
ALBERTA
PUBLIC LANDS APPEAL BOARD

Decision

Date of Decision – May 14, 2021

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

-and-

IN THE MATTER OF appeals filed by JH Drilling Inc., with respect to the decision of the Director, Lands Coordination and Delivery North, Alberta Environment and Parks, refusing to issue SML 130074.

Cite as: *JH Drilling Inc. v. Director, Lands Coordination and Delivery North, Alberta Environment and Parks* (14 May 2021), Appeal No. 20-0013-ID2 (A.P.L.A.B.), 2021 ABPLAB 5.

BEFORE:

Mr. Gordon McClure, Chair.

Board Staff: Mr. Andrew Bachelder, Board Legal Counsel,
and Ms. Denise Black, Board Secretary.

SUBMISSIONS BY:

Appellants: JH Drilling Inc., represented by Mr. John
Harms.

Director: Mr. Darrell Kentner, Director, Lands
Coordination and Delivery North, Alberta
Environment and Parks, represented by Ms.
Alison Altmiks, Alberta Justice and Solicitor
General.

EXECUTIVE SUMMARY

In 2013, JH Drilling Inc. (the Appellant) applied for a Surface Material Lease (SML) on public lands located in the Regional Municipality of Wood Buffalo. In 2020, the Director, Lands Management, Alberta Environment and Parks (the Director) advised the Appellant the SML application had been rejected for being incomplete. The Appellant appealed to the Public Lands Appeal Board (the Board).

The Appellant made numerous preliminary motions. The Board set a date for the Appellant and the Director (the Parties) to provide their preliminary motions. In total, the Appellant provided 42 preliminary motions. The Parties provided written submissions on the preliminary motions and the Board held a preliminary motions hearing by video conference.

The Board dismissed all of the Appellant's preliminary motions as they were either outside the Board's jurisdiction, beyond the scope of the appeal, irrelevant to the appeal, vague and unclear, inappropriate as a preliminary motion, or had been previously decided.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. SUBMISSIONS 2

 A. Appellant 2

 B. Director 9

 C. Appellant's Rebuttal 10

IV. ANALYSIS 11

V. DECISION 46

I. INTRODUCTION

[1] This is the decision of the Public Lands Appeal Board (the “Board”) regarding preliminary motions by JH Drilling, Inc. (the “Appellant” or “JHD”). The preliminary motions are related to the Appellant’s appeal of the decision by the Director, Lands Coordination and Delivery North, Alberta Environment and Parks (the “Director”), refusing to issue Surface Material Lease SML 130074 (the “SML”) to the Appellant. The Director’s decision was made under the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”) and the *Public Lands Administration Regulation*, Alta. Reg. 187/2011 (“PLAR”).

II. BACKGROUND

[2] On November 4, 2013, the Appellant applied to Alberta Environment and Parks (“AEP” or the “Department”) for the SML to extract gravel from public lands located at SE 9-81-13 W4M, in the Regional Municipality of Wood Buffalo. On September 24, 2020, the Director advised the Appellant the application for the SML was refused as it did not meet all the requirements for issuance of a disposition.

[3] The Appellant filed a Notice of Appeal with the Board on October 3, 2020. On October 19, 2020, the Appellant appealed a September 29, 2020 email from the Director regarding the same public lands. The Board later determined the two appeals were related to the same SML and combined them under one appeal number, PLAB 20-0013.

[4] The Board scheduled a mediation meeting on February 2, 2021, by videoconference, but the Director and the Appellant (the “Parties”) were unable to reach an agreement.

[5] Between October 3, 2020, and March 4, 2021, The Appellant made over forty preliminary motion applications. The Board scheduled a preliminary motions hearing by video conference for April 15, 2021, and requested the Parties provide written submissions in advance of the hearing as follows:

- (a) the Appellant provided an initial written submission for the preliminary motions hearing, on March 4, 2021;

- (b) the Director provided a response written submission on March 11, 2021; and
- (c) the Appellant provided a rebuttal submission on March 18, 2021.

[6] On March 4, 2021, the Director submitted a preliminary motion to the Board to have portions of the Appellant's submissions struck out due to an alleged breach of confidentiality. The Board requested the Parties provide written submissions on the Director's preliminary motion. The Board held a preliminary hearing by written submissions on the Director's motion and decided to grant the Director's motion to strike the following from the Appellant's submissions:

- (a) any reference to the mediated agreement in PLAB 14-0004, which is referred to by the Appellant as the "Rocky Resolution"; and
- (b) any reference to confidential mediation and settlement discussion in PLAB 20-0013.

[7] On April 15, 2021, the Board held the video conference on the Appellant's preliminary motions, with the Parties making oral submissions to the Board. Unfortunately, the Board mistakenly closed the hearing without providing the Appellant with an opportunity to provide final legal arguments as scheduled. The Board reconvened the video conference hearing on April 21, 2021, and the Appellant provided final legal arguments.

[8] On April 22, 2021, the Board considered the submissions, the case law, and the legislation, and decided on the Appellant's preliminary motions. These are the Board's decisions and reasons.

III. SUBMISSIONS

A. Appellant

[9] The Appellant made 42 preliminary motions. Many of the preliminary motions were unclear and vague, and the Board has attempted to present them in this decision as best as possible.

[10] The Appellant's preliminary motions are summarized as follows:

Preliminary Motion 1

The Appellant requested the disclosure of the following:

- (1) JH Drilling Client File 808 408 6002;
- (2) All correspondence and documents from the Government of Alberta related to fiduciary duty owed by AEP to aggregate leaseholders;
- (3) All correspondence and documents from the Government of Alberta related to fiduciary duty in the Alberta Aggregate (Sand and Gravel) Allocation Policy (the "2006 Allocation Policy");
- (4) AEP files relating to cancellation of the SML;
- (5) AEP files relating to the Conservation and Reclamation Business Plan ("CRBP") for the SML from 2013 to present, and in particular all correspondence related to the confirmation of the CRBP #150032 and the Conservation Operation and Reclamation Plans ("CORP"), and changes requested by AEP, which were approved three to four years ago;
- (6) AEP files relating to the Caribou Protection Plans for the SML from 2013 to present;
- (7) AEP correspondence and documentation of Mr. Darrell Kentner (the Director), Mr. Nicholas Stasiak (AEP Officer), "CRBP officials,"¹ and the Edmonton Assessments, and Continuations unit (aggregates), relating to SML 130074 and the preceding Surface Materials Exploration permit ("SME");
- (8) AEP email providing the letter dated August 4, 2021, from Ms. Brenda Huxley, to the Appellant;
- (9) There is no disclosure request;
- (10) See Disclosure Request 5;
- (11) The final lease that would be issued if the SML was approved;
- (12)
 - (a) "Disclosure of all of the steps taken by AEP and [the Government of Alberta ('GOA')], so that commercial gravel clients like [the Appellant], client #808-408-6002 and other commercial gravel clients, may be assured that the decision-makers are open and unbiased.

¹ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 3.

- (b) all procedures to ensure structural independence and structural guarantees, to enable delegates to make decisions free from external influence of loyalty to their employer, and to be seen to do so.
 - (c) disclosure of documentation for guarantees of institutional independence.
 - (d) disclosure of all structural guarantees to enable delegates to make decisions free from external influence.
 - (e) disclosure of all documentation for ascertainable security of tenure, security of remuneration and administrative independence.
 - (f) disclosure of all independence safeguards so that decision-makers can be seen to be in vulnerable to external influence and institutional bias.
 - (g) disclosure of any structural guarantees to enable fair, impartial and independent process.
 - (h) disclosure of any safeguards to ensure non-discrimination;²
- (13) any reasons why the Appellant could not have received the SML in time for the completion of the work twinning Highway 63;
 - (14) AEP documents showing who interprets the 2006 Allocation Policy;
 - (15) the letter approving the Appellant's First Nations Consultation;
 - (16) "Copies of recognitions and acknowledgements of the client and special client 808-408-6002 status of the appellant, JHD."³
 - (17) directives and administrative documents related to the decision to transfer decision-making procedures to the field offices and the names of the directors before and after the transfer;
 - (18) a list of documents claimed by the Director's legal counsel as not releasable due to legal privilege; and
 - (19) reasons why the August 4, 2020 letter from Ms. Huxley was not sent to the Appellant.

Preliminary Motion 2

The Appellant requested the Board find Director, unnamed employees of AEP,

² Appellant's Disclosure Motion, December 17, 2020, at page 7.

³ Appellant's Disclosure Motion, December 17, 2020, at page 9.

AEP, and the GOA, are in a conflict of interest due to the public lands regulatory system implemented by AEP under the Act and PLAR.

Preliminary Motion 3

The Appellant asked the Board to find there were promises in the 2006 Allocation Policy which created a fiduciary duty owed by the GOA to the Appellant.

Preliminary Motion 3.1

The Appellant requested the Board ask the Director's legal counsel who the Director and her client were.

Preliminary Motion 3.2

The Appellant asked the Board to request the Director explain why he apologized for moving decision-making to the field offices.

Preliminary Motion 3.3

The Appellant requested the Board ask the Director's legal counsel why she said the Appellant's Notices of Appeal was filed late.

Preliminary Motion 4

The Appellant requested the Board consider the SML's potential to reduce greenhouse gasses.

Preliminary Motion 5

The Appellant asked for a copy of its client file held by AEP. (See Preliminary Motion 1(1).)

