



**LAND AND PROPERTY RIGHTS TRIBUNAL**

**Citation:** Fisher v Foothills County (Subdivision Authority), 2025 ABLPRT 165

**Date:** 2025-03-31

**File No.** S24/FOOT/CO-027

**Decision No.** LPRT2025/MG0165

**Municipality:** Foothills County

**In the matter of** an appeal from a decision of the Foothills County Subdivision Authority (SA) respecting the proposed subdivision of NE 06-21-03 W5M (subject land) under Part 17 of the *Municipal Government Act*, RSA 2000, c M-26 (*Act*).

BETWEEN:

D. Fisher

Appellant

- and -

Foothills County Subdivision Authority

Respondent Authority

BEFORE: P. Yackulic, Presiding Officer  
G. Dziwenka, Member  
G. Newcombe, Member  
(Panel)

K. Lau, Case Manager

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**DECISION**

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**APPEARANCES**

See Appendix A

This is an appeal to the Land and Property Rights Tribunal (LPRT or Tribunal). The hearing was held by videoconference, on March 4, 2025, after notifying interested parties.

## OVERVIEW

[1] This appeal concerns the subdivision of a rural quarter section in the north west area of Foothills County (County), west of the Hamlet of Millarville. The subdivision would create two parcels, with a creek as the boundary between them. The property is designated as Agriculture (A) in the Land Use Bylaw (LUB), and the County requires an LUB amendment to such land prior to subdivision. In this case, the County denied the Appellant's application for redistricting.

[2] The SA refused the subdivision, having determined it would create a parcel that would not be agriculturally viable on its own, resulting in fragmentation of agricultural land and a loss of the agricultural land base, contrary to the intent of the County's agricultural policies. Furthermore, accesses to the property did not comply with the MDP, LUB, and Alberta Transportation and Economic Corridors' (ATEC) requirements as they incorporated easements and direct highway access.

[3] The Appellant appealed the refusal, taking the position that the subdivision would not result in fragmentation or loss of agricultural land, and that continuing use of the existing accesses should be allowed.

[4] The LPRT determined that the proposed subdivision did not meet the County's MDP Policies for a first parcel out, including maximum parcel size. In addition the circumstances were not appropriate to relax the relevant MDP and LUB requirements since approval would most likely result in fragmentation of the parcel and a loss to the agricultural land base contrary to the intent of the County's planning documents. In addition, access as proposed by the Appellant was not appropriate for the intended purpose and did not meet ATEC and/or County requirements. The LPRT denied the appeal and upheld the SA's refusal.

## REASONS APPEAL HEARD BY LPRT

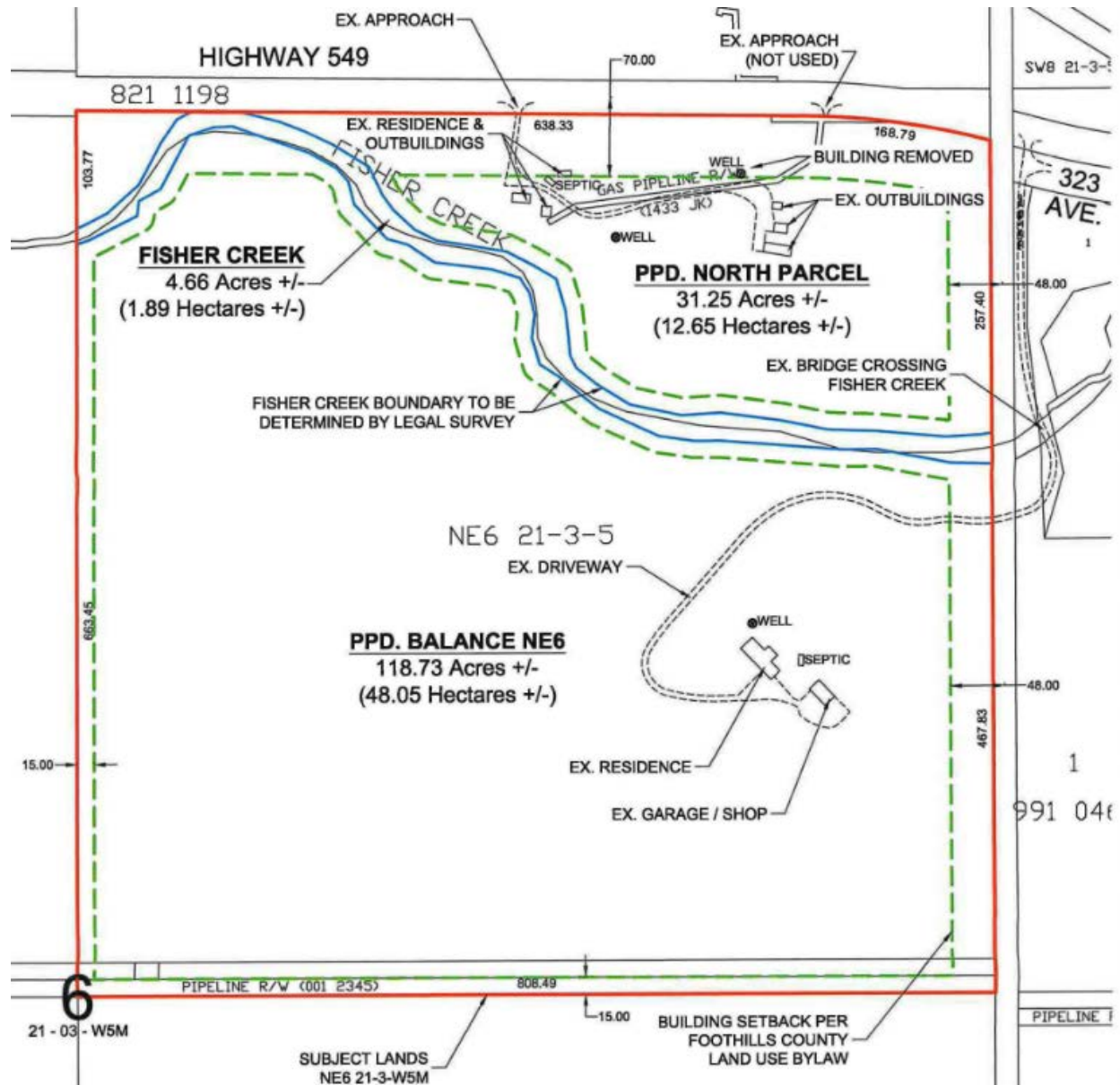
[5] Section 678(2) of the *Act* directs subdivision appeals to the LPRT instead of a subdivision and development appeal board when the subject land is in the Green Area or within prescribed distances of features of interest to Provincial authorities, including a highway, body of water, sewage treatment, waste management facility, or historical site. The distances are found in s. 26 of the *Matters Related to Subdivision and Development Regulation*, Alta Reg 84/2022 (*Regulation*). The LPRT also hears subdivision appeals when the land is the subject of a licence, permit, approval or other authorization from various Provincial authorities.

