

# Water Bodies

Definitions, Ownership & Legislation

# "Water Body"

## Water Act

(ggg) "water body" means **any location where water flows or is present**, whether or not the flow or the presence of water is continuous, intermittent or occurs only during a flood, and **includes but is not limited to wetlands** and aquifers but does not include except for clause (nn) and section 99 "water body" that is part of an irrigation works if the irrigation works is subject to a licence and the irrigation works is owned by the licensee, unless the regulations specify that the location is included in the definition of water body





# "Bed and Shore"

## Surveys Act

17(3) ...the bed and shore of a body of water shall be the land covered so long by water as to wrest it from vegetation or as to mark a distinct character on the vegetation where it extends into the water or on the soil itself.

- Considered **public land**.
- **Shore** is the part of the **bed** that is **exposed** when level of water is **below** normal level.



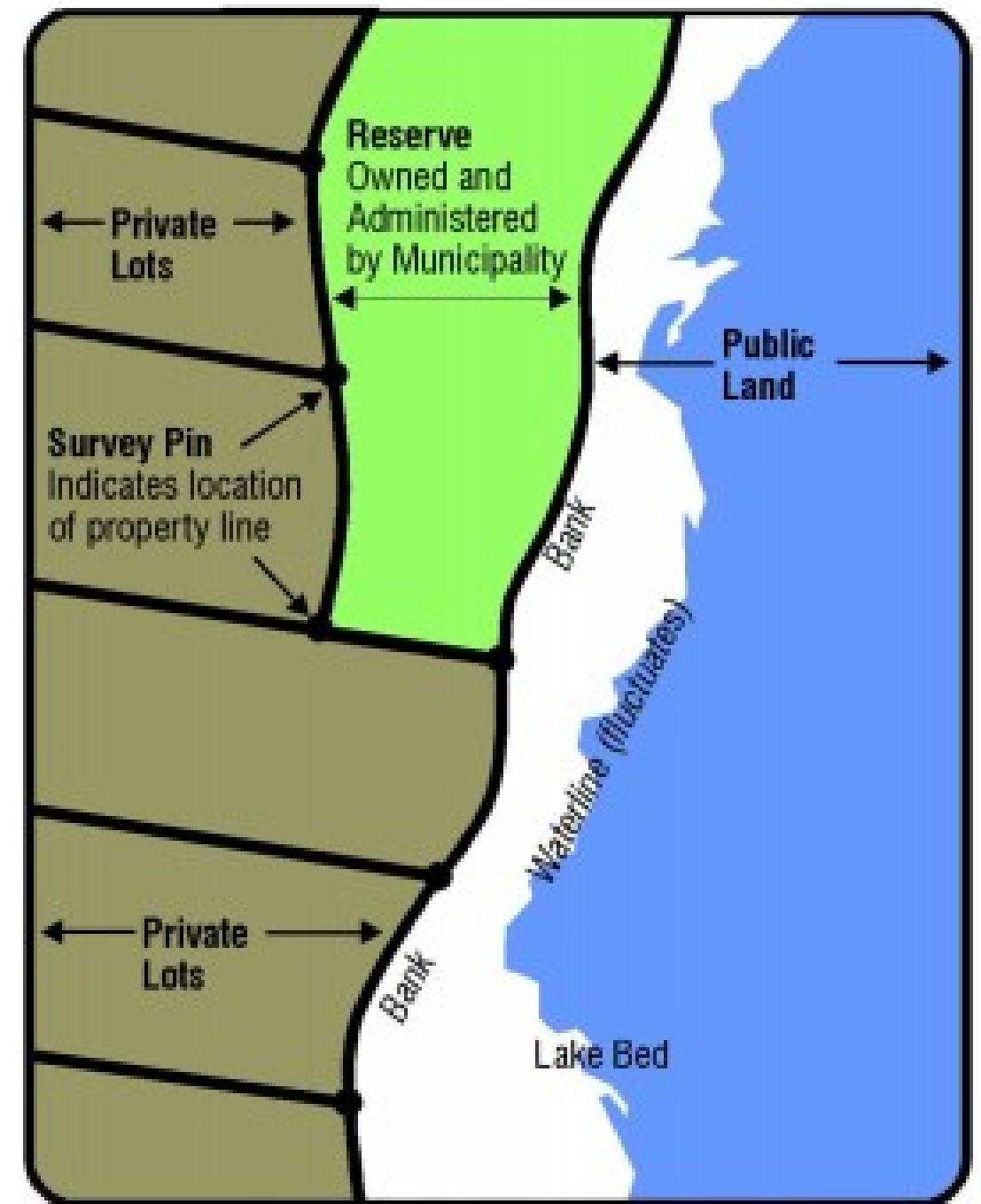
[http://healthyshorelines.com/media/The\\_Law\\_and\\_the\\_Lake.pdf](http://healthyshorelines.com/media/The_Law_and_the_Lake.pdf)

