelines and procedures for various aspects of their work. This report focuses on the AUC's approval process for renewable energy developments, as this is the area of concern for RMA members. The approval process is primarily outlined through the following:

- AUC "Rule 007: Applications for Power Plants, Substations, Transmission Lines, Industrial System Designations and Hydro Developments and Gas Utility Pipelines"
- The AUCA
- AUC "Rule 001: Rules of Practice"

AUC Inquiry Into Development of Electricity Generation in Alberta

In August 2023, the Government of Alberta paused approvals of new electricity generation projects (including renewable energy) and ordered the AUC to conduct an inquiry into the process for approving generation processes. Among the themes the AUC is required to address is the impact of development on types or classes of agricultural or environmental land, impacts on viewscapes, and reclamation security requirements.

When the inquiry was announced, the QJAC's work was already underway, and as of the completion of this report, the inquiry had not yet began. However, both the QJAC and RMA are hopeful that the themes and recommendations in this report will be considered by the AUC when conducting the inquiry.

18 AER Rules of Practice, ss. 9 – 15.

Role of Regulator

The AUC's approval process is structured similarly to that of the AER. While the applicant is responsible for leading the initial engagement process, the AUC is only directly involved in the event that objections to the development are noted and a hearing may be required.

The AUC has fairly wide latitude to determine whether a hearing is necessary for a project application. The AUC may make a decision on any application without giving notice or holding a hearing.[19] The AUC is required to hold a hearing if it appears to the AUC that its decision may directly and adversely impact the rights of a person, and an impacted person responds to an AUC notice advertising a hearing.

Role of Applicant

Rule 007 requires applicants to conduct pre-application public consultation and involvement through a participant involvement program (PIP). Applicants must notify and/or consult with parties potentially affected by the project, which depending on the project type may include local residents, various stakeholder groups, Indigenous groups, and local municipalities.

The AUC process is similar to the AER process in that consultation is typically divided into "notification" and "personal consultation." Notification can take the form of sharing basic project information through a variety of means, including mail, email, or telephone. Unlike the AER's Directive 056, Rule 007 does not appear to specifically require proponents to respond to questions or concerns from notified persons.

Personal consultation, on the other hand, places greater expectations on applicants. Rule 007 describes it as follows:

> *[Personal consultation] goes beyond notification and refers to meaningfully engaging with individuals and groups about the project and includes listening and responding to any objections to the project.*[20]

Rule 007 does require the applicant to gather confirmation of non-objection from those eligible for personal consultation. When applying to the AUC, the applicant is expected to note any objection received and their efforts to resolve them.[21] Neither Rule 007 nor the AUCA are specific as to if and how objections are linked to the need for a hearing, but the AUC would presumably consider objections when reviewing an application to decide whether they are valid, have been resolved, and whether the person making them would be considered directly and adversely affected.

19 *Alberta Utilities Commission Act*, s. 9(1)

20 AUC Rule 007, Appendix A1, s. 5.

21 AUC Rule 007, Appendix A1, s. 9.

Municipal Involvement

While the AUC approval process does include municipalities within the "notify" category for some gas utility pipelines installations under the AUC's jurisdiction, municipalities are not included in either engagement category for renewable energy projects. However, Rule 007 does reference municipalities as important stakeholders in electricity development approvals, specifically due to their land use planning responsibilities. In providing guidance to applicants as to how they can develop an effective PIP, Rule 007 states the following:

> *Local authorities and various provincial departments have a role in ensuring orderly land use and development. Applicants should* **consider whether it is appropriate** *to involve these groups at an early stage in the planning of the electric facility or gas utility pipeline project and its PIP.*[22]

This statement shows that while the AUC recognizes the land use planning role of municipalities, this is not reflected in the mandatory engagement requirements placed on applicants. It is unclear on what basis applicants are expected to "consider whether it is appropriate" to involve municipalities in project planning if they are not required to even notify municipalities.

Municipalities are also not referenced within the AUCA in terms of the hearing process. Although municipalities are permitted to respond to an AUC notice of an upcoming hearing, the lack of pre-application notification requirements means that municipalities are entirely responsible for being made aware of the pending project, determining the impacts to land use plans and other issues, and making an argument as to why they are directly and adversely affected.

Hearings

Like the AER, the AUC has wide latitude as to the scope and process of hearings they choose to hold. It is important to note that the AUCA does require the AUC to consider "public interest" when holding hearings. More specifically, the AUCA states the following:

> *[When holding a hearing, the AUC must] give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.*[23]

This same requirement is not included in the AUCA for decisions that the AUC makes without a hearing, and the factors that the AUC uses to weigh the various considerations are not outlined in detail within the AUCA or elsewhere.

Rule 001 outlines the process for how the AUC will accept and review evidence during a hearing process. There is no standard documents or evidence considered by the AUC, as the scope of their decision is dependent on the information filed by those given standing to participate. All evidence filed must also be accompanied by a description of the qualifications of the person under whose direction the evidence was prepared, and how those qualifications are relevant to the issue being addressed in the hearing.[24]

22 AUC Rule 007, Appendix A1, s. 3.

23 *Alberta Utilities Commission Act*, s. 17(1).

24 AUC Rule 001, s. 20.2.

NATURAL RESOURCES CONSERVATION BOARD

Authority and Regulatory Scope

The NRCB was established in 1991 under the *Natural Resources Conservation Board Act* (NRCBA). Its mandate was extended in 2002 to regulate CFOs under the *Agricultural Operation Practices Act* (AOPA). Previous to this, municipalities were responsible for approving CFO developments. While the NRCBA outlines the broad powers of the NRCB, the AOPA describes the NRCB's mandate in relation to regulating CFOs.

The NRCB's operations are guided by a variety of regulations and policies. This section will reference the following:

- NRCB Approvals Policy
- AOPA
- AOPA Agricultural Operations, Part 2 Matters Regulation
- AOPA Administrative Procedures Regulation
- AOPA Standards and Administration Regulation

It is important to note that unlike the AER's Directive 056 and AUC's Rule 007 that address approval requirements for a wide range of project types under the scope of each agency, the NRCB Approvals Policy and the various regulations focus specifically on CFOs. However, even within this more focused operational policy, the NRCB has different engagement and approval processes for different types of approvals based on the size of the proposed CFO and the scope of the development activity:

- Approval – new large CFO
- Registration – new small CFO
- Authorization – construction on a CFO that does not affect livestock numbers [25]

While the differences in engagement and approval processes between the three permit types are too nuanced and detailed to summarize in this section, the themes and recommendations do touch on the concept of tailoring engagement processes to align with the size and scope of impact of projects.

25 Specific thresholds for each permit type are outlined in the AOPA Agricultural Operations, Part 2 Matters Regulation, ss. 2 – 4.

Role of Regulator

The NRCB process differs significantly from those of the AER and AUC. While the AER and AUC rely on project applicants to undertake and report on consultation and confirmation of non-objection, the NRCB conducts engagement on behalf of the project applicant. The NRCB does this through the use of approval officers. While the powers of approval officers are conferred through AOPA,[26] the Approvals Policy guides how they interact with applicants and stakeholders, and what factors they consider when making decisions.

Approval officers are responsible for notifying and engaging stakeholders in response to an initial CFO application, as well as for guiding the applicant through the process of developing both parts of the two-part application process. While the details of the two-part process are beyond the scope of this report, it is worth providing some background as the approach differs significantly from that of the AER and AUC.

The AOPA Administrative Procedures Regulation establishes the requirement that CFO applications be submitted in two parts and gives approval officers discretion in determining the contents and format of each part.[27] Part 1 applications typically include basic information on the applicant and proposed CFO, including contact information, location, and the number and type of livestock that will be at the CFO. Part 2 applications, which must be filed within six months of part 1, require more detailed information such as construction plans, site plans, and area plans. According to the Approvals Policy, the purpose of the two-part application process is to require applicants to determine their minimum distance separation (MDS)[28] requirements and whether they can meet them for the proposed size, location and type of CFO prior to undertaking the work and cost associated with providing the more detailed information required under part 2 of the application process. It is also intended to balance interests of applicants and landowners, as applicants can receive MDS approval before undertaking detailed project analysis, while the six-month maximum duration between parts 1 and 2 applications (the process requires that part 2 be filed within six months, or the application must be re-started) provides landowners some

26 *Agricultural Operation Practices Act*, s. 12.

27 AOPA Administrative Procedures Regulation, ss. 2 – 3.

28 Minimum distance separation (MDS) requirements are outlined in s. 3 and Schedule 1 of the AOPA Standards and Administration Regulation. MDS requirements are the distance that CFOs must be located from neighbouring properties. MDS is determined based on the type and number of livestock being housed at a proposed CFO, as well as other factors such as neighbouring land uses.

certainty that an applicant cannot freeze development on surrounding lands by "sitting on" a part 1 application indefinitely.[29]

After receiving part 1 and part 2 applications, the approval officer must consider a wide range of factors to evaluate the application, including whether the application is consistent with municipal development plans (this is discussed in more detail below). They may also make or require the applicant to make other investigations and reports, give directly affected parties a reasonable amount of time to review and reply to the application, hold meetings or other proceedings with respect to the application, consider the effects of the application on the environment, the economy, the community, and the appropriate use of land, and others.[30] Based on these considerations, the approval officer may either deny the application or approve the application, including with conditions.[31]

As the approval officer must allow directly affected parties time to review and reply to the application, and consider those replies in their decision, the AOPA and the Approvals Policy establish timelines by which directly affected parties must respond to applications upon receiving notice of the application. As explained in more detail below, municipalities are considered directly affected parties for CFO applications. Interestingly, although the AOPA allows municipalities and other directly affected parties with 10 working days to respond to an application, and all other parties with 20 working days to review the application and apply for directly affected party status,[32] the Approvals Policy has simplified the timelines and requires all responses, including those from municipalities, within 20 days of the application being posted publicly.[33]

Once the approval officer makes a decision, the AOPA allows directly affected parties to apply to the board for a review (in AOPA, a "review" is equivalent to a "hearing" in the REDA and the AUCA) of the decision within 10 working days of the decision being issued.[34] The NRCB has wide latitude to determine whether a request for a review is valid and may dismiss the application if, in the NRCB's opinion, the issues in the request were addressed by the development officer or have "little merit."[35]

If the NRCB chooses to hold a review, they have a wide range of processes and tools available. Notably, the NRCB must allow all directly affected parties to review information relevant to the review and furnish evidence and written submissions relevant to the review, even if the directly affected party did not request the review.[36] The NRCB must also "have regard to, but not be bound by, the municipal development plan" when conducting the review.[37]

29 NRCB Approvals Policy, s. 7.1.

30 AOPA, s. 20(1).

31 AOPA, s. 20(3).

32 AOPA, s. 19.

33 The Approvals Policy has simplified the timelines and requires all responses, including those from municipalities, within 20 days of the application being posted publicly.

