PEMBINA Institute

Landowners' Guide
to Oil and Gas Development

pembina.org/landowners

4th Edition
all new and revised

Section 2

Before the Project Starts

photo: Roberta Franchuk, Pembina Institute

2. Before the Project Starts

The best opportunity to influence the details of a project is before its application has been submitted to the Alberta Energy Regulator (AER). The pre-application stage is the time when you can try to minimize impacts to you and your family, as the project is more likely to be influenced at this stage. If the project is on your land, you should carefully consider the surface lease agreement to ensure that it reflects your concerns and demands, and captures what you have agreed upon with the company. If a project is not on your land, the company may not be required to directly notify you about its project, but you can still raise any concerns with the company and the AER before they happen.

What's in this section

Before a company can submit an application to the AER for an oil and gas project, it must notify or consult affected residents and landowners in the region as part of its participant involvement program. When you hear about a proposed project, you can use this guide to find out more about issues that may be important to you, so that you can articulate your concerns during the pre-application stage. The company must wait 14 days for those who were notified to raise concerns before it can submit its application to the regulator.

If you own or live on the land where the development is proposed, the company will approach you about surface rights access, which gives you some ability to negotiate additional measures beyond the requirements that the company must follow.

Depending on the type of project, you may or may not be notified of the project application, even if you believe that you are affected by the decision. If you were not originally included in the participant involvement program and weren't notified personally, make sure that you raise your concerns with both the company and the regulator, and submit a pre-application concern (see Appendix D for definition). The company must show the regulator that it has addressed (or attempted to address) your concerns.

In many cases, landowners/occupants and companies do manage to negotiate an agreement. If the company and those potentially affected by its operations are unable to agree before an application is submitted to the regulator, they can use the AER's alternative dispute resolution program to facilitate discussions. After the company submits its application, you can also raise your concerns formally through a statement of concern and ask the AER to make a decision on the application through a hearing.

The initial steps of the regulatory process are summarized in Figure 1.

At every step of the process, it is important to keep a paper trail of your interactions with the company, including when you found out about the project, when company representatives were on your land, and any complaints or statements of concern you file. Additionally, keep track of any costs you incur, including time spent researching the project application, time inspecting your property after a company has entered, and damages to fences or trees. An example cost chart is provided in Appendix C.

