
ALBERTA PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – June 23, 2021

IN THE MATTER OF sections 121 and 123 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, and 216 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

-and-

IN THE MATTER OF an appeal filed by the Gordeyville and Area Community Members Group, with respect to the decision of the Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks, to issue Department Miscellaneous Lease DML 200008 to the Saddle Hills Target Sports Association.

Cite as: *Gordeyville and Area Community Members Group v. Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks, re: Saddle Hills Target Sports Association* (23 June 2021) Appeal No. 20-0025-ID1 (A.P.L.A.B.), 2021 ABPLAB 9.

BEFORE:

Mr. Gordon McClure, Board Chair and Appeals Coordinator.

Board Staff: Mr. Andrew Bachelder, Board Legal Counsel.

SUBMISSIONS BY:

GACM: Gordeyville and Area Community Members Group, represented by Mr. W. L. McElhanney, Q.C., Ackroyd Law LLP.

Director: Ms. Ramona Quaale, Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks, represented by Mr. Larry Nelson, Alberta Justice and Solicitor General.

Disposition Holder: Saddle Hills Target Sports Association, represented by Mr. Mike Davison.

EXECUTIVE SUMMARY

The Saddle Hills Shooting Association (the Disposition Holder) applied for a Department Miscellaneous Lease (DML) for a shooting range, in the County of Grande Prairie, No. 1. The Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks (the Director) issued the DML to the Disposition Holder.

The Gordeyville and Area Community Members Group (the GACM), representing approximately 410 residents in the area of the DML, served the Public Lands Appeal Board (the Board) with a Notice of Appeal. The GACM said the DML caused serious concerns for the GACM's members, including:

- noise pollution;
- safety issues (increased traffic and stray bullets);
- environmental degradation;
- wildlife habitat and migration;
- potential diminution of property values; and
- loss of access for recreation purposes.

The GACM stated approximately 150 of its members were directly and adversely affected by the DML.

The Director made a preliminary motion requesting the Board dismiss the GACM's Notice of Appeal, arguing the GACM did not have a majority of its members who were directly and adversely affected and, therefore, did not have standing to appeal the Director's decision to issue the DML.

The Board requested written submissions from the GACM, the Director, and the Disposition Holder. After reviewing the written submissions, the legislation, and the relevant caselaw, the Board denied the Director's motion to dismiss the GACM's Notice of Appeal.

The Board determined a majority of the GACM's members did not have to be directly and adversely affected to have standing to appeal. The Board also found only the issues of the directly and adversely affected members would be heard. The Board determined that 58 of the

GACM's members were directly and adversely affected by the noise the shooting range may create. The Board admitted the other members of the GACM's group as parties to the appeal, but not as appellants.

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I. INTRODUCTION

[1] This is the decision of the Public Lands Appeal Board (the “Board”) regarding a motion by the Director, Industrial Charges Unit, Public Land Disposition Management Section, Alberta Environment and Parks (the “Director”), to dismiss the Notice of Appeal filed by the Gordeyville and Area Community Members Group (the “GACM”). The Director issued Department Miscellaneous Lease DML 200008 (the “DML”) to the Saddle Hills Target Sports Association (the “Disposition Holder”) for the operation of a gun shooting range. The GACM submitted a Notice of Appeal to the Board appealing the Director’s decision to issue the DML. The Director requested the Board dismiss the GACM’s Notice of Appeal, arguing the GACM was not “directly and adversely affected” by the Director’s decision and, therefore, did not have standing¹ under section 212(1) of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”),² to file the Notice of Appeal.

[2] The motion by the Director to dismiss the GACM’s Notice of Appeal is denied. The Board finds the GACM is directly and adversely affected and has standing to file the Notice of Appeal.

II. BACKGROUND

[3] The Disposition Holder submitted an application to Alberta Environment and Parks (“AEP”) on February 13, 2020, for the DML to operate a gun shooting range located on public lands at SW 10-75-6-W6M, SW 3-75-6-W6M, SE 3-75-6-W6M, NW 3-75-6-W6M, and

¹ “Standing” is the right of a person to bring a matter before a tribunal for resolution. In the context of appeals before the Board, standing is the right of a person to appeal a certain decisions made by the Director. Only persons who meet the requirements of section 212 of *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”) have standing to initiate an appeal.

² Section 212(1) of PLAR states:

“The following persons have standing to appeal a prescribed decision:

- (a) a person to whom the decision was given;
- (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.”

NE 3-75-6-W6M, north of the City of Grande Prairie, in the County of Grande Prairie No 1. The Director issued the DML on January 22, 2021.

[4] On February 11, 2021, the Board received a Notice of Appeal from the GACM, alleging the Director, in issuing the DML, erred in the determination of a material fact on the face of the record and erred in law. The GACM said it had approximately 410 members who lived close to the proposed shooting range, of which 150 of those members could be considered directly and adversely affected by the DML. The GACM stated:

“GACM has expressed a number of concerns to the Lands Division, Environment and Parks. Some of these concerns include, *inter alia*:

- Noise Pollution
- Safety (Traffic, stray bullets)
- Environmental Degradation
- Wildlife Habitat and Migration
- Potential Diminution of Property Values
- Access.”³

[5] The GACM requested the Board:

- (a) stay the DML;
- (b) review the DML to determine if the decision to issue it was appropriate; and
- (c) hold a hearing on the matter, if necessary.

