

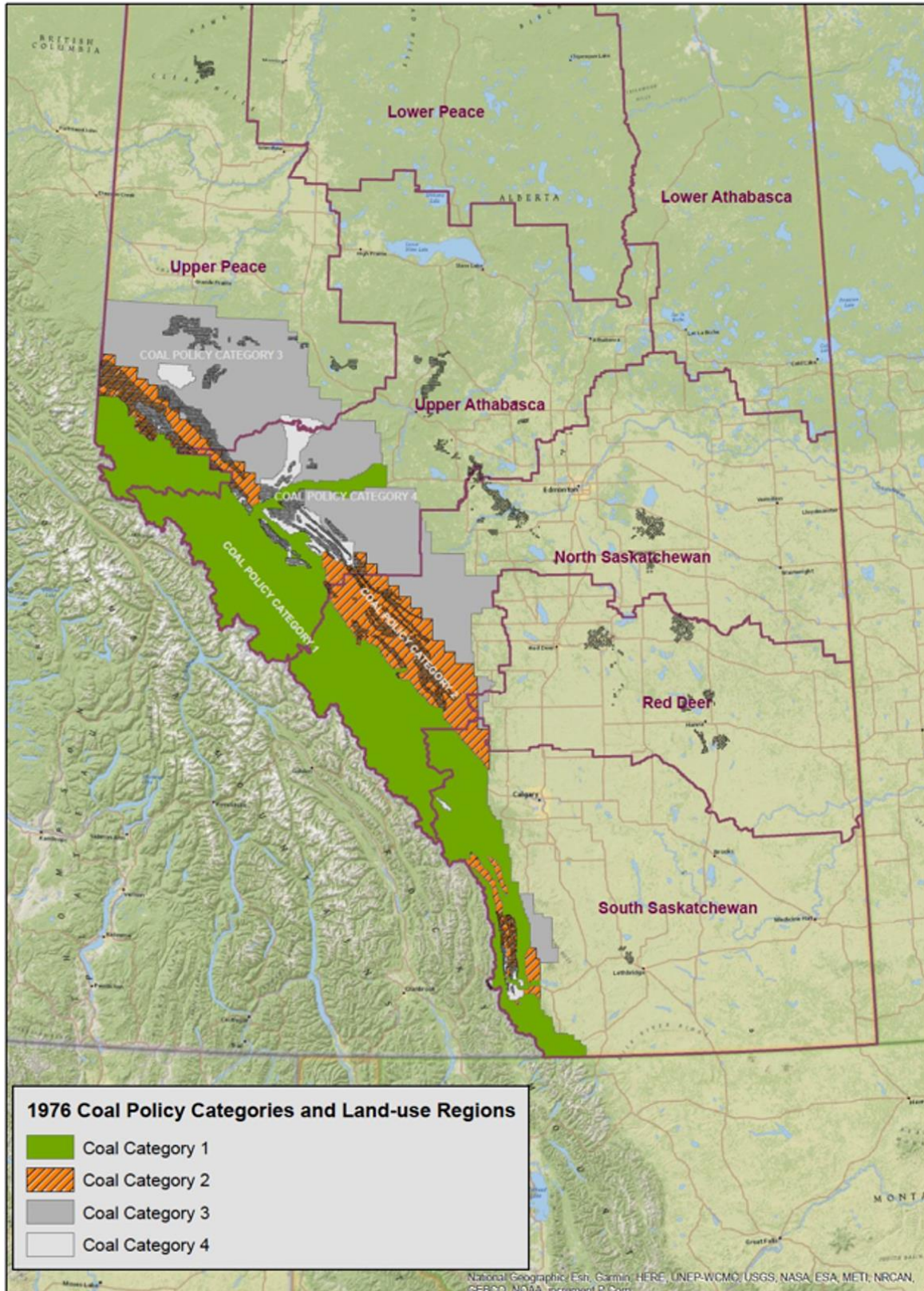
March 10, 2022

The Sad State of Regional Land Use Planning in Alberta

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Matters Commented On: (1) Coal Policy Committee, Final Report: [Recommendations for the Management of Coal Resources in Alberta](#), December 2021, released to the public March 4, 2022, (2) Minister Sonya Savage, Press Release, [Getting it Right on Coal in Alberta](#), March 4, 2022, (3) [Lower Athabasca Regional Plan](#), and (4) [South Saskatchewan Regional Plan](#)

