
SALE OF PUBLIC LAND IN ALBERTA

RECOMMENDATIONS FOR IMPROVING REGULATION, POLICY AND PROCEDURES

1. Introduction

In September 2010 a Ministerial statement of intent to approve sale of 65 km² (25 sections) of public land that would see native prairie turned into irrigated potato fields was a lightning rod for public discontent over shortcomings in how government deals with public land sale. Information about the proposed sale emerged through media reports and interviews, and was often incomplete and inaccurate. There were unexamined implications for native prairie of *national environmental significance*, species *at risk*, soil conservation, watershed protection and current uses of the land for sustainable livestock production and outdoor recreation. Standard procedures regarding sale of public land were not followed. The lack of an open, transparent and fair public process was a major concern for many Albertans. The proponent withdrew the application amidst a storm of controversy.

Since the mid-1990s, public lands have been sold at an average rate of approximately 30 km² (12 sections) per year, varying from 10 km² (4 sections) in 2006/07 to 56 km² (22 sections) in 1997/98. Most public land sales are for agricultural purposes. Some sales have occurred to allow urban expansion.

The above statistics on sale of public land do not include tax recovery land transactions. Tax recovery land is public land that at one time was privately owned but was forfeited due to unpaid taxes between the 1920s and 1940s when drought and other factors forced many off the land in southeast Alberta. Since 1996 the provincial government has been transferring public land with tax recovery status to municipalities for \$1 per parcel. This transfer has occurred upon request of municipalities without public consultation or full environmental assessment. In February 2011 the Alberta Government announced it will be transferring 338 km² (132 sections) of tax recovery land to 16 municipalities. The majority of transfers are to the County of Vulcan of the Municipal District of Taber in south central Alberta.

In addition, sale of tax recovery land occurs through the Special Areas Board that administers 1.5 million acres of public land and 1.4 million acres of tax recovery land in east central Alberta.

Alberta Native Plant Council, Alberta Wilderness Association and Nature Alberta have prepared this document to promote discussion about improvements in regulation, policy and procedures regarding sale and acquisition of public land, including tax recovery land. The focus is on public lands in the White Area of southern Alberta and the Peace River region where land use pressures are greatest but also includes consideration of public lands in the Green Area. Protected area targets have not yet been achieved in the Grassland and Parkland natural regions or in several other natural subregions of Alberta. Our organizations are fundamentally opposed to the sale of public land. Exceptions may be made for the

sale or trade of small cultivated parcels that have little ecological value to obtain more important habitat on private land and sale of small parcels near urban areas for meeting critical infrastructure needs.

Fundamental principles throughout the document are:

- Public lands supporting native ecosystems are of significant value to Albertans now and in future
- Land-use planning should define public lands that will be retained in trust for all Albertans because of their natural, historical and recreational value.
- Any proposal for sale, trade or acquisition of public land requires full environmental review, public notice, and a fair and transparent decision-making process.

2. Definition of Public Lands

Public Lands are lands held in trust by government. For the purposes of this document we are defining public land as:

- Land administered under the provincial *Public Lands Act*, throughout the White Area and the Green Area.
- Tax recovery lands; public land that at one time was privately owned but was forfeited in the early 1900s due to unpaid taxes. Public funds and resources are used to maintain and manage tax recovery land at both the provincial and municipal levels.

We are not including protected areas administered under the *Provincial Parks Act*, the *Willmore Wilderness Park Act* or the *Wilderness Areas, Ecological Reserves, Natural Areas and Heritage Rangelands Act*. Federal public lands are not included.

3. Value of Public Lands

Public lands support most of the remaining native ecosystems in southern Alberta. Native ecosystems are a key component of biodiversity and essential habitat for wildlife. They perform important ecological functions such as air purification, watershed protection (water capture, soil stability) and carbon storage. Remaining native ecosystems on public land are a hedge against climate change, tested as they have been over thousands of years.

Healthy native grasslands are essential for a sustainable ranching industry, providing high quality forage, stable production and operational flexibility combined with low maintenance costs. Healthy native forests are essential for sustainable forestry. With appropriate management oversight, resource extraction activities (e.g. oil and gas development) can occur on public lands so as not to negatively impact ecosystem health. Large blocks of public land supporting native ecosystems are important to cultivation agriculture by providing buffers against disease, pathogens and as habitat for pollinators.

Extensive blocks of public land provide space, a key element not only for retaining the gene pool of native biodiversity but also for human health and spirit. The open space and aesthetics of native landscapes contribute to high quality recreation opportunities and tourism and provide important education opportunities.

