ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – May 11, 2020

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

-and-

IN THE MATTER OF appeals filed by Robert Heigh, Sharon Heigh, and the Shelter Bay Campers, with respect to the decision of the Director, Provincial Approvals Section, Alberta Environment and Parks, to refuse to issue Department Miscellaneous Lease 160081, Department License of Occupation 160190, and Department License of Occupation 160191.

Cite as: Stay Decision: *Heigh et al.* v. *Director, Provincial Approvals Section, Alberta Environment and Parks* (11 May 2020), Appeal Nos. No. 19-0009-0011 and 19-0014-0244-ID1 (A.P.L.A.B.), 2020 ABPLAB 5.

BEFORE: Mr. Gordon McClure, Board Chair.

SUBMISSIONS BY:

Appellants: Robert Heigh, Sharon Heigh, and the Shelter Bay Campers, represented by Mr. Michael Theroux, Bennett Jones LLP.

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

EXECUTIVE SUMMARY

On November 14, 2016, Robert Heigh and Sharon Heigh (the Heighs), owners and operators of Shelter Bay Resort, applied to the Director, Provincial Approvals Section, Alberta Environment and Parks (the Director), for three formal dispositions: Department Miscellaneous Lease 160081; Department Licence of Occupation 160190; and Department Licence of Occupation 160191 (the Dispositions). The purpose of the Dispositions was for a recreational campground, which the Heighs have operated for over 30 years (the Shelter Bay Campground). On October 7, 2019, the Director refused to issue the Dispositions. On October 25, 2019, the Board received a Notice of Appeal from the Heighs appealing the Director's decision. On November 5, 2019, the Board received Notices of Appeal from 231 individuals who use the Shelter Bay Campground (the Shelter Bay Campers).

On March 23, 2020, the Heighs and the Shelter Bay Campers (collectively the Appellants), requested the Board stay the decision of the Director to refuse to issue the Dispositions. The Board requested and received written submissions from the Appellants and the Director.

The Board considered the written submissions, the relevant legislation, and case law, and applied the test for a stay, and found:

1. there was a serious issue to be heard by the Board;
2. the Appellants would suffer irreparable harm if a stay was not granted;
3. the Appellants would suffer greater harm if a stay was not granted than the Director would suffer if a stay was granted; and
4. the public interest favoured granting a stay.

The Board ordered the Director's decision to refuse to issue the Dispositions be stayed until the Board lifts the stay or the Minister issues a Ministerial Order regarding the appeals.

TABLE OF CONTENTS

I. INTRODUCTION

[1] This is the decision of the Public Lands Appeal Board (the "Board") regarding a stay application by Robert Heigh and Sharon Heigh (the "Heighs"), owners and operators of Shelter Bay Resort, and the individuals who use the Shelter Bay Campground (the "Shelter Bay Campers"). The Heighs and the Shelter Bay Campers (collectively the "Appellants") seek a stay of the decision (the "Decision") by the Director, Provincial Approvals, Alberta Environment and Parks (the "Director"), to refuse to issue dispositions for Department Miscellaneous Lease 160081, Department Licence of Occupation 160190, and Department Licence of Occupation 160191 (collectively, the "Dispositions").

II. BACKGROUND

[2] The Heighs received approval on August 13, 1987, for Miscellaneous Lease 870094, to operate a campground on public lands located on the eastern shore of Marie Lake in the Municipal District of Bonnyville (the "Lands").[1] Miscellaneous Lease 870094 was renewed in 1999 and expired in 2007. On November 25, 2015, Alberta Environment and Parks ("AEP" or the "Department") cancelled Miscellaneous Lease 870094. Throughout this period, the Heighs continued to pay yearly rent on the Lands and remained as overholding tenants.

[3] On November 14, 2016, the Heighs applied to the Director for the Dispositions to replace Miscellaneous Lease 870094. The Dispositions would allow them to operate a campground, road access, and a dock. On October 7, 2019, the Director provided the Heighs with a decision letter (the "Decision"), refusing to issue the Dispositions for the following reasons:

(a) non-compliance with the Act;

(b) the proposed campground would benefit only a small number of Albertans; and

(c) a historical pattern of non-compliance with the lease and acting without authorization from AEP.

[4] The Director's Decision noted the Heighs had no right to the Lands, and as a result of the Director's Decision, all chattels owned or improvements erected or created by the Heighs and the Shelter Bay Campers must be removed. The Decision stated failure to remove

the chattels and improvements might result in forfeiture to the Crown under section 62(4) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the "Act"), and that the matter had been referred to the Regional Compliance Section, Lower Athabasca Region, Alberta Environment and Parks ("Regional Compliance").[2]

[5] On October 25, 2019, the Board received a Notice of Appeal from the Heighs appealing the Director's Decision. On November 5, 2019, the Board received a Notice of Appeal from the Shelter Bay Campers (231 campers), also appealing the Decision. The Board accepted the Notices of Appeal and requested the Director provide the Department's record related to the Decision ("Department's Record"), which the Director sent to the Board on January 27, 2020.[3] The Board sent the Department's record to the Appellants on January 31, 2020.

[6] On March 18, 2020, the Appellants applied to the Board for a stay of the Decision. The Appellants stated: "The Heighs and the Shelter Bay Campers seek a stay of the Director's decision dated October 7, 2019, and in particular the order that the Heighs and the Shelter Bay Campers remove all chattels and improvements…" from the Lands.

[7] On March 20, 2020, the Board asked the Appellants and the Director (collectively the "Parties") to provide submissions on the appropriateness of the stay application and the following four questions which comprise the Board's test for determining whether to grant a stay:

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1 Miscellaneous Lease 870094 is located on NW 21-65-2-W4M, SW 28-65-2-W4M, and E 29-65-2-W4M.

2 Regional Compliance is the part of Alberta Environment and Parks responsible for the enforcement of the legislation administer by the Department in the area of the Province where the Lands are located.

