Alberta Lake Management Society
Submission on the *Municipal Government Act* Review

June 13, 2014

The Alberta Lake Management Society (ALMS) is providing these comments to the province regarding the *Municipal Government Act* (MGA) Review. We intend that our input into the MGA could improve management of lake and environmental resources. We emphasize that a priority is to see clarity around municipalities' powers to regulate for watershed and lake health, including the need to manage non-point source pollution.

Generally, ALMS supports that the MGA include and expand as follows:

1. Include protection and management of the environment as a valid municipal planning purpose,
2. Include by-law purposes specific to environmental matters,
3. Expand municipal enforcement tools,
4. Expand revenue generation powers, and
5. Improve public participation in municipal decision-making.

MGA amendments are also required to ensure adjoining municipalities are not undermining their adjacent municipality's environmental outcomes when shared environmental components are concerned (i.e. water, air, wildlife). This may fall under intermunicipal development plans.

Specific Concerns

Specifically ALMS is concerned that the MGA provisions regarding "environmental reserves" need significant clarification to enable municipalities to better regulate and control land uses adjacent to water bodies and watercourses, and manage environmentally sensitive or significant landscapes such as natural drainage courses, coulees, wetlands, and riparian lands.

The current MGA, drafted in 1994, reflects a different socio-cultural time in Alberta's history where natural resources were still relatively plentiful: Albertans often took natural resources for granted. We have now entered a phase of natural resource scarcity and competition for scare resources, including land and water. People all over the Province expect their local governments to work hand in hand with the Province to conserve and manage natural landscape features that sustain human health and well-being. Most important, local taxpayers want their local governments to manage land use and human activities that may negatively affect their water supplies, landscapes, biodiversity and air quality. More and more, people are advising their local governments that they want

their lakes and riparian lands protected and managed as natural areas for recreation and aesthetic values, and for their function as wildlife corridors and habitat. Economies of municipalities surrounding lakes are inter-dependant on the health of their lake. Municipalities need strong enabling legislation to manage environmentally sensitive or significant landscapes on behalf of their current citizens and for future generations.

ALMS is specifically interested in lake watershed management and enabling legislation that enables local regulation and control of land use around lakes. The current MGA is either unclear on what municipalities may require of private landowners or developers, or does not adequately enable local bylaws to conserve and manage these important landscape features. In particular, non-point source pollution within runoff is a significant concern that can only be managed at the municipal level. This submission is framed as six opportunities for transformative change in the MGA to meet the ALMS' lakeshore and lake management objectives. Each opportunity is followed by a brief description where warranted, and a request for transformative action.

Opportunity #1:
Provincial legislation, including the MGA, should provide clarity regarding the role of volunteer lake management societies and lake management plans created through multi-stakeholder processes where the Province is a partner.

Municipal governments often participate in lake management society activities as partners with the Province, industry, ENGOs, and the public. These management plans must be used as decision-support tools by all municipal and provincial decision-makers with respect to land use, and water allocation licensing, and approvals required under the *Water Act*, *Environmental Protection and Enhancement Act* and the *Public Lands Act*. They must also be used by decision-makers in the Department of Transportation.

Request:
The Province mandate that provincially supported lake management plans must be considered by the Director under the *Water Act* and other Provincial decision-makers, and must also used as a decision support tool during municipal land-use planning and other decision-making.

Opportunity #2
The MGA should provide clarity on the extent of municipal jurisdiction and responsibility regarding special bylaw passing powers under section 60 of the MGA.

Current municipal land-use practices in Alberta impact surface water and groundwater water quality. Soil erosion, and the approved or licensed release of emissions and pollutants into water bodies, watercourses and the airshed degrade the water and affect the health of aquatic ecosystems. The impairment, removal or in-filling of wetlands, riparian areas, ravines, floodplains and other landscape features during stripping and grading activities for servicing large tracts of land for development purposes, and encroachment on or near riparian lands affect surface water, groundwater and air

quality. Consideration should also be given for municipal jurisdiction and responsibility for groundwater.

Section 60 of the *Municipal Government Act* reads as follows:

> 60(1) Subject to any other enactment, a municipality has the direction, control and management of the rivers, streams, watercourses, lakes and other natural bodies of water within the municipality, including the air space above and the ground below.