The release of the [Coal Policy Committee Recommendations](#) on March 4, 2022, offers three reminders as to the sad state of regional land use planning in Alberta. The first reminder is that 14 years after the adoption of the much-heralded Land Use Framework in 2008, and 13 years after the adoption of the *Alberta Land Stewardship Act*, [SA 2009, c A-26.8 \(ALSA\)](#), we still have only *two* approved plans in Alberta, the [Lower Athabasca Regional Plan](#) (LARP) (approved August 22, 2012, and brought into force September 1, 2012) and the [South Saskatchewan Regional Plan](#) (SSRP) (adopted in 2014). This was significant to the Coal Policy Committee because it meant that while plans adopted under *ALSA* might ultimately supersede the “nascent form of land-use planning” (at 22) embodied in the “coal categories” of the [1976 Coal Policy](#), we are still awaiting plans for the balance of the eastern slopes of the Rockies north of the SSRP, namely for the North Saskatchewan, the Upper Athabasca and the Upper Peace regions (see Figure 1, below).



The second reminder is that even the two regional plans that have been adopted require additional work. We will say more about LARP below, but for the Coal Policy Committee, the significant point was that the coal categories of the 1976 policy “have not been reviewed and incorporated into the SSRP” (at 22). Consequently, even in the case of the SSRP, “considerable work remains outstanding” (at 17) before the SSRP could supersede the 1976 coal categories.

The third reminder comes from [Minister Savage’s press statement](#) announcing the release of the Coal Policy Committee’s two reports (in addition to its recommendations report, the Committee was also asked to prepare a report on what the Committee heard: [Engaging Albertans About Coal](#)). One of the principal recommendations of the Committee was that regional or sub-regional plans must be completed before any major coal project approvals are considered and that the acceptability of coal development “should be determined by those regional and subregional plans” (at 40). Minister Savage has largely accepted that recommendation and has implemented it by issuing a new [Ministerial Order](#) to the Alberta Energy Regulator (AER), which “will remain in place until additional direction on coal activities can be embedded into new or updated land-use plans” (Press Release). Minister Savage went on to indicate that additional clarity would be forthcoming and that specifically in the case of the SSRP, a “mandatory 10-year review” of that Plan “required by the *Alberta Land Stewardship Act* to start by September 2024, could also inform future changes.” This is the third reminder of the challenges plaguing regional land-use planning in Alberta, namely the state of the plan review process.

This is the focus of this post – not so much in the context of the SSRP, but in the context of the LARP. This is because LARP will sunset in September of *this year* unless the Land Use Secretariat commences a review before September (a fact that was brought to our attention by intrepid UCalgary JD student Catherine Ohler).

Section 6 of *ALSA* deals with the review and expiry of regional plans. It is unambiguous. The Secretariat must review each regional plan at least once every 10 years for its ongoing relevancy and effectiveness, in the absence of which the regional plan expires:

Review of regional plans

6(1) At least once every 10 years, the secretariat must review each regional plan and report to the Stewardship Minister on its ongoing relevancy and effectiveness.

(2) The extent and nature of each review of a regional plan is in the discretion of the secretariat, subject to any terms of reference set by the Lieutenant Governor in Council under [section 51](#).

(3) A regional plan expires if a review of the regional plan is not started within 10 years of the date the regional plan is made.

(4) If a regional plan expires or is repealed by the Lieutenant Governor in Council, the Lieutenant Governor in Council may make regulations

(a) respecting the transition of any matter in the expired or repealed regional plan;

(b) to remedy any confusion, difficulty, inconsistency, impossibility or other circumstance resulting from the expiry or repeal of the regional plan.

(5) A regulation may not be made under subsection (4) after the expiration of one year from the date the regional plan expires or is repealed.

While subsection 6(2) makes clear that the *ALSA*'s secretariat has discretion over the extent and nature of each review, *some* kind of review of relevance and effectiveness is required. This means that the Secretariat must initiate a review within the next six months, failing which LARP will simply die. We have [previously identified](#) the unconstrained discretion afforded the Executive throughout *ALSA* as a potential impediment to its effective implementation. And here, despite the years spent consulting and developing the LARP, and the investment of time and expertise developing [several](#) management frameworks under it, the failure of *ALSA*'s Secretariat to initiate a review by now, despite the clear legislative direction that it "must" do so, is a further indictment of this regime.