Preliminary Motion 6

The Appellant requested AEP's analysis or feedback for each of the Caribou Protection Plans it submitted related to the SML.

Preliminary Motion 7

The Appellant asked the Board to determine if it was fair, comprehensive and timely for AEP not to provide feedback or answer the Appellant's correspondence.

Preliminary Motion 8

The Appellant asked the Board to order AEP to provide any analysis or feedback related to its CRBP revisions for the SML, and a determination by the Board whether AEP acted in a fair, comprehensive and timely manner regarding the CRBP.

Preliminary Motion 9

The Appellant requested the Board determine whether it was fair, comprehensive and timely, for AEP to cancel the SML instead of providing feedback on changes to the Appellant's CRBP.

Preliminary Motion 10

The Appellant claimed the Director had made a settlement proposal, and asked the Board if the settlement proposal was "guaranteed" by the Director.

Preliminary Motion 11

The Appellant requested the Board ask the Director's legal counsel that if the SML application could be brought into "the Director's good books," would it be covered by fairness, comprehensiveness, and timeliness?

Preliminary Motion 12

The Appellant asked the Board to grant access to certain witnesses related to the Appellant's Caribou Protection Plans.

Preliminary Motion 13

The Appellant requested the Board make a determination regarding the August 4, 2020 letter from AEP.

Preliminary Motion 14

The Appellant requested the Board provide protection from AEP "heavy handedness."⁴

Preliminary Motion 15

The Appellant requested the Board admit an invoice/statement from AEP addressed to the Appellant in relation to Preliminary Motion 14.

Preliminary Motion 16

The Appellant asked the Director's legal counsel to advise if she represented Alberta Justice and other parties the Appellant had sent a routine disclosure request to. The Appellant requested the Board add those parties to the appeal if the Director's legal counsel indicated that she did not represent them.

⁴ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 32.

Preliminary Motion 17

The Appellant requested disclosure of the Director's authority credentials.

Preliminary Motion 18

The Appellant requested the Board make two determinations:

- (a) Does the word "commercial" imply "contractual, or arguably contractual, or equitable, or proprietary, rights..." and
- (b) Recognize that "special duties... specifically to commercial gravel operators" arise from the use of the word commercial.⁵

Preliminary Motion 19

The Appellant asked the Board to include AEP and Alberta Energy in the appeal.

Preliminary Motion 20

The Appellant wanted the Board to accept substitutional service.

Preliminary Motion 21

The Appellant made an identical motion in Preliminary Motion 18.

Preliminary Motion 22

The Appellant requested the Board determine whether there should be more than one "director" in AEP's operations.

Preliminary Motion 23

The Appellant requested the Board declare or acknowledge the meaning of the word "comprehensive."

Preliminary Motion 24

The Appellant requested the Board declare or acknowledge the meaning of the word "timely."

Preliminary Motion 24.1

The Appellant requested the Board declare or acknowledge the meaning of the word "fair."

⁵ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 36.

Preliminary Motion 25

The Appellant requested the Board determine if there is a contract offered in the 2006 Allocation Policy.

Preliminary Motion 26

The Appellant requested further evidence be admitted in this appeal.

Preliminary Motion 27

The Appellant requested the Board make a determination that the standard of review to apply to this appeal is correctness.

Preliminary Motion 28

The Appellant asked the Board to explain the credentials of the Director.

Preliminary Motion 29

The Appellant requested the Board examine the 2006 Allocation Policy and “note and acknowledge the centrality of ‘Purpose’ therein, and the repetition.”⁶

Preliminary Motion 30

The Appellant:

- (a) requested the Board “acknowledge that [the Director] did not show conflict with either the PLA or the PLAR;” and
- (b) “summarily grant or recommend the granting of the appeal... or set aside the submissions of the Respondent...”⁷

Preliminary Motion 31

The Appellant asked the Board to acknowledge the existence and viability of the 2006 Allocation Policy.

Preliminary Motion 32

The Appellant requested the Board declare or acknowledge the meaning of the word “equitable.”

Preliminary Motion 33

The Appellant requested the Board declare or acknowledge the meaning of the word “arguable or arguably.”

⁶ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 51.

⁷ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 52.

Preliminary Motion 34

The Appellant requested the Board declare or acknowledge the meaning of the word “proprietary.”

Preliminary Motion 35

The Appellant requested the Board take into account the Appellant’s client number and contractor status.

Preliminary Motion 36

The Appellant requested the Board acknowledge the Appellant is a commercial user as per the 2006 Allocation Policy.

B. Director

[11] The Director submitted the Board should proceed with a written hearing on the issue of remedy. The Director acknowledged the 2006 Allocation Policy “continues to exist within the boarder legislative and policy context applicable to aggregate dispositions on public lands.”⁸ The Director noted the current Alberta Aggregate (Sand and Gravel) Allocation Directive references the 2006 Allocation Policy and provides additional information on how applications for aggregate will be considered.

[12] The Director did not dispute that the location of the SML was suitable for gravel allocation. The Director stated the Appellant’s suggestion that it was responsible for discovering and identifying gravel resources on public lands was an overstatement, as there are multiple ways sand and gravel deposits are identified.

[13] The Director acknowledged the August 4, 2020 correspondence from AEP to the Appellant, contained errors and “did not articulate deficiencies with the CRBP to allow the Appellant a meaningful opportunity to address them.”⁹ The Director stated:

“Collectively the foregoing suggest the Director erred in his finding that the Appellant was sent a letter on June 29, 2020 providing 30 days to address CRBP outages.

⁸ Director’s Response Submission, March 11, 2021, at page 1.

⁹ Director’s Response Submission, March 11, 2021, at page 2.

The Director's conclusion that the Appellant had an opportunity to address deficiencies, and failed to do, is an error in determination of a material fact on the face of the record.”¹⁰

[14] The Director agreed AEP's decisions regarding the completeness of the SML application and its merits were not made within the timelines set in PLAR. The Director noted the Board had interpreted the failure to comply with the timelines for making a completeness decision as a deemed rejected, and, therefore, the Director would not have the authority to make a merit decision on the SML.

[15] The Director submitted the Board does not have the authority to consider a constitutional question.

[16] The Director stated:

“Most of the Appellant's preliminary motions lack the structure and content to support the motion, including: articulation of the issue, the legal foundation for the motion, and requested relief.

Similarly, the Appellant has failed to identify how each of the preliminary motions require determination by the Board on a preliminary basis, or that preliminary determination would benefit the overall process.

The majority of the Appellant's preliminary motions are irrelevant to a determination on the substance of the appeal before the Board, being the Director's refusal decision for SML 130074”.¹¹

[17] The Director submitted the Board should proceed directly to a written submission hearing on the issue of remedy. The Director stated that if the Appellant's hearing submissions failed to address the issues set by the Board, the Director would bring an application to dismiss the appeal.

C. Appellant's Rebuttal

[18] The Appellant's rebuttal submission consisted of further submissions of its preliminary motions previously submitted.

¹⁰ Director's Response Submission, March 11, 2021, at page 2.

¹¹ Director's Response Submission, March 22, 2021, at page 4.

IV. ANALYSIS

[19] A preliminary motion is an oral or written application requesting the Board rule or make an order before a hearing.¹² When considering a preliminary motion, the Board follows the relevant legislation and rules of procedural fairness just as it would during a hearing. The Board is not a general tribunal of inquiry. It must decide the preliminary motion within the scope of the appeal and the jurisdiction granted by the Act and PLAR. The Board may not consider matters that are outside the scope of the appeal and the Board's jurisdiction.

[20] The scope of the appeal is set by the legislation, particularly sections 120 and 124(1) and (2) of the Act and sections 211 and 213 of PLAR.

[21] Section 120 of the Act specifies: "An appeal under this Act must be based on the decision and the record of the decision-maker."

[22] Section 124(1) and (2) of the Act provides:

- "(1) The appeal body shall, within 30 days after the completion of the hearing of the appeal, submit a report to the Minister, including recommendations and the representations or a summary of the representations that were made to it.
- (2) The report may recommend confirmation, reversal or variance of the decision appealed."

[23] Section 211 of PLAR states:

"The following decisions are prescribed as decisions from which an appeal is available:

- (a) the issuance, renewal, amendment or suspension of a disposition issued under the Act;
- (b) the rejection of an application under the Act for a disposition,
- (c) a refusal to issue a disposition or to renew or amend a disposition applied for under the Act;
- (d) the imposition or variation under the Act of a term or condition of a disposition;

¹² Daphne A. Dukelow and Betty Nuse, *The Dictionary of Canadian Law*, 2d (Toronto: 1995, Thomson Canada Ltd.), at page 765.

- (e) a deemed rejection under section 15(1);
- (f) an order under section 35(1) to vacate vacant public land;
- (g) a refusal under section 43(1) of the Act;
- (h) an enforcement order, a stop order or an administrative penalty;
- (i) a removal under section 69(2)(f)(iii) of the Act;
- (j) an order under section 182;
- (k) a refusal to admit, or a requirement to remove, a pet animal under section 194(2);
- (l) an order under section 201(b) to vacate a public land recreation area;
- (m) an order under section 204(1) to vacate a campsite;
- (n) an order under section 205.”

