

1.0 Executive Summary

The Alberta public has become increasingly aware of the importance of ensuring that a delicate balance is maintained vis-à-vis the oft-competing economic requirements of developing a viable industry and the social/environmental concerns of citizens. While many are very protective of their own personal environment, they understand that there may be instances wherein it is necessary to place the needs of the greater whole in a preferential position to that of the individual. Thus, freeways may utilize more green space than many desire yet the need for public safety in a mass transportation mode is allowed to override the expectations of those who see the natural environment as sacrosanct. Similarly, the odours produced by intensive farming operations may be acceptable due to the importance of the agricultural industry to the Alberta and Canadian economy provided that they do not interfere with the observer's perceived quality of life.

The fact that these aspirations clash from time to time would appear to be almost inevitable given current technology and the apparent need for larger or more diverse operations in order to remain financially viable. Rural Canadians have dealt with the inherent contradictions of living in often beautiful settings but struggling to adapt to a changing, often expensive and more urbanized society that enjoys and respects the natural environment

without recognizing the challenges of remaining viable on the family farm.

The agriculture community in Alberta, like those in other Provinces, has faced a plethora of regulations and land use restrictions impacting their right to develop a viable agricultural business. This apparent patchwork of municipal and provincial requirements and the lack of consistency of application from one local jurisdiction to another was viewed by those in the business of agriculture as adding to their frustration of trying to develop a farming business that would be acceptable to the neighbours while viable economically. These frustrations were expressed frequently to the Government who recognized the need to find a solution that would level the playing field and enable the agricultural industry to proceed in a fair and consistent manner.

After months of deliberation and public consultation the Government decided to assign the responsibility of overseeing the fair administration of applicable legislation and regulation to the Natural Resource Conservation Board (referred to hereafter as the "NRCB"). The Board, established in 1991, had experience in reviewing the impacts of often large scale and diverse projects within the natural (non-oil/gas) sectors in order to ensure that they were deemed acceptable in terms of their social, economic and environmental impacts. While there is a framework of departments and agencies involved in various ways with regard to ensuring the appropriate management of

Alberta's resources and natural areas, the NRCB was chosen by the Government as that body most likely to achieve the aspirations of the various sectors involved while acting as a balancing agent and arbitrator of fairness in an oft-times volatile environment.

The NRCB was created in 1990 through the Natural Resources Conservation Board Act (proclaimed 1991) with the purpose "...to provide for an impartial process to review projects that will or may affect the natural resources of Alberta in order to determine whether, in the Board's opinion, the projects are in the public interest, having regard to the social and economic effects of the projects on the environment." (NRCB Act (RSA 2000 Chapter N-3). The Act has been subsequently amended over the years (1992,1997,2000-01-02-03).

The Government in 2002 through changes to the Agricultural Operation Practices Act (hereinafter referred to as "AOPA") impacted the role and mandate of the NRCB in a substantial way through permitting the approval of certain agricultural practices to be open to an appeal to the Board by any affected party. This decision to add this mandate to the NRCB greatly changed its focus and degree of activity, thereby also having a direct impact on both fiscal and human resources.

The Board has been far more active since 2002 in that its workload has jumped dramatically and its profile in the Alberta context has risen accordingly. Its mandate puts an onus on the NRCB Board (hereinafter referred to as the "Board") to hear appeals that are contentious and which draw the attention of various audiences. Whereas

the Board is expected to rule in a manner consistent with its mandate, it must also recognize the obvious and ongoing conflict between those trying to maintain (and/or grow) a viable agricultural business and those opposed to practices that they feel impinge either on the environment or on their ability and freedom to enjoy a reasonable quality of life. The fundamental nature of this dilemma or conundrum inevitably results in an atmosphere of uncertainty and tension vis-à-vis many of those matters wherein the Board is expected to make a ruling.

Whereas the Board seemed well-equipped to deal with matters that fell under the NRCB Act, and whereas the matters while significant did not produce the degree of animosity as has been evident since the post 2002 world, the current milieu in which the Board and NRCB functions is fraught with discontinuity between industry on the one hand and the public, non-governmental organizations, local governments and environmentalists on the other. The question to be resolved is whether or not the present legislative arrangement and administrative responsibilities serve the needs of this more diverse environment or whether the issues that have arisen since point to an underlying flaw that negates the goodwill of all parties. A further and obviously ancillary question is whether or not the contentious nature of the matters under review can ever be expected to be resolved other than by a body which has the mandate of hearing the issues, reviewing the legislation and imposing remedies that may be at times objectionable to all concerned.