# "Bank"

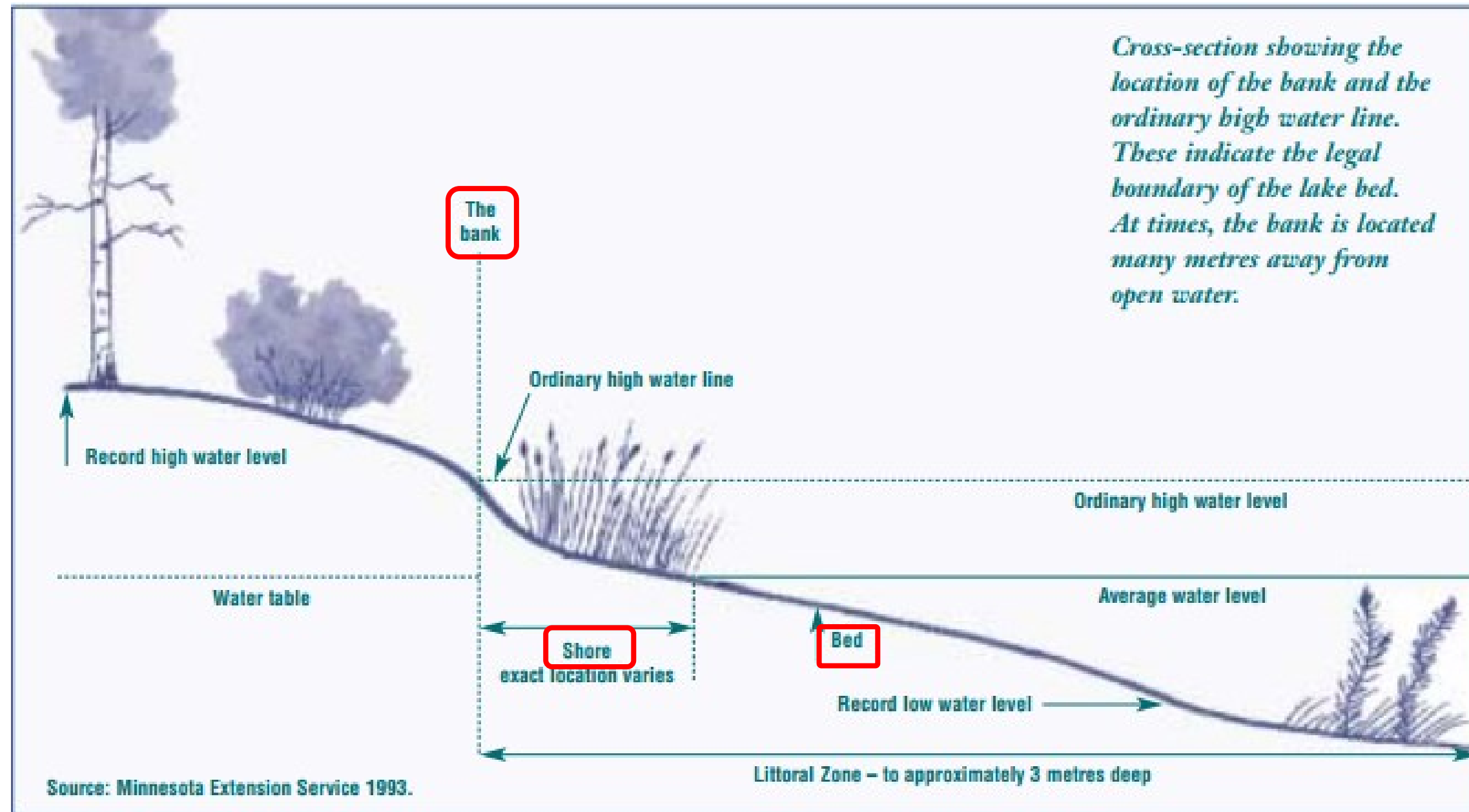
## Surveys Act

17(2) When surveying a natural boundary that is a body of water, the surveyor shall determine the position of the line where the bed and shore of the body of water cease and the line is to be referred to as the bank of the body of water.

- The **legal line** separating **private** land from the **bed and shore**.
- **Not** affected by occasional periods of drought or flooding.



[http://healthyshorelines.com/media/The\\_Law\\_and\\_the\\_Lake.pdf](http://healthyshorelines.com/media/The_Law_and_the_Lake.pdf)



<http://aep.alberta.ca/lands-forests/shorelands/lakeshores/documents/CaringForShorelineProperties-1999.pdf>

# Federal Right to Legislate

The federal government has the right to legislate over some water related matters, including:

- wetlands on federal lands (e.g. wetlands in national parks or other federal reserved lands) and all resources on these lands (e.g. timber, water, range, wildlife, mines and minerals),
- natural commercial, sport or recreational fishery habitat in water bodies and wetlands, whether on federal or non-federal lands, and whether on privately owned or public lands,
- ocean pollution, ocean mammals, and
- migratory birds and to a limited degree, migratory bird habitat (whether on federal or non-federal lands and whether on privately owned or public lands).



# Federal Ownership

- The federal government has certain **responsibilities** relating to water (i.e. fisheries, navigation, boundary waters) and **owns what is on federal land**.





# Federal Legislation

3 main federal environmental, statutory authorizations