34 This is clarified in AOPA, s. 20(4), 22(4), and 23(3) depending on the type of permit being issued.

35 AOPA, s. 25(1)(a).

36 AOPA, ss. 25(4)(b-c).

37 AOPA, s. 25(4)(g).

Role of Applicant

Aside from preparing the application itself, the applicant has a limited role in the engagement process, as the approval officer notifies directly affected persons and is responsible for considering any issues raised in the party's response to the application when making a final decision on the application.

The Approvals Policy does require approval officers to forward all written responses to an application to the applicant for review. The applicant may then choose to respond to the concern within 20 days. It should be noted that the response is submitted to the approval officer, not to the party that filed the initial response to the application. The approval officer may then consider both the initial response and the applicant response when making a decision on the application[38].

Municipal Involvement

Unlike the legislation and policies guiding the AER and AUC approval processes, the NRCB's CFO process has several direct references to municipalities. Firstly, AOPA specifically includes a municipality within the definition of an "affected person."[39] This definition is operationalized in the Approvals Policy, which clarifies that for the purposes of the approval process, the municipality that would host the proposed CFO is automatically "both an affected person and a directly affected party with respect to the application for that development." The same section also addresses neighbouring municipalities, indicating that if the municipal boundary is within the project's affected party radius, that municipality becomes an affected person and directly affected party as well.[40]

The approval process also includes recognition for municipal plans. AOPA requires approval officers to assess whether an application is consistent with the "land use provisions" of municipal development plans (MDPs), and to deny any application that is not consistent.[41] The Approvals Policy provides more details on what this recognition means in practice. It indicates that the approval officer will request the municipality's input on whether the application is consistent with the municipality's land use bylaw. However, approval officers are ultimately responsible for using their own discretion to determine consistency.[42] If an approval officer interprets an application as inconsistent with an MDP, they must deny the application.[43] If this occurs, the applicant may apply to the NRCB for a review. During the review, the NRCB is required to consider the MDP but may over-rule the approval officer denial and approve the application even if it is not in alignment with the MDP. It is important

38 AOPA, ss. 25(4)(b-c).

39 AOPA, s. 1(a).

40 NRCB Approvals Policy, s. 6.4.

41 AOPA, ss. 20(1) and 22(1).

42 NRCB Approvals Policy, s. 8.2.1

43 AOPA, ss. 20(1)(a) and 22(1)(a).

to note that while not a mandatory requirement, the NRCB has a history of working closely with municipalities seeking their advice on how they can develop their MDPs in a way that will provide some degree of local control over CFO siting without contradicting the NRCB's approval priorities.

Approval officers are also expected to consider land use provisions in other statutory plans, as well as a municipality's land use bylaw, if the MDP includes a clear reference to adopting a land use bylaw provision relevant to the application.[44]

In addition to considering plans and bylaws, the approval officer must consider "matters that would normally be considered if a development permit were being issued."[45] This section is intended to allow approval officers to evaluate the application against other issues or criteria the municipality would consider if the approval process was with the scope of the municipality. The policy includes details as to how "normally" is defined for this purpose.

Hearings

Applicants or directly affected parties may request that the NRCB review the permit decision, and in doing so, the NRCB may hold a review. The review may be in-person or based on written submissions. The Board will consider all details in an approval officer's report, evidence given by parties to review and any other information that the Board finds relevant. As mentioned above, the AOPA specifically requires the NRCB to consider municipal development plans and matters that would normally be considered if a development permit were being issued; direct references to municipal perspectives that are not included in the AER or AUC hearing processes.

44 NRCB Approvals Policy, ss. 8.2.3 and 8.2.5.

45 AOPA, s. 20(1)(b)(i).

SUMMARY OF EACH QUASI-JUDICIAL AGENCY'S APPROVAL PROCESS

As each quasi-judicial agency's approval process is quite complex, the table below provides a summary of how each process compares in terms of the regulator's role, applicant's role, municipal involvement, and hearing / review process.

Regulator's Role		
Alberta Energy Regulator	**Alberta Utilities Commission**	**Natural Resources Conservation Board**
◆ Review statements of concern if received. ◆ Hold hearing if statements of concern deemed valid.	◆ Review statements of concern if received. ◆ Hold hearing if statements of concern deemed valid.	◆ Conduct notification and engagement through approval officers. ◆ Consider wide range of factors, including municipal development plans (MDPs), to reach decision on application. ◆ Consider whether to hold a review (hearing) on application if eligible parties (including municipality and applicant) provide written concerns with decision. ◆ Deny initial application if not in alignment with MDP (approval officer). ◆ Consider MDP alignment and other development permit-related issues when making a decision (hearing).

Applicant's Role

Alberta Energy Regulator	Alberta Utilities Commission	Natural Resources Conservation Board
◆ Conduct engagement based on criteria in AER Directive 056. ◆ Develop and complete participant involvement program and submit as part of application. ◆ Confirm non-objection from those required under Directive 056.	◆ Conduct engagement based on criteria in AUC Rule 007. ◆ Develop and complete participant involvement program and submit as part of application. ◆ Confirm non-objection from those required under Rule 007.	◆ Option to respond to written questions or concerns that eligible parties submit to approval officer. ◆ Option to provide written objection and request for hearing based on approval officer decision.

Municipality Involvement

Alberta Energy Regulator	Alberta Utilities Commission	Natural Resources Conservation Board
◆ Receive direct notification for some project types. ◆ Project approval does not require municipal nonobjection. ◆ May submit statements of concern — standing in hearings determined by AER on a case-by-case basis. ◆ AER not obligated to consider or review municipal plans if not submitted as evidence into hearings.	◆ Receive direct notification on a limited number of project types (no notification requirement on renewable energy). ◆ Applicants are encouraged to "consider" engaging with municipalities. ◆ Project approval does not require municipal nonobjection. ◆ May submit statements of concern — standing in hearings determined by AER on a case-by-case basis. ◆ AUC not obligated to consider or review municipal plans if not submitted as evidence into hearings.	◆ Approval officer required to interpret whether application aligns with MDP, other statutory plans, and (in some cases) land use bylaw. ◆ Municipalities receive automatic standing at hearings.

Hearing / Review Process		
Alberta Energy Regulator	**Alberta Utilities Commission**	**Natural Resources Conservation Board**
◆ Wide latitude to decide whether hearing is required regardless of whether statements of concern are received. ◆ Hearings can take many forms, including in-person and written submissions. ◆ No specific standing or recognition for municipalities. ◆ Parties are driven to alternative dispute resolution to avoid need for hearings.	◆ Wide latitude to decide whether hearing is required regardless of whether statements of concern are received. ◆ Are legislatively mandated to consider public interest when making decisions based on hearings. ◆ No specific standing or recognition for municipalities. ◆ Witnesses and those submitting evidence are required to state their qualifications, which are considered by the hearing panel when evaluating the validity of the evidence.	◆ NRCB may hold a review of an approval officer decision if requested by an impacted party or the applicant. ◆ May be in-person or based on written submissions. ◆ NRCB must consider municipal development plans and issues normally dealt with through municipal permitting when making a decisions on a review.

LAND AND PROPERTY RIGHTS TRIBUNAL

The Land and Property Rights Tribunal (LPRT) is responsible for providing quasi-judicial and alternative dispute resolution services related to conflicts and appeals under several provincial acts, including appeals of municipal land use decisions under the *Municipal Government Act*.[46] While the LPRT is not within the QJAC's scope and will not be discussed in this report aside from this section, it is important to note that RMA members have expressed concerns with the LPRT's processes and decision-making. Specifically, members have commented that the LPRT utilizes inconsistent and unreasonable procedural fairness standards, including allowing appellants to submit last-minute evidence and taking extremely broad interpretations of what constitutes a "municipal decision," which allows, in the opinion of some RMA members, frivolous or unmerited appeals of municipal processes to be heard by the LPRT.

The impacts of these concerns are significant, both in terms of the costs municipalities face to participate in unnecessary and poorly facilitated appeals, and the risks that a provincial agency overturning municipal decisions that should not have been allowed to be appealed in the first place will erode municipal autonomy in making local land use decisions.

Municipalities play a much more direct role in LPRT processes than in AER, AUC or NRCB processes. In LPRT processes, they typically participate directly as the party defending a decision, while their involvement is more as an intervener or party seeking input in the AER, AUC and NRCB processes. For this reason, the LPRT has not been included in the QJAC mandate. Many of the challenges, themes and recommendations in this report would apply to the LPRT, and the RMA plans to advocate on this issue moving forward borrowing from the report's findings.

46 See Land and Property Rights Tribunal Mandate and Roles document.

> 4. THE MUNICIPAL PERSPECTIVE

Municipalities are responsible for providing local services, building and maintaining infrastructure, balancing competing land use interests, and planning for sustainable growth. As municipalities grow and develop over time, local authorities must balance current community priorities and future risks and opportunities to make decisions that benefit the community. In some cases, decisions with broad community benefits may have detrimental impacts on individual landowners. This is most commonly the case in relation to land use planning decisions. Some land uses may pose an unreasonable risk to surrounding properties, the environment, or municipal infrastructure. Municipal councils have powers to review and, if needed, reject applications for such land uses.

