

# SUMMARY

**RMA MEMBER COMMITTEE ON  
QUASI-JUDICIAL AGENCIES**

**November 2023**

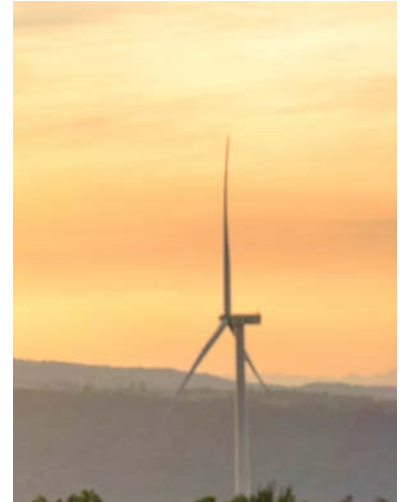




# CONTENTS

Introduction	3
Why are Municipalities Concerned?	5
Rural Municipal Impacts	6
Key Themes	9
Recommendations	11





## > INTRODUCTION

In May 2023, the Rural Municipalities of Alberta (RMA) formed the Quasi-Judicial Agency Member Committee (QJAC) in response to member concerns related to the lack of municipal input into developments approved by quasi-judicial agencies that the Government of Alberta (GOA) has created to carry out regulatory functions on its behalf. The committee developed a full report that is available on the RMA website. This summary report outlines key background, themes, and findings.

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, Barrhead County
- ◆ District 4: Tyler Airth, Big Lakes County
- ◆ District 5: Cindy Trautman, Camrose County

The QJAC examined three agencies (Alberta Energy Regulator [AER], Alberta Utilities Commission [AUC], and Natural Resources Conservation Board [NRCB]) that approve industrial projects commonly located in rural municipalities:



The AER was created in 2013 through the *Responsible Energy Development Act* (REDA). The AER regulates oil, oil sands, natural gas, coal resources, geothermal, and brine-hosted mineral resources. The mandate of the AER 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.” This includes regulation of the disposition and management of public lands, protection of the environment, and conservation, management, and allocation of water.



The AUC was established in 2008 through the *Alberta Utilities Commission Act* (AUCA). The AUC regulates electricity, natural gas, water, and renewable power generation throughout projects. The AUC’s mandate is to regulate Alberta’s utility sector in a manner that is fair, responsible, and in the public interest. The AUC has broad powers to carry out this mandate, including to hold hearings, make rules, issue orders, set rates, enforce compliance, and investigate complaints.



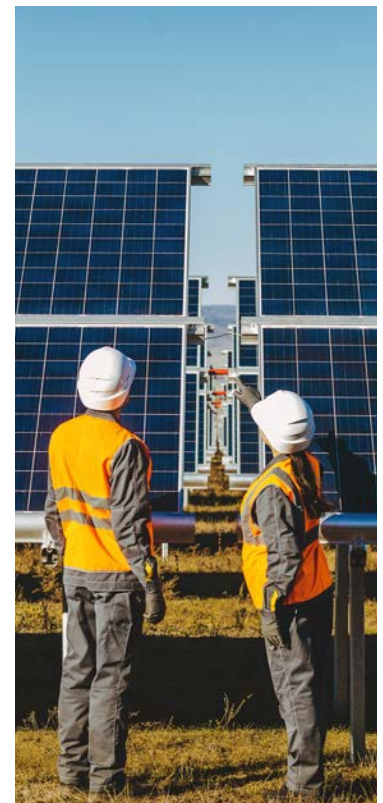
The NRCB was established in 1991 through the *Natural Resources Conservation Board Act* (NRCBA). Its mandate was extended in 2002 to regulate confined feeding operations (CFOs) under the *Agricultural Operation Practices Act* (AOPA). While the NRCBA outlines the broad powers of the NRCB, the AOPA describes the NRCB’s mandate in relation to regulating CFOs.