- 1) *Fisheries Act* – prohibits anyone from carrying on any type of work or undertaking that results in the harmful alteration, disruption or destruction of fish habitat without statutory authorization – also prohibits the deposit of deleterious substances into water frequented by fish
- 2) *Migratory Birds Convention Act* – prohibits anyone from doing anything that could harm migratory birds or their nests without statutory authorization – also prohibits the deposit of any substances harmful to migratory birds into any waters frequented by them
- 3) *Navigation Protection Act* – prohibits anyone from carrying on any activities that could interfere with navigability of water without statutory authorization



# Provincial Right to Legislate

Provincial governments have the right to legislate over some water matters, including:

- water bodies on provincial lands (e.g. lakes and wetlands in provincial parks or other provincial public lands) and all resources on these lands,
- activities relating to the bed and shores of all naturally occurring permanent water bodies (since these are provincial lands by virtue of Section 3 of the *Public Lands Act*), and
- wildlife, wherever it occurs in the province, whether on public or private lands, except for on federal lands.

# Provincial Water Ownership

Alberta Wetlands Guide – Primer #3 (pages 15 – 20)

- In all Canadian provinces, the **provincial Crown owns all water in the province** (ownership right asserted under the *Water Act* in Alberta).
- It does not matter whether water is on private or on public land, the Crown owns it.
- It does not matter whether a water body or wetland is permanent or intermittent, the Crown owns the water in it.
- Question of permanency is only relevant to who owns the bed and shore of water body, since the Crown is the owner of the bed and shores of nearly all naturally occurring, permanent water bodies.



