ALBERTA
PUBLIC LANDS APPEAL BOARD

Report and Recommendations

Date of Report and Recommendations – October 19, 2022

IN THE MATTER OF sections 121, 122, 123, and 124, of the *Public Lands Act*, R.S.A. 2000, c. P-40, and sections 211, 212, 228, and 235 of the *Public Lands Administration Regulation*, A.R. 187/2011;

-and-

IN THE MATTER OF an appeal filed by Everett Normandeau, with respect to the decision of the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, to refuse to withdraw land from grazing lease GRL 35454 held by Stanley Jensen.

Cite as: *Normandeau* v. *Director*, *Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks,* re: *Stanley Jensen* (19 October 2022), Appeal No. 21-0008-R (A.P.L.A.B.), 2022 ABPLAB 10.

Classification: Public

BEFORE: Mr. Gordon McClure, Board Chair; Dr. Brenda Ballachey, Board Member; and Mr. Chris Powter, Board Member.

SUBMISSIONS BY:

Appellant: Mr. Everett Normandeau, represented by Mr. Alex Kennedy, Worobec Law Offices.

Director: Mr. Stephen Shenfield, Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, represented by Mr. Paul Maas, Alberta Justice and Solicitor General.

Lease Holder: Mr. Stanley Jensen.

Classification: Public

EXECUTIVE SUMMARY

The Appellant, Mr. Everett Normandeau, is the owner of land (the Lands) adjacent to public lands Grazing Lease 35454 (the GRL) held by Mr. Stanley Jensen. There are no constructed roads that access the Lands, although there are municipal road allowances that could potentially be developed. The Appellant applied to the Director, Lands Delivery & Coordination, South Branch, Lands Division, Alberta Environment and Parks (the Director), to have a portion of land withdrawn from the GRL to enable access to the Lands.

The Director refused the application for the following reasons:

- there had been historical access to the Lands through privately owned land;
- the previous owner of the Lands accessed the Lands through the GRL without approval from AEP;
- the request to withdraw land from the GRL was for a private interest and was not in the public interest;
- there are existing municipal road allowances that could be developed for access which would be built to a higher standard than private roads and, therefore, would be of a greater public benefit;
- additional access through the GRL would increase the potential for trespass and impact to the GRL;
- there is no guarantee the Appellant would continue to have access to the GRL if the Spray Lake Road DLO was cancelled and reclaimed; and
- the road use agreement allowing the Appellant to access the Spray Lake Road DLO was with a company associated with the Appellant and not the Appellant individually.

The Appellant appealed the Director's decision to the Public Lands Appeal Board (the Board).

The Board set a hearing by written submissions on the following issues:

1. Did the Director, who made the decision to refuse to remove lands from GRL 35454, err in the determination of a material fact on the face of the record?
2. Did the Director, who made the decision to refuse to remove lands from GRL 35454, err in law?

The Board identified three sub-issues based on the parties' submissions:

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Did the Director err in the determination of a material fact on the face of the record or err in law by:

1. failing to follow the principles stated on the Alberta Environment and Parks website?
2. acting in bad faith by relying on improper considerations and not providing adequate reasons? and,
3. failing to apply the natural justice principle of *audi alteram partem*?[*]

The Board met to consider the submissions of the parties, the Director's File, and the relevant legislation, and prepare its report and recommendations to the Minister, Environment and Parks. On the main issues in the appeal, the Board found the Director:

1. did not err in the determination of a material fact on the face of the record; and
2. did not err in law;

in deciding to refuse the Appellant's application to remove lands from GRL 35454.

On the sub-issues identified by the Board from the parties' submissions, the Board finds the Director did not:

1. fail to follow to the principles stated on the Alberta Environment and Parks website;
2. act in bad faith by relying on improper considerations and not providing adequate reasons; and
3. fail to apply the natural justice principle of *audi alteram partem*.

The Board recommended the Minister confirm the Director's decision to refuse the Appellant's application to remove land from the GRL.

[*] "*Audi alteram partem*" means "hear the other side." It refers to fundamental legal principle that requires fairness in decision-making by ensuring the person affected by the decision has a reasonable opportunity to be heard by the decision-maker and to present evidence.

TABLE OF CONTENTS

I. INTRODUCTION 1

II. BACKGROUND 1

III. ISSUES 6

IV. SUBMISSIONS 6
- A. Appellant 6
- B. Director 11
- C. GRL Holder 15
- D. Appellant's Rebuttal 17

V. ANALYSIS 19
- A. Did the Director err in the determination of a material fact on the face of the record or err in law by failing to adhere to the principles espoused on the AEP website? 19
- B. Did the Director err in the determination of a material fact on the face of the record or err in law by acting in bad faith by relying on improper considerations and not providing adequate reasons? 21
- C. Did the Director err in the determination of a material fact on the face of the record or err in law by failing to apply the natural justice principle of audi alteram partem? 33

VI. DECISION 40

VII. RECOMMENDATION 41

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I. INTRODUCTION

[1] This is the Public Lands Appeal Board's (the "Board") Report and Recommendations to the Minister of Environment and Parks (the "Minister") regarding an appeal by Mr. Everett Normandeau (the "Appellant") of the December 8, 2021 decision of the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks (the "Director"), to refuse the application by the Appellant to withdraw land from Grazing Lease 35454 (the "GRL"). Mr. Stanley Jensen is the GRL holder (the "GRL Holder").

[2] The Board recommends the Minister confirm the Director's Decision to refuse the Appellant's application (the "Application").

II. BACKGROUND

[3] The Appellant owns land located at SW-35-30-7 W5M (the "Lands"), west of the Town of Didsbury in the Municipal District of Bighorn. There are undeveloped municipal road allowances but no existing constructed road access to the Lands. The Lands' previous owner had permission from the GRL Holder to access the Lands through the GRL, however, the GRL Holder withdrew that permission before the Appellant purchased the Lands. The Appellant acted as the agent for the previous owner in an appeal to the Board of AEP's decision to refuse an application for a Department Licence of Occupation ("DLO"). The DLO would have provided access across the GRL to the Lands. The Board heard that appeal and issued a Report and Recommendation ("*Conklin Aggregates*") on June 5, 2018, recommending that the Minister confirm the decision of the Director to reject the DLO application. The Minister accepted the Board's recommendations and the appeal was dismissed.[1]

[4] On August 23, 2021, the Appellant wrote a letter to Alberta Environment and Parks ("AEP") and advised as follows:

- he had purchased the Lands on August 20, 2021;

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[1] See: *Conklin Aggregates Ltd.* v. *Director, Provincial Approvals Section, Alberta Environment and Parks* (5 June 2018), Appeal No. 17-0010-R (A.P.L.A.B.).

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- he was applying under section 82(1) of the *Public Lands Act*, R.S.A. 2000, c. P-40 (the “Act”),[2] for AEP to remove a portion of the GRL so that he could have access to the Lands;
- the road allowances bordering the Lands were not cleared or developed;
- using the road allowances for access was not feasible as the costs of constructing a road would exceed the value of the Lands;
- the GRL Holder was not willing to allow access by easement on his private property or through the GRL;
- the Appellant was willing to work with the GRL Holder to minimize any impact access through the GRL might cause and was willing to compensate the GRL Holder for the withdrawal of land from the GRL; and
- if AEP granted the Application the Appellant would follow up with an additional application for a disposition regarding the withdrawn portion of the GRL that would allow him to access the Lands.[3]

[5] On September 24, 2021, the Appellant again wrote to AEP and requested the withdrawal of a portion of the GRL to enable the Appellant to access the Lands from a public lands road lease held by Spray Lake Forestry (the “Spray Lake Road”). The Appellant stated he

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2 Section 82(1) of the *Public Lands Act* states:

“Sixty days after the date on which the director mails a notice in writing to the last known address of the lessee, the director may cancel a lease or withdraw any part of the land contained in a lease

(a) when, except in the case of a lease conveying rights to sand, silica sand, topsoil, peat, gravel, clay or marl, the director is satisfied that the land contained in the lease or to be withdrawn from it contains sand, silica sand, topsoil, peat, gravel, clay or marl in commercial quantities,

(b) when the land contained in the lease or to be withdrawn from it is to be subdivided or made the subject of a disposition that will authorize its use for industrial or commercial purposes,

(c) when the land contained in the lease or to be withdrawn from it is to be designated as a park pursuant to the *Provincial Parks Act* or added to a park designated under that Act or its predecessors, or is to be set aside as a public resort or recreation area,

(d) when the land contained in the lease or to be withdrawn from it is, in the opinion of the director, irrigable in whole or in part,

(e) when the land contained in the lease or to be withdrawn from it is required to provide public access to a public resort or recreation area or to a river, stream, watercourse, lake or other body of water,

(f) when, in the opinion of the director, the land contained in the lease or to be withdrawn from it is required for a purpose that the director considers to be in the public interest, or

(g) when, in the opinion of the director, the land contained in the lease or to be withdrawn from it is required for the purposes of an applicable ALSA regional plan.”

3 Director’s File, at Tab 1.

met with the GRL Holder and later with the GRL Holder's lawyer. The Appellant said the lawyer provided a letter confirming the GRL Holder was not willing to provide consent for an easement through the GRL, but would be willing to provide reasonable recreational access as per the Act. The lawyer also indicated the GRL Holder was willing to provide a written agreement for access through the GRL if the agreement contained the following conditions:

- the agreement was not permanent or transferable;
- there was a requirement for closing and locking of gates;
- the GRL Holder could determine who could access the GRL and when they could do so; and
- there was an agreed route of travel across the GRL.

[6] The Appellant stated he was seeking a more permanent solution that would provide certainty to all parties involved. He also stated the Lands supported his agricultural business.

