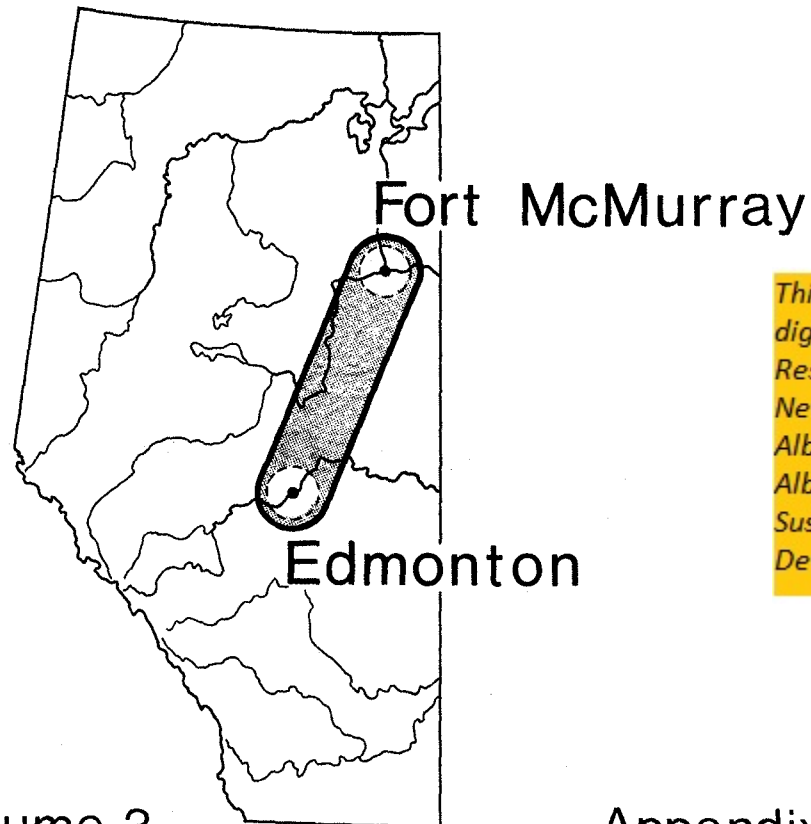


# Transportation Corridor Study



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Volume 3

Appendix

## The Effect of Existing Legislation

prepared for

**Alberta**  
ENVIRONMENT

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TRANSPORTATION CORRIDOR STUDY

FORT McMURRAY to EDMONTON

VOLUME 3 - APPENDIX

"THE EFFECT OF EXISTING LEGISLATION"

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For: Alberta Environment  
The Honourable William Yurko

## P R E A M B L E

WITHIN A DEMOCRATIC AND PLURALISTIC SOCIETY THERE EXISTS A MULTIPLICITY OF NEEDS AND DESIRES. WITHIN THE CONTEXT OF A MODERN INDUSTRIAL SOCIETY THE ATTEMPT TO SATISFY THESE INTENSIFIED ASPIRATIONS PRODUCES COMPETING AND CONFLICTING STRUCTURES. IT HAS BECOME THE GOVERNMENT'S DUTY TO CREATE INSTITUTIONS WHICH SATISFY CERTAIN DEAMNDS WHILE PRODUCING MINIMAL HARM TO OTHER VALUES. THE SOLICITOR'S FUNCTION WITHIN THIS ADMINISTRATIVE MATRIX IS TO EXPLAIN THE EXISTING ENACTMENTS AND SUGGEST LEGISLATIVE MACHINERY WHICH WILL MEET PUBLIC EXPECTATIONS.

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## NOTES

## INTRODUCTION

It is the purpose of this report to examine existing legislation to determine

- (1) what machinery is available for the creation of a transportation corridor,
- (2) what problems accrue or could accrue by virtue of that legislation.

Examination of this area raises several questions:

- (1) what is the most suitable legal structure by which to effect a transportation corridor,
- (2) what legislation is relevant,
- (3) is this legislation sufficient to ensure the proper operation of the corridor,
- (4) if the existing legislation is inadequate, what alterations, amendments, or new enactments are required.

Since it is extremely difficult to analyze these problems in the abstract, for purposes of explanation only, we have chosen two theoretical models which shall be referred to as

- (1) the limited governmental role,
- (2) the active governmental role.

It is recognized that the variety of permutations and combinations between the public and private sectors input is limitless, therefore these models are not intended to limit that choice but rather are used solely for explanatory purposes.

At this juncture, it should be mentioned that the basic tools available to achieve the required objectives are

- (1) zoning,
- (2) purchase,
- (3) expropriation,
- (4) legislative enactments.

Since the width, composition, and location of the corridor have not as yet been determined this report will not recommend any specific legal structure. It is intended to explain the existing law and the problems therein so that these choices can be made more intelligently.

EXISTING LEGISLATION

Since the initial question is what statutes directly affect or pertain to the construction of a transportation corridor they are enumerated here for purposes of convenience.

- (1) Alberta Government Telephones Act, 1970 R.S.A.  
c. 12 plus amendments
- (2) The Alberta Resources Railway Corporation,  
1970 R.S.A. c. 15
- (3) The British North America Act, 1867 30 & 31  
Victoria, c. 3 Consolidated
- (4) The Clean Air Act, 1971 S.A. c. 16 plus  
amendments
- (5) The Clean Water Act, 1971 S.A. c. 17 plus  
amendments
- (6) The Condominium Property Act, 1970 R.S.A.  
c. 62 plus amendments
- (7) The Department of the Environment Act, 1971  
S.A. c. 24 plus amendments
- (8) The Energy Resources Conservation Act, 1971  
S.A. c. 30 plus amendments
- (9) The Environment Conservation Act, 1970 R.S.A.  
c. 125 plus amendments
- (10) The Expropriation Procedures Act, 1970 R.S.A.  
c. 130 plus amendments
- (11) The Forest and Prairie Protection Act, 1971  
S.A. c. 36



- (12) The Forest Reserves Act, 1970 R.S.A.  
c. 146 plus amendments
- (13) The Forests Act, 1970 R.S.A. c. 147 plus  
amendments
- (14) The Hydro and Electric Energy Act, 1971  
S.A. c. 43
- (15) The Improvement Districts Act, 1970 R.S.A.  
c. 180 plus amendments
- (16) The Insurance Act (Alberta), 1970 R.S.A.  
c. 187 plus amendments
- (17) The Land Titles Act, 1970 R.S.A. c.198  
plus amendments
- (18) The Land Surface Conservation and Reclamation  
Act (Bill 47 not as yet proclaimed)
- (19) The Municipal Government Act, 1970 R.S.A.  
c. 246 plus amendments
- (20) The Planning Act, 1970 R.S.A. c. 276 plus  
amendments
- (21) The Provincial Parks Act, 1970 R.S.A. c. 288  
plus amendments
- (22) The Public Highways Development Act, 1970  
R.S.A. c. 295
- (23) The Public Utilities Board Act, 1970 R.S.A.  
c. 302 plus amendments
- (24) The Public Works Act, 1970 R.S.A. c. 303
- (25) The Pipe Line Act, 1970 R.S.A. c. 275 plus  
amendments

- (26) The Surface Reclamation Act, 1970 R.S.A.  
c. 356
- (27) The Surface Rights Act, 1972 S.A. c. 91
- (28) The Water, Gas, Electric and Telephone  
Companies Act, 1970 R.S.A. c. 387 plus  
amendments
- (29) The Water Resources Act, 1970 R.S.A. c. 388  
plus amendments
- (30) The Wildlife Act, 1970 R.S.A. c. 391

## THE LIMITED GOVERNMENTAL ROLE

### A. The Model

Under this approach, the Government would restrict its legislative activities to merely zoning a corridor for specific utilities. The private companies and various government utility agencies would then take the necessary procedures to purchase or expropriate and develop their individual utilities within this area.

B. Provincial Jurisdiction With Regard to Zoning

(1) The Constitutional Question

The question at this juncture is: Does the Provincial Government have the constitutional power to classify a multi utility zone?

It is our opinion that the division of power under The British North America Act clearly confers authority on a provincial government to make such classifications. Any, or all, or a combination of the following jurisdictional heads confers this legislative authority.

"92. In each Province the Legislature may exclusively make Laws in relation to Matters coming within the Classes of Subject next herein-after enumerated; that is to say,- ...

10. Local Works and Undertakings other than such as are of the following Classes:-

- (a) Lines of Steam or other Ships, Railways, Canals, Telegraphs, and other Works and Undertakings connecting the Province with any other or others of the Provinces, or extending beyond the Limits of the Province;
- (b) Lines of Steam Ships between the Province and any British or Foreign Country;
- (c) Such Works as, although wholly situate within the Province, are before or after their Execution declared by the Parliament of Canada to be for the general Advantage of Canada or for the Advantage of Two or more of the Provinces. ...

13. Property and Civil Rights in the Province. ...

16. Generally all Matters of a merely local or private Nature in the Province."

Under established constitutional law the pipeline corridor would probably be considered a matter of

property and civil rights. (92(13)). Further, since the case of Campbell-Bennett Ltd. v. Trans-Mountain Oil Pipe Line Company (1954) S.C.R. 207 held that a company incorporated by Parliament to operate inter-provincial pipelines was within the exclusive jurisdiction of Parliament, the converse proposition would be that pipelines and other utilities wholly situated within the Province would be within the provincial jurisdiction. The only possibility of this transportation corridor falling under Federal jurisdiction would appear to be if it became a work or undertaking under 92(10)(c). That is if the Federal Government declared the works to be for the general advantage of Canada. Although future Federal Government action cannot be predicted this possibility would appear to be remote.

### C. The Sufficiency of Provincial Legislation

Since the Provincial Government has constitutional authority to zone or classify certain areas for provincial purposes, the issue here is whether there is sufficient existing legislation under which such a corridor could be zoned. There are several statutes under which this type of power has been exercised:

- (1) under Section 25 of The Public Works Act, the Lieutenant-Governor in Council may declare an area to be a public works development area,
- (2) under Section 3 of The Improvement Districts Act, the Cabinet may declare an area to be an improvement district,
- (3) under Section 15 of The Department of the Environment Act, the Lieutenant-Governor in Council may establish restricted development areas,
- (4) under Section 3 of The Special Areas Act, the Minister can declare an area to be a "special area".

All these Acts grant the Cabinet or the controlling Minister power to restrict the use of these areas and control the activities therein. Therefore we have in fact a type of zoning or land use classification. The obvious question then is, are any of these Acts sufficiently wide in scope so as to encompass transportation corridor zoning?

