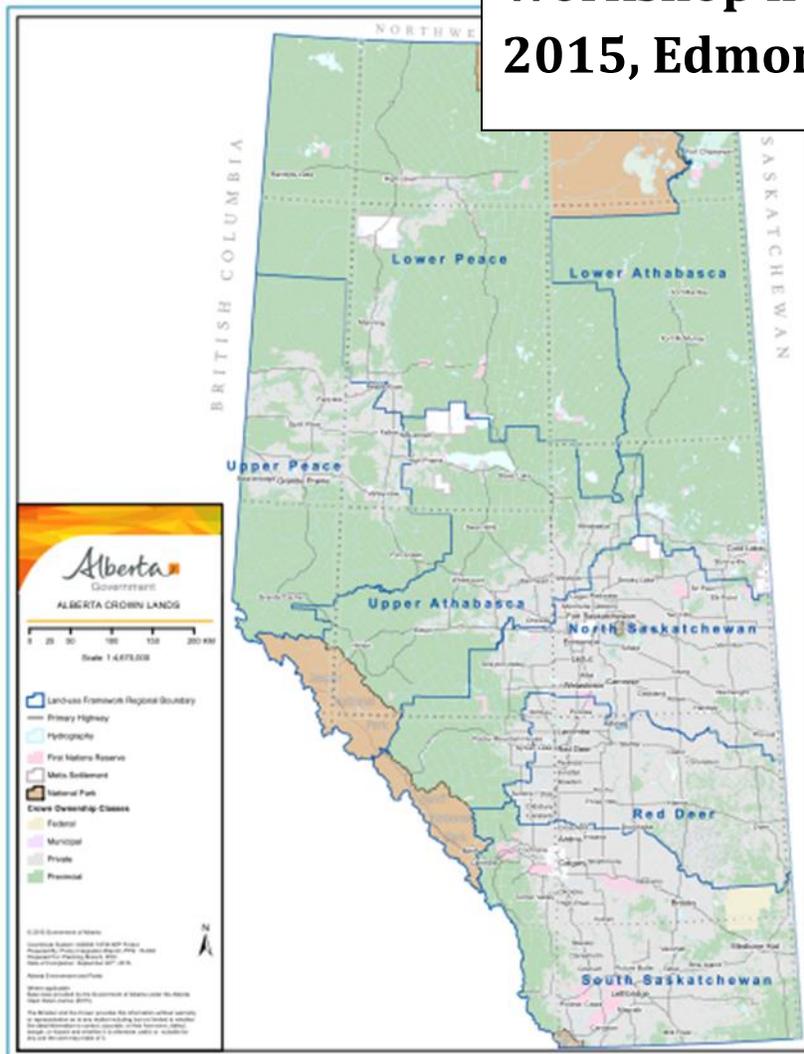


# *Public Lands, Private Conservation: Bridging the Gap*

**A Summary Report on the  
Workshop held October 20,  
2015, Edmonton, Alberta**



## Acknowledgments

The organizers wish to thank the following sponsors of the workshop. Sponsorship does not represent an endorsement of any of the views expressed at the workshop or in the background paper prepared for it.



Alberta Biodiversity Monitoring Institute



Canadian Boreal Forest Agreement



The logo for Teck, featuring the word "Teck" in a large, bold, black sans-serif font.

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## **Workshop Summary Report**

### **“Public Lands, Private Conservation: Bridging the Gap”**

**Workshop date: October 20, 2015**

#### **Introduction**

The workshop entitled “Public Lands, Private Conservation: Bridging the Gap” was organized by the Alberta Association for Conservation Offsets (AACO) and held at the Holiday Inn Express in downtown Edmonton on October 20, 2015. The purpose of the workshop was to consider whether new legal or policy tools are needed to enable private conservation actions, and secure the outcome of those actions, on public lands in Alberta.

In preparation for the event a background paper was circulated to prospective attendees several days earlier. There were approximately seventy-five attendees at the workshop from a wide variety of sectors of Alberta society and economy. There were several attendees from the Alberta government, as well as at least one from each of the British Columbia government and the federal government. The day was one of vigorous, informed discussion, which this report humbly seeks to capture. The leadership of AACO will be following up with Alberta Environment and Parks to identify priority issues which AACO and other interested parties might work on further.

