

WSGA Submission to Property Rights Task Force

January 23, 2012

Premier Redford in a year end interview with CBC Radio (Calgary) expressed her commitment to give Albertans the three things she believes they want in government – transparency, certainty, and consistency. We will attempt to review the “Land Bills” for their alignment with those three principles.

For certainty, so let’s first define the “Land Bills”. They are:

1. The *Alberta Land Stewardship Act* also known as Bill 36. This Bill received Royal Assent and came into force June 4, 2009. It was later amended by the *Alberta Land Stewardship Amendment Act, 2011* (Bill 10) which received Royal Assent and came into force on Friday the thirteenth of May, 2011.
2. The *Carbon Capture and Storage Statutes Amendment Act, 2010* also known as Bill 24, which received Royal Assent and came into force Dec. 2, 2010.
3. The *Land Assembly Project Area Act* also known as Bill 19. This Bill received Royal Assent and came into force on May 26, 2009. It was later amended by the *Land Assembly Project Area Amendment act, 2011* (Bill 23) which received Royal Assent and came into force on December 8, 2011.
4. The *Electric Statutes Amendment Act, 2009* also known as Bill 50. It received Royal Assent and came into force on November 26, 2009.

Transparency

With regards to transparency, please refer to Section 41.1(1) from Bill 50, and sections 3, 4 and 5 of Bill 36.

All of these sections except section 5 of Bill 36 allocate authority to The Lieutenant Governor in Council (cabinet). While that allocation of authority is very transparent, the choice of cabinet as the entity to whom authority is allocated precludes any further transparency because of cabinet secrecy.

Section 5 deals with consultation, but is totally ineffective in assuring meaningful consultation or the inclusion of the outcome of consultation into regional plans, and laying a proposed plan before the legislative assembly has no significance given the authority granted top cabinet in these Land Bills.

Certainty

Again with regards to certainty please refer to section 6) of Bill 24 referring to pore space, and to the definitions in Bill 36 as well as the aforementioned sections and section 3(1) of Bill 19.

The only real certainty for property owners (including owners of statutory consents) is that government, and in most instances cabinet, is in control not only of determining permitted and prohibited land uses but also compensation for the impact of those decisions on property.

The Land Bills do create an alarming amount of uncertainty for property owners (i.e. all Alberta citizens). For example the definitions of activity, effect, and policy are so all encompassing as to become vague. Even after the Bill 10 amendments the definition of statutory consents is unclear. Alberta has in excess of five hundred enactments so the section excluding “any permit, license, registration, approval” etc. issued under seven of those enactments does little to add precision to the legislation. That said, the inclusion of any other “enactment prescribed by the regulations” in the list of enactments under which statutory consents are excluded creates clear uncertainty. Those regulations are not yet even written, and when they are they will be approved by the Lieutenant Governor in Council (cabinet). How is that for transparency? An interesting example of this lack of clarity is that the MLA severance packages recently talked about because of the significant number of MLAs not seeking re-election are actually statutory consents under the *Legislative Assembly Act*. Thus they are subject to rescission under *ALSA* should a regional plan for some reason decide to extinguish them. Essentially any of the potential positive effects for property rights under the Land Bills are uncertain, while there is considerable certainty about the negative impacts of the Bills.

Consistency

The Land Bills are very consistent in their approach. All of the Bills grant very significant and unprecedented authority and power to cabinet. They do this at the expense of stakeholder and independent expertise involvement in decision making. All of the Bills reinterpret or redefine the well established social consensus of property rights and security of tenure. The Bills consistently reinforce the certainty of cabinet decisions by limiting or denying access to the courts and by establishing legislative supremacy for *ALSA* over other enactments. Not only is this clause written into *ALSA* directly, it is also reflected in the fact that *ALSA* amends approximately twenty-nine other enactments. Compensation under the rules of expropriation is expressly prevented under one of the Acts and a intentionally avoided under another.

Summary

There is just enough transparency in the Land Bills for critical thinkers to ascertain that this government has taken a new path for society – a path that will most certainly, inevitably, and consistently lead to the destabilization and decay of that society. These command and control tactics have been tried unsuccessfully in other jurisdictions. Alberta has an opportunity to develop and foster a new approach to managing competing land uses. For almost two years now the government has been in possession of the IAFE report “Ecosystem Services Market policy Framework” but it has yet to be publically released or taken seriously.

Solution

Repeal the Bills. Bill 24, beyond representing an egregious breach of trust, is simply unworkable. It separates ownership of two properties that cannot be physically separated. Bill 50 is nothing more than a work around for the open hearing process in which government agencies have previously betrayed the public trust. All of the Bills assume wise decisions from the Lieutenant Governor In Council. Likely the most damning evidence demonstrating the folly of the extreme authority these enactments grant to cabinet is the enactments themselves. All four Bills passed through the open debate in the full legislative assembly since 2009. In the less than three years since their passage, two of the enactments have been altered by amending legislation, and the implementation of a third has been partially postponed by Premier Redford pending review. Additionally a task force has been struck and extensive consultation undertaken to create a public report on property rights as related to the “Land Bills”. Quite obviously, the full legislative assembly with open debate and diverse representation got it wrong with these enactments – as demonstrated by their own amendments and the extensive public relations campaign now underway (“It’s easy to talk about the things that are really important”). Logic dictates that a smaller and less diverse subset of that legislative assembly making decisions in secrecy will only get it wrong more often. It is time to acknowledge the very significant success social consensus of respect for property rights and security of tenure has brought to western societies, and strengthen those principles rather than degrading them.

Respectfully submitted on behalf of Western Stock Growers’
Association

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