(1) The Public Works Act

Section 25 of The Public Works Act enables the Government to classify an area solely for public works. The definition of "public works" (Section 2(c)) is sufficiently broad to include the type of utilities contemplated in the corridor. However, the difficulty with this Act is that that same definition restricts those works encompassed in the Act to those "built,... constructed,... operated,... at the expense of the Crown". This then would appear to eliminate re-sale or re-leasing of the land to private companies for development. It is our opinion then that The Public Works Act could not be used for zoning a transportation corridor unless the Government intended to do the purchasing, expropriation, and development of the various utilities by itself.

The relevant sections of The Public Works Act in this regard can be enumerated as follows:

"25. (1) Where it is intended

- (a) to expend public moneys on the acquisition and development of any area of land for the purposes of the Crown or another public body in the Province, and
- (b) to acquire all the lands in that area over a period of time as they become available or are needed,

the Lieutenant Governor in Council may declare that area of land to be a Public Works Development Area.

(2) Where a Public Works Development Area is established for the purposes of a public body other than the Crown and if that public body has the authority to expropriate land, then with respect to that Area,

- (a) the powers and obligations of the Crown under section 26, and
- (b) the power of the Minister under section 27,

shall be undertaken by and in the name of the public body and not by the Crown and the Minister.

(3) In acquiring land in a Public Works Development Area by expropriation, a public body shall proceed under Part 1 of The Expropriation Procedure Act and for that purpose any reference to the Crown and the Minister therein shall be deemed to be a reference to the public body."

"2. In this Act,

- (c) "public work" includes the undertaking and all the works and property that may be acquired, made, built, constructed, erected, extended, enlarged, repaired, maintained, improved, formed, excavated, operated, reconstructed, replaced or removed at the expense of the Crown or for which there is legislative authority to pay out or apply public moneys thereon otherwise than by way of subsidy only."



(2) The Special Areas Act

The Special Areas Act in combination with Section 114 of The Planning Act may possibly provide authority to zone an area for a transportation corridor. Under Section 3 of The Special Areas Act, the Minister can declare an area to be a "special area". By virtue of Section 8(8) he can classify all lands within a special area for the purpose of utilizing them in the manner he considers them to be most adaptable. Further, he has power to purchase, expropriate and dispose of the lands within the special area (Section 8(11) and (13)). Additional zoning powers are found in Section 114 and Section 2(e)(ii) of The Planning Act. This authorizes the Minister of Municipal Affairs to create a development scheme for a special area stipulating the manner in which any particular area of land is to be used. The difficulties with using The Special Areas Act to classify transportation corridors is three-fold. First, since the Act was drafted to permit provincial creation of community pastures and similar projects - the utilization of this machinery to restrict areas of land solely to utilities requires a strained interpretation of several sections. (See Section 8(11)). Secondly, since the Minister under Section 114 of The Planning Act would have the same powers as a municipal government - the zoning would have to be in

accordance with the regional plan. Thirdly, the power to classify areas of land as a special area under Section 3 of the Act appears to be too restricted for our purposes. Section 3, among other things, empowers the Cabinet to constitute as a special area any portion of the Province not already contained in a city, town, village, or county. It follows then, without amendment to The Special Areas Act, large tracts of land within the contemplated zone could not be declared as part of the special area. It is our opinion then that The Special Areas Act is unsuitable as an implement to classify a transportation corridor.

The exact wording of the sections referred to in The Special Areas Act are as follows:

"3. The Lieutenant Governor in Council may by order, notice of which shall be published in the Gazette,

- (a) constitute as a special area any portion of the Province not already contained in a city, town, village, county, municipal district, improvement district or special area,
- (b) constitute as a special area any portion of a city, town, village, county, municipal district or improvement district withdrawn therefrom by an order of the Minister or the Local Authorities Board, and
- (c) designate a special area by a distinctive number."

"8. The Minister is hereby empowered in respect of special areas generally or in respect of any specified special area or any part thereof:

- (8) to classify all lands within the special area for the purpose of utilizing them for the

- purpose of which they are considered by him to be most adaptable; ...
- (11) to acquire by purchase or otherwise any property whether real or personal that is requisite or incidental to the exercise of any powers conferred by this Act; ...
  - (13) to dispose of, by public tender or otherwise, any real or personal property acquired by the Minister and no longer required for the purpose of or incidental to the exercise of any powers of administration in the special area; ..."

Sections 2(e)(ii) and Section 114 of The Planning

Act read as follows:

"2. In this Act, ...

(e) "council" means ...

(ii) in the case of a special area or an improvement district, the Minister of Municipal Affairs, or ...".

"114. (2) Without limiting the generality of subsection (1), the council, by a development scheme, may ...

(c) specify the manner in which any particular area of land is to be used, subdivided, or developed, and regulate or prohibit the construction of buildings that would interfere with the carrying out of the development scheme, and ...".

(3) The Improvement Districts Act

Under Section 3(1) of this Act, the Lieutenant Governor in Council may by order, constitute certain portions of the Province to be an improvement district. Under Section 4 of the same Act, the Minister is empowered to declare an improvement district to be an industrial improvement district. Prima facie this Act would appear to give the Department of Municipal Affairs sufficient power to zone the requisite transportation corridor. However, certain limitations are inherent in this Act which make this approach unfeasible. Section 3 of The Improvement Districts Act restricts the area of land which can be declared an improvement district to any portion that is not contained in a city, town, village or county, unless it has been withdrawn therefrom by an order of the Minister of Local Authorities Board. Section 5 of that Act states that an Indian Reserve is not part of an improvement district for any purpose whatsoever. Further, since the primary purpose of The Improvement Districts Act was to designate and improve various agriculture areas; it could not be used for corridor zoning.

The relevant sections of this Act are as follows:

"3. (1) The Lieutenant Governor in Council may by order, notice of which shall be published in the Gazette,

(a) constitute as an improvement district any portion of the Province not already

- contained in a city, town, village, county, municipal district, special area or improvement district, and
- (b) constitute as an improvement district any portion of a city, town, village, municipal district, county or special area that has been withdrawn therefrom by an order of the Minister or the Local Authorities Board,

and may designate an improvement district by a distinctive name or number."

"4. The Minister may at any time by order, notice of which shall be published in the Gazette, ...

- (e) declare any improvement district as an industrial improvement district."

"5. An Indian Reserve is not a part of an improvement district for any purpose whatsoever."

(4) The Department of the Environment Act

If the Minister of the Environment files a report with the Cabinet stating that it is in the public interest, the Cabinet can then declare any part or parts of Alberta to be a "restricted development area". The Government can then co-ordinate and regulate the development and use of this area for the following purposes:

- (a) to prevent, control, alleviate, the destruction or damage of any natural resource in the area,
- (b) to retain the environment of the area in a state suitable for ... plant or animal life,
- (c) to prevent the deterioration of the quality of the environment by reason of development in the area incompatible with the preservation of that environment. (Section 15)

Section 1(f) of the same Act defines natural resources to mean land, plant or animal life, water and air.

Once a restricted development area has been established, the Minister may regulate the control, restriction or prohibition of any use or development within that area. (Section 15(2a)). Further the Minister can control, restrict or prohibit the actions of other Government departments or agencies within that area. (Section 15(2b)). The Minister is also empowered to acquire by purchase or expropriation any estate or interest in land within the area.

The question whether this legislation enables corridor zoning leaves two possible conclusions. First, the potential environmental dangers of a multi utility corridor obviously renders it in the public interest to co-ordinate and regulate the development therein. The section grants adequate powers to prevent and control any type of potential pollution. Further, under Section 15(2a) the Minister via regulations can zone or restrict the land use to specific utilities. Therefore, this Act provides ample authority for the Government if the limited governmental role approach is used.

The alternate interpretations suggest that this legislation is inadequate for corridor zoning. Briefly, this argument is as follows. The purpose of The Department of the Environment Act and agencies created thereunder is to monitor and prevent pollution and other damage to natural resources by existing activity. One of the tools created by this Act to effect these purposes is the power to create restricted development areas. Therefore, as a condition precedent to the creation of a restricted development area there must be some person or association of persons within that area undertaking some activity which is or could possibly cause environmental damage. Since the prospective corridor zone is not presently suffering from peculiar environmental damage, and since no one

within the corridor is presently carryin on activities which could unduly damage the environment, the highway however intersects the corridor at irregular intervals, the Minister could not invoke this section. This argument could be supported by scrutinizing the language of Section 15. It is notable that this section is framed in the present tense, (eg. - "preventing, ... alleviating, ... destruction, ... of any natural resources, ... protecting a water shed, ... retaining the environment of the area, ..."). The use of such language implies that environmental damage or destruction must be occurring before the power in Section 15 comes into play. Further, since the objectives of a transportation corridor include minimization of cost and orderly land use development as well as environmental control, zoning under Section 15, for the purposes of such a corridor, would be clearly outside the scope of that section.

Although this latter argument at first appears "technical", it must be recognized that the Legislature intended there to be a definite limitation on the Cabinet's power to create restricted development areas. Since there are no judicial decisions precisely defining the parameters of the Cabinet's powers under Section 15, we are unable to unequivocally state whether or not a transportation corridor could be zoned under this Act. However, difficulties in this area could be cured by one of two means:



- (a) amendment to Section 15 so as to specifically include corridor zoning,
- (b) prior to a declaration that an area is a restricted development area, ensure that several utilities have taken definite action to develop within that area.

#### D. Development Within the Zone

In this section of the report, we have assumed that the existing legislation is sufficient to zone a corridor or that legislation has been enacted to effect that object.

The following is an analysis of existing legislation to determine whether or not construction of the various utilities is legally possible. To do so, we have examined the existing powers and procedures of pipeline companies since it is clear that this corridor will include pipeline construction.

(1) Pipeline Companies

Any pipeline company intending to construct a pipeline within the confines of Alberta will do so in the following manner.

Pursuant to Section 5 of The Pipe Line Act, the company would apply to the Energy Resources Conservation Board for a permit to construct the pipeline. They submit Form A of that Act, a plan of the proposed route, the point of connection with other pipelines, the location and capacity of the pipes, plus specifications of the type of pipe in Form B of that Act.

If the pipeline is in the public interest, the Board will grant the permit. The company can then proceed to purchase any of the required land. The land that the company is unable to purchase, it may expropriate pursuant to Sections 41 and 42 of The Pipe Line Act.

To effect these expropriations, the company files an application with the Surface Rights Board. (See: The Surface Rights Act Sections 32(e), 34). This application states the name of the authorizing act, land description, purpose of the expropriations, known names and addresses of the persons having an interest in that land or occupying that land, maps of the land which is to be expropriated. The Board will then set a date for hearing the application

wherein they will decide;

- (a) the estate or interest in land to be granted to the company,
- (b) the amount of compensation payable to the Crown and other persons,
- (c) the width of land to be allocated for the proposed pipeline. (Dome Petroleum v. Swan Swanson)

Section 12 of The Surface Rights Act prohibits an "operator" from disturbing the land while laying pipelines until he has obtained the consent of the landowner and of the occupant thereof or has become entitled to a right of entry order pursuant to this Act. Therefore, the company will apply to the Board for a surface entry order with respect to all those lands which they have failed to gain the required consent. Application is made in Form A of The Surface Rights Act and pursuant to Section 17 the Board has a hearing to decide whether to grant the right of entry (Section 12(3)), the amount of compensation (Section 23), the portion of the surface to be disturbed by the company (Section 19(a)).