## *Public Lands, Private Conservation: Bridging the Gap*

### Final Program

Tuesday, October 20, 2015  
Penthouse, Holiday Inn Express  
10010 – 104 Street, Edmonton, Alberta

ITEM	PRESENTER	DURATION	START
1. Welcome and Introductions	Robyn Jacobsen (facilitator) & Dave Poulton (Alberta Association for Conservation Offsets)	20 min.	8:30
2. Introductory Comments from Government of Alberta	Shannon Flint, ADM, Policy Division, Alberta Environment and Parks	15 min.	8:50
3. Review of the current situation, the challenges, and apparent challenges, opportunities, and implications (Poulton, Weber)	Dave Poulton & Marian Weber (Alberta Innovates Technology Futures)	40 min.	9:05
4. Property Rights and Biodiversity Offsets on Public Lands	Carla Gomez Wichtendahl (University of Ottawa, Faculty of Law)	30 min	9:45
5. BREAK		15 min.	10:15
6. Perspectives from the extractive sector	Scott Grindal (ConocoPhillips Canada)	30 min.	10:30
7. Perspectives from the forestry industry	Gord Whitmore (DMI)	30 min.	11:00
8. The role and potential role of land trusts	TBA	30 min.	11:300
9. Lunch (provided)		60 min	12:00
10. Small groups discussions on set questions: a. Under what conditions should private parties be allowed to access and secure public lands for conservation? b. What tools might be used for this		100 min.	1:00

<p>purpose and how?</p> <p>c. What are the implications and resource needs of each of those tools?</p> <p>d. Knowledge gaps?</p> <p>e. Key recommendations for future research or pursuit of discussion?</p>			
11. BREAK		20 min.	2:40
12. Reporting Back & Plenary Discussion		60 min.	3:00
13. Next steps and working group self-organization		30 min.	4:00
14. WRAP UP		10 min.	4:30

## Morning Presentations

### 1) **Shannon Flint, Assistant Deputy Minister, Policy Division, Alberta Environment and Parks**

Ms. Flint welcomed participants on behalf of the Government of Alberta. She expressed the GOA's continuing interest in the development of conservation offset framework as part of effective environmental policy. The GOA has used the offset approach previously with respect to carbon management, which involved a system of tradable credits. We are now seeing the approach being applied through the new wetlands policy. The early action program has recently recognized a project by ConocoPhillips for habitat-based offset credits if and when an applicable system is developed.

Conservation offsets have the potential to complement other tools as the GOA implements the Land Use Framework and works to integrate many resource management objectives. We see that in the use of restoration in new parks in the Lower Athabasca region, and in the recent announcement of protection for the Castle wilderness. We also see regulators invoking offsets, as in the case of Shell's Jackpine oil sands mine expansion.

While we have some pilot projects, there are challenges in moving from pilots to policy. Pilots, however, allow us to identify and resolve barriers to policy. "I am pleased to see the diversity of skills and experience in this room; thank you for your contributions in helping the Government of Alberta move forward on conservation offsets."

### 2) **Dave Poulton, Executive Director, Alberta Association for Conservation Offsets and Principal, Poulton Environmental Strategies, and Marian Weber, Environmental Economist, Alberta Innovates Technology Futures**

**Mr. Poulton** reviewed the main points in the background paper he prepared for the workshop. There is a rising expectation that private land and resource developers will contribute positively to the pursuit of conservation objectives. One source of this is the interest (both voluntary and from official sources) in implementing conservation offsets.

Where conservation activities are pursued for the purposes of offsetting development, that raises a couple of requirements that might not otherwise be of concern. Firstly, the outcomes of the action must be clearly be attributable to particular actors in order that those actors can claim the offset credits. Secondly, the doctrine of additionality in offsetting requires that the conservation outcomes be something greater than would have occurred without the offsetting. That means that a private party must undertake action which public authorities would not do, and this may create tensions between plans of public authorities and private parties.

Mr. Poulton raised the question of whether our existing legal and policy tools are adequate to facilitate this on a routing basis on the sixty percent of the Alberta landbase that is public lands. Those legal tools developed to facilitate conservation on private land (acquisition of fee simple title and registration of conservation easements) are generally not available on public lands. One possible exception to this is the conversion of public lands into title, which would allow a conservation easement to apply. That mechanism has rarely been used, however, and will likely require a much more full policy framework if it is to become readily available.

With respect to allocating the use of public lands, Alberta has a well-developed system of dispositions, reservation and notifications. These are primarily designed, however, to facilitate resource use and development, not conservation. While they might be adapted to apply to some conservation activities (for example, the use of a miscellaneous surface lease), this would require the active involvement and initiative of public agencies, which likely requires a more full policy framework.

**Dr. Weber** reviewed a series of considerations which may impact on the use of conservation offsets on public lands.

She noted that conservation activities on public lands compete with a broad range of other public land uses and objectives (for both surface and sub-surface objectives). We need to consider compensation for disturbed offsets. This raises the question of whether we wish public authorities to reconcile and prioritize conflicting interests in land or whether we want to let market mechanisms do so.

