
ALBERTA

PUBLIC LANDS APPEAL BOARD

July 27, 2016

IN THE MATTER OF sections 123 (8) of the *Public Lands Act*,
and section 226 of the Public Lands Administration Regulation,
A.R. 187/2011;

- and -

IN THE MATTER OF an appeal filed by Associated Aggregates
Incorporated.

Cite as: Associated Aggregates v. Alberta (Environment and Sustainable Resource Development)
2015 ABPLAB15-0042

Hearing Participants

Panel Members

A.J. Fox, Panel Chair

Dr. Alan Kennedy, Panel Member

Dr. Nick Tywoniuk, Panel Member

Appellant

Mr. Dean Baumann, Associated Aggregates Inc.

Represented by Michelle Corry, Aspen Land Group Inc.

Director

Ms. Corinne Kristensen, Director, Alberta Environment and Parks

Represented by Ms. Vivienne Ball and Ms. Jade Vo, Alberta Justice and Solicitor General

Board

Mr. Andrew R. Bachelder, Legal Counsel

Ms. Denise Black, Administrative Support

EXECUTIVE SUMMARY

On July 11, 2014, Associated Aggregates Inc. (“Appellant”) submitted an application for Surface Material Lease 140043 (“SML”) to Alberta Environment and Parks (“AEP”). The application included public lands that had been previously identified as being largely in an area designated by AEP as a Non-Preferred Development Area (“NDA”), an area where the development of aggregate resources is discouraged. Despite being in the NDA, the Appellant’s application for SML 140043 was accepted by the Director as being technically complete and the Appellant was advised that the application was being considered based on its merits.

As part of the merit review, on November 19, 2014, the field officer for the Fox Creek area reviewed the Geographic Information Systems (“GIS”) map and data layers for the public lands located within the Appellant’s SML application. The purpose of this review was to identify any wildlife sensitivities in the area of the application. Based on the review, the field officer recommended that SML 140043 be given “approval in principle,” with some conditions.

On June 23, 2015 AEP Provincial Approvals Section sent a letter to the Appellant advising that the SML application had been given approval in principle. The letter advised the Appellant that a Conservation and Reclamation Business Plan (“CRBP”), a plan of survey and amendment form, and a First Nations Adequacy Letter were required within six months of the date of the letter.

In September 2015, the Fox Creek field officer became aware he had not correctly applied a GIS data layer to the Appellant’s SML application. The field officer reprocessed the application using the correct data layer and discovered that the application was within the NDA and that the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley (“Guidelines”) applied to the Appellant’s application. The application of the Guidelines showed that the Appellant’s proposed SML was located within the NDA. The field officer recommended that the approval in principle of the SML application be revoked.

In a letter dated December 10, 2015 from the Director to the Appellant, Director advised that the SML application was within the NDA and was being refused. The Appellant filed a Notice of

Appeal with the Public Lands Appeal Board (“Board”) on December 22, 2015. In the Notice of Appeal the Appellant alleged that the Director erred in the determination of a material fact on the face of the record.

An oral hearing was held on May 31, 2016. The Panel appointed to hear the appeal reconvened on June 14, 2016 to consider the matter further. In a letter dated July 8, 2016 the Panel requested that the Appellant and Director provide further input regarding the following questions:

In the event the Panel finds that the Director breached principles of natural justice and the duty to be fair (procedural fairness):

1. what is the Board’s jurisdiction with respect to this potential breach; and
2. what is the appropriate remedy if such a breach has occurred?

The Parties provided their responses by July 15, 2016.

The Panel, upon reviewing the submissions and testimony of the parties, found that the Director refused the Appellant’s SML application based on an inflexible interpretation of the Guidelines without considering the merits of the application, and in doing so, fettered her discretion by not considering the application on an individual basis.

The Panel found that the Director erred in the determination of a material fact on the face of the record by blindly applying policy without consideration of the merits of the application. This resulted in the Director making a decision without all the facts before her. The Director relied upon a flawed record that was incomplete as it lacked important documentation regarding the merits of the application. The Panel found that the Director did not have the correct information before her in order to make an informed decision. The Panel found that by rejecting the Appellant’s application for SML 140043 without consideration of the merits of the application, and by fettering her discretion, the Director’s decision was unreasonable.