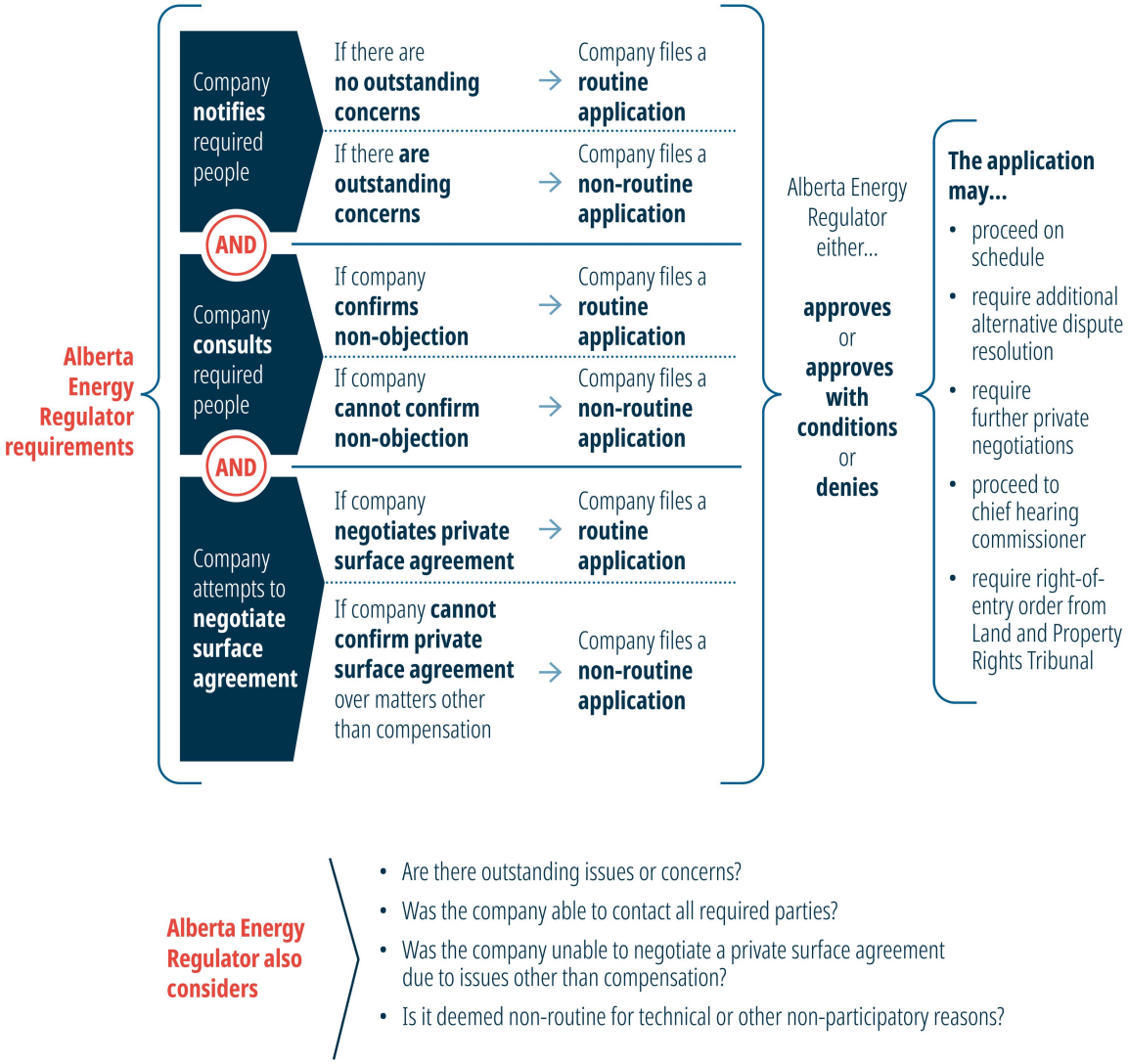

Figure 1. Notification and approval process

2.1 Public consultation, notification and involvement

The AER requires the energy industry to inform and consult all those "whose rights may be directly and adversely affected by the proposed application."[1] There is no formal definition of who may be directly and adversely affected, but the company will likely interpret this to mean those who are described in the minimum consultation and notification requirements, outlined in the AER's Directive 056 and summarized in Table 2 below. The AER encourages those who may or may not be directly affected to engage with the company early, ideally while the company

[1] AER, *Directive 056: Energy Development Applications and Schedules* (2025), section 3.1. AER directives are available at https://www.aer.ca/regulations-and-compliance-enforcement/rules-and-regulations/directives

is in the pre-application phase.[2] As a landowner, it is important that you maintain a certain degree of participation throughout the life cycle of a project.

Section 3 of Directive 056 sets out how a company is to consult or notify the public about a proposed well, pipeline or other oil and gas facility. There are further special requirements for notifying those living within the emergency planning zone of a sour gas well or pipeline (see section 6.2.1), set out in Directive 071.[3]

2.1.1 Required consultation and notification

For **consultation**, the applicant company (or the representative land agent) is obliged to conduct a face-to-face meeting or telephone conversation with landowners in the required consultation area. Consultation implies a two-way process: not just informing people, but also listening to their concerns and responding to them. The company must provide an information package about the proposed project and the relevant AER information brochures and packages as specified in Directive 056 (see section 5.2 for details; applicable to all types of development). When consulting, the company must also obtain a confirmation of non-objection, which does not necessarily have to be in writing. A surface rights agreement signed by landowners or occupants is a form of non-objection.

Notification involves, at a minimum, sending people and/or local authorities a written notice about the proposed project and an information letter from the AER. Additionally, the company must offer copies of relevant AER publications and brochures (including some of those supplied to the consulted landowners), and must be available either in person or by telephone to answer any questions. Companies will send the materials to the address on the land title. To ensure that you receive the proper notification, confirm that the address on your land title is up to date.

The company must wait 14 days after completing notifications to allow notified parties to raise concerns about the application before they can apply to the AER.

If the company does not receive the required confirmation of non-objection, or if they are aware of outstanding concerns from those they notified or from other people, they may still submit their application to the AER. However, they must apply through the non-routine application process and send a copy of the public notice of application directly to the concerned party. This provides an opportunity for the concerned party to file a statement of concern, as the AER will not make a decision on the application until the filing deadline in the application notice has passed.

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[2] AER, *Directive 056*, section 3.1.

[3] AER, *Directive 071: Emergency Preparedness and Response* (2023).

If there are no outstanding concerns, objections, or other technical reasons designated by the AER that require a company to file through the non-routine route, the company may submit the application as routine.

Table 2. Summary of the minimum consultation and notification requirements under the AER, outlined in Directive 056

Single well, multiwell pad, commercial or source water well (Category B well)[4] No hydrogen sulphide (H_2S)	
Consult	Landowners and occupants (about well site location and well site access) Residents within 200 m Residents within 300 m if single oil well with continuous flaring
Notify	Landowners within 100 m Freehold coal rights owners or lessees Crown disposition holders
Single well and multiwell pad (Category C well) Contains greater than 0.00 mol/kmol H_2S, release rate less than 0.3 m^3/s	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 100 m (about setbacks) Residents within 200 m or within the emergency planning zone radius (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Single well (Category D well) H_2S release rate between 0.3 m^3/s and less than 2.0 m^3/s	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 500 m (about setbacks) Residents within 200 m or within the emergency planning zone radius (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Single well (Category E well) H_2S release rate equal or greater than 2.0 m^3/s	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 1.5 km (about setbacks) Residents within the emergency planning zone
Notify	Freehold coal rights owners or lessees Crown disposition holders

[4] The well categories are determined by hydrogen sulphide (H_2S) content, H_2S release rate, and proximity to the public. These are outlined further in *Directive 056*, Table 1.

Proximity critical well (Category E well) H_2S release rate between 0.01 m^3/s and less than 0.1 m^3/s Within 500 m of an urban centre (project will be filed as a non-routine application)	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 100 m (about consultation on the setback) Residents within 200 m or within the emergency planning zone radius (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Proximity critical well (Category E well) H_2S release rate between 0.1 and less than 0.3 m^3/s Within 1.5 km of an urban centre (project will be filed as a non-routine application)	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 100 m (about setbacks) Residents within 200 m or within the emergency planning zone radius (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Proximity critical well (Category E well) H_2S release rate between 0.3 and less than 2.0 m^3/s Within 5 km of an urban centre (project will be filed as a non-routine application)	
Consult	Landowners and occupants (about well site location and well site access) Landowners within 500 m (about setbacks) Residents within 200 m or within the emergency planning zone radius (whichever is greater)
Notify	Freehold coal rights owners or lessees Crown disposition holders
Exempt single-well facility (Category B facility)[5] If deemed non-routine Less than 0.01 mol/kmol H_2S in inlet stream	
Consult	Landowner and occupants Residents within 300 m
Notify	Crown disposition holders

[5] Exempt single-well facilities are described in *Directive 056*, section 5.4.1.