Each agency reviews and approves applications for industrial developments that are often located 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 CFOs (NRCB) has led to land use conflicts and unintended impacts after projects have been approved and built.

To better understand and consider solutions to this issue, the QJAC 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. These barriers prevent them from understanding local impacts of the projects they approve, and therefore prevent them from making decisions that are truly in the public interest.

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.

To learn more on agency approval processes see page 23 of the full committee report.







## > WHY ARE MUNICIPALITIES CONCERNED?

Municipalities provide services, build and maintain infrastructure, balance competing land use interests, and plan for sustainable growth. As municipalities grow and develop over time, they must balance current community priorities against future risks and opportunities to make decisions that benefit the community. This is often the case in relation to land use planning decisions. Some land uses may pose risks to surrounding properties, the environment, or municipal infrastructure. Municipal councils have power to review and, if needed, reject such applications.

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 broad land use planning responsibilities, quasi-judicial approvals of select development types can lead to land use planning conflicts if quasi-judicial agencies do not adequately consider how a development they approve may impact existing land use plans implemented at the municipal level. Quasi-judicial approval processes vary in terms of the extent to which the land use planning responsibilities of municipalities are recognized, but all three agencies have clear paramouncy through section 619 of the *Municipal Government Act* to approve projects regardless of their compatibility with current or future local land use goals. This has led to situations across the province where projects have been approved despite not aligning with local land use planning, leading to impacts on neighbouring landowners, infrastructure, the local environment, and in other areas not considered or mitigated during the project approval process.



**RURAL**  
municipalities make up over  
**85% of AB land.**



## ➤ RURAL MUNICIPAL IMPACTS

Rural municipalities manage over 85% of Alberta's land mass, which host most of Alberta's industrial, agricultural, and natural resource development, as well as environmentally significant areas. Municipalities are impacted in multiple ways by developments approved by quasi-judicial agencies, including the following:

### Local Land Use Impacts



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 its 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.

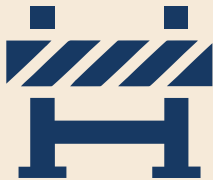
One of the most common examples of a lack of land use recognition is the siting of solar projects on prime agricultural land. Municipalities typically develop land use plans and bylaws that discourage or prohibit development of prime agricultural land. For rural municipalities, protecting agricultural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

Municipalities are responsible for fostering the well-being of the environment. 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.

## Local Environmental Impacts



## Reclamation and Long Term Liability Issues



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 projects. 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.

Rural municipalities manage massive infrastructure networks, much of which exist to support industry access to natural resources. 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 both new project construction and product transportation.

## Infrastructure Strain



## Municipal Governance and 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. 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 and 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 not as well known or as accessible (and therefore accountable) to rural residents than municipal elected officials.

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.







## > KEY THEMES

Through research and engagement with quasi-judicial agencies and RMA members, the QJAC identified five themes that characterize their view of quasi-judicial agency approval processes and their impacts on rural municipalities. For a more detailed explanation of the themes, see page 34 of the full report.

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

While many competing definitions of public interest exist, it is generally viewed as a lens for making decisions that balances competing interests to make decisions that are positive for most of those impacted. How those interests are determined and weighed against one another varies by agency and by the decision being made. During discussions with the QJAC, all three agencies stated that they consider public interest when evaluating project applications. However, none provided (definitions), thresholds, or criteria aside from indicating that it includes balancing economic, environmental, and social considerations.

## **Theme 2: Applicant engagement requirements do not reflect 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. 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.

## **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.**

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.

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

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.

## **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).

# ➤ RECOMMENDATIONS

Based on the themes, the QJAC developed several recommendations for how quasi-judicial agencies could improve their process to include municipal plans and perspectives, and therefore make decisions that better align with the public interest. For a more detailed explanation of the recommendations, see page 47 of the full report.

## 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, and that the requirements be expanded to include land use bylaws and intermunicipal development plans.

## 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.