In actual practice the company applies for an interim order of expropriation under Section 36 of The Expropriation Procedures Act by showing immediate necessity to exercise rights over the land and by depositing with the Board sufficient sums to secure

potential compensation. Secondly, the company applies to the Board for an immediate right of entry to all parcels of land for which the owners have given their consent to disturb the surface (Form C). Upon the Board granting an interim order of expropriation and upon receiving an interim right of entry order, the company can then proceed to enter upon, take and use the land in the manner described in the interim right of entry order. (See The Expropriation Procedures Act S. 37 and The Surface Rights Act S. 20).

The sections of the various acts which empower and enable pipeline companies to develop their lines are as follows:

The Pipe Line Act

"5. (1) No person shall construct a gas line, oil line or secondary line or any part thereof or undertake any operations preparatory to the construction thereof unless he is the holder of a permit.

(2) Notwithstanding subsection (1) but subject to the regulations, a person proposing to apply for a permit to construct a gas line, oil line or secondary line or any part thereof, or his agents may

- (a) enter upon any Crown or other lands lying in the intended route of the pipe line to make surveys or examinations, or
- (b) negotiate for the acquisition of interests in lands that may be required for the pipe line."

"41. Where a person requires an interest in land for the purposes of his pipe line the interest may be acquired in lands owned by the Crown or by any other person

- (a) by negotiation with the owner, or
- (b) by an order under The Surface Rights Act, if the operator is entitled to apply under that Act, or
- (c) by an order under The Water, Gas, Electric and Telephone Companies Act, if the operator is a company within the meaning of that Act, or
- (d) by an order under The Expropriation Procedure Act."

"42. (1) Where an operator requires an interest in land for the purposes of his pipe line he may expropriate the interest required by an order under The Expropriation Procedure Act. ...

(3) An order vests in the operator, unless otherwise provided in the order, an exclusive interest in the land described in the order for the purposes named therein, with such annexed rights in or over other land as may be specified in the order, but the order does not give an operator

- (a) any right or entitlement to a certificate of title under The Land Titles Act for the interest in land acquired by the operator by the order, or
- (b) the right to carry away sand, gravel, clay and marl from the land in respect of which the order was made."

#### The Expropriation Procedures Act

"32. (2) The Surface Rights Board has jurisdiction with respect to expropriations under this Part authorized under or pursuant to

- (a) The Pipe Line Act, or ... "

"34. (1) Where a company desires to expropriate land it may file with the Board an application setting forth

- (a) the name of its authorizing Act,

- (b) a description of the land it desires to expropriate,
- (c) the purpose for which it desires to expropriate the land, and
- (d) the names and addresses of the persons known to the company to have an estate or interest in the land,

and the application shall have attached thereto reference maps, plans or sketches showing the land to be expropriated.

(2) When an application under this section is made in respect of Crown land a copy of the application shall be served upon

- (a) the Deputy Minister of the Department administering the land, and
- (b) any person shown by the records of that Department to have an estate or interest in the land."

"35. (2) The Board shall proceed to hear and determine the application and, upon conclusion of the hearing or as soon as conveniently may be, the Board shall dispose of the application and make an order declaring,

- (a) the estate or interest in the land granted to the company for the works and general undertaking of the company, including when necessary, a right of way to and from the works, but subject to any provisions of the authorizing Act that provides for the nature of the estate, interest or right to be acquired by expropriation,
- (b) the description of the land to which the order relates,
- (c) the names and addresses of the persons known to the Board to have an estate or interest in the land,
- (d) the amount of money payable by the Company to the Crown or other persons for the estate or interest granted to the company, and the manner in which the money is payable,
- (e) the amount of money payable by the company to the Crown or other persons for incidental

damages resulting from or likely to result from the construction of the works for which the land is or was required, and

- (f) the costs of and incidental to the application and by whom payable."

"36. (1) At any time before an order is made under Section 35, the Board

- (a) upon application being made by the company, either ex parte or upon such notice to such parties as the Board in its sole discretion may direct, and
- (b) upon the Board being satisfied of the necessity for the immediate exercise by the company of all or any of the rights over the land for which the application has been made,

may order that, upon the company making a deposit with the Board of such amount as the Board estimates to be sufficient to secure the payment by the company of such sums as may, by reason or on account of the exercise of all or any of the rights of the company, become payable ultimately to the Crown or to any owner, the company be at liberty to exercise forthwith, in such manner and and subject to such conditions as the Board considers fit and proper in the circumstances, such rights in or over the land as are specified in the order."

"37. Upon the making of an order by the Board pursuant to this Part and upon the Board certifying in writing that the company has paid all the sums of money payable pursuant to the order or, in the alternative, that the company has deposited with the Board a sum sufficient to pay all sums payable under the order, the company acquires an immediate right to enter upon, take and use the land in the manner described in the order."

#### The Surface Rights Act

"12. (1) No operator has a right of entry in respect of the surface of any land for ...

- (b) the laying of pipe lines for or in connection with any mining or drilling operations, or the production of minerals, or ...



until the operator has obtained the consent of the owner of the surface of the land and of the occupant thereof, or has become entitled to right of entry by reason of an order of the Board pursuant to this Act."

"12. (3) The Board may make an order granting right of entry in respect of the surface of

(b) such other land as in the opinion of the Board is necessary

(i) for a pipe line, power line, or a road to connect the operator's mining or drilling operations located on adjacent lands and to permit the operations to be operated jointly, and for the tanks, stations, and structures to be used in the operations, or ...

irrespective of whether or not the owner or occupant of the other land is the owner or occupant of the surface of the land in which the operator or his principal has the right to the mineral or the right to work the same."

"15. (1) Where the surface of any land required by an operator for any of the purposes mentioned in this Act is owned by the Crown or any other person, and the operator cannot acquire by agreement a right of entry upon the surface of the land required by him, the operator may make application to the Board for right of entry in respect of the surface of such land as may be necessary for the efficient and economical performance of his operations."

"18. (1) Notwithstanding section 17, after the filing of an application the Board may, if it considers it proper to do so, issue an order granting right of entry in respect of the surface of the land,

- (a) upon the operator filing with the Board a letter of consent in Form C in the Schedule signed by the respondent, or
- (b) after seven clear days have elapsed from the date of personal service, or 14 days from the date of any substituted service, on the respondent, of

- (i) a copy of the application, and
- (ii) a notice in Form B in the Schedule."

"20. (1) A right of entry order is deemed to vest in the operator,

- (a) unless otherwise provided in the order, the exclusive right, title and interest, in the surface of the land in respect of which the order is granted other than
  - (i) the right to a certificate of title issued pursuant to The Land Titles Act, and
  - (ii) the right to carry away from the land any sand, gravel, clay or marl or any other substance forming part of the surface of the land, ...".

## (2) Possible Obstacles to Pipeline Development

It is the purpose of this segment of the report to examine the possible difficulties that can accrue in creating a pipeline either through jurisdictional conflicts or because of the nature of the land which must be crossed. Other utilities face similar difficulties and the Legislature has provided analagous solutions.

### (a) Crown Lands

It is clearly established that once a pipeline company has received its development permit and right of entry order it can expropriate Crown lands. Section 41 of The Pipe Line Act provides such authority by stating "where a person requires an interest in land for the purposes of his pipeline the interest may be acquired in lands owned by the Crown ..."; the company does so by following the procedures previously outlined with the exception that the application for expropriation must be served upon the Deputy Minister of the Department which administers the public lands involved and any person shown to have an interest or estate in those lands. (The Expropriation Procedure Act S. 34(2)).

### (b) Municipal Lands

Since the municipalities own an estate or interest in lands on which they have built municipal roads and could possibly own various sections within the municipality, the question then is whether or not

legislation is sufficient to permit pipeline companies to cross this land. Although in practice the company usually obtains access to these lands by voluntary agreement, Sections 23 and 25 of The Pipe Line Act clearly empower the companies to build across such land. Section 23(1) states:

"23. (1) Any person who has the right to construct or operate a pipe line under this Act has the right to do so on, across, over or under any highway or road."

Section 25(1) of The Pipe Line Act states:

"25. (1) No pipe line shall be constructed on, across, over or under any road without the approval of the local authority concerned, or, where approval cannot reasonably be obtained therefrom, without the approval of the Board."

("The Board" in this case means the Energy Resources Conservation Board. Section 2(1) )

(c) Provincial Highways and Roads

To cross provincial highways or roads, the pipeline again utilizes the powers vested in it by Section 23 of The Pipe Line Act. (see above). However, even though Section 23(1) gives the pipeline company the right to construct under a highway, this cannot be done without the consent of the Minister of Highways and Transport. If the Minister refuses permission there does not appear to be any powers of appeal; however, past experience has shown that this does not present a difficulty.

The restrictions which are placed on companies when crossing a highway are stipulated in Section 24 which

states:

"24. (1) No pipe line shall be constructed on, across, over or under any highway without the approval of the Minister of Highways and Transport.

(2) An application for approval under subsection (1) shall be accompanied by a plan and profile of the portion of the highway affected.

(3) The land in which an interest is required for a pipe line parallel to a highway shall not be located nearer than 100 feet to the boundary of the highway without the approval of the Minister of Highways and Transport.

(4) Where a pipe line crosses a highway no bend shall be permitted in that portion of the pipe line within the boundaries of the highway or within 100 feet of the boundary of the highway without the approval of the Minister of Highways and Transport."

(d) Rivers and Other Bodies of Water

The difficulties to construction under rivers, lakes and sloughs are found in The Water Resources Act and The Public Lands Act. Section 4(1) of The Public Lands Act states:

"4. (1) Subject to subsection (2), the title to the beds and shores of all rivers, streams, watercourses, lakes and other bodies of water is hereby declared to be vested in the Crown in right of Alberta and no grant or certificate of title made or issued before or after the commencement of this Act shall be construed to convey title to such beds or shores."

Section 6(1) of The Water Resources Act reads:

"6. (1) No person shall

- (a) divert or use any water, ...
- (d) lay, place, build or erect in, over, under, upon or adjacent to any water any structure, device, contrivance or thing, or any earth, sand, gravel or other material, which interferes with or is capable of interfering with the

- present or future development, conservation or management of water, or
- (e) remove or disturb any earth, sand, gravel or other material forming part of the bed, shore or banks of any water, where such removal or disturbance interferes with or is capable of interfering with the present or future development, conservation or management of water,

except under the authority of this Act, the regulations or a licence, interim licence or permit issued under this Act."

