

Land Preservation Mechanisms



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TOOL DESCRIPTION

Typically, by-laws created by local governments manage land uses, and are often used to control the scope and nature of development. However, activities on lands can also be managed through changes in the ownership rights reflected in the title to the land. These changes do not need to be instituted or overseen by local governments, and many are voluntary changes made to ownership rights by owners or developers themselves. These are often expected to be long-term changes because they are typically difficult to remove. Therefore, these tools are most appropriate for the permanent preservation of resources.

In Alberta, these tools have their foundation in three primary sources. The Alberta *Land Stewardship Act*, passed in 2009, provides the province, municipalities, and individual land owners with additional options for legal tools that promote conservation. (This includes the Transfer of Development Credits) The *Municipal Government Act* allows local governments to take title to lands or require easements or money-in-place as appropriate to protect sensitive environmental resources and provide for community recreation and open space uses. Finally, the *Land Titles Act* permits restrictive covenants to be placed on lands by landowners themselves.

Conservation easements

A conservation easement is the dedication of certain property rights to another person to protect environmental, scenic, aesthetic, agricultural, and recreational uses from future development. Under the Alberta *Land Stewardship Act*, a property owner can enter into a voluntary agreement with a qualified organization and relinquish the right to develop or use the property to achieve these goals. Note that in this case, a “qualified organization” can be a provincial agency, a local government, or a nonprofit land trust.

This restriction is specifically noted in the title, and can “run with the land”, or be retained even if the land is sold. Conservation easements were originally defined under the *Environmental Protection and Enhancement Act*, and they must be registered with the provincial Land Titles Office.

Tool Intent

To use changes in land titles to preserve sensitive lands or community resources.



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USERS

- ✓ Municipal Officials
- ✓ Municipal Planning Staff
- ✓ Planning + Design Professionals
- Engineers
- ✓ Land Developers
- ✓ Landowners
- Community Members

Conservation offsets

Under the Alberta *Land Stewardship Act*, provisions exist for an exchange of “stewardship units”. These units, certified through the Act, represent the effects of programs that preserve habitat, protect water supplies, and otherwise provide positive ecological and environmental benefits that can outweigh the negative impacts of industrial development. Relevant projects could include conservation programs that create habitat through easements, for example, or other actions that help to restore old habitat or create new healthy habitats for wildlife. Under provincial regulations, specific activities that have negative impacts that exceed a certain threshold may be required to purchase stewardship units from the exchange.

Reserve lands

The *Municipal Government Act* allows municipalities to require the dedication of land as a pre-condition for subdivision approvals. This dedication can include land for schools, municipal facilities, and rights-of-way for roads and utilities, but also includes lands for open space, recreation, and environmental conservation.

In this system, two types of reserves are relevant:

- › Municipal reserves are sections of a subdivision that are required to be conveyed to a municipality for use as a park, recreation area, or buffer between land uses. In lieu of dedicating land for these purposes, a land owner may elect instead to provide “money in place”, which can then be used by municipalities for these uses elsewhere.
- › Environmental reserves are sections of a property with important environmental benefits that should be conserved to maintain key functions in the landscape. This includes areas which provide drainage, are subject to flooding, or are located next to bodies of water. Areas required by the municipality to be dedicated as environmental reserve must be kept in its natural state or used as a park. A municipality may also choose to allow land owners to keep the property itself and protect these spaces through environmental reserve easements instead.

By-laws and policies should be developed to govern the acceptable uses and desired management for municipal and environmental reserves.

Restrictive covenants

Restrictive covenants allow the use of a parcel of land to be controlled through the consent of the current land owner. In this case, control of activities on a given parcel (described as a “subservient tenement”) are linked to another parcel of land (a “dominant tenement”) that gains benefits from this control and can ask for an injunction if specific requirements are not met. This control will “run with the land”, and apply to a new owner if the land is sold, but it must be registered with the provincial Land Titles Office. Valid controls include restrictions on architectural design elements, general land uses, and specific activities on a site. Note that restrictive covenants can apply to an entire subdivision, where all parcels of land are treated as dominant and subservient tenements and restricted in the same way for the benefit of the entire development.