[24] Section 213 of PLAR states:

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

[25] Essentially, these sections set the parameters of the appeal. In this appeal, the Board must determine if the Director, in deciding not to issue the SML to the Appellant:

- (a) erred in the determination of a material fact on the face of the record;
- (b) erred in law;
- (c) exceeded his jurisdiction; or
- (d) did not comply with a regional plan approved under the *Alberta Land Stewardship Act*.¹³

¹³ Notice of Appeal, Grounds of Appeal, Section 19.

[26] The Board must base its determination on the decision and the record of the decision-maker. The Board then must make a report and recommendation to the Minister, recommending the Minister either confirm, reverse, or vary the Director's decision. The Minister makes the final decision.

[27] Any preliminary motion made during the appeal process must move the appeal towards its conclusion. If a preliminary motion seeks to have the Board act outside of the parameters described above, the Board must dismiss it.

[28] The Board notes that many of the Appellant's preliminary motions are the same as arguments the Appellant made in *JH Drilling Inc. v. Alberta (Natural Resources Conservation Board)*, where Justice Slatter, refused to grant the Appellant leave to appeal, and stated:

“The applicant [JH Drilling] seeks various declarations on the status and effect of the Alberta Aggregate (Sand and Gravel) Allocation Policy. It seeks declarations as to whether the Policy creates legal rights or entitlements, whether it creates fiduciary duties, or whether it at least creates expectations of fairness. The applicant seeks declarations about whether its efforts to date in exploring and applying for a licence to extract the gravel create legally enforceable rights. It argues that it has interests similar to those in a ‘farmout’ agreement.

To the extent that these arguments relate to whether the applicant is ‘directly affected’, they have already been discussed. Otherwise, they all concern issues beyond the jurisdiction of the Board. The Board did not render a decision on any of these issues. In the present context the mandate of this Court is only to hear appeals from decisions of the Board. The final proposed ground of appeal does not disclose any issue upon which leave could be granted.”¹⁴ [Emphasis is the Board's.]

[29] The Board also notes the similarity between the Appellant's preliminary motions and issues heard by Justice Fagnan of the Court of Queen's Bench in *JH Drilling Inc. v. Public Lands Appeal Board et al.* Justice Fagnan stated:

“Although [the Appellant] is unhappy with the Public Lands Act and Public Lands Administration Regulation insofar as they affected the application of the AAA06* policy, this is a judicial review, not a formal challenge to the legislation. In other words, it is a review of the soundness of the Minister's decision, which

14 *JH Drilling Inc. v. Alberta (Natural Resources Conservation Board)*, 2014 ABCA 378, at paragraphs 22 and 23.

* The Appellant refers to the Alberta Aggregate (Sand and Gravel) Allocation Policy as the “AAA06.”

adopted the Appeal Board's decision on appeal of the Director's decision to reject [the Appellant's] lease application SML 15-0047 due to incompleteness."¹⁵

The Board finds Justice Fagnan's statement applies to this appeal, and the Board rephrases the statement as follows:

Although the Appellant is unhappy with the Act and PLAR insofar as they affected the application of the AAA06 policy, this is an appeal of the Director's decision to refuse the SML, not a formal challenge to the legislation. In other words, it is a review of the soundness of the Director's decision to reject the Appellant's lease application for the SML due to incompleteness.

[30] In reviewing the Appellant's preliminary motions, the Board finds that most of the motions are not within the scope of the appeal or the Board's jurisdiction and, therefore, the Board will not consider them.

[31] The Board's analysis of each of the Appellant's motions is below. The Board notes that the Appellant has provided multiple submissions over the past several months and has changed the numbering and content of many of its preliminary motions. This has made it challenging for the Board to determine exactly what the Appellant is seeking in the motions. In part to ensure certainty, the Board requested written submissions from the Appellant and the Director. In making its decision regarding the Preliminary Motions, the Board will rely on the Appellant's written submissions dated March 4 and March 18, 2021, the Director's written submissions dated March 11, 2021, and the oral submissions made by the Parties at the April 15 and April 21, 2021 hearing.

Preliminary Motion 1

[32] The Appellant's first preliminary motion was for disclosure beyond the Director's Record. The Board has provided a more extensive analysis of the Appellant's Preliminary Motion for disclosure as it is a motion that falls within the scope of the appeal and jurisdiction of the Board. Section 120 of the Act requires an appeal to be based on the decision and record of the decision-maker. The Act refers to the "director's file" and "the records of the decision-maker."

¹⁵ *JH Drilling Inc. v. Public Lands Appeal Board and Government of Alberta, Director of Alberta Environment and Parks, Minister of Alberta Environment and Parks, Government of Alberta, Her Majesty the*

[33] The “director’s file” is defined in PLAR section 209(f) as the “records of the Department that are considered by the director in making the decision...” The Board has previously noted that other than this definition, the term “director’s file” does not appear in any other instance in the regulation or the Act. The term is an orphan clause that clouds the Legislature’s intent regarding what constitutes the record of the decision-maker.

[34] Section 209(m) of PLAR defines “record” as meaning “record as defined in the *Freedom of Information and Protection of Privacy Act*...” (the “*FOIPP Act*”). Section 1(q) of the *FOIPP Act*, defines “record” as follows:

“In this Act...

- (q) ‘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....”

[35] These definitions do not shed any significant light on what is included in the “record of the decision-maker” other than it includes records in various formats.

[36] The term “decision-maker” is not defined in the Act or in PLAR. However, the Board notes that section 5(2) of the Act¹⁶ authorizes the Minister to designate a director for the purposes of making certain decisions. In this appeal, the Director’s decision not to issue the SML was made under the authority of section 16(1)(b) of the Act which states:

“The director may ...

- (b) refuse an application for a disposition at any time before the disposition is issued.”

The Board notes that Ministerial Order MO 44/2019 lists the positions designated as directors with authority to certain decisions under the Act. In this appeal, the Director is an Approvals Manager, which is a designated as a director under Ministerial Order 44/2019 for the purposes of

Queen in Right of Alberta, ABQB, Action No.: 1703-05479, at page 2.

¹⁶ Section 5(2) of the *Public Lands Act* states:

“Without limiting the generality of subsection (1), the Minister may by order designate any person as a director for the purposes of all or part of this Act and the regulations.”

making decisions under section 16 of the Act. Based on this designation, the Board finds the “director’s file” would be the records of the AEP that the Director considered in making the decision to refuse to issue the SML.

[37] The director’s file is a subset of the Department’s Record. The Board notes that in most situations, it is employees of AEP other than the director who choose which records are to be considered by the director. The Board has seen instances where the record forwarded by AEP employees to the director does not contain all records relevant to the issues under appeal. The Board frequently receives “supplemental director’s records” where the director in an appeal has found other relevant records which were not included in the initial record forwarded to the Board. The exclusion of relevant records could impact the director’s decision and influence the outcome of the appeal for all parties, and the Board appreciates AEP’s diligence in providing supplemental records where warranted.

[38] Both the Director and the Appellant have referred to *IMS Health Canada Ltd. v. Alberta (Information & Privacy Commissioner)* (“*IMS*”).¹⁷ *IMS* dealt with judicial review returns (the record provided to the Court) and the Rules of Court. The Rules of Court are specific to proceedings before the courts and are not applicable to administrative tribunals, however, the underlying principles discussed in *IMS* are relevant to appeals before the Board. The Board rejects the Appellant’s claim that the Board is inconsistent for recognizing that the *Alberta Rules of Court* do not apply to it, while at the same time accepting the principles of *IMS*.

[39] In *IMS*, the Court examined the wording of the *Alberta Rules of Court* related to the return for a judicial review. The Court found that there may be situations where a party alleges relevant evidence was not included in the record but should have been. In those circumstances, the Court found there must be a threshold factual foundation to the allegation. The Court stated:

“... for a further, more comprehensive production of records for judicial review, there must be an evidentiary basis and the allegations must not be intended to ‘investigate the possibility.’ Similarly, in *Tremblay* at 966, the Supreme Court also established a threshold for piercing the veil of deliberative secrecy:

¹⁷ *IMS Health Canada Ltd. v. Alberta (Information & Privacy Commissioner)*, 2005 ABCA 325

by the very nature of the control exercised over their decisions administrative tribunals cannot rely on deliberative secrecy to the same extent as judicial tribunals. Of course, secrecy remains the rule, but it may nonetheless be lifted when the litigant can present valid reasons for believing that the process followed did not comply with the rules of natural justice.”¹⁸

[40] After reviewing several cases with similar wording to the relevant *Alberta Rules of Court* sections, the Court in *IMS* stated:

“These interpretations provide some guidance. Concerns about far ranging returns are alleviated by the fact that the return is only directed at what is in issue. Moreover, in circumstances where the administrative decision-maker is insulated from investigative and other preliminary processes, the decision-maker will not possess documents relating to those functions and cannot be expected to include them in the return. Demands for more expansive returns cannot become fishing expeditions because the party attacking administrative decisions will not be granted access to the documents unless they have raised a valid reason for belief in the allegations underlying their attack. The Commissioner is required to include in his return all things which touch on the issue of his decision to conduct an investigation and to issue an order relating only to the disclosures made by pharmacists and pharmacies to *IMS*.”¹⁹

[41] In *IMS*, the Court found the return for the judicial review was incomplete, and ordered the Commissioner to review the return based on the Court’s direction. The Court stated:

“If the Commissioner concludes that documents fit the expanded approach directed in these reasons he should include them in the return. If he concludes that they do not, *IMS* may apply to the case management judge for a decision as to whether the documents are to be included in the return on the basis of the expanded scope of return set out in these reasons.”²⁰

[42] After considering the case law and the legislation, the Board finds the following:

- (a) the director’s file is a subset of the record of the decision-maker (the Department’s Record);
- (b) in most appeals, the director’s file contains sufficient information for the Board to make its report and recommendations to the Minister;
- (c) an appellant or the Board may request further records from the director when:

¹⁸ *IMS Health Canada Ltd. v. Alberta (Information & Privacy Commissioner)*, 2005 ABCA 325, at paragraph 43.