The effect of Section 4 of The Public Lands Act is two-fold. First, it vests exclusive title to lands adjacent to or under a body of water in the Crown. Secondly, notwithstanding the fact that pipeline companies are empowered to acquire Crown lands by virtue of Section 41 of The Pipe Line Act, Section 4 of The Public Lands Act is overriding and thus the company cannot obtain any interest or estate in lands adjacent to or under a body of water. Additional problems are created by Section 6 of The Water Resources Act which clearly prohibits the construction of any contrivance under a body of water.

The company usually avoids these pitfalls by voluntary agreement with the Provincial Government. In the alternative, the company could apply for a construction permit pursuant to Section 11(1)(e) of The Water Resources Act. To short circuit this procedure the company applies to the Minister for a preliminary permit to do surveys (Section 14(3)); they then apply to the Government for an interim licence. (Section 14(7)) Once the interim licence is obtained, the company can proceed with the

construction of its works (Section 26(1)).

The exact wording of the sections providing these procedures are as follows:

"14. ... (3) The Minister may in his discretion grant to the applicant a preliminary permit upon such conditions as he thinks fit authorizing the applicant to make all necessary examinations and surveys to prepare plans and sections, showing the extent of the proposed operations and the lands that will be affected by reason of any proposed diversion. ...

(7) The applicant, after completing the preliminary examination and survey, may file with the Minister an application for an interim licence, in such form and containing such particulars as the Minister may require, setting out the nature and extent of the proposed diversion of works. ... "

"26. (1) The applicant, immediately after the receipt of the interim licence, may proceed with the construction of the works authorized in accordance with the terms of the licence."

(e) Forest Reserves and Other Forests

Section 9 of The Forests Act prohibits all persons from cutting or destroying any forest growth on forest lands by stating:

"9. Except as may be authorized by the Minister, no person shall cut, damage or destroy any forest growth on any forest lands."

This section relates to all public land which is intermittently covered by forest growth. (Section 1(d) of The Forests Act)

To avoid the effect of these sections two possible courses seem available to the company. First, pursuant to Section 13 of The Forests Act the company could obtain a timber permit. Secondly, it may be possible for the pipeline company to acquire sufficient interest

in the land either by expropriation or purchase so as to be able to cut down the trees.

The Forest and Prairie Protection Act presents further obstacles because it authorizes the Minister to close to public entry any land where fire danger warrants such action. (Section 13). Section 10 of the same Act authorizes the Municipality to order the removal of fire hazards. To prevent costly delays in construction, the company could possibly utilize Section 6 of this Act which permits any person carrying on industrial or commercial operations to enter into a fire control agreement with the Government. Presumably, such an agreement could be framed so as to avoid such disruptions unless absolutely necessary.

The relevant sections in this regard can be stated as follows:

"6. (1) The Minister may enter into a fire control agreement with any person carrying on any timber, forest, mining, drilling or other industrial or commercial operation over, under, on or adjacent to public land."

"10. (1) Where the council of a municipal district finds within its boundaries on privately owned land or occupied public land, conditions that in its opinion constitute a fire hazard, it may order the owner or the person in control of the land on which the fire hazard exists to reduce or remove the hazard within a fixed time and in a manner prescribed by the council."

"13. (1) The Minister may, by order, close to public entry any land where fire danger warrants a closure."



(f) The Special Areas

Segments of the Province designated "special areas" pursuant to Section 3 of The Special Areas Act could give rise to peculiar problems if traversed by a pipeline. Under Section 8 of that Act the Minister is empowered "to direct that any of the public lands, or interest therein within a special area be dealt with in such manner as seems to him to be for the benefit of the residents of the special area, or to prohibit the dealing therein in any manner that seems to him to be detrimental to such residents". Although the pipeline company can acquire the necessary interest in these lands pursuant to Section 41 of The Pipe Line Act, the Minister's regulations relating to immediately adjacent land may put impossible strictures on the company's activities while constructing the pipeline. The pipeline company could avoid these contingencies either through agreement with the Municipal Affairs Department or by expropriating a sufficiently large estate in land so as to be unaffected by these regulations.

(g) Other Provincial Lands

All provincial Crown lands which are not under a specified department are administered by the Department of Lands and Forests. (Section 3 of The Public Lands Act) Again it is clear that a pipeline company could expropriate this land pursuant to Section 41 of The

Pipe Line Act. However, the following sections of The Public Lands Act could conflict with the objectives of a pipeline company.

"12. The Minister may by order classify public lands and declare the use for which he considers them to be adaptable."

"9. (1) The Lieutenant Governor in Council may make regulations authorizing and governing dispositions of public lands not expressly provided for by this Act, and without restricting the generality of the foregoing, the regulations may, with respect to the disposition so authorized,

- (a) restrict the use to be made of lands that are subject to the dispositions,
- (b) prescribe the duties and obligations of persons to whom the dispositions are made in relation to the use and occupation of the lands by them,"

Section 11(1) of this Act is also notable as it states:

"11. (1) With respect to public lands to which The Surface Reclamation Act does not apply, the Lieutenant Governor in Council may make regulations governing the conditioning, maintenance and reclamation of the surface of the public lands that has been or is being held incidental to or in connection with

- (b) the construction, operation or abandonment of a pipe line or battery,"

If then, regulations have been made which would make pipeline construction unfeasible or unnecessarily costly the company can apply to purchase the land under Section 8(d) of this Act. Section 8(d) authorizes "the Minister to make any disposition or grant of public lands in any special case for which no provision is made under this Act or the regulations". Such an agreement could be drafted so as to negative the stifling affect of any regulations.

(h) Indian Reservations and Indian Rights

Since Section 91(24) of The British North America Act declares "Indians and lands reserved for Indians" to be under the Dominion Government any company wishing to cross these lands must deal with the Federal Government. This is made clear by Section 28(1) of The Indian Act which states in part

"... a deed, lease, contract, instrument, document of agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void."

Therefore, the expropriating company applies to the Federal Cabinet for consent to acquire the necessary interest in an Indian Reserve. Once the company has gained this consent they can expropriate the land by following procedures set out in the Alberta Expropriation Procedures Act. However, it is unclear as to whether the company would follow the procedure for expropriating private land or Crown land under that Act. This problem does not usually arise as the Federal Government co-operates by selling the necessary interest to the private companies.

The relevant sections in this regard are as follows:

"28. (1) Subject to subsection (2), a deed, lease, contract, instrument, document or agreement of any kind whether written or oral, by which a band or a member of a band purports to permit a person other than a member of that band to occupy or use a reserve or to reside or otherwise exercise any rights on a reserve is void."

"35. (1) Where by an Act of the Parliament of Canada or a provincial legislature, Her Majesty in right of a province, a municipal or local authority or a corporation is empowered to take or to use lands or any interest therein without the consent of the owner, the power may, with the consent of the Governor in Council and subject to any terms that may be prescribed by the Governor in Council, be exercised in relation to lands in a reserve or any interest therein.

(2) Unless the Governor in Council otherwise directs, all matters relating to compulsory taking or using of lands in a reserve under subsection (1) are governed by the statute by which the powers are conferred.

(3) Whenever the Governor in Council has consented to the exercise by a province, authority or corporation of the powers referred to in subsection (1), the Governor in Council may, in lieu of the province, authority or corporation taking or using the lands without the consent of the owner, authorize a transfer or grant of such lands to the province, authority or corporation, subject to any terms that may be prescribed by the Governor in Council."

The second problem that arises in this area is this: What rights the Indians have over a pipeline which is on Crown lands or an Indian Reserve? Although this question involves an entire body of law, a brief summary of the most important aspects is given here.

In 1850, the Government of Canada entered into the "Robinson Treaties" with the Indians of the Northwest Territories. (Now part of which is Alberta) These treaties allowed "the said Chiefs and their tribes the full and free privilege to hunt over the territory now ceded by them, and to fish in the waters thereof as they have heretofore been in the habit of doing, saving and excepting only such portions of the said

territory as may from time to time be sold or leased to individuals or companies of individuals, and occupied by them with the consent of the provincial government".

In the Northwest Angle Treaty of 1873 a similar clause was included. By 1877, seven treaties had been signed by which the Indians surrendered most of the arable and grazing lands from the Great Lakes to the mountains. In 1899, by Treaty No. 8 the Indians surrendered the Peace River and Northern Alberta area. As part of the consideration for surrendering their interest in the land covered by the treaty, the Indians received the following covenant:

"And His Majesty the King hereby agrees with the said Indians that they shall have the right to pursue their useful vocations of hunting, trapping and fishing throughout the tract surrendered as heretofore described subject to such regulations as may from time to time have been made by the Government of Canada acting under the authority of His Majesty, and saving and excepting such tracts as may be required or taken up from time to time for settlement, mining, lumbering, trading or other purposes."

As noted by Mr. Justice Johnson in the case of R. v. Sikyea (1964) 46 W.W.R. 65 at p. 68

"The same covenant appears in all other treaties."

The effect of these treaties was to grant the Indians the privilege of hunting, fishing and trapping on all Crown lands that were not "occupied". This right was re-affirmed in 1930 when the Government of Canada transferred the natural resources to the Province of Alberta by stating in Section 12 of The Amendment to the British North America Act c. 26:

"In order to secure to the Indians of the Province the continuance of the supply of game and fish for their support and subsistence, Canada agrees that the laws respecting game enforced in the Province from time to time shall apply to the Indians within the boundaries thereof, provided however, that the said Indians shall have the right, which the Province hereby assures to them, of hunting, trapping, and fish and game and fish for food at all seasons of the year on all unoccupied Crown lands and on any other lands to which the said Indians may have a right of access."

The concern of the pipeline company is whether or not the Indians can be prevented from continually traversing the pipeline while they are hunting and fishing so as to protect the pipeline and to avoid possible liability for injury to the Indians. It is clear, of course, that the Indians have no right of access to lands which are held privately. The difficult question is whether the company can prevent the Indians from hunting on Crown lands which contain a pipeline. This evolves into the legal question as to whether these are tracts as may be required or taken up from time to time for settlement, mining or other purposes. As this question has not been judicially considered, we are in the area of conjecture and thus can give no definite recommendation.

Due to the legal ambiguity in this area as well as the political considerations involved, it is our recommendation that a corridor if possible avoid crossing Indian reservations. Secondly, it may be useful for the Government to consider specifically declaring that Indians may cross the transportation

corridor but are not permitted to hunt within that zone.

(i) Trap-Lines

Once licenced under The Wildlife Act, an Alberta resident, who does not hold a valid British Columbia or Saskatchewan trapping licence, can establish trap-lines. This licence does not authorize trapping within a wildlife sanctuary, a forest reserve, an Indian or Metis reserve. However, for the purposes of this study, it should be noted that:

"27. (1) No person shall remove, molest, spring or in any way interfere with traps set by any other person for the taking of fur-bearing animals or fur-bearing carnivores, except as provided for in section 65."

