

## Alberta Property Rights Initiative- Response to Alberta Draft Legislation on Bill 19

### Background

APRI agrees with the need for increased planning and consultation with all Albertans as it relates to new project areas. We are however concerned that all property owners, both surface and subsurface be treated fairly and consistently when a “taking” is required for a public interest. We also recognize the need to avoid unnecessary burdens on the public treasury, while at the same time minimizing unwarranted interference with private property rights.

The existing Expropriation Act and Surface Rights Act, and the Land Compensation Board and Surface Rights Board that are established from these acts, have for the most part served Albertans well in past land issues. As the Province experiences the need to accommodate new and competing land uses it is increasing apparent that present legislation relating to compensation for takings is inadequate. Bill 19 certainly addresses the need for increased consultation and planning on the front end of public projects. However, the issue surrounding compensation for not only takings of property but also regulatory takings of property has not been fully addressed. As Landowner groups around the Province formally debate the draft Bill 19, it is the issue of compensation for regulatory and full takings that is at the centre of controversy.

The following document will address specific areas of concern in Bill 19 as well as possible legislative solutions as it relates to fair and reasonable compensation for public interest takings.

### Bill 19 and Draft Amendments

Draft amendments to section 2.1(1) indirectly indicate that a project area may be anything the Lieutenant Governor in council may decide. This continues to leave Bill 19 with extreme powers with regard to takings of property and this area needs to be narrower in focus.

A time constraint of two years outlined in 2.1(2) of draft amendments helps to limit the time private property is in the proposed project area. Although we recognize the time constraints required in the developmental and consultative phase of a project area, one must also recognize the interference this consultation phase has on property values. In limited cases property values in and adjacent to proposed project areas will rise in anticipation of a designation, but in the vast majority of cases these properties experience devaluation during this consultative phase. An example of this devaluation may present itself as a lost opportunity to sell a property during this consultative phase, or a reduced price for the land in anticipation of the land being re-designated. This devaluation may be addressed by shortening the consultative phase, addressing this pre designation devaluation during the land purchase phase, and addressing the proven devaluation of property value should the land in the consultative area not be designated as a project area. Regulations to Bill 19 may partially address this issue, and a change to the definition of expropriation in the Expropriation Act to include a regulatory taking will also be necessary.

It is interesting to note that Aboriginals, although not specifically mentioned in Bill 19 (but noted in other legislation that pertains to any new Act), and Metis Settlements under section (5) are recognized as having "collective" property rights. Changes to the Expropriation Act, to include regulatory takings, may help propel the balance of Alberta's citizens closer to this recognition of property rights afforded to certain sectors of Alberta society.

Section 3 (1) (f) and (g) limits the use of the Surface Rights Act and the Expropriation Act as it pertains to crown land. This portion of the proposed Act comes from sections 9 and 10 of the Restricted Development Area Regulations under the Government Organization Act, dated 1976. These sections copied into Bill 19 continue to provide concerns for crown land disposition holders. Although it may have been the intent by Bill 19 authors to indicate that once Government has obtained the project area land it need not go through the above mentioned acts to determine compensation for electrical lines, pipelines, etc. within the new project area (compensation was already paid for the private property when the designation was applied and the land is now crown), this section provides contraindicated meaning to disposition holders.

Of concern is whether the limited property value afforded to Crown land dispositions such as a Grazing, Forestry, Recreation, and Hunting leases or a subsurface Mineral lease will be fairly compensated when the property is taken for a project area. Surface leases such as grazing dispositions, are bought and sold at fair market value, and pay land tax. Subsurface dispositions also sell and/or are sublet at fair market value thus indicating a partial property value.

An example of concern on a grazing disposition may be the designation of a pipeline right of way as a project area. The Alberta Government already owns the land used on the grazing disposition and in this case is expropriating the value of the disposition contract as it pertains to the project area. A further example may be a new dam and related flooded land being designated as a project area. A subsurface mineral lease holder may be denied access to mineral extraction on wells now under water. Directional drilling may or may not recover the known minerals and thus compensation in this case will need to be expended on the total minerals lost or the value of the area of subsurface land being denied access.

The above two examples further demonstrate the need to make changes to the definition of expropriation to include regulatory takings.