[6] In this case, the following circumstances apply to the subject land:

Highway:	Highway 549 is adjacent to the parcel
Body of Water	Fisher Creek flows through the parcel
Licensing or Approving Authority	Two pipelines licenced by the AER are within the parcel

## PROPOSAL

[7] To subdivide a previously unsubdivided quarter section into two parcels to be used for agricultural purposes, with Fischer Creek to be the boundary between them.



## BACKGROUND

[8] The property to be subdivided is approximately 4 km west of Millarville, or 25 km southwest of Calgary. It is designated Agriculture (A) in the LUB. The subject lands are bounded on the north by Highway 549, on the east by an undeveloped road allowance, with agricultural land to the south and southwest, and country residential development to the west.

- [9] Fisher Creek crosses the property, separating it into three areas:
- 29+/- acres south of Highway 549, northeast of the creek,
  - 120+/- acres south of the creek, and
  - 1.5+/- acres area south of the highway and northwest of the creek.

[10] The area northeast of the creek (northeast area) includes hayfields, out buildings, and a residence. It is level, with a minor slope down from the highway dropping about 5 m to Fisher Creek. There are two direct accesses to Highway 549, with the easterly most access not in use.

[11] The area south of the creek (south area) hosts a 60-acre hayfield, residence, and outbuildings on relatively level ground. North of the hayland, the ground slopes down to the north, with slopes exceeding 30% dropping 30 m to Fisher Creek. Two regulated pipelines lie on the property, adjacent to the south boundary. Access to this area is provided on private easements through properties that lie east of the road allowance on the east boundary and includes the use of a private bridge over Fisher Creek. The access route crosses the County road allowance, without benefit of documented approval.

[12] The area south of the highway and northwest of the creek (northwest area) is undisturbed, with natural vegetation on a minor slope down to the creek from the highway. Access has not been developed to this area.

[13] As proposed, the subdivision would create a 29.7 acre parcel north and east of Fisher Creek, a 120.2 acre parcel including the land south of the creek and the north west area, with 4.7 acres provided for the creek.

[14] Application to amend the LUB to allow for the subdivision was initiated in 2022. Decision on the LUB amendment was deferred pending submission of additional information. The amendment was further considered by County Council and refused in May of 2023.

[15] The application for subdivision was submitted in May 2024, and refused in October 2024 for the following reasons:

a. In consideration of Policy 2 of the Agriculture section of the MDP2010, Council did not find sufficient merit in the proposal to consider allowing fragmentation of the subject lands into smaller agricultural parcels, as it is Council's intent to maintain the agricultural land base. In addition, Council is not supportive of the proposed access and feels that the application is contrary to MDP2010 Agriculture Policy 5.3 and Section 9.1 of the County's Land Use Bylaw 60/2014 regarding access to the proposed parcel.

b. Further, the application for amendment to the Agricultural Land Use District for NE 06-21-03 W5M to allow for the future subdivision of one 29.76 +/- acre Agricultural District parcel was refused by Council on May 10, 2023, and therefore the proposed subdivision does not comply with Land Use Bylaw 60/2014.

[16] The refusal was appealed, with the Appellant initially noting that the SA erred in finding that subdivision would result in fragmentation of agricultural lands and that access is inappropriate.

[17] Additional reasons for the appeal were subsequently provided, stating that incorrect information had been provided to the SA concerning flood damage to the bridge, the extent of flooding in 2013, and provision of access. Further, the Appellant believes there is not a valid planning purpose for the refusal.

## ISSUES

[18] The LPRT must consider requirements under the *Act*, *Regulation*, any regional plans under the *Alberta Land Stewardship Act*, the Provincial Land Use Policies (LUP), the Land Use Bylaw (LUB), and any statutory plans. (see ss. 680(2), 618.3 and 618.4(1) of the *Act*). Against this general regulatory backdrop, the parties focused on the following particular issues:

1. Does the proposed subdivision comply with the policies of the Municipal Development Plan (MDP), specifically, the fragmentation of agricultural land identified in the MDP and the density provisions?
2. Does the proposed subdivision comply with the access provisions of the MDP and LUB, specifically with regard to the existing access to the south parcel, and its appropriateness for subdivision?

### **SUMMARY OF THE SA'S POSITION**

[19] The SA stated the proposal is not aligned with the policy direction of the South Saskatchewan Regional Plan (SSRP) related to the Efficient Use of Land and Economy, particularly with respect to reducing the fragmentation of agricultural lands and reducing the conversion of land for other uses. They noted that the MDP supports the SSRP by maintaining the integrity of the agricultural land base and discouraging the fragmentation of agricultural land, including the subdivision of land into smaller agricultural parcels.

