



**PUBLIC LANDS  
APPEAL BOARD**

# **Appeal Procedure Rules for Complex Appeals**

Public Lands Appeal Board, Version 1.0, 2011



**Appeal Procedure Rules For  
Complex Appeals**

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## PREFACE

These Appeals Procedure Rules were established under Part 7 of the *Public Lands Act*.

Additional information concerning Public Lands Act Appeals hearings and the subject matter they deal with can be found in Standard Operating Procedures on the SRD website:

<http://srd.alberta.ca/>

You can also contact the Public Lands Appeal Board office at 780-427-5570 or 310-0000 or email [SRD.PLAappeals@gov.ab.ca](mailto:SRD.PLAappeals@gov.ab.ca) for further information.

### Purpose of the Rules

The **purpose** of the Appeals Procedure Rules is to:

- Inform parties of the steps required to appeal decisions, disputes and/or complaints to the Board.
- Ensure a fair, open and accessible process in accordance with the principles of natural justice.
- Increase the efficiency and timeliness of appeal proceedings.

### Operating Principles

These Rules recognize the following principles to the extent they are consistent with the legislated requirements governing the activities of the Board.

- Parties must have a fair opportunity to be heard and to understand and respond.
- Procedures should be accessible and simple enough to be understood and followed without compromising natural justice.
- Parties should have opportunities and support to resolve issues under dispute prior to appeals being adjudicated by the Board.

## **Part A – Interpretation and Application of these Rules**

**1. Definitions**

- 1.1     **“Act”** means the Public Lands Act, RSA 2000 c.P-40, as amended from time to time.
- 1.2     **“Appeal”** means an appeal that is neither a complex nor a summary appeal.
  - a.     **“Appeal body”** means
    - (a) in respect of a summary appeal, the local settlement officer assigned under section 233(3) of the Public Lands Act Regulation to hear the appeal, or
    - (b) in respect of any other appeal, the panel appointed under section 221(1) of the Public Lands Act Regulation to hear the appeal.
- 1.3     **“Appeals Co-ordinator”** means the appeals co-ordinator appointed under section 210.
- 1.4     **“Appellant”** means a person that submits a notice of appeal.
- 1.5     **“Board”** means the Public Lands Appeals Board established by section 214 of the Public Lands Administration Regulation.
- 1.6     **“Board administration”** means staff engaged to support or act for the Board in the execution of its duties.
- 1.7     **“Board member”** means a member of the Board appointed by the Lieutenant Governor in Council pursuant to section 119 of the Act.
- 1.8     **“Case manager”** means a board member or member of the Board administration designated by the Chair as such.
- 1.9     **“Chair”**, for the purposes of these Rules, means the person to whom the powers of the Administrator have been delegated under section 119(b) of the Act.
- 1.10    **“Complex appeal”** means (i)an appeal from a decision (A) under section 15(2) or(3), 20(7) or 25(1)(b) of the Act, (B) amending or suspending a disposition under section 26(1) of the Act, (C) under section 47(1), 59.1, 62(1), 73 or 77 of the Act, (D) amending a disposition under section 81 of the Act, or (E) under section 4(6), 17(1) or (2)(a) or (b), 18(4)(b) or (c), 20(3)(b),(c), or (d), 22(1), 23(2) or (4), 27, 64(1)(a) or (b), 72, 81(3)(a), (b) or (c), 96(1), 135(2),137(1), (2) or (3), 150 or 163, or (ii) any other appeal that, in the opinion of the appeals

co-ordinator, should be treated under this as a complex appeal.

1.11 “**Director’s file**” in respect of a prescribed decision made by the director, means records of the Department that are considered by the director in making the decision

1.12 “**FOIP**” means legislation governing freedom of information and protection of privacy.

1.13 “**Intervener**” means

(a) a person whose interests may be affected by an appeal under section 212(4) of the *Public Lands Act Regulation* where the decision objected to was made in respect of land that is the subject of one or more dispositions or that adjoins other land, any of the disposition holders and any of the owners of the adjoining land that are directly affected by the decision may elect to participate as parties in the appeal; or

(b) a person whose interests may be affected by an appeal filed under section 212(5) of the *Public Lands Act Regulation* who subject to the rules established by the Board, the appeal body may allow persons other than those referred to in subsection (4) to be parties to the appeal if the appeal body considers it appropriate.