Although pipeline corridor rights would clearly override trapping rights, the infringement of these trapping rights may present political difficulties.

(j) Provincial Parks

Pursuant to Section 9 of The Provincial Parks Act the Cabinet may "regulate or prohibit any kind of business, behavior or traffic". If a pipeline company was able to get a development permit to construct a pipeline through a provincial park, they could of course expropriate the land pursuant to Section 41 of The Pipe Line Act. It is our recommendation that the overwhelming political considerations make it necessary for any corridor to avoid provincial parks.

### (3) Utilities Other Than Pipeline Companies

With respect to other utilities, analagous powers and procedures exist whereby they can purchase, expropriate, and develop their specific utility. Therefore it seems clear that there is no need for additional empowering legislation if the limited governmental role model is used. For purposes of this report, it seems sufficient to provide two examples.

#### (a) Highways

It appears unnecessary to outline the Department of Highway powers to expropriate within a municipal territory. It may be useful to note that the Department of Highways also has power to expropriate within city limits. This authority is given by Section 21 of The Public Highways Development Act, R.S.A. 1970 c. 295 which states:

"21. (1) The Minister and a city may enter into an agreement for the transfer by the city to the Crown in right of Alberta of title to any city street or for the purchase of land from the city for the purposes of a highway to be constructed and maintained by the Minister.

(2) Notwithstanding anything in The Municipal Government Act, the Minister may, with the consent of a city, purchase or expropriate land within the city for the purposes of a highway.

(3) Where the title to a street or any land is vested in the Crown in right of Alberta pursuant to this section, the highway constructed thereon is subject to the direction, control and management of the Minister and not the city."



(b) Water, Gas, Electric and Telephone Companies

The Water, Gas, Electric and Telephone Companies Act, 1970 R.S.A. c. 387, Section 32 grants the expropriating powers by stating:

"32. (1) Upon receiving a certificate of approval from the Minister, the company make take and expropriate for the purposes of a right of way so much of the lands or interest therein as may be approved by the Minister for the route of the right of way.

(2) The manner in which and the terms upon which a company may exercise the right to take and expropriate lands or any interest in lands,

(a) shall be in accordance with the terms of any agreement effected between the company and the owner of any such lands or interest therein, and

(b) in the absence of any such agreement shall be as set forth in The Expropriation Procedure Act."

Therefore, by following analagous procedures to pipeline companies albeit before different Boards, these various utilities can acquire and develop tracts of land within the contemplated corridor.

E. Conclusions re: The Limited Governmental Role

(1) In light of the legal ambiguity as to whether or not The Department of the Environment Act empowers the Minister to zone a corridor, it may be necessary to enact legislation on this point.

(2) The present legislation is sufficient for private companies and Government utilities to develop within the corridor once it is created.

(3) Due to the ambiguity as to the right of Indians over corridors on Crown lands, it may be necessary for the Provincial Government to adopt specific legislation on this question.

(4) There are several advantages to using the limited governmental approach:

- (a) if the Government restricted itself to zoning public expenditures on this project would be at an absolute minimum,
- (b) since existing procedures are known to the Boards and applicants, there would be a minimum of administrative errors,
- (c) since legislative alterations would be nominal, financial institutions and insurance companies could more easily assess the risk and thus financial backing would be more probable.

(5) There are several disadvantages to this structure some of which are:

- (a) under existing legislation different utilities make application for development permits to

different departments. This could produce the following inequities:

- (i) the development of utility "X" adjacent to utility "Y" could increase the risk to utility "Y". Among other things this would increase "X's" insurance rates. Since at present "development permits" are granted on an assessment of the "interest good" these factors may not receive adequate weight.
- (ii) since these different Boards apply different criteria when assessing whether to grant development permits, a uniform policy in relation to the corridor would not exist.
- (b) it is conceivable that the construction of a new utility within the corridor may not be detrimental to any of the individual utilities, however it could be detrimental to the corridor as a whole. Since under present legislation opposition to any development is restricted to the landowners, there would be no single "person" representing the corridor itself.
- (c) under the present procedures for expropriation, the right to be heard in opposition to the expropriation appears to be limited to the landowner and occupier. Therefore adjacent utilities may not have any right to be heard in opposition.

- (d) zoning would transform the "highest and best use" of the land from agricultural to utilities. The company's cost of acquiring the land would be radically increased. This in turn would increase the cost to the consumer.

These difficulties would appear to suggest that a more active role on the part of the Government is necessary. Specifically the Government could:

- (1) place the corridor under one department so as to provide a governmental body to represent "the corridor interests",
- (2) pass legislation to the effect that all corridor expropriation applications be made to a single Board,
- (3) appoint a body to arbitrate day to day differences pursuant to The Arbitration Act,
- (4) amend or pass legislation so as to allow the various adjacent utilities to present their cases before the Board which grants development permits.

F. Summary re: The Limited Governmental Role

The Provincial Government has the constitutional authority to zone a transportation corridor. However, the only existing legislation under which this could be done appears to be The Department of the Environment Act. It is questionable whether this Act could properly be used since it may be limited in purpose to protecting the environment from already existing structures.

Once the zoning problem is handled, it is clear that the legislation is sufficient for pipeline companies to proceed with development. Secondly, other companies and government departments have analogous powers. Therefore legislative amendment is not required in this respect.

Provincial lands, municipal lands, forest areas do not present an insurmountable obstacle since the utility owner can either purchase or expropriate. Although it is not possible to obtain an interest in river and lake beds, permits to cross the body of water can be obtained through negotiation.

Political considerations and ambiguity in the law suggest that a corridor should avoid Indian reserves. Political considerations alone make it advisable to avoid Provincial parks.

## THE ACTIVE GOVERNMENTAL ROLE

### A. The Model

This model contemplates that the Government would purchase or expropriate all the required land for the corridor. The Government would then proceed to zone this territory so as to restrict it to the types of utilities they contemplated in the corridor. The Government would then sell or lease strips of land within the corridor to private companies and Crown corporations in conformity with the zoning plan. In so doing, the Government would only alienate a part of their estate so as to maintain some control over the corridor.

For purposes of illustration only, we have included a diagram of the inter-relationship between the various Government departments and the private companies.

MODEL RE ACTIVE GOVERNMENTAL ROLE

THE LIEUTENANT GOVERNOR IN COUNCIL

THE DEPARTMENT OF THE ENVIRONMENT

THE DEPARTMENT OF AGRICULTURE

THE TRANSPORTATION CORRIDOR BOARD

THE SURFACE RIGHTS BOARD

A. Purpose

- (1) to administer the corridor,
- (2) to ensure minimal environmental disturbance.

B. Powers

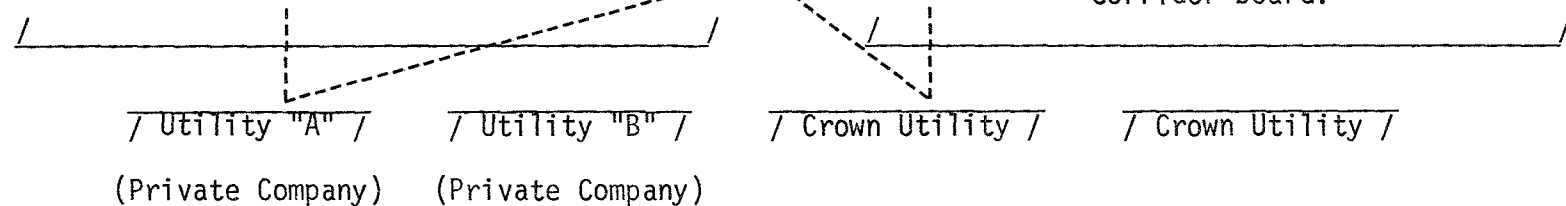
- (1) to zone the corridor,
- (2) to grant development permits,
- (3) to sell or lease segments of the corridor,
- (4) to represent "corridor interests".

A. Purpose

- (1) to ensure proper reclamation of lands and adequate compensation to owners.

B. Powers

- (1) to hear and grant right of entry orders,
- (2) to determine compensation
  - (a) payable by corridor board to owners,
  - (b) payable by utilities to the corridor board.



(1) Explanation of the Chart

Both the private companies and Crown utilities would apply to the transportation corridor Board for permits and for the purchase or lease of segments of the corridor. They would then apply to the Surface Rights Board for their right of entry order. Any disputes as to the amount of compensation payable by the corridor Board or by the various utilities would be first heard by the Surface Rights Board. There would be appeals to the Courts regarding the propriety and correctness of the actions of either the transportation corridor Board or the Surface Rights Board.



B. The Crown's Powers of Expropriation

The primary difficulty under this model appears to be whether or not the Crown has sufficient authority to expropriate for a multi utility corridor. Since the power to expropriate is entirely statutory, then it follows that the power to do so must be found within the relevant statutes. An examination of most of the expropriation powers now existing shows that they are not of assistance because the power is granted for a specific purpose.

(1) Examples of Specific Expropriation Powers

(a) The Alberta Government Telephone Act, 1970 R.S.A., c. 12 restricts the expropriations here to acquiring land for the purposes of building telephone lines. Section 25 of that Act states:

"25. (1) The commission

- (a) may at any time enter upon and take, or use, any lands in whomsoever vested, and
- (b) has full power and authority to do on or in relation to any real or personal property all acts and things that it deems necessary, advisable or expedient to do in order to carry out any authority or power conferred upon it by this Act.

(2) The commission may expropriate, purchase, lease or otherwise acquire land that it deems necessary, advisable or expedient to acquire in order to carry out any authority or power conferred upon it by this Act.

(3) For the purpose of expropriating land the commission has the same powers and may proceed in the same manner as the Minister of Public Works under The Expropriation Procedure Act, relating to the expropriation of land."

(b) The Alberta Resources Railway Corporation Act, 1970 R.S.A. c. 15 restricts the expropriations powers therein to acquiring land for purposes of building provincial railways. This is clear from Sections 13 and 10 of that Act which state:

"13. (1) Where the Corporation is authorized to construct a railway, it may expropriate any land or any estate or interest in land that it is empowered to acquire by this Act but which it is unable to acquire by agreement.

(2) For the purpose of expropriating land, the Corporation has the same powers and may proceed in the same manner as the Minister of Public Works under The Expropriation Procedure Act."

"10. (1) The Corporation shall construct only those railways it is authorized to construct by order of the Lieutenant Governor in Council.

(2) The Lieutenant Governor in Council may

- (a) designate any part of the Province as a resource area where that area is not served or in his opinion is not adequately served by existing railway facilities, and
- (b) authorize the Corporation to construct a railway from an existing railway, pipe line or highway to a point within a designated resource area.

