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# ALBERTA PUBLIC LANDS APPEAL BOARD

## Report and Recommendations

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Date of Report and Recommendations – November 19, 2018

**IN THE MATTER OF** sections 121, 123, and 124 of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 213, 216, 217, 226, and 227 of the *Public Lands Administration Regulation*, Alta. Reg. 187/2011;

**-and-**

**IN THE MATTER OF** an appeal filed by 1657492 Alberta Ltd. with respect to the decision of the Director, Provincial Approvals Section, Alberta Environment and Parks, to refuse to issue Surface Materials Lease SML 130035.

Cite as: *1657492 Alberta Ltd. v. Director, Provincial Approvals Section, Alberta Environment and Parks* (19 November 2018), Appeal No. 18-0006-R (A.P.L.A.B.).

**BEFORE:**

Ms. Marian Fluker, Acting Chair.

**PARTICIPANTS:**

**Appellant:** 1657492 Alberta Ltd., represented by Mr. Tom Owen, Owen Law.

**Director:** Ms. Corinne Kristensen, Director, Provincial Approvals Section, Alberta Environment and Parks, represented by Ms. Vivienne Ball, Alberta Justice and Solicitor General.

## **EXECUTIVE SUMMARY**

1657492 Alberta Ltd. (the Appellant) filed an application with Alberta Environment and Parks (the Department) for a Surface Materials Lease (SML). The Department refused to issue the SML. The Appellant appealed the refusal to the Public Lands Appeal Board (the Board).

A mediation meeting was held and a resolution was reached whereby the Appellant and the Department asked the Board to recommend to the Minister the decision to refuse to issue the SML be reversed and the SML be issued to the Appellant. The Board accepted the mediated agreement and recommended the Minister order the SML be issued.

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## **I. INTRODUCTION**

[1] This is the Report and Recommendations from the Public Lands Appeal Board (the “Board”) to the Minister, Alberta Environment and Parks (“Minister”), arising from a mediation held on an appeal filed by 1657492 Alberta Ltd.

## **II. BACKGROUND**

[2] On May 16, 2013, 1657492 Alberta Ltd. (the “Appellant”) filed an application for Surface Materials Lease 130035 (the “SML”) for public lands located at 28-76-23-W4M and 33-76-23-W4M, southeast of the Hamlet of Watino, in the Municipal District of Smoky River No. 130. On April 30, 2018, the Appellant received a letter from the Director, Provincial Approvals Section, Alberta Environment and Parks (the “Director”) advising the application had been refused based on the allegation the Appellant was affiliated with six other businesses in breach of the “80-Acre Rule” of the *Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land*. The 80-Acre Rule prohibits an applicant from obtaining a surface material disposition where the applicant is “affiliated” with other disposition holders, and the total acreage of the surface material dispositions held by the applicant and the affiliates would be over 80 acres within a 6-mile radius.

[3] On the same date the Director refused the Appellant’s application, the Director also refused four other applications for Surface Materials Leases (the “Other SMLs”), alleging the four applicants (the “Other Applicants”)<sup>1</sup> and the Appellant were affiliated.

[4] In addition to the affiliation allegation, the Director identified other reasons for refusing the applications of the Other Applicants.

[5] On May 8, 2018, the Board received Notices of Appeal from the Appellant appealing the refusal to issue the SML. The Board also received Notices of Appeal from the Other Applicants appealing the refusals of the Director to issue the Other SMLs. With the

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<sup>1</sup> The Other Applicants were: Independent Industries Ltd. (PLAB Appeal No. 18-0001), 1798471 Alberta Ltd. (PLAB Appeal No. 18-0003), Jessica Brennan (PLAB Appeal No. 18-0004), and Big Easy Ventures Ltd. (PLAB Appeal No. 18-0005).

consent of the Appellant, the Other Applicants and the Director, the Board combined the five appeals and a mediation meeting with the Appellant, Other Applicants, and the Director was held on October 19, 2018, in Edmonton, Alberta.

### **III. DISCUSSION**

[6] The mediation resulted in an agreement between the Director and the Appellant, jointly requesting the Board submit a Report and Recommendations to the Minister recommending the Minister reverse the Director's decision and issue the SML to the Appellant.

[7] The mediation also resulted in the appeals of the Other Applicants being withdrawn.

[8] The Board considers the mediated agreement to be reasonable and recommends the Minister reverse the Director's decision and order the SML be issued to the Appellant, subject to reasonable terms and conditions as determined by the Director.

### **IV. RECOMMENDATION**

[9] In accordance with section 122(3)<sup>2</sup> of the *Public Lands Act*, R.S.A. 2000, c. P-40, and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011, the Board recommends the Minister reverse the Director's decision to refuse the SML, and order the Director to issue SML 130035 to 1657492 Alberta Ltd. with reasonable terms and conditions as determined by the Director.

[10] In accordance with section 124(4)<sup>3</sup> of the *Public Lands Act*, a copy of this Report and Recommendations and any decision by the Minister regarding this appeal, are to be provided to:

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<sup>2</sup> Section 122(3) of the *Public Lands Act* provides:

“The appeal body may, with the consent of the parties to the appeal, make its report to the Minister without conducting a hearing of the appeal.”

<sup>3</sup> Section 124(4) of the *Public Lands Act* provides:

“The Minister shall immediately give notice of any decision made under this section to the appeal body, and the appeal body shall immediately, on receipt of the notice of the decision, give notice of the decision to all persons who submitted notices of appeal or made representations or written submissions to the appeal body and to all the persons who the appeal body considers should receive notice of the decision.”

1. Mr. Tom Owen, Owen Law, on behalf of 1657492 Alberta Ltd.; and
2. Ms. Vivienne Ball, Alberta Justice and Solicitor General, on behalf of the Director, Provincial Approvals Section, Alberta Environment and Parks.

Dated on November 19, 2018, at Edmonton, Alberta.



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Marian Fluker  
Acting Chair



ALBERTA  
ENVIRONMENT AND PARKS

*Office of the Minister  
Minister Responsible for the Climate Change Office  
MLA, Lethbridge-West*

**Ministerial Order  
40/2018**

*Public Lands Act*  
R.S.A. 2000, c. P-40;

and

*Public Lands Administration Regulation*  
Alta. Reg. 187/2011.

**Order Respecting Public Lands Appeal Board  
Appeal No. 18-0006**

I, Shannon Phillips, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being an Order Respecting Public Lands Appeal Board Appeal No. 18-0006.

Dated at the City of Edmonton, Province of Alberta, this 27<sup>th</sup> day of November, 2018.

  
Shannon Phillips  
Minister



## Appendix

### Order Respecting Public Lands Appeal Board Appeal No. 18-0006

With respect to the decision of the Director, Provincial Approvals Section, Alberta Environment and Parks, (the "Director"), to refuse to issue Surface Materials Lease SML 130035, under the *Public Lands Act*, R.S.A. 2000, c. P-40, to 1657492 Alberta Ltd., I, Shannon Phillips, Minister of Environment and Parks, order that:

1. The decision of the Director to refuse to issue SML 130035 is reversed.
2. The Director shall issue SML 130035 to 1657492 Alberta Ltd., with reasonable terms and conditions as determined by the Director.