3 Section 120 of the Act states "[a]n appeal under this Act must be based on the decision and the record of the decision-maker." To determine what the decision and the record of the decision-maker is, the Board looks to the definitions in PLAR. Section 209(f) of PLAR defines "director's file" as "in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision…"

Section 209(m) of PLAR defines "record" as follows: "means record as defined in the Freedom of Information and Protection of Privacy Act…" Section 1(q) of the *Freedom of Information and Protection of Privacy Act*, R.S.A. 2000, c. F-25, states:

> "'record' means a record of information in any form and includes notes, images, audiovisual recordings, x rays, books, documents, maps, drawings, photographs, letters, vouchers and papers and any other information that is written, photographed, recorded or stored in any manner, but does not include software or any mechanism that produces records…"

Based on these definitions, the Board considers the "Department's Record" to be the director's file, along with AEP's record, which is any of the information as defined in section 1(q) of the *Freedom of Information and Protection of Privacy Act.*

(a) what are the serious concerns of the Appellants that should be heard by the Board;

(b) would the Appellants suffer irreparable harm if the stay is refused;

(c) would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay; and

(d) would the overall public interest warrant a stay?[4]

[8] On March 24, 2020, the Appellants filed their written submission with the Board.

[9] On March 31, 2020, the Director made submissions responding only to the question of the appropriateness of the stay request. The Director asked the Board to find the Appellants had improperly amended their Notices of Appeal and refuse the stay application for the following reasons:

(a) the deadline for appeals had expired;

(b) the only decision the Director made was to refuse to issue the Dispositions;

(c) the Director did not issue an order to the Appellants; and

(d) the Appellants' stay application is a collateral attack on an Order to Vacate issued on December 11, 2019.

The Director requested the Board consider this "threshold issue" before considering the Appellant's stay application.

[10] The Appellants wrote to the Board on April 2, 2020, objecting to the Director's request and failure to make submissions according to the schedule for the exchange of submissions set by the Board.

[11] The Board wrote to the Parties on April 3, 2020, and reminded them the Board's instructions on submissions were "very specific that the parties were requested to provide a submission on the appropriateness of the stay application and the four questions that constitute the stay test." The Board noted the Director had chosen not to address the Board's four questions regarding the test for a stay, and the Director's approach was contrary to the process set by the Board. The Board adjusted its schedule to permit the Director to provide submissions on the stay test.

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4 See *RJR MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311.

[12] On April 7, 2020, the Board received submissions from the Director on the stay test. The Appellants provided a rebuttal submission to the Board on April 16, 2020.

III. ISSUES

[13] The Board set the following issues to be determined in making its decision on the stay application:

1. The appropriateness of the stay application.
2. What are the serious concerns of the Appellants that should be heard by the Board?
3. Would the Appellants suffer irreparable harm if the stay is refused?
4. Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay?
5. Would the overall public interest warrant a stay?

IV. SUBMISSIONS

A. Appellants' Application and Initial Submission

(i) Appropriateness of the stay application

[14] The Appellants stated that the Decision orders the Heighs and the Shelter Bay Campers to remove all chattels and improvements on the Lands. The Appellants stated they sought a stay of the Decision, particularly, the order to remove all chattels and improvements.

(ii) What are the serious concerns of the Appellants that should be heard by the Board?

[15] The Appellants said the Heighs have been lawful tenants on the Lands for over 33 years. The Appellants stated the Heighs live on the Lands and have built their life around operating a popular campground.

[16] The Appellants said the Heighs paid rent for the Lands every year for 33 years, and most recently paid rent in the summer of 2019 for the use of the Lands in 2020. The Appellants noted AEP accepted the rent every year, including the payment for the 2020 camping season.

[17] The Appellant submitted the Decision seeks to deprive the Heighs of their livelihood by shutting down the campground and removing their sole source of income.

[18] The Appellants referred to the Board's decision in *JMB Crushing Systems ULC* v. *Alberta Environment and Parks*, 2019 ABPLAB 4 ("*JMB Crushing*"),[5] where the Board stated the test for a stay set out in *RJR MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311 ("*RJR MacDonald*"),[6] was not binding on the Board's approach to stays. The Appellant noted the Board found it could take a "more reasonable approach" by considering "the justice and equity of the situation"[7] when considering whether or not to grant interim relief in an appeal under the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 ("PLAR"). The Appellants stated the Board found all appeals under PLAR are considered to be a "serious issue,"[8] meeting the first requirement of the *RJR MacDonald* test. The Appellants submitted the first part of the test is a low threshold that the Heighs and the Shelter Bay Campers satisfied as appellants involved in an appeal before the Board.

(iii) Would the Appellants suffer irreparable harm if the stay is refused?

[19] The Appellants stated the Heighs would suffer irreparable harm without a stay of the Decision. The Appellants submitted the Heighs would be forced to pack up their belongings, tear down their infrastructure, abandon their home, and shut down the campground. The Appellants noted the campground has been the Heighs' home for over 33 years.

[20] The Appellants said that removing their property from the Lands would be expensive, and these expenses would not be easily compensable with damages. The Appellants noted as a result of the economic downturn, the cost of having to remove chattels and improvements from the Lands will be irreparable to the Heighs and many of the Shelter Bay Campers. The Appellants submitted it would be contrary to the interests of justice to order the Heighs and the Shelter Bay Campers to vacate the Lands in this economic climate, especially before the Board has determined the merits of the Decision.

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5 *JMB Crushing Systems ULC* v. *Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (1 April 2019), Appeal No. 18-0023-DL1 (A.P.L.A.B.), 2019 ABPLAB 4.

6 *RJR MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311.

7 *JMB Crushing Systems ULC* v. *Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (1 April 2019), Appeal No. 18-0023-DL1 (A.P.L.A.B.), 2019 ABPLAB 4, at page 3.

8 *JMB Crushing Systems ULC* v. *Director, Regional Compliance, Lower Athabasca Region, Alberta Environment and Parks* (1 April 2019), Appeal No. 18-0023-DL1 (A.P.L.A.B.), 2019 ABPLAB 4, at page 2.

[21] The Appellants stated if they remove the infrastructure and leave the Lands, as ordered to do so, and then are subsequently successful in their appeals, the Heighs will be left with a compliant, but empty campground. The Appellants said in these difficult economic times, it is unlikely the Shelter Bay Campers would return to the campground after incurring the expense of removing their chattels and improvements from the Lands.

[22] The Appellants argued that if the Board refused to grant a stay of the Decision, the impacts on the Heighs' reputation would be significant, and it would be difficult, if not impossible, to rectify.

[23] The Appellants stated an eviction of the Shelter Bay Campers from the Lands would not only cost money but would also deprive them and their families of their only recreational plans for this summer.