(3) An order of the Lieutenant Governor in Council authorizing the construction of a railway by the Corporation shall prescribe the proposed route of the railway by means of a map or plan attached thereto showing the prescribed route."

(c) The Hydro and Electric Energy Act, 1971

S.A. c. 49 limits the powers to acquire the land there to building a power plant or a transmission line.

These limitations are provided in Section 30 which states:

"30. Where an operator requires an estate or interest in land for the purposes of a power plant or a transmission lines, the estate or interest may be acquired

- (a) by negotiation with the owner, or
- (b) by expropriation under The Expropriation Procedure Act."

(d) The Improvement Districts Act, 1970 R.S.A.

c. 180 is also of no assistance since the tenor of the Act clearly shows that transportation corridors were not contemplated. In this regard, see Section 25 which states:

"25. (1) The Minister may purchase, expropriate or otherwise acquire land required for or in a connection with the administration of an improvement district or for the purposes of an agreement

entered into under subsection (2) and he may encumber, lease or otherwise dispose of any such land as the circumstances required.

(2) The Minister may enter into agreements with the Government of Canada or any agency thereof or with any other public body or person for the purpose of obtaining any service, benefit or other advantages for an improvement district or part thereof, or the residents thereof.

(3) Where under an agreement entered into by the Minister a service, benefit or advantage is provided in respect of any particular assessable property, or the owners thereof, any expenditure made to provide such service, benefit or advantage may, in the Minister's discretion, be recovered by the levy of a special tax on that property."

(e) The Pipe Line Act, 1970 R.S.A. c. 275

is also of no assistance because of course it restricts the expropriation powers there only to acquiring land for a pipeline. See Sections 41 and 42 which read as follows:

"41. Where a person requires an interest in land for the purposes of his pipe line the interest may be acquired in lands owned by the Crown or by any other person

- (a) by negotiation with the owner, or
- (b) by an order under The Surface Rights Act, if the operator is entitled to apply under that Act, or
- (c) by an order under The Water, Gas, Electric and Telephone Companies Act, or
- (d) by an order under The Expropriation Procedure Act."

"42. (1) Where an operator requires an interest in land for the purposes of his pipe line he may expropriate the interest required by an order under The Expropriation Procedure Act.

(2) Where an order or orders are made with respect to a processing plant the area of land in which an interest is vested for the site of the processing plant shall not exceed five acres in the aggregate.

(3) An order vests in the operator, unless otherwise provided in the order, an exclusive interest in the land described in the order for the purposes named therein, with such annexed rights in or over other land as may be specified in the order, but the order does not give an operator

- (a) any right of entitlement to a certificate of title under The Land Titles Act for the interest in land acquired by the operator by the order, or
- (b) the right to carry away sand, gravel, clay and marl from the land in respect of which the order was made.

(4) Where an order pertains to land registered in the land registry it shall be deemed to be an instrument referred to in section 71 of The Land Titles Act."

(f) Although The Water, Gas, Electric and Telephone Companies Act, 1970 R.S.A. c. 387 covers a variety of utilities, it also is restricted to the purposes which are implicit in the title of that Act. See Section 32 which reads:

"32. (1) Upon receiving a certificate of approval from the Minister, the company may take and expropriate for the purposes of a right of way so much of the lands or interest therein as may be approved by the Minister for the route of the right of way.

(2) The manner in which and the terms upon which a company may exercise the right to take and expropriate lands or any interests in lands,

- (a) shall be in accordance with the terms of any agreement effected between the company and the owner of any such lands or interest therein, and
- (b) in the absence of any such agreement shall be as set forth in The Expropriation Procedure Act."

(g) The Forest Reserves Act - Section 7 and 3, The Municipal Government Act - Section 127, The Municipal Telephone Act - Sections 3 and 6, The Northern Development Act - Section 5 all provide expropriation powers but they are restricted to the purposes stated in the cited sections. Further, as stated under the limited governmental role section, The Public Works Act or The Special Areas Act do not provide sufficient authority to do the necessary expropriations.

The only possible expropriation power vis a vis a multi utility corridor is under the Department of the Environment Act.

(h) The Department of the Environment Act. Again the power to expropriate under this legislation is contingent upon the department having power to designate the area a "restricted development zone". For assessment of this question, see the "Limited Governmental Role" Part C. (4).

If the Minister can declare the area to be a "restricted development zone", he clearly has powers to expropriate within that zone.

### C. Zoning

The question here is whether or not the Government has power to zone a multi utility corridor. This, of course, is the same problem as analyzed previously under the head "The Limited Governmental Role". Therefore, the comments made in that regard apply mutatis mutandis.

Secondly, under The Planning Act the Provincial and Municipal Governments have created regional plans and general plans under which the various municipalites have been zoned. Therefore, political considerations alone would require negotiations with these various municipalites if the Government intended to zone a corridor.

The pre-existing land use classification is provided by The Planning Act under the following sections:

"67. A regional planning commission, by a vote of a majority of not less than two-thirds of the municipalities represented on the commission, may resolve to prepare and adopt a regional plan for the whole or such parts of the regional planning area as are specified in the resolution."

"94. (1) A council may resolve to prepare a general plan describing the manner in which the future development or re-development of the municipality may best be organized and carried out, having regard to considerations of orderliness, economy and convenience."

"114. (1) At any time after the adoption of a general plan or while development control is being exercised prior thereto, the council may prepare and by-law adopt a development scheme for the purpose of

- (a) ensuring that any proposal contained or to be included in the general plan will be carried out or will be carried out in a particular manner, or
  - (b) amplifying the details of any such proposal,
- or both.

(2) Without limiting the generality of subsection (1), the council, by a development scheme, may

- (a) provide for the acquisition, assembly, consolidation, subdivision and sale or lease by the municipality of such land and buildings as are necessary to carry out the development scheme,
- (b) reserve land for future acquisition as the site or location of any public roadway, service or building or for a school, park or other open space and make such agreements with the owner of the land as will permit its acquisition and use for those purposes,
- (c) specify the manner in which any particular area of land is to be used, subdivided, or developed, and regulate or prohibit the construction of buildings that would interfere with the carrying out of the development scheme, and
- (d) make available any land for agricultural, residential, commercial, industrial, or other uses of any class at any particular time."



#### D. The Procedures for Crown Expropriations

Assuming legislation exists whereby the Crown could expropriate a corridor, the procedures for so doing are outlined in Sections 7 to 21 of The Expropriation Procedures Act. Pursuant to Section 9 of that Act, the Crown deposits a plan of the land to be expropriated or notification of such plan with the Land Registry. Upon registration of the plan or notification, the interest in land therein stated vests immediately in the Crown. With respect to unregistered Crown lands, the expropriating department deposits the plan with the department presently administering the land and the effect of this is to transfer the lands to the expropriating department. Reverting back to privately held lands for a moment, the expropriating authority must within 30 days of registration of the plan give notification to the owner describing the land and the estate held by the private owner, the purpose to which it is to be used, and the date on which the plan was registered. The owner has the right to be compensated for the loss of the land and injurious affection. If the former owner files a claim for compensation for injurious affection within one (1) year after construction is completed or abandoned or within one (1) year after the date of expropriation, the Minister shall within three (3) months offer an

amount of compensation for that damage. Further, the Minister shall within three (3) months of the date of registration of the plan or notification offer an amount of compensation for the land expropriated. If the owner does not wish to accept either of these offers, they are to be decided by (a) arbitration, or (b) the Courts.

Since Section 3 of The Expropriation Procedures Act permits the Crown to use the above stated procedures or to provide special procedures, the question now is whether or not corridor expropriation should be done under a special procedure. Comparison with the expropriation procedures under The Railway Act, 1955 R.S.A. c. 276 may be useful in making this choice. Under Sections 89 and 90 of this Act, the company creates a plan or map of the required land, submits it to the Minister stating that the land shown is necessary, no other lands are suitable for such purposes, and requests the Minister to authorize the taking of such lands. Upon proof that the owner or possessors of the lands have received at least ten (10) days' notice of the application, the Minister shall inquire into the correctness of the maps and if he is satisfied shall grant a certificate declaring the acquisition necessary in the public interest. Although registration of the map is required by Section 93, Section 94 states that

upon granting of the certificate, the company may without consent of the owner take the lands shown on the map. Henceforth, the company can then proceed to construct their railroad and do all necessarily incidental acts. Naturally, the company is required to pay compensation. (Section 92(2)).

It is submitted that utilization of the procedures under The Expropriation Procedures Act would be preferable and more in unison with present thinking on expropriation. The basic advantage here would be uniformity in expropriation procedures. In this regard, the Institute of Law Research and Reform Report No. 12 at pages 3, 4 and 5 state:

" In our examination of procedures we have tried to evolve a machinery that is fair and as expeditious as fairness permits. Procedural fairness seems to us to require

- (1) notice to the owner of a proposed expropriation;
- (2) provision for objections by the owner;
- (3) if his land is taken, the right to payment of a reasonable proportion of his compensation before he is obliged to give up possession;
- (4) that the time from the inception of the expropriation until surrender of possession should be kept to a minimum both in the interest of the public and the owner;
- (5) that the procedures be as uniform as possible, while recognizing that some types of expropriation may require variation from the general scheme.

The scheme whereby the owner is afforded an opportunity to object is this:

- (1) There is in every case an approving authority who is politically responsible and whose approval is necessary to the

taking. Usually he is a Cabinet Minister. In some cases the expropriating authority and the approving authority are one and the same--for example in the case of Crown takings the Minister of Highways might act in both capacities and in municipal takings the council will be its own approving authority.

- (2) The expropriating authority notifies the owner of its intention to expropriate.
- (3) If the owner objects his objection is heard by an inquiry officer. The inquiry officer is a person independent of the expropriating authority and he holds a public hearing at which both sides will be represented.
- (4) The hearing officer makes his recommendation to the approving authority who either approves or refuses to approve the taking.
- (5) On registration of approval in the Land Titles Office, and not before, title vests in the expropriating authority."

#### E. The Inter-Relationship of the Parties

In this section of the report, we have assumed that the Government has the power to expropriate and re-zone the required corridor. The next step, in accordance with the model, is for the Government to sell or lease various tracts of land to the utility companies. This action produces the following general questions:

- (1) what is the Government's relationship vis a vis the other utilities,
- (2) what is the relationship between the various utilities,
- (3) what is the nature of the legal interest held by the respective parties,
- (4) how do you protect each parties interest.

As this type of structure is very analagous to condominiums, it appears useful to examine The Condominium Property Act.

(1) The Condominium Property Act, 1970 R.S.A.  
c. 62

This Act creates a hybrid form of the landlord-tenant relationship and the owner in fee simple absolute. That is, the occupant of a condominium does not own the complete estate in the land, however, his interest is considerably greater than that of a tenant. This is done by creating two types of interest in land

- (a) the common property interest, and
- (b) the occupant's private interest.