WHEN IN THE PROCESS IS IT USED?

Coordination should begin during the design and planning phase to ensure that plans reflect the changes in rights on the land. The actual changes in land titles can occur at any time in the process, although they may be subject to any requirements of the specific tool itself.

LOCAL APPLICATIONS

Bearspaw Loop Preservation Society



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Within the centre of Bearspaw Loop in Rocky View County just west of the City of Calgary, a core group of local residents have become the stewards of a 16-acre Municipal Reserve. The residents would like to ensure that this Reserve is preserved in perpetuity as a green space, not only for area residents, but for school children to use as an outdoor learning playground. Given the significant diversity of the landscape over a relatively small space, it epitomizes the biodiversity of southern Alberta’s ecological systems.

As the City of Calgary grows beyond its current borders, maintaining and enshrining green spaces becomes ever more critical. The Bearspaw Loop M.R. is currently home to many small animals, as well as larger animals that visit frequently, including a fairly large deer population, coyotes, moose and bear. It is also home to a wide variety of birds, including ducks, eagles, hawks and owls. It has an array of flora, from wetland area cattails to stands of aspen. The Bearspaw Loop Preservation Initiative will educate and inform youth, and more importantly show them the value of sharing their neighbourhood with the original residents.

POLICY SUPPORT

Town of Chestermere Municipal Development Plan

3.6 Parks, Open Space, and Plaza Policies

The Town will support the protection and conservation of natural areas within private developments and/or within the public open space system where such areas are characterized by significant biophysical functions or features. The Town's water conservation and wetlands policies will be used in principle to guide the future protection and enhancement of the Town's wetlands. Retention of, or compensation for, natural wetlands will be required where existing qualified wetlands can be incorporated into low impact development stormwater management plans.

Town of Crossfield Municipal Development Plan

Environmental Stewardship and Sustainability Policies

3.3.4 The Town of Crossfield shall collaborate with other levels of government and nongovernmental, charitable, and community service organizations to facilitate the acquisition of privately owned land (or the rights of public access to such privately owned land) for the purposes of creating and protecting public open spaces, trails, and natural areas within and surrounding Crossfield.

3.3.12 For all residential and commercial subdivisions, 10% of the net developable area of land to be subdivided shall be dedicated in accordance with the MGA for the purposes of providing Municipal Reserve, School Reserve, or Municipal and School Reserve.

3.3.13 For all industrial subdivisions, 10% of the net developable area of land to be subdivided should be dedicated in accordance with the MGA for the purposes of providing Municipal Reserve, School Reserve, or Municipal and School Reserve; however, cash-in-lieu of land dedication may be considered in cases where the dedication of reserve land in an industrial subdivision would not be suitable or where cash-in-lieu of reserve land would provide greater benefits to the Town.

3.3.16 Lands identified as sensitive natural areas may be designated as Environmental Reserve at the subdivision stage in accordance with the Municipal Government Act. Such areas may also be identified at the Area Structure Plan stage. In the case of identification at the Area Structure Plan stage, sensitive natural areas would require the appropriate land use designation before subdivision could proceed. If at the subdivision stage private ownership of environmentally sensitive lands is deemed more appropriate by the municipal approving authority, then environmental reserve easements may be registered to protect the sensitive lands.

RELATED TOOLS

- Tools for Transitioning
- Historic Resource Designation and Incentive Programs
- Ecological Infrastructure Modelling
- Conservation Subdivision Design
- Greenway and Open Space Networks
- Agricultural Urbanism – Local Food Production

ADDITIONAL RESOURCES

Alberta Land Trust Alliance: A Landowner's guide for conservation (<http://www.landtrusts-alberta.ca/guide.php>)

Canadian Land Trust Alliance (<http://www.cita.ca/>)

American Land Conservancy (<http://www.alcnet.org>)

Alberta Land Titles Procedures Manual: Restrictive Covenants (<http://www.servicealberta.ca/pdf/ltmanual/RES-1.pdf>)