Gas processing plant, multiwell gas battery, multiwell oil battery, multiwell bitumen battery, compressor station, gas fractionation plant (Category B facility) Less than 0.01 mol/kmol H_2S in inlet stream	
Consult	Landowner and occupants Residents within 500 m
Notify	Landowners and occupants within 1.5 km Crown disposition holders
Multiwell oil satellite, multiwell bitumen satellite (Category B facility) Less than 0.01 mol/kmol H_2S in inlet stream	
Consult	Landowner and occupants
Notify	Crown disposition holders
Injection/disposal facility (water or enhanced oil recovery), custom treating facility, straddle plant (Category B facility) Less than 0.01 mol/kmol H_2S in inlet stream	
Consult	Landowner and occupants Residents within 500 m
Notify	Landowners and occupants within 1.5 km Crown disposition holders
Gas processing plant, gas battery (single or multiwell), oil battery (single or multiwell), bitumen battery (single or multiwell), compressor station (Category C facility) Less than 1 tonne per day of sulphur inlet	
Consult	Landowner and occupants Residents within 1.5 km
Notify	Landowners and occupants within 2.0 km Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)
Oil satellite (single or multiwell), bitumen satellite (single or multiwell) (Category C facility) Less than 1 tonne per day of sulphur inlet	
Consult	Landowner and occupants
Notify	Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)
Gas processing plant, gas battery (single or multiwell), oil battery (single or multiwell), bitumen battery (single or multiwell), compressor station (Category D facility) More than 1 tonne per day of sulphur inlet	
Consult	Landowner and occupants Residents within 1.5 km
Notify	Landowners and occupants within 3.0 km Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)

Oil satellite (single or multiwell), bitumen satellite (single or multiwell) (Category D facility) More than 1 tonne per day of sulphur inlet	
Consult	Landowner and occupants
Notify	Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)
Gas processing plant (Category E facility) Sulphur recovery facilities	
Consult	Landowner and occupants Residents within 1.5 km
Notify	Landowners and occupants within 5.0 km Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)
Natural gas or oil effluent pipeline (Category B or C pipeline) Non-sour or sour service (up to 10 mol/kmol H_2S)	
Consult	Landowners and occupants on the right-of-way
Notify	Residents within 200 m (for larger pipelines) Residents within the emergency planning zone (if more than 0.1 mol/kmol of H_2S) Crown disposition holders
Pipeline tank farm, oil loading/unloading terminal, compressor station, pump station (Category B pipeline) Pipeline downstream facilities	
Consult	Landowners and occupants on the right-of-way Residents within 500 m
Notify	Landowners and occupants within 1.5 km Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)
Natural gas or oil effluent pipeline, high vapour pressure pipelines (Category D pipeline) Level 1–4 gas pipelines (more than 10 mol/kmol H_2S)	
Consult	Landowners and occupants on the right-of-way (and within 100 m of setback for Level 2, 3, 4 natural gas and oil effluent pipelines)
Notify	Landowners, occupants and residents within 500 m (and within 1.5 km for Level 3 or 4 pipelines, or within 200 m for high vapour pressure pipelines) Crown disposition holders Residents within the emergency planning zone (if 0.1 mol/kmol of H_2S or higher)

Note: This is a non-exhaustive summary of requirements relevant for rural residents and landowners. To ensure the accuracy of these requirements and for other consultation and notification requirements, refer to the most recent version of Directive 056.

2.1.2 Involvement by others

The notification radius for a given project is only a minimum; the industry itself is expected to determine if more people in the area have an interest and should be involved.[6] People living outside the consultation or notification radius, or beyond the proposed emergency planning zone (in the case of a sour gas–related project), may also have concerns. A company must try to deal with all questions, concerns and objections during the public involvement process before they file their application, even if the objections are from people considered outside the minimum radius or likely to not be considered directly and adversely affected.[7]

2.1.3 Addressing your concerns before the application

In order to receive expedited approval for a project, the company must confirm to the AER that all required parties have been consulted and that they have dealt with the concerns raised by those notified or consulted, as well as any others outside these groups whose concerns the company is aware of. If the company is not required to notify you at this stage of the process and isn't engaging with you in consultations, you can still submit a pre-application concern to the AER's alternative dispute resolution specialists.[8] This notifies the AER that there are outstanding concerns and should ensure that the company engages with you, all in the time period before an application is submitted to the regulator.

If there are any outstanding objections to their plans, or the company was not able to secure a surface lease or a confirmation of non-objection from the required persons, the company must disclose the nature of the objections to the AER, including a summary of the outstanding concerns or issues.[9] Additionally, the AER may require the application to be filed as non-expedited for technical reasons. If the company enters the non-expedited or non-routine process, the AER will not decide on the application until the statement of concern filing deadline has passed.[10]

Even if you have submitted a pre-application concern, you must submit a statement of concern when the company files their application, as the pre-application concern is not considered as part of the decision. The AER will then review the problems and decide whether to issue a licence, encourage a dispute resolution process to find a solution between the two parties, or hold a regulatory hearing. If the application was submitted as a routine application, the notice of

[6] AER, *Directive 056*, section 3.2.

[7] AER, *Directive 056*, section 3.

[8] AER, *Preapplication Concerns*. https://static.aer.ca/aer/documents/enerfaqs/PreapplicationConcern_FS.pdf

[9] AER, *Directive 056*, section 3.

[10] The statement of concern filing deadline is listed in the notice of application issued by the AER and may be up to 30 days from when the application was submitted.

application may not include a filing deadline for a statement of concern, and you should expect the AER to make a decision on the application quickly. If the AER makes a decision before you can submit your statement of concern, you can ask the regulator to reconsider its decision (section 10.1.10), or request a regulatory appeal (section 10.2).

