

## MGA Review Discussion Paper

# Land Dedication (Reserves)

*This technical document is part of a series of draft discussion papers created by Municipal Affairs staff and stakeholders to prepare for the Municipal Government Act Review. It does not reflect existing or potential Government of Alberta policy directions. This document is the result of a careful review of what is currently included in the Municipal Government Act (MGA) and regulations, definitions of terms and processes, changes requested by stakeholders over the last 18 years, some highlights from other jurisdictions, and identification of potential topics for discussion during the MGA Review. This information will be used to prepare consultation materials as the MGA Review proceeds.*

*These discussion papers have been reviewed and approved by the MGA Stakeholder Advisory Committee, comprised of representatives from major stakeholder organizations: Alberta Association of Municipal and Counties, Alberta Association of Urban Municipalities, Alberta Rural Municipal Administrators Association, Alberta Chambers of Commerce, City of Calgary, City of Edmonton, and Local Government Association of Alberta.*

*The Government of Alberta is asking all Albertans to directly contribute to the MGA Review during online consultation in late 2013 and consultation sessions throughout Alberta in early 2014. This technical document is not intended for gathering stakeholder feedback, but to generate thought and discussion to prepare for the upcoming consultation. Public engagement materials will be available in early 2014. To learn more about how you can join the discussion on how we can build better communities, please visit [mgareview.alberta.ca/get-involved](http://mgareview.alberta.ca/get-involved).*

## Preamble



The *Municipal Government Act (MGA)* provides the legislative framework to guide the operations of municipalities in Alberta. The current *MGA* empowers municipalities with the authority and flexibility to provide services in the best interests of the community. The *MGA* Review will proceed along three major themes: *governance and administration; assessment and taxation; and planning and development.*

This paper is one of 11 discussion papers exploring aspects relating to *planning and development.* It focuses on the municipal land dedication processes as described in the *MGA.* The objective of each discussion paper is to

- 1) Outline the existing legislation,
- 2) Identify issues with specific aspects based on stakeholder requests,
- 3) Look at how other jurisdictions are approaching these issues; and
- 4) Pose questions to help formulate future analysis of, as well as public and stakeholder engagement on the *MGA.*

Below is a list of the papers that relate to the planning and development theme.

- Managing Growth and Development
- Statutory Plans and Planning Bylaws
- Municipal Planning Authorities
- Land – Administrative Decision-Making Processes
- Land Dedication (Reserves)
- Fees and Levies
- Public Participation
- Planning and Intermunicipal Appeals
- Municipal Government Board
- Municipal Relationships and Dispute Resolution
- Fundamental Changes and Municipal Restructuring

## Land – Reserves (Land Dedication)



As part of the subdivision application approval process, a municipality may require a portion of the land to be dedicated for roads, utilities and various types of reserve land. Land dedicated for roads or utilities cannot exceed 30 per cent of the total land area (less the amount of land that has been dedicated as environmental reserve).

There are five types of reserves: municipal reserve (MR), school reserve (SR), municipal and school reserve (MSR), environmental reserve (ER) and community services reserve (CSR). The different types of reserves have limits, as outlined below, on what the land can be used for.

- Municipal reserve, school reserve<sup>1</sup>, municipal and school reserves – These types of reserves can be used for a public park, recreation area, school board purposes, or to separate lands that are used for different purposes (e.g., as a buffer). At the time of subdivision, a total of 10 per cent of the original parcel (less the amount taken for environmental reserve) can be taken as these types of reserves. In specific circumstances, an additional five per cent may be requested. Rather than asking for land, a municipality may require money in place of reserve land or choose to defer receiving the reserve land until a future subdivision occurs on the land. Calculation of money in place of reserve land is based upon either market value appraisal of the land or a value that is agreed upon between the developer and the subdivision authority.
- Environmental reserve – A municipality may require land to be provided as environmental reserve if it is a swamp, gully, ravine, coulee, a natural drainage course, unstable or subject to flooding, or adjacent to the bed and shore of any water body. This type of reserve is to remain in its natural state or be used as a public park. It can be acquired either through an easement registered against the title of the land, or through a dedication of the land. There is no maximum amount of land that can be dedicated as environmental reserve; however, the *MGA* sets a minimum width for any environmental reserve land that borders a body of water.
- Community services reserve – If a school board declares that reserve parcel (MR, SR or MSR) is no longer required for school purposes, the land where the school building would have been located can be transferred to the municipality and dedicated as community services reserve. A community services reserve can be used for a public library, a police station, a fire station, ambulance services, a non-profit day care, senior citizens or special needs facility, affordable housing, or a municipal facility that provides service directly to the public. A community services reserve differs from other types of reserve in that the reserve designation does not occur during the subdivision process.

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<sup>1</sup> Some of the issues pertaining to school reserve dedication and school sites are the topic of an ongoing stakeholder discussion process initiated by the Province.