1.14 “**Local settlement officer**” means a person designated under the *Exploration Dispute Resolution Regulation* (AR 227/2003) or the *Recreational Access Regulation* (AR 228/2003) as a local settlement officer.

1.15 “**Panel**” means a panel of the Board

1.16 “**Panel chair**” means (i) the panel member designated under section 223(2), in the case of a panel consisting of 3 persons other than the appeals co-ordinator, (ii) the appeals co-ordinator, in the case of a one-member panel consisting of the appeals co-ordinator or a 3-member panel on which the appeals co-ordinator sits, or (iii) the member, in the case of any other one-member panel.

1.17 “**Party**” in respect of an appeal, means (i) an appellant, (ii) the director or officer who made the decision objected to, (iii) a person that elects to participate as a party under section 212(4), or (iv) a person the appeal body allows under section 212(5) to be a party to the appeal.

1.18 “**Preliminary hearing**” includes an adjudicative hearing that addresses disclosure, procedural or jurisdictional matters.

1.19 “**Prescribed decision**” means a decision prescribed in section 211 of PLAR.

1.20 “**Record**” means record as defined in the Freedom of Information and Protection of Privacy Act.

1.21 “**Regulation**” means the *Public Lands Act Regulation*, as amended from time to time.

1.22 “**Rules**” mean these Appeals Procedure Rules adopted by the Board pursuant to its authority under section 123 of the Act.

1.23 “**Summary Appeal**” means an appeal referred to in section 233.

**2. Application of These Rules**

2.1 Subject to Rules 2.2 and 2.3, these Rules apply to appeals filed with the Board in accordance with section 123 of the Act.

2.2 These Rules apply only to the extent they are consistent with the Act and its regulations.

2.3 The Board may, in any case, give specific procedural directions which, to the extent of those directions, waive or modify the rules for that case.

2.4 The Board has all powers necessary to conduct the fair, expeditious and impartial hearing of an appeal, including the following:

- (a) To issue subpoenas authorized by law;
- (b) To administer oaths and affirmations;
- (c) To rule on the admissibility and relevancy of evidence;
- (d) To seek full disclosure of evidence when the ends of justice would be served;
- (e) To regulate the course of the hearing and the conduct of persons at the hearing;
- (f) Where appropriate, to inform the Parties as to the availability of one or more alternative means of dispute resolution, and encourage the use of such methods;
- (g) To hold conferences for the settlement or simplification of the issues including, where appropriate, the use of preliminary motions hearings and alternative means of dispute resolution;
- (h) To require the attendance at any meeting of at least one representative of each Party who has authority to make commitments in regard to procedural matters;

- (i) To dispose of procedural motions;
- (j) To make or recommend decisions in conjunction with the Panel;
- (k) To call and question witnesses;
- (l) Where sanctioned by law, to impose appropriate sanctions against any Party or person failing to obey a Board order, refusing to adhere to reasonable standards of orderly and ethical conduct, or refusing to act in good faith; and
- (m) To take any other action authorized by or exercise the powers of a commissioner under the Public Inquiries Act, R.S.A 2000, c P-39

**3. Effect of Non-compliance** 3.1 If a party fails to comply with the Rules or with an order of the Board, a panel may:

- (a) Limit or bar the presentation of evidence where a party has disregarded a Rule or Board decision concerning the exchange of evidence,
- (b) Order the non-complying party to pay all or part of the costs of another party resulting from the non-compliance, or
- (c) Take any other appropriate action.

## **Part B – Communication with and Representation Before the Board**

**4. Communication with the Board** 4.1 Unless made during a hearing, preliminary hearing, or prehearing conference, communications with the Board about Board proceedings must be made through the Board administration.

4.2 Where a proceeding involves many interveners or potentially affected parties, the Board may give specific directions as to the manner of communicating with those persons.