The *Municipal Government Act* (MGA) requires municipalities to create municipal development plans (MDPs) which outline the planned growth of a community. MDPs are often linked to land use bylaws, which provide specific guidance as to where various types of land uses and development can occur. MDPs and land use bylaws are vital to ensuring communities can balance growth and sustainability.

Because the MGA assigns municipalities with such broad and sweeping land use planning responsibilities, quasi-judicial approvals of select development types can result in significant complexity for municipalities and can lead to land use planning conflicts if quasi-judicial agencies do not adequately consider how a development within their jurisdiction may impact existing land use plans implemented at the municipal level. As the previous section showed, current quasi-judicial approval processes vary in terms of the extent to which the unique land use planning responsibilities of municipalities are recognized, but all three agencies have clear paramountcy through section 619 of the *Municipal Government Act* to approve projects regardless of their compatibility with current or future local land use goals.

While MDPs, land use bylaws, and intermunicipal development plans are hallmarks of effective local planning, they are also mandatory for municipalities to develop and adhere to.[47] They are also recognized by the Government of Alberta as core components of effective provincewide land use planning. In provincial planning guidance documents, municipal plans are often identified as part of a "planning hierarchy" in conjunction with broader provincial legislation, as seen in the graphic below:[48]

This is significant as it reflects a GOA-level recognition that local plans contribute to and work in tandem with provincewide legislation, policies, and goals.

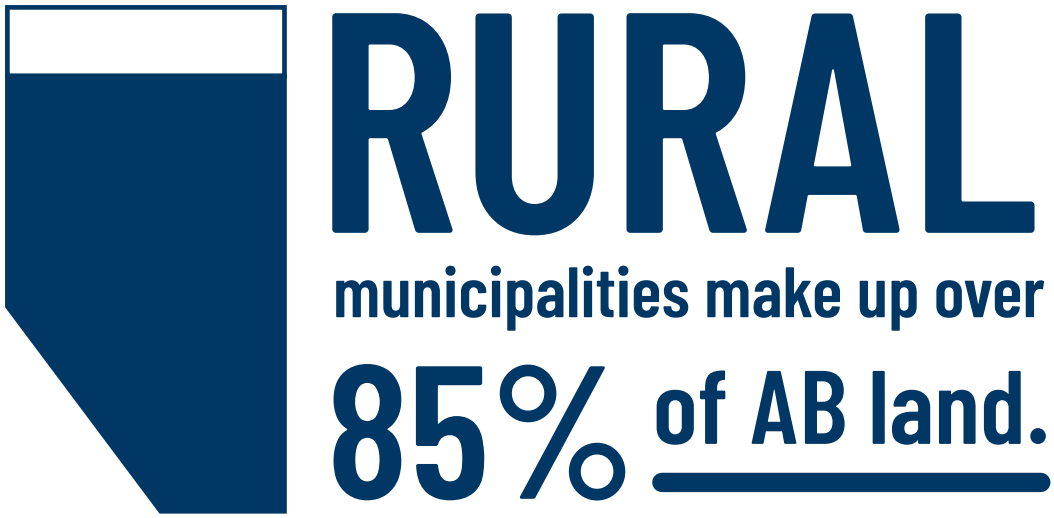
This section will provide an overview of some of the reasons why a lack of compatibility between quasi-judicial agency and municipal approval processes can pose risks or challenges for municipalities. Before diving into these reasons, it is important to emphasize that Alberta's rural municipalities (and the RMA) support industrial development. In fact, RMA members play a unique role in Alberta and Canada in terms of their responsibility for managing extremely large areas with low populations and high levels of industrial development. Oil and gas, agriculture, and renewable energy development are crucial to the continued growth of rural Alberta in the form of job creation and property tax revenue. Similarly, rural municipalities are extremely important to those industries as well, as they build and manage most of the public infrastructure that these industries rely on, such as roads, bridges, and water / wastewater systems.

47 Requirements for each can be found in the *Municipal Government Act*. MDPs are required under s. 632, LUBs under s. 640, and IDPs under s. 631.

48 *Guidebook for Preparing a Municipal Development Plan*, Government of Alberta (2018), p. 13.

LOCAL LAND USE IMPACTS

Rural municipalities are responsible for managing over 85% of Alberta's land mass, including most of Alberta's industrial, agricultural, and natural resource development, as well as environmentally significant areas. Rural municipalities are best able to determine the uses of land in their area as they are most familiar with the landscape and have developed significant planning resources to balance growth and sustainability. Municipalities consider all aspects of planning and development, including economic growth, infrastructure strain and environmental impacts.



As the previous section demonstrates, each quasi-judicial agency has a different process in place for approving projects, and a different level of recognition of municipal land use planning perspectives within that process. While each agency that the QJAC engaged with stated that their processes allowed for municipalities to have their voice heard, RMA members have shared many examples of actual decisions being made without consideration of land use impacts on both the land being developed and on neighbouring land.

One of the most common examples of a lack of land use recognition is the siting of solar projects on prime agricultural land. Municipalities typically develop land use plans and bylaws that discourage or prohibit development of prime agricultural land. For rural municipalities, protecting agricultural land is a priority for several reasons:

1. Agriculture is a key economic sector across rural Alberta, and reducing the land available for crop generation can have spin-off local and provincial economic impacts.
2. Agricultural land plays a crucial but often under-appreciated role in supporting adaptation to climate change. As new challenges emerge in food production, all levels of government have a public interest responsibility to properly manage land that is proven to produce food at a high rate.

3. Agricultural land has usually served this purpose for many decades and is central to not only the identity of a community but is also the land use for which municipal infrastructure and services have been designed. Abruptly replacing an agricultural land use with an industrial-scale solar development impacts the ability of surrounding residents and businesses to connect with their land as they intend, as well as the use of municipal infrastructure that was designed for agricultural use.

This is not to say that municipalities refuse to allow conversion of agricultural land in all cases, but rather to emphasize that there are local impacts to doing so, which, according to RMA members, are often not properly considered by the AUC. Additionally, there are often areas within most rural municipalities where land is less suited for agriculture but well-suited for renewable energy development. By properly engaging municipalities early in the project planning process, regulators and companies could direct projects to these areas.

While solar projects receive the bulk of attention related to land use impacts, the transmission infrastructure required to connect renewable energy projects to the existing electrical grid are also significant. Alberta's current system is managed by the Alberta Electric System Operator (AESO), a non-profit organization that the Government of Alberta has tasked with this responsibility. AESO's connection process requires it to ensure that all new power generation projects receive access to the grid. For renewable energy projects located in rural areas far from existing grid infrastructure, this means the construction of new transmission lines.

While this section emphasizes the challenges that municipalities face in relation to development regulated by quasi-judicial agencies, the intent is not to argue that such development should not occur or should occur elsewhere. Rather, if quasi-judicial agencies understand these concerns and create approval processes that allow them to be considered and mitigated, development will likely increase as municipalities will be better prepared to support additional growth and have an opportunity to identify local project risks that may not be visible to the applicant or regulator.

While this approach has significant cost impacts for Albertans (as transmission companies recoup costs of building new transmission lines through increased consumer power rates), the more relevant issue for this report is that while renewable energy projects require negotiation with existing landowners, transmission lines built to connect such projects often rely on expropriation of land. In some cases, this can mean that transmission lines are built through existing agricultural operations, developments, and environmentally-sensitive or difficult-to-traverse terrain. It can also mean that impacted residents and municipalities have even less say or compensation for the impacts of transmission lines linked to renewable energy developments than they do for the developments themselves.

While the AUC and renewable energy development are currently the most publicized example in this area, similar land use risks are present in developments approved by all three agencies. While each approval process includes references to set-backs and separation from certain property types, actual land use impacts can be more complex and less visible, which is why it is so important for agencies to hear directly from municipalities.

LOCAL ENVIRONMENTAL IMPACTS

Municipalities are responsible for fostering the well-being of the environment.[49] Industrial developments of all types and scales carry with them some level of environmental risk ranging from water shed impacts, soil contamination, dust, air pollution, and others. While mitigating some of these risks is beyond the scope and ability of municipalities, they are a consideration in evaluating the merits of a development application. While all three quasi-judicial agencies are required to consider environmental risks when reviewing project applications, their focus is often reactionary in nature and relies on being prepared to respond to environmental issues if they arise rather than understanding and requiring applicants to mitigate risks as part of their project application. If the agencies took a more proactive focus in requiring mitigation of risks, they would find that municipalities are often in the best position to provide input on environmental considerations due to their familiarity with local landscapes, water sheds, weather patterns, etc.

A common example of a lack of recognition for municipal input on environmental risks relates to NRCB approvals of CFOs near bodies of water. While the NRCB requires CFO manure storage facilities to be a certain distance from water bodies, in some cases local conditions could warrant larger setbacks due to soil conditions, flood or erosion risk, and other factors that are well known within the community but not necessarily documented in a format accessible to approval officers. Members have shared examples of CFOs receiving approvals despite input from the municipality or other community members that they pose a high risk of contamination to nearby water bodies, only to see that contamination subsequently occur. This results in local health risks, clean-up / remediation costs, costs for the agency to amend permits, and costs for the applicant to re-locate facilities or invest in increased mitigation mechanisms. Had this input been considered during the approval process, the risk could have been mitigated.

49 *Municipal Government Act*, s. 3(a.1).

RECLAMATION / LONG-TERM LIABILITY IMPACTS

Municipalities are no strangers to the reclamation risks that come with industrial development. While not a specific component of the external-facing engagement and project approval process for any of the development types within the report, each agency has a different approach and level of upfront accountability expectations on applicants to plan for the end-of-life management of their project. However, each approval process should include a condition that reclamation plans and financial commitments are in place.