### Orphaned Property and Project Lands

In many cases once project lands have been defined, property will be orphaned from the balance of their existing private property. This may be the case in a freehold mineral property where minerals may not be recoverable under a project area, or it may be the case where the adjacent surface property owner to a project area is unable to access owned land on the other side of the designation.

Compensation for orphaned property will need to be addressed.

Since project areas, as defined by the Lieutenant Governor, may be extended to include recreational corridors or the linking of paramount areas of interest close to existing corridors, or the linking of recreational corridors together, it is essential that property owners have continued access to orphaned

land on either side of the designation. This has not been the case with current recreational corridors and demonstrates the need to accommodate orphaned lands within Bill 19. The intent is to leave the property holder “whole” when property is taken for a public interest.

### Injurious Affection

This is defined as the loss or depreciation in value to the remainder of the land attributable to the actual taking for a project area. In some instances land adjacent to a designated project will increase in value. An example may be land next to a “gasoline alley” or land next to a new recreational reservoir. Unfortunately in most cases land values adjacent to project lands will be devalued. An example of this may be land adjacent to one or more large power lines. If the project lands are wide enough so as not to position large power lines close to property lines of non project areas then this devaluation may be mitigated. If an Edmonton/Calgary project area (corridor) was wide enough to have large electrical lines a couple kilometres away from adjacent property (corridors at least 6 kilometres wide) then this injurious affection would be vastly diminished.

Mitigation of injurious affection as described above then leads to providing compensation for land owners within a circle of the corridor, or alternatively purchasing a wider corridor. This principle if adopted in Bill 19 would set a precedent for the Surface Rights Act as well. Compensation under the SRA needs to be changed to provide compensation for landowners in a circle around industrial development. This is not the current policy and needs to be addressed in the amendments to the SRA in this session as well. The circle drawn around industrial activity, either around a well site, or a series of circles around linear disturbances such as power lines, would provide a diminished compensation the farther out from the centre of the circle. The actual total amount of compensation may increase slightly, but will be distributed to all landholders in the circle, not just the owner of the land experiencing the industrial development.

### No Net Loss of Private Property

As private property, either surface or subsurface, is taken for project areas the total amount of crown land in Alberta will increase. One may take the position that the total area of crown land in Alberta shall not increase, and therefore for every hectare of land taken for a project area there must be provision for an equal amount of Alberta Crown land to be sold. This would provide two important principles: 1) the current public/private land ownership ratio shall not increase; and 2) the Alberta public may sell Crown land to help offset procurement costs when obtaining land in designated project areas.

This principle of no net loss has already been effectively used by Federal and Provincial governments as it applies to no net habitat loss for land used for certain industrial development on environmentally sensitive lands.

### New Property Rights Legislation

Unfortunately, Alberta is under a severe time constraint as it relates to the implementation of project areas. New pipelines from the McKenzie Delta, CO2 pipelines, electrical lines Calgary/Edmonton,

electrical lines to new power generation (wind or nuclear), Edmonton /Calgary rail line, the Meridian dam, and expanded roadways are but a few of the projects that need to use Bill 19. The United States has allocated \$15 billion in the present stimulus package to be used for new corridors, some of which are energy related. Our Federal government has allocated monies for short time infrastructure projects, some of which may include the above-mentioned projects. Alberta is but a small player in the overall outlook in a North American corridor structure. These new projects must go ahead now and legislation such as Bill 19 is critical in this time period.

A rush to move these critical projects ahead should not include a rush to diminish property rights of those property owners inflicted with a new project area. Our elected government and we as Alberta citizens have the capacity to provide an environment to move these projects ahead while at the same time protecting property rights. One should not be exclusive of the other.

To that end Alberta Property Rights Initiative proposes the following:

Amendments to the Expropriation Act to include regulatory takings in the definition of expropriation will go a long way to mitigate the diminished property rights Albertans now have. Alternatively APRI has provided a stand-alone property rights bill- named The Property Rights Preservation Bill. This made for Alberta bill has been modified from similar legislation that has now been passed by over 30 US states. These states have gone through a similar situation where there was increasing diverse public interest for the use of private land. This bill was a response to that situation.

As we move farther into a Land Use Framework policy and legislation for Alberta, it is essential that property rights be included in all up front aspects of land planning.

APRI looks forward to discussing and helping the Alberta government with new legislation as it pertains to property rights.