**5. Representation** 5.1 Persons entitled to participate in Board proceedings may represent themselves or be represented by another person.

5.2 Upon the Board's request, a person who represents another person must provide:

- (a) Proof of authorization, and
- (b) An address for service.

### **Part C – Procedures to Facilitate Appeal Applications**

6. *Commencement of Appeals*

- 6.1 A notice of appeal on a decision must include the information required under s. 121(2) of the Act and s. 216 PLAR and is to be filed with the Board in the Notice of Appeal Form attached to these Rules as Appendix "A".
- 6.2 For a summary appeal a notice of appeal must be given to the appeals co-ordinator within 3 hours of the time the appellant becomes aware, or should have reasonably have become aware, of the decision that is the subject of the appeal notice.
- 6.3 For a complex or general appeal, notice of appeal must be served on the appeals chair within (a) 20 days after the appellant received, became aware of or should reasonably have become aware of the decision objected to, or (b) 45 days after the date the decision was made, which ever elapses first.
- 6.4 Where the appeals co-ordinator receives more than one notice of appeal in respect of a decision, the notices of appeal may be combined.
- 6.5 If there is a disagreement, any party can make request for a panel to make a jurisdictional decision.

7. *Late or Incomplete Notices of Appeal*

- 7.1 Late applications will not be processed subject to Board direction under Rule 7.3. Notice of late filing will be sent by the Board administration to all parties.
- 7.2 The Board administration may direct a person who has filed an incomplete application to:
  - (a) File a completed **Notice of Appeal** form, or
  - (b) Provide any information necessary to complete the appeal form

within the appeal period prescribed under the Act.
- 7.3 A person who has received a notice or direction under

Rules 7.1 or 7.2 may request a preliminary hearing to determine the question of lateness or incompleteness and its effect on the appeal.

7.4 The appeals co-ordinator may, either before or after the expiry of a period described extend the time for service of a notice of appeal if, in the opinion of the appeals co-ordinator, it is not contrary to the public interest.

## **Part D – Case Management and Prehearing Matters**

8. *Case Management* 8.1 A case manager may do one or more of the following:

- (a) Refer a matter to a panel for determination.
- (b) Request the parties to clarify or focus the issues in dispute.
- (c) Direct parties to identify any relevant facts upon which they agree.
- (d) Direct the parties to identify any witnesses they intend to call and to provide a summary of the evidence for those witnesses.
- (e) Request further material from any party or affected person to facilitate a fair, orderly and timely process.
- (f) Provide the parties with information, relevant decisions, or other authorities related to the matters in dispute.
- (g) Establish dates for preliminary and/or merit hearings or exchanges.
- (h) Hold an administration meeting with the parties to facilitate the above.
- (i) Refer any matter to a panel for a preliminary hearing.

8.2 A party who disagrees with a case manager's directive may request a preliminary hearing.

9. *Preliminary Hearings* 9.1 At a preliminary hearing, a panel may do one or more of the following:

- (a) Direct the parties to pursue settlement discussions on their own, with the case manager, or with another independent facilitator by specified dates, and monitor

the progress of such discussions.

- (b) Establish dates for preliminary and/or merit hearings or exchanges.
- (c) Determine whether further disclosure is required and direct parties or interveners to provide particulars, evidence summaries, legal analyses, authorities, or any other documents or relevant material.
- (d) Set directions for exchanges, including: the timing for the production of the material, the persons to whom the material must be produced, measures to protect confidential information, and any further directions deemed necessary.
- (e) Determine whether procedures or disclosure requirements established by legislation or the Board have been met.
- (f) Determine whether a person may participate in a proceeding as an intervener and the extent of that participation.

9.2 At a preliminary hearing, a panel may make any order it deems appropriate to establish procedures by which the appeal hearing may proceed.