[7] On December 8, 2021, the Director advised the Appellant a decision was made to refuse to grant the Application for the following reasons (the "Decision"):

"1. Historical access to SW-35-30-7-W5 from a registered road way existed through private land when originally sub-divided.

2. Although the previous landowner used alternate access to SW-35-30-7-W5M several years after obtaining the property, the activity was done without authority by Alberta Environment and Parks,

3. The request is for a private interest and not in the public interest as referenced in section 82(l)(f) of the Public Lands Act.

4. Alternative access is available to be developed through existing road allowances or working with the municipality on developing a registered roadway.

4.1. Although additional disturbance may be created through the development of road allowances, the municipality has the ability to apply for an appropriate roadway as an alternative and if issued, would be registered with Land Titles and removed from public land. Roads developed by the municipality are generally constructed at a higher standard than private roads, available to the public, and better able to accommodate emergency services and public transportation (e.g. school buses).

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5. Additional access to the grazing lease and Spray Lakes Road (DL04422) has an increased potential for trespass and impact to the surrounding area.

6. There is no guaranteed access to the Landowner's property using the Spray Lakes Road. If Spray Lakes Sawmills decides the road is no longer of need, it could reclaim the road and request the DLO be cancelled, leaving the Landowner with no access as previously mentioned (PLAB Appeal No. 17-0010-R).

    6.1. The road use agreement held by Everett Normandeau is between Spray Lakes Sawmill and a company associated with the Landowner as opposed to the individual."[4]

The Director concluded his Decision by stating it was not appealable under the *Public Lands Administration Regulation*, AR 187/2011 ("PLAR").

[8] On December 8, 2021, the Appellant filed a Notice of Appeal with the Board, appealing the Director's Decision. The Appellant stated the Director, in making the Decision, erred in the determination of a material fact on the face of the record and erred in law.

[9] On December 10, 2021, the Board wrote to the Appellant, the GRL Holder, and the Director (collectively, the "Parties"), acknowledging receipt of the Notice of Appeal. The Board noted the Director had said the Decision was not appealable, but by filing an appeal, the Appellant had indicated he disagreed with the Director. The Board had to determine if the Notice of Appeal was within the Board's jurisdiction to hear and requested the Director provide specific documents the Board identified as necessary in making its jurisdiction decision.

[10] The Director provided the requested documents on December 16, 2021, and the Board set a schedule for the receipt of written submissions from the Parties on whether the Board had jurisdiction to consider the Appellant's Notice of Appeal. The Board reviewed the written submissions received from the Parties and issued its decision on March 23, 2022 (the "Jurisdiction Decision").[5]

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4 Director's File, at Tab 17.

5 See: Jurisdiction Decision: *Normandeau* v. *Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, re: Stanley Jensen* (23 March 2022), Appeal No. 21-0008-ID1 (A.P.L.A.B.), 2022 ABPLAB 3.

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[11] In the Jurisdiction Decision, the Board found:

(1) although the Appellant represented the previous owner in an appeal before the Board regarding the same GRL, the current matter did not meet the criteria for *res judicata*[6] as the issue and parties are different from the previous appeal;

(2) a decision under section 82(1) of the *Public Lands Act* is appealable if the substance or effect of a decision corresponds with the range of prescribed decisions listed in section 211 of PLAR, and the Director's Decision corresponded to a refusal to amend a disposition and was appealable under section 211(c) of PLAR;[7] and

(3) third-party participatory rights were implied in section 82(1) of the *Public Lands Act*.[8]

[12] Having found it had jurisdiction to consider the appeal, the Board scheduled a mediation meeting between the Parties. The Parties participated in a mediation meeting on June 10, 2022, but did not reach an agreement.

[13] The Board received the Director's File on May 20, 2022, and an addendum on June 1, 2022. The Director provided the Parties with the Director's File and addendum.

[14] The Board set a schedule for a hearing by written submissions. The Parties provided submissions to the Board between August 12 and September 12, 2022. The Panel appointed by the Board to hear the appeal met on September 22, 2022, to consider the submissions, the Director's File, and the relevant legislation.

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6 *Res judicata* is defined as: "an issue that has been definitively settled by judicial [or quasi-judicial] decision." *Res judicata Black's Law Dictionary* (11th ed. 2019).

7 Section 211(c) of PLAR states: "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…"

8 Jurisdiction Decision: *Normandeau* v. *Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks, re: Stanley Jensen* (23 March 2022), Appeal No. 21-0008-ID1 (A.P.L.A.B.), 2022 ABPLAB 3, at paragraph 53.

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III. ISSUES

[15] The issues before the Board were:

1. Did the Director, who made the Decision to refuse to remove lands from GRL 35454, err in the determination of a material fact on the face of the record?
2. Did the Director, who made the Decision to refuse to remove lands from GRL 35454, err in law?

[16] Based on the submissions from the Parties, the Board found the two main issues could be divided into three sub-issues, as follows:

> Did the Director err in the determination of a material fact on the face of the record or err in law by:
>
> 1. failing to follow the principles stated on the AEP website;
> 2. acting in bad faith by relying on improper considerations and not providing adequate reasons; and
> 3. failing to apply the natural justice principle of *audi alteram partem*?[9]

IV. SUBMISSIONS

[17] The Board has summarized below the most relevant points of the Parties' submissions.

A. Appellant

[18] The Appellant noted AEP's website stated AEP "[s]upports environmental conservation and protection, sustainable economic prosperity, quality of life and outdoor recreation opportunities."[10] The Appellant submitted the Director's Decision did not adhere to the principles stated on the website and erred in law through an overall effect on the principle of sustainable economic prosperity, and erred in fact, law, and mixed fact and law, through

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[9] "*Audi alteram partem*" means "hear the other side." It refers to fundamental legal principle that requires fairness in decision-making by ensuring the person affected by the decision has a reasonable opportunity to be heard by the decision-maker and to present evidence.

[10] Appellant's Initial Submission, August 12, 2022, at paragraph 11.

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"[s]ignificant and material bad faith and reliance on improper considerations," and not providing adequate reasons.[11]

[19] The Appellant said the Lands without access are economically and personally useless, and he was attempting to obtain "sustainable economic prosperity" by seeking access. The Appellant submitted that using a pre-existing cutline through the GRL to the Lands would not cause damage to public land, and he would be willing to be subject to limitations that would prevent any damage from occurring. The Appellant argued the Director's Decision "ignored or misapplied the Ministry's stated policy."[12]

[20] The Appellant submitted the Director made the Decision in bad faith and with improper considerations. The Appellant referred to an internal AEP email (the "AEP Email")[13] where an AEP employee argued the Appellant's Application was more appropriately a municipality issue under the *Municipal Government Act*, R.S.A. 2000, c. M-26 (the "MGA"). The Appellant stated it was likely the AEP Email influenced the Director. The Appellant said the Director did not provide the Appellant with an opportunity to respond to the AEP Email, which was a breach of the natural justice principle of *audi alteram partem*.[14] The Appellant noted the Director reiterated the argument regarding the MGA from the AEP Email but did not provide reasons to show if he agreed or disagreed with it.

[21] The Appellant said the Director was also exposed by the AEP Email to the argument that the Application could not be granted because the Board had already decided it in *Conklin Aggregates*. The Appellant stated that, despite the Board's finding in the Jurisdiction Decision that the principle of *res judicata* did not apply, the Director still argued in his submission that the Application was an attempt to rehear an issue that the Board had already decided. The Appellant said: "It is evident that the Director incorrectly believed that he could

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[11] Appellant's Initial Submission, August 12, 2022, at paragraph 12.

[12] Appellant's Initial Submission, August 12, 2022, at paragraph 18.

[13] Director's File, at Tab 16.

[14] "*Audi alteram partem*" means "hear the other side." Daphne Dukelow and Betsy Nuse, *The Dictionary of Canadian Law*, 2nd ed. (Scarborough, ON: Thomson Canada, 1995), at page 87.

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not grant the Application, because it had already been determined by the Board."[15] The Appellant submitted he was not provided with an opportunity to respond to this argument and the Director did not provide any reasons.

[22] While acknowledging that the GRL Holder had a right to make submissions to the Director regarding the Application, the Appellant alleged, "… the Director went beyond respecting those rights, and took the position that the Application, and the Appellant's aims in general, were subject to the approval of the GRL Holder."[16] The Appellant argued the GRL Holder did not have the right to exclude other uses for the GRL and the intention of the Act was to provide for non-exclusive uses of public land subject to the legislation and policies of the government. The Appellant submitted that the Director erred in law by treating the GRL, "… as if it gave [the GRL Holder] full control and exclusive determination of the use of the underlying land…"[17]

[23] The Appellant submitted that all eight of the Director's reasons in the Decision contained errors of fact, law, or mixed fact and law. The Appellant addressed each of the reasons listed by the Director.

> "*1. Historical access to SW-35-30-7-W5 from a registered road way existed through private land when originally sub-divided.*"

[24] The Appellant stated the Director failed to provide reasons for why this was relevant to the Decision, which was an error of law.

> "*2. Although the previous landowner used alternate access to SW-35-30-7-W5M several years after obtaining the property, the activity was done without authority by Alberta Environment and Parks.*"

[25] The Appellant said the Director did not provide a reason for why this statement was a relevant consideration, and "there is some suggestion here that the previous landowner's

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15 Appellant's Initial Submission, August 12, 2022, at paragraph 29.