[24] The Appellants submitted ordering them to vacate the Lands before the Board has determined the merits of the appeal, would be contrary to the interests of justice as outlined in *JMB Crushing*. The Appellants stated vacating the Lands should wait until there is a final determination on the appeal.

(iv) Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay?

[25] The Appellants submitted the Appellants would suffer far greater harm if the Board refuses to grant a stay of the Decision than the Director would suffer if the Board grants a stay. The Appellants stated they are only seeking to keep the status quo that has existed for more than three decades, and there is no risk of harm to AEP resulting from the stay.

[26] The Appellants noted the Heighs are senior citizens and would suffer if forced to leave their home during the current COVID-19 pandemic without a home to self-isolate.

(v) Would the overall public interest warrant a stay?

[27] The Appellants submitted the public interest favoured granting the stay, as hundreds of campers back the appeals. The Appellants stated their limited recreational plans depend on the campground being operational. The Appellants noted it was in the public interest for the Province to avoid burdening the public with further financial and emotional concerns during a pandemic and economic crisis. The Appellants stated it would be socially irresponsible

to order hundreds of campers to descend on the Lands to remove infrastructure and personal belongings, creating a public health emergency.

[28] The Appellants argued it was not in the public interest to proceed with eviction before the appeal is determined.

B. Director's Response Submission

(i) Appropriateness of the stay application

[29] The Director submitted the Appellants' March 18, 2020 letter attempts to amend the Notices of Appeal to include the order allegedly made against the Heighs by the Director in the Decision. The Director stated she did not make an order in the Decision.

[30] The Director observed the deadline to appeal the Decision expired on October 27, 2019, 20 days after the Director issued the Decision on October 7, 2019. The Director argued the Appellants' "amended" Notices of Appeal were late. The Director noted the Decision advised of the strict timelines for filing of appeals to the Board and identified the applicable section of PLAR.

[31] The Director submitted the only decisions made in the Director's Decision were the refusal to issue the Dispositions to the Heighs. The Director stated no other decision, appealable or otherwise, was made in the October 7, 2019 Decision.

[32] The Director argued the Decision does not include an order. The Director noted the first paragraph of the Decision under the heading "No Rights to the Land," restates the operation of the law following cancellation of a public land disposition as provided in sections 62(2) and (4) of the Act.[9]

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[9] Section 62(2) of the Act states:

"When a disposition is surrendered or cancelled or has expired or when land is withdrawn from a disposition, the holder of the disposition at the date of the surrender, cancellation, expiration or withdrawal may

(a) subject to subsection (4), and

(b) before the expiration of one month following that date,

remove from the public land formerly in the disposition any chattels owned by the holder and any buildings or improvements erected or created by the holder."

Section 62(4) of the Act provides:

[33] The Director referred to page three of the Decision where the Director stated that Miscellaneous Lease 870094, formerly held by the Heighs, was cancelled by AEP on November 25, 2015, and was not reinstated. The Director observed that the Appellants did not challenge the cancellation of Miscellaneous Lease 870094.

[34] The Director submitted that under section 62(2) of the Act, the Heighs had one month following the date of cancellation – by December 25, 2015 - to remove from the lands any chattels, buildings or improvements erected or created by the Heighs.

[35] The Director stated she did not issue an order in the Decision when she notified the Appellants of the possible consequences of failing to remove chattels, buildings or other improvements as required by section 62(4) of the Act. The Director said the Decision notified the Heighs that the file would be referred to Regional Compliance for follow up. The Director submitted the Appellants' "amended" Notices of Appeal, and the application for a stay, is a collateral attack on an Order to Vacate issued to the Heighs by Regional Compliance on December 11, 2019 (the "Order to Vacate"). The Director stated the Appellants are attempting to use the Board's appeal process to avoid compliance with the Order to Vacate and challenge its enforceability. The Director noted the Heighs were issued the Order to Vacate under section 47.1 of the Act,[10] which is not appealable to the Board.

[36] The Director argued the Courts are the proper forum for the Appellants to challenge the Order to Vacate. The Director stated the Appellants' legal counsel wrote to Regional Compliance and requested the Order to Vacate be withdrawn or stayed. The Director noted after Regional Compliance confirmed the Order to Vacate would remain in effect, the Appellants amended their Notices of Appeal and applied for a stay.

[37] The Director submitted that to bring an application for a stay, section 123(1) of the Act requires two preconditions be satisfied: first, there must be a decision that can be

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> "Any chattel, building or other improvement on public land is forfeited to the Crown in right of Alberta
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> (a) when the one-month period referred to in subsection (2) and any extension of it prescribed by the Assistant Deputy Minister has expired, or
>
> (b) when a disposition is cancelled or expires if the holder at the time of the cancellation or expiry of the disposition is indebted to the Crown or to the director."

[10] Section 47.1 of the Act states: "Where a person unlawfully occupies public land the director may order the person to vacate the public land, subject to any terms and conditions the director considers appropriate."

appealed to the Board, and second, there must be a Notice of Appeal filed with the Board appealing the decision.[11] The Director stated the original Notices of Appeal submitted by the Appellants do not object to the order the Appellants alleged the Director made, but instead objected to the Director's refusal to issue the Dispositions.

[38] The Director said to apply for a stay, the Appellants were required to submit an "amended" Notice of Appeal that complies with the Act and PLAR. The Director submitted the Appellants' argument that they did not amend the Notices of Appeal means that the application for a stay must fail.

(ii) What are the serious concerns of the Appellants that should be heard by the Board?

[39] The Director submitted the facts as shown by the Department's Record establish that the Director did not make an order against the Heighs or the Shelter Bay Campers. The only decision the Director made was to refuse to issue the Dispositions to the Heighs. The Director submitted the Board's October 31, 2019, and November 15, 2019 letters accepting the Appellants' Notices of Appeal confirmed the appeals relate to the refusal to issue the Dispositions.

[40] The Director stated the Decision was only addressed to the Heighs, and not to any of the Shelter Bay Campers. The Director said any order against any of the Shelter Bay Campers would have to be addressed to them directly.

[41] The Director submitted the Appellants have failed to establish that the order allegedly made by the Director in the Decision is a "prescribed decision"[12] for the purpose of the Act and PLAR.