A lack of reclamation expectations impacts municipalities in multiple ways. Firstly, the environmental risks associated with any industrial development are likely to increase as they age, and even more so if they are abandoned rather than responsibly decommissioned. Alberta is currently facing a massive challenge with orphaned and abandoned oil wells which pose long-term environmental risks to rural municipalities and landowners, and in some cases result in the sterilization of land for other uses.

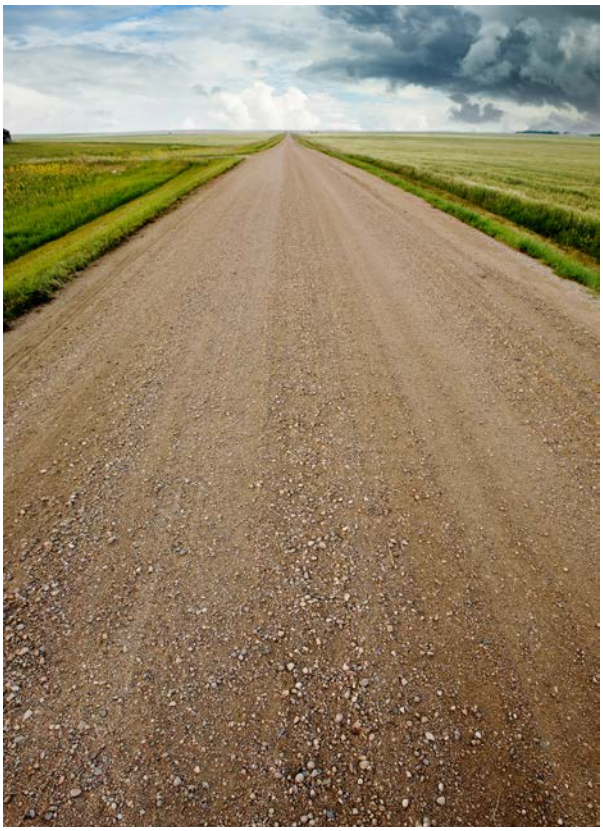
Municipalities have also expressed concerns that the lack of requirements imposed by the AUC for renewable energy project reclamation places long-term risks on rural landowners, who are responsible for negotiating reclamation agreements with companies for developments on their land; these negotiations are unrelated to the AUC approval process. This not only places rural residents in a high-risk position if they negotiate inadequate reclamation agreements or if the project located on their land is sold to a company uninterested in honoring the agreement, but it also places municipalities in a position of indirect risk in being required to take on reclamation responsibilities if the land is ultimately abandoned by the landowner at the end of the project's life.

While the RMA understands and respects the ability of landowners to negotiate agreements for the use of their land, there is a clear and distinct public interest risk to quasi-judicial agencies taking a "hands-off" approach to setting reclamation thresholds or expectations.

INFRASTRUCTURE STRAIN

Rural municipalities manage massive infrastructure networks, much of which exists to support industry access to natural resources. In fact, RMA members manage over 75% of Alberta's roads and 60% of bridges. Without this infrastructure, industries would be unable to develop in Alberta (or would face significantly higher direct costs to do so), meaning that rural municipalities are key actors in ensuring this growth can continue. While industrial development brings crucial property tax revenue to rural municipalities, it also results in a need for more infrastructure or increased strain on existing infrastructure.

In many cases, new projects approved by quasi-judicial agencies are in areas with limited existing development and infrastructure, or infrastructure that is not designed to accommodate increased truck and equipment traffic associated with building the new project, and in many cases in transporting products produced or extracted at the project site.



Municipalities are increasingly committing time and resources to developing asset management plans. Asset management plans are intended to support municipalities in planning for long-term infrastructure investments and making strategic decisions as to when to replace assets, when to expand infrastructure networks, and to determine what service levels they can reasonably provide to residents and industry. Quasi-judicial approval of a project with major infrastructure impacts risks undermining a municipality's asset management approach and forcing unplanned investment in infrastructure investments or upgrades which could have a "domino" effect in reducing investment in infrastructure elsewhere in the municipality.

Two common examples of infrastructure impacts associated with new industrial projects include the drilling of new wells approved by the AER, and the movement of livestock from CFOs approved by the NRCB. In the case of new wells, well-drilling equipment typically has major impacts on municipal roads and bridges due to its weight. In fact, the MGA allows municipalities to impose a well-drilling equipment tax (WDET) on those drilling new wells to off-set the sudden strain on roads and bridges.[50] Unfortunately the regulation has been amended to set the only allowable tax rate at zero, meaning that while the provision still technically exists, it provide no meaningful benefit to municipalities.[51] In the case of CFOs, truck traffic in and out of facilities is often ongoing on a 24/7/365 basis. Unlike the WDET, municipalities have no direct tool to generate revenue to off-set this strain, which has led to some contentious situations between CFO operators and municipalities.

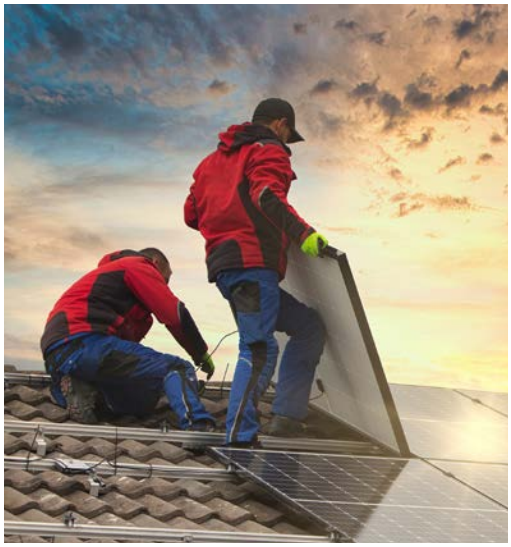
50 *Municipal Government Act*, ss. 388-390.

51 Well Drilling Equipment Tax Rate Regulation, s. 1.

MUNICIPAL GOVERNANCE AND LOCAL ACCOUNTABILITY

Rural council members are often the first point of contact for residents who have concerns about their community — even if the concerns fall outside the jurisdiction of the municipality. As section 3 of the report shows, each agency's approval process is complex and is likely not easily understood by those that are not regularly involved. While municipal approval processes can also be complex, they are generally much more straightforward, transparent, and accessible than those used by quasi-judicial agencies, if for no other reason than that local residents can easily attend council meetings to observe or even participate in development approval discussions. This is contrary to quasi-judicial agencies. While all have stakeholder engagement staff and some have regional representatives, they are much less known or accessible (and by extension accountable) to rural residents than municipal elected officials.[52]

Because municipal councils are accessible to residents and responsible for most development decisions that take place in the municipality, many RMA members have shared instances in which residents have voiced frustration with the municipality for approving a project that has had adverse local impacts, when in reality that project was approved by a quasi-judicial agency. The inaccessibility of the project approval processes themselves and of quasi-judicial agencies post-approval result in municipalities being responsible for helping residents to understand the approval process and where to direct their concerns.



52 An example of this is found in the results of a 2022 RMA member survey on the AER's engagement practices. Of the 26 municipalities that responded to the survey, only one had a specific contact person within the AER to facilitate responses to questions or concerns.

> 5. KEY THEMES

Throughout the committee's research and discussions with delegations and one another, several themes emerged related to the role and mandate of quasi-judicial agencies in general, the project approval process, and the role of municipalities, the regulator and project applicants.

Theme 1: Public interest is not well-defined by quasi-judicial agencies or reflected in quasi-judicial agency approval processes.

As the committee explored the relationship between municipalities and the three quasi-judicial agencies, a common theme was the concept of public interest. While many competing definitions of public interest exist, it is generally viewed as a lens for making decisions that attempts to balance competing interests to make decisions that are, on balance, positive for the majority of those impacted. How those interests are determined and weighed against one another typically varies by agency and by the decision being made. During discussions with the committee, all three agencies stated that they consider public interest when evaluating project applications. However, none provided a specific definition, thresholds, or criteria aside from indicating that it includes balancing economic, environmental and social considerations. While discussions on this concept were not particularly fruitful, each agency does have some formal references to public interest that are worth summarizing.

Alberta Energy Regulator

The AER does not have a publicly available definition of public interest. However, when the QJAC met with AER staff, they indicated that the AER often relied on Environmental, Social and Governance (ESG) principles as a measure for evaluating whether a given project was in the public interest. ESG is a mechanism to measure the non-financial performance of companies, industries, and regulators by taking the view that industry responsibility and performance should be evaluated in a broader societal context[53]. ESG's three central approaches are as follows:

- **Environmental:** Environmental criteria evaluates the performance of a business or government as a steward of the environment, including how it reduces greenhouse gas emissions, manages waste, and optimizes energy consumption.
- **Social:** Social criteria evaluates the treatment of employees and people by an organization, with a particular emphasis on human rights, labour standards in the supply chain, employee relations and diversity, health and safety, and more. Additionally, companies that are well integrated into their local communities will have a higher social score.
- **Governance:** Governance criteria examines how an organization manages its affairs. It considers the effectiveness of the rules or principles that corporations adopt to govern themselves, make effective decisions, and meet stakeholder needs, as well as whether the rules or principles are followed.

It is worth noting that some aspects of the AER's approval process not discussed earlier in the report have more direct links to the environmental and governance pillars of ESG. For example, the AER is empowered to require a company to submit an environmental impact assessment (EIA) as part of a project application.[54] The assessment must include:

- A detailed project description
- Baseline environmental information
- The project's potential environmental effects
- A cumulative effects assessment that considers other development in the area and the collective impact
- Plans to mitigate potential adverse effects
- Emergency response plans

According to the AER, the assessments are used to help them identify project uncertainty or risk and whether the project is in the public interest.[55] While the use of EIAs is a logical approach to supporting proper environmental

53 Alberta's ESG Approach. Government of Alberta. April 2023.

54 While environmental impact assessments are not specifically referenced in the REDA, the AER website states that the broad powers to create an application process under Part 2, Division 1 of the REDA provide the AER the power to require the assessments when they deem them necessary.