16 Appellant's Initial Submission, August 12, 2022, at paragraph 31.

17 Appellant's Initial Submission, August 12, 2022, at paragraph 35.

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bad behaviour could be prejudicing the Director's opinion of the present landowner, which would be an improper consideration."[18]

> "*3. The request is for a private interest and not in the public interest as referenced in section 82(1)(f) of the Public Lands Act.*"

[26] The Appellant argued access to an individual's land is in the public interest, and the Director's reasoning is an error in fact.

> "*4. Alternative access is available to be developed through existing road allowances or working with the municipality on developing a registered roadway.*"

[27] The Appellant characterized this reason as a version of the MGA argument from the AEP Email. The Appellant submitted the MGA argument required a conclusion regarding matters outside of the jurisdiction of the Act and, therefore, was an error in law. The Director's reason was also an error in fact, as the municipality was unwilling, and the Appellant unable, to pay for the multi-million dollar construction of roads on the road allowance.

> "*4.1. Although additional disturbance may be created through the development of road allowances, the municipality has the ability to apply for an appropriate roadway as an alternative and if issued, would be registered with Land Titles and removed from the public land. Roads developed by the municipality are generally constructed at a higher standard than private roads, available to the public, and better able to accommodate emergency services and public transportation (e.g. school buses).*"

[28] The Appellant stated that the Director's reason was irrelevant as the municipality had not applied for a roadway connection to the Lands, despite the Appellant's requests. The Appellant said the reason required speculation outside of the Act and submitted the Director was not an expert on the MGA.

> "*5. Additional access to the grazing lease and Spray Lake Road (DLO4422) has an increased potential for trespass and impact to the surrounding area.*"

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[18] Appellant's Initial Submission, August 12, 2022, at paragraph 42.

[29] The Appellant argued this reason was an error of fact as the Appellant was attempting to obtain access to his property for his own use and not the public's. The Appellant submitted, "[t]here is no reason to believe that a short easement given to the Appellant would increase public traffic in the area in any way."[19]

> "*6. There is no guaranteed access to the Landowner's property using the Spray Lake Road. If Spray Lake Sawmills decides the road is no longer of need, it could reclaim the road and request that the DLOs be cancelled, leaving the Landowner with no access as previously mentioned (PLAB Appeal No. 17-0010-R).*"

[30] The Appellant submitted this reason contained several errors of fact and law:

(a) The Director was not an expert on the access agreement between Spray Lake Sawmills, the Appellant's company, and the Appellant. The Appellant stated the Director did not provide him with an opportunity to answer this argument.

(b) Spray Lake Sawmills was not a party to the Application and did not provide submissions on how long it would use the road.

(c) If the reason was valid, it must apply to all easement applications, which would have to be refused. The Appellant stated it clearly could not be the Legislature's intent for such a reason to be applied.

(d) The reason was based on the occurrence of a combination of highly speculative events. Before cancelling the agreement, Spray Lake Sawmills would have to approach any connecting easement holders.

> "*6.1 The road use agreement held by Everett Normandeau is between Spray Lake Sawmill and a company associated with the Landowner as opposed to the individual.*"

[31] The Appellant stated the road use agreement was between "Everett and/or Trish Normandeau operating as Ten Ranch Ltd. and their successors in title to SW-35-30-7-W5M."[20] The Appellant submitted this reason was an error of fact and an improper consideration.

[32] The Appellant submitted the Decision had "the unfortunate effect of supporting [the GRL Holder] in an economic conflict with Mr. Normandeau."[21] The Appellant requested

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19 Appellant's Initial Submission, August 12, 2022, at paragraph 55.

20 Appellant's Initial Submission, August 12, 2022, at Exhibit "J", and the Director's File at Tab 14.

21 Appellant's Initial Submission, August 12, 2022, at paragraph 65.

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the Board quash the Director's Decision and substitute a decision granting the Application. Alternatively, the Appellant requested the Board return the matter to AEP for reconsideration.

B. Director

[33] The Director submitted that the Appellant was well aware of the access difficulties when he purchased the Lands. The Director stated the "…access problem is a private matter that would be most appropriately solved without the use of public lands."[22] The Director noted that section 82(5) of the *Public Lands Act* requires the Director to negotiate and pay compensation to a lessee if land is withdrawn from a lease.[23]

[34] The Director noted that no specific policies or procedures provide direction on how to apply section 82 of the *Public Lands Act*, meaning that the Director has broad discretion in determining what factors and matters to consider. The Director stated in making his Decision, he reviewed and considered the information provided by the Appellant and AEP staff and based the Decision on a specific rationale, which he outlined in the Decision.

[35] The Director submitted that even if the Application were granted, the Appellant would still not have access to the Lands. The Appellant would still require a disposition to enter and occupy any public lands withdrawn from the GRL. The Director stated he could not consider issuing a secondary disposition when making the Decision, as there was no disposition application before him.

[36] The Director submitted that none of the errors alleged by the Appellant were material errors of fact. The Director stated that the Appellant did not identify an error of fact in the Director's determination that it was not in the public interest to grant the Appellant's Application. The Director said the withdrawal of land from the GRL was not in the public interest for the following reasons:

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22 Director's Response Submission, August 26, 2022, at paragraph 19.

23 Section 82(5) of the *Public Lands Act* states:

"When the director cancels a lease or withdraws land from a lease otherwise than in the circumstances set out in subsections (3) and (4), the director shall negotiate with and pay compensation to the lessee for the loss of the lessee's interest under the lease."

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- there would be an increased potential for trespass and impact on the GRL by allowing additional access and use;
- a road constructed on the road allowances would be built to a municipal standard, which is generally a higher standard than private roads such as the Spray Lake Road, resulting in better availability for public and emergency transportation; and
- there would be impacts on Mr. Jensen as the GRL holder.

[37] The Director said the Appellant's access to his Lands is a public interest factor that he considered when making the Decision, but the Director also had to consider and balance multiple public interest factors and determine the best use of the public land. The Director stated:

> "Had the Director made a public interest determination in the method proposed by the Appellant, it would have been an error in law, as such a decision would have failed to meaningfully balance other relevant considerations beyond the Appellant's access to the Private Lands."[24]

[38] The Director submitted he did not make a material error of fact in considering alternate access to the Lands and noted the Appellant raised the alternate access in his Application. The Director referred to the case of *Hough* v. *Alberta*,[25] where the Court found road allowances were a "means of access" even where development of a road allowance might be expensive or inconvenient. The Court was hesitant to order other means of access where a third party would bear the cost. The Director stated there were municipal and private options available to the Appellant for access to the Lands.

[39] The Director submitted that he did not err in material fact by finding a possibility of increased trespass and impact to the GRL if the Application was granted. The Director noted the Director's File showed that the GRL Holder had brought concerns regarding trespassing on the GRL to AEP's attention on multiple occasions. The Director further noted the Appellant's stated plan included the development of public lands, which would also impact the GRL.

[40] The Director stated the Decision's reference to the road use agreement with Spray Lake Sawmill is not a material error of fact on the face of the record nor an error of law. The

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24 Director's Response Submission, August 26, 2022, at paragraph 47.

25 *Hough* v. *Alberta*, 2000 ABQB 1004.

Classification: Public

Director noted it was unclear from the road use agreement whether the agreement was with "Everett and/or Trish Normandeau" or "Ten Ranch Ltd." The Director stated that even if he was mistaken regarding the holder of the road use agreement, this was not an error of material fact. The Director noted that the findings in his Decision were that the road use agreement does not guarantee future access to the cutline on the GRL, and Spray Lake Road is not built to a municipal road standard. As noted earlier, a road allowance would be built to a higher standard, which would benefit the public more.

[41] The Director noted that a statement on AEP's website is not government policy that binds the Director. The Director noted he is not bound to consider any particular policy in making a decision under section 82 of the Act.

[42] The Director submitted he did not make an error of law in the Decision. The Director stated he made the Decision, not any other person or body. The Director indicated he relied in part on the work of AEP staff in making the Decision and that this was standard practice.

[43] The Director submitted he is not required to make a decision in a vacuum, and in making the Decision, he had to consider other methods of accessing public lands, including road allowances that could be developed with the municipality. The Director stated that as the Appellant raised possible solutions to the access problem, it was proper for the Director to consider the jurisdiction of the municipality along with the jurisdiction of AEP. The Director argued that it was a relevant consideration in the Director's expertise regarding public lands in the context of the Appellant's Application.

[44] The Director said it was not unreasonable for him to consider access to the Lands through the GRL Holder's private land, as this access existed previously and did not involve public lands. Likewise, the Director stated he correctly considered using the cutline in making the Decision, which was used in the past to access the Lands.

[45] The Director stated there was no evidence of the previous landowner's "bad behaviour" prejudicing the Director's opinion of the Appellant. The Director noted the

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Appellant specifically mentioned the past use of the cutline through the GRL and argued its use as access through the GRL would be harmless. The Director stated it was, therefore, reasonable for him to consider the past-unauthorized use in making the Decision.

[46] The Director said his submissions regarding the jurisdiction question should not be relied on as evidence related to the Decision. The Director stated, "… his earlier submissions have no value of any sort in analyzing the Director's decision-making process."[26] The Director requested the Board either strike the Appellant's references to the Director's jurisdiction submissions or give them no weight.

[47] The Director submitted it was best practice to consider the Board's guidance and insights from the related Board decision in *Conklin Aggregates*. The Director said there was nothing in the Decision that suggested the Director believed the Board had pre-decided the issue and, therefore, the Director could not consider the Appellant's Application.

[48] The Director disagreed with the Appellant's allegation that the Director did not provide an opportunity for the Appellant to respond to the Director's reasons in the Decision, which the Appellant stated was a violation of the natural justice principle of *audi alteram partem*. The Director noted the Appellant did not provide any specific legal authority that would require the Director to provide advance notice to the Appellant of the Director's reasons for the Decision. The Director submitted that the Appellant had sufficient opportunity to be heard and make his case through his submissions related to the Application and in subsequent meetings and discussions with the Director and AEP staff.