The Panel considered the July 15, 2016 submissions of the Appellant and Director regarding the questions regarding natural justice and procedural fairness. The Panel found that natural justice

and procedural fairness are foundational doctrines of administrative law and that the Panel has inherent jurisdiction to consider whether the Director breached these fundamental principles.

The Panel found that there was evidence to suggest that the errors made by the Director led to a breach of natural justice and procedural fairness. However, as the Panel had already found that the Director had made an error of material fact on the face of the Record, the Panel chose not to pursue this issue further.

The Panel recommended that AEP reconfigure the SIF and any other forms required to clearly provide an opportunity for the applicant to identify if the location of the lands in the application are within a non-preferred development area or any other area where development would be “restricted,” “discouraged,” or prohibited.

The Panel recommended that AEP implement a plan to prevent the misidentification errors from occurring in the future and develop a procedure for alerting applicants promptly when approval or authorization for an application is reversed or suspended.

The Panel recommended that the Minister reverse the decision of the Director to refuse the Appellant’s application for SML 140043 and order that the Director reconsider the Appellant’s application for SML 140043 based upon its merits. As part of the Director’s considerations of the merits of SML 140043 the Panel recommended that the Minister order the following:

- a. that the Appellant be given six months from the date of the Minister’s Order to provide the Director with the following documents in support of the Appellant’s SML application:
 - Conservation Reclamation Business Plan (CRBP);
 - a plan of survey and amendment form;
 - a First Nations Adequacy Letter; and
 - any other documentation required by the Director for a merit decision.

- b. furthermore, that the Director give consideration to the above documents provided in support of the Appellant's application for SML 140043, and consider whether the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley, is appropriate for the Appellant's application for SML 140043.

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I INTRODUCTION

- [1] This is the Public Lands Appeal Board’s (the “Board”) Report to the Minister of Environment and Parks regarding an appeal filed by Mr. Dean Baumann and Associated Aggregates Inc. (the “Appellant”). The appeal is with respect to the decision of the Director, Environmental Assessment, Approvals and Dispositions, Alberta Environment and Parks (the “Director”) to refuse the Appellant’s application for SML 140043. The Board has jurisdiction to deal with this appeal pursuant Part 7 of the *Public Lands Act*, R.S.A. 2000, c. P-40 (“PLA”) and section 211 of the Public Lands Administration Regulation, A.R. 187/2011 (“PLAR”)

II BACKGROUND

- [2] The Appellant, Associated Aggregates (“Appellant”), describes itself as “a small, family-owned aggregate company... that focuses on providing Alberta’s oil and gas sector with aggregate products.” On October 4, 2013 the Appellant submitted an application for a Surface Material Exploration approval (“SME”) for public lands located at S-32-59-18-W5M, N-33-59-18-W5M, SW-33-59-18-W5M and SW-4-60-18-W5M, near Fox Creek, Alberta. The area of the SME application was identified by an Alberta Environment and Parks (“AEP”) Fox Creek field officer as being largely in an area designated by AEP as being “NDA” which stands for “non-preferred development area.” The field officer recommended that the SME be not approved for the lands located within the NDA. Despite the recommendation from the field officer, on January 6, 2014 AEP issued SME 1301932 to the Appellant. The SME included public lands within the NDA.
- [3] On July 11, 2014 the Appellant submitted an application for Surface Material Lease 140043 (“SML”), which included public lands that had been identified in SME 1301932. Alberta Environment and Parks has what can be described as a two-part approval process

for dispositions. As per section 9 of the Public Lands Administration Regulation (“PLAR”), the Director undertakes what is typically called a “technical review” to ensure that the legislated requirements for the application are present. If the application is in order the Director proceeds to consider the application based on its merits. The Appellant’s application for SML 140043 was accepted by the Director as being technically complete and the Appellant was advised that the application was being considered on its merits.