<b>Pre-Hearing Dispute Resolution and Mediation</b>	<p>9.3 A party may request a preliminary hearing or administrative meeting be conducted in person, by teleconference, by written submissions, or by any other means acceptable to the Board.</p> <p>9.4 After receiving an application, the Board may schedule a pre-hearing dispute resolution conference at which the parties must attend to discuss the preparations for the hearing and the hearing itself, including attempts to define and narrow the issues in dispute, disclose potential evidence and witness lists, and discuss the possibilities of mediation.</p> <p>9.5 If a party fails to attend a pre-hearing dispute resolution conference without an explanation satisfactory to the Board, the Board may proceed in that party's absence.</p>
<b>Procedure at Pre- hearing Conferences</b>	<p>9.6 At the prehearing conference, the presiding Member shall first discuss the following with the parties:</p> <ul style="list-style-type: none"> <li>a. Identification of the issues and whether the issues can be simplified;</li> <li>b. Whether any facts or evidence can be agreed upon;</li> <li>c. Whether any or all of the issues can be settled;</li> <li>d. Issues relating to disclosure and the exchange of information; and</li> <li>e. The advisability of attempting other forms of resolution of the matter.</li> </ul> <p>9.7 The member conducting a pre-hearing dispute resolution conference may make any order the member considers appropriate for the efficient conduct of the application and, without limitation, may:</p> <ul style="list-style-type: none"> <li>a. Provide non-binding opinions on any issue or the likelihood of success of any issue in the application;</li> <li>b. Schedule a site visit and determine the terms of participation for the site visit;</li> <li>c. Schedule or reschedule a mediation;</li> <li>d. Schedule or reschedule a hearing;</li> <li>e. Adjourn a mediation or hearing;</li> <li>f. Require a party to produce for the Board and the other parties lists of witnesses intended to be called at a hearing;</li> <li>g. Require a party to produce to the Board and the other parties an expert report to be tendered at a hearing;</li> <li>h. Require a party to produce to the Board and the other parties copies of any documents or other records that will be submitted as evidence at a hearing;</li> <li>i. Require the parties to prepare and file an agreed statement of facts;</li> <li>j. Require the parties to prepare and file written submissions;</li> </ul>

- k. Review the procedure to be followed at the hearing;
- l. Order a party to pay part of the costs on another party incurred to date;
- m. Report the results of the dispute resolution conference including a summary of the issues and any orders, directions or rulings of the Board, excluding any non-binding opinions or non-binding evaluation of the success of any issue offered by the presiding member; and
- n. Make any order or final order or decision the member considers appropriate.

Mediation 9.8

- a. At any time after an application is made to the Board, the Board may, before conducting a hearing, on its own initiative or on the written request of any of the parties, convene one or more meetings for the purpose of mediating a resolution of the issues in dispute.
- b. If the parties are not able to resolve all of the issues in dispute through mediation, the Board may determine those issues before a hearing or other proceeding before the Board.
- c. At any time before concluding a mediation process, the Board may, on its own initiative or on the written request of any of the parties, discontinue the mediation process and determine the issues in dispute before a hearing of the Board.
- d. The Chair may direct that mediation be conducted by one or more members or appoint another person to conduct a mediation.
- e. The Board may conduct mediation in person, by telephone conference call or by some other method.
- f. The Board may determine the location for an in person mediation and will consider the convenience and cost to the parties and the Board, and the need, if any, to view the land that is the subject of an application.
- g. In a mediation the mediator has discretion in the manner in which the mediation will be conducted and may:
  - i. Facilitate discussion between the parties towards a settlement of issues;
  - ii. Meet with the parties individually or together;
  - iii. Schedule another meeting.
- h. Mediation is not open to the public