[6] In a letter to the GACM and the Director, dated February 18, 2021, the Board explained it can only grant a stay to a person who is directly and adversely affected by the decision being appealed. The Board requested the GACM answer questions regarding the stay request and the following question regarding the question of directly and adversely affected status of the GACM:

“Is the Gordeyville and Area Community Members Group adversely affected by the DML? In other words, how are the impacts under the DML directly and adversely affecting the Gordeyville and Area Community Members Group?”⁴

³ GACM’s letter, February 11, 2021, at pages 1 to 2.

⁴ Board’s letter, February 18, 2021, at page 3.

[7] On February 25, 2021, the GACM responded that “all of the individuals who are members of Gordeyville are directly and adversely affected by virtue of any number of different scenarios....”⁵

[8] On February 26, 2021, the Director wrote to the Board and noted the GACM said only 150 of its 410 members were directly and adversely affected, which likely meant the GACM did not have standing to appeal the Director’s decision to issue the DML. The Director requested the Board “consider the question of GACM’s standing and whether the Appeal is properly before the Board.”⁶ The Board regarded the Director’s letter to be a motion to dismiss the GACM’s Notice of Appeal.

[9] The Board wrote to the GACM, the Director, and the Disposition Holder (collectively, the “Parties”) on March 12, 2021, and set a schedule for the Parties to provide written submissions on the motion to dismiss. The Board also noted the potential significance of the Court of Appeal of Alberta decision in *Normtek Radiation Services Ltd v. Alberta Environmental Appeal Board* (“*Normtek*”),⁷ and invited the Parties to make their submissions with that case in mind. The Parties provided their written submissions, and a Panel of the Board met on May 26, 2021, to consider the matter.

III. ISSUES

[10] The issue to be determined is whether the GACM has standing under section 212 of PLAR to appeal the Director’s decision to issue the DML. In order to have standing, the GACM must be directly and adversely affected by the Director’s decision. The Board has examined the submissions of the Parties and identified the following questions which the Parties raised and addressed in their submissions:

- (a) what is the test to determine if a person is directly and adversely affected and has standing to file a Notice of Appeal?

⁵ GACM’s letter, February 25, 2021, at page 6.

⁶ Director’s letter, February 26, 2021, at page 1.

⁷ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456.

- (b) what percentage of the GACM's members have to be directly and adversely affected for the GACM to have standing? and
- (c) is the GACM likely to be directly and adversely affected by the DML? In particular, is the GACM likely to be directly and adversely affected by the following:
 - (i) noise;
 - (ii) safety;
 - (iii) economic loss;
 - (iv) loss of recreational access;
 - (v) damage to watercourses;
 - (vi) increased traffic; and
 - (vii) environmental damage.

IV. ANALYSIS

[11] The Board has authority under section 212(3) of PLAR to determine whether a person has standing to file a Notice of Appeal. Section 212(3) states: "An appeal body must not consider an appeal unless it is satisfied that the appellant is a person described in subsection (1)(a) or (b), and the appeal body's decision on that matter is final."

[12] In the context of an appeal to the Board, "standing" means the right of an appellant to appeal a decision by the Director. An appellant has standing if it meets the criteria set by the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act") and PLAR. The criteria includes section 121(1) of the Act and section 212 of PLAR, which sets out who can appeal to the Board.

[13] The Director submitted the GACM has not met the requirements of section 212, in particular, section 212(1)(b), which requires a person to be "directly and adversely affected" to have standing. The GACM submitted its members are directly and adversely affected.

A. What is the test to determine if a person is directly and adversely affected?

[14] The Act and PLAR provide guidance for the Board in determining standing. Section 121(1) of the Act states: "A notice of appeal of a prescribed decision may be submitted to an appeal body by a prescribed person in accordance with the regulations." Section 212 of

PLAR provides:

- “(1) The following persons have standing to appeal a prescribed decision:
 - (a) a person to whom the decision was given;
 - (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.
- (2) A person referred to in subsection (1)(a) or (b) is a prescribed person for the purposes of section 121 of the Act.
- (3) An appeal body must not consider an appeal unless it is satisfied that the appellant is a person described in subsection (1)(a) or (b), and the appeal body’s decision on that matter is final.
- (4) Where the decision objected to was made in respect of land that is the subject of one or more dispositions or that adjoins other land, any of the disposition holders and any of the owners of the adjoining land that are directly affected by the decision may elect to participate as parties in the appeal.
- (5) Subject to the rules established by the Board, the appeal body may allow persons other than those referred to in subsection (4) to be parties to the appeal if the appeal body considers it appropriate.”