Environment Canada's Framework for Conservation Allowances notes that provincial land use plans may designate areas for conservation, which can then serve as a focus for conservation banking. Under what circumstances does that make sense – why not just create a park? - , asked Dr. Weber.

She urged us to consider the advisability of permanent vs. temporary offsets. There are institutional challenges with permanent protection, such as the difficulty in protecting offsets from future disturbance by sub-surface mineral development. She also noted that we are dealing with dynamic ecosystems, where permanence of condition is not natural. We need to consider, therefore, how temporary offsets might operate.

Dr. Weber noted that offset credits may be generated by either avoiding loss or by undertaking restoration, both of which carry questions. For restoration there is often a significant timelag between the conservation action and the intended benefit being realized. There is also a risk of failure both within and beyond this time lag. We must consider who bears the risk of failure of restoration. We must also acknowledge that even successful restoration is likely to result in a net loss due to the time lag and the slow process of convergence with natural conditions.

She said that we must look at offsetting within the context of cumulative effects. Are we seeking landscape level outcomes or simply project level? Landscape level objectives will determine the baselines against which we measure the additionality of offset measures.

Dr. Weber referred to two alternatives to the standard offset model. She suggested that a system of tradable forest disturbance permits could operate as a kind of cap and trade system, where transferable permits could be issued each year up to a desired threshold. She also suggested that a charge on development could help control ecosystem loss, but raised the question of how we would set the optimal price and how such a price would translate into restoration.

She offered the following criteria to assess any system for limiting the impact of development on the landscape: efficiency, environmental outcome, political feasibility, and ease of administration.

### 3) Carla Gomez Wichtendahl, Ph.D. Candidate, University of Ottawa

Ms. Gomez' research focuses on the legal implications of implementing and operating a potential biodiversity banking system on Alberta's boreal forested lands.

Her presentation analysed the property rights needed to implement and operate such a system on public lands. The presentation addressed two questions: a) whether private entities (such as the regulated forestry industry) would be considered owners of biodiversity banks implemented on public lands, and b) whether private entities would have sufficient rights to transfer and trade biodiversity credits produced through biodiversity banks.

In order to answer the first question, different types of forest tenures were analyzed. The presentation showed, for example, that conservation actions alone would not be permitted as the basis to implement biodiversity offsets leading to biodiversity banks on public lands, because all current forest permits, and the Forests Act require forestry operators to harvest to a target amount. However, legal tenures that combine harvesting and conservation actions might qualify as the basis to create biodiversity banks on public lands. Within this context, legal mandates such as progressive reforestation could be used as long as they are additional, meaning that they produce additional ecological, financial, and legal benefits to those mandated or required by law.

The rights needed to implement biodiversity banks on public lands would depend, therefore, on the fit between the Forests Act, forestry disposition and operation and the regional plan under the *Alberta Land Stewardship Act*.

However, there are potential complications to implement biodiversity offsets/banks on public lands and to ensure their permanence. These complications come, for example, from the need to negotiate access to the public land base and third parties with preferred rights (i.e., subsurface mineral rights). We can look to New South Wales BioBanking system to address these challenges.

To answer the question of whether private entities would have sufficient rights to transfer and trade biodiversity credits produced by biodiversity banks implemented on public lands, the presenter started by questioning whether a transferable biodiversity credit would be considered a personal or real property right. Ms. Gomez argued that it was likely that biodiversity credits would be considered a real property that runs with the land.

ALSA might provide a potential way to authorize the transfer biodiversity credits through section 47(3)(c) and (e) of ALSA (i.e., stewardship unit). This, would apply only if biodiversity credits, specifically the services provided by the offset, were considered stewardship units, which can be basically "anything" including an "activity," that is suitable as a stewardship unit as pursuant to s. (47 (3) (e), to counterbalance the negative impacts of an activity.

The presentation showed that there is still the need to clarify in regulation who owns a credit produced on public land: the government, the forestry land manager, or a third party holding specific rights for this activity? Also, how is a transfer of credits to be legally carried out, and by who?

In sum, the conditional answer to the research questions is that, at least from the property rights perspective, Alberta's current legal framework does allow for a biodiversity banking system but many

uncertainties exist and require clarification. We can still contribute to the development of such a system to make it as good as it can be.