When the developer registers his plan at the Land Titles Office, this has the effect of dividing the building into separate registerable interests and a common overriding property interest. Pursuant to Section 14 of the Act, a condominium corporation is created which in effect holds the common property interest. The occupant, in respect to their respective units, have all the remainder of the interest in land.

The rights of each occupant vis a vis other occupants are protected by Sections 11 and 12 which grant

- (a) an easement for the subjacent and lateral support,
- (b) an easement for shelter,
- (c) an easement for the passage and protection of the various utilities needed.

These easements exist without special mention on the certificate of title. The rights of the occupants are

further protected by Section 19 which states:

"19. (1) A corporation is responsible for the enforcement of its by-laws and the control, management and administration of the common property."

The common property interest is protected by the corporation. It is required, pursuant to Section 18, to create by-laws for the management, administration, use and enjoyment of the units and of the common property.

Sections 21 to 24 of the Act provide channels whereby the owners and the corporation can protect itself from various types of damage. The effect of these sections is two-fold.

(1) Notwithstanding the fact that the corporation may not have an insurable interest in the whole estate of land, they can insure the individual units.

(2) Notwithstanding the fact that the unit owners may not have an insurable interest in the whole estate, they can insure the entire building.

The relevant sections of this Act read as follows:

"3. (1) A building may be divided into units by the registration of a condominium plan in the manner provided by this Act and the regulations."

"5. (1) The Registrar, in issuing a certificate of title for a unit, shall certify therein the owner's share in the common property.

(2) The common property comprised in a registered condominium plan is held by the owners of all the units as tenants in common in shares

proportional to the unit factors for their respective units.

(3) Except as provided in this Act, a share in the common property shall not be disposed of or become subject to any charge except as appurtenant to the unit of an owner and any disposition of or charge upon a unit operate to dispose of or charge that share in the common property without express reference thereto."

"6. Except to the extent that any interest endorsed on a certificate of title relates to that particular unit, the owner of the unit is only liable in respect of any such interest in proportion to the unit factor for his unit."

"9. (2) When a condominium plan is registered the developer may, at any time before he transfers title to any unit to any person, reserve the right to construct additional units

- (a) on the common property, or
- (b) on additional land

to be brought into the condominium scheme on completion of construction by registering a caveat against the condominium plan and the certificate of title of each unit described in the plan."

"11. After the registration of a condominium plan, there is implied in respect of each unit shown therein,

- (a) in favour of the owner of the unit and as appurtenant thereto, an easement for the subjacent and lateral support thereof by the common property and by every other unit capable of affording support,
- (b) in favour of the owner of the unit, and as appurtenant thereto, an easement for the shelter thereof by the common property and by every other unit capable of affording shelter, and
- (c) in favour of the owner of the unit, and as appurtenant thereto, easements for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for



the time being existing in the parcel to the extent to which those pipes, wires, cables or ducts are capable of being used in connection with the enjoyment of the unit."

"12. (1) After the registration of a condominium plan, there is implied in respect of each unit shown therein,

- (a) as against the owner of the unit, an easement, to which the unit is subject, for the sub-jacent and lateral support of the common property and of every other unit capable of enjoying support,
- (b) as against the owner of the unit, an easement, to which the unit is subject, to provide shelter to the common property and to every other unit capable of enjoying the shelter, and
- (c) as against the owner of the unit, easements, to which the unit is subject, for the passage or provision of water, sewerage, drainage, gas, electricity, garbage, artificially heated or cooled air and other services (including telephone, radio and television services) through or by means of any pipes, wires, cables or ducts for the time being existing within the unit, as appurtenant to the common property and also to every other unit capable of enjoying those easements.

(2) Where an easement is implied by this section, the owner of any utility service who is providing his service to the parcel, or to any unit therein, is entitled to the benefit of any of those easements that are appropriate to the proper provision of that service, but not to the exclusion of the owner of any other utility service."

"13. (1) Easements or restrictions as to user implied or created by this act or the by-laws take effect and are enforceable

- (a) without any memorial or notification on that part of the register constituting titles to the dominant or servient tenements, and
- (b) without any express indication of those tenements."

"14. (1) Upon registration of a condominium plan, there is constituted a corporation under the name "The Owners: Condominium Plan No. ...." (the

number to be specified being the number given to be the plan upon registration.)"

"21. (1) The corporation shall insure and keep insured the units and the common property to the replacement value thereof against fire, and against any other supplemental perils which may be specified by the by-laws, to the extent required by the by-laws and for this purpose the corporation has an insurable interest to the replacement value of the units and the common property, and an insurable interest in the subject matter of any other supplemental perils insurance.

(2) Where the by-laws are silent concerning insurance against any supplemental peril, the board may insure against that peril but the premium payable therefor shall only obligate the corporation for a period until the next general meeting of the corporation at which time continuation of the insurance may be authorized by special resolution.

(3) Any payment by an insurer under a policy of insurance entered into under subsection (1) shall, notwithstanding the terms of the policy, be paid to or to the order of the corporation, and, subject to section 29, the corporation shall forthwith use the proceeds for the repair or replacement of the damaged units and common property so far as the same may lawfully be effected.

(4) A policy of insurance issued to a corporation under subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1), and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy."

"22. (1) Notwithstanding section 21, subsection (1), The Alberta Insurance Act, or any other law relating to insurance, a unit owner may insure

- (a) his unit, to the replacement value thereof, against fire and such other supplemental perils to the extent that is is not so insured by the corporation under section 21, subsection (1),
- (b) improvements to his unit, to the extent the improvements are not so insured by the corporation under section 21, subsection (1),

- (c) his unit, in a sum equal to the amount owing at the date of any loss referred to in the policy on a mortgage of his unit, and
- (d) his unit, against any other supplemental perils, where the supplemental perils are not insured by the corporation.

(2) Notwithstanding The Alberta Insurance Act, or the terms and conditions of the policy, any payment by an insurer under a policy of insurance entered into for the purpose of subsection (1), clause (c) shall be made to the mortgagees, if the mortgagees, or any of them, so require, in the order of their priorities, and the insurer is then entitled to an assignment of the mortgage or a partial interest in the mortgage to secure the amount so paid.

(3) A policy of insurance issued to a unit owner under the authority of subsection (1) is not liable to be brought into contribution with any other policy of insurance except another policy issued on the same property under subsection (1), and, notwithstanding the provisions of the policy, shall be deemed not to be other insurance in relation to such other policy."

"23. Section 21, subsection (1), does not restrict the capacity of any person to insure otherwise than as provided in that subsection."

"24. Nothing in section 22 limits the right of an owner to insure against risks other than damage to his unit."

It may be useful to mention at this point that The Tort-Feasors Act, c. 365 covers any difficulties with respect to damage actions which involve more than two parties. Section 4 of that Act states:

"4. (1) Where damage is suffered by any person as a result of a tort, whether a crime or not,

- (a) a judgment recovered against any tort-feasor liable in respect of that damage is not a bar to an action against any other person who would, if sued, have been liable as a joint tort-feasor in respect of the same damage,

- (b) if more than one action is brought in respect of that damage
  - (i) by or on behalf of the person by whom it was suffered, or
  - (ii) for the benefit of the estate, or of the wife, husband, parent or child of that person,

against tort-feasors liable in respect of the damage, whether as joint tort-feasors or otherwise, the sums recoverable under the judgments given in those actions by way of damages shall not in the aggregate exceed the amount of the damages awarded by the judgment first given, and in any of those actions, other than that in which judgment is first given, the plaintiff is not entitled to costs unless the court is of the opinion that there was reasonable ground for bringing the action, and

- (c) any tort-feasor liable in respect of that damage may recover contribution from any other tort-feasor who is or would, if sued, have been liable in respect of the same damage, whether as a joint tort-feasor or otherwise, but no person is entitled to recover contribution under this section from any person entitled to be indemnified by him in respect of the liability regarding which the contribution is sought.

(2) In any proceedings for contribution under this section, the amount of the contribution recoverable from any person shall be such amount as the court may find to be just and equitable having regard to the extent of that persons responsibility for the damage.

(3) The court has power

- (a) to exempt any person from liability to make contribution, or
- (b) to direct that the contribution to be recovered from any person shall amount to a complete indemnity."

The effect of this section is to prevent the defendant from alleging res judicata by virtue of the fact that a second defendant had previously been sued. Secondly,

if one defendant is found liable for all the damages whereas in fact a second defendant is partially responsible, this Act enables him to bring an action to gain contribution. It seems clear then that the existing legislation is adequate with respect to common law tort actions.

F. Conclusions re: The Active Governmental Role

(1) In light of the legal ambiguity as to whether or not The Department of the Environment Act empowers the Minister to expropriate or zone a corridor, it may be necessary to enact legislation on this point.

(2) The present procedural legislation for Crown expropriations is sufficient.

(3) There are several advantages to using the active governmental model:

- (a) the Government would have complete control over types of utilities which were to be within the corridor. This could provide co-ordination for the "public good",
- (b) the Government could protect the interests of the corridor as a whole,
- (c) uniform criteria for granting "development permits" could be established,
- (d) legislation could be enacted to ensure adjacent utilities could express some voice as to future "neighbors".

(4) There are several disadvantages to this model some of which are as follows:

- (a) the Government's initial expenditures would be greater than under a more limited approach although a portion or all of this could be re-couped through sale and leasing to the utility companies.

- (b) by zoning all the land for the corridor, the Government would increase the "highest and best use" of the land from agriculture to pipelines and other utilities. Political consideration may necessitate selling and/or leasing to the various utilities at a price higher than purchase price. This, of course, would be passed on to the consumer.
- (c) new procedures, unknown to future applicants and Boards, could produce administrative errors.
- (d) the new structure could create fear of the unknown making insurance and finances more difficult to obtain.

G. Summary re: The Active Governmental Role

If the Government intends to acquire all the land and re-zone it for sale or lease, the only possible existing legislation whereby this could be done is The Department of the Environment Act. It is questionable whether this legislation was intended for such purposes.

Assuming that The Department of the Environment Act is wide enough to include corridor zoning, it is clear that adequate procedures exist for Crown expropriations.

Since this structure contemplates the Government and various utilities owning distinct but related interests in the corridor, The Condominium Property Act may provide a model for determining this relationship.



ENVIRONMENTAL CONTROLS

It is our purpose here to analyze the existing legislation. Our suggestion at this stage is that the existing pollution control legislation appears to be sufficient to prevent corridor operators from doing unnecessary damage.