For more information on submitting a statement of concern, see section 2.5.

2.1.4 Specific concerns to raise

If you think that operations could affect your water supply, you should ask the company to complete a comprehensive water test before development starts, with a test immediately after drilling has finished and six months after. These tests should be followed by documented annual tests and inspections of your water sources (sections 7.4.1 and 7.4.2). Specify what you would like to be tested to ensure that the testing covers the types of contaminants that may affect you. This will likely differ for each region, underlying geology, company and technology. Some basic tests may not be comprehensive enough to identify contaminants of concern, so it is best to do your research and ask for advice. If you are worried about health effects of air emissions from a nearby flare (section 7.2), you may be able to ask the company to install more efficient technology or capture additional gas that the regulator does not require them to conserve. For any concern, you should file a pre-application concern, followed by an official statement of concern once the application has been submitted.

People are sometimes concerned about the proximity of sour gas developments to their homes due to impacts to their health and safety or decreasing property values.[11] Companies are required to define an emergency planning zone around a sour gas development. The size of the zone depends on the concentration of H_2S in the gas and the release rate of the gas. Landowners and residents within the zone must be consulted and notified during the development phase, and must be notified if impacted during any sour gas event. Companies must also collect the names of susceptible residents so that they can be given early notification of any emergency and evacuated before a general evacuation is called (section 6.3).[12] See section 6.2 for more information on emergency response plans.

The AER has improved their proliferation requirements to limit excess sour gas developments. Before a company applies to construct a new pipeline or processing facility, it must contact other operators in the area to investigate whether it is feasible to upgrade a facility or form a

[11] Peter Boxall, Wing Chan and Melville McMillan, "The Impact of Oil and Gas Facilities on Rural Residential Property Values: A Spatial Hedonic Analysis," *Resource and Energy Economics* 27, no. 3 (2004). https://ssrn.com/abstract=894562

[12] For information on who is consulted and who is only notified, see AER, *Directive 071*, section 4.3.

partnership with existing operators instead of constructing a new facility.[13] During the consultation and notification period, you can ask the company how it plans to meet these AER requirements.

2.1.5 Notification after application submission

A public notice of application must be made for all applications submitted to the AER. Depending on the project, this may be advertised in your local newspaper or through some other form. The notice of application includes details and supporting documentation about the project such as the activity applied for, the legal land location, contact details for the company, and the deadline for filing a statement of concern. Most notices will be available to view using the AER's Public Notice of Application tool[14] for 30 days after the date the application was filed, even if a decision was made on the application before 30 days.[15] More complex projects, with applications under the energy resource enactments and specified enactments, are posted manually on the AER's Notices page.[16] A company is also expected to send the notice of application to anyone who has raised concerns about the project. You may also find additional information about a project before or after it is approved on the Integrated Application Registry.[17]

The AER publishes various notices and decisions on its website, and there are several places where you may find information about an application.

2.2 Direct negotiations with a company (for issues other than compensation)

As a landowner or member of the affected public, it is advisable that you try and resolve issues with a company in a non-adversarial manner, even if you don't agree with the proposed project. This is the best attitude to have when starting negotiations, and will increase your credibility with the AER should negotiations fail and alternative dispute resolution is pursued. Entering the conversation with a more adversarial approach may make it harder for you to successfully negotiate any terms you wish to include and potentially lead to a less-than-ideal outcome.

Depending on the type of development proposed for your land, you should closely consult the relevant section in this guide to ensure you fully understand the potential implications. (See

[13] AER, *Directive 056*, section 5.6.3.

[14] AER, "Public Notice of Application." https://webapps.aer.ca/pnoa

[15] Expedited applications, also known as routine applications, have a deadline for filing a statement of concern. However, the AER may make a decision before this deadline, including as soon as the application has been processed.

[16] AER, "Notices." https://www.aer.ca/applications-and-notices/application-status-and-notices/notices

[17] AER, "Integrated Application Registry." https://dds.aer.ca/iar_query/FindApplications.aspx

section 4.1 for oil and gas wells, section 4.2 for pipelines, or section 4.3 for batteries, gas compressors and other facilities). Appendix A has a series of questions for you to ask the company. You should be careful to consider the potential worst-case impacts, and try to negotiate with companies to ensure that these are minimized or negated.

Many times the company will approach you with a standard lease agreement, but you should take the time to negotiate additional clauses to protect yourself from impacts you identify. For example, if you are concerned about the impacts of increased traffic, you can negotiate to have the company plant trees along the road of concern to act as a windbreak and protect you from dust. If the company plans to flare, you can negotiate to ensure that the company gives you additional advance notice of each flaring event, or notice of flaring in the case where you otherwise may not be notified.

2.3 Signing the lease agreement

If you do not object to the project plan, or all your issues have been resolved and you decide to withdraw any objection, you, as a landowner, will be ready to sign the lease agreement. You would likely benefit by seeking advice from a lawyer or surface rights consultant before signing if one has not already been involved during negotiations. These expenses are usually considered reasonable, and you should ensure the company compensates you for these costs.

Be sure to read the agreement carefully and study the map of the survey that outlines the area where the company wants access. Never sign a lease without first reading the lease agreement, even if you have discussed the details with the land agent. You will be committing your property to a project that may have implications on your land for decades, so it is important to ensure, to the best of your ability, that the lease agreement protects the interests of your family and your neighbours and the health of your land for as long as the project will exist. See Appendix A to help ensure you are asking the right questions to protect your interests.

Before signing a lease, read section 9, “Compensation and Surface Rights Access."