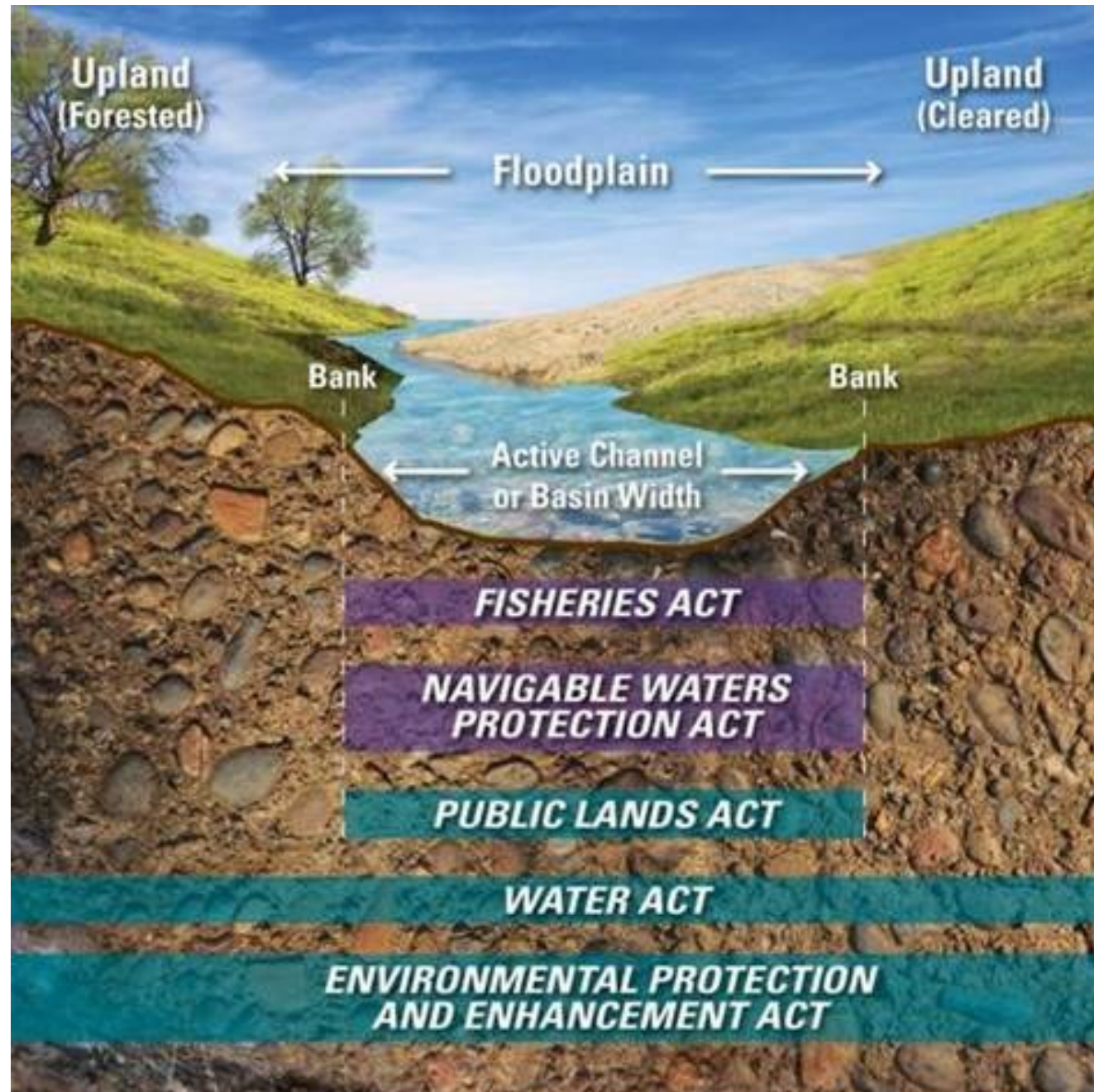
# Provincial Land Ownership

- As per the *Public Lands Act* the **Crown owns the bed and shores** of all **permanent** and **naturally occurring** bodies of water.





# Provincial Legislation



The Alberta government derives its legal authority to regulate water bodies and activities and development that affect them under:

- 1) the *Public Lands Act*, as the owner of the bed and shores of all permanent and naturally occurring bodies of water,
- 2) the *Water Act*, as the owner of all water in the province, and
- 3) the *Environmental Protection and Enhancement Act*, to promote the protection, enhancement and wise use of the environment

# Municipal Right to Legislate

## Municipal Government Act

Section 60(1)...a municipality has the **direction, control and management** of the **bodies of water** within the municipality...