55 See https://www.aer.ca/protecting-what-matters/protecting-the-environment/environmental-assessments.

accountability and reporting, it should be noted that Directive 056 does not include a requirement for applicants to include EIAs or any environmental analysis or information within the participant involvement program. Directive 056 does include some requirements for applicants to provide the AER with environmental information if their application is audited or if it is located in the Eastern Slopes region, but based on the reading of Directive 056, none of this is shared with affected parties more broadly.

The AER approval process connects to the governance pillar of ESG primarily through requirements defined in Directive 067: "Eligibility Requirements for Acquiring and Holding Energy Licences and Approvals." Directive 067 includes a list of factors that the AER considers in determining whether an applicant poses an "unreasonable risk" in holding an energy licence. Factors include a lack of in-person company presence in Alberta, compliance history, corporate structure, financial health, assessed capability to meet regulatory and liability obligations, outstanding debts owed for municipal taxes or surface leases, and others[56]. The AER uses the factors in Directive 067 to assign companies a status related to their ability to hold or acquire energy licences. If the AER finds that a company poses an unreasonable risk under Directive 067, they would not be permitted to participate in the project-specific application process guided by Directive 056.

While Directive 067 links to governance-related public interest concerns, it is important to note that the AER has no public-facing information explaining how the various unreasonable risk factors are applied, what thresholds for each may warrant suspension of licence eligibility, whether some are more important than others, or how they gather and verify the information relation to each factor.

Although ESG factors are linked to whether a company or industry operates in the public interest, it is unclear how ESG as a concept is used by the AER to evaluate whether specific projects are in the public interest. Given that the Government of Alberta has an existing provincewide ESG framework, there may be an opportunity for the AER to create a more formal and transparent outline of how ESG is used to evaluate projects.

Alberta Utilities Commission

The AUC has limited references to public interest in their guiding legislation, policies, etc., and no information on how public interest factors influence their decision-making processes. Section 17 of the AUCA states that the AUC must:

> *give consideration to whether construction or operation of the proposed hydro development, power plant, transmission line or gas utility pipeline is in the public interest, having regard to the social and economic effects of the development, plant, line or pipeline and the effects of the development, plant, line or pipeline on the environment.*[57]

The AUC's vision is closely aligned to the statement above:

56 AER Directive 067, s. 4.5.

57 AUCA, s. 17(1).

The Alberta Utilities Commission regulates the utilities sector, natural gas and electricity markets to protect social, economic and environmental interests of Alberta where competitive market forces do not.[58]

While the AUC has no public-facing documents outlining how application decisions are weighed in relation to social, economic and environmental interests, the QJAC did engage in a detailed discussion with AUC representatives on how they address public interest considerations in practice. During this conversation, the AUC explained that they typically view public interest at the provincewide level for project applications, but within this provincial scope is a recognition that the scope of interests and the scale of impact will vary depending on where individuals or organizations are located in relation to the project. They also explained that they do not use a standard definition of public interest because the concept varies by project type, size, location, and other factors. In general, the AUC considers a project within the public interest if the public benefits outweigh adverse effects, but part of the AUC's responsibility is to assess what those benefits and adverse effects are, which are in scope, their level of importance in relation to one another, etc., for each project.

AUC Rule 007 does include requirements for applicants to provide significant information related to environmental risks and considerations, emergency response, and end of life management for solar and wind projects.[59] While detailed information is required to be submitted to the AUC, the participant involvement plan requirements state only that applicants must include "a description of the general nature of potential impacts of the project, such as potential impacts on environment, traffic and construction impacts, visual impacts, noise impacts, etc.[60] "It is unknown what is meant by "a description of the general nature of…" or how or whether the AUC assesses the completeness of this information given they are typically uninvolved in the participant involvement program.

58 See https://www.auc.ab.ca/our-mission/.

59 See AUC Rule 007, s. 4.3.2 for wind requirements and 4.4.2 for solar requirements.

60 AUC Rule 007, Appendix A1, s. 4.

Natural Resources Conservation Board

Like the other agencies, the NRCB does not have a clear definition of public interest and what this means to their process. However, the legislation that creates the NRCB references public interest decision-making as a core NRCB purpose,[61] and the NRCB's mandate clearly indicates their responsibility to "determine the public interest of proposed natural resource projects."[62]

The NRCB Approvals Policy considers some public interest factors, including those that are fairly localized through consideration of MDPs. However, unlike the AUC process which requires applicants to provide some level of information on broader economic and infrastructure impacts of project proposals, the Approvals Process is more complex in terms of how it expects approval officers to consider broader project impacts. For example, the Approvals Policy explains that nuisance or health effects of a project could be considered within environmental or community considerations, but as these terms are not directly referenced in the legislation guiding the NRCB, approval officers may use their own discretion as to whether they evaluate health and nuisance effects and whether they consider them in their decision-making process.[63]

This is significant for multiple reasons. Firstly, it reflects the subjective and project-specific nature of public interest explained in the AUC section above. However, it also points to the tremendous level of autonomy given to approval officers to determine not only whether a given issue may be problematic or not in the public interest for a specific project, but even whether that issue should be considered when evaluating public interest. It is fair to assume that all residents living near a proposed CFO would be interested in knowing whether the project carries health or nuisance risks, and at minimum, being assured they do not. However, approval officers have the discretion to simply exclude these considerations from their decision-making, suggesting that different projects receive approval based on a different suite of public interest-related issues.

Theme 1: Why Does it Matter?

While all three quasi-judicial agencies clearly recognize their role as operating in the public interest, and can point to high-level mandates or legislation directing them to do so, they are much less clear on what this means in practice and how it impacts their decision-making on individual projects.

Also notably absent from any agency input on public interest is recognition that their application and engagement processes must be structured in a way that allows for various non-industry stakeholders (including municipalities) to access the process and provide their perspectives. As section 3 of the report shows, all three approval

61 *Natural Resources Conservation Board Act*, s. 2.

62 See https://www.nrcb.ca/about/mandate-and-governance.

63 NRCB Approvals Policy, s. 8.8.

processes are complex and formalized, and all differ from one another. It is fair to question whether such complex and siloed processes allow the regulators to receive information from stakeholders less familiar with the industry and the regulatory process, and whether this impacts their ability to consider all of the information and perspectives necessary to make decisions that are truly based on the public interest.

All three of the processes include significant barriers to access for non-industry representatives that may allow the agencies to assume complacency due to the absence of input from certain groups or persons, when in reality those groups or persons were unaware of or unable to access the decision-making process. Examples of these barriers or risks to accessibility include the allowance of applicants to rely on verbal nonobjection from directly affected parties in the AER process, to not confirm nonobjection at all in the AUC process, and for approval officers to completely disregard consideration of certain locally-important issues in the NRCB approval process. While these may not be linked to public interest on the surface, they allow the applicant or agencies to "speak for" those that are outside the industry but impacted by the project, and introduce the risk of the information presented to the agencies themselves being limited or misrepresented.

Overall, the agencies' focus on referencing public interest as a key aspect of their final decision-making process, but not as a measure of the effectiveness of how they gather information and perspectives from those outside the industry is concerning.

Theme 2: Applicant engagement requirements do not recognize the importance of municipalities in the project approval process.

The applicant engagement processes in all three agencies vary from one another, including in terms of the level of recognition for municipal plans and perspectives. As section 4 outlines, municipalities have a unique level of interest in projects approved by quasi-judicial agencies because they typically bear responsibility for providing the development with infrastructure and services and responding to risks or challenges linked to the project. Given the importance of municipalities in supporting the development once it is built, the barriers that they face in actively participating in approval processes, or even having land use plans considered, is concerning.

Based on the survey distributed by QJAC, approximately 55% of members described the ability of quasi-judicial agencies to balance provincewide and local considerations as ineffective, with less than 5% describing it as "very effective." Survey respondents frequently suggested a need for agencies to simplify engagement processes and act more proactively in accessing municipal plans themselves, rather than relying on municipalities to spend time and money navigating the process with no assurance their plans or perspectives will even be considered.

The two municipalities that met with the board directly shared similar concerns with the lack of municipal access to the approval processes. In fact, one indicated that in the case of the AUC process, companies now realize that the AUC places little weight on municipal input or concerns and that they have no formal obligation to engage municipalities. As a result, good faith efforts by companies willing to collaborate with municipalities (which was common early in the "renewables boom") are now being replaced by instances in which companies ignore municipalities until they have received AUC approval.

Theme 2: Why Does it Matter?

Similar to theme 1, all three agencies recognized the importance of municipalities as land use planners and as a local perspective on project impacts when meeting with the QJAC, but their actual processes do not provide municipalities with the same level of respect. For municipalities to champion projects and ensure that they are prepared to provide the services and infrastructure they will require, they must be included in the approvals process as a partner. Some industry and agency representatives have raised concerns that providing municipalities with too much influence could result in projects being delayed or even "sabotaged" by municipalities that are opposed. This is completely unfounded and makes little sense. Firstly, approval processes could easily be shifted to require agencies to consider municipal plans without giving municipalities complete control over project approvals. Secondly, municipalities will only oppose development when its local risks outweigh its local benefits. Municipalities are not interested in opposing or stopping development, as long as that development occurs in a way that improves the community as a whole.

Theme 3: The scope of approval processes are too narrow to adequately consider local input on cumulative effects, reclamation requirements, or broader land use impacts.

As mentioned in theme 1, the agency approval processes tend to divide the type and level of information that applicants must provide to the agency itself from what they must disclose to affected parties and the broader public. This "two-tiered" information sharing structure introduces a risk that municipalities and other local stakeholders may not be able to engage on important aspects of the project because they are not provided the applicant's initial information or analysis. Specific examples of these risk areas include the following:

Cumulative effects

"Cumulative effects" refer to the combined effects from past, present, and reasonably foreseeable future activities and natural processes. Such effects may be individually minor, but collectively significant.[64] Cumulative effects have a profound impact on municipalities as they are the stewards of the land and continue to care for it long after operators cease operations.