¹⁹ *IMS Health Canada Ltd. v. Alberta (Information & Privacy Commissioner)*, 2005 ABCA 325, at paragraph 53.

²⁰ *IMS Health Canada Ltd. v. Alberta (Information & Privacy Commissioner)*, 2005 ABCA 325, at paragraph 60.

- a. the director's file is demonstrated to be incomplete,
 - b. where there are matters of procedural fairness that may require a more fulsome record, such as bias or legitimate expectations, and
 - c. where the grounds of appeal listed in section 213(a) of PLAR require disclosure of an identified record to show the error or exceedance of jurisdiction or authority;
- (d) when an appellant requests any records beyond the director's record, the appellant must provide evidence that:
- a. the records should have been included in the director's record, but were not,
 - b. the record request is relevant to one of the grounds of appeal raised by the appellant,²¹ and
 - c. any allegations intended to be addressed by the records have an evidentiary basis and the allegations are not be intended to "investigate the possibility;"
- (e) an appellant must provide as detailed particulars of the records requested as reasonably possible and an explanation of why the records are required; and
- (f) the Board will not accept information requests that are "fishing expeditions."

[43] If an appellant provides sufficient evidence to show the requested documents exists and should properly form part of the record, the Board may require a director to produce a fuller record. If a director does not comply with the Board's order, then the Board may consider adverse inference arguments from the parties,²² usually in the hearing submissions.

²¹ See: Sara Blake, *Administrative Law in Canada*, 6th ed. (LexisNexis Canada Inc.: Toronto, 2017), at paragraph 2.109:

"In deciding whether a particular fact or item of evidence should be disclosed, the key criterion is relevance. Irrelevant information need not be disclosed. There are degrees of relevance. The more important the information is to a central issue to be decided, the more likely it should be disclosed, in contrast information that is relevant only to a peripheral issue or is repetitive of material already disclosed. The question to ask is: if the information is put before the decision-maker, what is the likelihood that it will influence the result? If it is not likely, then it is not probative and need not be disclosed."

²² See: *CRC Open Camp & Catering Ltd., et al. v. Director, Regional Compliance, Regulatory Assurance Division – North Region, Alberta Environment and Parks*, (11 January 2021), Appeal No. 20-0003-ID2 (A.P.L.A.B.), 2021 ABPLAB 1.

[44] The Appellant made 18 requests in its Disclosure Motion. The Board will list each request, summarize the Appellant's and Director's submissions for each request, and provide the Board's analysis and decision.

1. "JHD client file 808 408 6002."²³

[45] The Appellant stated it had previously requested its client file from AEP. The Appellant submitted the request is not overly broad or speculative, and it is a specific identification of a file. The Appellant said its client file was relevant to several issues in the appeal.

[46] The Director stated the request was too broad and ambiguous. The disclosure should be limited to information that is relevant and material to the issues under appeal. The Director said the Appellant had been advised that there is no single file associated with the Appellant's electronic application number (Client ID 808 408 6002). The Director also stated each application has an individual number based on the type of disposition applied for, the year and the sequential order.

[47] The Board finds that this request is broader than the matter under appeal. The Board is only able to consider records related to the grounds of the current appeal. The Appellant's reasons for requesting the client file go beyond the Director's decision to refuse SML 130074.

2. "All Government of Alberta correspondence and documents relative any kind of fiduciary duty, or lack thereof, relative AEP or Gravel Unit clients."

3. "All Government of Alberta correspondence and documents and legal opinions directly related to any kind of fiduciary duty or lack thereof, relative AAA06."²⁴

[48] The Appellant stated these requests were related to a previous appeal. The Appellant stated it had argued many times that AEP owed a fiduciary duty to gravel unit clients, including before the Board.

²³ Appellant's Disclosure Motion, December 17, 2020, at page 3.

[49] The Director stated the Appellant should have its own submissions and correspondence, along with AEP's responses and the Board's decision in PLAB 15-0010.

[50] The Board finds these requests are overly broad as it relates to matters beyond the issues of the appeal. In appeal PLAB 15-0010 the Board heard the Appellant's arguments regarding fiduciary duty allegedly owed under the Allocation Policy (2006) and stated:

"The Appellant's submission that there is a fiduciary obligation in regards to an application for a disposition is incorrect. The mere action of submitting an application for a public lands disposition does not create a fiduciary relationship."²⁵

[51] The Appellant did not provide sufficient reasons on why the Board should reconsider its previous decision.

4. "Copy of all AEP files relating to cancellation of SML 130074, or rejection thereof, of list of deficiencies and correspondence."²⁶

[52] The Appellant acknowledged this request may seem broad, however, the Appellant stated it is seeking to include all "background motivations or reasons, or real reasons, for the cancellation."²⁷ The Appellant submitted the Board had issued such disclosure requests in the past.

[53] In response to this disclosure request, the Director referred the Appellant to the Department's Record.

[54] The Board assumes the Department's Record would include the records sought by the Appellant. If the Appellant can point to specific records missing from the Department's Record, the Board would consider such a request. However, the Appellant was asked to identify such records and did not do so. The Board finds this request to be overly broad.

5. "Copy of all AEP files relating to CRBP for SML 130074 from 2013 to present, or rejection thereof, or list of deficiencies, and in particular all

²⁴ Appellant's Disclosure Motion, December 17, 2020, at page 4.

²⁵ *JH Drilling v. Director, Environment and Parks*, Appeal No. PLAB 15-0010, at paragraph 55.

²⁶ Appellant's Disclosure Motion, December 17, 2020, at page 4.

²⁷ Appellant's Rebuttal, January 20, 2021, at page 24.

correspondence about confirmation of the CRBP #150032 (CORP) and about the requested changes that were made and approved 3 and 4 years ago.”²⁸

[55] The Appellant said it received a deficiency list for the CRBP, completed it, submitted it to AEP, and thought the CRBP was complete until the Director refused to issue the SML three years later. The Appellant said it had repeatedly requested clarification from AEP on how the CRBP could be a basis to cancel the SML application.

[56] The Director said the CRBP was not approved as claimed by the Appellant and that in 2017, AEP staff made a recommendation to refuse the application after receiving the Appellant’s revised CRBP.

[57] The Director has a responsibility to include all relevant records that were considered in making the decision. If any records are specifically missing from the Department’s Record, the Appellant should have identified them. Instead, the Appellant requested all AEP files relating to the CRBP and did not attempt to reasonably identify the records it thought should have been included in the Department’s Record. For this reason, the Board finds this disclosure request to be overly broad and vague.

6. “Same for Caribou Protection Plans, which were submitted annually.”²⁹

[58] The Appellant said the Caribou Protection Plans were submitted yearly and were never acknowledged by AEP.

[59] The Director did not specifically address this disclosure request but included the request in a general response to requests 4 to 7, and 10.

[60] The Appellant should have copies of the records it submitted to AEP for its application. If there any records missing from the Department’s Record, the Appellant is required to identify them as specifically as possible in making a disclosure request but did not do so. The Board finds this disclosure request to be overly broad and vague.

²⁸ Appellant’s Disclosure Motion, December 17, 2020, at page 5.

²⁹ Appellant’s Disclosure Motion, December 17, 2020, at page 5.

7. “Copy of all correspondence and documentation of Darrell Kentner, Nicholas Stasiak, the Caribou officer, CRBP officials, the Edmonton gravel unit relating to SML 130074 and the preceding SME.”³⁰

[61] The Appellant did not provide any submissions regarding this disclosure request.

[62] The Director noted that records related to the previous disposition for a SME were not included in the Department’s Record, as it was a separate application.

[63] The Appellant did not identify any records missing from the Department’s Record and did not provide sufficient reasons for the request. The Board finds this disclosure request to be overly broad and vague. Additionally, the SME is very specific in its scope and is not relevant to this appeal.

8. “Copy of the email sending out to JHD, the Brenda Huxley letter.”³¹

[64] The Appellant referred to the August 4, 2020 letter signed by Ms. Brenda Huxley, Public Lands Disposition Management. The Appellant said it had not received the letter and noted the Director confirmed AEP had not sent the letter. The Appellant noted multiple errors in the letter, which it says Ms. Huxley would not have made. The Appellant stated it wrote to Ms. Huxley but did not receive a response.

[65] The Director said Ms. Huxley confirmed the August 4, 2020 letter was sent by regular mail and not emailed to the Appellant. Ms. Huxley also confirmed there were errors in the letter.

[66] The Board finds the Director’s confirmation that the August 4, 2020 letter was not emailed to the Appellant satisfies this request.

9. The Board notes there is no disclosure request numbered “9”.

10. “All correspondence about confirmation of the CRBP number 150032 (CORP) and about the requested changes that were made and, as understood by the Appellant, approved three years ago.”³²

³⁰ Appellant’s Disclosure Motion, December 17, 2020, at page 6.