[20] The SA noted that the proposed north parcel is not large enough to be viable as an agricultural parcel independent of the south parcel. The conversion of the north property to residential use from agriculture use as a result of its diminished size would remove it from the agricultural land base of the County, which it is trying to maintain. The SA provided MDP Agricultural Policy 5, which provides for the subdivision of a first parcel from a previously unsubdivided quarter section if the parcel is as small as possible, not larger than 20.99 acres. The parcel proposed as first parcel out exceeds 29 acres and does not comply with this policy of the MDP. The parcel is too large to qualify as a first parcel out, yet too small to be agriculturally viable.

[21] The SA advised that the LUB would allow for a second dwelling to be developed on the proposed south parcel as it would be greater than 80 acres. An additional residence would further fragment the land, reducing this parcel's agricultural viability.

[22] The SA held the position that the subdivision would result in the functional conversion of the land from agricultural to residential use, which would effect the change in use that was denied by County Council's refusal to amend the LUB.

[23] The SA determined that access to the property, as it currently exists, does not meet the requirements of the MDP and LUB and new access development would be required if any new parcels are created. Agricultural Policy 5.3 of the MDP requires properties to have year round physical and legal access to an MD (County) roadway, while Section 9.1 of the LUB extends the same requirement to all newly created parcels. The SA contends that the subdivision is creating two new parcels, and that access complying with the LUB is required. The SA noted that under Section 9.1.5 of the LUB access by easement is not acceptable unless the County is a party to the agreement and the access can become a public road in the future, which the County is not agreeable to in this instance.

[24] The SA confirmed that access to Highway 549 is subject to the requirements of Alberta Transportation and Economic Corridors (ATEC), which the SA must adhere to. They further confirmed that while public roads must be built to County standards, driveways within private property are not regulated.

### **SUMMARY OF ATEC'S POSITION**

[25] ATEC did not present a position on the fragmentation of agricultural land issue.

[26] ATEC presented that direct property access to Highway 549 as currently exists is not provided for in their regulations, and the two existing accesses to the proposed north parcel would have to be removed. They demonstrated that access to the County road east of the road allowance would meet their requirements and provide legal and physical access to the north parcel.

[27] With regard to the proposed south parcel, ATEC presented that dedication of land for a local road at the west side of the property, north of the creek, would meet their requirements for access to that area. This road would be a County road, built to County standards, at such time as it is required by the land owner or the County, at the cost of the County or landowner.

[28] ATEC did not speak to the appropriateness of access by easement.

### **SUMMARY OF ADJACENT LANDOWNERS' POSITIONS**

[29] The Adjacent Owner did not speak to the issue of fragmentation.

[30] The Adjacent Owner advised that the access easement shared by them and the Appellant had not presented any concerns to them in the past, and that they supported the proposed subdivision.

### **SUMMARY OF APPELLANT'S POSITION**

[31] The Appellant characterized the subdivision as a First Parcel Out, stating that the SA has the discretion to permit the subdivision where it is determined that there is an appropriate reason to do so. In this case, they argued the proposed subdivision represents an efficient use of the land as the parcels cannot be farmed together. In addition, they presented that the subdivision would be consistent with the LUB's intent for the surrounding area, including with respect to the keeping the lands in the pool of agricultural lands and encouraging efficient land use.

[32] The Appellant advised that only one of the two direct accesses to Highway 549 is currently in use, and that it has existed without concerns for over twenty years. They raised concern that creating a driveway across the north parcel to the road allowance on the east would fragment the parcel further. As such, removal of the dis-used access at this time and deferral of removal of the active access to the future would be appropriate.

[33] The Appellant stated that the subdivision does not result in a new parcel entirely south of the creek, and it is not subject to the LUB requirements for the provision of access to new parcels. Preliminary engineering drawings were provided to demonstrate that access to the proposed south parcel could be developed from the northwest corner of the land; however, this access was not part of the subdivision proposal. The current access to the proposed south parcel through private land subject to easement agreements has met their needs for a long time and will be sufficient in the future.

### **FINDINGS**

1. The proposal does not conform with the provisions of the MDP in that it would result in fragmentation and conversion of agricultural land to non-agricultural purposes.
2. The proposed access does not meet the requirements of the MDP and LUB, with access by easement not appropriate.

## **DECISION**

[34] The appeal is denied and the subdivision is refused.

## **REASONS**

### **Issue 1 Fragmentation of Agricultural Land**

[35] The SSRP and MDP mandate the preservation of agricultural land and discourage its conversion or fragmentation. These plans are also consistent with the Provincial Land Use Policies (LUP) – specifically, Policy 2 within Section 6.1 Agriculture, where ‘Municipalities are encouraged to limit the fragmentation of agricultural lands and the premature conversion to other uses...’. County Council carried forward the direction of the SSRP, MDP, and LUP and in their decision to not amend the LUB to allow for subdivision. The SA’s decision similarly followed this direction.

[36] The MDP’s policies concerning first parcels out are evidently intended to limit conversion of land to non-agricultural use. Section 5 states such subdivisions “may be supported” if the listed criteria are met; the phrase “may be supported” suggests approval of a first parcel out is intended to be discretionary and not available as of right, a conclusion supported by the requirement in Policy 5.5 for LUB redesignation prior to approval. In this case, the proposed subdivision also does not meet the size requirement in Policy 5.1, which states first parcels out should be “as small as possible” while encompassing features necessary to the use - and where possible, not larger than 20.99 acres. At 29 acres, the proposed northern parcel is much larger than is contemplated under the MDP.