**4) Scott Grindal, Senior Environmental Co-ordinator, Environmental Stewardship,  
ConocoPhillips Canada**

The interest of some oil and gas operators in offsets is based on more than philanthropy. There is a business case for offsets: corporate reputation, social license, employee retention, all improving access to resources. Several companies have indicated interest in offsets, or have made corporate commitments consistent with the use of offsets.

The oil and gas interest in locating offsets on public lands is founded in part on the wish to limit impacts to the regions in which they operate, and the emerging regulatory interest in keeping disturbance below defined thresholds (biodiversity management frameworks, landscape management plans, caribou range plans) . These dictate that the development impact and the offset be placed on similar landscapes in some proximity, and often there are no private lands which fit those criteria. Offsetting on public lands also allows companies to be responsive to the interests of First Nations within the regions in which the companies operate.

As to how offsetting may be undertaken, habitat restoration has included mounding and replanting seismic lines. In addition, caribou restoration may include non-habitat measures such as fencing for predator enclosure or maternity pens. Offsetting might also include investing in research.

In the Lower Athabasca region there is a question on the relationship of offsets and the new conservation areas prescribed by the regional plan. Are those new areas to be considered offsets in themselves, or is offsetting to be used to complement them in some way?

Offsetting in itself, and on public lands, faces several challenges. Which impacts are to be offset, and how does this reflect our balancing of different land-use values? The existing tenure system is based on a “use it or lose it” regulatory requirement to develop, which limits flexibility. Often different government agencies have conflicting mandates. The resulting uncertainty results in project delays and the risk of stranded assets. There are questions around permitting, liability, the security of restored sites and the management of multiple land uses. In attempting to use offsets to manage multiple values we need to decide appropriate currency. The doctrine of additionality requires us to distinguish between routine stewardship and the extra measures that count as offsets.

Mr. Grindal outlines some outcomes which he sees as desirable. Third parties (brokers and bankers) should manage the supply of offsets, as it is not the core business of resource developers. Clear regulatory direction from both the federal and provincial governments would incent conservation action. Fairness dictates that comparable rules apply to all land users, not singling out a particular industry.

In discussions after his presentation Mr Grindal said that the regulatory process could help facilitate and enable offsetting, but that the offsetting process should be managed on a provincial basis in line with provincial priorities. There are opportunities to use cap-and-trade concepts, such as thresholds, particularly in the case of caribou.

**5) Gord Whitmore, Land Management Superintendent, Daishowa-Marubeni International Ltd.**

Over two thirds of the 39 million hectares classified in Alberta as green zone is held under Forest Management Agreements (FMAs) with Alberta by forest companies. These FMAs utilize management practices that are in alignment with the Canadian Council of Forest Minister’s guiding principles: maintaining biological diversity, maintaining ecosystem productivity, protecting soil and water, considering global ecological cycles, providing multiple benefits to society, and accepting society’s responsibility for sustainable development. As part of their agreement with the government, FMA holders are required to develop long-term (200-year) sustainable forest development management plans that incorporate the Values, Objectives, Indicators, and Targets (VOITS) identified by their stakeholders through use of information such as detailed spatial forest inventories, research on growth and yield dynamics, High Conservation Value Forests, species at risk, and long-term effectiveness monitoring. With this existing FMA and Forest Management system already in place across the province and functioning, it is well positioned to provide some of the key building blocks required in the development of conservation offset systems, rather than starting from ground zero.

Some of the essential requirements that would allow the utilization of the Forest Management systems for conservation offsets would be the creation of a mechanism to either temporarily or permanently protect the conservation offset against conflicting land uses and the development of an offset market along with rules for ownership of offsets on crown land.

Mr. Whitmore gave an example of the development of these requirements could ultimately lead to by providing an example of what might be considered as an existing conservation offset opportunity on DMI’s FMA. As part of its use of ecosystem-based forest management practices, DMI voluntarily leaves a greater amount of unharvested forest within its harvest areas (i.e. retention) than required by government standards or in comparison to the standard retention levels in the province. Since the tree volume within retention areas are part of forest companies’ allowed harvest volume, the ecosystem services associated with “additional” retention area over and above the norm, that would otherwise have been lost if harvested, could be classified as an offset. However, a means to protect that area from development would be required along with understandings of ownership and an offset market.

In question and answer some questions on additionality were raised in regard to a company’s business-as-usual practices versus government requirements. Mr. Whitmore explained that much like carbon offset systems, additionality would be determined by a comparison of what a company is doing in comparison to what the norm is in for the industry.

**6) Tracy Scott, Head, Industry and Government Relations, Ducks Unlimited Canada, and Larry Simpson, Associate Regional Vice President – Alberta, Nature Conservancy of Canada**

On behalf of their organizations plus the Alberta Conservation Association, Mr. Scott and Mr. Simpson opined that the discussion of offsets should not focus only on public lands, but rather on

private lands. There are plenty of tools available for government to undertake conservation on public lands, and land trusts are happy to work with them to assist.