[15] Under section 212(2) of PLAR a “prescribed person” who can file a Notice of Appeal with the Board is either the person who received the decision being appealed, or a person who is directly and adversely affected by the decision. Any other person participating as a party in the appeal, including those the Board decides to allow, is not an appellant and does not have the right to file a Notice of Appeal with the Board. Public interest standing is not available unless the applicant can show it is directly and adversely affected. Groups and individuals with a public interest may still participate in an appeal as a party if the Board considers it appropriate.

(i) Submissions

[16] The GACM submitted that all of its members were directly and adversely affected by the DML and should be granted standing in the appeal, however, there were approximately 150 members (the “Close Proximity Members”) who were directly and adversely affected based on their close proximity to the DML lands. Some of the Close Proximity Members are grazing lease holders, or raise livestock on their lands.

[17] The GACM noted the Board, in *Rothwell v. Director, Operations Division, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: Scenic Sands Community*

Association (“*Rothwell*”),⁸ had considered the question of the test for determining if an appellant is directly and adversely affected by a decision. However, the GACM submitted the Court of Appeal of Alberta decision in *Normtek Radiation Services Ltd v. Alberta Environmental Appeal Board* (“*Normtek*”),⁹ meant the test in *Rothwell* was no longer relevant or applicable in determining whether a person was directly and adversely affected. In *Normtek*, the Court considered the Environmental Appeals Board’s (“EAB”) decision to refuse to hear an appeal because the EAB found the appellant was not directly affected by the director’s decision. In this appeal, the GACM noted the Alberta Court of Appeal in *Normtek* stated:

“Considerations relevant to the granting of an approval for a designated activity are not confined to impacts on natural resources. Nor are they even confined to impacts on the environment. And so the phrase ‘directly affected’ could not be limited to impacts on one’s use of natural resources. Social, economic, cultural, safety, human health effects, if established, could also round standing, as could adverse effects on property rights. They are all specifically mentioned in the *Environmental Protection and Enhancement Act*. If the direct effect on the person seeking to appeal a Director’s decision is economic, cultural, safety or health-related or is on a property right, then standing to appeal may be available whether or not there is any connection to an environmental impact to a natural resource proximate to the site of the approval as suggested by the [EAB] and the reviewing court.”¹⁰

[Emphasis is the GACM’s.]

The GACM said interests other than use of the public lands should be considered in determining whether its members are directly affected.

[18] The GACM stated the “reasonable possibility” standard required in *Rothwell* was inappropriate. The GACM said:

“The test of establishing that there is a ‘reasonable possibility’ that a negative effect will occur is not only onerous but it is not justifiable considering the stage of the proceedings in which a determination of standing is being sought. Issue of

⁸ Decision: *Rothwell v. Director, Operations Division, Red Deer-North Saskatchewan Region, Alberta Environment and Parks, re: Scenic Sands Community Association* (15 February 2019), Appeal No. 18-0014-D (A.P.L.A.B.), at paragraphs 31-32.

⁹ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456

¹⁰ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 85.

standing is a preliminary matter that does not involve a full examination of substantive issues such as the possibility of a negative effect occurring.”¹¹

[19] The GACM submitted the appropriate standard for evidence to demonstrate the GACM is directly and adversely affected is a reasonable probability, as found by the Court of Queen’s Bench in *Court v. Alberta Environmental Appeal Board*, which stated:

“[T]he ‘preponderance of evidence’ standard applies to the appellant’s burden of proving standing. However, for standing purposes, an appellant need not prove, by a preponderance of evidence, that he will in fact be harmed by the project in question. Rather, the Board has stated that an appellant need only prove a ‘potential’ or ‘reasonable probability’ for harm.”¹²

[Emphasis is the GACM’s.]

[20] The GACM submitted that the Director’s request that the GACM provide evidence regarding the GACM’s individual members was premature for a preliminary matter. The GACM stated a fulsome account of individual members, their land locations, and proximity to the DML would be more appropriate at a hearing.

[21] The Director agreed with the Board’s approach in *Rothwell* and said it was to be worthwhile referring to decisions from the courts that considered “directly affected” under the *Environmental Protection and Enhancement Act*, R.S.A. 2000, c. E-12 (“EPEA”), and the *Water Act*, R.S.A. 2000, c. W-3. The Director suggested a new test which would combine the test in *Rothwell* with modifications to the directly affected test from *Normtek*. The Director submitted the new test would be as follows:

- “(a) The onus is on the appellant to demonstrate to the Board there is a reasonable possibility that it will be directly affected by the Director’s decision.
- (b) In deciding whether someone is directly affected, the Board may examine adverse effects that a decision may have on:
 - (i) a person’s use of the public land that is the subject of a decision; and
 - (ii) a person’s social, economic and cultural interests, safety and human health, and property rights.

¹¹ GACM’s Rebuttal Submission, April 22, 2021, at paragraph 19.

¹² *Court v. Alberta Environmental Appeal Board*, 2003 ABQB 456.