A land agent is required to leave a copy of the proposed surface lease or right-of-way agreement with the owner for at least 48 hours (excluding holidays) for review before negotiations can resume.[18] An owner is defined as anyone who has the “right to dispose of an interest in land” and includes:

[18] See Alberta, *Land Agents Licensing Act*, RSA 2000, c. L-2, s. 17. https://open.alberta.ca/publications/l02

- the fee simple owner
- a person who has a registered interest in the land (includes a person who has an interest in Crown land)
- anyone who is in possession or occupation of the land[19]

However, a company may ask if you wish to sign a waiver, so that you can sign the agreement straight away. It is highly recommended that you take the 48-hour period to review the proposed agreement. If you sign the waiver and the agreement without taking the 48 hours to review it, you should be absolutely sure about all aspects of the lease agreement and should have resolved all issues. If you need more than 48 hours to study the agreement, advise the company and take it.

At least 48 hours after providing the proposed agreement, the company may apply for a licence from the AER and then a right-of-entry order from the Land and Property Rights Tribunal. Before the company applies for a right-of-entry order, the land agent must resume or attempt to resume negotiations after the 48-hour period.[20] However, in practice, the company may not attempt to resume negotiations with you. When applying to the tribunal, the company will refer to the last offer (not necessarily the last best offer) and the reasons why it was refused.

If there are outstanding concerns, the AER will encourage companies and landowners to use alternative dispute resolution to try to reach an agreement before filing an application. Even if the company files an application, it will take some time for the company to get a licence or a hearing, during which time negotiations can continue.

Remember that the agreement is written by the company and has their interests in mind, so you should study it carefully to make sure it meets your needs. There are different versions of this lease agreement and, even if it looks similar to one you have signed before, it is important to read it completely. If you do not agree with any clause, get advice (see below), discuss it with the land agent, and decide if you need to amend it or strike it out. A lease agreement should say exactly what the company is required to do, as this will reduce problems later. It would be wise to add an addendum to your agreement with additional clauses to address actions the company will be required to do as per your negotiations.

The lease agreement may include a clause that will allow the company to reduce the annual lease rent once surface structures have been removed from the site and the site reclaimed but before the reclamation certificate has been issued. The Surface Rights Act makes no provision for such a reduction in compensation, so you are not obliged to agree to such a clause.

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[19] See *Land Agents Licensing Act*, s. 1(f).

[20] Alberta, *Land Agents Licensing Regulation*, 227/2001, s. 9. https://open.alberta.ca/publications/2001_227

Some, if not most, agreements may have an additional "delay" clause that would allow the company to drill any time up to 365 days. This may mean that payment will not be paid until the company actually enters the property to drill.

Registering your agreement (Private Surface Agreements Registry)

Once a lease agreement is signed by both parties, it becomes a binding legal agreement on the current owner and all future owners of the land, if it is assigned to them.[21] The company will register the lease agreement with the Land Titles Office. You should make sure to register your written contract with the AER as a private surface agreement on the Private Surface Agreements Registry.[22] Although this will require you to disclose the amount of compensation you agreed to, the AER does not review the terms or details of the agreement unless there is a request for an order to comply by an owner or occupant of the land (known as a section 64 request). Additionally, if you enter into a new agreement with a company, you may also register it.

Confidentiality

It is recommended that you **not** agree to a confidentiality clause with the company in your surface rights agreement. Although the Responsible Energy Development Act[23] allows agreements to be registered on the Private Surface Agreements Registry even if a confidentiality provision exists,[24] such a clause will prevent you from speaking out about any concerns you may have, publicly or even just with your neighbours.

Getting advice

If you, as the landowner or occupant, are uncertain about any of the terms of the lease, it is important to get advice; you can contact your lawyer, the Farmers' Advocate Office, a landowner or surface rights consultant, Action Surface Rights,[25] or other landowner groups or associations in your area.

If you have outstanding concerns about the well site or operation, you should not sign the agreement and should contact the AER (Table 1). The company must have the landowner's

[21] Land may sometimes be sold without including the rights associated with the surface lease. In this case, the former landowner, not the new purchaser, receives the surface rights payments from the company.

[22] AER, "Private Surface Agreements Registry." http://www.aer.ca/applications-and-notices/private-surface-agreements-registry

[23] Alberta, *Responsible Energy Development Act*, SA 2012, c. R-17.3, s. 64(2). https://open.alberta.ca/publications/r17p3

[24] AER, "Private Surface Agreement Registry." https://www.aer.ca/applications-and-notices/private-surface-agreements-registry

[25] Action Surface Rights, https://actionsurfacerights.ca/

approval of the location before it can obtain a drilling licence from the AER without applying for a right-of-entry order, so the AER needs to know if there are problems. Companies must operate in an environmentally and technically acceptable manner, interfering as little as possible with the use of the land, but AER staff cannot ensure this unless they are alerted to potential problems by the landowner.

2.3.1 Enforcing the lease

If an issue arises from the surface agreement and you believe the company has failed to comply with a term or condition in your agreement, you can file a private surface agreement with the AER (described above), and submit a section 64 request under the Responsible Energy Development Act. After receiving the request, the AER will forward a copy to the company, who will be asked to respond. If the AER determines that the company has not complied with the conditions of the agreement, the regulator can order the company to comply.[26] For more information, see the AER's EnerFAQ on how to register a private surface agreement.[27]

If a company fails to comply with the terms of the lease agreement and you do not have a registered private surface agreement, you should still inform the AER. This includes telling the AER if the company ignores a special condition that was agreed to in writing between you and the company. Even if the complaint falls outside the jurisdiction of the regulator, they will help determine whether the company is in compliance with the regulations and what route is best to pursue your concerns with the company.