**10. Prehearing**

10.1 All parties entitled and intending to make submissions to the

<p><b>Submissions</b></p> <p><i>Prior notice of submissions prevents parties from being taken by surprise at the hearing</i></p>	<p>Board must give reasonable written notice to the Board administration and other parties of their intended submissions in accordance with these Rules.</p>
<p><b>11. Complex Appeal Submissions</b></p> <p><i>The application must be referred to and the conditions that trigger referral</i></p>	<p>11.1 A director whose decision has been appealed must provide the Board with the following upon receipt of a copy of the Notice Appeal form:</p> <ul style="list-style-type: none"> <li>(a) All information submitted with the original decision.</li> <li>(b) The director's letter comprising the decision, together with: <ul style="list-style-type: none"> <li>(i) Recommendations and reports to the director including comments.</li> <li>(ii) Minutes of the meeting where the director considered the decision.</li> <li>(iii) Any other reports considered by the director to make the decision.</li> </ul> </li> <li>(c) Time extension agreements, where applicable.</li> <li>(d) Copies of all letters from referral agencies and area and adjacent landowners.</li> <li>(e) List of adjacent disposition holders and/or landowners.</li> <li>(f) Excerpts from the Public Lands Act, Public Lands Administration Regulation, ALSA, regional plan or any other statute, including all provisions relating to an appeal. Applicable excerpts include, but are not limited to, purpose provisions, discretionary and permitted uses, standards, and policies.</li> <li>(g) Any applicable excerpts of plans under the Alberta Land Stewardship Act or other regional plans.</li> <li>(h) An accurate area map or maps showing land uses, together with aerial and site photographs that give a detailed graphic explanation of the improvements and the physical conditions of the lands that are the subject of the appeal and surrounding lands including easements</li> </ul>

and rights-of-way registered on the property.

- (i) If any transportation requirements are at issue, any relevant master plan or policy directive addressing:
  - (i) Access.
  - (ii) Road widening.
  - (iii) Service roads.
  - (iv) Road alignments.
  - (v) Any other relevant issue.
- (j) If public reserves are at issue, any relevant policy documents concerning environmental, municipal, or other reserves.
- (k) Any other information requested by a panel or a case manager that is necessary to expedite the appeal.

***12. Further Submissions***

- 14.1 A panel may allow submission of reports or other material in addition to that forwarded under these Rules.
- 14.2 Where a panel finds that a party or other person has not had a fair opportunity to review material submitted under this Rule, it may grant an adjournment or make any other order it deems appropriate to ensure a fair and expedient resolution of the appeal.

***13. Form of Documents***

- 13.1 The format of submissions must be clear and understandable and all pages must be numbered consecutively, throughout the entire text and graphic content, even if there are dividers or tabs.
- 13.2 Electronic filing of documents may be permitted if a panel or the Board administration deems it appropriate.

***14. Orders for Disclosure***

- 14.1 If a party makes a request for an order for disclosure, the request must:
  - (a) Identify as precisely as possible the information or material required and the issue(s) to which it relates, and
  - (b) Provide details explaining how the disclosure requested may be relevant to the issue(s) to be considered by the panel.
- 14.2 The Board may grant an order for disclosure regarding:

- (a) Material that has not been disclosed as required by these Rules, a preliminary hearing decision, or other legal requirement; or
- (b) Material that is
  - (i) Within the control of another party,
  - (ii) Not readily available from another source,
  - (iii) *Prima facie* relevant to the proceedings before the Board, and
  - (iv) Reasonably necessary for the person requesting the information to make its own submissions.

14.3 A panel may, after first considering a request made under this Rule:

- (a) Order disclosure within a specific time of all or some of the information or material requested by the other party, with or without conditions, including conditions to protect confidential information,
- (b) Refuse to order disclosure of the information requested,
- (c) Assess costs if, in the opinion of the panel, the disclosure was unreasonably withheld or unreasonably requested,
- (d) Give any other direction it deems to be appropriate.

14.4 In determining whether disclosure was unreasonably withheld or requested, a panel may consider:

- (a) The relevance of the material requested.
- (b) The requirements of disclosure for a fair process.
- (c) Whether the information is confidential.
- (d) Whether the information could have been obtained by other means.
- (e) The timeliness of the request.
- (f) Any other factor that, in the opinion of the panel, affects the reasonableness of the request.

<b>15. Disclosure of Confidential Information</b>	15.1 The Board or panel may, upon request, order that confidential records provided to it be sealed if the panel believes it justified.
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***Sealing of Records***

The Board will not allow access to sealed documents to persons not identified in the sealing order unless otherwise required by law (e.g. an order pursuant to a FOIP application)

<i>Confidentiality on Production of Documents (See also Rule 27)</i>	15.2 Where the Board or panel determines that information in documents containing confidential or sensitive material must be disclosed to another party, that the board or panel may:
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- (a) Order the first party to make and disclose a non-sensitive summary or extract of the original.
- (b) Order the material to be provided to the other party subject to a signed undertaking satisfactory to the board or panel.
- (c) Order restrictions on the use of information by observers to a hearing where confidential information is presented.
- (d) Make any other arrangement suitable in the context of an open hearing to allow access to the information without unnecessarily compromising its sensitive nature.