- [4] As part of the merit review, on November 19, 2014 the field officer for the Fox Creek area reviewed the Geographic Information Systems (“GIS”) map and data layers for the public lands located within the Appellant’s SML application. The purpose of this review was to identify any wildlife sensitivities in the area of the application. Based on the review, the field officer recommended that the application for SML 140043 be given “approval in principle” along with some conditions.
- [5] On June 23, 2015 AEP Provincial Approvals Section sent a letter dated June 23, 2015 to the Appellant advising that the SML application had been given approval in principle. The letter advised the Appellant that a Conservation and Reclamation Business Plan (“CRBP”), a plan of survey and amendment form, and a First Nations Adequacy Letter were required within six months of the date of the letter. The letter advised that if the items were not received by the Department within six months the application would be removed from the records of the Department. The Appellant began to work on the required documents.
- [6] In September 2015, the AEP Fox Creek field officer became aware he had not correctly applied a GIS data layer to the Appellant’s SML application. The field officer reprocessed the application using the correct data layer and discovered that the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley (“Guidelines”) applied to the Appellant’s application. The application of the Guidelines showed that the Appellant’s proposed SML was located within the NDA. The

field officer reconsidered the Appellant's application and concluded that he had made the wrong recommendation to approve in principle. On November 5, 2015, the AEP field officer recommended that the approval in principle be revoked.

[7] In a letter dated December 10, 2015 from the Director to the Appellant, the Director advised that the SML application fell within the NDA the application and was being refused. No other reason for the refusal was given.

[8] The Appellant filed a Notice of Appeal with the Public Lands Appeal Board ("Board") on December 22, 2015. In the Notice of Appeal the Appellant alleged that the Director erred in the determination of a material fact on the face of the record. The Board assigned the appeal the number of PLAB 15-0042.

[9] The Director declined mediation between the parties. With no mediation scheduled, the Board set a date for an oral hearing which included written submissions. The hearing was held on May 31, 2016. The Panel reconvened on June 14, 2016 to consider the matter further.

[10] In a letter dated July 8, 2016 the Panel requested that the Appellant and Director provide further input regarding the following questions:

In the event the Panel finds that the Director breached principles of natural justice and the duty to be fair (procedural fairness):

- a. what is the Board's jurisdiction with respect to this potential breach; and
- b. what is the appropriate remedy if such a breach has occurred?

[11] The Parties provided their responses by July 15, 2016. The Panel considered via email on July 18, 2016, the July 15, 2016 responses by the parties.

III ISSUES

[12] The Board requested submissions on the main issue:

Did the Director, in rejecting the Appellant’s application for SML 140043, err in the determination of a material fact on the face of the record?

And on the supplemental issue:

In the event the Panel finds that the Director breached principles of natural justice and the duty to be fair (procedural fairness):

- a. what is the Board’s jurisdiction with respect to this potential breach;
and
- b. what is the appropriate remedy if such a breach has occurred?

IV SUBMISSIONS

MAIN ISSUE - APPELLANT

[13] The Appellant submitted that there is discretion in how the Director applies the Guidelines. The Appellant submitted that the Director exercised discretion in approving an 864.72 acre Disposition Reservation (“DRS”) for sand and gravel removal adjacent to the proposed SML. The Appellant claimed that the majority of the DRS is located within the NDA.

Appellant’s Submission, page 3.

[14] The Appellant submitted that the Director did not properly consider cumulative effects when the Director denied the Appellant’s application for SML 140043. The Appellant

refers to the Guidelines, noting that the Guidelines “indicates that NDA’s include lands designated as environmentally sensitive.” The Appellant notes that the land within the proposed SML had been disturbed by both logging and oil and gas activity, with 29 acres of land having been recently disturbed. The Appellant stated:

When considering cumulative effects, there would be less of an impact to further disturb a compromised landscape rather than one that has not been disturbed by industrial activity.

Appellant’s Submission, page 3.

[15] The Appellant submitted that it is unreasonable for the AEP not to know that the application for the SML 140043 was not within the NDA for the following reasons:

- a) The application included a drawing showing the boundary of the proposed SML. The Appellant stated: “It seems reasonable that the field officer reviewing the application would be responsible for verifying the drawing in consideration of the Department guidelines they are responsible for administering.”
- b) AEP’s review of the application for SME 1301932 found that portions of the SME were located within the NDA, which was pointed out by AEP. Although the SME was issued in error the Appellant notes that AEP was aware that the location was within the NDA.
- c) During a July 10, 2014 phone conversation between the Appellant’s consultant, Aspen Land Group Inc. and AEP staff, AEP staff referred Aspen to the Woodlands Aggregate Gravel Strategy.

[16] The Appellant submitted that the above reasons make it difficult to understand how AEP could claim to not have been aware that the SML application was located within the NDA.