³¹ Appellant’s Disclosure Motion, December 17, 2020, at page 6.

[67] The Appellant said it provided its reasons for request 10 in its submissions for requests 4 to 7.

[68] The Director did not specifically address this disclosure request but included the request in a general response to requests 4 to 7, and 10.

[69] The Board finds this request is identical to request 5. If any of these records are relevant, they should be included in the Department's Record. If there any records specifically missing from the Department's Record, the Appellant should have identified them. The Appellant requested all files and did not identify any specific records. The Board finds the request to be overly broad and vague.

11. "A copy of the final lease form for SML 130074 that might be offered if all other requirements are met, so the Appellant can evaluate whether it is worth it, as the time and money have already skyrocketed orders of magnitude beyond what was ever contemplated or budgeted at the outset, and the investors need to see at least an unsigned copy of the lease that they are financing toward."³³

[70] The Appellant requested a copy of the final lease that would be issued if the SML is approved.

[71] The Director advised that there is no draft disposition, and the merit recommendation for refusal was waiting for a decision to be made since July 2017.

[72] The Board finds the request is unrelated to the issues under appeal and should be discussed between the Appellant and the Director.

"12(a) Disclosure of all of the steps taken by AEP and GOA, so that commercial gravel clients like JHD, client #808-408-6002 and other commercial gravel clients, may be assured that the decision-makers are open and unbiased.

(b) all procedures to ensure structural independence and structural guarantees, to enable delegates to make decisions free from external influence of loyalty to their employer, and to be seen to do so.

³² Appellant's Disclosure Motion, December 17, 2020, at page 6.

³³ Appellant's Disclosure Motion, December 17, 2020, at pages 6 and 7.

- (c) disclosure of documentation for guarantees of institutional independence.
- (d) disclosure of all structural guarantees to enable delegates to make decisions free from external influence.
- (e) disclosure of all documentation for ascertainable security of tenure, security of remuneration and administrative independence.
- (f) disclosure of all independence safeguards so that decision-makers can be seen to be in vulnerable to external influence and institutional bias.
- (g) disclosure of any structural guarantees to enable fair, impartial and independent process.
- (h) disclosure of any safeguards to ensure non-discrimination.”³⁴

[73] The Appellant stated the request was from the “investors” but offered no further explanation.

[74] The Director stated the Appellant’s apparent objection was to the statutory system under the Act and its regulations. The Director said he had the authority to make the decision and disputes the Appellant’s allegations of bias and conflict of interest.

[75] The Board notes the “investors” are not a party to the appeal and have no standing to make preliminary motions. The Board finds the requests to be overly broad and relates to matters beyond the issues under appeal. The records the Board can consider are only those records that are related directly to the appeal. The Appellant has failed to identify any specific records that are missing from the Department’s Record.

13. “Disclosure of any reasons why JHD could not have been signed up to this lease within time for the completion of the “twinning of the Highway 63, then so-called Highway of death”³⁵

[76] The Appellant said the SML was intended to supply gravel for the twinning of Highway 63. The location of the SML was next to an Alberta Transportation gravel pit. The SML could access the existing gravel haul roads and safe access to the highway. The Appellant stated that after it filed the CRBP with AEP, it did not hear back from anyone in AEP until the

³⁴ Appellant’s Disclosure Motion, December 17, 2020, at page 7.

³⁵ Appellant’s Disclosure Motion, December 17, 2020, at pages 8 and 9.

Director cancelled the application three years later. The Appellant submitted there were two letters from AEP refusing the SML, and the Appellant did not receive either. The Appellant requested disclosure of any reasons AEP had for not approving the SML Application in time to supply gravel for the twinning of the highway.

[77] The Director noted the request is for an explanation, not a record. The Department's Record included a 2017 recommendation that the Director refuse the SML Application, and there were no records related to the SML until the Director's 2020 decision.

[78] The Board finds the request does not identify any records missing from the Department's Record and is overly broad and vague. The request is speculative and goes beyond the issues under appeal.

14. "Disclosure of how the department now interprets the AAA06. JHD request to see paper documents with further clarification of the present department views, so that JHD and other commercial gravel operators can move forward into the future and do their job of finding, identifying, documenting and developing gravel pits with the degree of business certainty.

Disclosure and any documentation of how the SML application process has or has not been

- a) fair
- b) comprehensive or
- c) timely under the AAA06, in relation to this SML, and generally."³⁶

[79] The Appellant submitted AEP appeared to hold the Alberta Aggregate (Sand and Gravel) Allocation Directive for Commercial Use on Public Land as subordinate to the 2006 Allocation Policy. The Appellant requested to see any documentation that clarified AEP's current views on the two policies.

[80] The Director said the Department's Record, Tab 51, contained links to policy documents, and there were no further records related to the request.

³⁶ Appellant's Disclosure Motion, December 17, 2020, at page 9.

[81] The Board finds the Appellant has failed to explain why the request is relevant to the issues under appeal. The appeal is of the Director's refusal to issue the SML, and "moving forward into the future" for the Appellant and other gravel operators is beyond the scope of the appeal. The Board finds the request to be vague and overly broad.

15. "Copy of declaration showing that the FNC [First Nations Consultation] was adequate."³⁷

[82] The Appellant noted the First Nations Consultation Adequacy Assessment (the "FNC") was located in the Department's Record in the "post decision folder." The Appellant stated:

"Either the Director did not seek access to this before his Decision to cancel, or other access to background information, or it was not supplied to the Director. Actually, it seems that the Director did not do a careful analysis, but had decided to cancel this old SML application first, for some reason, and then searched around for something to base it on, and found first the first letter, which was then found to have been never sent, and then the second aberration letter. It is respectfully submitted that this is not the kind of thorough Decision-making procedure that is envisaged by the legislation or the Regulations, or which should be approved by the PLAB."³⁸

[83] The Director noted the FNC document was included in the Department's Record.

[84] The Board finds that as the FNC was approved by AEP and was included in the Department's Record, there is no basis to this request.

16. "Copies of recognitions and acknowledgements of the client and special client 808-408-6002 status of the appellant, JHD."³⁹

[85] The Appellant said it was asking for:

"recognitions of major gravel discoveries, acknowledgement of work well done, all fines and levies and assessments paid, except the one that was reduced during mediation, and otherwise, an unblemished career of cliency for over a decade in the books of the Government of Alberta, as far as is known to this client."⁴⁰

The Appellant stated the information should be located in its client file.

³⁷ Appellant's Disclosure Motion, December 17, 2020, at page 9.

³⁸ Appellant's Rebuttal, January 20, 2021, at page 35.

³⁹ Appellant's Disclosure Motion, December 17, 2020, at page 9.

⁴⁰ Appellant's Rebuttal, January 20, 2021, at page 36.

[86] The Director said the request was not for disclosure of records but, instead, it was an argument.

[87] The Board finds the request to be irrelevant to the issues under appeal. The Appellant's request is speculative and overly broad.

17. "Referring to the transfer of decisions to the field offices, JHD requests to see copies of the directives and administration of this transfer of decision-making procedure, and the reasons for it in the processes, and the names of the directors before and after the transfer."⁴¹

[88] The Appellant argued this request related to how AEP made its decision to refuse to issue the SML.

[89] The Director noted Ministerial Order 44/2019 provided authority to many directors to make regulatory decisions. The Director stated:

"Depending on the decision being made, there may be many individuals in roles with decision making authority. There is no singular list with the names of all "Directors" at any one time as it is based on the position, not the individual person."⁴²

The Director submitted where a director is located when making a decision is irrelevant if the director had the authority to make the decision.

[90] The Board finds the request to be overly broad as it related to matters beyond the scope of the issues of the appeal. The Appellant did not identify any records related to this request that are missing from the Department's Record.

18. "A list of documents claimed by Ms. Altmiks as exempt for legal or other privilege. JHD requests affidavit, or failing that, a very clear statement from the director or one of the employees, that these listed documents are all there is, and there is no other."⁴³

[91] The Appellant referred to a statement by legal counsel for the Director that exempted certain documents for legal privilege. The Appellant stated:

⁴¹ Appellant's Disclosure Motion, December 17, 2020, at page 10.

⁴² Director's Submission, January 5, 2021, at page 8.

⁴³ Appellant's Disclosure Motion, December 17, 2020, at page 10.

“The Appellant asks for a list of those documents and the natures of the privileges claimed, so that the Appellant and the Board can examine those documents or the claims of legal or other privilege, and so the Board may consider whether those privilege claims are supportable. This is for justice and fairness, and so that justice and fairness can be seen to be done.

The Appellant also requests and affidavit or, failing that, a very clear statement, from the Respondent or one of the employees, that these listed documents are all there is, and that there is no other. It is respectfully submitted that should be on the Record somewhere or somehow, in order to identify and complete.”⁴⁴

[92] The Director stated AEP declined to waive legal privilege and noted that solicitor-client privilege is “near absolute, it is a fundamental civil and legal right affording protection on a class, rather than case by case, basis to all solicitor-client communications.”⁴⁵

[93] The Board finds the Director is not required to provide legally privileged records. The Appellant has failed to identify any of the records it seeks in this request.