<b>16. Withdrawals</b>	16.1 A party may request to withdraw an appeal that it initiated before the Board.
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16.2	The Board may accept or reject a withdrawal or ask for supporting information.
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16.3	Withdrawal requests are to be submitted to the Board in writing at least 14 calendar days in advance of the scheduled hearing.
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16.4	Subject to a waiver from the Board or Board administration, where withdrawals are submitted less than 14 days in advance of the hearing, the party withdrawing shall appear on the hearing date scheduled to explain the reason for the late withdrawal.
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<b>17. Recommend-</b>	17.1 Where two or more parties reach an agreement concerning
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*ations* an issue before the Board, they may provide the Board with a joint recommendation for the Board to consider.

17.2 The Board may accept or reject a recommendation, or ask for supporting information.

17.3 Recommendations are to be submitted to the Board in writing at least 14 calendar days in advance of the scheduled hearing.

**18. Postponements**

18.1 A request to postpone a scheduled hearing must:

- (a) Be delivered to the Board and other parties in writing at least 14 calendar days before the hearing is scheduled to begin,
- (b) Include reasons for the postponement, and
- (c) Suggest suitable replacement dates for the hearing.

18.2 The Board will consider the following factors as relevant to deciding postponement requests:

- (a) The degree and likelihood of inconvenience, prejudice or cost to **other persons** if the request is **granted**,
- (b) The degree and likelihood of inconvenience, prejudice or cost to **the applicant**, if the request is **denied**,
- (c) The number of persons affected by the delay,
- (d) The likelihood of unreasonable disruption to the Board's schedule,
- (e) Where the request is based on relevant pending Board or Court decisions
  - (i) Whether the decisions are expected within 30 days, and
  - (ii) Whether the relevant proceedings have been pursued expeditiously,
- (f) Legislated timelines for hearings and decisions, and
- (g) Any other factor the Board deems relevant.

18.3 If the need for a postponement arises less than 14 days before a scheduled hearing, the person requesting the adjournment must notify the Board, all other parties and interveners as soon as the need arises.

18.4 The Board may accept or reject a request for a postponement. The Board will notify the parties if the request is granted. If the request is not granted, all parties shall be prepared to proceed at the scheduled hearing time.

## **Part E – Hearing Procedures**

**19. Location of Hearings**

19.1 Hearing locations will be in government offices determined by the Board, giving consideration to the convenience and cost to the parties, witnesses, interveners, and the Board.

**20. Mode of Hearings**

20.1 Hearings are open to the public, and all persons attending a hearing do so at their own cost.

20.2 Hearings may be conducted by way of:

- (a) An in-person hearing.
- (b) A telephone, video or other form of electronic conference.
- (c) Written materials and submissions delivered to the Board.
- (d) Any combination of (a), (b) or (c) or any other means a panel or case manager deems appropriate.

20.3 Procedure. In general, the panel will hear from the Appellant, the decision maker, adjacent disposition holders and landowners, etc.

**21. Consolidation and Severance**

21.1 When the Board considers that two or more matters are related to each other by common facts, issues, questions of law or for any other reason, the Board may order that the matters be:

- (a) Consolidated,
- (b) Heard at the same time, or
- (c) Heard one after the other.