2.4 Alternative dispute resolution

2.4.1 Working with the Alberta Energy Regulator

If you need help with negotiations, you can ask the AER to facilitate your meetings with land agents or company representatives. They have trained staff who can act as facilitators at everything from informal "kitchen table" meetings to more formal discussions between you and the company.

If direct negotiations fail, parties can use the alternative dispute resolution (ADR) process.[28] The ADR process is an alternative to the hearing process, which can be expensive and require a considerable time and financial commitment from all parties. The process may be used for any

[26] Alberta, *Responsible Energy Development Act*.

[27] AER, "How to Register a Private Surface Agreement – EnerFAQ." https://www.aer.ca/understanding-resource-development/enerfaqs-and-fact-sheets/enerfaqs-private-surface-agreement

[28] ADR Institute of Alberta, https://adralberta.com/directory/

disputes related to energy development in Alberta (projects under the jurisdiction of the Canada Energy Regulator [CER] use a similar process). The ADR process may involve facilitation, mediation, negotiation, arbitration or a combination of these strategies (see Appendix D for definitions). The ADR process isn't limited to issues within the jurisdiction of the AER. In some cases, it can facilitate discussion and resolution on a broader range of issues than the AER typically regulates, such as compensation. The process can be used at any point in the project life cycle, from the project planning phase until after project completion. Typically, the ADR program is voluntary, unless required by hearing commissioners after an application has been recommended for a hearing.

The AER will attend ADR meetings to facilitate and provide regulatory and other information, or act as mediators or negotiators. Mediation is helpful when situations are too complicated or controversial to be settled through facilitation alone. Mediation is usually provided by trained AER mediators; however, in some cases the AER may recommend, or you can request, a neutral third-party mediator who has experience with the energy industry. Those involved in a dispute can select an external mediator from the ADR Institute of Alberta.[29]

Before full mediation through the ADR program is pursued, negotiating parties should consider engaging in a preliminary alternative dispute resolution (PADR) meeting. This preliminary meeting will decide who will take part in the discussions, the issues to be discussed, how the mediator will be selected, the role of advisors (such as AER staff, lawyers and technical experts), what options are available to resolve the dispute, and how costs will be allocated. One of the principles of the PADR program is that the industry participants should cover the nominal costs of the preliminary meeting, including direct third-party costs incurred by landowners and public. Anyone considering using PADR or ADR should read the AER's guidelines.[30]

> The AER's alternative dispute resolution process has existed in some form or another since the early 2000s.

If you want to work in good faith to resolve issues with the company, but it seems that negotiations may be lengthy and involve considerable time reviewing and writing documents, it is not unreasonable to ask the company to provide partial or even full compensation. When a company reimburses some or all of the costs, individuals and groups can be more effectively involved in the process, and the company demonstrates that it is willing to cooperate and shoulder the responsibility for inconveniencing landowners.

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[29] ADR Institute of Alberta, "Directory of Mediators, Arbitrators, Adjudicators." https://adralberta.com/directory/

[30] AER, *Manual 004: Alternative Dispute Resolution Program and Guidelines* (2020). https://www.aer.ca/documents/manuals/Manual004.pdf

Although there are no formal cost recovery guidelines, the AER works with parties to determine cost recovery. You should ensure that you agree in writing with the company what they will cover for costs. If travel is involved, mileage, meals and accommodation costs should be recorded. Where possible, receipts should be obtained for all the expenses, and you should keep track in writing of the time needed for all discussions, meetings or research.

You may want to get a sense of the company's past compliance history, as a good track record may give you more confidence in the outcome of negotiations and the project as a whole. You can view their publicly available compliance record on the AER's Compliance Dashboard.[31] The compliance dashboard will include more recent incidents under the AER, but you may need to contact the AER inquiries line to get a more complete history. You can also contact Alberta Environment and Protected Areas, which may be able to give you a summary of a company's environmental compliance record before the creation of the AER. Although the AER boasts a high compliance rate,[32] much of the enforcement system relies on self-reporting, and it is not unheard-of for companies to breach, unintentionally or otherwise, rules and requirements.

It is important to know that the ADR process is confidential. This allows parties to speak freely and to determine appropriate solutions to the issues at hand without being hampered by concerns about confidential information being shared outside the group. However, this may limit your ability to speak about some of your issues in public, including in subsequent hearings related to the conversation, or to share with your neighbour for their conversations with the same company. All parties to the ADR process must agree to allow any resolutions from the process to be unbound by the ADR confidentiality clause in order for you to speak publicly about it.[33]

If the application has been submitted, yet you feel that a company is not seriously trying to minimize potential impacts, you can ask the AER to hold a hearing by submitting a statement of concern after the application has been submitted to the regulator (sections 2.5 and 10.1). If a hearing is recommended, but the hearing commissioners feel that you have been less than cooperative in trying to resolve the issue outside of a hearing, they have the power to deny you cost reimbursement for the hearing process. Therefore, you should make a reasonable effort to address your concerns through negotiation or the ADR process before deciding to pursue a hearing.