19. “Disclosure of why the first letter was not sent.”⁴⁶

[94] The Appellant would like to know why the August 4, 2020 letter from AEP was not sent to the Appellant.

[95] The Director stated the request was for an explanation, not for further records. The Director acknowledged there were errors in the letters sent to the Appellant:

“For further clarity, there was no correspondence dated June 29, 2020. This error in the dates of correspondence flows from an email by Brenda Huxley on July 17, 2020. The incorrect reference to June 29, 2020 then carried forward into the merit rationale and decision. The letter from Brenda Huxley is dated August 4, 2020.”⁴⁷

The Director’s email to the Appellant, dated September 29, 2020, corrected the errors.

[96] The Board finds the request is better suited for discussion at mediation or as questions in a hearing. The Appellant did not identify any records related to this request that are missing from the Department’s Record.

⁴⁴ Appellant’s Rebuttal, January 20, 2021, at page 39.

⁴⁵ Director’s Response Submission, January 5, 2021, at page 9.

⁴⁶ Appellant’s Disclosure Motion, December 17, 2020, at page 10.

⁴⁷ Director’s Response Submission, January 5, 2021, at page 9.

[97] The Board finds the Appellant did not provide sufficient evidence to:

- (a) identify the records it is seeking;
- (a) demonstrate the records likely exist, are related to the Department's Record and the Director's decision and should be a part of the Department's Record but are not; and
- (b) provide evidence regarding the relevancy of the records to the issues under appeal.

[98] The Board finds the Appellant's reasons for seeking the disclosure to be vague and overly broad. The Appellant's requests are akin to a fishing expedition, a speculative request for information beyond the scope of the appeal.

[99] The Board dismisses the Appellant's Preliminary Motion 1 for further disclosure.

Preliminary Motion 2

[100] In the Appellant's Preliminary Motion 2, the Appellant argues the Director, AEP, and the GOA are in a conflict of interest due to the regulatory system implemented by AEP under the Act and PLAR, to regulate public land resources. The Director submitted the Appellant failed to meet the legal tests for conflict of interest and provide analysis to support its allegations.

[101] The Board does not have the jurisdiction to consider conflict of interest allegations against the GOA or AEP. The Board's jurisdiction is limited to decisions made by the Director as prescribed in section 211 of PLAR. The Board may hear conflict of interest matters that impact the Director's duty to provide procedural fairness in the decision-making process. However, the Appellant did not make any procedural fairness submissions.

[102] The Appellant also alleged several unnamed employees of the government are in a conflict of interest. Without the identification of these employees, the Board cannot determine if the Appellant's allegations are correct.

[103] The Appellant has accused the Director of being in conflict of interest, but did not provide sufficient details for the Board to identify the alleged conflict or make submissions regarding the test for conflict of interest as set by the courts.

[104] The Appellant's preliminary motion also suggests the regulatory system creates a reasonable apprehension of bias against the Appellant. While conflict of interest and bias are not appealable matters under section 211 of PLAR, the Board may hear matters that relate to procedural fairness, as these matters do. However, the Appellant did not provide sufficient evidence to support its arguments that there is a conflict of interest and reasonable apprehension of bias in:

- (a) AEP's practice of appointing directors under the Act;
- (b) the Government of Alberta's ownership and regulation of public land; and
- (c) the allocation of gravel resources.

The Board also finds:

- (a) the Appellant appears to be using the preliminary motion as a collateral attack on the regulatory system;
- (b) the Appellant's concerns with the regulatory system is not an appealable matter under the Act or PLAR; and
- (c) the Appellant's Preliminary Motion is not consistent with the grounds the Appellant listed in its Notice of Appeal.

[105] The Board dismisses the Appellant's Preliminary Motion 2.

Preliminary Motions 3, 3A, and 3B

[106] The Appellant submitted the 2006 Allocation Policy made promises that created fiduciary duty owed by the Government of Alberta to the Appellant. The Appellant stated the use of the word "commercial" in the 2006 Allocation Policy, and the "tremendous power bestowed upon a plethora of Directors and officers..."⁴⁸ lead to the conclusion there is a fiduciary duty owed to the Appellant. The Appellant stated: "... gravel operators in Alberta

⁴⁸ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 14.

would not likely invest huge sums of money, millions, unless there is some idea, minimally, if not for guarantees of a lease being granted, minimally for fairness.”⁴⁹

[107] The Director argued the question of fiduciary duty had been decided upon by the Board previously, and there was nothing in the preliminary motion that would advance the appeal.

[108] The Board finds the Appellant provided insufficient evidence to support its argument that AEP owes a fiduciary duty to the Appellant. The Appellant failed to demonstrate a fiduciary duty is created from what the Appellant terms as “cliency” and the 2006 Allocation Policy.

[109] In a previous decision on a separate appeal by the Appellant, PLAB 15-0010, the Board considered arguments from the Appellant regarding the same fiduciary duty issue. In that decision, the Board wrote:

“The Appellant’s submission that there is a fiduciary obligation in regards to an application for disposition is incorrect. The mere action of submitting an application for a public lands disposition does not create a fiduciary relationship. The Director and the Department have an obligation to hold the general public interest above all other interests. The Director and the Department do not have an obligation to place the Appellant’s interests above public land interests, users or those of other applicants by virtue of the Appellant making an application for a disposition.”⁵⁰

[110] The Appellant has not provided a compelling reason for the Board to change its views from the October 28, 2015 Report and Recommendations for the decision in PLAB 15-0010.

Preliminary Motion 3.1

[111] The Appellant stated: “The Appellant asked for the Board to ask [the Director’s Counsel] exactly who the Director and her client was or were, inter alia, with details, and for reasonable opportunity for the Appellant to respond.”⁵¹ The Director submitted: “For the

⁴⁹ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at pages 14 and 15.

⁵⁰ *JH Drilling Ltd. v. Director, Environment and Parks* (28 October 2015), Appeal No. 15-0010-R.

⁵¹ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 17.

purposes of the present appeal, the party before the Board making these submissions is the Director who made the decision being appealed.”⁵²

[112] The Board finds Preliminary Motion 3.1 is not appropriate for a preliminary motion as it is a question the Appellant can ask the Director without the Board’s intervention. In the interests of clarity, the Board finds that in this appeal, the Director is the AEP employee who made the decision and signed the September 24, 2020 letter refusing to grant the SML to the Appellant. The Board dismisses Preliminary Motion 3.1.

Preliminary Motion 3.2

[113] The Appellant requested the Board ask “the Director to clarify the Director’s apology that decisions were being moved.”⁵³ The Appellant stated:

“The Director’s final words in the substitute or replacement decision email of September 29, 2020, are:

Our department is in the process of moving decisions on files out to Directors in the field offices now, which is why I have provided the decision on this file.”⁵⁴

The position of [Director’s legal counsel], as we understand, is that the whim or feeling of a Director, or maybe any Director, is sufficient, at any stage of the game, to enable cancellation. In that light, the decision-making procedure is very significant to this Appellant....

Secondly, if the movement of the decision procedure from one place to another is relevant, or is an explanation or whatever, as suggested in the second letter of [the Director], then [the Appellant] really needs to be able to have an opportunity to try to understand it, or to answer that letter.

Another question, is it double jeopardy or something, if, after the Director decides on one earlier email as founding his cancellation or rejection decision, after he is finally persuaded that it was never sent, then decided to try to base it on a different item (which was also never sent) which is even more bizarre than the first one? Is that double jeopardy, or does the Board allow that kind of deliberate course of actions, or is the Director allowed to fish around for a reason until he finds a good one or until the Applicant commercial user dies or goes broke, and so

⁵² Director’s Response Submission, March 11, 2021, Appendix D, at page 1.

⁵³ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 18.

⁵⁴ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 18.

very many have, does the Board allow any Director to stumble and fish around like that?...

The Appellant also asks for a list of Directors, with names and contacts. And Forest Officers. And CRBP reviewers. And Caribou Plan reviewers. Conceivably this could go into a separate one at the end.”⁵⁵

[114] The Director submitted the quote used by the Appellant from the September 29, 2020 email was an explanation of why he, the Director, was making the decision on the SML application.

[115] There are three parts to this preliminary motion:

- (a) The Appellant would like the Board to ask the Director to “to clarify the Director’s apology that decisions were being moved;”
- (b) Is it “double jeopardy or something” if the Director changes his reasons for a “cancellation or rejection decision?” and
- (c) The Appellant requests a list of Directors, Forest Officers, CRBP reviewers, and Caribou Plan reviewers, along with names and contacts.

[116] The Appellant can ask the Director part (a) without the Board’s intervention. The question in part (b) of “double jeopardy” is a matter more appropriate for the Appellant to raise in the hearing submissions than in a preliminary motion. The Board does not have the list the Appellant requests in part (c), and the Appellant may ask the Director for such information without the Board’s intervention.

[117] The Board finds the Appellant has not demonstrated a link between preliminary motion 3.2 and the refusal to issue the SML, therefore, Board dismisses the preliminary motion for being outside the scope of the appeal.

Preliminary Motion 3.3

[118] The Appellant requested the Board ask legal counsel for the Director to provide reasons why she said the Appellant’s Notices of Appeal was filed late. The Director stated he was not alleging the Appellant had filed late, but had only used lateness as an example of matters that that are appropriate for preliminary motions.

⁵⁵ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at pages 18-19.