They said that the offset discussion has not move ahead a lot in the last two and a half years and they are concerned that detail issues are standing in the way of progress. Habitat continues to be lost while we discuss process and potential tools. They therefore propose that we consider the development of an offset-based in-lieu fee system in order to begin implementation. A framework for this already exists in wetlands and carbon, and it is easy to understand and operate. Still some details must be worked out such as deployment on public lands, equivalency and proximity rules, rates, and restoration and reclamation opportunities. These exist for the offset program, but moving ahead with an in lieu fee program would allow conservation actions to be undertaken while we work out those other details.

### **Afternoon Discussions**

In the afternoon small group (table-based) discussions occurred. Participants were asked to consider the following questions:

- 1) Under what conditions should private parties be allowed to access and secure public lands for conservation?
- 2) What tools might be used for this purpose and how?
- 3) What are the implications and resource needs of each of those tools?
- 4) Knowledge gaps?
- 5) Key recommendations for future research or pursuit of discussion?

Spurred by the diverse presentations of the morning and the broad diversity of backgrounds of the participants many discussions went beyond simple considerations of these questions.

When the group reconvened in plenary to following answers were offered to the questions:

#### **1. Under what conditions should private parties be allowed to access and secure public lands for conservation?**

- Develop a process for prioritizing requests
- Ensure an integrated regulatory approach with objectives that focus on the public interest
- Demonstrated mitigation hierarchy
- Make use of disposition system
- Determine that existing tools don't work
- Address competing interests
- Establish accountability/credibility of private party

Additional questions

- Do we need special conditions?
- What if the private use goes beyond the established objectives?
- What is the role of government in reconciling multiple uses?

#### **2. What tools might be used for this purpose?**

(number) denotes how many groups discussed these concepts

- In lieu fee system (2)
- Executive order and regulatory zoning to protect (5)
  - Zoning under the Land Use Framework
  - Conservation directive
- New (or renegotiated) dispositions (5)
- Amended disposition upon renewal (4)
- Revision of tenure system (6)
- Active reclamation (2)
- Thresholds; cap and trade system; tools to trigger offsets (2)
- Incentives to accelerate BMPs (1)
- Regulatory incentives (5)
- Valuation process (5)
- Protective notations (2)
- Conservation easements (4)
- Selling portions of AAC or tenure, as a way to use the existing process (2)
- Develop a governance system (3)
- Better ILM system that is linked to ecosystem management (1)
- Ecosystem services banks (1)
- Tax credits (1)

### **3. Key recommendations for future research or pursuit of discussion**

- Review the wetlands policy as a model
- Clearly define the concepts of biodiversity offsets
  - Clearly define additionality
- Once the Biodiversity Framework is released, biodiversity offsets could be a mechanism to address the objectives in the Framework
- Focus on tackling concrete problems
- Develop methods for calculating ecological equivalency
- Develop pilot projects
- Define environmental and policy objectives
- Develop criteria for when private parties can access public land
- Review what is not working with current conservation tools
- Get an update on the pilot project on caribou restoration on NE Alberta
- Export the concept of trade-off values (e.g. conjoint surveys)
- Temporal spatial considerations
- Consider appropriate timelines for conservation (should be long-term)
- Consider the time lags between implementation of offsets and benefits being realized
- Consider how to manage natural disturbance in the context of an offset
- Discuss how to address duration issues
- Monitoring
- Provincial-federal alignment
- Risk and rewards of bundling and stacking
- Benefits and drawbacks of in lieu fees
- Public engagement
- Start with No Net Loss

- Regulatory approval conditions
- Security of dispositions
- Develop a common currency - economic and ecosystem
- Policy should be enabled by legislation
- Policy should apply to all public lands (green and white)

#### **4. Possible next steps**

- Categorize the laundry list of tools
- Request feedback and prioritization from the GoA
- Form working groups to discuss these key ideas, including identifying resources and implications
- Have a report back at the next workshop, in 6 months.
- The next workshop should also include presentations/updates on other, related projects

It was agreed that given the state of the discussions that it was premature to look to participants to form groups to work on particular ideas, as had been originally envisioned. Rather, participants were encouraged to work with AACO as it continues to take on many of the issues identified in the workshop.

The AACO leadership will work with Alberta Environment and Parks to identify key themes and issues for further study and discussion. That work will be pursued by AACO, but other parties are invited to become involved as they see fit.