<i>Effect of Consolidating Proceedings</i>	<p>21.2 The Board may sever a single proceeding into two or more separate hearings dealing with separate participants or separate issues.</p> <p>21.3 The Board will consider representations by the parties before issuing an order for severance or consolidation.</p> <p>21.4 When two or more matters are consolidated:</p> <ul style="list-style-type: none"> <li>(a) Findings and final determination of the issues before the Board may be applied to all the participants in the consolidated hearing,</li> <li>(b) Parties and interveners to each of the original separate proceedings are parties and interveners to the consolidated proceeding, and</li> <li>(c) Evidence presented in each of the separate proceedings is evidence in the consolidated proceeding.</li> </ul> <p>21.5 Where two or more matters are heard at the same time or one after the other, the Board may order that the same evidence be admitted for more than one proceeding, to the extent that doing so does not cause unfairness.</p>
<i>Effect of Severing Proceedings</i>	<p>21.6 Where a proceeding is severed, evidence and submissions already made may be applied to the separate hearings that ensue.</p>
<b>22. Interveners</b>	<p>22.1 The Board will only hear from those persons entitled to notice under section 212 of the <i>Regulation</i> unless otherwise directed by a panel. Exceptions may include third-party disposition and land-owners or prospective purchasers who can demonstrate that they are affected by the appeal application.</p>

**Persons entitled to notice under s 212 are:**

- (a) the director or officer who made the decision objected to,
- (b) the appeals chair,
- (c) where decision objected to was made in respect to land, any of the disposition holders and any of the owners of the adjoining land that are directly affected by the decision
- (d) persons considered to be appropriate parties to the appeal by the appeal body.

<b>23. Recording of Proceedings</b>	<p>23.1 No person shall make an audio, video, photographic or other electronic record of Board proceedings or a verbatim record without obtaining permission from the Board prior to the hearing.</p> <p>23.2 Requests to make a verbatim record of the proceedings, or any part thereof, will be considered by the Board in light of whether:</p> <ul style="list-style-type: none"> <li>(a) The cost is to be covered by one or more of the parties or interveners.</li> <li>(b) The Board is to receive a copy of any recording and sufficient copies of any transcription for the Board's use.</li> <li>(c) The parties and interveners are to receive a copy of any transcription, or of any recording if no transcription is made.</li> <li>(d) The process of recording or transcription will not interrupt the orderly conduct of the Board's business.</li> <li>(e) The recording and transcription proposed will be, in the view of the panel, of sufficient accuracy.</li> <li>(f) There are any further considerations as a panel finds appropriate.</li> </ul> <p>23.3 The Board may provide for the recording and transcribing of its own proceedings where:</p> <ul style="list-style-type: none"> <li>(a) A transcript may be requested under section 124 of the Act, or</li> <li>(b) The Board otherwise deems it necessary to do so.</li> </ul> <p>The Board will not provide access to recordings or transcripts made except as necessary to fulfill its responsibility under section 124 of the Act, FOIP, or other legal requirement.</p>
<b>24. Withdrawal of Panel Members</b>	<p>24.1 Where a panel member becomes aware of circumstances that he or she believes may raise a reasonable apprehension of bias, that member will:</p> <ul style="list-style-type: none"> <li>(a) Declare that an apprehension of bias exists and withdraw from the panel, or</li> </ul>

- (b) Disclose the circumstances and give the affected parties an opportunity to either:
  - (i) Waive any objection to the member sitting on the panel, or
  - (ii) Give reasons as to why the panel member should withdraw.
- 24.2 A party may request a panel member to withdraw because of a reasonable apprehension of bias. A party who makes such a request must do so as soon as the circumstances giving rise to it become known and provide their reasons for the request.
- 24.3 Where a member has been asked to withdraw, the parties will be given an opportunity to address the question of whether the circumstances raise a reasonable apprehension of bias.
- 24.4 The decision to grant or dismiss a request to withdraw because of an apprehension of bias must be made by the member in question.
- 24.5 A Board member may confer with other panel members before deciding whether or not to withdraw.
- 24.6 A panel from which one or more members has withdrawn may:
  - (a) Proceed to hear the matters before it, subject to the existence of a quorum as defined in section 223 of the *Public Lands Administration Regulation*, or
  - (b) Adjourn or make arrangements to reschedule a matter so that it may be heard by a full panel.