[37] The Appellant contended that in the circumstances of this case, the proposed subdivision would not affect the land use or the intensity of use of the site, and that continuing the existing use after subdivision would not result in fragmentation of agricultural land or conversion of agricultural land to other uses. However, there is no dispute that the proposed subdivision would create an additional title and allow for sale of that area to another party. Though the Appellant stated the physically divided areas cannot be farmed together, they later confirmed that the current occupant is farming the entire area. Division in ownership after subdivision presents the potential that the current or future occupants would not have access to both parcels, limiting the agricultural viability of one or both.

[38] Another consequence of approval would be the creation of the proposed parcel to the south, where the owner would have the right to construct an additional dwelling. As explained by the Appellant, there is potential for access to a second dwelling to be provided by a lengthy private driveway; such development would itself create fragmentation of the southern parcel and increase the likelihood of conversion to non-agricultural uses.

[39] In light of the above, the LPRT does not see sufficient support for the Appellant’s statement that the proposed subdivision represents an efficient use of the land consistent with the intent of the County’s MDP and LUB to avoid fragmentation and conversion of agricultural land. Argument to support this position was not consistent with the evidence. The Appellant’s identification of adjacent country residential development being similar in nature to their aspirations does not support their position that agricultural use would continue. Contrary to the Appellant’s assertion that there is not a valid planning purpose to refuse the application, the LPRT notes protecting agricultural land from premature conversion to non-agricultural use is a well-established planning principle which supports refusal in this case. The Panel determined that increasing the number of owners and potentially the number of dwellings would

more likely than not result in fragmentation of agricultural land and conversion to non-agricultural use, contrary to the intentions of the SSRP, LUP, MDP, and LUB.

## Issue 2 Suitability of Access

[40] While the subdivision is refused for the reasons above, the LPRT also examined the suitability of access for the two parcels that would be created by the proposed subdivision. Access to the property, as it currently exists, does not meet the requirements of the LUB and the LPRT agrees with the SA's position that new access development would be required for the proposed new parcels if the proposed subdivision were approved. The criteria listed in MDP s. 5.3 as supporting a first parcel out include "the developed parcel has year-round physical and legal access to an MD [County] roadway"; LUB s. 9.1.1 extends a similar requirement for "direct physical, legal access" to all newly created parcels. 9.1.5 clarifies that

an easement agreement or easement does not constitute legal access unless a future road dedication or utility right of way has been registered over the easement area and the County has become a party to the easement to ensure it cannot be removed without Council resolution

[41] These provisions are consistent with ss. 9(e) and 11 of the *Regulation*, which requires the SA to be satisfied parcels have suitable access before approval. While there may be circumstances under which an access easement is appropriate, easements also involve many planning challenges. In addition to potentially impeding future development, easements can be difficult to enforce, and can raise concerns over responsibility for maintenance, particularly when ownership or other relevant circumstances change. While in this case the easement appears to have been an effective arrangement for current and past owners, it is not a suitable arrangement for the long term, particularly given the proposed increase in density - and accompanying potential for an increase in the number of users. Under the circumstances, the Panel accepts the SA's position that access by easement is not acceptable unless the access can become a public road in the future and the County is a party to the agreement, which the County is not agreeable to in this instance.

[42] The Appellant discussed potential alternate access to the south parcel and undertook considerable efforts to demonstrate how it could be achieved, including the preparation of preliminary design information for an alternate access and hydrological information for the current access bridge. They also provided significant information on the property, including environmental reviews of Fisher Creek, contour information showing steep slopes, and flood plain information. However, as these aspects were not addressed in their plan submission, it appears that the significance of these environmental features has been identified but not accounted for in the plan presented.

[43] The Panel notes the Appellant's concern that incorrect information was provided to and considered by the SA with regards to bridge damage, flooding, and access provisions. As noted by the Appellant, the LPRT hearing is a hearing *de novo*. The Panel's decision is based on the submissions of the parties at the hearing.



Dated at the City of Edmonton in the Province of Alberta this 31st day of March, 2025.

**LAND AND PROPERTY RIGHTS TRIBUNAL**

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(SGD) P. Yackulic, Member

## **APPENDIX A**

PARTIES WHO ATTENDED, MADE SUBMISSIONS OR GAVE EVIDENCE AT THE HEARING:

<b><u>NAME</u></b>	<b><u>CAPACITY</u></b>
D. Fisher	Appellant
C. Marble	Appellant's Council
J. Badke	Appellant's Consultant
J. Jackson	Affected Party (adjacent land owner)
E. Neilsen	ATEC
B. Smith	SA
T. Chipchase	SA
R.D. McHugh	SA

## **APPENDIX B**

DOCUMENTS RECEIVED PRIOR TO THE HEARING:

<b><u>NO.</u></b>	<b><u>ITEM</u></b>
1A	Notice of Appeal (3 pp)
2A	Appeal Reasons of the Appellant -COMPLETE with Bookmarks (156 pp)
3R	Background Information Package (73 pp)
4R	Fisher policy excerpts and potential conditions (25 pp)
5R	Fisher_Agency Circulation & Adjacent Landowner Contact List (2 pp)
6TEC	LPRT Hearing Presentation (13 pp)
7A	Ltr to Tribunal - December 9 2024 (2 pp)
8A	Fax Confirmation - Ltr to FOIP Coordinator (4 pp)
9R	GMS-Final Document (49 pp)
10R	MDP2010_ADOPTED_Nov2017 (60 pp)
11R	Consolidated LUB Updated Oct 10_24_0 (379 pp)
12R	LU_TWP_MapBook_July_2024 (52 pp)
13R	Updated Appendix July 1_2024 (178 pp)
14A	Supplemental Appeal Reasons of the Appellant Delaine Fisher (135 pp)
15A	FOIP Bookmarked PDF (1868 pp)

## **APPENDIX C**

DOCUMENTS RECEIVED AFTER THE HEARING:

<b><u>NO.</u></b>	<b><u>ITEM</u></b>
16A	HRA Approval Survey License of Occupancy (2 pp)
17R	SA Presentation
18TEC	Maps

## APPENDIX D

### LEGISLATION

The *Act* and associated regulations contain criteria that apply to appeals of subdivision decisions. While the following list may not be exhaustive, some key provisions are reproduced below.