- (c) Any alleged effect must be reasonable and possible. It is not sufficient to show a person is possibly affected, they must also show the possibility is reasonable. An affect that is too remote, speculative, or is not likely to impact the appellant's interests will not form the basis to find a person is directly affected.”¹³

(ii) Analysis

[22] The first part of a test to be applied by the Board in determining standing is whether the person seeking standing is the same person who received the decision, or whether the person seeking standing is directly and adversely affected by the decision.¹⁴ In this appeal, the Appellant is not the recipient of the decision, so the Board must consider whether the Appellant is directly and adversely affected by the issuance of the DML. The Board considered the question of “directly and adversely affected” in *Rothwell*, where the Board stated:

“When the Board assesses the directly affected status of an appellant, the Board looks at how the appellant uses the public land that is the subject of the Director’s decision, how the Director’s decision will affect the public land, and how the effect on the public land will impact the appellant’s use of the public land. The closer these elements are connected (their proximity), the more likely the appellant is directly affected.

To determine whether an appellant is ‘adversely affected,’ the Board must find the director’s decision could potentially have a negative impact on the appellant, and there must be a reasonable possibility it will occur. When claiming to be directly and adversely affected, the onus is on the appellant to demonstrate to the Board there is a reasonable possibility he or she will be directly and adversely affected by the decision of the director. It is not enough for an appellant to show he or she is possibly affected, it must also be shown the possibility is reasonable. For the Board to find an appellant is directly and adversely affected, the effect cannot be too remote or speculative. Both the reasonableness and the possibility of the effect must be shown.”¹⁵

¹³ Director’s Response Submission, April 8, 2021, at paragraph 21.

¹⁴ Section 212(1) of PLAR states:

“The following persons have standing to appeal a prescribed decision:

- (a) a person to whom the decision was given;
- (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.”

¹⁵ Decision: *Rothwell v. Director, Operations Division, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Scenic Sands Community Association* (15 February 2019), Appeal No. 18-0014-D (A.P.L.A.B.), at paragraphs 31 to 32.

[23] The *Rothwell* test can be summarized as a two part test:

- (1) is the appellant directly affected based on the impact of the appealed decision on the appellant's use of the public land? and
- (2) is there a reasonable possibility the appellant would be adversely affected by the director's decision?

[24] The first part of the test that considers an appellant to be directly affected based on the use of public land is likely no longer applicable after the *Normtek* decision. In *Normtek*, the Alberta Court of Appeal found the EAB's test for determining if an appellant was directly affected too restrictive. The Court of Appeal was concerned with the EAB's interpretation of "directly affected," which required the appellant to establish the director's decision to approve an activity would harm the appellant's use of a natural resource near the approved activity. The Court reviewed section 91(1)(a)(i) of EPEA and stated:

"It can be seen from the forgoing that limiting "directly affected" to impacts on the appellant's use of natural resources affected by the activity approved by the Director is not supported by a plain reading of s 91(1)(a)(i) of the Act which requires only that the appellant be 'directly affected by the Director's decision', however that direct effect manifests itself."¹⁶

Further, the Court stated:

"We do not suggest that harm to a natural resource which an appellant uses or harm to an appellant's use of natural resource would not be sufficient to establish directly affected status. It is simply not a necessary prerequisite to establishing standing where other adverse effects are alleged."¹⁷

The Board sees similarities to the use of natural resources in the EAB test and the *Rothwell* test's use of public lands.

[25] The Court in *Normtek* approved the EAB's interpretation of "affected" in the EAB's decision *Bildson v. Alberta (Acting Director, North Eastern Slopes Region)*,¹⁸ stating:

"The dictionary employed by the [EAB] yielded 'harmed or impaired' as one meaning for 'affected'. On that basis, the [EAB] concluded that an appellant must be harmed or impaired by the activity authorized by the approval being appealed. In other words, the [EAB] interpreted 'affected' to mean adversely

¹⁶ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 82.

¹⁷ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 96.

¹⁸ *Bildson v. Alberta Acting Director of North Eastern Slopes Region, Alberta Environmental Protection*, re: *Smoky River Coal Limited*, (19 October 1998) Appeal No. 98-230-D (A.B.E.A.B.), 1998 ABEAB 42.

affected. The distinction between directly affected and adversely affected arises when others who are directly benefitted by the approval seek standing to support the Director's decision which is being appealed by a party who is directly and adversely affected. The *Concise Oxford Dictionary* which we consulted similarly defines the adjective 'affected' as 'attacked (as by a disease)' or 'acted upon physically'. It defines the verb 'affect' as 'attack (as disease)' and as 'producing a material effect on'. These meanings are not unlike those found by the [EAB] over 20 years ago. And so, we too conclude that, without more, 'directly affected' connotes directly affected in an adverse fashion."¹⁹

Both EPEA and the *Water Act* both require an appellant to be "directly affected," but not "directly and adversely affected", as is the requirement in PLAR. The Court's recognition that "directly affected" implies "adversely affected" makes the *Normtek* decision even more applicable to appeals before the Board.

[26] The Board has considered the legislation and the implications of the *Normtek* decision on the *Rothwell* test, and has determined the directly and adversely affected test employed in *Rothwell* is no longer applicable to Board decisions.