## **Part F – Post Hearing Procedures**

- 25. Costs**
  - 25.1 When determining whether to award costs under section 232 of the Public Lands Administration Regulation, the Board or panel will consider whether a person(s):
    - (a) Extent, if any, to which the appeal succeeded,
    - (b) Value of the statutory interest, right or privilege,
    - (c) Importance of the issue,
    - (d) Complexity of the appeal,
    - (e) Abused the Board's process,

- (f) Has acted contrary to an agreed-upon or Board-directed process,
- (g) Has caused unreasonable delays or postponements,
- (h) Has acted frivolously or engaged in other conduct worthy of an order to reimburse another person for costs and expenses incurred as a result of that conduct.
- (i) Commenced separate proceedings in court or a tribunal under another enactment that should have been dealt with in one proceeding, or
- (j) Other matter the panel considers relevant to the question of costs.

25.2 The Board or panel may consider costs may:

- (a) deal with costs at any stage of an appeal, and
- (b) award costs or a direction respecting costs before or after the panel submits its report and recommendations under section 124(1).

25.3 In awarding costs, the board or panel may

- (a) award all, part, or none of the costs to a party, or
- (b) award costs to a party respecting a particular matter or part of an appeal while refusing to award costs to that party, or awarding costs to another party, respecting another matter or part of the appeal, and may direct whether or not any costs are to be set off against other amounts owing by or to a party.

25.4 Where the board or panel awards costs, the board or panel must give a written notice to the parties directing by whom and to whom the costs are to be paid.

25.5 Where the Board or panel does not otherwise direct, a request for costs must:

- (a) Be submitted to the Board at the conclusion of a hearing or in writing within 30 days of the written order, decision letter, or notice of decision that finally determines an application.
- (b) Specify the sum sought for costs including an itemized list of any disbursements sought to be recovered and a description of how the amount is calculated.

- (c) Specify the reasons why an award of costs is appropriate in the circumstances.

**26. Rehearings/  
Reviews**

- 26.1 A party or intervener may request the Board to rehear, review, vary or rescind any matter or decision under section 125 of the Act.
- 26.2 A request under this rule must include:
  - (a) A detailed statement explaining how the request meets the grounds for a rehearing/review listed under this rule; and
  - (b) The following background information:
    - (i) Name of the applicant,
    - (ii) The legal description of or the approximate global position system co-ordinates of the location of, the area of public land on which the appeal was made,
    - (iii) Names of parties and interveners to the appeal or complaint,
    - (iv) Board decision number,
    - (v) The grounds on which the appeal is made,
    - (vi) Address, phone number and contact persons for all parties and interveners at the earlier hearing,
    - (vii) Proof that a copy of the request has been sent to the other parties and interveners.
- 26.3 Requests following the decision must be made within 30 days of the date of the decision.
- 26.4 After a request is filed pursuant to this Rule, the Chair may:
  - (a) Refer the matter to a case manager for case management,
  - (b) Refer the request to the panel that originally heard the matter for further directions, final determination, or both,

or

(c) Refer the request to a new panel for further directions, final determination, or both.

*Grounds for a Rehearing*

26.5 The Board will not exercise its power under section 125 of the *Public Lands Act* in the absence of the following:

(a) New facts, evidence or case-law that was not reasonably available at the time of the hearing. The new facts, evidence or case-law must be significant enough to have a bearing on the outcome of the decision,

(b) A procedural defect during the hearing which prejudiced one or both of the parties,

(c) Material errors that could reasonably change the outcome of the decision, or

(d) Any other circumstance the Board considers reasonable and substantive.

26.6 The following are not sufficient grounds for a review:

(a) disagreement with a decision;

(b) failure to provide related case authority; or

(c) present available evidence.

26.7 Pursuant to Section 126 of the Act, the Minister has exclusive and final jurisdiction, no decision, order, direction, ruling, proceeding, report or recommendation of the Minister or the appeal body shall be questioned or reviewed in any court.

*Effect of Application*

26.8 A request under section 125 of the Act does not automatically stay a decision already made.

**27. Access to Board Records**

27.1 Records filed with the Board will be made accessible to the public subject to:

(a) Sealing orders or other restrictions imposed by Board orders, FOIP, or other legal requirements, and

(b) Payment of any prescribed fee.