While all three regulators include impact projection requirements for applicants, most of the direction (at least that available to the public) lacks information on the methodology for such projections, as well as the scope of time that the projections must cover. For example, AER Directive 056 requires applicants to disclose the following through their PIP: [65]

- Need for proposed development and explanation of how it fits with existing and future plans
- Potential restrictions regarding developing lands adjacent to the proposed development
- Anticipated noise levels and mitigation measures

64 "Cumulative Effects." Environment and Climate Change Canada. https://www.canada.ca/en/environment-climate-change/services/cumulative-effects.html.

65 Not a full list. See AER Directive 056, s. 3.2.2.

- Potential sources of emissions and odours and measures to control or eliminate them
- Traffic impacts
- Any additional items that may assist the participant in understanding the proposed development

While all these items would be helpful to understanding the potential benefits and risks of the project, it is unclear what is meant by terms like "existing and future plans," as well as the duration of time for which noise levels, emissions, and traffic impacts are to be projected. Attaching some level of term to projection requirements would allow municipalities and other stakeholders to better understand the potential cumulative impacts of the development, especially in cases where additional developments are likely to follow in close proximity.

The AUC requires applicants to distribute project specific information to all persons included in the PIP, including the following:[66]

- A description of the general nature of potential impacts of the project such as potential impacts on environment, traffic and constriction impacts, visual impacts, noise impacts, etc.
- If applicable, a map identifying the solar glare receptors, registered and known unregistered aerodromes and critical points along highway, major roadways and railways.
- Discussion of the potential restrictions on the development of lands adjacent to the proposed project, such as setbacks.

Similarly, the information requirements lack projection timeline requirements in each area and rely on the applicant to assume how the project will impact adjacent land. This is particularly concerning as without a requirement to engage with the municipality, the applicant is assumed to have a significant amount of local knowledge related to long-term development plans on adjacent lands.

Finally, the NRCB requires applicants to provide to the approval officer information that is significantly more technical, such as the following:

- Any information required by an approval officer
- Construction plans
- Hydrogeological assessments
- Soil investigation
- Area plans

The requirements for the type and detail of the information depend on the scale of the proposed CFO and the permit type being issued. However, it is unclear if these plans are submitted to impacted parties as part of a Part 2 application or provided directly to the approval officer to consider based on their discretion.

66 Not a full list. See AUC Rule 007, Appendix A1, s. 4.

Land use and agricultural impacts

Land use planning is a core municipal responsibility. While private property owners have the right to use their property as they see fit, land use must align with a municipality's land use bylaw. This means that while a landowner could apply to a municipality to convert their property zoned for residential use into a commercial establishment, the municipality is ultimately empowered to decide whether this is within the public interest of the community and whether it will pose unreasonable impacts on infrastructure, the environment, the ability of neighbouring property owners to use their land as intended, and other factors.

In the case of quasi-judicial agency approvals, municipalities lose any ability to weigh these local factors. Even though the development of an industrial solar project in a residential or agricultural area will have major land use impacts, it is completely at the discretion of the agency (in this case the AUC) to consider them. The construction of transmission lines to connect renewable energy projects to the grid often have similar land use impacts and rely on expropriation of land, meaning landowners often have even less input and receive less compensation than through the approval process for the actual project. Even the NRCB's requirement to consider MDPs allows approval officers to use their own discretion to consider alignment, and the NRCB to approve developments even if they do not align.

While a lack of consideration for broader land use impacts has obvious local relevance, it also poses an increasing provincewide risk, particularly in relation to solar projects (and related transmission lines) and their placement on prime agricultural land. Because solar development agreements and negotiated between private landowners and individual companies, and subsequently approved by the AUC, industry can purchase prime agricultural land, and the AUC can approve the development because they have no requirement to consider municipal land use plans, or the broader impacts on food production in the province. In other words, the AUC's process lacks both the local lens needed to consider if and how siting an industrial development among a swath of agricultural land may be problematic, and the broad public policy lens to consider the cumulative impacts of repeatedly situating solar projects on agricultural land throughout the province.

While most focus is currently on the AUC related to this issue, none of the agencies appear to include an agricultural lens in their approval processes. Even the NRCB, which is approving agricultural development, does not appear to weigh the impacts of converting existing agricultural land into land that is hosting an industrial-scale facility.

Reclamation

Reclamation has been a key issue to many RMA members over the last few years. Reclamation is the process of restoring land to its former state, or as close as is environmentally possible. Historically, municipalities have faced issues with brownfields and orphan wells, as quasi-judicial agencies have not adequately held industry accountable for confirming their financial commitment to reclamation during the project approval process.

Recently, the AUC has been at the forefront of municipal concerns with reclamation, mainly due to lessons learned from the lack of reclamation focus in previous decades on oil and gas developments. Currently, the AUC has approval authority over all renewable energy projects, however reclamation legislation falls under the Ministry of Environment and Parks. The AUC's Rule 007 does require operators to prove they have sufficient funds to perform decommissioning and reclamation costs, however, there is no requirement for operators to actually set funds aside. As much can change in terms of technology, project ownership, and company fiscal capacity in the decades that a project is functioning, relying on only a promise from operators is woefully inadequate.

Theme 3: Why Does it Matter?

Cumulative effects, land use and agricultural impacts and reclamation are all extremely complex and important issues, and each could warrant a standalone report. While the sections above provide just a quick overview of each, the main takeaway is that approval processes are not designed to allow for local perspectives and concerns to be considered in any of the areas. While quasi-judicial agencies often cite the need for a timely and efficient approval process as a reason for not engaging stakeholders on these more complex issues, each must take a more holistic view of their role in the entire lifecycle of the project. Requiring applicants (and their own staff) to dedicate more time and resources to understanding and mitigating these complex impacts will ultimately pay off in the long run by discouraging high-risk projects and unreliable companies, and by reducing the risks of unexpected problems later in a project's life; problems that will likely be felt most acutely at the local level.

Theme 4: Quasi-judicial agency approval processes are difficult for municipalities to access.

Each agency uses an engagement and hearing process to review and make a decision on a project application. While theme 2 focused on limited municipal recognition in the engagement specifically, this theme examines issues with the broader process.

While the NRCB process requires approval officers to proactively notify and engage municipalities on projects, the AUC and AER processes put much more onus on municipalities to actively monitor public notifications and determine whether applications are within their borders and would result in any issues or concerns. This requires training municipal staff to navigate through e-filing and notification systems, and develop a technical knowledge of the industry and the regulatory process. This can be especially challenging for smaller municipalities with limited staff capacity.

Even if municipalities dedicate time and resources to monitoring agency notification portals, with the exception of the NRCB, there is no guarantee that a statement of concern or request for standing at a hearing will be accepted. The onus is on municipalities to prove why they are impacted, despite the obvious link between their legislated planning and service delivery responsibilities and the potential approval of a new industrial development within their boundaries. Even in the case of the NRCB, approval officers are not obligated to consider municipal perspectives, beyond what is in an MDP when making a decision on an application.

Municipalities also face significant costs related to participating in project hearings. While the AUC, AER and NRCB all have different rules relating to the recovery of costs for hearing participants, none guarantee cost recovery for municipalities. For example, the AUC may provide cost recovery for "local interveners," but they utilize a definition that, in some cases, will not include municipalities, particularly if their intention is to speak to broader community impacts rather than impacts on land that is directly impacted by the project.[67] Similarly, the AER awards costs to those they deem as eligible participants in a hearing. [68]Costs that can be claimed are in areas such as preparation, attendance, lawyers, consultants and experts, and alternative dispute resolution. While all three agencies have some mechanisms for participants to recover costs, all are linked to the hearing process specifically and none address the unique proactive costs that municipalities may face in preparing arguments for standing in hearings, which could be subsequently rejected by the agency.

In addition to the barriers to participating and having their voices heard within each of the three regulatory processes, municipalities are in a unique position in that they may (and often do) have to attempt to engage with all three agencies. Despite the fact that each agency serves a similar purpose in relation to a different industry, each engagement and approval process has been developed separately and has been guided by a different patchwork of legislation, regulations, directives, rules and policies that have been designed for and by the regulator and the industry. Because municipal interest transcends industry type, the responsibility falls on municipalities to learn three distinct processes with different terminology, different rules, and different approaches to organizing information. It is clear that each regulator's process was not designed through a public interest lens. Creating three completely separate process creates an additional barrier to participation from stakeholders outside the industry.

Theme 4: Why Does it Matter?

In speaking with each of the three agencies, the committee heard consistently that approval processes were fair, logical, consistent, and accessible. However, when the committee raised to one agency approaches or processes used by another agency, the response was typically a lack of awareness that the other agency took a different approach to gathering input or making decisions. What this suggests is that while quasi-judicial agencies are confident in the effectiveness of their processes and final outcomes, this confidence is based primarily on feedback from within their organization and from the industries that they regulate. It would appear that agencies are much less aware of how their colleagues responsible for regulating other industries operate, and how best practices used by others could be applied to their own processes.

This also suggests that agencies are basing their success on how comfortable their processes are for the industries they regulate, rather

67 AUCA, s. 22 and AUC Rule 009: Rules on Local Intervener Costs.

68 AER Directive 031: REDA Energy Cost Claims.

than for those representing the broader public and impacted stakeholders. Although each industry has significant differences, the fact that provincial quasi-judicial agencies appear to operate without recognition that their responsibilities and mandates have much in common across industries points to major gaps in how the provincial government see the role of quasi-judicial agencies.

Theme 5: Quasi-judicial agencies place tremendous trust in the companies they regulate.