[42] The Director argued the Appellants have failed to establish the "amended" Notices of Appeal are properly before the Board and have failed to establish that there is a serious question to be tried.

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11 Section 123(1) of the Act states: "The appeal body may, on the application of a party to a proceeding before the appeal body, stay a decision in respect of which a notice of appeal has been submitted."

12 Section 121(1) of PLAR states: "'prescribed decision' means a decision prescribed in section 211."

(iii) Would the Appellants suffer irreparable harm if the stay is refused?

[43] The Director submitted the Appellants bear the onus of establishing on the evidence that they will suffer irreparable harm if the Board refuses the stay. The Director stated irreparable harm is harm that cannot be quantified in monetary terms or which cannot be cured. The Director noted when determining irreparable harm, it is a question of the nature of the harm, not the magnitude. The Director quoted from a decision of the Environmental Appeals Board in *Aurora Heights,* that the applicant for a stay "must show there is a real risk harm will occur."[13]

[44] The Director stated the Appellants' claim they would suffer irreparable harm without a stay of the Decision are unproven and speculative. The Director said the Appellants have not provided evidence to support the specific harms they alleged they would suffer. The Director submitted the Appellants' claims of irreparable harm can be quantified in damages. The Director stated the Appellants intend to obtain damages from AEP.

[45] The Director stated if the matter is as urgent and as harmful as alleged, the Appellants should have challenged the alleged order immediately instead of waiting more than five months after the Decision was issued.

[46] The Director submitted the Appellants had not provided any evidence of the deadline by which they claim they are required to comply with under the alleged order. The Director stated in the absence of any evidence in this regard, and there are no facts to support the Appellants' allegations of urgency or irreparable harm.

(iv) Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay?

[47] The Director stated the third part of the stay test is a determination of which party will suffer greater harm from the granting or refusal of a stay. The Director said the Board must consider the burden granting a stay would have on the public interest in the administration of public lands and enforcement of the Act, versus the benefit to be gained by the Appellants if the stay is granted.

[48] The Director stated the Appellants had a pattern of non-compliance with the Act. The Director submitted that if the Board granted a stay, it would negatively impact AEP's authority to respond to contraventions of the Act effectively.

[49] The Director submitted the harm a stay of the Decision would have on the public interest in the lawful and environmentally responsible use of public lands outweighs any potential inconvenience the Appellants might suffer if the stay is not granted.

(v) Would the overall public interest warrant a stay?

[50] The Director stated a private applicant seeking a stay is presumed to be pursuing its interests, rather than the public interest. The Director said the private applicant must demonstrate real harm will occur without a stay.

[51] The Director submitted that there is a low bar to meet in showing that a stay would cause harm to the public interest. The Director stated her regulatory role satisfies the onus that there will be irreparable harm to the public interest if the stay is granted. The Director quoted *RJR MacDonald* as follows:

> "In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action."[14]

[52] The Director stated the public interest could be harmed where a public body such as AEP is constrained from exercising its statutory authority. The Director argued the Director represented the public interest by making the Decision on the Dispositions after considering the facts of the matter.

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[13] The Environmental Appeals Board made a decision on a stay involving Aurora Heights. See: *Aurora Heights Management Ltd. et al.* v. *Director, Red Deer-North Saskatchewan Region, Alberta Environment and Parks* (23 November 2018), Appeal Nos. 16-049-051-ID1 (A.E.A.B.).

[14] *RJR MacDonald Inc.* v. *Canada (Attorney General),* [1994] 1 S.C.R. 311, at para 76.

[53] The Director submitted the public interest favoured denying the Appellants' application for a stay of the Decision.

C. Appellants' Rebuttal Submission

[54] In their rebuttal submission, the Appellants stated the Director, in the Decision, expressly ordered the Appellants to vacate the subject lands. The Appellants quoted from the Decision as follows:

> "As a result of my decision, all chattels owned by you or improvements erected or created by you (or the campers) must be removed. Failure to remove chattels and improvements may result in forfeiture to the Crown under Section 62.4(4) of the *Public Lands Act.*"[15]

[55] The Appellants submitted the Decision "denied the active status of the Appellants' valid and subsisting dispositions, denied the Appellants' applications for new dispositions and then ordered that the Appellants vacate and remove their property from the subject lands."[16]

[56] The Appellants stated they have paid rent through the end of the 2020 camping season, and have a lawful right to remain on the Lands until there has been a final determination on the appeals.

[57] The Appellants denied trying to amend the Notices of Appeal and that they have always appealed the entire Decision. The Appellants observed the Notice of Appeal form does not provide an option to appeal only certain parts of a decision. The Appellants stated there is nothing in the Notices of Appeal to suggest they were not appealing the full Decision.

[58] The Appellants submitted there is a serious issue to be tried, as the Heighs have valid dispositions on the Lands because they have paid rent through to the end of the 2020 camping season.

[59] The Appellants stated the Director's allegation the Appellants intend to seek damages against AEP is false. The Appellants said they are seeking to preserve their rights to occupy the Lands, which includes seeking the performance of those rights, as well as damages if

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15 Director's Decision, October 7, 2019, at page 4.

16 Appellants' Submission, April 16, 2020, at page 1.

those rights are impeded. The Appellants submitted that claiming one right does not preclude the other.

[60] The Appellants noted the Director did not present any evidence of the Heighs' alleged non-compliance with the Act, which is disputed by the Heighs. The Appellants argued the Heighs are good environmental stewards of the Lands. The Appellants referred to the Shelter Bay Resort business development plan as evidence of their responsible stewardship. The Appellants said they submitted the development plan to the Director in response to requests made by AEP and at considerable expense to the Heighs.

[61] The Appellants stated AEP did not provide its May 2019 Inspection Report until AEP disclosed its records as part of the appeal process. The Appellants said AEP did not provide the Heighs with an opportunity to respond to items in the Inspection Report that they viewed as inaccurate or address any environmental concerns or correct any of the alleged deficiencies that AEP identified.

[62] The Appellants noted the Shelter Bay Campers are members of the public who were beneficiaries of the Heighs' disposition to operate a public campground. The Appellants said the Shelter Bay Campers represent the public interests in the stay application.