4. Suggestions to Improve Regulations, Policies and Procedures Regarding Public Land Sales

Legislation and policy exists or is being developed that contributes to a framework for decisions about public land sales. These include the Land-Use Framework, Integrated Watershed Management Plans, provincial Parks and Protected Areas network planning, Environmentally Significant Areas studies, municipal Integrated Community Sustainability Plans, Crown Reservations (PNTs and CNTs) to alert industry to the risks of developing in sensitive areas, the Prairie Conservation Action Plan and Recovery Plans for federally and provincially listed Species *At Risk*. Tools to assist in land sale decisions include the Grassland Vegetation Inventory, Alberta's Natural Regions and Subregions classification system, the Alberta Biodiversity Monitoring Program, the Alberta Conservation Information Management System, the Fisheries and Wildlife Management Information System, and various municipal environmental databases.

The following are suggestions to improve regulations, policies and procedures regarding public land sales.

4.1 Identify and Designate Areas of High Conservation Value Where Public Lands will be Retained

Regional plans developed under the Land-Use Framework provide a mechanism to identify public lands that should be retained and managed for protection and maintenance of biodiversity and species at risk and the other ecological goods and services that native ecosystems provide. In general the long-term interest of all Albertans is best served by retaining public lands as a trust held by government for conservation purposes. The lesson from other jurisdictions (e.g. Texas) with little public land left is that there are considerable issues over providing space for biodiversity maintenance and restoration and for recreation.

The Prairie Conservation Forum input to the Regional Advisory Council for the South Saskatchewan Region (SSRP) (August 2009) indicates that the large majority of public land remaining in the SSRP area is of high value for retaining biological diversity and ecosystem function. Included in this is a large amount of tax recovery land, some of which was settled or cultivated historically but has since reverted to native prairie. The only public lands remaining that may be suitable for sale are isolated parcels under cultivation or tame pasture or lands adjacent to large urban centres that are required for orderly urban expansion.

Areas that are zoned for conservation purposes at the regional level may include both public and private lands. One way of flagging public lands within these zones is through protective notations (PNT), reservations that identify land and resources that are managed to achieve particular conservation objectives. Protective notations identify the agency that has placed the reservation, show allowable land uses and may give management guidelines for integrating different uses on the land. Public lands under PNT are not considered for sale.

In general, protective notations would be applied to public lands in large contiguous blocks of prairie identified through the Grassland Vegetation Inventory, significant connecting corridors between these blocks (including possible regeneration connections), Environmentally Significant Areas and other important habitat areas for at risk species (PCF 2009). A list of sources of information for determining lands that merit protective notations is provided in Appendix 1. Note that completion of the Grassland Vegetation Inventory is needed to support the mapping base needed for regional planning.

4.2 Improve Public Transparency and Government Oversight of Public Land Sale, Trade and Acquisition

Currently applications for public land sale, government acquisition of private land and working partnerships with private land trusts are addressed on an *ad hoc* basis by staff in Sustainable Resource Development. Changes are needed to improve the capacity of government to deal with land sale and acquisition in a strategic and consistent manner. Establishing a separate group dedicated to overseeing sale and acquisition is recommended. This could occur within Sustainable Resource Development, be cross ministry with Alberta Environment and Alberta Tourism, Parks and Recreation or perhaps by establishing a separate public lands conservation estate and facilitating agency.

4.3 Define Regulations and Policy Regarding Public Land Sale, Trade and Acquisition

Regulations are needed that clearly codify procedures to be used for public land sale or trade and that require public notice and consultation.

In defining appropriate procedures we have reviewed the following documents:

- *Information on Acquiring Public Lands*. About Public Lands. Alberta Sustainable Resource Development. n.d.
- *Sale of Public Land*. About Public Lands. Alberta Sustainable Resource Development. 1998.
- *Sale of Public Land Under Disposition*. Information Letter IL 2010-03. Lands Division, Land Management Branch. Alberta Sustainable Resource Development. 2010.
- *Bill 209. Public Lands (Wildlife Habitat Preservation) Amendment Act, 2010*.
- *Special Areas Tax Recovery Land Sale Policy*. Ministerial Orders L:011/04 and L:024/26. Revised 2010.
- *M.D. of Taber Tax Recovery Land Transfer Process*. MD Connection. Quarterly Newsletter of the M.D. of Taber. Spring 2011.