The three quasi-judicial agencies examined in this report exist primarily because the industries they regulate have public impacts or risks that are significant enough that they require special oversight. Given this, it is surprising (and contrary to a public interest focus) that the three engagement and approval processes place tremendous trust in the companies subject to regulation to conduct and report on their own public engagement (in the case of the AER and AUC) or protect applicants from having to interact with impacted parties at all (in the case of the NRCB).

Both the AER and AUC processes place the onus on companies to design, execute and report on an engagement process. On one hand, this could be interpreted as requiring companies to be directly accountable to local stakeholders by answering questions and responding to concerns. On the other hand, the lack of involvement from the agencies in monitoring or verifying engagement, combined with the fact that many of the persons that the company is engaging with are likely unfamiliar with the engagement process, suggests that the company-led approach should pose a high risk of manipulation.

This is not to suggest that companies regulated by the AER or AUC are inherently dishonest or uninterested in engaging in good faith, but it does place significant levels of trust in the companies that are subject to regulation, an approach that does not align with prioritizing the public interest. For example, AER Directive 056 allows companies to verbally confirm nonobjection from directly affected parties and note this verbal confirmation in their application.[69] Given the complexity of some oil and gas developments and the unfamiliarity that some directly affected persons may have with the engagement process, it is easy to envision many scenarios in which a verbal statement of nonobjection could be based on a miscommunication or misinterpretation. Except in cases of gas pipelines, AUC Rule 007 does not appear to require companies to gather any confirmation of nonobjection from those requiring personal consultation, but only to document objections heard within their application.

It should be noted that both Rule 007 and Directive 056 reference occasional audits of PIP outcomes.[70] The reference is in Rule 007 is quite brief and the frequency and stringency of the AUC audit process is not known. Directive 056, on the other hand, provides much more detail on audits. It explains that audits may occur before issuing a licence if there are outstanding concerns or objections with an application or if there are existing environmental, safety or compliance risks. While pre-licence audits would appear to be focused on contentious applications or companies with a history of compliance issues, the AER also conducts post-licence audits to identify regulatory non-compliance, provide industry with

69 AER Directive 056, s. 3.3.1.

70 AUC Rule 007, Appendix A1, s. 9 and AER Directive 056, s. 4.

feedback and areas for future improvement, measure the effectiveness of the application process and provide benchmarks for future improvement, and aid regulatory reform.[71] In terms of audit selection, Directive 056 states that "all applications are potential audit candidates. An application may be randomly selected by computer or judgementally selected by the AER based on factors such as category type, public risk, location, and recent applicant compliance history."[72]

Another example of extreme trust in industry to design an effective engagement process is related to the boundaries of the engagement zone. As explained earlier, both the AUC and AER typically use a distance-based engagement radius based on the specific type of and size of project being proposed. However, sometimes local conditions may warrant that the standardized engagement radius be increased. AUC Rule 007 provides no guidelines on if, when, or to what extent radiuses should be increased except to state that:

> *it is an applicant's responsibility to assess the area potentially impacted by the project and determine whether the distance of notification recommended in these guidelines should be altered to include a greater area. It may be necessary to change the distance to include stakeholders or Indigenous groups who have expressed an interest in development in the area.*[73]

While the AUC's recognition that the engagement radius may need to be expanded for some projects is positive, the way the section is written leads to questions as to why a company would ever choose to do so if it is completely at their discretion. Such a requirement should be determined by the AUC, perhaps in conjunction with the company and other key stakeholders (such as the municipality).

While the NRCB's process is very different from the AER and AUC's, it also reflects a tremendous trust in industry by utilizing NRCB approval officers to engage on behalf of applicants. While there are clear benefits to having the agency itself directly involved in the engagement process, the NRCB approach insulates companies from having to directly answer stakeholder questions or address concerns. Even written input from stakeholders and responses from companies (should they choose to respond) is directed toward the approval officer.

When the QJAC discussed this lack of direct company-stakeholder engagement with NRCB representatives, their rationale in support of the approach was that industry representatives have expressed a reluctance in engaging directly with stakeholders because they may be pressured into making commitments to amend a project in response to concerns they hear directly. This statement was quite surprising and points to the lack of industry accountability requirements in the NRCB process.

Theme 5: Why does it matter?

Quasi-judicial agencies exist to regulate and hold industry accountable, not to advocate on their behalf or design their processes for their benefit. However, even as municipalities struggle to navigate engagement processes that seem to be designed to exclude consideration of land use plans and approval processes that allow agencies to restrict municipal voices from being considered, industry is trusted to design, implement, and report on their own engagement process, or is protected from discussing the project directly with stakeholders at all. This imbalance matters because it calls into question the extent to which different affected parties have access to the approval process and influence over the final decision. Companies are not only highly familiar with how the process works, but are actually trusted to operationalize an integral part of it. While there is no question that companies should be required to engage directly with stakeholders, they should not be the sole public presence speaking to the project. Ideally, both the company and the regulator should have a role in engaging and understanding stakeholder questions or concerns, but this is not the case in any of the three engagement processes.

71 AER Directive 056, s. 4.1.

72 AER Directive 056, s. 4.2.

73 AUC Rule 007, Appendix A1, s. 6.

6. RECOMMENDATIONS

Recommendation 1

That the Government of Alberta and quasi-judicial agencies work with stakeholders to develop an approach to integrating land use impact assessments and reclamation requirements into all project approvals.

While land use and reclamation impacts and requirements vary widely among industries, if agencies are actually making decisions based on the public interest, both of these concerns should be directly addressed or at least considered in all project approvals. Before individual agencies integrate both considerations into their individual approval process, the Government of Alberta should lead the development of a broader approach to establishing principles and methods for balancing industrial development with agricultural land preservation and other land uses, as well as expectations for end-of-life management for various development types.

Recommendation 2

That the Government of Alberta and quasi-judicial agencies work with stakeholders to develop a public interest evaluation framework to assess their decision-making and engagement processes.

While all three agencies spoke with confidence about alignment between their decision-making processes and acting in the public interest, a clear disconnect exists between municipalities, industry and regulators about what is within the scope of public interest and how to weigh different perspectives when making decisions on project approvals. Additionally, the current processes used by each agency present significant barriers to participation for many stakeholders outside of the industry, meaning that agencies are often making public interest-based decisions without adequate input from those that are impacted.

While there is no question that public interest is a subjective concept and different perspectives and considerations will be relevant for different projects, regulators should be expected to at least consider a common set of public interest questions when making decisions on projects. Each decision should be accompanied by a written statement from the regulator which outlines the various impacts, such as environmental, social, land use, and others which were used to come to a decision which reflects public interest. Reporting on the same categories and their impact on the decision create consistency for municipalities and other stakeholders and allow for industry to gain a better understanding of what they must consider when planning projects.

As a first step in transitioning to a more consistent and transparent public interest-based decision-making lens, the Government of Alberta should lead the development of a quasi-judicial agency public interest evaluation framework in conjunction with the impacted agencies, industry representatives, municipalities, and other stakeholders. The framework would allow quasi-judicial agencies to critically evaluate their own systems and implement improvements to final decision-making and the accessibility of engagement processes to ensure they are truly balancing multiple perspectives when making public interest-based decisions.

While the remaining recommendations are separate, some or all could potentially be implemented as part of this framework.

Recommendation 3

That the Government of Alberta and quasi-judicial agencies work together and with stakeholders, including municipalities, to regularly adapt approval processes to industry changes.

Industry practices are always changing. New technologies, new opportunities, change in government policy or economic conditions drive constant adaptation and innovation. This often leads to larger-scale projects with different types and levels of impact on surrounding communities. Given this, it is crucial that both quasi-judicial agencies and the provincial ministries that oversee them commit to regularly reviewing and updating both guiding legislation and regulations and operational policies, rules and directives to ensure approval processes align with current industry practices. Such reviews must be conducted transparently and in conjunction with stakeholders who are impacted by projects.

An example of a process not suited to industry trends is the NRCB's current thresholds for different permitting types. Currently, the most stringent permitting process (approval) is applied to a CFO application with over 500 feeders.[74] Many newly opened or under construction CFOs hold thousands of feeders. It is likely that the risks and impacts of a CFO holding 500 feeders will be much less than one holding 30,000 feeders or more, yet both face the same approval requirements. Because these thresholds are contained in a regulation, rather than an NRCB policy, amending thresholds or creating a new approval category for highly industrialized CFOs would require the participation of both the NRCB and Alberta Agriculture and Irrigation.

To allow agencies to continually understand and adapt to trends in industry technology, project scale, and local impacts associated with these changes, all three could consider forming an ongoing stakeholder advisory committee, similar to those currently used by the NRCB (AOPA Policy Advisory Group) and the AER (Multi-Stakeholder Engagement Advisory Committee). The committees could be redeveloped (and an equivalent created for the AUC) to create a more specific scope of committee member input and include accountability for when and how agencies will review and update various rules, directives and policies based on the committee's input.

Recommendation 4

That both quasi-judicial agencies and applicants play a direct role in initial project engagement processes.

While the approval processes used by the AER, AUC and NRCB all include significant differences, they have one often overlooked commonality. None require both the applicant and regulator to play a meaningful role in the initial project engagement process. While the applicant is responsible for initial engagement in the AER and AUC process and the agency (in the form of approval officers) is responsible in the NRCB process, it is not until a hearing or review takes place that both the agency and applicant are actively involved. As has been discussed earlier in the report, leaving engagement to applicants poses a risk of stakeholder concerns being misrepresented or under-reported, and places the regulator in a position of reliance on the applicant to summarize engagement and any concerns or objections shared by stakeholders. On the other hand, leaving engagement to the agency insulates the applicant from questions, concerns or criticisms of the project, even though they should be best positioned to respond.