#### *Municipal Government Act*

##### Control of roads

Section 18 of the *Act* indicates that Alberta Transportation has jurisdiction over highways, as such the *Highways Development and Protection Act* applies.

18(1) Subject to this or any other Act, a municipality has the direction, control and management of all roads within the municipality.

(2) Subject to this or any other Act, a municipal district also has the direction, control and management of roads and road diversions surveyed for the purpose of opening a road allowance as a diversion from the road allowance on the south or west boundary of the district although the roads or road diversions are outside the boundaries of the municipal district.

(3) Nothing in this section gives a municipality the direction, control and management of mines and minerals.

##### Purpose of this Part

Section 617 is the main guideline from which all other provincial and municipal planning documents are derived. Therefore, in reviewing subdivision appeals, each and every plan must comply with the philosophy expressed in 617.

617 The purpose of this Part and the regulations and bylaws under this Part is to provide means whereby plans and related matters may be prepared and adopted

(a) to achieve the orderly, economical and beneficial development, use of land and patterns of human settlement, and

(b) to maintain and improve the quality of the physical environment within which patterns of human settlement are situated in Alberta,

without infringing on the rights of individuals for any public interest except to the extent that is necessary for the overall greater public interest.

Section 618.3 and 618.4 direct that all decisions of the LPRT must be consistent with the applicable regional plan adopted under the *Alberta Land Stewardship Act* or the Land Use Policies (LUP).

##### ALSA regional plans

618.3(1) Anything done by any of the following under a provision in this Part or a regulation under this Part must be done in accordance with any applicable ALSA regional plan:

(a) a municipality;

(b) a council;

- (c) a municipal planning commission;
  - (d) a subdivision authority;
  - (e) a development authority;
  - (f) a subdivision and development appeal board;
  - (g) the Land and Property Rights Tribunal;
  - (h) an entity to which authority is delegated under section 625(4).
- (2) If there is a conflict or an inconsistency between anything that is done under a provision of this Part or a regulation under this Part and an applicable ALSA regional plan, the ALSA regional plan prevails to the extent of the conflict or the inconsistency.

#### Land use policies

- 618.4(1) Every statutory plan, land use bylaw and action undertaken pursuant to this Part by a municipality, municipal planning commission, subdivision authority, development authority or subdivision and development appeal board or the Land and Property Rights Tribunal must be consistent with the land use policies established under subsection (2).
- (2) The Lieutenant Governor in Council, on the recommendation of the Minister, may by regulation establish land use policies.

#### Approval of application

Upon appeal, the LPRT takes on the role of the subdivision authority. Pertinent provisions relative to decisions of the subdivision authority include section 654(1) and (2) of the *Act*. The SA (and by extension the LPRT) cannot approve a subdivision unless convinced that the site is suitable for the intended use, as per section 654(1)(a) of the *Act*.

654(1) A subdivision authority must not approve an application for subdivision approval unless

- (a) the land that is proposed to be subdivided is, in the opinion of the subdivision authority, suitable for the purpose for which the subdivision is intended,
  - (b) the proposed subdivision conforms to the provisions of any growth plan under Part 17.1, any statutory plan and, subject to subsection (2), any land use bylaw that affects the land proposed to be subdivided,
  - (c) the proposed subdivision complies with this Part and Part 17.1 and the regulations under those Parts, and
  - (d) all outstanding property taxes on the land proposed to be subdivided have been paid to the municipality where the land is located or arrangements satisfactory to the municipality have been made for their payment pursuant to Part 10.
- (1.1) Repealed 2018 c11 s13.
- (1.2) If the subdivision authority is of the opinion that there may be a conflict or inconsistency between statutory plans, section 638 applies in respect of the conflict or inconsistency.
- (2) A subdivision authority may approve an application for subdivision approval even though the proposed subdivision does not comply with the land use bylaw if, in its opinion,
- (a) the proposed subdivision would not
    - (i) unduly interfere with the amenities of the neighbourhood, or
    - (ii) materially interfere with or affect the use, enjoyment or value of neighbouring parcels of land,

- and
- (b) the proposed subdivision conforms with the use prescribed for that land in the land use bylaw.
- (3) A subdivision authority may approve or refuse an application for subdivision approval.

#### Conditions of subdivision approval

Section 655(1) of the *Act* details the conditions of subdivision approval that may be imposed by the subdivision authority.

655(1) A subdivision authority may impose the following conditions or any other conditions permitted to be imposed by the subdivision and development regulations on a subdivision approval issued by it:

- (a) any conditions to ensure that this Part, including section 618.3(1), and the statutory plans and land use bylaws and the regulations under this Part affecting the land proposed to be subdivided are complied with;
- (b) a condition that the applicant enter into an agreement with the municipality to do any or all of the following:
  - (i) to construct or pay for the construction of a road required to give access to the subdivision;
  - (ii) to construct or pay for the construction of
    - (A) a pedestrian walkway system to serve the subdivision, or
    - (B) pedestrian walkways to connect the pedestrian walkway system serving the subdivision with a pedestrian walkway system that serves or is proposed to serve an adjacent subdivision,
    - or both;
  - (iii) to install or pay for the installation of a public utility described in section 616(v)(i) to (ix) that is necessary to serve the subdivision, whether or not the public utility is, or will be, located on the land that is the subject of the subdivision approval;
  - (iv) to construct or pay for the construction of
    - (A) off-street or other parking facilities, and
    - (B) loading and unloading facilities;
  - (v) to pay an off-site levy or redevelopment levy imposed by bylaw;
  - (vi) to give security to ensure that the terms of the agreement under this section are carried out.