(New) Section 1(1.2)..a reference to a **body of water** is a reference to:

- a) a **permanent** and naturally occurring **water body**, or
- b) a naturally occurring river, stream, watercourse or lake.

- Municipalities can regulate impacts on bodies of water under the *Municipal Government Act*, including Part 17, which deals with subdivisions and development within a municipality.



# Municipal Ownership

- Municipalities own and manage lands containing wetlands, water bodies and watercourses as a result of direct purchase or dedication via the subdivision process (Environmental Reserve).
- Naturally occurring, permanent water bodies and watercourses found on municipal land are the property of the Crown.
- Provincial and federal legislation applies to lands owned by the municipality.





# Municipal Legislation

# Municipal Development Plan

## ENVIRONMENTAL MANAGEMENT

BACKGROUNDER | 7 OF 8



### INTRODUCTION

Strathcona County has made major strides towards protecting and enhancing the environment over the last 20 years, but there is always the opportunity to do more. The County has undertaken several new, successful environmental initiatives, and improved its environmental management policies and systems considerably over this time period. At the same time, it has been supported by the efforts of several other agencies, community-based organizations and private sector groups.

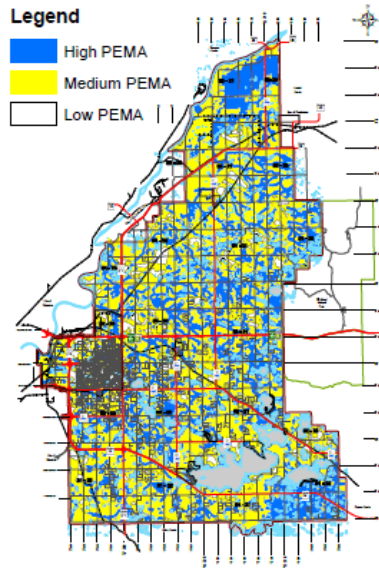
### CURRENT TRENDS

- An appreciation for the need to provide for more compact forms of rural development to protect agricultural lands.
- A recognition that a regional approach to managing land, transportation facilities and servicing infrastructure is one of the keys to protecting the County's environment.
- Interest in walkable, urban village style living (e.g. Palisades Estates), and other forms of compact urban housing (e.g. medium and high rise condos).
- Ongoing desire for different forms of country residential.
- Continued strong collaboration on environmental management between the County and groups like the Beaver Hills Initiative.

### Priority Environmental Management Areas (PEMAs)

#### Legend

- High PEMA
- Medium PEMA
- Low PEMA



- New technological and systems approaches to environmental protection and enhancement (e.g. using waste as a resource, advancements and lower costs in alternative energy such as solar and wind power, local waste management systems, etc).
- Younger generation with an understanding of the critical importance of environmental conservation.

## ENVIRONMENTAL MANAGEMENT

| BACKGROUNDER 7 OF 8

### WHAT DOES THE 2007 MDP SAY?

The key components of the MDP's environmental management approach are to:

1. Identify and map high, medium and low Priority Environmental Management Areas (PEMAs).
2. Use the PEMA areas as a guide to decision making when approving locations for development. The decision as to which lands will be conserved in a particular situation is based on further analysis (e.g., a biophysical assessment completed at the time of more detailed planning, such as the Area Structure Plan stage).
3. Protect and enhance PEMAs through:
  - » Regulations and development guidelines.
  - » Biophysical assessments, geotechnical assessments, environmental impact assessments.
  - » Environmental reserves, municipal reserves, and easements.
  - » Educational programs and community involvement.

Some of the other key MDP policies include:

- Create a large network of wildlife corridors.
- Protect and enhance significant/sensitive natural areas.
- Utilize Conservation Subdivision Design.
- Protect the Beaver Hills Moraine area, the North Saskatchewan River Valley and all water bodies.
- Promote higher densities and compact development.
- Restrict development in areas prone to flooding, shoreline erosion, soil instability or other potential hazards.
- Ensure wetlands are not filled in, drained or altered to accommodate development; require replanting and naturalization if needed.
- Ensure the type and scale of recreation/tourism developments within the Beaver Hills Moraine are appropriate to the environment.
- Implement recycling programs (e.g. curb-side recycling and recycling depots).
- Protect the environment through waste management, weed and pest control.
- Protect wildlife habitat areas by prohibiting the clearing of native vegetation, and requiring tree retention/planting.
- Carry out education on environmental matters.
- Collaborate with other jurisdictions to reduce greenhouse gas emissions, monitor groundwater quality, address air quality concerns, etc.