Section 60 is ambiguous and municipalities usually read it narrowly in the context of the general municipal purposes set out in Section 3 of the *Municipal Government Act,* although it is included as one of several special bylaw passing powers. The section is expressed "subject to any other enactment" [federal or provincial] which creates a significant potential for conflict rendering municipal action based on Section 60 *ultra vires* if the action is inconsistent with those enactments. As written, Section 60 does not provide clear jurisdiction for municipalities to undertake municipal management plans for local water bodies within their jurisdiction. The Province should clarify municipal jurisdiction under Section 60.

An example of municipal water body management is the Lac La Biche Watershed Management Plan, where three municipalities and several First Nations groups collaborated to manage the lake. These collaborations have been very successful.

Request:
Section 60 should be clarified to ensure that all local governments understand what they are responsible for or able to do under this section. For example, are they expected to identify and map all riparian areas and water bodies within their jurisdiction and collaborate to create local watershed management plans to conserve and manage these resources in the overall greater public interest?

Opportunity #3
Part 17 needs to be rewritten to be consistent with section 96 of the *Water Act* to ensure that municipalities do not approve development and buildings in flood risk areas particularly adjacent to watercourses and water bodies. Flood risk areas include riparian lands associated with wetlands and these terms need to be defined.

In the recent *Draft South Saskatchewan Regional Plan* (SSRP), the Province provided that

> *Municipalities will:*
> *Utilize or incorporate measures which minimize or mitigate possible negative impacts on important water resources or risks to health, safety and loss to property damage due to hazards associated with water, such as flooding, erosion and subsidence due to bank stability issues, etc., within the scope of their jurisdiction.*
>
> *Incorporate measures in land-use decisions to mitigate the impact of floods through appropriate flood hazard area management, emergency response planning for floods, and*

appropriate development in the flood hazard area in accordance with provincial policy on development within flood hazard areas.

These statements could be interpreted as an attempt to transfer responsibility for flood protection, control and response to municipalities. Arguably, this is primarily a provincial responsibility by virtue of provincial ownership of the water and the beds and shores of water bodies and its mandate to protect and enhance the environment under the *Water Act, Public Lands Act* and the *Environmental Protection and Enhancement Act*. As well, section 96 of the *Water Act* clarifies the Province's ability and responsibility to regulate and control land-use on riparian lands. Although municipalities have an obvious role to play in land-use planning on private lands, it is the Province that should have the lead and be primarily responsible for these matters and yet, this section of the SSRP makes no reference to the Province's role or responsibility. However, the reference to these measures being undertaken by municipalities "within the scope of their jurisdiction" seems to be a tacit recognition that municipalities may have little, if any, jurisdiction to undertake these measures under section 60, Part 17 or sections 7-9 of the MGA.

Request: Municipalities need enabling legislation so that they can Incorporate measures in land-use decisions to mitigate the impact of floods through appropriate flood hazard area management, emergency response planning for floods, and appropriate development in the flood hazard area in accordance with provincial policy on development within flood hazard areas. This could be mandated as part of section 60 as the flood hazard area is often the riparian land influenced by the presence of water in water bodies and watercourses.

Opportunity #4
The MGA needs to provide direction to municipalities that coulees, natural drainage courses, riparian lands, and wetlands are crucial natural landscape infrastructure that must be protected and enhanced for sustaining watershed health in the overall greater public interest. While the current environmental reserve (ER) provisions are one tool to achieve this goal, they are not a panacea, and the provisions need to be clarified and allow more flexible interpretation than recent court decisions.

a. Steep slopes, coulees, natural drainage courses and lands subject to flooding

During the 2013 flood event, it became evident that degradation and removal of natural vegetation from natural landscape features such as steep slopes, coulees, and natural drainage courses had a significant impact on the ability of the natural system to retain flood waters. The MGA needs to provide clear direction to municipalities that these landscape features are to be retained in their natural state, and natural vegetation not removed.

b. Riparian lands

As a bare minimum, the Committee recommends that the MGA requires municipalities to use S*tepping Back From the Water*, or similar provincial guidelines, or scientifically

determined setbacks from the beds and shores of water bodies when approving land-uses, development and buildings in riparian lands. These are “lands subject to flooding” and “flood risk areas” and should be retained in their natural state. They are critical to maintaining healthy lakes. Lac La Biche County’s *Riparian Setback Matrix Model* is an example of a scientifically defensible tool to ensure surface water protection from nutrients and sediment. Riparian lands need to be defined, and local governments enabled to identify, map and create riparian land conservation and management plans for those landscape features within their jurisdiction.

c. Wetlands

As a bare minimum, ALMS recommends that a “no net loss of wetlands” be required in Alberta, given the high degree of unmitigated white zone mineral and green zone peatland losses over the past decades. These losses have continued during urban and economic development activities despite our Water Act and wetland policies. Wetlands of all classes are necessary for a healthy landscape. They offer essential ecosystem services such as reducing flooding, storing water during droughts, filtering nutrients from runoff, providing wildlife habitat and storing carbon. Therefore all efforts must be made to retain natural wetland infrastructure. These are “lands subject to flooding” or “flood risk areas” and should be retained in their natural state. Specific language that captures the ability of local councils to conserve and manage all the wetlands now identified under the new Wetland Policy (bog, fen, marsh, swamp, shallow open water) needs to be included in the new MGA enabling provisions.