No legal instruments (such as caveats) may be registered against the land title on reserve land. Environmental reserve land may not be disposed of, except to the Crown for less than a three-year term, but may have its use modified by bylaw. Other than for environmental reserves the designation of reserve lands (MR, SR, MSR, or CSR) can be removed after giving notice and holding a public hearing. The land can then be used for any purpose or sold.

A subdivision authority cannot require land to be dedicated for reserves if:

- only one lot is to be created from a quarter section;
- the land is to be subdivided into lots of 16 hectares or more and is to be used only for agricultural purposes;
- the land to be subdivided is 0.8 hectares or less; or
- another reserve was previously dedicated for the full amount owing from the original parcel.

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## Discussion Points

Below are some identified discussion topics and questions based on a review of requested amendments, cross-jurisdictional research and issues raised by stakeholders. The requested amendments discussed below draw upon an inventory of requests received by the Province over the past 18 years. It is important to note these requests:

- i) do not necessarily represent the views of most Albertans;
- ii) do not necessarily apply to all municipalities; and
- iii) are categorized by policy topic, and have not been evaluated or ranked by number of requests received.

### 1. Land Dedication and Use

#### *Background:*

The *MGA* identifies types of land that can be dedicated for reserves, or for roads and utilities, at the time of subdivision and what the land that is dedicated can be used for. As growth occurs in many communities, there is a greater demand upon municipalities from local residents to put more community facilities in place (such as recreation facilities and fire halls) in newly developing areas. There is also an increasing trend toward redevelopment of existing urban areas, and potentially a need for additional or expanded facilities such as fire halls or parks in these redeveloping areas. However, if a reserve was provided at a previous time in the area, further dedications of reserve land cannot be requested again for these purposes.

As a result, municipalities have asked for more flexibility in terms of the types of uses allowed on reserve land and for a higher percentage of land to be dedicated. On the other hand, developers have expressed reservations about the costs of giving up more developable land for such uses.

#### *Cross-Jurisdictional Research:*

- In Ontario, land that is dedicated may be used for public park or other recreational uses, transit ways such as highways, roads, pedestrian highways, bicycle pathways or parking lots. The land that can be dedicated for municipal reserves cannot exceed five per cent for residential or two per cent for commercial or industrial developments. Alternatively, the municipality can require one hectare of land for every 300 dwelling units.
- In New Brunswick, municipalities pass a bylaw specifying the conditions for subdividing land, including the requirement for land dedication of up to 10 per cent for public purposes.
- In the Yukon, the legislation does not indicate the type of public use that the reserve land must be used for.

*Stakeholder and Legislative Amendment Requests:*

- Some stakeholders have requested that the *MGA* include a reserve for affordable housing.
- Stakeholders in the development industry have requested that lands designated as school reserves should also be used for medical facilities.
- Some municipalities and special interest groups have requested reserve provisions in the *MGA* to allow for historical resource preservation.

## 2. Conversion of Reserve Land Use

*Background:*

As noted previously, the *MGA* sets out a process for transferring land that has been dedicated but is no longer needed for school purposes, to the designation of community services reserve. Once this land is transferred, it can be used for affordable housing or any of the community facilities that may be developed on community services reserves. However, the transfer can result in a loss of land that can be used for park space.

The *MGA* also sets out a process for removing the “reserve” designation from lands (other than environmental reserves). When a reserve designation is removed, the municipality or school board may sell or lease the land, which can also result in a loss of land that can be used for park space. As a result of the loss of green space, there may be instances where local residents in the vicinity are not supportive of the change.

*Cross-Jurisdictional Research:*

- In B.C., a bylaw removing dedication must receive the approval of the electors.

*Stakeholder and Legislative Amendment Requests:*

- Some citizens have expressed concern that no public hearings are required under the legislation when reserve land is being redesignated to community services reserve.

## 3. The Purpose of Environmental Reserve

*Background:*

The *MGA* identifies situations where municipalities may require land to be dedicated as environmental reserve, and states that one of the purposes of this type of reserve is to prevent pollution and provide public access to the bed and shore of a body of water. However, there are differing interpretations on the intended purpose of an environmental reserve – that is, whether the intent is to enable municipalities to preserve environmental lands, or rather to claim land that is undevelopable due to its natural features (such as vulnerability to flooding), or to fulfill other purposes.

The designation of “environmental reserve” cannot be removed; however, a council may, by bylaw, correct errors in its boundaries, change the use of environmental reserve land, or lease the reserve land for a term of up to three years. If the bylaw changes the use of the reserve or leases it, the land may no longer be limited to remaining in its natural state or being used as a public park. In effect, depending on the type of use established in the bylaw, the purpose for which the environmental reserve was dedicated may no longer be applicable.