[63] The Appellants' submitted the Director misstated the law with regards to a public authority's threshold to be met in demonstrating a stay would cause harm to the public interest. The Appellants noted the Director quote paragraph 76 of *RJR MacDonald* as follows:

> "In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from the restraint of that action."[17]

The Appellants stated the Director omitted the first line of paragraph 76, which reads: "In our view, the concept of inconvenience should be widely construed in *Charter* cases." The Appellants argued the omission changed the paragraph's context, which referred to rights under

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17 *RJR MacDonald Inc.* v. *Canada (Attorney General),* [1994] 1 S.C.R. 311, at para 76.

the *Charter of Rights and Freedoms*. The Appellants pointed out they are not engaged in a Charter challenge but are instead challenging a ministerial delegate's decision to evict the Heighs and cease the operations of the campground.

[64] The Appellants noted the Supreme Court of Canada stated in *RJR MacDonald*: "[t]he government does not have a monopoly on the public interest."[18]

[65] The Appellants said the issue of collateral attack raised by the Director is irrelevant to the Appellants' stay application. The Appellants stated that as the Decision expressly ordered the Appellants to remove their property and vacate the Lands, the Appellants had a right to appeal under section 211(c) of PLAR.[19]

[66] The Appellants stated AEP issued an Order to Vacate the Lands on December 11, 2019. The Appellants submitted the Order to Vacate is irrelevant to whether the Board should grant the stay application. The Appellants argued AEP's Order to Vacate is a collateral attack on the Decision, as AEP issued the Order to Vacate months after the Decision and after the Appellants filed their Notices of Appeal.

V. ANALYSIS

[67] The Director raised some preliminary matters, which are related to the request for a stay. The Board will address these matters as follows:

(a) Did the Appellants amend the Notices of Appeal?

(b) Did the Director issue an order?

(c) Is the stay request a collateral attack?

A. Did the Appellants amend the Notices of Appeal?

[68] The Director submitted the Appellants' March 18, 2020 letter sought to amend the Appellants' Notices of Appeal. The Appellants stated they appealed all aspects of the Director's Decision and had labelled the letter "Amended Notice of Appeal" in error.

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[18] *RJR MacDonald Inc.* v. *Canada (Attorney General),* [1994] 1 S.C.R. 311, at para 70.

[19] Section 211(c) of PLAR provides: "The following decisions are prescribed as decisions from which an appeal is available: ... (c) a refusal to issue a disposition or to renew or amend a disposition applied for under the Act..."

[69] The Board accepts the Appellants' submission it mislabeled its March 18, 2020 letter in the "RE" line.

[70] Section 216(1) of PLAR[20] lists the requirements for each Notice of Appeal. The requirements that are relevant for this situation are that the Notice of Appeal must include a copy of the decision objected to and contain a description of the relief requested by the appellant. The Director's argument that the Appellants cannot seek a stay because the Notices of Appeal did not object to an order is going beyond the legislative requirements for a Notice of Appeal. The Appellants met the requirements for a Notice of Appeal by including a copy of the Decision and providing a description of the relief they sought, which stated:

> "Mr. Robert Heigh and Ms. Sharon Heigh (the "Heighs") respectfully request that the Public Lands Appeal Board recommend that the Minister confirm the active status of MLL870094, LOC870644 and LOC870573 or in the alternative reverse and/or vary the attached decision of Alberta Environment and Parks to refuse the Heighs' Lease Application DML160081 and Licence of Occupation Applications DL0160190 and DL0160191 and, in doing so, to recommend the Minister approve the Applications."[21]

The Appellants did not mention an order in the relief they sought. However, section 216(1) of PLAR does not require an appellant to list every aspect of the decision they are appealing. By including the Director's Decision and requesting a reversal or variance of the Decision, the Appellants' Notices of Appeal included any order issued by the Director in the Decision.

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[20] Section 216(1) of PLAR states:

"A notice of appeal must

(a) identify the director or officer who made the decision objected to,

(b) identify the provision of the enactment on which the appeal is based,

(c) include a copy of the decision objected to or, if the decision is not written, a description of it including the date on which it was made,

(d) include the legal description of, or the approximate global position system co-ordinates of the location of, the area of public land to which the appeal relates,

(e) set out the grounds on which the appeal is made,

(f) contain a description of the relief requested by the appellant,

(g) where the appellant is an individual, be signed by the appellant or the appellant's lawyer,

(h) where the appellant is a corporation, be signed by a duly authorized director or officer of the corporation or by the corporation's lawyer, and

(i) an address for service for the appellant."

[21] Notice of Appeal of Robert and Sharon Heigh, October 24, 2019, page 3. MLL is a Miscellaneous Lease and LOC is Licence of Occupation. There are the predecessor terms to DML or Department Miscellaneous Lease and DLO or Department Licence of Occupation, respectively.

[71] The Appellants' March 18, 2020 letter stated: "The Heighs and the Shelter Bay Campers seek a stay of the Director's Decision dated October 7, 2019, and in particular the order that the Heighs and the Shelter Bay Campers remove all chattels and improvements on the subject lands...." Based on the letter, an order to remove chattels and improvements is a significant concern for the Appellants, but it is not the sole focus of the request for a stay of the Decision.

[72] The Board finds the Appellants did not attempt to amend the Notices of Appeal through its request for a stay.[22]

B. Did the Director issue an order?

[73] The Director wrote in the Decision: "As a result of my decision, all chattels owned by you or improvements erected or created by you (or the campers) must be removed. Failure to remove chattels and improvements may result in forfeiture to the Crown under Section 62(4) of the *Public Lands Act*." The Director submitted she was restating the effects of sections 62(2) and (4) of the Act.[23] If so, the wording was unclear and confusing. The Director should have explicitly identified her statement was referencing section 62(2) of the Act, as she did for section 62(4). The Board finds that while the Director could have worded her statement better, it does not constitute an order. In the next paragraph of the Decision, the Director advised the Appellants the matter would be referred to Regional Compliance. Regional Compliance has the responsibility to issue orders to enforce decisions made by other sections of AEP, including

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22 Although not a consideration in this appeal, the Board has permitted appellants to amend their Notice of Appeal. Amendment of a Notice of Appeal has occurred after the appellant has had the opportunity to review the record provided by the Director, and has discovered additional grounds for appeal.