[49] The Director denied the Appellant's allegation that he erred in considering the GRL Holder's interests and that he viewed the GRL Holder as having a veto over the Application. The Director noted the Appellant did not point to any part of the Director's File to support his allegation.

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[26] Director's Response Submission, August 26, 2022, at paragraph 100.

Classification: Public

[50] The Director submitted the Appellant did not accurately portray the facts when he suggested AEP "lent its considerable power to help leverage one private party's economic interests against another's."[27] The Director noted the Appellant purchased the Lands after the Board's decision in *Conklin Aggregates* and should have had a full understanding of the access issues. In determining "sustainable economic prosperity," the Director stated he had to balance benefits to the Appellant against other public land uses and any economic harm to AEP and the taxpayer that may have resulted from the Application.

[51] The Director submitted there was no evidence he made the Decision in bad faith, and the Appellant did not provide any such evidence other than to state that one of the reasons for the Decision was not sufficiently specific.

[52] The Director submitted the Appellant did not meet the onus for establishing that the Director erred in the determination of a material fact on the face of the record or erred in law. The Director requested the Board recommend the Minister confirm the Decision.

C. GRL Holder

[53] The GRL Holder stated he made a verbal offer to purchase the Lands shortly after the Appellant became the owner, however, the Appellant rejected the offer, and the GRL Holder has not made another offer. The GRL Holder submitted that his reasons for not providing consent to the Appellant's request to remove lands from the GRL were related to his legislated duties as a disposition holder. The GRL Holder noted that disposition holders are responsible for damage or loss to the lease and that breaching those responsibilities could result in the cancellation of the disposition.

[54] The GRL Holder stated he was concerned the Appellant's Application would increase the use of the Spray Lake Road, which runs through the GRL. The GRL Holder was concerned that there would be an increase in trespass and additional disturbances to the GRL,

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[27] Appellant's Initial Submission, August 12, 2022, at paragraph 37.

Classification: Public

which would impact the GRL Holder's ability to comply with his responsibilities as a disposition holder. The GRL Holder submitted that the GRL is integral to his ranching operation.[28]

[55] The GRL Holder denies withholding consent to the Appellant's Application as a tactic to drive down the value of the Appellant's lands.

[56] The GRL Holder noted Spray Lake Sawmills could terminate the road use agreement with the Appellant on 30 days' notice. If the road use agreement were terminated the Appellant would have no access to the Lands even if the Application were granted.

[57] The GRL Holder submitted that Spray Lake Sawmills does not have authority to provide the Appellant with unrestricted access to the Spray Lake Road. The GRL Holder stated:

> "Only commercial users are authorized to access licensed areas pursuant to agreements with DLO holders. The Appellant is not a commercial user. Therefore, the Appellant does not have the legislative right to use the DLO at any time of his choosing… The Appellant must receive consent from [the GRL Holder] to use [the Spray Lake Road] to access the GRL [the GRL Holder] has not provided such consent."[29]

[58] The GRL Holder stated that alternatively, the Appellant can use the DLO to access the GRL when there are no cattle on the GRL, and the Act and PLAR permitted recreational access. The GRL Holder noted the Director could put conditions on any easement granted as a follow-up to the Appellant's Application, however, the same ability to place conditions on the road use agreement between the Appellant and Spray Lake Sawmills does not exist. The GRL Holder said he was concerned he is not a party to the road use agreement and, therefore, has no way of putting conditions on the use of the road to mitigate the increased risk of trespass and damage to the GRL.

[59] The GRL Holder acknowledged that, as a disposition holder, he has a duty to provide public access to the GRL when required in the legislation. Therefore, the GRL Holder disagreed with the Appellant's argument that he would not have access to the Lands if the appeal were unsuccessful.

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[28] The GRL Holder's Response Submission, August 25, 2022, at page 1.

D. Appellant's Rebuttal

[60] The Appellant stated that the municipality would not construct a road on the road allowances because construction was not possible due to the waterways that cross the road allowances.

[61] The Appellant stated the case of *Hough* v. *Alberta*, which the Director included in his submissions, was not about getting access across public land but instead was a decision that dealt with an "easement of necessity," which is not the situation in this appeal. The Appellant referred the Board to *Nelson* v. *1153696 Alberta Ltd*., where the Court of Appeal wrote: "It is doubtful whether access by water in the circumstances can operate to disallow an easement of necessity…"[30] The Appellant stated that practical limitations could impact determinations related to access.

[62] The Appellant submitted the following:

> "… it is in the public interest for members of the public to have recourse when they do not have access to their own land. Clearly that right is not the only public interest; but it is incorrect to suggest that it forms no part whatsoever of the public interest."[31] [Emphasis is the Appellant's.]

[63] The Appellant stated there was no substantial weighing of costs and benefits in the Decision and no apparent determination of what was in the public interest. The Appellant submitted the Decision appeared only to consider the interests of the Appellant and the interests of the GRL Holder, and the Director considered the interests of the Appellant to be irrelevant. The Appellant stated that if the Director undertook a true balancing of interests, it would demonstrate that the benefit to the Appellant far outweighs any detriment to the GRL Holder. The Appellant noted that the area the Appellant requested be withdrawn from the GRL totals 2.47 acres, while the GRL is more than 1,900 acres. The Appellant stated that any disposition granted to the Appellant could include cattle crossing provisions and payment by the Appellant to the GRL Holder for reasonable damages.

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29 The GRL Holder's Response Submission, August 25, 2022, at page 1.

30 *Nelson* v. *1153696 Alberta Ltd*., 2011 ABCA 203, at paragraph 44.

Classification: Public

[64] The Appellant noted that AEP granted another disposition in the area to a corporate landowner to provide access to private land from a road disposition and that the road disposition has an end date, the same as the Spray Lake Road.

[65] Regarding the Director's concerns that the taxpayer would have to pay for compensation to the GRL Holder for the removal of land from the GRL, the Appellant reiterated that any disposition to the Appellant could be subject to the Appellant providing compensation to this to the GRL Holder for the loss of his interest.

[66] The Appellant disagreed with the Director's statement that the submissions for the Jurisdiction Decision from his legal counsel are not evidence. The Appellant submitted that the Director misinterpreted the cases of *Lister* v. *Calgary (City)*[32] and *Poff* v. *Great Northern Data Supplies*,[33] noting that in both cases, "counsel's submissions were submitted as proof of the truth of their contents."[34]

[67] The Appellant disputed the Director's assertion that the Decision was only about removing land from the GRL, not about future access to the Lands. The Appellant noted the Decision and the Director's response submission contained comments and considerations applicable to the question of access to the Lands, which would be irrelevant if the Decision was only about withdrawing land from the GRL.

[68] The Appellant stated:

> "*Audi Alteram Partem* guarantees a right to be heard in one's own case, but that right is of no value unless one knows the case against one and can respond to it… this does not require submitting reasons for approval to the parties; rather, it requires letting the parties know what issues are relevant and allowing them to make submissions on them."[35]

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31 Appellant's Rebuttal Submission, September 9, 2022, at paragraph 14.

32 *Lister* v. *Calgary (City)*, CanLII 24567 (AB CA).

33 *Poff* v. *Great Northern Data Supplies (AB) Ltd.*, 2015 ABQB 173.

34 Appellant's Rebuttal Submission, September 9, 2022, at paragraph 30.

35 Appellant's Rebuttal Submission, September 9, 2022, at paragraph 37.

Classification: Public

The Appellant submitted the Director considered arguments and alleged facts without providing the Appellant opportunity to know or respond to those arguments and alleged facts.

[69] The Appellant stated:

> "If public policy is that a GRL holder has absolute dominion over the area covered by the GRL, and if the AEP will act in favour of a GRL holder and against any other Albertan in any decision, that policy amounts to an abdication of government in favour of a particular interest. The Appellant rightfully believes that cannot be the case…"[36]

V. ANALYSIS

[70] To determine if the Director erred in a material fact on the face of the record or erred in law, the Board will consider the sub-issues presented by the Appellant as to whether the Director erred by:

1. failing to adhere to the principles stated on the AEP website;
2. acting in bad faith by relying on improper considerations and not providing adequate reasons; and
3. failing to apply the natural justice principle of *audi alteram partem*.

A. Did the Director err in the determination of a material fact on the face of the record or err in law by failing to adhere to the principles espoused on the AEP website?

[71] The first page of the AEP website contains the following quote, indicating that AEP "Supports environmental conservation and protection, sustainable economic prosperity, quality of life and outdoor recreation opportunities."[37] The Appellant submitted that the Decision denied him "sustainable economic prosperity" and the Director did not follow AEP's policy statement on the website.

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36 Appellant's Rebuttal Submission, September 9, 2022, at paragraph 44.

37 <alberta.ca/environment-and-parks.aspx>.

Classification: Public

[72] "Policy" is defined as "[a] standard course of action that has been officially established by an organization, business, political party, etc."[38] The respected text on administrative law, *Practice and Procedures Before Administrative Tribunals*, stated that government policy consists of:

> "(1) orders-in-council;
>
> (2) legislation presented to Parliament or legislatures;
>
> (3) statements made in Parliament or the legislature by a minister and identified as government policy;
>
> (4) documents which are presented to Parliament or a legislature and subsequently adopted as a government policy;
>
> (5) directives issued by ministers or the cabinet in accordance with a statute entitling the particular minister or cabinet to issue such directives; and
>
> (6) duly promulgated regulations (gazetted as a rule)."[39]

[73] The Appellant provided no evidence to establish that the statement on the AEP website is actual government policy and, if so, that it is binding on the Director. A policy can guide the Director in exercising discretionary power, but the Director will breach procedural fairness if the policy is applied without flexibility and the consideration of each situation individually.[40] If the governing legislation specifies that a policy must be implemented, then the Director may do so without fettering his discretion.