#### Subdivision registration

Section 657 of the *Act* guides the registration of subdivision plans.

657(1) An applicant for subdivision approval must submit to the subdivision authority the plan of subdivision or other instrument that effects the subdivision within one year from the latest of the following dates:

- (a) the date on which the subdivision approval is given to the application;
- (b) if there is an appeal to the subdivision and development appeal board or the Land and Property Rights Tribunal, the date of the decision of the appeal board

or the Tribunal, as the case may be, or the date on which the appeal is discontinued;  
(c) if there is an appeal to the Court of Appeal under section 688, the date on which the judgment of the Court is entered or the date on which the appeal is discontinued.

...

#### Land dedication

Section 661 and 662 of the *Act* discuss the authority for the SA to require the dedication of land at time of subdivision as follows:

661 The owner of a parcel of land that is the subject of a proposed subdivision must provide, without compensation,  
(a) to the Crown in right of Alberta or a municipality, land for roads and public utilities,  
(a.1) subject to section 663, to the Crown in right of Alberta or a municipality, land for environmental reserve, and  
(b) subject to section 663, to the Crown in right of Alberta, a municipality, one or more school boards or a municipality and one or more school boards, land for municipal reserve, school reserve, municipal and school reserve, money in place of any or all of those reserves or a combination of reserves and money,  
as required by the subdivision authority pursuant to this Division.

Roads, utilities, etc.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.  
(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.  
(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

#### Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if  
(a) one lot is to be created from a quarter section of land,  
(b) land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,  
(c) the land to be subdivided is 0.8 hectares or less, or  
(d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

#### Environmental reserve

664(1) Subject to section 663 and subsection (2), a subdivision authority may require the

owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of

- (a) a swamp, gully, ravine, coulee or natural drainage course,
- (b) land that is subject to flooding or is, in the opinion of the subdivision authority, unstable, or
- (c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any body of water.

(1.1) A subdivision authority may require land to be provided as environmental reserve only for one or more of the following purposes:

- (a) to preserve the natural features of land referred to in subsection (1)(a), (b) or (c) where, in the opinion of the subdivision authority, those features should be preserved;
- (b) to prevent pollution of the land or of the bed and shore of an adjacent body of water;
- (c) to ensure public access to and beside the bed and shore of a body of water lying on or adjacent to the land;
- (d) to prevent development of the land where, in the opinion of the subdivision authority, the natural features of the land would present a significant risk of personal injury or property damage occurring during development or use of the land.

(1.2) For the purposes of subsection (1.1)(b) and (c), “bed and shore” means the natural bed and shore as determined under the Surveys Act.

(2) If the owner of a parcel of land that is the subject of a proposed subdivision and the municipality agree that any or all of the land that is to be taken as environmental reserve is instead to be the subject of an environmental reserve easement for the protection and enhancement of the environment, an easement may be registered against the land in favour of the municipality at a land titles office.

(3) The environmental reserve easement

- (a) must identify which part of the parcel of land the easement applies to,
- (b) must require that land that is subject to the easement remain in a natural state as if it were owned by the municipality, whether or not the municipality has an interest in land that would be benefitted by the easement,
- (c) runs with the land on any disposition of the land,
- (d) constitutes an interest in land in the municipality, and
- (e) may be enforced by the municipality.

(4) An environmental reserve easement does not lapse by reason only of

- (a) non-enforcement of it,
- (b) the use of the land that is the subject of the easement for a purpose that is inconsistent with the purposes of the easement, or
- (c) a change in the use of land that surrounds or is adjacent to the land that is the subject of the easement.

(5) When an easement is presented for registration under subsection (2), the Registrar must endorse a memorandum of the environmental reserve easement on any certificate of title relating to the land.

(6) Despite section 48(4) of the Land Titles Act, an easement registered under subsection (2) may be removed only pursuant to section 658(3.1).

(7) An environmental reserve easement is deemed to be a condition or covenant for the purposes of section 48(4) and (6) of the Land Titles Act.

(8) Subject to subsection (7), this section applies despite section 48 of the Land Titles Act.

(9) A caveat registered under this section prior to April 30, 1998 is deemed to be an environmental reserve easement registered under this section.

## Municipal and school reserves

Section 666 of the *Act* describes when reserves can be taken and the form that they can be taken in.

666(1) Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision

- (a) to provide part of that parcel of land as municipal reserve, school reserve or municipal and school reserve,
- (b) to provide money in place of municipal reserve, school reserve or municipal and school reserve, or
- (c) to provide any combination of land or money referred to in clauses (a) and (b).

(2) The aggregate amount of land that may be required under subsection (1) may not exceed the percentage set out in the municipal development plan, which may not exceed 10% of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3) The total amount of money that may be required to be provided under subsection (1) may not exceed 10% of the appraised market value, determined in accordance with section 667, of the parcel of land less all land required to be provided as conservation reserve or environmental reserve or made subject to an environmental reserve easement.

(3.1) For greater certainty, for the purposes of calculating the 10% under subsection (2) or (3), the parcel of land includes any land required to be provided under section 662.

(4) When a combination of land and money is required to be provided, the sum of

- (a) the percentage of land required under subsection (2), and
- (b) the percentage of the appraised market value of the land required under subsection (3)

may not exceed 10% or a lesser percentage set out in the municipal development plan.

## Appeals

Section 678 of the *Act* sets out the requirements for appeal of a decision by the subdivision authority.