[119] The Board has already accepted the Notices of Appeal and the Director has not applied to have the Notices of Appeal dismissed for lateness. The Board finds this question is irrelevant to the appeal and, therefore, dismisses Preliminary Motion 3.3.

Preliminary Motion 4

[120] The Appellant stated in its Initial Preliminary Motion Submission: "Preliminary Motion #4 (PM#4) is Environmental, Greenhouse Gasses emitted from long gravel haul convoys."⁵⁶ The Appellant argued in the Preliminary Motions Hearing that the proximity of the SML to Highway 63 would result in fewer greenhouse gas emissions than typical gravel operations and was a relevant matter for the Board to consider.

[121] The Director stated:

"There is no motion articulated for the Director to respond to.

This is not a preliminary motion. It appears the Appellant is attempting to argue the merits of its disposition application, which is not a preliminary motion. Further the Appellant's analysis regarding greenhouse gases was not an application requirement; it was not identified as a deficiency or as a reason for refusal."⁵⁷

[122] The Board finds whether the SML's location would reduce greenhouse gas emissions is an argument that goes to the merits of the SML application and not a proper preliminary motion. The Board therefore, dismisses Preliminary Motion 4.

Preliminary Motion 5

[123] The Appellant requested "an advance copy of the client file pursuant to the Act and Regulations... apart from the Disclosure Application (PM#1)."⁵⁸ The client stated this request is separate from its disclosure application, however, the Board notes the first request under the Appellant's disclosure application is for "JHD client file 808 408 6002."⁵⁹ The Board

⁵⁶ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 21.

⁵⁷ Director's Response Submission, March 11, 2021, Appendix D, at page 2.

⁵⁸ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 23

⁵⁹ Appellant's Disclosure Motion, December 17, 2020, at page 3.

dismisses Preliminary Motion 5 as the Board already considered this Preliminary Motion in the disclosure application.

Preliminary Motion 6

[124] The Appellant requested “full analysis or feedback for each year”⁶⁰ for the Caribou Protection Plans submitted for the SML. The Director stated in response:

“The Director has searched the Department’s records related to Caribou Protection Plans (CPPs) and the application for SML 130074. The search did not locate any CPPs submitted, or approved, in association with the application for SML 130074 other than what is already found at Director’s Record Tab 66.”⁶¹

[125] The Board notes the Appellant did not identify any dates for the submission of the Caribou Protection Plans. The Board is satisfied the Director has made reasonable attempts to fulfill the Appellant’s request and, therefore, the Board dismisses Preliminary Motion 6.

Preliminary Motion 7

[126] The Appellant asked the Board to determine if it was fair, comprehensive and timely for AEP not to provide feedback or answer the Appellant’s correspondence. The Director submitted the Appellant is attempting to argue the merits of its SML application.

[127] The Board finds no connection between the scope of the appeal and whether AEP acted in a fair, comprehensive and timely manner regarding the Caribou Protection Plans. The Appellant’s Preliminary Motion 7 is irrelevant at this stage of the appeal process, although it may be relevant when the Board considers the merits of the appeal in a hearing. The Board dismisses Preliminary Motion 7.

Preliminary Motion 8

[128] The Appellant seeks an order from the Board for AEP to provide any full analysis or feedback of its CRBP revisions for the SML and whether AEP acted in a fair, comprehensive

⁶⁰ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 24.

⁶¹ Director’s Response Submission, March 11, 2021, Appendix D, at page 1.

and timely manner regarding the CRBP. The Director stated the Appellant is attempting to argue the merits of the SML.

[129] The Board dismisses Preliminary Motion 8 as it is irrelevant at this stage of the appeal process, although it may be relevant when the Board considers the merits of the appeal in a hearing.

Preliminary Motion 9

[130] For Preliminary Motion 9, the Appellant wrote:

“JHD asks the Board for a determination, of whether it was fair, comprehensive and timely, for AEP to instead simply try to suddenly cancel the Mariana Lakes instead of providing feedback on that very expensive set of CRBP changes on the 2017 Project in 2020 and 2021.”⁶²

[131] The Director reiterated that the Appellant is presenting arguments based on the merits of the SML which are inappropriate for a preliminary motion.

[132] The Board dismisses Preliminary Motion 9 as it is irrelevant at this stage of the appeal process, although it may be relevant when the Board considers the merits of the appeal in a hearing.

Preliminary Motion 10

[133] The Appellant claimed there was “an apparent settlement proposal which is set out in tab 69 of the Director’s Record,” and requested the Board advise if the settlement proposal was “guaranteed” by the Director.

[134] The Board notes Tab 69 of the Director’s Record is a list of deficiencies in the SML application, and not a settlement proposal. The Board dismisses Preliminary Motion 10 as it is irrelevant to the scope of the appeal.

⁶² Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 27.

Preliminary Motion 11

[135] The Appellant requested the Board ask the Director's legal counsel that if the SML application could be brought into "the Director's good books," would it be covered by fairness, comprehensiveness, and timeliness? The Director responded that the 2006 Gravel Allocation Policy still existed as one of AEP's policies related to public land aggregate allocation.

[136] The Board dismisses Preliminary Motion 11 as it is not a matter appropriate for a preliminary motion and is outside the scope of the appeal.

Preliminary Motion 12

[137] In regards to Preliminary Motion 12, the Appellant wrote:

"The Appellant asks the Board to grant access to communicate with the 2 key witnesses, Brenda Huxley and Mr. Stasiak, and with others who reviewed the CRBP and the annual Caribou Protection Plans and were involved in the decisions or non-decisions, JHD deadline October each year for the caribou plans, so that the Appellant can speak to them directly, as in a flat or fair playing field, if it pleases the Board."⁶³

[138] The Director noted he made the decision being appealed, not the other people the Appellant wants to communicate with.

[139] The Board does not have jurisdiction to compel individuals to speak with the Appellant. The Board therefore, dismisses Preliminary Motion 12.

Preliminary Motion 13

[140] The Appellant requested the Board make a "determination of the non-admissibility of that bizarre, non-authentic, foundation of the Director, the letter containing the name of Brenda Huxley, if it pleases the Board."⁶⁴ The Appellant alleged a letter from Ms.

⁶³ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 30.

⁶⁴ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 31.

Brenda Huxley, Aggregate Administrator, AEP, dated August 4, 2020,⁶⁵ was not actually written by Ms. Huxley.

[141] The Director objected to the Appellant's allegations the letter was not written by Ms. Huxley.

[142] The Board finds the authorship of the August 4, 2020 letter to be irrelevant and outside the scope of the appeals. The Board dismisses Preliminary Motion 13.

Preliminary Motion 14

[143] The Appellant wrote:

“... for Heavy-Handedness by AEP and Much Worse. And for Board protection for future heavy-handedness and worse. Many prospectors and operators are very scared to appeal to the Board or to question decisions.

Board please protect us, please save us harmless, please save us from repercussions, now and in the future.

Board please ask [the Director's legal counsel] for protection assurances.

Some organizations and some procedures have specific protections for Appellants. Board please give some protection and safety assurances, if possible, or please ask the Respondents for protection and safety assurances.”⁶⁶

[144] The Director submitted this preliminary motion was vague and unclear.

[145] The Board finds this preliminary motion vague, beyond the scope of the appeal, and not within the jurisdiction of the Board. The Board dismisses Preliminary Motion 14.

Preliminary Motion 15

[146] The Appellant requested the Board admit an invoice/statement from AEP addressed to the Appellant in relation to Preliminary Motion 14. The Appellant did not explain the relationship between the invoice/statement and Preliminary Motion 14.

⁶⁵ Director's Record, Tab 63.

⁶⁶ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 32.

[147] The Board dismisses Preliminary Motion 15 as it was vague, beyond the scope of the appeal, and not within the jurisdiction of the Board.

Preliminary Motion 16

[148] The Appellant asked the Director's legal counsel to advise if she represented Alberta Justice and other parties the Appellant had sent a routine disclosure request to. The Appellant requested the Board add those parties to the appeal if the Director's legal counsel indicated that she did not represent them.

[149] The Director stated the Appellant had been previously provided with information on making a routine disclosure request, and the appeal is not the proper forum for such. The Director said no additional parties are needed for the appeal.

[150] The Board has not received any applications from another party to be a participant in the appeal. The Board does not have the authority to add a party to the appeal without that party's approval or application. The Board dismisses Preliminary Motion 16 for being beyond the jurisdiction of the Board.

Preliminary Motion 17

[151] The Appellant requested disclosure of the Director's authority credentials. The Director responded that the Director was an Approvals Manager at the time of the decision regarding the SML was made.

[152] The Board notes the position of Approvals Manager is designated a director under Ministerial Order 44/2019, Designation of Directors under the *Public Lands Act*, Force Land Use and Management Regulations and Public Lands Administration Regulation, for the purposes of section 10 of PLAR.⁶⁷ The Director cited section 10 of PLAR in the Notice of Merit Decision⁶⁸ letter dated September 24, 2020, as the legislative basis for the decision to refuse to issue the SML.

⁶⁷ Section 10 of PLAR states: "The director may issue or refuse to issue a formal disposition applied for under section 9."

⁶⁸ Director's Record at Tab T61.

[153] The Board is satisfied that the Director had the authority to make the decision to refuse to issue the SML. The Board dismisses Preliminary Motion 17.