To date, there is nothing on the LARP webpage indicating how the Secretariat intends to proceed, and, so far as we know, no terms of reference for a review have been established under section 51. Section 51 provides as follows:

51(1) The Lieutenant Governor in Council may

- (a) authorize the commencement of a regional planning process, a process to amend a regional plan or a process to review a regional plan;
- (b) set the terms of reference under which a process authorized under clause (a) is to be conducted and by whom;
- (c) describe the public and stakeholder communication and consultation required;
- (d) describe the role and function of regional advisory councils, government departments and the secretariat in respect of a process;
- (e) direct recognition, consideration or development of provincial policies and provide guidance on how they are to be respected, prioritized, balanced, incorporated or integrated in the development of a regional plan, amendment to a regional plan or review of a regional plan;
- (f) require a list to be prepared of areas that are candidates for a conservation directive for the protection, conservation, management or enhancement of environmental, natural scenic, esthetic or agricultural values;
- (g) describe the consideration to be given to any matter, including economic, environmental and social issues;
- (h) set out the expectations of and timeframe for the process of developing a regional plan or amendments to a regional plan or for the review of a regional plan.

(2) Nothing in this Act requires an order to be made under subsection (1) before the Lieutenant Governor in Council makes or amends a regional plan.

Nine and a half years on, there is no doubt that it is time to review and report on the LARP. There is a need to evaluate progress, bearing in mind that the [last “annual” report](#) of regional plans on the government website, dating back to 2016, indicated a significant amount of work was still ongoing. There is a need to consider the LARP’s ongoing relevancy and effectiveness in light of existing gaps in management frameworks, the failure to develop the Biodiversity Management Framework to which the LARP committed, and the failure to contemplate a management framework for the greenhouse gas emissions associated with oil sands activity in the Lower Athabasca Region. There is also an urgent need to discuss and report on the failure to move forward with the development of a Traditional Land Use Management Framework to protect First Nations’ treaty rights and traditional land uses from the cumulative impacts of oil sands development, as flagged in 2013 by the [Joint Review Panel Report](#) on the proposed Jackpine Mine Expansion and recommended by the [Gilmour Panel](#) in 2015 in response to [requests to review the LARP](#) under section 10 of *ALSA* from the six First Nations in the region. There is also a significant opportunity for a 10-year review to take the lessons learned and seek to improve the LARP to manage the cumulative impacts for present and future generations in the Lower Athabasca Region. A review might also consider whether adoption of the Plan has improved prospects for species listed under the *Species at Risk Act*, [SC 2002, c 29](#) and, if not, what additional measures might be required.

A review of the LARP, in addition to any requirements prescribed by any terms of reference, must also trigger the Crown’s duty to consult Indigenous communities within the LARP region. These communities continue to be affected by the cumulative effect of development and recent case law in both British Columbia and Alberta demonstrates that both treaty obligation and the honour of the Crown require the government to take positive measures to manage cumulative impacts so as to ensure the meaningful exercise of treaty-based harvesting and cultural rights: *Yahey v British Columbia*, [2021 BCSC 1287 \(CanLII\)](#), (post [here](#) and [here](#)) and *Fort McKay First Nation v Prosper Petroleum Ltd*, [2020 ABCA 163 \(CanLII\)](#) (post [here](#)).

We think that it is also clear that a decision to allow the LARP to expire would also trigger a duty to consult and accommodate, given the importance of the LARP and its frameworks as means to address cumulative impacts of resources development in the basin. This conclusion is amply supported by the *Yahey* and *Prosper* decisions. In this case, accommodation might well mean maintenance of the *status quo* until at least something equally – or more – protective might be put in place.

So, what is the plan for the review of LARP? Will the government initiate a meaningful review of the first plan under this [once-promising](#) legislation or will Alberta’s land-use planning regime continue to be neglected and eventually fall into disuse? The clock is ticking.

This post may be cited as: Nigel Bankes, Sharon Mascher & Martin Olszynski “The Sad State of Regional Land Use Planning in Alberta” (March 10, 2022), online: ABlawg,

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