While the current environmental reserve (ER) provisions **<u>are one tool</u>** to achieve this goal, they are not a panacea, and the provisions need to be clarified and allow more flexible interpretation than recent court decisions because Part 17 is narrowly interpreted. ER lands are prescribed, and can only be required to be dedicated to municipalities during subdivision processes, and only under certain conditions. It is also not good governance practice to allow municipalities to acquire title to large tracts of these valuable lands without having to pay the landowner compensation.

The MGA needs to clarify that municipalities do not need to own lands in identified and mapped flood risk areas to regulate and control land-use within these areas, for example by designating flood risk area land-use districts and setting out permitted and discretionary land-uses appropriate in flood risk areas. Municipalities want to understand the affect of *Water Act* approvals on their Municipal Development Plans and land use bylaw provisions that would otherwise require that retain wetlands and riparian lands be retained in their natural state. For example, a provincial approval to disturb and wetland and pay compensation may defeat the intent of local councils, conservation organizations or other land trusts to preserve those same wetlands in their natural state.

Request:
Terms such as environmentally significant areas, swamps, low lying areas, pollutants etc. need to be defined in the MGA and local governments need to be enabled to conserve and manage these landscapes for the multitude of ecological goods and services they provide society.

Request:
The following sections of the MGA regarding reserves, specifically environmental reserves need to be clarified and the intent and purpose re-evaluated to reflect current human expectations about conservation and management of environmentally sensitive landscapes.

Planning and Development Part 17:

Roads, utilities, etc.

662(1) A subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land for the purpose of roads, public utilities or both.

(2) The land to be provided under subsection (1) may not exceed 30% of the area of the parcel of land less the land taken as environmental reserve or as an environmental reserve easement.

(3) If the owner has provided sufficient land for the purposes referred to in subsection (1) but the land is less than the maximum amount authorized by subsection (2), the subdivision authority may not require the owner to provide any more land for those purposes.

1995 c24 s95

Reserves not required

663 A subdivision authority may not require the owner of a parcel of land that is the subject of a proposed subdivision to provide reserve land or money in place of reserve land if

(a) one lot is to be created from a quarter section of land,

(b) **land is to be subdivided into lots of 16.0 hectares or more and is to be used only for agricultural purposes,**

(c) **the land to be subdivided is 0.8 hectares or less, or**

(d) reserve land, environmental reserve easement or money in place of it was provided in respect of the land that is the subject of the proposed subdivision under this Part or the former Act.

In Alberta, times have changed with respect to how agricultural lands are treated by private landowners who apply for subdivision. In many cases, private landowners applied for subdivision to fragment agricultural lands so that large tracts can be used for dwellings and business operations. These developments cause significant damage to environmentally sensitive landscapes and the MGA should enable local councils to require dedication of environmental reserves, even if the land is subdivided into 16 hectare parcels. In many cases, the proposed development in large agricultural parcels

will destroy natural features that can never be replaced. This is especially true of privately owned parcels that contain large tracts of peatlands.

A clear definition of what constitutes an ***agricultural purpose*** is required. Environmentally sensitive areas need to be considered when people apply to develop smaller parcels as well for the same reasons. Logic that may have applied in the 1950s and in 1994 that led to section 663 is no longer applicable.

> **Environmental reserve**
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> **664(1)** Subject to section 663, a subdivision authority may require the owner of a parcel of land that is the subject of a proposed subdivision to provide part of that parcel of land as environmental reserve if it consists of
>
> (a) a swamp, gully, ravine, coulee or natural drainage course,
>
> (b) **land that is subject to flooding or is, in the opinion of the subdivision authority, unstable,** or
>
> **(c) a strip of land, not less than 6 metres in width, abutting the bed and shore of any lake, river, stream or other body of water for the purpose of**
>
> **(i) preventing pollution, or**
>
> **(ii) providing public access to and beside the bed and shore.**

The philosophy behind subsection 644 needs to be transformed. What is land subject to flooding? Do these lands have economic value? A scientific approach is required to determine appropriate setbacks from the legal bank and bed and shore. The 6 metre minimum "buffer strip" needs to be examined because it is not effective in preventing pollution by sedimentation or nutrients.