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[31] AER, "Compliance Dashboard." http://www1.aer.ca/ComplianceDashboard/index.html

[32] AER, "Data Hub" https://www.aer.ca/data-and-performance-reports/data-hub

[33] Alberta, *Alberta Energy Regulator Rules of Practice*, 99/2013, s. 7.7. https://open.alberta.ca/publications/2013_099

2.4.2 Working with the Canada Energy Regulator

If there are difficulties concerning an interprovincial pipeline's location, timing and method of construction, or protection of the associated land, you and the company can use the CER's alternative dispute resolution process (which is similar to the AER's ADR process, discussed above).[34] You and the company can also use this dispute resolution process, if you wish, to discuss the amount of compensation to be paid for the use of land or damage caused by construction or maintenance of the pipeline. If you do not wish to use the ADR process for a compensation dispute, you can submit a request to the Commission of the CER to adjudicate your dispute, under Part 6 of the Canadian Energy Regulator Act. See the CER's *Land Matters Guide* for further resources on the CER's role in land-related compensation disputes.[35]

2.5 When the application is filed: submitting a statement of concern

If negotiations have failed and you want the AER to formally address your concerns (other than compensation) after the company has submitted their application, the next step is to submit a statement of concern to the AER. If the AER is aware of any outstanding concerns, the company is required to submit their application through the non-expedited process, and the AER will not make a decision on an application until after the filing deadline outlined in the notice of application has passed.[36] The notice of application will also outline other relevant information about the proposed project and what you specifically need to address in your statement of concern. Companies are expected to send the notice of application to anyone who has outstanding concerns from the pre-application process. For example, anyone who submitted a pre-application concern should receive a notice of application. It is important for you to submit a statement of concern at this stage of the process if you want to trigger a formal process and ensure your concerns are still considered by the AER, because the regulator is very unlikely to recommend an application for a hearing if no statements of concern have been submitted.

When submitting a statement of concern, you need to concisely explain why you believe you are both directly and adversely affected by the regulator's decision, the nature of your objection to the application, and the outcome you are looking for.[37] To try and ensure that the AER accepts your statement of concern and your request for a hearing, you should clearly establish the

[34] CER, "Alternative Dispute Resolution." https://www.cer-rec.gc.ca/en/consultation-engagement/alternative-dispute-resolution/

[35] CER, "Land Matters Guide." https://www.cer-rec.gc.ca/en/consultation-engagement/land-matters-guide/index.html

[36] Notice of applications are found on the AER website and may also be issued in newspapers in your area.

[37] Alberta, *Alberta Energy Regulator Rules of Practice*, s. 6(1).

connection between the concern you'd like addressed and how it may negatively impact you. It is helpful to be precise and to "spell it out" for the AER. What may seem like an obvious connection between the project and the issue of concern won't necessarily be obvious to those reviewing your statement of concern, and the AER won't consider facts that aren't brought before it. Include all relevant details to establish why the project or a specific element of a project is connected to the concern you are expressing. For example, if you are concerned about flaring, it may help to include a map that outlines where the potential flare stack may be located in relation to your house, where you spend time in your garden, where animals are located, or where your children play outside. If you believe that the close proximity of the project to where you spend your time will exacerbate a health issue, clearly outline this.

In addition to the details about your concern, you need to include other relevant details, such as your contact information and your location relative to the location of the proposed energy activity. It is important to submit your objections within the filing period. The AER will consider your statement of concern when reviewing the application, and if your statement of concern meets the requirements, determine whether to hold a hearing.

You can review recent participatory and procedural decisions from the AER on their website. You will likely only find decisions on statements of concern that have not been recommended for a hearing. However, these decisions may give you a good sense of how the AER decides who is directly and adversely affected as they briefly outline the reasoning for not recommending an application for a hearing.[38] Currently, the AER has a fairly narrow interpretation of who is directly and adversely affected — typically people who are not the direct landowners or immediately next to a project have a difficult time establishing that they are directly and adversely affected.

Statements must be submitted in writing; calling the regulator does not count as submitting a statement. Statements of concern must be submitted individually by each concerned party or as a single submission on behalf of a group by a designated representative.

You must submit your statement within 30 days of the notice of the application or by the date specified in the notice. The AER must wait for the period for filing a statement of concern to pass before deciding on a project, unless the project is submitted as a "routine application." Companies are allowed to file a routine application if they do not require regulatory leniency and if there are no outstanding concerns.[39] If the regulator does not receive any statements of concern, they likely will not hold a hearing. If the regulator has already made a decision on an

[38] AER, "Participatory and Procedural Decisions." https://www.aer.ca/applications-and-notices/application-status-and-notices/decisions/participatory-and-procedural-decisions

[39] *Alberta Energy Regulator Rules of Practice*, s. 5.2(2), sets out the types of applications for which the AER does not need to wait for the statement of concern filing deadline to pass before rendering a decision.

application, then they may not consider a statement of concern, so it is important to submit your statement as soon as possible.[40]

Any statement of concern you submit will become part of the public record, so you should not include personal, medical, financial, or other information that you wish to remain confidential. If you have information that supports your case of being directly and adversely affected but wish to keep it confidential, it may help for you to indicate that such relevant information exists, note its confidentiality, and state that you would be willing to reveal it to the regulator at a later time. You may wish to contact the AER's stakeholder engagement team to determine the best way to include this information.

Consult the AER's EnerFAQ on expressing your concerns for more information about statements of concern.[41]

If the project is already approved and it is too late to submit an official statement of concern, you can submit a request for a regulatory appeal or request a reconsideration of a decision. Figure 2 shows the AER's appeal process. Additional details can be found on the AER's website under "Regulatory Appeal Process."[42]

Under the Responsible Energy Development Act, the AER has the authority to reconsider its decisions although it is not obliged to do so.

[40] Alberta, *Alberta Energy Regulator Rules of Practice*, s. 6.2(1)(c).