[74] The first part of section 82(1) states: "[s]ixty days after the date on which the director mails a notice in writing to the last known address of the lessee, the director <u>may</u> cancel a lease or withdraw any part of the land contained in a lease…" [Emphasis is the Board's.] The wording of section 82(1) confers discretionary powers on the Director as indicated by use of the word "may". There is no reference in section 82(1) to the AEP website or any policy the Director must follow or implement.

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38 *Policy*, Black's Law Dictionary (11th ed. 2019).

39 Lorne Sossin, Robert W. Macaulay, and James L. H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada Ltd., 2022) at § 3.10.

40 *Lac La Biche (County)* v. *Lac La Biche (Subdivision and Development Appeal Board)*, 2014 ABCA 305, at paragraph 11.

Classification: Public

[75] The Board finds the Director did not err in a material fact on the face of the record, or err in law when he did not follow the statement on the AEP website as alleged by the Appellant.

B. Did the Director err in the determination of a material fact on the face of the record or err in law by acting in bad faith by relying on improper considerations and not providing adequate reasons?

[76] Black's Law Dictionary states:

> "… 'bad faith' is not simply bad judgement or negligence, but rather it implies the conscious doing of a wrong because of dishonest purpose or moral obliquity; it is different from the negative idea of negligence in that it contemplates a state of mind affirmatively operating with furtive design or ill will."[41]

[77] As an act of dishonesty or ill will, the courts have found bad faith includes:

- "… acting while knowing that one has no power to do so;
- acting in excess of powers conferred;
- acts markedly inconsistent with the relevant legislative context;
- acting unlawfully with reckless indifference to the illegality of the act;
- engaging in deliberate unlawful conduct;
- engaging in conduct he/she knows is inconsistent with the obligations of the office;
- acting in other than the public interest; and
- engaging in unlawful, dishonest behaviour."[42]

[78] However, the courts have also found that the error of improper intention may occur when a public official bases a decision on irrelevant considerations. In reviewing the Appellant's submissions, the Board finds that the Appellant is not accusing the Director of bad faith in the sense of unlawful or dishonest behaviour, but rather the Appellant is alleging the Director based the Decision on irrelevant considerations. Specifically, the Appellant alleged the Director considered irrelevant facts when he was influenced by the AEP Email and included comments in his Decision related to:

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[41] Henry C. Black, *Black's Law Dictionary*, 6th ed. (St. Paul: West Publishing Co., 1990) at page 139.

(a) alternative access to the Lands;

(b) the influence of the Board's decision in *Conklin Aggregates*;

(c) the need for the GRL Holder's approval for the withdrawal of land from the GRL; and

(d) various issues involving the use of the Spray Lake Road.

[79] The AEP Email involved an internal AEP conversation between staff before the Director was involved. The writer makes three main points:

(a) dealing with landlocked private parcels of land is a problem best addressed under the MGA;

(b) the Board previously made a decision on the Lands and AEP should "… tread carefully on something that the PLAB has already ruled upon…"; and

(c) the municipality "… has a responsibility to ensure access for their ratepayers to titled properties, the [municipality] cannot rely on our (AEP) lands for their access problems."[43]

The writer of the AEP Email concluded the email by stating he would review the Act for a section that would allow AEP to override any consent requirements from the GRL Holder.

[80] Staff are vital to the operation of AEP or any government department. The Director may consult with staff on decisions that he must make, but the decision-making authority is the Director's and cannot be delegated unless permitted under the legislation. The Director must make the decision even when staff have more expertise in a matter than the Director.[44] The Board found in a past decision:

> "… the Director may rely upon field staff to provide recommendations and identify those facts that the Director may consider and base a decision upon. Ultimately, however, the Director must make a decision for which the Director is accountable."[45]

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42 *Neufeld* v. *Mountain View (County)*, 2014 ABQB 443, at paragraph 58.

43 Director's File, at Tab 16.

44 Lorne Sossin, Robert W. Macaulay, and James L. H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada Ltd., 2022) at § 28.21.

45 *Inshore Developments Ltd.* v. *Director, Alberta (Environment and Parks)*, 2017 APLAB 16-0023-R, at paragraph 84.

[81] The Supreme Court of Canada found in *I.W.A.* v. *Consolidated Bathurst*, that consultation by a panel with other board members was permissible, providing the consultation did not affect the panel's ability to come to an independent decision.[46] Although the case was specific to administrative tribunals, the Board finds the same principle applies to decision-makers such as the Director.

[82] For the Board to find, as claimed by the Appellant, that the Director inappropriately relied on AEP staff or was improperly influenced by the AEP Email, there must be evidence in the record that the Director failed to exercise his discretion and independently consider the merits of the matter. The onus is on the Appellant to provide evidence and argument to support an allegation that the Director was improperly influenced by the AEP Email to the extent that it prevented the Director from effectively considering the merits of the Application.

[83] The Appellant submitted the AEP Email influenced the Director into thinking the Application was a matter best resolved by the municipality under the MGA and not a matter for AEP to consider. The Board notes that while the Director's Decision did not reference the MGA, it did list as a reason for the Decision that the Appellant may pursue alternative access through existing road allowances or by working with the municipality to develop a road. The Decision states:

> "Alternative access is available to be developed through existing road allowances or working with the municipality on developing a registered roadway...
>
> Although additional disturbance may be created through the development of road allowances, the municipality has the ability to apply for an appropriate roadway as an alternative and if issued, would be registered with Land Titles and removed from public land. Roads developed by the municipality are generally constructed at a higher standard than private roads, available to the public, and better able to accommodate emergency services and public transportation (e.g. school buses)."[47]

[84] This reason is not mere parroting of the AEP Email. The Director provided a rationale that is distinct from the AEP Email. The rationale suggests the Director turned his

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46 *I.W.A., Local 2-69* v. *Consolidated Bathurst Packaging Ltd.*, [1990] 1 S.C.R. 282, at paragraph 39.

47 Director's File, at Tab 17.

Classification: Public

mind to the municipality's role in providing access to the Lands and exercised his discretion in finding it to be one of the reasons for refusing the Application. The AEP Email is part of the Director's File, the documents the Director considered in making the Decision. The Board finds it was appropriate for the Director to consider the advice and comments of his staff on the matter as contained in the AEP Email. If the Director had not considered the AEP Email, he would have been negligent in his responsibility to consider all relevant material in making the Decision.

[85] The Board finds no evidence to support the Appellant's allegation that the AEP Email's mention of the MGA and municipal responsibilities inappropriately influenced the Director's Decision.

[86] The Director noted in the Decision that he reviewed the information provided by the Appellant, which the Director stated included the *Conklin Aggregates* appeal. Although the Director did not raise it as a reason in the Decision, the Director argued in his preliminary motion to dismiss the appeal that the Appellant could not appeal the Decision because of the principle of *res judicata*, meaning the Board had already determined the matter in *Conklin Aggregates*. The Appellant submitted the AEP Email, and the Director's *res judicata* argument was evidence that "… Director was exposed to the argument that the Application could not be granted…"[48] because the Board had already decided on the matter.

[87] It is evident from the Director's preliminary motion on jurisdiction that he believed the Application was subject to *res judicata*. However, the motion was made during the Board's hearing process, after the Decision had been made. The Director's Decision does not include *res judicata* as a reason for refusing the Application.

[88] Written submissions of a party should provide argument supported by evidence in the record. Written submissions assist the Board in understanding the issues and the record but should not be evidentiary in nature. Section 120 of the Act states, "An appeal under this Act must be based on the decision and the record of the decision-maker." As the Board is not

48 Appellant's Initial Submission, August 12, 2022, at paragraph 27.

Classification: Public

authorized to hold a hearing *de novo*,[49] the Board will only accept evidence outside the Department's Record when a party shows the record is incomplete or in other rare circumstances. The Director's *res judicata* argument in the written submissions is not sufficient evidence that the AEP Email improperly influenced the Director's Decision, particularly as the Decision does not include *Conklin Aggregates* or *res judicata* as a reason for refusing the Application. As mentioned earlier, the Director would be negligent in his responsibilities if he did not consider all relevant material in making the Decision, including *Conklin Aggregates*. Exposure to information is not sufficient evidence of irrelevant considerations.

[89] The Board finds no persuasive evidence the AEP Email's mention of a previous appeal improperly influenced the Director's Decision or that the Director made the Decision thinking the matter was subject to *res judicata*.

[90] The Appellant alleged that the Director acted in bad faith by assuming the Application was subject to the approval of the GRL Holder. The Appellant is correct that the legislation does not provide a disposition holder with a "veto" over the withdrawal of land from a disposition. However, the Appellant did not provide any evidence from the Director's Decision or the Director's File to support the allegation the Director believed the GRL Holder's consent was required for the Application. The Board notes the Decision does not mention any necessity for the GRL Holder's approval.

[91] The Director's File shows AEP consulted the GRL Holder on the Application and recorded his objections and concerns. AEP and the Director must consider a wide range of stakeholders and options to determine the best use of public land. The GRL Holder's opposition to the Application was one of several considerations the Director had to weigh in making the Decision.

[92] The Board finds the Director did not treat the GRL Holder's approval as being required for the Application. The Board finds the Director did not act in bad faith when making the Decision.

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49 A hearing *de novo* is a hearing based on evidence given in that hearing.