678(1) The decision of a subdivision authority on an application for subdivision approval may be appealed

- (a) by the applicant for the approval,
- (b) by a Government department if the application is required by the subdivision and development regulations to be referred to that department,
- (c) by the council of the municipality in which the land to be subdivided is located if the council, a designated officer of the municipality or the municipal planning commission of the municipality is not the subdivision authority, or
- (d) by a school board with respect to
  - (i) the allocation of municipal reserve and school reserve or money in place of the reserve,
  - (ii) the location of school reserve allocated to it, or
  - (iii) the amount of school reserve or money in place of the reserve.

(2) An appeal under subsection (1) may be commenced by filing a notice of appeal within 14 days after receipt of the written decision of the subdivision authority or deemed refusal by the subdivision authority in accordance with section 681

- (a) with the Land and Property Rights Tribunal



- (i) unless otherwise provided in the regulations under section 694(1)(h.2)(i), where the land that is subject of the application
  - (A) is within the Green Area as classified by the Minister responsible for the Public Lands Act,
  - (B) contains, is adjacent to or is within the prescribed distance of a highway, a body of water, a sewage treatment or waste management facility or a historical site,
  - (C) is the subject of a licence, permit, approval or other authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board, Alberta Energy Regulator, Alberta Energy and Utilities Board or Alberta Utilities Commission,
  - or
  - (D) is the subject of a licence, permit, approval or other authorization granted by the Minister of Environment and Parks,
  - or
- (ii) in any other circumstances described in the regulations under section 694(1)(h.2)(ii),

or

(b) in all other cases, with the subdivision and development appeal board.

(2.1) Despite subsection (2)(a), if the land that is the subject-matter of the appeal would have been in an area described in subsection (2)(a) except that the affected Government department agreed, in writing, to vary the distance under the subdivision and development regulations, the notice of appeal must be filed with the subdivision and development appeal board.

...

Hearing and decision

Section 680(2) of the *Act* requires that LPRT decisions conform to the uses of land referred to in the relevant land use district of the LUB. It does not require that the LPRT abide by other provisions of the LUB, the MDP or the *Subdivision and Development Regulation*, although regard must be given to them.

680(2) In determining an appeal, the board hearing the appeal

- (a) repealed 2020 c39 s10(48);
- (a.1) must have regard to any statutory plan;
- (b) must conform with the uses of land referred to in a land use bylaw;
- (c) must be consistent with the land use policies;
- (d) must have regard to but is not bound by the subdivision and development regulations;
- (e) may confirm, revoke or vary the approval or decision or any condition imposed by the subdivision authority or make or substitute an approval, decision or condition of its own;
- (f) may, in addition to the other powers it has, exercise the same power as a subdivision authority is permitted to exercise pursuant to this Part or the regulations or bylaws under this Part.

(2.1) In the case of an appeal of the deemed refusal of an application under section 653.1(8), the board must determine whether the documents and information that the applicant provided met the requirements of section 653.1(2).

(2.2) Subsection (1)(b) does not apply to an appeal of the deemed refusal of an application under section 653.1(8).

...

## Endorsement of subdivision plan

Section 682 guides endorsement of subdivision plans after an appeal board makes a decision.

682(1) When on an appeal the Land and Property Rights Tribunal or the subdivision and development appeal board approves an application for subdivision approval, the applicant must submit the plan of subdivision or other instrument to the subdivision authority from whom the appeal was made for endorsement by it.

(2) If a subdivision authority fails or refuses to endorse a plan of subdivision or other instrument submitted to it pursuant to subsection (1), the member of the subdivision and development appeal board or Land and Property Rights Tribunal, as the case may be, that heard the appeal who is authorized to endorse the instrument may do so.

## Matters Related to Subdivision and Development Regulation - Alberta Regulation 84/2022

### Application referrals

Section 7 of the *Regulation* deals with application referrals.

7

...

(6) On an application for subdivision being determined or deemed under section 653.1 of the *Act* to be complete, the subdivision authority must send a copy to

....

(e) the Deputy Minister of the Minister responsible for administration of the *Public Lands Act* if the proposed parcel

(i) is adjacent to the bed and shore of a body of water, or

(ii) contains, either wholly or partially, the bed and shore of a body of water;

### Relevant considerations

While the LPRT is not bound by the *Subdivision and Development Regulation*, it is the LPRT's practice to evaluate the suitability of a proposed site for the purpose intended using the criteria in section 9 as a guide.

9 In making a decision as to whether to approve an application for subdivision, the subdivision authority must consider, with respect to the land that is the subject of the application,

(a) its topography,

(b) its soil characteristics,

(c) storm water collection and disposal,

(d) any potential for the flooding, subsidence or erosion of the land,

(e) its accessibility to a road,

(f) the availability and adequacy of a water supply, sewage disposal system and solid waste disposal,

(g) in the case of land not serviced by a licensed water distribution and wastewater collection system, whether the proposed subdivision boundaries, lot sizes and building sites comply with the requirements of the *Private Sewage Disposal Systems Regulation* (AR 229/97) in respect of lot size and distances between property lines, buildings, water sources and private sewage disposal systems as identified in section 4(4)(b) and (c),

(h) the use of land in the vicinity of the land that is the subject of the application, and

(i) any other matters that it considers necessary to determine whether the land that is the subject

of the application is suitable for the purpose for which the subdivision is intended.

...

Road access

Section 11 deals with road access requirements.

11 Every proposed subdivision must provide to each lot to be created by it

- (a) direct access to a road, or
- (b) lawful means of access satisfactory to the subdivision authority.

...