At the end of the day, all of those who participated with us in this Review were of the opinion that changes were needed if the system itself was to be established on a base sufficiently strong

to withstand both the internal and external pressures endemic to regulating and balancing economic sustainability with the public will.

1.1 Recommendations

- 1 We recommend that the Government review the structural options as presented herein and determine the appropriate steps to bring about renewed confidence in the regulation of matters related to the current mandate of the NRCB.
- 2 We recommend that the mandate of the NRC Board be limited to that of an appeal body relative to matters under both the NRCB Act and AOPA.
- 3 We recommend that the roles of Chair and Chief Operating Officer be split with separate position descriptions for each and that the latter be re-named the Chief Executive Officer.
- 4 We recommend that the Government recruit someone to the role of CEO who has a suitable background in the key aspects of the NRCB/AOPA mandate.
- 5 We recommend that the Natural Resources Conservation Board be established, as a Board of 6-9 part-time members.
- 6 We recommend that a Chair of the revised Natural Resources Conservation (NRC) Board be appointed, with authority to oversee the responsibilities assigned to the NRC Board, including:
 - identifying members to serve on "Review" or "Decision" Panels
 - serving on panels
 - drafting decision reports
 - acting on those other related duties as assigned.
- 7 We recommend that the intent of the Government vis-à-vis the role of the NRC Board in commenting on or requiring changes to any practice that was in operation prior to January 1st 2002, and policy guidance to the NRC Board relative to the issue of "protect the right to farm" in terms of agricultural sustainability, be provided through the provision of a purpose statement in the AOPA.
- 8 We recommend that the NRC Board and Alberta Environment work towards streamlining and harmonizing their respective roles and responsibilities.
- 9 We recommend that a process of mediation be considered where appropriate prior to any appeal being heard by the NRC Board.
- 10 We recommend that a "Review" Panel be established at the request of the CEO of the NRC Agency to determine whether or not a decision of the Approval Officer should be sustained or whether or not the request for an appeal has

- sufficient merit to take the matter to an appeal.
- 11 We further recommend that when a matter is determined by a "Review" Panel to have sufficient merit to warrant the appeal being heard by the Board, that the NRC Board Chair strike a "Decision" Panel consisting of three NRC Board members with the NRC Board Chair having the right to serve on one of the panels to hear the matter.
 - 12 We recommend that the Minister provide the NRC Board with access to legal and other support services as required from time to time.
 - 13 We recommend that the NRC Agency take a leadership role on the development of Business Plans and performance measures, including a facilitated formal strategic planning session, a planned methodology of establishing goals, priorities and performance measures, and obtaining broad input into the business planning process.
 - 14 We recommend that the NRC Agency conduct a thorough review of its resources and the performance of each regional office and ensure that the resources are appropriately allocated and that the policies of the NRC Agency are being followed consistently. We also recommend that the CEO of the Agency consider the utilization of the services of the Office of the Chief Internal Auditor (and/or an experienced external consultant) to regularly examine its approval and compliance processes to ensure consistency of decisions across the Province.
 - 15 We recommend that the approval process be reconfigured in order to require the Director of Approvals to sign the approvals (recognizing the need for and acceptability of variance decisions under AOPA and the regulations), and that the current approval officer's job function be changed to an "Application Review Officer", who would be responsible for assisting the client through the process.
 - 16 We recommend that Government communicate the approved changes to the organization to all of the affected stakeholders in order to re-build relationships and confidence.
 - 17 We recommend that the Government enhance its research into the options for mitigating odours associated with confined feeding operations.
 - 18 We recommend that the ongoing review by the external consultant relative to the appropriateness of approval/application/compliance processes of the NRCB be continued and that consideration be given to how these standards might afford some degree of flexibility to account for variations based on the significant geographical and topological differences that exist.
 - 19 We recommend that the new agency (NRCA) develop processes to ensure that:
 - every field officer is trained in the application and interpretation of the AOPA and regulations in approving applications
 - generally accepted standards of the related professions be accepted or cause is shown

as to why it would deny the evidence provided by a professional engineer or consultant

- all applicants are made aware of the NRC Agency recommended and approved processes for retaining external expertise
- more detailed guidelines are provided to all offices and applicable staff as needed

- an ongoing review of its policies and processes is conducted with the input of all relative stakeholder groups being sought.

20 We recommend that the NRC Board engage an external consultant to conduct a follow-up review of the implementation of this Report within 9-12 months and that the results of such a review be shared with the affected stakeholders.