[27] There is not one single test the Board can apply to every appeal to determine if the appellant is directly and adversely affected, but there are principles the Board can use to guide it in making the determination. The following are some of those principles, but the Board acknowledges a complete list is not possible as the facts and context of the appeal must be considered:

- (a) the purpose of section 212(1)(b) of PLAR is to limit the "class of persons who can appeal" a decision, but it also grants broad discretion to the Board to determine who is directly and adversely affected;²⁰
- (b) the appellant must have an interest in the appealed decision that is greater than the interest of the general public;²¹
- (c) the greater the relationship between the appellant and the appealed decision, or the greater the impact the appealed decision may have on the appellant's rights, the more likely the appellant may be directly and adversely affected;²²

¹⁹ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 79.

²⁰ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 77.

²¹ *Bahcheli v. Alberta (Securities Commission)*, 2007 ABCA 166, at paragraph 51.

²² *Alberta Liquor Store Association v. Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904, at paragraph 9.

- (d) there must be a reasonable probability the negative impact on the appellant will occur;²³
- (e) the onus is on the appellant to show on a balance of probabilities that the decision has a reasonable probability of an adverse impact;²⁴
- (f) the Board will consider the merits of the appeal only as far as it is necessary to determine if the appellant may be directly and adversely affected by the director's decision; and
- (g) each consideration of directly and adversely affected status will be determined by the Board on a case-by-case basis.

[28] The Board has determined there is no one test that it can apply to determine if an appellant is directly and adversely affected. Instead, the Board will apply the above principles to its consideration of the directly and adversely affected status of the GACM in this appeal.

B. What percentage of the GACM's members have to be directly and adversely affected for the GACM to have standing?

[29] As previously noted, section 212(1)(b) of PLAR states:

“The following persons have standing to appeal a prescribed decision:...

- (b) a person, including a commercial user referred to in section 98, that is directly and adversely affected by the decision.”

[30] The Court in *Normtek* and other decisions have found that the word “directly” limits the class of person who can appeal, but conferred broad discretion on the Board to determine who is directly affected by a director's decision.²⁵ The legislation does not specifically address an organization representing multiple persons alleging they are directly and adversely affected.

²³ Decision: *Rothwell v. Director, Operations Division, Red Deer-North Saskatchewan Region, Alberta Environment and Parks*, re: *Scenic Sands Community Association* (15 February 2019), Appeal No. 18-0014-D (A.P.L.A.B.), at paragraph 31.

²⁴ *Leduc (County No. 25) v. Alberta (Local Authorities Board) (1987)*, 84 A.R. 361 (Alta. C.A.) at paragraphs 11 to 12.

²⁵ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 77.

(i) Submissions

[31] The GACM submitted that organizing opponents into one association for the appeal promotes efficiency for the appeal process and this should be considered when the Board determines standing. The GACM stated:

“Standing is granted on an individual basis. GACM is merely a group formed to coordinate the intervention of members of Gordeyville and Area Communities that are directly and adversely affected by the proposed activity. If the 150 individual members that are directly and adversely affected are granted standing to appeal the decision, there will be duplication of efforts and extensive amount of time spent dealing with numerous appeals. By granting standing to the members and to the group that represents these 150 individual members, an appeal hearing can proceed effectively and efficiently.”²⁶

[32] The GACM said it had standing to appeal the decision on the basis that its individual members were directly and adversely affected. The GACM submitted the Board should not base its determination on whether the majority of the GACM’s members are directly and adversely affected, which the GACM called the “majority test.” The GACM stated: “Adoption of [the] ‘majority’ test is inconsistent with section 212(1) of the Regulation which does not prescribe the requirement of majority of members being directly and adversely affected before a group can be determined directly and adversely affected.”²⁷

[33] The Director submitted the Board should adopt the EAB’s approach to determining if an unincorporated organization is directly and adversely affected. The Director stated:

“... that in order for GACM to be directly and adversely affected (and therefore have standing to appeal of the Decision), GACM has the onus of showing a reasonable possibility that as a result of issuing the DML to the Association a majority of GACM’s members, individually, would be directly and adversely affected.”²⁸

[34] The Director noted the GACM said only 150 out of 410 of its members were directly and adversely affected. The Director submitted the Board should find that less than half

²⁶ GACM’s Rebuttal Submission, April 22, 2021, at paragraph 27.

²⁷ GACM’s Rebuttal Submission, April 22, 2021, at paragraph 30.

²⁸ Director’s Submission, April 8, 2021, at paragraph 24.

of the GACM's members are directly and adversely affected and, therefore, the GACM did not have standing to appeal the Director's decision to issue the DML.

[35] The Disposition Holder stated it was in favour of the Board conducting the appeal with the GACM representing concerned individuals rather than having each individual file their own separate appeals.