### SUCCESS STORIES SINCE THE 2007 MDP

- Environmental Sustainability Framework report (2009)
- Country Residential Area Concept Plan (2012) – environmental protection re country residential.
- Beaver Hills Tourism Development Opportunity Assessment (2012)
- Legacy Lands policy (2007) – acquisition of lands of historical, cultural and environmental significance.
- Wetland Conservation policy (2009)
- Municipal Sustainable Buildings policy (2010)
- Heritage Tree Retention policy (2011)

Other environmental initiatives include

- Backyard composting
- Enviroserve events for recycling/safe disposal options
- Green Routine - program to divert waste from landfills
- Hybrid/solar vehicles and buses
- Think trees and 2008 Urban Forest Conference
- Water conservation program

### CHALLENGES & OPPORTUNITIES

- Balancing the need to accommodate a growing population and keep housing prices reasonable, while protecting valuable environmentally sensitive areas.
- Addressing air quality concerns, given the close proximity of industry to residential areas, and a high reliance on private vehicle use.
- Opportunities to promote more compact, higher density, walkable communities.
- With density gradually increasing in the urban area, transit solutions become more feasible.
- The Country Residential Area Concept Plan has provided more clarity to encourage Conservation Design subdivisions and other forms of compact rural development.
- The County has created a positive momentum through the many success stories in the last few years.

### THINGS TO CONSIDER

- What important environmental issues do you think need to be addressed in the MDP update?
- What suggestions do you have for protecting and improving the environment in Strathcona County?

## 3.2 Environment

### Introduction

Strathcona County is valued for and values its natural beauty and quality of life. The County supports cooperative efforts to ensure the quality of air, water, land and natural systems found within the region are conserved, enhanced and resilient.

A large portion (55%) of Strathcona County lies within the boundaries of the Beaver Hills Moraine. The moraine is a distinct geomorphological feature representing an island of boreal forest and hummocky knob and kettle terrain supporting wetlands, lakes and creeks. The Beaver Hills Moraine was designated a UNESCO (United Nations Educational, Scientific and Cultural Biosphere) in 2016. There is an acknowledged desire to conserve this important natural landscape.

The North Saskatchewan River Valley is also a significant natural habitat and serves as an important wildlife corridor. Connectivity between the North Saskatchewan River Valley and the Beaver Hills Moraine is important and will be protected through the conservation and/or restoration of the riparian corridors adjacent to the watercourses flowing out of the Beaver Hills into the North Saskatchewan River.

As rural and urban residential development continues, the potential impact on environmentally significant areas also increases. There is a need to identify and conserve these areas as the community continues to grow and evolve. As development pressures increase, environmental considerations will be kept in balance with economic and social considerations.