[41] AER, "Expressing Your Concerns – EnerFAQ." https://www.aer.ca/understanding-resource-development/enerfaqs-and-fact-sheets/enerfaqs-expressing-your-concerns

[42] AER, "Regulatory Appeal Process." https://www.aer.ca/applications-and-notices/regulatory-appeal-process

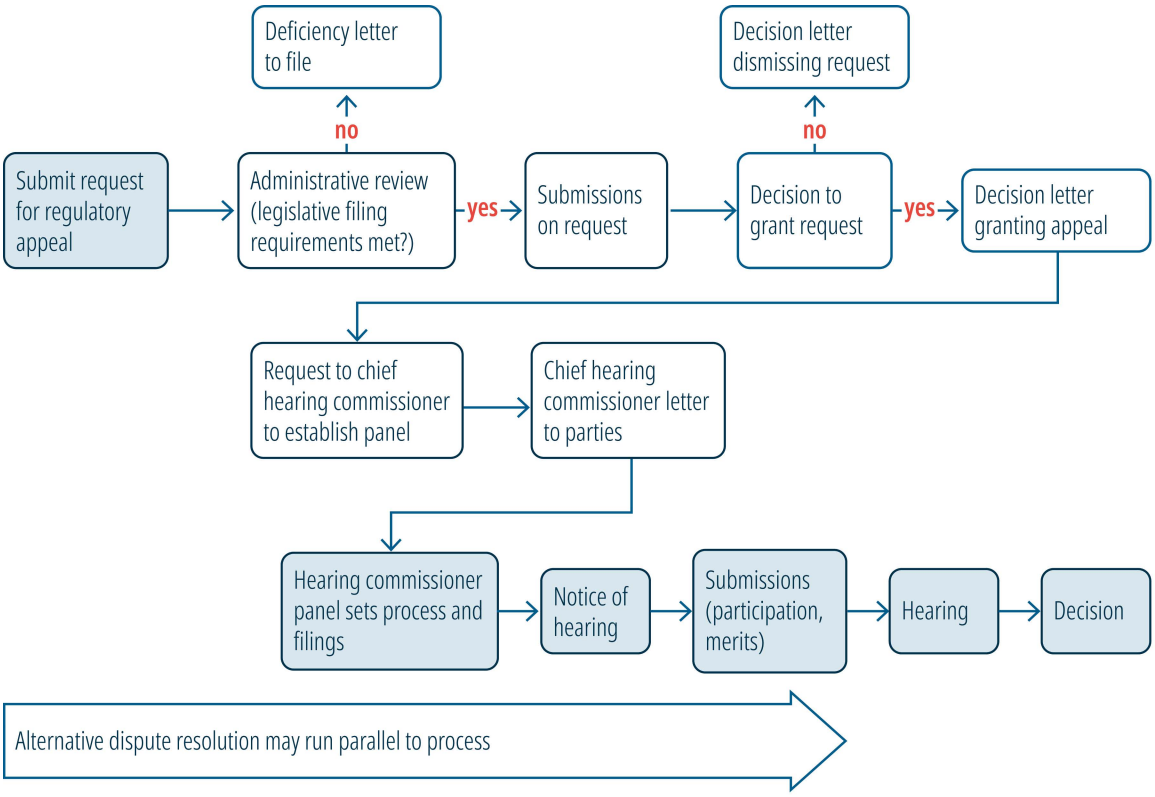

Figure 2. Alberta Energy Regulator's appeal process

2.6 If all dispute resolution fails

Sometimes it is not possible to reach agreement, even through a combination of negotiation, facilitation, or mediation. If this is the case, the company or landowner can ask the AER to consider holding a hearing (section 10) or apply for a right-of-entry order through the Land and Property Rights Tribunal (described in more detail in sections 9 and 10.3.1).

If you are thinking about asking the regulator to hold a hearing, you need to have strong evidence of the damage that an energy development could potentially cause you or your family, or reasons why it is not in the public interest to allow the project to proceed. While the AER has rarely prohibited a development, it may attach conditions to licences that address concerns that the hearing panel had with the application. You will likely get a more satisfactory resolution of problems if you try to negotiate and then, if necessary, ask the AER to facilitate or arrange mediation through the ADR process, rather than do nothing and simply refuse access.

Occasionally a landowner may be so strongly opposed to a proposed development that they are unwilling to attempt negotiation. If that is the case, it is important to consider the implications. If a landowner refuses to negotiate and makes it clear from the start that “no means no,” the company will inform the AER when they submit their application. The AER may suggest that the

landowner should negotiate with their facilitator or with a third-party mediator, but if this is still unsuccessful, the company may ask the AER for a hearing. If a landowner has not tried to resolve the issues through negotiation or explained to the AER why any anticipated adverse effects cannot be handled through negotiation, the AER may dismiss the objection and approve the application without a hearing. If a hearing is triggered, the hearing panel may not grant costs to the landowner if they believe that the issue should have been dealt with through the ADR process. Thus, before taking this stand, it is crucial for a landowner to consider their chances of securing all their demands at a hearing, given the fact that the AER has made very few decisions that actually prohibit development.

If, after weighing the above considerations, you do decide to fight an application, you will need to make a strong case. You may also want to garner the support of as many surrounding neighbours as possible. Each person should write a clear statement of concern to the AER, sending a copy before the deadline to the AER, as outlined in the notice of application. Copies should also be sent to the company proposing the development, the relevant member of the legislative assembly, the energy and environment critics for the opposition party, and relevant media. If the application is non-routine (for example when there are outstanding issues that the operator has identified), you should have 30 days to submit a statement of concern, in which you can suggest that the project be considered by a hearing. The AER has full discretion for when a hearing is triggered, but is most likely to decide to trigger a hearing when one or more parties considered by the regulator to be directly and adversely affected make their case that the issue is best resolved by hearing.

Adequate preparation for a hearing, including obtaining legal counsel and arranging appropriate technical expert witnesses, is essential; section 10 provides more information on hearings.

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