Preliminary Motion 18

[154] The Appellant requested the Board make two determinations:

- (a) does the word “commercial” imply “contractual, or arguably contractual, or equitable, or proprietary, rights...”? and
- (b) recognize that “special duties... specifically to commercial gravel operators” arise from the use of the word commercial.⁶⁹

[155] The Director submitted the word “commercial” does not imply “contractual,” and does not create a contract or special duties between AEP and the Appellant.

[156] The Appellant’s arguments are more suitable for the hearing rather than for a preliminary motion. The Board declines to make any determination regarding the word “commercial” at this point in the appeal process. If the Appellant believes the matter is relevant, it may raise the argument in the submissions for the hearing. The Board dismisses Preliminary Motion 18 as inappropriate for a preliminary motion.

Preliminary Motion 19

[157] The Appellant requested that AEP and Alberta Energy be “joined into this Appeal.” The Board has already considered this question in Preliminary Motion 16.

Preliminary Motion 20

[158] The Appellant stated:

“... for Substitutional Service upon Her Majesty the Queen, through her duly appointed representatives, the Crown in Right of Alberta, and its Department of Justice, and its, so it is argued, delegatee, Mr. Kentner, and his lawyer, Ms. Altmiks, as Substitutional Service was specified more precisely in this letter, the

⁶⁹ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 36.

letter of this Appellant to this Board, dated and emailed c. Monday, March 1, 2021, if it pleases the Board.”⁷⁰

[159] The Director said no communication was received from the Appellant on March 1, 2021.

[160] The Board does not have authority to accept service on behalf of any government department. The Appellant is represented by legal counsel, and should be familiar with service of the Crown. The Board dismisses this preliminary motion.

Preliminary Motion 21

[161] The Appellant made an identical motion in Preliminary Motion 18. Again, the Board declines to make any determination regarding the word “commercial” at this point in the appeal process.

Preliminary Motion 22

[162] The Appellant requested that the Board make a decision on whether there should be more than one “director” in AEP’s operations. The Director stated there was only one director in the appeal.

[163] The Board does not have the jurisdiction to change legislation or policy. This preliminary motion is beyond the jurisdiction of the Board, and not within the scope of the Appeal. The Board dismisses Preliminary Motion 22.

Preliminary Motions 23, 24, and 24.1

[164] The Appellant requested the Board declare or acknowledge the meaning of the words “comprehensive” (Preliminary Motion 23), “timely” (Preliminary Motion 24), and “fair” (Preliminary Motion 24.1). The Board’s role is not to make declarations on matters that are outside its jurisdiction or beyond the scope of the appeal. The Board declines to make any determination regarding the words at this point in the appeal process. If the Appellant believes

⁷⁰ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 38.

the matter is relevant, it may raise the argument in the submissions for the hearing. The Board dismisses Preliminary Motions 23, 24, and 24.1 for being outside the Board's jurisdiction and beyond the scope of the appeal.

Preliminary Motion 25

[165] The Appellant requested the Board "decide and declare that there is contract or some kind of actual agreement (or even 'arrangement' might help) that was originally started by the legal offer contained in the AAA06, in 2006."⁷¹

[166] The Director stated the preliminary motion is irrelevant to the appeal, and that the 2006 Allocation Policy was not a contract.

[167] The Board hears appeals based on the Act and PLAR and makes recommendations to the Minister. The Board's role is not to make declarations on matters that are outside its jurisdiction. The determination of whether the 2006 Allocation Policy creates contractual relations is outside the Board's jurisdiction and beyond the scope of the appeal. The Board dismisses Preliminary Motion 25.

Preliminary Motion 26

[168] The Appellant requested further evidence be admitted in this appeal. The Appellant failed to provide any reasons why the Board should admit any further evidence. The Board refers to its comments regarding Preliminary Motion 1, earlier in this decision. The Board dismisses Preliminary Motion 26.

Preliminary Motion 27

[169] The Appellant requested the Board make a determination that the standard of review to apply to this appeal is correctness. The Director submitted the Board does not need to consider the standard of review as the Director has acknowledged that one or more of the grounds of appeal have been made out.

[170] The Board finds this preliminary motion is more appropriate for a hearing, where the Appellant and the Director may make submissions on the standard of review. The Board dismisses Preliminary Motion 27 for being inappropriate for a preliminary motion.

Preliminary Motion 28

[171] The Appellant stated: “On page 5 line 2 she pointed out that the wrongful delegation ground could be raised before the Board.”⁷² The Board does not know which document the Appellant is referring to or who “she” is. The Appellant proceeds to request the Board explain the credentials of the Director. The Appellant has already requested an explanation of the Directors credentials in Preliminary Motion 17. The Board dismisses Preliminary Motion 28 for being unclear in his reference and for being repetitive of a previous preliminary motion.

Preliminary Motion 29

[172] The Appellant requested the Board examine the 2006 Allocation Policy and “note and acknowledge the centrality of ‘Purpose’ therein, and the repetition.”⁷³

[173] As discussed in its analysis of Preliminary Motion 25, the Board’s role is not to make declarations on matters that are outside its jurisdiction. Granting the Appellant’s Preliminary Motion 29 would do nothing to progress the appeal to its conclusion. The Board dismisses Preliminary Motion 29 for being outside the Board’s jurisdiction and beyond the scope of the appeal.

Preliminary Motion 30

[174] The Appellant made two requests in Preliminary Motion 30. The Appellant:

- (c) requested the Board “acknowledge that [the Director] did not show conflict with either the PLA or the PLAR,” and

⁷¹ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 46.

⁷² Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 50.

⁷³ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 51.

- (d) “summarily grant or recommend the granting of the appeal... or set aside the submissions of the Respondent...”⁷⁴

[175] The Director submitted the only issue remaining for the Board to consider is the remedy.

[176] The request that the Board acknowledge the Director did not show conflict with either the Act or PLAR is an argument that is more appropriate for the hearing than for a preliminary motion. The Appellant’s request that the Board summarily grant or recommend the Minister grant the appeal or set aside the Director’s submissions is based on the Director’s submission that the only issue remaining for the Board to consider is remedy. The Board must consider whether the Director erred in refusing to issue the SML. This determination is made after the Board hears the evidence and arguments from the Parties and considers the relevant legislation and case law. The Appellant has not presented sufficient evidence at this stage of the appeal to convince the Board to recommend the Minister reverse or vary the Director’s decision. The Board therefore dismisses the Appellant’s Preliminary Motion 30.

Preliminary Motion 31

[177] The Appellant requested the Board “acknowledge that the AAA06 is still alive, viable.”⁷⁵ The Director has already acknowledged the 2006 Allocation Policy exists and is one of many policies regulating the allocation of aggregates on public land. The Board finds it is not necessary to acknowledge the policy’s existence and, therefore, dismisses Preliminary Motion 31.

Preliminary Motions 32, 33, and 34

[178] The Appellant requested the Board declare or acknowledge the meaning of the words “equitable” (Preliminary Motion 32), “arguable or arguably” (Preliminary Motion 33), and “proprietary” (Preliminary Motion 34). The Director stated the preliminary motions are not relevant to the issues of the appeal.

⁷⁴ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 52.

⁷⁵ Appellant’s Initial Preliminary Motion Submission, March 4, 2021, at page 54.

[179] As stated earlier, the Board's role is not to make declarations on matters that are outside its jurisdiction. The Board declines to make any determination regarding the words at this point in the appeal process. If the Appellant believes the matter is relevant, it may raise the argument in the submissions for the hearing. The Board therefore, dismisses Preliminary Motions 32, 33, and 34.

Preliminary Motion 35

[180] The Appellant requested the Board "... consider [the Appellant's] old old established client number, 808 408 6002 and contractor status, when deciding the foregoing Preliminary Motions."⁷⁶ The Appellant proceeded to discuss fiduciary duty, procedural duty of fairness and business certainty duty.

[181] As discussed above, the Board will not consider matters regarding fiduciary duty. The Board has also already considered the Appellants' arguments regarding the client number. The Board dismisses Preliminary Motion 35.

Preliminary Motion 36

[182] The Appellant requested the Board "please confirm or acknowledge that this Appellant is a commercial user, as in the way that those words are used, in bold, in the current downloaded version of the AAA06 on the AEP website, or is not a commercial user."⁷⁷

[183] The Director stated: "There is no definition or reference to 'commercial user' in the AAA06. The policy refers to 'proponents' and 'applicants'."⁷⁸

[184] The Board finds that such a confirmation or acknowledgement is not necessary to advance the appeal. If the Appellant believes the matter is relevant, it may raise the argument in the submissions for the hearing. The Board dismisses Preliminary Motion 36.

⁷⁶ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 59.

⁷⁷ Appellant's Initial Preliminary Motion Submission, March 4, 2021, at page 60.

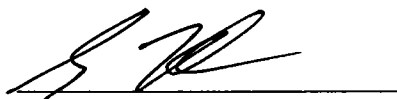
⁷⁸ Director's Response Submission, March 11, 2021, Appendix D, at page 8.

V. DECISION

[185] The Board has reviewed the submissions of the Appellant and the Director, the legislation, and the relevant case law, in making its decision.

[186] The Board dismisses each of the Appellant's preliminary motions for the reasons listed in the Analysis.

Dated on May 14, 2021, at Edmonton, Alberta.

A handwritten signature in black ink, appearing to read 'Gordon McClure', is written over a horizontal line.

Gordon McClure
Board Chair