(ii) Analysis

[36] The Courts have found there are significant advantages to allowing organizations to represent multiple appellants. The Court stated in *Alberta Liquor Store Association v. Alberta (Gaming and Liquor Commission)*:

“The granting of standing to collective organizations avoids multiplicity of lawsuits. It allows a number of concerned persons to combine their resources, which leads to a better ability to marshal evidence, to retain counsel, and generally to provide the kind of input that leads to sound decisions by administrative tribunals and the courts.”²⁹

[37] The efficiency of the appeal process is an important factor for the Board to consider in its deliberations. In *Normtek*, the Court noted the EAB's function was to hear appeals by parties directly affected by directors' decisions and report to the Minister, Environment and Parks (the “Minister”), who makes the final decision on the appeal. Like the EAB, the Board was also established to provide expert advice to the Minister on appeals under the Act and PLAR. The Board provides the Minister with a Report and Recommendations for appeals it hears, and the Minister makes the final decision on the appeal. In *Normtek*, the Court commented on the role of standing for directly and adversely affected appellants, and while the comment was related to the EAB, it also applies to the Board:

“By granting standing to those directly affected by Directors' decisions, the Minister receives the benefit of additional scrutiny which, in the case of directly affected industry participants, provides the Minister with a practical

²⁹ *Alberta Liquor Store Association v. Alberta (Gaming and Liquor Commission)*, 2006 ABQB 904, at paragraph 20.

understanding of the effects of conditions of approvals, which industry participants are in a unique position to provide.”³⁰

[38] The advantages to the efficiency of the appeal process and the advising of the Minister are lost if the Board allowed those who are not directly and adversely affected to initiate appeals. Such abuse of the appeals system would be against section 212 of PLAR and could result in unnecessary and frivolous appeals. Determining whether an appellant is directly and adversely affected by a director’s decision is an important function of the Board.

[39] The Board has a responsibility to ensure the appeal is conducted with procedural fairness for all parties to the appeal. The Board notes the Act and PLAR, particularly section 212, does not provide for a “majority test.” The Director would have the Board remove the right to appeal for at least 150 potentially directly and adversely affected appellants solely on the basis that they do not form the majority in the GACM’s membership. The Board finds such an approach would be a breach of natural justice and is not supported by the Act or PLAR.

[40] The Director has not provided any relevant caselaw that requires a majority of the group representing an appellant to be also directly and adversely affected. While *Normtek* does not specifically address the “majority test,” it does make it clear that any test to be applied must have a basis in the legislation. The “majority test” does not have any such basis.

[41] The Board is not concerned with who represents an appellant. There is no legislative prohibition preventing an appellant from choosing to be represented by an organization or group.

[42] An important factor the Board will consider when determining standing is a group or organization’s purpose. An organization that has a general purpose is less likely to be directly and adversely affected by a decision than an organization that is formed specifically with a common interest to address concerns regarding a decision.

³⁰ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 77

[43] In this appeal, the Board finds a substantial portion of the GACM's members are directly and adversely affected. The Board also finds the GACM was formed with a common interest and purpose.³¹

[44] The Board will consider only those issues impacting a directly and adversely affected appellant. The Board may choose to allow other members of a group to participate as parties to the appeal as per section 212(5) of PLAR, but such parties would not be "prescribed persons" under section 121 of the Act.

C. Is the GACM likely to be directly and adversely affected by the DML?

[45] In particular, is the GACM likely to be directly and adversely affected by the following:

- (i) noise;
- (ii) safety;
- (iii) economic loss;
- (iv) loss of recreation;
- (v) damage to watercourses;
- (vi) increased traffic; and
- (vii) environmental damage?

(i) Submissions

[46] The GACM submitted it was concerned the DML would have "negative and adverse consequences for the GACM members residing adjacent to the lands and for those member who use the area for recreational activities."³² The negative and adverse consequences included:

- noise pollution;
- safety issues from traffic and stray bullets;

³¹ See: *Bailey et al. v. Director, Northern East Slopes Region, Environmental Service, Alberta Environment*, re: *TransAlta Utilities Corporation*, (13 March 2001), Appeal Nos. 00-074-075, 077-078, 01-001-005 and 011.

³² GACM's Initial Submission, March 25, 2021, at page 4.

- environmental degradation for wildlife and the aquatic environment; and
- and loss of enjoyment of the area for recreational activities.

[47] The GACM noted that some of its members held grazing leases and raised livestock on the grazing leases, while others raised livestock on their own lands, all of which would be at risk of being hit by stray bullets.

[48] The GACM said the DML would have “adverse environmental effects on wildlife and the aquatic environment.”³³

[49] The GACM stated: “[Virtually] all of the members of the Gordeyville and Area Community Members Group have historically used and currently use and will foreseeably use the Lands applied for the [DML] as well as adjacent Lands...”³⁴ The GACM said its members use the DML lands for economic, social, and recreational activities, including:

- hiking;
- cross country skiing;
- geocaching;
- dogsledding;
- walking dogs;
- snowshoeing;
- hunting;
- outback camping;
- wiener/smoky roasts;
- snowmobiling;
- OHV riding;
- cutting firewood from deadfalls;
- wildlife and bird watching;
- fresh water runoff for livestock watering;
- livestock grazing; and
- fresh water table replenishment for water wells all of the community relies on for fresh potable water.

[50] The GACM said there were approximately 150 Close Proximity Members.

[51] The Director stated that a person making a claim of begin directly and adversely affected by the loss of public lands for recreation must provide evidence indicating:

³³ GACM’s Initial Submission, March 25, 2021, at page 4.