[17] The Appellant submitted that it is difficult to understand why AEP authorized SME 1301932 and "approval in principle" for SML 140043 when an SML "cannot be issued on lands within the NDA." Alberta Environment and Parks required the Appellant to prepare a CRBP, obtain a legal survey and undertake First Nations consultations. The Appellant stated:

The cost to prepare these applications and complete the above items is very expensive and time consuming... As one can appreciate this misleading error in the review of the applications and the direction that was provided by AEP has created undue stress and financial hardship for Associated. It is unacceptable that the department can request items to be completed if an SML cannot be issued within the NDA. Again, the location was clearly shown on plans provided with both applications.

[18] The Appellant stated:

Associated has spent a significant amount of time and money following the department's process and direction for obtaining an SML, it only seems fair that the department is held to the same level of accountability.

[19] The Appellant requested that the application for SML 140043 be approved.

SUPPLEMENTAL ISSUE - APPELLANT

[20] The Appellant provided the Board with a response to the supplemental issue; however they did not address the issue of the Board's jurisdiction.

[21] With regards to the appropriate remedy, the Appellant stated:

We ask that we are treated fairly and believe the issuance of an SML at this location is the appropriate remedy should the Panel find that the Director breached principles of natural justice and the duty to be fair.

Appellant's Response to Panel Questions, July 15, 2016.

MAIN ISSUE - DIRECTOR

[22] The Director submitted that the application for SML 140043 was reviewed "according to the procedures established by Alberta Environment and Parks, and considered the applicable legislation, surface material guidelines, and area-specific guidelines. The Director was correct to refuse to issue the SML to the Appellant."

Director's Submission, page 2.

[23] The Director acknowledged that SME 1301932 was issued in error.

Director's Submission, page 2.

[24] The Director also acknowledged that a mistake was made when SML 140043 was "approved in principle," and attributed that mistake to an error by the AEP Fox Creek field officer who did not realize that the proposed SML was located within the NDA because:

a) A data layer was missing on the GIS map;

- b) The Appellant did not identify on the Site Information Form (“SIF”) form that the guidelines were applicable to the SML;
- c) SME 1301932 had been issued on the lands previously.

Director’s Submission, page 6.

[25] The Director submitted that the onus is on the applicant for a disposition to determine if the Guidelines apply. The Director stated in the submissions:

AEP expects the applicant to inform themselves of and review the applicable policies and guidelines before submitting an application. If an application for aggregate exploration or extraction is within lands subject to the Guidelines, the applicant is expected to determine that the Guidelines apply, determine if the land is designated PDA or NDA, and determine whether aggregate development is a permitted use in that designated area.

Director’s Submission, page 10.

[26] The Director submitted that the Guidelines attempt to balance aggregate development with environmental protection. The Guidelines attempt to do this by using designated development areas, such as a preferred area (“PDA”) where development is managed, and a non-preferred area where “aggregate development will be restricted.”

[27] The Director stated in the submissions:

AEP has interpreted “restrict” and “discourage” to mean no development, and has consistently applied the Guidelines to not approve aggregate exploration and extraction in the NDA.

Director’s Submission, page 11.

[28] The Director also stated in the submissions:

Although the Guideline does not impose a permanent ban on aggregate exploration and extraction within the NDA, the goals and outcomes of the Guidelines cannot be practically achieved without stopping aggregate activities in the NDA, at least for some period of time.

Director's Submission, page 13.

- [29] The Director submitted that the Guidelines are intended “to protect large scale areas in the Woodlands Area within the Athabasca River valley from aggregate exploration and extraction in order to prevent fragmentation of wildlife habitat and range.” The Director submitted that the Guidelines provide guidance on environmental issues and cumulative effects.

Director's Submission, page 13.

- [30] The Director submitted that some of the specific land concerns included maintaining wildlife habitat, and the proximity to other industrial activities and recreational activities.

Director's Submission, pages 13-14.

- [31] The Director submitted that the Appellant did not identify the desired land in the SML application was located within the NDA in the drawings submitted for the SML or on the SIF.

Director's Submission, page 15.

- [32] The Director noted in the submissions that DRS 150014 held by Alberta Transportation is for future public projects and that AEP has not issued a disposition for gravel extraction.