23 Section 62(2) and (4) of the Act provide:

> "(2) When a disposition is surrendered or cancelled or has expired or when land is withdrawn from a disposition, the holder of the disposition at the date of the surrender, cancellation, expiration or withdrawal may
>
> (a) subject to subsection (4), and
>
> (b) before the expiration of one month following that date,
>
> remove from the public land formerly in the disposition any chattels owned by the holder and any buildings or improvements erected or created by the holder....
>
> (4) Any chattel, building or other improvement on public land is forfeited to the Crown in right of Alberta
>
> (a) when the one-month period referred to in subsection (2) and any extension of it prescribed by the Assistant Deputy Minister has expired, or
>
> (b) when a disposition is cancelled or expires if the holder at the time of the cancellation or expiry of the disposition is indebted to the Crown or to the director."

decisions made by the Provincial Approvals Section. By making the referral, the Director acknowledged she did not have jurisdiction to issue an order to vacate the Lands while also acknowledging the decision would result in the Appellants being ordered to remove their chattels and improvements.

[74] The Board finds that while the Director could have been clearer in her wording, she did not make a specific order requiring the Appellants to remove all chattels and improvements from the Lands. However, the Decision the Director made initiated and led to the Order to Vacate.

C. Is the stay application a collateral attack?

[75] The Director submitted the Appellants' stay application is a collateral attack on the Order to Vacate issued by Regional Compliance on December 11, 2019. There are several judicial definitions of a collateral attack, but the definition that is closest to the Director's use of the term is from the Federal Court of Appeal's decision in *Mancuso* v. *Canada (Minister of National Health and Welfare)*, where the Court stated a collateral attack "is an impermissible attempt to nullify the result of another proceeding outside of the proper channels for the review of that decision."[24]

[76] The Board is aware Regional Compliance issued an Order to Vacate. However, neither party has provided the Board with a copy of the Order to Vacate. The Board does not have sufficient evidence before it to make a determination regarding an alleged collateral attack. The Board will make its decision on the stay request based on the merits of the request, the submissions of the parties, relevant legislation, and case law.

D. The Board's Jurisdiction

[77] Section 123(1) of the Act provides the Board's authority to grant a stay. It reads: "The appeal body may, on the application of a party to a proceeding before the appeal body, stay a decision in respect of which a notice of appeal has been submitted."

[78] The Board's test for determining a stay request is based on the Supreme Court of Canada's decision in *RJR MacDonald*.[25] However, *RJR MacDonald* does not bind the Board in

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24 *Mancuso* v. *Canada (Minister of National Health and Welfare)*, 2015 FCA 227, at paragraph 39.

25 See: *RJR MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311. At paragraph 43, the Court

every stay application. The Saskatchewan Court of Appeal stated in *Potash Corp. of Saskatchewan Inc.* v. *Mosaic Potash Esterhazy Ltd. Partnership*:

> "... the strength of [the] case, irreparable harm and balance of convenience considerations, although prescribed and necessary parts of the analysis mandated by the Supreme Court, are nonetheless not usefully seen as an inflexible straightjacket. Instead, they should be regarded as the framework in which a court will assess whether an injunction is warranted in any particular case. The ultimate focus of the court must always be on the justice and equity of the situation in issue. As will be seen, there are important and considerable interconnections between the three tests. They are not watertight compartments."[26] (Emphasis added.)

[79] There are situations where it is appropriate for the Board to depart from the *RJR MacDonald* test to consider what is just, equitable and reasonable for all parties involved.

E. Application of the test for a stay

[80] The Board considers a four-part test when determining whether to grant a stay: (1) whether there is a serious concern; (2) whether the applicant would suffer irreparable harm; (3) the balance of convenience; and (4) the public interest. An applicant for a stay must meet all four conditions for the Board to grant a stay.

(i) What are the serious concerns that should be heard by the Board?

[81] The first part of the test is whether there is a serious concern that should be heard by the Board. The Courts have indicated the threshold for this question is relatively low.[27] An applicant for a stay must show there is a serious question to be considered, and the request is not frivolous or vexatious.[28]

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states:

> "First, a preliminary assessment must be made of the merits of the case that there is a serious question to be tried. Secondly, it must be determined whether the applicant would suffer irreparable harm if the application were refused. Finally, an assessment must be made as to which of the parties would suffer greater harm from the granting or refusal of the remedy pending a decision on the merits."

26 *Potash Corp. of Saskatchewan Inc.* v. *Mosaic Potash Esterhazy Ltd. Partnership*, 2011 SKCA 120, at paragraph 26.

27 *RJR MacDonald Inc.* v. *Canada (Attorney General)*, [1994] 1 S.C.R. 311, at paragraph 54.

28 *American Cyanamid Co.* v. *Ethicon Ltd.*, [1975] A.C. 396.

[82] The Appellants submitted the fact the Heighs have lived on the Lands for 33 years, and the existence of the appeal of the Decision is sufficient to meet the low threshold that there is a serious concern to be heard by the Board.

[83] The Director argued the Appellants had the onus to establish the following:

(a) there was an order made against them;

(b) the order was a decision that could be appealed according to the legislation; and

(c) the amended Notices of Appeal met the legislated requirements.

The Director stated the Appellants did not meet the onus of proving the appeals were properly before the Board and, therefore, did not meet the first part of the test.

[84] As already noted, the Board finds the Director did not issue an order, but the lack of an order does not invalidate the Appellants' request for a stay. In a Notice of Appeal, an appellant is required under section 216(1)(e) of PLAR to "set out the grounds on which the appeal is made." Section 213 of PLAR lists the grounds for an appeal.[29] In the Notices of Appeal, the Appellants' grounds were that the Director erred in the determination of a material fact on the face of the record, erred in law, and exceeded the Director's jurisdiction or legal authority. Although at this stage of the appeals, these grounds are unproven, they are serious concerns that justify the Board considering them in the appeals.

[85] The Board has already found the Appellants did not amend the Notices of Appeal, and an order was not the only reason the Appellants requested a stay of the Decision. The Board finds the Notices of Appeal are properly before it. Therefore, the Appellants have satisfied the first part of the test for a stay.

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[29] Section 213 of PLAR provides:

"A decision is appealable only on the grounds that

(a) the director or officer who made the decision

(i) erred in the determination of a material fact on the face of the record,

(ii) erred in law,

(iii) exceeded the director's or officer's jurisdiction or authority, or

(iv) did not comply with an ALSA regional plan,

or

(ii) Would the Appellants suffer irreparable harm if the stay is refused?