[93] The Appellant noted the Director provided eight reasons for refusing the Application and alleged all the reasons contained "errors of fact, law, or mixed fact and law."[50] The Appellant also stated the reasons were inadequate.

[94] The Supreme Court of Canada has identified the value of reasons in decision-making. The Court stated:

> "Reasons explain how and why a decision was made. They help to show affected parties that their arguments have been considered and demonstrate that the decision was made in a fair and lawful manner. Reasons shield against arbitrariness as well as the perception of arbitrariness in the exercise of public power."[51]

[95] As important as reasons are to a decision, the decision-maker is not expected to provide extensive rationale for every reason. The courts have said: "A [decision-maker] is not required to make an explicit written finding on each constituent element, however subordinate, leading to its final conclusion."[52] The Board cannot dismiss a decision simply because the reasons do not include all the desired details, such as arguments, legislation, caselaw, etc.[53]

[96] However, there are standards a decision-maker's reasons must meet to be considered adequate. The Board reviews reasons in the context of the legislation, the facts, and the Department's Record and considers several factors, including if the reasons:

(a) meet legislative requirements;

(b) enable the appellant to know why the decision was made;

(c) logically link back to the decision in a "chain of analysis"; and

(d) are supported by the evidence in the Department's Record;

(e) are justified considering the legal and factual constraints facing the decision-maker.[54]

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50 Appellant's Initial Submission, August 12, 2022, at paragraph 38.

51 *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, [2019] 4 SCR 653, at paragraph 79.

52 *S.E.I.U., Local 333* v. *Nipawin District Staff Nurses Assn*. [1975] 1 S.C.R. 382, at paragraph

53 *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, [2019] 4 SCR 653, at paragraph 91.

54 *Clifford* v. *Ontario (Attorney General)* 2009 ONCA 670, at paragraphs 28-31, and *Canada (Minister of Citizenship and Immigration)* v. *Vavilov*, [2019] 4 SCR 653, at paragraphs 102, 103, and 105.

[97] The Board reviewed the reasons provided by Director in the Decision[55] and considered the written submissions from the Parties.

> "1. Historical access to the Lands from a registered road way existed through private land when originally sub-divided."

[98] The Board finds the Director could have provided more detail in the Decision on why historical access was a reason for the Decision. However, in the context of the facts and the Decision, it is evident historical access is another option the Director considered as an alternative to the withdrawal of land from the GRL. The Board finds the Director's reason to be sufficient.

> "2. Although the previous landowner used alternate access to SW-35-30-7-W5M several years after obtaining the property, the activity was done without authority by Alberta Environment and Parks."

[99] The Appellant raised the issue of previous access to the Lands through the GRL in letters to the Director on August 25, 2021, and September 24, 2021. In those letters, he noted the previous owner had applied for a DLO across the existing trail, which had been used since the 1990s, and would not cause damage to public lands. This was the same route requested by the Appellant for the withdrawal of land from the GRL.

[100] The written submissions of the Director and the Appellant expanded on the reason and assisted the Board in understanding the purpose behind the rationale. The Director noted that just because the previous owner used the trail to access the Lands in the past does not mean it is appropriate now. AEP had not approved the trail access, and the Director rejected the Appellant's reasoning that past use was a favourable factor in the Application.

[101] While the Director could have provided a more thorough rationale that expanded on the legislative requirement for AEP approval for access on the GRL, in the context of the facts and the legislation, the limited rationale is not significant enough of a flaw to affect the validity of the Decision.

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55 Director's File, at Tab 17.

> "3. The request is for a private interest and not in the public interest as referenced in section 82(1)(f) of the Public Lands Act.

[102] "Public interest" has been defined as follows:

> "The concept of doing something in the 'public interest' refers to actions or decisions which are seen in the context of the spirit and intent of the legislation granting the authority as resulting in the good, or the benefit, or the well-being, of the public (to use different words to convey essentially the same meaning). Beyond that the term does not have a specific meaning but takes its parameters from the legislative context in which it is found. The application of the phrase involves the value judgment, or discretion, of the decision-maker that the thing being done will be, in the context of the relevant legislation, to the benefit of the public.[56]

In the context of the Act and PLAR, the public interest is in managing public land to the greatest benefit of Albertans.

[103] Determining the public interest is a highly discretionary judgment for the Director. In *Memorial Gardens Association (Canada) Ltd.* v. *Colwood Cemetery Co*., the Supreme Court of Canada considered the discretionary powers of the British Columbia Public Utilities Commission (the "Commission"). The Court held that public interest:

> "… is predominantly the formulation of an opinion. Facts must, of course, be established to justify a decision by the Commission but that decision is one which cannot be made without a substantial exercise of administrative discretion. In delegating this administrative discretion to the Commission the Legislature has delegated to that body the responsibility of deciding, in the public interest… and in reaching that decision the degree of need and of desirability is left to the discretion of the Commission.[57]

[104] Similarly, the Legislature has delegated significant discretion to the Director to determine if it is in the public interest to withdraw land from a disposition. Section 82(1)(f) of the Act states:

> "Sixty days after the date on which the director mails a notice in writing to the last known address of the lessee, the director may cancel a lease or withdraw any part

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[56] Lorne Sossin, Robert W. Macaulay, and James L. H. Sprague, *Practice and Procedure Before Administrative Tribunals* (Toronto: Thomson Reuters Canada Ltd., 2022), at §8.2.

[57] *Memorial Gardens Association (Canada) Limited* v. *Colwood Cemetery Company*, [1958] SCR 353, at page 357.

Classification: Public

of the land contained in a lease…

(f) when, in the opinion of the director, the land contained in the lease or to be withdrawn from it is required for a purpose that the director considers to be in the public interest…"

The wording, "… in the opinion of the director…" makes it clear that the Director is to exercise his discretion in considering whether a withdrawal of land from a disposition is in the public interest.

[105] The Director cannot exercise his discretion arbitrarily or in bad faith. While access to private land is a public interest, the Director had multiple interests to consider when making the Decision. The Director gave eight reasons in the Decision for refusing the Application, which demonstrates the Director considered the interests of the Appellant, the GRL Holder, the public, and AEP as regulator of public land. The Director attempted to find "… an appropriate balance between environmental, economic and social pressures…"[58]

[106] The Appellant indicated that if the Application were granted he would apply for a disposition to access the Lands on the land withdrawn from the GRL. There was no guarantee the Appellant would apply for a future disposition, and there was no guarantee the Director could grant it. By not applying for the disposition at the same time as the Application, the Appellant created uncertainty that the Director had to consider when determining if the Application was in the public interest. It would have been irresponsible for the Director to withdraw land from the GRL based on a proposed application for a future disposition. Such action would not be sensible management of public land and would not be in the public interest or in the GRL Holder's interest.

[107] The Board finds the Director did not err in the determination of a material fact on the face of the record, err in law, or err in fact and law when he decided the Application was not in the public interest.

"4. Alternative access is available to be developed through existing road allowances or working with the municipality on developing a registered roadway.

58 Director's File, at Tab 17.

> 4.1 Although additional disturbance may be created through the development of road allowances, the municipality has the ability to apply for an appropriate roadway as an alternative and if issued, would be registered with Land Titles and removed from the public land. Roads developed by the municipality are generally constructed at a higher standard than private roads, available to the public, and better able to accommodate emergency services and public transportation (e.g. school buses)."

[108] The Appellant submitted that alternative access through existing municipal road allowances was too expensive for a realistic option. The Director considered it an option that could be viable and would result in a better quality road. The Appellant raised the matter of municipal road allowances in a letter to AEP dated August 25, 2021, stating:

> "Normally freehold lands are provided access via road allowances administered by the local municipality. In this case none of the road allowances that touch the SW-35 parcel are cleared or developed. The road allowances are not a feasible option because the construction costs would far exceed the value of the property."[59]

[109] In the initial letter to AEP, the Appellant stated:

> "On Sept 8, 2021 I had a meeting with Bill Luka, Director of Operations for the MD of Big Horn. He confirmed that the M.D has neither the budget nor the need to upgrade any of the road allowances in question. Any upgrades would have to be done at the cost of the individual requesting it. The MD committed to working with me to allow me to use a portion of the road allowance but it would have to be done at my expense."[60]

[110] The Appellant did not provide evidence to support his claim that the municipality would not build on the road allowance. He also did not provide evidence of the cost to build a road on the municipal road allowance. It was the Appellant's responsibility to provide this evidence to the Director. Had the Appellant provided evidence to the Director of the municipality's position on developing the road allowance, or on the cost of such development, it would have been part of the Director's File and would have been available to the Board to consider. Without evidence to support the Appellant's claims, the Board must consider those claims to be speculation.

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[59] Director's File, at Tab 1.

[111] As previously noted, the Director must balance the interests of AEP, the Appellant, the GRL Holder, and the public. It was appropriate for the Director to consider the municipal road allowance option as an alternative access to the Lands, even if the Appellant claimed it would be economically infeasible.

[112] The Appellant may not desire to spend the money to obtain access through the municipal road allowance, but the option exists. Development of the municipal road allowance is the only access that has certainty. The other options depend on third-party agreements and a disposition application to AEP.

[113] If the option of access through the municipal road allowance was the sole reason the Director provided for refusing the Application, then the Board may have considered it insufficient. However, as part of the overall consideration of the Application and in the context of the Decision, the Board finds the Director did not err in considering the municipal road allowance as one of the reasons for refusing the Application.

> "5. Additional access to the grazing lease and Spray Lake Road (DLO4422) has an increased potential for trespass and impact to the surrounding area."