Director's Submission, page 16.

- [33] The Director submitted that “it is unfortunate that the Appellant has spent time and money on the application,” but the Director rejects the suggestion that the Appellant is

entitled to the SML as a result of the errors made by AEP during the review of the Appellant's application.

[34] The Director requested that the Board:

- a) find that the Director did not err in the determination of a material fact in making the decision to refuse to issue the SML to the Appellant;
- b) recommend to the Minister of AEP that she confirm the Director's decision to refuse the Appellant's application for SML 140043; and
- c) recommend to the Minister of AEP that this appeal be dismissed without costs.

Director's Submission, page 18.

SUPPLEMENTAL ISSUE - DIRECTOR

[35] The Director submitted that the Board did not have jurisdiction to find that the Director breached principles of natural justice or the duty to be fair for the following reasons:

1. including a new ground of appeal would violate the principles of natural justice and procedural fairness and be an error of law;
2. the Board must determine matters in the appeal prior to the hearing and not after the close of the hearing;
3. the Board is restricted to the issues included by the Appellant in the Notice of Appeal;
4. adding a new ground of appeal after the close of the hearing is prejudicial to the Director.

[36] In the alternative, the Director submitted that if the Board were to find that the Director breached principles of natural justice and procedural fairness, the Board would be limited to submitting a report to the Minister with the recommendation that the Director's decision be confirmed, reversed, or varied.

V ANALYSIS

ERRORS ON THE FACE OF THE RECORD / SITE INFORMATION FORM

[37] The Director acknowledged that AEP staff made a series of material errors which resulted in the Appellant's application for SML 140043 not being identified as located in the NDA. These errors ultimately caused a significant hardship for the Appellant. An applicant for a disposition should be able to rely upon the information provided by the Department. The Panel found that while there were material errors committed by AEP staff, the Director did not carry forward those errors in her decision.

[38] The Panel found that the Director was correct in asserting that these errors do not entitle the Appellant to an SML. However, the Panel is concerned that the Director seemed to place much of the blame for the misidentification of the SML location on the Appellant by insisting that the Appellant should have identified on the Site Information Form (SIF) that the SML was located in the NDA. The Panel examined the SIF and could not find an obvious, or even likely, place on the form to make such an identification. Applicants should not have to guess what is required or where to include application information when filling out AEP applications. The Panel found that the vagueness of the SIF contributed to the errors in identifying the location of the SML application.

- [39] The Panel recommends that AEP revise the SIF and other forms to be more transparent and to provide clearly directed opportunity for an applicant to identify whether an application is located in the NDA or other restricted areas.

APPROVAL IN PRINCIPLE

- [40] The Panel found that the material errors by the AEP staff, including the vagueness of the Site Information Form, led to the SML application being “approved in principle.” This gave rise to a legitimate expectation by the Appellant that if the requested documents were provided to the AEP and were satisfactory to the Director then the SML would be approved. The Appellant claimed to have incurred significant, and ultimately unnecessary, expenses in preparing documentation such as the CRBP, a legal survey and First Nations consultations, which were required by the Director after the application was “approved in principle.” It is unclear to the Panel how far the Appellant progressed in preparing these documents, and while the Director is correct in asserting that the Appellant’s expenses should not be a consideration in the decision, but it speaks to the consequences of a flawed application process that would allow the Appellant to proceed to that stage when the Director had no intention of approving any application in the NDA.
- [41] The Panel is particularly concerned that although AEP staff identified the location mistake in September 2015, the Appellant was not notified of any concerns until the receipt of the Director’s letter dated December 10, 2015 advising that the application had been cancelled. After discovering the error, AEP did not take any steps to mitigate possible damages to the Appellant. At the very least the Appellant should have been promptly notified that there was a concern that the AEP was looking into and that the “approval in principle” was suspended.

[42] The Panel recommends that AEP implement a plan to reduce such errors occurring in the future and develop a procedure for alerting applicants promptly when approval or authorization for an application is reversed or suspended.

EXERCISE OF DIRECTOR'S DISCRETION

[43] The Director made it clear in the Director's Record, written submissions, and oral testimony that the application would not have been approved because it was within the NDA. In the Notice of Merit Decision - Application Refusal letter dated December 10, 2015, the Director wrote:

After further review of the application, it has come to my attention that this application falls within the non-preferred area of the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley... Consequently, I have made the decision to refuse to issue a surface material lease application as applied for...

