Public Participation at Key Stages in Alberta’s Resource Development Process

Monique Passelac-Ross
Research Associate CIRL
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Introduction – Key Questions

- What are the stages in the decision-making process for resource development in Alberta?
- How does the public participate at each stage of the process?
Key stages of decision-making process for resource development

- Policy Development
- Land-use Planning
- Disposition of Mineral Rights
- Access to Surface Rights
- Environmental Impact Assessment
- Project Review and Approval
- Monitoring and Enforcement
Types of Public Participation

- Legislated vs non-legislated
- The “public” vs “stakeholders”
- Landowners vs the “public” at large
- Open houses vs round tables discussions
Policy development

- Broad statements of government intent or direction (vision statements, objectives, strategies)
- Examples of land and resource policies:
  - *Oil Sands Consultations* (2006-2007) (feeding into 2009 *Oil Sands Plan*)
Policy development

- Public participation not legislated, *ad hoc* processes
- Public input: open houses, round tables, public presentations, written submissions
- Multi-stakeholders processes, eg. CASA, CEMA, RACs for regional plans
- Issues re:
  - rules of process (lack of specificity, transparency, inadequate resources, selection/role of participants)
  - outcomes (lack of government commitment, no regulatory backstop, “black box”)
Land-Use Planning

- Translates strategic policies into specific decisions regarding certain landscapes: seven regional plans announced for Alberta

- *Alberta Land Stewardship Act (ALSA):*
  52 (1) The Lieutenant Governor in Council may establish a regional advisory council (RAC) for a planning region.
  (2) The LGC may a) appoint members of a RAC…
  5(1) A regional plan may be made or amended whether or not
  a) a regional advisory council has been appointed…
  b) a regional advisory council …has provided advice about a propose regional plan…. And irrespective of the advice given…..
Land-Use Planning

- Public participation?
  - legislated: RACs (discretionary appointment), no other public participation provisions in ALSA
  - non-legislated: “public” and “stakeholders” information and input sessions, questionnaires
    • before drafting the plan
    • on draft plan
- Potential issues: role of RACs? role of public?
Mineral Rights Disposition

- Most mineral rights owned by the Crown
- Mineral rights issued by Minister of Energy under the *Mines and Minerals Act*
- Land-use Plan may limit issuance of mineral rights within a certain area
- Issuance of mineral rights creates property rights and expectations of development: a key component of the ERCB’s assessment of the “need” for a well or facility
Mineral Rights Disposition

Public participation opportunities?

- Notices of public offerings published
- No direct notification of surface landowners
- No public input
Leases or licences issued by government under the *Public Lands Act*

May establish terms and conditions

Public participation?

- No public input
- Consent required from other disposition holders (e.g. grazing leases, forest management agreement holders)
Access to Surface – Private Lands

- *Surface Rights Act*
- Consent required from landowner
- Surface Rights Board (SRB) can issue a right of entry order, sets landowner compensation
- In case of disagreement, SRB may hold a hearing
- No public input
Environmental Impact Assessment

- Part 2 of the *Environmental Protection and Enhancement Act (EPEA)*
- Purpose of EIA: review and mitigate potential environmental, social, economic and cultural impacts of a proposed activity
- Some projects have a mandatory assessments, others are exempt, others may be assessed at the discretion of the Director
Public participation?
- Decision whether or not to order an EIA report: “directly affected” persons can submit written statements of concern to Director
- Terms of reference of EIA report: public can comment on proposed terms
- Final EIA report available to the public: statements of concerns by “directly affected” persons
- Online register of information related to EIA kept by Alberta Environment
Three regulatory boards review and approve applications for energy and resource development: ERCB, AUC, NRCB

The boards approve projects that are in the ‘public interest’

The boards may allow public hearings to be held
Project review and approval

- Public consultation?
  - Consultation of affected stakeholders by project proponents: not “public consultation”
  - Public hearings in front of regulatory boards, allowing other “interveners” to participate

- Two issues in relation to public hearings:
  - Standing: whether an affected person can trigger a public hearing
  - Interveners’ costs: whether a person qualifies to obtain costs when participating in public hearings

- How do the Boards define the “public interest”? 
Monitoring and Enforcement

- **ALSA:**
  - no judicial review of regional plans
  - no opportunities for the public to appeal any aspect of the plans
  - only complaints to the head of Land-Use Secretariat that a plan is not complied with

- **Surface Rights Act:**
  - Dispute resolution by the Surface Rights Board

- Review of implementation of approvals: limited opportunities
Questions arising from overview of public participation opportunities

- How much public participation should be mandated by legislation?
- How does Alberta’s approach to public participation reflect the criteria of effective public participation, i.e.
  - who is allowed to participate?
  - is there appropriate access (financial, information, knowledge)?
  - are the rules of the process clear and accepted by all?
  - is there accountability and transparency of the process?
  - are the outcomes acceptable? is the government committed?
- Where on Arnstein’s “ladder” do the various processes fit?