For this reason, both the quasi-judicial agency and the applicant should have a role in the initial stakeholder engagement process. The details of what this would look like would vary for each agency, primarily because some

74 Feeders are used as an example of a livestock type addressed through the NRCB approval process. There are separate thresholds for different types of livestock. See Agricultural Operations, Part 2 Matters Regulation, Schedule 2.

process many more projects than others. In the case of large-scale or high impact projects, one option may be to have the agency organize an initial townhall meeting to bring together the applicant and directly affected parties. This would ensure that all parties in attendance receive baseline information about the project and engagement process from the agency itself, which greatly reduces the risk of actual or perceived bias. For smaller scale projects, an option may be to have the agency send a letter directly to affected parties before the applicant-led engagement process begins. The letter could outline the process and provide affected parties with information on their rights as well as how they can share concerns with the applicant or agency.

While diving farther into the details of how a more collaborative agency / applicant engagement process would look is beyond the scope of the report, this would be a significant step in reducing bias and ensuring that engagement and approval processes proceed as objectively as possible. It would also increase accountability for both the applicant and regulator and likely reduce the frequency of hearings, which, while a necessary component of approvals, are costly and time consuming for all involved.

Recommendation 5

That agencies review and redevelop current notification systems to better engage with municipalities at the onset of projects.

While the current NRCB process ensures municipalities are notified of project applications, the AER and AUC processes only require applicants to notify municipalities for certain project types. Based on their unique status as land use planners and infrastructure managers, municipalities should be directly notified by quasi-judicial agencies any time a new project application is submitted within their municipal boundaries.

Recommendation 6

That the AER, AUC, and NRCB collaborate to harmonize their respective engagement and approval processes as much as possible.

While each agency's process was developed independently to reflect the nature of the industry being regulated, the complexities within each combined with the distinctions between each create a major barrier to participation for municipalities and other stakeholders likely to engage in multiple approval processes.

The agencies should work together to identify aspects of their processes that could be harmonized. This would not mean that each process is identical, but rather that terminology, response timelines, engagement thresholds, etc. are compared and aligned where possible.

Recommendation 7

That the AER and AUC adopt NRCB requirements related to aligning projects with municipal development plans, and that the requirements be expanded to include land use bylaws and intermunicipal development plans.

Given the important role that municipalities play in land use planning, and the impacts that projects approved provincially can have on local land uses, it is inexcusable that there is no requirement within the AER and AUC approval processes for applicants to align projects with MDPs, or for the agencies themselves to consider MDPs when evaluating projects in the hearing stage. Applicants should be required to confirm alignment with municipal plans, ideally through confirmation from the municipality itself, and a lack of alignment should trigger a hearing or other dispute resolution mechanism.

The current NRCB process also includes a requirement that approval officers confirm that projects adhere to land use bylaws if MDPs make specific reference to them in a way that is relevant to the project under review. As different municipalities place different levels of importance on how MDPs and land use bylaws are used to inform planning decisions and how they interact with one another, all three processes should require proposals to be consistent with both. Additionally, municipalities are now able to complete intermunicipal development plans with municipal neighbours to collaboratively plan for growth in boundary areas.[75] Approval processes should also include a requirement that projects adhere to IDPs as they are considered statutory plans as well.[76]

Recommendation 8

That municipalities have automatic status as directly affected parties and automatic standing at all hearings, and that all municipal costs to participate in the engagement and hearing process be covered.

Given the time and costs municipalities incur to understand the impacts of new developments, there is no reason that they should be required to apply for recognition in relation to project applications. In most cases, municipalities are unlikely to have a significant objection to projects, so any concerns that allowing them automatic directly affected party status or standing will reduce the speed of the approval process are unfounded. This change may actually result in municipalities more actively lending their formal support to projects that are well-planned and in alignment with municipal plans.

While municipalities can apply for reimbursement of hearing costs (in some cases) under all three agency processes, none of the cost-recovery mechanisms account for the more complex impacts that a project may have on a municipality in comparison to an individual landowner, due to the municipality's role in representing broader community interests. Each agency should develop a unique municipal cost-recovery approach that eliminates cost as a barrier to municipal participation in project hearings while ensuring that actual municipal costs are reasonable.

75 MGA, s. 631(8).

76 MGA, s. 616(dd).

7. CONCLUSION

Land use planning is complex and challenging, and often balances the "science" of considering the direct and measurable impacts of various developments on land use, environment, infrastructure, and other factors with the "art" of considering what is best for the landowner, their neighbours, and the community as a whole, both presently and in the future.

While municipalities are responsible for nearly all land use planning decisions in Alberta, it is reasonable that some with especially significant impacts locally and provincially be within the scope of the Government of Alberta, or a delegated arms-length agency. In theory, these provincial decision-makers should have the expertise and capacity to consider the myriad impacts that the development will have provincially and locally, and make a decision that is in the public interest.

While this approach makes sense in theory, it is not the case in practice. The agencies tasked with this role rely on processes that do not require or allow them to properly consider the "local" side of the decision-making equation. This lack of recognition of local project risks and mitigation requirements has resulted in cases where municipalities have been forced to respond to local impacts of projects because the decision-maker did not consider project risks that were well-known to municipalities and local landowners. It has also led to many instances in which municipalities have been left to face anger and frustration from residents for the impacts of a project that they had no role in approving.

It is important to consider that the QJAC's work (and this report) is not intended to suggest that oil and gas, renewable energy, or industrial agriculture developments are unwelcome in rural Alberta. Rural municipalities are proud of their tremendous efforts in attracting and retaining industrial and resource development of all kinds, and in fact much of the services and infrastructure provided by rural municipalities is solely for industrial use.

It is also not intended to suggest that the RMA or rural municipalities are opposed to the practice of utilizing quasi-judicial agencies to make approval decisions on highly complex projects with significant local and provincial benefits and risks. The AER, AUC and NRCB have the technical knowledge and expertise to understand the projects. However, for these agencies to effectively fulfill their mandates or stated goals of making decisions that are truly in the public interest, municipalities must not be "notified parties," "interveners," or a "person with standing." They must be partners, and agencies must treat their land use planning decisions and other perspectives as central to their decision-making processes.

The recommendations in the report will not cause upheaval in the approval system or harm industrial development. What they will do is ensure Alberta's economy continues to grow and that rural municipalities continue to play a crucial role in the province's future.

> APPENDIX A – ACRONYMS

AER: Alberta Energy Regulator

AOPA: *Agricultural Operation Practices Act*

AUC: Alberta Utilities Commission

AUCA: *Alberta Utilities Commission Act*

CFO: Confined Feeding operation

EIA: Environmental impact assessment

ESG: Environmental, Social and Governance

GOA: Government of Alberta

LPRT: Land and Property Rights Tribunal

MDP: Municipal Development Plan

MDS: Minimum distance separation

MGA: *Municipal Government Act*

NRCB: Natural Resource Conservation Board

PIP: Participant Involvement Program

QJAC: Quasi-judicial Agency Committee

REDA: *Responsible Energy Development Act*

RMA: Rural Municipalities of Alberta

WDET: Well Drilling Equipment Tax

APPENDIX B – RELEVANT RMA RESOLUTIONS

Resolution 6-22S: Responsiveness of Service Delivery by Quasi-independent Agencies in Alberta

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request that the Government of Alberta review the continued use of unelected, quasi-independent agencies for the administration and delivery of essential public services, with the results of the review published for public examination.

Resolution 9-22F: Renewable Energy Project Reclamation Requirements

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request that the Government of Alberta implement a mandated collection of adequate securities for future reclamation of renewable energy projects on private lands, either by requiring renewable energy project proponents to post a reclamation surety bond as a condition of any renewable energy project approvals or by other means;

FURTHER BE IT RESOLVED that the amount of the required securities be calculated based on data-driven projections of actual reclamation costs to protect municipalities and residents of Alberta from incurring costs associated with the decommissioning of all renewable energy projects.

Resolution 21-22F: Loss of Agricultural Land to Renewable Energy Projects

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request the Government of Alberta to work collaboratively on policy that will find a balance between the development of renewable energy and protection of valuable agriculture lands.

Resolution 7-20F: Amendments to *Municipal Government Act* Section 619

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta urge the Government of Alberta to amend Section 619 of the *Municipal Government Act* to clearly state that the Natural Resources Conservation Board, the Energy Resources Conservation Board, the Alberta Energy Regulator, the Alberta Energy and Utilities Board or the Alberta Utilities Commission must consider municipal statutory land use planning related to the protection of productive agricultural lands when making decisions on licenses, permits, approvals and other authorizations under their jurisdiction.

Resolution 6-19F: Municipal Recourse for Solvent Companies Choosing Not to Pay Taxes

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta advocate that the Government of Alberta direct the Alberta Energy Regulator to add unpaid municipal taxes to the grounds for which a company may be denied a licence to operate in Alberta.

Resolution 11-19F: Requirement for Municipal Authority Input on Energy Resource Development Projects

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request that the Government of Alberta directs the Alberta Energy Regulator to incorporate municipal authorities' input into the energy resource development project and change of use approval process.

Resolution 20-18F: Decommissioning Costs for Wind Energy Developments

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request Alberta Energy to direct the Alberta Utilities Commission to establish a method of ensuring that there is funding in place to ensure that an abandoned wind energy plant is decommissioned and reclaimed in an environmentally responsible way.

Resolution 6-18S: Wind Energy Regulations Required at Provincial Level

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta request Alberta Energy to direct the Alberta Utilities Commission to establish a method of ensuring that there is funding in place to ensure that an abandoned wind energy plant is decommissioned and reclaimed in an environmentally responsible way.

Resolution 11-18S: Recycling of Solar Panels

THEREFORE, BE IT RESOLVED that the Rural Municipalities of Alberta (RMA) request that the Government of Alberta expand existing recycling programs to include solar panels (photovoltaic modules).

Resolution 7-11S: Natural Resources Conservation Board Approval Process

THEREFORE, BE IT RESOLVED that the Alberta Association of Municipal Districts and Counties request the Province of Alberta to review its approval process for confined feeding operation developments and ensure all limiting factors such as water are taken into consideration before the development is approved.