Director's Record, Tab 1

[44] The Guidelines state:

The environmentally sensitive area of the Athabasca River valley identified in this document has been separated into Preferred Development Areas (PDA) and Non-preferred Development Areas (NDA) with geographically-focused application criteria for aggregate development within them. Aggregate dispositions will be directed towards PDAs and discouraged from NDAs where aggregate use is considered incompatible with other resource values in support of this document's operating principles and

outcomes. The PDA and NDA boundaries will continue to be refined in an ongoing manner based on the best data available... Aggregate development is restricted within the NDAs as per this document's Operating Principles and Outcomes.

Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley, pages 6-7.

[45] In the Director's submissions the Director wrote:

AEP has interpreted "restrict" and "discourage" to mean no development, and has consistently applied the Guidelines to not approve aggregate exploration and extraction in the NDA.

Director's Submission, page 11.

[46] The Panel found no evidence in the Director's Record, and the Director offered no evidence, that it was AEP policy to define these words as meaning "no development."

[47] The Panel further found that the Director refused the Appellant's SML application based on an inflexible interpretation of the Guidelines without considering the merits of the application. The Panel also found that the Director's interpretation of the words "restrict" and "discourage" to be unreasonable.

"Restrict" is defined by Black's Law Dictionary as "to restrain within bounds; to limit; to confine."

Black, H.C. and Henry Black, Black's Law Dictionary, 6th Edition, Springer: 1994 at page 1315.

"Discourage" is defined in the Online Merriam-Webster Dictionary as: "to make (something) less likely to happen."

www.merriam-webster.com/dictionary/discourage

Neither of these definitions suggest “no development.” Words such as prohibit, which is used in various forms 28 times in the *Public Lands Act*, would definitively indicate “no development.”

- [48] The Director’s written submissions correctly identifies that the Director has discretion whether to issue an SML or not. However, that discretion is not unlimited and cannot be exercised unreasonably. Particularly, it is essential that discretion is not fettered by the adoption of an inflexible interpretation of policy. Noted administrative law scholars, David Jones and Anne de Villars, have written:

The existence of discretion implies the absence of a rule dictating the result in each case; the essence of discretion is that it can be exercised differently in different cases. Each case must be looked at individually on its own merit. Anything, therefore, which requires a delegate to exercise its discretion in a particular way may illegally limit the ambit of its power. A delegate who fetters its discretion fails to exercise the discretion of the legislature conferred upon it and is thereby acting unreasonably.

Jones and de Villars, *Principles of Administrative Law*, 6th Edition Thomson Reuters Canada: Toronto at page 207.

- [49] Jones and de Villars also note that a delegate can adopt a general policy, “provided that each case is individually considered on its merits.” They further state that:

The adoption of an inflexible policy almost certainly means that the delegate has not exercised the discretionary power granted to it.

Ibid at 207.

- [50] In *Maple Lodge Farms v. Canada*, the Supreme Court of Canada quoted favourably from the preceding decision by the Federal Court:

The Minister may validly and properly indicate the kind of considerations by which he will be guided as a general rule in the exercise of his discretion but he cannot fetter his discretion by treating the guidelines as binding upon him and excluding other valid or relevant reasons for the exercise of his discretion.

Maple Lodge Farms Ltd. v. Canada (1982), [1982] 2 S.C.R. 2 (S.C.C.) at para. 6.

- [51] In *Maple Lodge Farms*, the Supreme Court of Canada found that the adoption by a Minister of the Crown of an inflexible interpretation of policy to the exclusion of other valid or relevant considerations resulted in the fettering of the Minister's discretion. In PLAB 15-0042, as the Minister's delegate, the Director is under the same responsibility to not fetter her discretion.
- [52] Based on the Director's Record, the submissions of the Director, and the oral testimony of the Director, the Panel found that the Director refused the application for an SML by the Appellant for the sole reason that it was located in the NDA. In doing so, the Panel found that the Director fettered her discretion by adopting an inflexible interpretation of the Guidelines policy and not considering the application on an individual basis.
- [53] The Panel found that the Director erred in the determination of a material fact on the face of the record by blindly applying policy without consideration of the merits of the application. This resulted in the Director making a decision without all the facts before her. The Director relied upon a flawed record that was incomplete as it lacked important documentation regarding the merits of the application. The Panel found that the Director did not have the correct information before her in order to make an informed decision.
- [54] The Panel found that by rejecting the Appellant's application for SML 140043 without consideration of the merits of the application, the Director made a decision that was unreasonable.