- “(a) the specific activities an individual conducts on the public lands,
- (b) the frequency and duration the public lands are used for those activities,
- (c) whether there are alternative locations on which those activities could be conducted in the area, and
- (d) any restrictions that may be associated with the use of the public lands.”³⁵

[52] The Director noted the GACM stated its members use the DML lands for economic activities, such as livestock grazing and watering. The Director said such activities are not permitted on public land without a disposition from AEP, and that none of the GACM’s members have been issued a disposition for the DML lands.

[53] The Director submitted more than proximity to the DML lands is required to show a person is directly and adversely affected.

[54] The Disposition Holder noted that all registered shooting range designs are governed by the RCMP and routinely inspected by the Provincial Chief Firearms Offices.

[55] The Disposition Holder stated land values are enhanced by proximity to the shooting range. The Disposition Holder submitted that the value of land developments around shooting clubs in Spruce Grove and Grande Prairie rose at the same rate or better than similar land developments in the same areas not next to a shooting club.

[56] The Disposition Holder said it conducted sound testing on the DML in relation to nearby residences 1.9 kilometres away and found there was no audible or measurable sound from the two closest neighbours’ driveways. The Disposition Holder noted the testing did not include mitigating conditions, so that it could produce a “worst case scenario” to assist in developing its structures and sound dampening measures.

[57] The Disposition Holder stated it had been exploring possible noise reduction ideas. The Disposition Holder said:

“In addition, our board has been working with a local sound suppression specialist to design and build a bench-mounted safety device that serves two purposes:

³⁴ GACM’s Letter, February 25, 2021, at page 5.

³⁵ Director’s Response Submission, April 8, 2021, at paragraph 38.

controlling the firing direction of a member's firearm (making errant bullets virtually impossible); and inherently dampening percussive sounds generated by our membership."³⁶

(ii) Analysis

[58] The GACM must provide some reasonable evidence on the balance of probabilities to support their application for standing. The GACM does not have to show they would be successful in the appeal, only that the DML has reasonable potential to directly affect them. In *Normtek*, the Alberta Court of Appeal quoted favourably from its previous decision in *Leduc (County No. 25) v. Alberta (Local Authorities Board)*:

“A tribunal cannot know with any certainty at the start of the hearing what the proceeding will involve. The only certain way to determine that would be to require each person to call evidence on the point. In the present case, [the appellant] would presumably be forced to call enough evidence to establish the potential for a serious effect on him if the proposed annexation takes place. That would be to force him to succeed on the principal issue in the hearing before he has a right to appear in it, which in our view would be applying the statute to bring about an absurd conclusion. On the other hand, if the [Local Authorities Board] were required to wait until the [Disposition Holder] had called evidence as to the effect of annexation and that had been answered by the other parties, the hearing would be virtually completed before the preliminary question of who are to be parties could be answered...

In our view, the legislature cannot have intended that degree of certainty in this definition. The overriding purpose sought to be achieved by the *Administrative Procedures Act* is fairness in the administrative process. The [Local Authorities Board] must ensure that those persons with a serious interest in the proceeding are fairly heard. At the same time, it must protect itself, and the legitimate parties to the hearing, from having the whole proceeding complicated and made more expensive by those with no real interest at stake. The [Local Authorities Board], by the nature of its task, is bound to make its ruling at an early stage of the proceeding. It is bound to rule fairly on a balance of probabilities whether the hearing has the potential to affect or vary a person's rights given the variations in result possible at the conclusion of the hearing.”³⁷

The Court in *Normtek* concluded that there must be “at least some consideration of the merits of the appellant's objections or concerns in order to determine whether an appellant is directly

³⁶ Disposition Holder's Response Submission, March 28, 2021, at page 3.

³⁷ *Leduc (County No. 25) v. Alberta (Local Authorities Board)* (1987), 84 A.R. 361, at paragraphs 11 to 12.

affected.”³⁸

[59] The Board finds it must consider, without making a final decision, some of the merits of the appeal in order to determine if the GACM may be directly and adversely affected by the DML.

[60] The Board does not have the jurisdiction to consider damage to water courses and to the environment when determining directly and adversely affected status. Water courses and water issues are governed by the *Water Act* and environmental issues are governed mainly by EPEA. These are matters of appeal that the EAB may hear. The Board also does not have the jurisdiction to consider potential safety issues from an increase in traffic. Traffic in the area is a matter within the jurisdiction of the County of Grande Prairie

[61] The Board finds the GACM did not provide sufficient evidence to demonstrate a reasonable probability that the GACM’s members or their livestock would be impacted by safety issues such as stray bullets. Stating there is a potential is not the same as providing at least minimal evidence to back up the statement. While the Board has already noted the evidence need not be conclusive, it must be sufficient to demonstrate the potential harm. The GACM failed to provide such evidence.

[62] The Board finds the GACM did not submit adequate evidence that there was a reasonable probability the DML would cause damage to wildlife habitat and migration. The Board had no evidence in front of it to determine what wildlife habitat existed or what migration routes were potentially impacted.

