

FIXING PROPERTY RIGHTS IN ALBERTA

—An Alberta Property Rights Protection Act

WHEREAS the term property rights is mistakenly thought by many to be a consideration related only to the ownership of real estate, industrial, commercial, residential, and agricultural lands; and

WHEREAS it is recognized that the term property rights correctly applies to a range of considerations, including real property, intellectual property, and incorporeal or intangible property; and

WHEREAS it has been universally recognized by the Magna Carta, the French Declaration of the Rights of Man, the Canadian Bill of Rights, and the Swiss Book on Human Rights, that property rights and human rights are integral to one another;

THEREFORE HER MAJESTY, by and with the advice and consent of the Legislative Assembly, enacts as follows:

NAME

This Act shall be called the Alberta Property Rights Protection Act

DEFINITIONS

In this Act, “property” means anything tangible or intangible—including duly authorized statutory consents—whereby a legal possessory interest or title is established or has been lawfully obtained.

In this Act, “property rights” means the privileges, opportunities, financial considerations and advantages that are associated with the ownership of property.

In this Act, “statutory consent” means a permit, licence, registration, approval, authorization, disposition, lease, certificate, allocation, agreement or instrument issued under or authorized by an enactment or regulatory instrument.

In this Act, “taking” or “partial taking” means a diminution of property rights or property value as a result of a government regulation or action, including as a result of a plan that has been undertaken pursuant to the provisions of the Alberta Land Stewardship Act.

THE PURPOSES OF THIS ACT

- a) To ensure that every Albertan shall not be deprived of the ownership, use, economic value, or enjoyment of property, or of any right attached to property, except by due process of law.
- b) To ensure that every Albertan is entitled to a hearing, just and timely compensation, when a taking or partial taking of property occurs.
- c) To require clear justification prior to a full or partial taking occurring, and to ensure that takings are non-discriminatory, guided by transparent rules that define the terms under which a taking is justified, and the process by which just and timely compensation shall be assured.

- d) To require that privative clauses and provisions that exclude judicial review shall not be applied when a taking or partial taking of property occurs, or has been ordered, whether by an Act of the Legislature or a decision made under the authority of an Act of the Legislature.
- e) To ensure that if the terms of this Act or any other Act are in conflict, that this Act shall prevail, including over the provisions of the Alberta Land Stewardship Act.

THE RIGHT TO DUE PROCESS AND JUST COMPENSATION

Any individual or legal entity compelled to surrender property, forego economic value to property, or the enjoyment of property, including subsurface property, pore space, and mineral rights, as a result of an Act of the Legislature or an action undertaken under the authority of an Act of the Legislature, is entitled to due process, just and timely compensation.

Any property owner whose property rights, property value, use, or enjoyment of property is negatively affected by a government approved act or undertaking has the right to due process, just and timely compensation so as to be made whole, including when a government approved act or undertaking occurs on adjoining or adjacent property.

PROPERTY RIGHTS IN STATUTORY CONSENTS

The individual or corporation in possession of a statutory consent holds property rights in the statutory consent, and when deprived of the privileges, opportunities, rights, and benefits associated with that statutory consent, including as a result of a regional plan made under the provisions of the Alberta Land Stewardship Act, has the right to a hearing, just and timely compensation so as to be made whole.

LEGAL RIGHT TO A NOTICE WHEN PROPERTY IS AFFECTED

Prior to the Crown or an agent of the Crown undertaking a decision or authorizing an action that will affect, or could have cause to affect, the use, enjoyment, and/or economic value of property, the affected property owner and lawful occupant of the property has the right to formal notification. Additionally, the owner or owners of adjoining and adjacent property shall have a lawful right to notification if there is reasonable cause to believe that the proposed action might have cause to affect the value of adjoining or adjacent properties.

Notice that a decision, hearing, or authorization is pending upon property shall be served in writing upon the owner under the direction of the expropriating or regulating authority, and if applicable, upon the occupant, by registered mail at least 45 days prior to any hearing, regulatory assessment, review, or undertaking.

ATTORNEYS' FEES AND OTHER COSTS

In any action or proceeding resulting from a provision of this Act, the court shall allow a prevailing plaintiff legal fees as part of the costs, and include expert fees as part of the legal fees. In any action where it is pre-determined that costs will be awarded to the plaintiff, the plaintiff is entitled to

make application for advance or interim financial consideration, and the approving authority shall give the said application(s) favourable consideration.

Any property owner that is ordered by an approving authority or regulatory body to participate in a mediation process is entitled to the recovery of legal costs including expert fees.

THE ALBERTA PROPERTY RIGHTS PROTECTION ACT SHALL PREVAIL

If the terms of this Act or any other Act are in conflict, this Act shall prevail, including over the provisions of the Alberta Land Stewardship Act.

AMENDMENTS TO THE PROPERTY RIGHTS ADVOCATE ACT

—PROPERTY RIGHTS ADVOCATE GIVEN NEW BROAD DISCRETIONARY POWERS

Section (4) of the Property Rights Advocate Act requiring the Property Rights Advocate to refer complaints within the jurisdiction of another person or body to that person or body, shall be repealed, replaced with the following:

(4) The Property Rights Advocate is granted discretionary powers to investigate, audit, review, and make public, details of any decision made by a regulatory body, board, committee, or adjudicating council, subsequent to any formal complaint being received by the Property Rights Advocate from any individual or Alberta corporation.

The Property Rights Advocate Act shall be amended to state that the Property Rights Advocate shall be appointed for a period of 8 years on the recommendation of the Legislature, as an officer of the Legislature.

*The above document is submitted in order to present the principles landowners believe must be considered and adopted as the provincial government moves ahead with legislation to protect property rights. It is acknowledged that there are nuances, implications, and subtleties to various points the document raises that will require further debate, clarification, or adjusted language. The document is presented not as a carved-in-stone solution, but as a clear representation of the inherent principles that must be attended to when it comes to protecting the integrity of property rights for all Albertans.

For additional background information and/or commentary regarding property rights in Alberta and the content of this document, contact: Aaron Brower (403-647-4505), President, Western Stock Growers Association; Norm Ward (403-646-0006) Director, Alberta Property Rights Initiative; Larry Sears (403-625-0417), President, Alberta Grazing Leaseholders Association; Danny Hozack (780-808-0271), Past Chairman, Alberta Beef Producers; Kevin Avram (403-354-4614) Director, Grassroots Alberta Landowners Association.