Distance from highway

18 Subject to section 20, a subdivision authority shall not in a municipality other than a city approve an application for subdivision if the land that is the subject of the application is within 1.6 kilometres of the centre line of a highway right of way unless

- (a) the land is to be used for agricultural purposes on parcels that are 16 hectares or greater,
- (b) a single parcel of land is to be created from an unsubdivided quarter section to accommodate an existing residence and related improvements if that use complies with the land use bylaw,
- (c) an undeveloped single residential parcel is to be created from an unsubdivided quarter section and is located at least 300 metres from the right of way of a highway if that use complies with the land use bylaw,
- (d) the land is contained within an area where the municipality and the Minister of Transportation have a highway vicinity management agreement and the proposed use of the land is permitted under that agreement, or
- (e) the land is contained within an area structure plan satisfactory to the Minister of Transportation at the time of the application for subdivision and the proposed use of the land is permitted under that plan.

Service roads

19(1) In this section, “provide” means dedicate by caveat or by survey or construct, as required by the subdivision authority.

(2) Subject to section 20, if the land that is the subject of an application for subdivision is within an area described in section 7(6)(d), a service road satisfactory to the Minister of Transportation must be provided.

(3) Subsection (2) does not apply if the proposed parcel complies with section 18 and access to the proposed parcel of land and remnant title is to be solely by means other than a highway.

Waiver

20(1) The requirements of sections 18 and 19 may be varied by a subdivision authority with the written approval of the Minister of Transportation.

## **ALBERTA LAND USE POLICIES**

Land Use Policies were established by Lieutenant Governor in Council pursuant to section 618.4 of the *Act*.

6.0 Resource Conservation

6.1 Agriculture

Goal

To contribute to the maintenance and diversification of Alberta's agricultural industry.

#### Policies

1. Municipalities are encouraged to identify, in consultation with Alberta Agriculture, Food and Rural Development, areas where agricultural activities, including extensive and intensive agricultural and associated activities, should be a primary land use.
2. Municipalities are encouraged to limit the fragmentation of agricultural lands and their premature conversion to other uses, especially within the agricultural areas identified in accordance with policy #1.
3. Where possible, municipalities are encouraged to direct non-agricultural development to areas where such development will not constrain agricultural activities.

...

#### 7.0 Transportation

##### Goal

To contribute to a safe, efficient, and cost effective provincial transportation network.

##### Policies

1. Municipalities are encouraged to identify, in consultation with Alberta Transportation and Utilities, the location, nature and purpose of key transportation corridors and facilities.
2. Municipalities are encouraged to minimize negative interactions between the transportation corridors and facilities identified in accordance with policy #1 and the surrounding areas and land uses through the establishment of compatible land use patterns.
3. If a subdivision and development is to be approved in the vicinity of the areas identified in accordance with policy #1, municipalities are encouraged to employ appropriate setback distances and other mitigative measures relating to noise, air pollution, and safety, to limit access, and to enter into highway vicinity agreements with Alberta Transportation and Utilities.

## **MUNICIPAL BYLAWS AND STATUTORY PLANS**

### Municipal Development Plan

2. The MD supports maintaining the integrity of the agricultural land base and discourages the fragmentation of agricultural land, including the subdivision of land into smaller agricultural parcels.
  - 5.1. The parcel is as small as possible while encompassing the structures, shelterbelts, well and septic fields necessary to the use, but not less than 2 acres in size and where possible, not larger than 20.99 acres.
  - 5.3. The parcel has year round physical and legal access to a developed MD roadway.
  - 5.5. All provisions of the Land Use Bylaw have been met.

### Land Use Bylaw

#### 9.1 ACCESS TO PROPERTY:

- 9.1.1 All newly created parcels must have a direct legal, physical access. The Director of Public Works and engineering, in consultation with the Approving Authority where applicable, may determine the most suitable access and egress point(s) onto a Municipal road with regard to any new accesses in the County.

9.1.2 Legal, physical access to a parcel of land, for any use other than agricultural use, must exist prior to a Development Permit and/or Building Permit being issued.

9.1.3 Section 4.2.1 of this bylaw outlines where no Development Permit is required for development of an access to property. It is the landowner's responsibility to ensure that they have obtained all necessary permits in all other instances.

9.1.4 Notwithstanding Section 9.1.3, A Development Permit or Building Permit cannot be obtained until the Director of Public Works has signed off on an approved legal, physical access. Sign off by the Director of Public Works may involve the landowners to fully executing and complying with all requirements of a Municipal Development Agreement for the purposes of development of legal access to the lands, including submission of appropriate engineered drawings, cost estimates, liability insurance and a letter of credit to the satisfaction of the Director of Public Works.

9.1.5 For purposes of this Bylaw, an easement agreement or easement does not constitute legal access unless a future road dedication or utility right of way has been registered over the easement area and the County has become a party to the easement to ensure that it cannot be removed without Council resolution.

9.1.6 All site access from roads shall be to the satisfaction of the Director of Public Works and Engineering with respect to location and design.

9.1.7 As a condition of development permit, redesignation or land use amendment, or subdivision approval, the Approving Authority may require the construction of new approaches, upgrading to existing approaches and/or the removal of approaches to achieve desired access management objectives.

9.1.8 All approaches shall be constructed or upgraded to the satisfaction of the Director of Public Works and Engineering in accordance with the "Rural Approach Standards Policy" which can be found in Appendix I. Where required, adjustments to approaches shall be at the cost of the applicant.

9.1.9 The Council may allow access by way of easement in special circumstances if deemed appropriate. In such case, the County will be party to the easement agreement and the agreement shall be registered on title. A road acquisition agreement and Caveat may be required over the easement area registered on title of the subject lands.

9.1.10 Upgrading and surfacing of private driveways within the Municipal right of way will require approval by the Director of Public Works and Engineering and shall be in accordance with the "Rural Approach Standards" included as Appendix I of this bylaw.