PANEL QUESTIONS

- [55] The Panel considered the July 15, 2016 submissions of the Appellant and Director regarding the questions from the Panel. The Panel finds that natural justice and procedural fairness are foundational doctrines of administrative law and that the Panel has inherent jurisdiction to consider whether the Director has breached these fundamental principles.
- [56] The Panel found that there was evidence to suggest that the errors made by the Director led to a breach of natural justice and procedural fairness. However, as the Panel had already found that the Director had made an error of material fact on the face of the Record, the Panel chose not to pursue this issue further.

VI RECOMMENDATIONS

- [57] The Panel recommends that Alberta Environment and Parks reconfigure the Site Information Form, and, if needed, any other forms required in the disposition process, to clearly provide an opportunity for the applicant to identify if the location of the lands in the application are within a non-preferred development area or any other area where development would be “restricted,” “discouraged,” or prohibited.
- [58] The Panel recommends that Alberta Environment and Parks implement a plan to prevent the mapping misidentification errors from occurring in the future.
- [59] The Panel recommends that Alberta Environment and Parks develop a procedure for alerting applicants promptly when approval or authorization for an application is reversed or suspended.
- [60] **The Panel recommends that the Minister reverse the decision of the Director to refuse the Appellant’s application for SML 140043 and order that the Director**

reconsider the Appellant's application for SML 140043 based upon its merits. As part of the Director's considerations of the merits of SML 140043 the Panel recommends that the Minister order the following:

a) that the Appellant be given six months from the date of the Minister's Order to provide the Director with the following documents in support of the Appellant's SML application:

- Conservation Reclamation Business Plan (CRBP);
- a plan of survey and amendment form;
- a First Nations Adequacy Letter; and
- any other documentation required by the Director for a merit decision.

b) Furthermore, that the Director give consideration to the above documents provided in support of the Appellant's application for SML 140043, and consider whether the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley, is appropriate for the Appellant's application for SML 140043.

Dated on July 27, 2016, at Edmonton, Alberta.

_____ (original signed by) _____
A.J. Fox, Panel Chair

_____ (original signed by) _____
Dr. Alan Kennedy, Panel Member

_____ (original signed by) _____
Dr. Nick Tywoniuk, Panel Member



ALBERTA
ENVIRONMENT AND PARKS

*Office of the Minister
MLA, Lethbridge-West*

ALBERTA ENVIRONMENT AND PARKS

Public Lands Act
RSA 2000, c. P-40

MINISTERIAL ORDER
43/2016

ORDER RESPECTING PUBLIC LANDS APPEAL BOARD
APPEAL NO. 15-0042

I, Shannon Phillips, Minister of Environment and Parks, pursuant to section 124 of the *Public Lands Act*, make the order in the attached Appendix, being the Order Respecting Public Lands Appeal Board Appeal no. 15-0042.

DATED at the City of Edmonton, in the Province of Alberta, this 22nd day of September, 2016.

Shannon Phillips
Minister

APPENDIX

ORDER RESPECTING PUBLIC LANDS APPEAL BOARD APPEAL NO. 15-0042

With respect to Public Lands Appeal Board Appeal No. 15-0042, I, Shannon Phillips, Minister of Alberta Environment and Parks, order as follows:

That the Director reconsider the Appellant's application for SML 140043 based upon its merits. As part of the Director's considerations of the merits of SML 140043 the Director shall:

- a. give the Appellant six months from the date of this Ministerial Order to provide the Director with the following documents in support of the Appellant's SML application:
 - Conservation Reclamation Business Plan (CRBP);
 - a plan of survey and amendment form;
 - a First Nations Adequacy Letter; and
 - any other documentation required by the Director for a merit decision.
- b. furthermore, the Director shall give consideration to the above documents provided in support of the Appellant's application for SML 140043, and consider whether the Supplemental Guidelines for Aggregate Operations, Woodlands Area - Athabasca River Valley, is appropriate for the Appellant's application for SML 140043.