### A. The Energy Resources Conservation Act

Pursuant to this Act the Energy Conservation Board has authority to direct pipeline operators to clean up any oil that has escaped. If the pipeline company refuses to do so the Government can enter the area and conduct such operations as are necessary to contain and clean up the oil. The Government then has a cause of action against the pipeline company for the costs that it has incurred.

The authority to exercise this control is found in Section 133.1. Section 133.1 states in part:

"133.1 (1) Where oil escapes from a well, battery or pipe line or from an unidentified sources and it appears to the Board that such oil may not otherwise be contained and cleaned up forthwith, the Board may

- (a) direct the licensee or pipe line operator, or such licencees or pipe line operators who appear to the Board could be responsible for a well, battery or pipe line from which oil escaped, to take steps it considers necessary to contain and clean up oil which has escaped and to prevent further escape of oil, or
- (b) enter upon the area where oil has spilled and conduct such operations as it considers necessary to contain and clean up oil which has escaped and to prevent further escape of oil.

(2) Where the Board enter upon an area pursuant to subsection (1), clause (b),

- (a) every person responsible for the escape of oil, every licensee or pipe line operator who appears to the Board could be responsible for a well, battery or pipe line from which oil escaped and every officer and employee of such person, licensee or operator shall, until the operations to be conducted by the Board are completed, obey the order concerning such

operations given by the Board or such person or persons as it places in charge of such operations;"

B. The Department of Environment Act

Under this Act the Cabinet can make any regulations in relation to the corridor which are necessary to prohibit or regulate the doing of any act which could cause soil erosion. Further, the Act authorizes the Cabinet to make regulations refraining anyone from using land in any manner which may be detrimental to the environment of that land. Finally, the Cabinet can make regulations prescribing the disposal of any substance which may be detrimental to the quality of the environment.

It should also be noted under this Act that the Minister can declare a state of emergency and then he has extremely broad powers with which to control environmental destruction.

The relevant sections of this Act are as follows:

"13. The Minister may, in co-operation with representatives of other departments of the Government of Alberta and of government agencies and, where advisable, with other persons including representatives of other governments, municipal corporations or organizations, formulate plans for effective co-ordinated action in cases of emergency to prevent, alleviate, control or stop the destruction or loss of, or damage to, a natural resource or to human beings as a result of the pollution of a natural resource."

"17. The Lieutenant Governor in Council may make regulations

- (a) prohibiting, regulating or requiring the doing of any act for the purpose of preventing, alleviating or stopping soil erosion or anything detrimental to the protection or preservation of a watershed;
- (b) requiring persons owning, possessing or having rights in respect of land to refrain

- from using that land in any manner detrimental to the environment of that land and other lands in the vicinity thereof;...
- (e) authorizing the payment of compensation by the Crown to any person for loss or damage to that person as a result of the application of any regulation under this Act to him or an order under this Act directed to him, prescribing the cases in which the compensation shall be paid and the loss or damage for which the compensation is to be paid, and conferring jurisdiction on the Supreme Court of Alberta, the district courts or the Public Utilities Board in connection with settlement of the compensation to be paid;...
  - (h) prescribing procedures for the disposal of any substance that is or may be detrimental to the quality of the environment;...
  - (m) generally, providing for any procedure or matter incidental to the carrying out of the provisions of this Act or any regulations under this Act."

### C. The Surface Reclamation Act

This Act authorizes the Minister to require any person who is conducting an activity which will likely result in surface disturbance to apply to him for a permit. If that party fails to obtain a permit, contravenes any provisions of the permit, or is carrying on the operation in accordance with the permit but is still doing damage, the Minister can issue a stop order. If the person fails to obey the stop order the Government can have him cited in contempt of Court and fined \$10,000.00 for each day that the offence continues. If, notwithstanding these severe sanctions, the company still continues the Government can then enter upon the land without liability and forceably stop the operation. These powers are granted under the following sections:

"8. (1) The Council may

- (a) hold its inquiries at such place or places in the Province as it from time to time deems expedient, and
- (b) adjourn any inquiry from time to time for such period as the Council thinks fit."

"9. (1) Subject to section 16, this section does not apply to any land in respect of which a reclamation certificate has been issued.

(2) The Council may hold an inquiry with respect to the condition of any land

- (a) that has been or is held under a surface lease or right of entry order, or
- (b) that has been or is owned in fee simple and that has been or is being used for any purpose referred to in section 4."

"9. (4) An order may direct the performance of any act necessary in the opinion of the Council

- (a) to condition, maintain or reclaim the land or any part thereof,
- (b) to destroy or prevent the growth of noxious weeds or weed seeds,
- (c) to remove or remedy any hazard to livestock or to the conduct of farming operations, and
- (d) to install or repair any fence, gate, cattle guard, culvert or other thing."

"9. (6) An order under this section shall be in Form A in the Schedule."

"17. (1) Where, after the issue of a reclamation certificate, it is indicated to the Council that further work may be necessary to reclaim the surface of the land referred to in the certificate, the Council may hold an inquiry into the matter."

#### D. The Clean Air Act

Under this Act there are two ways in which the Government can control air pollution within the corridor. First, the Minister is empowered to prescribe the maximum levels of air contamination in any part of Alberta. Secondly, if the Minister is of the opinion that the actual construction of a utility will be a source of air pollution, he can require them to submit plans and specifications for approval by the director. As under The Surface Reclamation Act, the Government is empowered to issue a stop order. It is noticeable that under this Act the director must request plans and specifications prior to the commencement of construction.

Authority for the above propositions can be found in the relevant sections of The Clean Air Act which are:

"3. (1) The Minister may make regulations

(a) prescribing the maximum permissible levels of density of any air contaminant for all or any part of Alberta;"

" 4. (1) Subject to the regulations, no person shall commence the construction of

(g) any plant, structure or thing, where the Director of Standards and Approvals has, prior to the commencement of construction, notified that person in writing that the proposed plant, structure or thing will, in the Director of Standards and Approvals opinion, be a source of air pollution and that it is subject to this section, or"



"7. (1) Where the Minister is satisfied that any person

- (a) has contravened or is contravening a provision of this Act or a regulation or order under this Act, or
- (b) has failed to comply with an order or direction of the Director of Pollution Control under this Act or under the regulations, or
- (c) owns or operates any plant, structure, or thing that is a source of air pollution which the Minister considers to be an immediate danger to human life or property or both, or".

### E. The Clean Water Act

This Act, which is similar to The Clean Air Act, provides two protections against water pollution. First, the Minister by regulation may prescribe the permissible concentration of contaminants in surface water. Secondly, if prior to the commencement of construction of a utility, the Director of Standards and Approvals notifies the company that the project will in his opinion be a source of water pollution, the company must apply for a development permit. If a person proceeds with construction contrary to the plans and specifications in the permit the Director will issue a stop order. Failure to obey the stop order could result in a \$10,000.00 fine per day plus contempt of Court.

The relevant sections in this Act are as follows:

"3. (1) The Minister may make regulations

- (a) prescribing water contaminants and the permissible concentration in surface water of any water contaminant either generally or with respect to any part of Alberta or any watercourse specified in the regulations;"

"4. (1) Subject to the regulations, no person shall commence the construction of

- (j) any plant, structure or thing where the Director of Standards and Approval has, prior to the commencement of construction, notified that person in writing that the proposed plant, structure or thing will, in the Director of Standards and Approvals' opinion, be a source of water pollution and that it is subject to this section, or"

"4. (9) Where any person is constructing any thing referred to in subsection (1), either not in accordance with

- (a) the permit issued to him, or
- (b) the plans and specifications submitted to the Director of Standards and Approvals, or
- (c) the terms and conditions of the permit,

the Director of Standards and Approvals may cause to be served on that person a notice directing him to cease the construction forthwith until he satisfies the Director of Standards and Approvals that the water facility to be constructed will be constructed in accordance with the permit and terms and conditions attached thereto and the plans and specifications upon which the permit was issued."

"7. (6) Where the person to whom the stop order is directed fails to comply with the stop order forthwith upon service of a copy of the order of the Supreme Court under subsection (5) upon him or subsequently,

- (a) the failure to comply with the stop order may be dealt with by the Court as in the case of a civil contempt of the Court,
- (b) an officer of the Department authorized by the Minister for the purpose and any other persons assisting that officer, may without notice and without incurring liability therefor, enter upon any land and do any acts that are necessary to carry out the stop order,
- (c) the sheriff, the sheriff's bailiff and any other persons under the written direction of the sheriff may assist the officer of the Department and his assistants in enforcing their powers and duties under clause (b), and
- (d) the Minister may recover by action any expenses incurred by the Government in carrying out the stop order pursuant to clause (b) from the person to whom the stop order was directed."

#### F. The Land Surface Conservation and Reclamation Act

Although this Act has not yet been proclaimed in total, it will in the future provide additional pollution safe guards.

This Bill authorizes the Cabinet to declare that pipeline, railway, micro-wave and broadcasting construction, and several other activities are "regulated surface operations". These "operators" will then have to gain Government approval to commence, continue or re-commence such activities. (Section 24) If an operator fails to comply with Section 24 they are subject to a \$10,000.00 fine for each day they so continue.

The relevant citations of the Bill are:

"23. (1) The Lieutenant Governor in Council may by regulation designate any kind of operation or activity as a regulated surface operation if the operation or activity is also of a kind falling within the following descriptions, namely,

- (b) the construction, operation or abandonment of a pipe line, battery, transmission line or telecommunication line;...
- (f) the construction, operation or abandonment of a mineral processing plant, road, railway or aircraft landing strip;...
- (h) the construction, operation or abandonment of a site for subsurface disposal of solid or liquid waste;"

"24. (1) Unless he has first obtained an approval therefor under this Part, no person shall, subject to subsection (3), commence or continue or recommence any operation or activity in, upon, or over the surface of any land where

- (a) the operation or activity is of a kind designated by the regulations under section 23 as a regulated surface operation, and
- (b) the land to be affected by the operation or

activity is within a part of Alberta to which the designation applies.

(2) Where a regulation under section 23 restricts the designation of a regulated surface operation by limiting or specifying the circumstances in which the operation or activity is to be a regulated surface operation, subsection (1) only applies to the operation or activity if those circumstances exist or will exist at the time of the commencement of the operation or activity.

(3) Where a regulation is made pursuant to section 23, subsection (3) with respect to any class of regulated surface operation, subsection (1) of this section does not apply to any person continuing or recommencing any operation or activity to which that regulation applies until the date fixed by that regulation as the date by which that person is required to obtain an approval in respect of his operation or activity."

"28. (1) Where any person has commenced, continued or recommenced a regulated surface operation in contravention of section 24, the Minister may make an order directing that person to cease the operation forthwith until he satisfies the Minister that the operation will be carried on in accordance with the approved plans and specifications and the conditions of the approval."

It is our opinion that the existing and contemplated pollution control legislation is sufficient to protect against environmental damage within a transportation corridor.

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