The following terms need to be defined: Floodway, Flood Fringe, Flood Hazard Area, Flood Risk Area. As does 1:10 year flood, 1:100 year flood.

Subsection 644(c) must enable municipalities to require dedication of riparian lands adjacent to beds and shores based on scientific exploration of the extent of lands required to be building-free, in order to prevent flood damage, prevent pollution of the water bodies and watercourses, and provide access. Preventing pollution while at the same time providing public access are sometimes counterintuitive and in many cases public access should not be encouraged in sensitive riparian lands next to lakes.

Pollution needs to be defined - what constitutes a "pollutant" for the purpose of this subsection?

What is a "swamp" for the purpose of this section? All wetlands and riparian lands need to be highly valued during consideration of applications to subdivide land or develop land. These are the most highly valued lands we have in the Province. Current

stripping and grading practices do not respect the natural undulation of land required to assure requisite resilience in riparian and wetland complexes.

Bed and shore and legal bank need to be defined for the purpose of the MGA and the *Subdivision and Development Regulation*. What constitutes a permanent and naturally occurring water body needs to be clarified: is it the location where water is present, or the presence of water at a location for seven plus months of the year? The Committee believes that wetland permanence is the location on the land where water is present, not the presence of water all year round. Water level fluctuations in wetland locations are natural wetland processes and indicate healthy wetland systems and functionality.

Request:
The MGA should provide clarity around the relationship between requirements for environmental reserve dedication and building development setbacks in section 640(4) of the MGA. How do these two sections operate together to enable local decision-makers to conserve and manage lakeshores and riparian lands in flood risk areas?

> **665 Designation of municipal land**
> 665(1) A council may by bylaw require that a parcel of land or a part of a parcel of land that it owns or that it is in the process of acquiring be designated as municipal reserve, school reserve, municipal and school reserve, environmental reserve or public utility lot.

There needs to be a process for getting rid of R zoned lands that were dedicated to municipalities under the old *Planning Act* before 1994.

Request:
The MGA should require municipalities to elect whether reserve land dedicated prior to 1994 is functioning as municipal reserve or environmental reserves, and all future land uses on those lands follow the requirements for land use set out in the MGA.

> **Changes to environmental reserve's use or boundaries**
> 676(1) A council may by bylaw, after giving notice in accordance with section 606 and holding a public hearing in accordance with section 230,
> (a) use an environmental reserve for a purpose not specified in section 671(1),
> (b) transfer an environmental reserve to the Crown or an agent of the Crown for consideration, as agreed,
> (c) lease or dispose of an environmental reserve other than by a sale for a term of not more than 3 years, and
> (d) change the boundaries of an environmental reserve or environmental reserve easement in order to correct an omission, error or other defect in the certificate of title, or to rectify an encroachment problem or other concern.

This subsection defeats the purpose of dedication of environmental reserves. Social behaviour and expectations of citizens about protecting environmentally sensitive landscapes is different than it was in 1994.

Request:
Subsection 676 needs to be evaluated for content and process as it defeats the purpose for Environmental Reserve dedication.

Request:
Section 640 should provide clarity that municipalities can create land use districts for environmentally significant lands with limited permitted and discretionary uses notwithstanding that the lands are held by private landowners. The use of land use district "development overlays" need to be clarified in section 640.

Opportunity # 5
Section 7 of the MGA for general jurisdiction health and welfare bylaws, and section 9 need to enable rapid municipal response to emergent issues associated with watershed management to protect human health and safety and private property when the social-ecological system is faced with shock. (Example fire and floods).

Municipal response to fire, droughts and flood events need to be rapid and the jurisdiction to regulate and control human activities that degrade the watershed needs to be clarified in sections 7-9 of the MGA under the health and welfare general bylaw passing provisions.

Opportunity # 6
The MGA should provide for master drainage plan preparation, integration with site specific drainage systems, scale of application and adaption over time.

Request:
The MGA should be clarified so that the relationship between legal requirements for storm drainage collection, treatment, storage and conveyance to receiving water bodies under other provincial legislation is applied. Municipalities need master drainage plans and there must be coordination of infrastructure for storm drainage at a regional or watershed scale. For example, a lake is a watershed.