- *Information letter 2009-04. Fescue Grassland Information Letter - Principles for Minimizing Surface Disturbance. SRD, 2009.*

Our suggested regulations and policies would stipulate:

- a. In general the long-term interest of all Albertans is best served by retaining public lands as a trust held by government for conservation purposes.
- b. Criteria that would guide determining if public land is “surplus to public needs” or “suitable for sale/trade” including:
 - Value for protecting and maintaining biodiversity and legislative requirement to protect critical habitat for species at risk
 - Impact on other resource values (e.g. archaeological, historical, recreational)
 - Conformity with land-use policies and plans (e.g. park planning, regional plans, municipal plans)
 - Availability of alternative private land for uses of economic or social importance
- c. Who may make an application and how.
 - Canadian citizens, corporations or municipalities who currently hold a disposition or have the consent of the current disposition holder would submit an application.
- d. Procedure for sale or trade.
 - Lands that are the subject of a proposed sale or trade are assessed by qualified provincial and/or municipal government staff and through referral by other government agencies with an interest.
 - The results of the assessment are communicated to the public and opportunity provided for input.
 - If the land is determined to be suitable for sale or trade and there is not significant public concern, public notice is given.
 - The land would be sold in a public auction or tender.
 - Alternatively a grazing leaseholder may purchase land held by them and deemed suitable for sale for appraised market value subject to a memorandum of agreement prohibiting the breaking of grassland.
 - A small parcel that is cultivated or assessed of low conservation value may not require opportunity for public input and public tender.

4.4 Use Conservation Easements

Cooperation between managers of public and private land may be needed to achieve conservation objectives identified in regional plans, especially in areas where there is a mix of public and private lands. Private lands of high importance for conservation may be secured by private land trusts through outright purchase, land donation or conservation agreement. Conservation agreements known as conservation covenants, conservation servitudes or conservation easements, are legal documents in which a landowner agrees to the imposition of restrictions on activities that would threaten the environmental value of the land.

This tool may be especially important to use in situations where tax recovery lands have been transferred to a municipality who then chooses to sell the land. Conservation easements would be placed on land before it is transferred to a municipality, to be maintained if this land is sold at a future date. A conservation agreement allows the owner to remain on the land and make compatible use of the land while ensuring its protection from future development.

The recommendations in this document have been endorsed by:

Alberta Wilderness Association
Alberta Native Plant Council
Nature Alberta

For further information, contact AWA, below.

Appendix 1

Recommended Considerations for Potential Sales of Public Land

- Fisheries & Wildlife Management Information System database
- Alberta Conservation Information Management System database
- Large contiguous blocks of prairie identified through the Grassland Vegetation Inventory and listed as High Value Southern Alberta Landscapes (PCF 2009).
- Areas where rough fescue grasslands occur (Grassland Vegetation Inventory)
- Connecting corridors between large blocks of prairie and other important prairie habitats (PCF 2009)
- Smaller isolated refugia used by migrating wildlife, at risk species and game species (PCF 2009). (i.e., Migratory bird stopover sites, Piping Plover and Trumpeter Swan Breeding lakes, Snake hibernacula, bat roosting areas, Sharp-tailed Grouse and Sage Grouse leks, amphibian breeding ponds).
- Riparian areas adjacent to major waterways
- Canadian Heritage River sites
- Critical Ungulate Winter Range, including Pronghorn winter range, identified by Alberta Sustainable Resource Development and the Canada Land Inventory
- Critical and important habitat areas for at risk species identified in federal and provincial status reports and recovery plans
- Important Bird Areas (IBA 2004-2009)
- Environmentally Significant Areas identified in the late 1980s and 90s and by Fiera Biological Consulting (2009)
- North American Priority Grassland Conservation Areas (The Commission for Environmental Cooperation and The Nature Conservancy 2005)
- Great Plains Landscapes of Biological Significance (Aldrich et al. 1997)
- Sites identified under Special Places 2000 (Alberta Environment 2007)
- Priority Migratory Bird Habitats of the Prairie Provinces (Poston et al 1990)
- Priority areas identified during planning exercises for the North American Waterfowl Management Plan (see Poston et al. 1990, more references exist)
- NAWMP/Ducks Unlimited projects
- Colonial Nesting Bird sites identified by Cottonwood Consultants Ltd. (2000)
- Sites identified under the Northern Prairie and Parkland Waterbird Conservation Plan (Beyersbergen et al. 2004).
- Western Hemispheric Shorebird Reserve Network Sites and other important shorebird areas identified by Poston et al (1990), Morrison et al (1995), Prairie Canada Shorebird Conservation Plan (Gratto-Trevor et al. 2001), Donaldson et al (2000)
- RAMSAR sites
- Important habitat areas identified in Integrated Resource Plans
- Bucks for Wildlife sites