### Goal

**Strathcona County will be an environmental leader and ensure responsible use of the natural landscape.**

# Municipal Legislation

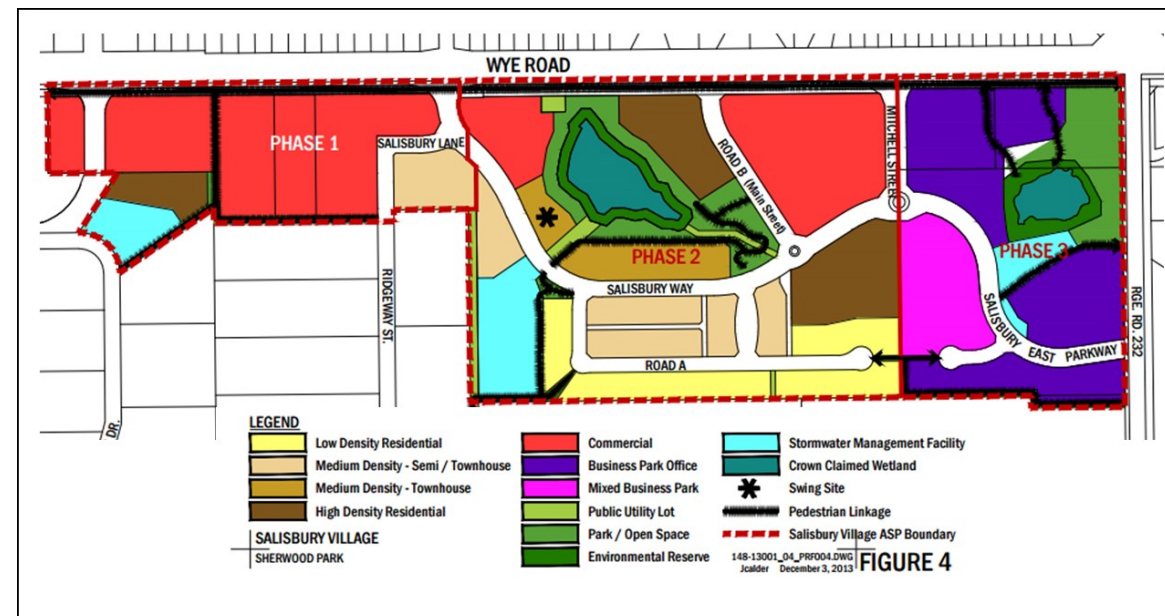
## Land Use Bylaw

- **Bed and Shore** definition as per the *Surveys Act*
- **Top of Bank** means the top of a water body's valley or ravine. Where a bank is not well defined (i.e. in the case of lakes and wetlands) the top of bank shall be equivalent to the 1:100 year floodplain.
- **Water Body** definition as per the *Water Act*
- **Watercourse** definition as per the *Environmental Protection and Enhancement Act*
- **Wetland** means land saturated with water long enough to promote wetland or aquatic processes
- Part 3: General Regulations, **Section 3.6 Environmental Features**

# Municipal Policy

## Environmental Reserve

- Municipalities are able to take ravines, floodplains, or unstable ground as an **environmental reserve** and allows for them to buffer around any body of water to allow **access** to the bed and shore or **prevent pollution**.
- "...incorporate reserve land into the County's green infrastructure inventory for public benefit and to ensure long term sustainability of the natural landscape."
- Coordinate with Alberta Environment and Parks to use all legislative tools to provide adequate buffers between development and a lake, river, watercourse, or wetland.



STRATHCONA  
COUNTY



# Water Authority Summary

Development on private land that contains surface water requires statutory approvals:

- ✓ *Water Act* – activities that could alter drainage
- ✓ *Public Lands Act* – permanence assessment for Crown claim determination
- ✓ *Environmental Protection and Enhancement Act* – activities that could pollute
- ✓ *Fisheries Act* – diversion, drainage or activities affecting fish habitat
- ✓ *Migratory Birds Convention Act* – activities that could affect migratory birds or their nests
- ✓ *Navigation Protection Act* – activities that could interfere with navigable water

**\*\* MGA Section 60(1) gives a municipality the right to participate in applications for any of the above approvals relating to water bodies or watercourses (Alberta's Wetlands: A Law and Policy Guide)**

# Resources

## Alberta Environment & Parks – Water Boundaries

<http://aep.alberta.ca/lands-forests/shorelands/water-boundaries.aspx>

## Alberta Environment & Parks – Wetlands

<http://aep.alberta.ca/lands-forests/shorelands/wetlands.aspx>

## Alberta's Wetlands: A Law and Policy Guide

<http://www.wetlandsalberta.ca/media/uploads/AlbertaWetlandsGuide.pdf>

## Caring for Shoreline Properties

<http://aep.alberta.ca/lands-forests/shorelands/lakeshores/documents/CaringForShorelineProperties-1999.pdf>

## On the Living Edge – Your Guide for Waterfront Living

Sarah Kipp & Clive Callaway, Alberta Edition, 2002