[86] The second part of the test is whether the Appellants will suffer irreparable harm without a stay of the Decision. Irreparable harm occurs when the person requesting the stay would be adversely affected to the extent the harm could not be remedied if that person succeeded at the hearing. It is the nature of the harm that is relevant, not its magnitude. The harm must not be quantifiable; that is, the harm to the person cannot be fairly dealt with by the payment of money. In *Ominayak* v. *Norcen Energy Resources*,[30] the Alberta Court of Appeal defined irreparable harm by stating:

> "By irreparable injury it is not meant that the injury is beyond the possibility of repair by money compensation but it must be such a nature that no fair and reasonable redress may be had in a court of law and that to refuse the injunction would be [a] denial of justice."[31]

[87] The party claiming that financial compensation would be inadequate to remedy the harm must show there is a real risk that harm will occur. It cannot be mere conjecture.[32]

[88] The Appellants noted the Heighs have lived on the Lands and operated the campground for over three decades. The Appellants submitted the Heighs would experience irreparable harm if, before the appeal is concluded, they were forced to pack their belongings, tear down the infrastructure, abandon their home, and close the campground. The Appellants stated the Shelter Bay Campers might not return to the campground if the stay is not granted. The Appellants noted the financial hardship that would be experienced by both the Heighs and the Shelter Bay Campers from vacating the Lands, especially in the current economic environment. The Appellants stated the damages they would suffer without a stay would not easily be recovered from the Government. The Appellants also questioned the wisdom of having the Heighs and the Shelter Bay Campers gather to remove infrastructure and improvements during the COVID-19 pandemic.

[89] The Director said the Appellants did not provide sufficient evidence to support their claim of financial hardship, and their claims are unproven and speculative. The Director

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(b) the decision is expressly subject to an appeal under section 59.2(3) of the Act or section 15(4)."

30 *Ominayak* v. *Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.).

31 *Ominayak* v. *Norcen Energy Resources*, [1985] 3 W.W.R. 193 (Alta. C.A.) at paragraph 30.

32 *Edmonton Northlands* v. *Edmonton Oilers Hockey Corp.*, [1993] A.J. No. 1001 (Q.B.) at paragraph 78.

submitted the financial harms the Appellants alleged would occur are quantifiable and do not constitute irreparable damage. The Director stated the Appellants intend to pursue damages against AEP.

[90] The *Proceedings Against the Crown Act* restricts civil action for damages against AEP and the Director except in certain circumstances.[33] The Appellants would have virtually no realistic chance of recovering damages for losses related to the Decision if they were successful in the appeals.

[91] The Director submitted the Appellants' allegations of irreparable harm are unproven and speculative. Unfortunately, evidence of financial harm can often only be proven after the fact. The Board finds it unreasonable to require the Appellants to go through serious financial hardship to prove irreparable harm.

[92] Although the Appellants' evidence must not be speculative and without basis, it is not required to be conclusive or beyond doubt. In *Matrix Photocatalytic Inc.* v. *Purifics Environmental Technologies Inc.*, the Court found the applicant "does not have to demonstrate irreparable loss beyond doubt or even, at this stage, on a balance of probabilities. All that must be done, as it seems to me, is to show a real risk of disastrous consequences for which damages will be of little or no comfort."[34] In *Alberta Treasury Branches* v. *Ghermezian*, the Court stated: "The threshold which the applicant must meet is to demonstrate that there is some doubt that the potential harm could be adequately compensated by an award for damages..." However, the Court also cautioned there the evidence must demonstrate a real risk of the harm occurring.[35]

[93] After reviewing the evidence, the Board finds it most likely that without a stay of the Decision pending the determination of the appeals, the Appellants would suffer irreparable harm for which they could not receive adequate compensation. The Board finds the Appellants have met the second part of the stay test.

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33 *Proceedings Against the Crown Act*, R.S.A. 2000, c. P-25.

34 *Matrix Photocatalytic Inc.* v. *Purifics Environmental Technologies Inc.*, 1994 CarswellOnt 176, at paragraph 77.

35 *Alberta Treasury Branches* v. *Ghermezian*, 1999 CarswellAlta 330, at paragraph 36.

(iii) Would the Appellants suffer greater harm if the stay was refused pending a decision of the Board on the appeal, than the harm that could occur from the granting of a stay? Would the overall public interest warrant a stay?

[94] The third part of the test for a stay is referred to as the "balance of convenience." The test is a determination of which party would suffer greater harm from granting or refusing a stay, pending a decision on the merits of the appeals. The Board must weigh the burden the stay would impose on the Director against the benefit the Appellants would receive. The Board considers the harm the parties allege they will suffer, the nature of the relief requested, the relevant legislation and the impact on the authority of the AEP.[36] Weighing the burden is not strictly a cost-benefit analysis but rather a balancing of significant factors.

[95] The fourth part of the test, the effect on the public interest, may sway the balance for one party over the other. The Board will combine the balance of convenience and public interest parts of the test for this stay decision.

[96] The Appellants submitted the Heighs and the Shelter Bay Campers would suffer greater harm if the Board refuses to grant the stay than the Director would suffer. The Appellants said without a stay, the Heighs would be removed from their home and their livelihood. The Appellants stated they seek only to enforce a status quo, and there is no real risk of harm to AEP that would result from granting the stay. The Appellants claimed it was in the public interest to stay the Decision as the appeals are backed by hundreds of campers who depend on the continued operation of the campground. The Appellants noted the Director omitted the first line when quoting paragraph 76 of *RJR MacDonald*, which the Appellant submitted changes the context of the paragraph.

[97] The Director stated the Decision was made as a "result of the Appellants' current and historical pattern of non-compliance with the Act," and a stay would negatively affect AEP's authority to respond to contraventions of the Act. The Director submitted a stay would harm "the broader public interest in the lawful and environmentally responsible use of public lands" and "outweighs any potential inconvenience the Appellants allege they might suffer if a stay is not granted."

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36 *Algonquin Wildlands League* v. *Ontario (Minister of Natural Resources)*, 1996 CarswellOnt 3634, at paragraph 12.