[114] AEP staff met with the GRL Holder and the Appellant on September 7, 2021, shortly after receiving the Appellant's first letter requesting the land withdrawal from the GRL. In an internal email reporting on the meeting, AEP staff noted the GRL Holder's concerns with trespass and how that might potentially interfere with management of the GRL.[61] The GRL Holder and the Director were concerned that unauthorized users could enter the GRL through the access route or on Spray Lake Road. The potential environmental impact and the impact on the GRL Holder's management of the GRL were appropriate considerations for the Director when making the Decision.

[115] The Board finds the Director did not err in material fact, law, or mixed law and fact when he considered the issue of trespass.

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60 Director's File, at Tab 7.

61 Director's File, at Tab 2.

> "6. There is no guaranteed access to the Landowner's property using the Spray Lake Road. If Spray Lake Sawmills decides the road is no longer of need, it could reclaim the road and request that the DLOs be cancelled, leaving the Landowner with no access as previously mentioned (PLAB Appeal No. 17-0010-R)."

[116] The Director stated if the Spray Lake Road DLO were cancelled, the Appellant would be without access even if the Director granted the Application. The Appellant argued that before the DLO could be cancelled the DLO holder would have to advise any contractual users of the Spray Lake Road.

[117] The Appellant noted Spray Lake Sawmills was not a party to the Application and did not provide submissions on its use of the DLO. The Board notes the Appellant could have requested Spray Lake Sawmills be added as a party to the appeal or requested the Board accept further evidence regarding the road use agreement between Spray Lake Sawmills and the Appellant.

[118] The DLO is not permanent and cannot be relied on to guarantee access to any land removed from the GRL. The Board finds the Director did not err in considering access issues if the DLO was cancelled.

> "6.1 The road use agreement held by Everett Normandeau is between Spray Lake Sawmills and a company associated with the Landowner as opposed to the individual."

[119] The Appellant provided the Director with the road use agreement for Spray Lake Road on October 26, 2021. The agreement states it is between "Spray Lake Sawmills (1980) Ltd. and Everett and/or Trish Normandeau operating as Ten Ranch Ltd. and their successors in title to SW-35-30-7-W5M."[62] The Director determined the agreement was between Spray Lake Sawmills and a company, instead of the Appellant individually. The Appellant submitted this was an error of fact and an improper consideration. The Director maintained it was not an error, but that even if it was, it was not an error of material fact.

[62] Director's File, at Tab 14.

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[120] The distinction between the Appellant and the company is irrelevant to the Decision. The Board finds the Director made an error of fact, but the error was not a material one. A material fact is "a fact that is significant or essential to the issue…" and "makes a difference in the result to reached in a given case."[63] Removing this reason from the Decision would have no impact on the overall outcome.

[121] The Director gave multiple reasons for the Decision, and not all the reasons are of equal weight. It would have been preferable if the reasons had more detailed rationale behind them, but the Board found the reasons were generally supported by the evidence in the Director's File. The courts have held: "It is not fatal to a policy decision that some irrelevant factors be taken into account; it is only when such a decision is based entirely or predominantly on irrelevant factors that it is impeachable."[64]

[122] Although some of the Director's reasons in the Decision are of minor consequence, and therefore of some degree of irrelevance, the Board finds there is sufficient relevancy in the reasons overall and in context of the legislation, to validate the Decision. The reasons as a whole meet the legislative requirements, enabled the Appellant to know why the Decision was made, logically linked back to the Decision, were supported by the Director's File, and were justified in light of the legal and factual constraints facing the decision-maker.

[123] The Board finds the Director did not act in bad faith by relying on improper considerations and not providing adequate reasons and, therefore, did not err in the determination of a material fact on the face of the record or err in law.

C. Did the Director err in the determination of a material fact on the face of the record or err in law by failing to apply the natural justice principle of *audi alteram partem*?

[124] The Appellant submitted the Director breached the natural justice principle of *audi alteram partem* by not providing the Appellant with an opportunity to respond to the reasons in the Decision. The Director argued the Appellant had opportunity to provide input

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[63] *Material fact, Black's Law Dictionary*, 11th ed.

[64] *Canadian Assn. of Regulated Importers* v. *Canada (Attorney General)*, [1994] 2 F.C. 247, at paragraph 22.

before the Decision was issued.

[125] Natural justice is often referred to as the duty of fairness or procedural fairness. The duty to act fairly is a fundamental principle of administrative law. The Supreme Court of Canada has held that public authorities, such as the Director, have a duty to act fairly:

> "This court has affirmed that there is, as a general common law principle, a duty of procedural fairness lying on every public authority making an administrative decision which is not of a legislative nature and which affects the rights, privileges or interests of an individual."[65]

[126] AEP is a public body with legislated powers and must exercise those powers according to the principles of administrative law.[66] It is the Director's responsibility to ensure an appropriate level of procedural fairness exists within the decision-making process. The courts have stated:

> "The basic objective of the duty to act fairly is to ensure that an individual is provided with a sufficient degree of participation necessary to bring to the attention of the decision-maker any fact or argument of which a fair-minded decision-maker would need to be informed in order to reach a rational conclusion."[67]

[127] The intent of the duty of fairness is not to achieve "procedural perfection" but to attain an appropriate balance between the need for fairness, efficiency, and consistency of the outcome.[68] If the balance is incorrect, the decision-maker has breached the duty to act fairly. If the breach is substantial, the decision-maker's actions may be void. However, not every breach of the duty of fairness will render a decision void. Minor procedural technicalities or errors that are immaterial to a decision or did not affect the outcome will generally not be fatal to the decision.[69]

[128] When the Board reviews the duty of fairness it is not determining whether the Director was reasonable or correct, but rather whether a director met the level of fairness

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65 *Cardinal* v. *Kent Institution*, [1985] 2 S.C.R. 643, at paragraph 14.

66 *Knight* v. *Indian Head School Division No. 19*, 408, [1990] 1 S.C.R. 653, at paragraph 26.

67 *Kindler* v. *Canada (Minister of Justice)*, [1987] 2 F.C. 145, at paragraph 18.

68 *Knight* v. *Indian Head School Division No. 19*, 408, [1990] 1 S.C.R. 653, at paragraph 53.

69 See: *Manyfingers* v. *Calgary (City) Police Service*, 2005 ABCA 183.

required by law.[70] The degree of procedural fairness owed by a director to an appellant "is to be decided in the specific context of each case."[71]

[129] In *Baker* v. *Canada (Minister of Citizenship and Immigration)* ("*Baker*"),[72] the Supreme Court of Canada listed factors to be considered in a determination of the level of procedural fairness required.[73] The list is not absolute, as other factors may be relevant. Although the Court gave the factors in the context of a judicial review, the Board considers them helpful:

(a) the nature of the decision being made and the process followed in making the decision;

(b) the nature of the statutory scheme and the terms of the statute under which the body operates;

(c) the importance of the decision to the individuals affected;

(d) the legitimate expectations of the person(s) affected by the decision; and

(e) the agency or administrator's choice of procedure.

(a) Nature of the Decision

[130] The more a decision is judicial in nature, the higher the level of procedural fairness required. A decision that is more legislative in nature requires less procedural fairness. The decision to grant or refuse an application to withdraw land from a disposition is a mixture of judicial and legislative characteristics. While a high level of discretionary power suggests a judicial nature, there is no legislated opportunity for an applicant to make representations, which suggests a legislative nature. A comparison can be made between a decision to withdraw land from a disposition and a decision to issue an Administrative Penalty under the Act. Both decisions require a director to exercise discretion, however, the procedures a director follows to issue an Administrative Penalty are significantly more judicial in nature, involving notices, disclosure of evidence, and opportunity to present argument and evidence. The process for withdrawing land from a disposition requires none of the Administrative Penalty procedures,

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70 *Institute of Chartered Accountants of Alberta* v. *Barry*, 2016 ABCA 354, at paragraph 5.

71 *Knight* v. *Indian Head School Division No. 19*, [1990] 1 S.C.R. 653, at paragraph 50.

72 *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

73 *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraphs 21-28.

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suggesting a lower level of procedural fairness owed by the Director.

(b) Statutory Scheme

[131] Where a decision is final with no appeal permitted, a greater degree of procedural fairness is required. The Act provides for an appeal to the Board of decisions prescribed in the legislation. An appeal to the Board allows an appellant to make comprehensive arguments, engage the Director in mediation, and obtain the record related to the appeal. At the appeal level, the Board can rectify most breaches in procedural fairness that may have been committed in the initial decision-making stage and make recommendations to the Minister to mitigate other breaches. The final decision-making authority rests with the Minister, who receives the Board's report and recommendations regarding the appeal. The Act's appeal system lessens the degree of procedural fairness owed to the Appellant by the Director.

(c) Importance of the Interest to the Appellant

[132] The more important a decision is to an appellant, the higher the duty of fairness is required. The Board understands the Appellant has invested a large sum of money into purchasing the Lands,[74] and the Director's Decision will negatively impact the Appellant. However, the Board finds the Appellant's actions to be inconsistent with a high degree of importance for the following reasons:

(a) The Appellant did not specify long-term intentions for the Lands. Using the Lands for recreation, while certainly important and valuable, is likely of lesser importance than using the Lands for a full-time residence or business. The lack of a clear intention made it difficult for the Board to find that the Decision was of high importance to the Appellant.

(b) The Appellant did not apply for a DLO or similar disposition that would allow access to any lands withdrawn from the GRL. The Appellant said he would apply for the secondary disposition after the Application was granted. The absence of an essential secondary application suggests the Decision was not highly important to the Appellant.