*Cross-Jurisdictional Research:*

- In Quebec, a bylaw that is passed by a municipality and sets the conditions for subdivision approval and land dedication, may allow for land dedication to be required to preserve a natural area.

*Stakeholder and Legislative Amendment Requests:*

- Some municipalities have suggested expanding the definition of environmental reserve in the *MGA* to include natural systems of high ecological value in order to broaden municipal authority to protect natural systems within municipal boundaries.
- Some stakeholders have requested that municipal governments be enabled to create environmental reserves based upon their environmental significance and role in ecosystem processes.
- Some stakeholders have suggested coordinating the legislation regarding the protection of lakeshore areas, and allowing Environment and Sustainable Resource Development the authority to enforce environmental protection on lands dedicated as environmental reserve.

#### 4. Accounting and Collection of Reserve Monies

*Background:*

Under the *MGA*, when a payment of money in place of reserve land is a condition of a subdivision's approval, the monies collected must be accounted for separately and can be used only for the purposes associated with that type of reserve. For example, money in place of land for a municipal and school reserve (MSR) can only be allocated to pay for a public park or public recreation area or for school board purposes. Moreover, if the designation of reserve land is removed and the land is sold, the monies collected from the sale must be used only for the purposes for which the reserve was taken.

*Cross-Jurisdictional Research:*

- In New Brunswick, money in place of land may be provided and this money may be used to cover costs for the maintenance of roads, curbs, and similar public features.

*Stakeholder and Legislative Amendment Requests:*

- Some municipalities have requested that the *MGA* be amended to restrict the use of monies collected for "school authority purposes" to the purchase of land for schools and school-related buildings and to restrict the use of monies collected for "municipal purposes" to public parks or public recreation areas. Requests have been made to outline in the *MGA* the considerations and process for taking money in place of reserve land.

#### 5. Reserve Exemptions

*Background:*

The *MGA* specifies that in some situations, the owner or developer of the land to be subdivided cannot be required by the municipality to provide reserve lands. One such situation is when the first parcel is being subdivided out of a quarter section. Under this exemption, there is no opportunity to require reserve land from the new lot, and a reserve cannot be obtained on this

first parcel when future subdivision of the remaining portion of the quarter section occurs (unless that first parcel is subdivided in the future). If some of the land in the quarter section is adjacent to the bed and shore of a water body, this can be problematic, since environmental reserve land cannot be required and there is no opportunity to designate a buffer zone.

*Cross-Jurisdictional Research:*

- In Saskatchewan, exemptions from the requirement for land dedication include lands that will be largely remote from future subdivisions, lands used solely for agricultural purposes, lands divided so they may be used for public utilities, highways, or other public purposes, or land that is considered park land. Resubdivided lands may also be excluded from municipal reserve requirements.
- In the Yukon, reserve dedication may be deferred or waived if the land would serve no useful purpose or would be undesirable.

*Stakeholder and Legislative Amendment Requests:*

- Some stakeholders have requested that the *MGA* provide more clarity on the “reserves not required” provisions.

**6. Servicing of Reserve Lands (MR, SR, MSR)**

*Background:*

The *MGA* does not require servicing to be supplied at the time of subdivision for reserve land that is dedicated for school purposes. When a school board develops a school site, there may be significant costs for the municipality or the school board to install servicing to the site. However, if servicing were to be required at the time of subdivision, the costs would be the responsibility of the developer of the area.

*Cross-Jurisdictional Research:*

- Cross-jurisdictional research on other municipal acts did not result in any information specific to this issue.

*Stakeholder and Legislative Amendment Requests:*

- Some school boards have requested that the *MGA* require the provision of serviced reserve lands in order to facilitate site preparation and land development for schools.

## Discussion Questions



1. Are the current provisions for reserves appropriate (e.g., categories, uses, amounts, timing of collection, etc.)? Why or why not?
2. Are there other processes, other than during subdivision, that the dedication of reserve land should occur? Why or why not?
3. Are the procedures for conversion of reserve land and disposal of reserve land appropriate? Why or why not?
  - a) What should the proceeds from the disposal of reserve land be used for?
4. What features or characteristics should land have, in order to qualify for designation as environmental reserve?
  - a) What should be the purpose of dedicating land as environmental reserve?
  - b) What should be done to ensure that environmental reserve easements are serving the purpose for which they are taken?
5. What should be the provisions respecting the collection and accounting of money collected through reserves?
  - a) Is the current method for determining the value of land (e.g. market value for un-serviced land or serviced land) for money in place appropriate? Why or why not?
6. Does the *MGA* identify the appropriate situations when, at the time of subdivision, reserves are not required? Why or why not?
  - a) Are there other situations when reserves should not be required?
7. Should school sites be serviced (e.g., water, sewer) at the time they are subdivided? If so, who should be responsible for servicing the site?