[98] Whether the Appellants or the Director would suffer greater harm from the Board's decision on the stay request is dependent on the issue of public interest. The definition of "public interest" depends on the circumstances of each situation, but generally, it can be defined as what is in the best interests of the society for which the particular legislation was designed.[37] To determine the public interest in the context of the stay request, the Board is required to consider the Act and PLAR.

[99] The Board takes AEP's regulatory responsibilities under the Act very seriously. The regulatory system relies heavily on the director to make decisions regarding public land based on the provisions of the Act and PLAR. The Act also provides for the Board to undertake a quasi-judicial function in the regulatory process. The Act and PLAR list decisions of the director that appellants may appeal to the Board. Appellants may also request the Board grant a stay of the decision being appealed. As already noted, section 123(1) of the Act states: "The appeal body may, on the application of a party to a proceeding before the appeal body, stay a decision in respect of which a notice of appeal has been submitted." The inclusion in the Act of the right to appeal and request a stay shows the Legislature recognized there are situations where it would be in the public interest to stay a director's decision until an appeal is resolved.

[100] As the Board's regulatory role includes the jurisdiction to grant a stay of the Director's Decision, the Board does not accept the argument that the Director's regulatory role alone is enough to demonstrate there will be irreparable harm to the public interest if the stay is granted. Potential damage to the Director's or AEP's regulatory authority is an important factor, but such damage cannot be mere speculation or conjecture.

[101] The Director quoted paragraph 76 of *RJR MacDonald* to argue the onus is low for public authorities to demonstrate harm from a stay.[38] However, the Director omitted the first line

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37 Robert W. Macauly and James L.H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada: 2017), at page 1-22.

38 Paragraph 76 of *RJR MacDonald* v. Canada (Attorney General), [1994] 1 S.C.R. 311, states:

> "In our view, the concept of inconvenience should be widely construed in *Charter* cases. In the case of a public authority, the onus of demonstrating irreparable harm to the public interest is less than that of a private applicant. This is partly a function of the nature of the public authority and partly a function of the action sought to be enjoined. The test will nearly always be satisfied simply upon proof that the authority is charged with the duty of promoting or protecting the public interest and upon some indication that the impugned legislation, regulation, or activity was undertaken pursuant to that responsibility. Once these minimal requirements have been met, the court should in most cases assume that irreparable harm to the public interest would result from

of paragraph 76, which, when read in full, clearly refers to *Charter* cases. In *Charter* and constitutional cases, a public authority has a significantly lesser onus to meet in demonstrating harm to the public interest. The Director's Decision and the Appellants' appeals are not *Charter* or constitutional matters and, therefore, the onus is not as low as the Director submitted.

[102] The Board does not see any rational evidence a stay of the Decision will constrain or harm the Director's or AEP's ability to fulfill their regulatory responsibilities.

[103] The Board notes AEP chose not to renew Miscellaneous Lease 870094 when it expired in 2007, and the Heighs remained on the Lands as overholding tenants under section 20(3) of PLAR. When AEP cancelled the lease in 2015, the Heighs still remained on the Lands as overholding tenants. AEP appears to have delayed any eviction action while it considered the applications for the Dispositions.

[104] From the expiry of Miscellaneous Lease 870094 until the present, the Heighs continued to pay annual rent, and AEP continued to accept that rent. The Appellants submitted copies of AEP emails from 2017 confirming the Heighs had paid rent since the expiry of Miscellaneous Lease 870094. The Board notes the Department's Record did not include the emails, which are clearly related to the appeal. The Heighs submitted a copy of a cheque dated June 26, 2019, for $3,235.76, payable to the Minister of Finance. The cheque lists the disposition numbers formerly held by the Heighs along with the numbers of the new Dispositions they applied for. The Appellants stated the cheque was for rental of the Lands until the end of the 2020 camping season. The Board finds the Heighs paid yearly for the right to use the Lands, including for the 2020 camping season, although it is not clear exactly when the season ends.

[105] Ultimately, the Director decided to refuse to issue the Dispositions. Whether the Director was justified in making the Decision will be one of the issues to be determined as the appeal proceeds. As the Director noted, the result of the Decision was that the Heighs lost their right to occupy the Lands. Although the Director did not issue an order in the Decision, the effect of the Decision was that the Heighs went from overholding tenants to unauthorized occupants of the Lands. Section 20(2) of PLAR states: "Where an application for renewal of a disposition is made and is rejected or refused, all rights and interests of the disposition holder in

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the restraint of that action."

respect of the subject land cease on the expiry or cancellation of the disposition." It is these rights and interests the Appellants seek to retain pending the determination of the appeals.

[106] The Board finds on the balance of convenience that not granting a stay of the Decision pending the outcome of the appeals, will cause more harm to the Appellants than granting a stay will cause to the Director. The Heighs face the loss of their home and livelihood. The Shelter Bay Campers face the loss of their recreational plans. The Appellants face the expense of removing infrastructure and chattels despite the possibility they could succeed in their appeals. The public interest favours granting the stay, particularly as the Province is in the midst of the COVID-19 pandemic. The Board finds there is a public interest in AEP honouring its agreements. The Heighs paid rent, and AEP accepted it. It is clear from the 2017 emails provided by the Appellants that AEP knew of the rental payments, yet did nothing to prevent them.

[107] Under section 236(1)(b) of PLAR, the appeal must be resolved within one year from the date a Notice of Appeal is filed. Within that short timeframe, a stay of the Decision will cause no damage to the Director's and AEP's regulatory authority. A stay of the Decision will not cause financial hardship for the Government of Alberta, and it will not result in additional damage to public land or the environment.

VI. CONCLUSION

[108] The Board finds the Appellants have met the requirements of the stay test. The Board grants the Appellants' application for a stay of the Director's Decision to refuse to issue the Dispositions. The stay preserves the status quo of the applications for the Dispositions before the Director issued the Decision and preserves the status quo of the Lands and the Appellants' rights to occupy them as overholding tenants. The stay of the Decision remains until the Board lifts the stay or until the Minister issues an order regarding these appeals.

[109] The Board notes the existence of an Order to Vacate related to the Director's Decision. As the Order to Vacate is not a subject of these appeals, the Board has no opinion on the effect of the stay on the Order to Vacate.

Dated on May 11, 2020, at Edmonton, Alberta.

Gordon McClure , Board Chair