[63] The GACM’s evidence was lacking on whether there was a reasonable probability the DML would reduce property values. The Board had no evidence from the GACM regarding similar areas where property values were impacted by a nearby gun range, or even any estimates or logical reasons.

³⁸ *Normtek Radiation Services Ltd. v. Alberta Environmental Appeal Board*, 2020 ABCA 456, at paragraph 104.

[64] The Board finds the DML would result in restricted access to the GACM for recreational purposes. However, the GACM did not provide sufficient evidence there was a reasonable probability the restricted access would directly and adversely affect the GACM. Additionally, the Board notes public land belongs to the Crown. Recreational users who do not have a disposition from the Government of Alberta do not have a right to use public land except at the pleasure of the Crown.

[65] The Board finds there is a reasonable probability the noise levels from the DML would directly and adversely affect the GACM. The Board reviewed the RCMP document “Shooting Ranges and Sound” which included information showing that sound levels from a gunshot drops from over 110 decibels to 60 decibels over 1000 metres.³⁹ As the calculation involves many variables, the Board was liberal in its consideration of who would be directly and adversely affected by gun noise from the DML. The Board applied a range of 1 to 3.21 kilometres, which is equivalent to the distance of two sections, to the list and map provided by the GACM of the location of its members. The Board notes the following members of the GAMC are within a 3.21 (2 mile) distance of the DML and are directly and adversely affected for the purposes of section 212(1)(a) of PLAR:

Badger, Marvin	Gordey, Dexter
Badger, Rose	Gordey, Randy
Badger, William	Gordey, Robin
Burrell, Darcy	Hamilton, Brandon
Burrell, Stephanie	Hamilton, Cassandra
Corf, Fred	Herzog, Brandon
Crocker, Joanna	Herzog, Shana
Crocker, Wayne	Hinteregger, Peter
Dunlop, Brandon	Hollingsworth, Doug
Dunlop, Lynda	Hollingsworth, Peggy
Fimrite, Jason	Jamison, Alycia
Fimrite, Katherine	Jamison, Ian
Fraser, Bruce	Lacey, Bobbie
Fraser, Judy	Lacey, Corey
Gendreau, Kristofer	Lacey-Short, Ferne
Girard, Marc	Larose, Erin
Gordey, Dave	MacDonald, Hugh

³⁹ John C. Swallow, John Hemingway, and Pearlie Yung, *Shooting Ranges and Sound*, online 2007, Royal Canadian Mounted Police (RCMP) <<http://bancroftfishandgame.com/wp-content/uploads/2014/01/Range-Guidelines-sound.pdf>>

MacDonald, Sarah
Marquarott, Grant
McLuskie, Julie
Muggaberg, John
Muggaberg, Val
Perry, Betty
Perry, Dana
Robinson, Linda
Robinson, Randy
Saddleview Ranch
Sandboe, Coltan
Sarrasin-Ster, Leah
Scarlett, Colleen
Shannon, Melanie

Snoble, Cameron
Speedtsberg, Jim
Steinbru, Ken
Sterr, Perley
Strebchuk, Stephan
Utz, Andy
Walters, Jody
Williams, Bev
Williams, Roger
Williams, Sydney
Woodland, Jamie
Woodland, Krissy
Zahn, Debbie
Zahn, Denni

[66] The Board will refer to those GACM members who have been identified as directly and adversely affected by the DML as the “Appellants.” The Board will allow the GACM members, who are represented by the GACM and who have not been identified by the Board as being directly and adversely affected, to be to be parties to the appeal (the “Interested Parties”). The Board expects the Appellants and Interested Parties will remain represented by the GACM. The Board will not accept separate submissions from individuals in the GACM, although they may provide individual testimony and statements as part of the GACM submissions, if required.

V. CONCLUSION

[67] The Board has considered the following in determining if the GACM is directly and adversely affected and has standing to file a Notice of Appeal with the Board:

- the proximity of the Appellants to the DML;
- the GACM’s interest in the decision to issue the DML is greater than the interest of the general public;
- the GACM has shown on there is a reasonable probability that some of its members (the Appellants) may experience a negative impact due to the noise the DML may cause;
- the Board has identified the Appellants who are directly and adversely affected by the noise the DML may cause;

- the Appellants represent a substantial portion of the GACM's membership; and
- GACM's membership have a common interest and purpose.

[68] Based on these findings, the Board has determined the GACM is directly and adversely affected by the DML and has standing under section 212(1)(b) of PLAR. The GACM will represent the Appellants and the Interested Parties in the appeal.

[69] The Board denies the Director's motion to dismiss the GACM's Notice of Appeal.

[70] The Board has considered the merits of the appeal only to the extent necessary to determine if the GACM is directly and adversely affected. This is a preliminary finding that does not bind the Board to any particular recommendation or decision. If the appeal proceeds to a hearing, the GACM must prove the Director, in making the decision to issue the DML, erred in the determination of a material fact on the face of the record or erred in law.

[71] The issues of the appeal will be heard by the Board only as they relate to the Appellants.

Dated on June 23, 2021, at Edmonton, Alberta.

"original signed by"
Gordon McClure
Board Chair