(c) The Appellant, as the agent for the previous owner of the Lands, was well aware of the access complications when the purchase was made. This suggests to the Board that the Appellant was willing to take a risk on

74 Director's File, at Tab 15.

> purchasing the Lands. Knowingly entering into a purchase agreement where access is highly uncertain indicates the Decision may be of lesser importance to the Appellant.

[133] Based on the evidence before the Board, the Board finds the Decision was of a lesser degree of importance to the Appellant.

(d) Legitimate Expectations

[134] The doctrine of legitimate expectations is based on the principle that procedural fairness must consider the promises or regular practices of the delegate. It would be unfair for the Director or AEP to vary from their usual practice without good reason. The Board did not find any significant instances of legitimate expectations in the appeal and, therefore, did not factor legitimate expectations into its procedural fairness deliberations.

(e) Procedural Choices

[135] In *Baker*, the Supreme Court of Canada held that the choice of procedure followed by a decision-maker should be considered and respected. The Court stated:

> "… the analysis of what procedures the duty of fairness requires should also take into account and respect the choices of procedure made by the agency itself, particularly when the statute leaves to the decision-maker the ability to choose its own procedures, or when the agency has an expertise in determining what procedures are appropriate in the circumstances. While this, of course, is not determinative, important weight must be given to the choice of procedures made by the agency itself and its institutional constraints."[75]

[136] As a department, AEP can set its own policies and procedures if they do not conflict with the legislation. A relevant example is the assessment of an Administrative Penalty under the Act. Like the Director making a decision under section 82 of the Act, a director assessing an Administrative Penalty has significant discretionary powers granted by the legislation. AEP established specific procedures for assessing an Administrative Penalty, which may include inviting the person being assessed the Administrative Penalty to view the evidence and present argument. AEP chose not to establish similar procedures for deciding on an application to withdraw land from a disposition. Using *Baker* as a guide, the Board finds the

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75 *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraph 27.

Director owed a low level of procedural fairness to the Appellant based on the procedures chosen by the AEP.

[137] Although the Board is unaware of any court-sanctioned procedural fairness spectrum, a review of the caselaw demonstrates that the highest standard of procedural fairness is reserved for decisions that affect personal liberty and livelihood, such as disciplinary procedures and immigration matters. The lowest level requires only the most minimal procedural fairness standards. The Board's application of the factors listed in *Baker* to the facts of this appeal suggests a duty of fairness in the lower mid-range of a procedural fairness spectrum. A lower mid-range degree of procedural fairness still requires the Director to fulfill a duty to act fairly, but it does not require the Director to provide the Appellant with procedures like those afforded to persons involved in an Administrative Penalty assessment. The Board acknowledges this discretionary determination is not a precise measurement, and the standard may fluctuate depending on the facts and circumstances, as noted by the Court in *Baker*.

[138] The Appellant submitted the Director did not act fairly regarding the principle of *audi alteram partem*, or "hear the other side." The courts have held that *audi alteram partem* means that a "party affected by a decision has the right to know the case against it, and be provided a meaningful opportunity to address it."[76] The right to be heard does not mean the party has a "…right to the most advantageous procedure nor a right to have one's views accepted nor a right to be granted the remedy sought. It is only a right to have one's views heard and considered by the decision-maker."[77] The Supreme Court of Canada set the test for determining if the principle of *audi alteram partem* has been met. In *Baker*, the Court stated: "At the heart of this analysis is whether, considering all the circumstances, those whose interests were affected had a meaningful opportunity to present their case fully and fairly."[78]

[139] The Board finds the Appellant had meaningful opportunity to present his case fully and fairly to the Director. The Appellant sent detailed letters with documents to AEP in

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76 *New Brunswick (Registrar of Motor Vehicles)* v. *Maxwell,* 2016 NBCA 37, at paragraph 46.

77 Sara Blake, *Administrative Law in Canada*, 6th ed. (Toronto: LexisNexis Canada, 2017), at §2.22.

78 *Baker v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, at paragraph 30.

support of the Application,[79] met with AEP staff and the Director,[80] and was able to provide evidence in a phone call with the Director.[81]

[140] The Appellant submitted he did not know the case to be met as he did not know the Director's reasons before the Decision was issued or had an opportunity to respond. The Board finds the Director's reasons in the Decision were in response to information and issues raised by the Appellant in letters on August 25, 2021,[82] and September 24, 2021.[83] These issues included historical access, unauthorized access by the previous owner of the Lands, public vs. private interest, alternative access through the municipal road allowances, and concerns regarding a potential increase of trespassing. The only matters not addressed by the Appellant's letters involved the Spray Lake Road Use Agreement, which the Appellant provided to the Director and the Director addressed in the Decision. The Director disagreed with the Appellant's arguments, but that does not mean the Appellant did not have the opportunity to be heard.

[141] When applying the *Baker* analysis to the facts of the appeal, the Board found the Director owed a low degree of procedural fairness to the Appellant. By accepting letters and documents from the Appellant, meeting with the Appellant and communicating by phone, the Director provided the Appellant meaningful opportunity to present his case fully and fairly. The Board finds the Director met his duty to act fairly.

[142] The Appellant's appeal to the Board provided the Appellant with a more fulsome opportunity to be heard and to know the case to be met through the following aspects of the Board's appeal process:

- The Director provided the Director's File, which consisted of documents he relied on to make the Decision, including correspondence between AEP and the Parties.

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79 Director's File, at Tabs 1, 7, and 8.

80 Director's File, at Tabs 2 and 10.

81 Director's File, at Tab 14.

82 Director's File, at Tab 1.

83 Director's File, at Tab 7.

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- The Appellant was able to present comprehensive arguments and relevant evidence to the Board and review and respond to the arguments and evidence of the Director and GRL Holder.
- The Appellant will have his appeal heard and determined by a more authoritative decision-maker in the Minister. The Board will provide the Minister with this report of the hearing that summarizes the Parties' submissions and issues and makes recommendations on whether the Minister should confirm, reverse, or vary the Director's Decision.

[143] The Legislature was satisfied the Act provided for an appeal system that would provide an acceptable level of procedural fairness to all parties to an appeal. The appeal system enables the Board to remedy defects or breaches in the Director's decision-making process within the confines of a hearing on the record. The Board found the Director provided a meaningful opportunity for the Appellant to present his case fully and fairly, but if that was not the case, the appeal process compensated for any lack of procedural fairness. This includes deficiency in the Director's reasons provided in the Decision or the opportunity for the Appellant to know the case to be met and heard by the other side. The Board found the Director's errors did not affect the result and to be of little weight in the overall Decision.

[144] The Board finds the Director did not breach the principle of *audi alteram partem* and, therefore, did not err in the determination of a material fact on the face of the record, err in law, or err in mixed law and fact.

VI. DECISION

[145] In deciding to refuse the Appellant's Application to remove lands from GRL 35454, the Board finds the Director:

1. did not err in the determination of a material fact on the face of the record; and
2. did not err in law.

[146] On the sub-issues identified by the Board from the Parties' submissions, the Board finds the Director did not:

1. fail to adhere to the principles espoused on the AEP website;
2. act in bad faith by relying on improper considerations and not providing adequate reasons; and
3. fail to apply the natural justice principle of *audi alteram partem*.

VII. RECOMMENDATION

[147] When the Board provides its Report and Recommendations to the Minister, it must comply with section 124 of the *Public Lands Act*, which states:

> "(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.
>
> (3) On receiving the report of the appeal body, the Minister may, by order, confirm, reverse or vary the decision appealed and make any decision that the person whose decision was appealed could have made, and make any further order that the Minister considers necessary for the purpose of carrying out the decision."

[148] In this appeal, the Board has considered the Director's File, the Parties' submissions, and the relevant legislation. The Board recommends the Minister confirm the Director's Decision to refuse the Application by the Appellant to remove land from GRL 35454.

[149] With respect to section 124(4) of the *Public Lands Act*,[84] the Board recommends copies of the Report and Recommendations, and the decision of the Minister, be sent to the following persons:

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[84] Section 125(4) of the Act states:

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

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(a) Mr. R. Alex Kennedy, Worobec Law Offices, representing Mr. Everett Normandeau;

(b) Mr. Paul Maas, Alberta Justice and Solicitor General, representing Mr. Stephen Shenfield, Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Parks; and

(c) Mr. Stanley Jensen.

Dated on October 19, 2022, at Edmonton, Alberta.

"*original signed by*"
Gordon McClure
Board and Panel Chair

"*original signed by*"
Brenda Ballachey
Board Member

"*original signed by*"
Chris Powter
Board Member

ALBERTA

ENVIRONMENT AND PROTECTED AREAS

Office of the Minister

Ministerial Order
64 /2022

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

and

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

Order Respecting Public Lands Appeal Board
Appeal No. 21-0008

I, Sonya Savage, Minister of Environment and Protected Areas, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being an Order Respecting Public Lands Appeal Board Appeal No. 21-0008.

Dated at the City of Edmonton, Province of Alberta, this 6th day of December 2022.

Honourable Sonya Savage, KC
Minister

224 Legislature Building, 10800 - 97 Avenue NW, Edmonton, Alberta T5K 2B6 Canada Telephone 780-427-2391

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Appendix

Order Respecting Public Lands Appeal Board Appeal No. 21-0008

With respect to the decision of the Director, Lands Delivery & Coordination South Branch, Lands Division, Alberta Environment and Protected Areas (the "Director") to refuse an application from Everett Normandeau under the *Public Lands Act,* R.S.A. 2000, c. P-40, to remove land from Grazing Lease GRL 35454 (the "GRL") held by Stanley Jensen, I, Sonya Savage, Minister of Environment and Protected Areas, in accordance with section 124(3) of the *Public Lands Act*, order that:

1. The decision of the Director to refuse the application for removal of land from the GRL is confirmed.

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